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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

February 4, 1999

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

Re: Partial Opposition to Petition for Reconsideration and Clarification
MM Docket No. 97-217
File No. RM-9060

Dear Ms. Salas:

Transmitted herewith on behalf of UT Television, is an original and five (5) copies of its Partial Opposition to the Catholic Television Network's Petition for Reconsideration and Clarification in MM Docket No. 97-217. Should there be any questions concerning this material, please communicate directly with the undersigned.

Very truly yours,

Robert F. Corazzini
Counsel

Enclosure

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Amendment of Parts 1, 21 and 74 to Enable	)	MM Docket No. 97-217
Multipoint Distribution Service	)	
And Instructional Television Fixed	)	File No. RM-9060
Service Licensees to Engage in Fixed	)	
Two-Way Transmissions	)	

PARTIAL OPPOSITION TO PETITION FOR RECONSIDERATION AND CLARIFICATION

Comes now, UT Television ("UT/TV"), by the undersigned counsel to present its Opposition to three modifications proposed by the Catholic Television Network ("CTN") in their Petition for Reconsideration and Clarification of the above-captioned Report & Order[1/] filed on December 28, 1998. In support thereof, the following is respectfully submitted:

I. Clarifying Interference Complaint Procedures

1. CTN requests that the Commission define the procedures it will use in resolving interference issues that arise from response or booster stations and more specifically, what a "documented complaint" should encompass as part of those procedures.[2/] UT/TV is in agreement that the procedures and definition should be clarified. However, requiring an automatic shutdown of a station based on a

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[1/] In the Matter of Amendment of Parts 21 and 74 to Enable Multipoint Distribution Service and Instructional Television Fixed Service Licensees to Engage in Fixed Two-Way Transmissions, Report and Order, MM Docket No. 97-217, FCC 98-231 (released Sept. 25, 1998) ("Order").

[2/] See CTN's Petition at 3-7.

"documented complaint," however that term may be defined, is not only a Draconian measure that supersedes any previous protection provided to ITFS stations, but would interrupt the two-way transmissions of other ITFS stations for what may amount to de minimis interference. Therefore, UT/TV disagrees with CTN that such extreme measures be automatically invoked.

2. Interference is most likely to occur on a co-channel basis, targeting other ITFS stations as the recipients of such a drastic consequence. The Commission has restrained from imposing strict regulations on ITFS stations in the past due to the inability of most educational entities to adhere to such measures. To do so now would be to impede ITFS operations in such a way that could severely interrupt educational programming or other services being delivered to students or customers of a wireless cable system of which the ITFS station is a part. More disturbing is the potential use that "greenmailers" could make of such a regulation which potential abuse could wreak havoc on ITFS two-way operations along with the wireless cable systems of which it may be a part, if enacted as requested by CTN.

3. CTN recommends having a complainant "certify that it made a good-faith effort to resolve the interference problem with the licensee of the allegedly interfering transmitter before bringing the matter to the Commission Staff."[3/] CTN's own request begs the question as to how certain a complainant must be before filing a pleading with the FCC. By its own proposal, a complaint must provide evidence that the interference is being caused by a specific facility, yet the complainant can petition an "allegedly

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[3/] See CTN's Petition at 4-5.

interfering transmitter." In addition, CTN makes no attempt to define a "good-faith effort" made by a complainant that is filing a request to shut down a neighboring facility. Hence, the complainant may consider making one phone call and leaving a message on an answering machine as a good faith effort justifying notice to the Commission. Further, CTN makes no effort to define the amount of interference that must be caused before requiring a station to cease operations. UT/TV does not agree that the slightest amount of interference should condone terminating the operation of an entire station providing two-way educational programming to students or two-way services to a business. Without clarifying these particular issues, CTN's proposal can only be considered vague and uncertain, creating a loophole that could be wielded as a weapon by obstructionists rather than as a tool for prompt resolution of interference issues. Certainly CTN did not intend an outcome that hinders the development of ITFS stations and the wireless cable systems of which they are a part.

4. UT/TV suggests an alternative to CTN's proposal that would strike a more favorable balance between two parties trying to determine if interference does indeed exist. UT/TV believes that it will be more the exception than the rule for actual interference to occur after an adjacent or cochannel station has been analyzed and served with a copy of an application proposal which, pursuant to the new rules, must demonstrate interference-free operation. This is particularly true if the licensee decided not to petition the applicant on the basis of its own findings. Under these circumstances, it is not unreasonable to provide the allegedly interfering station the due process of notice and an opportunity to respond or cure such interference before enforcing the

ultimate step of terminating operations. Therefore, it is suggested that the Commission require that a written Notice of Complaint of Interference (the "Notice") be served on the allegedly interfering station and on the Commission as a forewarning that an alleged interference issue has arisen.[4] Upon receipt of this Notice, the allegedly interfering station would be provided 5 business days in which to respond, by either filing proof through engineering documents that such interference either does not exist or by taking the necessary steps to cure the interference.[5] This filing would include a description of the actions that have been or will be taken. Such procedures will maintain the burden on the allegedly interfering station as proposed by the Commission[6], yet will discourage unsubstantiated allegations from being filed for reasons other than to legitimately protect a currently authorized or previously proposed ITFS station. If the parties are able to resolve the issue independently, a final submission should be made to the Commission indicating that the matter has been resolved.

5. If the parties reach an impasse resulting from contradictory findings of their respective engineers and a resolution is not possible, the complainant should then file a Motion for Resolution of Interference Complaint (the "Motion") requiring

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[4] The Notice could also request that "on/off" tests be performed, as such tests would quickly determine if the station on which the complaint is based is in fact the interfering party.

[5] This is slightly longer than the response period cited in CTN's Petition regarding its alternative proposal for filing such a Notice, but such time is necessary to adequately respond, particularly if the Notice provides insufficient evidence of interference. See CTN's Petition at 7-8. If it is determined that the interfering station must make changes to its operations that require filing a modification application at the Commission, then the parties must work out a temporary resolution based on the amount of interference designed to allow continued operation of both stations until a Special Temporary Authorization or other FCC approval is obtained.

[6] See Two-Way Order at MM Docket 97-217, at ¶ 69 (released September 25, 1998).

Commission action. Upon filing of this Motion, the Commission could then demand in writing that the operations of the allegedly interfering station be ceased until a resolution is reached, but only if such interference prevents operation of the complainant's station.[7] In order to ensure the parties that the conflict will be resolved in an expedited manner, it would be helpful if the Commission were equally subject to certain measures to facilitate a decision. Such measures could include a requirement that an FCC engineer review the documented evidence provided by the parties and make an independent finding as to whether interference in fact exists, with an FCC Order incorporating this finding to be sent via facsimile to both parties within 3 business days of the Motion being filed with the Commission.[8] By mandating short deadlines for all involved, the concerns that ceasing operation would normally entail can be alleviated somewhat as the period for which a station is required to be inoperational is minimal and instigated through due process.

6. These procedures conform to the Commission's mandate that parties attempt to resolve interference issues before requesting FCC assistance. Furthermore, they continue to encourage applicants to comply with Commission rules by threatening to terminate their operations if such entities do not properly adhere to these regulations. Hence, the Commission's dual goals of protecting operating stations while not requiring

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[7] This determination can be made depending on the information provided by the complainant and other documentation submitted by the parties. The complainant should be held to the same certification requirements if it states that operation of both stations simultaneously is impossible.

[8] Such Motion would need to be served via hand-delivery to both the Acting Chief of the Video Services department and the engineer responsible for this particular market to allow for the Commission to act in such an accelerated fashion.

that drastic measures be taken until certain safeguards have been met will continue to be upheld if this proposal is adopted.

II. Brute Force Overload Complaint Procedures

7. UT/TV also agrees that procedures should be in place should brute force overload occur between response station and receive site. However, the Commission should enact procedures similar to those specified above for the reasons set forth above. Again, the proposals set forth in CTN's petition are vague and lack proper due process safeguards.

III. Registering ITFS Receive Sites

8. CTN has also requested that the Commission require the protection of receive sites registered or proposed since September 17, 1998, when conducting interference studies as well as the performance of additional studies prior to the activation of response stations.[9/] Such analysis is both administratively burdensome and unnecessary since the Commission has universally granted ITFS stations 35-mile protected service areas ("PSA"). Commission staff conduct their interference studies of PSAs based on a standard antenna height and pattern. However, actual receive antennas used by ITFS stations have far better receive capability than the theoretical reference pattern used in predicting interference by the Commission. Thus, requiring study of an ITFS station's PSA dispenses greater protection than that normally provided

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[9/] CTN's Petition at 9-13.

under a receive site's actual technical parameters. To require such painstaking analysis of receive sites, including proposed sites, particularly when activating a response station, would be to prevent such response stations from expeditiously activating their services. This in turn would affect the ability of a wireless cable operator to market two-way services against a competitor that does not face such restrictions. UT/TV believes that such market decisions will have an effect on the continued viability of the operation of their ITFS stations. Furthermore, requiring such studies would only create an administrative burden that does not enhance the protection currently enjoyed by ITFS stations under the Commission's rules. Accordingly, UT/TV requests that the Commission not adopt CTN's request.

IV. Conclusion

In conclusion, CTN has failed to present a compelling case supporting its arguments regarding cessation of operation of an ITFS response or booster station that allegedly causes interference to neighboring stations nor has it shown that such procedures would be conducive to addressing possible brute force overload. In lieu of CTN's proposal, UT/TV suggests procedures that are more conducive to the Commission's ultimate goals and which treat both parties fairly. Finally, CTN's request

for greater protection of ITFS receive sites is unnecessary and would only create an administrative burden that does not provide a greater benefit to the ITFS licensee.

Respectfully submitted,

UT Television

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CERTIFICATE OF SERVICE

I, Robert F. Corazzini, on behalf of UT Television, certify that a copy of the foregoing Opposition to Petition for Reconsideration was mailed via United States First Class Mail, postage prepaid to the following on February 4, 1999:

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