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Before the
Federal Communications Commission
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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	)))))	MM Docket No. 97-217 File No. RM-9060

CONSOLIDATED REPLY OF THE CATHOLIC TELEVISION NETWORK

Pursuant to Section 1.429(g) of the Commission's Rules, the Catholic Television Network ("CTN"), by its undersigned attorneys, hereby submits this reply to certain comments filed in opposition to CTN's Petition for Reconsideration and Clarification, filed in the above-referenced docket on December 28, 1998.[1]

I. THE COMMISSION SHOULD ADOPT CTN'S PROPOSALS FOR PROCEDURES TO RESOLVE INTERFERENCE COMPLAINTS.

Several parties objected or suggested modifications to CTN's proposals to (a) define the procedures associated with a "documented complaint" of interference and (b) adopt a procedure for a "notice of complaint of interference." Adoption of CTN's proposals is critical to implementation of the Commission's post-grant

[1] CTN's petition for reconsideration was filed in response to the Commission's *Report and Order* adopting rules to permit two-way operations on ITFS and MDS frequencies. *Report and Order*, 13 FCC Rcd 19112 (1998) ("*Two-Way Order*").

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interference resolution procedures. However, there are some modifications and/or additions that would improve CTN's proposals.

The parties filing the original Petition for Rulemaking (RM-9060) in this proceeding ("Petitioners") object generally to CTN's suggestions for more detailed rules governing the interference complaint resolution process. However, Petitioners also state that they would find CTN's "documented complaint" proposal acceptable *if* the Commission refuses to adopt CTN's alternative "notice of complaint of interference" procedure and abandons the advance notification and professional installation requirements relating to the activation of response stations.[2] Petitioners' objections show a surprising lack of consideration for the Commission's policies in adopting the regulations governing response transmitters.

Each of the rules governing installation, notification, and complaint resolution addresses an independent issue; they are not somehow fungible, as Petitioners suggest. Professional installation helps to ensure that installed response stations comply with the Commission's rules, one of which requires that response stations not cause interference to ITFS receive sites.[3] Notification ensures that ITFS licensees are aware of the location of two-way response transmitters that are potential interferors, but it, like the professional installation requirement, does nothing to remedy *actual* interference. The complaint procedure addresses actual interference if and when it occurs. Thus, Petitioners' suggestion that the

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[2] See Petitioners' Opp. to Recon., at 18-19.

[3] See, e.g., 47 C.F.R. § 21.909(g)(7); *Two-Way Order*, ¶ 52.

Commission trade particular complaint procedures for waiver of the installation and notification requirements is not practical, useful or rational. The professional installation and notification rules and CTN's proposed complaint procedures serve distinct and useful purposes, all of which should be given full effect.

On the other hand, CTN is sympathetic to BellSouth's and Petitioners' concerns regarding the possibility that complaints of interference sent by fax may not be received in a timely manner, and that it may be difficult, at times, to shut down a response transmitter on two hours notice.[4] CTN agrees that reasonable boundaries should be placed on the service of "documented complaints" of interference by fax. For example, faxed complaints should only be sent during normal business hours at the office of the party served, and they should be confirmed by a telephone call to the number provided in the party's application and/or advance notification materials. Transmitter shut down should occur no later than the next business day.

However, only reasonable limits are required. Under CTN's proposal, such complaints would have been preceded by a discussion between the parties of the interference issue, because good-faith efforts to resolve the interference would be a required prerequisite to filing a complaint.[5] Therefore, the complaint can hardly come as a surprise.

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[4] See BellSouth Opp. to Recon., at 10 n.19; Petitioners' Opp. to Recon., at 20.

[5] See CTN Pet. for Recon., at 4-5.

Also, hub station licensees are bound by the Commission's rules *not* to cause interference to ITFS receive sites.[6] If there were no procedure to shut down an interfering facility quickly, a licensee would be allowed to continue to violate this rule while an educator is denied the benefit of instructional transmissions. A rapid and decisive response is necessary to minimize disruption to instructional service and give meaning to the requirement that hub licensees "*promptly* remedy" or "*immediately* cease operations" when interference occurs.[7]

Petitioners charge that CTN's proposals would be unfair to their interests.[8] This is flatly wrong. The Commission has already placed the burden of ceasing operations on the party responsible for the interfering station. What *would* be unfair would be to require ITFS licensees to suffer continued interference when the Commission placed the burden of ceasing operations on the interferor.[9] It should also be noted that neither CTN nor the Commission suggested that the "documented complaint" procedure should be used to shut down an entire two-way network; the goal is to shut down a specific response transmitter that is causing interference. When viewed in light of the problem they address, CTN's proposals are narrowly focused and reasonable.

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[6] See, e.g., 47 C.F.R. § 21.909(g)(7).

[7] Id. (emphasis added).

[8] See Petitioners' Opp. to Recon., at 19.

[9] See, e.g., 47 C.F.R. § 21.909(g)(7).

Finally, CTN's "documented complaint" proposal is also responsive to the licensing procedure outlined in the *Two-Way Order*, which already empowers applicants in a manner that is, to borrow Petitioners' phrase, "unique in Commission annals."[10] CTN's proposal attempts to maintain the equities and burdens on the parties in the same manner as the Commission's rules have already allocated them. It should be adopted to clarify the new rules.

II. THE COMMISSION SHOULD CONTINUE TO REQUIRE INTERFERENCE PROTECTION FOR *ALL* ITFS RECEIVE SITES, INCLUDING THOSE REGISTERED AFTER SEPTEMBER 17, 1998.

Petitioners, Region IV Education Service Center *et al.* ("Region IV"),[11] and UT Television oppose CTN's request that the Commission clarify that it intends to protect ITFS receive sites, regardless of whether those sites were registered before or after September 17, 1998, against later-activated two-way response stations.[12] These arguments should be rejected.

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[10] Petitioners' Opp. to Recon., at 19.

[11] The Region IV opposition was filed on behalf of nine entities, six of which are also identified as Petitioners in Appendix A to the *Two-Way Order*: Denver Public Schools; George Mason University Instructional Foundation, Inc.; Humanities Instructional TV Educational Center, Inc.; Indiana Higher Education Telecommunications System; Valley Lutheran High School; and Views on Learning, Inc. Not only does this dual status as Petitioners and as "independent" commenters afford these parties two appearances before the Commission, it also creates the false impression that Petitioners' arguments are supported by ITFS entities that are unaffiliated with the Petitioners. Even more offensive, Petitioners have taken to bolstering their arguments by citing to many of these entities as "other ... well-regarded" parties that have independently come to share Petitioners' views. See Petitioners' Opp. to Recon., at 5.

[12] See CTN's Pet. for Recon., at 9-13.

Petitioners recycle their theory that such protection will promote the continued use of what Petitioners deem to be "spectrally inefficient downconverters."[13] Petitioners' argument is deficient because they fail to provide even a shred of evidence of the existence or commercial availability of downconverters that are resistant to brute force overload ("BFO").[14] Moreover, even if such downconverters were available, they would likely be significantly more expensive than other options. The Commission should not mandate increased costs for the provision of instructional material on frequencies reserved for instructional use. Such was certainly not the goal of the *Two-Way Order*.

Moreover, CTN's concerns regarding BFO were recently confirmed once again by the Wireless Communications Association International ("WCA"), the principal wireless cable trade association and a Petitioner. Earlier this month, WCA urged the Commission to require new wireless services at 2110-2150 MHz to protect Multipoint Distribution Service ("MDS") stations at 2150-2162 MHz from BFO interference.[15] While objecting to the notification and professional installation requirements,[16] WCA explicitly asked the Commission to impose the same

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[13] Petitioners' Opp. to Recon., at 15-16.

[14] See CTN's Response to Recon., at 13-14.

[15] See WCA Comments, ET Docket 95-18, at 15-16 (filed Feb. 3, 1999).

[16] See id. In these comments, the WCA objects to the professional installation and notification requirements adopted for two-way ITFS and MDS services as "overly burdensome." However, the Commission has frequently adopted obligations to protect educators that are different from those adopted for commercial services. Therefore, the Commission should definitely retain these rules for ITFS and MDS

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obligations on licensees of the 2110-2150 MHz band as adopted for MDS stations at 2150-2162 MHz in this proceeding. CTN's concerns regarding BFO have thus been validated again by the WCA, which seeks in another context to take advantage of the BFO rules that the Commission has here adopted at the urging of CTN. The Commission need look no further than the WCA's record on BFO to understand that the rules adopted in the *Two-Way Order* should remain in place.[17]

Region IV and UT Television argue that requiring two-way operators to conduct interference studies before activating each and every response station will be unnecessary and unduly burdensome.[18] But CTN never made such a proposal. CTN requested that the Commission clarify that response station *hub* applicants must demonstrate noninterference with respect to all then-registered ITFS receive sites in the area.[19] CTN also requested that the Commission clarify that two-way operators must notify all then-registered ITFS receive sites in the area before activating new response stations.[20] CTN *never* requested that the Commission require interference analyses for individual response stations registered after a response station hub application is filed.

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in this proceeding, and then consider the issue separately for licensees at 2110-2150 MHz.

[17] See CTN's Response to Recon., at 7.

[18] See Region IV Opp. to Recon., at 6-7; UT Television Opp. to Recon., at 6-7.

[19] See CTN's Pet. for Recon., at 9-13.

[20] See id.

In any event, insofar as Region IV and UT Television appear to complain of having to do interference analyses before activating response station hubs, their argument is based on an erroneous premise. The notification requirement is directed at brute force overload interference from stations that are neither co-channel nor adjacent channel stations, and therefore are not covered in any currently required interference analysis. Similarly, the Commission's grant of protected service area ("PSA") protection to ITFS stations does not alter the need for notification. Notification facilitates the elimination of BFO interference. PSA protection only addresses the distinct issue of co-channel and adjacent channel interference, not BFO interference. The Commission should reject Region IV's and UT Television's attempts to modify these rules, particularly since their suggestions do not address the underlying purpose of the rules.

III. TWO-WAY I-CHANNEL STATIONS SHOULD BE SECONDARY.

Petitioners oppose CTN's proposal to ensure the preservation of current I-channel instructional uses by making them primary to other uses.[21] But, Petitioners' opposition does not take sufficient account of instructional policies underlying the ITFS spectrum reservation. Like Petitioners, CTN applauds the Commission's efforts to promote flexible frequency usage. But, as CTN explained in its Petition, the *Two-Way Order*'s I-channel rules foreclose rather than expand possibilities for many ITFS licensees.[22] Given the limited amount of spectrum at

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[21] See Petitioners' Opp. to Recon., at 21-22

[22] See CTN's Pet. for Recon., at 15-17.

issue, CTN believes that the better practice is to preserve the primary use of already assigned I-channels for point-to-point upstream transmissions.

IV. THE COMMISSION SHOULD REQUIRE FILING OF INTERFERENCE ANALYSES WITH THE COMMISSION.

Petitioners assert three reasons why the Commission need not require that interference analyses be filed with the Commission: (1) applicants will have certified the correctness of the analyses; (2) the Commission has reserved the right to require such filings in particular cases; and (3) such filings will hinder implementation of an electronic filing system.[23]

Petitioners' arguments ignore completely the reasons why such filings must be required. As is explained in greater detail in CTN's Petition for Reconsideration and Clarification, each applicant for two-way service must prepare an interference analysis. That analysis must be made available to all potentially affected parties, and it is relied upon to determine whether there would be harmful interference and/or whether two proposals are mutually exclusive. Most importantly, the interference analysis becomes a condition of the ITFS or MDS authorization upon grant of a license.[24]

The significance of the analysis and its role in the Commission's procedures mandate that the analysis should be filed with an application so that it becomes a part of the permanent record. As to its impact on an electronic filing system, if the

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[23] See Petitioners' Opp. to Recon., at 4 n.10.

[24] See CTN's Pet. for Recon., at 17-20.

Commission were to install an electronic filing system that could not accept information that will become a condition of the license if granted, CTN questions whether such a system would serve the public interest in making available sufficient technical information on licensed facilities.

V. CONCLUSION

CTN requests that the Commission reconsider and clarify the rules adopted in the *Two-Way Order* and modify the rules governing ITFS and MDS as set forth in this reply, in CTN's response to petitions for reconsideration, and in CTN's Petition for Reconsideration and Clarification.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, William D. Wallace, hereby certify that I have on this 18th day of February, 1999, caused to be served true and correct copies of the foregoing "Consolidated Reply of the Catholic Television Network" upon the following parties via hand delivery (indicated by an *) or first-class United States mail, postage prepaid:

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