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

In the Matter of	)	
	)	
Reallocation of the 216-220 MHz,	)	**ET Docket No. 00-221**
1290-1395 MHz, 1427-1429 MHz,	)	
1429-1432 MHz, 1432-1435 MHz,	)	
1670-1675 MHz, and 2385-2390 MHz	)	
Government Transfer Bands	)	

To: The Commission

COMMENTS OF PHONIC EAR, INC.

1. These Comments are filed on behalf of Phonic Ear, Inc. ("Phonic Ear") in response to the Commission's *Notice of Proposed Rule Making* in the above-captioned proceeding, 15 FCC Rcd 22657 (2000). Phonic Ear is one of the nation's earliest and largest manufacturers of assistive listening devices ("ALDs") that utilize FM radio transmission to link a teacher or other speaker to the hearing amplification device of a hard-of-hearing person. It has manufactured, sold, and serviced ALDs for over 30 years.

2. Phonic Ear was the petitioner for rule making whose efforts led to the first frequency allotment for ALDs, the 72-76 MHz band, in Docket No. 19185.[1/] It was also the petitioner in ET Docket 91-150, which expanded the frequencies available in the 72-76 MHz band,[2/] and in WT Docket No. 95-56, which led to the allotment of the 216-217 MHz band to the Low Power Radio Service ("LPRS") and the inclusion of ALDs as an important part of that service.[3/]

1/ *Auditory Training Devices*, 35 FCC 2d 677 (1972), 39 FCC 2d 983 (1972).

2/ *Auditory Assistance Devices*, 7 FCC Rcd. 2256 (1992).

3/ *Low Power Radio and Automated Maritime Telecommunications System Operations in the 216-217 MHz Band*, 11 FCC Rcd. 18517 (1996).

3. Prior to the opening of the 72-76 MHz band, the earliest ALDs operated in the 88-92 MHz FM radio broadcast band, where the field strength limits of Part 15 of the Commission's Rules severely impaired the effectiveness of the devices in classrooms, which were one of the earliest applications of ALD technology. Opening the 72-76 MHz band made it possible for the first time to manufacture high quality ALDs that really worked. Children all over the nation finally heard sound, many for the first time. ALDs have now become widely accepted, and their availability is mandated in many cases by disability laws.

4. Because the 72-76 MHz band was not reserved exclusively for ALDs, it became filled with other users over the years. Most of those users transmit signals with considerably higher power than ALDs are permitted to use. ALDs are secondary, so interference problems have mounted; and only increasingly clever manufacturing techniques and on-site band survey techniques have made it possible to continue to meet the needs of educational and other institutions that rely on ALDs to serve their students, members, and patrons.

5. Realizing that the interference problem would only get worse over time, Phonic Ear petitioned for a new allotment at 216-217 MHz. This band was seen as ideal for ALDs because no high powered operations could be permitted without interfering with television broadcast reception. Thus the LPRS was created, and ALDs were made a principal part of that service. The quiet RF environment, along with a shorter signal wavelength that facilitates miniaturization, have resulted in new products that are cosmetically superior and more acceptable to the hard-of-hearing community, especially young people, than earlier generation products. Several manufacturers have entered the field, and they offer a variety of products.

5. Obviously, it is a matter of great concern to Phonic Ear that the 216-217 MHz band may go on the commercial block and be sold to the highest bidder, leaving hard-of-hearing people on the back burner once again, as happened in the evolution of the 72-76 MHz band. Notwithstanding the auction language in the 1997 Balanced Budget Act, it is inconceivable that Congress ever intended such a

result when it passed the statute. Congress did not know which spectrum the National Telecommunications and Information Administration ("NTIA") would release, so it could not have anticipated that ALDs would be adversely affected. The tenor of the legislation is that the government would vacate spectrum it uses, opening up new clear spectrum for auction to commercial entrepreneurs, not that NTIA would release its interest in already-shared spectrum and put civilian hard-of-hearing people at risk. Reaching such an unintended result cannot be justified under any legal theory.

6. Phonic Ear is a member of the Hearing Industries Association ("HIA") and strongly endorses the detailed comments being filed by HIA in this proceeding. HIA's comments will analyze not only the Balanced Budget Act but also other statutes that mandate the provision of assistive devices for hard-of-hearing people. The Commission must find a way to satisfy all of these statutes, without making vulnerable members of the public victims.

7. Accordingly, Phonic Ear urges the Commission to review HIA's comments carefully and to reach a conclusion in this proceeding that allows ALDs to continue to operate in the 216-217 MHz band without any increased threat of interference.

Respectfully submitted,

/s/ Peter Tannenwald

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March 5, 2001

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