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July 18, 2001

Ms. Magalie Roman Salas, Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: Reallocation of the 216-217 MHz, 1390-1395MHz, 1427-1429 MHz, 1429-1432 MHz, 1432-1435 MHz, 1670-1675 MHz, and 2385-2390 MHz Government Transfer Bands; ET Docket No. 00-221

Dear Ms. Salas:

The following parties met yesterday with Peter Tenhula in Chairman Michael Powell's office: David Woodbury of Hearing Industries Association; John Flanders of Alexander Graham Bell Association; Beth Wilson and Timothy Creagan of Self-Help for Hard of Hearing People; and David Irwin and Loretta Garcia of the captioned law firm. The parties discussed ET Docket No. 00-221 and specifically the potential reallocation of the 216-217 MHz band. They observed that they filed comments in this proceeding earlier this year.

The parties demonstrated an assistive listening device and explained the value of the device to hearing-impaired persons. They discussed the legal and policy reasons why assistive listening devices should continue operating in the 216-217 MHz band. They also advocated for protection of these devices from harmful interference from any other potential users in the band.

The attached memorandum was distributed at the meeting. Should there be any questions concerning this meeting, please contact the undersigned counsel.

Sincerely,



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MEMORANDUM

July 17, 2001

TO: Chairman Michael Powell, Peter Tenhula
FROM: Hearing Industries Association
RE: Potential Reallocation of 216-217 MHz Band

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Problem: Americans who use assistive listening devices (ALDs) will be harmed if the Commission chooses to reallocate spectrum from the 216-217 MHz bands currently assigned for use by these devices.

Solution: Assign the highest priority to preserving the benefits of ALDs operating in the 216-217 MHz band. Elevate their status to primary use and license them on a blanket basis if necessary for preservation, but not in a way that restricts their ability to operate anywhere at any time so long as no interference is caused.

Background

The Commission released a Notice proposing to make available to the private sector spectrum that was previously allocated exclusively or on a shared basis for federal government use, pursuant to the Balanced Budget Act of 1997. See NPRM in ET Docket No. 00-221, FCC 00-395, Nov. 20, 2000.

Many hard-of-hearing persons rely heavily on ALDs. For example, 35% of the nation's places of worship -- as well as schools, theaters, auditoriums, sports arenas, and other public places -- use assistive listening technology. Most new and improved equipment is focused on using the 216-217 MHz band, which replaced the old interference-riddled 72-76 MHz band. The hard-of-hearing community has counted on the FCC to keep their new electronic home available and clear and are deeply concerned that the FCC's commitment is proposed for abandonment without good reason.

The Technology

Traditional hearing aids amplify all sounds equally and the hard-of-hearing person does not have the neurological tools to distinguish and reject the undesired sounds.

ALDs solve this problem by allowing the sound receptor to be placed at the source of the sound and linked to the hearing aid-based amplifier through radio spectrum.

The desired sound becomes dominant and the user can decipher sounds that otherwise would be unintelligible. This development has significantly improved the quality of life for a million persons currently using ALD technologies.

Legal and Policy Arguments

The 1997 Budget Act does not require the auctioning of 216-217 MHz to the detriment of ALDs.

The Act directs the Commission to award licenses by competitive bidding. However, the Act does NOT compel that every single piece of designated spectrum must be offered at auction; nor does it require accepting mutually exclusive applications, which is the only action that invokes the general statutory auction obligation.

Our meetings with members of Congress make clear that members of the Telecommunications and Appropriations Committees think that that NTIA's identification of 216-217 MHz for reallocation was the result of a misunderstanding of the identification criteria in have the Budget Act of 1997.

In addition, these members of Congress believe that NTIA failed to adequately consider the requirement that the transfer of spectrum used by the federal government shall not result in costs to the federal government, or in loss of services or benefits to the public, that are excessive in relation to the benefits that may be provided. 47 USC 923(a)(4).

Introduction of new services that threaten ALDs would conflict with statutory obligations and administration policies to encourage and protect services for persons with disabilities.

Other statutes -- and established legislative and executive policies -- favor promoting and *requiring* the deployment of devices to aid disabled users.

For example, section 225 requires a telecommunications system for speech- and hearing-impaired users and section 255 requires manufacturers and service providers to make their equipment and services accessible by physically-challenged users. And as discussed below, schools and special education institutions are *required* by federal law to provide properly functioning ALDs to children with disabilities.

The principle of harmonization of statutes compels the FCC to confine auctions to 217-220 MHz and to reserve 216-217 MHz for statutorily exempt public safety operations, such as ALDs.

ALDs should be elevated to primary spectrum status and licensed on a blanket basis.

To permit interference of ALDs would seriously harm the ability of the hearing-impaired users to function in society. Thus primary status is justified. However, primary status

should not be turned against the hard-of-hearing community by disallowing non-interfering operation of ALDs at any time and at any place.

Individual licensing would tremendously burden FCC staff and discourage the use of ALDs by people who cannot afford to pay regulatory fees or are unable to undertake the required paper work.

The 216-217 MHz band must be governed by technical rules that protect ALDs and television broadcast services.

Any other use of the spectrum at 216-217 MHz must not impair the ability of the hard-of-hearing to use ALDs or adversely affect reception of TV Channel 13, which occupies the band 210-216 MHz and is especially vulnerable to interference from operations close to 216 MHz.

Any competing uses of this spectrum should operate with very low power, infrequently in time, and only in places not frequented by people, and must not be available as general consumer products.

Well-established public policy requires the protection of ALDs.

No realistic fiscal policy objective exists to successfully compete against the well-established national policy of protecting persons with disabilities and the devices they use to improve their lives.

Recent trade press shows growing support for protecting the use of this spectrum by ALDs.

The Commission has the opportunity to show that it cares for the needs of people with disabilities.

Impairing the operation of ALDs would place state and other institutions in violation of federal laws.

Federal law covering special education provides federal funding to states if they meet certain requirements, including providing a free and appropriate public education to children with disabilities. 20 U.S.C. §§1400 *et seq.*

The school is required to provide hearing aids and radio-based assistive listening systems if they are included in the child's Individual Education Program established under the state's procedures.

It is important that the band on which radio-based devices operate be free from interference everywhere (not just in or near schools) because a school may permit a child to use an ALD outside of school, such as in the home.

Introducing new potentially interfering services in the 216-217 MHz band could destroy a service intended to assist persons who are a specific target of federal and state government assistance.

Conclusion

The FCC should not turn both law and public policy on their head by depriving a group that Congress intended to protect of the tools they need to function in a hearing world and by causing educational institutions and public gathering places to be in violation of other federal laws. To do so would be objectionable and politically embarrassing both to the Commission and to Congress, which clearly did not direct such an unintended result.

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