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Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

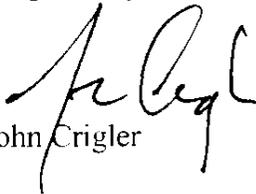
Re: **MM Docket No. 95-31**
Ex Parte Notice

Dear Ms. Dortch:

Pursuant to Section 1.1200, *e/seq.*, of the Commission's Rules, Station Resource Group ("SRG") hereby gives notice that an ex parte presentation, including the attached documents, was made to Susan Eid, Legal Advisor to Chairman Powell on December 12, 2002. The documents consist of a redacted form of comments SRG filed in MM ET Docket 02-135 and an illustrative list of parties that will be affected by the outcome of MM Docket 95-31

Please direct any questions regarding this matter to the undersigned

Respectfully submitted,


John Crigler

JC:gr
Enclosures

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STATION RESOURCE GROUP SPECTRUM MANAGEMENT

1. **SRG** urges the Commission to use public benefit outcomes as the principal criteria for framing and evaluating its spectrum policies. Radio spectrum is a public asset, as was pointed out by virtually every party that commented in this proceeding. The Commission's critical role as a trustee of the public airwaves must continue to guide its overall policies.

2. The Commission's most powerful spectrum policy tool is a forward-looking framework for decision-making that anticipates multiple uses in a rapidly evolving media environment.

An effective and efficient use of spectrum must address a complex mix of services including, commercial and public radio, public safety, military, national defense, telephone, wireless broadband networks, data transmission, radio-reading, short-range wireless LANs, wireless home networks, intentional emitters (such as garage door openers), ham radio, mesh networks of computers accessing Neighborhood Access Points for Internet use, data collection by astronomers, and numerous other uses that will emerge as spectrum policies promote innovation—which will in turn address and cultivate a blend of public service, public safety, utility, and private use expectations by the public at large.

3. **SRG** proposes that the Commission incorporate a "spectrum easement" concept for certain services. Commission policies should provide, in real estate terms, a *spectrum easement* that incorporates *tolerance-averse services* of over-riding public good.

Spectrum policies must recognize the different *service tolerances* of different services—including *tolerance-averse services*. As numerous Comments highlighted, some services, most notably military, public emergency use, public safety, and national security services, must be absolutely dependable. Public broadcasting has a unique obligation to deliver universal service at no cost. Other services might have a greater tolerance for some occasional failures or interference problems at the margin, and in fact might evolve more effectively in that atmosphere.

While SRG does not necessarily concur with the specific regulatory or technical approaches suggested by parties who provide *tolerance-averse services*, we urge the Commission to incorporate the concept of these *spectrum easements* into its spectrum policies framework.

4. The Commission's spectrum policies framework should anticipate and incorporate the capacity for change. The policy framework must allow the Commission to speedily adapt to lessons learned, adjust to the most effective ways to enforce transmission and interference standards, and invoke cooperation by various parties with different economic interests.

It was clear for decades, for example, that comparative hearings for contested reserved band spectrum were leading to protracted and expensive deadlocks that precluded use of the contested spectrum for public benefit. The current point system for resolving mutually exclusive noncommercial educational broadcast applications may or may not prove more effective, but it is convoluted, complicated and contradictory—linked to aging premises rather than a long-term solution. This is one example from the world of public radio that highlights the need for policy based on the *public's* interest rather than the interests of broadcasters and the importance of an atmosphere in which the Commission can institute change in a timely fashion. Spectrum policies need to allow and to anticipate change as the Commission learns from successes and failures and adapts for the future.

Another current example of deadlock is the FM Auction situation. Today, following court cases and months of internal review at the Commission, FM Auction #37 of 359 commercial fm frequencies, initially scheduled for February, 2001, has still not occurred. This past month the FCC decided to prohibit noncommercial educational licensees from applying for licenses for new services in the lower 700 MHz band because the involvement of that group of licensees threatened to delay or derail that auction.

The FCC's initial approach in FM Auction #37 was to give a bidding credit to public radio licensees by virtue of not attributing reserved spectrum broadcast stations to their ownership criteria. This approach would have most likely resulted in more public radio service in the end. This approach could have been used in the auction of the lower 700 MHz band as well. The bidding credit was an example of a logical, practical, public-service driven approach.

Public radio, as well as the public at large, will benefit if the Commission can employ new techniques without finding itself with its hands tied in terms of implementation.

5. The spectrum policies framework must address a matrix of **issues**—different services will require different **techniques and approaches at** different points in time. SRG believes the major components of such a matrix include: transmission standards, receiver standards, interference standards, enforcement techniques, fees and licensing terms, and service tolerances.

The FCC's flexibility concerning Part 15 spectrum use, for example, has clearly promoted innovation and drive to use spectrum more **efficiently** and to develop services, such as cordless telephones, wireless broadband networks, and wireless LANS and home networks. At the same time, the public has benefited from the FCC's oversight of the power and frequency of electromagnetic radiation emissions of unintentional emitters, such as televisions and personal computers, and its certification and FCC-approved lab test requirements for manufacturers of intentional emitter devices, such as garage door openers and cordless telephones. And at some point in the future, for some services, consumer expectations and service providers' own economic self-interest may negate the need for some parts of this oversight.

Receiver design offers another example. While it is unlikely that long-term and persistent **entwinement** in issues of receiver design would be justified in terms of public interest benefits and economic costs to tax-payers there are times when involvement is both appropriate in terms of the public interest and spectrum efficiency.

In the case of broadcast radio, for example, IBOC digital radio transmission includes bandwidth beyond that required for the FM analog and FM digital main channel. This capacity can be used for a variety of purposes, including a secondary audio stream and various data applications. The successful deployment of any of this capacity depends upon the availability of receivers that will receive, decode, and present the additional material. One model is universally available receivers that would make a secondary channel or data services available to the general public, The other model is proprietary devices that would be marketed in conjunction with the service itself, such as current SCA receivers. It is very likely, however, that marketplace forces alone will not bring about a timely shift in receiver design despite the promise of more efficient spectrum use and public benefit that would accrue.

6. SRG predicts that in the long term there will be true spectrum scarcity and that the Commission must employ spectrum policies that anticipate little or no margin for clearing out or renovating the Spectrum Commons to accommodate public good services, particularly tolerance-averse public good services.

At this time, the inefficiencies of current spectrum policies are all but overwhelming and shape an atmosphere in which Commission staff are caught between frustrated potential service-providers, **businesses and individuals**, and the various interest groups who have a stake in preserving the status quo or perceive that change is worse than the current situation. It is clearly in the public interest to move forward in a way that both preserves current benefits to the public and realizes the significant advantages for the public that more efficient use of spectrum can bring about.

The more speedily the Commission moves to making the spectrum a Commons, though, with all the policy shifts this implies, the more rapidly we will evolve from the current artificial scarcity construct to real spectrum scarcity. For the most part, the market is the most practical solution to a shake-out in the best interest of the public.

Spectrum policies may address the construction of the spectrum easement services through auction bidding credits for non-profits, restrictions on licenses that limit spectrum uses to public services. or other techniques—and the Commission may or may not employ and preserve such old-style techniques such as set-aside of reserved and non-reserved broadcast spectrum.

7. Finally, the Commission, working in partnership with organizations with an interest in this proceeding, should review existing statutory language and other pertinent governmental policies to assure a consistency with the Commission's work.

As a specific example, SRG believes that current statutory language that prohibits the Commission from requiring that noncommercial educational licensees resolve mutually exclusive situations through the auction process was crafted with the notion that it would be applied to reserved broadcast band situations. Unfortunately, it has been used more broadly with respect to auctions on other portions of the radio spectrum, most recently resulting in the ban on the participation of noncommercial licensees in the auction of lower 700MHz band.

SRG urges the Spectrum Policy Task Force to add a review of statutory language that might unnecessarily or inadvertently restrict or compromise its ability to manage spectrum in a rational manner with maximum public benefit

Licensee: Examples of Organizations Prohibited in Spectrum Auction

Abilene Christian University
Alabama Agricultural and Mechanical University
Alabama State University
Alamo Navajo School Board
Alcorn State University
Alfred University
Alpine School District
Amarillo Junior College District
Ambassador College
American University
Antioch College
Arizona Western College
Arkansas State University
Atlanta Board of Education
Augustana College
Ball State University
Baylor University
Bellevue Community College
Beloit College
Berkshire School, Inc.
Bethany College
Bethel College
Bilingual Broadcasting Foundation
Black Hills State College
Bloomington Community Radio
Blue Lake Fine Arts Camp
Board of Education - Akron City School District
Board of Education - City of New York
Board of Education - Kent County
Board of Education - Southfield
Boise State University
Boston University
Bradley University
Brenau University
Brentwood Union Free School District
Brigham Young University
Brookdale Community College
Burlington County College
Butler University
California Lutheran University
California State University - Chico
California State University - Long Beach
California State University - Northridge
California State University - Sacramento
Cameron university
Campbell University
Cape Cod Community College
Cape Cod Regional Technical High School
Case Western Reserve University
Catholic University
Centenary College
Center for Communication and Development
Center for Study & Appreciation of Black Theology
Centerville City Schools Board of Education
Central Connecticut State University
Central Michigan University
Central Missouri State University
Central State University - Ohio

Central Texas College
City College of New York
City of Albuquerque Board of Education
City School District - Columbus, OH
Clark Atlanta University
Cleveland State University
Clover Park School District at Voc. Tech. Inst.
Colby-Sawyer College
College of Dupage, District 502
College of Staten Island
Colleges of the Seneca
Colorado College
Colorado State University
Columbia City Joint High School
Columbia University in the City of New York
Community College of Baltimore
Community Communications Inc.
Community High School District #217
Confederated Tribes & Bands of the Yakama Nation
Confederated Tribes of the Warm Springs Reserv.
Connecticut Public Broadcasting
Cooperative Educational Services of Monroe County
Cossitt Library
Craven Community College
Crested Butte Mountain Educational Radio
Cumberland Communities Communications Corp.
Curry College
Davidson College
Dayton City Schools
Dayton Public Radio
Dillingham City School District
Douglas County School District 001
Duke University
Duquesne University
Earlham College
East Baton Rouge Parish School Board
East Tennessee State University
East Texas State University
Eastern Connecticut State College
Eastern Illinois University
Eastern Kentucky University
Eastern Mennonite University
Eastern Michigan University
Eastern New Mexico University
Eastern Washington University
Economic Opportunity Board of Clark County
Edinboro State College
Educational Information Corporation
Elizabeth City State University
Elkhart Community Schools Corporation
Emerson College
Escuela de la Raza Unida
Evergreen State College
Fayetteville State University
Findlay College
Fisk University
Florida Gulf Coast University
Florida Institute of Technology
Florida State University
Foothill Community College District

Fordham University
Fort Berthold Communications Enterprise
Fort Lewis College
Franklin Township Community School Corporation
Freed-Hardeman College
Fresno Free College Foundation
Friends University
Frostburg State College
Fl. Belknap College
Gadsden State Community College
Gateway Adult Education District
Georgetown College
Georgia Institute of Technology
Georgia Public Telecommunications Commission
Georgia State University
Goddard College Corporation
Goshen College
Grambling College of Louisiana
Grand Valley State University
Grand View College
Greece Central School District
Guam Educational Radio Foundation
Guiding Hands for the Blind, Inc.
Gulf Coast Community College
Gwandak Public Broadcasting
Hamilton College
Hampton Institute
Hampton Roads Educational Telecom. Association
Hawaii Public Radio
Henrico County Schools
Henry Ford Community College
Hofstra University
Hoopa Tribal Telecommunications Corporation
Hopi Foundation
Humboldt State University
Husson College
Hutchinson Community College
Hyde County Board of Education
Idaho State University
Illinois Eastern Community College
Illinois State University
Indian River Community College
Indiana State University
Indiana University
Interlochen Center for the Arts
Iowa State University
Iowa Western Community College
Isothermal Community College
J.C. Maxwell Broadcasting Group
Jackson State University
Jacksonville State University
James Madison University
Jicarilla Apache Tribe
John Carroll University
Jones College
Juniata College
Kansas State University
Kashunamiut School District
Kearney State College
Kekahu Foundation, Inc.

Kennedy-King College
Kent State University
Kentucky State University
Kilgore Junior College
Kings College
Kingsport City Schools Board of Education
Kirkwood Community College
Lakota Communications
Lamar University
Lane Community College
Langston University
Lansing Community College
Lawrence University of Wisconsin
Lenoir Community College
Lincoln Memorial University
Lincoln University
Lincoln University of Missouri
Lindenwood College
Little Hoop Community College
Long Island University - C.W. Post Campus
Long Island University - Southampton Campus
Louis G. Gregory Baha'i Institute
Louisiana State University
Louisville Free Public Library
Lower Cape Communications
Loyola Marymount University
Loyola University Chicago
Lynn Canal Broadcasting
Maine Public Broadcasting Corporation
Manchester College
Mankato State University
Maricopa County Community College District
Marywood College
Mercer County Community College
Mercyhurst College
Mesquite Independent School District
Mexican Fine Arts Center
Miami University
Michigan State University
Middle Tennessee State University
Middlebury College
Middletown Area School District
Mid-South Public Communications Foundation
Miles Community College
Milwaukee Board of School Directors
Milwaukee School of Engineering
Minneapolis Public Schools Board of Education
Mississippi State University
Missouri Southern State College
Monroe Board of Education
Montana State University
Montana State University - Billings
Morehead State University
Morgan State College
Mount Hood Community College District
Mount Union College
Muhlenberg College
Murray State University
Muskingum College Speech Department
Narrows Broadcasting Corporation

New Mexico State University
New York University
Norfolk State University
North Carolina Ag. & Tech. State University
North Carolina Central State University
North Carolina Wesleyan College
North Dakota State University
North Texas State University
Northeast Louisiana University
Northeastern Illinois University
Northeastern University
Northern Arapao Tribe
Northern Arizona University
Northern Illinois University
Northern Kentucky University
Northern Michigan University
Northern Montana College
Northern Nevada Community College
Northridge Local School District
Northwest Missouri State University
Northwestern Michigan College
Northwestern University
Novi Community School District
Oak Hill Jackson Economic Development Corporation
Oberlin College Student Network
Odessa Junior College
Ohio County Board of Education
Ohio Northern University
Ohio State University
Ohio University
Oklahoma State University
Ontonagon School District
Oregon State Board of Higher Education
Pacific Lutheran University
Panhandle State University
Parkland College
Pasadena Area Community College District
Palaphysical Broadcasting Foundation
Peninsula School District No. 401
Pennsylvania College of Technology
Pennsylvania State University
Performing Arts Network of New Jersey
Pickle Hill Public Schools
Pittsburg State University
Plains Independent School District
Plymouth Community School District
Pomona College
Prairie View A&M University
Pribilof School District
Purdue University
Quincy University Corporation
Quinnipiac College
Radford University
Radio Bilingue
Radio Campesina
Radio Catskill
Ramah Navajo School Board
Raven Radio Foundation
Rensselaer Polytechnic Institute
RGV Educational Broadcasting

Ricks College Corporation
Rochester Community College
Rochester Institute of Technology
Rogers University
Rosebud Educational Society
Rowan University of New Jersey
Rust College
Sacred Heart University
Saddleback Collge
Saint Ambrose College
Saint Cloud State College
Saint Lawrence university
Saint Olaf College
Salisbury State College Foundation
Salt Pond Community Broadcasting Corporation
Samford University
San Antonio College
San Bernardino Community College District
San Diego Community College District
San Diego State University
San Francisco Unified School District
San Jose State University
San Juan Basin Area Vocational Technical School
San Juan College
San Juan Unified School District
San Mateo County Community College
San Miguel Educational Fund
Sandwich Public Schools
Santa Monica Community College
Santa Monica Community College District
Savannah State College
School Board of Broward County
School Board of Dade County
School District 4J, Lane County
School District No. 1, Multnomah County
School District of Haverford Township
Seattle Public Schools
Seton Hall University
Shaw University
Sioux Falls College
Skagit Valley College
South Carolina State University
Southeast Missouri State University
Southeastern Louisiana University
Southern College of Seventh Day Adventists
Southern Communication Volunteers
Southern Illinois University - Carbondale
Southern Illinois University - Edwardsville
Southwest Missouri State University
Spanish American Civic Assn. for Equality
Spring Hill College
Springfield Technical Community College
St. Paul Bible College
State University of Iowa
State University of New York -
State University of New York - Binghamton
State University of New York - Brockport
Slate university of New York - Buffalo
State University of New York - Cortland
State University of New York - Fredonia

State University of New York - Oswego
State University of New York - Stony Brook
Streetsboro City Schools
Susquehanna University
Syosset Central School District
Syracuse University
Tacoma School District No. 10
Technology Broadcasting Corporation
Temple University
Texarkana Community College
Texas A&I University
Texas ABM University
Texas Christian University
Texas Educational Broadcasting
Texas Southern University
Texas Tech University
The University of Southwestern Louisiana
Tillicum Foundation
Toledo City Board of Education
Towson University
Trinity College
Trinity University
Tri-State College
Tri-State Public Teleplex
Triton College
Troy State University
Tuba City High School Board
Tufts University
Union College of Schenectady New York
Union School District #46
Univ. of Arkansas & Little Rock School District
University of Akron
University of Alabama - Birmingham
University of Alabama - Tuscaloosa
University of Alaska
University of Arizona
University of Arkansas
University of Bridgeport
University of California - Berkeley
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University of Wyoming
Upsala College
Utah State University
Vincennes University
Virginia State University
Virginia Tech Foundation

Volunteer State Community College
Wake Forest University
Washington and Lee University
Washington State University
Wayne State University
Weber State University
West Georgia College
Western Connecticut State College
Western Illinois University
Western Iowa Technical Community College
Western Kentucky University
Western Michigan University
Western New York Public Broadcasting Association
Western North Carolina Public Radio
Western Washington University
Wheaton College
White Ash Broadcasting
White Pine Community Broadcasting
Wichita State University
Wiley College
Winston Salem State University
Word of Victory Outreach Center
Wyoming Public Schools
Xavier University
York County School Board
Youngstown State University
Zuni Communications Authority