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June 20, 2003

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VIA ELECTRONIC MAIL

Mr. John Muleta
Chief, Wireless Telecommunications Bureau
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Mr. Ed Thomas
Chief, Office of Engineering and Technology
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

**Re: Request for Permit-But-Disclose Treatment,
Biotronik, Inc., Request for Waiver of the Frequency Monitoring
Requirements of the Medical Implant Communications Service Rules
ET Docket No. 03-92**

Dear Messrs. Muleta and Thomas:

Medtronic Inc. ("Medtronic") respectfully requests that the Commission treat its consideration of the above-referenced Request for Waiver of Biotronik, Inc. ("Biotronik") as a "permit-but-disclose" proceeding for purposes of the agency's ex parte rules. See 47 C.F.R. § 1.1206 (2002). Given the unusual nature of Biotronik's Request for Waiver, particularly the broad spectrum policy issues inherent in it, allowing all interested parties to engage in free discussions with the Commission and its staff will best ensure that the public interest is served. As such, full permit-but-disclose status is not only appropriate, but clearly warranted.

The Commission's Rules explicitly accord the agency and its staff great discretion to modify the applicable ex parte treatment as needed in a particular proceeding. Where "the public interest so requires," the Commission has discretion to modify the ex parte requirements by order, letter or public notice. 47 C.F.R. § 1.1200(a) (2002). Further, where "a restricted proceeding not designated for hearing involves primarily issues of broadly applicable policy rather than rights and responsibilities of specific parties," the Commission or its staff may designate the proceeding as permit-but-disclose. 47 C.F.R. § 1.1208, Note 2 (2002).

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Exercising such discretion is fully warranted here. As emphasized by the parties' recent filings, the circumstances presented by the instant Request for Waiver raise broad policy issues with respect to the Medical Implant Communications Service ("MICS") rules and spectrum management. In considering a related equipment authorization proceeding (*i.e.*, FCC ID PG6BAOT), OET staff granted "permit-but-disclose" status.

The instant proceeding similarly raises issues that go beyond any one device or petitioner and could affect how equipment from many different companies will be authorized. Because of this, permitting full discussion with the Commission and its staff is crucial to ensuring that the ramifications of this proceeding are clearly identified and understood and that all questions are addressed.

Accordingly, the Commission should promptly designate the instant proceeding as having permit-but-disclose status.

Thank you in advance for your attention to this matter.

Sincerely,

electronically transmitted

Robert L. Pettit
Counsel for Medtronic Inc.

cc: Messrs. Scott Delacourt, Bruce Franca, Julius Knapp, and Bruce Romano,
Ms. D'Wana Terry

Mr. Henry Goldberg