Wiley Rein & Fielding LLP

1776 K STREET NW
WASHINGTON, DC 20006
PHONE 202.719.7000
FAX 202.719.7049

Virginia Office
7925 JONES BRANCH DRIVE
SUITE 6200
McLEAN, VA 22102
PHONE 703.905.2800
FAX 703.905.2820

www.wrf.com

December 2, 2003

John W. Kuzin
202.719.3506
jkuzin@wrf.com

VIA ECFS

Marlene H. Dortch, Esq.
Secretary
Federal Communications Commission
Washington, DC 20554

Re: *Ex parte* Notification – Biotronik Request for Waiver Of MICS Frequency Monitoring Requirements – ET Docket 03-92

Dear Ms. Dortch:

On December 1, 2003, David Hilliard and I of this law firm met with Paul Margie, Legal Advisor to Commissioner Copps, to discuss Medtronic's views in the above-referenced proceeding. For the reasons explained in its earlier filings, Medtronic strongly opposes waiving the interference protection provisions (*i.e*., Listen Before Transmit "LBT" requirements) of the Medical Implant Communications Service ("MICS").

We discussed the February 2003 MICS Order, wherein the Commission recognized that interpretation of the MICS rules "as urged by Biotronik, to permit regular and potentially frequent transmissions with no specific instigation, would effectively eviscerate the protective provisions of the rules, and we cannot interpret our rules such that they have no effect." *Biotronik, Inc. Equipment Authorization for the Medical Implant Communications Service, FCC Identifier PG6BAOT, Memorandum Opinion and Order*, 18 FCC Rcd 3027, rel. Feb. 25, 2003.

We noted the incongruity inherent in consideration of the waiver of LBT requirements when the Commission has so recently upheld the requirement for MICS and has long imposed LBT requirements in both Part 15 and Part 90 contexts as a sound spectrum management technique to avoid causing and receiving harmful interference.

We also discussed NTIA's May 22. 2003, letter regarding the Biotronik Request for Waiver.[1] In particular, we urged the Commission to bear in mind each of the conditions specified by NTIA. While Medtronic opposes any waiver grant, should the Commission decide that a limited waiver is in the public interest, it should be

[1] A copy of the February 2003 MICS Order and the May 22, 2003, NTIA Letter (in ET Docket 03-92) were provided at the meeting.

limited to one year from the date of issuance. A one-year limitation will encourage long-term compliance with the FCC's MICS regulations that wisely require implementation of self-regulating radio systems that incorporate interference avoidance mechanisms (*i.e*., LBT) to support reliable medical services operating at 402-405 MHz.

Accordingly, any waiver grant should clearly state that:

1. The waiver is limited to marketing and human implantation of devices for one year from the date of issuance of the Commission's Order.

2. The waiver applies to cardiac implants only and not to any external equipment.

3. Operation under the waiver is limited to the device characteristics (*i.e*., peak power, periodic transmission duration, transmissions per day) stated in the Request for Waiver and Biotronik's September 24, 2003, *ex parte* filing.

4. Potential interference to Biotronik's implant device transmissions can occur from Part 15 devices, other MICS devices, and Meteorological Aids devices, such as radiosondes – and that interference from radiosondes may occur on a regular basis in geographic locations where radiosondes launch at pre-scheduled times.

5. Biotronik must accept that: (1) operation under the waiver is limited to non-critical communications the failure of which will not impact the health and safety of an implant patient; and (2) interference to Biotronik's implants from radiosondes and other spectrum users (including other MICS users) is a very real possibility.

6. Biotronik must inform medical professionals and implant patients considering implantation of a Biotronik implant operating under the waiver that: (1) operation is limited to non-critical communications for which failure will not impact the health or safety of the patient; and (2) interference from radiosondes and other spectrum users (including other MICS users) to the implant's periodic scheduled transmissions is a very real possibility.

A copy of the other materials provided at the meeting is attached to Medtronic's November 14, 2003, *ex parte* notification in this docket.

Sincerely,

/s/John W. Kuzin

John W. Kuzin
Counsel for Medtronic

cc (via email): Mr. Margie