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May 28, 2004

VIA ELECTRONIC FILING

Marlene H. Dortch
Secretary
Federal Communications Commission
The Portals
445 12th Street, S.W.
Washington, D.C. 20554

FR

BOSTON
DALLAS
DELAWARE
NEW YORK
SAN DIEGO
SILICON VALLEY
TWIN CITIES
WASHINGTON, DC

Re: **EX PARTE SUBMISSION**
WT Docket No. 03-66; Amendment of Parts 1, 21, 73, 74 and 101 of the Commission's Rules to Facilitate the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150-2162 and 2500-2690 MHz Bands

Dear Ms. Dortch:

Today, the undersigned counsel to the Catholic Television Network, spoke by telephone with Paul Margie, Commissioner Michael J. Copps' Spectrum and International Legal Advisor regarding the above-referenced proceeding. We discussed the importance of the existing eligibility rules in the Instructional Television Fixed Service ("ITFS") and concerns among educators regarding proposals to reduce the total amount of spectrum allocated to ITFS. The attached materials were provided to Mr. Margie by e-mail. Pursuant to Section 1.1206(b)(2) of the Commission's Rules, this letter is being filed electronically.

Respectfully submitted,

/s/ Edwin N. Lavergne

Edwin N. Lavergne
Counsel to the Catholic Television Network

cc by email: Paul Margie

WT DOCKET NO. 03-66

Partial List of Parties
On Record Opposing Sale of ITFS Spectrum for Commercial Purposes

1. American Association of Community Colleges
2. American Association of School Administrators
3. American Association of State Colleges and Universities
4. American Council on Education
5. Archdiocese of Chicago
6. Archdiocese of Detroit
7. Archdiocese of Los Angeles Education and Welfare Corporation
8. Archdiocese Of New York
9. Association of Education Service Agencies
10. Association of Public Television Stations
11. Association for Communications Technology Professionals in Higher Education
12. Catholic Television Network
13. Consortium for School Networking
14. Council for Exceptional Children
15. Council of Chief State School Officers
16. Council of Great City Schools
17. Diocese of Brooklyn
18. Diocese of Dallas
19. Illinois Institute of Technology
20. International Society for Technology in Education
21. Internet2
22. National Alliance of Black School Educators
23. National Association of Elementary School Principals
24. National Association of Independent Schools
25. National Association of Secondary School Principals
26. National Association of State Universities and Land Grant Colleges
27. National Education Association
28. National Education Knowledge Industry Association
29. National ITFS Association
30. National PTA
31. National Rural Education Association
32. National School Boards Association
33. Northeastern University
34. Stanford University
35. United States Conference of Catholic Bishops

United States Senate

WASHINGTON, DC 20510

May 28, 2004

Honorable Michael K. Powell
Chairman
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Dear Chairman Powell,

We write to express our deep concern regarding proposals under consideration by the Federal Communications Commission that would allow spectrum reserved for educational purposes as part of the Instructional Television Fixed Service ("ITFS") to be sold to commercial entities, or would otherwise reduce the total amount of spectrum allocated to ITFS.

We believe that improving education is one of our nation's highest priorities. Moreover, it is clear that there is strong bipartisan support in Congress for the effective use of technology to help in achieving that goal. In order to succeed in school, today's students must master a diverse range of 21st century skills necessary to find quality employment and to contribute to their communities. Currently more than 1,200 educational entities hold nearly 2,200 ITFS licenses across the country. Millions of students are served by these systems, especially in rural communities that rely heavily on ITFS for distance education programming. As a result, any FCC rule change that would commercialize the ITFS band would have a substantial adverse impact on our education system and on student achievement.

While we welcome efforts to improve the use of these bands for educational purposes and agree that the Commission should consider new ways to facilitate the rollout of high speed services to students, we remain deeply troubled by plans that allow the outright sale of ITFS spectrum to non-educational commercial companies. In our view, such a plan would unfairly limit the ability of educational institutions to control this spectrum at the very time that it promises to become a more effective tool to serve students throughout the nation.

Accordingly, as consideration of this item continues, we hope that you will act to reaffirm limitations that reserve ITFS licenses for educational use only, to prevent any reallocation that would reduce the total amount of ITFS spectrum, and to ensure that the desires of commercial interests are not put before the public's interest in using this asset to promote educational advancement.

Sincerely,

EFH/jg

cc: Commissioner Kathleen Abernathy
Commissioner Michael Copps
Commissioner Kevin Martin
Commissioner Jonathan Adelstein

ACUTA: The Association for Communications
Technology Professionals in Higher Education
152 West Zandale Drive, Suite 200
Lexington, KY 40503
Ph: (858)278-3338
Fax: (859)278-3268

May 26, 2004

Honorable Michael K. Powell
Chairman
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

RE: WT Docket No. 03-66

On behalf of ACUTA, the Association for Communications Technology Professionals in Higher Education, I am writing to express serious concerns regarding proposed changes to the Commission's rules regarding ITFS spectrum.

ACUTA, an association of over 780 colleges and universities including many ITFS licensees, is opposed to any rule changes which would allow commercial ownership of spectrum previously dedicated to educational purposes.

We understand that a proposal from the Wireless Bureau is being circulated for rushed FCC consideration that would eliminate the eligibility restrictions on ITFS spectrum, and would reduce the amount of spectrum held by each ITFS licensee in order to accommodate new commercial users in the band. This proposal is seriously flawed.

ACUTA supports the continued availability of ITFS spectrum in the 2.5 GHz band for educational purposes. Any change in the rules that would permit the transfer of this valuable spectrum to commercial entities would open the door to commercial enterprises slowly acquiring more and more of these educational licenses that Congress has specifically stated were intended for educational purposes in the public interest.

In addition, reducing the size of each channel would seriously limit the feasibility of conversion of analog ITFS systems into digital, wireless broadband networks. This would seriously hamper our ability to develop advanced technologies for educational outreach to rural and other traditionally underserved populations, and to a student base that is increasingly relying upon distance learning as an important method of obtaining a college education.

ITFS is the only spectrum specifically allocated to support formal education. This vital educational asset must be protected, as the FCC promised to do just three years ago. As the FCC updates the technical rules for ITFS to more effectively support a range of new broadband services, **we urge you to reject proposals to allow any ITFS spectrum to be licensed to commercial entities, or to reduce in any respect the total amount of spectrum allocated to ITFS**.

If necessary, we ask you to delay consideration of the proposal to a later meeting, so that our concerns can be heard.

The possibilities for future development of educational services in the ITFS band are exciting, and the higher education community is developing innovative methods of using ITFS spectrum to help meet the needs of current and future students. I hope that you will support our efforts to keep this valuable educational resource available to the students of today and tomorrow, and that you will refrain from any action that would negate the public interest benefits that it can offer.

Thank you for your consideration of this important matter.

Sincerely,

Walter Czerniak
President
ACUTA: The Association for Communications Technology Professionals in Higher Education

cc: Commissioner Kathleen Q. Abernathy
Commissioner Michael J. Copps
Commissioner Kevin J. Martin
Commissioner Jonathan S. Adelstein

ARCHDIOCESE OF CHICAGO

Office of the Archbishop

Post Office Box 1979
Chicago, Illinois 60690-1979

May 21, 2004

Honorable Michael K. Powell
Chairman
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

RE: WT Docket No. 03-66

Dear Chairman Powell:

The Archdiocese of Chicago has long been licensed to use Instructional Television Fixed Service ("ITFS") channels in the 2.5 GHz band to transmit instructional programming to students in our schools. The Archdiocese of Chicago recently invested approximately $200-thousand for new television equipment to better serve our schools through the use of ITFS technology. We are acquiring new, diverse educational programs that can be fed to our high schools. We are able to videotape presentations made to either students or teachers at any of our schools and, thanks to our ITFS system, share the material with thousands of others quickly and efficiently.

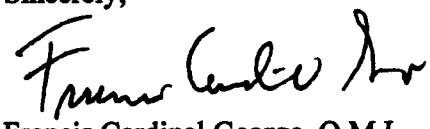
As the cost of education continues to increase, the resources we can provide to schools through our ITFS system are essential in keeping the quality of education high, and ensuring that every child has access to the resources necessary to excel. The FCC showed great foresight in the 1960's with the allocation of ITFS spectrum for educational purposes. It is the only spectrum specifically dedicated to formal education. It is with this in mind that we ask your support in protecting this vital educational asset.

While we support adoption of new technical rules to permit more flexible use of ITFS spectrum for new services such as high-speed wireless Internet access, we strongly oppose the commercialization of ITFS. Loss of spectrum would deal a terrible blow to education options for students in need. I urge you to reject proposals to allow any ITFS spectrum to be sold to commercial entities. I also ask that you oppose any reduction in the total amount of spectrum allocated to ITFS.

The future of education through the ITFS band holds exciting possibilities for teaching institutions dedicated to providing a high quality, affordable learning experience for all children no matter what their background. I respectfully hope that you will support our efforts to prevent this vital educational resource from being removed from the control of educational entities.

Thank you for your consideration of this important matter.

Sincerely,



Francis Cardinal George, O.M.I.
Archbishop of Chicago

cc: Commissioner Kathleen Abernathy
Commissioner Michael Copps
Commissioner Kevin Martin
Commissioner Jonathan Adelstein
Mr. John Muleta

Diocese of Dallas

OFFICE OF THE BISHOP

May 21, 2004

Honorable Michael K. Powell
Chairman
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

RE: WT Docket No. 03-66

For decades, the Diocese of Dallas has used our Instructional Television Fixed Service ("ITFS") channel in the 2.5 GHz band to transmit instructional programming to students in our schools. The allocation of ITFS spectrum for educational purposes was a wise and forward-thinking move on the part of the FCC in the 1960's. The Diocese is proud to be among the pioneers in the ITFS band.

Thousands of students, parents and teachers in the nine county area heavily rely on ITFS for access to critical educational services including interactive instruction, distance education, electronic field trips, and other services. As the cost of education continues to increase, the resources we can provide to schools through our ITFS system are essential in keeping the quality of education high, and ensuring that every child has access to the resources necessary to excel.

ITFS is the only spectrum specifically allocated to formal education. I am writing to request your support in protecting this vital educational asset. As the FCC updates the technical rules for ITFS to more effectively support a range of new broadband services, **I urge you to reject proposals to allow any ITFS spectrum to be sold to commercial entities, or to reduce the total amount of spectrum allocated to ITFS**. Loss of the spectrum would be a terrible blow to education, including President Bush's "No Child Left Behind" initiative.

The possibilities for future development of educational services in the ITFS band are exciting, and we plan to use the spectrum to the fullest extent in the years ahead. I hope that you will support our efforts to keep this valuable educational resource from being licensed for commercial use. Thank you for your consideration of this important matter.

Sincerely,

+Charles V. Grahmann

Most Rev. Charles V. Grahmann, D.D.
Bishop of Dallas

3725 Blackburn Street • Post Office Box 190507 • Dallas TX 75219 — (214) 528-2240 • Fax (214) 528-0287

cc: Commissioner Kathleen Abernathy
Commissioner Michael Copps
Commissioner Kevin Martin
Commissioner Jonathan Adelstein
Mr. John Muleta

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COMMITTEE ON EDUCATION AND THE WORKFORCE

U.S. HOUSE OF REPRESENTATIVES
2181 RAYBURN HOUSE OFFICE BUILDING
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TIMOTHY H. BISHOP, NEW YORK

May 20, 2004

Honorable Michael K. Powell
Chairman
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Dear Chairman Powell:

I am writing in response to a proposed rule by the Federal Communications Commission (FCC) that threatens to eliminate the eligibility requirements for the spectrum known as the Instructional Television Fixed Service (ITFS). As you know, this spectrum has historically been reserved for educational purposes.

On behalf of our nation's students and educational institutions, I would like to take the opportunity to express my strong support for the preservation of the ITFS. This spectrum is used to provide millions of students from across the country with formal classroom instruction, distance learning, and videoconference capability. It also provides our nation's teachers with valuable professional development opportunities. I firmly believe that once the FCC adopts new technical rules for the ITFS it will provide elementary and secondary schools, community colleges and universities with expanded opportunities to provide innovative services including two-way interactive video, document and data exchanges, video-on-demand, wide area networking, and high speed Internet access.

As the Chairman of the House Education and the Workforce Committee I have worked closely with President Bush over the past three and a half years to ensure that our nation's students have access to a high quality education. I believe the ITFS can be an important part of this effort.

Once again I encourage you to preserve this valuable educational tool on behalf of our nation's students. Thank you for your time and attention. I look forward to learning how the FCC plans to proceed on this matter.

Sincerely,

JOHN BOEHNER
Chairman
House Education and the Workforce Committee

CONGRESS OF THE UNITED STATES
U.S. HOUSE OF REPRESENTATIVES
WASHINGTON, DC 20515

May 13, 2004

Chairman Michael Powell
Federal Communications Commission
445 12th Street S.W.
Washington, D.C. 20554
Re: WT Docket No. 03-66

Dear Chairman Powell:

We are writing to express our strong support for preserving the long-term viability of the Instructional Television Fixed Service (ITFS). As the Commission updates the technical rules for ITFS to more effectively support a range of new broadband services, we urge you to reject efforts to allow this spectrum to be sold to commercial entities, or to reduce the total amount of spectrum allocated to ITFS.

Improving education is one of our nation's highest priorities and there is overwhelming bipartisan support in Congress for the effective use of technology to assist in achieving that goal. Today's students must master a wide range of 21st century skills in order to succeed in school, find quality employment and to contribute to their communities.

There are more than 1,200 educational entities holding nearly 2,200 ITFS licenses serving educators and students across the nation. Millions of students are served by these systems, especially in rural communities that rely heavily on ITFS for distance education programming. We are concerned about any FCC proposal that would effectively commercialize the ITFS band, fearing an adverse impact on our education system and on the ability of educators to improve student achievement.

ITFS has been an effective educational tool since its inception decades ago with licensees making extensive use of the spectrum to provide formal classroom instruction, distance learning, videoconference capability and professional development services to a wide variety of users.

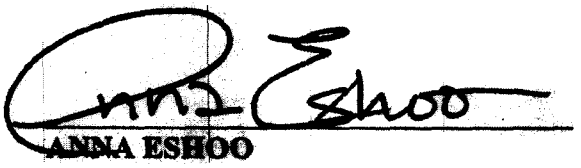
Once the FCC adopts new technical rules to allow the development of new broadband services, elementary and secondary schools will have the ability to roll out additional educational tools to better serve students. However, if the Commission reverses course and allows ITFS licenses to be purchased and held by commercial entities, educational institutions will lose control of this spectrum just as it becomes a more effective tool for educators.

Therefore, we strongly urge you to reaffirm that ITFS licenses be held only by educational entities and reject efforts to reallocate any portion of this spectrum. Thank you for your consideration of this issue.

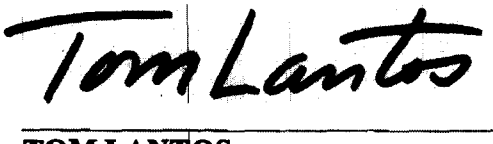
Sincerely,

GEORGE MILLER

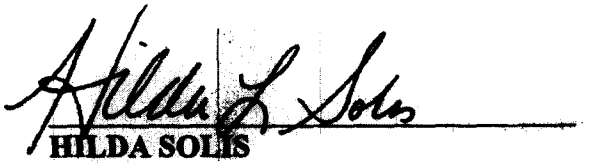
FORTNEY PETE STARK


ANNA ESHOO

BOB FILNER


TOM LANTOS

ROBERT MATSUI


HILDA SOLIS

MIKE HONDA

ELLEN TAUSCHER

cc: Commissioner Kathleen Abernathy
Commissioner Michael Copps
Commissioner Kevin Martin
Commissioner Jonathan Adelstein

Archdiocese of Los Angeles

Office of
the Archbishop
(213)637-7288

3424
Wilshire
Boulevard

Los Angeles
California
90010-2202

May 7, 2004

Honorable Michael K. Powell, Chairman
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: WT Docket No. 03-66

Dear Chairman Powell:

For over 35 years, the Archdiocese of Los Angeles has used Instructional Television Fixed Service ("ITFS") channels in the 2.5 GHz band to transmit instructional programming to students in our schools. The allocation of ITFS spectrum for educational purposes was a wise and forward-thinking move on the part of the FCC in the 1960's. The Archdiocese is proud to have been among the pioneers in the ITFS band.

Today, the Archdiocese operates over 250 Catholic schools in three southern California counties covering approximately 8000 square miles, and uses ITFS to support the educational needs of an ethnically diverse and economically deprived student population. As the cost of education continues to increase, the resources we can provide to schools through our ITFS system are essential to keeping the quality of education high, and ensuring that every child has access to the resources necessary to excel.

ITFS is the only spectrum specifically allocated to formal education. I am writing to request your support in protecting this vital educational asset. As your agency updates the rules for ITFS to more effectively support a range of new broadband services, **I urge you to reject proposals to allow any ITFS spectrum to be sold to commercial entities, or to reduce the total amount of spectrum allocated to ITFS.** A transfer of control of the spectrum to commercial interests would be a terrible blow to education.

The possibilities for future development of educational services in the ITFS band are exciting, and we plan to use the spectrum to the fullest extent in the years ahead. I hope that you will support our efforts to keep this valuable educational resource from being licensed for commercial use.

Thanking you for your consideration of this important matter, and with every best wish, I am

Sincerely yours,

+ Roger Card. Mahony

His Eminence
Cardinal Roger Mahony
Archbishop of Los Angeles

ARCHDIOCESE OF DETROIT
1234 WASHINGTON BLVD.
DETROIT, MICHIGAN 48226

OFFICE OF THE CARDINAL

March 16, 2004

Honorable John Dingell
United States House of Representatives
2328 Rayburn House Office Building
Washington, DC 20515-2215

Dear Representative Dingell:

For decades, the Archdiocese of Detroit has used Instructional Television Fixed Service ("ITFS") channels in the 2.5 GHz band to transmit quality instructional programming to students in our schools. The allocation of ITFS spectrum for educational purposes was a wise and forward-thinking move on the part of the FCC in the 1960's. The Archdiocese is proud to have been among the pioneers in the ITFS band.

Thousands of students in the Detroit area rely on ITFS for access to critical educational services including interactive instruction, distance education, electronic field trips, and other services. As the cost of education continues to increase, the resources we can provide to schools through our ITFS system are essential in keeping the quality of education high, and ensuring that every child has access to the resources necessary to excel.

ITFS is the only spectrum specifically allocated to formal education. I am writing to request your support in protecting this vital educational asset. As the FCC updates the technical rules for ITFS to more effectively support a range of new broadband services, we urge you to reject efforts to allow any ITFS spectrum to be sold to commercial entities, or to reduce the total amount of spectrum allocated to ITFS. Loss of the spectrum would be a terrible blow to education.

The possibilities for future development of educational services in the ITFS band are exciting, and we plan to use the spectrum to the fullest extent in the years ahead. I hope that you will be able to support us in our efforts to demonstrate the importance of this educational resource to FCC Chairman Michael Powell and the other FCC Commissioners.

Thank you for your consideration of this important matter. I hope our paths cross again soon. Please contact me if I can provide any additional information or assistance.

Sincerely yours in the Lord,

+ Adam Cardinal Maida

Adam Cardinal Maida
Archbishop of Detroit

PRESERVE ITFS SPECTRUM FOR EDUCATION

May 26, 2004

Honorable Michael K. Powell
Chairman
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

RE: WT Docket No. 03-66

Educational institutions throughout the United States for many decades have used Instructional Television Fixed Service ("ITFS") channels in the 2.5 GHz band to transmit instructional programming to students at all levels, from grade school through graduate school to the workplace. The allocation of ITFS spectrum for educational purposes was a wise and forward-thinking decision of the FCC in the 1960's. We are proud that many of our member institutions have been among the pioneers in the ITFS band.

Millions of learners across the country rely on ITFS for access to critical educational services including interactive instruction, distance education, electronic field trips, job site training and other services. As the cost of education and training continues to increase in a difficult budgetary era, the resources that institutions can provide through ITFS systems are essential in keeping the quality of education high, and ensuring that every learner has access to the resources necessary to excel.

ITFS is the only spectrum specifically allocated to formal education, and we are writing to request your support in protecting this vital educational asset. As the FCC updates the technical rules for ITFS to more effectively support a range of new broadband services, **we urge you to reject proposals to allow any ITFS spectrum to be sold to commercial entities, or to reduce the total amount of spectrum allocated to ITFS**. Loss of the spectrum would be a terrible blow to education. In this regard, we emphatically disagree with the eligibility position taken by NITV in a recent *ex parte* filing in this proceeding. NITV is an ITFS licensee that is, of course, free to advocate whatever position best serves its corporate interests. However, it is not an educational institution, and it certainly does not speak for ITFS licensees or the education community in the United States who firmly believe that such a change likely would cripple ITFS as an educational tool.

The possibilities for future development of educational services in the ITFS band are exciting. Our ITFS member institutions plan to use this spectrum to the fullest extent in the years ahead after the adoption of the new technical rules. But these efforts could be fatally jeopardized if the spectrum is opened up to commercial entities or is reduced in

size. Therefore, we ask that you will support keeping this valuable educational resource from being reduced or licensed for commercial use. Thank you for your consideration of this important matter.

Sincerely,

American Association of Community Colleges
American Association of State Colleges and Universities
American Council on Education
Association of Public Television Stations
Internet2
National Association of State Universities and Land Grant Colleges
University Continuing Education Association

CC: Commissioner Abernathy
Commissioner Adelstein
Commissioner Copps
Commissioner Martin
John B. Muleta

The *American Association of Community Colleges* is the primary advocacy organization for community colleges at the national level. AACC's membership represents close to 95 percent of all accredited U.S. two-year community, junior and technical colleges and their 10.5 million students.

The *American Association of State Colleges and Universities* represents more than 430 public colleges, universities and systems of higher education throughout the United States and its territories. AASCU schools enroll more than 3 million students or 56 percent of the enrollment at all public four-year institutions.

The *American Council on Education* is the major coordinating body for all the nation's higher education institutions. It seeks to provide leadership and a unifying voice on key higher education issues and to influence public policy through advocacy, research, and program initiatives. Its members include approximately 1,800 accredited, degree-granting colleges and universities and higher education-related associations, organizations, and corporations.

The *Association of Public Television Stations* is a nonprofit membership organization that supports the continued growth and development of a strong and financially sound noncommercial television service for the American public. APTS provides advocacy for public television interests at the national level, as well as consistent leadership and information in marshaling support for its members: the nation's public television stations.

Internet2 is a consortium being led by 206 universities working in partnership with industry and government to develop and deploy advanced network applications and technologies, accelerating the creation of tomorrow's Internet. Internet2 is recreating the partnership among academia, industry and government that fostered today's Internet in its infancy.

The *National Association of State Universities and Land-Grant Colleges* is the nation's oldest higher education association. A voluntary association of public universities, land-grant institutions and many of the nation's public university systems, NASULGC campuses are located in all 50 states, the U.S. territories and the District of Columbia. As of February 2004, the association's membership stood at 212 institutions. This includes 76 land-grant universities, of which 17 are the historically black public institutions created by the Second Morrill Act of 1890, and 27 public higher education systems. In addition, tribal colleges became land-grant institutions in 1994 and 31 are represented in NASULGC through the membership of the American Indian Higher Education Consortium (AIHEC).

The *University Continuing Education Association* is among the oldest college and university associations in the United States. As the principal US organization for continuing higher education, the Association assists institutions of higher learning and affiliated nonprofit organizations to increase access through a wide array of educational programs and services.

EDWARD J. MARKEY
7TH DISTRICT, MASSACHUSETTS

ENERGY AND COMMERCE COMMITTEE
RANKING MEMBER
SUBCOMMITTEE ON
TELECOMMUNICATIONS AND
THE INTERNET

SELECT COMMITTEE ON
HOMELAND SECURITY

RESOURCES COMMITTEE

Congress of the United States
House of Representatives
Washington, DC 20515–2107

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www.house.gov/markey

April 28, 2004

The Honorable Michael K. Powell
Chairman
Federal Communications Commission
445 12th Street S.W.
Washington, D.C. 20554

Dear Chairman Powell:

We are writing to express our strong support for preserving the spectrum set-aside for educational use by students and schools. As the Commission updates the rules for Instructional Television Fixed Service ("ITFS") to more effectively support a range of new digital education services, we urge you to reject efforts to allow any portion of this spectrum to be licensed to commercial entities.

As you know, there is broad bipartisan support in Congress for the effective use of technology in education. Students in school today must master a range of advanced skills in order to succeed in school, find quality work, and contribute to their communities. More than 1,200 educational entities hold nearly 2,200 ITFS licenses across the country, serving hundreds of thousands of students, and these services would be disrupted if ITFS licenses were to be transferred from educational to commercial entities. Rural communities that rely on distance education programming through ITFS would be especially hard hit.

Instructional Television Fixed Service has been an effective educational tool since its inception several decades ago. ITFS licensees make extensive use of the spectrum to provide formal classroom instruction, distance learning, videoconference capability, and professional development services to a wide variety of users.

Once the FCC adopts new technical rules, the ability of ITFS to serve educators and students will be significantly enhanced. Elementary and secondary schools, community colleges, and universities will have the ability to roll out additional educational tools, and access to these educational enhancements will be provided to hundreds of thousands of additional students.

For these reasons, we strongly urge you to reaffirm that ITFS licenses be held only by educational entities, and reject efforts to license any portion of this spectrum to commercial entities. Thank you for your consideration.

PRINTED ON RECYCLED PAPER

Sincerely,

cc: Commissioner Kathleen Abernathy
Commissioner Kevin Martin
Commissioner Michael Copps
Commissioner Jonathan Adelstein

Preserve ITFS Spectrum for Education

May 26, 2004

The Honorable Michael Powell
Chairman
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: *Amendment of Parts 1, 21, 7, 74 and 101 of the Commission's Rules to Facilitate the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150-2162 and 2500-2690 MHz Bands* – WT Docket No. 03-66

Dear Chairman Powell:

The undersigned education organizations write today to strongly urge you to support retaining the current educational character of the Instructional Television Fixed Service (ITFS), which we consider a vital national resource. Additionally, we request that you delay the full Commission's consideration of changes to ITFS's licensing rules, currently scheduled for the June 10 Commission Meeting, to allow an opportunity for the parties to continue discussions about the issue.

As you know, ITFS is the only portion of the spectrum licensed exclusively to educational entities, with more than 1,200 licensees holding nearly 2,200 licenses, effectively serving millions of students throughout the country. K-12 institutions have used ITFS extensively since its inception in the 1960s to provide services such as distance learning, videoconference capability and professional development programs. K-12 schools use ITFS to deliver courses and professional development wirelessly to remote sites and to transmit virtual courses and other information to wide audiences through both one-way video and two-way broadband applications. With the No Child Left Behind Act (NCLB) placing so many demands on K-12 educators throughout the nation, there is an acute need for the resources delivered by ITFS, particularly those that help teachers and students in geographically isolated areas and inner cities gain access to courses and professional development opportunities unavailable in their regions.

Proposed new rules currently before the Commission place in jeopardy these accomplishments and the ability to fulfill the requirements of NCLB. Under these draft rules, commercial entities would be permitted to obtain ITFS licenses and devote no portion or only a small portion of their allotments for educational purposes. We believe that this proposal would decimate the educational focus of this portion of the spectrum and we urge you to oppose it. From our perspective, these new rules would lead inevitably to the termination of ITFS's educational goals as education licensees eventually sell to commercial entities and the original educational functions of ITFS are transformed into commercial purposes. When a current educational entity proposes to sell its ITFS license, other educational entities would have a hard time competing with commercial entity bids.

Moreover, the proposed new rules would place undue pressure on current license holders who wish to continue to use ITFS for educational purposes by effectively choking-off the thriving secondary leasing model, through which educational licensees lease excess spectrum to commercial entities in order

to finance the development of educational programming. With the ability to purchase entire licenses outright, commercial entities will have no incentive to negotiate with education licensees and simply hold out for sales. In short, we fear that these proposed new rules threaten all that the educational licensees have achieved and all that they hope to achieve in digital education through ITFS.

In the short term, we request that you delay the full Commission's consideration to allow time for education license-holders and the Commission to continue discussions regarding possible solutions that would meet the needs of all parties. In any event, we strongly urge you to oppose changes to ITFS's current licensee eligibility requirements.

We appreciate your time and attention to this most important matter.

Sincerely,

American Association of School Administrators
Association of Educational Service Agencies
Consortium for School Networking
Council for Exceptional Children
Council of Chief State School Officers
Council of Great City Schools
International Society for Technology in Education
National Alliance of Black School Educators
National Association of Elementary School Principals
National Association of Independent Schools
National Association of Secondary School Principals
National Education Association
National Education Knowledge Industry Association
National PTA
National Rural Education Association
National School Boards Association
United States Conference of Catholic Bishops

cc. Commissioner Kathleen Abernathy
Commissioner Jonathan Adelstein
Commissioner Michael Copps
Commissioner Kevin Martin

To: Ed Lavergne
From - Mary D
Date - 5/28/04

CLEARWIRE CORPORATION
2000 Pennsylvania Avenue, NW
Suite 4400
Washington, DC 20006

May 24, 2004

Via Electronic Filing

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 Twelfth Street, SW
Washington, DC 20554

Re: Amendment of Parts 1, 21, 73, 74 and 101 of the Commission's Rules to Facilitate the Provision of Fixed and Mobile Broadband Access, Education and other Advanced Services in the 2150-2162 and 2500-2690 MHz Bands, WT Docket No. 03-66
Notice of Ex Parte Presentation

Dear Ms. Dortch:

On May 20, 2004, Gerard Salemme and Nadja Sodos-Wallace of Clearwire Corporation, ("Clearwire") met with Jennifer Manner of Commissioner Abernathy's office.[1] They discussed Clearwire's business plan. Specifically, they discussed how Clearwire and its affiliated companies intend to use Multipoint Distribution Service ("MDS") and Instructional Television Fixed Service ("ITFS") frequencies to launch a new wireless service that provides broadband voice and data to residential customers in both urban and rural areas as a low cost alternative to the broadband access provided by incumbents. They also discussed the need for the Commission to adopt rules that discourage warehousing of this spectrum. To that end, Clearwire discussed its belief that a substantial service requirement be adopted. Clearwire supports the Commission proposal to establish a high power band so that educational entities can continue to use their ITFS spectrum for educational purposes. In markets where eligible ITFS entities opt to exclusively provide their educational service through low power operation Clearwire recommends the adoption of a transition mechanism to reassign the reserved high power band segment in those markets for low power uses as high power uses are migrated out of the band. It also discussed its support for continued ITFS eligibility restrictions.

[1] Clearwire is aware that under the Commission's rules, this notice should have been filed one business day after the meeting. Due to an oversight, that did not occur. To the extent necessary, Clearwire requests a waiver of that rule to permit this letter to be included in the record.

Finally, Clearwire would like to recommend that the Commission adopt, as it has done elsewhere, a procedure that will maintain at least three competitors in a frequency band. *See, e.g., Amendment of the Commission's Space Station Licensing Rules and Policies*, FCC 00-102, 18 FCC Rcd 10760, 10788-10789 (2003). The Commission has previously found that the same "factors that have led courts to disfavor mergers to duopoly also support establishing a procedure that will maintain at least three competitors in a frequency band...." *Id.* at 10789. During the process of analyzing the spectrum that Clearwire has access to, Clearwire has found itself in the position of being blocked in by incumbent operators and licensees. For example, in a market where Clearwire has access to eight channels, it still needs consents from the remaining interleaved channel groups, which are owned by or leased to another entity which may be unwilling to grant such consent. Or Clearwire wishes to launch a system in a particular market, but all of the spectrum in that market is owned by or leased to another entity which is unwilling to grant us access, despite the fact that they do not require all of that spectrum for their system or are not actually using all of the spectrum. The Commission must provide new entrants with the ability to access spectrum and provide services.

Pursuant to Section 1.1206(b)(2) of the Commission's Rules, this presentation is being filed electronically. Should any questions arise concerning this matter, kindly contact the undersigned.

Sincerely,

/s/ R. Gerard Salemme

R. Gerard Salemme

Key Concerns of the Education Community WT Docket No. 03-66

Monsignor Michael J. Dempsey, Catholic Television Network

Jim Hermes, American Association of Community Colleges

Mary Kusler, American Association of School Administrators

ITFS
A National Investment in Education

The 120 MHz of spectrum set-aside for ITFS is an investment in education. Educators want to keep that investment intact by maintaining the Commission's existing rules, which limit eligibility to entities that will use the spectrum for educational purposes.

ITFS is Needed for Educational Purposes

- The factual record reflects the many ways in which ITFS spectrum is being used for educational purposes. Any anecdotal concerns regarding underutilization (which are not supported by the FCC record), can best be addressed by:
  - Lifting the decade-long freeze on new ITFS filings, which has prevented educational institutions that want ITFS from applying for the spectrum; and
  - Adopting a new band plan and technical rules so as to permit the spectrum to be used more effectively and for a broader range of services.

The ITFS Leasing Model Works

The FCC has created a healthy and vibrant market for leasing ITFS spectrum. The spectrum-leasing model works because it permits ITFS spectrum to meet the needs of educators while, at the same time, making spectrum available to the commercial sector. Spectrum leasing will provide even more opportunities for the deployment of new commercial services under the new ITFS band plan and the policies adopted in the FCC's Secondary Market proceeding.

Open Eligibility Will Cause the Leasing Market to Dry Up

- If the FCC permits ITFS spectrum to be sold to commercial entities, the leasing market will dry up because commercial entities will have little incentive to negotiate spectrum leases when they could simply hold out for a sale.
  - The "choice" to sell or lease will be no choice at all.
  - The public/private partnerships that have been, and will be, forged as a result of the Commission's leasing polices would end.

Open Eligibility Would Shift Control from Educational to Commercial Entities

- The sale of ITFS spectrum may be *privately beneficial* (in terms of revenue generation) to the individual entity that sells. But, it would be *publicly detrimental* because once the spectrum is sold, it is gone forever.
- Over time, sale-by-sale, the ITFS set-aside will disappear, and control over the spectrum will shift from educational to commercial hands.

A Shift in Control from Educational to Commercial Entities is Detrimental to Education

- If control of ITFS spectrum shifts from educational to commercial hands, the future opportunities for education will be greatly diminished.
  - Requiring commercial entities to set aside a portion of their spectrum for educational use, as in DBS, is destined to fail because *access to bits of capacity controlled by others is no substitute for educational control of spectrum*.
  - Control over spectrum provides educators with a "seat at the table" allowing them to have meaningful input in deciding what services will be provided, when services will be provided, and the geographic areas to be served.

The Commission should not Reduce the Total Amount of Spectrum Allocated to Education

One of the core principles of the NIA and CTN in supporting the Coalition's proposed band plan was that no ITFS licensee would lose spectrum. Any reduction in spectrum allocated would have a ripple effect that could adversely affect ITFS licensees.

Requested Action

- Do not change the Commission's existing rules, which limit eligibility for ITFS to entities that will use the spectrum for educational purposes.

- Do not reduce the total amount of spectrum allocated to ITFS.