

March 17, 2006

VIA ELECTRONIC FILING

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

Re: **WRITTEN EX PARTE PRESENTATION**

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:

The National ITFS Association ("NIA") and the Catholic Television Network ("CTN") hereby provide the following presentation on an issue that has assumed prominence in the above-referenced proceeding – the possible modification of the existing Educational Broadband Service ("EBS") lease requirement limiting such leases to 15 years.

As NIA and CTN have previously stated, they strongly support a continued term limit for EBS excess capacity leases, in order to preserve the essential educational purpose of the service. If the FCC were to permit leases to continue indefinitely, or to continue for very long terms, leases will be transformed into little more than outright purchases of the spectrum for commercial purposes, contrary to the Commission's clearly expressed views in this proceeding.¹

Nevertheless, CTN and NIA have come to believe that certain changes in the term limit requirement may be in the public interest to ensure that investments will be made in support of wireless broadband deployments in the band. NIA and

¹ See *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*, Report and Order, FCC 04-135 (rel. July 29, 2004) at ¶181.

CTN therefore seek to ensure that the record formally reflects their positions on the matter.

NIA believes that a 20 year term would probably be sufficient to ensure that investment can and will support development in the band. However, in a good faith attempt to accommodate those that might believe a longer term is necessary, NIA is willing to have the Commission adopt a maximum 25 year limit, subject to several conditions: first, that the limit is strictly adhered to – various devices (such as but not limited to penalties for non-renewal) used in agreements to evade term limits would not be allowed; second, that all EBS excess capacity leases with terms longer than 25 years that were previously entered into on the hope that the FCC would eliminate term limits be required to come into conformance with the 25-year limit; and finally, that sufficient information be filed with the Commission in connection with the lease approval process to permit compliance with the term limit to be ensured. For example, the Commission might have the Form 603-T application include a question requiring that applicants state the maximum term of an EBS spectrum leasing arrangement (including the initial term and all renewal terms that commence automatically or at the sole option of the lessee).

CTN is willing to support a maximum lease term of up to 30 years if the Commission adopts a rule which provides EBS licensees with the ability to review their educational use requirements at periodic intervals so as to ensure that EBS spectrum is used efficiently and effectively for educational purposes. In CTN's view, a right of periodic review is important because it is impossible for any educator to predict now what its educational, technological, and spectrum needs will be decades from now. In furtherance of this objective, CTN proposes adding the following language to the beginning of Section 27.1214(d) of the Commission's rules:

The maximum permissible term of an EBS spectrum leasing arrangement entered into on or after [*date of adoption of Memorandum Opinion and Order on Reconsideration*] (including the initial term and all renewal terms that commence automatically or at the sole option of the lessee) shall be 30 years. In furtherance of the educational purposes for which EBS spectrum is allocated, any spectrum leasing arrangement in excess of 15 years, which is entered into on or after [*date of adoption of Memorandum Opinion and Order on Reconsideration*] must include terms which provide the EBS licensee at the 15th year and every 5 years thereafter, with the ability to review its educational use requirements so as to ensure the efficient and effective use of the EBS licensee's reserved capacity for educational purposes in light of changes in educational needs, technology, and other relevant factors.

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Pursuant to Section 1.1206(b)(2) of the Commission's Rules, we are submitting this presentation by filing an electronic copy of this letter in the public record of the proceeding.

Should any questions arise concerning this matter, kindly contact undersigned counsel.

Respectfully submitted,

Todd D. Gray
Counsel, National ITFS Association
Network

Edwin N. Lavergne
Counsel, Catholic Television

Dow, Lohnes & Albertson, pllc
1200 New Hampshire Avenue, NW
Washington, D.C. 20036
202-776-2571
tgray@dowlohn.com

Fish & Richardson, P.C.
1425 K Street, NW
Washington, D.C. 20005
202-783-5070
lavergne@fr.com

cc: Hon. Kevin J. Martin
Hon. Michael J. Copps
Hon. Jonathan S. Adelstein
Hon. Deborah Taylor Tate
Fred Campbell
John Giusti
Barry Ohlson
Aaron Goldberger
Catherine Seidel
Uzoma Onyeije
Joel Taubenblatt
John Schauble

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Leslie Marx

Evan Kwerel

Walter Strack

Wayne Leighton