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FEDERAL COMMUNICATIONS COMMISSION
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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Petition for Rulemaking of the Satellite Industry Association to Amend Table of Frequency Allocations	)	File No. RM-9911
	)	
	)	

COMMENTS OF NUCENTRIX BROADBAND NETWORKS, INC.

Nucentrix Broadband Networks, Inc. ("Nucentrix") hereby submits its comments on the above-captioned petition for rulemaking of the Satellite Industry of America ("SIA"). SIA seeks to reallocate the 2500-2520 MHz and 2670-2690 MHz bands for usage by Mobile Satellite Services operators, in order to develop third generation wireless services (so called "3G services"). SIA's petition is premature and should be dismissed.

The petition for rulemaking filed by the SIA suffers several fatal defects. First, it fails to take into account, or even acknowledge, the substantial use of the 2500-2690MHz band by Multipoint Distribution Service ("MDS")[1] and Instructional Television Fixed Service ("ITFS") licensees. The spectrum which SIA proposes to reallocate makes up substantial segments of this band. Second, as a result of ignoring these licensees, the petition makes no attempt to protect them against harmful interference that use of the band for MSS services might engender. Finally, the SIA petition was filed prior to the

[1] For the purposes of these comments, Nucentrix refers to Multipoint Distribution Service ("MDS") and Multichannel Multipoint Distribution Service ("MMDS") collectively as "MDS."

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2000 World Radio Conference ("WRC" or "WRC-2000"), and therefore does not reflect the conclusions of that body on IMT-2000 requirements. While the FCC should not accept the recommendations of WRC-2000 without a detailed inquiry, it makes little sense to expend time and energy considering a petition for spectrum reassignment which gives these recommendations no consideration whatsoever. The SIA petition should therefore be dismissed with no further action by the Commission.

I. NUCENTRIX IS ONE OF THE LARGEST HOLDERS OF MDS AND ITFS SPECTRUM, AND THUS IS CRITICALLY CONCERNED WITH THE OUTCOME OF THIS PROCEEDING

Nucentrix is the third largest holder of MDS and ITFS spectrum in the United States, owning and leasing spectrum in 94 markets. The company serves primarily medium and small markets across Texas and the midwestern United States, many of which are rural. Nucentrix has been a leader in the effort to transition MDS and ITFS spectrum to two-way services. Pursuant to a grant of developmental authority, the company already provides broadband wireless Internet access service over MDS spectrum in Austin and Sherman-Denison, Texas, mainly to medium-sized and small businesses, small offices/home offices and telecommuters. In addition, the company has filed for developmental authority to test two-way equipment in the Amarillo, Texas market.

During the Commission's August 2000 two-way filing window, Nucentrix filed approximately 400 applications to provide two-way service in 70 markets.[2] Nucentrix

[2] *See* Nucentrix Files for FCC Approval to Launch Broadband Fixed-Wireless Services, Press Release, (August 21, 2000), *available at* < http://www.nucentrix.com/cgi-bin/t3.cgi/search/news.taf?_function=detail&PRESS_RELEASE_uid1=63&_UserReference=B2A3C8C0F782497639A68C3C>.

has announced plans to deploy broadband services in at least 20 markets by the end of 2001. Moreover, the company fully expects to launch permanent commercial service by the end of this year. Despite the failure of SIA to mention incumbents, including Nucentrix, in the 2500-2690 MHz band, Nucentrix submits that the Commission must consider and protect the interests of such incumbents in this proceeding.

II. THE SIA PETITION FAILS TO ACKNOWLEDGE THE PRESENCE OF INCUMBENT LICENSEES

The SIA petition seeks reallocation of a large segment of spectrum currently occupied by ITFS and MDS licensees.[3] However, the petition totally overlooks these incumbent licensees and the public interest benefits that they provide.

Licensees in the MDS and ITFS spectrum will soon provide high-speed, two-way Internet services in hundreds of markets across the country. In addition to the 70 mainly small and rural markets which Nucentrix will soon serve, WorldCom has announced plans to begin service in 60 markets, and Sprint is planning to operate in an additional 45.[4] At the Commission's behest, licensees have invested significant time and treasure in developing this two-way service over the past two years, culminating with the opening

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[3] SIA seeks reallocation of the 2500-2520 MHz and 2670-2690 MHz bands, which are currently part of the 2500-2690 MHz allocation occupied by MDS/ITFS licensees. *See* In the Matter of Amendment of the U.S. Table of Frequency Allocations to Designate the 2500-2520/2670-2690 MHz Frequency Bands for the Mobile-Satellite Service, Petition for Rulemaking of the Satellite Industry Association, April 28, 2000 ("SIA Petition") at 3.

[4] *See* "Licensing Step Moves WorldCom Closer to Market Launch," Press Release, (August 14, 2000), *available at* <http://www.prnewswire.com/cgi-bin/stories.pl?ACCT=104&STORY=/www/story/08-14-2000/0001289570&EDATE=>; *see also* "Sprint Files For Two-Way MMDS Licenses in 45 Major Markets," Press Release, (August 22, 2000), *available at* <http://www.prnewswire.com/cgi-bin/stories.pl?ACCT=104&STORY=/www/story/08-22-2000/0001295984&EDATE=>.

of the two-way filing window in August.[5] SIA's petition, which fails to even acknowledge these developments, cannot be taken seriously.

Nucentrix will be providing service to many areas that have been overlooked by other broadband providers. In areas where there is already broadband service, MDS/ITFS will provide a competitive alternative to the cable/DSL duopoly. These expansion plans are not speculative visions of a distant future, but are being rolled out now. Nucentrix already offers service under developmental authority in two cities, and plans to have 20 markets operating by the end of 2001. In contrast, SIA admits that the deployment of 3G satellite service will take four to six years from the date of allocation.[6]

Fixed wireless broadband will provide many ITFS licensees with their first high-speed Internet connection, and will further the Commission's important goal of "allowing every schoolchild and every community to take advantage of modern communications technology."[7] The FCC has, through e-rate and other initiatives, worked hard to provide access to the Internet to every school, in order to "help open new worlds of knowledge, learning and education to all Americans," and to "assure that no one is barred from

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[5] *See* Commission Announces Initial Filing Window for Two-Way Multipoint Distribution Service and Instructional Fixed Television Service, Public Notice, DA 00-666 (rel. March 23, 2000); *see also* Mass Media Bureau Provides Further Information on Application Filing Procedures, Public Notice, DA 00-1481 (rel. June 30, 2000).

[6] *See* SIA Petition at 8.

[7] In the Matter of Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, CC Docket No. 98-146, Second Report, FCC 00-290 (rel. August 21, 2000) ("Advanced Telecommunications Report") at 3.

benefiting from the power of the Information Age."[8] The wireless broadband access that schools receive through the MDS/ITFS spectrum will complement the Commission's efforts, and build on its success.

The benefits to schools will go beyond those institutions who hold ITFS licenses. Wireless broadband service offers a uniquely cost-effective way to bridge the "last 100 feet" between the end user and the network. The FCC has recognized that the "cost of [facilities for the last 100 feet] may be a significant factor in the deployment of advanced telecommunications capability in the small business, school and library context."[9] By providing a viable high-speed service to span the last 100 feet for a relatively low cost, the deployment of MDS/ITFS data services will speed the rollout of advanced telecommunications capability to schools, libraries, and small businesses throughout the country. The expansion of the MDS/ITFS service into broadband offerings should also provide the educational ITFS licensees with a continuing, steady revenue stream via their channel leases. SIA's petition does not even acknowledge the existence of these public interests, let alone address how these benefits can be retained under its reallocation proposal.

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[8] Federal-State Joint Board on Universal Service, Report and Order, 12 FCC Rcd 8776 (rel. May 8, 1997) at ¶426.

[9] Advanced Telecommunications Report at 29.

III. BY IGNORING THE INCUMBENT LICENSEES, THE SIA PETITION FAILS TO DEMONSTRATE THAT REALLOCATION WILL NOT CAUSE HARM TO INCUMBENT USERS

Because the SIA petition makes no mention of the current licensees in the 2500-2690 MHz spectrum block, it naturally fails to offer any assurance that the proposed reassignment will not harm incumbent services.

Indeed, it is doubtful that such a demonstration could be made. SIA proposes reallocating a large chunk of the MDS/ITFS spectrum for mobile satellite use.[10] The Commission has recognized that operating terrestrial wireless and mobile satellite services in the same band on a co-channel basis is "not feasible," because of the insurmountable interference concerns that such operation causes.[11] Since it will not be possible for the MSS industry to share the spectrum with the incumbent users, SIA's reallocation would therefore require that the incumbent terrestrial services be removed from a substantial portion of the band in which they operate. However, instead of addressing this point directly, the SIA petition simply glosses over it, as if the 2500-2690 MHz band were totally unoccupied.

Because of its lack of even the most cursory attempt to show that the reallocation in question would not harm incumbent licensees, the SIA petition should be dismissed.

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[10] *See* SIA Petition at 3.

[11] In the Matter of Redesignation of the 17.7-17.9 GHz Frequency Band, FCC 00-212 (rel. June 22, 2000) at 10.

IV. SIA'S PROPOSAL TO AMEND THE TABLE OF ALLOCATIONS TO DESIGNATE THE 2500-2520 AND 2670-2690 MHZ BANDS FOR MOBILE-SATELLITE SERVICES IS PREMATURE

The Commission should not consider any reallocation to support 3G development until it resolves the many outstanding issues surrounding the development of this service, including the level of potential demand and the amount of spectrum that the service may require. There is little reason for the FCC to adopt as a starting point the SIA proposal, which not only fails to answer these questions but also ignores the international consensus reached at WRC-2000.

A. The Commission Should Not Adopt Any Reallocation Plan Without First Determining Whether there is a Need for Reallocation

The FCC should not adopt the recommendations of WRC-2000 without conducting a thorough analysis of the market conditions in the United States for 3G. The Commission should not assume that additional spectrum is necessary to promote the development of 3G services. Instead, the FCC should start at the beginning, and examine through a Notice of Inquiry the potential market for 3G services in this country. Only when that issue has been explored will it be possible for the Commission to decide whether 3G services need spectrum beyond that already allocated for CMRS and, if so, whether those spectrum needs can be adequately addressed within the bands designated by the Commission in its 1999 Policy Statement as being suitable for 3G development.[12]

[12] *See* In the Matter of Principles for Reallocation of Spectrum to Encourage the Development of Telecommunications Technologies for the New Millennium, Policy Statement, FCC 99-354 (rel. November 22, 1999).

B. In Addition to Making Assumptions About Demand, the SIA Petition Pre-Dates, and Therefore Ignores, the Recommendations of WRC-2000

It is clear the FCC should not rush to adopt recommendations on spectrum allocations to support 3G development, such as those made at WRC-2000, without first examining whether the basic assumptions underpinning those recommendations hold true in the United States. It is even more certain that the FCC should not adopt a proposal which makes many of the same assumptions, but which was drafted by a single trade association, ignoring the consensus reached at WRC-2000 and circumventing the international, intergovernmental process that led to those conclusions. By failing to protect, or even acknowledge, the interests of incumbent licensees and short-circuiting the international process designed to further 3G development, the SIA petition harms both incumbent licensees and the 3G process. Accordingly, the SIA petition should be dismissed.

V. CONCLUSION

SIA's petition fails to even mention the incumbent licensees in the 2500-2690 MHz band which will be affected by the proposed reallocation plan, let alone offer any showing that the incumbent services would be protected from harmful interference. The petition should be dismissed on these grounds alone.

Moreover, the petition jeopardizes the current public interest benefits provided by the MDS/ITFS services and circumvents the intergovernmental consensus building process of the World Radio Conference. Indeed, SIA ignores WRC-2000 entirely and interposes its own proposal as the starting point for an FCC proceeding on spectrum

needs for 3G services. Because SIA's petition predates WRC-2000 and ignores the interests of incumbents, it should be summarily dismissed.

Respectfully submitted,

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