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

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In the Matter of	)	
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Petition for Rule Making of the Cellular Telecommunications Industry Association Concerning Implementation of WRC-2000: Review of Spectrum and Regulatory Requirements for IMT-2000	)))))	RM-9920

To: The Commission

COMMENTS OF WIRELESS ONE OF NORTH CAROLINA, L.L.C.

Wireless One of North Carolina, L.L.C. ("WONC")[1], by its attorneys, hereby files these comments on the Petition for Rulemaking filed with the Federal Communications Commission ("Commission") by the Cellular Telecommunications Industry Association ("CTIA") requesting that the Commission initiate a rulemaking proceeding to designate additional spectrum for third generation ("3G") wireless service ("Petition").[2] Specifically, CTIA is requesting the designation of additional spectrum for 3G wireless service in a manner consistent with the decisions adopted at the International Telecommunication Union's ("ITU") World Radiocommunication Conference 2000 (WRC-2000) with respect to International Mobile Telecommunications 2000 ("IMT-2000") services. Petition at 1. As noted in CTIA's Petition, WRC-2000 identified the 1710-1885 MHZ and 2500-2690 MHz bands as those that should be considered for IMT-2000 terrestrial implementation. Petition at p. 5. The 2500-2690 MHz

[1] WONC is a wireless broadband operator in North Carolina. MCI WorldCom owns 50% of WONC and CT Communications, Inc. owns 49.49%.

[2] The Petition was filed with the Commission on July 12, 2000 and appeared on Public Notice on July 28, 2000.

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spectrum is already licensed and being utilized and developed by commercial wireless broadband operators, such as WONC, to provide a variety of broadband services to consumers in markets throughout the country as well as by Instructional Television Fixed Service ("ITFS") licensees who utilize the band nationwide to transmit educational programming for distance learning. WONC does not believe that sufficient information has been developed to warrant the rulemaking proceeding requested by CTIA. However, should the Commission find that further inquiry into the matter is warranted, then the appropriate course of action would be for the Commission to issue a notice of inquiry pursuant to Section 1.430 of the Rules to examine the issues concerning the current and future use of the spectrum to determine whether a rulemaking is necessary.

I. The 2500-2690 MHz Spectrum is Currently Allocated for ITFS and MDS.

In a footnote, CTIA acknowledges that the spectrum identified by WRC-2000 for IMT-2000 services is currently allocated for Multipoint Distribution Service ("MDS") and ITFS in the United States and that the domestic uses of these frequencies present significant challenges to the Commission in reallocating the spectrum for IMT-2000 services. Petition at p. 9, note 17. Considering the outstanding allocation of the spectrum, the Commission must fully investigate the current usage of the spectrum before initiating a rulemaking proceeding.

The MMDS channels are licensed to commercial broadband operators and the ITFS channels are licensed to educational institutions throughout the country. WONC itself holds authorizations for eleven (11) Basic Trading Areas ("BTA") in North Carolina. With each of the BTAs comes the right to apply for all available MDS channels in the BTA. Further, WONC has excess capacity lease agreements with numerous educational institutions in North Carolina which have licenses for the ITFS channels. Currently, WONC, like many other wireless broadband

operators, is implementing a business plan which focuses on providing two-way broadband applications utilizing MDS and ITFS frequencies in a digital format. Over the past five years WONC has spent millions of dollars and allocated considerable resources to developing a wireless broadband network in North Carolina. Implementation of innovative applications utilizing this spectrum only recently became possible as a result of changes in the Commission's rules pertaining to MDS and ITFS spectrum.[3] WONC, like many companies developing broadband applications utilizing this spectrum, took advantage of the Commission filing window which was only opened two weeks ago, to file applications requesting authority to launch two-way operations. Upon grant of Commission authorization for two-way operations WONC and other broadband operators nationwide will be able to offer highly efficient broadband services to individuals and businesses alike in competition with both telephone and cable companies. This third competitive platform is essential to balance the interests of the nation's consumers. To deprive wireless broadband operators of this spectrum now would be fundamentally unfair to the companies who have so heavily invested in the spectrum over the last five years. It would also be detrimental to the nation's private and commercial users who need a third competitor to ensure economic balance in the pricing of services. Therefore, before instituting a rulemaking to reallocate the spectrum, the Commission must obtain sufficient information from operators and licensees alike concerning current and future usage of the bands. Such information is best obtained through a notice of inquiry.

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[3] See, In the Matter of Amendment of Parts 21 and 74 to Enable Multipoint Distribution Service and Instructional Television Fixed Service Licensees to Engage in Fixed Two-Way Transmission, 13 FCC Rcd 19112 (1998).

II. The Commission Should Issue a Notice of Inquiry to Gather Sufficient Information for Possible Institution of a Rulemaking Proceeding.

In its Petition, CTIA urges the Commission to immediately initiate a proceeding to examine the implications of, and impediments to, implementation of the 1710-1885 MHz and 2500-2690 MHz bands for IMT-2000 services in the United States. Petition at p. 6. CTIA claims that there a number of factors necessitating immediate action by the Commission. Id. Among the factors cited by CTIA are the benefits to consumers from the development of IMT-2000 services, the need for the Commission to act quickly so United States industry is not disadvantaged in competing with industry in other countries that have adopted the bands for IMT-2000 services and Congressional deadlines for auctioning part of the spectrum. Petition at pp. 6-7. WONC believes that the factors cited in CTIA's Petition support the issuance of a notice of inquiry rather than a rulemaking proceeding at this time.

As noted in CTIA's Petition, the Commission needs time to study the bands. Id. In order to study the bands, the Commission must gather sufficient information on the current and future use of the bands. Such information will come from broadband operators, such as WONC, and from educators utilizing the ITFS spectrum for distance learning. CTIA and related parties will also have an opportunity to provide the Commission with evidence regarding their need for the reallocation of the bands for IMT-2000 services. A notice of inquiry will give the Commission the opportunity to accumulate date and other evidence from all interested parties. It will also permit the Commission to review the host of issues surrounding CTIA's request for reallocation of spectrum that has already been auctioned by the Commission. If, after reviewing the information provided by the parties, the Commission finds that a rulemaking proceeding is

required, then such a proceeding can be instituted. However, a rulemaking proceeding would be premature at this time.

CONCLUSION

Rather than instituting a rulemaking proceeding without sufficient information to analyze the relevant issues surrounding the reallocation of the 2500-2690 MHz band for IMT-2000 services, should the Commission believe further review of this matter is warranted, the appropriate procedure would be for it to issue a notice of inquiry requesting that interested parties provide evidence concerning the current and future use of the frequencies. Such an inquiry will provide the Commission with the information it will need to craft a rulemaking. Until such evidence is gathered, a rulemaking proceeding would be impracticable and a waste of the Commission's valuable resources. Therefore, CTIA's Petition for Rulemaking should be denied.

Respectfully submitted,

WIRELESS ONE OF NORTH CAROLINA, L.L.C.

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August 28, 2000

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CERTIFICATE OF SERVICE

I, Rhonda L. Neil, an attorney with the law firm of Brown Nietert & Kaufman, Chartered, hereby certify that on the 28th day of August, 2000, a copy of the foregoing "Comments of Wireless One of North Carolina, L.L.C." was deposited in the U.S. mail, postage prepaid, addressed to the following:

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Rhonda L. Neil

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