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March 9, 2001

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

VIA HAND DELIVERY

Magalie Salas Roman, Esq.
Office of the Secretary
Federal Communications Commission
445 12th Street, S.W., Room TW-A325
Washington, D.C. 20554

Re: **Reply Comments**
ET Docket No. 00-258
The Catholic Television Network

Dear Ms. Salas:

On behalf of The Catholic Television Network, please accept an original, four copies, a stamp-return copy and a 3" diskette in Word 97 format of the attached Reply Comments in ET Docket No. 00-258. These Reply Comments are filed in response to the *Notice of Proposed Rule Making*, which was released on January 5, 2001.

If you have any questions, please contact the undersigned at (202) 639-5603. Thank you for your attention to this matter.

Respectfully submitted,

Edwin N. Lavergne

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Before the
FEDERAL COMMUNICATIONS COMMISSION
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FEDERAL COMMUNICATIONS COMMISSION
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In the Matter of:	)	
	)	
Amendment of Part 2 of the Commission's Rules to Allocate Spectrum Below 3 GHz for Mobile and Fixed Services to Support the Introduction of New Advanced Wireless Services, Including Third Generation Wireless Systems	)	ET Docket No. 00-258

REPLY COMMENTS OF THE CATHOLIC TELEVISION NETWORK

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Counsel To
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Dated: March 9, 2001

SUMMARY

Members of the Catholic Television Network ("CTN") use the 2.5 GHz band to provide educational, instructional, inspirational and other services to hundreds of thousands of students and millions of households throughout the United States. This proceeding was initiated to explore the possibility of introducing new advanced wireless services, including third generation ("3G") mobile services, in bands below 3 GHz. CTN is vehemently opposed to the reallocation of any spectrum in the 2.5 GHz band for the provision of 3G services.

The record in this proceeding does not support a reallocation of the 2.5 GHz band for 3G services. The record demonstrates that (1) the 2.5 GHz band is used extensively for educational purposes; (2) the 2.5 GHz band cannot be shared with 3G mobile services; (3) any segmentation of the 2.5 GHz band would indefinitely suspend or stop the roll out of fixed broadband services which the Commission has found to be in the public interest; (4) there are no suitable alternative bands to which ITFS/MMDS licensees can be relocated without compromising the quality of education in America; and (5) the 1.7 GHz band is a far more desirable alternative for the deployment of 3G services.

CTN urges the Commission to act quickly and decisively to eliminate the 2.5 GHz band from further consideration as a candidate band for 3G services. By taking such action, the Commission will end the regulatory uncertainty created by this proceeding and facilitate the continued deployment of fixed wireless broadband services which will benefit educators, students and consumers. Moreover, since the Commission has gone to great lengths to encourage the investment of billions of dollars in the 2.5 GHz band, such action will bring renewed credibility to the Commission's spectrum management policies.

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

In the Matter of	)	
	)	
Amendment of Part 2 of the Commission's Rules to	)	
Allocate Spectrum Below 3 GHz for Mobile and	)	ET Docket No. 00-258
Fixed Services to Support the Introduction of New	)	
Advanced Wireless Services, including Third	)	
Generation Wireless Systems	)	

To the Commission:

REPLY COMMENTS OF
THE CATHOLIC TELEVISION NETWORK

The Catholic Television Network ("CTN") hereby submits this reply to the comments filed in the above-captioned proceeding on February 22, 2001.[1] The comments demonstrate that (1) the 2.5 GHz band is used extensively for educational purposes; (2) the 2.5 GHz band cannot be shared with 3G mobile services; (3) any segmentation of the 2.5 GHz band would indefinitely suspend or stop the roll out of fixed broadband services; (4) there are no suitable alternative bands to which ITFS/MMDS licensees can be relocated without compromising the quality of education in America;

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[1] Amendment of Part 2 of the Commission's Rules to Allocate Spectrum Below 3 GHz for Mobile and Fixed Services to Support the Introduction of New Advanced Services, including Third Generation Wireless Systems, *Notice of Proposed Rulemaking*, FCC 00-455 (rel. Jan. 5, 2001) ("Notice"). The Notice requested comment on ways to support the introduction of new advanced wireless services, including third generation ("3G") mobile wireless services, in bands below 3 GHz. On February 22, 2001, over 100 parties filed comments in response to the Notice. CTN's comments focused on the Commission's proposals concerning the possible use of the 2500-2690 MHz band (the "2.5 GHz band") for the provision of advanced wireless services. The 2.5 GHz band is currently allocated to the Instructional Television Fixed Service ("ITFS") and Multichannel Multipoint Distribution Service ("MMDS").

and (5) the 1.7 GHz band is a far more desirable alternative for the deployment of 3G services. In light of these facts and the regulatory uncertainty created by this proceeding, CTN urges the Commission to act quickly and decisively to eliminate the 2.5 GHz band from further consideration as a candidate band for 3G services.

I. The 2.5 GHz Band Is Used Extensively For Educational Purposes.

The comments submitted by CTN, the National ITFS Association, the Education Community of the United States, the American Federation of Teachers, the Council of the Great City Schools, and numerous other parties document the extensive use of the 2.5 GHz band for educational purposes, and the importance to educators of deploying two-way fixed broadband services in the band.[2] The comments also document the important ways in which the Commission's spectrum leasing policies have enabled educators to maximize the use of ITFS spectrum to achieve their educational goals.[3]

A few parties, most notably Verizon, question the degree to which the 2.5 GHz band is being used for educational purposes.[4] Verizon argues that the band is no longer being used for its primary

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2 *See e.g.,* CTN comments at 1-14; the National ITFS Association at 7-16 and attached appendix; the American Federation of Teachers at 2; the K-12 Community at 11-14; the American Association of School Administrators at 1-3; the Network For Instructional Television at 5-11; the Education Community of the United States at 8-10; Joint Comments of ITFS Parties at 4-6 and attached appendix; Joint Parties comments filed by Schwartz, Woods and Miller at 4-19; Council of the Great City Schools at 2-4; and the University of Colorado at 2-5.

3 *See e.g.,* CTN comments at 4-14 and 25; National ITFS Association at 11-16; Wireless One of North Carolina, L.L.C. at 6-8; American Federation of Teachers at 3; Joint Comments of Education Service Center Region 9 and the Texas ITFS Educational Community at 4-8; Oklahoma State Regents For Higher Education & Oklahoma Educators at 3-5; the Council of the Great City Schools at 4-5; and the American Association of Community Colleges and the Association of Community College Trustees at 3-5.

4 *See* Verizon Wireless comments at 20-28; *see also* Universal Wireless Communications

intended purpose of instructional programming because so much channel capacity is leased to commercial entities.[5] Verizon asks the Commission to determine exactly how much spectrum is being leased speculating that such an analysis "will likely reveal that, on average, substantial portions of ITFS spectrum are no longer being used for instructional purposes and can be made available for 3G."[6] Simply stated, Verizon's position is that if significant spectrum is being leased by educators, the spectrum should be taken away.

Verizon's focus on how much capacity is being leased by ITFS licensees is completely misplaced. Verizon's mathematical outlook ignores the fact that the Commission has developed a spectrum management policy that encourages educators to lease channel capacity in order to create more efficient shared networks that benefit schools and commercial operators alike. This policy was recently validated in MM Docket No. 97-217, where the Commission adopted two-way rules to "provide increased service to consumers, upgrade the tools available to educational institutions and enhance the competitive position of MDS operators."[7] Relying on the Commission's actions in MM

Consortium comments at 6-8; and Hubbard Trust, Wireless World, LLC and Centimeterwave Television, Inc. ("Hubbard Trust") comments at 13-14.

5 Verizon Wireless comments at 23; *see also* UWCC comments at 8 ("What percentage of ITFS licensed spectrum is being used for commercial, non-educational purposes?") and Hubbard Trust comments at 13 ("ITFS spectrum should be reallocated from ITFS use to the MDS BTA holders unless the ITFS licensees are using more than 25% of their spectrum for educational purposes.")

6 Verizon Wireless comments at 23.

7 *Report and Order*, MM Docket 97-217, 13 FCC Rcd 19112 at ¶ 2 (1998), *recon.*, 14 FCC Rcd 12764 (1999), *further recon.*, 15 FCC Rcd 14566 (2000) ("Two-Way Order"); *see also* 15 FCC Rcd 14566, 14569 (¶¶ 9-10) (2000) ("We do not believe that there is any contradiction between an ITFS licensee performing its educational mission and that same licensee securing financial returns from the lease of its excess capacity. In fact, those financial returns can and do provide substantial resources to the ITFS licensee in the performance of its educational mission.")

Docket 97-217, educators across the nation have developed technology plans to improve education,[8] commercial operators have invested billions of dollars to deploy broadband services,[9] and manufacturers have developed new ways to use the 2.5 GHz band more efficiently.[10] In fact, as this proceeding unfolds, the Commission is processing thousands of applications for two-way authorizations.[11] In light of the Commission's clearly articulated policies governing the use of the 2.5 GHz band, CTN takes great exception to Verizon's suggestion that leasing somehow abrogates an ITFS licensee's educational responsibilities.[12]

Verizon's position is also premised on the false assumption that the need for ITFS spectrum can be measured by the amount of spectrum reserved for educational use. In fact, the amount of spectrum leased by an ITFS licensee cannot be equated with how much spectrum is actually used by the licensee for educational purposes. As noted in CTN's comments, spectrum leasing is

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8 *See e.g.,* CTN comments, Exhibit A, Attachment B.

9 The Commission is well aware of the investment in the 2.5 GHz band, and the public interest benefits that will result from that investment. *See e.g.,* Spectrum Study of the 2500-2690 MHz Band: The Potential for Accommodating Third Generation Mobile Systems," Interim Report, ET Docket No. 00-232, DA 00-2583, rel. Nov.15, 2000 ("Interim Report") at 17-18 ("The MDS industry has invested several billion dollars to develop the band for broadband fixed wireless data systems. These systems will provide a significant opportunity for further competition with cable and digital subscriber line (DSL) services in the provision of broadband services in urban areas and deliver broadband services to rural areas. These systems will also enable ITFS operators to bring a wide variety of broadband services to educational users, often in cooperation with MDS operators in the band.")

10 *See* Interim Report at 33.

11 *See Mass Media Bureau Multipoint Distribution Service and Instructional Television Fixed Service Applications Accepted for Filing,* Public Notice, Report No. 164 (rel. February 1, 2001).

12 Verizon comments at 21 ("ITFS licensees should 'utilize each of their channels substantially for legitimate ITFS use.' Furthermore, the Commission warned that 'any wholesale abandonment of the primary purpose of the facility could jeopardize the entity's license.'")

especially important in a two-way digital environment where greater spectrum efficiencies can be achieved through shared networks that can be used by both educators and commercial operators.[13]

II. The 2.5 GHz Band Cannot Be Shared With 3G Mobile Services.

The comments reflect a widespread consensus that the 2.5 GHz band cannot be shared with 3G mobile services due to the potential for co-channel interference. Indeed, virtually all parties, including the informal industry working group that was established to study the 2.5 GHz band, have concluded that co-channel sharing is not possible.[14] CTN urges the Commission to include this finding in its final report scheduled for release in late March 2001.

III. Any Segmentation Of The 2.5 GHz Band Would Indefinitely Suspend Or Stop The Roll Out Of Fixed Broadband Services.

CTN is opposed to any plan to segment the 2.5 GHz band because segmentation would cause further delay and uncertainty, and could prevent the launch of broadband services altogether.[15] If commercial service providers fail in their broadband deployment plans, ITFS licensees will fail as well in their plans to use new broadband technologies to improve academic achievement. There is now extensive evidence in the record showing that any band segmentation plan would indefinitely

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13 *See* CTN comments at 17-19.

14 *See Report of the Industry Association Group on Identification of Spectrum For 3G Services* at v attached to Joint Comments of the Cellular Telecommunications & Internet Association, Telecommunications Industry Association, and Personal Communications Industry Association; *see also* Motorola comments at 13 ("After analysis of the current and planned uses of the 2500-2690 MHz band, it is the collective view of [the industry] that co-channel sharing is not feasible between MDS and 3G systems. Therefore, it is unlikely that this band can offer a near term solution for 3G spectrum.")

15 *See* CTN comments at 21-24.

suspend or stop the roll out of fixed broadband services. Accordingly, the Commission should eliminate this option as a possibility in the final report scheduled for release in late March 2001.

Cisco Systems, a major manufacturer of fixed wireless broadband equipment, states that "there is no single piece" of the 2.5 GHz band that could be extracted for reallocation without severely upsetting the delicately interwoven co-existence among existing licensees.[16] According to Cisco, any band segmentation plan would radically change the business case for the roll out of fixed broadband wireless services in both residential and rural markets.[17] Similarly, Nortel Networks, which also has developed equipment for the 2.5 GHz band, states that an abrupt change such as that proposed as Option 3 in the Notice "would negate much of the work that has already occurred, and would seriously disrupt the business plans of incumbent licensees."[18]

The Wireless Communications Association International, Inc. ("WCA") and major commercial operators predict equally disastrous results. The WCA states that any segmenting of the band "would sound the death knell for many of the advanced fixed wireless systems that are bringing

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16 Cisco Systems, Inc. comments at 8.

17 *Id.* at 2. *See also, id.* at 11 ("Service providers faced with band segmentation would confront a Hobson's choice – to severely limit the capacity of their networks, or to multiply their up-front capital and recurring cost. Either way, consumers lose. Service will be less extensive and more expensive.")

18 Nortel Networks, Inc. comments at 7. *See also* WorldCom comments at 26 ("[C]ost-effective two-way broadband equipment is just becoming available in the MMDS/ITFS bands, whereas no such equipment for as yet unidentified relocation spectrum can be expected for years to come. The Commission must also recognize that equipment manufacturers can be expected to discontinue or scale back research and development on MMDS equipment if MMDS/ITFS is going to be moved to another band. All of these consequences of relocation would substantially delay the delivery of two-way fixed broadband wireless services to the public and could irrevocably harm the business case for the deployment of such services.")

broadband access to the unserved and underserved."[19] The WCA's conclusion is based on a comprehensive analysis of the implications of band segmentation prepared by HAI Consulting, Inc. which is included as an appendix to the WCA's comments.[20]

Sprint indicates that if the Commission were to adopt any of the band segmentation options that it proposed in the Interim Report, Sprint would likely cease providing its broadband service in the 2.5 GHz band.[21] WorldCom states that in order to provide an economically viable two-way fixed wireless broadband service, it needs all of the available MMDS/ITFS spectrum in virtually all of the markets it will serve.[22] And, Nucentrix, which serves primarily rural areas that are most in need of broadband access, states that any band segmentation plan would "raise the cost of providing advanced wireless services, and render these services economically non-viable in most areas."[23]

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19 WCA comments at 32.

20 *Id.* at Appendix B.

21 Sprint comments at 20 ("If the Commission were to adopt any of the band segmentation options that it proposed in the Interim Report, Sprint likely would cease providing its Broadband Direct service. Sprint requires access to the entire 2.1 and 2.5 GHz bands to provide its service, and any diminution of the spectrum ... would render its business plan useless.")

22 WorldCom comments at 16 ("In order to provide an economically viable two-way fixed wireless broadband service, WorldCom needs all of the available MMDS/ITFS spectrum in virtually all of the markets that it intends to serve with advanced broadband services. This is especially the case for many smaller markets where population densities will only support the introduction of two-way broadband services through the use of a single cell ... architecture.")

23 Nucentrix comments at 8. CTN is also opposed to any reallocation or relocation of MDS incumbents in the 2.1 GHz band. As described in the comments of the WCA, the 2.1 GHz band plays a critical role in the deployment of two-way broadband services and any reallocation or relocation would have a devastating impact on the roll out plans of the industry. *See* WCA comments at 40-42.

IV. There Are No Suitable Alternative Bands To Which ITFS/MMDS Licensees Can Be Relocated Without Suspending or Stopping The Roll Out Of Fixed Broadband Services And Compromising The Quality Of Education In America.

A fundamental objective of any spectrum relocation plan is to make the victims of the forced relocation whole in all respects.[24] However, proposals to relocate 2.5 GHz incumbents fail completely to address the adverse effects that band segmentation would have on broadband deployment as described in Section III above. Moreover, such proposals fail to address the impact that relocation would have on educators. As described in CTN's comments, the 2.5 GHz band is of critical importance to educators because it serves as a wireless pipeline that permits the ubiquitous delivery of educational services within a wide geographic area, and generates significant revenues, facilities, and services to support education.[25] ITFS systems that are owned, managed, and controlled by schools themselves empower educators to use this wireless pipeline in ways that best meet their students' changing needs.[26]

The HAI Consulting study included with the WCA's comments concludes that "there are no existing frequency bands available below 3 GHz that offer sufficient capacity to accommodate current

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24 *See e.g., Amendment to the Commission's Rules Regarding a Plan for Sharing the Costs of Microwave Relocation*, 11 FCC Rcd 8825, 8843 (1997).

25 *See* CTN comments at 22.

26 *See e.g.*, K-12 Community comments at 11 ("Presently, ITFS licensees have substantial control over their systems. This flexibility has been crucial in developing ITFS. ... [I]t is this inherent flexibility, through local control, that enables ITFS to succeed."); *see also* American Association of School Administrators comments at 2 ("AASA would like to reiterate the necessity of local control and decision making ... Without authority over the spectrum, local licensees would no longer be able to ensure that their schools are able to update their system with the latest technology.")

and evolving MMDS/ITFS applications."[27] Nonetheless, several 3G advocates suggest that incumbent licensees in the 2.5 GHz band could be relocated to other spectrum. However, in doing so, they fail to meaningfully address where or how incumbents could be relocated. They also fail to consider how incumbents could be relocated without compromising the unique educational benefits that are derived from the use of the 2.5 GHz band.[28]

For example, Ericsson proposes that the Commission allocate the 2.5 GHz band as a 3G downlink, and cavalierly suggests that incumbent licensees "could be transitioned to 3.5 GHz and reimbursed with auction proceeds."[29] This proposal fails to address the delay such a "transition" would cause on the deployment of fixed broadband services in the band. It also fails to answer a myriad of other questions that would have to be resolved. How would ITFS lessors and commercial lessees of spectrum be made whole for their losses? What relocation procedures would be used? What are the type and amount of costs to relocate incumbents? Could present equipment be used, or would it have to be replaced? When will new equipment become available, and at what cost? These are just some of the novel questions that would have to be resolved if any incumbents in the 2.5 GHz band were to be relocated. Other 3G advocates make similar relocation suggestions without meaningful analysis.[30] Such suggestions should be dismissed because they fail to address difficult

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27 WCA comments at Appendix B, page ii.

28 *See* CTN comments at 22. ("[I]f some ITFS spectrum is reallocated for 3G use, licensees of the reallocated spectrum and those they serve would lose the important benefits generated by ITFS lease agreements. These agreements have evolved over many years, and it is highly unlikely that the unique characteristics of the 2.5 GHz band, including interleaved commercial and educational spectrum, could be replicated in other bands.")

29 Ericsson comments at 16 n. 33.

30 *See e.g.*, Cingular Wireless comments at 24 ("If it is possible to relocate ITFS licensees to

and complex technical, operational, and legal questions associated with the relocation of incumbents in this band, many of which were asked by the Commission in the Notice.[31]

V. The 1.7 GHz Band Is A More Desirable Alternative For The Deployment Of 3G Services.

The comments make it clear that the 1.7 GHz band is far more desirable than the 2.5 GHz band for the deployment of 3G services because the 1.7 GHz band offers better propagation characteristics and is already used in most of the world for mobile services. For example, Motorola states that while the 2.5 GHz band is highly desirable, it does not believe that it offers the same advantages as the 1.7 GHz band:

> Although 2500-2690 MHz was identified by WRC-2000 as a potential IMT-2000 band, no country has yet implemented any commercial mobile services in the band, and, in Motorola's opinion, it is unlikely that any country will deploy IMT-2000 services before 2007 at the earliest. Thus, the band does not offer the same near term potential for spectrum harmonization, as does the 1710-1850 MHz band that is now widely used globally for 2nd generation systems.[32]

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another band suitable for point-to-multipoint systems in which they would enjoy equal or better ITFS coverage and capacity, Cingular believes that improvements in technology could enable MMDS licensees to increase the spectral efficiency of their operations, enabling them to provide the same services in their originally-allocated 70 MHz of spectrum."); AT&T Wireless comments at 9 ("Finally, to the extent the reallocation of 1755-1850 MHz cannot be made, the Commission should reallocate some or all the spectrum in the 2500-2690 MHz band."); and VoiceStream comments at 2 ("VoiceStream strongly believes that spectrum should be allocated for mobile 3G services in both [the 1710-1850 MHz and the 2500-2690 MHz] bands. VoiceStream understands the incumbents' concerns; however, the U.S. must thoroughly examine all options with respect to using both of these bands. VoiceStream urges the FCC to review the current uses of the 2500-2690 MHz band and identify alternate spectrum to accommodate the incumbent systems.")

31 *See e.g.*, Notice at ¶65.

32 Motorola comments at 12.

Similarly, Lucent states that it would be premature to designate the 2.5 GHz band for 3G services noting that the band "is not currently in operation anywhere in the world for commercial mobile radio services."[33] In the same vein, the Radio Advisory Board of Canada notes that 2.5 GHz band in Canada has been allocated to ITFS/MMDS type services, is heavily encumbered, and is in a state of rapid evolution by incumbent licensees.[34] The Canadian Wireless Telecommunications Association also favors the 1.7 GHz band noting that it is important for administrations in the Americas to adopt regional spectrum harmonization in the 1.7 GHz band in order to accommodate roaming:

> We believe the FCC should recognize the importance of the relationships between the United States and its North America Free Trade Agreement (NAFTA) partners, including the potential for cross-roaming. There are over 30 million overnight trips between the United States and Canada annually. Given the current harmonization of spectrum allocation and standards for existing services, the common use of the North American Numbering Plan (NANP), and other similarities between the two countries, cross-boarder roaming is very important, and consumers expect service compatibility. In addition to travel to Canada, Americans make over 15 million overnight trips to Mexico annually.[35]

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33 Lucent comments at 9. *See also* Cingular Wireless, LLC comments at 15 ("The Federal Government spectrum at 1710-1850 MHz offers great potential for advanced services if it can be cleared of the incumbent Federal Government use."); and AT&T Wireless Services, Inc. comments at 9 ("AT&T concurs with the Commission's proposal to allocate the 1710-1755 MHz band, which already has been identified by NTIA for transfer to the Commission, for mobile and fixed services. ... AT&T believes that spectrum in the 1755-1850 MHz bands should be made available for commercial use, and it urges the Commission and NTIA to work together to establish reasonable relocation and reimbursement procedures for government incumbents currently occupying that spectrum.")

34 Radio Advisory Board of Canada comments at 10-11.

35 Canadian Wireless Telecommunications Association comments at 3-4.

VI. Public Interest Considerations Support The Continued Deployment of Fixed Broadband Services in the 2.5 GHz Band.

Verizon argues that "reallocation of spectrum to 3G services is in the public interest and consistent with previous Commission decisions."[36] In support of its position, Verizon cites to other instances where the Commission has reallocated spectrum for new services.[37] However, the fact that spectrum has been reallocated for new services in other proceedings provides no basis for the Commission to abandon its policies concerning the 2.5 GHz band.

For example, in the DBS proceeding cited by Verizon, the Commission found that the 12.2-12.7 GHz band was occupied by a small number of one-way, point-to-point microwave users (approximately 1,900 links nationwide), the majority of which could be accommodated in alternate bands, including the 18 GHz band and the "sparingly used" 22.0-23.6 GHz band.[38] By contrast, (1) the 2.5 GHz band is heavily encumbered throughout the country, (2) licensees provide one-way and two-way point-to-multipoint services, (3) there are over 70,000 registered receive sites typically located within a 35-mile protected service area around each ITFS base station, (4) the band is in a state of rapid evolution and development that will bring competition in the provision of broadband services, and (5) there is a lack of suitable alternate spectrum.[39] Given these material differences, Verizon cannot plausibly argue that reallocation of ITFS spectrum to 3G services is "fully in line"

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36 Verizon comments at 28.

37 *Id.* at 28-31.

38 *Inquiry into the Development of Regulatory Policy in regard to Direct Broadcast Satellites for the Period following the 1983 Regional Administrative Radio Conference, Report and Order*, 90 FCC 2d 676, ¶¶ 60-64 (1982).

39 *See* Interim Report at 17-19.

with the Commission's prior reallocation decisions.[40]

While the Commission has flexibility to reexamine and change its spectrum management policies, it is a well-established principle of administrative law that "such changes must be rationally and explicitly justified."[41] The Commission has found fixed broadband deployment in the 2.5 GHz band will foster competition, promote the use of new technology in the classroom, and bring broadband services to rural America.[42] There is absolutely no evidence in the record to support a change in this policy.[43] To the contrary, the public interest factors supporting the allocation of spectrum for 3G services are far outweighed in the record by the substantial and compelling considerations underlying the Commission's decision to encourage fixed broadband deployment in the 2.5 GHz band. Indeed, just last week, Verizon's President and CEO stated that the "primary objective of federal policymakers should be to encourage new investment" in broadband fixed wireless technologies to facilitate competition:

> Competition in broadband will consist of rival pathways to the home. Two such technologies already are available-cable modems and telephone digital

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40 Verizon comments at 28.

41 *West Coast Media, Inc. v. FCC*, 695 F.2d 617 (D.C. Cir. 1982); *see also Atchison, Topeka & Santa Fe Railway Co. v. Whichita Board of Trade*, 412 U.S. 800, 806-09 (1973 ("This Court has relied on the simple but fundamental rule of administrative law . . . that the agency must set forth clearly the ground on which it acted"); *Office of Communication of The United Church of Christ, et al.*, v. FCC, 560 F.2d 529, 532 (2d Cir. 1977) (setting aside FCC's change in policy regarding its EEO guidelines as arbitrary and capricious for failure to provide rational and explicit justification); and *Greater Boston Television Corp. v. FCC*, 444 F.2d 841 (D.C. Cir. 1970) ("an agency changing its course must supply a reasoned analysis indicating that prior policies and standards are being deliberately changed, not casually ignored"), *cert. denied*, 403 U.S. 923 (1971).

42 *See* Interim Report at 20-22.

43 *See supra* Section IV discussing deficiencies in the record.

> subscriber lines. These will be joined in coming years by broadband fixed wireless and satellite connections. The primary objective of federal policymakers should be to encourage new investment and allow competition between these rival 'last mile' technologies.[44]

VII. Conclusion

This proceeding has created significant and troubling regulatory uncertainty which threatens the continued roll out of advanced fixed wireless services in the 2.5 GHz band.[45] In light of the record, CTN urges the Commission, in its final report, to eliminate the 2.5 GHz band from further consideration as a candidate band for 3G services. By taking such action, the Commission will end the uncertainty, and facilitate the continued deployment of advanced fixed wireless services in the band, which will benefit educators, students and consumers.

Respectfully submitted,

THE CATHOLIC TELEVISION NETWORK

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March 9, 2001

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44 *Stop Blocking The Broadband Revolution*, Ivan Seidenberg, The Wall Street Journal, March 1, 2001 at A-22.

45 *See e.g.*, IP Wireless, Inc. comments at iii ("Uncertainty makes planning and budgeting for system and equipment design, development and deployment extremely difficult, and makes it more difficult for entrepreneurial operators to raise the additional capital required for deployment of broadband wireless services in this band in the United States.")

CERTIFICATE OF SERVICE

I, Shelia Wright, hereby certify that on this 9th day of March, 2001, I caused copies of the foregoing Reply Comments by the Catholic Television Network to be hand-delivered to the following:

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