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June 1, 2001

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

**VIA HAND DELIVERY**

Kevin Martin
Commissioner
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

**RE: EX PARTE**
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.

Dear Commissioner Martin:

Congratulations on your appointment to the FCC. We are taking the unusual step of communicating with you immediately because we are facing an emergency and want to be certain you are fully apprised of the facts before you vote on a pending further notice of proposed rulemaking ("FNPRM") in Docket 00-258. Staff informs us that the FNPRM will be sent to the Commissioners for a vote in the very near future. We are also seeking an appointment at your earliest convenience to discuss this matter.

Our concern is that you will vote in favor of issuing the FNPRM before you have had an opportunity to hear our story. Specifically, we are requesting your support to remove the 2.1 and 2.5 GHz bands from further consideration as a possible home for third generation ("3G") commercial wireless services. Staff has informed us that these bands will be included in the FNPRM unless the Commissioners direct otherwise.

For over seven months, the FCC has been exploring the possibility of sharing or segmenting the 2.1 and 2.5 GHz bands to accommodate 3G services. These bands currently are allocated to Instructional Television Fixed Service ("ITFS") and Multipoint Distribution Service ("MDS") licensees who use the spectrum to provide educational services to millions of students and to deploy advanced fixed wireless broadband services to businesses and residential customers throughout America.

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On March 31, 2001, after months of intensive analysis and study, the FCC staff issued a Final Report in ET Docket 00-258 which demonstrates conclusively that no portion of the 2.1 or 2.5 GHz spectrum should be reallocated for 3G. Among things, the Final Report concluded that:

> "ITFS licensees make extensive use of their spectrum to provide formal classroom instruction, distance learning, and video conference capability to a wide variety of educational users throughout the nation." *Final Report at 13.*
>
> "ITFS has approximately 1,275 entities holding over 2,175 licenses in urban and rural locations throughout the United States. Over 70,000 locations serve as registered ITFS receive sites, although the number of actual locations at which ITFS programming is viewed is likely much higher since receive sites are typically located within a 56.3-kilometer (35-mile) protected service area around an ITFS base station." *Final Report at 14.*
>
> "The MDS industry has invested several billion dollars to develop the band for fixed wireless data systems. These systems will provide a significant opportunity for further competition with cable and digital subscriber line (DSL) services and deliver broadband services to rural America." *Final Report at 13.*
>
> "Sharing between 3G systems and ITFS/MDS operations is extremely problematic." *Final Report at 36*
>
> "Segmentation would require considerable time and costs on both private entities and the public. ... Furthermore, delivery of fixed broadband wireless services to the public and educational users would be delayed, and in rural areas or smaller markets, may never be realized. Relocation would also require considerable time and costs to re-engineer and deploy systems in alternate frequency bands. Again, delivery of service would be delayed or never realized. The relocation option also would require other services to relocated, and the time and costs to move those additional services would be significant." *Final Report at 92-93.*
>
> The relocation costs for traditional ITFS facilities would be approximately $19 billion; and secondary relocation costs would fall between $10.6 and $30.4 billion. *Final Report at 90-92.*

In addition to these very compelling findings, the record established at the FCC shows that the 2.1 and 2.5 GHz bands are not the preferred bands for 3G services. Rather, the record demonstrates that the 1.7 GHz band allocated to the Department of Defense is far more desirable for 3G services. Among other things, the 1.7 GHz band offers better propagation characteristics and is already used in most of the world for mobile services.

The timetable originally established for this proceeding called for a final spectrum reallocation decision to be reached by July 2001. Recently, however, 3G advocates asked for this proceeding be delayed so that the Bush administration has more time to explore its options, particularly with respect to a possible reallocation of the 1.7 GHz band. Staff is now in the process of preparing the FNPRM to explore, among other things, the possibility of reallocating additional bands for 3G services.

This proceeding already has created significant regulatory uncertainty that has slowed the deployment of important new educational technologies and threatened the continued rollout of advanced fixed broadband services, particularly in rural markets. Given that nothing in the record credibly supports reallocation of the 2.1 or 2.5 GHz bands for 3G, it is fundamentally unfair to further delay a decision with respect to these bands while the Commission explores other more desirable options.

Please help us end the needless delay, expense, and uncertainty created by this proceeding. We urge you to support the issuance of a Report and Order removing the 2.1 and 2.5 GHz bands from further consideration as candidate bands for 3G services. Thank you for your consideration of this important matter. We will be in touch with your office shortly to schedule an appointment.

In accordance with Section 1.1206 of the Commission's rules, an original and a copy of this letter are being submitted with the Secretary's Office.

Sincerely yours,

THE CATHOLIC TELEVISION NETWORK

By: Shook, Hardy & Bacon, LLP
Its Attorneys
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