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June 6, 2001

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

**VIA HAND DELIVERY**

Ms. Magalie Roman Salas, Esq.
Secretary
Federal Communications Commission
445 12th Street, S.W.
Room TW-B204
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 Ms. Salas:

On Tuesday, June 5, 2001, Carroll D. McHenry, Chairman and CEO of Nucentrix Broadband Networks ("Nucentrix"), J. Curtis Henderson, Senior Vice President and General Counsel of Nucentrix, and I met with: (1) Thomas Sugrue, James Schlichting, Kris Monteith, Blaise Scinto, Charles Rush and John Spencer; (2) Julius Knapp and Geraldine Matise; and (3) Commissioner Gloria Tristani and Adam Krinsky. At those meetings, Nucentrix emphasized the importance of retaining both the 2.1 and 2.5 GHz bands for advanced fixed wireless services, and urged the FCC to remove these bands from further consideration in the above-mentioned proceeding as a home for 3G.

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

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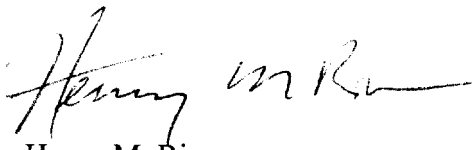
Please contact the undersigned if there are any questions in connection with this matter.

Sincerely,



Henry M. Rivera
Counsel to Nucentrix Broadband Networks

cc: Commissioner Tristani
Adam Krinsky
Thomas Sugrue
James Schlichting
Kris Monteith
Blaise Scinto
Charles Rush
John Spencer
Julius Knapp
Geraldine Matise
J. Curtis Henderson

# nucentrix™

broadband networks

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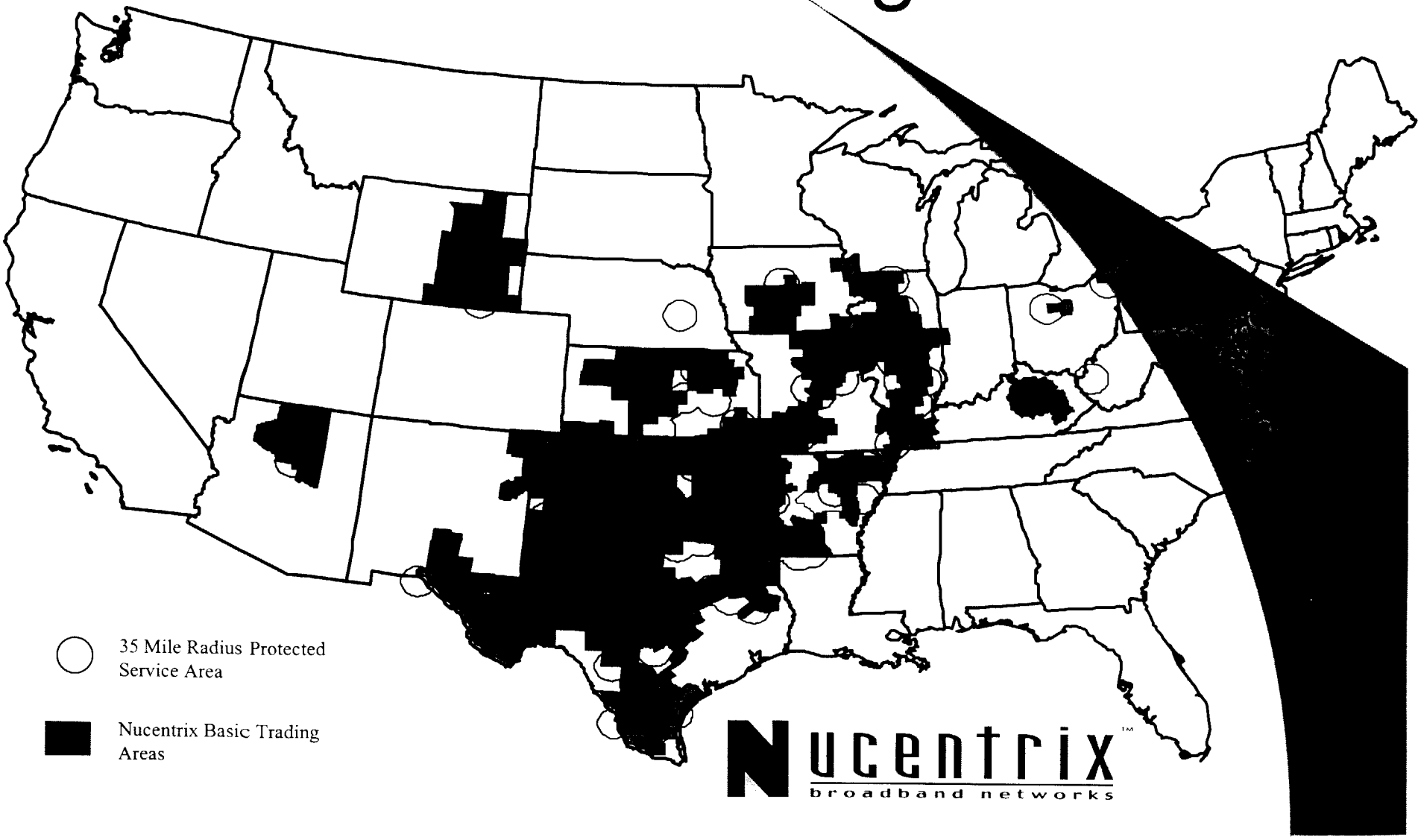
# About Nucentrix

- Public company (Nasdaq: NCNX)
- Broadband fixed wireless service provider using FCC licensed spectrum:
  - 2150-2162 MHz band ("MDS")
  - 2.5 GHz band ("MMDS" and "ITFS")
- Facilities based "last mile" provider
- Competitor to DSL and Cable Duopoly
- 3rd largest MMDS operator behind WorldCom and Sprint
- 9 million homes, mostly rural
- Began as Heartland Wireless Communications
  - originally brought wireless cable television to rural markets ignored by wireline providers

# Nucentrix
# Licensed Coverage Area



# Nucentrix Today: Bringing Broadband to Rural & Underserved Markets

- Currently providing broadband Internet service under FCC developmental licenses in:
  - Austin, TX
  - Sherman/Denison, TX
  - Amarillo, TX
- Testing next generation broadband fixed wireless and voice over IP platform developed by Cisco Systems

# Nucentrix Today: Bringing Broadband to Rural & Underserved Markets

- Filed FCC applications for broadband two-way service in 70 markets
- FCC has granted applications in 45 of these markets
- Further market deployments/capital investments on hold
- Capital markets will not provide additional funding as long as regulatory uncertainty over both 2150-2162 MHz and 2.5 GHz bands continues

# 2150-2162 MHz Band Must Remain Intact

- MDS 1/2/2A Channels (used for upstream)
- Provides the essential channel separation from the 2.5 GHz band (used primarily for downstream)
- Foundation of all MDS/MMDS/ITFS two-way networks and channel band plans
- Not on table at WRC-2000
- NCNX and other MDS operators purchased exclusive rights to this spectrum at BTA auction in 1996
  - 90% of Nucentrix's MDS channels obtained under BTA rights
  - applied for 500 BTA channel authorizations
  - FCC has granted 370 of the 500 applications
  - 170 BTA channels constructed to date

# 2150-2162 MHz Band Must Remain Intact

- **Taking these assets and reselling them to other bidders will ensure protracted spectrum litigation and lengthy appeals.**
- **Possible damages to MDS licensees:**
  - Purchase price for BTA rights
  - Purchase price for negotiated acquisitions of MDS licenses to which FCC consented ($billions)
  - Appreciated value of spectrum following auction
  - Decrease in market capitalization due to loss of core assets of a wireless business
  - R&D costs for alternate spectrum
  - Cost to purchase & install new equipment for every existing CPE (up to 1.2M users in two years)
  - Cost of deployment delays

# 2150-2162 MHz Band Must Remain Intact

- **Hundreds of independent lawsuits may be brought by individual spectrum licensees (MDS, MMDS and ITFS) and lessors based on an unconstitutional "taking" of property:**
  - –MDS licensees have a reasonable expectation that the spectrum they obtained at auction would be available during the full initial term of the license and for subsequent renewal terms.
  - –Taking of MDS licenses exposes the FCC to legal claims by both ITFS and MMDS licensees because their spectrum rights and operations are inextricably intertwined.
- **Guarantees that no use is made of the spectrum for a long time**

# Nucentrix Proposal

- Remove 2.1 GHz and 2.5 GHz bands from further consideration in the FNPRM
  - Eliminates regulatory uncertainty that continues to delay broadband deployment to rural areas
  - Removes chill on capital markets to fund additional deployment
  - 3G proponents favor 1.7 GHz band
  - If additional time is needed to study the 1.7 GHz band, Nucentrix would support that decision