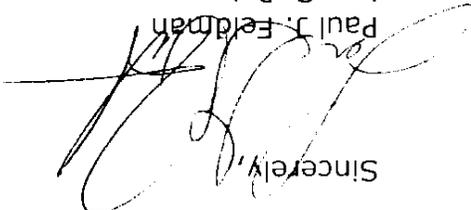


Oth

Enclosures

Counsel for Plateau Telecommunications, Inc.

Sincerely,  
  
 Paul J. Feldman  
 Lee G. Petro

Should any questions arise concerning this matter, please communicate with this office.

Transmitted herewith is an original and four copies of a Petition for Reconsideration, filed on behalf of Plateau Telecommunications, Inc., in the above-referenced proceeding.

Dear Ms. Dortch:

**Re: Petition For Reconsideration**  
**WT Docket 03-66**  
**Plateau Telecommunications, Inc. - FRN: 0003-8005-70**

**By Hand Delivery**  
 Marlene H. Dortch, Esquire  
 Secretary  
 Federal Communications Commission  
 445 12<sup>th</sup> Street, S.W., Room TW-B204  
 Washington, D.C. 20554

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 FEDERAL COMMUNICATIONS COMMISSION  
 OFFICE OF THE SECRETARY

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In the Matter of )  
 )  
Amendment of Parts 1, 2, 21, 73, 74 and )  
101 of the Commission's Rules to Facilitate )  
the Provisions of Fixed and Mobile )  
Broadband Access, Educational and Other )  
Advanced Services in the 2150-2160 and )  
2500-2690 MHz Bands )

WT Docket No. 03-66  
RM-10586

TO: THE COMMISSION

**PETITION FOR RECONSIDERATION**

Plateau Telecommunications, Inc., ("Plateau") a subsidiary of ENMR Telephone Cooperative, Inc., pursuant to Section 1.106 of the Commission's Rules, hereby petitions the Commission to reconsider and reverse its decision in last week's Notice of Proposed Rulemaking and Memorandum Opinion and Order' to impose an immediate freeze on the filing of applications for new or modified facilities in the Instructional Television Fixed Service ("ITFS") and apparently, Multipoint Distribution Service ("MDS").<sup>2</sup>

In addition, Plateau Telecommunications is a member of the Wireless Communications Association International, Inc. ("WCA") and fully supports

<sup>1</sup> *Amendment of Parts 1, 21, 73, 74 and 101 of the Commission's Rules to Facilitate the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150-2162 and 2500-2690 MHz Bands*, Notice of Proposed Rulemaking and Memorandum Opinion and Order, WT Docket No. 03-66, FCC 03-56 (rel. April 2, 2003) ("NPRM/MO&O").

<sup>2</sup> Although the text of the *NPRM/MO&O* only discusses a freeze on new and major-change applications for ITFS facilities, the Ordering Clauses reference a freeze on both ITFS and MDS new and major-change applications. See *NPRM/MO&O*, ¶¶ 226-229, 260.

the WCA petition for reconsideration that was filed on April 7, 2003 seeking reversal of this Commission decision.

An MDS freeze is inconsistent with Commission policies on broadband services. Answering the call of the Federal Communications Commission to provide broadband Internet services to rural America and more specifically rural Eastern New Mexico, over a year ago, Plateau embarked upon the time-consuming and extremely expensive business plan to acquire MDS spectrum, lease excess capacity from ITFS licenses, acquire funding, research vendor equipment, trial vendor equipment, and formulate business models, to meet this challenge. Plateau was finalizing a field trial between two equipment vendors and was literally a few weeks away from completing the last step in this crucial process by filing station licenses for **4** rural facilities in its Eastern New Mexico **BTA's**. A formal business plan was currently being executed to commercially launch broadband Internet services in these markets by September 30, 2003.

An MDS freeze is also inconsistent with the expectations and legal rights created by the Commission's spectrum auction system. Plateau had placed confidence in the Federal Communications Commission's spectrum auction process that duly awarded licensed BTA areas within New Mexico. Plateau, just this February, completed the purchase of a partitioned portion of a BTA in Northeastern New Mexico and was in the final stage of executing a purchase agreement for three additional markets in Eastern and Southeastern New Mexico. In addition to the purchase of this auctioned MDS spectrum, Plateau has participated in and directly purchased spectrum in two

separate Federal Communications Commission spectrum auctions and was devastated to learn last week that the Federal Communications Commission was willing to revoke any and all confidence in the unabated future use of said spectrum which was purchased at great cost.

In addition to threatening the provision of competitive rural broadband service, and impinging on the assets just purchased by Plateau, the harm to Plateau by a freeze compounds the harms recently suffered by Plateau due to other regulatory delays by the Commission. In order to conduct a field trial to make an experienced decision among various MDS equipment vendors, Plateau filed for a site license in August 2002, to construct a trial system. Plateau was expecting the normal 60-day process to receive these licenses but was forced to endure a six-month FCC delay with the result that the site license was not awarded until February, 2003.<sup>3</sup> Plateau was patient in enduring this unnecessary delay, only to be defeated once more by a government commission who should be aiding our deployment of such services. It appears by these actions that the FCC is trying to discourage investment in wireless broadband equipment in anything other than non-licensed spectrum.

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<sup>3</sup> Plateau filed applications for two new facilities on the E & F Groups on August 20, 2002 pursuant to a Partition Agreement with Nucentrix Broadband Networks, Inc. Due to processing delays apparently resulting from the Commission's internal transfer of regulatory authority over the MDS and ITFS services from the Media Bureau to the Wireless Bureau six months prior, the applications were not entered into the Commission database and were not released on public notice until October and November, 2002, respectively. The applications were unopposed, and both applications were ripe for grant by the end of December. However, apparently because the staff was created new processing procedures, the applications were not granted until February 26, 2003.

The only stated reason for the freeze on new and major-change application was to create “conditions under which formal rulemaking proceedings can be held in an effective efficient and meaningful manner.”<sup>4</sup> However, it is not clear how the licensing of the new facilities, in accordance with the processing and technical rules currently in place, will undercut or dramatically alter the MDS regulatory landscape.

In the end, Plateau will be forced to modify its facilities in accordance with whatever revised MDS/ITFS band-plan the Commission adopts. The addition of facilities that will be subject to that band-plan will not affect any other party, since these applications will be submitted pursuant to geographic-based BTA licenses acquired at an FCC-conducted auction. Nothing in the proposed rules would force MDS BTA licensees to relinquish the licenses acquired through an auction, and therefore, the addition of facilities within the geographic area acquired through the auction should not be frozen.

Moreover, nothing in the NPRM/MO&O froze the submission of the MDS BTA holders’ installment payments incurred as a result of the auction. Therefore, while the Commission has frozen the ability of BTA holders to construct facilities acquired through the auction, it will continue to reap the benefits of the auction.’ This decision is patently unfair, and should be reversed on reconsideration.

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<sup>4</sup> NPRM/MO&O, ¶ 229.

<sup>5</sup> Given that many MDS licensees purchased their authorizations at auction, the freeze also raises serious Fifth Amendment “taking” issues.

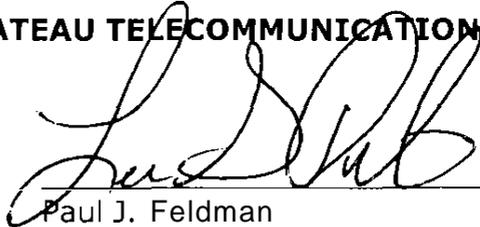
Plateau is saddened by the fact that an investment in MDS-based broadband services in almost any other nation on earth would be moving forward rapidly with the encouragement and full blessing of that nation's communications commission. Plateau urges the United States Federal Communications Commission to please support current and future investment in MDS-based broadband services in our great nation as well. At the very least, please do not hinder investment in such services by freezing the use of spectrum that was duly auctioned and purchased from the Federal Communications Commission for this very service.

WHEREFORE, on the basis of the discussion provided herein, it is hereby respectfully requested that the Commission reconsider the freeze placed on new and major-change applications for ITFS and MDS facilities.

Respectfully submitted,

**PLATEAU TELECOMMUNICATIONS, INC.**

By:



---

Paul J. Feldman  
Lee G. Petro

Fletcher, Heald & Hildreth PLC  
1300 North 17<sup>th</sup> Street  
11<sup>th</sup> Floor  
Arlington, Virginia 22209  
703-812-0400

April 8, 2003

## CERTIFICATE OF SERVICE

I, Carla M. Whitlock, a secretary in the law firm of Fletcher, Heald & Hildreth, do hereby certify that a true copy of the foregoing "Petition for Reconsideration" was sent this 8th day of April, 2003 via hand delivery to the following:

Hon. Michael Powell  
Chairman  
Federal Communications Commission  
445 12th St. SW  
Room 8-B201  
Washington, D.C. 20554

Jennifer Manner  
Office of Commissioner Abernathy  
Federal Communications Commission  
445 12th St. SW  
Room 8-8115  
Washington, D.C. 20554

Commissioner Kathleen Q. Abernathy  
Federal Communications Commission  
445 12th St. SW  
Room 8-B-115  
Washington, D.C. 20554

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Office of Commissioner Copps  
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Commissioner Michael J. Copps  
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Office of Commissioner Martin  
Federal Communications Commission  
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Commissioner Kevin J. Martin  
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Commissioner Jonathan Adelstein  
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Wireless Telecommunications Bureau  
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Bryan Trarnont  
Office of Chairman Michael K. Powell  
Federal Communications Commission  
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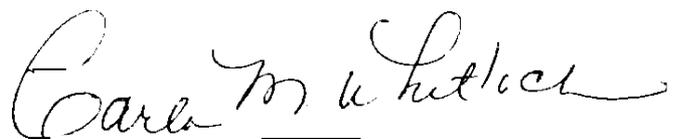
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Federal Communications Commission  
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Carla M. Whitlock