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April 21, 2003

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 Twelfth Street, SW
Washington, DC 20554

Re: *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 -- WT Docket No. 03-66*

Notice of Ex Parte Presentation

Dear Ms. Dortch:

On Friday, April 18, 2003, Jeffrey Blumenfeld and Larry Blosser, counsel to IPWireless, Inc. ("IPWireless"), met with Bryan Tramont, Senior Legal Advisor to Chairman Powell and with Shellie N. Blakeney and John Schauble of the Wireless Telecommunications Bureau to express support for the WCA Petition for Reconsideration of the freeze on applications for new or modified MDS and ITFS facilities pending completion of this rulemaking.

Using examples from the attached ex parte presentation delivered a day earlier, we explained the adverse effect of the freeze on IPWireless. We explained that if the Commission grants the WCA Petition, there will be no harm to prospective bidders at future spectrum auctions, and that parties intending to deploy the IPWireless technology prior to the adoption of final rules will assume the risk that they may be required to move to a different frequency or to make other adjustments in the technical parameters of their facility when permanent rules take effect.

Sincerely,

Gray Cary Ware & Freidenrich LLP

Larry A. Blosser
lblosser@graycary.com

cc: Bryan Tramont
Shellie Blakeney
John Schauble

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April 17, 2003

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 Twelfth Street, SW
Washington, DC 20554

Re: *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 -- WT Docket No. 03-66*

Notice of Ex Parte Presentation

Dear Ms. Dortch:

On April 17, 2003, the undersigned, counsel to IPWireless, Inc. ("IPWireless"), met with Shellie N. Blakeney, Ramona Melson and John Schauble of the Wireless Telecommunications Bureau regarding the Commission's decision to freeze the filing of applications for new or modified MDS and ITFS facilities pending completion of the rulemaking in this docket.

IPWireless supports the WCA Petition for Reconsideration. As the Commission is aware from IPWireless' submissions in earlier dockets, IPWireless, headquartered in San Bruno, California, has developed a technology platform that is capable of delivering advanced wireless broadband services in fixed, portable and mobile applications across a variety of spectrum bands. In the early stages of technology development IPWireless focused on the 2500-2690 MHz (2.5 GHz) band, and acquired spectrum rights in several markets. IPWireless has deployed technology in two of those markets to conduct tests and demonstrations.

The IPWireless technology platform has been commercially deployed in three US markets by ITFS/MMDS service providers not affiliated with IPWireless. In Missoula, Montana, the operator is Teewinot Wireless. Maui Sky Fiber has deployed a system on the island of Maui, Hawaii. The third system (in Jacksonville, Florida) is operated by Clearwire Technologies, using ITFS spectrum leased by Clearwire from the Hispanic Information and Telecommunications Network, Inc. and the Duval County Public School System.

Sprint, in collaboration with Inukshuk Internet, Inc., conducted a test of the IPWireless technology in Montreal, Quebec, last summer. Other operator-sponsored trials are anticipated in the US, but have not been publicly announced. IPWireless anticipates that there is a potential for the deployment of its technology in two to four US markets this year, in addition to those specifically discussed below.

Outside the US, the IPWireless technology is being deployed by Walker Wireless in the three largest cities in New Zealand (Auckland, Wellington and Christchurch), with coverage to nearly one-half of that country's population. IPWireless expects that at least three additional national operators outside the US will commit to deployments by mid-2003, in frequency bands between 1.9 GHz and 3.5 GHz, depending upon national spectrum allocations.

The freeze on filing of applications for new or modified ITFS and MDS facilities is having a severe impact on IPWireless' efforts to sell its technology within the US market. In the three markets where the IPWireless technology is already deployed, there are a total of between $3 million and $5 million in equipment orders that will not be filled as long as the freeze remains in effect. The equipment has been ordered to expand coverage to presently unserved areas, to fill gaps in existing coverage and to meet the growing customer demand. The equipment on order is of no use to the operators, and the customer demand can't be met, unless the FCC lifts the freeze and grants the operators' applications for new and expanded (within existing protected service areas) on a timely basis.

IPWireless is a party to a pending transaction in one top-30 MSA. The prospective operator, who has asked that its identity not be disclosed, has raised $38 million to finance the acquisition of spectrum rights, the purchase and installation of base station and subscriber equipment and the marketing of service, which (but for the freeze) could commence in the summer of 2003. The transaction documents are complete and awaiting signature. The system engineering and application preparation are complete for the initial phase of deployment, 35 cell sites capable of serving 50,000 new wireless broadband subscribers. The transaction contemplates the expansion of the system to 60 cell sites capable of serving as many as 100,000 customers. This transaction can move forward only if the WCA petition is granted and the freeze is lifted.

IPWireless is also in discussions with a national CMRS operator. Although this transaction has not progressed as far as the one described in the preceding paragraph, it would, if consummated, lead to the deployment of service in at least one top-30 market and, depending on the availability of spectrum, many additional markets. The CEO of the major CMRS company has visited an IPWireless test bed, and the IPWireless technology is being put to further tests at the CMRS operator's corporate headquarters. If the current negotiations with this company are successful, and if the freeze is lifted, the company would fund an expansion and major commercial trial based upon one of the existing IPWireless test bed systems this summer. A successful trial could quickly lead to a larger deal including the transfer of spectrum rights and deployment of the IPWireless technology in another top-30 market.

During the meeting, Commission staff asked whether the availability of equipment was an issue. I responded, and confirmed following the meeting, that there is sufficient equipment presently on hand to fill the orders for 20-30 additional sites in the currently deployed markets (Missoula, Maui, Jacksonville), as well as the 35-cell initial phase of the top-30 market buildout described above. As announced in January of this year, IPWireless has an agreement with Solectron Corporation, a leading manufacturer, to fulfill the expected nationwide demand for IPWireless products, including base stations and CPE.

Staff asked whether the deployment of IPWireless equipment would be affected if service were offered on one frequency or group of channels, but the rules adopted by the Commission required relocation to a different channel. I stated, and subsequently confirmed with IPWireless, that the

existing radio equipment is tunable across the entire 2500-2690 MHz band and that, regardless of the band plan adopted, service could still be provided.

Finally, the staff asked whether the majority of the applications needed to deploy the services discussed were already on file when the freeze was imposed, and merely await the lifting of the freeze. Insofar as the filing process is currently a paper process, IPWireless has no means of ascertaining whether its existing customers filed any applications for additional sites before the freeze was imposed. It is possible that a few such applications are pending, but it is likely that the majority of applications for expansion of existing systems have not yet been filed and are awaiting the lifting of the freeze. More importantly, neither the expansion of an existing IPWireless test bed system to support a major commercial trial nor the two top-30 market transactions described above can proceed so long as the freeze is in place.

To the extent that the 2.5 GHz band is "underutilized" (as some believe to be the case), that situation can only be exacerbated by a continued moratorium on the deployment of next-generation technologies such as that being offered by IPWireless. Whatever the outcome of the rulemaking, the rules will almost certainly permit (and perhaps even encourage) the deployment of efficient, low-power, cellularized non-line-of-sight technologies.

If the freeze is maintained for the duration of the rulemaking, the focus of technology development and the associated investment will go elsewhere. In the US, this may be to the WCS band, to the broadband PCS bands, to one of the unlicensed bands or (if the conclusion of this rulemaking is delayed long enough), to an auctioned 3G band. If the domestic US market is closed to IPWireless and other manufacturers, the advanced technologies will be offered to operators in other countries, leaving the US even further behind in the global race to deploy ubiquitous broadband. Once the technology development efforts and the capital have moved elsewhere, there can be no assurance that they will return to this band when the rulemaking is concluded. As long as licensees and suppliers understand that they may be required to make changes in their systems to conform to whatever rules the Commission eventually adopts, they should not be forced to await the adoption of final rules before proceeding with the construction and operation of new or modified facilities.

For these reasons, the WCA Petition for Reconsideration should be promptly granted.

Sincerely,

Gray Cary Ware & Freidenrich LLP

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cc: Shellie N. Blakeney
Ramona Melson
John Schauble
Paul J. Sinderbrand