Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
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 RM-10586
	)	
Part 1 of the Commission's Rules - Further Competitive Bidding Procedures	)	WT Docket No. 03-67
	)	
Amendment of Parts 21 and 74 to Enable Multipoint Distribution Service and the Instructional Television Fixed Service to Engage in Fixed Two-Way Transmissions	)	MM Docket No. 97-217
	)	
Amendment of Parts 21 and 74 of the Commission's Rules With Regard to Licensing in the Multipoint Distribution Service and in the Instructional Television Fixed Service for the Gulf of Mexico	)	WT Docket No. 02-68 RM-9718
	)	

JOINT REPLY COMMENTS OF
THE CATHOLIC TELEVISION NETWORK
AND THE NATIONAL ITFS ASSOCIATION

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SUMMARY

The Catholic Television Network ("CTN") and the National ITFS Association ("NIA") represent the interests of the majority of Instructional Television Fixed Service ("ITFS") licensees in the United States. CTN and NIA have serious concerns with the Commission's proposals to permit the sale of ITFS spectrum to commercial entities. Virtually every educator and ITFS licensee in the nation share these concerns.

Some commercial parties argue that ITFS licensees should be given the option, in their sole discretion to sell ITFS spectrum to commercial entities. This argument should be rejected because while an individual ITFS licensee might determine that the sale of its ITFS spectrum to a commercial entity would be in *its* best interest, collectively, and over time, such sales would be detrimental to the larger *public* interest in preserving spectrum for educational use.

Other commercial entities argue that because ITFS spectrum is underutilized, the Commission should permit the spectrum to be sold to the highest bidder on the theory that such sales will put the spectrum to its highest and best use. This argument should be rejected as well for at least three reasons. First, the "best" use of spectrum is not necessarily a commercial use that is measured on the basis of economic returns. The set aside of ITFS spectrum is not about empirical economic returns. Rather, it is about a long-term investment in education and America's future. Second, the factual premise underlying this argument – that ITFS spectrum is underutilized – is flawed. The record unequivocally shows that ITFS spectrum is being used throughout the nation to meet important educational needs. Third, to the extent there is some spectrum underutilization, the Commission must recognize that such underutilization is caused by needed changes to the ITFS/MMDS band and regulations which are the reasons for the very existence of this rulemaking.

There is nothing in the record to justify alteration of the existing ITFS eligibility restrictions. The adoption of a new band plan and flexible use rules combined with the leasing of spectrum through secondary markets will unleash the full potential of ITFS spectrum for both educational and commercial purposes. Ultimately, this will result in increased spectrum efficiency, the availability of improved technological tools for education, and new commercial services for consumers and businesses.

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The Catholic Television Network ("CTN") and the National ITFS Association ("NIA"), by their attorneys, hereby submit these joint reply comments in the above-captioned Notice of Proposed Rulemaking ("NPRM").[1] These joint reply comments focus on just one issue of particular concern to ITFS licensees – ITFS eligibility requirements. In separate joint reply comments being submitted to the Commission

[1] *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, FCC 03-56 (rel. April 2, 2003) 18 FCC Rcd 6722 (2003).

today CTN, NIA and the Wireless Communications Association International ("WCA") address a number of other issues.

In their comments, CTN and NIA expressed serious concerns with the Commission's proposals to permit the sale of ITFS spectrum to commercial entities.[2] These concerns were premised on the fact that if market forces alone are permitted to dictate who holds licenses for ITFS spectrum, such forces would, over time, result in a de facto reallocation of this limited and valuable spectrum resource to commercial interests.[3] CTN and NIA explained that the manner in which ITFS spectrum is used will change over time in response to new technologies and educational needs. For example, while ITFS traditionally has been used for one-way video program delivery to reduce the unit cost of education, in the years ahead, it will increasingly be used not only for video program delivery, but also as a wireless pipeline for high-speed Internet access, on-demand audio, video and data services, and a host of other applications.[4] Numerous other parties reached the same conclusion, strongly opposing any rule change that would permit ITFS licenses to be held by commercial entities.[5]

The educational community is opposed to the commercialization of ITFS spectrum because, unlike other sources of educational programming, ITFS provides

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[2] CTN-NIA Joint Comments at 3.

[3] *Id.* at 5.

[4] *Id.* at 13.

[5] *See e.g.*, Comments of the Education Community at 4; Comments of the New America Foundation, *et al.* at 34-37; Comments of the ITFS/2.5 GHz Mobile Wireless Engineering & Development Alliance, Inc. at 3-7; Comments of Hispanic Information and Telecommunications Network, Inc. at 10; Comments of the George Mason University Instructional Foundation, Inc., *et al.* at 7; Comments of PACE Telecommunications Consortium of Michigan at 9; Comments of the School Board of Broward County at 13; Comments of the School Board of Miami-Dade County, Florida at 6; Comments of South Carolina Educational Television Commission at 7; Joint Comments of ITFS Parties at 4; and Comments of Illinois Institute of Technology at 5.

educators with the ability to control how the program delivery pipeline (*i.e.*, the spectrum) is configured and used. As a result, educators are able to decide for themselves how best to use this spectrum asset to meet their changing instructional needs.[6] For example, an ITFS licensee might determine that leasing part of its spectrum to support ongoing video operations is the most valuable use of this asset. Later, the licensee may decide to take a portion of its ITFS spectrum to construct a licensed wireless data network on its campus to replace unprotected WiFi services operating on unlicensed spectrum. The licensee might subsequently determine that incorporating ITFS spectrum into a larger wide area commercial fixed wireless or mobile system, and having the right to use a portion of that capacity for students, faculty and staff, will best meet the licensee's educational needs. But, if the Commission permits ITFS licenses to be sold outright to the highest commercial bidder, within a matter of time, educational control over ITFS, and all the associated education benefits, will be lost forever.

Some commercial parties argue that ITFS licensees should be given the option, in their sole discretion, to sell ITFS spectrum to commercial entities on the theory that ITFS licensees are in the best position to determine whether such sales would meet their individual educational and instructional needs.[7] These parties often emphasize that they are not suggesting that the ITFS allocation is unnecessary or that ITFS spectrum is not being used to provide valuable educational services to the public. However, they believe

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[6] *See e.g.*, Comments of Illinois Institute of Technology at 6 ("In the decades since [the ITFS allocation], IIT has enhanced and expanded its distance learning and educational programming, as well as the supporting plant and infrastructure associated with these systems. Currently, the distance learning program and the FCC-licensed spectrum over which it is delivered, are essential to IIT's educational mission.").

[7] *See e.g.*, Comments of EarthLink, Inc. at 10 and Comments of Sprint Corporation at 23.

that each ITFS licensee should be free to decide for itself how much spectrum should be retained for educational versus commercial use.[8]

The problem with this argument is that while a single ITFS licensee might well determine that the sale of its license to a commercial entity would be in its *individual* interest (at least in the short run), the *public* interest would not be served by such a sale because, over time, such sales taken as a whole would result in a de facto reallocation of ITFS to commercial interests. The Commission needs to understand the dynamic at play here. Education is critical to the well being of our society, but educators always tend to have fewer resources than they need to accomplish their goals. Thus, the temptation of any individual licensee may well be to "monetize" its ITFS asset by selling the asset outright rather than leasing excess capacity for a finite period of time. If this practice is allowed, the principle educational benefit of ITFS – the ability to control, over time, how the asset is used to serve local educational needs – will be gradually lost. At some point, the critical educational mass needed to preserve ITFS as a local educational resource will be gone forever.

This can be prevented if the Commission maintains its current ITFS eligibility rules and continues to require, as it does today, that when an ITFS licensee determines that it no longer has a need or use for an ITFS license, the licensee may elect one of two options: (1) assign the license to another entity eligible to hold an ITFS license, or (2) return the license to the FCC so that the spectrum can be used by another entity eligible to hold an ITFS license. This will ensure that the ITFS spectrum set aside for education

[8] *See e.g.*, Comments of EarthLink, Inc. at 10 and Comments of Sprint Corporation at 23-24.

remains intact and continues to be available to local educators to serve local educational needs.

In evaluating the argument that the Commission should do educators a favor by allowing individual licensees to decide whether to monetize their licenses, the Commission should look hard at who makes that argument. It is particularly telling that with just one exception, no ITFS party or other educational interest calls for giving educators the flexibility to sell their ITFS licenses to commercial parties.[9] Rather, it is the commercial entities, apparently anxious to coax ITFS spectrum from educators (no doubt at current fire sale prices), who are arguing that the Commission should "help" educators by providing the flexibility to sell.

Another argument made by a few parties is that ITFS spectrum is underutilized, and, therefore, the Commission should permit the spectrum to be sold to the highest bidder on the theory that such sales will put the spectrum in the hands of commercial entities that will put the spectrum to its best use.[10] This argument should be rejected for

[9] The exception is the Network for Instructional TV, Inc. ("NITV"), which filed a letter with the Commission on October 16, 2003 supporting rule changes that would permit commercial interests to hold ITFS licenses. Significantly, NITV is *not* an accredited educational institution. Rather, NTIV is a non-profit entity that provides enrichment and other materials to parents, teachers, and local school affiliates on a national basis. Moreover, because NITV is migrating its services to the Internet for national delivery, it apparently has no continuing need for ITFS spectrum. However, as the record in this proceeding makes abundantly clear, for the vast majority of ITFS licensees, the Internet is not an adequate substitute for ITFS. *See e.g.,* Comments of Illinois Institute of Technology at 13-14 ("Whatever the extent of educational programming currently available over the Internet, the nature and quality of such programming are distinctly different from the programming provided via ITFS. .. The Internet options simply do not meet expectations for video educational programming – a significant failing , particularly when it is the video component of ITFS that aids in the learning process.").

[10] *See e.g.,* Comments of Motorola, Inc. at 5 ("[T]here is limited utilization of this spectrum for educational programming.") and 12 ("Eligibility restrictions should be omitted from new licensing rules to maximize flexibility and allow the most efficient use of spectrum.") and Comments of the Cellular Telecommunications & Internet Association at 5 ("[T]he Commission should … ensure that no new … eligibility restrictions … are imposed on this spectrum… CTIA urges the Commission not to repeat the mistakes of the past, and instead let the market determine the most efficient use of underutilized spectrum in the 2500-2690 MHz band.").

three reasons. First, it is critical to recognize that the "best" use of spectrum is not necessarily a commercial use, and the "value" of spectrum cannot always be measured empirically on the basis of immediate economic returns.[11] The federal government's decision to set aside ITFS spectrum for non-commercial use in the 1960's was an investment in education and America's future. That investment has paid ample dividends, and will continue to do so.[12] It would be a tragedy for the Commission to backtrack on that decision now by adopting rules and polices that inevitably will result in ITFS spectrum falling into the hands of the highest for-profit bidder.

Second, the factual premise underlying this argument (*i.e.*, that ITFS spectrum is underutilized) is not supported by the record. Indeed, the record is replete with evidence demonstrating the many ways in which ITFS spectrum is being effectively utilized throughout the country to meet important educational and instructional needs. By way of example, the Archdiocese of Los Angeles, which operates 278 Catholic schools in three southern California counties covering approximately 8000 square miles, described in its comments how the Archdiocese has used ITFS for over 35 years to support the educational needs of an ethnically-diverse and economically deprived student

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[11] *See e.g.*, Comments of Spectrum Market at ii ("The reservation of some 30% of the band for educational television use, substantially reduces the value of the band … ")

[12] *See e.g.*, Spectrum Study of the 2500-2690 MHz Band, Final Staff Report Issued by the Office of Engineering Technology, Mass Media Bureau, Wireless Telecommunications Bureau and International Bureau, March 30, 2001 at 13 ("ITFS licensees make extensive use of the spectrum to provide formal classroom instruction, distance learning, and videoconference capability to a wide variety of educational users throughout the nation. [B]roadband fixed wireless data systems … will enable ITFS operators to bring a wide variety of broadband services to educational users, often in cooperation with MDS operators in the band."). *See also* 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, *First Report and Order and Memorandum Opinion and Order*, 16 FCC Rcd 17222 at 17223 ("[B]ecause the 2500-2690 MHz band is extensively used by incumbent ITFS and MMDS licensees, and in order to preserve the viability of the incumbent services, we are not relocating the existing licensees or otherwise modifying their licenses.").

population.[13] Stanford University and Northeastern University described how they use ITFS to provide hundreds of credit and noncredit courses each year to enrolled university students as well as to business sites throughout Boston and the San Francisco Bay Area.[14] The Illinois Institute of Technology, which holds eight ITFS channels, described how it uses ITFS to offer 250 courses and over 500 hours of educational programming each week in the Chicago metropolitan area and surrounding communities.[15] And, forty-six ITFS licensees, who together serve millions of students and adult/workforce learners throughout the United States, filed comments detailing the specific uses they have made of ITFS to further their educational, governmental and other non-profit missions.[16] These

[13] Comments of Archdiocese of Los Angeles at 1-2.

[14] Joint Comments of Stanford University and Northeastern University at 2-3.

[15] Comments of Illinois Institute of Technology at 6-7.

[16] Joint Comments of ITFS Parties at Appendix. The Appendix describes, among other ITFS users, Anaheim City School District (using ITFS for over 40 years to transmit programs to over 24,000 elementary students); Arizona Board of Regents for Benefit of the University of Arizona (provides educational programming to over 25,000 K-12 students and hundreds of university and community college students; California State University (Calnet) (providing hundreds of hours per week of college credit and other educational courses, serving thousands of students per year, along with cable subscribers in excess of a quarter million); California State University, Sacramento (operating four channels 24x7x365 and serving an annual enrollment of 6,000 students); Hampton Roads Educational Telecommunications Association (providing 6 channels of instruction 24 x 7 (over 1000 hours per week) to 154 receive locations in Virginia and North Carolina, including K-12 school systems with nearly 400,000 students); INTELECOM Intelligent Telecommunications, a consortium of California community colleges (delivering over 130 hours of lower division credit courses per week to about 35,000 students per year, as well as about 500,000 cable subscribers); Kern Educational Telecommunications Association, a consortium of five Bakersfield, California educational institutions (providing over 500 hours per week of educational programming, used by 80,000 students and adult learners each year at 175 school and education sites); Long Beach Unified School District (offering 6 channels, 100 hours per week of instructional programming used by 97,500 students, 5,000 teachers and 3,000 classified personnel, as well as service to 500,000 cable subscribers); Milwaukee Area Technical College (providing 4 channels 24 x 7 to 83 receive sites, serving about 1,000 students every year); Oregon Wireless Instructional Network, composed of 7 university and community college institutions in Oregon, offering 2500 distance learning courses in 65 degree programs to over 29,000 students per year); Pasadena Unified School District (providing 200 hours of programming per week to over 33,000 students in 33 school sites); Richardson Independent School District (providing over 800 hours per week of instructional programming serving an eight county area of more than 120 schools, used by about 175,000 students per year); St. Louis Regional Educational and Public Television Commission (in conjunction with local educational consortia providing educational programming to serve about 194,000 students in the greater St. Louis area); Tarrant County College (providing over 100 hours per week of instructional programming to about 10,000 students per year); University of Maine System

are just some examples of the many comments submitted to the Commission which describe some of the important ways that ITFS is being used today to meet a variety of educational, instructional, cultural and other needs.[17]

Third, to the extent that some ITFS spectrum is underutilized, the Commission must recognize that the current band plan and regulations are the major roadblock to progress. In this regard, virtually all licensees in the band (both commercial and non-commercial) are preparing to move from the existing ITFS/MMDS interleaved channel plan suitable mainly for high power downstream analog video, to a much more flexible channel plan that will permit low power fixed wireless and mobile applications, as well as continued high power downstream video. The very existence of this rulemaking, including the period anticipating its launch, and the need to plan for a transition inevitably has created some service disruptions and inactivity. For example, many ITFS licensees and their commercial partners are in the process of discontinuing existing video or first generation two-way services in order to migrate to new service offerings once new rules are finalized by the Commission. It was precisely for this reason that the

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(operating a statewide ITFS system that delivers four channels of educational programming full time, used in over 80 locations to provide over 28,000 credit hours to students last year); University of Maryland (providing about 80 hours per week of engineering and other courses to 25 government and business locations in Washington and Baltimore, serving about 1000 credit students and 2000 non-credit students per year); and University of South Florida (providing over 100 credit courses annually, serving more than 14,700 students).

[17] *See also* Comments of South Carolina Educational Television Commission, whose educational television network based on 68 ITFS stations provides service this year to 686 schools, 469,359 K-12 students, and 43,408 teachers; Comments of the School Board of Miami-Dade County, Florida, which with a consortium of licensees delivers 20 channels of programming to more than 350 schools, serving 360,000 students and 52,000 teachers; Comments of the School Board of Broward County, which in the course of a year uses ITFS to serve several hundred thousand users (students, teachers, administrators, adult consumers); Comments of PACE Telecommunications Consortium of Michigan, whose Petosky ITFS operation provides both educational programming and broadband accessibility to a consortium of 22 K-12 school districts and 2 intermediate school districts in rural areas; Comments of George Mason University Instructional Foundation, Inc., whose ITFS stations in the Washington, D.C. area provide, in addition to extensive GMU credit courses, a "Capitol Connection" instructional and business television service serving 570 office buildings with over 35,000 sets.

WCA, NIA and CTN requested a suspension of the build out requirements during the transition.[18] However, these temporary circumstances provide no basis for the Commission to change its ITFS eligibility requirements for the long term.

In sum, there is nothing in the record to justify changing the current ITFS eligibility requirements. While an individual ITFS licensee might determine that the sale of its ITFS spectrum to a commercial entity would be in its best interest, collectively, and over time, such sales would be detrimental to the larger public interest of preserving spectrum for educational use, even if the return on that spectrum cannot be measured empirically in dollars and cents. The adoption of the new band plan and flexible use rules proposed by the WCA, NIA and CTN, combined with the leasing of spectrum through secondary markets will unleash the full potential of ITFS spectrum for both educational and commercial purposes. Ultimately, this will result in increased spectrum efficiency, the availability of improved technological tools for education, and new commercial services for consumers and businesses.

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October 23, 2003

[18] *See* "A Proposal for Revising the MDS and ITFS Regulatory Regime," Wireless Communications Ass'n Int'l, Nat'l ITFS Ass'n and Catholic Television Network, RM 10586 (filed October 7, 2002) at 43-46, and n.122.

CERTIFICATE OF SERVICE

I, Shelia Wright, hereby certify that copies of the foregoing Joint Reply Comments of the Catholic Television Network and the National ITFS Association have been served by Hand or by First Class Mail this 23rd day of October, 2003, on the following:

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