

*Submitted via ECFS*

May 12, 2004

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:

Yesterday, I met on behalf of the Wireless Communications Association International, Inc. (“WCA”) with Catherine W. Seidel, Uzoma C. Onyeije, Thomas P. Stanley, John Schauble, Nancy Zaczek, Stephen Zak and Henry Allen of the Wireless Telecommunications Bureau regarding WCA’s positions on certain of the provisions of the *Notice of Proposed Rulemaking* in the referenced proceeding.

During the course of the meeting, WCA reiterated its support for the bandplan proposed by WCA, the National ITFS Association (“NIA”) and the Catholic Television Network (“CTN”) and expressed strong opposition to any suggestion that spectrum should be taken away from the current licensees either for auction or for relocation of Multipoint Distribution Service (“MDS”) channels 1 and 2 from the 2150-2162 MHz band. WCA emphasized that the secondary market for MDS and Instructional Television Fixed Service (“ITFS”) channels was extraordinarily active, with ownership or lease of licenses covering approximately 40-50% of the channel/pops changing hands over the past year. It was noted that a substantial number of ITFS excess capacity leases were rejected during the recent WorldCom, Inc. and Nucentrix Broadband Systems, Inc. Chapter 11 proceedings, and that those channels, coupled with the MDS and ITFS capacity that is not otherwise under lease and the ITFS “white space” that will soon be available by auction, provides ample opportunity for new entrants to secure access to spectrum.

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In addition, WCA noted that any reduction in channel size from that proposed in the WCA-NIA-CTN bandplan to accommodate new entrants would undermine a fundamental objective of the WCA-NIA-CTN proposal – allowing licensees the flexibility to utilize the technology of their choice. It was stressed that even if the Commission adopts the dual spectral mask proposed by WCA for base stations, current technology is such that guardbands will still be required between non-synchronized systems. Reducing the standard channel group size from 16.5 MHz to 15 MHz to free spectrum for auction would eliminate the very spectrum that is needed if licensees are to provide three 5 MHz channels and still meet today's non-synchronized system guardband requirements.

WCA also reiterated its continuing support for the transition plan proposed by WCA, NIA and CTN. WCA emphasized that imposing a date-certain by which transitions would be required would be inconsistent with the Commission's market-based focus, as it would mandate conversion of systems against the wishes of the very licensees best able to judge the needs of their local markets. While WCA continues to support mandatory transitions of systems that pose a threat of interference to broadband operations in neighboring markets, WCA stressed that the public is not well-served by mandating transitions for their own sake. WCA and the Commission staff also discussed alternative regulatory vehicles for keeping the Commission generally apprised of the status of transitions. The participants in the meeting also discussed the derivation and need for the transition plan safe harbors proposed by WCA-NIA-CTN.

In addition, WCA emphasized the importance of the "MVPD Opt-Out" provisions proposed by WCA, NIA and CTN as part of their transition plan. The proposed approach strikes an appropriate balance between the interests of those who are serving at least 5% of their market or have deployed digital operations utilizing more than seven 6 MHz channels in maintaining existing facilities and services, and those in neighboring markets desiring to provide ubiquitous wireless broadband service. WCA stressed that the right of a multichannel video programming distributor to opt-out of a transition should be reserved to the actual provider of the video service, and that a licensee that merely leases capacity to the video service provider should not have the ability to derail a transition when the video service provider is not opposed.

WCA urged the Commission to adopt the WCA-NIA-CTN proposal for using substantial service at renewal as the performance benchmark for MDS and ITFS licensees. However, it emphasized the need to modify the traditional "snapshot" approach under which the Commission examines usage at the time the renewal application is filed. WCA noted that many MDS or ITFS licensees that had been providing substantial service during its license term may not be doing so at the time their renewal applications are filed because of impending moves towards new service offerings under the new regulatory regime. Thus, it urged the Commission to renew current licenses so long as the licensee demonstrates that it was providing substantial service at any time during its license term.

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Finally, WCA expressed continuing support for the proposals that it, NIA and CTN have submitted for addressing cochannel and adjacent channel interference and explained the benefits associated with adoption of those proposals. WCA emphasized that its dual spectral mask for base stations serves important purposes by avoiding unnecessary filtering expenses in those cases where adjacent channels operate in a synchronized manner (and thus would not benefit from additional filtering), while requiring extensive filtering in those cases where non-synchronized systems are deployed (and thus would benefit from the additional filtering). In particular, WCA noted that the  $43 + 10 \log(P)$  mask proposed for base station equipment certification was that used in other similar services, and indeed was just adopted for the new Advanced Wireless Service in the 1710-1755/2110-2155 MHz band.

Should you have any questions regarding this presentation, please contact the undersigned.

Respectfully submitted,

/s/ Paul J. Sinderbrand

Paul J. Sinderbrand

cc: Catherine W. Seidel  
Uzoma C. Onyeije  
Thomas P. Stanley  
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