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May 27, 2004

VIA ELECTRONIC FILING

Marlene H. Dortch
Secretary
Federal Communications Commission
The Portals
445 12th Street, S.W.
Washington, D.C. 20554

FR

BOSTON
DALLAS
DELAWARE
NEW YORK
SAN DIEGO
SILICON VALLEY
TWIN CITIES
WASHINGTON, DC

Re: **EX PARTE SUBMISSION**
WT Docket No. 03-66; 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

Dear Ms. Dortch:

Today, the undersigned counsel to the Catholic Television Network, spoke by telephone with Sam Feder, Commissioner Kevin J. Martin's Legal Advisor on Spectrum and International Issues regarding the above-referenced proceeding. We discussed the importance of the existing eligibility rules in the Instructional Television Fixed Service ("ITFS") and concerns among educators regarding proposals to reduce the total amount of spectrum allocated to ITFS. A copy of the attached presentation was provided to Mr. Feder by e-mail. Pursuant to Section 1.1206(b)(2) of the Commission's Rules, this letter is being filed electronically.

Respectfully submitted,

/s/ Edwin N. Lavergne

Edwin N. Lavergne
Counsel to the Catholic Television Network

cc by email: Sam Feder

Key Concerns of the Education Community WT Docket No. 03-66

Monsignor Michael J. Dempsey, Catholic Television Network

Jim Hermes, American Association of Community Colleges

Mary Kusler, American Association of School Administrators

ITFS

A National Investment in Education

The 120 MHz of spectrum set-aside for ITFS is an investment in education. Educators want to keep that investment intact by maintaining the Commission's existing rules, which limit eligibility to entities that will use the spectrum for educational purposes.

ITFS is Needed for Educational Purposes

- The factual record reflects the many ways in which ITFS spectrum is being used for educational purposes. Any anecdotal concerns regarding underutilization (which are not supported by the FCC record), can best be addressed by:
  - Lifting the decade-long freeze on new ITFS filings, which has prevented educational institutions that want ITFS from applying for the spectrum; and
  - Adopting a new band plan and technical rules so as to permit the spectrum to be used more effectively and for a broader range of services.

The ITFS Leasing Model Works

The FCC has created a healthy and vibrant market for leasing ITFS spectrum. The spectrum-leasing model works because it permits ITFS spectrum to meet the needs of educators while, at the same time, making spectrum available to the commercial sector. Spectrum leasing will provide even more opportunities for the deployment of new commercial services under the new ITFS band plan and the policies adopted in the FCC's Secondary Market proceeding.

Open Eligibility Will Cause the Leasing Market to Dry Up

- If the FCC permits ITFS spectrum to be sold to commercial entities, the leasing market will dry up because commercial entities will have little incentive to negotiate spectrum leases when they could simply hold out for a sale.
  - The "choice" to sell or lease will be no choice at all.
  - The public/private partnerships that have been, and will be, forged as a result of the Commission's leasing polices would end.

Open Eligibility Would Shift Control from Educational to Commercial Entities

- The sale of ITFS spectrum may be *privately beneficial* (in terms of revenue generation) to the individual entity that sells. But, it would be *publicly detrimental* because once the spectrum is sold, it is gone forever.
- Over time, sale-by-sale, the ITFS set-aside will disappear, and control over the spectrum will shift from educational to commercial hands.

Requested Action

- Do not change the Commission's existing rules, which limit eligibility for ITFS to entities that will use the spectrum for educational purposes.

- Do not reduce the total amount of spectrum allocated to ITFS.