

[DBC LETTERHEAD]

May 27, 2004

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th 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)

WRITTEN EX PARTE PRESENTATION

Dear Ms. Dortch:

Digital Broadcast Corporation ("DBC") understands that the Commission has before it a proposal in the above-referenced proceeding that seeks to create two new Multipoint Distribution Service ("MDS") channels by taking spectrum from incumbent MDS and Instructional Television Fixed Service ("ITFS") licensees in the 2.5 GHz band in which to auction as well eliminate the eligibility restrictions on ITFS spectrum. DBC strongly opposes both proposals and respectfully requests the Commissioners deny taking such action due to the irreparable harm it would cause to both existing operations as well as incoming service providers, such as DBC, that are poised to utilize this spectrum to its fullest capabilities upon issuance of the new rules.

DBC's business plan is based on the Commission approving the Coalition's bandplan, as it intends to utilize the seven (7) high-powered channels in the mid-band to provide wireless digital services nationwide. Using advanced digital technology that promises compression ratios of 20:1 or greater, DBC fully anticipates being a major competitor to traditional cable and satellite service providers. DBC is already in discussions with the major license holders of both MDS and ITFS spectrum to utilize this high-powered mid-band spectrum in markets where other providers only plan to utilize the low-powered band segments, filling what was considered a major void in the new plan. Any decisions to decrease the amount of spectrum that is currently held by incumbents would have a serious effect on DBC's ability to fulfill its business plan.

DBC also supports the WCAI's conclusion in its Written Ex Parte Presentation dated May 25, 2004, that adoption of such a proposal is in violation of the Administrative Procedures Act ("APA") as no such possible scenario was ever indicated in the Notice of Proposed Rulemaking for this proceeding nor in any discussion that DBC held with FCC staff members regarding its concerns over the issuance of the new rules.¹ Accordingly, adoption of such a proposal would not comply with the APA nor with the Commission's own rules regarding rulemaking proceedings and would be fought against vigorously by the wireless cable industry. Allowing for more time to pose comments regarding such a proposal would only be a futile result to further delay the deployment of service on this spectrum, as the inevitable conclusion is that the MDS and ITFS community is completely opposed to such measures.

DBC also opposes any proposal that would eliminate eligibility restrictions on ITFS Spectrum. DBC has acquired leases to utilize the excess capacity of various Instructional

¹ DBC timely filed comments on October 24, 2003, as well as notices of ex parte meetings held with various staff in the Commissioners offices on March 5th, March 26th and April 27th of 2004.

Television Fixed Service (“ITFS”) 2.5 GHz stations in at least 20 markets. Such ITFS spectrum is expected to be used to transmit instructional programming to students in conjunction with dozens of schools as part of DBC’s business plan to reach out to communities with such services. The advent of new technologies, together with the prospect of anticipated band plan and rule changes requested by the ITFS community, promise deployment of DBC’s new digital educational services that will enhance service to students and the community at large. The proposal as currently structured would adversely effect the ITFS community and its educational mission. ITFS is a vital educational asset that must be protected. Accordingly, DBC strongly urges the Commission to protect this valuable tool for the education system by denying this proposal.

Pursuant to Section 1.1206(b)(2) of the Commission’s Rules, this written *ex parte* presentation is being filed electronically with the Commission via the Electronic Comment Filing System for inclusion in the public record of the above-referenced proceeding. Should any questions arise concerning this matter, kindly contact the undersigned.

Sincerely,

/s/ Gary S. Nerlinger

Gary S. Nerlinger
Chairman

cc: Honorable Michael K. Powell
Honorable Kathleen Q. Abernathy
Honorable Michael J. Copps
Honorable Kevin J. Martin
Honorable Jonathan S. Adelstein