FISH & RICHARDSON P.C.

Frederick P. Fish
1855-1930

W.K. Richardson
1859-1951

1425 K STREET, N.W.
11TH FLOOR
WASHINGTON, DC 20005

Telephone
202 783-5070

Facsimile
202 783-2331

Web Site
www.fr.com

Edwin N. Lavergne
(202) 626-6359
LAVERGNE@FR.COM

June 3, 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:

Yesterday, Monsignor Michael Dempsey of the Catholic Television Network, David Moore of the Archdiocese of Los Angeles Education and Welfare Corporation, Patrick Gossman, of the National ITFS Association, Todd Gray, counsel to the National ITFS Association, Leslie Harris, counsel to the Education Community, Mary Kusler of the American Association of School Administrators, Jim Hermes of the American Association of Community Colleges, and the undersigned, counsel to the Catholic Television Network, met with Commissioner Kevin J. Martin and his Legal Advisor on Spectrum and International Issues, Sam Feder regarding the above-referenced proceeding. A summary of the points discussed during the meeting is included in the attached presentation. 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

Key Concerns of the Education Community

WT Docket No. 03-66

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.

Commercial Support for Leasing Model

- "Any interest the Commission has in promoting new entry into the MDS/ITFS arena can be satisfied through the secondary market… The MDS/ITFS secondary market is as active now as it has been at any time over the past two decades."
  - Letter from WCA to FCC dated May 25, 2004.
- Clearwire supports "continued ITFS eligibility restrictions."
  - Letter from Clearwire to FCC dated May 24, 2004.

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.

A Shift in Control from Educational to Commercial Entities is Detrimental to Education

- If control of ITFS spectrum shifts from educational to commercial hands, the future opportunities for education will be greatly diminished.
  - Requiring commercial entities to set aside a portion of their spectrum for educational use, as in DBS, is destined to fail because *access to bits of capacity controlled by others is no substitute for educational control of spectrum*.
  - Control over spectrum provides educators with a "seat at the table" allowing them to have meaningful input in deciding what services will be provided, when services will be provided, and the geographic areas to be served.

The Commission should not Reduce the Total Amount of Spectrum Allocated to Education

One of the core principles of the NIA and CTN in supporting the Coalition's proposed band plan was that no ITFS licensee would lose spectrum. Any reduction in spectrum allocated would have a ripple effect that could adversely affect ITFS licensees.

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.