



UNITED STATES DEPARTMENT OF COMMERCE
National Telecommunications and
Information Administration
Washington, D.C. 20230

March 23, 2004

VIA ELECTRONIC AND U.S. MAIL

Mr. Don Schellhardt, Esq.
45 Bracewood Road
Waterbury, CT 06706

Re: Motion for Correction of Procedural Infirmities Submitted in NTLA
Spectrum Policy Proceeding (Docket No. 040127027-4027-1)

Dear Mr. Schellhardt:

On March 16, 2004, you submitted a request on behalf of The Amherst Alliance, Lee McVey, and Nickolaus E. Leggett that the National Telecommunications and Information Administration (NTIA) post the full text of a report submitted by the Center for Strategic and International Studies (CSIS) and establish a reply comment period for the above-referenced Spectrum Policy inquiry. You also question the appropriateness of the timing of NTLA's denial of your earlier motion for an extension of time.

NTLA has now posted the CSIS report, entitled "Spectrum Management for the 21st Century, on its web site at <http://spectrumreform.ntia.doc.gov/responses/index.htm>. Because this report has been copyrighted by the CSIS, NTLA needed to reach an accommodation with the organization about the manner in which it would appear on NTLA's web site before it could be posted.

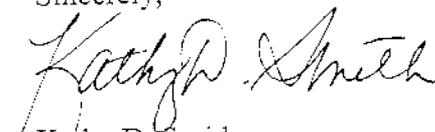
The Spectrum Policy proceeding is not a "rulemaking," as that term is defined in the Administrative Procedure Act (APA), for which an agency is required to provide prior notice and an opportunity for public comment. *See* 5 U.S.C. §§ 551, 553 (2003). Rather, as stated in the Notice of Inquiry, the purpose of the Spectrum Policy proceeding is to develop recommendations for improving the United States spectrum management policies to be submitted as a report to the President of the United States. These recommendations will not, in and of themselves, have a legally binding effect, the touchstone requirement under the APA for an agency proceeding to be subject to the notice and comment requirement. *See* Appalachian Power Co. v. Environmental Protection Agency, 208 F.3d 1015 (D.C. Cir. 2000), General Electric Co. v. Environmental Protection Agency, 290 F.3d 377 (D.C. Cir. 2002). Further, while many agencies may provide a period for "reply" comments, there is simply no requirement in the APA for an agency to allow for such an opportunity.

NTLA's denial of your request for an extension of time was timely and reasonable. It was sent within two days of your request to give you as much time as possible within the remaining comment period to provide the agency with your

comments. As a result, you had approximately 30 days from the date of the denial to submit your comments.

If you have any questions regarding this matter, you may contact me at (202) 482-1316.

Sincerely,

A handwritten signature in cursive script that reads "Kathy D. Smith". The signature is written in black ink and is positioned above the printed name and title.

Kathy D. Smith
Chief Counsel