

November 17, 1999

**MEMORANDUM**

**TO:** Presidents with ITFS Licenses Granted  
and Those with ITFS Licenses Pending

**FROM:** Parks Todd

**SUBJECT:** Status Report on Wireless One Contract

**System Office Role**

A brief historical note is necessary to form the background for this communication. Five years ago, when we became aware that the U.S. Congress had passed legislation authorizing the Federal Communications Commission to allow educational and not-for-profit entities to lease their excess bandwidth to private sector companies, Cindy Pannill, Todd Dupree, and I researched the issue through reading journals, the Internet, and numerous phone calls to people in other states. Since the System Office was not applying for a license, I encouraged the Presidents Association to form a committee to negotiate with the private sector company and oversee the licensing process. What was at first called the Wireless Cable Committee has now become the Technology Committee. Along with our unpaid consultant, Kemp Harshman, President of the Clarendon Foundation, Cindy and I have continued to act as staff to the committee. The System Office has no contract with Wireless One of N.C. (WONC) and we have no standing with the FCC or, if it should come to that, with the courts.

**Buy-Out by MCI-WorldCom**

MCI-WorldCom is seeking approval from the FCC to purchase the half interest in WONC held by Wireless One of Louisiana that is in Chapter 11 bankruptcy. This request is still pending before the FCC, but it appears that the request will be approved. The first issue that arises is whether or not such a buy-out is in the best interest of community colleges that have ITFS licenses or whose licenses are still pending. The answer depends on whether or not Concord Telephone retains its half interest.

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If Concord Telephone stays as a partner, we might have the best of both worlds. MCI-WorldCom has the resources to build the systems in a relatively short time frame. On the other hand, North Carolina is just a "little fish in a big pond" to MCI-WorldCom. Concord Telephone, being a "home-grown company," would have a mutuality of interests with the state and would be a good balance to MCI-WorldCom.

### **Is WONC in Violation of the Contract?**

The existing contract was negotiated by a committee of eight community college presidents, with Todd Dupree, Cindy Pannill, and me providing staff support. We contacted at least ten companies to solicit bids and only received two, and the committee selected WONC. The committee negotiated the best deal possible under the circumstances then present. No one seemed to even notice the ITFS frequencies until recently when MCI-WorldCom started buying the frequencies all over the country.

The accompanying analysis by Kemp Harshman, President of the Clarendon Foundation and our advisor from the beginning of this project, lists several ways in which WONC is in violation. Some violations may be debatable or subject to a plea of extenuating circumstances, but there is one dramatic change in the technology that will almost certainly result in the contracts having to be renegotiated. The existing licenses and those still pending are for broadcast-type television to be sent into homes, other colleges, businesses, and other public facilities, with the community colleges originating classes using the frequencies that they have retained after leasing the excess capacity to a private sector cable company. Now, the intended use for the ITFS channels and the MMDS channels is for various types of two-way communications such as data, telephone, and IP video. The FCC has already approved the change in use and ruled that the educational provision can be fulfilled by either data, or IP video, or what is more likely, a combination of the two. Kemp Harshman, who is an attorney, stated that in his opinion this change in use will require that the contracts be renegotiated even if there were no other violations of the contract.

### **Request for Extension of Deadline for Construction**

I apologize for the confusion caused by conflicting advice as to whether the licensees should sign the document sent to them by WONC's legal counsel, the law firm of Brown, Neitert and Kaufman, or send it directly to the FCC. Our initial advice was to send it to the FCC. Since several presidents had already sent it to the law firm and were anxious about the effect that the action might have, we restudied the contract and concluded that it really didn't matter which route they took, because the whole matter rests upon the contract. If WONC is in violation of the contract, it is of no consequence since the extension had to be filed in any case. On the other hand, if we are still bound by the contract, it is of no consequence.

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### **Future Action**

The System Office's attorney, Clay Hines, is ready to seek advice from the Attorney General's Office. After the Attorney General's Office has examined the issues, the next step would be to hire an attorney who has expertise in telecommunications law and FCC regulations. Such an attorney will be expensive and the System Office does not have the necessary funds. Therefore, we see no other way to secure the funds than to ask the sixteen colleges that already have licenses and the twenty-four colleges with licenses that are still pending to share equally in the costs.

Bob Blackmun, Doug Eason, and I will meet in the near future with Barry Rubens, CEO of Concord Telephone to determine their plans and to find out what communications have taken place between that company and Wireless One of Louisiana and MCI-WorldCom.

Kemp Harshman feels strongly that there needs to be a single point-of-contact between us and all the other parties: the law firm of Brown, Nietert, and Kaufman; WONC; Wireless One of Louisiana; Concord Telephone; and MCI-WorldCom. **Therefore, I ask that you send a signed and dated copy of the contract with WONC and any past communications regarding the contract to Clay Hines. Since Clay will have her hands full dealing with the contracts, I ask that you refer all future oral and written communication from the above parties to me. I will act as a kind of clearinghouse, referring legal issues to Clay Hines, and other issues to the Technology Committee of the Presidents Association through Doug Eason.**

**Time is critical, so please respond by e-mailing or faxing the attached form to me.**

Thanks for your time and attention.

JPT:sh

Attachment

c: President H. Martin Lancaster  
Dr. Stephen C. Scott  
Dr. Brenda H. Rogers  
Ms. Clay Tee Hines  
Dr. Douglas Eason  
Mr. Bob Blackmun

**TO:** Parks Todd  
NCCCS System Office

**FROM:** \_\_\_\_\_  
(Name)  
\_\_\_\_\_  
(Community College)

**DATE:** \_\_\_\_\_

**SUBJECT:** Wireless Cable

In response to your memo of November 17, 1999:

1. We wish to participate with the other community colleges in the effort to resolve the questions and issues identified with the agreement with Wireless One of North Carolina.

Yes \_\_\_\_\_ No \_\_\_\_\_

2. We estimate that the total cost for legal counsel will be \$28,000 (\$700 per college). Are you willing to share equally in the cost of legal counsel by contributing \$700?

Yes \_\_\_\_\_ No \_\_\_\_\_

3. However, if the cost of legal counsel exceeds \$28,000, what is the maximum you could expend? \_\_\_\_\_

*Amount*

4. Copies of our executed agreements and applications relating to WONC and the FCC are enclosed.

Yes \_\_\_\_\_ No \_\_\_\_\_

*Please return your completed form to:*  
**NORTH CAROLINA COMMUNITY COLLEGE SYSTEM**  
**Mailing Address: 5010 Mail Service Center, Raleigh, NC 27699-5010** S99-054  
**E-Mail: toddp@ncccs.cc.nc.us or Fax: 919/733-0680** Paper Copy