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VIA FEDERAL EXPRESS

Mr. William F. Caton  
Acting Secretary  
Federal Communication Commission  
1919 M Street, N.W. Room 222  
Washington, D.C. 20554

93-106

RE: Amendment of Part 74 of the Commission's Rules  
Governing Use of the Frequencies in the  
Instructional Television Fixed Service

Dear Mr. Caton:

Enclosed for filing is a copy of the Comments of WJB-TV  
Limited Partnership to the Notice of Proposed Rulemaking in  
response to MM Docket No. 93-106. The original and nine copies are  
being forwarded to you by overnight delivery.

Please acknowledge your receipt of this letter by file-  
stamping the enclosed copy of this letter and returning it to me in  
the enclosed self-addressed, stamped envelope.

If you have any questions or need additional informaiton,  
please advise.

Sincerely,

WILLOUGHBY & HOEFER, P.A.

  
Alvis J. Bynum, Jr.

AJB/jpd  
Enclosure

cc: Mr. Walter R. Pettiss  
Mr. Kenneth E. Hall  
Mr. Robert A. Brannon  
John H. Muehlstein, Esquire

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OCT 28 1993

Before the

FEDERAL COMMUNICATIONS COMMISSION

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

Washington, DC 20554

In the Matter of )  
 )  
Amendment of Part 74 of )  
Commission's Rules Governing )  
Use of the Frequencies in )  
the Instructional Television )  
Fixed Service )  
 )

MM Docket No. 93-106

**COMMENTS OF WJB-TV LIMITED PARTNERSHIP**

Pursuant to the Commission's "Order Granting Extension of Time" in this Docket, released on September 27, 1993 (the "Extension"), WJB-TV Limited Partnership ("WJB")<sup>1</sup> hereby files these brief comments with regard to the compromise reached between the Wireless Cable Association International, Inc., the National ITFS Association, and a group of several educational entities.

At the outset, WJB is pleased that a compromise could be reached between the parties. The relationship between wireless cable operators and educational entities has proven to be a mutually-beneficial one. Through excess capacity leasing arrangements, educational entities have received equipment, royalties, technical assistance and other valuable benefits, while, in return, operators such as WJB have been able to secure the additional channel capacity that is critical to their ability to

<sup>1</sup> WJB is the general partner of entities that operate wireless cable systems in Ft. Pierce and Melbourne, Florida, under the business name of "Coastal Wireless Cable Television". It previously filed initial comments in this proceeding.

compete in the cable television marketplace. Because both sides depend on the cooperation of the other to make the relationship successful, it is constructive that they work together to determine the parameters for future usage of the available spectrum.

WJB is filing these comments to address a single, but very important, issue - that of simultaneous usage. As to that issue, the Commission requested comments on the following language:

"as to satisfaction of the minimum recapture requirement, hours 21 through 40, ITFS licensees are required to retain the right, upon the currently-required one year notice, to transmit multiple programs simultaneously."

If this provision grants ITFS licensees the right to demand simultaneous usage of leased channels, notwithstanding contractual restrictions to the contrary, WJB must voice its adamant opposition to this one aspect of the compromise.

This issue is of grave concern to WJB. Like many wireless cable operators, WJB must compete for customers with entrenched, hard-wire cable systems. In most cases, these systems offer forty, fifty, or even more channels of programming. Currently, wireless systems cannot match this quantity; in fact, there are only a maximum of thirteen commercial channels that are available to wireless operators. For wireless systems to compete, or even to exist, they must obtain usage of additional spectrum.

The use of excess capacity on ITFS channels is presently the only method by which wireless operators can assemble this needed capacity. The use of these channels is absolutely critical to the success of virtually every competitive wireless cable system in the country. Before any operator would ever spend the millions

of dollars and countless hours necessary to develop and construct a system, it would need the assurance that this capacity is and will continue to be available. If the operator knew that this capacity might cease to be available, it would probably never undertake to construct a system.

WJB notes that the recapture rule still would allow recapture of only twenty additional hours per channel per week (a total of 40 hours per channel per week). However, these twenty (20) hours, if claimed simultaneously, could completely disrupt commercial usage of the channels, especially if they were claimed at certain peak viewing periods. In essence, if a commercial channel is not available when viewers wish to watch it, it has little value to the wireless system. Disruptions in a programming schedule tend to alienate customers, placing the wireless system at a severe competitive disadvantage. Consequently, simultaneous usage, even on a part-time basis, substantially reduces the value of the remaining leased capacity.

Furthermore, WJB believes that this aspect of the compromise could have a severe negative impact on educational lessors. Most excess capacity lease agreements extend for ten years and require substantial expenditures by the commercial lessee at the outset. Under these circumstances, capacity that can be simultaneously lost after only one year is obviously of very limited value to wireless operators; consequently, operators will be willing to provide much less compensation in order to acquire

it. The shortfall, which could be substantial, must ultimately be borne by the educators.

The experience of WJB illustrates the likely effect of this proposal. WJB has entered into excess capacity lease agreements covering forty channels in two markets and is presently negotiating agreements for additional capacity in other markets. In every case, it has provided significant consideration, usually consisting of equipment, grants, and/or royalties, to the ITFS lessor. The amount of this consideration varies, but in every case, it is largely determined by the value of the benefit being conferred to WJB. Some lessors have requested the right to simultaneous usage, and WJB has agreed to that request. However, because they were offering less to WJB in terms of full-time channel usage, these lessors typically receive less consideration. On the other hand, lessors that were able to provide more channels for full-time usage generally receive greater consideration. The balance between these commodities - simultaneous usage of the channels and consideration for that use - is negotiated by the parties, generally based on the particular educator's needs and objectives.

Requiring that educators be able to reclaim simultaneous usage, despite contractual provisions to the contrary, removes the flexibility to develop an agreement based on a particular educator's needs and objectives. Because of the mandated right of recapture, operators such as WJB, when negotiating compensation packages, will be forced to treat every educator as if it intended

to use all of its capacity simultaneously. Educators that have not yet developed a substantial need for capacity, but that need assistance to develop their ITFS systems, will not be able to command the level of compensation that is now available. In effect, as a result of this mandated right, these educators will be paying (through reduced compensation) for something that they may not want and may not be able to use.

In summary, WJB believes that the mandated right to recapture simultaneous usage will have two negative effects:

1. some operators will not be able to adopt channel loading, simply because the economic risk of doing so - i.e., the creation of an automatic right on the part of the lessor to claim simultaneous usage at a later date - outweighs the advantages. Instead, many will be forced to continue the use of channel mapping technology. Unfortunately, channel mapping is expensive and inefficient, as was borne out by the initial comments of virtually all parties in this proceeding.

2. those operators that do utilize channel loading will be willing to provide far less to ITFS lessors in terms of financial and technical assistance. In essence, the possibility of losing full-time usage of a channel substantially reduces the value of that channel.

For the foregoing reasons, WJB is opposed to any requirement that lessors be entitled to claim simultaneous usage of leased channels when such usage has not been agreed upon in advance by the lessee.

The solution which appears to be in everyone's best interest is to continue to allow ITFS lessors to recapture up to twenty (20) additional hours of capacity upon one (1) years notice, but to leave it to the parties, through negotiated contracts, to determine where and when the recaptured capacity will be aired. The key is to give the parties as much flexibility as possible over their programming schedules. The parties in most instances will use the capacity efficiently and effectively, and the ITFS provider will recognize substantial benefits from the arrangement. Mandating by rule, however, that simultaneous usage be required, notwithstanding the terms of a contract, will ultimately be adverse to the interests of ITFS providers. Consequently, WJB requests that the parties maintain the right to negotiate the terms for and placement of any recaptured capacity, so as to ensure that the spectrum is most efficiently utilized and that the compensation for any leased capacity is maximized.

All other provisions set forth in the Extension are acceptable to WJB.

If the Commission does not maintain the flexibility of the current recapture rule, then WJB would expect that existing contracts, which were negotiated in reliance on this rule, would be grandfathered.

Respectfully submitted this 28 day of October, 1993.

**WJB-TV LIMITED PARTNERSHIP**



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