two or more applications filed during the same window are only mutually exclusive because of one or more PSA requests, they nonetheless be considered mutually exclusive.[31] WCAI strongly supports that approach, for it acknowledges the critical role that PSA protection serves in the willingness of a wireless cable operator to fund ITFS operations. Simply stated, if the Commission ignores the PSA in making determinations of mutual exclusivity, it will play right into the hands of the greenmailers. Nothing would make the unscrupulous more happy than to see the Commission adopt rules that will permit the granting of applications for closely-spaced ITFS stations.

D. Requiring ITFS Applicants That Rely On Another Party To Finance Construction To Provide A Certificate Of Financial Ability May Deter Speculation Without Imposing Undue Burdens On ITFS Applicants Or The Processing Staff.

In the initial phase of this proceeding, WCAI and others called for the Commission to impose a requirement that any ITFS applicant relying on another party to fund the construction of its station provide the Commission with evidence of that party's financial ability to construct the station in issue and all other stations that party has agreed to fund.[32] Therefore, WCAI is pleased that in the *FNPRM* the Commission acknowledges that "the adoption of this proposal may deter a significant number of speculative applications."[33]

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[31] *See FNPRM*, at ¶¶ 27-28.

[32] *See* WJB-TV Comments, at 9-10; WCAI Reply Comments at 3-4.

[33] *FNPRM*, at ¶ 15.

In other services, the Commission has recognized that requiring a demonstration of financial ability is essential to deterring speculation.[34] Even now, each ITFS applicant that relies on one or more third parties for funding is required to certify "that sufficient net liquid assets are on hand or available from committed sources to construct and operate the requested facilities for three months without additional funds" and that "it has determined that a reasonable assurance exists that [such third parties] have sufficient net liquid assets to meet these commitments."[35] While the Commission in other services has made clear that an applicant making such a certification must independently evaluate the financial ability of third-party funding sources and not just engage in "box checking," ITFS applicants have been treated differently. Since the Commission has refused to look behind an applicant's certification even where there is evidence that the applicant is relying on a third party that may not be financially capable of meetings its obligations, the Commission's current reliance on ITFS applicant certifications to ascertain the financial qualifications of wireless cable operators does little to deter speculative filings. Indeed, a review of the Commission's files

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[34] *See, e.g. Rulemaking to Amend Part 1 and Part 21 of the Commission's Rules to Redesignate the 27.5 - 29.5 GHz Band and to Establish Rules and Policies for Local Multipoint Distribution Service*, FCC 92-538, at ¶¶ 46-47 (rel. Jan. 8, 1993); *Amendment of Parts 2 and 90 of the Commission's Rules to Provide for the Use of 200 Channels Outside the Designated Filing Areas in the 896 - 901 MHz and 935-940 MHz Bands Allotted to the Specialized Mobile Radio Pool,* 8 FCC Rcd 1469, 1475 (1993); *Amendment of the Commission's Rules to Provide Channel Exclusivity To Qualified Private Paging Systems at 929-930 MHz,* 8 FCC Rcd 2227, 2231 n.47 (1993).

[35] *See* FCC Form 330, at §3, questions 2.c. and 3.

illustrates that serious questions have often been raised regarding the financial qualifications of the very firms that have been most often charged with speculative behavior.[36]

From discussions with the Commission's staff, WCAI understands that the Commission's reluctance to pursue those allegations is due in large part to the fact that the Commission has no direct remedy available to it against the wireless cable operator, other than to penalize the local educator. Certainly, WCAI is sensitive to that concern, as well as to the concern expressed in the *FNPRM* that requiring the submission of detailed financial information by each applicant could unnecessarily burden many ITFS applicants and bog down the processing line.[37] Therefore, WCAI proposes that the Commission require any ITFS applicant that is relying on a third party to fund the construction of its proposed station to submit a certificate from that third party, made under penalty of perjury and subject to 47 U.S.C. § 1001, attesting to its financial ability to fund construction and three months operation of the station in issue after meeting all other financial obligations that third party may have (including obligations to construct and operate other ITFS facilities). In addition, the Commission should do as it has done in the past with respect to broadcast applications and conduct spot checks of certifications as a means of promoting compliance.[38]

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[36] *See, e.g.* Petition of Ector County Independent School District to Deny, File No. BMPLIF-921221DA (filed Feb. 24, 1993); Petition of Greenwood Independent School District to Deny, File No. BMPLIF-930201DG (filed Feb. 24, 1993); Petition of Montgomery Public School System *et al* to Deny, File Nos. BPLIF-920603DG, *et seq.*, at 7-8 (filed April 16, 1993).

[37] *See FNPRM*, at ¶ 15.

[38] *Certification of Financial Qualifications*, 62 Rad. Reg.2d 638 (P&F, 1987).

Adoption of this approach will minimize the burden on ITFS applicants (who will not be required to assemble detailed financial showing) and the Commission staff (which will not be required to address financial issues in most cases). Yet, interested parties will still be able to provide the Commission with evidence going to the truthfulness of a financial certification, and the Commission will have a direct remedy against any third party that falsely certifies its financial abilities.[39]

E. While A Cap On The Number Of Applications An Entity Can Fund In A Given Window May Be Appropriate, The Commission's Proposal Must Be Modified So As Not To Frustrate Non-speculative Filings.

In the *FNPRM*, the Commission seeks comment on whether it should limit to 25 the number of applications in a given window that can be associated with the same wireless cable entity.[40] While adoption of such a rule three years ago would have prevented the RuralVision

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[39]Where it is shown that the third party is not financially qualified, the Commission should give the ITFS applicant in question sixty days to amend its application to either certify that it will directly fund construction and operation or to find another third party that is financially qualified. If the ITFS applicant chooses not to do the former, and cannot do the latter, its application should be dismissed.

[40]The *FNPRM* also proposes to establish a cap on the number of applications any non-local ITFS entity can submit during a single filing window. For the reasons set forth regarding the imposition of a cap on applications funded by a single wireless cable entity in any given window, WCAI urges the Commission to exempt from any cap on non-local applications those applications that propose major changes in licensed facilities. Such an exemption will promote the establishment of wireless cable systems by promoting co-location activities, without raising the specter of speculative applications.

While WCAI generally takes no position on the proposal to limit the number of new station applications a non-local entity can file, the facts that all non-local applicants must demonstrate local educational involvement in their proposals, and that the point system for selecting from among mutually-exclusive applicants is heavily weighted against non-local

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fiasco that is largely responsible for the ITFS processing logjam, the need for such a rule today is less clear. Nonetheless, WCAI supports the Commission's proposal, provided that it is tailored so as not to frustrate time-sensitive, non-speculative ITFS filings, and can be implemented without undue diversion of staff resources.

At the outset, the Commission should make clear that whatever cap is adopted does not apply to applications for authority to implement major changes in licensed ITFS facilities. One of the primary goals of an application cap would be to "limit multiple filings by frequency speculators and their affiliated applicants."[41/] That goal is not advanced by capping major change applications, for speculators generally are not in the business of filing such applications. Rather, a review of the Commission's records shows that the vast majority of major change applications submitted over the past few years have been for the purpose of co-locating facilities leased to a legitimate wireless cable operator. Restricting major change applications would do little more than delay the inauguration of ITFS and wireless cable services.

In addition, WCAI urges the Commission to exempt from the cap any applications that are being sponsored by a wireless cable operator and propose a new station that will be co-located with at least four MDS channels that: (i) have already been licensed, conditionally

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[40/](...continued)
applicants suggests to WCAI that non-local entities are not the source of substantial abuse. Indeed, because the non-local entities tend to be more knowledgeable about the Commission's ITFS rules and about the proclivities of various wireless cable operators, it appears that they are less likely to be victimized by unscrupulous speculators.

[41/]*FNPRM*, at ¶ 18.

licensed, or proposed in unopposed applications; and (ii) the operator has secured either in its own name or through lease. The Commission has previously recognized that under such circumstances, there is "a reasonable expectation of prompt wireless cable service" by the operator.[42] Such an exemption would be consistent with the purposes of the proposed application cap -- to prevent speculative filings. It is a fair assumption that where a wireless cable operator has already secured MDS channel capacity in a given market and is sponsoring new ITFS applications to fill in its channel complement, no speculation is occurring. To limit the ability of an entity that has already secured MDS channel capacity in a given market to complete assembling the critical mass of channels necessary to compete does nothing but slow the introduction of wireless cable service to the public.

F. The Commission Should Adopt WCAI's Proposal For Expediting Consideration Of Certain Applications

As is recognized in the *FNPRM*, WCAI and the Educational Parties have proposed that the Commission expedite the processing of ITFS applications under certain circumstances.[43] While the Commission has questioned the practicality of this proposal, WCAI believes the concerns expressed in the *FNPRM* can be resolved.

In the *FNPRM*, the Commission expresses the concern that "the staff may have to expend substantial resources determining which applications were eligible for expedited

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[42] *See Amendment of Parts 21, 43, 74, 78, and 94 of the Commission's Rules Governing Use of the Frequencies in the 2.1 and 2.5 GHz Bands*, 6 FCC Rcd 6792, 6803 (1991)(establishing eligibility for commercial applicants for vacant ITFS spectrum).

[43] *See FNPRM*, at ¶ 19.

consideration, enforcing the requirement for ordering equipment, and enforcing the construction deadline."[44] If, as the Commission fears, this would "significantly slow the rate of processing and ultimately delay service to the public," WCAI would withdraw its suggestion.[45] However, WCAI does not believe that adoption of its proposal would have the impact feared by the Commission.

First, WCAI does not contemplate that the Commission would have to expend substantial resources determining which applications were eligible for expedited processing. Rather, WCAI envisions that applicants would self-certify their eligibility under penalty of perjury and that willful false statements would be punishable by fine or imprisonment pursuant to 18 U.S.C. § 1001, revocation of license pursuant to 47 U.S.C. 312, and/or forfeiture pursuant to 47 U.S.C. § 503. WCAI submits that the ramifications of making a false certification would be sufficiently severe that the Commission could merely accept certificates of eligibility for expedited processing at face value.

Second, the requirement suggested by WCAI that the recipient of expedited processing be required to order equipment within 21 days of public notice of a grant can be implemented so that it is self-effectuating. The Commission need not monitor compliance by all licensees who receive the benefit of expedited processing. Rather, since the goal of the requirement is to assure prompt construction of ITFS facilities, the Commission should only require those who request an extension of the six month construction period to demonstrate compliance as

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[44] *Id.*, at ¶ 20.

[45] *Id.*

part of their extension request. This will minimize the drain on staff resources, but make clear to licensees that if they do not comply with the 21 day equipment ordering requirement, they do so at their own risk.

Third, contrary to what the *FNPRM* implies, the Commission would not be required to ignore the public interest when considering requests for extension of the six-month construction deadline.[46] Obviously, the Commission will want to be somewhat more stringent in addressing extension requests where the Commission has afforded expedited processing. However, in cases where construction is nearly complete or the applicant has a legitimate excuse for its failing to complete construction, the Commission will retain the discretion to grant additional time under WCAI's proposal.

Finally, WCAI disagrees with the implication of the *FNPRM* that a policy of more stringent review of extension applications is an adequate substitute for WCAI's proposal. Although WCAI supports a more stringent review of extension applications, as will be discussed in Section II.G of these comments, the adoption of such a policy by the Commission is no substitute for a system of giving high priority to those applications most likely to yield rapid service to the public. Every time the Commission processes an application for an ITFS station that will not be built rapidly, it wastes a scarce resource -- staff manpower. Even if the Commission ultimately denies a request for additional time to construct that station eighteen months later, it still will have expended unrecoverable staff

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[46] *Id.*

resources to grant the initial application at the expense of processing an application that would have yielded immediate service to the public.

G. The Commission Should Afford Interested Parties A Fair Opportunity To Petition To Deny An Application For Additional Time To Construct An ITFS Station.

With the *FNPRM*, the Commission inquires as to whether "processing efficiency [would] be adequately improved by a stricter enforcement of the existing requirements for extensions of time?"[47] WCAI believes it would.

Certainly, there are many situations were an ITFS licensee is unable to complete construction of its authorized facilities within the eighteen month period afforded by the Commission for a new station, and should be afforded additional time. To cite a few examples, WCAI has no problem with extending construction deadlines in cases where equipment is ordered in timely fashion but delayed because of manufacturer backlogs, where an application to co-locate with other facilities in the market is pending, where nodes in a statewide educational network are being built in systematic fashion over an extended period, or where unanticipated events have frustrated a licensee's efforts to construct in timely fashion.

Yet, extensions of construction deadlines have also become the speculator's best friend. Too often, speculators have entered into excess capacity lease agreements with local educators, yet have no intention of constructing facilities and operating a wireless cable system. Rather, these speculators intend either to assign these leases to legitimate wireless

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[47] *FNPRM*, at ¶ 20.

cable system developers at a profit or to greenmail nearby cable systems by threatening to cause harmful electrical interference. History has shown that when speculators are unable to profit within the initial construction period afforded, requests for extension of time are filed routinely and, at least to date, granted almost immediately after filing. With the value of excess capacity leases for unbuilt ITFS stations being confirmed by the recent sale of RuralVision for $45 million dollars,[48] the Commission can anticipate that these speculators will continue to use requests for extension of time to warehouse ITFS spectrum for as long as possible.

WCAI believes that there are two steps the Commission can take to deter warehousing, without unduly limiting the ability of ITFS licensees to seek and secure extensions of time under appropriate circumstances. First, the Commission should adopt a policy of placing every request for additional time to construct an ITFS station on public notice for a minimum of fifteen days before it can be acted upon. This will afford interested parties a reasonable opportunity to provide the Commission with information bearing on the merits of the extension request, including evidence of warehousing.

Second, the Commission should revise its policy of declaring moot any opposition to a request for additional time to construct when the ITFS station is constructed during the pendency of the dispute. WCAI is aware of a case in which an opposition was filed to several applications for additional time to construct which presented to the Commission

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[48] *See* Foisie, "Wireless Cable Controversy Simmering," *Broadcasting and Cable*, at 30, 33 (June 20, 1994).

evidence that the ITFS licensees had misrepresented to the Commission their reasons for requesting extensions. While the misrepresentation charges were pending before the Commission, those ITFS licensees constructed their facilities. The Commission then dismissed the opposition as moot. While WCAI believes that ITFS or MDS licensees should be permitted to construct their facilities while a request for an extension of time is pending, WCAI also believes that such construction should be subject to whatever action the Commission may take with regard to the extension request. Thus, the Commission should make clear that the construction of a facility while an extension request is pending is at the licensee's own risk and does not deprive the Commission of the power to deny the extension request and order the facility to cease operations.

H. The Commission Should Formalize Its Policy Limiting The Consideration An ITFS Licensee Can Receive Upon Assignment Of A License For An Unconstructed Station.

In the *FNPRM*, the Commission has proposed to formalize its current practice of limiting to out-of-pocket expenses the consideration allowed an ITFS licensee upon assignment of the license for an unbuilt ITFS station.[49] Such an approach has proven effective in deterring speculation in other services. While WCAI does not believe there has been a significant problem with ITFS applicants submitting speculative applications in the hope that the ITFS applicant will reap a profit by assigning licenses for unbuilt facilities, WCAI nonetheless supports the Commission's proposal to formalize its current practice.

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[49] *See FNPRM*, at ¶ 21.

I. Even Where Frequency Offset Is Employed, The Commission Should Require A Demonstration That The Cochannel Desired To Undesired Signal Ratio Will Be At Least 39 dB.

In the *FNPRM*, the Commission has once again solicited comment on its policies regarding the use of frequency offset in the 2.5 GHz band as a mechanism for avoiding harmful electrical interference. Certainly WCAI is supportive of the Commission's proposal to require ITFS licensees to employ frequency offset -- WCAI was the proponent of the tighter frequency tolerance rules that were adopted in 1990 to make the use of offset more practical.[50] However, WCAI must disagree with the Commission's proposal to redefine cochannel interference such that no harmful electrical interference would be deemed present if a 28 dB desired-to-undesired ("D/U") ratio is predicted.

While it is beyond dispute that a 28 dB D/U cochannel interference protection standard is appropriate in the television broadcast services when offset is employed, there is absolutely no evidence in the record before the Commission that such a standard is appropriate at the higher frequencies employed by ITFS stations. When the Commission first adopted the current 45 dB cochannel interference protection standard for MDS and ITFS, it recognized that "because of the higher frequencies used for MDS transmission (also ITFS) using frequency offset techniques is technically more difficult than at either VHF or UHF television frequencies."[51] That remains true today. Tests conducted by members of WCAI's Technical Committee confirm that frequency offset does yield some improvement in signal quality when

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[50] *See Gen. Docket No. 90-54 R&O*, 5 FCC Rcd at 6420-21.

[51] *80-113 FR&O*, 98 F.C.C.2d at 75.

employed in the 2.5 GHz band. However, those tests indicate that once the cochannel D/U ratio falls below 39 dB, the resulting interference begins to become objectionable.[52] At a 28 dB D/U ratio, the picture is unacceptable.

As a result, WCAI urges the Commission to modify its cochannel interference protection rules so that, even where offset can be employed because transmitters have been installed or can be upgraded to maintain frequency tolerance within ± 10 kHz, no facility will be subject to a cochannel D/U ratio of less than 39 dB without its consent. While WCAI certainly agrees that parties should be free to agree to accept lower cochannel ratios if they choose, the Commission should not impose a cochannel standard of less than 39 dB absent consent.[53]

J. The Commission Should Revise and Clarify Its Policies Regarding ITFS Receive Sites To Assure Protection To Those Sites Where Educational Programming Is Being Viewed In Connection With Courses Offered For Credit By Accredited Educational Institutions While Preventing Abuse.

In an effort to reduce abuse of its ITFS processes, the *FNPRM* solicits comment on several somewhat related issues: (i) whether an applicant should be required to document that

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[52] *See* ITS Corp., "Offset Frequency Operation, *ITFS/MMDS Technical Notes*, Vol. VI, No. 1 (March 1992). While somewhat superior performance can be realized when the precision offset techniques are used, the costs of doing so are prohibitive, and the results uncertain at this time. Until such time as the benefits of precision offset are better quantified, the Commission should refrain from requiring its use.

[53] When an applicant has indicated an acceptance of some lesser standard, it should thereafter be precluded from insisting upon a higher D/U ratio against newcomers. For example, if Applicant A was able to secure a license by demonstrating a 28 dB cochannel D/U ratio relative to Licensee B, Applicant A subsequently should be required to accept a 28 dB cochannel D/U ratio from Licensee B or any other party. Parties should not be able to pick and choose among cochannel standards at different times.

each of its proposed receive sites is accredited; (ii) how nonaccredited receive sites should be treated for purposes of interference protection and comparative consideration; (iii) whether ITFS receive sites located more than 35 miles from the transmitter site should be protected from interference; and (iv) whether applicants should be able to establish eligibility for an ITFS license solely by proposing service to receive sites more than 35 miles from the transmitter site.

The issues surrounding ITFS receive sites are complex ones, for receive sites play three important roles in the ITFS regulatory regime. First, they are a source of eligibility for an ITFS license -- under Section 74.932(a)(4) of the Rules, an applicant that is not itself an accredited educational institution can become eligible by proposing service to accredited institutions and establishing that service by submitting documentation from proposed receive sites demonstrating that they will use the applicant's formal educational programming. Second, they play a critical role in the mechanism for selecting from among mutually-exclusive applicants -- under Section 74.913(d) of the Rules, the number of students at proposed receive locations is used to break ties under the point system for selecting from among mutually-exclusive applicants. Third, they are a source of interference protection -- under Sections 21.902 and 74.903 of the Rules, applicants for new or modified ITFS and MDS stations must demonstrate that they will not cause harmful interference to ITFS receive sites.

WCAI applauds the Commission for proposing to overhaul its rules and policies regarding ITFS receive sites. As those rules and policies have been revised over the past

decade, they are no longer always clear and consistent. Moreover, as the *FNPRM* acknowledges, ambiguities in the Commission's rules and policies governing ITFS receive sites present opportunities for abuse. Therefore, WCAI urges the Commission: (i) to clarify that all receive sites where formal educational programming is viewed by students enrolled in for-credit courses offered by accredited institutions are entitled to interference protection and consideration during tie-breakers, even if the site in question is not itself an accredited institution; (ii) to require the submission by ITFS applicants of evidence that programming will be viewed by students enrolled in for-credit courses offered by accredited institutions at every receive site for which interference protection is claimed; and (iii) to only consider those receive sites where an acceptable signal can be received for purposes of establishing ITFS eligibility, for consideration during tie-breakers, and for affording interference protection.

1. The Commission Should Treat Distance Learning Receive Sites That Are Employed For Viewing Of Formal Educational Programming No Differently Than Receive Sites That Are Devoted Exclusively To Accredited Educational Programs.

In the *FNPRM*, the Commission has expressed concern that "applicants often evade the intent of the rule by having only one receive site out of many accredited, thereby defeating the fundamental purpose of the service, which is to serve the educational needs of accredited institutions."[54] Based on that concern, the Commission has solicited comment on whether it should deny interference protection for any unaccredited receive site or require a majority of receive sites to be accredited in order for the application to be granted.

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[54] *FNPRM*, at ¶ 39.

WCAI submits that adoption of the Commission's proposals would run counter to the growing use of ITFS for extending the reach of educators beyond the classroom, and in the process, unduly restrict the interference protection afforded ITFS licensees. What the *FNPRM* ignores is that many ITFS licensees are employing their stations to transmit formal educational programming to distance learning receive sites (such as corporate parks, community centers and the like) that are not themselves accredited, but are sites where students enrolled in for-credit courses offered by accredited institutions congregate. There is no logical reason to ignore these sorts of receive sites in determining basic eligibility, in conducting tie-breakers, and in awarding interference protection. Indeed, for all intents and purposes, these distance learning receive sites should be considered as regulatory equivalents to receive sites such as schools that are devoted exclusively to accredited educational programs.

2. Only Those Receive Sites Where Formal Educational Programming Is Viewed By Students Enrolled In For-Credit Courses Offered By Accredited Institutions Should Be Entitled To Interference Protection.

Under the Commission's rules, only receive sites where formal educational programming is viewed by students enrolled in for-credit courses offered by accredited institutions are considered for purposes of determining basic ITFS eligibility and comparative credit. Historically, however, the Commission has never required that any formal education programming be viewed at a receive site in order for that receive site to be entitled to interference protection. Now may be the time for the Commission to do so.

WCAI recognizes that the Commission's Rules permit ITFS licensees to transmit a wide array of educational, instructional and cultural programming that is not intended for viewing by students enrolled in accredited courses. Indeed, WCAI recently has been critical of the Commission for adopting rules and policies regarding channel loading that overly emphasize formal educational programming. Yet, WCAI shares the Commission's concern that some ITFS receive sites are being added merely to increase interference protection and that those receive sites are very often sites where no formal educational programming occurs.

Certainly, a strong argument can be made that receive sites for some informal educational programming (such as a receive site at a bar association headquarters established for viewing continuing legal education programming), should be entitled to protection. WCAI believes, however, that often distant libraries, firehouses and community centers where no educational activities are conducted are being added as receive sites. It would be difficult, if not impossible, for the Commission to develop and enforce policies that would distinguish among receive sites based on the type of informal ITFS programming being viewed. Limiting receive site protection to those receive sites where formal educational programming is viewed by students enrolled in for-credit courses offered by accredited institutions establishes a bright line test that will be easily employed.[55] Moreover, WCAI does not believe that an ITFS receive site where no viewing of educational programming by students enrolled in for-credit

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[55]The only exception should be to permit an ITFS licensee to establish receive sites for monitoring purposes at the administrative offices of the accredited institutions involved with its service and at the program origination source.

courses offered by an accredited institution takes place should preclude the licensing of an ITFS facility that will engage in the distribution of formal educational programming.

On a related matter, WCAI is well-aware of the problem raised in the *FNPRM* -- schools listed as receive sites in some applications have subsequently informed the Commission that they had never agreed to participate in the proposed ITFS system.[56] Unfortunately, the Commission has exacerbated this problem by allowing applicants to merely delete such receive sites, rather than designating the matter for a hearing into possible misrepresentations to the Commission. While the false specification of receive sites does not enhance an applicant's eligibility to serve as an ITFS licensee or its comparative standing (since documentation from receive sites is already required in both cases),[57] it can result in applications being declared mutually exclusive or in the preclusion of future services in nearby markets.

To prevent such occurrences, WCAI believes that the appropriate solution is to require each applicant to establish through documentation submitted with its application that formal educational programming will be viewed at each proposed receive site by students enrolled in a for-credit course offered by an accredited educational institution. That documentation should include, at a minimum, (i) a letter from an authorized representative of every proposed receive site that confirms that formal educational programming will be viewed at the receive site by students enrolled in for-credit courses offered by an accredited institution, and identify

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[56] *See FNPRM*, at ¶ 37.

[57] *See* 47 C.F.R. §§ 74.932(a)(1)(4), 74.913(d)(4).

the accredited institution; and (ii) the accrediting body and date of accreditation for each accredited institution utilizing a proposed receive site. In this way, the Commission can assure that its regulatory objectives are met, without subjecting to possible interference distance learning receive sites where formal educational programming is received.

3. The Commission Should Restrict Consideration of Receive Sites To Those ITFS Receive Sites Receiving An Adequate Signal.

In the *FNPRM*, the Commission proposes to amend its rules so that, absent unusual circumstances, ITFS receive sites more than 35 miles from the transmitter site could not be used to establish applicant eligibility and would be denied interference protection.[58] While WCAI is sensitive to the concerns underlying the Commission's proposal, WCAI questions the wisdom of establishing an arbitrary distance beyond which ITFS receive sites could not be used to establish eligibility and would be denied protection. Admittedly, most ITFS receive sites are within 35 miles of the transmitter and, as the *FNPRM* suggests, there do appear to be cases where more distant ITFS receive sites have been added to enhance interference protection. By the same token, however, there are other cases where legitimate ITFS receive sites are located beyond 35 miles and should be entitled to consideration for all regulatory purposes.

Because there are legitimate ITFS receive sites beyond 35 miles, WCAI submits it would be inappropriate for the Commission to artificially limit interference protection to receive sites within a 35 mile radius. On the other hand, WCAI agrees with the Commission

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[58] *See FNPRM*, at ¶ 30.

that distant receive sites should not be entitled to interference protection if they do not serve a legitimate educational function. To address this dilemma, WCAI suggests that the Commission adopt a two-pronged approach to ITFS receive sites. First, as is discussed more fully in Section II.J, the Commission should only afford consideration to those receive sites where formal educational programming is being viewed by students enrolled in for-credit courses offered by accredited institutions. Second, the Commission should further limit consideration to only those receive sites where an adequate signal can be received. WCAI's Technical Committee is considering possible technical standards to be applied in determining whether an adequate signal can be received at an ITFS receive site, and anticipates submitting a specific proposal as part of WCAI's reply comments.

WCAI recognizes that requiring ITFS applicants to establish the predicted S/N ratio at every receive site could prove unduly burdensome for applicants and the Commission, particularly since the vast majority of proposed ITFS receive sites can readily receive an acceptable signal. To implement WCAI's proposed revision, applications for new ITFS stations or major changes to licensed stations only should be required to submit terrain profiles and technical analyses demonstrating that every receive site outside of the PSA contour for such station[59] can receive a signal such that the S/N ratio at the antenna input terminals of the affected receiver will be at least 45 dB. Since the PSA boundary proposed by WCAI essentially defines the area in which reliable service can be provided, it is fair to

[59]The PSA contour should be employed for purposes of this analysis, even if the applicant in question is not requesting PSA protection.

assume that all receive sites within the PSA boundary can receive an adequate signal. By accepting such assumption, the Commission will avoid burdening ITFS applicants with the need to submit a substantial amount of technical support for each receive site.[60] However, by requiring the submission of technical support for those receive sites outside the PSA definition, the Commission can assure that receive sites are not being added to improperly establish eligibility, comparative standing or increase interference protection.

K. The Commission Should Modify Its System For Classifying ITFS Modifications.

Like the Commission, WCAI believes that the Commission should classify as a "major change" any proposed modification of an ITFS facility that could potentially have a material impact on an existing or previously proposed facility entitled to protection or preclude other facilities. For the better part of a decade, WCAI and its predecessor organization has recognized that the Commission's current policies fail to consider as a major change many applications that could have a significant adverse impact on other facilities. Therefore, WCAI is fully supportive of the Commission's proposal to revisit Section 74.911(a)(1) of its Rules.

In developing new rules to govern ITFS modifications, the Commission should consider implementing a rule similar to Section 21.42, which permits MDS licensees to make several insignificant modifications without prior Commission consent, so long as the Commission is notified of the modifications within thirty days. Specifically, WCAI suggests

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[60]The assumption that an acceptable signal can be received at every receive site within the PSA should be a rebuttable one. There is no reason to provide interference protection to an authorized ITFS receive site within the PSA contour where an interested party can establish that the receive site in issue suffers terrain blockage.

that ITFS licensees be permitted without prior Commission consent to: (i) make any changes to the antenna and/or transmission system that would result in the EIRP being no greater than 1 dB above that authorized in any direction (other than increase the height of the transmission antenna or change antenna polarization); (ii) increase the height of the transmission antenna so that it is no higher than five feet above the previously authorized height (so long as the height of the structure supporting the antenna is not increased as a result or, if it is increased, remains no greater than 20 feet above the antenna supporting structure); or (iii) decrease the overall height of the antenna structure, subject to compliance with appropriate FAA requirements. Licensees making such changes should be required to notify the Commission by filing the appropriate parts of FCC Form 330 within thirty days of making the changes. In this way, the Commission can eliminate the need to process applications for insignificant facilities modifications and expedite the implementation of such modifications.

On the other hand, WCAI believes that the *FNPRM* does not go far enough in proposing to redefine what constitutes a major change. WCAI agrees with the Commission that any application proposing a change in polarization, the addition of any receive site that would experience interference from any licensee or applicant on file prior to the submission of the amendment, any increase in EIRP in any direction by more than 1.5 dB, any increase in transmission antenna height of 25 feet or more, or any other change that would cause interference to any previously proposed application or existing facility should be considered

a major change.[61] However, WCAI disagrees with the Commission's approach to changes in location.

Simply stated, WCAI believes that changes in station location of as much as ten miles raise too great a risk of interference to permit such changes without the safeguards of the major change rules. Such changes pose a significant threat of increasing the undesired signal level at nearby stations or eliminating terrain blockage that may have permitted the relocating station to be licensed in the first place. In either case, the result can be harmful electrical interference. To assure ITFS facilities adequate interference protection, WCAI recommends that the Commission adopt the same standard it has employed for the MDS -- changes in location of more than ten seconds of longitude, latitude or both are subject to the full panoply of regulatory safeguards.

In addition, WCAI believes that the Commission should treat a request for a PSA as a major change. While such applications do not pose a threat to interfere with other stations, they are by their very nature designed to preclude nearby facilities. Thus, they should be subject to competing applications.

Finally, the Commission should clarify the regulatory ramifications of having an application being designated as one for a "minor change." The Commission should establish cut-off dates for the filing of petitions to deny minor change applications. Although minor change applications are unlikely to cause interference to facilities entitled to protection, there

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[61] *See FNPRM*, at ¶ 33.

is still some risk that interference may occur.[62] Therefore, WCAI suggests that the Commission afford interested parties thirty days from public notice that a minor change application has been filed to petition to deny such an application. While this may engender some delay in the processing of minor change applications, it will assure that no facility is denied its right to interference protection.

L. Applicants Should Be Required To Submit FAA Determinations To The Commission Within Thirty Days Of Issuance.

In the *FNPRM*, the Commission solicits comment on its proposal to require all ITFS applicants to submit determinations by the Federal Aviation Administration ("FAA") that the proposed facility will not pose a hazard to air navigation.[63] WCAI supports that proposal.

The Commission has concluded that by requiring applicants to submit FAA no hazard determinations, the processing of ITFS applications will be hastened and service to the public accelerated. These certainly are meritorious goals, and to the extent ITFS applicants can further those goals by submitting FAA no hazard determinations promptly, they should be required to do so. The cost of merely filing a copy of the FAA's determination will be minuscule, while the benefits to be realized from reducing the ITFS application backlog and accelerating service to the public are significant.

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[62]This will be particularly true if the most benign minor changes are treated as changes a licensee can implement without prior Commission approval, as WCAI proposes. If WCAI's proposal is adopted, those applications that are still deemed minor change applications will be those that are most likely to impact other stations.

[63]*See FNPRM*, at ¶ 34.

Perhaps even more importantly, applicants should be required to promptly advise the Commission when the FAA determines that the proposed facility will pose a hazard to air navigation. Once the FAA has determined that a proposed facility poses a hazard, no further Commission staff resources should be expended on the application for that facility until the proposal is brought into compliance with FAA requirements.

Therefore, WCAI urges the Commission to require all ITFS applicants to submit the results of any requests for FAA clearance within 30 days of issuance.

M. The Proposal To Adopt A Propagation Model Should Be Implemented.

In the *FNPRM*, the Commission has proposed to amend its rules to require the submission of terrain profiles and a quantitative analysis of any additional signal loss calculated by using the Longley-Rice propagation model, Version 1.2.2, in the point-to-point mode (the "Longley-Rice Model").[64] WCAI supports that proposal as an effective means of bringing standardization and increased accuracy to claims of terrain blockage. Although not perfect, the Longley-Rice Model appears to be the best available for the Commission's purposes. By requiring its usage, the Commission will be taking a significant step towards assuring ITFS licensees the full protection against harmful interference to which they are entitled, without unnecessarily precluding the facilities they could operate without causing harmful interference.

As is discussed in the comments of Hardin & Associates, Inc. ("Hardin") being filed today, the Commission must give applicants guidance as to how the Longley-Rice Model is

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[64] *See id.* at ¶¶ 35-36.