Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

RECEIVED

SEP 2 8 1994

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of	)	
	)	
Amendment of Part 74 of the Commission's Rules With Regard to the Instructional Television Fixed Service	)))	MM Docket No. 93-24

DOCKET FILE COPY ORIGINAL

REPLY COMMENTS IN RESPONSE TO ORDER AND FURTHER NOTICE OF PROPOSED RULEMAKING

THE WIRELESS CABLE ASSOCIATION
INTERNATIONAL, INC.

Paul J. Sinderbrand

Sinderbrand & Alexander
888 Sixteenth Street, N.W.
Suite 610
Washington, D.C. 20006-4103
(202) 835-8292

Its Attorneys

No. of Copies rec'd 0+1
List A B C D E

September 28, 1994

TABLE OF CONTENTS

EXECUTIVE SUMMARY ii

I. INTRODUCTION. 1

II. DISCUSSION. 3

A. The Commission Should Refrain From Adopting Rules That Would Permit The Close-Spacing Of ITFS Stations Based On The Use Of Frequency Offset. 3

B. The Commission Should Require An ITFS Applicant Dependent On Funding From a Wireless Cable Operator to Submit That Operator's Certification of Financial Ability to Construct and Operate. 9

C. The Commission Should Only Afford Interference Protection To Those ITFS Receive Sites Outside the Protected Service Area That Can Achieve A Signal To Noise Ratio of 40 dB. 12

D. The Commission Should Not Afford Interference Protection To ITFS Receive Sites That Are Merely "Interested" In Possibly Receiving Programming. 14

E. The Commission Should Not Unnecessarily Delay The First Filing Window. 16

F. The Commission Should Not Restrict PSA Applicability In A Manner That Promotes Speculation And Greenmail. 17

G. The Rules And Policies Governing The Cut-Off Of Applications By Commercial Entities For ITFS Channels Should Not Unduly Hamper The Ability Of Wireless Cable Operators To Secure Necessary Spectrum. 18

H. The Commission Should Permit Leases Of Excess ITFS Capacity To Extend For A Period Of Fifteen Years, Subject To License Renewal. 21

III. CONCLUSION. 22

EXECUTIVE SUMMARY

The Commission should refrain from adopting rules that would permit the close-spacing of ITFS stations based on the use of frequency offset. If the Commission permits ITFS stations to become too closely-spaced, it will hamper, if not prevent, the wireless cable industry's transition to digital compression technology. Rather, the Commission should refrain from adopting rules governing the use of frequency offset techniques until the ramifications of such rules on the transition to digital technology are better understood.

The Commission should require an ITFS applicant dependent on funding from a wireless cable operator to submit that operator's certification of financial ability to construct and operate. This minimal paperwork burden is more than justified by the impact it should have on reducing speculative applications. Certifications should be required not only with new applications, but also when requests for additional time to construct ITFS stations are filed so as to prevent further speculation.

The Commission should only afford interference protection to those ITFS receive sites outside the protected service area that can achieve a signal to noise ratio of 40 db. However, the Commission should not afford interference protection to ITFS receive sites that are merely "interested" in possibly receiving programming. To do so is to unnecessarily preclude new ITFS facilities.

The Commission should not unnecessarily delay the first ITFS filing window. Affording interested parties sixty days advance notice before the opening of the first window should be adequate.

The Commission should not restrict applicability of its ITFS protected service area rules in a manner that promotes speculation and greenmail. Specifically, it should not create a *de minimis* exception. Nor should the Commission deny interference protection to areas that cannot be served due to terrain blockage, but can be served through the use of on-channel repeaters.

The rules and policies governing the cut-off of applications by commercial entities for ITFS channels should not unduly hamper the ability of wireless cable operators to secure necessary spectrum. The Commission should utilize the proposed filing window for processing commercial ITFS applications. If it does not, it should at least assure that A/B cut-off lists are issued regularly and that commercial ITFS applications are processed in timely fashion.

Finally, the Commission should permit leases of excess ITFS capacity to extend for a period of fifteen years, subject to license renewal.

RECEIVED

SEP 2 8 1994

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Amendment of Part 74 of the Commission's Rules With Regard to the Instructional Television Fixed Service	)))	MM Docket No. 93-24

REPLY COMMENTS IN RESPONSE TO ORDER AND FURTHER NOTICE OF PROPOSED RULEMAKING

The Wireless Cable Association International, Inc. ("WCAI"),[1/] by its attorneys and pursuant to Sections 1.415 and 1.419 of the Commission's Rules, hereby submits its reply to the comments submitted in response to the *Order and Further Notice of Proposed Rulemaking* ("*FNPRM*") in this proceeding.[2/]

I. INTRODUCTION.

By and large, the comments submitted in response to the *FNPRM* evidence a great deal of solidarity among wireless cable and Instructional Television Fixed Service ("ITFS") interests alike. The overwhelming majority of those responding to the *FNPRM* sound a common theme -- the Commission must carefully craft new rules that stop the speculation and greenmail infecting the ITFS application process without unduly burdening the development of *bona fide* wireless cable and ITFS systems. The proposals for achieving that difficult task

---

[1/]WCAI, the trade association of the wireless cable industry, submitted comments and reply comments in response to the *Notice of Proposed Rulemaking* commencing this proceeding, as well as comments in response to the *Order and Further Notice of Proposed Rule Making*. *See* Comments of WCAI, MM Docket No. 93-24 (filed April 19, 1993); Reply Comments of WCAI, MM Docket No. 93-24 (filed May 19, 1993); Comments of WCAI, MM Docket No. 93-24 (filed Aug. 29, 1994)[hereinafter cited as "WCAI Comments"].

[2/]*Amendment of Part 74 of the Commission's Rules With Regard to the Instructional Television Fixed Service,* 9 FCC Rcd 3348 (1994)[hereinafter cited as "*FNPRM*"].

advanced by WCAI in its initial comments were shared by many others. For example, WCAI's call for the opening of frequent filing windows was supported by virtually every other party commenting in this proceeding.[3] Similarly, the suggestion that the Commission adopt WCAI's long-pending proposal to modify the protected service area ("PSA") definition to deter greenmail applications drew support from all of those addressing the issue.[4] WCAI's proposal that the Commission exempt from any application cap modification applications and applications for new ITFS stations designed to fill in existing channel complements was echoed by, among others, the initial proponents of the application cap concept and the wireless cable operator most likely to be impacted by the Commission's application cap proposal.[5]

In the interest of brevity, WCAI will refrain from repeating here the arguments advanced in its initial comments in response to the *FNPRM*. Rather, WCAI will devote the remainder of this filing to refuting the arguments advanced by some against WCAI's

---

[3] *See* Joint Comments of Educational Parties, MM Docket No. 93-24, at 9-10 (filed Aug. 29, 1994) [hereinafter cited as "Educational Parties Comments"]; Comments of American Telecasting, Inc., MM Docket No. 93-24, at 2 (filed Aug. 29, 1994) [hereinafter cited as "ATEL Comments"]; Comments of North American Catholic Educational Programming Foundation, Inc., Network for Instructional TV, Inc. and Shekinah Network, MM Docket No. 93-24, at 7 (filed Aug. 29, 1994) [hereinafter cited as "National ITFS Comments"]; Joint Comments of Coalition of Wireless Cable Operators, MM Docket No. 93-24, at 4 (filed Aug. 24, 1994) [hereinafter cited as "Coalition Comments"]; Comments of Heartland Wireless Communications, Inc., MM Docket No. 93-24, at 2-3 (filed Aug. 29, 1994)[hereinafter cited as "Heartland Comments"].

[4] *See* National ITFS Comments, at 4; Coalition Comments, at 13-14.

[5] *See* Educational Parties Comments, at 13-14; ATEL Comments, at 7-9.

proposals and addressing proposals advanced for the first time in the initial comments of others.

II. DISCUSSION.

A. The Commission Should Refrain From Adopting Rules That Would Permit The Close-Spacing Of ITFS Stations Based On The Use Of Frequency Offset.

If one thing has become clear from evaluation of the comments submitted in response to the *FNPRM* and subsequent industry discussions, it is that the Commission has opened a Pandora's Box of problems with its 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 and non-precision frequency offset techniques proposed.

With one exception, the comments submitted in response to the *FNPRM* were unanimous -- the use of frequency offset results in some lessening in perceived interference such that stations can be located more closely together than otherwise would be possible.[6] However, WCAI and others recognized that a 28 dB D/U cochannel interference protection

---

[6] *See* WCAI Comments, at 30-31; Heartland Comments, at 10; Comments of Hammett & Edison, MM Docket No. 93-24, at 2 (filed Aug. 29, 1994)[hereinafter cited as "Hammett & Edison Comments"]; Educational Party Comments, at 18; Comments of RuralVision South and RuralVision Central, MM Docket No. 93-24, at 28 (filed Aug. 29, 1994)[hereinafter cited as "RuralVision Comments"]; ATEL Comments, at 12; Comments of Hardin & Associates, MM Docket No. 93-24, at 2-3 (filed Aug. 29, 1994)[hereinafter cited as "Hardin Comments"]. The Coalition Comments, meanwhile, suggest that frequency offset is unproven as a reliable method for interference protection, a position clearly refuted by the other commentors in this proceeding. *See* Coalition Comments, at 12.

standard is inappropriate for the ITFS, even where offset techniques are employed.[7] In its comments, WCAI urged 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 utilize frequency offset, no facility will be subject to a cochannel D/U ratio of less than 39 dB without its consent.[8] One commenting party proposed a 35 dB standard where precision offset techniques are used,[9] and WCAI understands from recent discussions that others intend to press the Commission to adopt even less stringent standards. Clearly, there is much debate within the industry as to just how effective the various frequency offset techniques are in eliminating perceived interference between analog systems transmitting NTSC signals. To address that debate, WCAI's Technical Committee is in the process of forming a subcommittee for the express purpose of recommending cochannel interference

---

[7] *See* WCAI Comments, at 30-31; ATEL Comments, at 11-12 ("it has been the experience of ATEL that perceived interference commonly results with regard to the signals of co-channel facilities operating at a 28 dB level."); Hardin Comments, at 2-3. *See also* Educational Parties Comments, at 18 (supporting use of offset "subject to their understanding that the Commission will consider whether a D/U ratio of greater than 28 dB in such circumstances is appropriate.")

[8] *See* WCAI Comments, at 30-31. WCAI argued that although 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. Also, WCAI urged that 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.

[9] *See* Hardin Comments, at 2-3.

protection ratios to be applied when various frequency offset techniques are utilized to control interference between analog systems transmitting NTSC signals.

Upon reflection, however, WCAI believes that now is not the time to be making any changes to the Commission's policies regarding ITFS cochannel interference protection that have the effect of permitting closer spacing of ITFS stations than is currently permitted under the 45 dB co-channel interference protection ratio specified in Section 74.903 of the Commission's Rules. WCAI's position is grounded in its concern that the licensing of new, closely-spaced ITFS stations will hamper, and perhaps preclude, a smooth transition to digital technology.[10]

For all its success of late, the wireless cable industry is at a critical juncture. A wireless cable operator not only faces competition from the entrenched cable operator in the area and newly-launched Direct Broadcast Satellite systems, in the near future it will also have to compete with 28 GHz systems, video dialtone providers and direct telephone company entrants into the multichannel video marketplace. While no one can today predict with precision how the marketplace will look five years from now, one thing is certain -- wireless cable systems will have to offer their subscribers far more than the maximum thirty-three

[10]Therefore, WCAI suggests that the Commission consider applications proposing frequency offset where the proponent has the consent of potentially affected applicants and licensees or can demonstrate that the use of frequency offset will neither cause interference to previously-proposed analog stations nor prevent any wireless cable operator using those previously-proposed stations from converting to digital technology.

channels of video programming available today. As the trade press[11] and the Commission[12] have recognized, the wireless cable industry is at the forefront of efforts to develop the digital compression technology required to meet the competitive challenge.

Although the industry has much work to do, one thing is already certain from preliminary studies conducted by the Wireless Cable Research and Development Center, Inc. ("Wireless R&D Center") and the work performed by the Advanced Television Test Center and the Commission's Advanced Television Advisory Committee. An analog video signal meeting the NTSC standard likely will be somewhat more prone to interference from a digitally compressed signal than it is from another analog NTSC signal, although the degree of vulnerability is today unknown.

This fact will significantly affect the Commission's development of rules to govern wireless cable's transition to, and use of, digital compression technology. Presumably those proposing to convert to digital technology will be required to demonstrate that the conversion will not result in harmful electrical interference to nearby cochannel and adjacent channel facilities.[13] That may prove difficult, if not impossible to do, where the initial analog

---

[11] "Zenith Demos Compression at Wireless Show," *Multichannel News*, at 39 (Aug. 9, 1993); "WCA pursues digital dreams and technological realities," *Broadcasting & Cable*, at 21 (Aug. 2, 1993); "Wireless cable will benefit more from digital compression," *Communications Daily*, at 7 (Aug. 24, 1992); Kim, "WCA Throws Down The Gauntlet," *Multichannel News*, at 31 (Aug. 10, 1992).

[12] *Amendment of Part 74 of the Commission's Rules Governing Use of the Frequencies in the Instructional Television Fixed Service*, 8 FCC Rcd 2828, 2832-33 (1993).

[13] WCAI understands that a prospective manufacturer of digital compression equipment has (continued...)

facilities barely satisfied the Commission's interference protection criteria. Most importantly for present purposes, it will become particularly difficult if the use of frequency offset was a critical element of rendering the initial analog cochannel facilities compatible, for offset of a digitally compressed signal is unlikely to provide any improvement in the analog signal of a nearby cochannel facility.

If the sole concern at this point were to smooth the transition to digital technology, WCAI would urge the Commission to refrain from lifting the freeze on applications for new ITFS stations until the Commission can adopt technical rules fully governing the issues posed by the upcoming introduction of digital technology.[14] Such an approach would prevent speculators and others from littering the landscape with proposals for new, closely-spaced ITFS stations that will have the effect, if not the design, of preventing wireless cable operators from smoothly introducing digital technology. The situation here is quite similar to that which was before the Commission in 1987 when it imposed a freeze on most applications for

---

[13](...continued)
recently made *ex parte* presentations to the Commission suggesting that systems converting from analog to digital technology not be required to secure prior Commission consent. WCAI strongly disagrees. Because the conversion to digital technology may result in potential interference to nearby systems transmitting analog NTSC signals, the proponent of a conversion to digital technology should be required to demonstrate that no interference will result, and should have its demonstration subject to public notice and opportunity for interested parties to comment.

[14]This is precisely the position WCAI has taken with respect to the lifting of the MDS application freeze, although WCAI has proposed an exception for wireless cable operators adding critical channels to existing channel complements. *See* Letter from Paul J. Sinderbrand, Counsel to WCAI, to James R. Keegan, Chief, Domestic Facilities Division (dated Aug. 30, 1993).

new broadcast television facilities and amendments to the Table of Allotments in order to maintain regulatory flexibility for the transition from NTSC to advanced television. Permitting applications for new ITFS facilities to be filed and prosecuted to grant during the coming months can only make more difficult the task of smoothly transitioning wireless cable systems from NTSC to digital compression technology.

WCAI recognizes, however, that there is a significant unmet demand for ITFS facilities that must be met by lifting the freeze as soon as possible. So that the Commission can accommodate the vast majority of that demand, without unduly hampering the wireless cable industry's conversion to digital technology, WCAI suggests that the Commission retain its current cochannel interference protection rules when it lifts the freeze on applications for new ITFS stations. While this approach will still permit the filing of applications for some new ITFS stations that may ultimately hamper the digital transition, it will not overly exacerbate the problem by inviting applications for a myriad of closely-spaced stations that could effectively preclude the industry's embrace of digital technology. WCAI recognizes that adoption of its proposal may have the effect of making more difficult the efforts of some wireless cable operators, including some of its members, to secure critical channel capacity in isolated circumstances. However, WCAI believes that this unfortunate cost is justified by the benefits to be achieved through expediting the introduction of digital compression technology into the MDS and the ITFS.

At present, it is WCAI's expectation that, based on the work of the Wireless R&D Center, WCAI will be able to present the Commission during the first half of 1995 with a

comprehensive petition for rulemaking proposing specific rules to govern the transition of wireless cable to digital technology. That petition will propose, among other things, cochannel and adjacent channel interference protection ratios to govern analog-to-digital, digital-to-analog, and digital-to-digital services. In the interim, however, the Commission should take a page from its approach to transitioning the broadcast industry to digital technology and refrain from promoting the filing of applications for closely-spaced ITFS facilities.[15]

In short, the Commission is now well-positioned to usher in the coming digital revolution for wireless cable and the ITFS. Permitting applications for closely-spaced ITFS facilities can only delay wireless cable's embrace of digital technology by unnecessarily complicating resolution of the inevitable interference protection issues that will arise.

B. The Commission Should Require An ITFS Applicant Dependent On Funding From a Wireless Cable Operator to Submit That Operator's Certification of Financial Ability to Construct and Operate.

In its initial comments, WCAI proposed 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

---

[15] *Advanced Television Systems and Their Impact on the Existing Television Broadcast Service*, RM-5811, *Order* (rel. July 17, 1987).

may have (including obligations to construct and operate other ITFS facilities).[16] As WCAI explained, such an approach would deter speculative applications, while imposing minimal burden on ITFS applicants and the staff. Although it comes as no surprise that the company most often accused of funding speculative ITFS applications opposes increased FCC scrutiny,[17] the concept advanced by WCAI was supported by ITFS interests and wireless cable operators alike.[18]

One commenting group would have the Commission believe that increased scrutiny of financial qualifications is unnecessary because "many of the 'land rush' abuses of ITFS by speculators have already occurred, and currently are beyond the scope of Commission enforcement."[19] That simply is not true. Admittedly, the Commission's unwillingness to

---

[16] *See* WCAI Comments, at 19-22.

[17] *See* RuralVision Comments, at 3-4. The only ITFS entity opposing the imposition of some new financial qualification requirements is Hispanic Information and Telecommunications Network, Inc. ("HITN"), which contends that "ITFS channels are not being warehoused. . . . they are being built at a rapid pace." Comments of Hispanic Information and Telecommunications Network, MM Docket No. 93-24, at 6 (filed Aug. 29, 1994)[hereinafter cited as "HITN Comments"]. WCAI can only assume that HITN is unaware of the vast number of requests for extensions of time being filed by ITFS licensees that are, or were, affiliated with RuralVision, requests that suggest massive warehousing is occurring.

[18] *See* Educational Parties Comments, at 12 ("At most, the Commission might consider a requirement that new ITFS applicants relying on a wireless cable lessee include a demonstration or certification from the lessee that it has sufficient funding available to construct the ITFS station."); ATEL Comments, at 7 ("[FCC Form 330] should require that . . . the entity providing the financial support should also sign the application and certify that it has sufficient net current and liquid assets to meet the applicant's proposed costs.").

[19] Coalition Comments, at 6.

explore the veracity of financial certifications made by ITFS applicants affiliated with RuralVision South, Inc. and RuralVision Central, Inc. ("RuralVision"), among others, has already led to the issuance of hundreds of licenses for ITFS stations that may never be constructed for lack of financing. However, as WCAI explained in its initial comments, requests for additional time to construct are becoming the "best friend" of speculators attempting to hold onto ITFS lease rights for as long as possible.[20] As Central Texas Wireless TV, Inc. ("Central Texas") rightly noted in its comments, speculators "have come to rely on the expectation of obtaining extensions to construct from the Commission."[21] The construction periods afforded by many of those ITFS licenses are expiring, the Commission is being flooded with applications for additional time to construct speculative ITFS stations, and there is ample opportunity for the Commission to enforce new financial qualification rules. If the Commission is truly interested in controlling speculation, it should do as Central Texas proposes and require any ITFS licensee requesting additional time to construct to

---

[20]Indeed, WCAI is aware of at least one situation where a newly-formed entity has acquired from successors to RuralVision excess capacity leases for several hundred unbuilt stations and announced plans to raise money from the public. That entity has conceded that it lacks the financial wherewithal to construct those unbuilt facilities in timely fashion, but advises potential investors that the FCC has routinely granted extensions in the past. Significantly, the requirement that these unbuilt facilities be protected from harmful electrical interference is preventing nearby wireless cable systems from making modifications necessary to improve service to the public. Thus, if the Commission extends the construction period for these stations, despite the fact that the funding to construct them is unavailable, it will effectively be precluding others from maximizing service to the public.

[21]Comments of Central Texas Wireless TV, MM Docket No. 93-24, at 3 (filed Aug. 29, 1994)[hereinafter cited as "Central Texas Comments"].

provide a certification of financial ability from any wireless cable lessee[22] on which the licensee is relying.[23]

C. The Commission Should Only Afford Interference Protection To Those ITFS Receive Sites Outside the Protected Service Area That Can Achieve A Signal To Noise Ratio of 40 dB.

Like WCAI, virtually every party commenting in this proceeding opposed the proposal advanced in the *FNPRM* to amend the 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.[24] The comments overwhelmingly confirm that there are numerous cases where legitimate ITFS receive sites

---

[22]WCAI cannot endorse the identical arguments by CAI Wireless Systems, Inc. ("CAI") and Heartland Wireless Communications, Inc. that publicly-traded wireless cable companies with market capitalizations in excess of $10,000,000 be exempted from all financial documentation requirements. *See* Heartland Comments, at 9-10; Comments of CAI Wireless Systems, Inc., MM Docket No. 93-24, at 3-4 (filed Aug. 29, 1994). First, simply because a company has a market capitalization of that size does not necessarily mean, *ipso facto*, that it has the financial capability of funding the construction and operation of additional ITFS facilities. A market valuation is based on a variety of factors (including non-liquid assets and prospective earnings) and does not necessarily reflect a company's ability to make further capital expenditures in the near future. Second, this proposal will be difficult to enforce, particularly since a company's market valuation varies from day to day. How will the Commission know whether a given lessee qualifies for the exemption? Will an exemption certification be required? What will be required if the market valuation falls below the threshold while the application is pending?

[23]*See* Central Texas Comments, at 4. In addition, the Commission should adopt the proposal advanced in WCAI's initial comments that the rules require public notice of extension requests and afford interested parties an opportunity to petition to deny. *See* WCAI Comments, at 27-29. Absent such a rule change, there will no opportunity to alert the Commission when false certifications of financial ability are filed.

[24]*See FNPRM*, 9 FCC Rcd at 3352.

are located beyond 35 miles and should be entitled to consideration for all regulatory purposes if it can be demonstrated that the receive site in question can receive an adequate signal.[25]

In its initial comments, WCAI urged the Commission to amend its rules so that applicants would be required to demonstrate that an acceptable signal could be received at any receive site outside of the PSA of the ITFS station in issue. Since the PSA boundary proposed by WCAI essentially defines the area in which reliable service can be provided utilizing standard reception equipment, it is fair to assume that all receive sites within the PSA boundary can receive an adequate signal. WCAI noted in its initial comments that its Technical Committee was considering possible technical standards to be applied in determining whether an adequate signal can be received at an ITFS receive site, and anticipated providing the Commission with a proposal in these reply comments. Based primarily on the CCIR picture impairment scale, the Technical Committee now recommends that a Grade 3 signal -- one with a carrier to noise ("C/N") ratio of 40 dB measured at the antenna input terminals -- be required at all receive sites outside the PSA for which

---

[25] *See* Heartland Comments, at 11; Hammett & Edison Comments, at 2; Educational Parties Comments, at 20; ATEL Comments, at 14; Coalition Comments, at 14. The only exception is HITN, which proposes that the Commission protect only those ITFS receive sites within the PSA of the station in order to avoid "a hodgepodge of interference requests that will stymie the entire processing scheme." HITN Comments, at 10. While WCAI certainly does not advocate any interference protection scheme that would slow the processing line to a crawl, adoption of the proposal to require proof of adequate service to those receive sites outside the PSA should not overly burden the recently-expanded ITFS processing staff.

interference protection is requested.[26] By requiring the submission of technical support that those receive sites outside the PSA definition can achieve at least a 40 dB C/N ratio, the Commission can assure that receive sites are not being added to improperly establish eligibility, comparative standing or increase interference protection.

D. The Commission Should Not Afford Interference Protection To ITFS Receive Sites That Are Merely "Interested" In Possibly Receiving Programming.

In the *FNPRM* the Commission sought comment on an all too common problem -- schools listed as receive sites in some applications have subsequently informed the Commission that they never agreed to participate in the proposed ITFS system.[27] As WCAI noted in its initial comments, the false specification of receive sites can result in applications being declared mutually exclusive when they are not, or in the preclusion of future services in nearby markets.[28] To prevent such occurrences, WCAI proposed to require that each applicant 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.[29]

---

[26]In its initial comments, WCAI suggested that, while its Technical Committee was exploring the issue, the appropriate standard might be a 45 dB C/N ratio. *See* WCAI Comments, at 38. Upon analysis by the Technical Committee and after consultation with ITFS licensees, it appears that a lower quality picture -- one with a C/N ratio of 40 dB -- may be sufficient for use at distant receive sites.

[27]*See FNPRM*, 9 FCC Rcd at 3353.

[28]*See* WCAI Comments, at 22-23.

[29]*See id.*

WCAI is certainly sensitive to the concern expressed by the Educational Parties that such a requirement will impose additional paperwork burdens on ITFS applicants. WCAI agrees with the Educational Parties that listing receive sites in an application constitutes a representation that the receive sites have been contacted and have agreed to participate or, in the alternative, are under the jurisdiction of some authority that can mandate their participation. Nonetheless, the large number of false certifications of receive sites being filed with the Commission indicates that the current rules are not working. Something more must be done, even if it imposes some additional paperwork burden on applicants.

What must not be done is adoption of RuralVision's proposed variation. RuralVision would have the Commission validate a receive site for all regulatory purposes, even if the receive site is unwilling to commit to utilizing the proposed programming in classes and merely expresses that it is "interested" in receiving that programming.[30] That proposal is, in a word, absurd. It simply defies logic to contend that service by a prospective ITFS applicant should be precluded because the facilities to be proposed by that prospective ITFS applicant cannot protect a receive site that may or may not actually use ITFS programming. Until a receive site is willing to commit to utilizing at least some of the proposed programming, it should not be entitled to protection.[31]

---

[30] *See* RuralVision Comments, at 15-16.

[31] Of course, even receive sites that are not registered with the Commission can receive programming, so a school interested in viewing programming for evaluation purposes can be served pending a commitment by that school to utilize the programming.

E. The Commission Should Not Unnecessarily Delay The First Filing Window.

In its comments, Hardin & Associates, Inc. suggests that, should the Commission adopt a filing window system, it announce the first filing window 150 to 180 days in advance of opening that window.[32] WCAI respectfully disagrees; rather, WCAI believes that sixty days' advance notice is ample.

Simply stated, the freeze on applications for new ITFS stations should be lifted as quickly as possible so that the many wireless cable systems that today lack sufficient channel capacity to be fully competitive with cable can expand their offerings to the public. When the Commission adopted the current A/B cut-off system for ITFS applications, it expressly recognized that sixty days advance notice was ample time for the preparation of an ITFS application and that "a longer period for filing applications is not justified."[33] The same holds true today. If the Commission gives at least sixty days advance notice of the opening of the first filing window, it will provide interested parties ample time to prepare and submit applications for new ITFS facilities. Indeed, WCAI believes that since potential ITFS applicants have long been on notice that the freeze would be short-lived, huge numbers of applications for new ITFS stations are already in preparation for submission once the first filing window is announced.

---

[32] *See* Hardin Comments, at 1.

[33] *Amendment of Part 74 of the Commission's Rules and Regulation in Regard to the Instructional Television Fixed Service*, 101 F.C.C.2d 50, 74 (1985).

F. The Commission Should Not Restrict PSA Applicability In A Manner That Promotes Speculation And Greenmail.

Given that RuralVision has consistently sponsored ITFS applications proposing stations designed to squeeze as close to other wireless cable systems as the Commission's rules will allow, it is not surprising that RuralVision has proposed two unacceptable modifications to the rules and policies governing the protection of ITFS stations.

First, RuralVision would have the Commission deny protection to an ITFS station's PSA "where only inconsequential interference is predicted to an existing station."[34] The short answer to RuralVision is that a *de minimis* exception to the PSA rule already has been considered and rejected earlier this year.[35] That decision was clearly a correct one, for it would be an inefficient use of scarce staff resources to referee disputes among applicants as to what constitutes *de minimis* interference. Presumably, if interference is predicted that is truly inconsequential, the affected licensee or applicant will not oppose the newcomer's proposal.

Second, RuralVision has proposed to deny an ITFS licensee protection to any portion of its PSA that is terrain blocked from the transmitter.[36] What RuralVision conveniently ignores is that Section 74.985 of the Commission Rules authorizes the use of on-channel repeaters to serve areas within the PSA that cannot be served from the primary transmitter

---

[34] RuralVision Comments, at 11.

[35] *See Family Entertainment Network, Inc.*, 9 FCC Rcd 566, 567-68 (1994).

[36] *See* RuralVision Comments, at 14.

due to terrain blockage. Thus, even those areas with the PSA that suffer terrain blockage from the primary transmitter can be served by an ITFS station and should not be denied protection from harmful interference from a newcomer.

G. The Rules And Policies Governing The Cut-Off Of Applications By Commercial Entities For ITFS Channels Should Not Unduly Hamper The Ability Of Wireless Cable Operators To Secure Necessary Spectrum.

As the Commission has recognized, "wireless cable operators endeavoring to compete with wired cable systems, whose number of channels often exceeds 50, must have access to as many of the available 32 or 33 ITFS and MMDS channels as possible in a given market."[37] Recognizing the difficulties wireless cable operators face in accumulating the critical mass of channels necessary to compete with cable where local demand for ITFS is weak, the Commission in 1991 authorized wireless cable operators to secure commercial licenses for unused ITFS channels.[38]

Under Section 74.991(a) of the Commission's Rules, a wireless cable operator applying for ITFS channels is currently subject to the A/B cut-off rule applicable to all ITFS applications. In the *Notice of Proposed Rulemaking* commencing this proceeding, the

---

[37] *Amendment of Part 74 of the Commission's Rules Governing Use of the Frequencies in the Instructional Television Fixed Service*, 9 FCC Rcd 3360, 3364 (1994).

[38] *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 Affecting: Private Operational Fixed Service, Multipoint Distribution Service, Multichannel Multipoint Distribution Service, Instructional Television Fixed Service and Cable Television Relay Service*, 6 FCC Rcd 6792 (1991).

Commission proposed to apply the window filing procedure to all ITFS applications, including those by wireless cable operators proposing commercial use of ITFS spectrum.[39]

The Educational Parties argue, however, that while the Commission should adopt a filing window system for ITFS applications submitted by educational entities, the Commission should retain the A/B cut-off system for applications filed by wireless cable operators. According to the Educational Parties, such an approach must be retained to assure ITFS applicants "notice and opportunity to file."[40] WCAI disagrees.

Under the filing window approach advocated by the Commission for both commercial and non-commercial ITFS applications, prospective ITFS applicants will have ample notice and opportunity to file, for they will be apprised at least sixty days in advance of any upcoming ITFS filing window -- the same amount of time ITFS licensees have to respond to A cut-off lists. Moreover, prospective ITFS applicants have been on notice for three years of the possibility for commercial ITFS use.[41]

Significantly, it must be remembered that the A/B cut-off rule is just one of many rules and policies designed to assure the primacy of the ITFS channels for educational use. Most

---

[39] *See Amendment of Part 74 of the Commission's Rules With Regard to the Instructional Television Fixed Service*, 8 FCC Rcd 1275, 1277 n. 14. (1993).

[40] Educational Parties Comments, at 10.

[41] Under Section 74.991 of the Commission's Rules, an applicant for commercial use of ITFS spectrum is required to publish local notice within thirty days of filing its application. WCAI would not object were the Commission to require a wireless cable operator to publish local notice prior to filing, so long as the notice requirement is tailored so as to provide the wireless cable operator a fair and reasonable opportunity to place local notices after a given window is announced.

importantly for present purposes, the rules limit commercial entities to just eight of the twenty ITFS channels in a market and require the commercial entity to demonstrate that, even after grant of its application(s), eight unused channels will continue to be available for future educational use.[42] Thus, even an ITFS applicant that sleeps through all of the Commission's prior warnings still cannot be precluded from securing ITFS spectrum by use of the filing window system to govern applications for commercial use of ITFS spectrum.

If the Commission chooses to reverse the course announced in the *NPRM* and retain an A/B cut-off approach for commercial ITFS applications, then the Commission must start doing a better job of publishing cut-off lists and processing commercial ITFS applications. In the almost three years since the Commission first began accepting applications proposing commercial use of ITFS spectrum, it has released just three A cut-off lists and has generally been slow to process commercial ITFS applications. As a result, applications for critical spectrum have languished and wireless cable operators have been unable to meet the public demand for additional services.

WCAI recognizes that, in large part, this has been the result of difficulties in coordinating the processing of such applications between the Common Carrier Bureau and the Mass Media Bureau -- difficulties that should be resolved now that jurisdiction over all wireless cable application functions has been transferred to the Mass Media Bureau.[43] WCAI

---

[42] *See* 47 C.F.R. 74.990 (1993).

[43] While WCAI is hopeful that the consolidation of responsibility in the Mass Media Bureau will result in more timely processing of commercial ITFS applications, the experience to date (continued...)

trusts that if the Commission decides to retain the inefficient A/B cut-off system for commercial ITFS applications, it will devote additional staff resources to those applications so that wireless cable operators and the public will not suffer as a result.

H. The Commission Should Permit Leases Of Excess ITFS Capacity To Extend For A Period Of Fifteen Years, Subject To License Renewal.

CAI and the Coalition both urge the Commission to permit leases of excess ITFS capacity to extend for a period beyond the current ten year limitation.[44] While WCAI believes that CAI's call for leases of unlimited duration may be excessive, the time is certainly right to permit leases of fifteen years, subject to renewal of the license.

The Commission-mandated brief duration of ITFS leases significantly hampers the ability of a wireless cable operator to raise the funds necessary to construct facilities with useful lives far in excess of ten years. Most prospective debt and equity investors in the wireless cable industry have experience with the cable industry and are both familiar and comfortable with cable's typical fifteen-year franchise requirement. By affording ITFS licensees the flexibility to enter into fifteen-year leases, subject to license renewal, the Commission will place wireless cable on a more equal footing with its cable brethren in the eyes of potential investors. Yet, the relatively brief, additional five-year lease period will not

---

[43](...continued)
has not been positive. Although the staff has already released one A cut-off list for applications proposing modifications to traditional ITFS stations since the freeze on major modification applications was lifted this summer, it has yet to place any applications for modification of commercial ITFS facilities on an A cut-off list. It is just this sort of disparate processing treatment of commercial ITFS applications that must be eliminated.

[44]*See* CAI Comments, at 8-11; Coalition Comments, at 19.