

receive interference protection for the particular site in question.⁹⁰ Central Texas advocates that the Commission not authorize new receive sites for applicants unless they have already placed their facilities into operation. It alleges that such a restriction would deter parties from abusively applying for receive sites solely to prevent legitimate operators from expanding.⁹¹

58. Our second proposal, regarding basic eligibility through receive sites located more than 35 miles from the transmitter, was directly addressed by only two commenters. Vermont Wireless expresses its support for the proposal as put forth in the Further Notice.⁹² RuralVision, however, advocates not allowing an applicant to use such a receive site to establish its basic eligibility unless it has demonstrated that it can adequately serve that site. The commenter also supports a similar requirement for receive sites that are used for tie-breaking purposes.⁹³

59. Discussion. With regard to the 35-mile proposal, we acknowledge the concerns of some commenters that educators may at times serve receive sites beyond the proposed boundary. We also acknowledge RuralVision's statement that schools in rural areas are frequently more than 35 miles apart. It is true that an educator might indeed be able to serve two sites more than 35 miles apart. In fact, however, under the proposed rule, a licensee could protect two receive sites that were as far as 70 miles apart, depending on the location of the transmitter. Thus, we find that the 35-mile standard is not unduly restrictive, and we adopt the proposal as it regards both interference protection and basic eligibility for receive sites not more than 35 miles from the transmitter. However, we will waive the rule for a particular site if an applicant can demonstrate that it is located within the educator's reasonable coverage area.

60. We next address an issue raised by one of the commenters in relation to the four-channel rule: how to justify defining a service area as 35 miles in one context, and 20 miles in another. Significantly, the two rules have differing purposes. The four-channel rule addresses the facility's general service area, i.e., the area within which an educator can reasonably expect the substantial majority of its receive sites to be located. In contrast, our receive site interference rules concern a different and much smaller set: only the farthest sites that an educator generally and reasonably can expect to be protected. By definition, they involve more distant sites, and therefore a larger area that subsumes the general service area. Accordingly, the mileage standard is greater for the receive site interference protection rule than for the four-channel rule. As the purposes of the two rules are unrelated, the standards

⁹⁰ American Telecasting Further Comments at 13-14; Hardin Further Comments at 3; Heartland Further Comments at 11; Educational Parties Further Reply at 5-6.

⁹¹ Central Texas Further Comments at 9.

⁹² Vermont Wireless Further Comments.

⁹³ RuralVision Further Comments at 13.

used to define an area of operation are also unrelated.⁹⁴ Turning to more specific applications of the rule, we decline to adopt Central Texas' proposal not to authorize any new receive site unless the applicant has already placed its facilities into operation. This would place a significant obstacle to an educator and a newly formed wireless cable operator with which it may be associated, as they might lack the funds to fully implement a competitive MDS system.⁹⁵

Major Modifications

61. Proposal. We turn now to our proposal to reclassify certain types of modifications to existing ITFS facilities. As stated in the Further Notice, we have classified these as either major or minor, attaching different procedural rules to each. In the Further Notice, we expressed our belief that our consideration of certain changes as minor does not realistically take into account the impact that they would have on the facilities in question, nearby facilities, or proposed facilities.⁹⁶

62. Consequently, we proposed to reclassify as a major change any application involving: (1) any polarization change; (2) the addition of any receive site that would experience interference from any licensee or applicant on file prior to the submission of the application; (3) an increase in the EIRP in any direction by more than 1.5 dB;⁹⁷ (4) an increase of 25 feet or more in the transmitting antenna height; or (5) any change that would cause interference to any previously proposed application or existing facility. We additionally proposed to formalize our policy of considering proposals to relocate a facility's transmitter site by ten miles or more as a major change. We asked whether, by limiting the opportunity

⁹⁴ We note the similarity to the broadcast multiple-ownership rules in this respect. The duopoly rules are concerned with common station ownership within the same service, and they define an area of operation by use of frequency contours. 47 C.F.R. § 73.3555(a) and (b). In contrast, the one-to-a-market rule addresses common ownership between separate services, television and radio, and its definition of an area of operation is based on commercial markets. 47 C.F.R. § 73.3555(c).

⁹⁵ Hardin and Heartland propose requiring an educator to initiate service to any protected receive site beyond the 35-mile boundary within a specified period of time, in order to prevent abuse. Hardin Further Comments at 3; Heartland Further Comments at 11. However, when we receive the required certification of construction from the ITFS licensee, we expect that it applies to the facilities as authorized, i.e., all receive sites. If, however, an applicant has abandoned its intent to use a receive site, we expect it to inform us in a timely manner. The deletion of a receive site will no longer require prior Commission approval.

⁹⁶ Further Notice at 3352-53.

⁹⁷ Thus, total power output (TPO) would no longer be the deciding factor in determining whether a change is major.

to file the above types of applications to open window filing periods, adoption of the proposal would diminish an educator's flexibility to respond to changing needs and circumstances. We also stated our belief that the change in definitions would make our classification of changes more consistent, enhancing the efficiency of the window filing system. Finally, we proposed to exempt from the new rule any change that would resolve mutually exclusive applications without creating new frequency conflicts.⁹⁸

63. Comments. Most of the commenters that addressed this issue generally supported the proposal. HITN and the Educational Parties, however, did not support the proposal, stating that the changes would slow the licensing process because currently-permitted modifications would have to be filed during a window. The Educational Parties oppose making polarization changes that eliminate interference as a major change. Many of the commenters who supported the reclassifying of amendments suggested that we adopt the rules contained in Sections 21.41 and 21.42 of the Commission's MDS rules, 47 C.F.R. §§ 21.41, 21.42. The supporting comments assert that the adoption of the MDS modification rules would be desirable, due to the technical and regulatory relationship that exists between the two services.

64. Discussion. Our experience, as supported by many of the comments, warrants the need to modify the current classification system to increase processing efficiency. We do not believe that the reclassification of certain amendments as major will diminish processing efficiency, as claimed by HITN and the Educational Parties. These amendments are being reclassified precisely because their submission outside a window would likely impede processing, due to their potential effect on the facilities in question, nearby facilities, or proposed facilities. Also, adoption of the MDS classification system would not be appropriate. Its definition of a major change is significantly broader than that previously used or now adopted for ITFS. However, the MDS rolling one-day filing window is structured to accommodate such an expansive definition, and it does not significantly restrict the submission of applications to change existing facilities. The ITFS window filing system, on the other hand, is not compatible with such an expansive classification that would needlessly restrict the filing of many ITFS technical modifications. Thus, we shall classify as major any application involving: (1) any polarization change; (2) an increase in the EIRP in any direction by more than 1.5 dB; (3) an increase of 25 feet or more in the transmitting antenna height; and (4) relocation of a facility's transmitter site by ten miles or more. We shall, however, accept such applications at any time, if their grant would resolve mutually exclusive applications without creating new conflicts. Adoption of the proposal will significantly expedite the processing of ITFS applications.

65. We do not incorporate into the new rule two types of changes that we had earlier listed: (1) the addition of any receive site that would experience interference from any

⁹⁸ Section 22.23(g)(2) of the Commission's Rules, 47 C.F.R. § 22.23(g)(2), has a similar exception for the resolution of mutually exclusive applications in the Public Mobile Service.

licensee or applicant on file prior to the submission of the application; and (2) any change that would cause interference to any previously proposed application or existing facility. By eliminating the cut-off system, the window filing system will prevent parties from requesting changes that are mutually exclusive with a tendered but not yet cut-off application.

Reasonable Assurance of Receive Sites

66. Proposal. The Further Notice requested comment on how best to ensure the accuracy of each applicant's list of receive sites. We seek to deter applicants from listing receive sites that have in fact not agreed to participate in the proposed ITFS system. We therefore proposed requiring a letter of assurance from the applicant, listing each receive site's contact person, title, and telephone number. We also asked if we should decline to consider any proposed receive site that lacked such adequate assurance.⁹⁹

67. Comments. ACS supports the proposal, stating that the applicant's letter should also contain other information. For example, if an applicant is relying on the accreditation of its receive sites for its basic eligibility, the letter should supply supporting accreditation information. According to ACS, the letter could also contain enrollment information for potential tie-breaking purposes.¹⁰⁰ RuralVision proposes that a school district submit one letter for all the schools within its jurisdiction, listing each school individually. However, RuralVision claims that schools may be more hesitant to sign a letter that they fear will lock them into a commitment, thereby causing them to miss the opportunity to receive ITFS programming. Thus, it proposes that a school be allowed to assert simply its interest in, not necessarily its commitment to, participating in the ITFS system.¹⁰¹ In this regard, it alleges that the Commission's Rules would continue to protect the receive site's right to change its mind as to its participation, regardless of the letter's wording.¹⁰² North American Catholic advocates the same standard, but applied only to businesses, libraries, and other institutions not relevant to eligibility or tie-breaking.¹⁰³ WCA opposes altogether the modified standard proposed by RuralVision, focusing instead on receive site interference protection. According to the commenter, the public interest would be disserved if the Commission precluded an

⁹⁹ Further Notice at 3353.

¹⁰⁰ ACS Further Comments at 17-18. North American Catholic, which would impose a stricter rule than proposed, agrees that the letter should contain such additional data. North American Catholic Further Reply at 3.

¹⁰¹ North American Catholic supports this modified standard, but only for libraries and businesses. North American Catholic Further Reply at 3.

¹⁰² RuralVision Further Comments at 15-16.

¹⁰³ North American Catholic Further Reply at 3.

applicant's potential service solely to protect a receive site that might not even use ITFS programming.¹⁰⁴

68. Most interested commenters support a stricter requirement than we proposed. They argue that for adequate deterrence, we should require a verification letter from an authorized official of each receive site listed in an application.¹⁰⁵ Most of these commenters generally envision each letter to contain the information described in the Further Notice: the receive sites' contact people, titles, and telephone numbers.¹⁰⁶ WCA, for example, avers that the letter should confirm that formal educational programming will be viewed at the receive site by students enrolled in for-credit courses offered by a specifically identified accredited institution. For each such institution, WCA adds, the application should provide the accrediting body and date of accreditation.¹⁰⁷

69. Only two commenters oppose the proposal in any form. HITN claims that the requirement would be superfluous, because nonlocal applicants already have to submit commitment letters on accredited school letterhead, showing the school's commitment to be a receive site.¹⁰⁸ The Educational Parties contend that compiling a single list would impose an undue paperwork burden on applicants. Instead, they argue, the Commission should declare that it considers the listing of receive sites as a representation that those sites have been contacted and have agreed to participate, or, in the alternative, are under the jurisdiction of an authority that can mandate their participation. Under this proposal, petitioners would bear the burden of demonstrating otherwise. The commenter states that many receive sites are work places or public locations (such as libraries or hospitals) whose participation consists only of installing ITFS equipment and letting people watch, instead of formally committing to incorporate ITFS into instructional or educational programs.¹⁰⁹

¹⁰⁴ WCA Further Reply at 14-15.

¹⁰⁵ American Telecasting Further Comments at 13-14; Central Texas Further Comments at 9-10; Hardin Further Comments at 1; National Micro Vision Further Comments at 3; RuralVision Further Comments at 14-17; WCA Further Comments at 36-37; North American Catholic Further Reply at 3.

¹⁰⁶ National Micro Vision also proposes that we develop a tracking system to verify that each receive site is actually utilized as pledged. National Micro Vision Further Comments at 3. We believe that the rules we are adopting today provide adequate safeguards against potential fraud to make such a precaution unnecessary.

¹⁰⁷ WCA Further Comments at 36-37.

¹⁰⁸ HITN Further Comments at 5.

¹⁰⁹ Educational Parties Further Comments at 22-23.

70. Discussion. To better ensure the accuracy of receive site lists submitted both by local and nonlocal applicants, we adopt a modified version of the proposal. Because the submission of commitment letters by nonlocal applicants does not encompass all the situations with which we are concerned, we reject HITN's assertion that the proposal is superfluous. Processing efficiency will be enhanced because the additional data would allow for rapid confirmation of a site's participation. However, requiring a separate letter of verification from each receive site would involve the submission of not one letter, but potentially dozens of separate letters. We believe, though, that we can expedite processing to the same degree through the application form itself, rather than by separate attachments. Therefore, on the application form, where we already ask for information about each of the applicant's receive sites, we shall simply add a column asking for a contact person's name, title, and telephone number. The contact person should be the person (or one of the people) responsible for implementation of the ITFS program at that receive site.

71. We also will not adopt the modified standard of assurance suggested by RuralVision. Our goal is to ensure the availability of the receive sites that are associated with the applications being processed. The public interest is not served by the processing of applications in which we have no reasonable assurance that the receive sites have indeed agreed to participate in the ITFS system.

Accreditation of Applicants

72. Proposal. While applicants seeking to construct a new ITFS station must indicate their accreditation or that of the schools or other institutions that intend to utilize the proposed ITFS service, we noted in the Further Notice that the extent to which the specified receive sites are being utilized by students from accredited institutions is not called for. Accordingly, we proposed to require applicants to state whether and by whom each listed receive site is accredited. We also asked whether having only one proposed receive site out of many as accredited defeats the fundamental purpose of ITFS: to serve the educational needs of accredited institutions. Thus, we invited commenters to address whether we should require a majority of receive sites to be accredited in order for the application to be grantable, or if we should deny interference protection for any unaccredited receive site.¹¹⁰

73. Comments. The proposed changes are generally opposed by the commenters. Many of them argue that receive sites are increasingly being used for distance learning without regard to whether they are accredited. According to these commenters, such distance learning gives more people, including students enrolled in accredited courses, greater access to the educational programming transmitted by the ITFS facilities.¹¹¹ CSU Northridge, for

¹¹⁰ Further Notice at 3353-54.

¹¹¹ E.g., ACS Further Comments at 18; Educational Parties Further Comments at 23-24; American Telecasting Further Comments at 14-15; WCA Further Comments at 34-36; North

example, claims that it utilizes hospitals, fire stations, and military bases as receive sites where students go for distance learning.¹¹² Also, RuralVision argues that because some states have higher fees than others for private accreditation of schools, mandatory accreditation of receive sites would unfairly deprive many smaller private schools of the opportunity to receive educational programming.¹¹³

74. According to HITN, the purpose of ITFS is not to serve the educational needs of accredited institutions, as we stated in the Further Notice, but simply to educate. Thus, as long as one of the applicant's receive sites is accredited, the commenter continues, the accreditation of any of the others is irrelevant.¹¹⁴ The Educational Parties propose that as long as the party offering the programming (not necessarily the licensee) is accredited, offers credit for some of its programming, and enrolls students that are able to take courses at listed receive sites, the accreditation of those receive sites is irrelevant.¹¹⁵ Even those commenters that do not oppose obtaining more detailed accreditation information urge the Commission not to use such information to affect the substantive rights an applicant or licensee might have.¹¹⁶ ACS, for example, alleges that the Commission can address its concerns regarding receive site legitimacy through the proposed letters of assurance, discussed above.¹¹⁷ Finally, WCA advocates the existing standard, i.e., that the only receive sites that should have interference protection are those where formal educational programming is viewed by students enrolled in for-credit courses offered by accredited institutions.¹¹⁸

75. Discussion. The record does not demonstrate that serving one accredited receive site among other unaccredited receive sites is incompatible with serving the formal, for-credit educational needs of students enrolled at accredited institutions, and we therefore decline to adopt either proposal. To do otherwise would artificially restrict those enrolled students' accessibility to formal ITFS educational programming, while depriving others of worthwhile programming, such as in-service training and instruction in special skills and safety programs. As most commenters note, while the essential purpose of the ITFS service is

American Catholic Further Comments at 6-7.

¹¹² CSU Northridge Further Comments at 2.

¹¹³ RuralVision Further Comments at 17-18.

¹¹⁴ HITN Further Comments at 10-11.

¹¹⁵ Educational Parties Further Comments at 23-24.

¹¹⁶ ACS Further Comments at 18; American Telecasting Further Comments at 14-15.

¹¹⁷ ACS Further Comments at 18.

¹¹⁸ WCA Further Comments at 34-36.

to provide formal educational programming to students enrolled in accredited schools, colleges and universities, the Commission has long recognized the value of transmitting "other visual and aural educational, instructional and cultural material to selected receiving locations. . ." 47 C.F.R. § 74.931(a)-(b). We find no evidence on the record that persuades us to now significantly alter the existing relationship between the provision of formal, for-credit educational ITFS programming and the offering of other educational, instructional, and cultural material. Indeed, we reaffirm our commitment to our longstanding objective, one that permits ITFS licensees to transmit educational and cultural programs for use in other than a classroom setting or to persons other than students enrolled at accredited institutions. However, we take this opportunity to modify and make clearer our requirements regarding the need for further specification with respect to the accreditation of the parties utilizing the proposed ITFS services.

76. To attain eligibility, an ITFS applicant must, among other things, be accredited in its own right and serve its own students or serve accredited institutional or governmental organizations. It has come to our attention that some applicants accredited in their own right propose service only to receive sites which will not be used by their own students. Such applicants do not satisfy the eligibility requirements. They must, therefore, as Item 3 of Section II in the FCC Form 330 now requires, indicate the name of the "school/institution" it will serve, the accreditation date and the accrediting agency or organization. However, we have found, in processing applications, that the name of the school or institution often does not match with any receive site specified in Section VI of the Form 330. For ease of processing, we shall require, for applicants accredited in their own right and serving their own students, to identify in Section II, Item 3(a), the receive sites in Section VI which fall under their jurisdiction. For other applicants, that is, those which are accredited and not serving their own students and those applicants which are unaccredited and establishing their eligibility by serving accredited institutions, we shall require that they specify in Section II, Item 3(b), the receive sites belonging to or being used by the accredited institution. This additional information will enable the staff and all interested parties to immediately determine the accreditation status of an applicant.

Other Proposals

77. Offset. The Further Notice proposed requiring the use of offset when all affected transmitters are capable of handling frequency offset stability requirements. This proposal is supported by most of the commenters. However, we believe that voluntary agreements to utilize frequency offsets better serve the public interest. The use of frequency offsets represents a balancing of the need to prevent co-channel interference with our desire to allow an increase in the number of stations in a geographic area. As such, frequency offsets are not a substitute for the standard of interference protection, a desired-to-undesired signal ratio of 45dB, that our technical rules are designed to ensure. Indeed, the efficacy of frequency offsets, which is not universally acclaimed by the engineering society, is largely determined by the exigencies of the situation at hand, requiring affected applicants and licensees to engage in cooperative efforts to construct and adjust their respective technical

operations to successfully avail themselves of this engineering technique, if possible. Under these circumstances, we are not persuaded to require the mandatory specification of frequency offsets.

78. Expedited Consideration of Applications. In the Further Notice, we asked for comments on the Educational Parties and WCA's proposal that we expedite consideration of certain ITFS applications in return for the applicant's agreeing to an accelerated construction schedule.¹¹⁹ The stated purpose was to rapidly authorize facilities that would most likely become part of an operating wireless cable system. Most commenters are supportive of the proposal,¹²⁰ although they disagree on the details of its implementation. Opponents of expedited consideration argue that it would not in fact accelerate the construction of viable MDS systems, because processing the likely high number of requests would delay service to the public. We agree. Rapid authorization of ITFS facilities is essential to providing unique educational programming to greater numbers of people, and to accelerating the ability of MDS systems to compete with wired cable operators. The more rapid processing sought by the commenters will likely be achieved by implementation of the filing window, as enhanced by the proposed electronic filing and processing system and the other modifications adopted in this proceeding. Hence, we do not believe that adoption of the commenters' proposal is warranted.

79. FAA Authorization. As mentioned in the Further Notice, we do not grant or modify a license until the Federal Aviation Administration (FAA) has determined that the proposed transmitter site and receive sites will pose no hazard to air navigation.¹²¹ To prevent needless delay in processing applications, we proposed to require applicants to inform the Commission of the FAA's determination.¹²² The record clearly supports our belief that enactment of this policy would speed processing at minimal cost to applicants. Therefore, to expedite processing, we require applicants to inform the Commission of the FAA's determination on a timely basis.

80. Interference Studies. The Further Notice noted that applicants frequently make technical claims that lack adequate supporting data. To address this problem, we proposed requiring 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-

¹¹⁹ Further Notice at 3351. A licensee utilizing offset operates at a frequency either slightly higher or slightly lower than the standard frequency for that channel. Specifically, such a licensee operates its facilities with a carrier frequency within 10 kHz of the nominal carrier frequency.

¹²⁰ The Educational Parties, who originated the proposal, are an exception.

¹²¹ Section 17.4 of the Commission's Rules, 47 C.F.R. § 17.4.

¹²² Further Notice at 3353.

point mode.¹²³ Most of the commenters that addressed this issue generally supported the proposal. In addition, most advocate various exceptions to the rule, allowing the use of less rigorous models under a variety of circumstances.¹²⁴ Two commenters oppose the required use of the Model altogether.¹²⁵

81. Based on the information before us, we shall not adopt the proposal. The record demonstrates that our concern will be met by the submission of any valid profile maps or sufficient data that takes terrain shielding into account and supports the validity of each claim, regardless of whether the study involves the Model. Also, for each instance where terrain shielding is relied upon to protect ITFS facilities, applicants will be required to submit the quantitative amount of signal attenuation, in dB, attributable to terrain shielding. Any study must use generally acceptable engineering practices, and applicants must state the specific model they have used in their analysis.

82. Construction of Facilities. Some commenters express concern that the Commission has extended construction periods for parties with no intention to construct. Hence, they request strict guidelines for granting such extensions. National Micro Vision proposes decreasing the period within which an ITFS licensee must construct its facilities from 18 months to 12 months. The commenter alleges that, if its proposal were adopted, frequency speculators would quickly lose their licenses and their channels would consequently become available during the next window.¹²⁶ In both cases, however, our existing rules already address these matters. We have set forth the requirements an educator must meet in order to obtain an extension of time within which to construct: (1) construction is complete and testing of the facilities has begun; (2) substantial progress has been made; or (3) reasons clearly beyond the applicant's control, which applicant has taken all possible steps to resolve, have prevented construction.¹²⁷ We have no specific evidence that these rules have not operated sufficiently to prevent abuses by frequency speculators. Therefore, we decline to modify the period of time to construct.

¹²³ Longley, A. G. and P. L. Rice, "Prediction of Tropospheric Radio Transmission Loss Over Irregular Terrain: A Computer Method," ESSA Technical Report ERL 79-ITS 67, Institute for Telecommunications Sciences, July, 1968.

¹²⁴ E.g., ACS Further Comments at 17; Educational Parties Further Comments at 22; WCA Further Comments at 43-44; North American Catholic Further Reply at 3.

¹²⁵ North American Catholic Further Comments at 5; National Micro Vision Further Comments at 2-3.

¹²⁶ National Micro Vision Further Comments at 1.

¹²⁷ Section 73.3534(b) of the Commission's Rules, 47 C.F.R. § 73.3534(b), addresses this issue in the television broadcast service. Pursuant to Section 74.910 of the Commission's Rules, 47 C.F.R. § 74.910, we subject unbuilt ITFS facilities to the same requirements.

CONCLUSION

83. Over the past decade, the Commission has actively endeavored to find new and innovative ways to encourage educational institutions to develop working ITFS systems. At the same time, we have sought to facilitate the rapid development of robust wireless cable systems that can vigorously compete in the rapidly expanding video marketplace. The substantial increase in the number of tendered ITFS applications over the past several years¹²⁸ demonstrates that our policies regarding excess capacity leases have effectively served both goals. The window filing system and the other changes we have adopted today represent further steps that will encourage and allow both ITFS and MDS to reach their full potential.¹²⁹

ADMINISTRATIVE MATTERS

A. Regulatory Flexibility Analysis

84. The Commission's Final Regulatory Flexibility Analysis for this Report and Order is set forth in Appendix A.

B. Ordering Clause

85. IT IS ORDERED that this Report and Order IS ADOPTED.

86. IT IS FURTHER ORDERED that, pursuant to authority contained in Sections 4(i) and 303 of the Communications Act of 1934, as amended, 47 C.F.R. § 74 IS AMENDED as set forth in Appendix B. The change to the rules adopted in this Report and Order will become effective thirty (30) days from the date of publication in the Federal Register.¹³⁰

¹²⁸ See Notice at 1276.

¹²⁹ Until the effective date of this order, we will continue the present filing restrictions in effect and accept applications for major changes to existing ITFS facilities and applications relying on NTIA funding.

¹³⁰ The staff is also directed to revise appropriately FCC Form 330 to effectuate the modifications approved in this Report and Order.

87. IT IS FURTHER ORDERED that MM Docket No. 93-24 IS TERMINATED.

FEDERAL COMMUNICATIONS COMMISSION


William F. Caton
Secretary

APPENDIX A

A. List of Commenters

COMMENTS

ACS Enterprises, Inc., Cablemaxx, Inc., Multimedia Development Corp., Rapid Choice TV, Inc., Superchannels of Las Vegas, Inc., and Wireless Holdings, Inc.
American Council on Education, Arizona Board of Regents for Benefit of the University of Arizona, California State University - Sacramento, Instructional Telecommunications Consortium of the American Association of Community Colleges, Kirkwood Community College, South Carolina Educational Television Commission, St. Louis Regional Educational and Public Television Commission, State of Wisconsin - Educational Communications Board, University of Maine System, University of Wisconsin System, and University System of the Ana G. Mendez Educational Foundation
American Telecasting, Inc.
CAI Wireless Systems, Inc.
California State University, Northridge
Central Texas Wireless TV, Inc.
Hardin and Associates, Inc.
Heartland Wireless Communications, Inc.
Hispanic Information and Telecommunications Network, Inc.
National Micro Vision Systems, Inc.
North American Catholic Educational Programming Foundation, Inc., Network For Instructional TV, Inc., and Shekinah Network
Pioneer Telephone Cooperative, Inc.
RuralVision South, Inc. and RuralVision Central, Inc.
Vermont Wireless Co-operative
Wireless Cable Association International, Inc.

REPLY COMMENTS

ACS Enterprises, Inc., Cablemaxx, Inc., Multimedia Development Corp., Rapid Choice TV, Inc., Superchannels of Las Vegas, Inc., and Wireless Holdings, Inc.
American Council on Education, Arizona Board of Regents for Benefit of the University of Arizona, California State University - Sacramento, Instructional Telecommunications Consortium of the American Association of Community Colleges, Kirkwood Community College, South Carolina Educational Television Commission, St. Louis Regional Educational and Public Television Commission, State of Wisconsin - Educational Communications Board, University of Maine System, University of Wisconsin System, and University System of the Ana G. Mendez Educational Foundation
American Telecasting, Inc.
Hardin and Associates, Inc.

American Telecasting, Inc.
Hardin and Associates, Inc.
Heartland Wireless Communications, Inc.
North American Catholic Educational Programming Foundation, Inc., Network For
Instructional TV, Inc., and Shekinah Network
United States Interactive and Microwave Television Association
United States Wireless Cable, Inc.
Wireless Cable Association International, Inc.
Wireless Holdings, Inc.

INFORMAL REPLY COMMENTS

Hammett & Edison, Inc.

B. Final Regulatory Flexibility Analysis

Pursuant to the Regulatory Flexibility Act of 1980, the Commission's final analysis is as follows:

1. Need and purpose of this action: The actions taken in this Report and Order are intended to improve ITFS and wireless cable service by making the regulations that govern applying for a new or modified ITFS facility consistent with the continuing evolution of the telecommunications industry.
2. Summary of issues raised by comments in response to the Initial regulatory Flexibility Analysis: No comments were received in response to the Initial Regulatory Flexibility Analysis.
3. Significant alternatives considered and rejected: We considered both maintaining the existing cut-off system and excluding applicants not leasing their excess capacity from the window requirements, before adopting the policies and rules set forth in this Report and Order. The first option would require duplicative processing of applications and would not allow the Commission to control the flow of applications, thereby continuing the significant applications backlog. The second option would be difficult to enforce and, if successfully enforced, would impose unacceptable burdens on educational institutions. We also considered detailed financial disclosure requirements, application caps, technical requirements to determine four-channel limitations, and a continued separation between receive site interference protection and distance from the transmitter. Adoption of these options would diminish processing efficiency or otherwise impede the continued growth of MDS and ITFS systems.

APPENDIX B

Rules

Part 74 of Title 47 of the Code of Federal Regulations is amended to read as follows:

PART 74 -- EXPERIMENTAL, AUXILIARY, AND SPECIAL BROADCAST DISTRIBUTION SERVICES

1. The Authority Citation for Part 74 continues to read as follows:

AUTHORITY: Secs. 4, 303, 48 Stat. 1066, as amended, 1082, as amended; 47 U.S.C. 154, 303, unless otherwise noted. Interpret or apply secs. 301, 303, 307, 48 Stat. 1081, 1082, as amended, 1083, as amended; 47 U.S.C. 301, 303, 307.

2. Section 74.902 is amended by revising paragraph (d) to read as follows:

§ 74.902 Frequency assignments

* * *

(d) A licensee is limited to the assignment of no more than four channels for use in a single area of operation, all of which should be selected from the same Group listed in paragraph (a) of this section. An area of operation is defined as the area 20 miles or less from the ITFS transmitter. * * *

3. Section 74.903 is amended by adding a new paragraph (a)(5), by adding a final sentence to paragraph (e), and by adding a new paragraph (f) to read as follows:

§ 74.903 Interference

(a) * * *

(5) No receive site more than 35 miles from the transmitter shall be entitled to interference protection.

* * *

(e) * * * Such protection shall be applied solely with regard to applications filed subsequent to the request for a protected service area.

(f) With respect to protected service area proposals, two applications will be regarded as mutually exclusive if they are: (1) submitted during the same filing window; (2) otherwise

grantable; and (3) mutually exclusive only because either or both applicants request a protected service area. However, if an applicant in such a situation shows that the resulting interference would occur solely over water, the applications will not be considered to be mutually exclusive.

4. Section 74.910 is amended to read as follows:

§ 74.910 Part 73 application requirements pertaining to ITFS stations.

The following rules are applicable to ITFS stations.

[The following text is deleted] 73.3564 (a), (b) Acceptance of applications.

[The following text is added] 73.3597(c)(2) Procedures on transfer and assignment applications.

5. Section 74.911 is revised by amending paragraph (a)(1), and by revising paragraph (c) in its entirety, to read as follows:

§ 74.911 Processing of ITFS station applications

(a) * * *

(1) In the first group are applications for new stations or major changes in the facilities of authorized stations. These applications are subject to the provisions of paragraph (c) of this section. A major change for an ITFS station will be any proposal to add new channels, change from one channel (or channel group) to another, change polarization, increase the EIRP in any direction by more than 1.5dB, increase the transmitting antenna height by 25 feet or more, or relocate a facility's transmitter site by 10 miles or more. However, the Commission may, within 15 days after the acceptance of an application, or 15 days after the acceptance of any other application for modification of facilities, advise the applicant that such application is considered to be one for a major change, and subject to the provisions of paragraph (c) of this section.

* * *

(c) New and major change applications for ITFS stations will be accepted only on dates specified by the Commission. Filing periods will be designated by the Commission in a

Public Notice, to be released not fewer than 60 days before the commencement of the filing period. Qualified parties will have no fewer than 5 business days within which to submit their applications. After termination of the filing period, the Commission shall release a Public Notice with a list of applications filed in the window and provide no fewer than 30 days for the submission of petitions to deny. Uncontested applications that are not mutually exclusive with any other application or licensed facility, and are found to be acceptable, shall be granted. Mutually exclusive applications shall be evaluated pursuant to the comparative selection process set forth in § 74.913 of this part, as herein amended.

(1) The requirements of this section apply to a wireless cable entity requesting to be licensed on ITFS frequency pursuant to Section 74.990. The application of such a wireless cable entity shall be included in the Public Notice released after the termination of the filing period.

6. Section 74.913 is amended by replacing the first sentence of paragraph (d)(1), and adding a new paragraph (d)(5), to read as follows:

§ 74.913 Selection procedure for mutually exclusive applications

* * *

(d) * * *

(1) Enrollment will be considered as of the last date of the filing window during which the applications were filed, as provided by § 74.911(c) of this part. * * *

* * *

(5) A receive site not receiving interference protection may not be utilized by an applicant for tie-breaking purposes.

7. Section 74.932 is amended by adding a new subsection (e), to read as follows:

§ 74.932 Eligibility and licensing requirements

* * *

(e) No receive site more than 35 miles from the transmitter site shall be used to establish basic eligibility.

8. Section 74.991 is amended to revise the final two sentences of paragraph (a) to read as follows:

§ 74.991 Wireless cable application procedures

(a) * * * A wireless cable application for available instructional television fixed service channels will be subject to § 21.914 of this chapter with respect to other wireless cable applicants, and to the ITFS window filing period with respect to instructional television fixed service applications. All lists of accepted applications for ITFS frequencies, regardless of the nature of the applicant, will be published as ITFS public notices.