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FEDERAL COMMUNICATIONS COMMISSION
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July 11, 1995

Via Hand Delivery

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

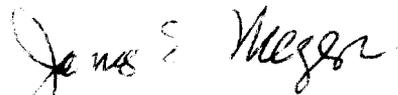
Re: Reply Comments of Erwin Aguayo, Jr.
WT Docket No. 95-47
RM-8476

Dear Mr. Caton:

Transmitted herewith on behalf of Erwin Aguayo, Jr. are an original and five copies of his Reply Comments in the above-referenced proceeding.

Should you have any questions, please contact the undersigned.

Very truly yours,



James E. Meyers
Counsel for Erwin Aguayo, Jr.

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WASHINGTON, DC 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)
)
Amendment of Part 95 of the)
Commission's Rules to allow)
Interactive Video and Data)
Service licensees to provide)
mobile service to subscribers)

WT Docket No. 95-47

RM-8476

REPLY COMMENTS OF ERWIN AGUAYO, JR.

I. INTRODUCTION

Erwin Aguayo, Jr. ("Aguayo"), through undersigned counsel, submits these reply comments in the above-captioned proceeding. The record supports the Commission's proposal. In providing IVDS service, licensees should be allowed to operate fixed, itinerant and mobile RTUs.

II. ALL RTUs (INCLUDING MOBILE) SHOULD OPERATE AT UP TO 20 WATTS AS PRESENTLY PROVIDED

In his comments, Aguayo sought to accommodate the Commission's proposal by suggesting that mobile RTUs be allowed to operate at an Effective Radiated Power ("ERP") higher than 100 milliwatts and itinerant RTUs that are not co-located with fixed RTUs up to 20 Watts where it can be demonstrated that no

interference would occur to Channel 13. See Comments of Aguayo at 3-4. Based on the comments of the parties,¹ Aguayo is persuaded that and urges the Commission to permit operation of all RTUs (fixed, itinerant and mobile) up to a maximum of 20 Watts ERP as presently provided for in the rules. The IVDS regulations provide interference protection standards to which both CTSs and RTUs must adhere. See Sections 95.855 and 95.859 of the rules. Moreover, the regulations prohibit interference to the Channel 13 Grade B contour from either RTUs or CTSs. This prohibition commands licensees to undertake system design and operations very carefully or face automatic suspension of operations under the procedures for Channel 13 viewer protection set forth in the regulations. See Section 95.861(c)-(e). See also Comments of Aguayo in Partial Support of Petition for Waiver (of Kingdom R. Hughes), filed July 7, 1995, pursuant to the Commission's Public Notice of June 23, 1995, Mimeo 54505, attached hereto as Attachment 1 and made a part of the record hereof. Accordingly, all RTUs should be allowed to operate up to the maximum 20 Watt ERP presently provided for in the regulations.²

¹E.g., Comments filed June 26, 1995 of: Committee for Effective IVDS at 6-7; Triad TV Data at 5; IVDS licensees at 6.

²Aguayo supports measuring mobile RTU power limits in terms of average power rather than peak power as suggested by IVDS licensees at 6.

III. CTS-TO-CTS TRANSMISSIONS SHOULD BE PERMITTED ON A PRIMARY BASIS

Aguayo supports rule changes, to the extent necessary, to permit CTS-to-CTS transmissions on a primary basis. See Comments of National Action Group for IVDS at 12. While Aguayo believes that CTS-to-CTS transmissions which are designed to transport signal to and from subscribing RTUs on an application-specific basis are permissible under current Section 95.805(b), there is no need to limit CTS-to-CTS communications.

IV. THE DUTY CYCLE LIMIT SHOULD BE REMOVED

Commenters urged the Commission to remove the duty cycle limitations of Section 95.863. Aguayo supports them. See Attachment 1 at 3 n.3.

V. DUTY CYCLE LIMITS SHOULD NOT PROVIDE THE REGULATORY BASIS FOR PERMISSIBLE IVDS SERVICE

Aguayo urged that no regulatory reliance be placed on a duty cycle limit for fixed and itinerant RTU applications (Aguayo Comments at 4) and is persuaded that the same should not apply to mobile applications either. See Comments of Committee for Effective IVDS at 5-6. By proposing that mobile applications be ancillary, the Commission has presented no issue as to the regulatory treatment of IVDS. Accordingly, any reliance on the duty cycle to define permissible IVDS service is misplaced and any concerns with “de facto” reallocation of the service,

as alluded to by Brown and Schwaninger (at 4), are unfounded.

VI. IVDS IS A FIXED SERVICE UNDER THE COMMISSION'S PROPOSAL: "MOBILE" IVDS IS NOT "PMRS"

Aguayo does not believe it is necessary or appropriate to declare IVDS ancillary mobile applications as Private Mobile Radio Service ("PMRS") as suggested by Grand Broadcasting Corporation (at 3).³ The applications of a broadcast mobile radio service discussed by Grand are clearly interactive.

Aguayo further believes that, in keeping with the rationale of its proposal that mobile applications be ancillary, the Commission could permit mobile applications for subscribers who are not "fixed" subscribers without rendering IVDS a "Mobile Service,"⁴ so long as the system remains primarily fixed, which can be measured by total CTS output, for example.

Were IVDS to be reclassified as a Mobile Service, which ostensibly could only occur if the Commission were to determine that IVDS was primarily mobile,

³See Also Comments of ITV, Inc. And IVDS Affiliates, LLC (at 5).

⁴Section 332 of the Act amended Section 3(n), 47 U.S.C. § 153(n), which defines "mobile service" as:

a radio communication service carried on between mobile stations or receivers and land stations, and by mobile stations communicating among themselves, and includes both one-way and two-way radio communication services.

See also 47 CFR § 20.3 "Mobile Service."

then classification as a PMRS is appropriate. Moreover, any such PMRS classification should be irrebuttable: Section 20.9(a)(13) should not apply. IVDS is a "private short distance communications service"⁵ which the Commission specifically excluded from the PMRS category of then-existing services precisely because it had determined IVDS to be "a fixed service." Second Report and Order in GN Docket No. 93-252, FCC 94-31 (released March 7, 1994) at ¶ 83.

In no event, however, should IVDS be reclassified unless and until it has achieved viability. The Commission may take appropriate measures later, after IVDS has had the opportunity to incubate.⁶ Aguayo urges the Commission, as it did in its comments (Aguayo Comments at 4-5) to clearly pronounce that its action in this proceeding not be the basis of any precedent for CMRS (or PMRS) services, such as, personal communications services, for evaluating fixed applications that are ancillary to mobile service.

VII. CONCLUSION

Accordingly, the Commission should: (1) permit "mobile" RTUs on a co-primary basis with fixed (or itinerant) RTUs; (2) remove RTU duty cycle limitations; (3) permit all RTUs to operate at 20 Watts ERP (mobile RTUs to be

⁵Notice of Proposed Rule Making in PP Docket No. 93-253, FCC 93-455 (released October 12, 1993) at ¶ 142.

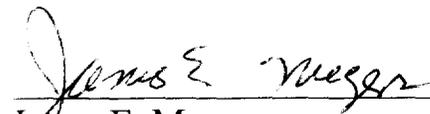
⁶See Comments of National Action Group for IVDS at 6-7.

measured on an average power basis); (4) permit CTS-to-CTS communications on a primary basis; (5) confirm that no precedent may be drawn from the Commission's action herein as to what constitutes permissible fixed service for CMRS providers; and (6) retain the existing regulatory treatment of IVDS as a fixed service.

Respectfully submitted

ERWIN AGUAYO, JR.

By:


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His Counsel

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ATTACHMENT 1

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June 30, 1995

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JUL 7 1995

**FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY**

Mr. William Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20054

Re: Petition for Waiver of Section 95.863 of the Rules
IVDS
Kingdom R. Hughes
Comments of Erwin Aguayo, Jr

Dear Mr. Caton:

Transmitted herewith on behalf of Erwin Aguayo, Jr. are his comments to the above referenced petition. These comments are filed pursuant to the Commission's Public Notice of June 23, 1995, Mimeo 54505.

An original and five copies are transmitted herewith.

Please contact the undersigned if you have any questions.

Very truly yours,


James E. Meyers
Counsel for Erwin Aguayo, Jr.

Commission's Public Notice, Mimeo 54505 (released June 23, 1995).

Aguayo, an IVDS licensee,¹ supports the waiver request only on the occasion that both "A-Channel" and "B-Channel" licensees receive an equal waiver. In Allentown-Bethlehem-Easton, PA-NJ (Market 58), Aguayo and Kingdom Hughes are direct competitors, Aguayo on the A-Channel, Kingdom Hughes on the B-Channel. Inherent in the petition is the notion that because Hughes is licensed to a B-Channel, he is perhaps more entitled to a waiver than an A-Channel licensee. Petition at 7.

When the Commission promulgated the IVDS regulations it carefully evaluated Channel 13 interference potential in establishing the A-Channel (218 to 218.5 Mhz), concluding that "interference concerns with respect to TV Channel 13 do not preclude us from allocating any or all spectrum in the 218-219 MHz band." The Commission observed only that Channel-B would be "less of a threat." Report and Order in GEN Docket 91-2, 7 FCC Rcd. 1630, 1632 (Para. 16) (1992). Any action on Kingdom Hughes' petition short of equal treatment by the Commission would be unfair and place an additional hardship on A-Channel license holders.

Instead, the Commission should extend a generic blanket waiver of Section 95.863 to all IVDS licensees for all applications, not merely for the applications

¹Aguayo is the licensee of Frequency A, Market 58 (Allentown-Bethlehem-Easton, PA-NJ) and Market 76 (New Bedford-Fall River, MA).

proposed by Kingdom Hughes in the instant waiver request. In this way, IVDS will have the required flexibility to develop economical video and data transport networks for the public.

There are numerous interference protection measures that A-Channel (and B-Channel) licensees may undertake to ensure that the Channel 13 Grade B contour in the IVDS license area is protected, none of which implicate the arbitrary 5 second (or any prescribed) duty cycle. Numerous commenters in WT Docket No. 95-47,² identify various measures and proposals addressing Channel 13 interference issues in support of eliminating Section 95.863 in its entirety.³ Indeed, the existing interference protections provided in Sections 95.855 and 95.859 provide the needed protection. It is worth observing that a CTS has no duty cycle limit.

The duty cycle limitation is unnecessary if not superfluous to the protection of Channel 13. It was added into the rules to provide an "additional interference

²Notice of Proposed Rule Making, In The Matter of Amendment of Part 95 of the Commission's Rules to allow Interactive Video and Data Service licensees to provide mobile service to subscribers, FCC 95-158 (released May 5, 1995).

³See, e.g., Comments of IVDS licensees (duty cycle redundant and unnecessary); SEA, Inc. (5-second duty cycle should be relaxed in channel 13 markets for on-the-ground RTUs); Active Communications Partners (duty cycle should be lifted); Dispatch Interactive Television (Channel 13 is already protected, no need to have duty cycle); Triad TV Data (5 second duty cycle not required to protect Channel 13); Committee for Effective IVDS (eliminate duty cycle: it does not protect Channel 13); Tel/Logic, Inc. (eliminate duty cycle: it is unnecessary and redundant).

safeguard." Report and Order in GEN Docket No. 91-2, 7 FCC Rcd. 1630, 1635 (Para.38)(1992). The underlying IVDS technical parameters developed by TV Answer and agreed to by the Association for Maximum Service Television ("MSTV") originally did not include a duty cycle limitation; the duty cycle limit can be seen to have occurred as an afterthought. See, e.g., Id. at 1632 and notes 24-26 (Para. 16). See also various comments and reply comments of TV Answer and MSTV in RM 6169.

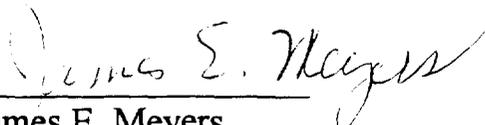
Under a blanket waiver the IVDS licensee, irrespective of whether licensed on the A Channel or on the B Channel, should be allowed to provide RTU transmissions without duty cycle limitation. A blanket waiver of Section 95.863 will not cause interference to the Channel 13 Grade B contour. The protection criteria of sections 95.855 and 95.859 provide the needed protection.

Moreover, the regulations prohibit interference to the Channel 13 Grade B contour from either RTUs or CTSs. This prohibition commands licensees to undertake system design and operations very carefully or face automatic suspension of operations under the procedures for Channel 13 viewer protection set forth in the regulations.. See Section 95.861(c)-(e).

The superimposition of a duty cycle limit for the RTU is not warranted.
Based on the above, the Commission should grant a blanket waiver of Section
95.863 of the regulations.

Respectfully submitted,

ERWIN AGUAYO, JR.

By: 
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His Counsel

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