

ORIGINAL

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

DOCKET FILE COPY ORIGINAL

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

RECEIVED

JUL 11 1995

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

To: The Commission

REPLY COMMENTS

The IVDS Licensees ("Licensees")<sup>1/</sup>, pursuant to Section 1.415 of the Commission's rules (the "Rules"), hereby submit these Reply Comments ("Reply") in the referenced Notice of Proposed Rulemaking (the "Rulemaking").<sup>2/</sup>

I. BACKGROUND AND SUMMARY.

1. A substantial majority of the Commenters agree on most of the issues for which the Commission sought comment. Specifically, nearly all the Comments received in this Rulemaking: (i) support mobility; (ii) call for the elimination or the substantial relaxation of the 5-second duty cycle; (iii) urge the retention of the current power levels for fixed service; and (iv) urge the Commission to recognize that the current Rules concerning IVDS operations provide broad interference protection for Channel 13 broadcasters, thus eliminating the need for additional

<sup>1/</sup> Attached as Schedule A is a list of the Licensees and the markets which they represent.

<sup>2/</sup> The Licensees' Reply Comments are timely filed.

No. of Copies rec'd  
List ABCDE

015

restrictions on the operation of IVDS facilities which would unnecessarily limit the types and quality of service that IVDS licensees could offer to the public. The Licensees urge the Commission to act promptly to make the requested changes to the Rules and thereby enhance the viability of the evolving IVDS industry.

**II. THE NEAR UNIFORMITY OF THE COMMENTS REFLECTS A CLEAR RECOGNITION OF THE CHALLENGES FACING IVDS LICENSEES AS WELL AS THE PROPER MEANS FOR ADDRESSING THEM.**

2. As noted above, the near uniformity of the Comments received in this Rulemaking illustrates the convergence in thinking about the structural challenges facing IVDS licensees. The majority of the Commenters also offer productive means for addressing structural challenges in a manner that supports the Commission's goals of promoting competition and development in the IVDS industry.

3. A total of nineteen (19) parties responded to the Rulemaking. Seventeen (17) of those parties supported the Commission's proposal to allow IVDS licensees to provide mobile service. See, e.g., Supporting Comments of Interactive Management Services, LLC, at 1; Comments of Tel/Logic Inc., at 3. The vast majority of the Commenters also strongly supported the elimination or substantial relaxation of the 5-second duty cycle and provided ample rationale in support of the fact that such a duty-cycle is unnecessary and redundant. See, e.g., Comments of SEA, Inc., at 6; Comments of ITV, Inc., at 3; Comments of Erwin Aguayo, Jr., at

4.

4. The majority of Commenters also made compelling cases for not changing the power levels for fixed services, recognizing that the cost of operating at lower power levels would significantly delay the roll-out of IVDS systems and would likely reduce the uses for which IVDS can be applied. See, e.g., Comments of The National Action Group for IVDS, at 9 ("IVDS Licensees have found that at these frequencies, transmissions of such low power have difficulty penetrating buildings, which greatly reduces the workability of most potential applications."); Comments of Erwin Aguayo, Jr., at 2-3 ("The Commission and the record developed in establishing the current 20 Watt authorization carefully considered and determined the potential for Channel 13 and other interference. Now is the time to expand licensee service options, not foreclose them."). See also, Comments of the Committee for Effective IVDS Regulation, at 6 ("IVDS Licensees should be free to determine appropriate power levels for RTUs in accordance with terrain capacity and investment considerations.").

5. Several Commenters also pointed out that the current Rules provide multiple redundant levels of interference protection for broadcasters and thus such a reduction in operating power is unwarranted. Dispatch Interactive Television, for example, pointed out that "other existing services in the same area of the spectrum, including amateur radio and 220-222 MHz SMR systems, have less

restrictive power limitations and regulatory safeguards to prevent interference to Channel 13 reception." Comments of Dispatch Interactive Television at 9. See also, Comments of Licensees, at 9.

**III. THE OPPOSITIONS' COMMENTS MUST BE RECOGNIZED AS BIASED OR OTHERWISE MISDIRECTED.**

6. The views of the minority should be viewed in light of the economic interests of each, either in defending its stake in a competing industry or in promoting its own type of equipment. Brown & Schwaninger ("B&S") is the only party which seeks to put a straight-jacket on the development of the IVDS industry. B&S offers two basic arguments. First, B&S insists that the initial IVDS Rules dramatically limited the scope and applications of IVDS businesses. The 1992 Report & Order, however, did no such thing. The Report and Order described a wide range of services IVDS licensees could provide, specifically stating that:

[The allocation of spectrum for IVDS] is warranted in order to permit development of a convenient, low-cost system that provides two-way interaction with commercial and educational programming, along with informational and data services that may be delivered by, and coordinated with, broadcast television, cable television, wireless cable, direct broadcast satellite, or any future television delivery methods.

Amendment of Parts 0, 1, 2, and 95 of the Commission's Rules to Provide Interactive Video And Data Services, 7 FCC Rcd 1630 (1992).

7. The notion that IVDS licensees should be limited in their service offerings is analogous to the FCC authorizing new radio

stations based upon the type of music it believes is needed in a certain market. Comments of the Committee for Effective IVDS Regulation, at 2. As noted by several Commenters, the substantial benefits of allowing IVDS licensees to provide the services which consumers want is the fulfillment of the Commission's goal of promoting competition in the public interest. See, e.g., Comments of the Committee for Effective IVDS Regulation, at 1; Comments of Dispatch Interactive Television, at 4. Accordingly, B&S's attempt to restrict the development of various IVDS businesses is not only inconsistent with the history of the original rulemaking, but also antithetical to the notion of competition in the marketplace.

8. The second argument raised by B&S is that the proposed changes contained in the Rulemaking would "create a dispatch or paging service" and that such a result "must be rejected to spare affected paging and dispatch operators from unwelcome surprise through the welcoming of an unwanted and unheralded entrance to the market." See B&S Comments, at 6. The public interest in expanding competition through the dynamic nature of the evolving telecommunications industry must take precedence over the concerns for protecting existing service providers from such competition. Cable television has not been protected from wireless cable; cellular has not been protected from paging or PCS and, similarly, paging and dispatch providers should not be allowed to stand in the way of the evolving IVDS industry.

9. The second contrarian view may be properly viewed as an attempt by other equipment providers to promote their equipment, as well as infrastructure flexibility. The Licensees agree that, by avoiding narrow definitions of mobility and power settings, the Commission will achieve an important goal of avoiding an anti-competitive situation where only Eon's equipment can satisfy the requirements for mobility. Broad interpretations of mobility will increase the type and variety of equipment available and likely reduce the cost of developing the IVDS systems.

10. It is important, however, to note that the Comments by Concepts to Operations, Inc. ("Concepts") not only fail to qualify the "test" results to which they refer,<sup>3/</sup> but also transparently promote the equipment of Eon's main competitor as the cure for all of the potential interference concerns raised by Concepts. Indeed, even RTT - the author of the "tests" to which Concepts refers - does not espouse the points promoted by Concepts.

11. The bottom line on the "interference" issue, as noted by multiple Commenters, is that protection of the broadcasters' signal is adequately assured through Sections 95.855 and 95.859 of the Commission's Rules, which limit height and power within the grade B contour and require IVDS licensees to correct any interference problems. See 47 C.F.R. § 95.861(e) Nothing more is needed.

---

<sup>3/</sup> These test results were both out-dated and performed at frequencies other than in the 218-219 MHz band.

**IV. THE BROADCASTERS RECOGNIZE THAT THE PROPOSED  
RULE CHANGES WILL LEAVE THEM WELL PROTECTED.**

12. No broadcasters commented on this Rulemaking. The reasons for their non-participation are understandable to anyone who has studied the Rules and recognizes that the multiple layers of Rules designed to protect Channel 13 broadcasters from interference provide more than adequate protection. Broadcasters also know that the Commission's commitment to provide television broadcasters with interference protection will not be compromised by the modest adjustments advocated herein because - should all else fail - the IVDS licensees must correct any interference. See 47 C.F.R. § 95.861(e). The IVDS licensees, knowledgeable of the broadcast industry's power, do not seek relief from this statutory obligation, but rather seek adjustments at the edges that will enable them to adjust certain technical parameters, which will contribute to the development of the information superhighway, without jeopardy to broadcast television. As noted in the Licensees' Comments, the Association for Maximum Service Television ("MSTV") has already supported the development of IVDS. Licensees' Comments, at 4.

**V. OTHER MATTERS.**

13. As referenced herein, the Licensees agree that the Commission should avoid creating Rules such as requiring that all mobile RTUs operate at 100 milliwatts since to do so might mandate the exclusive use of Eon's patented milliwatt technology. This

would create an anticompetitive market, contrary to the Commission's stated goals. The Licensees agree generally with the Committee for Effective IVDS Regulation that the Commission should utilize this opportunity to employ a new market-oriented regulatory approach. In this manner, the Commission would enforce its Rules concerning interference protection but would otherwise "get out of the way" of the evolving IVDS industry.

14. Several Commenters addressed the interpretation issue of "ancillary service." The Licensees reiterate their support for a broad reading of the rule - allowing subscribers to have mobility without requiring them to subscribe first to fixed service. This result is consistent with the Comments of those who advocated a broad interpretation in order to promote the corresponding benefits realized through lower cost,<sup>4/</sup> more expeditious buildout<sup>5/</sup> and a more flexible infrastructure.<sup>6/</sup>

## **VI. CONCLUSION.**

15. The Licensees urge that the Commission: (i) adopt mobility without limiting power levels for fixed or mobile facilities beyond the existing power ceilings; (ii) eliminate the

---

<sup>4/</sup> See Comments of Henry Mayfield, at 2; Comments of The National Action Group for IVDS, at 13.

<sup>5/</sup> See Comments of Dispatch Interactive Television, at 4.

<sup>6/</sup> See Comments of ITV, Inc., at 2; Comments of Tel/Logic, Inc., at 4; and Comments of Grand Broadcasting Corp., at 4.

5-second duty cycle in recognition of the fact that substantial additional data services would be possible without this "governor" on the operation of the IVDS facilities; (iii) generally adopt a free market oriented regulatory posture toward IVDS, limited only by the non-interference requirements found in the existing Rules; and (iv) act expeditiously in recognition that the IVDS industry desperately needs relief from these unnecessary and redundant operating limitations.

**WHEREFORE**, these premises considered, the Licensees respectfully request that the Commission carefully consider this Reply.

Respectfully submitted,

**KMC INTERACTIVE TV, INC.  
WHITEHALL WIRELESS CORP.  
LOLI, INC.  
VISION TV, INC.  
TRANS PACIFIC INTERACTIVE, INC.  
NEW WAVE COMMUNICATIONS, INC.  
IVDS ON-LINE PARTNERSHIP  
MAR PARTNERSHIP  
DUNBAR TELEVISION CORP.**

By: 

J. Jeffrey Craven  
M. Tamber Christian  
**BESOZZI, GAVIN, CRAVEN & SCHMITZ**  
1901 L Street, NW  
Suite 200  
Washington, D.C. 20036  
(202) 293-7405

Their Attorneys

**COMMUNITY TELEPLAY, INC.  
TV-ACTIVE, L.L.C.**

By: Richard S. Myers  
Richard S. Myers  
Lori B. Wasserman  
**MYERS KELLER COMMUNICATIONS LAW GROUP**  
1030 15th Street, NW  
Suite 908  
Washington, D.C. 20005  
(202) 371-0789

Their Attorneys

**AMERICA 52 EAST, INC.  
AMERICA 52 WEST, INC.  
AMERICAN INTERACTIVE EAST, INC.  
AMERICAN INTERACTIVE WEST, INC.  
ON-SCREEN USA INTERACTIVE, INC.  
PREMIER INTERACTIVE, INC.  
REMOTE VISION INTERACTIVE, INC.**

By: Stephen E. Coran  
Stephen E. Coran  
**RINI & CORAN, P.C.**  
1350 Connecticut Ave., NW  
Suite 900  
Washington, D.C. 20036  
(202) 296-2007

Their Attorney

Dated: July 11, 1995

## SCHEDULE A

### KMC Interactive

Cleveland, OH MSA #16A  
Buffalo, NY MSA #25B  
Hamilton-Middleton, OH MSA #145A

### Whitehall Wireless Corp.

Baltimore, MD MSA #14B  
Atlantic City, NJ MSA #134A

### Loli, Inc.

Hartford, CT MSA #32A  
Rochester, NY MSA #34B  
Syracuse, NY MSA #53A  
Shreveport, LA MSA #100B  
Visalia, CA MSA #150A  
Portland, ME MSA #152A  
Portsmouth, NH MSA #156A  
El Paso, TX MSA #81B  
Janesville, WI MSA #216A  
Rockford, IL MSA #131A  
Utica-Rome, NY MSA #115B  
Elmira, NY MSA #284A  
San Angelo, TX MSA #294A  
Anchorage, AK MSA #187B  
Gulf of Mexico MSA #306A  
Bridgeport, CT MSA #42B  
Orange County, NY MSA #144B  
Manchester, NH MSA #133B

### Vision TV

Odessa, TX MSA #255B

### TransPacific Interactive, Inc.

Bakersfield, CA MSA #97A

### New Wave Communications, Inc.

Lorraine-Elyria, OH MSA #136A  
Reno, NV MSA #171B  
Chico, CA MSA #215B  
Redding, CA MSA #254B  
Great Falls, MT MSA #297B

IVDS On-Line Partnership

Erie, PA MSA #130A  
Poughkeepsie, NY MSA #151A  
Wilmington, NC MSA #218A

MAR Partnership

Battle Creek, MI MSA #177A  
Clarksville, TN MSA #209B  
Kokomo, IN MSA #271B  
Pittsfield, MA MSA #213B

Dunbar Television Corp.

York, PA MSA #99B  
Lansing, MI MSA #78B

Community Teleplay, Inc.

Norfolk-Virginia Beach, VA MSA #43B

TV-Active, L.L.C.

Jackson, MS MSA #106A  
Lima, OH MSA #158B  
Springfield, OH MSA #180B  
Mansfield, OH MSA #231A

America 52 East, Inc.

Daytona Beach, FL MSA #146A

America 52 West, Inc.

Colorado Springs, CO MSA #117A  
St. Cloud, MN MSA #198A  
Fort Collins-Loveland, CO MSA #210A  
Richland-Kennewick, WA MSA #214B  
Pueblo, CO MSA #241A

American Interactive East, Inc.

Canton, OH MSA #87A  
Asheville, NC MSA #183B

American Interactive West, Inc.

Honolulu, HI MSA #50B  
Tacoma, WA MSA #82B

On-Screen USA Interactive, Inc.

Modesto, CA MSA #142B  
Wheeling, WV-OH MSA #178A  
Racine, WI MSA #189A

Premier Interactive, Inc.

Salina, CA MSA #126B  
Roanoke, VA MSA #157B  
Yakima, WA MSA #191B

Remote Vision Interactive, Inc.

Akron, OH MSA #52B  
Duluth, MN/WI MSA #141B  
Billings, MT MSA #268A

## CERTIFICATE OF SERVICE

I, Tracy Powell, hereby certify that a true copy of the foregoing Reply Comments of the IVDS Licensees was served by first-class U.S. mail, postage pre-paid, on each of the parties listed below this 11th day of July, 1995.

Commissioner James H. Quello\*  
Federal Communications Commission  
1919 M Street, N.W., Room 802  
Washington, D.C. 20554

Commissioner Andrew C. Barrett\*  
Federal Communications Commission  
1919 M Street, N.W., Room 826  
Washington, D.C. 20554

Commissioner Susan Ness\*  
Federal Communications Commission  
1919 M Street, N.W., Room 832  
Washington, D.C. 20554

Ralph Haller\*  
Federal Communications Commission  
2025 M Street, N.W., Room 5002  
Washington, D.C. 20554

Lisa B. Smith\*  
Federal Communications Commission  
1919 M Street, N.W., Room 826  
Washington, D.C. 20554

Jill Lockett\*  
Federal Communications Commission  
1919 M Street, N.W., Room 844  
Washington, D.C. 20554

Donna Kanin\*  
Federal Communications Commission  
2025 M Street, N.W., Room 5002  
Washington, D.C. 20005

John L. Bartlett  
1776 K Street, N.W.  
Washington, D.C. 20006

Peter Tannenwald  
Irwin Campbell & Tannenwald  
1320 18th Street, N.W., Suite 400  
Washington, D.C. 20036-1811

Chairman Reed Hundt\*  
Federal Communications Commission  
1919 M Street, N.W., Room 814  
Washington, D.C. 20554

Commissioner Rachele Chong\*  
Federal Communications Commission  
1919 M Street, N.W., Room 844  
Washington, D.C. 20554

Regina Keeney\*  
Federal Communications Commission  
2025 M Street, N.W. Room 5002  
Washington, D.C. 20554

Ruth Milkman\*  
Federal Communications Commission  
1919 M Street, N.W., Room 814  
Washington, D.C. 20554

David Siddall\*  
Federal Communications Commission  
1919 M Street, N.W., Room 832  
Washington, D.C. 20554

Rudy Baca\*  
Federal Communications Commission  
1919 M Street, N.W., Room 802  
Washington, D.C. 20554

Albert Halprin  
Halprin, Temple & Goodman  
Suite 650, East Tower  
1100 New York Avenue  
Washington, D.C. 20005

Stephen Kaffee  
1920 N Street, N.W., Suite 660  
Washington, D.C. 20036

Louis Martinez  
Radio Telecom & Technology, Inc.  
6951 Flight Road, Suite 210  
Riverside, CA 92504

Herbert Zeiler  
Federal Communications Commission  
Private Radio Bureau  
2025 M Street, N.W., Room 5322  
Washington, D.C. 20554

William J. Franklin  
ITV, Inc.  
1919 Pennsylvania Ave., N.W., Suite 300  
Washington, D.C. 20006-3404

David A. Reams  
Grand Broadcasting Corporation  
P.O. Box 502  
Perrysburg, OH 43552

Don Meyers  
Windgate Fund, L.L.C.  
130 William Street, Suite 807  
New York, NY 10038

James E. Myers  
1555 Connecticut Avenue, N.W.  
Suite 500  
Washington, D.C. 20036

Richard L. Vega  
The Richard L. Vega Group  
235 Hunt Club Boulevard  
Longwood, FL 32779

Mark D. Schneider  
Anne E. Gilson  
Sidley & Austin  
1722 Eye Street, N.W.  
Washington, D.C. 20006

John B. Kenkel  
Kenkel & Associates  
1901 L Street, N.W., Suite 200  
Washington, D.C. 20036

Winston E. Himsworth  
Tel/Logic, Inc.  
51 Shore Drive  
Plandome, NY 11030

Thomas J. Keller  
Verner, Liipfert, Bernhard,  
McPherson & Hand  
901 15th Street, N.W., Suite 700  
Washington, D.C. 20005-2301

Lauren A. Colby  
P.O. Box 113  
Frederick, MD 21705-0113

Henry Mayfield  
1400 Carrollsburg Place, S.W.  
Washington, D.C. 20024-4102

Stanley I. Cohn  
Concepts To Operations, Inc.  
801 Compass Way, Suite 217  
Annapolis, MD 21401

Richard K. Kent  
Interactive Service Designs  
7921 Grayson Road  
Harrisburg, PA 17111

Dennis C. Brown  
Brown & Schwaninger  
1835 K Street, N.W., Suite 650  
Washington, D.C. 20006

Thomas J. McCabe  
McCabe & Associates  
9 North Third Street, Suite 200  
Warrenton, VA 22186

Eliot J. Greenwald  
Kevin M. Walsh  
Fisher Wayland Cooper  
Leader & Zaragoza  
2001 Pennsylvania Avenue, N.W., Suite 400  
Washington, D.C. 20006

  
Tracy Powell

\* Denotes Hand Delivery