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Before the
Federal Communications Commission
Washington, DC 20554

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In the Matter of)
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Amendment of Part 95)
Extend the Terms of)
Interactive Video Data Service)
Licenses from Five to Ten Years)

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

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To: Chief, Wireless Telecommunications Bureau

PETITION FOR RULEMAKING

Pursuant to Section 1.401 of the Commission's Rules, 47 C.F.R. § 1.1401, Euphemia Banas, Trans Pacific Interactive, Inc., Wireless Interactive Return Path, L.L.C., New Wave Communications, L.L.C., Loli, Inc., Multimedia Computer Communication, Inc., Southeast Equities, Inc., Robert H. Steele, MAR Partnership, IVDS On-Line Partnership, A.B.R. Communications Inc., IVIDCO, L.L.C., Vision TV, Dunbar TV, Corp., and Legacy TV, Inc., all of which are Interactive Video and Data Service ("IVDS") licensees (the "Licensees" or "Petitioners"), request that the Commission: (a) extend the license term for IVDS providers from five (5) to ten (10) years and; (b) allow licensees that qualify for installment payments under the current FCC rules to extend the installment payment period from five (5) to ten (10) years.

Background

IVDS is a point-to-point short distance communications service that provides two-way interactive communication to subscribers located at fixed and mobile locations. 47 C.F.R. § 95.803(a); Amendment of Part 95 of the Commission's Rules to Allow Interactive Video and

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Data Service Licensees to Provide Mobile Services to Subscribers, 11 FCC Rcd 6610 (1996).

The FCC awards two IVDS licenses per Metropolitan Statistical Area ("MSA") and Rural Statistical Area ("RSA"). 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); 47 C.F.R. § 95.803(b).

Currently, the Commission issues IVDS licenses for a five-year term. 47 C.F.R. § 95.811(d).

IVDS technology is designed to provide real-time response to information displayed on a television set, pager, or personal computer screen through the use of a wireless remote control. Potential applications for IVDS include interactive messaging as well as commercial and two-way telemetry services, such as remote monitoring of utility services, vending machines, cable television, and home security systems. IVDS technology allows businesses to automate data collection tasks that have previously required manual readings. For example, a utility company can use an IVDS network to take readings from electricity meters several times a day; or even several times an hour. This allows the utility to offer time-of-day usage discounts and allows for more accurate billing and power demand estimation. Without IVDS technology, such constant monitoring would not be economically feasible. See Henderson, Electric Utilities Plug into Telecom, Phone +, June 1995, at 76; Reeves, The Emerging Utility Paradigm, Wireless, February 1996, at 14.

I. The Commission Has Authority To Grant a License Term of Ten (10) Years

The Commission has authority to grant a ten-year license term for IVDS. Section 154(j) of the Communications Act of 1934, as amended, allows the Commission to conduct proceedings "in such manner as will best conduce to the proper dispatch of business and to the ends of justice." 47 U.S.C. § 154(j) (1995). Further, Section 307(c) sets a maximum license period for

certain classes of providers. Any station other than a radio or television broadcasting station may have a license term of up to ten (10) years. 47 U.S.C. § 307(c). The Commission also has authority to modify the provisions of existing licenses by rulemaking. National Broadcasting Co., Inc. v. United States, 319 U.S. 190 (1943); California Citizens Band Assoc., Inc. v. United States, 375 F.2d 43 (9th Cir.), cert. denied 389 U.S. 844 (1967). Thus, the Commission has the authority to grant a ten-year license period for IVDS licensees.

II. The License Period For IVDS Providers Is Substantially Shorter Than For Providers With Similar Technologies And Market Areas

The FCC has designated a five-year licensing period for IVDS providers. 47 C.F.R. § 95.811(d). This contrasts with longer licensing periods for similar technologies. For example, broadcasting stations feature eight-year licenses. 47 U.S.C. § 307(c)(1)(Supp. 1996). Licenses for stations in Point-to-Point Microwave Radio, Local Television Transmission, Multipoint Distribution Service ("MDS"), and Digital Electronic Message Services are issued for a period of ten (10) years. 47 C.F.R. § 21.45(a). Similarly, the recently auctioned Personal Communication Services ("PCS") licenses are assigned for a ten-year period. 47 C.F.R. § 24.15.

Cellular systems, which are technologically very similar to IVDS, and are licensed using the same geographic boundaries, are awarded a ten-year license term. The Commission decided to grant all common carrier and fixed satellite licenses for a ten-year period because: (1) common carrier and fixed satellite service are rarely contested and are granted relatively routinely, (2) the public is adequately protected by regulatory tools other than renewal proceedings, and (3) longer license terms "would result in savings of Commission and licensee resources" by eliminating the cost of filing and processing renewal applications every five (5) years. Common Carriers and Satellite Licensing Procedures Pursuant to the Communications

Amendments Act of 1982, 53 RR 2d 1514, 1515 (1983) ("Common Carrier Licensing Report and Order"). Accordingly, for the same reasons that the Commission has provided for ten-year licenses for other MSA and RSA area providers, IVDS licensees should likewise have a ten-year license.

The FCC originally adopted a five-year license term for IVDS in order to deter trafficking in licenses that were granted by lottery. The FCC said the five year term "strikes a reasonable balance between the administrative burden on both the Commission and the applicant, and our desire to track the status of licensed IVDS operations. These rules will help to reduce any potential for trafficking in licenses by persons who have no real interest in constructing IVDS systems." Amendment of Parts 0, 1, 2, and 95 of the Commission's Rules to Provide for Interactive Video and Data Service, 7 FCC Rcd 1630, 1641, (1992). The need to monitor the IVDS industry to deter the trafficking and unjust enrichment that accompanied lotteries was eliminated when the Commission decided to award IVDS licenses by auction. ("The strongest measure to deter future instances of unjust enrichment in the lottery context has already been taken by Congress when, in the Budget Act, it granted the Commission auction authority . . .") Implementation of Section 309(j) of the Communications Act -- Competitive Bidding, 9 FCC Rcd 7373, 7375 (1994). Since the main purpose for the five year license period no longer exists, the Commission should extend the IVDS license term to ten years.

If the Commission finds a continued need to track the status of the IVDS industry, it can do so using other existing IVDS rules. IVDS licensees are required to file applications with the Commission to propose modifications to their systems (47 C.F.R § 95.815(e), (f)), to assign or transfer control of their licenses (47 C.F.R. § 95.819, 95.821), and to provide three- and five-year

benchmark coverage reports (47 C.F.R. § 95.833). If the Commission needs further information, the existing reporting rules should be modified, rather than requiring a renewal filing.

III. The Short Five-Year License Period For IVDS Providers Inhibits Competition And Will Delay The Development Of IVDS

a. A Ten Year Term Will Help Assure Winning Bidders a Return on Their Investment

In the MDS context, the Commission has said that winning bidders "should be assured of receiving . . . licenses of a duration sufficient so that they may have a reasonable period of time to construct their systems and earn a return on the amounts they invested." Amendment of Parts 21 and 74 of the Commission's Rules With Regard to Filing Procedures in the Multipoint Distribution Service, 10 FCC Rcd 9589 (1995) ("MDS Report and Order"). Like MDS bidders, IVDS service providers took part in a competitive bidding process that resulted in expensive acquisitions of license rights. Due to these high costs and the delay in developing IVDS technology, a period longer than five (5) years is necessary for bidders to meet build-out projections and recoup the initial investment. Further investment in the still-developing IVDS technology could be curtailed if the license period is not extended, as individuals and corporations will hesitate to invest in a technology with such limited license periods.

As noted above, the Commission has also recognized the savings that will be realized by both providers and the Commission as a result of a ten-year term: "the longer license terms would result in savings of Commission and licensee resources." Common Carrier Licensing Report and Order at 1515. Potential savings include the cost of licensee personnel needed to complete renewal applications, legal costs, and filing fees. The FCC is well aware of the substantial demand imposed upon its staff by such filings. If a licensee needs to apply only once

every ten (10) years instead of once every five (5) years, the licensee's and the Commission's costs are cut in half.

b. A Ten-Year License Period Will Facilitate Financing Agreements

The Commission has also noted that "bidders who must arrange financing will need to assure lenders that they will have possession of their station licenses for a reasonably lengthy period of time." MDS Report and Order at ¶ 156. Likewise, IVDS providers must assure lenders that they will hold a license for a sufficient period to warrant financial investment. If a ten (10) year license is appropriate for MDS, so it should be for IVDS. Indeed, extending the IVDS license period to ten (10) years would help ensure that small enterprises who wish to compete in the IVDS market will be able to secure financing by convincing financial backers that an investment will have a sufficient period to turn profitable. This will have the added benefit of increasing the number of potential operators in the market, thereby advancing the public interest.

c. A Ten-Year Term Is Especially Helpful To Small Businesses and Entrepreneurs

As the Commission noted, awarding licenses with ten-year terms rather than shorter time spans "serves both prospective bidders and the Commission well." Id. at ¶ 157. The Commission determined that the ten-year period is "of sufficient certainty and length to be fair to parties who must now pay considerable sums, and perhaps obtain outside financing" in order to acquire licenses. Id. This is particularly true for small businesses, since they are more likely to require outside financing. The Commission has acknowledged the difficulty of small and start-up businesses in obtaining private funds. Implementation of Section 309(j) of the Communications Act -- Competitive Bidding, 9 FCC Rcd 2348, 2389-90 (1994). Due to this added difficulty in obtaining outside financing, small businesses in particular would benefit from

an extension of the licensing period. As the Commission has noted, financing is easier to obtain over a longer licensing period. *Id.* This is particularly true in the IVDS service, where delays in availability of equipment and service implementation have contributed to difficulty in attracting financing. Increasing small business participation will increase competition within each market and ensure that consumers receive a choice of IVDS providers. The 1993 Budget Act requires the Commission to encourage small businesses attempting to enter into the wireless industry. Omnibus Budget Reconciliation Act of 1993, P.L. 103-66 § 6002(j)(3)(B). Section 257 of the Telecommunications Act of 1996 ("Act") directs the Commission to identify and eliminate "market entry barriers for entrepreneurs and other small businesses in the provision and ownership of telecommunications services and information services . . ." Pub. L. 104-104, Section 203, 110 Stat. 56, 112. The Commission must also promote a national policy "favoring diversity of media voices, vigorous economic competition, technological advancement and promotion of the public interest, convenience and necessity." *Id.*

d. A Ten-Year License Period Will Facilitate Expansion of Coverage and Development of Regional and National IVDS Networks

No one at the FCC or in the wireless business would have predicted that two years after the IVDS MSA licensing auction, only a handful of IVDS systems would have been constructed and even those operate on only a trial basis. The delay is due to equipment manufacturing, and is clearly beyond the control of IVDS licensees. Therefore, it is particularly important to increase the duration of the IVDS license term so as to allow sufficient time for the development of the new service. Extension of the license term would allow expansion of IVDS networks and the development of regional systems. IVDS licensees, poised on the cutting edge of the nascent interactive multimedia industry, face challenges in constructing local, regional and national

systems that integrate wireless technologies with other technologies to provide new services for the public. With two years already expended, companies will need additional time to concentrate on constructing and servicing IVDS systems and expanding coverage to form national and regional IVDS networks.

The Commission has not yet conducted auctions to distribute IVDS licenses in RSAs, which are critical for establishing regional IVDS coverage. In other contexts, the Commission has recognized that carriers and the public benefit from MSA/RSA market consolidation. The Commission has said that MSAs and RSAs are "too small for the efficient provision of regional or nationwide mobile service" and that "cellular carrier's efforts have frequently been directed towards geographic aggregation to provide wider service areas for consumers and to lower costs of providing service." Amendment of the Commission's Rules to Establish New Personal Communications Services, 9 FCC Rcd 4957, 4987 (1994). Such regional coverage is essential for utilities and other potential IVDS customers that need comprehensive regional coverage. There is less incentive to form important alliances with utility companies and others if the shorter license period unnecessarily restricts the potential profits and usefulness of IVDS networks. Firms may decide that the cost and administrative burden of creating national networks is not justified if the network will be viable for less than five (5) years. IVDS consumers will be less willing to use IVDS and change out existing equipment if license terms expire in a few years.

The encouragement of regional and national networks will facilitate the realization of another Commission goal: stability and continuity of service in the marketplace. The Commission has made clear, both in cellular and related technologies such as IVDS, that stability and continuity of service to the public is vital. Amendment of Part 22 of the Commission's Rules

Relating to License Renewals in the Domestic Public Cellular Radio Telecommunications

Service, 7 FCC Rcd. 719 (1992). A ten-year license term will help produce the strong networks necessary to realize this goal.

**IV. Extension Of Installment Payments
To The Entire Length Of A Ten-Year License Term**

Currently, small businesses may elect to pay the full amount of their IVDS license bid in installments over the term of their licenses. 47 C.F.R. § 95.816(d)(3). This allows a small business to spread the cost of acquiring the IVDS license over the length of the license period. The current rules recognize the utility of such an approach. Without installment payments, many companies could not raise the initial investment necessary to enter the IVDS industry.

Petitioners ask the Commission to expand this common-sense installment payment plan to the new ten-year license period. For the reasons that the Commission found dispositive in initiating the installment payment option for the five-year license period, expansion of the installment payment plan makes sense over the ten-year period as well. This extension would require no change in the current wording of the regulation. The Commission can simply issue to each licensee a revised IVDS Auction Payment Schedule, and thereby enhance IVDS licensees' ability to operate a successful business by stretching the repayments over a longer licensing term, and thus allowing the licensees to direct resources to the development of IVDS services to the public. This approach would also enable the Commission to re-program its auction payment database, which is consistently unreliable.

Conclusion

The Commission deemed a ten-year license period beneficial for the cellular, MDS, and other market-based wireless services. For the same reasons, extending the IVDS license period

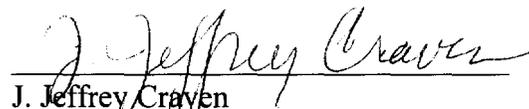
from a five-year to a ten-year period would benefit the licensees, the Commission, and the consumer public.

The Petitioners have charted a positive, practical course of seeking a longer licensing term and a longer period of time to pay-off its obligations. The Commission should promptly and enthusiastically embrace this proposal and expedite the Rulemaking process.

WHEREFORE, it is respectfully requested that the Commission issue a Notice of Proposed Rulemaking to amend Section 95.811(d) of the Commission's Rules to extend the license period for IVDS system licenses to ten (10) years. Further, the Commission is requested to keep the plain language of Section 95.816(d)(3) and allow the use of installment payments over the length of the ten (10) year license period.

Respectfully submitted,

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MAR Partnership
IVDS On-Line Partnership
A.B.R. Communications Inc.
IVIDCO, L.L.C.
Vision TV
Dunbar TV Corp.
Legacy TV, Inc.



J. Jeffrey Craven
Janet Fitzpatrick
PATTON BOGGS, L.L.P.

Dated: September 4, 1996

Proposed Revised Rule - 47 C.F.R. § 95.811(d)

"The term of each IVDS system license and each CTS license is **ten** years."