

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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In the Matter of)
)
Amendment of Parts 21 and 74 To Enable) MM Docket No. 97-217
Multipoint Distribution Service and)
Instructional Fixed Television Fixed) File No. RM-9060
Service Licensees To Engage In Fixed)
Two-Way Transmissions)

**RESPONSE TO
REQUEST FOR SUPPLEMENTAL COMMENT PERIOD
AND EXTENSION OF TIME**

The parties listed on Appendix A to the Petition for Rulemaking (the "Petition")^{1/} that commenced this proceeding (collectively, the "Petitioners")^{2/} hereby submit their response to the November 25, 1997 filing by Catholic Television Network ("CTN") of a "Request for Supplemental Comment Period and Extension of Time" (the "CTN Request"). Although marketplace pressures make time of the essence if the wireless cable industry is to become a viable competitor, the Petitioners believe that an extension of the comment and reply comment dates in this proceeding by no more than 14 days each will ultimately speed the resolution of the issues before the Commission. Such an extension will not only allow interested parties to fully analyze the proposals advanced both in the CTN Request and in this response in the context of their comments on the *Notice of Proposed*

^{1/} See Petition for Rulemaking, File No. RM-9060 (filed March 14, 1997) [hereinafter cited as "Petition"]

^{2/} The Petitioners represent a rare grouping of participants in the wireless cable industry and the educational community, including The Wireless Cable Association International, Inc. ("WCA"), most major wireless cable system operators, many Multipoint Distribution Service ("MDS") and Instructional Television Fixed Service ("ITFS") licensees, MDS Basic Trading Area ("BTA") authorization holders, wireless cable engineering consultants, and manufacturers of wireless cable transmission and reception equipment.

[Signature]

Rulemaking (“*NPRM*”),^{3/} but will also allow more time for ongoing discussions between the Wireless Cable Association International, Inc. (“*WCA*”), which is one of the Petitioners, and the National ITFS Association (“*NIA*”) aimed at developing a common position on the critical issues before the Commission in this proceeding relating to the use of ITFS capacity for technologically advanced communications systems.

The *NPRM* solicits comments by December 9, 1997 on proposals drawn from the Petition for enhancing the ability of MDS and ITFS licensees to use their spectrum more flexibly and efficiently. Among the substantial benefits of the proposals advanced by the Petitioners would be to provide MDS and ITFS licensees a mechanism for using their spectrum for two-way communications to meet a variety of commercial and educational needs. As reflected by the record created when the Commission issued its March 31, 1997 *Public Notice* soliciting comment on the Petition and on “how the Commission can amend its rules to permit even broader flexibility than suggested by Petitioners,”^{4/} the concept of allowing MDS and ITFS spectrum to be used for two-way communications has met with overwhelming support. Indeed, even CTN purports to “generally support[] the proposed use of ITFS and MDS spectrum for two-way transmissions.”^{5/}

The CTN Request, however, evidences a concern that the deployment of response transmitters will cause what CTN calls “brute force” interference to ITFS receive sites, and proposes

^{3/} See *Amendment of Parts 21 and 74 to Enable Multipoint Distribution Service And Instructional Television Fixed Service Licensees to Engage in Fixed Two-Way Transmissions*, FCC 97-360, MM Docket No. 97-217 (rel. Oct. 10, 1997) [hereinafter cited as “*NPRM*”].

^{4/} “Pleading Cycle Established For Comments On Petition For Rulemaking To Amend Parts 21 And 74 Of The Commission’s Rules To Enhance The Ability Of Multipoint Distribution Service And Instructional Television Fixed Service Licensees To Engage In Fixed Two-Way Transmissions,” *Public Notice*, RM-9060, DA 97-637 (rel. March 31, 1997).

^{5/} CTN Request, at 2.

a specific approach to “refarm” the E, F, G and H Group MDS and ITFS channels to create a 24 MHz guardband between response channels and ITFS channels. Although the filing of the CTN Request on the eve of the Thanksgiving holiday weekend has made it difficult for the Petitioners’ technical consultants to fully analyze the issues raised, the Petitioners generally believe that the potential for ITFS downconverters to suffer such interference is not as great as CTN fears, and that CTN has focused on just one of many possible solutions to any interference that does occur, excluding others that may be more efficient in a particular market. Nonetheless, the Petitioners, and presumably others, require additional time before they can fully analyze CTN’s proposal and determine the ramifications of CTN’s proposal for other issues raised in the *NPRM*.

The Petitioners cannot say that interference from downconverter overload will never occur if the rules proposed in the Petition are adopted. As the example put forth in the CTN Request illustrates, one can always assume the worst case scenario -- a co-polarized subscriber transceiver radiating directly into the main beam of an ITFS reception antenna which is located in close proximity. Of course, since ITFS receive sites are registered with the Commission, the installer of subscriber transceivers will be aware of their location in advance and presumably will avoid the scenario advanced by CTN. Nonetheless, the regulatory response to any problem that does arise is simple. Just as the Commission today requires licensees in several services to cure similar sorts of interference,^{6/} the Petitioners believe that it should be the responsibility of the newcomer to either cure any interference to protected ITFS receive sites from downconverter overload or cease operating the offending transceiver.

^{6/} See, e.g. 47 C.F.R. § 22.353 (Public Mobile Service stations must cure blanketing interference); 47 C.F.R. § 27.58 (WCS licensee must cure interference due to certain MDS/ITFS downconverter overloads); 47 C.F.R. § 73.88 (AM broadcaster must cure blanketing interference); 47 C.F.R. § 73.318 (FM broadcaster must cure blanketing interference).

CTN has advanced a series of detailed alternatives under which the E, F, G and H Group MDS and ITFS channels would be voluntarily “refarmed” by the licensees in a market and the G and H Group channels would be available for response transmissions.^{7/} While the Petitioners are troubled by certain elements of the CTN proposal and intend to comment more fully in their comments in response to the *NPRM*,^{8/} the Petitioners do agree with CTN that the creation of contiguous channel blocks for return path transmissions through the retuning of MDS and ITFS stations to other frequencies within the MDS/ITFS band presents a very valuable tool (although not the only tool) towards minimizing any interference that will result from return path transmissions.

In the Petitioners’ preliminary view, however, the CTN proposal needs to be modified in at least two major respects. At the outset, it unnecessarily limits the location of response channels in the 2.5 GHz band to the G and H Groups. There is no reason apparent from the CTN Request, and none known to the Petitioners, why other channels within the 2.5 GHz band could not also be used for response channels. Why, for example, should a system designer be barred from aggregating the A and B Group channels for return path use in those markets where this may be the most efficient approach to providing return path capability? Given the almost unlimited number of combinations and permutations of licensing situations in markets across the country, the Petitioners do not believe that any “one size fits all” solution is workable.

Moreover, the Petitioners disagree with CTN’s proposal that “refarming” should only occur

^{7/} See CTN Request, at 4-6.

^{8/} For example, the Petitioners must question CTN’s insistence that ITFS licensees have the benefit of a guardband from MDS return paths, while apparently advocating that ITFS licensees be allowed to utilize the existing 125 kHz channels immediately adjacent to channel G4 without regard for potential interference to G4 or any other channel that would suffer downconverter overload as a result. See *id.*, at 4.

where the G Group ITFS licensee voluntarily agrees. As CTN concedes, “a shifting of frequencies should not represent a hardship.”^{9/} Given the ease of retuning ITFS transmitters to other frequencies, the Petitioners believe that the Commission should require MDS and ITFS licensees to retune to other frequencies in the MDS/ITFS band at the cost of the proponent of such retuning when doing so promotes the introduction of advanced technologies in a spectrally efficient manner.

Requiring ITFS licensees to modify their facilities in order to promote the most efficient use of the spectrum is a well-established procedure.^{10/} And, requiring licensees to retune to other frequencies in order to promote the most efficient use of spectrum would hardly be unique in the annals of the Commission. To the contrary, a requirement that MDS or ITFS licensees retune to other frequencies in the same band would represent a minor intrusion compared to the many cases arising out of mass media and other contexts where the Commission has required licensees to make major changes in operating frequencies in order to promote the most efficient usage of the spectrum.^{11/} For example, just recently the Commission re-affirmed its decision to require any

^{9/} *Id.*, Joint Engineering Exhibit, at ¶ 6.

^{10/} *See Amendment of Parts 21, 43, 74, 78, and 94 of the Commission's Rules Governing Use of the Frequencies in the 2.1 and 2.5 GHz Bands Affecting: Private Operational-Fixed Microwave Service, Multipoint Distribution Service, Multichannel Multipoint Distribution Service, Instructional Television Fixed Service, and Cable Television Relay Service*, 6 FCC Rcd 6792, 6796-97 (1991)(“Parties are sometimes unable to agree, however, rendering potentially beneficial modifications impossible.”)

^{11/} *See, e.g. Broadcast Corporation of Georgia (WVEU-TV)*, 96 F.C.C.2d 901 (1984)(adopting a plan that required mobile radio licensees to change their authorized frequencies at the cost of the licensee of WVEU-TV (Atlanta, GA) when such changes were necessary to allow WVEU-TV to operate at full power without interference to the land mobile licensees); *Amendment of Section 73.202, Table of Assignments, FM Broadcast Stations*, 8 F.C.C.2d 159 (1967)(requiring WNRE (Circleville, OH) to switch from channel 285A to channel 296A in order to accommodate introduction of new station using channel 285A at Columbus, OH); *Redevelopment of Spectrum to Encourage Innovation in the Use of New Telecommunications Technologies*, 7 FCC Rcd 6886 (1992)(adopting rules requiring licensees in the 1850-1990, 2110-2150 and 2160-2200 MHz bands

incumbent licensee in the 816-821/861-866 MHz Specialized Mobile Radio Service (“SMR”) band to retune to other SMR frequencies when it is requested to do so by the Economic Area (“EA”) licensee for that band, the EA licensee agrees to pay the reasonable costs associated with the retuning, and comparable facilities are available.^{12/} The Commission recognized that “while voluntary negotiations are important and to be encouraged, mandatory relocation is necessary to achieve the transition to geographic area licensing and to enhance the flexibility of EA licensees on the upper 200 channels.”^{13/} Along similar lines, the Commission recently explained its decision to mandate the retuning of an FM broadcast station as follows:

The Commission recognizes that a channel shift by an existing licensee can be disruptive to the station's operation. However, we have consistently found that the public interest arising from the initiation of a new service outweighs the disruption

to relocate to higher bands or other media to accommodate emerging technologies); *Amendment to the Commission's Rules Regarding A Plan for Sharing the Costs of Microwave Relocation*, FCC 97-223 (rel. July 10, 1997)(revising 1850-1990, 2110-2150 and 2160-2200 MHz relocation rules to accelerate deployment of emerging technologies); *Amendment of Section 2.106 of the Commission's Rules to Allocate Spectrum At 2 GHz For Use By the Mobile-Satellite Service*, 6 C.R. 1025 (1997)(addressing relocation of users of 1990-2025 MHz and 2165-2000 MHz band to permit innovative mobile satellite services); *Amendment of the Commission's Rule to Relocate the Digital Electronic Message Service From the 18 GHz Band to the 24 GHz Band and to Allocate The 24 GHz Band For Fixed Service*, 12 FCC Rcd 3471 (1997)(requiring all DEMS licensees to relocate to 24 GHz band to promote efficient use of 18 GHz band). For similar reasons, in those services where frequency coordinators are employed, the Commission has vested those coordinators with the discretion to ignore an applicant's request for specific channels and assign other channels where appropriate to maximize spectral efficiency. See *Frequency Coordination in the Private Land Mobile Radio Services*, 103 F.C.C.2d 1093, 1108-09 (1986).

^{12/} *Amendment of Part 90 of the Commission's Rules to Facilitate Future Development of SMR Systems in the 800 MHz Frequency Band*, 12 FCC Rcd 9972, 9984-91 [hereinafter cited as “800 MHz Reconsideration Order”] affirming *Amendment of Part 90 of the Commission's Rules to Facilitate Future Development of SMR Systems in the 800 MHz Frequency Band*, 11 FCC Rcd 1463, 1507-10 (1995).

^{13/} *800 MHz Reconsideration Order*, 12 FCC Rcd at 9984.

to the existing station.^{14/}

The same holds true here -- while voluntary retuning negotiations along the lines advocated by CTN are to be promoted, the Commission should not permit any licensee's unreasonable refusal to retune to deter the introduction of innovative new wireless cable services.

Finally, in order to avoid disputes over retuning, the Petitioners believe the Commission should adopt clear and concise procedures to guide the parties during voluntary negotiations and govern the resolution of disputes that cannot be resolved without Commission intervention.

Consistent with the Commission's approach elsewhere, the Petitioners are of the view that retuning should be required only where the requesting party can demonstrate the availability of "comparable facilities." Obviously, no licensee should be required to operate from a different channel if the retuning would have a material adverse impact on its operations. For these purposes, Petitioners propose that "comparable facilities" generally should be deemed available where it is possible for the existing facility to retune to other MDS or ITFS channels while still enjoying a 45 dB desired-to-undesired ("D/U") signal ratio from co-channel operations and a 0 dB D/U signal ratio from adjacent channel operations.^{15/}

^{14/} *Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations. (Smith and Reno, Nevada, Susanville and Truckee, California), 12 FCC Rcd 10218, 10219-20 (1997)(citing Ava, Branson and Mountain Grove, Missouri, 10 FCC Rcd 13035 (1995)).*

^{15/} In demonstrating that the 45 dB/0 dB standard can be achieved, the requesting party should be permitted to propose receive antenna upgrades and the replacement of obsolete pre-May 26, 1983 downconverters, just as any applicant can today pursuant to Section 74.903(a) of the Commission's Rules. Moreover, the Petitioners believe that an exception to the 45 dB/0 dB requirement should exist to address those situations where the licensee being asked to retune has either explicitly or implicitly accepted a lower D/U ratio. In those cases, comparable facilities should be deemed present where the D/U ratio will not be reduced in any portion of the MDS or ITFS protected service area (if one exists) or, in the case of an ITFS license, at any registered receive site entitled to protection. *See Request For Declaratory Ruling on the Use of Digital Modulation by Multipoint Distribution Service and Instructional Television Fixed Service Stations, 11 FCC Rcd*

In order to avoid unnecessary burdens on the Commission's staff, the Petitioners believe retuning proposals should be subject to private negotiations before being brought to the Commission. The Petitioners propose a three-step process for handling retuning proposals – (1) notice; (2) negotiations; and (3) Commission intervention.

(1) Notice – The requesting party should be required to provide the licensee with written notice requesting that the licensee retune to other channels, agreeing to pay all costs associated with such retuning,^{16/} and demonstrating that comparable facilities are available.

(2) Negotiations – Service of the notice should commence a period during which the parties can negotiate arrangements for retuning. At any time more than thirty (30) days after service of the notice, either party may terminate negotiations. The proponent of the retuning proposal can then refer it to the Commission for resolution by submitting an application in the name of the licensee proposing a change in channels along with any other contingent applications necessary to effectuate the retuning (such as a proposal by another licensee to retune its channels to make channels available for the proposed mandatory retuning).

(3) Commission Intervention – Upon termination of negotiations and referral, the staff of the Video Services Division should expeditiously determine whether the conditions for retuning (availability of comparable facilities and an offer to pay the cost of retuning) have been satisfied and, if so, should order the prompt retuning of the subject station.

The Petitioners recognize that retuning of this sort was not fully addressed in either the

18839, 18853-54 (1996); *Amendment of Parts 21, 43, 74, 78, and 94 of the Commission's Rules Governing Use of the Frequencies in the 2.1 and 2.5 GHz Bands Affecting: Private Operational-Fixed Microwave Service, Multipoint Distribution Service, Multichannel Multipoint Distribution Service, Instructional Television Fixed Service, and Cable Television Relay Service*, 10 FCC Rcd 7074, 7083-84 (1995).

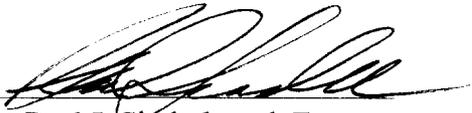
^{16/} As CTN acknowledges, the costs associated with retuning are likely to be minimal because most transmitters in use today can be readily retrofitted at reasonable cost to operate on any channel in the 2.5 GHz band. In addition, in those few cases where licensees do not use broadband downconverters capable of receiving the entire 2.5 GHz band, it may be necessary to replace existing downconverters with downconverters capable of receiving the channels to which the transmitters will be retuned. While the requesting party should be required to ensure a seamless transition to the new channels, the licensee should be required to cooperate in a reasonable manner in connection with the transition.

Petition or the *NPRM*. Thus, the Petitioners believe the Commission would be well-served by releasing a public notice advising interested parties of the CTN Request and this response and extending the deadlines for the submission of comments and reply comments in response to the *NPRM* by 14 days.

Such an extension could also result in the submission of a joint proposal by WCA and NIA for resolving the numerous issues raised in the *NPRM* regarding the relationship among wireless cable operators and ITFS licensees and the changing usage of ITFS frequencies resulting from those relationships. For the past several months, a joint working group consisting of representatives of WCA and NIA have been attempting to develop a joint position for their two organizations. Just last week, NIA submitted a proposal for consideration by WCA. While the two sides remain far apart on several critical issues, the Petitioners believe that with additional time, a resolution may be possible. Certainly, if an extension is granted, WCA intends to continue working with NIA in an effort to develop a series of rules and policies that achieve the Commission's fundamental objectives for both wireless cable and ITFS.

In short, granting a brief extension of the comment and reply comments dates established by the *NPRM* may well expedite the ultimate resolution of the issues before the Commission by providing a better record on the issues raised by CTN and, perhaps, allowing WCA and NIA to present the Commission with a joint proposal on the issues raised by the use of ITFS capacity in advanced wireless communications systems.

Respectfully submitted,

By: 
Paul J. Sinderbrand, Esq.
William W. Huber, Esq.

WILKINSON, BARKER, KNAUER & QUINN, LLP
2300 N Street, NW, Suite 700
Washington, DC 20037-1128
(202) 783-4141

Counsel to the Petitioners

December 1, 1997

CERTIFICATE OF SERVICE

I, Paul J. Sinderbrand, hereby certify that I have on this 1st day of December 1997, caused to be served true and correct copies of the foregoing "Response to Request for Supplemental Comment Period and Extension of Time" upon the following parties via hand delivery (indicated by an *) or first-class United States mail, postage prepaid:

Charles F. Dziejczak(*)
Assistant Chief, Video Service Division
Federal Communications Commission
1919 M Street, N.W., Room 702
Washington, D.C. 20554

Michael J. Jacobs (*)
Mass Media Bureau
Federal Communications Commission
2033 M Street, N.W., Room 600
Washington, D.C. 20554

David Roberts (*)
Mass Media Bureau
Federal Communications Commission
1919 M Street, N.W., Room 702
Washington, D.C. 20554

William D. Wallace
Crowell & Moring, LLP
1001 Pennsylvania Ave., N.W.
Washington, D.C. 20004



Paul J. Sinderbrand

December 1, 1997