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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)	
)	
Amendment of Parts 1, 21 and)	MM Docket 97-217
74 to Enable Multipoint Distribution)	
Service and Instructional Television)	
Fixed Service Licenses to Engage in)	File No. RM-9060
Two-Way Transmissions)	
)	

Joint Reply Comments

Asheville-Buncombe Technical Community College, Belmont Abbey College, Bladen Community College, Brunswick Community College, College of the Albemarle, The Crary School, Davidson County Community College, Edgecombe Community College, Fayetteville Technical Community College, Forsyth Technical Community College, James Sprunt Community College, Johnston Community College, Meredith College, Nash Community College, Pitt Community College, Queens College, Richmond Community College, Roanoke Bible College, and Roanoke Rapids Graded School District, and Wake Technical Community College (collectively "Reply Commenters"), by their attorneys and pursuant to Sections 1.415 and 1.419 of the Commission's Rules, hereby submit these reply comments regarding the proposed amendment to Parts 1, 21 and 74 of the Commission's Rules to enable Multipoint Distribution Service ("MDS") and Instructional Television Fixed Service ("ITFS") licensees to engage in fixed, two-way transmissions.

Each Reply Commenter filed an application to obtain an authorization to operate ITFS facilities in the State of North Carolina during the Commission's October, 1995 filing window for

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ITFS applications ("October Window"). The applications remain pending at the Commission. Each Reply Commenter has entered an ITFS Airtime Lease Agreement with Wireless One of North Carolina, L.L.C. ("WONC"). WONC is an operator developing a statewide wireless cable network in North Carolina.

Reply Commenters generally support the revisions to the Commission's Rules proposed in the Petition for Rulemaking submitted on March 14, 1997 by the Wireless Cable Association International, Inc. and various wireless cable operators, consulting engineers and MDS and ITFS licensees ("Petitioners").¹ Reply Commenters generally support the revisions to the rules proposed by the Commission in its Notice of Proposed Rulemaking ("NPRM") which will allow fixed, two way transmissions. Reply Commenters believe that their institutions and the educational institutions served at the various receive sites in Reply Commenters ITFS applications would benefit immensely from the flexibility to use the ITFS spectrum for two-way transmissions.

Reply Commenters support the positions espoused in the Joint Statement of Position by the Petitioners and the National ITFS Association, Inc. ("NIA") ("Joint Statement") and believe the principles espoused in the Joint Statement should be adopted by the Commission. Although the Joint Statement is not a point by point response to the NPRM, Reply Commenters believe the fundamental issues addressed therein should be considered essential to safeguard the original purpose of the ITFS spectrum as its use evolves in a competitive environment. In addition, Reply Commenters address the following specific matters below.

¹ Several of the Reply Commenters submitted comments to the Commission in support of the Petition.

Application Processing

The NPRM and comments filed by several parties have raised concerns regarding the impact of the proposed changes to the rules on ITFS licensees.² Reply Commenters believe that many of these concerns are unfounded or have been adequately dealt with by Petitioners in their Petition and in their Comments to the NPRM. Reply Commenters agree with Petitioners that streamlining the application process will speed service to the public without adversely affecting ITFS applicants and licensees. Reply Commenters filed their applications for ITFS authorizations more than two years ago and are still waiting for the Commission to process them. Reply Commenters do not want similar delays to haunt future applications for two-way facilities. In addition, ITFS licensees affected by a given proposal must be served with copies of the application thereby affording the licensees and their counsel the opportunity to review the proposals. The filings will be placed on Public Notice and ITFS licensees will have 60 days to submit petitions to deny or other formal objections. Further, as noted by Petitioners, even if ITFS licensees fail to utilize any of the safeguards, ITFS operations will still be protected because any impermissible harmful electrical interference resulting from the new operations after an automatic grant will have to be cured immediately. Petitioners' Comments at p. 29. Reply Commenters believe these safeguards are sufficient to protect ITFS licensees against harmful interference while ensuring the expedited development of two-way service.

Reply Commenters also agree with Petitioners' proposal to adopt a one day filing window for major ITFS modification applications and the Commission should adopt rules to expedite the processing of such applications. Petitioners' Comments at p. 53. Adoption of expedited

² See Comments of Instructional Television Foundation.

processing for major modifications would ensure faster service to ITFS receive sites and to the public.

Reply Commenters do not agree with Petitioners' proposal for adopting a strict approach regarding the supplementing of pending ITFS applications with consent letters after the applications have been filed. Petitioners' Comments at n. 36. While Reply Commenters agree that it would be best if all necessary consent letters were included in the initial application, that is simply not always possible because of the operating constraints of the typical ITFS applicant. Reply Commenters are all educational institutions which operate on a semester or quarter schedule. They are primarily involved in educational matters. If the Commission opens a filing window during a break period or between semesters (or quarters), it will be very difficult to obtain consents from educational institutions because the employees who need to review the proposal and sign the consent are not available. Instituting a strict approach to supplementing ITFS applications would be a tremendous disservice to the educational institutions who are the principle users of ITFS facilities.

ITFS Programming Requirements

Reply Commenters do not believe that the Commission should adopt increased programming requirements. However, Reply Commenters believe that the Commission's Rules should be revised to allow non-video programming to satisfy ITFS programming requirements. See Petitioners' Comments at n. 232. Reply Commenters believe the flexibility to utilize their frequencies for two-way transmissions will enhance their offerings to their students and those at their receive sites. By allowing such transmissions to apply toward fulfillment of ITFS

programming requirements, the Commission will be opening a whole new area of use for ITFS channels.

Other ITFS Issues

Reply Commenters support the proposal that the Commission allow the trading of frequencies between and among ITFS and MDS. This was initially proposed in comments submitted by Schwartz Woods & Miller on behalf of numerous ITFS licensees and was included in the Joint Proposal. The costs of such channel swapping would be the responsibility of the wireless cable operator initiating the swap and not the ITFS licensee.

Reply Commenters also agree with the proposal by the Dow Lohnes & Albertson Parties that each ITFS licensee preserve at least one 6 MHz channel capable of downstream video transmissions to receive sites. Petitioners' Comments at p. 153. As noted in Petitioners' Comments, this will enable ITFS licensees to engage in transmissions even if they leave the wireless cable system. Reply Commenters believe that mandating that each ITFS licensee have at least one channel of downstream transmissions available gives an added amount of protection in the new two-way environment.

Finally, Reply Commenters do not believe that the Commission should mandate that ITFS licensees retain independent counsel and consulting engineers. Most ITFS licensees and applicants, including Reply Commenters, have lease agreements with wireless cable operators and utilize the counsel and consulting engineers of the operator. The wireless cable operator pays the fee of the counsel and consulting engineer. To require all ITFS licensees to hire their own counsel and consulting engineer would be prohibitively expensive to many licensees and is simply

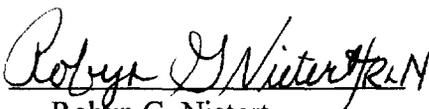
unnecessary. Those ITFS applicants and licensees that want their own consultants are capable of hiring them, but the Commission should not be mandating such actions.

Conclusion

Reply Commenters believe that adoption of proposals that would enable ITFS licensees to utilize their frequencies for two-way transmissions would greatly benefit the wireless cable industry generally and ITFS licensees, in particular.

Respectfully submitted,

Asheville-Buncombe Technical Community College, Belmont Abbey College, Bladen Community College, Brunswick Community College, College of the Albemarle, The Crary School, Davidson County Community College, Edgecombe Community College, Fayetteville Technical Community College, Forsyth Technical Community College, James Sprunt Community College, Johnston Community College, Meredith College, Nash Community College, Pitt Community College, Richmond Community College, Roanoke Bible College, Roanoke Rapids Graded School District and Queens College, and Wake Technical Community College

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