

ORIGINAL

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

In the Matter of)
)
Amendment of Parts 1, 21 and 74 to)
Enable Multipoint Distribution)
Service and Instructional)
Television Fixed Service Licensees)
To Engage in Fixed Two-Way)
Transmissions)

MM Docket No. 97-217
File No. RM-9060

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

To: The Commission

PETITION FOR RECONSIDERATION OF
BELLSOUTH CORPORATION AND BELLSOUTH WIRELESS CABLE, INC.

BELLSOUTH CORPORATION
BELLSOUTH WIRELESS CABLE, INC.

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December 28, 1998

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Summary

BellSouth Corporation and BellSouth Wireless Cable, Inc. (collectively, "BellSouth") hereby seek reconsideration of the *Report and Order*, FCC 98-231, released September 25, 1998 (the "*Two-Way Order*").

The *Two-Way Order* represents a sea change in the regulation of the MDS and ITFS industries, replacing rigid rules and strict oversight with flexibility and self-governance. In advancing these objectives, the Commission has performed a tremendous service to operators and licensees seeking to expeditiously deploy competitive, advanced services.

There are, however, five areas where further changes are needed to advance the Commission's goals in this proceeding:

- The Commission should extend its new streamlined processing rules to ITFS "major change" applications.
- The Commission should adopt expedited dispute resolution procedures to resolve interference claims.
- The Commission should permit capacity lessees to apply for booster stations within the 35-mile protected service area of the main station, with the consent of the licensee.
- The Commission should not afford licensees of point-to-point (as opposed to point-to-multipoint) ITFS stations a 35-mile PSA.
- The Commission should allow ITFS lease provisions that require capacity leases to be assigned upon assignment or transfer of the underlying license.

Upon adoption of these further rule and policy changes, the objectives intended by the Commission in the *Two-Way Order* can be maximized, to the benefit of operators, licensees and the public.

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**PETITION FOR RECONSIDERATION OF
BELLSOUTH CORPORATION AND BELLSOUTH WIRELESS CABLE, INC.**

BellSouth Corporation and BellSouth Wireless Cable, Inc. (collectively, "BellSouth"), by their attorneys and pursuant to Section 1.429 of the Commission's Rules, hereby petition for reconsideration of the *Report and Order*, FCC 98-231, released September 25, 1998 (the "*Two-Way Order*").¹

Introduction

BellSouth commends the Commission for adopting the *Two-Way Order*, an important event that will comprehensively alter the wireless cable industry by allowing the more flexible use of spectrum, streamlining application processing and establishing policies for the digital age. At the request of more than one hundred petitioners, supported by comments of BellSouth and other parties, the Commission's regulatory policy has evolved from one of careful supervision to one premised on industry cooperation and self-governance. BellSouth and the industry strongly support this general movement in the *Two-Way Order* toward less government regulation of MDS

¹ The *Two-Way Order* was published in the Federal Register on November 25, 1998. Thus, this Petition is timely filed pursuant to Section 1.4.

and ITFS.

Given the extreme complexity of this proceeding, however, it is to be expected that some additional fine tuning is needed to fully accomplish the Commission's goals. First, the Commission should extend its new processing rules to ITFS "major change" applications, as requested by the petitioners. Second, as BellSouth advocated in its Reply Comments, the Commission should adopt expedited dispute resolution procedures to resolve interference claims. Third, the Commission should continue to permit lessees of MDS and ITFS capacity to apply for booster stations within the 35-mile protected service area ("PSA") of the main station. Fourth, the Commission should not afford licensees of point-to-point ITFS stations (as opposed to point-to-multipoint) a 35-mile PSA. Fifth, the Commission should allow ITFS lease provisions that require the assumption of ITFS capacity leases upon assignment or transfer of the underlying license.

Discussion

I. ITFS "MAJOR CHANGE" APPLICATIONS SHOULD BE PROCESSED USING THE STREAMLINED PROCEDURES APPLICABLE TO RESPONSE STATION AND BOOSTER STATION APPLICATIONS.

One of the most dramatic changes adopted in the *Two-Way Order* is streamlined processing of response station and booster station applications. As the Commission stated:

[t]he process we adopt today for two-way applications represents a fundamental shift from the Commission's traditional review function in MDS/ITFS licensing. . . . It will require increased diligence by MDS and ITFS licensees in tracking and monitoring the impact of applications by other parties on their own services.²

² *Two-Way Order* at 36.

No longer will Commission staff be required to analyze interference studies. No longer will conflicting applications filed on the same day be deemed mutually exclusive. Instead, applicants for response stations and booster stations will submit only certifications as to compliance with the Commission's service, technical and interference rules. Applications will be placed on public notice, and interested parties will have 60 days to file petitions to deny. Thereafter, in the absence of petitions or other defects discovered pursuant to random audits, the Commission would grant the application.

There are two predicates for this new processing scheme. First, as the Commission stated, "MDS and ITFS operators have a long history of mutual cooperation in their systems."³ Second, in order to take advantage of the new rules, operators and licensees must cooperate with each other. As the Commission stated:

[a]n MDS operator trying to run a system across its BTA must cooperate with the various ITFS licensees in its BTA. Likewise, many ITFS licensees depend on the compensation paid by their local MDS operator to make their own systems a reality. Therefore, the viability of the services depends on the parties working together in good faith, a situation which reinforces the appropriateness of a certification system in this context.⁴

³ *Id.*

⁴ *Id.*

Notwithstanding the urging of BellSouth⁵ and others,⁶ however, the Commission did not extend the streamlined processing rules to ITFS "major change" applications.⁷ Curiously, the Commission offered no explanation whatsoever for its rejection of this proposal. The anomalous result is that routine ITFS applications will be processed under existing rules that have led to lengthy processing delays⁸ and require substantial staff resources, whereas new and technically-complicated response station and booster station applications will be processed under the new streamlined rules.

There is no sound reason for this inconsistency. First, the two predicates for streamlining cited by the Commission – a pattern of historical industry cooperation and the need to coordinate the design of advanced MDS/ITFS systems – are equally present with respect to major changes to ITFS stations. As operators reconfigure their systems for cellularization, sectorization and two-way services, it may be necessary to also modify the "main" MDS and ITFS stations. For instance, BellSouth is now designing and developing digital video systems in several markets and operators of neighboring systems similarly are engineering advanced systems for two-way data

⁵ See BellSouth Reply Comments at 16-18.

⁶ See, e.g., Petitioners Comments at 47-55.

⁷ Pursuant to Section 74.911(a)(1), a major change in the ITFS service is any proposal to add new channels, change channel groups, change polarization, increase EIRP more than 1.5 dB, increase the antenna height by at least 25 feet or relocate the transmit site more than ten miles.

⁸ As has been well documented, the window filing rule has not had the desired effect of expediting ITFS service to the public. Because of pent-up demand prior to the first window in October 1995, more than 1,000 applications for new and modified facilities were filed, creating substantial burdens on Commission staff to review and process those applications. This created delays in the processing of applications, which has impeded the Commission from commencing a new filing window to accept more applications. This vicious cycle will only continue unless streamlined procedures are adopted.

services. In many cases, in order to maximize their respective service objectives and minimize harmful interference to surrounding systems, the technical parameters of the main stations of these systems must be reconfigured to increase power, change polarization, change transmission systems or make other "major changes" as defined by Section 74.911(a)(1). Further, system operators may need to deploy response stations for two-way services or booster stations in order to serve shadowed or foliated areas.

Under the existing processing rules for ITFS major changes, BellSouth's plans and those of its neighbors could be substantially delayed or even abandoned. While BellSouth could file for its *MDS* main station modifications at any time⁹ and for MDS or ITFS booster stations under the streamlined procedures, ITFS applicants cannot even file their major change applications until the FCC opens a filing window. In the meantime, operators and ITFS educators may not be able to deploy the booster stations until *all* of the facilities at the main station can be reconfigured.¹⁰ Given the long time that has passed since the Commission last accepted major change applications, creating pent-up demand and outstanding ITFS auction issues, it may be some time, if ever, before an ITFS licensee would be able to conform its facilities to the MDS stations. The practical effect may be to delay the implementation of advanced services altogether, since the technical facilities

⁹ MDS applications can be filed by the BTA authorization holder or incumbent licensees at any time. FCC staff must still review the technical data, but the petition period is shorter by 30 days. Assuming that the MDS applications are filed on or about the same day as corresponding ITFS major change applications, response stations and booster station applications for a given market, it is fair to say that all of the applications for that market would be granted within a few weeks of each other.

¹⁰ For instance, to avoid intra-system interference, booster stations must be cross-polarized with the associated main station. Thus, as a practical matter, any change in polarization of the main station must occur simultaneously with deployment of the booster station.

would need to be conformed in order to avoid interference and for there to be sufficient bandwidth properly configured to provide such services.

Moreover, the authorization of response stations and booster stations in nearby markets prior to the acceptance of ITFS major change applications might preclude BellSouth and other ITFS and MDS operators from *ever* upgrading the ITFS facilities at a main transmit site. As it stands now, operators likely would be less likely or unwilling to invest in the piecemeal development of advanced systems without knowing if or when all of the applications would be granted. Taken to its logical extreme, the ripple effect would be evident in a very large number of markets.

With streamlined processing rules for ITFS major changes, not only will those applications be granted more expeditiously, but they would be processed along with other applications for the same market to which they are operationally related and critical for the deployment of advanced systems. Such streamlining would, for all practical purposes, enable market-by-market processing by the Commission, an objective that offers substantial benefits to the MDS/ITFS industry. Operators and ITFS educators would obtain the assurance that all of their proposed main station changes, response stations and booster stations would be granted within the same time frame. The greater certainty created by simultaneous processing would enable business plans and operation timelines to be advanced and more predictable, and would encourage investment in the MDS/ITFS industry.

Under BellSouth's proposal, ITFS major change applications would be treated exactly like those response station and booster station applications covered by Sections 74.939 and 74.985, respectively. That is, applications would be filed in the same initial filing window or under the

rolling one-day filing windows following thereafter. The applications would not be deemed mutually exclusive and could not be amended to change the technical parameters or provide interference consents. Those applicants that did not coordinate their technical parameters prior to filing would be required to resolve interference issues. Applications would be placed on public notice as accepted for filing and would be granted after 60 days if there were no pending petitions or no defects discovered in an audit.

In summary, one of the primary goals of this proceeding is the streamlining of the advanced system applications process. As explained above, allowing ITFS major change applications to be part of that process is critical to achieving that goal and to avoiding the effects of disparate processing schemes and timelines on system development. It is abundantly clear that the public interest would be served if ITFS major change applications were subject to the same processing rules as response stations and booster stations. For these reasons, BellSouth urges the Commission to include ITFS major change applications within Section 74.911(e).

II. THE COMMISSION SHOULD IMPLEMENT PROCEDURES FOR THE EXPEDITIOUS RESOLUTION OF INTERFERENCE CLAIMS.

In its Reply Comments, BellSouth proposed the adoption of procedures designed to resolve claims of interference between newcomers and incumbents and between newcomers filing on the same day or during the initial filing window.¹¹ The timeline suggested by BellSouth was as follows:

¹¹ BellSouth Reply Comments at 19.

| | |
|--|---------|
| Interference Complaint Filed ¹² | - - - |
| Opposition Due | 10 days |
| Reply Due/Settlement Conference Period Begins | 15 days |
| Settlement Conference Period Ends | 30 days |
| FCC Decision Due | 90 days |

BellSouth reasoned that, in some cases, applicants could file for facilities that would inadvertently cause interference to another applicant's concurrently-filed proposal. Because the lack of mutual exclusivity under streamlined processing could lead to grants of facilities causing substantial interference to one another, parties would be without recourse if they could not reach a private agreement to resolve interference claims. Without procedures for expediting dispute resolutions, BellSouth and other operators may not be able to justify the enormous investment represented by the conversion to digital.¹³

In the *Two-Way Order*, the Commission declined to adopt this proposal, stating that "we find BellSouth's system to be too restrictive and are concerned that it would not allow us to resolve interference complaints in the most reasonable and beneficial manner possible."¹⁴ One can only assume that the Commission believes that the absence of specific deadlines will motivate parties to privately resolve interference issues without Commission intervention.

¹² As set forth in its Reply Comments, an interference complaint could be filed at any time, affording parties an opportunity to resolve their disputes without resorting to the Commission's regular processes. See BellSouth Reply Comments at 20. See also Petitioners Reply Comments at 85-87. In some cases, it may be appropriate during the process to extend the above-referenced time periods if a settlement appears imminent. Such extensions should be permitted if all parties consent.

¹³ See BellSouth Reply Comments at 20 (footnote omitted).

¹⁴ *Two-Way Order* at 38, n. 162.

BellSouth respectfully disagrees with this conclusion. To the contrary, BellSouth believes that the threat of Commission action is necessary to discourage the filing of frivolous petitions and encourage parties to settle when a legitimate petition is filed. Moreover, in addition to the reasons discussed above, expedited dispute resolution procedures would add greater certainty to the timing of interference dispute resolution.

There are three circumstances where a party would file an interference complaint. First, an incumbent may have a legitimate claim of actual interference, in which case it could be harmed by the continued reception of interference. In this case, expedited resolution would resolve the complaint promptly so as to minimize harm. Second, a newcomer may claim that a nearby applicant's proposal is predicted to cause interference. In this case, two applicants may have filed conflicting proposals without the knowledge of each other, and the petition process would allow the parties to evaluate interference and negotiate a settlement with the knowledge that a failure to settle expeditiously would result in a quick Commission decision. If the parties were unable to privately settle, the settlement conference that the Commission would hold would encourage parties to focus on the relevant issues, facilitating settlement and providing the Commission with a clearer basis upon which to render a decision. Third, a party may file a frivolous interference complaint solely to attempt to delay grant of an application and extort "greenmail" from a legitimate filer or licensee. With expedited dispute resolution, the petitioner may be discouraged from filing in the first place because its nefarious objectives would be frustrated by the expedited resolution process. The frivolous complaint would be quickly dismissed with little delay.

BellSouth has great faith in the willingness and ability of legitimate operators to work together to design their systems before filing for modifications, response stations and booster

stations. There will, however, be cases where legitimate differences exist. In many of these cases, the specter of Commission resolution will help drive a private resolution. And, where an unscrupulous party resorts to abusing the Commission's processes solely to hinder or delay a legitimate operator from conducting its business, expedited dispute resolution procedures would help ensure that legitimate service to the public will not be delayed.

III. THE COMMISSION SHOULD RETAIN THE RULES PERMITTING CAPACITY LESSEES TO FILE FOR MDS AND ITFS BOOSTER STATIONS WITH THE CONSENT OF THE LICENSEE OF THE MAIN STATION.

In the *Two-Way Order*, the Commission modified Sections 21.913 and 74.985 to prohibit capacity lessees from holding booster station licenses, such that only licensees, conditional licensees and permittees of MDS and ITFS facilities are eligible to hold booster station licenses.¹⁵

In making this change, the Commission stated that:

all licenses for all downstream booster stations and any associated return paths that employ ITFS licensed channels should be held by the ITFS licensee. This approach will be administratively efficient and will help to prevent the anomalous situation of an ITFS licensee being in conflict with a booster station on its own licensed frequency.¹⁶

Given the Commission's emphasis on flexibility, it is simply incongruous for the Commission to eliminate one of the effective means for operators to expeditiously achieve their licensing objectives. Licensees and their capacity lessees may simply prefer that the lessee be

¹⁵ High-power booster stations operate at a maximum power level in excess of -9 dBW EIRP. *See* Sections 21.913(b) and 74.985(b). Capacity lessees are eligible for low-power booster stations, which operate with a maximum power level of -9 dBW EIRP. *See* Section 21.913.

¹⁶ *Two-Way Order* at 8. The Commission did not address reasons for changing the rules for MDS eligibility. However, Section 21.913 was amended to delete references permitting capacity lessees to hold booster station licenses.

responsible for regulatory and service matters related to booster stations. For instance, in order to maximize its service objectives in the Atlanta market, BellSouth designed a system utilizing a main transmit site located in downtown Atlanta surrounded by three booster sites that replicate, channel for channel, the programming from the main site. To accomplish this licensing task, BellSouth obtained the consent of each MDS and ITFS licensee to retransmit their signal at the booster sites, and now BellSouth holds booster licenses for ITFS and MDS channels at each location.

As the sole applicant, BellSouth was a single point of contact with Commission staff processing the applications. As questions arose, BellSouth could quickly respond without the need to coordinate with the consenting licensees, thereby expediting the licensing process. Moreover, on an ongoing basis, BellSouth is solely responsible for regulatory compliance of the these stations, a reasonable position given its design of the booster stations.

In addition to these benefits, the right of lessees to hold booster station licenses in no way harms licensees of the main station. The rules did not compel lessees to file for booster stations, it only permitted them to do so, and only with the consent of the licensee. In light of the fact that the licensee retains this control, BellSouth does not understand why the Commission believes this rule change would be "administratively efficient" or why "the anomalous situation of an ITFS licensee being in conflict with a booster station on its own licensed frequency" presents any difficulties.¹⁷ To the contrary, limiting the flexibility enjoyed by licensees and lessees alike is a

¹⁷ To the extent the Commission is concerned about the rights of licensees to provide service within the PSA after lease termination, it may be appropriate to grant licensees an option to obtain, by assignment, any booster station licenses held by a lessee upon termination of the
(continued...)

solution in search of a problem. The Commission's rules, affording more flexibility to licensees, should be maintained.

IV. POINT-TO-POINT ITFS LICENSEES SHOULD NOT BE AFFORDED A 35-MILE PROTECTED SERVICE AREA.

In its Comments, Instructional Telecommunications Foundation, Inc. ("ITF") observed that, under Commission rules, only leased ITFS stations could receive a 35-mile PSA, whereas ITFS licensees that do not lease could not have a PSA, even if they were providing point-to-multipoint service to the public. According to ITF, in these circumstances, ITFS licensees could be compelled to lease capacity as an artifice in order to operate a wide-area system without interference. In response to these concerns, the Commission granted *all* ITFS licensees a PSA of 35 miles from their transmit site.¹⁸

The rule change adopted by the Commission is justifiable for point-to-multipoint ITFS stations, but not for point-to-point ITFS stations. Although the vast majority of ITFS licensees operate point-to-multipoint and lease excess capacity to commercial operators,¹⁹ the automatic

¹⁷(...continued)
capacity lease. This policy would be consistent with existing policies granting ITFS licensees the right to purchase ITFS equipment upon lease termination so that the licensee may maintain its operations.

¹⁸ Footnote 296 of the *Two-Way Order* appears to be incorrect in stating that the protected service area comprises an area within a 35 mile radius of the licensee's *registered receive sites*. See *Two-Way Order* at 62, n. 296. BellSouth asks that this obvious error be corrected.

¹⁹ The Commission estimates that approximately 95 percent of new ITFS applicants propose to lease their excess capacity for commercial purposes. See *Two-Way Order* at 41. Of the remaining five percent, some, like ITF, use or plan to use their spectrum to provide point-to-multipoint services directly to the public. For these two classes, a 35-mile PSA would be appropriate.

granting of PSAs to point-to-point stations creates unnecessary design challenges for operators that desire to reconfigure their stations to provide advanced services. Where an ITFS applicant or licensee has proposed a point-to-multipoint system – whether it leases excess capacity or not – it should be entitled to a PSA. However, where an ITFS station provides point-to-point service, that station does not need and should not be afforded a PSA for interference protection purposes. Accordingly, BellSouth urges the Commission to create an exception in Section 74.903(d) that states that point-to-point ITFS stations are not entitled to a PSA.²⁰

For the small percentage of ITFS stations that operate point-to-point, PSA protection is totally irrelevant to their institutional needs, results in overprotection and causes unintended adverse consequences. To cite an example, in designing its systems to provide enhanced digital video services, BellSouth has been able to fully protect the sole receive site of several point-to-point stations used as studio-transmitter links ("STLs") or to relay instructional programming to campuses and learning centers. Under BellSouth's engineering designs, these stations would not receive harmful interference, and thus no interference consents are required. But, under the rules adopted in the *Two-Way Order*, BellSouth would need to provide interference protection to a theoretical 35-mile PSA where the station operates only on a point-to-point basis. In this scenario, PSA protection has no useful purpose whatsoever, and creates unnecessary, artificial design problems. Operators and their lessors may not be able to design or operate viable systems under such restrictions, and would be forced either to design inferior systems to meet a 35-mile PSA

²⁰ For purposes of the exception, a point-to-point station would be defined as having the following characteristics: (1) a single designated receive site; (2) use of a parabolic or other directional transmit antenna; and (3) the lack of an excess capacity lease agreement with a commercial operator.

interference protection standard to protect only one or a few point-to-point links, or to abandon commercial operation in the market.

The Commission has held that point-to-point service is not the "primary" use of ITFS spectrum and that ITFS frequencies used for STLs operate on a secondary basis and thus are subject to displacement.²¹ In according secondary protection to point-to-point ITFS stations, the Commission has acknowledged that the "highest and best" use of ITFS spectrum is to provide distance learning services to multiple locations and to provide competitive video and data services. That the vast majority of ITFS spectrum is used for such purposes underscores the primacy of point-to-multipoint operation.²²

In attempting to accommodate ITF's concern, the Commission has gone too far. Affording a PSA even to point-to-point ITFS stations is unnecessary and spectrally inefficient, creating unintended design problems to the detriment of other ITFS licensees, operators and, ultimately, the public. The Commission should amend Section 74.911(d) to state that point-to-point ITFS stations are not entitled to a 35-mile PSA.

²¹ *See Report and Order*, 98 FCC 2d 925, 930 (1984).

²² If a point-to-point ITFS licensee desires to modify its facilities to provide point-to-multipoint services, it can do so subject to the interference protection rights of incumbent co-channel and adjacent-channel MDS and ITFS stations.

V. THE COMMISSION SHOULD ALLOW ITFS LEASE PROVISIONS THAT REQUIRE THE LEASE TO BE ASSIGNED AND ASSUMED UPON ASSIGNMENT OR TRANSFER OF THE STATION LICENSE.

In the *Two-Way Order*, the Commission restated its policy that prohibits an ITFS licensee from assigning the remaining obligations under its capacity lease when it disposes of its license.²³ According to the Commission, "such provisions place an unreasonable impediment on the assignment or transfer of the ITFS facility. . . . [B]anning such provisions enhances the ITFS licensee's flexibility in finding a buyer *should it decide to seek a buyer*."²⁴

This policy fails to recognize that it leaves both capacity lessees and lessors without adequate assurances as to the future use of the station. Companies such as BellSouth spend millions of dollars to construct transmission facilities, operate a business and compensate MDS and ITFS licensees for the use of their spectrum. If an ITFS licensee could assign its license during the lease term without honoring the lease commitment, the operator may have no assurance that it will be able to continue to use the capacity. The operator could lose capacity on its system without any replacement means to deliver the services it is providing to the public. This increased risk has the corresponding effect of limiting the amount of compensation an operator reasonably can provide to an ITFS licensee for the excess capacity. This, in turn, reduces the overall ITFS benefits derived from the lease. Similarly, if the lease were not assigned, the new licensee would not have an automatic right to transmit upon acquisition of the license.

The practical effect of the Commission's policy might require the new licensee and the

²³ See *Two-Way Order* at 73-74.

²⁴ *Id.* at 74 (emphasis in original).

operator to negotiate a new lease agreement or other agreement. Depending on the circumstances, either party could be at a distinct disadvantage in such negotiations. Where there would be insufficient commercial capacity on a system upon removal of the ITFS channels, the operator may be forced to pay unreasonable lease fees merely to preserve the *status quo* of its service offerings, or to discontinue service. Where there would be sufficient commercial capacity without the ITFS channels, the new licensee could be in a disadvantageous bargaining position.

Retention of the lease assignment restriction contravenes the overall policy of promoting flexibility. While continuing the limitation on the rights of parties to freely negotiate contractual provisions, the Commission otherwise adopts ITFS excess capacity leasing rules designed to "maximize the flexibility of educators and wireless cable operators to design systems which best meet their varied needs."²⁵ As examples, the Commission now permits, but does not compel, 15-year lease terms, operator input on license assignees, superchannelization, subchannelization, channel shifting and channel swapping, sweeping changes that greatly increase the parties' ability to freely contract about the use and future use of ITFS channels. In this context, it is simply illogical for the Commission to remove from the lease negotiation process a critical element of future spectrum usage. An assignment requirement is the norm in virtually any long-term asset lease agreement in the free market, and is reasonable for ITFS leases. ITFS licensees should be free to negotiate such a term in order to receive maximum value for their excess capacity.

The prohibition of lease provisions permitting the assignment of ITFS leases undermines the relationship between ITFS licensees and lessees and is contrary to the overall Commission

²⁵ *Id.* at 48.

objectives granting greater flexibility to ITFS educators. The Commission should reverse its policy and allow ITFS licensees and their capacity lessees to negotiate provisions permitting or compelling the assignment and assumption of the lease if and when the license is assigned or transferred.

Conclusion

In view of the foregoing, BellSouth urges the Commission to adopt the proposed rule and policy changes discussed above.

Respectfully submitted,

**BELLSOUTH CORPORATION
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