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

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FEDERAL COMMUNICATIONS COMMISSION
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In the Matter of	)	
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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

To: The Commission

PETITION FOR RECONSIDERATION OF
THE SAN FRANCISCO-SAN JOSE EDUCATOR/OPERATOR CONSORTIUM

The San Francisco-San Jose Educator/Operator Consortium (the "Consortium"),[1] by counsel and pursuant to Section 1.429 of the Commission's Rules, hereby seeks reconsideration of certain portions of the *Report and Order*, FCC 98-231, released September 25, 1998 (the "*Order*").[2]

Introduction

The Consortium, an enthusiastic participant in this proceeding,[3] applauds the Commission's adoption of the *Order*. In adopting streamlined processing, the *Order* makes fundamental changes

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[1] The Consortium consists of the Roman Catholic Communications Corporation; the Regents of the University of California - on behalf of the University of California, Berkeley and University of California, San Francisco; the Association for Continuing Education; Peralta Community College District; the Santa Clara County Board of Education; and San Jose State University, and their operator lessee, Wireless Holdings, Inc. d/b/a Bay Area Cablevision. The seven educators in the Consortium are licensed for a total of 42 ITFS channels, 22 serving the northern San Francisco area region and 20 serving the San Jose region to the south.

[2] The *Order* was published in the Federal Register on November 25, 1998. Pursuant to Section 1.4, this petition is timely filed.

[3] *See generally* Comments of Consortium.

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to the regulatory processes governing MDS and ITFS. In adopting rules designed to promote flexible spectrum use, the *Order* provides a vehicle for the expeditious deployment of digital video and high-speed Internet access services in furtherance of the educational needs of ITFS licensees and consumer demand.

In a document of this magnitude, it is not surprising that a few modifications are required in order to further the Commission's objectives. The Consortium, therefore, advocates: (1) employment of the newly-adopted response station and booster station application procedures to ITFS "major changes;" (2) use of expedited dispute resolution procedures to resolve interference conflicts; and (3) elimination of response station hub notification requirements to ensure confidentiality and reduce administrative burdens on ITFS licensees.

Discussion

I. THE COMMISSION SHOULD PROCESS ITFS "MAJOR CHANGE" APPLICATIONS UNDER THE STREAMLINED PROCEDURES ADOPTED FOR RESPONSE STATION AND BOOSTER STATION APPLICATIONS.

The Consortium urges the Commission to include ITFS "major change"applications in its streamlined application processing procedures in order to expedite modifications and upgrades to ITFS systems and increase reliability for operators and licensees that may need to simultaneously upgrade all licenses in the same wireless system. As an initial matter, the Consortium notes that simplified application and review procedures have been adopted for response stations and booster stations, which involve a complex methodology to determine harmful interference. Conversely, ITFS major change applications, which involve existing facilities and have become rather routine, remain subject to processes requiring detailed engineering showings and time-consuming Commission staff review. Maintaining this dichotomy serves no useful purpose.

Moreover, major changes to existing ITFS facilities often will be designed to work hand-in-hand with the deployment of response stations and booster stations. In many cases, in order to cellularize or sectorize systems to provide spectrally efficient two-way services, main transmit sites will need to be re-configured to re-orient transmit antennas, change polarity, adjust power or make other changes. If major changes to ITFS facilities cannot be proposed until after a filing window opens, after full review of the application and after determinations as to mutual exclusivity have been made, it may be years before such approvals could be secured. In these circumstances, the benefits of streamlined processing will be frustrated, and the promise of advanced services envisioned by the *Order* will not result.

The solution to this conundrum is simple: subject ITFS major change applications to the same streamlined procedures applicable to response stations and booster stations. Applications for ITFS major changes as well as response stations and booster stations could be filed in the first one-week window, and at any time after that.[4] Parties would have 60 days to file petitions to deny, after which acceptable applications would be granted.

Upon grant of the applications, licensees and operators could immediately begin to construct two-way systems on all MDS and ITFS channels. The increased speed with which ITFS applications could be processed and the uniformity in the timing of application grants for all licenses in a wireless system will greatly expedite the upgrade of current systems and the subsequent deployment of advanced services.

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[4] Under existing rules, MDS applications can be filed at any time. An operator would naturally seek to coordinate its filings to obtain grant of all applications at roughly the same time.

Accordingly, in the interest of expediting the deployment of advanced services using MDS and ITFS technology, including educational services, the Consortium respectfully requests that the Commission reconsider its decision and process ITFS "major change" applications under the streamlined procedures.

II. THE COMMISSION SHOULD ADOPT EXPEDITED DISPUTE RESOLUTION PROCEDURES FOR THE REVIEW OF INTERFERENCE COMPLAINTS.

In its Comments, the Consortium urged the Commission to adopt expedited dispute resolution procedures, similar to the procedures proposed in connection with the preemption of state and local restrictions on tower siting,[5] in order to resolve interference disputes.[6] The Consortium proposed that, from the time an existing licensee experienced harmful interference, it would have 10 days to invoke arbitration, and the Commission would have 15 days to appoint an arbitrator to resolve the dispute. Alternatively, within 30 days of experiencing interference, the licensee could petition the Commission for declaratory relief, in which case the Commission would have 30 days to issue a ruling.[7]

In their joint Reply Comments in this proceeding, BellSouth Corporation and BellSouth Wireless Cable, Inc. ("BellSouth") proposed a more comprehensive complaint process under which a final decision on an interference conflict would be issued within 90 days after the filing

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[5] *See In the Matter of Preemption of State and Local Zoning and Land Use Restriction on the Siting, Placement and Construction of Broadcast Station Transmission Facilities*, FCC 97-296, 62 Fed. Reg. 46241 (August 19, 1997).

[6] *See* Consortium Comments at 19-20.

[7] *See id.* at 20.

of a complaint.[8] The procedures established deadlines for the filing of responsive pleadings and settlement procedures that would obviate the need for Commission decision-making, and could be utilized by ITFS and MDS licensees as well as applicants. In the *Order*, the Commission stated that BellSouth's proposal would be "too restrictive" and that it was "concerned that it would not allow us to resolve interference complaints in the most reasonable and beneficial manner possible."[9]

The Consortium believes that expedited dispute resolution procedures are necessary, and disagrees with the Commission's view that being "unable to offer reliable service without resolving such conflicts"[10] will provide enough incentive for the parties to resolve their interference conflicts in the most efficient manner. However, where a party files an interference complaint solely to delay service in another market or on other channels, it has no incentive to resolve the matter. Also, in legitimate cases where actual interference is claimed, expedited processes would motivate parties to deal fairly and promptly with one another, increasing the prospects for private resolution. Further, adoption of expedited resolution procedures should limit the number of interference complaints actually filed and limit the number of cases the Commission would need to resolve itself. For these reasons, the Consortium endorses the adoption of expedited dispute resolution procedures.

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[8] *See* BellSouth Reply Comments at 19-20.

[9] *Order* at 38, n. 162.

[10] *Id.* at 65.

III. THE COMMISSION SHOULD RELAX THE RESPONSE STATION HUB NOTIFICATION REQUIREMENTS TO ENSURE CONFIDENTIALITY AND REDUCE ADMINISTRATIVE BURDENS ON ITFS LICENSEES.

The Consortium urges the Commission to eliminate its rules requiring response station hub licensees to formally notify ITFS licensees by certified mail prior to the response station's operation. Instead, the Consortium requests that response station hub applicants be required only to serve a copy of their applications on ITFS licensees having receive sites in the "notification zone." This rule change would provide ITFS licensees with the appropriate degree of notice to identify potential sources of interference, without creating unnecessary, intrusive and ineffective burdens on ITFS licensees.

The Commission adopted its detailed notice rules so that ITFS stations would be aware of potential interference to receive sites. Specifically, the rules require response station hub licensees to notify all ITFS licensees with registered receive sites within 1,960 feet of the response station to provide advance notice of the institution of service.[11] The notice must be sent by certified mail at least 20 days before service on the response station commences, and must disclose, among other things, the street addresses and geographic coordinates of response stations, which are the subscriber locations that transmit signals to a response station hub. In effect, the rules require response station hub licensees to disclose the locations of their subscribers.

This requirement has the potential for creating a significant competitive problem. In the greater San Francisco Bay Area, more than one system plans to use MDS and ITFS channels to deliver two-way data services. Operators typically keep confidential the locations of their

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[11] *See* Sections 21.909(n) and 74.939(p).

subscribers in order to prevent competitors from targeting those customers and offering predatory rates to switch providers. Under the rules, one operator's lessor would be required to disclose the locations of its subscribers to another operator's lessor, which could then provide that information to its lessee, the competing operator. In these circumstances, the rules could act as a vehicle for anti-competitive behavior.

The rules also create huge administrative burdens for ITFS licensees on both sides of the notification. The provider of the notice will be obligated to expend administrative resources and funds to prepare and mail notices. The receiver of the notice would be obligated to review potentially thousands of notifications. For educational institutions, these burdens will be overwhelming and counterproductive to their educational missions.

In balancing the objectives of the rules with the burdens they create, it is clear that the notification requirement cannot stand. As a more appropriate method to provide ITFS licensees with notice, the Consortium proposes that response station hub applicants serve copies of their applications on all ITFS licensees having registered receive sites in the notification zone. Not only would such a requirement be far less burdensome on ITFS licensees, it would also be more effective in accomplishing the Commission's objectives. First, because response station hub applicants already must serve copies of their applications on co-channel and adjacent-channel incumbent licensees, it would be a simple ministerial task to simultaneously send copies of that same application to all other ITFS licensees in the notification zone. Second, this notice would be provided several months before service would actually commence on the proposed response stations because applications would be subject to the 60-day public notice period. Interference issues thus could be analyzed before construction or service commences. Third, because all ITFS

licensees would get one notice describing the response station service areas and the classes of response stations, it would have sufficient information to identify the party proposing or causing interference without being burdened with certified mail notifications each time a new response station was prepared to initiate service. Fourth, the competitive concerns associated with disclosing the locations of individual response stations would be eliminated.

In sum, service of response station hub applications would reduce administrative burdens and eliminate competitive issues, while at the same time providing a more effective process for the Commission's objectives to be realized. Accordingly, the Consortium proposes that the notification requirements of Sections 21.909(n) and 74.939(p) be eliminated, and that response station hub applicants, at the time of filing their applications, be required to serve copies of their applications on ITFS licensees with registered receive sites in the notification zone.

Conclusion

The revisions to the rules discussed above will permit the expedited deployment of two-way audio, video and data communications through MDS and ITFS system advancement. The Consortium urges the Commission to carefully reconsider its newly-adopted rules and implement the changes discussed above in order to more effectively advance the objectives of the *Order*.

Respectfully submitted,

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