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

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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
Request for Declaratory Ruling on the Use of Digital Modulation by Multipoint Distribution Service and Instructional Television Fixed Service Stations	)	

To: The Commission

PETITION FOR FURTHER RECONSIDERATION

BELLSOUTH CORPORATION
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Summary

BellSouth Corporation and BellSouth Wireless Cable, Inc. (collectively, "BellSouth") hereby seek amendment and clarification of certain rules and policies set forth in the *Report and Order on Reconsideration*, FCC 99-178, released July 29, 1999 (the "*Reconsideration Order*").[1]

Although the *Reconsideration Order* further refined the rules promulgated in the initial *Report and Order* in this proceeding[2] in significant respects, there remain several areas where the Commission should further amend and clarify its rules.

- As BellSouth and others have contended in previous filings in this proceeding, the Commission should permit mutually agreed-upon lease provisions that require the assumption of ITFS capacity leases upon assignment or transfer of the underlying ITFS license.

- Licensees of limited, point-to-point ITFS stations should not be afforded a 35-mile protected service area ("PSA"), and the Commission also should clarify that licensees of "secondary" ITFS facilities are not entitled automatically to a 35-mile PSA.

- To correct what appear to be oversights, the Commission should conform the language of its rules to the *Reconsideration Order*, to clarify that lessees of MDS capacity, like ITFS capacity lessees, are eligible to hold booster station authorizations, and that the channel shifting rules apply to channels operating with analog as well as digital modulation.

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[1] *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; Request for Declaratory Ruling on the Use of Digital Modulation by Multipoint Distribution Service and Instructional Television Fixed Service Stations*, FCC 99-178, MM Docket No. 97-217, released July 29, 1999, as modified in an *Erratum* in this proceeding released September 2, 1999.

[2] *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*, 13 FCC Rcd 19112 (1998).

With these changes, the Commission will further promote its policy of flexibility in spectrum usage, encourage further investment in and development of MDS and ITFS spectrum, and facilitate the expeditious launch and expansion of advanced systems.

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To: The Commission

PETITION FOR FURTHER RECONSIDERATION

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 and clarification of certain provisions of the *Report and Order on Reconsideration*, FCC 99-178, released July 29, 1999 (the "*Reconsideration Order*").[1]

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[1] *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; Request for Declaratory Ruling on the Use of Digital Modulation by Multipoint Distribution Service and Instructional Television Fixed Service Stations*, FCC 99-178, MM Docket No. 97-217, released July 29, 1999, as modified in an *Erratum* in this proceeding released September 2, 1999. A summary of the *Reconsideration Order* was published in the Federal Register on November 22, 1999. *See* 64 FR 63727 (1999). On November 23, 1999, the Petitioners in this proceeding filed a Petition for Further Reconsideration.

Introduction

In adopting the initial *Report and Order* in this proceeding (the "*Two-Way Order*"),[2] the Commission laid the groundwork to alter fundamentally the wireless cable industry, affording operators the benefits of more flexible use of spectrum and streamlined application processing, and establishing policies for the digital age. Subsequently, acting on petitions for reconsideration filed by BellSouth and others, the Commission made additional changes to some of its rules, in order to provide further relief and greater flexibility.[3] Already, these rules have enhanced the usefulness of the MDS and ITFS spectrum and stimulated unprecedented investment in the wireless cable industry. These new rules bring the possibility of efficient provision of advanced, digital services to the public.

There remain, however, several areas where the Commission should further amend and clarify its rules. First, as BellSouth and others have contended in previous filings in this proceeding, the Commission should permit mutually agreed-upon lease provisions that require the assumption of ITFS capacity leases upon assignment or transfer of the underlying ITFS license. Second, licensees of limited, point-to-point ITFS stations should not be afforded a 35-mile protected service area ("PSA"), and the Commission also should clarify that licensees of

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[2] *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*, 13 FCC Rcd 19112 (1998).

[3] *See Reconsideration Order*. As requested by BellSouth, the Commission extended its streamlined processing rules to include ITFS "major change" applications, restored eligibility to capacity lessees for booster station licensing and established procedures for adjudicating "documented complaints" of interference. *See* Petition for Reconsideration filed by BellSouth on December 28, 1998 ("BellSouth Petition").

"secondary" ITFS facilities are not entitled automatically to a 35-mile PSA. Third, to correct what appear to be oversights, the Commission should conform the language of its rules to the *Reconsideration Order*, to clarify that lessees of MDS capacity, like lessees of ITFS capacity, are eligible to hold booster station authorizations, and that the channel shifting rules apply to channels operating with analog as well as digital modulation.

Discussion

I. THE COMMISSION SHOULD PERMIT MUTUALLY AGREED-UPON ITFS LEASE PROVISIONS THAT REQUIRE THE LEASE TO BE ASSIGNED AND ASSUMED WHEN THE UNDERLYING AUTHORIZATION IS ASSIGNED OR TRANSFERRED.

In the *Two-Way Order*, the Commission affirmed its policy prohibiting ITFS lease provisions that require a licensee to assign or transfer the remaining rights and obligations under a capacity lease to a purchaser of the ITFS license.[4] According to the Commission, this prohibition was retained because of its "belief" that "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*."[5]

In the BellSouth Petition, BellSouth documented that this rationale is flawed and inconsistent with Commission policy, and that, in truth, the restriction itself disserves the interests of ITFS licensees and their capacity lessees. Specifically, BellSouth stated that:

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[4] *See Two-Way Order*, 13 FCC Rcd at 19185.

[5] *Id.* (emphasis in original).

> 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.[6]

BellSouth also demonstrated, by citing numerous examples, that the limitation on an ITFS licensee's ability to negotiate lease assignment provisions directly contradicts the Commission's policy of promoting flexibility.[7] In this regard, BellSouth observed that "it is simply illogical for the Commission to remove from the lease negotiation process a critical element of future spectrum usage."[8] In the BellSouth Reply, BellSouth explained this aspect of flexibility as follows:

> If an ITFS licensee does not, in a given circumstance, choose to require the assumption of the lease upon assignment of the license, then it can negotiate such terms. If it does, in a given circumstance, choose to require the assumption of the lease, it would be free to negotiate those terms as well.[9]

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[6] BellSouth Petition at 15. *See also* Reply to Oppositions to Petition for Reconsideration filed by BellSouth on February 18, 1999 at 9 ("BellSouth Reply").

[7] BellSouth Petition at 16. Examples of flexibility include 15-year lease terms, operator input on license assignees, superchannelization, subchannelization, channel shifting and channel swapping.

[8] *Id.*

[9] *Id.* at 9. In the BellSouth Reply, BellSouth effectively countered the arguments of the Catholic Television Network, Inc. ("CTN") and the Instructional Telecommunications Foundation,

(continued...)

Without any indication that the Commission even considered BellSouth's analysis, in the *Reconsideration Order* the Commission summarily noted its agreement with CTN that the lease assignment prohibition would place an "undue burden" on ITFS licensees, and merely reiterated that "such lease prohibitions would place an unreasonable impediment on the assignment or transfer of an ITFS facility. We believe that this rationale applies, because banning such provisions enhances the licensee's flexibility in finding a buyer should it decide to sell."[10] This was a nearly-verbatim recitation of its statement in the *Two-Way Order*, with the Commission again providing no further explanation in response to the points raised by BellSouth in the BellSouth Petition.

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[9](...continued)
Inc. ("ITF"), the only two parties that addressed BellSouth's proposal:

> CTN and ITF mischaracterize BellSouth's proposal. CTN states that "[i]f an ITFS licensee wants to assign its license, it should be able to do so without being forced to find a successor willing to be bound by the lease." ITF notes that "ITFS licensees can be very different, and can require different amounts of airtime at different times of day." BellSouth agrees with both of these statements: its proposal would not "force" ITFS licensees to do anything that they do not choose to do, nor would it seek to impose programming limitations on assignees. To the contrary, the policy BellSouth advocates would afford parties maximum flexibility to negotiate the assignment and assumption of the lease.

BellSouth Reply at 8-9.

[10] *Reconsideration Order* at 29-30 (footnote omitted).

A. Perpetuation Of The Lease Assignment Prohibition Will Economically Harm ITFS Licensees And Operators.

The Commission has long recognized that it should not intervene in the marketplace except where there is evidence of a market failure and an appropriate regulatory solution can be found "that does not impose greater costs than the evil it is intended to remedy."[11] The Commission's lease assignment prohibition ensures only that contracting parties will be unduly burdened and unreasonably impeded in their ability to negotiate a key lease provision. The logical outgrowth of the prohibition is the potential loss of spectrum at any time during the negotiated lease term, which will increase the risk and thus reduce the economic value of such leases. This, in turn, will inhibit ability to invest the substantial financial resources necessary to develop, construct, operate and market ITFS stations to provide the public with educational services, video programming and/or broadband Internet access. Even the possibility of the loss of quiet enjoyment of the excess capacity that operators have leased will chill further development of the industry. At a time when flexibility and the ability to negotiate freely are absolutely critical to the public interest in developing advanced wireless systems, it is counterproductive to impose such needless and unjustified economic risk and burden upon the contracting parties.

Under the Commission's rules and policies, an ITFS licensee and an operator are free to negotiate a broad array of terms, such as the allocation of capacity, the use of ITFS spectrum (*e.g.*, analog, digital, video, data, upstream, downstream, two-way, etc.), lease payments and other financial terms, facilities construction, channel swapping, subchannelization, receive site

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[11] *See Amendment of the Syndication and Financial Interest Rules*, 94 FCC 2d 1019, 1055 (1983) (emphasis added).

construction, termination rights, rights of first refusal and renewal rights, to name just a few. However, because of the Commission's artificial restriction on lease assignment and assumption, the ITFS licensee cannot provide its contractual partner with the one thing that is perhaps most critical to its success: the assurance that it will be able to use capacity for a definitive period of time. Such assurances are standard in the business world (including contracts involving broadcast stations),[12] are critical to long-term business success and prudent financial planning, and necessary to attract capital necessary for system development and operation. At best, the operator will be required to adjust its economic evaluation of leases to account for the risk, or recover its investment in other ways, any of which devalue the ITFS spectrum to the detriment of the ITFS licensee. For instance, the operator may be forced to lessen the remuneration to the licensee, commit to provide lesser amounts of equipment, or exact a financial penalty if the license is assigned or transferred, all in an attempt to offset the very real potential impact of losing capacity if a licensee decides to sell its license.[13]

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[12] For example, it is standard in agreements for the provision of loans or other capital to communications businesses, including entities operating stations in other broadcast services, for lenders and public funding sources to require that assets of a station, such as leases and other agreements, be assigned or transferred in the same manner as the station license itself, so that the FCC license is not separated from the station's other assets.

[13] This problem takes on even greater impact when considering the impending migration to advanced wireless systems. In order to transform existing analog video systems to advanced digital video or two-way data access systems, hundreds, if not thousands, of ITFS capacity leases must be renegotiated. The limitations of the parties to freely negotiate lease assignment provisions add an unnecessary element to this already cumbersome process. As articulated in the BellSouth Petition, these limitations cause artificially-imposed risk:

> The practical effect of the Commission's policy might require the new licensee and the operator to negotiate a new lease agreement or

(continued...)

For the foregoing reasons, BellSouth urges the Commission to reverse its policy to permit ITFS licensees and their lessees to have the flexibility to negotiate provisions requiring the assignment of the capacity lease when the underlying license is assigned.

B. The Commission's Mere "Belief" That Its Prohibition Should Be Retained Is Arbitrary And Capricious.

Without any evidence to support its policy [14] or articulation of a rationale to distinguish it from other Commission policies in analogous circumstances, the Commission's summary conclusions in the *Reconsideration Order* are arbitrary and capricious. As stated in *Atlantic Tele-Network*,[15] an agency must "examine[] the relevant data and articulate[] a satisfactory explanation for its action." There is no indication either in the *Two-Way Order* or the *Reconsideration Order* that the Commission examined the relevant information presented in this proceeding, and it certainly did not articulate how allowing parties to negotiate lease assignment provisions would

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[13](...continued)

> 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.

BellSouth Petition at 15-16. This risk would be avoided if the existing ITFS licensee and operator had the freedom to fully address their issues contractually.

[14] Administrative Procedure Act, 5 U.S.C. §706(2)(A) (1966) ("APA")

[15] *Atlantic Tele-Network, Inc. v. FCC*, 59 F.3d 1384, 1389 (D.C.Cir. 1995) ("*Atlantic Tele-Network*"). *See also Fresno Mobile Radio, Inc. v. FCC*, 165 F.3d 965 (D.C. Cir. 1999).

be "unduly burdensome" and an "unreasonable impediment" to license assignments other than its unexplained and unsupported "belief" that such would be the case.

In the *Reconsideration Order*, the Commission acknowledged that BellSouth sought reversal of the Commission's policies, and noted CTN's opposition. However, in failing completely to discuss the substance of BellSouth's arguments and the rationale behind its proposal, the Commission fell short of examining the relevant data, as required by the APA. Even if the Commission's mere acknowledgment of the contested issue rises to the level of *bona fide* "explanation," the nearly-verbatim reiteration in the *Reconsideration Order* of the language that appeared in the *Two-Way Order* cannot be deemed "satisfactory." Nowhere in this proceeding has the Commission addressed the substance of BellSouth's reasons for proposing a change in the policy.

As has been discussed at length above and in BellSouth's other pleadings in this proceeding, there is no basis for the Commission's mere "belief" that its policy should be retained.[16] Not only are there compelling reasons for reversing the policy, but the perpetuation of an artificial restriction on the ability of parties to freely negotiate is a lone contradiction to the policies of flexibility and competition that are the very foundation of this proceeding. Notably, *in every other aspect of this proceeding*, the Commission took great steps to promote flexibility within the lessor/lessee relationship. To cite one example, the Commission rightly adopted rules

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[16] Even if it could be and was shown that the presence of a lease assumption prohibition is a factor in the assignability of ITFS licenses, which BellSouth believes it is not, the negative impact the Commission's policy is sure to have on the value of leased spectrum, and the attendant adverse financial and business consequences, will impose a far greater cost to ITFS licensees than the "evil" the Commission's existing policy is intended to remedy. Thus, the Commission's policy disserves the public interest.

requiring only five percent of an ITFS licensee's digital capacity to be set aside for recapture.[17] In rejecting arguments seeking to raise this five percent threshold, the Commission stated that "*[o]ur approach also provides greater certainty to MDS operators as to what spectrum will be available for their long-term use and greater flexibility to ITFS operators to negotiate leases than the proposals of the Joint Statement would provide.*"[18] It remains a mystery why the Commission has not applied the same reasoning to ITFS lease assignment provisions.

Also unexplained are the reasons why the Commission has imposed the assignment prohibition only on ITFS excess capacity leases. Long-standing precedent holds that the Commission is bound to provide an explanation when it departs from a clear precedent.[19] In analogous circumstances, the Commission's policies do not restrict the ability of licensees to assign leases or similar agreements. For example, an MDS licensee may agree to assign its capacity lease to the assignee of its license; in fact, nearly every lease so requires. Likewise, while the Commission imposes a host of rules governing the television network-affiliate relationship, including restrictions on provisions in affiliation agreements that would grant the network an exclusive affiliation agreement, option the affiliate's time to the network, or eliminate the affiliate station's right to reject certain network programming, noticeably absent from this list is a restriction on provisions requiring the assumption of the affiliation agreement upon assignment

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[17] Other examples are noted at n. 7, *supra*. *See also* BellSouth Petition at 16.

[18] *Reconsideration Order* at 4 n.6 (emphasis added). The referenced *Joint Statement* was a proposal submitted jointly by two trade associations that, among other things, proposed a higher minimum recapture threshold.

[19] *See, e.g., Orion Communications, Ltd. v. FCC*, 131 F.3d 176 (D.C.Cir. 1997); *Atchison, Topeka & Santa Fe Ry. Co. v. Wichita Bd. of Trade*, 412 U.S. 800 (1973).

or transfer of the station license.[20] Notably, the Commission has not made any exceptions in these rules for non-commercial educational licensees. The Commission also does not involve itself in the regulation of the assignment or transfer of site leases, equipment leases and other contracts of the like held by FCC licensees, including non-commercial educational licensees. Such contracts go as much to the heart of station operation as an ITFS capacity lease. Suffice it to say, ITFS stands alone as the only service where the Commission, for reasons it has never articulated, imposes a restriction on the ability of parties to ensure that lease rights would travel with the underlying license.

Notwithstanding the general policies of certainty and flexibility and their specific manifestations throughout the *Two-Way Order* and the *Reconsideration Order*, and outright contravention to Commission policies in analogous circumstances, the Commission has utterly failed to recite any evidence or offer a reasoned decision lawfully justifying this significant, artificial contractual restraint on lease assignments. For all these reasons, the Commission should reverse its policy and allow ITFS licensees and their capacity lessees to negotiate provisions requiring the assignment and assumption of the lease if and when the licensee assigns or transfers its license.

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[20] *See* Sections 73.658(a), (d) and (e). Similarly, there are no restrictions in the commercial mobile radio service preventing a licensee from requiring a management agreement to be assigned to the purchaser of its authorization.

II. LICENSEES OF LIMITED, POINT-TO-POINT ITFS STATIONS SHOULD NOT BE AFFORDED 35-MILE PROTECTED SERVICE AREAS.

In the BellSouth Petition, BellSouth urged the Commission to exclude point-to-point ITFS stations from its new rules granting all ITFS stations a 35-mile PSA.[21] BellSouth cited to instances where, in the design of its systems, BellSouth and ITFS lessors were forced to protect the PSAs of point-to-point ITFS stations where the PSA was entirely unrelated to their service objectives. As BellSouth stated, "[f]or 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."[22] As described in BellSouth's earlier filings, among these are the difficulties in designing and operating advanced systems that must needlessly and artificially protect point-to-point stations as if those stations were transmitting to a 35-mile PSA.[23] The Commission did not agree, stating that "adopting BellSouth's requested exception would place an unacceptable burden on ITFS licensees who wish to convert from point-to-point to point-to-multipoint transmission, perhaps even precluding such a change."[24]

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[21] *See* BellSouth Petition at 13-14. *See also* BellSouth Reply at 7-8. BellSouth defined a point-to-point station 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. *See* BellSouth Petition at 13 n.20.

[22] *Id.* at 13.

[23] Notably, no party opposed BellSouth's proposal, although CTN proposed to limit the exception. BellSouth demonstrated in the BellSouth Reply that such limitations undermined the very purpose of the exception and were unnecessary to protect point-to-point ITFS interests. *See* BellSouth Reply at 7-8.

[24] *Reconsideration Order* at 13. The Commission also observed that not all point-to-point ITFS stations are afforded "secondary" interference protection. For those stations that are authorized on a "secondary" basis, the Commission should clarify that these stations were not, by

(continued...)

The Commission's analysis and result turn ITFS processing on its head. Rather than maintaining the "first come, first served" and "window" filing approaches that are the historical DNA of the ITFS service, the Commission would now replace that system with one that reserves rights for future uses of stations that have no demonstrated need, much less a desire, for such expanded service. The effect of this shift is to limit artificially the ability of the vast majority of ITFS licensees already operating in a point-to-multipoint fashion to modify their operating parameters to address real and immediate service and operational needs -- simply based on conjecture that a point-to-point licensee *may*, at some future time, desire to change the fundamental nature of its operations. Contrary to the Commission's view, the "unacceptable burden" is imposed on *existing* point-to-multipoint licensees that wish to take advantage of the rules adopted in the *Two-Way Order* and the *Reconsideration Order*, but are prevented from doing so because of the overprotection granted to point-to-point ITFS licensees.

There are a very small minority of ITFS stations licensed as point-to-point facilities. For the most part, these stations are used as studio-to-transmitter links or relay facilities, in either case serving as transmission paths to singular locations. There is no indication in the record of this proceeding of a pressing need to convert these stations to point-to-multipoint facilities for wide-area distribution. Yet, because of the Commission's rule change, this small minority of stations have the ability to frustrate the plans of the vast majority of ITFS stations that are operating point-to-multipoint and desire to modify their facilities for advanced services.

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[24](...continued)
virtue of the *Two-Way Order*, upgraded to "primary" status.

The better result would be to exclude point-to-point ITFS stations from the protection rules. Any point-to-point licensee that in the future desires to provide point-to-multipoint services may do so by submitting a modification application, subject to the pre-existing interference protection rights of incumbent licensees.[25] Continuing instead to guarantee this minority of point-to-point stations an infinite placeholder would unnecessarily disrupt the orderly processing of ITFS applications and needlessly and artificially create potentially preclusive difficulties in designing and operating advanced systems.

III. THE COMMISSION SHOULD CONFORM CERTAIN OF ITS NEW RULES TO THE *RECONSIDERATION ORDER.*

A. The Commission Should Clarify That MDS Lessees, Like ITFS Lessees, Are Eligible To Hold Booster Station Authorizations.

In the BellSouth Petition, BellSouth argued against the Commission's decision to preclude MDS and ITFS lessees from directly holding booster station authorizations.[26] Specifically, BellSouth demonstrated why the Commission should amend Sections 21.913 and 74.985 to include capacity lessees as parties eligible to hold same-channel booster authorizations.[27]

On reconsideration, the Commission agreed with BellSouth.[28] However, the *Reconsideration Order* speaks only to the amendment of the ITFS booster eligibility rules; it fails

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[25] To the extent point-to-point stations have been precluded by the lack of a filing window from proposing a multipoint system, they stand in the same position as all other ITFS licensees. Restrictions on filing for "major changes" have applied with equal force to all ITFS licensees desiring to make needed changes to their facilities.

[26] *Id.* at 19119.

[27] BellSouth Petition at 10-12.

[28] *See Reconsideration Order* at 31-32.

to mention the MDS rules. Inasmuch as the rationale for making capacity lessees eligible to hold booster station authorizations applies equally to the MDS and ITFS services, BellSouth urges the Commission to clarify that lessees of MDS capacity are eligible to hold booster station licenses for such MDS channels.

In what can only be an inadvertent oversight, neither Section 21.913 nor Section 74.985 was amended to reflect the inclusion of either ITFS or MDS capacity lessees as parties eligible to hold booster station authorizations. Accordingly, BellSouth requests that the Commission revise Sections 21.913(b) and (e) and Sections 74.985(b) and (e) to make clear that, in addition to permittees and licensees, lessees of MDS and ITFS capacity are eligible to hold booster station authorizations.

B. The Commission Should Clarify That The Channel Shifting Rules Apply To Analog Systems As Well As Digital Systems.

It appears that the Commission inadvertently failed to amend Section 74.931(c)(3) to reflect that MDS and ITFS licensees operating with analog transmission may, as is the case with licensees operating digitally, engage in channel swapping. Acting favorably on petitions for reconsideration, the Commission has stated that it will allow analog channel swaps.[29] BellSouth requests that the policy adopted in the *Reconsideration Order* be incorporated specifically into Section 74.931(c)(3).

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[29] *Id.* at 28.

Conclusion

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

Respectfully submitted,

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