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

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

To: The Commission

**PETITION FOR FURTHER RECONSIDERATION**

The National ITFS Association ("NIA"), by its counsel, and pursuant to Section 1.429 of the Commission's Rules, petitions for reconsideration of one aspect of the Commission's *Report and Order on Reconsideration*, FCC 99-178 (released July 29, 1999) ("*Reconsideration R&O*") in this proceeding. NIA seeks reconsideration of the Commission's statement reflecting a determination to allow excess capacity lessees to be licensed to operate booster stations on ITFS Channels. NIA strongly urges the FCC to return to the position it reached earlier in this proceeding that an ITFS booster station should be licensed only to the licensee of the ITFS main station, and not to excess capacity lessees.

Background

The National ITFS Association, established in 1978, is a non-profit, professional organization of ITFS licensees, applicants and others interested in the Instructional Television Fixed Service. The goals of NIA are to gather and exchange information about ITFS, to act as a conduit for those seeking information or assistance about ITFS, and to represent the interests of

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ITFS licensees and applicants. NIA and its members have participated in virtually every FCC rule making proceeding affecting ITFS, including the current proceeding authorizing two-way transmissions and other operational flexibilities. NIA supported the two-way proposals generally, but has expressed concern about various elements that NIA believes detract from the essential educational nature of the ITFS service or threaten permanently to encroach on the ITFS band.

This petition for further reconsideration addresses one such issue – an avenue the FCC opened in the *Reconsideration R&O* for excess capacity lessees to become *both* temporarily *and* permanently licensed to operate booster stations on ITFS frequencies within the protected service area of an educator's ITFS station.

#### The Booster Licensing Issue

NIA seeks reconsideration of the Commission's statement in Paragraph 67 of the *Reconsideration R&O* that ITFS excess capacity lessees may apply for booster stations on ITFS frequencies if they have the written consent of the main station licensee and they offer to assign the booster licenses to the main station licensee for purely nominal consideration upon lease termination. NIA also seeks reconsideration of the *Reconsideration R&O's* changes to Section 74.985 (b) and (e) which, although they do not appear precisely to implement the Commission's statement in Paragraph 67, are now oddly ambiguous about what entities are eligible to apply for ITFS booster station licenses.

NIA's position is that no party other than the licensee of a main ITFS station whose protected service area encompasses the service area of the booster station should be licensed to operate any booster facility on any ITFS channel. Earlier, the Commission clearly agreed.

However, the Commission's treatment of the matter of ITFS booster licensing flip-flopped between the original *Report and Order* in this proceeding and the *Reconsideration R&O*.

In the *Report and Order*, the FCC seemed to understand precisely the problem with licensing wireless operator/lessees to operate ITFS booster stations, and it clearly associated ITFS booster stations with the service characteristics of the main ITFS stations. In Paragraph 82 of the *Report and Order*, the FCC subjected ITFS booster stations to educational usage requirements, stating that “[h]igh power ITFS signal booster stations originating signals on ITFS channels are hardly distinguishable from main instructional television fixed stations.” Naturally, therefore, in Section 74.985(b) of the revised rules, the FCC limited eligibility for high power booster licenses to “[a]n ITFS licensee or conditional licensee.”<sup>1</sup> The FCC imposed a similar limitation on licenses for low power booster stations in Section 74.985(e), which stated that eligibility for such stations “shall be restricted to an ITFS licensee or conditional licensee.”

In the *Reconsideration R&O*, however, at Paragraph 67, the FCC changed its approach to licensing ITFS booster stations as reflected above, under which excess capacity lessees would be eligible to be licensed for the boosters in their own name, so long as they have the written permission of the main station ITFS licensee and offer to assign the booster licenses back to the licensee for purely nominal consideration upon lease termination. The FCC apparently saw this as a “solomonic” splitting of the issue – excess capacity lessees would benefit by the “flexibility and efficiency” of being able to have all system booster licenses held by a single entity, and there

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<sup>1</sup> Section 74.985(b) also limited ITFS booster stations to those ITFS licensees or conditional licensees who were also a response station hub licensee, conditional licensee or applicant, and that employ only digital modulation. The FCC was correct in the *Reconsideration R&O* to eliminate these unnecessary restrictions on the licensees of ITFS booster stations.

would purportedly not be any risk of ITFS licensees permanently losing part of their licensed spectrum. Unfortunately, as shown below, the latter statement is not true.

Strangely, the modified ITFS booster station rule, Section 74.985(b), does not implement the change set out in Paragraph 67. The rule now only says that “[a] licensee or conditional licensee may secure a license for a high power signal booster station.” Nothing whatever is stated about excess capacity lessees being eligible, nor about the FCC’s two conditions (written consent of the ITFS licensee and offer to transfer the booster license back for purely nominal consideration). Similar language appears in Section 74.985(e) dealing with low power signal boosters (“eligibility ... shall be restricted to a licensee or conditional licensee”). Moreover, the rules do not even make clear what sort of “licensee or conditional licensee” might be eligible. Are they ITFS licensees or conditional licensees only? MMDS licensees? Licensees in other FCC services?

NIA opposes the ITFS booster licensing changes in the *Reconsideration R&O*. The Commission’s explanation of the rule changes in the text of the *Reconsideration R&O* is not consistent with the new rule provisions. The rules now ambiguously allow unspecified “licensees and conditional licensees” to apply for ITFS booster stations, which could be interpreted to include MMDS licensees and conditional licensees.

More importantly, the change contemplated by the Commission in Paragraph 67 of the *Reconsideration R&O* does *not* guarantee that booster licenses are in fact returned, and could (and probably would) in some instances result in ITFS facilities being permanently licensed to other than ITFS main station licensees. For example, an unwitting ITFS licensee could decide not to accept the return of an ITFS booster station at the end of the lease. Indeed, there is no

prohibition against a lessee offering incentives, either directly or indirectly, to have the ITFS licensee decline the “offer” of the return of the booster license. This means that, over time, one-time lessees may end up permanently licensed on ITFS booster stations. ITFS licensees around the country will end up with “swiss cheese” service areas, with ITFS booster stations being licensed to third parties, without any educational service obligation or connection to the ITFS licensee, within the service area of the main ITFS stations.

More fundamentally, NIA objects to a fundamental shift in attitude reflected in the *Reconsideration R&O*, based only on a concern for system “flexibility and efficiencies.” With a very limited exception that applied when multiple ITFS frequency groups were unused in a given area, *see* Section 74.990 *et seq.*, the FCC has never allowed excess capacity lessees or other non-educators to apply for ITFS channels, and it has consistently resisted the reallocation of the ITFS spectrum subsequent to the adoption of the currently channel structure in 1983. No mere desire of wireless operators for “flexibility and efficiencies,” which may be largely illusory<sup>2</sup> is justification for opening the door to non-ITFS parties being licensed on ITFS frequencies.

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<sup>2</sup> The flexibility and efficiencies of allowing booster stations to be licensed to excess capacity lessees may be less than anticipated by the FCC, as this will (and should) never become a “blank check” for lessees. The process will require negotiation by the lessee and the licensee of contractual provisions governing the application for such stations, the protection of existing ITFS operations from disruption and interference and the give-back provisions at the end of lease term. The actual applications by lessees for licenses will generally require the specific consent of the ITFS licensee, in that the booster generally would be calculated to cause interference to the ITFS licensee’s facilities.

Conclusion

For the foregoing reasons, NIA urges the FCC to reverse its determination to allow excess capacity lessees, or perhaps other "licensees or conditional licensees," to be licensed for ITFS booster stations. The FCC's rules should be revised to make clear that only ITFS licensees are eligible for licenses for ITFS booster stations.

Respectfully submitted,

NATIONAL ITFS ASSOCIATION

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