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Before the Federal Communications Commission  
Washington, D.C. 20554

In the Matters of )  
)  
ITFS 2020 Emergency Petition for )  
Postponement of the July 3 - July 10, 2000 )  
Filing Window for Two-Way Multipoint )  
Distribution Service and Instructional )  
Television Fixed Service Applications )  
)  
and )  
)  
The Association of Federal )  
Communications Consulting Engineers )  
Petition Requesting Revision Of Initial )  
Filing Window For Two-Way )  
Multipoint Distribution and )  
Instructional Television Fixed Service )

MM Docket No. 97-217

Order

Adopted: June 22, 2000

Released: June 23, 2000

By the Chief, Video Services Division:

1. By this Order, we hereby grant a postponement of the July 3 through July 10, 2000 filing window for MDS and ITFS applications for two-way operations.<sup>1</sup> The new filing window will begin August 14, 2000 and end August 18, 2000. However, in order to permit commercial operators to fulfill their business plans which were created in reliance upon the timelines set forth in previous Commission Orders and the *Filing Window Public Notice*, we will permit MDS operators, starting July 3, 2000, to file applications for two-way authority for Channels 1, 2 and 2a upstream. Such commercial applicants should have consents for downstream transmissions from all affected parties. In addition, we will permit ITFS operators the opportunity to file for developmental authority to begin two-way service.<sup>2</sup>

2. On June 6, 2000, ITFS 2020, a non-licensee limited liability company, filed an "Emergency Petition" requesting that the Commission postpone the July 3 through July 10, 2000 filing window for MDS and ITFS applications for two-way operations. Subsequently, on June 7, 2000, the Association of Federal Communications Consulting Engineers ("AFCCE")<sup>3</sup> filed a similar petition requesting revision of the initial filing window for MDS and ITFS. In the respective petitions, ITFS 2020 requests a nine-

<sup>1</sup> See *Public Notice*, DA 00-666, "Commission Announces Initial Filing Window for Two-Way Multipoint Distribution Service and Instructional Television Fixed Service" (March 23, 2000) ("*Filing Window Public Notice*").

<sup>2</sup> See 47 C.F.R. §§ 74.101 and 74.102.

<sup>3</sup> According to its petition, the AFCCE includes 90 registered professional engineers, many of whom provide engineering services to MDS and ITFS licensees.

month postponement, while the AFCCE requests a 130-day postponement. On June 12, 2000, the Commission issued a Public Notice inviting comment on the parties' petitions.<sup>4</sup>

3. We deny both ITFS 2020's emergency petition for a nine-month postponement and AFCCE's request for a 130-day postponement of the filing window. We find, based upon the record before us, that it would be in the public interest to allow a limited postponement of the initial filing window. We find that there is a general consensus within the MDS and ITFS communities that a short postponement of the filing window will help to ensure that the applications for two-way service will be both accurate and complete. We commend attempts by licensees and engineers to ensure the correctness of their filings, and as such, we believe that a limited delay of the filing window will allow MDS and ITFS entities sufficient time to address the problems which they have encountered in preparing their two-way applications.

4. We believe that a nine-month or 130-day delay is too extensive in nature and will unfairly preclude the filing of two-way applications that are ready to be processed. We find that it would not be in the public interest to overly delay the advent of two-way service and to penalize licensees who have relied on the timelines set forth in previous Commission Orders and the *Filing Window Public Notice*. We note that many MDS and ITFS operators have devoted substantial resources in preparing applications for the initial filing window.<sup>5</sup> Delaying the filing window for a lengthy period will hinder the availability of two-way service to the public and potentially put licensees at a competitive disadvantage with regard to other broadband services.<sup>6</sup> In light of the Commission's dedication to facilitate the deployment of two-way service in a timely manner, we believe that a limited postponement of the filing window strikes a balance between the MDS and ITFS licensees who are ready to file and those who need additional time. To ensure that commercial operators who are ready to file are not unduly prejudiced, however, we will permit MDS operators, starting July 3, 2000, to file applications for two-way authority for Channels 1, 2 and 2a upstream. Such commercial applicants should have consents for downstream transmissions from all affected parties. In addition, we will permit ITFS operators to file applications for developmental authority to begin two-way service.<sup>7</sup>

5. Although we have agreed to postpone the filing window for a limited period, we emphasize that many of the arguments in ITFS 2020 and AFCCE's respective petitions are unsupported and/or

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<sup>4</sup> See *Public Notice*, DA 00-1256, "Mass Media Bureau Receives Petitions to Postpone Initial Filing Window For Two-Way Multipoint Distribution Service and Instructional Television Fixed Service" (June 12, 2000).

<sup>5</sup> See Comments of Sprint Corporation ("Sprint") at 7-9. Assertedly, Sprint is ready to file approximately 1,500 applications with the Commission during the initial filing window. Sprint states that "[T]he need for an immediate introduction of a new facilities-based provider is urgent. MMDS represents this critical facilities-based alternative to the existing providers . . . Any delay in the two-way window would thwart the public interest." See also Comments of WorldCom, Inc. ("WorldCom") at 11. "WorldCom and other commercial operators are ready and able to provide such service." WorldCom notes that, "Any delay in the filing window will result in an unacceptable delay in the deployment of fixed wireless broadband access to unserved and underserved residential, small and mid-sized business, and rural customers." *Id.* at 2. See generally Comments of San Diego County Office of Education ("[A]ny delay may prove very costly for our institutions."); Comments of San Jose State University ("Any postponement . . . will inevitably delay the inauguration of our high-speed access capabilities.").

<sup>6</sup> See, e.g., *Deferral of Licensing of MTA Commercial Broadband PCS*, 11 FCC Rcd 17052 (1996) (holding that even a temporary delay in the issuance of licenses would not be in the public interest when it would delay the introduction of new competition and services).

<sup>7</sup> See 47 C.F.R. §§ 74.101 and 74.102.

inaccurate. We will address a few of the misconceptions presented in ITFS 2020's Emergency Petition. First, we note that ITFS 2020 is under the mistaken impression that once the initial filing window closes, licensees will have to await the Commission's announcement of subsequent filing windows to apply for two-way authorization. *Emergency Petition* at 2. We emphasize that we have adopted a rolling application process. Subsequent to the initial filing window, a 120-day period will commence to resolve any conflicts between applications filed in the initial window and to allow for the filing of petitions to deny. After this period, a rolling one-day filing window will be in effect, which will allow for the daily filing of applications without any formal window announcement.<sup>8</sup>

6. In addition, with regard to the availability of station files in the Commission's Public Reference Information Center, ITFS 2020 incorrectly states that "a member of the public currently is permitted to review only three files per day, and files are accessible only four days per week." *Emergency Petition* at 10. According to Commission staff, three members of a firm or company can request up to six station files at a time, thereby allowing one firm to look at up to 18 files at a time. Upon return of these files, an additional set of MDS and ITFS files can be obtained and reviewed. This process can be repeated throughout the day. In addition, the Commission's Public Reference Information Center has, with respect to this specific filing window, made special accommodations for accessing the MDS and ITFS files. Upon request, many more than three employees have been allowed to review the files at the same time. Moreover, although the Public Reference Information Center began closing on Fridays as of April 28, 2000 in order to retire broadcast files, Commission staff has again made exceptions, upon request, to allow members of the public to examine the MDS and ITFS files on those days.

7. In conclusion, ITFS 2020's emergency petition for a nine-month postponement of the filing window and AFCCE's similar request for a 130-day postponement ARE DENIED. In lieu of the parties' request, we hereby grant a postponement of the July 3 through July 10, 2000 filing window for MDS and ITFS applications for two-way operations. We will allow MDS operators to file applications for two-way authority using channels 1, 2 and 2a upstream. Such commercial applicants should have consents for downstream transmissions from all affected parties. In addition, we will permit ITFS operators to file applications for developmental authority to begin two-way service. The new filing window will begin August 14, 2000 and end August 18, 2000.

#### FEDERAL COMMUNICATIONS COMMISSION

Barbara A. Kreisman  
Chief, Video Services Division  
Mass Media Bureau

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<sup>8</sup> See *Amendment of Parts 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), *recon.*, 14 FCC Rcd 12764 (1999), *further recon. pending*.