



October 16, 2003

Marlene H. Dortch, Secretary  
Federal Communications Commission  
445 12th Street, S.W.  
Washington, D.C. 20554

**Re: Comments and Reply Comments  
WT Docket No. 03-66 (RM-10586)  
WT Docket No. 03-67  
MM Docket No. 97-217  
WT Docket No. 02-68 (RM-9718)**

Dear Ms. Dortch:

Network for Instructional TV, Inc. ("NITV") submits its Comments and Reply Comments in this proceeding<sup>1</sup> to address significant issues impacting the future of Instructional Television Fixed Service ("ITFS"). NITV has reviewed proposals to restructure the band and to streamline ITFS regulations, and NITV favors rebanding proposals that maximize ITFS licensees' flexibility to determine the best ways to use the spectrum to further their educational mission. Among other things, NITV believes that in order to best promote educational services and stimulate competition, innovation and investment in wireless broadband services that benefit education, the Commission should:

- change its long-standing eligibility restrictions by permitting commercial interests to hold ITFS licenses and requiring them to make capacity available for educational use;
- ensure that any changes in auction policy with respect to ITFS spectrum reflect the primacy of educational uses of the spectrum;
- replace existing service requirements with a "substantial service" standard;
- refrain from adopting proposals to introduce an "unlicensed underlay" or a reallocation of MDS/ITFS spectrum for unlicensed use; and
- avoid imposing across-the-board power reductions in the MDS/ITFS bands.

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<sup>1</sup>Amendment of Parts 1, 21, 73, 74 and 101 of the Commission's Rules to Facilitate the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150-2162 and 2500-2690 MHz Bands; Part 1 of the Commission's Rules - Further Competitive Bidding Procedures; Amendment of Parts 21 and 74 to Enable Multipoint Distribution Service and the Instructional Television Fixed Service Amendment of Parts 21 and 74 to Engage in Fixed Two-Way Transmissions; Amendment of Parts 21 and 74 of the Commission's Rules With Regard to Licensing in the Multipoint Distribution Service and in the Instructional Television Fixed Service for the Gulf of Mexico; WT Docket Nos. 03-66, 03-67, 02-68, MM Docket No. 97-217, *Notice of Proposed Rulemaking and Memorandum Opinion and Order*, 18 FCC Red 6722 (2003) ("NPRM").



## **Background: NITV and Its Mission**

NITV is a non-profit education corporation that was established in 1979 and in 1983 became the first “national ITFS licensee.” In the late 1970s, NITV’s founder, John A. Curtis, created the organization that later became the National ITFS Association to better share information among ITFS licensees and to facilitate the growth and utilization of ITFS. Together with its local school affiliates, which include 57 local K-12 School Districts, two community colleges and three universities, NITV distributes educational programming and services to students, teachers and parents across the nation through 23 ITFS stations in 22 cities, in 13 states and the District of Columbia, and over the Internet nationally and internationally.

Since its establishment, NITV has worked closely with local educators where it holds ITFS licenses to provide distance-learning services.<sup>2</sup> These local educators serve approximately one million students and teachers and help select, and choose from, NITV’s video library of over 300 curriculum-based programs and a variety of satellite-delivered services. Local educators also utilize their own local production capabilities and media libraries to support their traditional distance-learning efforts.

NITV is equally committed to using the Internet to deliver educational services. In 1997, when ITFS frequencies were authorized to provide experimental Internet access, NITV helped demonstrate and establish the first K-12 high-speed fixed wireless Internet delivery system in the nation, which served the District of Columbia Public Schools. After that success, NITV created and launched its first website, TeachersFirst.com, a highly acclaimed “teacher-friendly” site that provides K-12 educators with needed training and quality resources they use for classroom instruction. Within a year, teachers in all 50 states and in more than 70 foreign countries began using this free service made possible by the revenue from leasing ITFS excess capacity.

At the request of TeachersFirst users, an award-winning companion site,<sup>3</sup> TeachersAndFamilies.com, was launched in 2002 to improve learning and to strengthen the relationships among teachers, parents, and their children. TeachersAndFamilies.com’s content for parents, preschool and K-12 students, makes toddlers and students more eager to learn and makes parents aware of educational issues and more able to work productively with their child’s school.

As NITV continues to offer its curriculum-based video services, NITV’s online efforts are growing. With the advent of streaming video, NITV hopes to migrate its video content to the Internet because access is universal, available to anyone with a connection

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<sup>2</sup> NITV (and its locally-controlled licensee affiliates) provide service in the following areas: Anderson, IN, Atlanta, GA, Baltimore, MD, Bloomington, IN, Champaign, IL, Fort Worth, TX, Indianapolis, IN, Kansas City, MO, Miami, FL, Milwaukee, WI, New Orleans, LA, Nolanville, TX, New York, NY, Philadelphia, PA, Pittsburgh, PA, Portland, OR, Saginaw, MI, San Antonio, TX, St. Louis, MO, Tampa, FL, Waco, TX and Washington, DC.

<sup>3</sup> The site was named Best Bet for Educators by USA Today (September 24, 2002).



to the Internet and is technology agnostic; that is, it will function to serve all of those who have Internet access, irrespective of the means used to provide that access.

### **Education Would Benefit from the Removal of ITFS Eligibility Restrictions**

For many educators, ITFS remains a critically important distribution system. For others, ITFS has become less important in furthering their educational mission. Rapid changes in technology and the marketplace have dramatically outpaced the existing ITFS regulations that have prevented ITFS from reaching its full potential. NITV agrees with the FCC that the rise of other media sources from the time ITFS was first established that include in-school computer networks with CD-ROM access, educational software and the Internet; satellite-delivered distance learning; VCRs and DVDs; cable television; and license-exempt spectrum commonly known as Wi-Fi presently offer real alternatives to ITFS delivery systems<sup>4</sup> for many educators.

In light of these dramatic changes, NITV concurs with those Commenters who believe that the time is right for the Commission to lift the ITFS eligibility restrictions set forth in Section 74.932 of the Commission's Rules.<sup>5</sup> Additional flexibility to expand the eligibility of those who are allowed to hold ITFS licenses to include commercial interests would promote investment to benefit education. As set forth more fully below, in taking this action, the FCC can also ensure that education continues to benefit by imposing a reasonable access requirement on ITFS licenses sold to commercial interests.<sup>6</sup> These Rules should be revised as a reflection of the evolution of the ITFS service, changes in technology and the reality of the critical need for business investment in the development of new and innovative technologies that can be harnessed to benefit education. Removing these restrictions would promote the Commission's objectives in the *NPRM* to promote flexibility in service offerings, both educationally and commercially, and to facilitate the highest and best uses of this spectrum. Much of the spectrum necessary for new wireless services is allocated to ITFS and controlled by educators. Eliminating restrictions on ITFS eligibility would empower educators to determine how best to utilize their spectrum assets to further their educational missions and pave the way for commercial deployments that can also benefit educators by providing the necessary infrastructure for educational services provided over the Internet.

Open ITFS eligibility would unlock the full educational potential of ITFS spectrum by promoting the infusion of investment capital into ITFS that would accelerate the development and implementation of technology to promote educational ends. Historically, education would have languished without paying customers to support the

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<sup>4</sup> See *NPRM* at ¶ 114.

<sup>5</sup> See, e.g., Comments of Adams Telcom, Inc., et al., pp. 7-9; Comments of Blooston, Mordkofsky, Dickens, Duffy & Prendergast, pp. 9-10; Comments of Education Service Center Region 10 at p. 14; Comments of Sprint Corporation, pp. 23-24.

<sup>6</sup> This is similar to the obligation of satellite carriers to make four percent of their channel capacity available for use by qualified programmers for noncommercial programming of an educational or informational nature. See 47 C.F.R. § 25.701(c). In addition, local franchising authorities are permitted by federal law to designate channel capacity over cable systems for public, educational or governmental use. See 47 U.S.C. § 531.



development and implementation of technology. Education budgets simply couldn't have afforded the costs to develop even the over-head projector, which entered the classroom after years of use in the local bowling alleys. Even if the money had been available, the education community lacked the technological, operational, advertising, sales and marketing expertise necessary to bring these technologies successfully to market. We are at a similar point in the development of wireless services for education. Leveraging wireless technology to benefit education requires the private sector's investments and expertise.

Commercial operators must invest the necessary capital to develop a viable product attractive to customers. Changing the technical rules alone may not be enough to stimulate the capital investment necessary for this endeavor. Changing the eligibility rules to allow commercial companies to hold ITFS licenses may provide additional incentives necessary for companies to invest the needed dollar amounts in something that they themselves control. NITV believes that the *NPRM* affords the FCC an opportunity to implement rules that maximize incentives to invest in ITFS spectrum by promoting certainty in licensees' spectrum rights and reducing transaction costs associated with leasing spectrum. For example, NITV believes that the right to hold, rather than lease, a license for spectrum is a powerful incentive to investment and will facilitate the best and highest uses for this spectrum that will benefit education. Expanding eligibility would encourage new entrants who may be reluctant to build businesses using leased spectrum and increase the likely benefits to ITFS licensees by the broader availability of wireless systems that would result from a competitive secondary market for spectrum, balancing any potential harms.<sup>7</sup>

Educators' judgments regarding the best means for maximizing the local educational benefits of their ITFS spectrum must remain paramount. Open eligibility would allow ITFS licensees to elect to monetize all or part of their spectrum assets to help fulfill their educational missions, rather than being limited solely to leasing capacity for commercial purposes with a reservation of anywhere from five to twenty-five percent of capacity for educational purposes. The FCC has acknowledged that there is "no contradiction" between an ITFS licensee performing its educational mission and obtaining the maximum return from its licensed spectrum to further that mission.<sup>8</sup> The revenues realized from the sale of spectrum could form the basis to fund the ITFS licensee's development of distance-learning materials, Internet projects or other educational programs/services. If an educator were to choose this option, it could, as it might today when leasing excess capacity, secure rights for free Internet access, obtain

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<sup>7</sup> This step is not without risks or controversy. As NITV itself has observed in opposing ITFS spectrum auctions, there is the possibility that "... ITFS spectrum allocation, over time, will become just another commercial allocation, providing commercial operators with reduced incentive to provide much-needed technical support and services to ITFS licensees." See Comments of NITV and North Carolina Association of Community College Presidents in RM-10586 (submitted November 14, 2002).

<sup>8</sup> See 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, *Report and Order and Order on Further Reconsideration and Further Notice of Proposed Rulemaking*, 15 FCC Rcd 14566 at ¶ 9 (2000).



such access at reduced cost on its own behalf or on behalf of local educational affiliates, or fund other critical educational services or programs.

NITV respectfully disagrees with CTN/NIA in their opposition to open eligibility for ITFS.<sup>9</sup> Specifically, CTN/NIA argue that “permitting market forces to dictate who controls the spectrum would, over time, result in a *de facto* reallocation of this valuable spectrum resource from educational to commercial interests.”<sup>10</sup> CTN/NIA argue that ITFS eligibility restrictions should remain in place and note that in the broadcast context, the Commission “consistently has recognized the unique value of public interest spectrum set-asides.”<sup>11</sup> Accordingly, CTN/NIA would require ITFS licensees that no longer have a “continuing need or use” for their license to either assign the license to another entity eligible to hold an ITFS license, or to return the license to the FCC for use by another entity eligible to hold an ITFS license.

Although CTN/NIA point to the example of noncommercial broadcast stations to support retaining restrictions on ITFS eligibility, such requirements applicable to broadcast stations impose no obligation on the FCC to retain a “set aside” for ITFS eligibility. Moreover, ITFS is not a creature of federal statute mandated by Congress, but rather a service that the FCC first authorized in 1963 as a reallocation of operational fixed service.<sup>12</sup> Thus, the FCC is free to revise its regulations, including ITFS eligibility, in the public interest in response to changing marketplace conditions and technologies. Indeed, if private sector investment is stimulated by open eligibility, as NITV believes is most likely, education stands to benefit by having more choices for broadband service available for educators to choose among.

NITV does not believe that providing ITFS licensees with an option to sell or lease spectrum would necessarily result in large-scale transfers of spectrum from ITFS incumbents to commercial entities. Contrary to the views of CTN/NIA, if ITFS eligibility were expanded to enable commercial entities to hold such licenses, NITV believes that large numbers of educators will choose to hold their licenses based on the substantial use many ITFS licensees are currently making of their capacity and the tremendous potential for educational uses associated with adoption of rebanding proposals. Indeed, those educators who hold multiple licenses or channels may choose to hold some and sell others. The decision would be completely voluntary and always in furtherance of their educational mission. This would enable many licensees who wish to continue to hold their ITFS licenses or a portion of the spectrum to continue to provide valuable educational services and lease excess capacity to those that wish to provide commercial services.<sup>13</sup> In addition, licensees should retain flexibility to structure private arrangements to meet their individualized spectrum needs. Open eligibility must not

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<sup>9</sup> See Comments of the Catholic Television Network and the National ITFS Association (“CTN/NIA Comments”).

<sup>10</sup> *Id.* at p. 5.

<sup>11</sup> *Id.*

<sup>12</sup> See *Educational Television Report and Order*, 39 FCC 846 (1963); *recon. denied*, 39 FCC 873 (1964).

<sup>13</sup> NITV strongly opposes any attempt to reclaim licenses from incumbents and is pleased the FCC is not contemplating such action. See *NPRM* at ¶ 116.



undermine incumbent ITFS licensees' rights in their licenses; instead, the decision to lease or sell spectrum must always rest with the ITFS licensee.<sup>14</sup>

Allowing the sale of ITFS licenses to commercial entities would hardly be unprecedented.<sup>15</sup> As CTN/NIA acknowledge,<sup>16</sup> the FCC recently granted a noncommercial educational television station licensee's request to remove the reservation of one of the licensee's two noncommercial educational channels in Pittsburgh to permit the licensee to sell the associated station to a commercial entity.<sup>17</sup> In support of the decision, the FCC noted the licensee's financial distress and the licensee's intent to use the net proceeds from the sale to retire debt and to fund local programming and operations so that noncommercial service in the market could continue.<sup>18</sup> The FCC concluded that the second noncommercial channel was "no longer necessary to meet the broader educational and cultural needs" of the community, although the FCC noted that the "dereservation" was not "warranted solely" on the presence of alternative program-distribution technologies, such as cable, DBS and the Internet.<sup>19</sup> The FCC therefore has acknowledged that the provision of noncommercial educational service does not occur in a vacuum -- where marketplace realities sufficiently undermine a station's ability to provide educational service, sale of the station to a commercial entity may serve the public interest. This decision can form the basis for a national policy governing ITFS.

Similar to the policy governing the sale of non-commercial broadcast stations, an ITFS licensee that desires to sell its license should not be required to sell only to other currently eligible ITFS entities or else seek license cancellation. In particular, where the sale of an ITFS license will be used to further the educational mission of the ITFS licensee, the FCC should permit such sales requiring the assignor to make such a showing in the assignment application. The FCC should also require the assignee pursuant to a rule adopted in this proceeding to make five percent of the capacity of a digital system (and 25% for analog video systems) available for free to non-profit educational organizations and institutions for use in fulfilling their educational mission. In this way, all educators, not just those few who were fortunate enough to apply for a license from the FCC, gain by enjoying continued access to ITFS spectrum. This access right would be available on a first-come, first-served basis and reasonable conditions, such a payment of installation costs, could be imposed. This helps ensure that ITFS spectrum continues to meet the needs of education as was originally intended when the service was first established.

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<sup>14</sup> Subject to prior FCC approval for license assignments or transfers of control, or as otherwise required by the Commission's Rules.

<sup>15</sup> Indeed, assuming the availability of eight ITFS channels in a market, current rules already allow commercial interests to hold ITFS licenses, subject to a right of reasonable access by ITFS eligibles. 47 C.F.R. §§ 990-992.

<sup>16</sup> See CTN/NIA Comments at p. 6.

<sup>17</sup> See Amendment of the Television Table of Allotments to Delete Noncommercial Reservation on Channel \*16, 482-488 MHz, Pittsburgh, Pennsylvania, *Report and Order*, 17 FCC Red 14038 (2002).

<sup>18</sup> *Id.* at ¶ 9.

<sup>19</sup> *Id.* at ¶ 41.



Like several Commenters,<sup>20</sup> NITV also believes that eligibility to hold ITFS licenses should not be restricted to certain commercial entities. Allowing cable and DSL operators to acquire or lease ITFS and MDS licenses would promote service to the public by increasing the potential pool of entrants. It is NITV's view that structural prohibitions on eligibility are unduly restrictive in the current marketplace and that the streamlined rules would reduce incentives to warehouse spectrum by promoting certainty and flexibility and by allowing operators to offer services more quickly in response to consumer demand. These benefits in turn will flow to the industry at large, while the rising tide of investment will lift the boats of all in the industry, including educators.

### **NITV Supports Pro-Education Changes in Auction Policy**

The *NPRM* invites comment on several proposals related to conducting auctions, including “two-sided” auctions, for existing and vacant ITFS spectrum.<sup>21</sup> Although significant questions remain about the mechanics of and underlying legal authority for such auctions,<sup>22</sup> NITV agrees that such auctions may promote the effective use and allocation of spectrum and should afford incumbents additional flexibility to meet their educational needs. NITV notes, however, that the *NPRM* contemplates conducting a single two-sided auction among all incumbent and prospective ITFS and MDS licensees to restructure spectrum.<sup>23</sup> NITV believes, however, that no incumbent ITFS licensee should be compelled to participate in such an auction,<sup>24</sup> and given how many ITFS licensees have entered into lease agreements with third parties, it is unclear how many would actually participate.

Two-sided auctions may encourage investment and reduce transaction costs, and these benefits would flow to all licensees, including those who seek to maximize the educational utilization of their spectrum. As a general matter, while some argue that spectrum auctions would represent a “windfall” to incumbents, these arguments ignore the significant pro-education investments of money, time and effort that NITV and others have made in their ITFS licenses since the license was first issued without reasonable expectation of an auction “windfall.” Moreover, any proceeds from such an auction would be reinvested to further the educational mission of the ITFS licensee. As such, the FCC should avoid the temptation to impose a fee or retain any proceeds for the federal treasury.

With respect to initial auctions of vacant ITFS spectrum, NITV believes that educators' participation is key to furthering educational objectives in the band. In fairness to the original applicants, no additional parties – commercial or noncommercial – should be allowed to participate in auctions for channels that already have been applied for as far back as 1995. In addition, to the extent the Commission expands eligibility to

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<sup>20</sup> See Comments of Cellular Telecommunications and Internet Association, p. 5; Comments of Motorola, Inc., pp. 14-15; Comments of Sprint Corporation, pp. 22-23.

<sup>21</sup> See *NPRM* at ¶¶ 233-246.

<sup>22</sup> It is unclear how many educational organizations or institutions even have the authority to participate in an auction.

<sup>23</sup> See *NPRM* at ¶ 241.

<sup>24</sup> There is widespread belief that Congress never intended to subject ITFS to spectrum auctions.



hold ITFS licenses to include commercial interests and conducts auctions for vacant but unapplied-for ITFS channels, educators must receive some priority or risk being foreclosed from further expansion or use of the band. This is because educators cannot be expected to participate in such auctions on the same footing as commercial entities. Such priority may include the use of bidding credits to encourage participation by educators or the establishment of a one-time initial filing window where only currently eligible ITFS licensees could apply.

### **A “Substantial Service” Standard Should Replace Existing Service Requirements**

NITV agrees with Commenters who argue that the service requirements for ITFS and MDS must be replaced with a “substantial service” standard.<sup>25</sup> Like Sprint Corporation and BellSouth,<sup>26</sup> NITV believes that the standard should provide ITFS licensees with a renewal expectancy based on the provision of “substantial service” at some point during the effective dates of their license. Although commenters such as IPWireless and Grand Wireless propose coverage-based benchmarks,<sup>27</sup> NITV believes that such requirements would be unduly burdensome and would hinder licensees’ ability to deliver services in a flexible manner in response to local conditions. Such benchmarks could be as cumbersome as the unduly rigid rules that currently exist, which require, for example, prior consent for license modifications. The current rules also force licensees to risk loss of their license when commercial operators cause service interruptions due to bankruptcies and business plan failures. Such risks harm educational missions by threatening service disruption without providing licensees with flexibility to deal with changing conditions. Whatever standard is ultimately adopted, it must be flexible enough to deter warehousing while allowing licensees to respond to changing conditions for wireless services.

### **The Commission Should Not Adopt Unlicensed Underlay Proposals or Reallocate MDS/ITFS Spectrum for Unlicensed Use**

Like nearly all of the Commenters addressing the issue, NITV agrees that the FCC should not adopt rules permitting uses of unlicensed spectrum in the MDS/ITFS bands.<sup>28</sup> In a time when the Coalition and other parties have focused enormous energy

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<sup>25</sup> See, e.g., Comments of Ad Hoc MMDS Licensee Coalition, pp. 22-24; Comments of Blooston, Mordkofsky, Dickens, Duffy & Prendergast, pp. 4-5; Comments of Earthlink, Inc. p. 9; Comments of Hispanic Information & Telecommunications Network, p. 8; Independent MMDS Licensee Coalition, pp. 22-23 and Comments of Sprint Corporation, pp. 16-17.

<sup>26</sup> See Comments of Sprint Corporation, p. 18; Comments of BellSouth, pp. 31-33.

<sup>27</sup> See Comments of IP Wireless, pp. 23-25 (proposing milestones where a licensee would be afforded from the effective date of a Report and Order 36 months to serve a community in the geographic service area (“GSA”), 48 months to provide adequate signal to at least one-third of the population and 60 months to provide adequate signal to at least two-thirds of the GSA population); Comments of Grand Wireless Company, Inc. – Michigan, p. 14 (proposing coverage requirements in rural areas as follows: 30% of population within two years, 50% of population within four years, 70% of population within six years and 80% of population within eight years.)

<sup>28</sup> See, e.g., Comments of Blooston, Mordkofsky, Dickens, Duffy & Prendergast at p. 9; Comments of Cellular Telecommunications & Internet Association, pp. 5-6; Comments of ComSpec Corporation at p. 2;



and resources to propose rules to promote the potential of MDS and ITFS, an "unlicensed underlay" would introduce uncertainty that would deter investment and would undermine efforts to reconfigure and streamline the licensed uses of the band. As many Commenters have noted, further testing and analysis is required to resolve the complex technical issues associated with the introduction of unlicensed uses in the band. Like other Commenters, NITV is concerned about the potential for unlicensed underlay devices to interfere with licensed services, and the difficulty of detecting and correcting interference from unlicensed devices. Furthermore, NITV supports the redesignation of licensed MDS and ITFS services in accordance with the Coalition's proposed band plan and opposes New America Foundation's proposal to reallocate 90 MHz of the band for unlicensed services. Once unlicensed uses are introduced in the band, it would be extraordinarily difficult to remove them in the event that they cause interference. Accordingly, NITV cannot support a proposal to add an unlicensed underlay to the MDS/ITFS bands.<sup>29</sup> The need for an additional allocation of unlicensed spectrum is simply not apparent from the record, particularly given the FCC's recent efforts to identify and allocate new spectrum for unlicensed uses.<sup>30</sup>

### **Across-the-Board Power Reductions are Unwarranted and Would Effectively Terminate Existing Service**

NITV concurs with those Commenters who oppose the application of across-the-board power reductions to the MDS/ITFS spectrum.<sup>31</sup> NITV believes that such power reductions would necessitate the shutdown of successful video systems in the band, cause serious service disruptions and require uneconomical expenditures to convert some systems to low-power uses. Many educators in rural areas would lose an important (and sometimes only) source of multi-channel video programming due to the prohibitive costs of replacing an existing system with a network of low-power cells or with operations at lower power. NITV also believes that high-power operations in certain rural areas may be the only way to economically provide either commercial or educational services. NITV agrees with the Coalition proposal that to adopt across-the-board power reductions presupposes that the need to accommodate high-power services will diminish and that such power reductions would promote flexible use in this band.<sup>32</sup> For these reasons,

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Comments of EarthLink, Inc. at pp. 13-14; Comments of Ericsson Inc. at pp. 9-13; Comments of Hardin and Associates, Inc., p. 7; Comments of IPWireless, Inc., p. 21; Comments of ITFS/2.5 GHz Mobile Wireless Engineering and Development Alliance, Inc., p. 19; Comments of Motorola, Inc., p. 15; Comments of Sprint Corporation pp. 7-15.

<sup>29</sup> Perhaps the FCC should consider adding a licensed overlay to unlicensed bands that currently exist and use that spectrum as a test bed.

<sup>30</sup> See Comments of New America Foundation at pp. 17-23. Furthermore, NITV believes that New America Foundation's proposal to reallocate spectrum from ITFS to unlicensed use exceeds the scope of the instant proceeding. The Administrative Procedure Act would preclude the FCC from adopting the proposal. See 5 U.S.C. §§ 551 *et seq.*

<sup>31</sup> See Comments of Archdiocese of Los Angeles, pp. 2-3; Comments of Archdiocese of New York, pp. 1-2; Comments of Diocese of Brooklyn, pp. 1-2; Comments of Education Service Center Region 10, p. 4; Comments of Grand Wireless Company, Inc. – Michigan, p. 6; Comments of Illinois Institute of Technology, p. 16; Comments of National Telecommunications Cooperative Association, pp. 3-4; Comments of Oklahoma Western Telephone Company, Inc., p. 3.

<sup>32</sup> See Comments of WCA, NIA and CTN, pp. 30-31.



NITV cannot support the introduction of across-the-board power reductions for this spectrum. The bandplan proposed by WCA/CTN/NIA, which preserves high-power operations in the mid-band segment, represents the best way to preserve incumbent operations and allow for the development of new technologies for the provision of wireless broadband services that will benefit education.

### **Conclusion**

For the foregoing reasons, NITV supports the rule changes described herein and efforts to maximize ITFS licensees' flexibility to make the highest possible educational use of their spectrum. NITV believes that amendment of Section 74.932 to permit commercial entities to hold ITFS licenses would serve the public interest because the new licensee would be required to continue educational service for at least the minimum currently required of existing licensees and any consideration for the sale of the license would be required to further the educational mission of the assignor. In all cases, the decision to lease or sell a license as well as the proceeds from the sale of that license must remain in the hands of educators, who are best capable of determining how to fulfill their local educational missions. This flexibility should extend to a "substantial service" standard that would permit ITFS licensees to adapt to rapidly changing conditions without undue risk to their station authorizations. In addition, the highest educational use of such spectrum would be undermined by proposals to add unlicensed uses to the band and to impose across-the-board power reductions. Any new auction rules or procedures must account for the needs of education and the priority of channels for which applications have already been filed. Adoption of these proposals will best promote educational services and stimulate competition, innovation and investment in wireless broadband services that benefit education.

Respectfully submitted,  
Network for Instructional TV, Inc.

By: \_\_\_\_\_ /s/  
Thomas A. Pyle  
CEO/Executive Director