Management Act of 1976, 43 U.S.C. 1714 (1988), it is ordered as follows:

1. Subject to valid existing rights, the following described public lands are hereby withdrawn from settlement, sale, location, or entry under the general land laws, including the United States mining laws (30 U.S.C. Ch. 2 (1988)), but not from leasing under the mineral leasing laws, to protect the significant historic and recreational values along Galice Creek:

Willamette Meridian

Revested Oregon and California Railroad Grant Lands

T. 34 S., R. 8 W.,
Sec. 35, S½SE¼SE¼.
T. 35 S., R. 8 W.,
Sec. 2, lots 7 to 14, inclusive, and lots 16, 17, and 19, N½SW¼NE¼, SE¼NW¼, and NW¼SW¼;
Sec. 3, SE¼NE¼SE¼ and E½SE¼SE¼.

The areas described aggregate 290.02 acres in Josephine County.

2. The withdrawal made by this order does not alter the applicability of those public land laws governing the use of the lands under lease, license, or permit, or governing the disposal of their mineral or vegetative resources other than under the mining laws.

3. This withdrawal will expire 20 years from the effective date of this order unless, as a result of a review conducted before the expiration date pursuant to Section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f) (1988), the Secretary determines that the withdrawal shall be extended.

Dated: April 4, 1995.

Bob Armstrong,

Assistant Secretary of the Interior.

[FR Doc. 95–10081 Filed 4–24–95; 8:45 am]

BILLING CODE 4310–33–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 74

[MM Docket No. 93–24, FCC 95–51]

Experimental, Auxiliary, and Special Broadcast and Other Program Distributional Services; ITFS Filing Window

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This Report and Order adopts a window filing procedure for the processing of applications for new Instructional Television Fixed Service (ITFS) stations and major changes to existing stations. It further adopts rules affecting the four-channel rule, receive site interference protection, the protected service area, and other aspects of ITFS operation. The Report and Order responds to the comments received in response to the Notice of Proposed Rulemaking in this proceeding. Notice of Proposed Rulemaking in MM Docket No. 93–24, (Notice), Order and Further Notice of Proposed Rulemaking in MM Docket No. 93–24 (Further Notice). The action is required to hasten ITFS and wireless cable service to the public by streamlining the processing of ITFS applications.

EFFECTIVE DATE: Upon approval of the Office of Management and Budget of a modified FCC Form 330 to effectuate the modifications approved in this Report and Order. The FCC will published a document announcing the effective date in the **Federal Register** when OMB approval is imminent.

FOR FURTHER INFORMATION CONTACT: Paul R. Gordon, Mass Media Bureau, Policy and Rules Division, (202) 739–0773.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order in MM Docket No. 93–24, adopted and released on February 7, 1995. The complete text of this Report and Order is available for inspection and copying in the FCC Reference Center (room 239) at the Federal Communications Commission, 1919 M St., NW, Washington, DC 20554, and may also be purchased from the Commission's copying contractor, International Transcription Service, at (202) 857–3800, 2100 M St., NW, Suite 140, Washington, DC 20037.

Synopsis of Report and Order

1. By this Report and Order, the Commission adopts rules that will increase the efficiency of our processing of applications for new ITFS stations, major amendments to such applications, and major changes to existing stations. The Commission also considers additional proposals intended to increase the efficiency, and curtail potential abuse, of the application processes.

2. During the past decade, applicants for new ITFS stations or major changes in existing stations have been subject to an A/B cut-off procedure. This procedure involves placing the first application(s) accepted for filing and determined to be substantially complete on a public notice called an ''A'' cut-off list. This list notifies the public that the application has been accepted and gives interested parties 60 days to file competing applications or petitions to deny. An applicant placed on the ''A'' cut-off list is required to make any major changes to its proposal before the end of the ''A'' cut-off period. After the ''A'' period expires, the staff places all substantially complete applications which were filed during that period and found to be mutually exclusive with any listed ''A'' application on a ''B'' list. This list notifies the public that the specified applications have been accepted for filing, and it provides 30 days for the filing of petitions to deny or minor amendments to those applications.

3. The telecommunications environment has changed substantially since 1985, when the Commission instituted this procedure. Also, in more than 90% of recently filed applications, ITFS licensees plan to lease their excess channel capacity to wireless cable operators, who almost always pays for the construction of the ITFS facilities. These changes have fostered a substantial increase in the rate of applications filed for new ITFS stations or major changes in existing stations, creating a significant backlog of applications. Therefore, in the Notice of Proposed Rulemaking in this proceeding, 58 FR 12011 (March 2, 1993), we proposed a filing window procedure for the acceptance of applications, to allow us to better control the flow of applications and to improve processing efficiency.

4. Pursuant to our proposal, we would accept applications for new facilities and applications for major changes in existing facilities only during limited periods (or ''windows''). We would place applications filed in the window that were not mutually exclusive with any other application, and that were found to be acceptable for filing, on a proposed grant list. We would then provide the immediately following 30 days for the submission of petitions to deny. Uncontested applications would then be granted, if in the public interest. With regard to mutually exclusive applications, we would similarly give 30-day Public Notice for the submission of petitions to deny. Thereafter, we would evaluate those applications under the existing comparative selection process. Any applications currently tendered but not yet placed on an ''A'' cut-off list would be treated as having been filed and cut off as of the close of the first filing window.

5. Currently, simply to allow the release of an ''A'' cut-off list, each application must undergo a substantive engineering analysis upon filing. No applications are granted or denied in this stage of processing. Subsequently, after the ''B'' cut-off period, each

application undergoes a second technical analysis in order to determine whether it is grantable. Because each of these analyses requires significant resources, eliminating the duplicative step would substantially improve processing efficiency.

6. The Commission concludes that a window filing system, as enhanced by an electronic filing and processing system as proposed in our outstanding MDS rulemaking proceeding, 59 FR 63743 (Dec. 9, 1994), would serve the public interest. A window filing procedure would allow us to better control the flow of applications and it would prevent speculators from filing against applicants that had appeared on an ''A'' cut-off list.

7. A 60-day Public Notice period before each filing window will provide potential applicants adequate notice and opportunity to prepare their applications. As most commenters observe, this is the same period within which parties currently have to file an application in response to an ''A'' cut-off list. The window shall remain open for at least five business days. This period, when combined with the 60-day public notice, will provide all potential applicants time to prepare their applications.

8. Potential inefficiencies caused by the submission of a large number of applications during a national (as opposed to a regional) window are significantly diminished by our likely adoption of the electronic filing system for ITFS applications. A regional window would unfairly require educators not located within the relevant area to delay their educational plans. Finally, a national window will allow all interested parties to commence or continue their ITFS and MDS plans as soon as possible. This will provide the certainty of an imminent filing opportunity to all wireless cable entities, not just those within a restricted geographic area.

9. *Frequency.* Some commenters support a fixed schedule, arguing that this would allow educators to plan their proposals in advance of the Public Notice. They also advocate the non-discretionary opening of a window at least once each quarter, asserting that frequent filing periods are necessary to avoid unduly delaying the licensing of ITFS facilities that are essential to the growth of the wireless cable industry. However, we have never before utilized a window filing system with ITFS, and we therefore believe that we should take a more cautious approach as we structure the window filing system. The rate of the submission of applications could vary significantly in the future, and a fixed requirement could quickly and unpredictably become counterproductive or impracticable to meet. Also, we intend to open filing windows as frequently as is consistent with our goals of efficient and expeditious processing.

10. *Amendments.* Some commenters propose that, after a filing window closes, the Commission should prohibit amendments that demonstrate eligibility, improve comparative standing, or seek rule waivers. Currently, they claim, many applicants impose an unnecessary burden on the Commission by filing such amendments, such as requests for waiver of the four-channel-per-market rule, § 74.902(d) of the Commission's rules, 47 CFR 74.902(d).

11. We agree that amendments that pertain either to improving comparative standing or to establishing eligibility, as set forth in §§ 74.913(b) and 74.932(a) of the Commission's Rules, respectively, 47 CFR 74.913(b) and 74.932(a) should not be filed outside the window period. Similarly, we shall prohibit the filing of amendments to a facility's proposed technical operations, including amendments to add any receive sites, outside the window. Such engineering amendments often require a time-consuming re-analysis by the staff of the amendment's effects on other applications and thus delay the processing of all pending applications. However, with the two exceptions noted above, such delay is not inherent in non-engineering amendments, including requests for waiver of the four-channel rule, and we will consequently permit their filing.

12. We make a narrow exception to the window filing system. NTIA rules require a party seeking a grant to have already filed its application with the Commission, and those requests are subject to an annual deadline. Accordingly, in order not to obstruct these grants, we shall allow the tendering of applications that rely upon NTIA funding during the 30 days preceding the annual deadline. They shall be considered as having been filed during the current or immediately subsequent window, whichever is appropriate.

13. In response to several commenters, we decline generally to exempt the filing of major change applications from the window filing process, and, as discussed above, we similarly decline to exempt amendments with similar effects. By definition, such changes can substantially impact both existing and proposed facilities. Accordingly, for the purpose of the window filing procedure, they should be treated the same as applications for new facilities. However, consistent with existing practice, we shall continue to make a narrow exception for amendments to pending applications that would resolve mutually exclusive applications without creating any additional interference. We will accept such amendments at any time, and we shall provide a 30-day period for the submission of petitions to deny those amendments. We believe that this will most efficiently bring new or improved service to the public. Further, to encourage market settlements, we shall now allow licensees of existing facilities to submit at any time applications for major changes, as long as the changes are essential components of a settlement involving mutually exclusive applications.

14. The Commission declines to adopt several other exceptions that the commenters propose. These rules would significantly disrupt the new window filing system, while promoting no public interest that is not already being served by the filing procedure or other ITFS rules.

Proposals to Improve the Application Process

15. As argued by the commenters, and noted in the *Further Notice,* the goals of the proposed window filing procedure could be maximized if we at the same time enacted additional rules that would increase its efficiency. Therefore, we set forth several proposals, many initially advanced by the commenters, that were intended to improve service to the public or otherwise enhance processing efficiency. Our analysis of each of the proposals will be affected by two factors. First, as noted above, is the proposed electronic filing and processing system for ITFS applications, which would diminish the negative impact that a large number of applications has had on our processing in the past. Second, implementation of the proposals adopted herein and strict enforcement of our existing rules will, we believe, eliminate many of the inefficiencies and alleged abuses of the existing processing system.

Financial Qualifications

16. *Proposal.* Currently, applicants are required to certify their financial ability or their reliance upon NTIA funding. In response to the *Notice,* two commenters proposed to require applicants or their prospective wireless cable lessees to submit with their applications proof of their financial ability to construct. In the *Further Notice,* 59 FR 35665 (July 13, 1994) we postulated that such a

requirement might deter a significant number of ITFS speculators. We also asked whether we should require separate financial documentation for each station applied for, and whether we should require the wireless cable lessee to submit the documentation when it is paying for construction of the facilities.

17. The record does not indicate that our reliance on applicant certification has been ill-placed. Further, we believe that the submission of detailed financial information would in practice neither increase processing efficiency nor deter abuse. Collecting the data would impose significant costs on the wireless cable lessee, regardless of whether the supporting documents were kept on hand by the educator or submitted to the Commission. We believe that a sound analysis of all of the incoming detailed financial submissions would consume a great deal of the staff's time, severely slowing the rate of processing. Conversely, any reliance on the documents without our own rigorous independent analysis would enable us to detect only a small proportion of potential abuse.

18. A financially unqualified educator would generally not be able to complete construction within the prescribed period. Because that educator would then need an extension of time within which to construct, it would have to submit an appropriate application to the Commission, explaining the reasons for its delay in construction. Thus, we already have a process in place by which we can monitor and assess ITFS licensees' progress in constructing their authorized facilities and forestall any dilatory conduct on their part. Should it become necessary in the future, we can revise this process accordingly.

Application Caps

19. We now address two proposals, raised in response to the Notice by the Educational Parties: (1) To impose a cap of 25 applications associated with the same wireless cable entity, including any entity with direct or indirect common ownership or control; and (2) to limit an individual nonlocal ITFS entity to filing no more than three to five applications during a window. To support this restriction, the Educational Parties argued that nonlocal applicants often work with wireless cable entities as frequency speculators. The overwhelming majority of interested commenters oppose the adoption of either type of cap.

20. To suddenly impose limits on the number of applications that particular parties may be affiliated with would slow both ITFS and wireless cable development. Further, it would artificially constrain MDS operators' business decisions as to the number of ITFS channels needed to establish economically viable wireless cable operations. Also, we can deter the speculation complained of by the less restrictive process of analyzing construction extension applications, as noted above.

Assignment of Unbuilt Facilities

21. In the Further Notice, we proposed to formalize our current practice of limiting the allowable consideration for the assignment of authorizations for unbuilt ITFS facilities to out-of-pocket expenses, as we do with broadcast construction permits. Our stated goal was to diminish the incentive of frequency speculators to submit applications for authorizations that they intend to later assign for profit. Every commenter addressing this issue supports the proposal, agreeing that it would help deter abuse. We agree that this limitation, applicable to broadcast construction permits, will have similar deterrent effects on frequency speculation in the ITFS service, and we shall therefore adopt it.

Excess Capacity Lease Terms

22. *Proposal and Comments.* Our existing policy does not authorize an educator to execute a lease agreement the term of which extends beyond the end of the educator's license term. Consequently, depending on how many years remain in the term, there may be situations in which our policy would prohibit a lease agreement to extend beyond one or two years. At most, MDS operators can have contractual access to ITFS channels for no more than ten years, the length of a full license period. Some commenters propose that we modify our policy to allow parties to negotiate lease agreements whose terms extend beyond the end of the license term, to demonstrate to potential investors their long-term channel access. The proposal is unopposed.

23. *Discussion.* The wireless cable industry requires substantial equity investment in order to become a viable competitor in the video marketplace. However, potential financiers are likely to exercise caution before investing in an MDS system, where there is uncertain long-term availability of the ITFS channels that provide the basic capacity for that system. Authorizing lease agreements that extend beyond the end of the license term would reduce the anxiety of potential investors that the MDS entity would shortly lose four channels, crippling the entire system. The increased confidence of investors will significantly accelerate the development of the wireless cable industry and provide competition to wired cable. Hence, we are revising our policy to permit an educator, if it chooses, to execute a 10-year lease agreement without regard to the duration of the educator's current license term. ITFS lease agreements that extend beyond the end of the license term must note that such an extension is contingent on the renewal of the educator's license.

Application of the Four-Channel Rule

24. *Proposal.* We seek to provide as many educators as possible with the opportunity to operate ITFS systems that meet their educational needs. Consequently, the four-channel limitation rule generally limits an ITFS licensee to four channels for use in a single area of operation. However, we have never clearly and formally defined what constitutes an ''area of operation.'' The Further Notice proposed to adopt the staff's informal policy of considering a single area of operation for this purpose to extend no farther than 20 miles from the transmitter site. Many commenters supported such a mileage-based proposal, while others preferred one based on predicted interference.

25. *Discussion.* We adopt the 20-mile standard. Our experience has demonstrated that this standard is efficient and easily understood and implemented. Determining a station's area of operation by use of the interference approach would require a considerable amount of technical analysis by the staff. As a consequence, adoption of this proposal could inordinately slow processing and delay service to the public. We recognize that any mileage standard will be imprecise, because there will always be educators that serve sites beyond the designated distance. However, the bright-line test we are adopting today has the important advantage of being easy for applicants to comprehend and apply. Further, the Commission staff can process applications far more efficiently using this standard. Moreover, staff, educators, and wireless cable entities are extremely familiar with this standard, having utilized it for a number of years.

Protected Service Areas

26. *Proposal.* The Further Notice also solicited comment on a proposed change in the application of protected service areas for wireless cable lessees. Currently, we provide a 15-mile interference protection for a service area regardless of receive site locations, but solely at the request of the ITFS

applicant or licensee. The Further Notice observed that an applicant for new facilities often requests and receives interference protection that restricts an existing licensee lacking such protection from pursuing certain modifications to its facilities. At the same time, an existing facility that has not requested such protection, upon learning that an application for a nearby operation has been filed, often requests interference protection and possibly obstructs the new applicant. We therefore proposed to apply interference protection only prospectively, making it effective solely with regard to applications filed after the protection request. We asked commenters whether our proposal would sufficiently diminish the disruption and delay resulting from the current system. We also asked commenters to address a specific application of the proposed rule: If two applications are (1) submitted during the same filing window, (2) otherwise grantable, and (3) mutually exclusive only because both applicants request a protected service area, we proposed to consider them as mutually exclusive. Most commenters addressing the proposal express support.

27. *Discussion.* We conclude that the public interest will be served by adoption of the proposal to apply protected service area protection only prospectively. Adoption of the proposal will diminish disruption to existing and proposed facilities. Only one commenter expressed opposition to the proposed specific application of the rule involving mutual exclusivity, and we shall adopt it, with a slight exception. There is no public interest benefit in protecting an uninhabitable area. To do so would needlessly restrict neighboring facilities, unduly depriving the area of both ITFS and wireless cable programming. Thus, if an applicant shows that interference will occur solely over water, we shall not consider the applications to be mutually exclusive. However, in order to avoid future conflicting interpretations and confusion, we will not extend the exception to cover any area in which no subscribers or potential subscribers would be affected by the interference.

Receive Site Interference Protection

28. *Proposal.* The Commission's rules currently provide interference protection to an educator's receive sites, regardless of their distance from the transmitter. The Further Notice cited instances in which interference protection was requested for receive sites apparently beyond an educational institution's reasonable coverage area. We stated in the Further Notice that such requests could be an abuse of our processes, designed to artificially increase the service area of the wireless cable lessee. We also opined that eliminating this practice would significantly increase the efficiency of our processing of applications, thereby hastening service to the public. We tentatively concluded that an educational institution is generally unlikely to reasonably serve a receive site located more than 35 miles from the transmitter. Thus, absent a showing of unique circumstances, we proposed to protect only those receive sites 35 miles or less from the transmitter. Further, we proposed that an applicant not be able to claim basic eligibility for a license by use of any receive site more than 35 miles from the transmitter. With regard to the 35-mile standard generally, the commenters are nearly evenly divided.

29. *Discussion.* We acknowledge the concerns of some commenters that educators may at times serve receive sites beyond the proposed boundary. In fact, however, under the proposed rule, a licensee could protect two receive sites that were as far as 70 miles apart, depending on the location of the transmitter. Thus, we find that the 35-mile standard is not unduly restrictive, and we adopt the proposal as it regards both interference protection and basic eligibility for receive sites not more than 35 miles from the transmitter. However, we will waive the rule for a particular site if an applicant can demonstrate that it is located within the educator's reasonable coverage area.

Major Modifications

30. *Proposal.* We turn now to our proposal to reclassify certain types of modifications to existing ITFS facilities. As stated in the Further Notice, we have classified these as either major or minor, attaching different procedural rules to each. In the Further Notice, we expressed our belief that our consideration of certain changes as minor does not realistically take into account the impact that they would have on the facilities in question, nearby facilities, or proposed facilities. Consequently, we proposed to reclassify as a major change any application involving: (1) Any polarization change; (2) the addition of any receive site that would experience interference from any licensee or applicant on file prior to the submission of the application; (3) an increase in the EIRP in any direction by more than 1.5 dB; (4) an increase of 25 feet or more in the transmitting antenna height; or (5) any change that would cause interference to any previously proposed application or existing facility. We additionally proposed to formalize our policy of considering proposals to relocate a facility's transmitter site by ten miles or more as a major change. We also proposed to exempt from the new rule any change that would resolve mutually exclusive applications without creating new frequency conflicts. Most of the commenters that addressed this issue generally supported the proposal. Also, the supporting comments assert that the adoption of the MDS modification rules would be desirable, due to the technical and regulatory relationship that exists between the two services.

31. *Discussion.* Our experience, as supported by many of the comments, warrants the need to modify the current classification system to increase processing efficiency, and we do not believe that the reclassification of certain amendments as major will diminish processing efficiency. Also, adoption of the MDS classification system would not be appropriate. Its definition of a major change is significantly broader than that previously used or now adopted for ITFS. However, the MDS rolling one-day filing window is structured to accommodate such an expansive definition, and it does not significantly restrict the submission of applications to change existing facilities. The ITFS window filing system, on the other hand, is not compatible with such an expansive classification that would needlessly restrict the filing of many ITFS technical modifications. Thus, we shall classify as major any application involving: (1) Any polarization change; (2) an increase in the EIRP in any direction by more than 1.5 dB; (3) an increase of 25 feet or more in the transmitting antenna height; and (4) relocation of a facility's transmitter site by ten miles or more. We shall, however, accept such applications at any time, if their grant would resolve mutually exclusive applications without creating new conflicts. Adoption of the proposal will significantly expedite the processing of ITFS applications.

32. We do not incorporate into the new rule two types of changes that we had earlier listed: (1) The addition of any receive site that would experience interference from any licensee or applicant on file prior to the submission of the application; and (2) any change that would cause interference to any previously proposed application or existing facility. By eliminating the cut-off system, the window filing system will prevent parties from requesting changes that are mutually exclusive with a tendered but not yet cut-off application.

Reasonable Assurance of Receive Sites

33. *Proposal.* The Further Notice requested comment on how best to ensure the accuracy of each applicant's list of receive sites. We seek to deter applicants from listing receive sites that have in fact not agreed to participate in the proposed ITFS system. We therefore proposed requiring a letter of assurance from the applicant, listing each receive site's contact person, title, and telephone number. Most interested commenters support a stricter requirement than we proposed, and two commenters oppose the proposal in any form. Supporters argue that for adequate deterrence, we should require a verification letter from an authorized official of each receive site listed in an application.

34. *Discussion.* To better ensure the accuracy of receive site lists submitted both by local and nonlocal applicants, we adopt a modified version of the proposal. Processing efficiency will be enhanced because the additional data would allow for rapid confirmation of a site's participation. However, requiring a separate letter of verification from each receive site would involve the submission of potentially dozens of separate letters. We believe, though, that we can expedite processing to the same degree on the application form: where we already ask for information about each of the applicant's receive sites, we shall simply add a column asking for a contact person's name, title, and telephone number. The contact person should be the person (or one of the people) responsible for implementation of the ITFS program at that receive site.

Accreditation of Applicants

35. *Proposal.* While applicants seeking to construct a new ITFS station must indicate their accreditation or that of the schools or other institutions that intend to utilize the proposed ITFS service, we noted in the Further Notice that the extent to which the specified receive sites are being utilized by students from accredited institutions is not called for. Accordingly, we proposed to require applicants to state whether and by whom each listed receive site is accredited. We also asked whether having only one proposed receive site out of many as accredited defeats the fundamental purpose of ITFS: To serve the educational needs of accredited institutions. Thus, we invited commenters to address whether we should require a majority of receive sites to be accredited in order for the application to be grantable, or if we should deny interference protection for any unaccredited receive site. The proposed changes are generally opposed by the commenters. Many of them argue that receive sites are increasingly being used for distance learning without regard to whether they are accredited.

36. *Discussion.* The record does not demonstrate that serving one accredited receive site among other unaccredited receive sites is incompatible with serving the formal, for-credit educational needs of students enrolled at accredited institutions, and we therefore decline to adopt either proposal. To do otherwise would artificially restrict those enrolled students' accessibility to formal ITFS educational programming, while depriving others of worthwhile programming, such as in-service training and instruction in special skills and safety programs. As most commenters note, while the essential purpose of the ITFS service is to provide formal educational programming to students enrolled in accredited schools, colleges and universities, the Commission has long recognized the value of transmitting ''other visual and aural educational, instructional and cultural material to selected receiving locations * * *'' 47 CFR 74.931(a)–(b). We find no evidence on the record that persuades us to now significantly alter the existing relationship between the provision of formal, for-credit educational ITFS programming and the offering of other educational, instructional, and cultural material, Indeed, we reaffirm our commitment to our longstanding objective, one that permits ITFS licensees to transmit educational and cultural programs for use in other than a classroom setting or to persons other than students enrolled at accredited institutions. However, we take this opportunity to modify and make clearer our requirements regarding the need for further specification with respect to the accreditation of the parties utilizing the proposed ITFS services.

37. To attain eligibility, an ITFS applicant must, among other things, be accredited in its own right and serve its own students or serve accredited institutional or governmental organizations. It has come to our attention that some applicants accredited in their own right propose service only to receive sites which will not be used by their own students. Such applicants do not satisfy the eligibility requirements. They must, therefore, as Item 3 of Section II in the FCC Form 330 now requires, indicate the name of the ''school/institution'' it will serve, the accreditation date and the accrediting agency or organization. However, we have found, in processing applications, that the name of the school or institution often does not match with any receive site specified in Section VI of the Form 330. For ease of processing, we shall require, for applicants accredited in their own right and serving their own students, to identify in Section II, Item 3(a), the receive sites in Section VI which fall under their jurisdiction. For other applicants, that is, those which are accredited and not serving their own students and those applicants which are unaccredited and establishing their eligibility by serving accredited institutions, we shall require that they specify in Section II, Item 3(b), the receive sites belonging to or being used by the accredited institution. This additional information will enable the staff and all interested parties to immediately determine the accreditation status of an applicant.

Other Proposals

38. *Offset.* The Further Notice proposed requiring the use of offset when all affected transmitters are capable of handling frequency offset stability requirements. This proposal is supported by most of the commenters. However, we believe that voluntary agreements to utilize frequency offsets better serve the public interest. The use of frequency offsets represents a balancing of the need to prevent co-channel interference with our desire to allow an increase in the number of stations in a geographic area. As such, frequency offsets are not a substitute for the standard of interference protection, a desired-to-undesired signal ratio of 45dB, that our technical rules are designed to ensure. Indeed, the efficacy of frequency offsets, which is not universally acclaimed by the engineering society, is largely determined by the exigencies of the situation at hand, requiring affected applicants and licensees to engage in cooperative efforts to construct and adjust their respective technical operations to successfully avail themselves of this engineering technique, if possible. Under these circumstances, we are not persuaded to require the mandatory specification of frequency offsets.

39. *Expedited Consideration of Applications.* In the Further Notice, we asked for comments on the Educational Parties and WCA's proposal that we expedite consideration of certain ITFS applications in return for the applicant's agreeing to an accelerated construction schedule. The stated purpose was to rapidly authorize facilities that would most likely become part of an operating wireless cable system. Most commenters are supportive of the proposal, although

they disagree on the details of its implementation. Opponents of expedited consideration argue that it would not in fact accelerate the construction of viable MDS systems, because processing the likely high number of requests would delay service to the public. We agree. Rapid authorization of ITFS facilities is essential to providing unique educational programming to greater numbers of people, and to accelerating the ability of MDS systems to compete with wired cable operators. The more rapid processing sought by the commenters will likely be achieved by implementation of the filing window, as enhanced by the proposed electronic filing and processing system and the other modifications adopted in this proceeding Hence, we do not believe that adoption of the commenters' proposal is warranted.

40. *FAA Authorization.* As mentioned in the Further Notice, we do not grant or modify a license until the Federal Aviation Administration (FAA) has determined that the proposed transmitter site and receive sites will pose no hazard to air navigation. To prevent needless delay in processing applications, we proposed to require applicants to inform the Commission of the FAA's determination. The record clearly supports our belief that enactment of this policy would speed processing at minimal cost to applicants. Therefore, to expedite processing, we require applicants to inform the Commission of the FAA's determination on a timely basis.

41. *Interference Studies.* The Further Notice noted that applicants frequently make technical claims that lack adequate supporting data. To address this problem, we proposed requiring the submission of terrain profiles and a quantitative analysis of any additional signal loss calculated by using the Longley-Rice propagation model, Version 1.2.2, in the point-to-point mode. Most of the commenters that addressed this issue generally support the proposal, but advocate various exceptions to the rule, allowing the use of less rigorous models under a variety of circumstances.

42. Based on the information before us, we shall not adopt the proposal. The record demonstrates that our concern will be met by the submission of any valid profile maps or sufficient data that takes terrain shielding into account and supports the validity of each claim, regardless of whether the study involves the Model. Also, for each instance where terrain shielding is relied upon to protect ITFS facilities, applicants will be required to submit the quantitative amount of signal attenuation, in dB, attributable to terrain shielding. Any study must use generally acceptable engineering practices, and applicants must state the specific model they have used in their analysis.

43. *Construction of Facilities.* Some commenters express concern that the Commission has extended construction periods for parties with no intention to construct. Hence, they request strict guidelines for granting such extensions. One proposes decreasing the period within which an ITFS licensee must construct its facilities from 18 months to 12 months. It alleges that, if its proposal were adopted, frequency speculators would quickly lose their licenses and their channels would consequently become available during the next window. In both cases, however, our existing rules already address these matters. We have set forth the requirements an educator must meet in order to obtain an extension of time within which to construct: (1) Construction is complete and testing of the facilities has begun; (2) substantial progress has been made; or (3) reasons clearly beyond the applicant's control, which applicant has taken all possible steps to resolve, have prevented construction. We have no specific evidence that these rules have not operated sufficiently to prevent abuses by frequency speculators. Therefore, we decline to modify the period of time to construct.

Administrative Matters

A. Regulatory Flexibility Analysis

44. These rules are not major rules for the purposes of Executive Order 12291 of February 17, 1981. As required by the Regulatory Flexibility Act, it is hereby certified that these rules will not have a significant impact on small business entities.

B. Final Regulatory Flexibility Analysis

45. Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 605, it is certified that this decision will have an impact on ITFS stations by establishing a window filing procedure for the processing of such applications and applications for major changes to existing ITFS stations, and by adopting rules affecting the four-channel ruleee, receive site interference protection, the protected service area, and other aspects of ITFS operation. As detailed in the full text of the Report and Order, the Commission has attempted, wherever possible within the statutory constraints, to establish regulations which, to the extent possible, minimize the burdens of ITFS stations. The full text of the Commission's final regulatory flexibility analysis may be found in Appendix A of the full text of this Report and Order.

C. Ordering Clauses

46. It is ordered that this Report and Order is adopted.

47. It is further ordered that, pursuant to authority contained in sections 4(i) and 303 of the Communications Act of 1934, as amended, 47 CFR 74 is amended as set forth below. The change to the rules adopted in this Report and Order will become effective upon approval of the Office of Management and Budget of a modified FCC Form 330 to effectuate the modifications approved in this Report and Order.

48. It is further ordered that MM Docket No. 93–24 is terminated.

List of Subjects in 47 CFR Part 74

Television broadcasting, Instructional television fixed service.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

Rules

Part 74 of title 47 of the Code of Federal Regulations is amended as follows:

PART 74—EXPERIMENTAL AUXILIARY, AND SPECIAL BROADCAST DISTRIBUTION SERVICES

1. The authority citation for part 74 continues to read as follows:

Authority: Secs. 4, 303, 48 Stat. 1066, as amended, 1082, as amended; 47 U.S.C. 154, 303, unless otherwise noted. Interpret or apply secs. 301, 303, 307, 48 Stat. 1081, 1082, as amended, 1083, as amended; 47 U.S.C. 301, 303, 307.

2. Section 74.902 is amended by revising the second sentence of paragraph (d)(1) to read as follows:

§ 74.902 Frequency assignments.

* * * * *

(d)(1) * * * An area of operation is defined as the area 20 miles or less from the ITFS transmitter.* * *

* * * * *

3. Section 74.903 is amended by adding a new paragraph (a)(5), by adding a final sentence to paragraph (e), and by adding a new paragraph (f), to read follows:

§ 74.903 Interference.

(a) * * *

(5) No receive site more than 35 miles from the transmitter shall be entitled to interference protection.

* * * * *

(e) * * * Such protection shall be applied solely with regard to applications filed subsequent to the request for a protected service area.

(f) With respect to protected service area proposals, two applications will be regarded as mutually exclusive if they are:

(1) Submitted during the same filing window;

(2) Otherwise grantable;

(3) Mutually exclusive only because either or both applicants request a protected service area. However, if an applicant in such a situation shows that the resulting interference would occur solely over water, the applications will not be considered to be mutually exclusive.

§ 74.910 [Amended]

4. Section 74.190 is amended by removing the entry Section 73.3564(a), (b) Acceptance of applications, and adding in its place, 73.3597(c)(2) Procedures on transfer and assignment applications.

5. Section 74.911 is amended by revising the third sentence of paragraph (a)(1), and by revising paragraph (c) to read as follows:

§ 74.911 Processing of ITFS station applications.

(a) * * *

(1) * * * A major change for an ITFS station will be any proposal to add new channels, change from one channel (or channel group) to another, change polarization, increase the EIRP in any direction by more than 1.5dB, increase the transmitting antenna height by 25 feet or more, or relocate a facility's transmitter site by 10 miles or more.* * *

* * * * *

(c)(1) New and major change applications for ITFS stations will be accepted only on dates specified by the Commission. Filing periods will be designated by the Commission in a Public Notice, to be released not fewer than 60 days before the commencement of the filing period. Qualified parties will have no fewer than 5 business days within which to submit their applications. After termination of the filing period, the Commission shall release a Public Notice with a list of applications filed in the window and provide no fewer than 30 days for the submission of petitions to deny. Uncontested applications that are not mutually exclusive with any other application or licensed facility, and are found to be acceptable, shall be granted. Mutually exclusive applications shall be evaluated pursuant to the comparative selection process set forth in § 74.913 as herein amended.

(2) The requirements of this section apply to a wireless cable entity requesting to be licensed on ITFS frequency pursuant to § 74.990. The application of such a wireless cable entity shall be included in the Public Notice released after the termination of the filing period.

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6. Section 74.913 is amended by revising the first sentence of paragraph (d)(1), and adding a new paragraph (d)(5), to read as follows:

§ 74.913 Selection procedure for mutually exclusive ITFS applications.

* * * * *

(d) * * *

(1) Enrollment will be considered as of the last date of the filing window during which the applications were filed, as provided by § 74.911(c).* * * * * * * * *

(5) A receive site not receiving interference protection may not be utilized by an applicant for tie-breaking purposes.

* * * * *

7. Section 74.932 is amended by adding a new paragraph (e), to read as follows:

§ 74.932 Eligibility and licensing requirements.

* * * * *

(e) No receive site more than 35 miles from the transmitter site shall be used to establish basic eligibility.

* * * * *

8. Section 74.991 is amended by revising the last two sentences of paragraph (a) to read as follows:

§ 74.991 Wireless cable application procedures.

(a) * * * A wireless cable application for available instructional television fixed service channels will be subject to § 21.914 of this chapter with respect to other wireless cable applicants, and to the ITFS window filing period with respect to instructional television fixed service applications. All lists of accepted applications for ITFS frequencies, regardless of the nature of the applicant, will be published as ITFS public notices.

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47 CFR Part 90

[DA95–741]

Inter-Category Sharing of Private Mobile Radio Services in the 806–821/851–866 MHz bands

AGENCY: Federal Communications Commission.

ACTION: Notice of policy.

SUMMARY: The Wireless Telecommunications Bureau has imposed a freeze on the filing of new applications for inter-category sharing on all private mobile radio service frequencies in the 806–821/851–866 MHz bands. This action was taken to ensure the continued availability of these channels to currently eligible Part 90 applicants not licensed in the Specialized Mobile Radio (SMR) Service until the Commission resolves inter-category sharing issues in PR Docket No. 93–144 and PP Docket No. 93–253. This action will assure the integrity of the Commission's licensing process.

EFFECTIVE DATE: April 5, 1995.

FOR FURTHER INFORMATION CONTACT: Freda Lippert Thyden, Wireless Telecommunications Bureau, (202) 418–0627.

SUPPLEMENTARY INFORMATION: This is a summary of the Wireless Telecommunications Bureau's Order, DA95–741, adopted April 5, 1995, and released April 5, 1995. The full text of this Order is available for inspection and copying during normal business hours in the Private Wireless Division, Wireless Telecommunications Bureau, 2025 M Street, Room 5322, Washington, DC. The complete text may be purchased from the Commission's copy contractor, International Transcription Service, Inc., 2100 M Street, Suite 140, Washington, DC 20037, telephone (202) 857–3800.

This will impose no paperwork burden on the public.

Summary of Order

1. The Wireless Telecommunications Bureau imposed a temporary freeze on inter-category sharing of frequencies in the 806–821/851–866 MHz band allocated to the Public Safety, Industrial/Land Transportation (I/LT), Specialized Mobile Radio (SMR) and Business Services, in response to a request by the Association of Public Safety Communications Officials, Inc. (APCO). This request was opposed by the Industrial Telecommunications Association, Inc. (ITA).

2. APCO asserts that as a consequence of a Commission-imposed freeze (59 Fed. Reg. 60111 (November 22, 1994))