

Species (chemical)	Chemical formula	Global warming potential (time horizon)		
		20 years	100 years	500 years
CFC-11	CFCl ₃	5000	4000	1400
CFC-12	CF ₂ Cl ₂	7900	8500	4200
CFC-13	CClF ₃	8100	11700	13600
CFC-113	C ₂ F ₃ Cl ₃	5000	5000	2300
CFC-114	C ₂ F ₄ Cl ₂	6900	9300	8300
CFC-115	C ₂ F ₅ Cl	6200	9300	13000
H-1301	CF ₃ Br	6200	5600	2200
Carbon Tet	CCl ₄	2000	1400	500
Methyl Chl	CH ₃ CCl ₃	360	110	35
HCFC-22	CF ₂ HCl	4300	1700	520
HCFC-141b	C ₂ FH ₃ Cl ₂	1800	630	200
HCFC-142b	C ₂ F ₂ H ₃ Cl	4200	2000	630
HCFC-123	C ₂ F ₃ HCl ₂	300	93	29
HCFC-124	C ₂ F ₄ HCl	1500	480	150
HCFC-225ca	C ₃ F ₅ HCl ₂	550	170	52
HCFC-225cb	C ₃ F ₅ HCl ₂	1700	530	170

United Nations Environment Programme (UNEP), February 1995, Scientific Assessment of Ozone Depletion: 1994, Chapter 13, "Ozone Depleting Potentials, Global Warming Potentials and Future Chlorine/Bromine Loading," and do not reflect review of scientific documents published after that date.

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 95

[FCC 95-506]

Modification of the "Build-Out" Construction Requirements for the Interactive Video and Data Service (IVDS)

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission has adopted a *Report and Order* to eliminate the one-year "build-out" requirement for the IVDS, while retaining the three-year and five-year build-out requirements. This action will allow the IVDS industry additional time to develop and deploy new and innovative applications.

EFFECTIVE DATE: January 19, 1996.

FOR FURTHER INFORMATION CONTACT: Donna Kanin, (202) 418-0680, Wireless Telecommunications Bureau.

SUPPLEMENTARY INFORMATION: This is the final version of the Commission's *Report and Order*, FCC 95-506, adopted December 14, 1995, and released January 16, 1996. The full text of this *Report and Order* is available for inspection and copying during normal business hours in the FCC Reference Center, Room 230, 1919 M Street, NW., Washington, DC. The complete text may be purchased from the Commission's copy contractor, International Transcription Service, Inc., 2100 M

Street, NW., Suite 140, Washington, DC 20037, telephone (202) 857-3800.

I. Introduction

1. On July 31, 1995, the Commission adopted a Notice of Proposed Rule Making (Notice), 60 FR 43105, August 18, 1995, proposing to eliminate the one-year construction "build-out" requirement for Interactive Video and Data Service (IVDS)¹ licensees.² No change was proposed concerning the three-year and five-year construction requirements. We initiated the Notice in response to requests by several IVDS licensees³ that won their licenses in the IVDS auction held July 28-29, 1994. This *Report and Order* amends Section 95.833(a) of the Commission's Rules⁴ to eliminate the one-year build-out requirement as proposed. This action will allow the IVDS industry additional time to develop and deploy new and innovative applications, such as commercial data distribution services and inventory monitoring services.

II. Background

2. Section 95.833(a) of the Commission's Rules specifies that each IVDS licensee must make service available to at least ten percent of the population or geographic area within the licensee's service area within one year of the grant of the license, thirty percent within three years, and fifty

percent within five years. As indicated in the Notice,⁵ Section 95.833(a) was crafted in 1992 when it was anticipated that licenses would be awarded by lottery.⁶ These build-out requirements were intended "to reduce the filing of speculative applications by entities that have no real intention of implementing [IVDS] systems and to avoid the potential for warehousing of IVDS spectrum."⁷ We stated in the Notice that the use of auctions to award licenses reduces the incentives for speculation, and therefore, tentatively concluded that the one-year benchmark is unnecessary.⁸ The Commission received six comments and two reply comments in response to the Notice.⁹

III. Discussion

3. *Comments.* Generally, the commenters favor the elimination of the one-year construction requirement. Erwin Aguayo, Jr. (Aguayo), the Coalition of IVDS Licensees¹⁰ (Coalition) and EON Corporation (EON) agree that the auction rules preclude the need for the one-year build-out

⁵ Notice at para. 3.

⁶ The eighteen IVDS licensees that received their licenses as a result of a lottery held September 15, 1993, have already passed their one year build-out deadline. We waived the one year deadline for 17 of the 18 licenses. These 17 licenses are required to meet the three year/30 percent construction deadline in March, 1997.

⁷ See *Report and Order* in GEN Docket No. 91-2, 7 FCC Rcd 1630, 1640 ¶ 73 (1992), 57 FR 8272, March 9, 1992; see also *Memorandum Opinion and Order* in GEN Docket No. 91-2, 7 FCC Rcd 4923, 4925 ¶ 13 (1992), 57 FR 36372, August 13, 1992.

⁸ Notice at para. 3.

⁹ A list of the commenting parties is provided in Appendix A of the *Report and Order*.

¹⁰ Coalition members are listed in Appendix A of the *Report and Order*.

¹ IVDS is a point-to-multipoint, multipoint-to-point, short distance communications service in which licensees may provide information, products, or services to individual subscribers at fixed locations within a service area, and subscribers may provide responses.

² Notice of Proposed Rule Making, (Notice), WT Docket No. 95-131, 10 FCC Rcd 8700 (1995).

³ *Id.* at footnote 5.

⁴ 47 CFR § 95.833(a).

requirement.¹¹ Aguayo states that by amending the rules as proposed, the Commission will provide IVDS licensees with the necessary opportunity for flexibility in establishing their IVDS services.¹² EON states that the introduction of auctions to assign IVDS licenses has created significant short-term incentives for licensees to begin service as quickly as possible, and has reduced the risk of speculation in the IVDS license application process.¹³ Moreover, the Coalition of IVDS Licensees (Coalition) asserts that not only is the one-year benchmark unnecessary, but it will also impede the viability and evolutionary development of the IVDS spectrum. By requiring IVDS licensees to construct facilities prior to the full development of commercially viable services, the Coalition believes that the construction requirement will impede the development of new and innovative services.¹⁴ ITV, Inc. (ITV) and IVDS Affiliates, LLC (IALC) support eliminating the one-year deadline, but at the same time, recommend that the Commission establish a two-year, ten percent deadline for lottery and auction winners.¹⁵ They argue that two years would be sufficient for lottery winners to demonstrate the function of their respective IVDS systems and competing technologies, but not halt IVDS development. Secondly, ITV and IALC assert that such an amendment will permit auction winners to initiate service in a timely fashion.¹⁶

4. While supporting the proposal, EON, ITV and IALC assert that lack of equipment should not be the rationale for the proposed rule change. EON claims that its equipment will be commercially available before the one-year construction benchmark,¹⁷ but emphasize that IVDS licensees' equipment choices and short-term deployment schedules should be based on market conditions, rather than arbitrary regulatory constraints.¹⁸ Similarly, ITV and IALC state that they have developed a product line of IVDS equipment for data distribution, which they are marketing to licensees.¹⁹ Radio Telecom and Technology, Inc. (RTT), a manufacturer of IVDS equipment, is the only commenter that takes no position

as to the elimination of the one-year build-out requirement.²⁰

5. Additionally, the Notice proposed to retain the three-year and five-year construction benchmarks. EON, the Coalition, ITV and IALC agree.²¹ The Coalition believes that eliminating the one-year benchmark and retaining the other benchmark strikes an appropriate balance between the licensees' ability to manage intelligently their investments, and the public's interest in receiving interactive service on a timely basis.²² EON concurs that the three-year and five-year benchmarks are appropriate means for the Commission to meet its Congressional mandate to promote investment in and rapid deployment of new technologies and services.²³ ITV and IALC further emphasize that the IVDS equipment market cannot develop without strictly enforced three and five-year construction deadlines.²⁴ Alternatively, Richard L. Vega (Vega) argues that the three-year benchmark should also be eliminated.²⁵ According to Vega, it too has become an outdated, unnecessary, and unduly burdensome requirement for license holders. Vega states that the public, as well as the fledgling IVDS industry, would benefit from a one-time, five-year, build-out requirement, allowing licensees an opportunity to focus completely on the technology selection process.

6. *Decision.* We are adopting the proposal to eliminate the one-year, ten percent construction requirement. As the Coalition states, the one-year construction requirement impedes the viability and evolutionary development of the IVDS spectrum. Aguayo also points out that amending the rules, as proposed, will provide IVDS licensees with the necessary opportunity for flexibility in establishing their IVDS services. EON further emphasizes that IVDS licensees' equipment choices and short-term deployment schedules should be based on market conditions, rather than arbitrary regulatory constraints. We conclude that eliminating the one-year construction requirement will provide licensees with greater flexibility in selecting service options, obtaining financing, selecting equipment, and other considerations relating to construction of their systems. Such action will, in turn, promote the development of the IVDS industry. Moreover, we believe the one-year

construction benchmark is unnecessary to prevent spectrum warehousing. The use of auctions, rather than lotteries, to award licenses reduces the potential for spectrum warehousing and, as EON indicates, the introduction of auctions to assign IVDS licenses creates significant short-term incentives for licensees to begin service as quickly as possible. Finally, all of the commenters support this action except RTT, who takes no position regarding the one-year build-out.

7. Further, as proposed, we will retain the three-year and five-year build-out benchmarks. These benchmarks are consistent with the statutory requirement for performance benchmarks for licenses obtained through competitive bidding,²⁶ and will ensure the timely delivery of service to the public. At the same time, we decline to adopt the suggestions offered by Vega, ITV and IALC. We believe that Vega's request to eliminate the three-year benchmark would not promote rapid delivery of new technologies and services to the public. Additionally, we believe ITV's and IALC's suggestion to create a two-year, ten percent benchmark in lieu of the one-year, ten percent benchmark, while retaining the three-year benchmark, is unnecessary. Imposing the first benchmark at two years, rather than three years, would give auction winners less time and flexibility to make the critical business decisions described above. Further, a two-year, ten percent build-out requirement, in light of our auction framework and the three-year and five-year requirements, is unnecessary to prevent speculation and warehousing.

IV. Procedural Matters

8. Pursuant to the Regulatory Flexibility Act (Pub. L. No. 96-354, 94 Stat. 1165.5 U.S.C. 603, *et seq.* (1981), the Commission attached an Initial Regulatory Flexibility Analysis (IRFA) as Appendix A to the *Notice of Proposed Rule Making* in WT Docket No. 95-131. Written comments on the IRA were requested. The Commission's Final Regulatory Flexibility Analysis is as follows:

A. *Need and Purpose of the Action.* Our objective is to allow IVDS licensees greater flexibility in equipment and construction decisions, while meeting the Congressional mandate for specific performance standards in auctionable services.

B. *Issues Raised in Response to the Initial Analysis.* There were no

¹¹ Aguayo comments at 1-2; Coalition comments at 3; EON comments at 1-2.

¹² Aguayo comment at 2.

¹³ EON comments at 1-2.

¹⁴ Coalition comments at 2-4.

¹⁵ ITV and IALC reply comments at 2-3.

¹⁶ *Id.*

¹⁷ EON comments at 2.

¹⁸ *Id.*

¹⁹ ITV and IALC comments at 3.

²⁰ RTT's comments at 1-2.

²¹ Coalition comments at 3-4; EON comments at 2-3; ITV and IALC comments at 5-6.

²² Coalition comments at 3-4.

²³ EON comments at 3.

²⁴ ITV and IALC comments at 4-6.

²⁵ Vega comments at 2-4.

²⁶ Section 309(j)(4)(B) of the Communications Act of 1934, as amended, 47 U.S.C. § 309(j)(4)(B).

comments submitted in response to the Initial Regulatory Flexibility Analysis.

C. Significant Alternatives Considered and Rejected. All significant alternatives have been addressed in this *Report and Order*.

D. Description, Potential Impact, and Number of Small Entities Involved.

These adopted rule changes will allow greater business opportunities and greater flexibility in the business decisions of IVDS licensees, many of which are small businesses.

V. Ordering Clauses

9. Accordingly, *it is ordered* that Part 95 of the Commission's Rules and Regulations *is amended* as specified below. This action is taken pursuant to Section 4(i), 303(r), and 309(j) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 303(r), and 309(j).

10. *It is further ordered* that these amendments are effective January 19, 1996. These rule changes relieve a restriction and, therefore, are not subject to the 30-day effective date provision of the Administrative Procedure Act. *See* 5 U.S.C. 553(d)(1).

11. *It is further ordered* that this proceeding *is terminated*.

12. For further information, contact Donna L. Kanin, Federal

Communications Commission, Wireless Telecommunications Bureau, Private Wireless Division, 2025 M Street, N.W., Room 8010, Mail Stop 2000-F, Washington, D.C. 20554; (202) 418-0680.

Federal Communications Commission.
William F. Caton,
Acting Secretary.

Final Rules

Part 95 of Chapter 1 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 95—PERSONAL RADIO SERVICES

1. The authority citation for Part 95 continues to read as follows:

Authority: Secs. 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303.

2. Section 95.831 is revised to read as follows:

§ 95.831 Service requirements.

Subject to the initial construction requirements of Section 95.833, each IVDS system licensee must make the service available to at least 50 percent of the population or land area located within the service area.

2. Section 95.833 is revised to read as follows:

§ 95.833 Construction requirements.

(a) Each IVDS system licensee must make the service available to at least 30 percent of the population or land area within the service area within three years of grant of the IVDS system license, and 50 percent of the population or land area within five years of grant of the IVDS system license. Failure to do so will cancel the IVDS system license automatically. For the purposes of this section, a CTS is not considered as providing service unless that CTS and two associated RTUs are placed in operation.

(b) Each IVDS system licensee must file a progress report at the conclusion of each of the two benchmark periods to inform the Commission of the construction status of the system. The report must be addressed to: Federal Communications Commission, Wireless Telecommunications Bureau, Special Services Branch, 1270 Fairfield Road, Gettysburg, PA 17325-7245. The report must include:

(1) A showing of how the system meets the benchmark; and

(2) A list, including addresses, of all component CTSs constructed.

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