

of the demand and appropriate current or former GSA employee(s). In proceedings in which GSA, its current or former employees, or the United States are represented by DOJ the determination shall be coordinated with DOJ, which may respond to the issuer of the subpoenas or demand in lieu of the Appropriate Authority.

**§ 105–60.606 Procedure where response to demand is required prior to receiving instructions.**

(a) If a response to a demand is required before the Appropriate Authority's decision is issued, a GSA attorney designated by the Appropriate Authority for the purpose shall appear with the employee or former employee upon whom the demand has been made, and shall furnish the judicial or other authority with a copy of the instructions contained in this subpart. The attorney shall inform the court or other authority that the demand has been or is being referred for the prompt consideration by the Appropriate Authority. The attorney shall respectfully request the judicial or administrative authority to stay the demand pending receipt of the requested instructions.

(b) The designated GSA attorney shall coordinate GSA's response with DOJ's Civil Division or the relevant Office of the United States Attorney and may request that a DOJ or Assistant United States Attorney appear with the employee in addition to or in lieu of a designated GSA attorney.

(c) If an immediate demand for production or disclosure is made in circumstances which preclude the appearance of a GSA or DOJ attorney on the behalf of the employee or the former employee, the employee or former employee shall respectfully make a request to the demanding authority for sufficient time to obtain advice of counsel.

**§ 105–60.607 Procedure in the event of an adverse ruling.**

If the court or other authority declines to stay the effect of the demand in response to a request made in accordance with § 105–60.606 pending receipt of instructions, or if the court or other authority rules that the demand must be complied with irrespective of instructions by the Appropriate Authority not to produce the material or disclosure the information sought, the employee or former employee upon whom the demand has been made shall respectfully decline to comply, citing these instructions and the decision of the United States Supreme Court in *United States ex rel. Touhy v. Ragen*, 340 U.S. 462 (1951).

**§ 105–60.608 Fees, expenses, and costs.**

(a) In consultation with the Appropriate Authority, a current employee who appears as a witness pursuant to a demand shall ensure that he or she receives all fees and expenses, including travel expenses, to which witnesses are entitled pursuant to rules applicable to the judicial or administrative proceedings out of which the demand arose.

(b) Witness fees and reimbursement for expenses received by a GSA employee shall be disposed of in accordance with rules applicable to Federal employees in effect at the time.

(c) Reimbursement to the GSA for costs associated with producing material pursuant to a demand shall be determined in accordance with rules applicable to the proceedings out of which the demand arose.

Dated: October 28, 1997.

**David J. Barram,**

*Administrator.*

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**FEDERAL COMMUNICATIONS COMMISSION**

**47 CFR Parts 1, 21 and 74**

[MM Docket No. 97–217; FCC 97–360]

**MDS and ITFS Two-Way Transmissions**

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** In this Notice of Proposed Rulemaking (“NPRM”), the Commission seeks comment on the proposed amendment of its rules to enable Multipoint Distribution Service (“MDS”) and Instructional Television Fixed Service (“ITFS”) licensees to engage in fixed two-way transmissions. The Commission seeks comment on its proposals to enhance the flexibility of MDS and ITFS operations through facilitated use of response stations, use of booster stations with program origination capability in a cellular configuration, and use of variable bandwidth (“subchanneling” or “superchanneling”). Comment is sought regarding the technical, procedural and economic effects of implementing the proposed rule changes.

**DATES:** Comments must be filed on or before December 9, 1997, and reply comments on or before January 8, 1998. Written comments by the public on the Initial Regulatory Flexibility Analysis are due December 9, 1997.

**ADDRESSES:** Office of the Secretary, Federal Communications Commission, 1919 M Street, N.W., Washington, D.C. 20554.

**FOR FURTHER INFORMATION CONTACT:** Michael J. Jacobs, (202) 418–7066 or Dave Roberts, (202) 418–1600, Video Services Division, Mass Media Bureau.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's *Notice of Proposed Rulemaking*, MM Docket No. 97–217, adopted October 7, 1997, and released October 10, 1997. The full text of this *NPRM* is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, N.W., Washington, D.C., and also may be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 1231 20th Street, N.W., Washington, D.C. 20036.

**Synopsis of Notice of Proposed Rulemaking on MDS and ITFS Two-Way Transmissions**

1. This *NPRM* was issued in response to a petition for rulemaking filed by a group of 111 educators and participants in the wireless cable industry (collectively, “Petitioners”), comprised of MDS and ITFS licensees, wireless cable operators, equipment manufacturers, and industry consultants and associations. In this proceeding, Petitioners are asking that we implement a series of technical rule changes that would give MDS and ITFS licensees the needed flexibility to fully exploit digital technology in delivering two-way communications services. Currently, MDS and ITFS licensees are authorized to use digital technology in order to increase the number of usable one-way channels available to them, leased ITFS frequencies and MDS channels may be used for asymmetrical high speed digital data applications so long as such usage complies with the Commission's technical rules and its declaratory ruling on the use of digital modulation by MDS and ITFS stations (“*Digital Declaratory Ruling*,” 11 FCC Rcd 18839 (1996)), and MDS licensees have been permitted to provide two-way service on a limited basis. While 125 kHz response channels are currently allocated for use in association with most MDS and ITFS stations, Petitioners anticipate that many MDS and ITFS licensees and wireless cable operators engaging in two-way transmissions will require more capacity for return paths than is available through such 125 kHz channels. Moreover, because these 125 kHz response channels must be individually licensed under the

Commission's existing rules, Petitioners argue that the existing rules are too cumbersome and impose too great a financial burden on licensees seeking to implement two-way wireless services. Instead, Petitioners propose a system under which MDS and ITFS licensees would be permitted to utilize all or part of a 6 MHz channel for return path transmissions from subscriber premises, to cellularize their transmission systems to take advantage of spectrally efficient frequency reuse techniques, and to employ modulation schemes consistent with bandwidths either larger or smaller than 6 MHz, all while providing incumbent MDS and ITFS licensees interference protection equivalent to what they currently receive.

2. Petitioners emphasized that they are not seeking a reallocation of spectrum, but instead are seeking to modify the technical rules governing the spectrum already allotted to MDS and ITFS. We placed the petition for rulemaking on public notice, and received comments and reply comments from wireless cable industry participants that generally supported Petitioners' proposals. While many ITFS commenters expressed concern over the details of Petitioners' proposals, the comments and reply comments reflected a consensus in the MDS and ITFS communities that the concept of two-way offerings would greatly aid both services. We believe that several of Petitioners' proposals may be in the public interest in that they would enhance the MDS and ITFS services by providing licensees additional flexibility in order to implement two-way services. Such flexibility would be facilitated by changing certain of our technical rules, amending some of our programming rules, and modifying some of our current application procedures for MDS and ITFS facilities. The *NPRM* seeks comment on the various issues raised by these proposals, and puts forth some counter-proposals to those proffered by Petitioners.

3. *Revised Definitions of Service.* The ITFS/MDS spectrum is used primarily for the provision of either one-way video service to students, in the ITFS context, or, in the MDS context, wireless cable service to subscribers, which likewise historically has constituted primarily the provision of one-way video services. While our Rules already permit MDS licensees to provide non-video services, under our current regulatory scheme, MDS operators typically only provide two-way service to subscribers using telephone return links or individually licensed subscriber premises stations. This is an outgrowth of the basic one-way approach to MDS

transmission from which our current rules originated.

4. We propose changes to MDS and ITFS service definitions to fully incorporate the concept of two-way transmission and which reflect the reorientation of the regulatory approach to a flexible service, from that of an essentially one-way service. A regulatory system would be created authorizing the use of response stations and response station hubs to enable the two-way operation of wireless cable systems. We solicit comment on this new service paradigm.

5. Specifically, we propose to amend the definition of a "response station" to indicate that licensees may use all or part of any of their 6 MHz channels as a response channel. Response stations would be the means of transmission from a subscriber's premises, and could use either separate transmitting antennas for return paths or combined transmitting/receiving antennas. The concept of a response station hub is added, and these hubs would serve as the collection points for signals from the response stations in a multipoint-to-point configuration for upstream signal flow. Thus, response stations would not need to be licensed individually, and they could operate at lower power because the response station hubs would be located closer to subscriber premises than are current transmitter sites. Commenter Caritas Telecommunications, Inc. ("Caritas") proposed that we limit the availability of response channels to MDS channels 1, 2 and 2A, converting those channels from their current use for point-to-multipoint transmissions to subscribers' homes to use for transmission return paths. We tentatively decline to adopt this counter-proposal and agree with Petitioners that it would both artificially limit the amount of spectrum that could be used for return paths and unnecessarily prevent ITFS licensees from using their own channels for return paths. We solicit comment on the response station hub concept and its implications. We also solicit comments on our proposals regarding the expanded definition of response stations, including provision for transmissions on all available MDS and ITFS channels, and on Caritas' counter-proposal.

6. We further propose to amend the definition for "signal booster stations" to allow such stations to originate transmissions, as well as to relay transmissions from other stations. Booster stations would be used to cellularize wireless cable operations, which now may operate in areas too large to be served by a single station.

Permitting boosters to originate as well as relay programming would facilitate frequency reuse cellular configurations and two-way high speed Internet access and other services. We seek comment on the proposal to expand the role of booster stations in this manner. Flexible subchannelization (*i.e.*, the division of a channel of a particular bandwidth into multiple channels of smaller bandwidth) also would be permitted to allow more efficient channel reuse within a given service area, and superchannelization (*i.e.*, the combining of more than one channel into a single, wider channel) would be allowed and could be used for the transmission of high data rates and/or the use of spread spectrum emissions. Superchannels also would be licensed to multiple entities in many instances, due to the fact that the interleaved, non-contiguous channels in this band generally are licensed to different entities.

Subchannels and superchannels would be limited to digital transmissions with uniform spectral power density across the bandwidth, in order to make possible the use of spectral density analysis as part of the interference analysis process. We seek comment on these channelization proposals.

7. Finally, as noted above, 125 kHz channels are currently allocated as response channels for use in association with most MDS and ITFS stations, and as such they would provide further capacity as return paths in the cellularized two-way scheme. In their Comments, Petitioners add that the Commission should also permit the use of the 125 kHz channels for point-to-multipoint transmissions. Petitioners explain that for systems using digital technologies, there is a need to transmit downstream control signals over side channels that require less than a full 6 MHz channel, for instance for control over digital set top decoders or control over two-way communication systems. Petitioners maintain that use of the 125 kHz channels for such applications is beneficial in that it preserves the 6 MHz channels for transmissions that require greater bandwidth, and it can lead to reduced equipment costs. Petitioners also propound that to further offer flexibility to create channels with bandwidths exceeding 125 kHz, the Commission should remove the current rule provisions which require that the 125 kHz channels only be used in conjunction with their associated 6 MHz channels. While also proposing that the 125 kHz channels be used for additional point-to-multipoint spectrum, Caritas goes a step further than Petitioners, advancing that the Commission should

reallocate the 125 kHz channels to be combined into one continuous piece of spectrum to be used for such purposes. We are proposing rules in accordance with the most flexible framework ultimately requested by Petitioners for use of the 125 kHz channels, including allowing superchannelization or subchannelization of these stations regardless of whether they are used as response stations or for point-to-multipoint transmissions. We believe that these changes are sufficient to derive the benefits explained by Petitioners, and that a reallocation and the complications associated with that is not necessary. We solicit comment on these proposals regarding use of the 125 kHz channels.

8. *Interference Considerations.* In the *Digital Declaratory Ruling*, we waived our rules with respect to out-of-band emissions and permitted the use of a somewhat relaxed spectral mask for digital transmission modes. This action was taken because the Commission concluded that the application of the current analog emission mask to digital emissions would be unnecessarily restrictive and could increase the cost of digital equipment while providing no benefit. In addition, the results of laboratory tests submitted in connection with the Commission's consideration of this issue demonstrated that a digital station using the relaxed mask is less likely to cause interference than an analog station using the existing, more restrictive, mask.

9. In the *NPRM*, we propose to permanently incorporate into the Rules the spectral mask waiver provisions of the *Digital Declaratory Ruling*, specifically for primary system transmitters and single channel booster transmitters with a power greater than  $-9$  dBW EIRP; masks are further specified, albeit with certain modifications, for sub-and superchannels, response stations, and booster stations transmitting on multiple non-contiguous channels carrying separate signals and with an EIRP greater than  $-9$  dBW ("broadband boosters"). As an exception to the spectral masks for the 125 kHz channels, discrete spurious emissions above the upper and below the lower authorized channel edges would be permitted under certain conditions. And Petitioners request that no spectral mask whatsoever be applicable to booster stations with an EIRP of  $-9$  dBW or less. Petitioners argue that such low power stations have only a very limited potential for interference, and that applying strict emission limitations to them would significantly increase the price of equipment with no benefit to

the user or nearby licensees in terms of added interference protection. We seek comment on whether the degree of attenuation proposed for these various schemes is sufficient to provide adequate adjacent channel interference protection. We also request comment on whether eliminating a spectral mask for low power boosters presents an undue interference risk, and, if so, which additional interference safeguards should be adopted.

10. As in the *Digital Declaratory Ruling*, all spectral mask calculations involving digital emissions will use the average power of the emission across its bandwidth, and steps must be taken to ensure substantially uniform power density across the bandwidth in use, including constant power per unit of bandwidth for sub-and superchannels. We also propose to place a limit of 18 dBW EIRP on response station transmitters in cellularized systems, and that higher power facilities be authorized separately and require a site specific interference analysis. Given the extremely complex interference situation attendant to cellularized operations and the heavily encumbered nature of MDS and ITFS environments, we do not believe that it would be prudent to permit essentially unlimited numbers of response station transmitters with 2000 watts (33 dBW EIRP) of radiated power, as Petitioners requested. However, while current MDS and ITFS rules limit booster power to 18 dBW EIRP, we propose to allow boosters to operate up to 33 dBW EIRP, the maximum power level for MDS and ITFS. We seek comment on this approach to transmitter power within the two-way scheme. We also seek comment on rule proposals with respect to frequency tolerance requirements for digital transmissions, type acceptance of response station transmitters and boosters, and radio frequency ("RF") emissions for MDS/ITFS return path transmissions.

11. The Commission's current regulations in ITFS and MDS for interference protection were designed to minimize the potential for destructive cochannel and adjacent channel interference between systems located in proximity to each other. The specific criteria for protection are of two forms, namely, (1) cochannel and adjacent channel desired-to-undesired signal (D/U) ratios and (2) limits on the magnitude of a station's free space field as measured at the edge of the station's protected service area. For cochannel interference protection, an applicant must configure its system so that the signals from each of its transmitters are at least 45 dB weaker than the signals

of the existing licensee's transmitters within the licensee's protected service area and/or, in the case of ITFS licensees, at the licensee's protected receiver sites. For adjacent channel protection, the ratio must be at least 0 dB. In order to meet the second form of protection, an applicant generally must be able to demonstrate that the magnitude of the free space radiated field from each transmitter does not exceed a particular limit (i.e., a power flux density  $-73$  dBW/m<sup>2</sup>) at the boundary of the applicant's service area.

12. Petitioners propose to apply the existing interference criteria in essentially unchanged form, and to supplement them with similar new criteria to be applied to hub, booster, and response stations. Petitioners further propose to aggregate the power from a primary station and all associated booster stations for one set of interference calculations, and that a separate set of interference calculations be performed using the aggregated power from response stations. However, we counter-propose that a calculation of the combined field produced by the primary station transmitter, all boosters, and the aggregated power from response stations within a system be utilized to determine compliance with interference standards. We seek comment on the relative merits of Petitioners' proposed approach and our counter-proposal. We also emphasize that where an interfered-with receive antenna meets the antenna characteristics set forth in our MDS and ITFS rules, the station causing the harmful interference is responsible for curing it.

13. *Interference Prediction Methodology.* In order to predict the interference potential of response stations in the proposed cellularized scheme, Petitioners seek to employ a three-step process using statistical analysis and worst-case assumptions. In step one, the hub station response service area ("RSA") is defined and a grid of points is located within this area representative of the expected actual distribution of response station transmitters within the area. Regions within the area are defined so that an adequate population uniformity exists for purposes of predicting interference from a distribution of response station transmitters. Population uniformity is determined using a complex formula involving evaluation of the population density within each ZIP Code within the planned boundaries of a region. Population uniformity is an important facet of each region because Petitioners assume, *a priori*, that the distribution of response station transmitters will be

closely matched to population distribution within each region.

14. In step two, Petitioners propose to identify the technical characteristics of response stations which will be associated with each point in the RSA grid. One or more classes of response stations would be identified within the RSA and its regions, with each class being a function of several variables, such as transmitted power (EIRP), antenna height, frequency, bandwidth, and maximum number of assumed simultaneously operated response stations in the regional class; these characteristics and others would be specified in the response hub application. Differentiating between classes is asserted by Petitioners to be essential for accurately calculating the interference potential of the response stations within an RSA, because differentiable technical characteristics between classes likely will lead to differentiable potentials for causing interference to neighboring systems.

15. The final step in calculating response station interference would require combining the radiated fields of all response stations of all classes, regions and RSAs within the primary station's protected service area. In order to simplify this calculation, the statistical population uniformity within each region would be used as a basis for grouping response stations of all classes in proximity at the grid points laid out within each RSA; multiple classes could share the same grid points. For each class of response stations assigned to a grid point, a set of worst-case assumptions would be made concerning the transmitting antenna radiation pattern, transmitter power (EIRP) and antenna height. Several complex calculations, including procedures for checking the initial calculations, combining the radiated field for all of the transmitters for each class of response station at each grid point from all RSAs would then be used to evaluate compliance with the interference criteria. Thus, whereas under current rules such compliance is calculated on a per-transmitter basis, Petitioners' proposed system would necessitate that it be calculated on an aggregated basis, covering hundreds or thousands of transmitters and their combined interference potential to neighboring systems. Petitioners argue that licensees should be free, upon notification to the Commission, to continue adding response station transmitters within their systems until calculations indicate that permissible interference values would be exceeded, and that using worst-case assumptions in their methodology has built in an interference

protection buffer for situations where more stations or a different mix of stations than anticipated are activated in an RSA.

16. In the *NPRM*, we caution that the interference prediction methodology is based solely on assumptions, thus leading to a statistical picture of response station interference potential which gives an uncertain approximation of the operating environment, although Petitioners also claim that this approximation is conservative. In addition, we discuss how the small scale test conducted by Petitioners in the flat and relatively unimpeded terrain of Tucson, AZ, while useful, may not be generally applicable to the very diverse geographical and interference environments in which MDS and ITFS systems operate. We also express concern that the proposed methodology is so complex that it may be very difficult to implement and enforce, and may lead to numerous filings updating system configurations, which would present severe burdens upon existing licensees and operators needing to analyze these filings in order to verify that no harmful interference will result to their systems. Notwithstanding these reservations, however, we express our belief that Petitioners' overall goal of facilitating cellularization of the services is very forward-looking, and warrants an opportunity to proceed despite the complications and uncertainties which could arise. Thus, we propose to adopt the methodology and seek comment on it, but we also specifically solicit suggestions for alternative methods for prediction of interference to and from cellularized systems. For example, we ask to what extent "worst case" analysis could serve a sufficient approximation to a more exact analysis, such as a determination of noninterference based solely on terrain shadowing, and to what geographical extent individual response station areas should be aggregated in large BTAs.

17. *Modulation Methods.* In the *Digital Declaratory Ruling*, we authorized the use of Quadrature Amplitude Modulation ("QAM") and Vestigial Sideband ("VSB") modulation. While we declined to consider the use of other digital modulation methods in the context of that proceeding, we stated that we would consider future requests for declaratory rulings where the requesters submit appropriate data to demonstrate that other modulation techniques could be used in a manner that would not interfere with MDS and ITFS analog and digital operations. In the current rulemaking proceeding, Pace Telecommunications Consortium

("Pace") commented that the Commission should immediately grant ITFS and MDS licensees the flexibility to use whatever digital techniques best serve their needs, with interference controlled through the use of power spectral density limits and spectral masks.

18. As in the *Digital Declaratory Ruling*, in the *NPRM* we decline to adopt one or more "standard" digital technologies. We will retain or add provisions for accommodating the use of different modulation types, as requested by Petitioners. In addition, because we wish to encourage parties to continue to identify different digital modulation schemes that could be useful in MDS and ITFS, we emphasize that we remain open to considering future requests for declaratory rulings in accordance with the *Digital Declaratory Ruling*, upon submission of appropriate data. We further invite comment on whether there is a basis for concluding that use of particular digital modulation types by MDS and ITFS stations other than VSB and QAM would not be prone to interference, based on the current 45 dB/0 dB protection ratios for cochannel and adjacent channel interference respectively, *i.e.* that such modulation formats should be permitted without requiring test data. For example, one modulation type may be a subset of VSB and QAM and, therefore, is covered under the industry tests used to support the *Digital Declaratory Ruling*.

19. *Application Procedures.* Petitioners set forth an application processing scheme, governing the filing of applications for new or modified response station hubs or boosters, that would substantially shift review of applications from Commission staff and leave much of the interference environment to be worked out among licensees. Petitioners propose that we adopt a rolling, one-day filing window system. While each applicant would be required to demonstrate protection of existing or previously proposed facilities, all acceptable applications filed on the same day would be granted and the filers left to resolve incompatibilities amongst themselves with little or no intervention by Commission staff. Specifically, Petitioners propose that applications would be placed on public notice without prior staff review of interference studies, and that the applications would be automatically granted on the 61st day after that notice unless a petition to deny was filed or the Commission notified the applicant prior to that date that a grant would not be made.

20. Petitioners speculate that a large number of applications are likely to be filed once the new rules become effective and that many of the applications submitted at that time will conflict with others filed simultaneously. In order to smooth the transition to the rolling one-day filing window application processing system, Petitioners propose that a special one-week window be employed when the new rules first go into effect, and that all applications filed during this window be deemed filed as of the same day. Following the publication of a public notice announcing the tendering for filing of applications submitted during that window, applicants would have a period of 60 days to amend their applications to resolve conflicts. During this 60-day period, no additional applications could be filed, affording those who filed during the one-week window an opportunity to resolve any conflicts without fear that, during the pendency of settlement discussions, third parties will propose facilities that will have to be protected if the original applicants amend their applications. After this initial 60 day period, public notice and automatic grant procedures akin to those proposed by Petitioners for the rolling one-day filing windows would be implemented. Following Petitioners' plan, on the 61st day after the publication of the second public notice, applications for authorizations for response station hubs and for booster stations henceforth would be accepted and processed under the rolling one-day filing window approach.

21. Although we tentatively accept Petitioners' proposal to place the applications on public notice without prior staff review of the interference studies, we tentatively reject their proposal for automatic grant of the applications. We believe that placing the applications on public notice without prior interference analysis will serve to speed the review process by making the relevant data available to all interested parties as quickly as possible. However, we believe that an automatic grant at the end of the proposed 60 day public notice period will not provide an adequate opportunity for interested parties or, where necessary, for Commission staff, to review the interference studies or for the Commission to make a reasoned determination in complex cases. We solicit comment on our conclusions.

22. In addition, while Petitioners' proposal in this area presents a promising start, it still leaves a number of concerns and questions unresolved. Commenter Catholic Television Network ("CTN") raised the concern

that the one-day rolling filing window will create an undue burden on ITFS licensees, who may find themselves required to evaluate a continuing stream of applications. We solicit comment on how such a concern could be resolved in the context of the one-day rolling filing window. We also solicit comment on whether we should retain our current periodic filing window system used for ITFS applications and what advantages and disadvantages exist between the existing system and the proposed system. Furthermore, Petitioners' proposal leaves a number of significant questions unresolved regarding the processing of conflicting applications. For example what should be the result in the event that same-day filers of closely-spaced conflicting applications cannot resolve their differences? Should the applicants be ordered into binding arbitration for which they will assume the cost and whose outcome will be finally subject to Commission approval? Should the Commission simply freeze the applications until the parties are able to resolve their differences? Should the Commission's staff function as a referee in such cases and, if so, should it adopt any sort of comparative criteria to guide its decisions? Should the staff adopt some type of point system to rate competing applicants? We seek comment on these questions.

23. We tentatively propose the following processing rules, taking into consideration the concerns of the various commenters. Under these rules, applicants would file an original and two copies of their system proposal and serve a copy of the proposal on any party whose MDS/ITFS interests may be affected by the proposal. A complete application would then be placed on public notice for a 60-day initial comment period. Prior to the expiration of the 60-day period, interested parties could file comments, petitions to deny or requests for extension of time to file comments or petitions to deny. Although it is our policy that requests for extension of time shall not be granted, and we do not propose to change that policy, we anticipate that the limited resources available to an ITFS party to review a potentially complex two-way service proposal will be a factor considered in whether we grant a request for extension of time. In the alternative, we would consider adopting a 120-day initial comment period, with requests for extensions of time considered only in extraordinary circumstances. We seek comment on these proposals and solicit detailed alternate proposals. We especially seek comment on what time period parties

believe would be necessary to adequately review a service proposal without unduly delaying the processing of such a proposal.

24. We believe that the adoption of the one-week initial filing window will lessen the burden on all affected parties, including the Commission's staff, during the first round of application filing. We also believe that providing parties with an initial 60-day period during which they can resolve any apparent conflicts and then amend their applications without prejudice will provide for quicker and easier processing. We believe that issuing a public notice announcing the acceptance for filing of all applications as amended will serve an important notice function for all potentially affected parties. As discussed above, however, we do not propose to accept Petitioners' automatic grant proposal. Rather than adopt Petitioners' proposed automatic grant, we tentatively conclude that, at the end of any comment period that we may adopt and following any further staff review, the Commission staff, pursuant to delegated authority, would issue a grant or denial of any authorization pursuant to the revised rules. If no oppositions have been filed in a particular proceeding and the Commission staff has determined that a service proposal would not cause interference in violation of our Rules, we anticipate that such a grant would be accomplished quickly. We seek comment on both our proposed approach and on Petitioners' proposed automatic grant.

25. We also solicit comment on ways to make information on actual system operating parameters available to third-party applicants who need such information for analysis of the interference environment, and on how to conform our MDS and ITFS rules to provide for amendment of booster station and response station hub applications. Finally, in their Comments, Petitioners urge that we adopt a system whereby an applicant, once authorization for service has been granted, may switch from common carrier to non-common carrier service and back without seeking subsequent authorization. We seek comment on this aspect of Petitioners' proposal, and on whether operators should be required to give the Commission notice when they are switching back and forth between common carrier and non-common carrier service, even if prior approval is not required.

26. *Issues Specific to ITFS.* Under § 74.931 of the Commission's Rules, ITFS stations are operated by

educational organizations and are "intended primarily to provide a formal educational and cultural development in aural and visual form," to students enrolled for credit in accredited secondary schools, colleges and universities. An ITFS licensee who leases excess channel capacity to a wireless cable operator must provide a total average of at least 20 hours per channel per week of ITFS programming on its authorized channels. ITFS licensees in such lease arrangements also retain the right to recapture "an average of an additional 20 hours per channel per week for simultaneous programming on the number of channels for which it is authorized." In addition, an ITFS licensee may shift its required educational programming onto fewer than its authorized number of channels via channel loading or channel mapping. The licensee may further agree to transmission of recapture time on channels not authorized to it but which are included in the wireless cable system of which it is a part.

27. Petitioners propose changes which would revise the absolute 20 hours per channel per week recapture time requirement to provide that the ITFS programming requirements constitute a total of 40 hours per channel per week, including both actual programming and recapture time. The Petition does not contemplate any changes to the required minimum of 20 hours per channel per week of actual ITFS programming. Thus, under the proposed changes, if an ITFS licensee actually provides more than an average of 20 hours per channel per week of ITFS programming, reserved recapture time would only need to make up the difference to achieve a total of 40 hours per channel per week. CTN commented that retaining the 20 hour minimum actual programming requirement is inadequate, and insisted that as digital compression increases the number of channel paths, there must be a proportionate increase in the number of paths available for education, including data services. In their reply, Petitioners claimed that many ITFS licensees are finding it difficult to satisfy the existing ITFS minimum programming requirements. Petitioners further posed that adoption of CTN's proposal would create a disincentive for ITFS licensees to introduce the new technologies contemplated by the Petition. We solicit comment from ITFS licensees on these comments. In the *NPRM*, we find no grounds for retreat from the absolute 20 hour recapture time requirement, especially at this juncture when several wireless cable systems currently enjoy

or imminently stand to reap the benefits of increased spectrum capacity through use of digital compression techniques. While we acknowledge the great value to wireless cable operators of maximization of spectrum available for leasing, we also emphasize the primary educational purpose of ITFS and the importance of maintaining sufficient capacity for programming by ITFS licensees which fulfills that purpose.

28. In the *NPRM*, we specifically seek comment on several issues related to the question of whether to change our ITFS programming requirements in light of the use of digital technology by ITFS licensees. Should there be different rules depending on whether the wireless cable system employs digital transmissions? Should a change take the form of an increase in required levels of actual ITFS programming, an increase in ready recapture time, or both? How should any increased requirements be measured, *e.g.*, additional hours or additional paths? With the flexibility in implementation of ITFS programming requirements currently allowed or proposed, such as channel loading and shifting of required programming onto other channels within a wireless cable system, should we retain our existing program content requirements and, if not, how should they be modified? For example, should data transmission count towards minimum ITFS programming requirements? Should voice transmission count? If data and/or voice transmission were to count, how would they be measured with respect to fulfillment of minimum ITFS programming requirements? Should time-of-day requirements be instituted for these uses to help ensure that they are really being put towards ITFS programming? Furthermore, should counting one or both of them have an effect on the amount of actual programming or ready recapture time required? We also invite comment on whether education-related uplink transmissions should be applied towards satisfaction of minimum ITFS programming requirements. While we note our initial impression that counting uplink transmissions will be overly complicated and impractical, given the anticipated multitudes of response stations and the difficulty in predicting or tracking exactly when they are being used for educational purposes, we nonetheless welcome suggestions on how they would be measured with respect to fulfillment of minimum ITFS programming requirements.

29. Petitioners anticipate that system developers will attempt to utilize contiguous 6 MHz channels for two-way services in order to minimize the

amount of spectrum that would be lost to the proposed spectral mask whenever a return path is adjacent to a downlink channel. Furthermore, entire ITFS channel groups may need to be devoted for return paths. Thus, Petitioners propose that we allow ITFS licensees to satisfy their programming requirements on other channels within the wireless cable system. This proposal would be the next step in a progression of rule changes, following our allowance of channel mapping and channel loading, that have afforded ITFS licensees increased flexibility in the implementation of their minimum programming requirements. Because this proposal would enhance the two-way scheme, and because it would not call for any dilution or elimination of minimum ITFS programming requirements, we are considering implementing it. The flexibility that the suggested changes would accord to ITFS licensees to lease their channel capacity, along with the maintenance of minimum ITFS programming requirements, could also encourage educators to apply for new ITFS stations and lead to more educational programming. Several commenters put forth ideas for refinements to this proposal. Arizona State Board of Regents, *et al.* ("Arizona") suggested that each ITFS licensee be required to preserve at least one downstream video channel, and that the Commission institute a procedure whereby it would routinely grant applications by ITFS licensees to exchange individual ITFS channels between channel groups. Instructional Telecommunications Foundation, Inc. ("Foundation") would require that each ITFS licensee devote at least half of its capacity for downstream use. Schwartz, Woods & Miller ("SWM") prompted the Commission to facilitate the "trading" of channels between the ITFS and MDS bands.

30. Several of the ITFS commenting parties expressed concern that the proposed two-way scheme presents threats to the independence of ITFS licensees and their future ability to use spectrum capacity for instructional purposes. Pace, for instance, cautioned that because the Petition proposes a massive shift towards industry control over ITFS applications, the Commission must ensure that individual ITFS licensees "do not lose their freedom of choice" over the use of their channels, through coercion by neighboring licensees or strong wireless cable operators. However, Charlotte-Mecklenburg Public Broadcasting Authority ("CMPBA"), an ITFS licensee, took the view that the proposed rules

adequately protect the interests of ITFS entities, primarily because the rules do not obligate ITFS licensees to take part in the two-way system, enter into a lease agreement, file FCC applications, or accept harmful signal levels. Some of the concerned ITFS commenting parties focused on the effect that the proposed rules may have on the engineering autonomy of ITFS licensees. Arizona posed the question of what would happen if an excess capacity agreement comes to an end, and the ITFS licensee has previously converted its channels to two-way use and has shifted some or all of its programming onto other channels in the wireless cable system. Similarly, CTN asked what the impact of cellularization of a market would be on one or more ITFS licensees within it who elect not to cellularize, as well as whether a single ITFS licensee who strives to cellularize its operations would be dependent on other licensees in the market.

31. In the *NPRM*, we emphasize that cellularization by ITFS licensees would be permissive only, and not mandatory. We particularly seek comment on the effects of allowing complete flexibility in the number of channels "turned around" for return paths, and in the shifting of required ITFS programming onto other channels in the wireless cable system and what restrictions, if any, should be adopted. We also seek comment on whether we should require ITFS licensees to retain one or more channels for downstream transmissions and the ramifications of such a requirement. Further, we seek comment on whether ITFS channel swaps should only be just between ITFS channels, or whether ITFS licensees should be able to swap their spectrum for channels in the MDS band. We seek additional comment on specific potential threats to the engineering autonomy of ITFS licensees which could result from institution of the proposed two-way framework; in conjunction with such comment, we further seek proposed solutions. Some proposed solutions include channel swapping and reimbursement of costs of channel changes, upholding that participation of ITFS licensees in cellularization is not mandatory, and potentially increasing reservation of ready recapture time for ITFS programming. Do any of these ideas individually, or a combination of them, provide a sufficient foundation for meeting the expanding needs of some ITFS licensees? Commenters are also encouraged to address the general question of whether the Commission should establish solutions by rule, or

whether solutions should be achieved by contract, as advocated by Petitioners.

32. Several commenters also addressed the degree of oversight the Commission should maintain in regulating the wireless cable industry and ITFS. In the past, the Commission has adopted rules and procedures to accommodate and protect the special needs of educational institutions and organizations, believing that educational institutions should be treated differently from commercial entities in many situations due to limited financial and staff resources. In addition, ITFS licensees and applicants are required to file their excess capacity lease agreements, which are reviewed by the staff for overly restrictive provisions affecting the licensee's rights and obligations, and compliance with the Commission's leasing policies.

33. In order to ensure that educators retain control of their facilities and to protect their interests, the Foundation proposed that the Commission require that two-way digital applications and interference consents be reviewed by legal and engineering counsel that do not represent commercial interests, and that these independent advisors "certify that in their professional opinion the submission will not be harmful to future instructional service." We have declined in the past to require all leasing parties to hire separate counsel, finding this "safeguard" unnecessary and relying instead on the staff's review and monitoring of leases. We see no reason to change our position on this issue and seek comment on this issue. SWM also proposed that in order to protect the rights of incumbent ITFS licenses, the Commission require that leases approved or submitted under the previous rules "be amended to make clear that the wireless cable lessee and the ITFS licensee have together considered the rule changes adopted and made any appropriate changes to lease terms, prior to the commencement of commercial operations on the frequencies using cellularization, sectorization or differing channelization plans." Petitioners opposed this proposal, stating that the parties to the excess capacity lease agreements, and not the Commission, are best positioned to determine whether proposed system changes require contract revisions. Accordingly, we seek comment on SWM's proposal.

34. We also seek comment on what impact the proposed rule changes would have on our requirements regarding excess capacity lease agreements. For example, the Commission consistently has maintained that an ITFS licensee should

be permitted to purchase the ITFS equipment necessary to maintain its operation in the event the lease is terminated. In addition, we also require that the licensee maintain ultimate control over its licensed facilities. Several commenters have expressed concern that given the complexity and cost of Petitioner's proposal, ITFS licensees will be unable to sever their relationship with the wireless cable operator and acquire the equipment to either continue cellular operations or return to non-two-way transmissions. We particularly seek comment on this matter and on what type of equipment MDS lessees of ITFS channels should be required to make available to the ITFS licensees upon termination of a lease. For example, should it only be digital equipment comparable to that in use on the system at the time the lease is terminated or should it be equipment that would make it possible for the ITFS licensee to restore analog video operation, if necessary? Furthermore, with respect to Petitioners' proposal that ITFS licensees be allowed to utilize their entire channel for return paths and shift their ITFS programming to other channels, we request comment on whether the parties should be required to file written agreements governing the ITFS licensee's lease of an ITFS programming channel, and whether our present requirements for excess capacity leases, including those dealing with control issues, length of lease, and rights on termination, should apply.

35. We also revisit our channel loading rules, and propose to retain them. We request that interested parties comment on whether these rules have been beneficial to ITFS licensees and wireless cable operators, or whether they have been detrimental. Because we believe that they have provided additional much-needed flexibility to ITFS licensees and wireless cable operators, any parties commenting that these rules have been detrimental should also focus on solutions to permit the continued application of them while rendering them more universally beneficial. Finally, we also consider issues related to retention of ITFS call sign transmission requirements and accountability of ITFS licensees.

36. In this *NPRM*, we propose to amend our rules to give MDS and ITFS licensees the needed flexibility to fully exploit digital technology in delivering two-way communications services. Growth in the wireless cable industry has remained slow despite the increased channel capacity offered by digital compression and facilitated by the *Digital Declaratory Ruling*. Meanwhile, convergence of different information



delivery systems, including video and Internet access, is occurring in other industries, such as cable and DBS. Thus, one of our primary goals in instituting this proceeding is to enhance the competitiveness of the wireless cable industry. Another of our chief underlying goals in this proceeding is to provide benefits to the educational community through the use of two-way services, such as high speed Internet service. Besides proposing to amend our technical rules to facilitate such usage over ITFS frequencies, we note that the growth of wireless cable has led to the continued development of ITFS by supporting and funding approximately 95 percent of all new ITFS applicants. Thus, we believe that enhancing the competitive viability of wireless cable service through maximization of flexibility and service offerings promotes the underlying educational purpose of ITFS.

37. This is a permit-but-disclose notice and comment rulemaking proceeding. *Ex parte* presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed as provided in the Commission's Rules. See generally 47 CFR 1.1202, 1.1203, and 1.1206(a).

38. For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.419. To file formally in this proceeding, participants must file an original and five copies of all comments, reply comments, and supporting comments. If participants want each Commissioner to receive a personal copy of their comments, an original plus ten copies must be filed. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center (Room 239) at the Federal Communications Commission, 1919 M Street, N.W., Washington, D.C. 20554.

39. *Authority.* This *NPRM* is issued pursuant to authority contained in Sections 4(i) and (j), 301, 303(g) and (r), and 403 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), 301, 303(g), 303(r), and 403.

#### Initial Regulatory Flexibility Analysis

As required by the Regulatory Flexibility Act (RFA),<sup>1</sup> the Commission has prepared this present Initial Regulatory Flexibility Analysis (IRFA) of the expected significant economic impact on small entities by the policies

and rules proposed in this *Notice of Proposed Rulemaking* in MM Docket No. 97-217 ("NPRM"). Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the *NPRM* provided above. The Commission will send a copy of the *NPRM*, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA). See 5 U.S.C. § 603(a). In addition, the *NPRM* and IRFA (or summaries thereof) will be published in the **Federal Register**. See *id.*

#### Need for, and Objectives of, the Proposed Rules

The Commission is instituting this rulemaking to determine whether, and if so, how, to amend its rules to promote the ability of MDS and ITFS licensees to provide two-way digital services. The objective of this proceeding is to encourage the efficient use of the spectrum allotted to MDS and ITFS by simplifying our current two-way licensing system and providing greater flexibility in the use of the allotted spectrum where such flexibility would best serve the needs of the public. In addition, we intend to enhance the competitiveness of the wireless cable industry and the resultant choices available to consumers, and to increase Internet access for educational institutions and their students via ITFS frequencies.

#### Legal Basis

Authority for the action proposed in this proceeding may be found in Sections 4(i) and (j), 301, 303(g) and (r), and 403 of the Communications Act of 1934, as amended, 47 U.S.C. Sections 154(i), 154(j), 301, 303(g), 303(r), and 403.

#### Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

The RFA generally defines "small entity" as having the same meaning as the terms "small business," "small organization," and "small business concern."<sup>2</sup> In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.<sup>3</sup> A small

business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.<sup>4</sup>

#### MDS

The Commission has defined "small entity" for the auction of MDS as an entity that, together with its affiliates, has average gross annual revenues that are not more than \$40 million for the preceding three calendar years.<sup>5</sup> This definition of a small entity in the context of MDS auctions has been approved by the SBA.<sup>6</sup> The Commission completed its MDS auction in March 1996 for authorizations in 493 basic trading areas (BTAs). Of 67 winning bidders, 61 qualified as small entities.<sup>7</sup>

MDS is also heavily encumbered with licensees of stations authorized prior to the auction. The SBA has developed a definition of small entities for pay television services, which includes all such companies generating \$11 million or less in annual receipts.<sup>8</sup> This definition includes multipoint distribution systems, and thus applies to MDS licensees and wireless cable operators which did not participate in the MDS auction. Information available to us indicates that there are 832 of these licensees and operators that do not generate revenue in excess of \$11 million annually. We tentatively conclude that for purposes of this IRFA, there are approximately 892 small MDS providers as defined by the SBA and the Commission's auction rules, and some of these providers may be impacted by the outcome of this *NPRM*. We seek comment on this tentative conclusion.

#### ITFS

There are presently 2032 ITFS licensees. All but 100 of these licenses are held by educational institutions (these 100 fall in the MDS category, above). Educational institutions may be included in the definition of a small entity.<sup>9</sup> ITFS is a non-pay, non-

which are appropriate to the activities of the agency and publishes definitions in the **Federal Register**.

<sup>4</sup> Small Business Act, 15 USC § 632.

<sup>5</sup> 47 CFR 21.961(b)(1).

<sup>6</sup> See Amendment of Parts 21 and 74 of the Commission's Rules With Regard to Filing Procedures in the Multipoint Distribution Service and in the Instructional Television Fixed Service and Implementation of Section 309(j) of the Communications Act—Competitive Bidding, MM Docket No. 94-31 and PP Docket No. 93-253, Report and Order, 10 FCC Rcd 9589 (1995), 60 FR 36524 (July 17, 1995).

<sup>7</sup> One of these small entities, O'ahu Wireless Cable, Inc., was subsequently acquired by GTE Media Ventures, Inc., which did not qualify as a small entity for purposes of the MDS auction.

<sup>8</sup> 13 CFR 121.201.

<sup>9</sup> See 5 U.S.C. §§ 601 (3)-(5).

<sup>1</sup> See 5 U.S.C. § 603. The RFA, see 5 U.S.C. § 601 *et seq.*, has been amended by the Contract With America Advancement Act of 1996, Public Law 104-121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

<sup>2</sup> 5 U.S.C. § 601(6).

<sup>3</sup> 5 U.S.C. § 601(3) (incorporating by reference the definition of "small business concern" in 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of small business applies unless an agency after consultation with the Office of Advocacy of the Small Business Administration and after an opportunity for public comment, establishes one or more definitions of such term



commercial broadcast service that, depending on SBA categorization, has, as small entities, entities generating either \$10.5 million or less, or \$11.0 million or less, in annual receipts.<sup>10</sup> However, we do not collect, nor are we aware of other collections of, annual revenue data for ITFS licensees. Thus, we tentatively conclude that up to 1932 of these educational institutions are small entities. We seek comment on this conclusion.

#### **Description of Reporting, Recordkeeping and Other Compliance Requirements**

The Commission seeks comment on proposals to amend its rules to promote the ability of MDS and ITFS licensees to provide two-way digital services, including implementation of simplified procedures governing application for, and authorization of, booster stations and response station hubs. Because the proposed rule changes would enable licensees to apply for and receive authorizations for new types of booster stations and for response station hubs, certain commensurate new reporting and recordkeeping obligations would follow as part of this process, though the nature of the obligations and the MDS and ITFS rules directly addressing them<sup>11</sup> would remain the same. At the same time, however, the proposed rule changes would make the overall licensing process for two-way digital services much less cumbersome than the current process, which requires individual licensing of each response station and booster station. In the *NPRM*, we request comment on whether we should increase ITFS programming requirements, and if so, in which way and to what degree. While the proposed two-way scheme would result in more complicated interference analysis requirements for MDS and ITFS entities seeking to establish or modify service, regardless of whether the entities themselves choose to engage in fixed two-way transmissions, these interference safeguards are necessary to promote the objectives of this proceeding. We seek comment on these conclusions and how we can modify any proposed new requirements so as to reduce the burden on small entities and still meet the objectives of this proceeding.

#### **Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered**

As described in the *NPRM*, in response to a March 31, 1997 *Public*

*Notice* soliciting comment on the Petition, several of the ITFS commenting parties express concern that the proposed two-way scheme presents threats to the independence of ITFS licensees and their future ability to use spectrum capacity for instructional purposes. Pace, for instance, cautions that because the Petition proposes a massive shift towards industry control over ITFS applications, the Commission must ensure that individual ITFS licensees "do not lose their freedom of choice" over the use of their channels, through coercion by neighboring licensees or strong wireless cable operators. Other commenting ITFS parties, however, do not perceive such a threat. For instance, CMPBA believes that the proposed rules adequately protect the interests of ITFS entities, primarily because the rules do not obligate ITFS licensees to take part in the two-way system, enter into a lease agreement, file FCC applications, or accept harmful signal levels. Nevertheless, in order to find solutions that would allay the concerns of some ITFS licensees, in the *NPRM* we seek suggestions on ways to provide maximum flexibility in usage of ITFS channels while ensuring that capacity is reserved for downstream ITFS programming, pose the question of whether solutions should be established by rule or by contract and what role the Commission or other third parties should play in reviewing excess capacity lease agreements, and confirm that cellularization by ITFS licensees would be permissive only, and not mandatory.

CTN raises the concern that Petitioners' one-day rolling application filing window plan and automatic grant proposal will create an undue burden on ITFS licensees who may find themselves required to evaluate a continuing stream of applications. We solicit comment on how such a concern could be resolved in the context of a one-day rolling filing window or whether we should retain a periodic filing window system. Furthermore, we tentatively reject the automatic grant component of Petitioners' application processing proposal, and instead propose a "comment period" of 60 or 120 days, after which applications would be processed pursuant to current procedures. In proposing the comment period alternative, we acknowledge the complexity of the engineering information in the response hub or booster station applications, and the substantial number of affected parties, particularly ITFS licensees, that frequently have very limited resources

and that often would not be able to file a petition against an application before the application is automatically granted. Thus, in the *NPRM*, we particularly solicit comment from small ITFS operators. Similarly, we express concern that the proposed interference prediction methodology is so complex that it may lead to numerous filings updating system configurations, which would present considerable burdens upon existing licensees and operators needing to analyze these filings. We therefore solicit suggestions for other possible prediction methodologies.

In some instances, a proposed rule will impact different classes of small entities in different ways. For instance, in considering whether to increase ITFS programming requirements, including ready recapture time, we acknowledge in the *NPRM* the balance which underlies the existence and substance of the ready recapture provisions of 47 CFR 74.931(e): the great value to wireless cable operators of maximization of spectrum available for leasing, and the importance of maintaining sufficient capacity for programming by ITFS licensees which fulfills the primary educational purpose of ITFS. We decline to retreat from the current recapture time requirements of § 74.931(e), but we solicit comment in the *NPRM* on whether we should adopt any changes to the number of hours required for ready recapture by ITFS licensees.

Other proposals, tentative conclusions, or questions that we pose in the *NPRM* are designed to minimize the impact on all small entities involved. For example, we tentatively reject Caritas' proposal to limit the availability of response channels to MDS channels 1, 2, and 2A, because it would both artificially limit the amount of spectrum that could be used for return paths and unnecessarily prevent ITFS licensees from using their own channels for return paths, while providing no interference protection benefits that cannot be derived in other ways.

CTN and SWM both put forth procedural suggestions for this proceeding. CTN proposes that rather than proceeding with the instant rulemaking, we pursue a negotiated rulemaking procedure and convene a federal advisory committee to evaluate Petitioners' proposals and work out the most effective method to implement them. CTN asserts that this would provide substantial, useful information and facilitate the process initiated by Petitioners. We believe that the instant rulemaking process will provide us with sufficient information to adequately

<sup>10</sup> See 13 CFR 121.210 (SIC 4833, 4841, and 4899).

<sup>11</sup> See, e.g., 47 CFR 21.911.

evaluate Petitioners' proposals. In addition, the need for swift consideration of these proposals, in order to enhance the competitiveness of the wireless cable industry and expedite educational institutions' access to the Internet via ITFS frequencies, may be defeated by implementing a potentially lengthy negotiated rulemaking procedure. Thus, we reject CTN's proposal for a negotiated rulemaking at this time. Should circumstances warrant, however, we reserve the option to revisit our decision on this issue at a later date. Conversely, SWM requests the issuance of an NPRM in this proceeding, and noting that many of the parties which filed comments in the initial round of this proceeding are ITFS entities, requests an early Fall comment date in light of the academic schedules which predominate amongst these entities. The comment period that we establish here, therefore, should enhance the ability of ITFS entities to file carefully considered comments and reply comments. We solicit comment in the NPRM on other substantive and procedural alternatives to adoption of the proposed two-way digital transmission scheme.

#### **Federal Rules that Overlap, Duplicate or Conflict With the Proposed Rule**

None.

#### **List of Subjects**

##### **47 CFR Part 1**

Environmental impact statements

##### **47 CFR Part 21**

Communications common carriers, Communications equipment, Reporting and recordkeeping requirements, Television.

##### **47 CFR Part 74**

Communications equipment, Education, Reporting and recordkeeping requirements, Television.

Federal Communications Commission.

**William F. Caton,**

*Acting Secretary.*

[FR Doc. 97-29346 Filed 11-5-97; 8:45 am]

BILLING CODE 6712-01-P

## **FEDERAL COMMUNICATIONS COMMISSION**

### **47 CFR Part 64**

[CC Docket 96-128; DA 97-2162]

#### **Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996**

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule; petition for waiver.

**SUMMARY:** On October 7, 1997, the Common Carrier Bureau granted, on its own motion, a limited waiver of five months, until March 9, 1998, to those local exchange carriers and payphone service providers that cannot provide payphone-specific digits as required by orders in this proceeding. This limited waiver applied to the requirement that local exchange carriers provide payphone-specific coding digits to payphone service providers, and that payphone service providers provide coding digits from their payphones before they can receive per-call compensation from interexchange carriers for subscriber 800 and access code calls, and 0+ and inmate calls. The limited waiver recognized that three parties had filed petitions for waiver of the payphone-specific coding digit requirements.

**EFFECTIVE DATE:** October 7, 1997.

**FOR FURTHER INFORMATION CONTACT:** Rose Crellin or Greg Lipscomb, Formal Complaints and Information Branch, Enforcement Division, Common Carrier Bureau. (202) 418-0960.

**SUPPLEMENTARY INFORMATION:** A toll-free call transmitted by a local exchange carrier (LEC) to an interexchange carrier (IXC) carries with it billing information codes, called automatic number identification (ANI), supplied by the LEC that assist the IXC in properly billing the call. Currently, however, not all payphone calls carry the payphone-specific coding digits necessary to identify the calls as payphone calls, making per-call tracking and blocking more difficult.

In the *Payphone Orders*,<sup>1</sup> we imposed a requirement that LECs provide payphone-specific coding digits to payphone service providers (PSPs), and that PSPs provide those digits from their

payphones before the PSPs can receive per-call compensation from IXCs for subscriber 800 and access code calls.<sup>2</sup> In the *Order on Reconsideration*, we clarified that, to be eligible for per-call compensation beginning October 7, 1997, payphones are required to transmit specific payphone coding digits as a part of their ANI, which will assist in identifying payphones to compensation payers.<sup>3</sup> Each payphone must transmit coding digits that specifically identify it as a payphone, and not merely as a restricted line.<sup>4</sup> We also clarified that by October 7, 1997, LECs must make available to PSPs, on a tariffed basis, such coding digits as a part of the ANI for each payphone.

We have received three requests for a waiver of the payphone-specific coding digit requirements.<sup>5</sup> Meanwhile, we have granted, on our own motion, pursuant to § 1.3 of our rules, a limited waiver, until March 9, 1998, of the payphone-specific coding requirement for those LECs and PSPs not yet able to provide transmission of such digits. Those LECs and PSPs that are able to transmit the required coding digits by October 7, 1997, remain obligated to do so. Similarly, the remaining LECs and PSPs are obligated to transmit the required coding digits as soon as they are technically capable, but in any event no later than March 9, 1998.

During the period between October 7, 1997, and March 9, 1998, payphones appearing on the LEC-provided lists of payphones will be eligible for per-call compensation even if they do not transmit payphone-specific codes. This waiver of the requirements applicable to LECs and PSPs will provide LECs, IXCs, and PSPs with additional time that the record indicates is necessary to implement the procedures needed to transmit payphone-specific coding digits, without further delaying the payment of per-call compensation required by section 276 of the Act.<sup>6</sup>

<sup>2</sup> See *Report and Order*, 11 FCC Rcd at 20,591, paras. 98-99; *Order on Reconsideration*, 11 FCC Rcd at 21,265-66, para. 64, and 21,278-80, paras. 93-99.

<sup>3</sup> See *Order on Reconsideration*, 11 FCC Rcd at 21,265-66, para. 64, and 21,278-80, paras. 93-99.

<sup>4</sup> See *id.*

<sup>5</sup> Requests were received from the United States Telephone Association (USTA), the LEC ANI Coalition and TDS Communications Corporation. Those petitions have been placed on public notice for comments. See DA 97-2214, Pleading Cycle Established for Petitions to Waive Payphone Coding Digits Requirements, October 20, 1997.

<sup>6</sup> This waiver does not change the obligations of LECs pursuant to our requirements in *Policies and Rules Concerning Operator Service Access and Pay Telephone Compensation, Third Report and Order*, CC Docket No. 91-35, 61 FR 26466 (May 28, 1996), 11 FCC Rcd 17,021 (1996).

<sup>1</sup> *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-128, Report and Order, 61 FR 52307 (October 7, 1996), 11 FCC Rcd 20,541 (1996), ("Report and Order"); *Order on Reconsideration*, 61 FR 65341 (December 12, 1996), 11 FCC Rcd 21,233 (1996) ("Order on Reconsideration") (together the "Payphone Orders").