

58 FR 26728-01

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PROPOSED RULES

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 74

(MM Docket No. 93-106, FCC 93-183)

Experimental, Auxiliary, and Special Broadcast and Other Program
Distribution Services; Instructional Television Fixed Service, Purpose
and Permissible Service

Wednesday, May 5, 1993

***26728** AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rule making.

SUMMARY: Section 74.931(a) of the Commission's Rules provides that every authorized channel must be used to transmit formal educational programming offered for credit to enrolled students of accredited schools. Section 74.931(e)(2) requires that an ***26729** Instructional Television Fixed Service (ITFS) licensee leasing its excess capacity to a wireless cable operator provide at least 20 hours per channel per week of ITFS programming and reserve an additional 20 hours per channel per week. This Notice of Proposed Rule Making proposes to modify these rules so that ITFS licensees with a group of channels may "channel load" their minimum ITFS programming on only one or two of their channels. The Notice responds to requests for waiver of the minimum programming rules, filed in February 1992 by four ITFS permittees. On July 23, 1992, the Commission issued a Public Notice seeking comment on those requests, urging commenters and opponents specifically to address the question of whether the four requests would best be addressed in a waiver proceeding or in a rule making proceeding. Having examined the comments, the Commission determined that the proper avenue for addressing the concerns in the

waiver requests is a rule making proceeding, initiated by this Notice.

DATES: Comments are due by June 14, 1993, and reply comments are due by July 29, 1993.

ADDRESSES: Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Anne Lucey, Mass Media Bureau, Video Services Division, Distribution Services Branch, (202) 632-6357.

SUPPLEMENTARY INFORMATION: This is the Commission's Notice of Proposed Rule Making in MM Docket No. 93-106, adopted on April 6, 1993 and released on April 26, 1993.

The complete text of this Notice of Proposed Rule Making is available for inspection and copying during normal business hours in the FCC Reference Center, room 239, at the Federal Communications Commission, 1919 M Street, NW., Washington, DC, 20554, and may also be purchased from the Commission's copy contractor, International Transcription Service, at (202) 857-3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

Notice of Proposed Rule Making

1. On July 23, 1992, the Commission issued a Public Notice seeking comment on four petitions requesting waiver of our rules regarding the provision of formal educational and other Instructional Television Fixed Service (ITFS) programming on every licensed ITFS channel. The Public Notice urged commenters and opponents specifically to address the question of whether the four requests would best be addressed in a waiver proceeding or in a rule making proceeding. Having examined the comments [FN1] and the issue, we find, for reasons set forth below, that the proper avenue for addressing the fundamental regulatory concerns expressed in the waiver requests is a rule making proceeding. Accordingly, we initiate this Notice of Proposed Rule Making to solicit further comment on our minimum ITFS programming requirements.

FN1 a list of the parties filing comments and replies is provided below,

with abbreviated descriptions of associations and joint parties.

Background

2. Since its inception in 1963, ITFS has had as its primary purpose the transmission of instructional material to accredited public and private schools, colleges and universities for the formal education of students. Educational Television, 39 F.C.C. 846, 852-53 (1963), recon. denied, 39 F.C.C. 873 (1964). We have not, in the nearly 30 years since the inauguration of the ITFS service, deviated from that primary purpose in fashioning ITFS rules, and amendments to those rules. What we have calibrated, however, is the point of equilibrium in attempting to balance the fixed educational purpose of ITFS with fluid factors, such as the ability of educators to finance the construction and operation of ITFS facilities, the utilization of the spectrum, and the growth of "wireless cable" [FN2] as a competitive spur to conventional cable operators. Indeed, upon initiation of ITFS in 1963, we were urged by manufacturers to expand eligibility so as to encourage a great many users to enter the service, thereby increasing the demand for equipment and lowering costs to educators. *Id.* at 854. Instead, we limited those who could apply for ITFS, noting that "(i)t would not be in the public interest to create a demand far in excess of the capacity of the band." *Id.* The service, however, was founded on the principle that most ITFS systems "will require more than one channel so that teaching material in several subjects may be transmitted simultaneously." *Id.* at 846.

FN2 "Wireless cable" is a term used to describe Multipoint Distribution Service (MDS) and Multichannel Multipoint Distribution Service (MMDS), which utilize over-the-air microwave radio channels rather than coaxial or fiber optic cable to deliver video material to subscribers. There are 12 or 13 channels available to wireless cable for full-time use: 11 MMDS channels, E1-E4, F1-F4, and H1-H3; two single-channel MDS channels available in 50 cities; and one single-channel MDS channel in the rest of the country. In addition, wireless cable has access to the 20 ITFS channels, A1-A4, B1-B4, C1-C4, D1-D4, and G1-G4, on a leased, part-time basis. We do not intend to suggest by our use of the term "wireless cable" that it constitutes "cable" service for statutory or regulatory purposes.

3. Twenty years later, we acknowledged that there was far less

demand for ITFS spectrum than originally anticipated: although the 28 ITFS channels were heavily utilized in several large metropolitan areas, other large metropolitan areas had no licensed ITFS stations. Instructional TV Fixed Service--Report and Order in Gen. Docket No. 80-112 (Report and Order), 94 F.C.C. 2d 1203, 1214 ([1983](#)) [48 FR 33873](#), July 26, 1983, recon. denied, 98 F.C.C. 2d 129 ([1984](#)) [49 FR 27147](#), July 2, 1984. In addition, there was little ITFS spectrum in use outside the large metropolitan areas. Id. But even as we conceded the underutilization of ITFS spectrum during the first 20 years, we foresaw an increase in demand for channels by institutions of higher education for the delivery of graduate level training to the workplaces of engineers, scientists, and other professionals. Id. at 1220. Conversely, the prognostication for ITFS use by elementary, junior high and high school systems, as well as for delivery of health services information, was less optimistic. Id. Thus, while reaffirming our belief in the concept of spectrum reserved for educational service, we reallocated eight of the 28 ITFS channels, the E- and F-channel groups, to the burgeoning wireless cable sector. Id. at 1247. At the same time, in concert with our principle of balancing the educational purpose of ITFS, we attempted to bolster ITFS licensees by permitting them to use their excess capacity for non-ITFS purposes in order to generate revenues for their facilities. Id. at 1250. Although we initially rejected specific time limitations on non-ITFS use of licensee excess channel capacity, we expected licensees to "utilize each of their ITFS main channels substantially for legitimate ITFS use." Id. at 1251.

4. In adopting the present quantitative minimum of weekly educational programming on each ITFS channel for those ITFS licensees leasing excess capacity, we emphasized that this time limitation was an "elementary necessity to guarantee the intended use of ITFS channels in the face of the revenue-generating uses which will also be permitted." Instructional TV Fixed Service-- Second Report and Order in MM Docket No. 83-523 (Second Report and Order), 101 F.C.C. 2d 49, 85 ([1985](#)) [50 FR 26736](#), June 26, 1985. In lieu of a strict reservation scheme, we established a minimum actual use of 20 hours of educational programming per channel per week, with an equal, readily recapturable amount to be ***26730** "preserved" for use at a later time. This recapture element harmonized the primary purpose of ITFS, presentation of educational programming for instructional use, with the needs of new ITFS entities, unable to commence operations with a 40-hour schedule, and the needs of wireless cable lessees, able

to provide service where there would otherwise be an "unnecessary waste of valuable airtime." Id. However, we specifically rejected the practice of day loading, the shifting of all requisite programming to one day of the week, and channel loading, the shifting of all requisite programming to one channel. Instead, we required that a minimum of 20 hours of actual use per channel per week of ITFS programming be scheduled at least three hours each weekday, between 8 a.m. and 10 p.m., and five additional hours, Monday through Saturday, between 8 a.m. and 10 p.m. An additional 20 hours of ready recapture time was to be scheduled on each channel with the same scheduling restrictions. Finally, we noted that prospective licensees which could not meet the established standards but wished to lease should consider the feasibility of merging or sharing facilities with others whose needs were similarly slight. Id. at 88.

5. We ratified our commitment to minimum programming requirements for ITFS licensees leasing excess capacity in Report and Order (Wireless Cable Order), 5 F.C.C. Rcd 6410, 6416 ([1990](#)) [55 FR 46006](#), October 31, 1990, underscoring that excess capacity usage is "ancillary" and that the ITFS spectrum was allotted for transmission of educational materials, not as a source of financial support for educational institutions. Yet, we relaxed our minimum actual use requirement to 12 hours per channel per week for the first two years of an ITFS station operation in hopes of stimulating ITFS expansion and facilitating the initiation of new wireless cable systems. Id. at 6416.

6. Upon reconsideration of our leasing restrictions, we agreed that Section 74.932, which limits eligibility to accredited local educators, and Section 74.931(e), which requires 20 hours per channel per week of actual educational programming for those licensees leasing excess capacity, were sufficient to insure that ITFS licenses were not secured merely to realize financial gain from wireless cable operators. Wireless Cable Order Recon., 6 F.C.C. Rcd 6764, 6773-74 ([1991](#)) [56 FR 57596](#), November 13, 1991. [FN3] Consequently, we revised the rules once again to strike "the appropriate balance between our interest in promoting alternative uses of excess ITFS spectrum, on the one hand, and our interest in ensuring that ITFS entities retain the right to fully exploit their ITFS channels for legitimate educational purposes, on the other." Id. at 6774. With regard to the 20 hours per channel per week of actual use and 20 hours per channel per week of recapture time, we

removed the time-of-day and hours-per-day restrictions permitting ITFS licensees to fulfill the per channel minimum required programming at any time of the day and on any day of the week. We also rendered the recapturability by the ITFS licensee subject to one year's written notice to the wireless cable lessee. Moreover, we acknowledged the permissibility of using channel mapping technology, which, we believed, could meet both our leasing restrictions and the lessee's programming need for apparent full-time use of the same channels. Channel mapping technology allows an ITFS licensee with a staggered schedule to transmit ITFS programming over each of the four channels and a student-viewer to receive that programming on what appears to be uninterrupted service on as few as one channel. Wireless cable lessees are also able to channel map their commercial programming over the channels so that their subscribers receive what appears to be uninterrupted service on as many as three channels. In sanctioning the utilization of channel mapping, we described an arrangement in which "(t)he leasing is scheduled on different channels in a staggered pattern," so that "(t)he subscriber's channel selection is unchanged and the subscriber is unaware that the channel is automatically switched." *Id.* We did not sanction, however, the diversion of all ITFS programming to one channel only, nor did we endorse any specific amount of channel time that could be mapped to another channel. Moreover, we cautioned ITFS applicants that they "should not request more frequencies than necessary for their educational needs." *Id.* at 6774 n.48.

FN3 But we cautioned that we would strictly enforce the existing eligibility rules and, if the need arises, would consider restricting ITFS eligibility. *Id.* at 6774 n.47.

7. Most recently, in order to create a "shared and symbiotic use of spectrum," we permitted wireless cable entities to be licensed on a maximum of eight of the remaining 20 ITFS channels in communities where at least eight other ITFS channels remain available in that area for future ITFS use. [FN4] Second Report and Order in Gen. Docket 90-54, 6 F.C.C. Rcd 6792, 6802 [\(1991\) 56 FR 57808](#), November 14, 1991. We provided ITFS entities with the right to demand access to those wireless cable facilities licensed on the ITFS frequencies. Indeed, we allowed ITFS operation on all ITFS frequencies, if the demand for ITFS warranted the use of all channels, [FN5] while limiting access to a maximum of 40 hours per channel per week, with the ITFS operator

entitled to 20 of those hours during specific periods of the day. [FN6] This access limitation, we noted, rendered "the outer limits of a wireless cable operator's exposure to liability measurable, so that it can make a reasonable judgment as to whether a wireless cable system dependent on ITFS channels would be viable." Id. at 6803.

FN4 For the various restrictions governing the wireless cable entities' use of ITFS frequencies, see Second Report and Order, 6 F.C.C. Rcd at Appendix C.

FN5 While no minimum amount of programming is required of an ITFS entity seeking access to channels licensed to a wireless cable operator, the ITFS entity must utilize at least 20 hours per week on each channel before requesting another. Second Report and Order, 6 F.C.C. Rcd at 6904.

FN6 An ITFS entity has an unqualified right to transmit its programming for 15 of those 20 hours between 8 a.m. and 10 p.m. Monday through Friday, excluding holidays and school vacations, and the remaining five hours between 8 a.m. and 10 p.m. Monday through Saturday. Id.

8. In February 1992, four ITFS permittees, North American Catholic Educational Programming Foundation, Inc., Spokane Community College, Spokane Falls Community College, and Gonzaga University Telecommunications Association (the permittees), each submitted a revised programming schedule and concomitant request for waiver of §§74.931 (a) and (e)(2) of the Commission's Rules. Section 74.931(a) provides that every authorized channel "must be used to transmit formal educational programming offered for credit to enrolled students of accredited schools." Section 74.931(e)(2) requires that an ITFS licensee leasing its excess capacity to a wireless cable operator provide at least 20 hours per channel per week of ITFS programming and reserve an additional 20 hours per channel per week, subject to one year's advance written notification, for such programming. The four permittees, each authorized to operate four channels in Spokane, Washington, [FN7] seek waiver of these rules so that each may transmit a ***26731** minimum of 80 hours of educational programming on only one of its channels. This schedule would allow the permittees to "channel load" their minimum ITFS program requirements of 20 hours per channel per week onto one channel so that each could lease

its remaining three channels on a 24- hour basis to Skyline Entertainment Network (Spokane) Limited Partnership, a wireless cable operator and the permittees' excess capacity lessee. As for the demonstration of need for four channels, a prerequisite for an ITFS license provided in Section 74.902(d), the permittees assert that such a need is "self-evident": without four channels, a wireless cable operator would be unwilling to construct the ITFS facility.

FN7 The permittees' authorizations are as follows: Gonzaga University Telecommunications Association, B-group channels on WLX-516; North American Catholic Educational Programming Foundation, Inc., C-group channels on WLX-276; Spokane Community College, D-group channels on WLX-515; and Spokane Falls Community College, G-group channels on WLX-514.

9. As we have noted in the past, the function of a request for waiver is not to change the general standard, a matter in which the opportunity for general comment is a prerequisite under Section 553(a) of the Administrative Procedure Act, but to justify an ad hoc exception to that standard on the ground that it works against the public interest in the particular case. [VHF Drop-In Proceeding, 90 F.C.C. 2d 160, 166 \(1982\)](#), aff'd sub nom. [Springfield Television of Utah, Inc. v. FCC, 710 F.2d 620 \(10th Cir. 1983\)](#). However, a general rule, deemed valid because its overall objectives are in the public interest, may not be in the public interest if extended to an applicant which proposes a new service that will not undermine the policy served by the rule. [WAIT Radio v. FCC, 418 F.2d 1153, 1157 \(1969\)](#). Here, we find that the permittees, authorized to operate ITFS stations and intending to lease their excess capacity to a wireless cable operator, features possessed by most ITFS licensees, have failed to demonstrate the "special circumstances" generally required to trigger the "safety valve" of a waiver proceeding. *Id.* Nevertheless, we are persuaded that review of our underlying rules is warranted. To that end, we initiate this rule making, on an expedited basis, in order to address the issues raised by the permittees in their waiver requests.

Proposed Rules Changes

Comments

10. Although the scope of the Public Notice was limited to the question

of whether the issue of channel loading should be addressed in a waiver or rule making proceeding, most of the commenters, in anticipation of a Notice, argued the advantages and disadvantages of modifying Sections 74.931 (a) and (e)(2). We include some of the comments here in order to lay the foundation for an informed debate regarding our proposed rules changes. [FN8]

FN8 Comments submitted by parties in response to the Public Notice will be maintained as part of the record in this proceeding.

11. Those favoring the use of channel loading argue, as did the four permittees in their waiver requests, that our approval of the use of channel mapping technology makes our approval of channel loading the "next logical step." They contend that since the licensee of a four-channel ITFS station can stagger its schedule to implement channel mapping so that only one of its channels is employed at a given time to transmit ITFS programming, and where only one of its channels is ever employed for receipt of that programming, the Commission should "remove the fiction of channel mapping" and simply allow licensees to transmit all required programming on one channel for receipt on that channel. This would enable wireless cable operators to lease three channels on a full-time basis, necessary for its commercial programming, without the expenses affiliated with channel mapping. The cost of the channel mapping switch alone, according to WCA, is \$115,000, in addition to \$100,000 for time-base correction equipment, \$700 per month for increased space, power and environmental controls associated with the switching equipment, and \$150 for each set-top converter to be installed on every subscriber's television set. [FN9] A system with 10,000 subscribers, WCA estimates, could spend at least \$1 million to implement channel mapping alone, funds that could be better spent, several wireless cable operators note, developing additional systems, increasing the support for educational activities, and funding the addition of new subscribers. While several wireless cable operators endorse retention of the licensee's right to simultaneously program all of its licensed channels as a "safeguard" designed to ensure that an educators' future needs are accommodated in a channel loading scheme, WCA rejects such a proposal if it is mandated by the Commission. Although WCA supports ready recapture rights to all channels if negotiated for by the ITFS licensee and the wireless cable operator, it asserts that required preservation of all channels would continue to necessitate the use of channel mapping

technology, in the event the licensee were to exercise its rights.

FN9 In addition to the substantial costs associated with channel mapping, there are, according to WCA, several other drawbacks to the technology: it is impossible for viewers to view one channel while recording another on a video cassette recorder, to automatically tape consecutive programs on separate channels, or to utilize the "picture-in-picture" features of newer television and video cassette recorders without the aid of additional expensive equipment.

12. Even those educators opposed to channel mapping agree that the technology is beneficial because it isolates educational from commercial programming, thereby avoiding situations where students accidentally view adult commercial programming before or after a scheduled educational program. However, the major disadvantage to channel mapping, NIA notes, is that it precludes the simultaneous use of ITFS channels for instructional use, "often relegating the educational programs to one or two channels." And, channel loading, according to NIA, will ultimately lead to the proposal that three of the four ITFS channels in each of the five channel groups be directly licensed to wireless cable operators. This, in turn, would effectively terminate the "healthy and robust partnership" which derives from balancing the protection of traditional ITFS use and the growth of the wireless cable industry. In contrast, a group of commenters, the ITFS Parties, contends that although they are not "comfortable" with the Commission's approval of the use of channel mapping, they "see no virtue in requiring the reality of the use of ITFS channels to be different than the appearance of that use." However, the ITFS Parties caution, channel loading must be counterbalanced with safeguards in order to prevent the de facto reallocation of three channels of every ITFS channel group. One such safeguard suggested by the ITFS Parties is Commission review of any ITFS lease permitting channel loading to ensure ready recapture on each of the three remaining channels. Second, the ITFS Parties urge the Commission to require a heightened demonstration of "bona fide educational intent" to ensure that the ITFS licensee will actually provide an educational service that "will be used by local institutions and that its future use of the channels will be dictated by educational goals, not an intent to maximize lease revenues."

13. The panacea to the Commission's difficulties in allotting ITFS

spectrum, according to many commenters, educators as well as wireless cable operators, is digital compression. Implementation of this technology may soon make it possible for the licensee of a four-channel ITFS station to simultaneously transmit 40 or more compressed video programs over the station's 24 MHz of spectrum. But WCA and NIA diverge as to how to modify §§74.931(a) and (e)(2) to address digital compression. WCA suggests imposing ***26732** minimum formal educational programming and other ITFS programming requirements on a "per station" rather than on a "per channel" basis, thereby encompassing the current technology of channel mapping, the implementation of channel loading, as well as that of digital compression, which may yield as many as 10 program paths per channel, and of digital advanced television, which may yield only one or two very high quality advanced signals. [FN10] NIA, conversely, views digital compression as a guarantor of the availability of 20 program paths, or four channels in five channel groups, to be utilized substantially for ITFS programming.

FN10 The comments of the four permittees which originally sought waiver of our purpose and permissible service rules propose that we amend Section 74.931(e) to prescribe "an average" of 20 hours per channel per week, similar to that required in §74.913(b)(4). That section provides for the awarding of one comparative point to applicants proposing a "weekly schedule of 21 or more average hours per channel per week," and two points for "41 or more average hours per channel per week of formal educational programming." As to §74.931(a), the permittees seem to suggest that the provisions of Section 74.931(e) would be exceptions to the requisite formal programming on each channel.

Discussion

14. At the outset, we must address the confusion that our recognition of channel mapping technology apparently has engendered. We did not, in sanctioning the use of channel mapping, intend to revise or eliminate the requirements of our ITFS rules governing minimum instructional use, §74.931, or the demonstration of need for the number of channels requested, §74.902. Rather, we believed that channel mapping might permit a less disruptive scheduling of instructional and commercial uses of ITFS channels to the benefit of both educational institutions and wireless cable operators. We did not

envision that channel mapping technology would be utilized to an extreme by diverting all instructional programming to only one channel. However, we now believe that a relaxation of the per channel minimum use requirements may be appropriate in order to permit a more flexible leasing scheme that will benefit and nurture ITFS operations during the transition to an era of channel compression technology.

15. Specifically, we propose to permit ITFS applicants to seek up to four channels where they propose a minimum average of 20 hours of use per channel per week, regardless of the distribution of that use via channel mapping. Thus, an ITFS applicant could request four channels so long as it proposes a minimum of 80 hours of instructional use, even if all 80 hours are diverted to only one of the channels. Under such a proposal, there is no reason to prohibit channel loading, as opposed to channel mapping, as the means for freeing up channels for leasing to wireless cable operators. Indeed, if we allow the diversion of all instructional programming to one channel by the use of channel mapping technology, it is senseless to prohibit the same result by the use of less costly channel loading. The policy debate at issue here is not the mechanism by which ITFS channel time is made available to wireless cable operators, but how we can preserve the primary purpose of ITFS in light of our proposals here. We seek comment on these proposals, including the benefits and detriments which they may bring. We recognize that the relaxation we offer here carries certain risks and we expressly invite comment on those dangers. We are particularly interested in comments addressing the issue of whether and in what manner this proposal might constitute a de facto reallocation of the ITFS spectrum, as some commenters fear. At least preliminarily, we believe that the current needs of ITFS licensees for funding, of wireless cable operators for channel capacity, and of the cable subscribing public for viable multichannel alternatives all favor the proposal we have outlined. We also believe, however, that the period in which this approach may best serve these needs is limited in duration and that the proper balance of licensing criteria in the ITFS service will be deeply affected by the arrival of digital compression technology.

16. Accordingly, we propose to authorize the more flexible ITFS licensing described above on a temporary basis, for between three and five years, until digital compression technology is a viable alternative,

technologically and economically. We believe this length of time is appropriate in view of a report cited by WCA, which heralds the imminent arrival of digital compression: Within two years wireless cable operators will be able to purchase digital video compression decoders and to install these within subscribers' households. [FN11] Indeed, in July 1992, we granted for the first time experimental licenses to two wireless cable operations, authorizing the use of the 2.5 GHz band for the testing of digital transmissions. [FN12] We seek comment regarding the duration of the temporary period, emphasizing that the terminus should be the anticipated date when digital compression can be practically implemented. At the expiration of the temporary period, we shall examine the state of digital technology. If use of digital compression is not yet feasible, we may extend that period, but if so, we shall at that time adapt our purpose and permissible rules in light of that technology. [FN13]

FN11 Vivian Associates, Inc., *Wireless Cable and Compressed Video* at 4 (July 21, 1992).

FN12 *Cross Country Telecommunications, Inc.*, FCC File No. 3233-EX-PL-92, and *People's Choice TV of Tucson*, FCC File No. 3234-EX-PL-92, were granted those authorizations.

FN13 We decline, therefore, to now modify §§74.931(a) and (e) in anticipation of digital compression technology, as WCA would have us do. Moreover, at the expiration of the temporary period, we may also be better able to address the impact of high definition television, or HDTV, on the ITFS service.

17. In proposing this interim measure, we attempt to meet the wireless cable operators' asserted demand for additional spectrum without reallocating the ITFS spectrum. We acknowledge the role the wireless cable industry has played in reinvigorating the ITFS service, [FN14] and we believe that channel loading will provide the incentive for wireless cable operators which may have been reluctant to invest in a "partnership" with an educator yielding no full-time access to ITFS channels. At the same time, we stress that this interim measure is permissive only, and not mandatory. Thus, those educators desiring to transmit instructional programming simultaneously on every channel may continue to do so, leasing their excess capacity pursuant to the modified minimum programming requirements. And, mindful of our

long-standing commitment to the primary purpose of ITFS, we take note of the potential for abuse were we to permit channel loading without any offsetting restrictions upon its use. Therefore, we seek comment on whether and what additional means of safeguarding the primary purpose of ITFS in the event we permit the use of channel loading.

FN14 As we noted in a recent Notice of Proposed Rule Making, in Amendment of part 74 of the Commission's Rule with Regard to the Instructional Television Fixed Service in MM Docket No. 93-24, 8 F.C.C. Rcd 1275 ([1993](#)) [58 FR 12011](#), March 2, 1993, new or major change ITFS applications were filed in fiscal year 1991 alone. The following year, the number of applications doubled, with more than 90 percent of them containing excess capacity lease agreements with wireless cable operators which supply funding for the construction and operation of the ITFS facilities.

18. First, should the use of channel loading be limited so as to free up less than three full-time channels for commercial programming? Second, ***26733** should a specified number of the required programming hours be scheduled during specified times of the day, such as between the hours of 8 a.m. and 10 p.m., Monday through Saturday? Third, should the ready recapture of all four channels be required so that an ITFS licensee may simultaneously transmit its programming on all channels if the need arises? Or ready recapture of only three channels? Or two? Or one? Fourth, should a comparative advantage in mutually exclusive cases be awarded to those applicants refraining from the use of channel loading or channel mapping? If so, what number of merit points should such an applicant be entitled to? Finally, we seek comment on whether there should be, as suggested by the ITFS Parties, a heightened demonstration of bona fide educational intent in order to discourage applicants seeking a financial bonanza. If so, what should this "heightened demonstration" consist of? As to technical safeguards, we inquire whether those licensees utilizing channel loading should be given ITFS protection for their receive sites only with regard to the channel or channels being utilized for ITFS programming while protection for the remaining channels would be limited to the 15-mile protection of §21.902(d). Commenters are urged to suggest additional changes which would promote our objectives.

19. Finally, in the event we modify §74.931 (a) and (e)(2), we may have to reconcile §74.902(d) with that action. That section provides that a licensee "is limited to the assignment of no more than four channels for use in a single area of operation" and that the number of channels authorized to an applicant "will be based on the demonstration of need for the number of channels requested." Several commenters favoring channel loading, suggest that because §74.902(d) was not undermined by channel mapping, it is, therefore, not undermined by channel loading. As for demonstration of need for the channels requested, the permittees seeking waiver of our rules assert, as noted above, that the need for four channels is "self-evident." They insist that an authorization of fewer than four channels renders an ITFS licensee undesirable to wireless cable operator willing to finance the construction and operation of a station in exchange for an excess capacity lease agreement. Moreover, these commenters contend, the educator-licensee's ready recapture rights of the remaining channels for simultaneous transmission of ITFS programming comports with the required demonstration of need of §74.902(d). We seek additional comments on these issues.

Procedural Matters

20. Pursuant to applicable procedures set forth in §§1.415 and 1.419 of the Commission's Rules, 47 CFR 1.415 and 1.419, interested parties may file comments on or before June 14, 1993, and reply comments on or before July 29, 1993. All relevant and timely comments will be considered by the Commission before taking further action in this proceeding. To file formally in this proceeding, participants must file an original and four copies of all comments, reply comments and supporting comments. If participants want each Commissioner to receive a personal copy of their comments, an original and nine copies must be filed. Comments and reply comments should be sent to Office of the Secretary, Federal Communications Commission, Washington, DC 20554.

21. For further information concerning this Notice of Proposed Rule Making, contact Anne Lucey (202-632-6357), Mass Media Bureau, Video Services Division, Distribution Services Branch, Federal Communications Commission, Washington, DC 20554.

List of Commenters

Initial Comments

1. Maureen Smith, Executive Director of Telicare
2. North American Catholic Educational Programming Foundation, Inc.
3. Community Telecommunications Network
4. Joint Comments of ITFS Parties: Association for Higher Education of North Texas; Arizona Board of Regents for Benefit of the University of Arizona, Iowa Public Broadcasting Board; Regents of the University of New Mexico and Board of Education of the City of Albuquerque, New Mexico; South Carolina Educational Television Commission; State of Wisconsin--Educational Communications Board, and the University of Maine System (ITFS Parties)
5. WJB-TV Ft. Pierce Limited Partnership and WJB-TV Melbourne Limited Partnership
6. Twenty-One Wireless Cable Licensees and Operators
7. Clarendon Foundation
8. Cross Country Telecommunications, Inc.
9. Ruralvision South and Ruralvision Central
10. Wireless Cable Association International, Inc. (WCA)
11. Skyline Entertainment Network (Spokane) Limited Partnership, Spokane Community College, Spokane Falls Community College, and Gonzaga University Telecommunications Association
12. Specchio Developers Investment Corp.
13. American Wireless Systems, Inc.
14. The Consortium of Concerned Wireless Cable Operators
15. National ITFS Association (NIA)
16. Vermont Wireless Consortium
17. Trans Video Communications, Inc.

Reply Comments

1. National ITFS Association (NIA)
2. Wireless Cable Association International, Inc. (WCA)
Federal Communications Commission.

Donna R. Searcy,

Secretary.

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