

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

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

#### Receive Site Interference Protection

28. *Proposal.* The Commission's rules currently provide interference protection to an educator's receive sites, regardless of their distance from the transmitter. The Further Notice cited instances in which interference protection was requested for receive sites apparently beyond an educational institution's reasonable coverage area.

We stated in the Further Notice that such requests could be an abuse of our processes, designed to artificially increase the service area of the wireless cable lessee. We also opined that eliminating this practice would significantly increase the efficiency of our processing of applications, thereby hastening service to the public. We tentatively concluded that an educational institution is generally unlikely to reasonably serve a receive site located more than 35 miles from the transmitter. Thus, absent a showing of unique circumstances, we proposed to protect only those receive sites 35 miles or less from the transmitter. Further, we proposed that an applicant not be able to claim basic eligibility for a license by use of any receive site more than 35 miles from the transmitter. With regard to the 35-mile standard generally, the commenters are nearly evenly divided.

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

#### Major Modifications

30. *Proposal.* We turn now to our proposal to reclassify certain types of modifications to existing ITFS facilities. As stated in the Further Notice, we have classified these as either major or minor, attaching different procedural rules to each. In the Further Notice, we expressed our belief that our consideration of certain changes as minor does not realistically take into account the impact that they would have on the facilities in question, nearby facilities, or proposed facilities. Consequently, we proposed to reclassify as a major change any application involving: (1) Any polarization change; (2) the addition of any receive site that would experience interference from any licensee or applicant on file prior to the submission of the application; (3) an increase in the EIRP in any direction by more than 1.5 dB; (4) an increase of 25 feet or more in the transmitting antenna height; or (5) any change that would cause interference to any previously proposed application or existing facility.

We additionally proposed to formalize our policy of considering proposals to relocate a facility's transmitter site by ten miles or more as a major change. We also proposed to exempt from the new rule any change that would resolve mutually exclusive applications without creating new frequency conflicts. Most of the commenters that addressed this issue generally supported the proposal. Also, the supporting comments assert that the adoption of the MDS modification rules would be desirable, due to the technical and regulatory relationship that exists between the two services.

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

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