

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

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

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

42. Based on the information before us, we shall not adopt the proposal. The record demonstrates that our concern will be met by the submission of any valid profile maps or sufficient data that takes terrain shielding into account and supports the validity of each claim, regardless of whether the study involves the Model. Also, for each instance where terrain shielding is relied upon to protect ITFS facilities, applicants will be required to submit the quantitative

amount of signal attenuation, in dB, attributable to terrain shielding. Any study must use generally acceptable engineering practices, and applicants must state the specific model they have used in their analysis.

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

Administrative Matters

A. Regulatory Flexibility Analysis

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

B. Final Regulatory Flexibility Analysis

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

text of the Commission's final regulatory flexibility analysis may be found in Appendix A of the full text of this Report and Order.

C. Ordering Clauses

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

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

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

List of Subjects in 47 CFR Part 74

Television broadcasting, Instructional television fixed service.

Federal Communications Commission.

William F. Caton,
Acting Secretary.

Rules

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

PART 74—EXPERIMENTAL AUXILIARY, AND SPECIAL BROADCAST DISTRIBUTION SERVICES

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

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

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

§ 74.902 Frequency assignments.

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

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

§ 74.903 Interference.

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