

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Amendment of Parts 1, 21, 73, 74 and 101 of the Commission's Rules to Facilitate the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150-2162 and 2500-2690 MHz Bands)	WT Docket No. 03-66 RM-10586
)	
Part 1 of the Commission's Rules – Further Competitive Bidding Procedures)	WT Docket No. 03-67
)	
Amendment of Parts 21 and 74 to Enable Multipoint Distribution Service and the Instructional Television Fixed Service)	MM Docket No. 97-217
Amendment of Parts 21 and 74 to Engage in Fixed Two-Way Transmissions)	
)	
Amendment of Parts 21 and 74 of the Commission's Rules With Regard to Licensing in the Multipoint Distribution Service and in the Instructional Television Fixed Service for the Gulf of Mexico)	WT Docket No. 02-68 RM-9718
)	

COMMENTS OF THE EDUCATION COMMUNITY

The American Association of Community Colleges (AACCC), American Association of School Administrators (AASA), Association of American Universities (AAU), American Council on Education (ACE), Association of Community College Trustees (ACCT), Association for Communications Technology Professionals in Higher Education (ACUTA), Association of Educational Service Agencies (AESA), Association of Research Libraries (ARL), California Community Colleges (CCC), Consortium for School Networking (CoSN), Council of Chief State School Officers (CCSSO), EDUCAUSE, International Society for Technology in Education (ISTE), The National

Association of College and University Business Officers (NACUBO), National Association of Independent Schools (NAIS), National Association of State Universities & Land-Grant Colleges (NASULGC), National Education Knowledge Industry Association (NEKIA), National Parent Teacher Association, and University Continuing Education Association (UCEA) (collectively, “the Education Community”) submit these comments in response to the *Notice of Proposed Rulemaking and Memorandum Opinion and Order*, FCC 03-56, in WT Docket No. 03-66 *et al.*, released April 2, 2003 (“NPRM”), which proposes fundamental changes to the ITFS/MDS frequency allocation plan and rules. Descriptions of the Education Community organizations are attached as Appendix A.

INTRODUCTION

The Education Community is comprised of national education organizations that collectively represent virtually all of the interests of the elementary and secondary schools, community colleges, and universities. Some of our organizations’ members hold ITFS licenses, and all of them benefit from the educational services ITFS provides. Many of the signatories joined together in 2001, when the Commission proposed to move the ITFS licensees out of the valuable 2.5 GHz band to make way for third generation (3g) cellular services, to organize a powerful coalition, Wireless Education Broadband Now (“Web Now”), to oppose the move. In September 2001, the Commission declined to move the ITFS licensees out of the 2.g GHz band. At that time, it appeared the assault on ITFS was over. But, several proposals in the instant NPRM suggest that ITFS is still at risk.

While the ITFS spectrum can now support high-speed digital wireless broadband and communications services, decades old technical rules governing the spectrum have stood in the way of the transition to modern digital technology. We applaud the Commission's efforts in this NPRM to initiate a comprehensive examination of the rules and policies governing the licensing of the Instructional Television Fixed Service (ITFS), the Multipoint Distribution Service (MDS), and the Multichannel Multipoint Distribution Service (MMDS) in the 2500-2690 MHz band in order to promulgate new technical rules that will encourage deployment of advanced wireless services. We also support the Commission's stated goals of promoting competition, innovation and investment in wireless broadband services, and promoting educational services for ITFS licensees.

We believe that adopting new the technical rules to govern the ITFS spectrum can facilitate the transition to these advanced services, encourage new entrants into the market to provide new digital services on the spectrum that will serve both the schools and the community, and maximize the efficient use of the spectrum. Nevertheless, we have serious concerns with respect to the proposed changes in eligibility requirements for ITFS licensees. Specifically, the proposal to eliminate the requirement that ITFS licensees provide educational services and to permit ITFS licenses to be acquired by commercial entities represent a wholesale assault on this critical educational resource. Together, these proposals would open the door for commercial enterprises to acquire ITFS licenses and ultimately eliminate educational activity in the 2.5 GHz band. We join in Commissioner Michael Copps' statement that, "Such an outcome would threaten this important educational tool. If ITFS becomes just another commercial service, we will have lost the last place on the spectrum reserved specifically for education."

DISCUSSION

ITFS Eligibility Requirements

We oppose any changes in the ITFS eligibility requirements that would either grant licenses in this spectrum to commercial entities or eliminate the longstanding obligation of licensees to provide educational services. Under the current rules, only accredited educational institutions, governmental organizations engaged in the formal education of enrolled students, and nonprofit organizations whose purposes include providing educational and educational television materials to accredited institutions and governmental organizations may obtain ITFS licenses. Additionally, the rules specify that the primary use of ITFS spectrum must be for educational and cultural purposes. With the possible exception of public television and radio, ITFS spectrum is currently the only reserved spectrum that the educational community licenses and operates. The changes in ITFS eligibility requirements would vitiate the fundamental character of ITFS spectrum as a reserve for educational purposes.

ITFS has provided critical educational services to students and teachers for more than 40 years. There are more than 1,200 licensees across the country holding over 2000 licenses, serving more than 70,000 individual sites, including K-12 schools, universities, community colleges, and nonprofit institutions.¹ Initially, ITFS stations were primarily used to deliver multi-point educational video and audio programming. This traditional video instruction ITFS usage has been widespread and effective as licensees reach millions of students. ITFS has provided a critical “last mile” distribution channel for a

¹ For specific examples of ITFS usage, please see the Reply Comments of the Education Community of the United States, filed in ET Docket No. 00-258, filed February 22, 2001.

wide variety of transmission services, including courses for distance education for schools, hospitals, workplaces, and other places of learning; educational programming into schools; and professional development for teachers, health professionals, and public safety officers.

While video programming remains the principal education service, ITFS licensees are beginning to provide high-speed wireless broadband networks and data services that bring broadband connectivity to educational and community institutions around the country that otherwise would be unable to receive such services, and are beginning to provide digital content. Indeed, the networks represent an invaluable resource to the thousands of school districts and colleges across the country struggling to stretch the reach of their limited resources to serve record numbers of students. Additionally, ITFS spectrum has been used, largely through secondary market transactions, to introduce competition to cable modem and DSL services in a number of rural and urban communities throughout the country, in line with the goals of Section 706 of the 1996 Telecommunications Act.

ITFS is a resource that is highly valued by educators all over the country. If the ITFS educational requirement were eliminated, the loss of the existing ITFS services would be devastating to communities across the country. Moreover, allowing commercial entities to hold licenses for this spectrum, particularly in the absence of an educational obligation, increases the likelihood that any unused spectrum in this band would be auctioned off for commercial services. In such a context, educational institutions and other currently eligible licensees would be unable to financially compete for the available spectrum against commercial licensees, and the ITFS system would

essentially be destroyed as commercial bidders convert the spectrum for commercial uses without any educational obligations. The Commission should refrain from taking any action to endanger the current and future uses of this spectrum, particularly at a time when improving the quality and reach of education is such a high national priority.

Sale of ITFS Licenses by Licensees

Furthermore, we also oppose changes in the rules that would permit ITFS licensees to sell their licenses to a commercial bidder. It is important to understand that the purpose of noncommercial spectrum like ITFS is not chiefly to benefit the licensees; rather, it is to benefit the public through the work of the licensees. Thus, giving the licensees the “choice” to sell their spectrum to commercial entities undermines the core public interest purpose of the ITFS service – to provide educational services to the public.

While a proposal to allow educational institutions to sell their ITFS licenses to commercial entities may have facial appeal during the current fiscal crisis, the consequences to education would be profound and irreversible. The Commission asserts in ¶2 of the NPRM “that we do not intend to evict any incumbent licensees from the affected band if they have been in compliance with our rules and continue to comply with our rules when we modify or augment them nor do we intend to undermine the educational mission of ITFS licensees. Far from evicting existing licensees, we anticipate that the streamlined regulations and revised spectrum plan adopted in this proceeding will facilitate the provision of advanced wireless communications services by incumbent licensees.” Unfortunately, we believe this is a false promise. If ITFS licenses are “propertized” and sold at auction, all ITFS licensees will be affected, and educational institutions will quickly lose their current position in the public spectrum. Over time, we

believe that the sale of the spectrum to commercial entities would undermine the remaining ITFS licensees and their educational mission in a number of ways. For these same reasons, UHF-VHF spectrum swaps in public television are similarly barred, because of the potential for permanent damage to educational services.

First, the sale of license would undermine the ability of educational licensees to negotiate excess capacity leases. The current rules regarding the leasing of excess capacity allow educational institutions to lease excess capacity to commercial entities who in turn provide the licensees with financial support to maintain and expand their ITFS infrastructure as well as provide services to the schools at reduced rates. Through these arrangements, a number of rural areas, inner cities, and insular communities are gaining access to broadband wireless services. If ITFS licenses were auctioned, remaining licensees would be stripped of bargaining power to negotiate favorable excess capacity arrangements with commercial entities, since companies would have little incentive to come to the bargaining table rather than holding out for sale. Without a robust secondary market, licensees would be hard pressed to maintain or upgrade their ITFS systems, let alone develop and deploy advanced services. These licensees would also find it harder to transition to digital services from analog, since companies would be unlikely to invest in the transition of an existing licensee when they could buy and develop other 2.5 GHz spectrum without any educational “strings” attached.

Additionally, potential commercial buyers will be able to exert formidable political pressure on cash-strapped educational institutions to sell their valuable spectrum in order to meet immediate budget shortfalls. Consequently, with the spectrum market depressed, ITFS licensees are unlikely to realize significant gain at auction that would

offset the loss of the educational services, the investment in infrastructure, and the income from excess capacity leasing. Furthermore, the sale of ITFS licenses to commercial entities would diminish the collective clout of the remaining licensees to protect their services and their rights in the regulatory arena. In the end, educational institutions would find themselves shut out of the new and increasingly valuable digital spectrum and the wealth of innovative digital services that will be available, and the educational mission of ITFS licensees would be severely undermined.

CONCLUSION

We believe that eliminating the educational requirements for ITFS licensees, permitting commercial entities to hold ITFS licenses and/or allowing licensees to sell their licenses to commercial bidders would irreparably damage the education community. At issue here is the survival of the ITFS system. If there is no educational requirement on the spectrum and no eligibility restrictions on licensees, then the fundamental character of ITFS as a reserve for educational purposes will be lost. If this resource passes into commercial hands, there is no prospect of ever reclaiming educational ownership and usage. It is simply not necessary to adopt policies that will bring an end to ITFS in order

to ensure that the spectrum is fully and efficiently utilized. For all these reasons, the Education Community strongly opposes this proposal.

Dated: September 8, 2003

Respectfully submitted,

Leslie Harris
Jessica Brodey
Leslie Harris & Associates
2120 L Street, NW Suite 510
Washington, DC 20037
(202) 478-6301

On Behalf of:

American Association of Community Colleges
American Association of School Administrators
Association of American Universities
American Council on Education
Association of Community College Trustees
Association for Communications Technology
Professionals in Higher Education
Association of Educational Service Agencies
Association of Research Libraries
California Community Colleges
Consortium for School Networking
Council of Chief State School Officers
EDUCAUSE
International Society for Technology in Education
The National Association of College and University
Business Officers
National Association of Independent Schools
National Association of State Universities & Land-
Grant Colleges
National Education Knowledge Industry
Association
National Parent Teacher Association
University Continuing Education Association

APPENDIX A

American Association of Community Colleges (AACC)

AACC is the primary advocacy organization for the nation's community colleges. The Association represents more than 1,100 associate degree-granting institutions and some 10 million students. Hundreds of community colleges use ITFS as a tool to increase access to higher education.

American Association of School Administrators (AASA)

AASA is the professional organization for more than 14,000 educational leaders across the United States and Canada and in many other parts of the world. Founded in 1865, members of AASA include superintendents of schools and other central office administrators, building level administrators (principals), college and university administrators and professors, and administrators from other regional, state and national educational agencies.

American Council on Education (ACE)

ACE is the major voice in American higher education and serves as the focus for discussion and decision-making on higher education issues of national importance. An independent, nonprofit association founded in 1918, ACE represents approximately 1800 members from a substantial majority of colleges and universities in the United States. ACE seeks to foster high standards in higher education, believing a strong higher education system to be the cornerstone of a democratic society.

Association of American Universities (AAU)

AAU is an organization of research universities concerned with maintaining a vigorous system of academic research and education. It consists of sixty-one U.S. universities and two Canadian universities, divided about evenly between public and private. The primary purpose of AAU is to provide a forum for the development and implementation of institutional and national policies that promote strong programs in academic research, scholarship, and undergraduate, graduate, and professional education.

Association for Communications Technology Professionals in Higher Education (ACUTA)

ACUTA is a non-profit association whose members include over 875 colleges and universities throughout the United States, Canada and other countries. ACUTA members include both large and small non-profit institutions of higher education, ranging from colleges with several hundred students to major research and teaching institutions with 25,000 students or more. ACUTA member representatives are responsible for managing communications technology services on college and university campuses, including telecommunications, data networks, and ITFS.

Association of Community College Trustees (ACCT)

ACCT is a nonprofit educational organization of governing boards, representing more than 6,500 elected and appointed trustees who govern over 1,200 community, technical,

and junior colleges in the United States, Canada, and England. These community professionals, public policy leaders, and leading citizens offer their time and talent to serve on the governing boards of this century's most innovative higher education institutions.

Association of Educational Service Agencies (AESA)

AESA is the national organization that represents over 520 educational service agencies throughout the United States. AESA serves as the voice for educational service agencies at the federal level and supports its members in the areas of learning, technical assistance, research and advocacy.

Association of Research Libraries (ARL)

ARL is a not-for-profit membership organization comprising the leading research libraries in North America. Its mission is to shape and influence forces affecting the future of research libraries in the process of scholarly communication. ARL programs and services promote equitable access to and effective use of recorded knowledge in support of teaching, research, scholarship, and community service.

California Community Colleges (CCC)

The CCC is a system of two-year public institutions, consisting of 108 colleges statewide organized into 72 districts, serving more than 2.9 million students, representing the largest system of higher education in the world.

Consortium for School Networking (CoSN)

CoSN is the premier K-12 education association whose mission is to promote how the Internet and telecommunications can improve learning. CoSN's goals include supporting school leaders to ensure that information technology has a direct and positive impact on student learning, exploring the practical application of emerging technologies and demonstrating its use in the K-12 environment and establishing an effective national voice on key education technology issues.

Council of Chief State School Officers (CCSSO)

CCSSO is a nationwide nonprofit organization composed of public officials who lead the departments responsible for elementary and secondary education in the United States, the U.S. extra-state jurisdictions, the District of Columbia, and the Department of Defense Education Activity. In representing the chief education officers, CCSSO works on behalf of the state agencies that serve pre-K–12 students throughout the nation.

EDUCAUSE

EDUCAUSE is a nonprofit association whose mission is to advance higher education by promoting the intelligent use of information technology. EDUCAUSE programs include professional development activities, print and electronic publications, strategic policy initiatives, research, awards for leadership and exemplary practices, and a wealth of online information services. The current membership comprises nearly 1,900 colleges, universities, and education organizations, including more than 180 corporations, and more than 13,000 active member representatives.

International Society for Technology in Education (ISTE)

ISTE is the leading organization for educational technology professionals. Nonprofit and nonpartisan, ISTE works with members and partners worldwide to promote appropriate use of technology in K-12 classrooms, school administration and policy, and teacher preparation. ISTE publishes essential journals, books, and courseware, conducts professional development workshops, forums and symposia, and is a leading voice in educational technology policy and program evaluations.

The National Association of College and University Business Officers (NACUBO)

NACUBO represents chief financial officers at 2,200 colleges and universities. The association promotes sound financial management and administration of institutions of higher education.

National Association of Independent Schools (NAIS)

NAIS, governed by a board of trustees and staffed by approximately 40 individuals, is a membership organization and the national voice of independent education. It represents nearly 1,200 U.S. independent schools, including day, boarding, and day/boarding schools, elementary and secondary schools, and boys', girls', and coeducational schools. NAIS offers a variety of products and services to member schools and associations.

National Association of State Universities & Land-Grant Colleges (NASULGC)

NASULGC is a voluntary organization representing 212 institutions and public university systems. Founded in 1887, NASULGC is the oldest higher education association in the nation and has campuses located in all fifty states, the U.S. territories, and the District of Columbia. The organization provides a voice through which public higher education has sounded its commitment to access and opportunity for all Americans. NASULGC strengthens existing educational partnerships and builds new ones between public higher education and federal, state and local government in support of the common good. It expands opportunities for dialogue between business and civic sectors, the public and higher education.

National Education Knowledge Industry Association (NEKIA)

NEKIA is a nonpartisan trade association whose mission is to promote-research based knowledge and its effective use with all learners. Created in 1997, its members include the foremost for-profit and nonprofit education research, development, and dissemination institutions, including national research centers, regional educational laboratories, education media and technology companies, public television developers, national clearinghouses, and technical assistance providers.

National Parent Teacher Association (PTA)

National PTA is a nonprofit, nonpartisan association of volunteers who seek to unite home, school, and community in promoting the education, health, and safety of children and families. National PTA represents 6.2 million parents, teachers, students, and other child advocates, through 26,000 local units in each of the 50 states, the District of Columbia, the U.S. Virgin Islands and at the Department of Defense dependent schools in

Europe and the Pacific region. Founded in 1897, National PTA is the oldest and largest national advocacy organization working exclusively on behalf of children and youth.

University Continuing Education Association (UCEA)

UCEA, the principal U.S. organization for continuing higher education, assists institutions of higher learning and affiliated nonprofit organizations to increase access through a wide array of educational programs and services. UCEA also provides national leadership in support of policies that advance workforce and professional development. Since its inception in 1915, UCEA has been committed to making higher education available to everyone, as well as to ensure that programs and services address societal needs and economic trends. In addition, UCEA works with counterparts abroad to foster professional exchange and better international understanding of continuing higher education.