

**§ 74.912**

(e) Except as provided in paragraph (d) of this section, major change applications may be filed at any time. Except during the sixty (60) day amendment period provided for in paragraph (d) of this section, any amendment to a major change application that reflects any change in the technical specifications of the proposed facility, includes any new or modified analysis of potential interference to another facility, or submits any interference consent from a neighboring licensee, shall cause the application to be considered newly-filed. Notwithstanding any other provision of part 74, major change applications meeting the requirements of part 74 shall cut-off applications that are filed on a subsequent day for facilities that would cause harmful electromagnetic interference to the facilities proposed in the major change application. A facility proposed in a major change application shall not be entitled to protection from interference caused by any facilities proposed on or prior to the day the major change application is filed. A facility proposed in a major change application shall not be required to protect from interference facilities proposed on or after the day the major change application is filed. Except as provided by paragraph (d) of this section, any petition to deny a major change application shall be filed no later than the sixtieth (60th) day after the date of public notice announcing the filing of such application. Except as provided in paragraph (d) of this section a major change application that meets the requirements of part 74 shall be granted on the sixty-first (61st) day after the Commission shall have given public notice of the acceptance for filing of it, unless prior to such date either a party in interest files a timely petition to deny or files for other relief pursuant to § 74.912, or the Commission notifies the applicant that its application will not be granted at such time. Where an application is granted pursuant to the provisions of this paragraph, the licensee shall maintain a copy of the application at the facility until such time as the Commission issues a license for that facility's operations.

[64 FR 63738, Nov. 22, 1999, as amended at 65 FR 46620, July 31, 2000]

**47 CFR Ch. I (10-1-00 Edition)**

**§ 74.912 Petitions to deny.**

(a) Petitions to deny against the long-form applications filed by winning bidders in ITFS auctions must be filed in accordance with § 73.5006 of this chapter. Petitions to deny against applications for transfers of control of ITFS licensees, or for assignments of ITFS station licenses, must be filed not later than 30 days after issuance of a public notice of the acceptance for filing of the transfer or assignment application. In the case of applications for renewal of license, petitions to deny may be filed after the issuance of a public notice of acceptance for filing of the applications and up until the first day of the last full calendar month of the expiring license term. Any party in interest may file a petition to deny any notification regarding a low power ITFS signal booster station, within the 60 day period provided for in § 74.985(e).

(b) The applicant or notifier may file an opposition to any petition to deny, and the petitioner a reply to such opposition in which allegations of fact or denials thereof shall be supported by affidavit of a person or persons with personal knowledge thereof. Except with regard to petitions to deny against the long-form applications of ITFS auction winners, the times for filing such oppositions and replies shall be those provided in § 1.45 of this chapter.

[64 FR 24527, May 7, 1999]

**§ 74.931 Purpose and permissible service.**

(a)(1) Instructional television fixed stations are intended primarily to provide a formal educational and cultural development in aural and visual form, to students enrolled in accredited public and private schools, colleges and universities. Authorized instructional television fixed station channels must be used to transmit formal educational programming offered for credit to enrolled students of accredited schools, with limited exceptions as set forth in paragraph (e)(9) of this section and Secs. 74.990 through 74.992.

(2) All applicants that do not list accredited schools as receive sites must name the school(s) and the degree(s) or

diploma(s) for which the formal programming will be offered and describe the administration of the course(s). They must submit documentation, written or signed by the authorities responsible for the schools' curricula, verifying each of these points.

(b) Such stations may also be used for the additional purpose of transmitting other visual and aural educational, instructional and cultural material to selected receiving locations, including in-service training and instruction in special skills and safety programs, extension of professional training, informing persons and groups engaged in professional and technical activities of current developments in their particular fields, and other similar endeavors.

(c) A licensee solely utilizing analog transmissions may use excess capacity on each channel to transmit material other than the ITFS subject matter specified in paragraphs (a) and (b) of this section, subject to the following conditions:

(1) Before leasing excess capacity on any one channel, the licensee must provide at least 20 hours per week of ITFS educational usage on that channel, except as provided in paragraph (c)(2) and (c)(3) of this section. An additional 20 hours per week per channel must be strictly reserved for ITFS use and not used for non-ITFS purposes, or reserved for recapture by the ITFS licensee for its ITFS educational usage, subject to one year's advance, written notification by the ITFS licensee to its lessee and accounting for all recapture already exercised, with no economic or operational detriment to the licensee. These hours of recapture are not restricted as to time of day or day of the week, but may be established by negotiations between the ITFS licensee and the lessee. This 20 hours per channel per week ITFS educational usage requirement and this recapture and/or reservation requirement of an additional 20 hours per channel per week shall apply spectrally over the licensee's whole actual service area.

(2) For the first two years of operation, an ITFS entity may lease excess capacity if it provides ITFS educational usage for at least 12 hours per channel per week, provided that the en-

tity does not employ channel loading technology.

(3) The licensee may shift its requisite ITFS educational usage onto fewer than its authorized number of channels, via channel mapping or channel loading technology, so that it can lease full-time channel capacity on its ITFS station and/or associated ITFS booster stations, subject to the condition that it provide a total average of at least 20 hours per channel per week of ITFS educational usage on its authorized channels. The use of channel mapping or channel loading consistent with the Rules shall not be considered adversely to the ITFS licensee in seeking a license renewal. The licensee also retains the unbridgeable right to recapture, subject to six months' advance written notification by the ITFS licensee to its lessee, an average of an additional 20 hours per channel per week, accounting for all recapture already exercised. Regardless of whether the licensee has educational receive sites within its psa, the licensee may lease booster stations in the entire psa, provided that the licensee maintains the unbridgeable right to ready recapture at least 40 hours per channel per week for ITFS educational usage. The licensee may agree to the transmission of this recapture time on channels not authorized to it, but which are included in the wireless system of which it is a part. A licensee under this paragraph which leases excess capacity on any one of its channels to an operator may "channel shift" pursuant to and under the conditions of paragraph (d)(2) of this section.

(4) An ITFS applicant or licensee may specify an omnidirectional antenna for point-to multipoint transmissions to facilitate the leasing of excess capacity.

(5) Leasing activity may not cause unacceptable interference to cochannel or adjacent channel operations.

(6) When an ITFS licensee makes capacity available on a common carrier basis, it will be subject to common carrier regulation.

(i) A licensee operating as a common carrier is required to comply with all policies and rules applicable to that service. Responsibility for making the

initial determination of whether a particular activity is common carriage rests with the ITFS licensee. Initial determinations by the licensees are subject to Commission examination and may be reviewed at the Commission's discretion.

(ii) An ITFS licensee also may alternate, without further authorization required, between rendering service on a common carrier and non-common carrier basis, provided that the licensee notifies the Commission of any service status changes at least 30 days in advance of such changes. The notification shall state whether there is any affiliation or relationship to any intended or likely subscriber or program originator.

(iii) Licensees under paragraph (c)(6) of this section additionally shall comply with the provisions of §§ 21.304, 21.900(b), 21.903(b)(1) and (2) and (c), and 21.910 of this chapter.

(d) A licensee utilizing digital transmissions on any of its licensed channels may use excess capacity on each channel to transmit material other than the ITFS subject matter specified in paragraphs (a) and (b) of this section, subject to the following conditions:

(1) The licensee must reserve a minimum of 5% of the capacity of its channels for instructional purposes only, and may not lease this reserved capacity. In addition, before leasing excess capacity, the licensee must provide at least 20 hours per licensed channel per week of ITFS educational usage. This 5% reservation and this 20 hours per licensed channel per week ITFS educational usage requirement shall apply spectrally over the licensee's whole actual service area. However, regardless of whether the licensee has an educational receive sites within its psa served by a booster, the licensee may lease excess capacity without making at least 20 hours per licensed channel per week of ITFS educational usage, provided that the licensee maintains the unabridgeable right to recapture on one month's advance notice such capacity as it requires over and above the 5% reservation to make at least 20 hours per channel per week of ITFS educational usage.

(2) The licensee may shift its requisite ITFS educational usage onto fewer than its authorized number of channels, via channel mapping or channel loading technology, and may shift its requisite ITFS educational usage onto channels not authorized to it, but which are included in the wireless system of which it is a part ("channel shifting"), so that it can lease full-time channel capacity on its ITFS station, associated ITFS booster stations, and/or ITFS response stations and associated response station hubs, subject to the condition that it provide a total average of at least 20 hours per licensed channel per week of ITFS educational usage. The use of channel mapping, channel loading, and/or channel shifting consistent with the Rules shall not be considered adversely to the ITFS licensee in seeking a license renewal. In addition, an ITFS entity receiving interference protection provided by § 74.903, will continue to receive such protection if it elects to swap channels with another ITFS or MDS station as specified in § 74.902(f).

(3) An ITFS applicant or licensee may specify an omnidirectional antenna for point-to-multipoint transmissions to facilitate the leasing of excess capacity.

(4) Leasing activity may not cause unacceptable interference to cochannel or adjacent channel operations.

(5) A licensee leasing any of its licensed channels to be used as response channels shall be required to maintain at least 25% of the capacity of its channels for point-to-multipoint transmissions during the term of the lease and following termination of the leasing arrangement. This 25% preservation may be over the licensee's own authorized channels or over channels not authorized to it, but which are included in the wireless system of which it is a part.

(6) When an ITFS licensee makes capacity available on a common carrier basis, it will be subject to common carrier regulation.

(i) A licensee operating as a common carrier is required to comply with all policies and rules applicable to that service. Responsibility for making the initial determination of whether a particular activity is common carriage

rests with the ITFS licensee. Initial determinations by the licensees are subject to Commission examination and may be reviewed at the Commission's discretion.

(ii) An ITFS licensee also may alternate, without further authorization required, between rendering service on a common carrier and non-common carrier basis, provided that the licensee notifies the Commission of any service status changes at least 30 days in advance of such changes. The notification shall state whether there is any affiliation or relationship to any intended or likely subscriber or program originator.

(iii) Licensees under paragraph (d)(6) of this section additionally shall comply with the provisions of §§ 21.304, 21.900(b), 21.903(b)(1) and (2) and (c), and 21.910 of this chapter.

(e) ITFS excess capacity leases entered into prior to March 31, 1997, which contain a provision for automatic renewal which would be effective after March 31, 1997, are exempt for the duration of said lease from compliance with subsequently adopted Commission rules. However, the total term of such applicable lease may not exceed fifteen years.

(f) A licensee may use excess capacity on each channel to transmit material other than the ITFS subject matter specified in paragraphs (a), (b), (c), and (d) of this section subject to the following conditions:

(1) If the time or capacity leased is not to be used for "wireless cable" operations, the licensee must preserve at least 40 hours per week, including at least 6 hours per weekday (Monday through Friday), excluding holidays and vacation days, for ITFS purposes on that channel. The 40-hour preservation may consist of airtime strictly reserved for ITFS use and not used for non-ITFS programming, or of time used for non-ITFS programming but subject to ready recapture by the licensee for ITFS use with no economic or operational detriment of the licensee. At least 20 hours per week of the preserved time on each channel must be used for ITFS programming, including at least 3 hours per weekday, excluding holidays and vacation days, except as provided in paragraph (e)(3)

of this section. Only ITFS programming and preserved airtime scheduled between 8 a.m. and 10 p.m. Monday through Saturday, will qualify to meet these requirements.

(2) If the time or capacity leased is to be used for "wireless cable" operations, before leasing excess capacity on any one channel, the licensee must provide at least 20 hours per week of ITFS programming on that channel, except as provided in paragraph (e)(3) of this section. All hours not used for ITFS programming may be leased to a "wireless cable" operator. An additional 20 hours per week per channel must be reserved for recapture by the ITFS licensee for its ITFS programming, subject to one year's advance, written notification by the ITFS licensee to its "wireless cable" lessee. These hours of recapture are not restricted as to time of day or day of the week, but may be established by negotiations between the ITFS licensee and the "wireless cable" lessee.

(3) For the first two years of operation, an ITFS entity may lease excess capacity if it provides ITFS programming at least 12 hours per channel per week, including up to four hours of ITFS usage per day.

(4) The licensee may schedule the ITFS programming and use automatic channel switching equipment so as to employ channel mapping technology to lease to a "wireless cable" operator. However, an ITFS applicant should request only as many channels as it needs to fulfill its educational requirements.

(5) All of the capacity available on any subsidiary channel of any authorized channel may be used for the transmission of material to be used by others.

(6) When an ITFS licensee makes capacity available on a common carrier basis, it will be subject to common carrier regulation. A licensee operating as a common carrier is required to apply for the appropriate authorization and to comply with all policies and rules applicable to that service. Responsibility for making the initial determination of whether a particular activity is common carriage rests with the ITFS licensee. Initial determinations

by the licensees are subject to Commission examination and may be reviewed at the Commission's discretion.

(7) An ITFS applicant, permittee, or licensee may use an omnidirectional antenna to facilitate the leasing of excess capacity to "wireless cable" operators.

(8) Leasing activity may not cause unacceptable interference to cochannel and adjacent-channel operations.

(9) A licensee may shift its requisite ITFS programming onto fewer than its authorized number of channels, via channel mapping technology or channel loading, so that it can lease full-time channel capacity to a wireless cable operator, subject to the condition that it provide a total average of at least 20 hours per channel per week of ITFS programming on its authorized channels. The licensee also retains the unbridgeable right to recapture, subject to six months' written notification to the wireless cable operator, an average of an additional 20 hours per channel per week for simultaneous programming on the number of channels for which it is authorized. The licensee may agree to the transmission of this recapture time on channels not authorized to it, but which are included in the wireless system of which it is a part.

(g) Material transmitted by these stations may be intended for simultaneous reception and display or may be recorded by authorized users for use at another time.

(h) On a secondary basis, an ITFS station may be operated as a temporary fixed station from temporary unspecified points to an ITFS station under the provisions of paragraph (a), (b), (d) or (e) of this section.

(i) Except as specified in paragraphs (i) and (j) of this section, no licensee of a station in this service may lease transmission time or capacity to any cable television company either directly or indirectly through an affiliate owned, operated, controlled by, or under common control with the cable television company, if the ITFS main transmitter station is within 32 km (20 miles) of the cable television company's franchise area or service area, and if the cable television company is the sole provider of cable television service in the franchise area.

(j)(1) A cable television company shall be exempt from the provisions of paragraph (h) of this section if its franchise area contains none of the following:

(i) Any incorporated place of 2,500 inhabitants or more, or any part thereof;

(ii) Any unincorporated place of 2,500 inhabitants or more, or any part thereof; or

(iii) Any other territory, incorporated or unincorporated, included in an urbanized area.

(2) All population statistics and definitions used in qualifying for this exemption shall be the most recent available from the U.S. Department of Commerce, Bureau of the Census. In no event shall any statistics resulting from censuses prior to 1980 be used. The Census Bureau has defined some incorporated places of 2,500 inhabitants or more as "extended cities." Such cities consist of an urban part and rural part.

(3) If the cable operator's franchise area includes a rural part of an extended city, but includes no other territory described in this paragraph, an exemption shall apply.

NOTE 1: In applying the provisions of paragraphs (h) and (i) of this section, an attributable ownership interest shall be defined by reference to the Notes contained in § 74.912.

EDITORIAL NOTE: At 65 FR 46621, July 31, 2000, § 74.931 was amended by redesignating paragraphs (e) through (j) as paragraphs (f) through (k); however (k) already exist in the 1999 volume.

(k) The provisions of paragraph (h) of this section will not apply to ITFS excess capacity leased directly or indirectly to cable operators or affiliates to provide locally-produced programming to cable headends. Locally-produced programming is programming produced in or near the cable operator's franchise area and not broadcast on a television station available within that franchise area. A cable operator or affiliate will be permitted to lease ITFS excess capacity equivalent to one MDS channel within 32 km (20 miles) of the cable television franchise area or service area for this purpose, and, within 32 km (20 miles) of the cable television franchise area or service area, no more ITFS excess capacity than the equivalent of one MDS channel may be

used by a cable television company or affiliate pursuant to this paragraph. The licensee for a cable operator providing local programming pursuant to a lease must include in a notice filed with the Mass Media Bureau a cover letter explicitly identifying its lessee as a local cable operator or affiliate and stating that the lease was executed to facilitate the provision of local programming. The first lease notification for an MDS or ITFS channel in an area filed with the Commission will be entitled to the exemption. The limitations on the equivalent of one MDS channel per party and per area include any cable/ITFS operations grandfathered pursuant to paragraph (k) of this section or any cable/MDS operations grandfathered pursuant to §21.912(f) of this chapter. Local programming service pursuant to a lease must be provided within one year of the date of the lease or one year of the grant of the licensee's application for the leased channel(s), whichever is later.

(k) Lease arrangements between cable and ITFS entities for which a lease or a firm agreement was signed prior to February 8, 1990, will not be subject to the prohibitions of paragraph (h) of this section. Leases between cable television entities and ITFS entities executed on February 8, 1990, or thereafter, are invalid.

[28 FR 13731, Dec. 14, 1963, as amended at 33 FR 15424, Oct. 17, 1968; 48 FR 33901, July 26, 1983; 49 FR 27151, July 2, 1984; 49 FR 32596, Aug. 15, 1984; 50 FR 26760, June 28, 1985; 51 FR 9800, Mar. 21, 1986; 55 FR 46013, Oct. 31, 1990; 56 FR 57600, Nov. 13, 1991; 56 FR 57819, Nov. 14, 1991; 56 FR 65191, Dec. 16, 1991; 58 FR 34378, June 25, 1993; 58 FR 44951, Aug. 25, 1993; 59 FR 35636, July 13, 1994; 64 FR 50646, Sept. 17, 1999; 65 FR 46621, July 31, 2000]

EDITORIAL NOTES: 1. At 63 FR 65116, Nov. 25, 1998, §74.931 was amended by redesignating paragraphs (d) and (e) as (b) and (c), redesignating paragraphs (f) through (k) as (e) through (j), revising paragraphs (a), (b) and (c), and adding a new paragraph (d), however, (b) and (c) already exist.

2. At 65 FR 46621, July 31, 2000, paragraph (d) was revised. Paragraph (d)(l) contains information collection and recordkeeping requirements and will not become effective until approval has been given by the Office of Management and Budget.

#### § 74.932 Eligibility and licensing requirements.

(a) With certain limited exceptions set forth in §§74.990 through 74.992 of this part, a license for an instructional television fixed station will be issued only to an accredited institution or to a governmental organization engaged in the formal education of enrolled students or to a nonprofit organization whose purposes are educational and include providing educational and instructional television material to such accredited institutions and governmental organizations, and which is otherwise qualified under the statutory provisions of the Communications Act of 1934, as amended.

(1) Only local applicants can file applications and be considered for licenses during the local priority period, which extends for one year from the effective date of these rules.

(i) During this local priority period, the existing of any outstanding application for ITFS channels by a nonlocal applicant will not prevent the filing and/or grant of an application by a local entity for those same channels.

(2) A publicly supported educational institution must be accredited by the appropriate state department of education.

(3) A privately controlled educational institution must be accredited by the appropriate state department of education or the recognized regional and national accrediting organizations.

(4) Those applicant organizations whose eligibility is established by service to accredited institutional or governmental organizations must submit documentation from proposed receive sites demonstrating that they will receive and use the applicant's educational usage. In place of this documentation, a state educational television (ETV) commission may demonstrate that the public schools it proposes to serve are required to use its proposed educational usage.

(5) Nonlocal applicants, in addition to submitting letters from proposed receive sites, must demonstrate the establishment of a local program committee in each community where they apply.

(b) No numerical limit is placed on the number of stations which may be