

becomes a source of harmful co-channel interference, and other equipment would avoid the harmful interference;

(6) If an ITFS licensee uses equipment incapable of meeting the out-of-band emissions standard specified in § 74.936 of this part and that equipment becomes a source of harmful adjacent-channel interference, and other equipment would avoid the harmful interference; and

(7) If harmful adjacent-channel interference may be avoided by collocation of an ITFS facility with its own facilities.

(8) There are no response station hubs licensed to or previously-proposed by any of the parties specified in paragraph (b) of this section, in the same system as the existing ITFS licensee of whose facilities involuntary modification is sought; however, in no event shall the Commission approve an involuntary retuning of an existing ITFS licensee's station to other frequencies, except as provided in § 74.902(i) through (k).

(b) Involuntary modification may be sought by an MDS, MMDS or ITFS licensee, conditional licensee, permittee or applicant. Opposed applicants do not have authority to seek involuntary collocation. An opposed application is one that faces a competing application(s) or petition(s) to deny. Applicants will be required to confirm their unopposed status after the period for competing applications and petitions to deny has passed. If an initiating application is opposed, the companion ITFS modification application will be returned. It may be refiled when the initial application is again unopposed.

(c) The application for involuntary modification must be prepared, signed and filed by the initiating party. The applicant must submit FCC Form 330 but need not fill out section II (Legal Qualifications), and the application must include a cover letter clearly indicating that the modification is involuntary and identifying the parties involved. A copy of the application must be served on the affected ITFS party on or before the day of filing. The ITFS party to be modified will have a 60-day period in which to oppose the modification application; the opposition should state objections to the modification

with specificity, including engineering and other challenges. If the modification includes collocation, the opponent should address the desirability of the present site compared to the proposed new site.

(d) The party initiating the modification will be responsible for all costs connected with the modification, including purchasing, testing and installing new equipment, labor costs, reconfiguration of existing equipment, administrative costs, legal and engineering expenses necessary to prepare and file the modification application, and other reasonable documented costs. The initiating party must secure a bond or establish an escrow account to cover reasonable incremental increase in ongoing expenses that will fall upon the modified ITFS entity and to cover expenses that would inure to the modified ITFS entity in the event the initiating party becomes bankrupt. In establishing a bond or escrow amount, such factors as projected electricity or maintenance expenses, or relocation expenses must be taken into account, as relevant in each case.

(e) The involuntarily modified facilities must be operational before the initiating party will be permitted to begin its new or modified operations. The modification must not disrupt the ITFS licensee's provision of service, and the ITFS licensee has the right to inspect the construction or installation work.

[56 FR 57820, Nov. 14, 1991, as amended at 63 FR 65127, Nov. 25, 1998]

§ 74.990 Use of available instructional television fixed service frequencies by wireless cable entities.

(a) Notwithstanding the provisions §§ 74.931 and 74.932 of this part, a wireless cable entity may be licensed on instructional television fixed service frequencies in areas where at least eight other instructional television fixed service channels remain available in the community for future ITFS use. Channels will be considered available for future ITFS use if there are no co-channel operators or applicants within 80.5 km (50 miles) of the transmitter site of the proposed wireless cable operation, and if the transmitter site remains available for use at reasonable

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terms by new ITFS applicants on those channels within three years of commencing operation.

(b) No more than eight instructional television fixed service channels per community may be licensed to wireless cable entities.

(c) To be licensed on instructional television fixed service channels, a wireless cable applicant must hold a conditional license, license or a lease, or must have filed an unopposed application for at least four MDS channels to be used in conjunction with the facilities proposed on the ITFS frequencies. An unopposed application is one that faces no competing application(s) or petition(s) to deny. Applicants will be required to confirm their unopposed status after the period for filing competing applications and petitions to deny has passed. If an MDS or MMDS application is opposed, the companion ITFS application will be returned.

(d) To be licensed on instructional television fixed service channels, a wireless cable applicant must show that there are no multipoint distribution service or multichannel multipoint distribution service channels available for application, purchase or lease that could be used in lieu of the instructional television fixed service frequencies applied for. A wireless cable entity may apply for instructional television fixed service frequencies at the same time it applies for the related MDS or MMDS frequencies, but if that MDS or MMDS application is opposed by a timely filed mutually exclusive application or petition to deny, the application for ITFS facilities will be returned.

(e) If an instructional television fixed service application and a wireless cable application for available instructional television fixed service facilities are mutually exclusive, as defined at § 21.31(a) of this chapter, the instructional television fixed service application will be granted if the applicant is qualified. An instructional television fixed service applicant may not file an application mutually exclusive with a wireless cable application if there are other instructional television fixed service channels available for the pro-

posed instructional television fixed service facility.

(f) The interference protection provided wireless cable applicants and licensees of instructional television fixed service facilities will be that described in § 21.902 of this chapter.

[56 FR 57820, Nov. 14, 1991, as amended at 58 FR 44951, Aug. 25, 1993]

§ 74.991 Wireless cable application procedures.

(a) A wireless cable applicant for available instructional television fixed service channels must file sections I and V of FCC Form 330, with a complete FCC Form 494 appended. A wireless cable applicant must include with its application a cover letter clearly indicating that the application is for a wireless cable entity to operate on ITFS channels. A wireless cable application for available instructional television fixed service channels will be subject to § 21.914 of this chapter with respect to other wireless cable applicants, and to the ITFS window filing period with respect to instructional television fixed service applications. All lists of accepted applications for ITFS frequencies, regardless of the nature of the applicant, will be published as ITFS public notices.

(b) Within 30 days of filing its application, a wireless cable applicant for available instructional television fixed service channels must give local public notice of the filing of its application in a newspaper. The local public notice must be made in a daily newspaper of general circulation published in the community in which the proposed station will be located at least twice a week for two consecutive weeks in a three week period. If there is no such daily newspaper, notice must be made in a weekly newspaper of general circulation published in the community once a week for three consecutive weeks in a four week period. If there is no daily or weekly newspaper published in the community, notice must be made in the daily newspaper, wherever published, that has the greatest general circulation in the community twice a week for two consecutive weeks within a three week period.