



PUBLIC NOTICE

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WIRELESS TELECOMMUNICATIONS GRANTS PETITONS FOR RECONSIDERATION OF ITFS, MDS, AND MMDS APPLICATIONS THAT WERE DISMISSED WITHOUT PREJUDICE ON JUNE 20, 2003

On October 18, 2002, the Wireless Telecommunications Bureau (WTB) released a Public Notice¹ in which it sought to ensure that it had a complete and accurate listing of all licenses and pending applications in the Instructional Television Fixed Service (ITFS), the Multipoint Distribution Service (MDS), and the Multichannel Multipoint Distribution Service (MMDS) (collectively, the Services). The Public Notice referenced six different tables of licensing information. Table A listed all ITFS licenses including main station and two-way stations shown in BLS. Table B listed all MDS and MMDS licenses, including Basic Trading Area authorizations, main stations and two-way stations contained in BLS. Table C listed all granted modifications and construction permits for ITFS for which certifications of construction have not yet been filed. Table D listed all granted MDS/MMDS modifications and conditional licenses for which certifications of construction have not yet been filed. Table E listed all pending applications for ITFS and Table F listed all pending applications for MDS and MMDS. The WTB required that all ITFS, MDS and MMDS licensees and applicants review and verify the information contained in these tables. For pending applications filed prior to March 25, 2002, the WTB required that the applicant respond in writing by December 18, 2002 if continued processing was desired. The time for licensees and applicants in these services to respond to the *October Public Notice* was extended to February 3, 2003.² This deadline was further extended to February 21, 2003.³

¹ Wireless Telecommunications Bureau Seeks to Verify ITFS, MDS, and MMDS License Status and Pending Applications, *Public Notice*, DA 02-2751, 67 Fed. Reg. 69010 (2002) (*October Public Notice*).

² Wireless Telecommunications Bureau Seeks to Verify ITFS, MDS, and MMDS License Status And Pending Applications – Request for Extension of Response Date Filed by Multipoint Distribution Service and Instructional Television Fixed Services Licensees, *Order*, DA 02-3371 (rel. Dec. 5 2002).

³ Letter from D’wana R. Terry, Chief, Public Safety and Private Wireless Division, to Paul J. Sinderbrand, Esq., Wilkinson Barker Knauer LLP (dated Feb. 20, 2003).

On June 20, 2003, the WTB released a Public Notice⁴ (*June Public Notice*) in which it announced action on responses to the *October Public Notice*. The *June Public Notice* dismissed without prejudice pending ITFS, MDS, and MMDS applications where written affirmations requesting further processing were not received from the licensee or applicant. Specifically, Appendix A to the *June Public Notice* listed and dismissed those pending ITFS applications with a filing date prior to March 25, 2002 where the applicant/licensee had not responded to the *October Public Notice*. Appendix B to the *June Public Notice* listed and dismissed those pending MDS and MMDS applications with a filing date prior to March 25, 2002 where the applicant/licensee had not responded to the *October Public Notice*.

We have received thirty-one petitions for reconsideration filed by applicants whose applications were dismissed in the *June Public Notice*. The underlying purpose of the *October Public Notice* was to ensure that all information contained within the Commission's licensing records regarding the Services is accurate, current and comprehensive.⁵ In light of the fact that the applicants listed in Appendices A and B to this public notice remain interested in prosecuting applications, and have filed timely petitions for reconsideration, we find it is in the public interest to return those applications to pending status, particularly given that dismissal was premised on our belief, based on the information before us, that they were no longer interested in pursuing the proposals. Accordingly, we will grant the petitions for reconsideration filed with respect to the applications listed in the attached appendices and reinstate the applications listed therein. Appendix A lists the ITFS applications that are being returned to pending status. Appendix B lists the MDS and MMDS applications that are being returned to pending status.

Accordingly, IT IS ORDERED, pursuant to Sections 4(i) and 405 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 405, and Section 1.106 of the Commission's Rules, 47 C.F.R. § 1.106, the petitions for reconsiderations seeking reconsideration of the dismissal of the applications listed in Appendix A and Appendix B to this Public Notice ARE HEREBY GRANTED.

IT IS FURTHER ORDERED, pursuant to Sections 4(i) and 405 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 405, and Section 1.106 of the Commission's Rules, 47 C.F.R. § 1.106, that the applications listed in Appendices A and B to this Public Notice ARE RETURNED to pending status.

IT IS FURTHER ORDERED, pursuant to Sections 4(i) and 309 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 309, that the Licensing and Technical Analysis Branch SHALL PROCESS the applications listed in Appendices A and B to this Public Notice in

⁴ Wireless Telecommunications Bureau Announces Action On Responses to Public Notice Regarding ITFS, MDS, and MMDS Pending Applications, *Public Notice*, DA 03-2057, 68 Fed. Reg. 417191-01 (2003) (*June Public Notice*).

⁵ *October Public Notice* at 1.

accordance with the Commission's Rules and policies, and subject to any pleadings that had previously been filed with respect to those applications.⁶

This action is taken under delegated authority pursuant to Sections 0.131 and 0.331 of the Commission's Rules, 47 C.F.R. § 0.131, 0.331.

For questions relating to this public notice, please contact John J. Schauble, Chief, or Gregory Vadas, Attorney-Advisor, Policy and Rules Branch, Public Safety and Private Wireless Division at 202-418-0680.

Action by the Chief, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau.

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⁶ We note that the Commission has suspended processing of mutually exclusive ITFS applications. 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; Part 1 of the Commission's Rules - Further Competitive Bidding Procedures; Amendment of Parts 21 and 74 to Enable Multipoint Distribution Service and the Instructional Television Fixed Service 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 Nos. 03-66, 03-67, 02-68, MM Docket No. 97-217, *Notice of Proposed Rulemaking and Memorandum Opinion and Order*, 18 FCC Rcd 6722, 6813-14 ¶ 228 (2003). Therefore, to the extent that any reinstated ITFS application is mutually exclusive with another pending ITFS application, that application shall not be processed unless and until the Commission directs that such applications shall be processed.