

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

In the Matter of Application of)
INSTRUCTIONAL TELECOMMUNICATIONS) File No. BLNPIF-20020618AAC
FOUNDATION, INC.)
For Authority to Make Minor Changes to)
Instructional Television Fixed Service Station)
WHR527, Philadelphia, Pennsylvania)

MEMORANDUM OPINION AND ORDER

Adopted: February 19, 2004

Released: February 20, 2004

By the Deputy Chief, Broadband Division, Wireless Telecommunications Bureau:

1. In this Memorandum Opinion and Order, we address Instructional Telecommunications Foundation, Inc.'s (ITF) above-captioned application for authority to modify Instructional Television Fixed Service (ITFS) Station WHR527, Philadelphia, Pennsylvania. Additionally, we address WorldCom Broadband Solutions, Inc.'s (WorldCom)1 and Northwest Communications, Inc.'s (Northwest)2 Petitions to Deny ITF's application. For the reasons discussed below, we dismiss WorldCom's and Northwest's Petitions to Deny, treat them as informal objections, and deny the informal objections.

2. Background. ITFS stations are intended primarily to provide a formal educational and cultural development in aural and visual form.3 The Commission's Rules envision that ITFS licensees will make extensive use of the spectrum to provide formal classroom instruction, distance learning, and videoconference capability to a wide variety of users. On December 8, 1983, ITF's application to operate an ITFS station on the G-Group channels4 at Philadelphia, Pennsylvania was granted under call sign WHR527.5 Station WHR527 is currently licensed to operate from a transmitter site at 216 Paoli Avenue, Philadelphia, Pennsylvania.6 WorldCom is currently authorized to operate Multipoint Distribution Service (MDS) Stations WNET336 (operating on Channel H2)7 and WNEY590 (operating on Channel

1 Petition to Deny filed by WorldCom Broadband Solutions, Inc. (Aug. 21, 2002) (WorldCom Petition).

2 Petition to Deny filed by Northwest Communications, Inc. (Aug. 22, 2002) (Northwest Petition).

3 47 C.F.R. § 74.931.

4 The G group channels consist of the frequencies 2644-2650 MHz, 2656-2652 MHz, 2668-2674 MHz, and 2680-2686 MHz. See 47 C.F.R. § 74.902(a).

5 File No. BPIF-19830729DA.

6 See File No. BCIF-20010709AAE. The coordinates of this site are 40°-2'-21" N. Lat 75°-14'-13" W. Long.

7 The H-2 channel consists of the frequencies 2662-2668 MHz. See 47 C.F.R. § 21.901(b)(6).

H1)⁸ from the same location.⁹ Northwest is currently authorized to operate MDS Station WHT644 on the F group channels from the same location.¹⁰

3. On June 18, 2002, ITF filed the above-captioned minor change modification application. In the narrative portion of its engineering exhibit, ITF states that it proposes moving its transmitter 290 meters from its currently authorized location. ITF's original application provided conflicting information on the location of its proposed transmitter site. Its application, FCC Form 330, specifies the coordinates as 40°-2'-30" N. Lat., 75°-15'-12" W. Long.¹¹ The engineering exhibit submitted with the application, however, listed the coordinates of the new transmitter site as 40°-2'-30" N. Lat., 75°-14'-11.5" W. Long. On April 9, 2003, ITF amended its application to clarify that its proposed coordinates would be 40°-2'-30" N. Lat., 75°-14'-11.5" W. Long.¹² Our calculations show that, as amended, ITF's proposed transmitter site is 280 meters (0.174 mile) respectively, from the 216 Paoli Avenue site.

4. The application appeared on public notice as accepted for filing on July 24, 2002.¹³ On August 21, 2002, WorldCom filed a timely Petition to Deny, and on August 22, 2002, Northwest filed a Petition to Deny against ITF's application. ITF filed a consolidated opposition On October 31, 2002. WorldCom filed a reply on November 13, 2002.¹⁴ On May 23, 2003, WorldCom filed a "Supplement to Petition to Deny and Reply to Opposition to Petition to Deny" addressing ITF's April 9, 2003 amendment.¹⁵

5. *Discussion.* Initially, we note that ITF's application only seeks to make minor changes to Station WHR527. The Commission's Rules do not authorize the filing of petitions to deny against applications to make minor changes to ITFS stations.¹⁶ Accordingly, we will consider WorldCom's and Northwest's filings as informal objections.¹⁷

6. WorldCom and Northwest submit engineering studies that purport to show that ITF's proposed facilities would not provide the requisite level of adjacent channel interference protection to Stations WNET336, WNEY590, and WHT644.¹⁸ ITF accuses WorldCom of being responsible for requiring the modification because WorldCom declined to extend ITF's lease at the 216 Paoli Avenue site.¹⁹ ITF argues that its application should be considered acceptable under Section 74.902(h) of the Commission's Rules because ITF has placed its station as close as possible to WorldCom's and Northwest's stations.²⁰ WorldCom denies that it has taken any action that would unreasonably interfere

⁸ The H1 channel consists of the frequencies 2650-2656 MHz. See 47 C.F.R. § 21.901(b)(6).

⁹ See File Nos. BLMD-9650489, BMLMD-9055970.

¹⁰ See File No. BMLMD-9055970. The F group channels consist of the frequencies 2602-2608 MHz, 2614-2620 MHz, 2626-2632 MHz, and 2638-2644 MHz. See 47 C.F.R. § 74.902(a).

¹¹ Application, Response to Section IV, Question 5.

¹² Amendment (filed Apr. 9, 2003).

¹³ See WTB Public Notice Report No. 1237 (rel. Jul. 24, 2002).

¹⁴ Reply to Opposition to Petition to Deny (filed Nov. 13, 2002).

¹⁵ Supplement to Petition to Deny and Reply to Opposition to Petition to Deny (filed May 23, 2003).

¹⁶ 47 C.F.R. §§ 74.910, 74.912.

¹⁷ See 47 C.F.R. § 73.3587.

¹⁸ WorldCom Petition, Engineering Statement of Kanwar-Preet S. Jolly; Northwest Petition, Engineering Statement of Kanwar-Preet S. Jolly.

¹⁹ Opposition at 3-6.

²⁰ Opposition at 8-10.

with ITF's ability to locate its antenna within ITF's protected service area,²¹ and it argues that Section 74.902(h) of the Commission's Rules does not relieve ITF of the responsibility to provide adjacent channel interference protection to WorldCom.²²

7. Section 74.903(a)(2) of the Commission's Rules requires an applicant to engineer its system to provide at least 0 dB of adjacent channel interference protection, respectively, within the PSA of all other authorized or previously proposed stations.²³ An applicant to make major changes to an ITFS station must include a potential analysis of potential interference to any existing or previously proposed stations with an unobstructed electrical path that are within fifty miles of the proposed facilities.²⁴ ITF's application, however, only requests minor changes to Station WHR527.²⁵ In its application, ITF states, "the applicant considers the proposed facilities to be co-located with its currently authorized facilities, and therefore submits no interference analyses."²⁶ Our calculations show that ITF's application, as amended, proposes a transmitter site located 280 meters (0.174 mile) respectively, from the 216 Paoli Avenue site. Therefore, ITF's claim of being collocated with the Petitioners' stations is incorrect.

8. We conclude that the WorldCom and Northwest petitions fail to prove that ITF's application is defective. While the engineering statements attached to the petitions provide maps showing predicted interference, the petitioners fail to provide the data that the engineering consultant used to make his calculations or explain how those calculations were made. Without that information, it is impossible for the Commission's staff to evaluate the engineering statement and determine whether WorldCom's and Northwest's engineering consultant accurately analyzed ITF's proposal.

9. Nonetheless, because WorldCom and Northwest raised a colorable claim of interference, we conducted our own engineering analysis to determine the application's compliance with the Commission's Rules. Based upon our engineering analysis and our review of the record in this proceeding, we conclude that ITF's application complies with the Commission's Rules because it provides the requisite level of co-channel and adjacent channel interference protection to WorldCom's and Northwest's stations and prior pending applications. Accordingly, we will deny the WorldCom and Northwest objections and direct the Broadband Division's licensing staff to process ITF's application.

10. Accordingly, IT IS ORDERED, pursuant to Sections 4(i) and 309 of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), 309, and Section 74.912 of the Commission's Rules, 47 C.F.R. § 74.912, the Petitions to Deny filed by the WorldCom Broadband Solutions, Inc. on August 21, 2002 and by Northwest Communications, Inc. on August 22, 2002 are considered as informal objections and ARE DENIED.

11. 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, and Sections 21.20 and 21.902 of the Commission's rules, 47 C.F.R. § 21.30, 21.902, that the Broadband Division SHALL PROCESS the application filed on June 18, 2002 by Instructional Telecommunications Foundation, Inc. (File No. BLNPIF-20020618AAC) in accordance with this *Memorandum Opinion and Order* and the Commission's rules and policies.

²¹ Reply at 2-3.

²² *Id.* at 3-4.

²³ 47 C.F.R. § 74.903(a)(2).

²⁴ 47 C.F.R. § 74.903(b).

²⁵ See Application, Response to Section I, Question 3.

²⁶ Application, Exhibit EE at 1.

12. 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.

FEDERAL COMMUNICATIONS COMMISSION

John J. Schauble
Deputy Chief, Broadband Division
Wireless Telecommunications Bureau