



# PUBLIC NOTICE

Federal Communications Commission  
445 12<sup>th</sup> St., S.W.  
Washington, D.C. 20554

DA 04-3061  
Released: September 24, 2004

## WIRELESS TELECOMMUNICATIONS BUREAU'S BROADBAND DIVISION GRANTS REQUESTS FOR WAIVER OF MDS AND ITFS DISCONTINUANCE OF SERVICE RULES

In this *Public Notice*, the Broadband Division grants waivers of the Commission's discontinuance of service rules for the Multipoint Distribution Service (MDS) and Instructional Television Fixed Service (ITFS) stations, in order to facilitate the transition to new rules.

For MDS facilities, Section 21.44(a)(3) of the Commission's Rules provides that a license shall be automatically forfeited upon the voluntary removal or alteration of facilities, so as to render the station not operational for a period of 30 days or more.<sup>1</sup> Section 21.303(d) of the Commission's Rules requires the licensee to take one of three actions "if any radio frequency should not be used to render any service as authorized during a consecutive period of twelve months at any time after construction is completed. . . ."<sup>2</sup> The three potential actions are (1) submitting its station license for cancellation, (2) filing an application for modification of the station license to delete the unused frequency, or (3) requesting a waiver and an extension in the time permitted for resuming operation, pursuant to Section 21.303(d)(3).<sup>3</sup> For ITFS stations, Section 74.932(d) of the Commission's Rules requires a licensee to forward a license to the Commission for cancellation in case of permanent discontinuance of operation.<sup>4</sup> A station which has not operated for one year is considered to have permanently discontinued operation.<sup>5</sup>

The attachment to this public notice lists timely-filed requests pending before the Broadband Division for waiver of Section 21.44(a)(3) of the Commission's Rules or Section 21.303(d) of the Commission's Rules. Grant of these waivers would allow the stations to remain silent beyond the time contemplated in the rules. For MDS licensees, pursuant to Section 21.19 of the Commission's Rules,<sup>6</sup> an applicant seeking a waiver must make an affirmative showing that: (a) The underlying purpose of the rule will not be served, or would be frustrated, by its application in the particular case, and that grant of the waiver is otherwise in the public interest; or (b) The unique facts and circumstances of a particular case render application of the rule inequitable, unduly burdensome or otherwise contrary to the public interest.

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<sup>1</sup> 47 C.F.R. § 21.44(a)(3).

<sup>2</sup> *Id.*

<sup>3</sup> *See* 47 C.F.R. § 21.303(d)(1)-(3).

<sup>4</sup> 47 C.F.R. § 74.932(d).

<sup>5</sup> *Id.*

<sup>6</sup> 47 C.F.R. § 21.19.

Applicants must also show the lack of a reasonable alternative.<sup>7</sup> For ITFS licensees, “An applicant for waiver faces a high hurdle even at the starting gate. ‘When an applicant seeks a waiver of a rule, it must plead with particularity the facts and circumstances which warrant such action.’”<sup>8</sup> Based upon the record before us, we conclude that the waiver requests listed in the appendix have made a sufficient showing to justify a waiver.<sup>9</sup>

On July 29, 2004, the Commission released a *Report and Order and Further Notice of Proposed Rule Making* that fundamentally restructured the band to provide MDS (renamed the Broadband Radio Service, or BRS) and ITFS (renamed the Educational Broadband Service, or EBS) licensees with greater flexibility, and took numerous steps to promote competition, innovation, and investment in wireless broadband services and educational services.<sup>10</sup> Among other actions, the *MDS/ITFS R&O & FNPRM* eliminated the discontinuance of service rules for the new BRS and EBS.<sup>11</sup> Once the rules adopted in the *MDS/ITFS R&O & FNPRM* become effective, the discontinuance of service rules will no longer apply to non-common carrier BRS and EBS licensees. In order to facilitate the transition to the new rules, we will grant a waiver of the existing rules until the effective date of the new rules.

Accordingly IT IS ORDERED that pursuant to Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), and Sections 21.44 and 21.303 of the Commission’s Rules, 47 C.F.R. §§ 21.44, 21.303, the waiver requests listed in the Appendix to this Public Notice ARE GRANTED, and the MDS and ITFS stations listed in the Appendix ARE AUTHORIZED to remain silent until the effective date of the new rules adopted in WT Docket No. 03-66.

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.

Action by the Deputy Chief, Broadband Division, Wireless Telecommunications Bureau

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<sup>7</sup> *Id.*

<sup>8</sup> *WAIT Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969) (citing *Rio Grande Family Radio Fellowship, Inc. v. FCC*, 406 F.2d 664 (D.C. Cir. 1968) (*per curiam*)).

<sup>9</sup> Our decision to grant these waiver requests should not be construed as evidence that the Broadband Division agrees with all of the arguments made in the waiver requests. Instead, our decision to grant these waiver requests is based upon our independent review of the record as a whole.

<sup>10</sup> 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, *et al.*; WT Docket Nos. 03-66, *et al.*, *Report and Order and Further Notice of Proposed Rulemaking*, 19 FCC Rcd 14165 (2004) (*MDS/ITFS R&O & FNPRM*).

<sup>11</sup> *Id.*, 19 FCC Rcd at 14255-57 ¶¶ 231-239.

**APPENDIX – GRANTED WAIVER REQUESTS**

<b>Licensee</b>	<b>Call Sign</b>	<b>Community of License</b>	<b>Date Waiver Request Filed</b>
AIG Radio Holding Co., Inc.	WMI890	Bremerton, Washington	7/26/2004
Alda Wireless Holdings, Inc.	WHJ878	Detroit, Michigan	3/4/2003
Alda Wireless Holdings, Inc.	WLK238	Detroit, Michigan	3/4/2003
Alda Wireless Holdings, Inc.	WNEK611	Detroit, Michigan	3/4/2003
Alda Wireless Holdings, Inc.	WNTK656	Detroit, Michigan	3/4/2003
Atlanta MDS Company	WGW309	Atlanta, Georgia	4/14/2004
Baypoint TV, Inc.	WLW755	Metropolis, Illinois	7/9/2004
Blake Twedt	WNTI680	Burlington, Vermont	8/9/2004
Gadsden Independent School District	WNC259	Las Cruces, New Mexico	2/10/2004
Hispanic Information and Telecommunications Network, Inc.	WLX806	Las Cruces, New Mexico	1/16/2004
Ivan Nachman	WNTI675	Burlington, Vermont	8/9/2004
John Dudeck	WNTH842	Burlington, Vermont	8/9/2004
Krisar, Inc.	WLW835	Jackson, Mississippi	12/4/2003
Libmot Communications Partnership	WLW787	Enid, Oklahoma	7/9/2004
Libmot Communications Partnership	WMX910	Paducah, Kentucky	7/9/2004
Libmot Communications Partnership	WMX911	Paducah, Kentucky	7/9/2004

Libmot Communications Partnership	WNTH681	Metropolis, Illinois	7/9/2004
Minneapolis MDS Company	WCU552	Minneapolis, Minnesota	4/23/2004
Multichannel MDS, Inc.	WHT661	Albuquerque, New Mexico	1/30/2004
Nevada MDS, Inc.	WHT722	Las Vegas, Nevada	7/10/2003
Nevada MDS, Inc.	WHT724	Las Vegas, Nevada	7/10/2003
Ocate High School	WNC224	Las Cruces, New Mexico	12/31/2003
Paul M. Kimball	WHT662	Albuquerque, New Mexico	4/13/2004
People's Choice TV of Albuquerque, Inc.	KFK32	Albuquerque, New Mexico	9/1/2004
Sacramento Microband, Inc.	WSL88	Sacramento, California	3/29/2004
Sanguinetti Investment Corporation	WMH868	Rutland, Vermont	2/5/2004
Sanguinetti Investment Corporation	WMI343	Rutland, Vermont	2/5/2004
Satellite Signals of New England, Inc.	WLK341	Rutland, Vermont	2/5/2004
Satellite Signals of New England, Inc.	WMH308	Cornwall, Vermont	2/5/2004
Satellite Signals of New England, Inc.	WMH560	Lyndonville, Vermont	2/5/2004
Satellite Signals of New England, Inc.	WNTI856	Rutland, Vermont	2/5/2004
Stella Pappas	WLW935	Columbus, Georgia	11/25/2003
Wayne State University	WLK367	Detroit, Michigan	3/4/2003
Weststar Communications, Inc.	WNTH820	Monterey, California	8/18/2004