



PUBLIC NOTICE

Federal Communications Commission
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ITFS MUTUALLY EXCLUSIVE APPLICATIONS – SETTLEMENT PERIOD

The FCC will waive certain provisions of 47 C.F.R. § 73.3525(a), which limits the terms for settlement among applicants competing for Instructional Television Fixed Service (ITFS) facilities, for a 60 day period, effective April 30, 2000. In order to facilitate settlements, the FCC will also permit “white knight” settlements which involve the award of a license to a non-applicant third party.

In the *First Report and Order, Implementation of Section 309(j) of the Communications Act*, 13 FCC Rcd 15920 (1998), the Commission construed Section 309(l)(3) of the Communications Act to require the waiver of any applicable provisions of its settlement regulations for pending mutually exclusive AM, FM and TV applications that were to be subsequently auctioned. Specifically, applicants subject to Section 309(l) were allowed to enter into settlement agreements that removed conflicts among their applications. They were also permitted to enter into “white knight” settlements involving the award of a permit to a non-applicant third party where necessary to facilitate a full-market settlement. Thereafter, the Commission conducted closed broadcast auctions for the remaining mutually exclusive applications for AM, FM and TV stations.

In that *Report and Order*, the Commission also concluded that based on the express terms of Section 309(j) of the Communications Act of 1934, 47 U.S.C. § 309(j), it was compelled to use competitive bidding to resolve mutually exclusive ITFS applications, notwithstanding the noncommercial educational nature of the service, unless Congress subsequently indicated otherwise. Congress has not done so. Now, in anticipation of soon scheduling an auction for the pending mutually exclusive ITFS applications, the Commission will allow an opportunity for settlement similar to that previously enjoyed by AM, FM, and TV applicants in the face of an impending auction.

Accordingly, any agreement filed on or before June 30, 2000, that provides for a universal settlement of mutually exclusive ITFS applications now on file, need not comply with the requirements of Section 73.3525(a)(3) precluding payments to dismissing applicants for new facilities in excess of their legitimate and prudent expenses. In addition, parties need not provide the information required in Section 73.3525(a)(5). Parties may also enter into settlement agreements, which will result in the award of the authorization to a non-applicant third party, including the pertinent MDS BTA authorization holder. We emphasize, however, that any “white knight” must demonstrate that it meets all eligibility criteria for the service, as set forth in 47 C.F.R. §§ 74.932 for ITFS users or 74.990 for wireless cable users. Pursuant to Section 74.990(a), only the BTA holder is qualified to submit any new application for commercial use of available ITFS frequencies within its BTA. Parties are also reminded that they are permitted to amend pending applications in order to resolve mutually exclusive applications, so long as no additional interference results. *See Report and Order* in MM Docket No. 93-24, 10 FCC Rcd 2907, 2911 (1995).

For further information contact: Joyce Bernstein or Melvin Collins at (202) 418-1610



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Adopted by the Commission on March 10, 2000.