requirement might deter a significant number of ITFS speculators. We also asked whether we should require separate financial documentation for each station applied for, and whether we should require the wireless cable lessee to submit the documentation when it is paying for construction of the facilities.

17. The record does not indicate that our reliance on applicant certification has been ill-placed. Further, we believe that the submission of detailed financial information would in practice neither increase processing efficiency nor deter abuse. Collecting the data would impose significant costs on the wireless cable lessee, regardless of whether the supporting documents were kept on hand by the educator or submitted to the Commission. We believe that a sound analysis of all of the incoming detailed financial submissions would consume a great deal of the staff's time, severely slowing the rate of processing. Conversely, any reliance on the documents without our own rigorous independent analysis would enable us to detect only a small proportion of potential abuse.

18. A financially unqualified educator would generally not be able to complete construction within the prescribed period. Because that educator would then need an extension of time within which to construct, it would have to submit an appropriate application to the Commission, explaining the reasons for its delay in construction. Thus, we already have a process in place by which we can monitor and assess ITFS licensees' progress in constructing their authorized facilities and forestall any dilatory conduct on their part. Should it become necessary in the future, we can revise this process accordingly.

## **Application Caps**

19. We now address two proposals, raised in response to the Notice by the Educational Parties: (1) To impose a cap of 25 applications associated with the same wireless cable entity, including any entity with direct or indirect common ownership or control; and (2) to limit an individual nonlocal ITFS entity to filing no more than three to five applications during a window. To support this restriction, the Educational Parties argued that nonlocal applicants often work with wireless cable entities as frequency speculators. The overwhelming majority of interested commenters oppose the adoption of either type of cap.

20. To suddenly impose limits on the number of applications that particular parties may be affiliated with would slow both ITFS and wireless cable

development. Further, it would artificially constrain MDS operators' business decisions as to the number of ITFS channels needed to establish economically viable wireless cable operations. Also, we can deter the speculation complained of by the less restrictive process of analyzing construction extension applications, as noted above.

### **Assignment of Unbuilt Facilities**

21. In the Further Notice, we proposed to formalize our current practice of limiting the allowable consideration for the assignment of authorizations for unbuilt ITFS facilities to out-of-pocket expenses, as we do with broadcast construction permits. Our stated goal was to diminish the incentive of frequency speculators to submit applications for authorizations that they intend to later assign for profit. Every commenter addressing this issue supports the proposal, agreeing that it would help deter abuse. We agree that this limitation, applicable to broadcast construction permits, will have similar deterrent effects on frequency speculation in the ITFS service, and we shall therefore adopt it.

#### **Excess Capacity Lease Terms**

22. Proposal and Comments. Our existing policy does not authorize an educator to execute a lease agreement the term of which extends beyond the end of the educator's license term. Consequently, depending on how many years remain in the term, there may be situations in which our policy would prohibit a lease agreement to extend beyond one or two years. At most, MDS operators can have contractual access to ITFS channels for no more than ten years, the length of a full license period. Some commenters propose that we modify our policy to allow parties to negotiate lease agreements whose terms extend beyond the end of the license term, to demonstrate to potential investors their long-term channel access. The proposal is unopposed.

23. *Discussion*. The wireless cable industry requires substantial equity investment in order to become a viable competitor in the video marketplace. However, potential financiers are likely to exercise caution before investing in an MDS system, where there is uncertain long-term availability of the ITFS channels that provide the basic capacity for that system. Authorizing lease agreements that extend beyond the end of the license term would reduce the anxiety of potential investors that the MDS entity would shortly lose four channels, crippling the entire system. The increased confidence of investors

will significantly accelerate the development of the wireless cable industry and provide competition to wired cable. Hence, we are revising our policy to permit an educator, if it chooses, to execute a 10-year lease agreement without regard to the duration of the educator's current license term. ITFS lease agreements that extend beyond the end of the license term must note that such an extension is contingent on the renewal of the educator's license.

# **Application of the Four-Channel Rule**

24. Proposal. We seek to provide as many educators as possible with the opportunity to operate ITFS systems that meet their educational needs. Consequently, the four-channel limitation rule generally limits an ITFS licensee to four channels for use in a single area of operation. However, we have never clearly and formally defined what constitutes an "area of operation." The Further Notice proposed to adopt the staff's informal policy of considering a single area of operation for this purpose to extend no farther than 20 miles from the transmitter site. Many commenters supported such a mileagebased proposal, while others preferred one based on predicted interference.

25. Discussion. We adopt the 20-mile standard. Our experience has demonstrated that this standard is efficient and easily understood and implemented. Determining a station's area of operation by use of the interference approach would require a considerable amount of technical analysis by the staff. As a consequence, adoption of this proposal could inordinately slow processing and delay service to the public. We recognize that any mileage standard will be imprecise, because there will always be educators that serve sites beyond the designated distance. However, the bright-line test we are adopting today has the important advantage of being easy for applicants to comprehend and apply. Further, the Commission staff can process applications far more efficiently using this standard. Moreover, staff, educators, and wireless cable entities are extremely familiar with this standard, having utilized it for a number of years.

#### **Protected Service Areas**

26. *Proposal*. The Further Notice also solicited comment on a proposed change in the application of protected service areas for wireless cable lessees. Currently, we provide a 15-mile interference protection for a service area regardless of receive site locations, but solely at the request of the ITFS