

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 21

[MM Docket No. 94-131 and PP Docket No. 93-253, FCC 95-230]

Filing Procedures in the Multipoint Distribution Service and in the Instructional Television Fixed Service, Including Electronic Filing and Competitive Bidding

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This Report and Order adopts a licensing plan under which we will allot Multipoint Distribution Service (MDS) authorizations by geographic areas, through a simultaneous multiple round bidding process. The Report and Order also adopts a variety of measures to streamline the application and implementation processes. It authorizes the voluntary use of electronic filing for new MDS applications, as well as electronic fee payments. It institutes computerized interference studies utilizing new data elements to be included in a revised MDS application form. It also makes clear that interference disputes are to be resolved, in the first instance, through private negotiations, with the FCC to serve only as a last resort. These procedures are designed to expedite processing and facilitate development of wireless cable, an industry that delivers video programming to subscribers using MDS and Instructional Television Fixed Service (ITFS) channels. This proceeding is intended to expedite more service to the public and enhance opportunities for wireless cable to reach its potential as a competitor to wired cable.

EFFECTIVE DATE: September 15, 1995.

FOR FURTHER INFORMATION CONTACT: Sharon Bertelsen at (202) 416-0892 or Jerianne Timmerman at (202) 416-0881, Video Services Division, Mass Media Bureau.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The following collection of information has been submitted to the Office of Management and Budget for review under Section 3504(h) of the Paperwork Reduction Act. Copies of the submission may be purchased from the Commission's copy contractor, International Transcription Service, 2100 M Street, N.W., Suite 140, Washington, D.C. 20037, (202) 857-3800. Persons wishing to comment on

this information collection should direct their comments to Timothy Fain, (202) 395-3561, Office of Management and Budget, Room 10102 NEOB, Washington, D.C. 20503. A copy of any comments should also be sent to the Federal Communications Commission, Office of Managing Director, Washington, D.C. 20554. For further information contact Judy Boley, Federal Communications Commission, (202) 418-0210.

OMB Numbers: None. This Report and Order adopts a new application form, FCC Form 304, to be used for new MDS facilities, and several new rules and amended rules. There is also a new FCC Form 304-A and FCC Form 175-M.

Titles: Form 304: Application for a Multipoint Distribution Service Authorization. Form 304-A: Certification of Completion of Construction for a Multipoint Distribution Service. Form 175-M: Application to Participate in an FCC MDS Auction. 47 CFR 21.930 (Five-year Build-out Requirements), 21.931 (Partitioning of BTAs), 21.934 (Assignment or Transfer of Control of BTA Authorizations), 21.937 (Negotiated Interference Protections), 21.956 (Filing of Long-form Applications or Statements of Intention) and 21.960 (Designated Entity Provisions for MDS).

Action: New Collections.

Respondents: Businesses or other for-profit, small businesses or organizations.

Frequency of Response: On occasion reporting requirements.

Estimated Annual Response: Form 304: 300 responses, 55 hours per response; Form 304-A: 100 responses, .5 hours per response; Form 175-M: 1600 responses, .48 hours per response; Section 21.930: These filings will not occur until FY 2001, 750 responses, 1 hour per response; Section 21.931: 150 responses, 6 hours per response; Section 21.934: 200 responses, 1 hour per response; Section 21.937: 75 responses, 30 hours per response; Section 21.956: 200 responses, 3 hours per response; Section 21.960: 550 responses, 2 hours per response.

Needs and Uses: FCC Form 304 will be used to ensure that the respondent is qualified to become a Commission licensee. FCC Form 304-A will be used to certify that the facilities as authorized have been completed and that the station is ready to provide service to the public. FCC Form 175-M will be used to determine whether the applicant is legally, technically and otherwise qualified to participate in an MDS auction. Section 21.930 will be used to

determine whether the BTA holder has met its construction requirements and to ensure that service is promptly delivered to the public. Sections 21.931 and 21.937 will ensure that the interference protection rules are complied with. Section 21.934 is used to determine whether there has been unjust enrichment to the party selling the station. Section 21.956 will be used by the staff to determine whether to grant a BTA authorization. Section 21.960 will prevent abuse of the special measures offered to MDS auction winners claiming designated entity status.

A summary of the Report and Order follows. The complete text is available for inspection and copying during normal business hours in the MDS public reference room, Room 207, at the Federal Communications Commission, 2033 M Street, N.W., Washington, D.C., and it may be purchased from the Commission's copy contractor, International Transcription Service, Inc., 2100 M Street, N.W., Suite 140, Washington, D.C. 20037, (202) 857-3800. (Action by the Commission: Chairman Hundt dissenting in part and issuing a statement; Commissioners Quello and Barrett issuing separate statements; and Commission Ness dissenting in part and issuing a statement.)

1. By this action, we adopt rules to facilitate the development and rapid deployment of wireless cable services.¹ As a result of our actions in prior proceedings, wireless cable operators that use spectrum in the Multipoint Distribution Service (MDS), often supplemented with leased channels from the Instructional Television Fixed Service (ITFS), have begun to provide a competitive alternative to wired cable and other multichannel video programming distributors.² The rules we now adopt will accelerate that process by setting streamlined measures to distribute unused MDS spectrum through competitive bidding and by establishing a protected service area for MDS stations that is large enough to allow operators flexibility they need to design viable and competitive wireless cable systems. Adoption of these rules will enable the Commission to lift the

¹ Wireless cable programming to subscribers resembles cable television, but instead of coaxial cable, wireless cable uses microwave channels. Our use of the term "wireless cable" does not imply that it constitutes cable television for statutory or regulatory purposes.

² Unless otherwise indicated, "MDS" includes single channel Multipoint Distribution Service (MDS) and Multichannel Multipoint Distribution Service (MMDS) applications and authorizations collectively.