

applicants.¹¹ In the Notice, the Commission proposed that applicants file short-form applications for established geographic service areas to identify mutually exclusive applicants for competitive bidding purposes and that the successful bidders file long-form applications. Notice at 7669–71. The Notice suggested the use of predetermined geographic areas, such as Metropolitan Statistical Areas (MSA) and Rural Service Areas (RSA) or Areas of Dominant Influence (ADI).¹² This proposal envisioned that we would release a public notice announcing auctions by geographic area, specifying the filing period for short-form applications (FCC Form 175)¹³ and the applicable bidding procedures. Mutually exclusive applicants would bid for all usable MDS channels in that area as a package and the auction winner would be permitted to file long-form applications for conditional licenses to operate stations anywhere throughout the service area provided the specific engineering design of their MDS stations meets the Commission's interference protection standards with respect to all authorized or previously proposed MDS and ITFS facilities. Long-form applications accepted for filing would be proposed for grant by a Commission public notice, announcing that the applications are accepted for filing and opening a thirty-day period for filing petitions to deny. See 47 U.S.C. § 309(b); 47 CFR 21.30. The Notice observed that these filing procedures would enable operators to

amass MDS channels, would avoid the lengthy delay associated with licensing stations site-by-site and therefore would allow operators to enhance their services more rapidly. The Notice asked commenters to determine which type of geographic areas would be most suitable for MDS and to address the definition of protected service area. In particular, we requested comment on whether the current definition of an MDS station's protected service area would be appropriate,¹⁴ or whether the boundary of the geographic area designed for auction purposes should become the protected service area. We also asked commenters to discuss the interference standards for service to the areas adjacent to the boundaries between geographic areas. Although the Notice identified this approach of licensing MDS channels as the preferred approach, we also invited comment on alternative licensing procedures.

10. The Notice suggested an alternative approach that would limit applications to predetermined sites where there are vacant E, F or H channels. Notice at 7671–72. Under this approach, the Commission would identify such sites based upon the location of an already authorized E, F or H channel. The Commission would issue multiple public notices specifying the filing period and applicants would file a short-form application to identify mutually exclusive situations for purposes of competitive bidding. The auction winner would be required to file a long-form application containing a complete engineering proposal and specifying a compatible station design with the Commission's interference protection standards to all previously proposed or authorized MDS and ITFS facilities.

11. Under another alternative presented in the Notice, the Commission would periodically open national filing windows, with no geographic restrictions on filing for available MDS channels. Notice at 7672–73. Pursuant to this proposal, we would release a public notice announcing the filing window for available channels. This proposal would initially require a long-form application, containing the applicant's complete technical proposal, to determine mutual exclusivity before competitive bidding procedures are implemented. The Notice pointed out that this approach would likely result in a larger number of mutually exclusive applications and

increase the possibility of "daisy-chains" (interlinking application proposals at different locations), which would require a more complicated and time consuming competitive bidding process, including subsequent rounds of auctions to resolve all mutual exclusivities in a daisy-chain. We invited commenters favoring a national window approach to recommend ways to resolve the daisy-chains that might arise under this proposal.

12. As an option to the national filing window approach, the Notice discussed limiting eligibility to file in the first window to existing licensees and system operators who, at the time the application is filed, are operating with a certain minimum number of channels. Notice at 7673. In many situations the acquisition of a small number of additional channels may be essential for launching a whole new wireless cable system in a given area. This approach would allow existing wireless cable operators to accumulate the critical mass of channels necessary to operate competitive wireless cable systems. We asked commenters favoring this option to suggest eligibility requirements to govern the filing of applications in this first window.

13. Resolution. After careful consideration of the merits of the various proposals we raised in the Notice, we continue to prefer a filing approach where applicants file short-form applications and auction winners file long-form applications. We have decided that BTAs are the most appropriate geographic area for MDS. The boundaries of each geographic area, with the exceptions of channels obtained through leases with ITFS licensees, will become the protected service area for the auction winner. The auction winners will be issued authorizations for specific geographic areas and will be permitted to operate one or more MDS transmitting stations and signal boosters anywhere inside the service area, provided the specific engineering design meets the Commission's interference protection standards to all authorized or previously proposed MDS and ITFS facilities, and complies with the limits we establish for signal strength along the perimeter of the geographic area. See *infra* at ¶¶ 38–41. Following the auction, there would be a five year build-out period in which an authorization holder can expand service or initiate new service within their area without competing applications. The authorization holder will also be permitted to partition its area along established geopolitical boundaries and enter into contracts with eligible parties, allowing such parties to

¹¹ Notice of Proposed Rulemaking in MM Docket No. 94–131 and PP Docket No. 93–253, 9 FCC Rcd 7665 (1994), 59 Fed. Reg. 63,743 (Dec. 9, 1994) (Notice). The only aspect of the Notice which applied to ITFS was the electronic filing proposal. In a separate proceeding, the Commission recently adopted improvements to the ITFS licensing process, including a window filing procedure. Report and Order, Amendment of Part 74 of the Commission's Rules With Respect to the Instructional Television Fixed Service, MM Docket No. 93–24, 10 FCC Rcd 2907 (1995), 60 Fed. Reg. 20,241 (Apr. 25, 1995).

¹² MSAs and RSAs are standard geographic areas used by the Commission for administrative convenience in licensing cellular radio systems. The Commission has also used MSAs since 1983 for making mutually exclusive determinations for MDS applications filed for the E or F channels under 47 C.F.R. § 21.901(d)(5). ADIs are standard geographic areas that were developed by Arbitron Ratings Company. Each county in the United States is placed within one of 209 ADIs, the lowest numbered ADI having the highest population.

¹³ FCC Form 175 contains the applicant's name, the markets in which the applicant wishes to bid, the persons authorized to make or withdraw a bid, whether the applicant is qualified as a designated entity under 47 C.F.R. § 1.2110, certifications that the applicant is legally, technically, financially and otherwise qualified, and identification of all parties involved in agreements, or certification that no agreements exist, relating to the authorizations being auctioned or the bidding process.

¹⁴ 47 C.F.R. § 21.902. In another order, also adopted today, the Commission amends 47 C.F.R. § 21.902, to expand the protected service area for authorized or previously proposed MDS facilities. Second Order on Reconsideration at ¶¶ 2–31.