

stations within the auction winner's BTA service area will be the five year build-out date which runs from the grant date of the first conditional license within the auction winner's BTA (granted the same date as the BTA authorization). When the portion of the system represented by a particular long-form application is constructed and ready to begin operation, the holder of the BTA authorization will file a corresponding certification of completion of construction. The license term for those stations will be the same ten-year term as MDS stations licensed prior to the adoption of this Report and Order. See 47 CFR 21.45. The ten-year term for the new licenses will commence on the date the Commission declares bidding in the MDS auction to be closed. The holder of a BTA authorization has a protected service area that is coterminous with the boundaries of their BTA service area, subject to exclusion of the protected service areas and/or locations of authorized or previously proposed MDS and ITFS facilities, as further discussed *infra* in ¶ 42. Individual station licenses that are a part of a BTA service area will not have a uniquely associated protected service area. The common protected service area of all individual stations within the BTA authorization will be the boundary of that BTA.

28. We emphasize that the actual service areas can be tailored through voluntary agreements among the affected parties. Although our rules indicate that the holders of BTA authorizations must locate all transmitter sites within the boundaries of the BTA and may not cause interference in adjacent BTAs, the interference rights may be modified through negotiation and written agreements. The MDS station facilities within the auction winner's BTA may be expanded or modified throughout the BTA service area so long as the system continues to be in compliance with our technical rules and protects incumbent MDS and ITFS facilities. The facilities may be expanded beyond the BTA or into the protected service area of an incumbent with an agreement from the entity that controls the adjacent BTA or the incumbent protected 35-mile circular area.

29. Consistent with our goal of establishing filing procedures and policies that will encourage the accumulation of a full complement of channels necessary for a viable MDS system, only the BTA authorization holder will be qualified to submit any new application for MDS use of available ITFS frequencies within the BTA in accordance with 47 CFR

74.990(a), and the ITFS application procedures of § 74.991. ITFS station licensees and prospective ITFS applicants that seek to construct and operate new ITFS facilities located within a BTA and that choose to lease excess channel capacity will be free to negotiate with any potential lessee, including the holder of the BTA. In furtherance of our goal of accumulating a full complement of channels, however, the holder of the BTA will be afforded the right to match the final offer of any proposed lessee. Should the holder of the BTA decline to exercise such right, then the ITFS applicant can enter into a lease arrangement with any operator it so chooses. This is not intended to interfere with present contractual rights that are in effect or renewal of those rights. In the case where a BTA authorization holder is the licensee of ITFS channels, the associated protected service area will be the entire BTA, and interference protection will be governed in the manner for protecting BTA service on MDS channels. However, in the case where a BTA authorization holder leases excess channel capacity from an ITFS licensee, the protected area will be a 35-mile circle centered around the particular ITFS station in the BTA that leases the channels. We will afford this area the same protection generally afforded under our ITFS rules. BTA authorization holders in adjacent BTAs must protect points on the 35-mile circle using cochannel and adjacent channel desired-to-undesired signal strength ratios of 45 dB and 0 dB, respectively. A special case will occur whenever BTA authorization holders in adjacent BTAs both lease the same ITFS channel group, such that the 35-mile protected circle of each extends into the BTA of the other. In this regard, we will expect the respective ITFS entities and BTA holders to reach an agreement concerning interference protection near their common boundary. Moreover, a BTA authorization holder will not be required to protect that portion of the 35-mile circle associated with the other authorization holder that falls on his or her side of the boundary. We believe that this approach will promote our policy objectives for this service and will similarly have only a positive effect on the continued successful development of ITFS with the ever expanding financial support for that service provided by wireless cable operators.

30. The available MDS spectrum within a BTA authorization will increase if the unconstructed facilities or unused channels held by an MDS

incumbent with transmitter site locations within a particular BTA are forfeited or if previously proposed conditional licenses or modifications are not granted. The holders of the BTA authorizations obtain contingent rights to this spectrum when they receive their authorizations, so that the forfeited channels will revert and become part of the BTA authorization up to the boundary of the BTA. The holder of the BTA authorization may subsequently file long-form applications for the forfeited channels, provided the specific station design meets the Commission's interference protection standards. Such a policy provides an incentive for the holders of BTA authorizations to find and document such warehousing violations, resulting in efficient use of fallow spectrum. In addition, authorization rights may be revoked or terminated because of gross misconduct, misrepresentation or bad faith by an applicant. Other events may also change the protected service area, such as the end of the five year build-out period, an assignment or transfer or partitioning of the BTA. These events are discussed in detail below.

31. Five Year Build-out Period. The build-out period in which the holder of a BTA authorization is permitted to expand service or initiate new service within their BTA service area will be five years. Specifically, we will provide the BTA authorization holder five years from the grant date of the initial BTA authorization to construct and operate the system. The purpose of this requirement is to ensure that service is promptly delivered to the public. See 47 U.S.C. 309(j)(4)(B). This five year build-out period is not extended by the grant of subsequent authorizations, such as the grant of a long-form or modification application for an individual station within the BTA service area. We will require the holder of a BTA authorization to submit a showing to the Commission five years after the BTA authorization was issued demonstrating that it is providing a signal level sufficient to provide adequate service to approximately two-thirds of the population of the area within its control in the licensed BTA. The holder of the BTA authorization must submit maps and other supporting documents showing compliance with this construction requirement. The Commission, in evaluating the showing, may consider line-of-sight obstructions and the ability to provide service without causing harmful interference to other MDS or ITFS facilities. If the holder of the BTA fails to cover any of the BTA, it will forfeit the authorization