

and it will be ineligible to regain it. If the Commission determines that there are usable channels in an unserved or underserved area of the BTA, the Commission would partition the area along geopolitical boundaries and issue a public notice establishing the reauction of the partitioned area. This public notice would announce the auction or auctions by geographic area, specifying the filing period for short-form applications and the applicable bidding procedures. The holder of the BTA will forfeit the partitioned service area and will be ineligible to bid on it. We believe that this coverage policy is reasonable and will result in the channels being made available to applicants who will provide service to the public. We further believe that this will deter the warehousing of channels and ensure that the spectrum is being effectively utilized for MDS.

32. Assignment or Transfer of Control. The holders of BTA authorizations and MDS incumbents may negotiate mergers, buyouts, channel swaps, channel splits or make similar arrangements on a voluntary basis, pursuant to the general assignment and transfer provisions of 47 CFR 21.38. Both parties are generally permitted to buy from and sell authorizations to each other and to third parties, with few limitations.

33. Additional spectrum may be acquired by the holder of a BTA authorization through buyouts of incumbent licensees within their authorized BTA service area. As is the case with ITFS licensees, wireless cable operators may also acquire spectrum through leasing agreements with incumbents. In this case, the protected service area of the acquired station will extend to the BTA boundary or the existing 35-mile protected circular area (from the incumbent), whichever is larger. The holder of the BTA authorization may assign or transfer control of its entire BTA, which will include all authorized stations, subject to the unjust enrichment provisions for designated entities. See *infra* at ¶¶ 147.152. Such an assignment or transfer of an entire BTA may also include unserved areas so long as the five year build-out period has not expired. If a BTA authorization is assigned or transferred, the new holder of the BTA authorization is held to the original build-out period. The holder of the BTA authorization may also partition portions of the BTA along geopolitical boundaries under our partitioning rules, discussed below, and contract with eligible parties, allowing such parties to file long-form applications for the usable MDS

channels within that area. We believe that allowing the partitioning of portions of the BTA service area will encourage provision of service to rural areas, which will promote the most efficient use of the spectrum. See 47 U.S.C. 309(j)(3)(A) (instructing the Commission to promote the development and rapid deployment of new technologies, products, and services for the benefit of the public, including those residing in rural areas).

34. Partitioning. During the five year build-out period, we will permit the holder of a BTA authorization to partition portions of its BTA authorization and enter into contracts with eligible parties, allow such parties to file long-form applications for the usable MDS channels within that partitioned area. The BTA may be partitioned along geopolitical boundaries, and the Commission may grant such applications, provided they are in compliance with the rules. Also, a holder of a BTA authorization will be permitted to add to its service area by acquiring a partitioned service area from the holder of an adjacent BTA. Following grant of such an application, the authorization will be referred to as "partitioned service area." The holder of a partitioned service area would, in effect, then hold something similar to a BTA authorization for the partitioned area. The protected service area will become or expand to the boundaries partitioned along the designated geopolitical boundaries and the same technical rules will apply, including the limiting signal strength at the boundaries of the partitioned area. Accordingly, the construction period for the partitioned service area will be the remaining portion of the five year build-out and at the end of this five year period, the holder of the partitioned service area must demonstrate that it is providing substantial service to the partitioned area. Once construction is complete, the license term will run ten years from the date the Commission declared bidding in the MDS auction to be closed.

35. We believe that allowing holders of the BTA authorizations to partition will facilitate the provision of service to small markets and rural areas, some of which currently have no source of multichannel video programming. Partitioning will also promote the most efficient use of the spectrum and encourage participation by a wide variety of entities, including small businesses, rural telephone companies, and businesses owned by members of minority groups and women. See 47 U.S.C. 309(j) (3)(B), (3)(D) and (4)(C).

36. Technical Rights and Responsibilities. In determining interference protection standards and other technical provisions under this new approach to MDS authorization of service, our objectives are two-fold: (1) to provide maximum flexibility to allow both new BTA authorization holders and current MDS licensees, conditional licensees, and applicants to develop and expand service in the most rapid and economically feasible manner, and (2) to assure that the introduction of new MDS service will not result in objectionable interference to the services of incumbent stations and will minimize insofar as possible the extent of potential interference within BTA service areas. These objectives and the provisions herein take into account the extent to which the current service has been built around successful negotiations among neighboring operators and/or licensees, as well as prospective operators and licensees. We fully expect this spirit of cooperation and accommodation to continue and, while we will adopt interference protection provisions for BTA and incumbent service, we will allow and indeed encourage the holders of BTA authorizations and incumbents to work out mutually agreeable interference concerns with other potentially affected parties whenever possible.

37. As a result of this Report and Order and a separate MDS order we are adopting today, protected service areas for BTA authorization holders and MDS incumbents will be defined differently. Second Order on Reconsideration at ¶¶ 2-31. We believe this approach will best facilitate the full development of incumbent wireless cable systems, many of which already have secured the desired transmitting site, and serve subscribers within a metropolitan area from a single site. In addition, this approach may allow the rapid expansion of new MDS service into other unserved portions of BTAs. We adopt an idea contemplated in the Notice, that the perimeter of a predetermined geographic area (BTA) generally defines its protected area. The holders of BTA authorizations will not be permitted to cause interference within the boundaries of an adjacent BTA, without the consent of the affected authorization holder. When such interference occurs, an offending party will be expected to act promptly to eliminate any unwanted interference in another operator's BTA.

38. Interference among adjacent BTA operators will be partially controlled by establishing an allowable limit for a station's predicted signal strength at all points along a BTA boundary. The same