

the method for electronically filing MDS applications. We will also authorize electronic fee payment for MDS applications. Current methods of payment available under 47 CFR 1.1109 will continue to be accepted. As our resources permit, we will work toward improved viewing access to the data bases.

D. Competitive Bidding Procedures

1. Competitive Bidding Background

60. On August 10, 1993, the Omnibus Budget Reconciliation Act of 1993 (Budget Act) added a new section 309(j) to the Communications Act of 1934, as amended, 47 U.S.C. 151-611 (Communications Act). This amendment to the Communications Act gave the Commission express authority to employ competitive bidding procedures to choose from among mutually exclusive applications for certain initial licenses. The Commission adopted a Notice of Proposed Rule Making in the competitive bidding proceeding on September 23, 1993.²⁸ In it March 8, 1994 Second Report and Order,²⁹ the Commission established general rules and procedures and a broad menu of competitive bidding methods to be used for all auctionable services, including MDS. We indicated in the Second Report and Order that in subsequent Reports and Orders we would set forth specific competitive bidding rules that would be applicable to individual services. To date, the Commission has established competitive bidding rules specifically applicable to, and has conducted auctions for, narrowband Personal Communications Services (PCS),³⁰ the Interactive Video and Data Service (IVDS),³¹ and broadband PCS.³² This

Report and Order establishes competitive bidding rules and procedures for MDS.

61. Given the interdependencies we believe exist between authorizations for certain BTA service areas and the declining cost of conducting simultaneous multiple round bidding, we choose this auction method for use in MDS. We also adapt the general procedures set forth in the Second Report and Order so as to be compatible with the application procedures established for MDS in this Report and Order. Finally, we set forth rules to deter possible abuses of the bidding and application procedures, and establish special provisions for small businesses, including those owned by minorities and women, to encourage their participation in the competitive bidding process and in the provision of MDS system offerings.

2. Auction Eligibility

62. The Commission has in the past employed a random selection process (i.e., a lottery) to select from among mutually exclusive MDS initial applications. See 47 CFR 1.824. However, Section 309(j) of the Communications Act, as amended, permits auctions were (1) mutually exclusive applications for initial licenses or construction permits are accepted for filing by the Commission; (2) the principal use of the spectrum will involve or is reasonably likely to involve the receipt by the licensee of compensation from subscribers in return for enabling those subscribers to receive or transmit communications signals; and (3) the objectives set forth in Section 309(j) would be promoted. In the Second Report and Order, we concluded that single and multichannel MDS as classes of services would satisfy the Section 309(j) criteria for auction ability, and, thus, new initial applications in MDS would be eligible for competitive bidding. *Id.* at 2359. The Second Report and Order did not, however, expressly resolve the question of the auction ability of mutually exclusive MDS station applications filed prior to July 26, 1993, the date specified in the Commission's auction authority in the 1993 Budget Act. *Id.* For the reasons set forth in Section 3 below, we now determine to lottery these previously filed MDS applications.

3. Disposition of Previously Filed MDS Applications

63. Before the Commission conducts competitive bidding for the BTA service areas applied for under the revised procedures set forth herein, we must first process the remaining acceptable,

mutually exclusive applications for MDS station licenses that were filed prior to July 26, 1993.³³ Under the procedures in effect prior to the enactment of competitive bidding authority in the 1993 Budget Act, these mutually exclusive MDS applications were to have been lotteried. In September 1993, the Commission tentatively concluded to lottery rather than auction pre-July 26, 1993 MDS applications. See Competitive Bidding Notice at 7661. In reaching this decision, the Commission first noted that these applications have already incurred substantial delays. The Commission then tentatively decided to eschew auctions in favor of lotteries for pending MDS applications to avoid "further delay" in granting MDS station licenses and providing service to the public during the time it would take for the Commission to promulgate competitive bidding rules. *Id.* Subsequently, in the Second Report and Order, the Commission concluded that new initial applications in MDS would be eligible for competitive bidding, but did not resolve the question of whether to employ lotteries or auctions to dispose of the previously filed MDS applications. Second Report and Order at 2359. Thus, due to processing delays and further delays resulting from the consideration of issues raised in the Budget Act regarding competitive bidding, this group of previously filed MDS applications, through no fault of the applicants themselves, has never been lotteried.

64. The 1993 Budget Act empowers the Commission to either auction or lottery these previously filed MDS applications.³⁴ Consistent with the statute, our tentative conclusion in the Competitive Bidding Notice, and Commission precedent,³⁵ we now exercise our discretion to lottery this group of remaining previously filed, mutually exclusive MDS applications. By employing lotteries for pre-July 26, 1993 MDS applications, and by holding auctions for initial applications accepted for filing after that date, we adopt a straightforward approach that is

³³ Once we complete our processing, we expect that this group of previously filed, acceptable MDS station applications will likely be quite small, consisting of approximately 100 mutually exclusive applications for five rural locations. The applications for these five locations have been pending since 1991.

³⁴ See 47 U.S.C. §§ 309 (i) & (j); Budget Act, Pub. L. No. 103-66, § 6002(e) (Special Rule), 107 Stat. 312, 397 (1993).

³⁵ See Memorandum Opinion and Order in PP Docket No. 93-253, 9 FCC Rcd 7387 (1994), 59 FR. 37 163 (July 21, 1994) (Cellular Unserved Order) (determining to lottery previously filed applications for cellular unserved areas).

²⁸ Notice of Proposed Rule Making in PP Docket No. 93-253, 8 FCC Rcd 7635 (1993), 58 Fed. Reg. 5389 (Oct. 15, 1993) (Competitive Bidding Notice).

²⁹ Second Report and Order in PP Docket No. 93-253, 9 FCC Rcd 2348 (1994), 59 Fed. Reg. 22980 (May 4, 1994) (Second Report and Order), recon. granted in part, Second Memorandum Opinion and Order, 9 FCC Rcd 7245 (1994), 59 Fed. Reg. 44272 (Aug. 26, 1994) (Second Memorandum Opinion and Order).

³⁰ Third Report and Order in PP Docket No. 93-253, 9 FCC Rcd 2941 (1994), 59 Fed. Reg. 26741 (May 24, 1994) (Third Report and Order), recon. granted in part, Third Memorandum Opinion and Order and Further Notice of Proposed Rule Making, 10 FCC Rcd 175 (1995), 59 Fed. Reg. 44059 (Aug. 26, 1994) (Third Memorandum Opinion and Order).

³¹ Fourth Report and Order in PP Docket No. 93-253, 9 FCC Rcd 2330 (1994), 59 Fed. Reg. 24947 (May 13, 1994) (Fourth Report and Order), petition for recon. pending.

³² Fifth Report and Order in PP Docket No. 93-253, 9 FCC Rcd 5532 (1994), 59 Fed. Reg. 37566 (July 22, 1994) (Fifth Report and Order), recon. granted in part, Fifth Memorandum Opinion and Order, 10 FCC Rcd 403 (1995), 59 Fed. Reg. 63210 (Dec. 7, 1994) (Fifth Memorandum Opinion and Order).