

imposed for installment financing at the time the authorization was awarded, before transfer or assignment will be permitted. The amount of the required reimbursement will be reduced over time. A transfer or assignment in the first two years after issuance of the authorization will result in a reimbursement of one hundred percent of the value of the bidding credit; during year three, of seventy-five percent of the bidding credit; in year four, of fifty percent; in year five, of twenty-five percent; and thereafter, no reimbursement.

153. Eligibility for Installment Payments, Reduced Upfront Payment and Bidding Credits. In the Second Memorandum Opinion and Order, the Commission amended its generic auction rules to replace the small business definition used by the Small Business Administration (SBA) with a provision enabling the Commission to establish a small business definition in the context of each particular service, taking into consideration the characteristics and capital requirements of the particular service. See 47 CFR 1.2110(b)(1). We conclude that the definition adopted for the narrowband and broadband PCS is also appropriate for MDS. Under this approach, a small business is an entity that, together with its affiliates, has annual average gross revenues for the three preceding years not in excess of \$40 million. We will also allow consortia of small businesses, each member of which individually meets the \$40 million gross revenue standard, to qualify for installment payments, reduced upfront payments and bidding credits. See 47 CFR 1.2110(j). Consideration of the capital requirements of MDS has persuaded us to adopt this definition of small business. Wireless cable, although significantly less capital intensive than traditional coaxial cable, is not inexpensive. Tower and head end expenses may range from under \$1 million for a small rural system to \$2 to \$3 million per system in major markets, and the cost of adding each new subscriber has been estimated to be \$400 to \$600. Thus, even though the cost of acquiring BTA authorizations at auction are estimated to be relatively modest in comparison to other services, considerable capital is nonetheless required to construct a competitive wireless cable system. Moreover, the wireless cable industry has historically had difficulty in obtaining financing, and the future success of wireless cable

is crucially dependent upon its ability to obtain additional financing.⁵⁸

154. Given the capital requirements of the wireless cable industry and its past difficulties in attracting capital, we believe that the \$40 million gross revenue standard is appropriate for MDS. If the Commission were to adopt a significantly lower standard for the definition of small business, we would exclude companies with the financial wherewithal to operate wireless cable systems competitive with cable television from eligibility for installment payments, reduced upfront payments and bidding credits. See Second Memorandum Opinion and Order at 7268. We also believe that the standard SBA definition of small business—an entity with no more than \$6 million net worth and no more than \$2 million in annual profits—is similarly overly restrictive,⁵⁹ and we accordingly decline to adopt such definition of small business for MDS. We therefore conclude that the \$40 million gross revenue standard utilized by other services is appropriate, as it would not exclude enterprises in need of special incentives to compete successfully in the wireless cable industry, but would not provide such incentives to larger telecommunications enterprises with well-established revenue streams and easier access to capital.

155. Records Maintenance and Audits. All holders of BTA authorizations acquired by auction that claim designated entity status will be required to maintain, at their principal place of business or with their designated agent, and updated documentary file of ownership and revenue information necessary to establish their status. Holders of BTA authorizations or their successors in interest must maintain such files for a ten year period running from the date that their BTA authorizations are issued. The files must be made available to the Commission upon request.

156. BTA authorization holders claiming eligibility under designated entity provisions will be subject to audits by the Commission, using in-house or contract resources. Selection for an audit may be random, on-information, or on the basis of other factors. Consent to such audits is part of

the certification included in the short-form application. Such consent will include consent to the audit of the holders' books, documents and other material (including accounting procedures and practices), regardless of form or type, sufficient to confirm that such holders' representations are, and remain, accurate. Such consent will also include inspection at all reasonable times of the facilities, or parts thereof, engaged in providing and transacting business or keeping records regarding licensed MDS offerings, and will also include consent to the interviewing of principals, employees, customers, and suppliers of the BTA authorization holders.

157. We believe that the above records maintenance and audit provisions are necessary to prevent abuse of the special measures offered to those MDS auction winners claiming designated entity status. These provisions requiring the retention of records should not prove overly burdensome, and they will help to ensure that only entities eligible under the auction rules will be able to take advantage of the designated entity measures.

158. Accordingly, it is ordered that, pursuant to the authority of Sections 4(i) and (j), 301, 303(f), 303(g), 303(h), 303(j), 303(r), 307(c), 308(b), 309(j) and 403 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), 301, 303(f), 303(g), 303(h), 303(j), 303(r), 307(c), 308(b), 309(j), and 403, this Report and Order is adopted, and Part 21 of the Commission's Rules are amended as set forth herein.

159. It is further ordered that the rule amendments set forth herein will become effective September 15, 1995.

160. It is further ordered that, upon approval by the Office of Management and Budget, FCC Form 304 will supersede FCC Form 494.

List of Subjects in 47 CFR Part 21

Communications common carriers, Reporting and recordkeeping requirements, Television.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

Amendatory Text

Part 21 of Chapter I of Title 47 of the Code of Federal Regulations is amended as follows:

PART 21—DOMESTIC PUBLIC FIXED RADIO SERVICES

1. The authority citation for Part 21 continues to read as follows:

Authority: Secs. 1, 2, 4, 201–205, 208, 215, 218, 303, 307, 313, 314, 403, 404, 410, 602;

⁵⁸ See Gerard Klauer Mattison & Co., Inc., *The Wireless Cable Industry: Summary of 1994 and Outlook for 1995* (Dec. 22, 1994) at 2; Dillon Read & Co. Inc., *The Wireless Cable Industry* (Aug. 22, 1994) at 10; Gerard Klauer Mattison & Co., Inc., *The Wireless Cable Industry* (Jan. 21, 1993) at 4.

⁵⁹ See Second Memorandum Opinion and Order at 7268; Third Memorandum Opinion and Order at 195; Fifth Report and Order at 5606–5608.