

Order on Reconsideration, 56 FR 57596 (Nov. 13, 1991), which reevaluated a number of issues decided in the Report and Order, 55 FR 46006 (Oct. 31, 1990); Erratum, 55 FR 46513 (Nov. 5, 1990), which had revised rules governing MDS and ITFS stations. The rule revisions were made to simplify MDS rules, promote competition for cable television systems by wireless cable systems,<sup>1</sup> and facilitate the imminent transition from analog to digital compression technology of these microwave stations.

2. After examining the issues raised in a petition for reconsideration, it was decided to modify the shape and size of each MDS station's protected service area, as defined at 47 CFR 21.902(d). Formerly, this was a 710 square mile area. (For an MDS station with an omnidirectional antenna, the 710 square miles is a circle with a radius of 15 miles.) Now, each MDS station's protected service area will be a circle with a radius of 35 miles.

3. However, a very narrow exception was adopted to this 35-mile circle protected service area definition. The exception applies only to: (1) modification applications filed *after* the effective date of the expansion to a 35-mile circle protected service area; (2) to MDS stations which were authorized or for which there was an application pending *on or before* the effective date of this expanded protected service area rule; and (3) to the interference analysis of the protected service area of an MDS station which was authorized or for which there was an application pending *on or before* the effective date of the revision to Section 21.902(d). The exception to the 35-mile circle protected service area allows such a modification application's interference analysis to exclude, from the desired station's 35-mile circular protected service area, the area defined by the intersection of the predicted 45 dB desired-to-undesired

signal ratio contour line associated with the modification applicant's previously authorized station and the 35-mile circle boundary of the desired station. However, the modification application: (1) cannot increase the size of the geographic area suffering harmful interference, and (2) cannot cause harmful interference to any new portion of the desired station's protected service area. The exception also does not apply to any point within the desired station's current 710 square mile protected service area. No proposal will be allowed which would cause existing stations to adapt to additional interference. Moreover, waiver request made in MDS modification applications filed for ITFS market settlements will be considered.

4. Unless these two exceptions apply, any modification applications or applications for new MDS stations filed *after* the effective date for the revision to Section 21.902(d), or amendments thereto, must use the expanded 35-mile circle definition of a protected service area, including the winners of competitive bidding procedures. Also, each modification application for an authorized MDS station filed *after* the effective date of the expanded protected service area rule, which requests a waiver of the expanded protected service area definition of Section 21.902(d), must contain: (1) a waiver request and waiver justification pursuant to 47 C.F.R. § 21.19, and (2) a map, 8½ by 11 inches, depicting the boundary of the 45 dB desired-to-undesired signal ratio contour, which clearly states the mileage at each radial, measured at one degree intervals, for 360 degrees, of the protected service area boundary from the desired station's transmitter site coordinates.

5. The expansion of the MDS station's protected service area may affect the prohibitions of Section 21.912 against ownership or leasing interests, direct or indirect, by cable television companies, or affiliates, in MDS stations when there is an overlap between the MDS station's protected service area and the cable company's service area. With the expansion of the MDS station protected service area, it is possible that some cable television companies, or affiliates, now might be barred, that formerly compiled with Section 21.912. Although the further restriction on cable television companies serves one of the primary purposes of the rule and the statutory restrictions of 47 USC 553(a)(2), to enhance cable competition by a wireless cable company as an alternative choice for consumers, a blanket waiver was granted until June 1,

1996 to cable companies with newly-prohibited interests in an MDS station.

6. In addition, the *Second Reconsideration Order* revises Section 21.902(i) by setting two deadlines earlier. Together, the earlier deadlines reduce from 120 days to 30 days a delay in processing MDS applications which propose locations within 50 miles of cochannel or adjacent-channel authorized ITFS stations. As the result of petitioner's request, the deadline for service by MDS applicants on specified ITFS stations was changed to the date of filing of the MDS application. In order to provide better identification and improved notice to the affected ITFS licensee or construction permittee, the MDS applicant must now serve a complete copy of its application, instead of the few pages from the middle of the application which contain the ITFS interference study. And, because the Commission adopted on June 15, 1995 in the *Report and Order* in MM Docket No. 94-131 rules for MDS competitive bidding, deadlines for ITFS service were set for winners of competitive bidding.

7. Pursuant to petitioner's request, authorized ITFS stations are required to file petitions to deny for MDS applications by the 30th day after public notice, instead of the 120th day after public notice. The earlier deadline was adopted so that MDS applications can become ripe for grant more quickly and MDS stations can begin operations as soon as possible in order to provide competition for cable television systems.

8. Two issues which had been clarified in the previous Order on Reconsideration were again the subject of clarifications in this Second Order on Reconsideration. The Commission always intended to evaluate involuntary MDS frequency offset proposals on a case by cases basis, and no changes in frequency offset rules or policies were made in the Second Order on Reconsideration. And, the order further clarifies that the adoption of the same calendar day cut-off rule, Section 21.912, in the Report and Order complies with the requirements of the Administrative Procedure Act. No changes were made in Section 21.912 in the Second Order on Reconsideration.

#### Regulatory Flexibility Act Analysis

1. Pursuant to the Regulatory Flexibility Act of 1980, 5 USC 605, it is certified that the adopted rules will not have a significant impact on a substantial number of small entities.

2. The Secretary shall send a copy of this Second Order on Reconsideration, including the Final Regulatory Flexibility Analysis, to the Chief

<sup>1</sup> A wireless cable system uses a combination of MDS 1, 2, E, F or H channels, or ITFS excess capacity to distribute video entertainment programming to subscribers. (MDS Channel 2A with only 4 MHz lacks sufficient bandwidth to transmit a standard television signal which requires 6 MHz.) It is possible for commercial companies to apply for a limited number of ITFS channels under prescribed circumstances. Second Report and Order in Docket No. 90-54, 6 FCC Rcd 6792, 6801-06 (1991). We do not restate the background of the term "wireless cable" here; interested parties may consult the Wireless Cable Order, 5 FCC Rcd 6410 (1990). Use of the term "wireless cable" does not imply that MDS, ITFS or wireless cable constitute "cable" service for any statutory or regulatory purpose. See Definition of a Cable Television System, 5 FCC Rcd 7638, 7639-41 (1990) (the definition of a cable television system does not include transmissions such as MDS), vacated on other grounds sub nom. *Beach Communications, Inc. v. FCC*, 965 F.2d 1103 (D.C. Cir. 1992), rev'd, 113 S.Ct. 2096 (1993).