

Counsel for Advocacy of the Small Business Administration, in accordance with paragraph 603(a) of the Regulatory Flexibility Act (Pub. L. No. 96-354, 94 Stat. 1164, 5 U.S.C. Section 601 *et seq.* (1981)).

Ordering Clauses

1. For the reasons set forth above, Part 21 of the Commission's Rules are hereby amended as discussed herein and as shown below. It is further ordered that the rule changes set forth below will become effective on October 1, 1995, except the revision of Section 21.902(d) which will become effective September 18, 1995.

2. Accordingly, it is ordered that pursuant to the authority contained in Sections 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 USC 154(i) and 303(r), and Section 1.429(i) of the Commission's Rules, 47 CFR Section 1.429(i), the Partial Petition for Reconsideration filed in this proceeding is granted to the extent indicated herein, and in all other respects is denied.

List of Subjects in 47 CFR Part 21

Communications common carriers, Domestic public fixed radio services, Multipoint distribution service.

Federal Communications Commission.

William F. Caton,
Acting Secretary.

Amendatory Text

47 CFR Part 21 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; 48 Stat. 1064, 1066, 1070–1073, 1076, 1077, 1080, 1082, 1083, 1087, 1094, 1098, 1102, as amended; 47 U.S.C. 151, 154, 201–205, 208, 215, 218, 303, 307, 313, 314, 403, 404, 602; 47 U.S.C. 552, 554.

2. 47 CFR 21.902 is amended by revising paragraphs (d)(1) and (i) to read as follows:

§ 21.902 Frequency interference.

* * * * *

(d) (1) Subject to the limitations contained in paragraph (e) of this section, each MDS station licensee shall be protected from harmful electrical interference, as determined by the theoretical calculations, within a protected service area of which the boundary will be 56.3255 kilometers (35 miles) from the transmitter site.

* * * * *

(i) (1) For each initial application for a new station, or amendment thereto, or modification application, or amendment thereto, proposing Multipoint Distribution Service (MDS) facilities on E, F or H channels, filed on October 1, 1995 or thereafter, on the day the application or amendment is filed, the applicant must prepare but is not required to submit with its application or amendment, an analysis demonstrating that operation of the MDS applicant's transmitter will not cause harmful interference to each registered receive site of any existing, cochannel or adjacent-channel, D, E, F, or G channel Instructional Television Fixed Service (ITFS) station, licensed or with a construction permit authorized on the day such MDS application is filed, with an ITFS transmitter site within 50 miles of the coordinates of the MDS station's proposed transmitter site.

(i) In the alternative, an applicant for an MDS station may submit a statement from the ITFS licensee or construction permittee stating that the ITFS licensee or construction permittee does not object to operation of the MDS station.

(ii) In the alternative, an applicant for an MDS station may submit an analysis demonstrating that there are no ITFS licensees or construction permittees as described in paragraph (i)(1) of this section within 50 miles of the coordinates of the proposed transmitter site of the MDS station.

(2) For each application described in paragraph (i)(1) of this section, the applicant must serve, by certified mail, return receipt requested, on or before the day the application or amendment described in paragraph (i)(1) of this section is initially filed with the Commission, a copy of the complete MDS application or amendment, including each exhibit and interference study, described in paragraph (i)(1) of this section, on each ITFS licensee or construction permittee described in paragraph (i)(1) of this section.

(3) For each application described in paragraph (i)(1) of this section, the applicant must certify and file, with the application or amendment, its certification of its compliance with the requirements of paragraph (i)(2) of this section.

(4) For each application described in paragraph (i)(1) of this section, the applicant must file, on or before the 30th day after the application or amendment described in paragraph (i)(1) of this section is initially filed with the Commission, a written notice which contains the following:

- (i) caption—ITFS Service Notice;
- (ii) applicant's name, address, proposed service area and channel

group, and application file number, if known;

(iii) a list of each ITFS licensee and construction permittee described in paragraph (i)(1) of this section;

(iv) the address of each ITFS licensee and construction permittee described in paragraph (i)(1) of this section used for service; and

(v) a list of the date each ITFS licensee and construction permittee described in paragraph (i)(1) of this section received a copy of the complete application or amendment described in paragraph (i)(1) of this section, or a notation of lack of receipt by the ITFS licensee or construction permittee of a copy of the complete application or amendment, on or before such 30th day, together with a description of its efforts for receipt by each such licensee or construction permittee lacking receipt of the application.

(5) The public notices described in paragraph (i)(6) of this section are as follows:

(i) For initial applications for new MDS stations which participate in a lottery, this public notice is the notice announcing the selection of the applicant's application by lottery for qualification review.

(ii) For initial applications for new MDS stations which participate in a competitive bidding process, this public notice is the notice announcing the application of the winning bidder in the competitive bidding process has been accepted for filing.

(iii) For initial applications for new MDS stations which do not participate in a lottery or a competitive bidding process, this public notice is the notice announcing that the applicant's application is not mutually-exclusive with other MDS applications.

(iv) For MDS modification applications, this public notice is the notice announcing that the modification application has been accepted for filing.

(6) (i) Notwithstanding the provisions of Sections 1.824(c) and 21.30(a)(4), for each application described in paragraph (i)(1) of this section, each ITFS licensee and each ITFS construction permittee described in paragraph (i)(1) of this section may file with the Commission on or before the 30th day after the public notice described in paragraph (i)(5) of this section, a petition to deny the MDS application.

(ii) Except for the requirements as to the filing time deadline, this petition to deny must otherwise comply with the provisions of Section 21.30.

(iii) In addition, this ITFS petition to deny must:

- (A) identify the subject MDS application, including the applicant's