protected service area does not exceed - 73.0 dBW/m^2 at locations for which there is an unobstructed siganl path to the boundary.

(d) In addition to the other application requirements of this part, each application for a signal booster station must state in the application that is has prepared a study which demonstrates that the proposed booster station will cause no harmful interference to co-channel and adjacent-channel existing or previously-proposed ITFS and MDS stations with transmitters within 80.5 kilometers (50 miles) of the proposed booster station's transmitter site.

(e) In addition to the other application requirements of this part, each application must include a written consent statement of the licensee of each MDS, ITFS, and OFS station whose signal is retransmitted.

* * * * *

(g) * * *

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(8) The power flux density at the edge of the MDS station's protected service area does not exceed -73.0 dBW/m^2, if the signal of an MDS station is repeated;

* * * * *

II. The following sections are added as amendments to Part 21 of Chapter 1 of Title 47 of the Code of Federal Regulations:

§ 21.921 Basis and purpose for electronic filing and competitive bidding process.

(a) *Basis.* The rules for competitive biding procedures for the Multipoint Distribution Service (MDS) in this part are promulgated under the provisions of the Communications Act of 1934, as amended, which vests authority in the Federal Communications Commission to regulate radio transmission and to issue licenses for radio stations, and § 309(j) of the Act, which vests authority in the Commission to conduct competitive bidding.

(b) *Purpose.* This part states the conditions under which portions of the radio spectrum are made available and licensed for Multipoint Distribution Service via the competitive bidding procedures.

(c) *Scope.* The rules in this part apply only to authorizations and station licenses granted under the competitive bidding procedures of this section. This subpart contains some of the procedures and requirements for the issuance of authorizations to construct and operate multipoint distribution services. One also should consult Part 1, Subpart Q of the Commission's rules, §§ 21.1 through 21.406 and 21.900 through 21.920 of this subpart, and

other Commission rules of importance with respect to the licensing and operation of MDS stations.

§ 21.922 Authorized frequencies.

The frequencies in the MDS service available through the competitive bidding process are in the frequency allocations table of § 21.901 of this subpart.

§ 21.923 Eligibility.

Any individual or entity, other than those precluded by §§ 21.4 and 21.912 of this subpart, is eligible to receive a Basic Trading Area (BTA) authorization and a station license for each individual MDS station within the BTA. There is no restriction on the number of BTA authorizations or MDS station licenses, including multiple cochannel station licenses, sought by or awarded to a qualified individual or entity.

§ 21.924 Service areas.

(a) MDS service areas are regional Basic Trading Areas (BTAs) which are based on the Rand McNally *1992 Commercial Atlas & Marketing Guide*, 123rd Edition, at pages 38-39. The BTA Map is available for public inspection at the public reference room, Multipoint Distribution Service, Video Services Division, Mass Media Bureau, Room 207, 2033 M Street, N.W., Washington, DC.

(b) The following additions will be available for licensing separately as BTA-like areas: American Samoa; Guam; Northern Mariana Islands; San Juan, Puerto Rico; Mayagüez/Aguadilla-Ponce, Puerto Rico; and the United States Virgin Islands.

(c) The area within the boundaries of a BTA to which a BTA authorization holder may provide Mutlipoint Distribution Service excludes the protected service areas of any incumbent MDS stations and the registered receive sites of previously authorized or proposed ITFS stations.

§ 21.925 Applications for BTA authorizations and MDS station licenses.

(a)(1) An applicant must file a short-form application and, when necessary, the short-form application supplement, identifying each BTA service authorization sought.

(2) For purposes of conducting competitive bidding procedures, short-form applications are considered to be mutually exclusive with each other if they were filed for, and specified the same, BTA service area.

(b)Separate long-form applications must be filed for each individual MDS station license

sought within its the protected service area of a BTA or PSA, including:

(1) an application for each E-channel group, F-channel group, and single H, 1, and 2A channel station license sought;

(2) an application for authority to operate at an MDS station in the area vacated by an MDS station incumbent that has forfeited its station license; and

(3) an application for each ITFS-channel group station license sought in accordance with §§ 74.990 and 74.991.

(c) The Commission shall grant BTA authorizations to auction winners as set forth in § 21.958.

(d) No long-form application filed by the BTA authorization holder will be accepted prior to completion of the competitive bidding process and no long-form application will be granted until expiration of the 30-day petition to deny period following the public notice listing of the application as being accepted for filing.

(e) Applicants may use the electronic filing procedures to file both the Multipoint Distribution Service short-form and long-form applications with the Commission.

§ 21.926 Amendments to long-form applications.

(a) A Multipoint Distribution Service long-form application may be amended as a matter of right up to the date of the public notice announcing the application has been accepted for filing provided that:

(1) the proposed amendments do not amount to more that a *pro forma* change of ownership and control;

(2) the Commission has not otherwise forbidden the amendment of pending applications.

(b) Requests to amend a long-form application placed on public notice as being accepted for filing may be granted only if a written petition demonstrating good cause is submitted and properly served on the parties of record.

§ 21.927 Sole bidding applicants.

Where the deadline for filing MDS short-form applications has expired and a particular BTA service area has been specified in a single short-form application only, the applicant shall be named the auction winner for that BTA authorization.

§ 21.928 Acceptability of short- and long-form applications.

The acceptability of short- and long-form applications will be determined according to the

requirements of §§ 21.13, 21.15, 21.20, 21.21 and 21.952.

§ 21.929 Authorization period for station licenses.

Notwithstanding § 21.45, each new MDS station licensed within a BTA or PSA will be granted for a term of ten years, terminating ten years from the date the Commission declared bidding closed in the MDS auction.

§ 21.930 Five-year build-out requirements.

(a)(1)A BTA authorization holder has a five-year build-out period, beginning on the date of the grant of the BTA authorization and terminating on the 5th year anniversary of the grant of the authorization, within which it may develop and expand MDS station operations within its service area.

(2) This period is not extended by the grant of subsequent authorizations (*i.e.,* grant of a station license or modification).

(3) Timely certifications of completion of construction for each MDS station within a BTA or partitioned service area must be filed upon completion of construction of a station.

(b) Each BTA authorization holder has the exclusive right to build, develop, expand and operate MDS stations within its BTA service area during the five-year build-out period. The Commission will not accept competing applications for MDS station licenses within the BTA service area during this period.

(c)(1) Within five years of the grant of a BTA authorization, the authorization holder must construct MDS stations to provide signals pursuant to § 21.907 that are capable of reaching at least two-thirds of the population of the applicable service area, excluding the populations within protected service areas of incumbent stations.

(2) Sixty days prior to the end of the five-year build out period, the BTA authorization holder must file with the Commission proof that demonstrates the holder has met the requirements of § 21.930(c)(1). The most recent census figures available from the U.S. Department of Commerce, Bureau of Census prior to the expiration of the authorization holder's five-year build-out period will be used to determine compliance with population-based requirements. In no event shall census figures gathered prior to 1990 be used.

(d)(1) If the Commission finds that the BTA authorization holder has demonstrated that it has met the requirements of § 21.930(c)(1), the Commission will issue a declaration that the holder has met such requirements.

(2) If the Commission finds that the BTA authorization holder has not provided a signal as required in § 21.930(c)(1), the Commission shall partition from the BTA any unserved area, using county lines as a guide, and shall re-authorize service to the unserved area pursuant to the MDS competitive bidding procedures of this subpart. Applications for such unserved areas are not acceptable for filing until a filing date is announced through a public notice.

(i) The competitive bidding procedures set forth in §§ 21.950 to 21.961 shall be

followed by applicants seeking authority to provide MDS service to the unserved partitioned area.

(ii) The BTA authorization holder originally authorized to provide service is ineligible to participate in the competitive bidding process for the unserved areas partitioned from its BTA.

§ 21.931 Partitioned service areas (PSAs).

(a)(1) The holder of a BTA authorization may enter into contracts with eligible parties to partition any portion of its service area according to county boundaries, or according to other geopolitical subdivision boundaries, or multiple contiguous counties or geopolitical subdivisions within the BTA service area.

(2)(i) Partitioning contracts must be filed with the Commission within 30 days of the date that such agreements are reached.

(ii) The contracts must include descriptions of the areas being partitioned and include any documentation necessary to convey to the Commission the precise boundaries of the partitioned area.

(3) Parties to partitioning contracts must file concurrently with such contracts one of the following, where appropriate:

(i) an MDS long-form application for authority to operate a new MDS station within the PSA;

(ii) applications for assignment or transfer of existing stations within the PSA; or

(iii) a statement of intention as defined in § 21.956(a) along with a completed FCC Form 430.

(b) The eligibility requirements applicable to BTA authorization holders also apply to those individuals and entities seeking PSA authorizations.

(c) Any individual or entity acquiring the rights to a partitioned area of a BTA also acquires the rights to any previously authorized individual stations located within the partitioned area that were held by the previous authorization holder, provided that grantable applications for assignment and transfer of control, FCC Forms 702 and 704, are filed for existing stations and that acceptable amendments to pending long-form applications are filed. Pending long-form applications filed by the previous authorization holder for transmitter sites within the PSA may also be dismissed without prejudice at the applicant's request.

(d) Authorizations for PSAs will be issued in accordance with § 21.958; however, when individual stations within an PSA are assigned along with the partitioned area, the authorization will be granted concurrently with the grant of the applications for assignment and transfer of the existing stations.

(e) Subsequent to issuance of the authorization for a PSA, the partitioned area will be treated as a separate protected service area.

(f)(1) When any area within a BTA becomes a PSA, the remaining counties and other

geopolitical subdivisions within that BTA will also be subsequently treated and classified as a PSA(s).

(2) At the time a BTA is partitioned, the Commission shall cancel the BTA authorization initially issued and issue a PSA authorization to the former BTA authorization holder.

(g) The duties and responsibilities imposed upon BTA authorization holders in this part and throughout the Commission's rules, such as § 21.930(c)(1), apply to the holders of PSA authorizations.

(h) The build-out period for PSAs voluntarily partitioned shall be the remainder of the five-year build-out period applicable to the BTA or PSA from which the PSA was drawn. For PSA authorizations issued pursuant to § 21.930(d)(2) and the competitive bidding process, the build-out period is five years, beginning on the date of the grant of the PSA authorization. The requirements of § 21.930(c)(1) also apply to the holders of authorizations for PSAs.

§ 21.932 Forfeiture of incumbent MDS station licenses.

(a) If the license for a incumbent MDS station is forfeited, absent the filing and grant of a petition for reinstatement pursuant to § 21.44(b), the 56.33 km (35 mile) protected service area of the incumbent station shall dissolve and the protected service area shall become part of the BTA or PSA surrounding it.

(b) If upon forfeiture the protected service area of a forfeited license extends across the boundaries of more than one BTA or PSA, the portions of the protected service area of the incumbent station shall merge with the overlapping BTAs or PSAs.

(c) The holder of the authorization for the BTA or PSA with which the service area of the forfeited incumbent station has merged has the exclusive right to file a long-form application to operate a station within the merged area and may modify the locations of its stations to serve the forfeited area.

§ 21.933 Protected service areas.

(a) The stations licensed to the holder of a BTA authorization shall have a protected service area that is coterminous with the boundaries of that BTA, subject to the exclusion of the 56.33 km (35 mile) protected service area of incumbent MDS stations and the registered receive sites of previously proposed and authorized ITFS facilities within that BTA.

(b) The stations licensed to the holder of a PSA authorization shall have a protected service area that is coterminous with the boundaries of the counties or other geopolitical subdivisions comprising the PSA, subject to the exclusion of the 56.33 km (35 mile) protected service area of incumbent MDS stations and the registered receive sites of previously proposed and authorized ITFS facilities within that PSA.

§ 21.934 Assignment or transfer of control of BTA authorizations.

(a)(1) A BTA or PSA authorization holder seeking approval for a transfer of control or assignment of its authorization within three years of receiving such authorization through a competitive bidding procedure must, together with its application for transfer of control or assignment, file with the Commission a statement indicating that its authorization was obtained through competitive bidding.

(2) Such applicant must also file with the Commission the associated contracts for sale, option agreements, management agreements, or other documents disclosing the total consideration that the applicant would receive in return for the transfer or assignment of its authorization. This information should include not only a monetary price, but also any future, contingent, in-kind, or other consideration (*e.g.*, management or consulting contracts either with or without an option to purchase; below market financing).

(b) Transfers of control or assignments of BTA or PSA authorizations are subject to the limitations of §§ 21.4, 21.900 and 21.912 of this subpart.

(c) The anti-trafficking provision of § 21.39 does not apply to the assignment or transfer of control of a BTA or PSA authorization, which was granted pursuant to the Commission's competitive bidding procedures.

§ 21.935 Assignment or transfer of control of station licenses within a BTA.

Licenses for individual stations within a BTA or PSA area issued to authorization holders may not be transferred or assigned unless they are acquired as part of a PSA.

§ 21.936 Cancellation of authorization.

(a) The Commission may revoke or cancel a BTA or PSA authorization for gross misconduct, misrepresentation or bad faith on the part of the authorization holder.

(b) Cancellation of a BTA or PSA authorization shall result in termination of any rights the authorization holder holds in individual proposed or authorized stations within the BTA or PSA.

§ 21.937 Negotiated interference protection.

(a) The level of acceptable electromagnetic interference that occurs at or within the boundaries of BTAs, PSAs, or an incumbent MDS station's 56.33 km (35 mile) protected service area can be negotiated and established by an agreement between the appropriate parties, provided that:

(1) the parties to such an agreement file with the Commission a written statement of no

objection, acknowledging that the parties have agreed to accept a level of interference that does not meet the protection standards set forth in §§ 21.902 or 21.938 of the Commission's rules;

(2) the statement bears the signatures of all parties to the agreement, or the signatures of their representative agents; and

(3) the statement is filed with the Commission within 30 days of its ratification or filed in conjunction with an application with which the agreement is associated, whichever is earliest.

§ 21.938 BTA and PSA technical and interference provisions.

(a) BTA or PSA authorization holders are expected to cooperate with one another by designing their stations in a manner that protects service in adjoining BTAs and PSAs, including consideration of interference abatement techniques such as cross polarization, frequency offset, directional antennas, antenna beam tilt, EIRP decrease, reduction of antenna height, and terrain shielding.

(b) Unless the affected parties have executed a written interference agreement in accordance with § 21.937, stations licensed to a BTA or PSA authorization holder must not cause harmful electromagnetic interference to the following:

(1) the protected service areas of other authorization holders in adjoining BTAs or PSAs.

(2) the 56.33 km (35 mile) protected service areas of authorized or previously proposed MDS stations (incumbents).

(3) registered receive sites and protected service areas of authorized or previously proposed stations in the Instructional Television Fixed Service pursuant to the manner in which interference is defined in § 74.903(a).

(c) Unless the affected parties have executed a written interference agreement in accordance with § 21.937, it shall be the responsibility of a BTA or PSA authorization holder to correct at its expense any condition of harmful electromagnetic interference caused to authorized MDS service at locations within other BTAs or PSAs or within the 56.33 km (35 mile) protected service areas of authorized or previously proposed MDS stations (incumbents).

(d) Unless specifically excepted, BTA or PSA authorization holders are governed by the interference protection and other technical provisions applicable to the Multipoint Distribution Service.

(e) The calculated free space power flux density from a station may not exceed - 73 dBW/m^2 at locations on BTA or PSA boundaries for which there is an unobstructed signal path from the transmitting antenna to the boundary, unless the applicant has obtained the written consent of the authorization holder for the adjoining BTA or PSA.

(f)(1) Authorization holders for BTAs or PSAs must notify authorization holders of adjoining areas of their application filings for new or modified stations; provided the proposed facility would produce an unobstructed signal path anywhere within the adjoining BTA or PSA.

(2) This service of written notification must include a copy of the FCC application and occur on or before the date the application is filed with the Commission.

(3) With regard to incumbent MDS stations, authorization holders for BTAs or PSAs must comply with the requirements of § 21.902.

(g) Where a PSA adjoins a BTA and both authorizations are held by the same individual or entity, the PSA shall be considered an extension of the protected service area of the BTA regarding the interference protection, limiting signal strength, and notification provisions of this section.

§ 21.939 Harmful interference abatement.

In the event harmful interference occurs or appears to occur, after notice and an opportunity for a hearing, Commission staff may require any Multipoint Distribution Service conditional licensee or licensee to:

(a) modify the station to use cross polarization, frequency offset techniques, directional antenna, antenna beam tilt, or

(b) order an equivalent isotropically radiated power decrease, a reduction of transmitting antenna height, a change of antenna location, a change of antenna radiation pattern, or a reduction in aural signal power.

§ 21.940 to § 21.949

[Reserved.]

§ 21.950 MDS subject to competitive bidding.

Mutually exclusive MDS initial applications are subject to competitive bidding. The general procedures set forth in 47 C.F.R. Chapter I, Part 1, Subpart Q are applicable to competitive bidding proceedings used to select among mutually exclusive MDS applicants, unless otherwise provided in 47 C.F.R. Chapter I, Part 21, Subpart K.

§ 21.951 MDS competitive bidding procedures.

(a) The following competitive bidding procedures will generally be used in MDS auctions. Additional, specific procedures may be set forth by public notice. The Commission may also design and test alternative procedures. *See* 47 C.F.R. §§ 1.2103 and 1.2104.

(1) *Competitive bidding design.* Simultaneous multiple round bidding will be used in MDS

auctions, unless the Commission specifies by public notice the use of sequential oral (open outcry) bidding or sealed bidding (either sequential or simultaneous). Combinatorial bidding may also be used with any type of auction design.

(2) *Competitive bidding mechanisms*. The Commission may utilize the following mechanisms in MDS auctions:

(i) *Sequencing*. The Commission will establish and may vary the sequence in which the BTA service areas will be auctioned.

(ii) *Grouping*. In the event the Commission uses either a simultaneous multiple round competitive bidding design or combinatorial bidding, the Commission will determine which BTA service areas will be auctioned simultaneously or in combination.

(iii) *Reservation price*. The Commission may establish a reservation price, either disclosed or undisclosed, below which a BTA service area subject to auction will not be awarded.

(iv) *Minimum bid increments*. The Commission will, by announcement before or during an MDS auction, require minimum bid increments in dollar or percentage terms.

(v) *Stopping rules*. The Commission will establish stopping rules before or during multiple round MDS auctions in order to terminate an auction within a reasonable time.

(vi) *Activity Rules*. The Commission will establish activity rules which require a minimum amount of bidding activity. In the event that the Commission establishes an activity rule in connection with a simultaneous multiple round auction, the Commission will allow bidders to request and to receive automatically waivers of such rule, the number of which will be determined by the Commission.

(vii) *Suggested minimum bid*. The Commission may establish suggested minimum bids on each BTA service area subject to auction. Bids below the suggested minimum bid would count as activity under the activity rule only if no bids at or above the suggested minimum bid are received.

(b) *Identities of bidders*. The Commission will generally release information concerning the identities of bidders before each auction but may choose, on an auction-by-auction basis, to withhold the identity of the bidders associated with bidder identification numbers. The Commission will announce by public notice before the MDS auction whether the bidders' identities will be revealed.

(c) *Commission control of auction*. The Commission may delay, suspend, or cancel an MDS auction in the event of a natural disaster, technical obstacle, evidence of security breach, unlawful bidding activity, administrative necessity, or for any other reason that affects the fair and efficient conduct of the competitive bidding. The Commission also has the authority, at its sole discretion, to resume the competitive bidding starting from the beginning

of the current or some previous round or cancel the competitive bidding in its entirety.

§ 21.952 Bidding application procedures.

(a) *Short-form applications.* To participate in MDS auctions, all applicants must submit short-form applications, along with all required certifications and exhibits specified by such forms, pursuant to the provisions of § 1.2105(a) and any Commission public notices. *See* 47 C.F.R. § 1.2105(a).

(b) *Filing of short-form applications.* Prior to any MDS auction, the Commission will issue a public notice announcing the availability of BTA service areas and, in the event that mutually exclusive short-form applications (as defined by § 21.925(a)(2)) are filed, the date of the auction for those BTA service areas. This public notice also will specify the date on or before which applicants intending to participate in an MDS auction must file their short-form applications in order to be eligible for that auction, and it will contain information necessary for completion of the application as well as other important information such as the material which must accompany the forms, any filing fee that must accompany the application or any upfront payment that will need to be submitted, and the location where the application must be filed.

(c) *Modification and dismissal of short-form applications.*

(1) Any short-form application that is not signed in some manner or form, including by electronic means, and does not contain all requisite certifications is unacceptable for filing and cannot be corrected subsequent to any applicable filing deadline. Such short-form application will be dismissed with prejudice.

(2) The Commission will provide bidders a limited opportunity to cure certain defects specified herein and to resubmit an amended short-form application. For MDS, we classify all amendments to a short-form application as major, except those to correct minor errors or defects, such as typographical errors, or those to reflect ownership changes or formation of bidding consortia or joint bidding arrangements specifically permitted under § 21.953. A short-form application may be modified to make minor amendments. However, applicants who fail to correct defects in their short-form applications in a timely manner as specified by public notice will have their applications dismissed with no opportunity for resubmission.

(3) A short-form application will be considered to be a newly filed application if it is amended by a major amendment and may not be resubmitted after applicable filing deadlines.

§ 21.953 Prohibition of collusion.

(a) Except as provided in paragraphs (b), (c) and (d) of this section, after the filing of short-form applications, all applicants in an MDS auction are prohibited from cooperating,

collaborating, discussing or disclosing in any manner the substance of their bids or bidding strategies, or discussing or negotiating settlement agreements, with other applicants until after the winning bidder makes the required down payment, unless such applicants are members of a bidding consortium or other joint bidding arrangement identified on the applicant's short-form application. Communications among applicants concerning matters unrelated to the MDS auction will be permitted after the filing of short-form applications.

(b) Applicants may modify their short-form applications to reflect formation of consortia or changes in ownership at any time before or during an auction, provided such changes do not result in a change in control of the applicant, and provided that the parties forming consortia or entering into ownership agreements have not applied for the same BTA service areas.

(c) After the filing of short-form applications, applicants may make agreements to bid jointly for BTA service areas, provided the parties to the agreement have not applied for the same service areas.

(d) After the filing of short-form applications, a holder of a non-controlling attributable interest in an entity submitting a short-form application may, under the circumstances specified in § 1.2105(c)(4), acquire an ownership interest in, form a consortium with, or enter into a joint bidding arrangement with, other applicants for the same BTA service areas. *See* 47 C.F.R. § 1.2105(c)(4).

(e) To reflect the changes in ownership or in the membership of consortia or joint bidding arrangements specified in paragraphs (b), (c) and (d) of this section, applicants must amend their short-form applications by submitting a revised short-form application, filed within two business days of any such change; such modifications will not be considered major amendments of the applications within the meaning of § 21.952(c)(2). However, any amendment which results in the change of control of an applicant will be considered a major amendment of the short-form.

(f) For purposes of this section, the terms "applicant" and "bids or bidding strategies" are defined as set forth in 47 C.F.R. § 1.2105(c)(5).

§ 21.954 Submission of upfront payments.

(a) The Commission will require applicants to submit an upfront payment prior to the MDS auction. The amount of the upfront payment for each BTA service area being auctioned and the procedures for submitting it will be set forth in a public notice. Upfront payments may be made by wire transfer or by cashier's check drawn in U.S. dollars from a financial institution whose deposits are insured by the Federal Deposit Insurance Corporation and must be made payable to the Federal Communications Commission. No interest will be paid on upfront payments.

(b) For MDS auctions, the Commission will require each applicant to submit an upfront payment equal to the largest combination of activity units (as defined in the Commission's

activity rules established pursuant to § 21.951(a)(2)(vi)) associated with the BTAs on which the applicant anticipates being active in any single round of bidding. Applicants who are small businesses eligible for reduced upfront payments will be required to submit an upfront payment amount in accordance with § 21.960(c). If an upfront payment is not in compliance with the Commission's rules, or if insufficient funds are tendered to constitute a valid upfront payment, the applicant shall have a limited opportunity to correct its submission to bring it up to the minimum valid upfront payment prior to the auction. An applicant who fails to submit a sufficient upfront payment to qualify it to bid on any BTA service area being auctioned will be ineligible to bid, its application will be dismissed, and any upfront payment it has made will be returned.

(c) The upfront payment(s) of a bidder will be credited toward any down payment required for the BTA service areas on which the bidder is the winning bidder. Where the upfront payment amount exceeds the required down payment of a winning bidder, the Commission may refund the excess amount after determining that no bid withdrawal payments are owed by that bidder. In the event a payment is assessed pursuant to § 21.959(a) for bid withdrawal or default, upfront payments or down payments on deposit with the Commission will be used to satisfy the bid withdrawal or default payment before being applied toward any additional payment obligations that the winning bidder may have.

§ 21.955 Submission of down payments.

(a) After bidding has ended on all BTA service areas, the Commission will identify and notify the winning bidders and declare the bidding closed in the MDS auction. Within five (5) business days after being notified that it is a winning bidder on a particular BTA service area(s), a winning bidder must submit to the Commission's lockbox bank such additional funds as are necessary to bring its total deposits (upfront payment plus down payment) up to twenty (20) percent of its winning bid(s). This down payment may be made by wire transfer or by cashier's check drawn in U.S. dollars from a financial institution whose deposits are insured by the Federal Deposit Insurance Corporation and must be made payable to the Federal Communications Commission.

(b) Winning bidders who are small businesses eligible for installment payments under § 21.960(b) are only required to bring their total deposits up to ten (10) percent of their winning bids. Such small businesses must pay the remainder of the twenty (20) percent down payment within five (5) business days following release of the public notice stating that their BTA authorizations are ready to be issued.

(c) Down payments will be held by the Commission until the winning bidder has been issued its BTA authorization and has paid the remaining balance of its winning bid, in which case it will not be returned, or until the winning bidder is found unqualified to be a station licensee or has defaulted, in which case it will be returned, less applicable default payments. No interest will be paid on any down payment.

§ 21.956 Filing of long-form applications or statements of intention.

(a) Within 30 days of being notified of its status as a winning bidder, each winning bidder for a BTA service area will be required to submit either: (1) an initial long-form application for an MDS station license, along with any required exhibits; or (2) a statement of intention with regard to the BTA service area, along with any required exhibits, showing the encumbered nature of the BTA, identifying all previously authorized or proposed MDS and ITFS facilities, and describing in detail the winning bidder's plan for obtaining the previously authorized and/or proposed MDS stations within the BTA. A winning bidder that fails to submit either the initial long-form application or statement of intention as required under this section, and fails to establish good cause for any late-filed application or statement, shall be deemed to have defaulted and will be subject to the payments set forth in § 21.959(a).

(b) Each initial long-form application for an MDS station license within an auction winner's BTA service area, and each statement of intention with regard to an auction winner's BTA service area, must also include the following:

(1) FCC Form 430;

(2) an exhibit detailing the terms and conditions and parties involved in any bidding consortia, joint venture, partnership or other agreement or arrangement the winning bidder had entered into relating to the competitive bidding process prior to the time bidding was completed (*see* 47 C.F.R. § 1.2107(d));

(3) an exhibit complying with 47 C.F.R. §§ 1.2110(i) and 21.960(e), if the winning bidder submitting the long-form application or statement of intention claims status as a designated entity.

(c) Subsequent long-form applications for additional MDS station licenses within the BTA service areas of winning bidders may be submitted at any time during the five year build-out period and need not contain the exhibits specified in paragraph (b)(2)-(3) of this section.

§ 21.957 Petitions to deny against long-form applications; comments on statements of intention.

(a) Within thirty (30) days after the Commission gives public notice that a long-form application for an MDS station license submitted by a winning bidder within its BTA service area has been accepted for filing, petitions to deny that application may be filed. Any such petitions and oppositions thereto must comply with the requirements of §§ 47 C.F.R. 1.2108 and 21.30.

(b) Parties wishing to comment on or oppose the issuance of a BTA authorization issued in connection with the filing of a statement of intention by a winning bidder must do so prior to the Commission's issuance of the BTA authorization.

§ 21.958 Full payment and issuance of BTA authorizations.

Each winning bidder, except for small businesses eligible for installment payments under § 21.960(b), must pay the balance of its winning bid for its BTA service area(s) in a lump sum within five (5) business days following the release of the public notice stating that the BTA authorization(s) is ready to be issued. A winning bidder who submitted a long-form application for an MDS station license within its BTA service area pursuant to § 21.956(a) will receive its BTA authorization concurrent with the grant of its MDS conditional station license within its BTA service area. A winning bidder who submitted a statement of intention with regard to its BTA service area pursuant to § 21.956(a) will receive its BTA authorization following the Commission's review of its statement of intention. The Commission will issue a BTA authorization to a winning bidder within ten (10) business days following notification of receipt of full payment of the amount of the winning bid.

§ 21.959 Withdrawal, default and disqualification.

(a) When the Commission conducts an MDS simultaneous multiple round auction, the Commission will impose additional payment requirements on bidders who withdraw high bids during the course of an auction, who default on down or full payments due after an auction closes, or who are disqualified. The withdrawal and default payments set forth below will be deducted from any upfront payments or down payments that the withdrawing, defaulting or disqualified bidder has deposited with the Commission.

(1) *Bid withdrawal prior to close of auction.* A bidder who withdraws a high bid during the course of an auction will be subject to a payment equal to the difference between the amount bid and the amount of the winning bid the next time the license is offered by the Commission. No withdrawal payment will be assessed if the subsequent winning bid exceeds the withdrawn bid.

(2) *Default or disqualification after close of auction.* If a winning bidder defaults or is disqualified after the close of such an auction, the defaulting bidder will be subject to the payment in paragraph (1) above, plus an additional payment equal to three (3) percent of the subsequent winning bid. If the subsequent winning bid exceeds the defaulting bidder's bid amount, the three percent payment will be calculated based on the defaulting bidder's bid amount.

(b) If the Commission were to conduct a sequential oral (open outcry) auction or sealed bid auction for MDS, the Commission may modify the payments set forth in paragraph (a) above to be paid in the event of bid withdrawal, default or disqualification; provided, however, that such payments shall not exceed the payments specified in paragraph (a) above.

(1) In the case of sealed bidding:

(i) If a bid is withdrawn before the Commission releases the initial public notice announcing the winning bidder(s), no bid withdrawal payment will be assessed.

(ii) If a bid is withdrawn after the Commission releases the initial public notice announcing the winning bidder(s), the bid withdrawal payment will be equal to the difference between the high bid amount and the amount of the next highest bid. Losing bidders will only be subject to this bid withdrawal payment for a period of thirty (30) days after the Commission releases the initial public notice announcing the winning bidders.

(2) In the case of oral sequential (open outcry) bidding:

(i) If a bid is withdrawn before the Commission has declared the bidding to be closed for the BTA service area bid on, no bid withdrawal payment will be assessed.

(ii) If a bid is withdrawn after the Commission has declared the bidding to be closed for the BTA service area bid on, the bid withdrawal payment of paragraphs (a)(1) and (2) of this section will apply.

(c) If a winning bidder withdraws its bid after the Commission has declared competitive bidding closed or fails to remit the required down payment within five (5) business days after the Commission has declared competitive bidding closed, the bidder will be deemed to have defaulted, its application will be dismissed, and it will be liable for the default payment specified in paragraph (a)(2) above. In such event, the Commission may either re-auction the BTA service area to existing or new applicants or offer it to the other highest bidders (in descending order) at their final bids.

(d) A winning bidder who is found unqualified to be an MDS station licensee, fails to remit the balance of its winning bid in a timely manner, or defaults or is disqualified for any reason after having made the required down payment, will be deemed to have defaulted and will be liable for the payment set forth in paragraph (a)(2) above. In such event, the Commission will generally conduct another auction for the BTA service area, affording new parties an opportunity to file applications for such service area.

(e) Bidders who are found to have violated the antitrust laws or the Commission's rules in connection with their participation in the MDS competitive bidding process may be subject, in addition to any other applicable sanctions, to loss of their upfront payment, down payment or full bid amount, and may be prohibited from participating in future auctions.

§ 21.960 Designated entity provisions for MDS.

(a) *Designated entities.* As specified in this section, designated entities that are winning bidders for BTA service areas are eligible for special incentives in the auction process. *See* 47 C.F.R. § 1.2110.

(b) *Installment payments.* Small businesses and small business consortia may elect to pay the full amount of their winning bids for BTA service areas in installments over a ten (10) year period running from the date that their BTA authorizations are issued.

(1) Each eligible winning bidder paying for its BTA authorization(s) on an installment basis must deposit by wire transfer or cashier's check in the manner specified in § 21.955 sufficient additional funds as are necessary to bring its total deposits to ten (10) percent of its winning bid(s) within five (5) business days after the Commission has declared it the winning bidder and closed the bidding. Failure to remit the required payment will make the bidder liable for the payments set forth in § 21.959(a)(2).

(2) Within five (5) business days following release of the public notice stating that the BTA authorization of a winning bidder eligible for installment payments is ready to be issued, the winning bidder shall pay another ten (10) percent of its winning bid, thereby commencing the eligible bidder's installment payment plan. The Commission will issue the BTA authorization to the eligible winning bidder within ten (10) business days following notification of receipt of this additional ten (10) percent payment. Failure to remit the required payment will make the bidder liable for the payments set forth in § 21.959(a)(2).

(3) Upon issuance of a BTA authorization to a winning bidder eligible for installment payments, the Commission will notify such eligible BTA authorization holder of the terms of its installment payment plan. For MDS, such installment payment plans will:

(i) impose interest based on the rate of ten (10) year U.S. Treasury obligations at the time of issuance of the BTA authorization, plus two and one half (2.5) percent;

(ii) allow installment payments for a ten (10) year period running from the date that the BTA authorization is issued;

(iii) begin with interest-only payments for the first two (2) years; and

(iv) amortize principal and interest over the remaining years of the ten (10) year period running from the date that the BTA authorization is issued.

(4) A BTA authorization issued to an eligible winning bidder that elects installment payments shall be conditioned upon the full and timely performance of the BTA authorization holder's payment obligations under the installment plan.

(i) If an eligible holder making installment payments is more than ninety (90) days delinquent in any payment, it shall be in default.

(ii) Upon default or in anticipation of default of one or more installment payments, a holder may request that the Commission permit a three (3) to six (6) month grace period, during which no installment payments need be made. In considering whether to grant a request for a grace period, the Commission may consider, among other things, the holder's payment history, including whether the holder has defaulted before, how far into the payment period the default occurs, the reasons for default, whether the holder has met construction build-out requirements within its BTA service area, the holder's financial condition, and whether the holder is seeking an eligible buyer. If the Commission grants a request for a grace period, or otherwise approves a restructured payment schedule, interest will continue

to accrue and will be amortized over the remaining years of the ten (10) year payment period.

(iii) Following expiration of any grace period without successful resumption of payment or upon denial of a grace period request, or upon default with no such request submitted, the BTA authorization will automatically cancel and the Commission will initiate debt collection procedures pursuant to Part 1, Subpart O of the Commission's rules.

(5) *Unjust enrichment.*

(i) If an eligible BTA authorization holder that utilizes installment financing under this subsection seeks to assign or transfer control of its BTA authorization to an entity not meeting the eligibility standards for installment payments, the holder must make full payment of the remaining unpaid principal and any unpaid interest accrued through the date of assignment or transfer as a condition of approval.

(ii) If a BTA authorization holder that utilizes installment financing under this subsection seeks to make any change in ownership structure that would result in the holder losing eligibility for installment payments, the holder shall first seek Commission approval and must make full payment of the remaining unpaid principal and any unpaid interest accrued through the date of the change in ownership structure as a condition of approval. Increases in gross revenues that result from revenues from operations, business development or expanded service shall not be considered changes in ownership structure under this paragraph.

(c) *Reduced upfront payments.* A prospective bidder that qualifies as a small business, or as a small business consortia, is eligible for a twenty-five (25) percent reduction in the amount of the upfront payment required by § 21.954. To be eligible to bid on a particular BTA, a small business will be required to submit an upfront payment equal to seventy-five (75) percent of the upfront payment amount specified for that BTA in the public notice listing the upfront payment amounts corresponding to each BTA service area being auctioned.

(d) *Bidding credits.* A winning bidder that qualifies as a small business, or as a small business consortia, may use a bidding credit of fifteen (15) percent to lower the cost of its winning bid on any of the BTA authorizations awarded in the MDS auction.

(1) *Unjust enrichment.*

(i) If a BTA authorization holder that utilizes a bidding credit under this subsection seeks to assign or transfer control of its BTA authorization to an entity not meeting the eligibility standards for bidding credits, the authorization holder must reimburse the government for the amount of the bidding credit, plus interest at the rate imposed for installment financing at the time the authorization was awarded, before assignment or transfer will be permitted. The amount of the required reimbursement will be reduced over time. An assignment or transfer in the first two years after issuance of the BTA authorization will result in a reimbursement of one hundred (100) percent of the value of the bidding credit;

during year three, of seventy-five (75) percent of the bidding credit; in year four, of fifty (50) percent; in year five, twenty-five (25) percent; and thereafter, no reimbursement.

(ii) If a BTA authorization holder that utilizes a bidding credit under this subsection seeks to make any change in ownership structure that would result in the holder losing eligibility for bidding credits, the holder shall first seek Commission approval and must reimburse the government for the amount of the bidding credit, plus interest at the rate imposed for installment financing at the time the authorization was awarded, as a condition of approval. The amount of the required reimbursement will be reduced over time. Such a change in ownership structure in the first two years after issuance of the BTA authorization will result in the reimbursement of one hundred (100) percent of the value of the bidding credit; during year three, of seventy-five (75) percent of the bidding credit; in year four, of fifty (50) percent; in year five, twenty-five (25) percent; and thereafter, no reimbursement. Increases in gross revenues that result from revenues from operations, business development or expanded service shall not be considered changes in ownership structure under this paragraph.

(e) *Short-form application certification; Long-form application or statement of intention disclosure*. An MDS applicant claiming designated entity status shall certify on its short-form application that it is eligible for the incentives claimed. A designated entity that is a winning bidder for a BTA service area(s) shall, in addition to information required by § 21.956(b), file an exhibit to either its initial long-form application for an MDS station license, or to its statement of intention with regard to the BTA, which discloses the gross revenues for each of the past three years of the winning bidder and its affiliates. This exhibit shall describe how the winning bidder claiming status as a designated entity satisfies the designated entity eligibility requirements, and must list and summarize all agreements that affect designated entity status, such as partnership agreements, shareholder agreements, management agreements and other agreements, including oral agreements, which establish that the designated entity will have both *de facto* and *de jure* control of the entity. *See* 47 C.F.R. § 1.2110(i).

(f) *Records maintenance*. All holders of BTA authorizations acquired by auction that claim designated entity status shall maintain, at their principal place of business or with their designated agent, an updated documentary file of ownership and revenue information necessary to establish their status. Holders of BTA authorizations or their successors in interest shall maintain such files for a ten (10) year period running from the date that their BTA authorizations are issued. The files must be made available to the Commission upon request.

(g) *Audits*. BTA authorization holders claiming eligibility under designated entity provisions shall 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 shall 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 shall 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 shall also include consent to the interviewing of principals, employees, customers, and suppliers of the BTA authorization holders.

§ 21.961 Definitions applicable to designated entity provisions.

(a) *Scope*. The definitions in this section apply to § 21.960, unless otherwise specified in that section.

(b) *Small business; consortium of small businesses*

(1) A *small business* is an entity that together with its affiliates has average annual gross revenues that are not more than $40 million for the preceding three calendar years.

(2) *Attribution and aggregation of gross revenues*

(i) Except as specified in paragraph (b)(2)(ii), the gross revenues of the applicant (or BTA authorization holder) and its affiliates shall be considered on a cumulative basis and aggregated for purposes of determining whether the applicant (or holder) is a small business.

(ii) Where an applicant (or BTA authorization holder) is a consortium of small businesses, the gross revenues of each small business shall not be aggregated.

(3) A *small business consortium* is a conglomerate organization formed as a joint venture between mutually-independent business firms, each of which individually satisfies the definition of a small business.

(c) *Gross revenues* shall mean all income received by an entity, whether earned or passive, before any deductions are made for costs of doing business (*e.g.*, cost of goods sold), as evidenced by audited financial statements for the preceding relevant number of calendar years, or, if audited financial statements were not prepared on a calendar-year basis, for the preceding relevant number of fiscal years. If an entity was not in existence for all or part of the relevant period, gross revenues shall be evidenced by the audited financial statements of the entity's predecessor-in-interest or, if there is no identifiable predecessor-in-interest, unaudited financial statements certified by the applicant as accurate.

(d) The definition of an *affiliate* of an applicant is set forth in 47 C.F.R. § 1.2110(b)(4).

APPENDIX D -- DRAFT FCC FORM 304

Subject to Approval by the Office of Management and Budget

Federal Communications Commission
Washington, D.C. 20554

Approved by OMB
xxxx-xxxx
Expires xx/xx/xx

Instructions for FCC 304
Application for a Multipoint Distribution Service Authorization
(FCC Form 304 attached)

GENERAL INSTRUCTIONS

Introduction

This FCC Form is to be used to apply for a license for new Multipoint Distribution (MDS), Multichannel Multipoint Distribution (MMDS) or MDS/MMDS signal booster station, amend a pending license application, modify a granted license pursuant to 47 CFR Sections 21.40 and 21.41 and notify the Commission of station modifications pursuant to 47 CFR Section 21.42.

For Assistance

For assistance with FCC Form 304 applications, contact the MDS Section of the Mass Media Bureau at the FCC, Washington, D.C. 20554, Telephone Number (202) 416-1106.

Applicable Rules and Regulations

Before this application is prepared, the applicant should review the relevant portions of Parts 0, 1, 17 and 21 of the FCC rules in Title 47 of the Code of Federal Regulations (C.F.R.). Copies of Title 47 may be purchased from the Superintendent of Documents, Government Printing Office, Washington, DC 20402. You may telephone the GPO order desk at (202) 783-3288 for current prices. FCC rules generally require various exhibits to be filed with an application, in addition to the information requested in the application form. Applicants should make every effort to file complete applications in compliance with the Rules. Replies to questions in this form and the applicant's statements constitute representations on which the FCC will rely in considering the application. Thus, time and care should be devoted to all replies, which should reflect accurately the applicant's responsible consideration of the questions asked. Include all information called for by this application. Failure to do so can result in a dismissal or return of the application or a delay in processing the application.

English to Metric Conversions

The following English to Metric equivalents should be used to convert heights and distances, where necessary:

1 foot = 0.3048 meters
1 mile = 1.6093 kilometers

Electronic Filing
The Commission has authorized the voluntary electronic filing for new MDS applications, based on the data and other information contained in this form. The specific details concerning the method for electronically filing MDS applications, including an electronic counterpart to this paper form, will be provided through subsequent Commission public notices.

Paper Copies
All entries on the form shall be typed or legibly printed in ink. A separate application must be submitted for each MDS or signal booster station at a separate site and for each MDS channel or channel group specified in 47 CFR Section 21.901. Submit an original and one copy of the application (SIGN ORIGINAL COPY ONLY).

Incorporation by Reference
You may not incorporate by reference data, documents, exhibits, or other showings already on file with the FCC. All applicable items on this form must be answered without reference to a previous filing.

Current Information
Information filed with the FCC must be kept current. The applicant should notify the FCC regarding any material change in the facts as they appear in the application. See 47 CFR Section 1.65.

Waiver Requests
Requests for waivers of the FCC's Rules must contain an exhibit a stating reasons sufficient to justify a waiver. A separate request with the required showing must be made for each rule waiver desired, identifying the specific rule or policy for which the waiver is requested.

Exhibits
Each document required to be filed as an exhibit should be current as of the date of filing. Each page of each exhibit must be identified with the number or letter of the exhibit, the number of the page of the exhibit and the total number of pages of the exhibit. If interference studies are submitted, attach these as an exhibit.

Certificate of Completion of Construction
The applicant is reminded that upon completion of construction, an MDS licensee is required to submit a certification of construction completion and that the station is operational pursuant to 47 CFR Section 21.43. FCC Form 304A should be used to make such notification to the FCC.

INSTRUCTIONS FOR SECTION I - GENERAL AND FEE INFORMATION

Item 1. The legal name of the applicant should be the same as reported in FCC Form 430, "Licensee Qualification Report" (**See also** Section II., Item 1.) The name should also be the same as shown on any related station license or service authorization for a Basic Trading Area (BTA) or partitioned service area (PSA). The address listed may vary from that reported on FCC Form 430 if the address of the corporate officer, or other employee authorized to certify this application, differs from that of the applicant's principal office. Applicants must provide a current and valid mailing address in the United States, and this address must be that of the applicant, not the address of an equipment supplier, consultant or any third party; the authorization will be sent to this address. Failure to respond to FCC correspondance sent to the address of record may result in dismissal of an application.

Item 2. **FEE INFORMATION.** By law, the Commission is required to collect charges for certain of the regulatory services it provides to the public. Generally, MDS applicants seeking a new station license or a major change to an existing license are required to pay and submit a fee with the filing of FCC Form 304. However, governmental entities, which include any possession, state, city, county, town, village, municipal organization or similar political organization or subpart thereof controlled by publicly elected and/or duly appointed public officials exercising sovereign direction and control over their respective communities or programs, are exempt from the payment of this fee. Also exempted from this fee are long-form license applications for MDS stations to be operated in conjunction with an authorization for a Basic Trading Area (BTA) or Partitioned Service Area (PSA), which was attained directly through competitive bidding procedures. Applications for minor facilities changes or notifications pursuant to 47 CFR Sections 21.41 or 21.42 are nonfeeable. To avail itself of a fee exemption, the applicant must indicate its eligibility by checking the appropriate box in Question 2(B), Section I. FCC Form 304 applications NOT involving the payment of a fee can be hand-delivered or mailed to the FCC's Washington, D. C. offices. See 47 C.F.R. Section 0.401(a).

The Commission's fee collection program utilizes a U.S. Treasury lockbox bank for maximum efficiency of collection and processing. All FCC Form 304 applications, which require the remittance of a fee, must be submitted to the appropriate post office box address. See 47 C.F.R. Section 0.401(b). A listing of the required fee and the address to which FCC Form 304 should be mailed or otherwise delivered is also set forth in the "Common Carrier Services Fee Filing Guide" which is obtained either by writing to the Commission's Form Distribution Center, 2803 52nd Avenue, Hyattsville, Maryland 20871, or by calling Telephone No. (202) 418-FORM and leaving your request on the answering machine provided for this purpose. See also 47 C.F.R. Section 1.1104.

Payment of any required fee must be made by check, bank draft, money order or credit card. If paying by check or bank draft, make checks payable to the Federal Communications Commission, denominated in U.S. dollars, and drawn upon a U.S.

financial institution. No postdated, altered or third-party checks will be accepted. DO NOT SEND CASH. Checks dated six months or older will not be acceptable for filing. Applicants who wish to pay by money order or credit card, must submit FCC Form 159 together with their application. Payment of application fees may also be made by electronic payment, provided prior approval has been obtained from the Commission. Applicants interested in this option must first contact the Billings and Collections Branch at (202) 418-1995 to make the necessary arrangements.

Parties hand-delivering FCC Forms 304 may receive dated receipt copies by presenting copies of the applications to the acceptance clerk at the time of delivery. For mailed-in applications, a "return copy" of the application can be furnished provided the applicant clearly identifies the "return copy" and attaches it to a stamped, self-addressed envelope. Only one piece of paper per application will be stamped for receipt purposes.

For further information regarding the applicability of a fee, the amount of the fee or the payment of the fee, refer to the "Common Carrier Services Fee Filing Guide."

CLASSIFICATION OF FILING

Item 3. This item indicates whether this filing is intended as an application for a new station, a major change in an authorized station pursuant to 47 CFR Section 21.23 a minor change in authorized facilities, as defined in 47 CFR Section 21.41, a notification of facilities changes pursuant to 47 CFR Section 21.42, or an amendment to a pending application. Applications for new stations, or major or minor changes, will be assigned a new file number to the filing. Application amendments will be associated with the pending application identified in Item 5b.

Item 4. Indicate which type of protected service area is associated with this application filing. A 56.33 kilometer (35 mile) circular protected area applies to MDS licensees or conditional licensees who received prior to September 1, 1995, their initial authorization for an MDS station for which a modified license is requested herein, or an associated signal booster station. The circular area also applies to applicants using this form to amend applications on file at the Commission prior to September 1, 1995, or to modify station authorizations that were initially applied for prior to September 1, 1995. An MDS station to be operated in a Basic Trading Area (BTA), one of the six BTA-like areas or partitioned service area (PSA), as defined in 47 CFR Section 21.2, should be so indicated here and also specified in Section IV.

Item 6. Indicate whether this filing is for an MDS station, or a signal booster station pursuant to 47 CFR Section 21.913. Each MDS station signal booster at a different site requires a separate application.

Contact Representative

Item 7. This item identifies the contact representative (usually the headquarters office of a large applicant, the law firm or other representative of the applicant, or the person or company that prepared or submitted the application on behalf of the applicant). In the event there is a question concerning the application, the FCC will attempt to communicate with the contact representative first.

Certifications

Item 8. The engineering certificate must be signed by the technically qualified person responsible for preparation of the engineering information. In this context, a "technically qualified person" is a person qualified to calculate and determine the interference potential and the efficient utilization of the proposed facilities, and is thoroughly familiar with the technical requirements as specified in the applicable parts of the Commission's Rules. Except for electronically filed applications, such engineering certifications must be signed in the original for each application.

Item 9. Certification on behalf of the applicant shall be made personally by the individual applicant, a partner (if the applicant is a partnership), a corporate officer or duly authorized employee (if applicant is a corporation that has been specifically authorized to act for and on behalf of the applicant, or officer/member (if applicant is an unincorporated association). Note: The financial certification must be updated when this financial certification is no longer substantially accurate and complete.

INSTRUCTIONS FOR SECTION II - LEGAL INFORMATION

Item 1. If FCC Form 430, "Licensee Qualifications Report" has been previously filed, it need be updated only when the information presently on file with the MDS Section of the FCC's Mass Media Bureau is no longer substantially accurate and complete in all matters of decisional significance. Examples of significant types of changes which must be reported include: a change in control (*de jure or de facto*) of an applicant; a change in alien ownership or control, which is significant under § 310(a) of the Communications Act; or any conviction or administrative finding required to be reported under item 7 of FCC Form 430.

Items 6. - 9. These items apply only to applicants who have attained a BTA, one of the six additional BTA-like areas, or a partitioned service area directly through the competitive bidding procedures. Applicants who have already submitted the information called for by these items, by filing a Statement of Intent, may omit these items.