

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).

Note: The following draft long-form application, FCC Form 304, reflects the most recent changes to the form and differs from the version released as Appendix D to the *MDS Report and Order* on June 30, 1995. The Office of Management and Budget has not yet approved the FCC Form 304 pursuant to the Paperwork Reduction Act, and thus, a public notice will be issued when the new form has been approved and is available for use.

**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 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 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 for this purpose.

INSTRUCTIONS FOR SECTION I - GENERAL AND FEE INFORMATION

Question 1. The legal name of the applicant should be the same as reported in FCC Form 430, "Licensee Qualification Report" (See also Section II., Question 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 correspondence sent to the address of record may result in dismissal of an application.

Question 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. 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

Question 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 Question 5b.

Question 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 15, 1995, their initial authorization for an MDS station for which a modified license is requested herein, or an associated signal booster station. This circular area also applies to applicants using this form to amend applications on file at the Commission prior to September 15, 1995, or to modify station authorizations that were initially applied for prior to September 15, 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.

Question 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 or signal booster at a different site requires a separate application.

Contact Representative

Question 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

Question 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. Engineering certifications must be signed in the original for each application.

Question 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

Question 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.

Questions 6. - 8. 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.

INSTRUCTIONS FOR SECTION III - PURPOSE OF FILING

Question 1. Applicants should enter in alphabetical order one or more letters corresponding to the listed purposes of this filing; *i.e.*, a request for authorization of a new station or request for authority to make various modifications to an authorized station, or notification of facilities modifications already made where specific FCC authorization is not required. Describe in an exhibit facilities changes or other purposes not listed in this item.

INSTRUCTIONS FOR SECTION IV - STATION LOCATION INFORMATION

Question 1. indicates the nature of an action regarding transmitting antenna site coordinates. Applicants may use this form to correct the geographic coordinates of their antenna site. However, a discrepancy of more than 10 seconds in site latitude, longitude or both requires the filing of a major change application.

Questions 2 - 5. identify the antenna site by its address, or if there is no address, by a brief description of the location such as a distance and direction from known landmarks, city or town, county and state. If not located in a city or town, insert the name of the nearest identifiable community.

Question 6. specifies the geographic coordinates of the location of the transmitting antenna site. Questions 6a. and 6b. are the North Latitude and West Longitude, respectively, with reference to North American Datum of 1927 (NAD27). Specify South Latitude and East Longitude where applicable; otherwise, North Latitude and West Longitude will be presumed. Geographic coordinates should be rounded off to the nearest second; *e.g.*, 29.5' is rounded to 30'. The National Geodetic Survey is in the process of replacing NAD27 with the more accurate 1983 North American Datum (NAD83) and updating current topographic maps with NAD83 datum. In addition, coordinates determined by use of the satellite-based Global Positioning System already reflect the NAD 83 datum. To prevent intermixing of data using two different datum, however, the Commission announced that until further notice, applicants are to furnish coordinates based on NAD27 datum on all submissions and the Commission will continue to specify NAD27 coordinates in its data bases and authorizations. In addition, applicants who have already filed applications with coordinates that reflect NAD 83 datum must provide NAD27 coordinates to the appropriate Commission licensing bureau. See Public Notice, entitled "FCC Interim Procedures for the Specification of Geographic Coordinates," 3 FCC Rcd 1478 (1988).

Question 7. This item reports the ground elevation (in meters) of the transmitting site above mean sea level.

Question 8. This question keys to location data in the data base that is to be replaced by the data in Questions 2 - 6.

The filer should complete this question only if (1) correcting geographical coordinates or (2) relocating the pertinent facilities at the location indicated by this question to the location specified in Questions 2 - 6.

Question 9. Quiet Zone. Quiet zones are those areas where it is necessary to restrict radiation so as to minimize possible impact on the operations of radio astronomy or other facilities that are highly sensitive to radio frequency interference. The protected areas involved and procedures required are given in 47 CFR Section 21.113.

Question 10. Environmental Policy. Each applicant should check the appropriate box to indicate whether a Commission grant of the proposed communications facility(ies) may or may not have a significant environmental impact as defined by 47 C.F.R. Section 1.1307. Briefly, Commission grant of an application may have a significant environmental impact if any of the following are proposed:

- (a) A facility is to be located in sensitive areas (e.g., an officially designated wilderness area, a wildlife preserve area, a flood plain) or will physically or visually affect sites significant in American history.
- (b) A facility whose construction will involve significant changes in surface features.
- (c) The antenna tower and/or supporting structure(s) will be equipped with high intensity white lights and are to be located in residential neighborhoods.
- (d) The facilities or the operation of which will cause exposure of workers or the general public to levels of radio frequency radiation in excess of the "Radio Frequency Protection Guides" recommended in "American National Standard Safety Levels with respect to Human Exposure to Radio Frequency Electromagnetic Fields, 300 kHz to 100 GHz," (ANSI C95. 1-1982), by the Institute of Electrical and Electronics Engineers, Inc., 345 East 47th Street, New York, New York 10017.

NOTE: In answering this question, applicants for MDS signal booster stations and MDS stations which transmit with an equivalent isotropically radiated power (EIRP) of 200 watts or less are excluded from the standards set forth in subparagraph (d) above. However, in determining the appropriate response to this question, such applicants must still perform an analysis of the subject facilities in the context of the matters set forth in subparagraphs (a) - (c) above.

If you answered "No", a brief statement explaining the reasons why there will not be a significant environmental impact must be submitted. With respect to RF radiation exposure, the required statement must include a description of the steps that have been taken to protect the general public, station employees, and other persons authorized

access to the tower from exposure to RF radiation levels in excess of the specified safety standards and that these steps comply with those required by OST Bulletin No. 65, October, 1985, entitled "Evaluating Compliance with FCC-Specified Guidelines for Human Exposure to Radiofrequency Radiation." The applicant must take into account ALL non-excluded transmitters at and around the station's transmitter site; that is, contributions to environmental RF levels from all nearby radio and television stations, not just the applicant's station, must be considered.

If you answered "Yes", submit the required Environmental Assessment (EA). The EA includes for antenna towers and satellite earth stations:

- (a) A description of the facilities, as well as supporting structures and appurtenances, and a description of the site, as well as the surrounding area and uses. If high intensity white lighting is proposed or utilized within a residential area, the EA must also address the impact of this lighting upon the residents.
- (b) A statement as to the zoning classification of the site, and communications with, or proceedings before and determinations (if any) made by, zoning, planning, environmental or other local, state or federal authorities on matters relating to environmental effect.
- (c) A statement as to whether construction of the facilities has been a source of controversy on environmental grounds in the local community.
- (d) A discussion of environmental and other considerations which led to the selection of the particular site and, if relevant, the particular facility; the nature and extent of any unavoidable adverse environmental effects; and any alternative sites or facilities which have been or might reasonably be considered.

The information submitted in the EA shall be factual (not argumentative or conclusory) and concise with sufficient detail to explain the environmental consequences and to enable the Commission, after an independent review of the EA, to reach a determination concerning the proposal's environmental impact, if any. The EA shall deal specifically with any feature of the site which has special environmental significance (e.g., wilderness area, wildlife preserve, natural migratory paths for birds and other wildlife, and sites of historic, architectural or archeological value). In the case of historically significant sites, it shall specify the effect of the facilities on any district, site, building, structure or object listed in the National Register of Historic Places, 39 Fed. Reg. 6402 (February 19, 1974). It shall also detail any substantial change in the character of the land utilized (e.g., deforestation, water diversion, wetland fill, or other extensive change of surface features). In the case of wilderness areas, wildlife preserves, or other like areas, the statement shall discuss the effect of any continuing pattern

of human intrusion into the area (e.g., necessitated by the operation and maintenance of the facilities).

The EA shall also be accompanied with evidence of site approval which has been obtained from local or federal land use authorities.

To the extent that such information is submitted in another part of the application, it need not be duplicated in the EA, but adequate cross-reference to such information shall be supplied.

An EA need not be submitted to the Commission if another agency of the Federal Government has assumed responsibility: (a) for determining whether the facilities in question will have a significant effect on the quality of the human environment and, (b) if it will affect the environment, for invoking the environmental impact statement process.

Protected Service Area

Question 11. indicates the nature of the protected service area. Individual stations licensed in conjunction with a BTA or PSA authorization do not have individually associated service areas; rather, the service area is that of the BTA or PSA. A BTA service area must include all the counties in that BTA. Upon the removal of any portion of a BTA through partitioning, the remaining area is no longer a BTA but, itself, becomes a partitioned service area, defined by its counties or other recognized geopolitical subdivisions.

Question 12. If the proposed MDS station or signal booster station is not licensed in conjunction with a BTA or PSA authorization, but rather is associated with an "incumbent" MDS license, conditional license or application, give the geographic coordinates of the center of the fixed 56.33 kilometer (35 mile) circular protected service area. On September 15, 1995, the center coordinates of the circular protected areas became fixed at the then-authorized and/or previously proposed coordinates.

Question 13. must be answered only if the filing is for a station licensed in conjunction with a BTA authorization, including the six additional BTA-like areas defined by the Commission. BTA market designators and market names are listed in FCC Public Notices or in the FCC Record.

Question 14. must be answered only if the filing is for a station licensed in conjunction with an authorization for a partitioned service area (PSA). Identify each contiguous county or other recognized geopolitical subdivision in the space provided. If more space is needed, continue the description in an exhibit. Applicants not using electronic filing procedures may also submit a map depicting the PSA, if so desired.

INSTRUCTIONS FOR SECTION V. TRANSMITTING ANTENNA INFORMATION

Question 1. specifies numbers used to later-identify (in Section VI., Question 8.) the antennas described in Questions 2 - 4, below. It serves no other purpose. A separate number is used to identify each different type of antenna to be included in a multiple-antenna array. Most MDS stations employ a single transmitting antenna, which entails completing only the leftmost column for Questions 2 - 4. This application form also accommodates the use of multiple-antenna arrays, where the array is treated as a single entity. All antennas in the array must operate from the same site. The array must have a single antenna radiation center height above ground and a "composite" horizontal plane radiation characteristic, based on the superposition of the fields of its individual antennas, regardless of the degree of electrical coupling between the antennas. If more than one identical antenna is to be used in an array, these antennas need only be identified once; i.e., by one number in Question 1.

Questions 2 - 3. describe an antenna(s) by its manufacturer and model number and must be completed regardless of whether a directional or omnidirectional antenna is being proposed. Manufacturer is the name of the company that made the antenna, and model number is the designation that the manufacturer assigns to the antenna.

Question 4. For a directional antenna in the horizontal plane, indicate the total beamwidth between the 3 dB (or 1/2 power) points in the major radiation lobe of the antenna or enter "omni" for an omnidirectional antenna; i.e., an antenna with an approximately circular radiation pattern. **Note:** 47 CFR Section 21.904, provides a formula for relating the antenna beam width and the maximum permissible effective isotropic radiated power (EIRP). For multiple antenna systems, the maximum permissible EIRP is that allowed for an omnidirectional antenna if the composite horizontal radiation pattern is approximately circular. Otherwise, the maximum EIRP in a main horizontal lobe is determined by the beam width of the dominant antenna in the array that produces that lobe.

Question 5. specifies the horizontal radiation pattern of a directional antenna or multiple-antenna array in terms of a tabulation of relative field strengths (used to calculate the power radiated in different azimuthal directions.) If a single omnidirectional transmitting antenna is proposed, Question 5. is not applicable and may be omitted. If a single directional antenna is proposed and the antenna manufacturer and model number are included in the Commission's list of common "off-the-shelf" directional antennas (periodically released by Public Notice), so indicate in Question 5b. and omit the tabulation of relative field strengths. Otherwise, tabulate the horizontal radiation pattern in Question 5d. by entering relative field strengths for the 36 azimuths given in the table. **For single antennas,** the radiation pattern must be entered in a "normalized" fashion, the method antenna manufacturers normally use to depict "polar diagrams" of horizontal radiation patterns. In

a normalized radiation pattern, the antenna's main lobe, (or one of the main lobes where the relative field strength has a value of 1.0) is always pointed at True North, which is an azimuth of 0 degrees. Starting at True North, give the relative field strengths at 10 degree intervals, proceeding clockwise around the radiation pattern. The FCC antenna data base allows for relative field strengths at ten additional azimuths, as selected by the applicant (the last set of columns in Question 5d.). Applicants should enter the azimuths corresponding to the maximum and minimum values of (normalized) relative field strengths for the antenna, if these azimuths are not a multiple of 10 degrees.

Where two or more transmitting antennas are used, the applicant must tabulate in Question 5d. the "composite" horizontal radiation pattern, regardless of the degree of electrical coupling between the antennas. For composite antennas, applicants may not refer to a composite pattern already "on file" in another MDS application or station authorization, nor a composite pattern contained in the FCC's directional antenna data base. Unlike the case of the normalized tabulation for a single antenna, complete the table in Question 5.d by entering the "**unnormalized**" relative field strengths of the composite antenna radiation pattern; *i.e.*, the actual horizontal radiation pattern that will exist once the station is placed in operation. For example, if the antenna's main lobes are at azimuths of 40 and 220 degrees, enter in the table a relative field strength value of 1.0 at azimuths of 40 and 220 degrees, etc. Applicants should enter the azimuths corresponding to the maximum and minimum values of unnormalized relative field strengths for the antenna, if these azimuths are not a multiple of 10 degrees.

Note: For applications that are not electronically filed, applicants may submit the tabulation of relative fields in an exhibit, in lieu of completing Question 5.d. The format of this tabulation should be identical to that of Question 5.d.

INSTRUCTIONS FOR SECTION VI. - REQUESTED TRANSMITTING FACILITIES

Question 1. specifies the channel(s) or channel group for the proposed station operation. For example, an applicant would request the first two channels in the E-channel group by entering E1 E2 . A request for the entire E-group (four channels) would be made by entering E Channel Group. Note that requests for each of the H channels (H1, H2 and H3) requires the filing of separate applications.

Question 2. specifies the associated visual carrier frequency offset, if any. Allowable offsets are "+" (plus) and "-" (minus). Leave the offset box empty if no frequency offset is proposed. **Note:** Operation on the basis of a 10 kHz frequency offset requires that (1) two cochannel stations operate with different visual carrier offsets; operation on the nominal carrier frequency may also be considered an offset for this purpose, (2) that the related transmitters meet the

prescribed frequency tolerances in 47 CFR Section 21.101 and (3) that the affected parties have agreed in writing to operate on the basis of frequency offset and that this application includes a statement to that effect, signed by both parties. By specifying a frequency offset, an applicant acknowledges compliance with these requirements, or is submitting with this application a request for waiver of the MDS interference protection standards, supported by full engineering justification.

Question 3. specifies the emission designators for the transmitter, normally the same as the type accepted/notification values. The visual and aural emission designators for the transmission of standard television signals are 5M75C3F and 250KF3E, respectively.

Question 4. specifies the polarization of transmitting antenna(s); enter "H" for horizontal polarization or "V" for vertical polarization. The application form provides for a single polarization for each transmitting facility. Proposed use of any other type of polarization should be described in an exhibit.

Question 5. specifies the height of the antenna center of radiation above ground (in meters) which, together with the ground elevation of the site, is used in determinations of signal path obstructions.

Question 6. specifies the maximum effective isotropic radiated power (EIRP) in the horizontal plane, expressed in decibels above one watt (dBW). The specified EIRP should correspond to that for an angle of zero degrees in the transmitting antenna's vertical radiation plane, regardless of whether or not antenna beam tilt is used. To calculate the EIRP in dBW, take the logarithm to the base ten of the transmitter output power (in watts), multiply by ten, add to the result the antenna gain (in dBi) and then subtract the sum of the losses from transmission line and other devices to be inserted between the transmitter and antenna (in dB). To convert EIRP from units of watts to dBW, take the logarithm to the base ten of the EIRP in watts and multiply the result by ten. **Note:** Applicants proposing to locate MDS stations or signal boosters within 80.5 kilometers (50 miles) of the Canadian or Mexican borders should also attach an exhibit which specifies the maximum EIRP in the vertical plane, reflecting the use of antenna beam tilt, if applicable.

Question 8. Indicate whether the antenna is directional or omnidirectional in the horizontal plane and specify the amount of nonstandard antenna beam tilt, if any, accurate to the nearest 1/10th of a degree; *i.e.*, beam tilt in addition to that incorporated into the antenna design. Beam tilt does not factor into routine interference calculations performed by the FCC's MDS staff in application acceptance studies, but will appear on MDS station licenses. For directional antennas in the horizontal plane, specify the azimuth of the major lobe(s) of radiation in degrees clockwise from True North ("orientation of the main lobe".) In FCC

computerized interference studies, the normalized relative field strengths of the antenna (Section V, Question 5.) are "rotated" by this angle in order to calculate the power radiated for 360 equally spaced radial azimuths. **Note:** Do not enter the orientation of the line of symmetry between major radiation lobes.

Question 9. applies only to applications proposing the use of multiple transmitting antennas. Indicate the azimuth of the major horizontal radiation lobe(s), degrees clockwise from True North, of each individual antenna in the system. Use the antenna numbers from Section V., Question 1 to identify the individual antennas. For example, an antenna array consisting of two identical antennas radiating equal power, one pointed North, the other South, would be specified as follows:

Antenna No.	Azimuth of Main Lobe(s)
First antenna 1	0
Second antenna 1	180
Third antenna	
Composite antenna array ***	0, 180

Note 1: Applicants proposing to locate MDS stations or signal boosters within 80.5 kilometers (50 miles) of the Canadian or Mexican border must provide an exhibit giving the following additional information about the proposed facilities: (a) transmitter peak visual output power (watts), transmitting antenna gain (dBi) and transmission system losses (dB); e.g., losses due to transmission line, diplexers, combiners, etc. This additional data is needed to meet international notification requirements.

Note 2: An indication as to the specific transmitter make and model is not required on the application. Rather, in filing a Certificate of Completion of Construction, an MDS licensee must certify that it has installed a transmitter that has been type accepted by the FCC for use in the MDS service pursuant to 47 CFR Sections 21.120. See also 47 CFR Section 21.908.

INSTRUCTIONS FOR SECTION VII. - ANTENNA STRUCTURE DATA

Question 1. The term "new" applies to the proposed construction of a new antenna structure or the use of a structure which contains no FCC licensees of any kind. The term "existing" applies to any structure with an antenna which is presently utilized by an existing FCC licensee(s).

Question 2. If the response to Question 1 is "Existing", enter the call sign of one existing FCC licensee using the structure and the radio service for that call sign.

Question 3. See the antenna figure examples on the lower portion of this page. Indicate the number of the figure

which most resembles your antenna structure. In Question 3a., enter the type of supporting structure on which the antenna is or will be mounted (e.g., building, tower, tank, silo, building/tower, etc.) In Question 3b., enter the height above ground in meters, to the highest point of the supporting structure only. For instance, if the antenna structure consists of a building/tower combination, include any elevator shaft, flag pole, or penthouse in the support structure height, but not the antenna, tower, pole or mast. If the antenna structure is a tower only, include the height of the tower, but not the antenna. Refer to letter "b" in the antenna figure examples below. In Question 3c., enter the overall height above ground in meters, of the entire antenna structure to the highest point, including any appurtenances. You must include antennas, dishes, or obstruction lighting. Refer to letter "d" in the antenna figure examples below.

Question 4. Enter the FCC assigned tower number if the tower is existing and the number is known.

Question 5. You must notify the Federal Aviation Administration on FAA Form 7460-1 (obtainable from any FAA office), with certain limited exceptions as set forth in Part 17 of the FCC Rules and Part 77 of the FAA Rules, of any of the following construction or alterations of an antenna structure:

- (1) Construction of any new structure or alteration of any existing structure, which would result in the top of the antenna or the antenna structure exceeding a height of 61 meters (200 feet) above ground level at the antenna site.
- (2) Construction of any new structure or alteration of any existing structure, which would result in the top of the antenna or the antenna structure exceeding the height of an imaginary surface extending outward and upward at one of the following slopes:
 - (a) 1 meter above the airport elevation for each 100 meters from the nearest runway longer than 1 kilometer within 6.1 kilometers of the antenna structure, excluding helicopter and seaplane bases with specified boundaries, if that airport is either listed in the Airport Directory of the current Airman's Information Manual or is operated by a Federal military agency.
 - (b) 2 meters above the airport elevation for each 100 meters from the nearest runway shorter than 1 kilometer within 3.1 kilometers of the antenna structure, excluding helicopter and seaplane bases with specified boundaries, if that airport is either listed in the Airport Directory or is operated by a Federal military agency.
 - (c) 4 meters above the airport elevation for each 100 meters from the nearest landing and takeoff area

within 1.5 kilometers of the antenna structure of each heliport listed in the Airport Directory or that is operated by a Federal military agency.

- (3) Any construction of an antenna structure (or any alteration of an antenna structure that would increase its height) on an airport listed in the Airport Directory of the current Airman's Information Manual.
- 4) When requested by the FAA, any construction or alteration that would be in an instrument approach area (defined in the FAA standards governing instrument approach procedures) and available information indicates it might exceed an obstruction standard of the FAA.

If you intend to install towers of unusual height or at locations in close proximity to aircraft landing areas, it will be to your advantage to discuss the location and height of the antenna in detail with the appropriate FAA area office before filing your application.

Question 6. If a Notice of Construction or Alteration has been filed with the FAA, enter "Y" (yes). If a Notice of Construction or Alteration has not been filed, enter "N" (no). If "Y", enter the date filing was made with the FAA and the name of the regional FAA office where the filing was made. Also enter the FAA assigned Aeronautical Study Number, if known.

INSTRUCTIONS FOR SECTION VIII. - INTERFERENCE ANALYSIS AND NOTIFICATION REQUIREMENTS

The Commission's Rules require MDS applicants to perform certain analyses of the potential for causing harmful interference to authorized or previously proposed MDS and ITFS facilities and to serve these studies on affected licensees, conditional licensees, and/or applicants, together with a copy of this application form and related exhibits. Interference analyses do not have to be submitted with MDS applications filed at the FCC, although applicants may do so. In lieu of performing the required analyses, an applicant may submit a written statement(s) of "no objection" to the operation of the proposed station, signed by the licensee(s), conditional licensee(s) or applicant(s) whose facility(ies) otherwise must be included in the interference analyses. The Commission Rules also require applicants to give written notification to BTA and PSA authorization holders of the areas adjoining an applicant's protected service area.

Before filing an application, an applicant should carefully review the rules governing interference protection, analysis and/or notifications, and the limiting MDS signal strength at service area boundaries. See 47 CFR Sections 21.901, 21.902, 21.913, 21.937, and 21.938.

Questions 1.-6. are the applicant's declaration of compliance with all required interference and signal strength analyses and/or notifications on or prior to the date of filing this application. Applicants are reminded that any such analyses or agreements must be available to the Commission, upon request. The Commission may also request evidence that an applicant properly notified MDS licensees or BTA/PSA authorization holders.

FCC NOTICE TO INDIVIDUALS REQUIRED BY THE PRIVACY ACT AND THE PAPERWORK REDUCTION ACT

The solicitation of personal information requested in this application is authorized by the Communications Act of 1934, as amended. The Commission will use the information to determine whether grant of this application is in the public interest. In reaching that determination, or for law enforcement purposes, it may become necessary to refer personal information contained in this form to another government agency. In addition, all information provided in this form will be available for public inspection. If information requested on the form is not provided, the application may be returned without action having been taken upon it or its processing may be delayed while a request is made to provide the missing information. Your response is required to obtain the requested authorization.

Public reporting burden for this collection of information is estimated to average 55 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden to the Federal Communications Commission, Records Management Branch, Paperwork Reduction Project (3060-XXXX), Washington, DC 20554.

THE FOREGOING NOTICE IS REQUIRED BY THE PRIVACY ACT OF 1974, P.L. 93-579, DECEMBER 31, 1974, 5 U.S.C. 552a(e)(3), AND THE PAPERWORK REDUCTION ACT OF 1980, P.L. 96-511, DECEMBER 11, 1980, 44 U.S.C. 3507.

FCC 304 FEDERAL COMMUNICATIONS COMMISSION Application for a Multipoint Distribution Service Authorization	Approved by OMB xxxxxxxx Expires dd/mm/yy Est. Avg. Burden Hours Per Response: ## Hrs.	FCC Use Only (File Number)
		Fee Use Only

Section I. General and Fee Information

1. Legal Name of Applicant		Telephone Number ()		
Mailing Street Address or P.O. Box				
ATTENTION:				
City		State	Zip Code	
Call Letters		Other FCC identifier (if applicable)		
2. A. Is a fee submitted with this application? [] <u>Yes</u> <u>No</u> B. If "No", indicate reason for fee exemption (see 47 CFR Section 1.1112 and go to Question 3. [] Government Entity <u>or</u> [] Nonfeeable Application C. If "Yes", provide the following information:				
(a) Fee Type Code	(b) Fee Multiple	(c) Fee Amount	(d) Fee Payor ID	FCC USE ONLY
		\$		

CLASSIFICATION OF FILING

3. This filing is for a (an) (check one) <input type="checkbox"/> New station authorization <input type="checkbox"/> Major change to authorized station <input type="checkbox"/> Minor change pursuant to 47 CFR § 21.41 <input type="checkbox"/> Notification pursuant to 47 CFR § 21.42 <input type="checkbox"/> Major amendment to pending application <input type="checkbox"/> Minor amendment to pending application	
4. The proposed station is associated with which type of protected service area? (check one) <input type="checkbox"/> Basic Trading Area (BTA) or partitioned service area (PSA) <input type="checkbox"/> Circular protected area, 56.33 kilometers (35 mile) radius	
5. a. If filing references an existing station: Call letters of existing station:	b. If filing amends a pending application: File number of pending application:
6. Type of station: (check one) <input type="checkbox"/> MDS station <input type="checkbox"/> Signal booster station	

CONTACT REPRESENTATIVE

7. Name of Contact Representative (if other than applicant)	Telephone Number ()	
Firm or Company Name		
Mailing Street Address or P.O. Box		
City	State	Zip Code

8. Certification of Person Responsible for Preparing Engineering Information Submitted in this Application.		
I certify that I am responsible for the preparation of the engineering information contained in this application, that I am familiar with Part 21 of the Commission's Rules and have either prepared or reviewed the engineering information submitted in this application, and that it is complete and accurate to the best of my knowledge.		
Date	Type or Print Name of Person Certifying	Signature
Firm or Company Name		
Mailing Street Address or P.O. Box	City	
State	Zip Code	Telephone Number (Area Code) ()

9. Certifications of Applicant

Except for applicants for stations to be licensed in conjunction with an authorization for a Basic Trading Area (BTA) or partitioned service area (PSA), the applicant certifies that it has, or has reasonable assurance that it will have, the ability to meet the expected costs of constructing the facility within the construction permit period and the estimated operating expenses for twelve months and that the proposed station site will be available to the applicant for timely construction of the facilities during the initial construction period. I am familiar with Part 21 of the Commission's Rules and have either prepared or reviewed the information submitted in this application. The applicant waives any claim to the use of any particular frequency of the electromagnetic spectrum as against the regulatory power of the United States because of previous use of the same, whether by license or otherwise, and requests a construction authorization in accordance with this application. All statements made in the attached exhibits are a material part hereof and are incorporated herein as if set out in full in this application. The undersigned, individually and for the applicant, hereby certifies that the statements made in this application are true, complete and correct to the best of the signer's knowledge and belief, and are made in good faith.

By checking "Yes" below, the applicant certifies that, in the case of an individual applicant, he or she is not subject to a denial of federal benefits, that includes FCC benefits pursuant to Section 5301 of the Anti-Drug Abuse Act of 1988, 21 U.S.C. Section 862, or, in the case of a non-individual applicant (e.g., a corporation, partnership or other unincorporated association), no party to the application is subject to a denial of federal benefits that includes FCC benefits pursuant to that section. For the definition of a "party" for these purposes, see 47 CFR Section 1.2002(b).

Yes No

Failure to check "Yes" may cause dismissal of your application.

Date	Applicant (Must correspond with that shown on Page 1)	Type or Print Name of Person Signing
Signature		Title (Position Held by Person Signing)

Section II. Legal Information

1. Licensee Qualification Report: Does the applicant have a current "Licensee Qualification Report," FCC Form 430, on file for the MDS service? If "No", that form must be completed and submitted with this application. If "Yes", indicate the date of such filing with the MDS Section of the Video Services Division of the Mass Media Bureau: _____	<input type="checkbox"/> <u>Yes</u> <u>No</u>
2. Applicant proposes service as a	<input type="checkbox"/> Common Carrier <input type="checkbox"/> Non-common Carrier

OWNERSHIP AND CONTROL OF FACILITIES

3. Are there any agreements or understandings existant or under negotiation which affect the ownership or control of the facilities proposed herein, or any right or interest therein by any person not party to this application? If "Yes", submit an exhibit explaining such understanding or agreements.	<input type="checkbox"/> <u>Yes</u> <u>No</u>
4. Are there any agreements or understandings existant or under negotiation which affect the management or operation of the facilities proposed herein? If "Yes", submit an exhibit demonstrating how the applicant will retain control over the facilities and certifying compliance with 47 CFR Section 21.13(g).	<input type="checkbox"/> <u>Yes</u> <u>No</u>
5. Does this application propose a new or modified station for which there is an ownership interest in, control by, affiliation with, or leasing arrangement with a cable television company? If "Yes", submit an exhibit describing the relationship with the cable company and a map or narrative depicting the overlap, if any, of the boundaries of the cable franchise area and MDS protected service area.	<input type="checkbox"/> <u>Yes</u> <u>No</u>

INITIAL LONG-FORM APPLICATION OF AUCTION WINNERS ONLY

6. (a) Is this the initial long-form application for an MDS station within an auction winner's BTA service area; i.e., the first new station to be licensed in this BTA to the auction winner? [] Yes No

(b) If "Yes", has the applicant previously filed a Statement of Intent regarding this BTA? [] Yes No

If this is the initial long-form application and the applicant has not previously filed a Statement of Intent, the applicant must submit the information specified in Questions 7 and 8 of this section.

7. Submit an exhibit pursuant to 47 CFR Sections 1.2107(d) and 21.956(b)(2) detailing the terms and conditions and parties involved in any bidding consortia, joint venture, partnership or other arrangement the applicant had entered into relating to the competitive bidding process.

8. Does the applicant claim status as a designated entity? [] Yes No
If "Yes", submit an exhibit pursuant to 47 CFR Sections 1.2110(i) and 21.960(e) describing how the applicant satisfies the designated entity eligibility requirements, summarizing all agreements that affect designated entity status, and disclosing specified revenue and net worth information.

PURPOSE OF FILING

1. The purpose of this filing is to: []

Enter one or more letters that
correctly describes the purpose
of this filing.

- A. request authorization for new station
- B. request authority to add channel(s) within an E- or F- group authorization
- C. request authority to change channel(s) within an authorized E- or F- group
- D. request authority to relocate a transmitting site
- E. request authority to increase EIRP by more than 1 dB in any direction
- F. request authority to increase antenna radiation center height above ground
- G. request authority to increase overall height of antenna structure
- H. request authority to change antenna polarization
- I. request authority to change transmitter emission type or bandwidth

- J. change antenna horizontal radiation pattern
- K. change azimuth of main horizontal lobe of radiation
- L. add or change visual frequency offset
- M. decrease EIRP
- N. change antenna radiation center height by less than 1.5 meters
- O. increase overall height of antenna to a height of 6.1 meters or less above ground or building
- P. decrease overall height of antenna structure
- Q. delete a channel(s)
- R. other facilities changes (submit exhibit explaining changes)
- S. correct erroneous information on license not involving a major change pursuant to 47 CFR § 21.23 (submit exhibit if nature of correction(s) is not listed here.)

Section IV. Station Location Information

ANTENNA SITE LOCATION

1. Action requested <input type="checkbox"/> Add new station <input type="checkbox"/> Move location <input type="checkbox"/> Correct coordinates (check one)		
2. Street address or other description of antenna site		
3. City:	4. State:	5. County:
6. Transmitting antenna site coordinates a. North latitude (DD-MM-SS) _____ ' _____" b. West longitude (DD-MM-SS) _____ ' _____"		7. Ground elevation above mean sea level (meters)
8. If changing antenna location or correcting antenna site coordinates, give coordinates of the site being changed or corrected. Note: Correction of site latitude or longitude or both by more than 10 seconds is a major change in authorized facilities. a. North latitude (DD-MM-SS) _____ ' _____" b. West longitude (DD-MM-SS) _____ ' _____"		
9. Quiet Zone: Does this application propose to construct or modify a station in any "quiet zone" area where radio use is restricted? If "Yes", give the name of authority notified and date of notification. <input type="checkbox"/> <u>Yes</u> <u>No</u>		
a. Authority notified:		b. Date of notification:
10. Environmental Policy: Would a Commission grant of any proposal in this application or amendment have a significant environmental effect as defined by 47 CFR 1.1307? If "Yes", submit with the application the environmental assessment required by 47 CFR §§ 1.1308 and 1.1311. If "No", give a brief explanation of why there will not be a significant environmental effect (submit an exhibit if more space is necessary). <input type="checkbox"/> <u>Yes</u> <u>No</u>		

PROTECTED SERVICE AREA

11. The protected service area associated with the proposed station is a:
(Check one)

- Circle with radius of 56.33 km (35 miles)
- Basic Trading Area (BTA) or one of the six additional BTA-like areas
- Partitioned service area (PSA)

Note: By definition, a BTA authorization must include all counties of that BTA; i.e., no counties of a BTA have been partitioned to another entity. Upon the removal of any portion of a BTA through partitioning, the remaining area is no longer a BTA, but, itself, becomes a partitioned service area.

12. **For application proposals associated with a 56.33 km (35 mile) protected service area**, enter the geographic coordinates of the center of the authorized circular protected service area. **Caution:** The center coordinates may not coincide with the antenna site coordinates if the site has been, or is herein proposed to be relocated.

- a. North latitude b. West longitude
(DD-MM-SS) (DD-MM-SS)

___ ' ___" ___ ' ___"

13. **For application proposals associated with a Basic Trading Area (BTA):**

BTA Numerical Designator

BTA Name (city/state)

14. **For application proposals associated with a partitioned service area (PSA):** Identify the contiguous counties and/or other political subdivisions that comprise the PSA in which the proposed antenna site will be located. A map depicting the PSA may be submitted, but is not required.

Section V. Transmitting Antenna Information

1. Antenna Number:	1	2	3
2. Manufacturer:			
3. Model Number:			
4. Beam Width: (or "omni")			
5. Tabulation of horizontal relative field strengths for a directional antenna or array.			
a. The station at this site will use: <input type="checkbox"/> a single antenna <input type="checkbox"/> multiple antennas			
b. For single transmitting antenna systems , is the <input type="checkbox"/> <u>Yes</u> <input type="checkbox"/> <u>No</u> horizontal radiation pattern for this antenna already tabulated in the FCC's directional antenna data base? If "No", enter in Question 5.d., values for the <u>normalized</u> horizontal relative field strengths for this antenna. Refer to the instructions for guidance.			
c. For multiple transmitting antenna systems , tabulate in Question 5.d., values for the horizontal plane relative field strengths for the "composite" antenna system. Give the <u>non-normalized</u> (i.e., actual) relative field strength corresponding to each specified azimuth.			
d.			
<u>Azimuth</u>	<u>Rel Field</u>	<u>Required Azimuths</u>	<u>Optional Azimuths</u>
		<u>Azimuth</u> <u>Rel Field</u> <u>Azimuth</u> <u>Rel Field</u>	<u>Azimuth</u> <u>Rel Field</u>
0		120	240
10		130	250
20		140	260
30		150	270
40		160	280
50		170	290
60		180	300
70		190	310
80		200	320
90		210	330
100		220	340
110		230	350

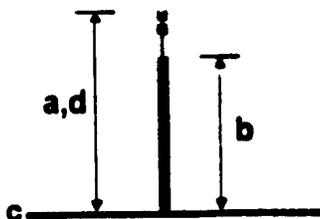
Section VI. Requested Transmitting Facilities

1. Channel(s): ___ ___ ___ or ___ Channel Group	2. Offset: []										
3. Emission Designator. Visual: [] Aural: []	4. Polarization: ___										
5. Antenna Radiation Center Height Above Ground: _____ meters											
6. Equivalent Isotropically Radiated Power: _____ dBW											
7. Transmitting Antenna System: [] Single Antenna or [] Multiple Antennas											
8. Data for a Single Transmitting Antenna System (a) Antenna Type: [] Omnidirectional or [] Directional (b) If Directional, Azimuth of Main Horizontal Lobe: _____ (c) Beam Tilt _____											
9. Data for a Multiple ("Composite") Transmitting Antenna System Give the main lobe azimuth(s) (clockwise from True North) of the each separate antenna in the multiple antenna array, and also give the main lobe azimuth(s) of the composite horizontal plane radiation pattern resulting from the combined use of these antennas Use the antenna numbers in Section V. that correspond to each different antenna in the array. For example, if the array consists of two identical antennas, the number 1 would be entered in the Antenna No. column for both the first and second antenna.											
<table style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 50%; border-bottom: 1px solid black; text-align: center;"><u>Antenna No.</u></th> <th style="width: 50%; border-bottom: 1px solid black; text-align: center;"><u>Azimuth of Main Lobe(s)</u></th> </tr> </thead> <tbody> <tr> <td style="padding: 5px;">(a) First antenna</td> <td></td> </tr> <tr> <td style="padding: 5px;">(b) Second antenna</td> <td></td> </tr> <tr> <td style="padding: 5px;">(c) Third antenna</td> <td></td> </tr> <tr> <td style="padding: 5px;">(d) Composite antenna array</td> <td style="text-align: center; padding: 5px;">*****</td> </tr> </tbody> </table>	<u>Antenna No.</u>	<u>Azimuth of Main Lobe(s)</u>	(a) First antenna		(b) Second antenna		(c) Third antenna		(d) Composite antenna array	*****	
<u>Antenna No.</u>	<u>Azimuth of Main Lobe(s)</u>										
(a) First antenna											
(b) Second antenna											
(c) Third antenna											
(d) Composite antenna array	*****										

Section VII. Antenna Structure Data

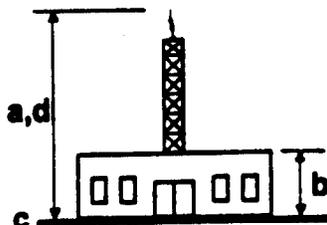
1. Structure is <input type="checkbox"/> New <input type="checkbox"/> Existing	2. Existing station using structure a. Call sign: b. Radio service:
3. Figure number (1, 2, or 3) of figures below which most resembles the structure: _____	
a. Structure type:	
b. Height of support structure ("b" in figures): _____ meters	
c. Overall height of structure ("d" in figures): _____ meters	
4. FCC tower no. (if known):	5. Is FAA notification required? <input type="checkbox"/> Yes <input type="checkbox"/> No
6. If "Yes", FAA notified? <input type="checkbox"/> Yes <input type="checkbox"/> No	
a. Date FAA notification filed:	b. FAA regional office (city/state):
c. FAA study number (if known):	
d. If required FAA notification has not been made, briefly explain below.	

Figure 1



a = height to tip of antenna (AGL)

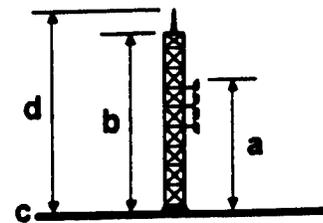
Figure 2



b = height of support structure (AGL)

c = ground elevation (AMSL)

Figure 3



d = overall height of structure including all appurtenances (AGL)

Section VIII. Interference Analysis and Notification Requirements

<p>1. The applicant has met the following requirement to:</p> <p>(a) Prepare an analysis of the potential for harmful interference from its proposed facility to the protected service area of all authorized and previously proposed "incumbent" MDS stations, for which the geographic coordinates of the center of the protected 56.33 kilometer (35 mile) circular areas are located within 160.94 kilometers (100 miles) of the proposed MDS station antenna site, [or 80.47 kilometers (50 miles) of a proposed signal booster site], and which operate or propose to operate on the same channel or an adjacent channel <u>or</u>, in lieu of an interference analysis to a particular station(s),</p> <p>(b) The applicant has previously filed or is filing with this application a written statement(s) of "no objection" to the operation of the proposed station from the licensee(s), conditional licensee(s) and/or applicant(s). (<u>See</u> 47 CFR Sections 21.902 and 21.937.)</p>	<p>[] <u>Yes</u> <u>No</u></p>
<p>2. The applicant certifies that it has, on or before the date of submission of this application, served the above-referenced interference analyses, together with a copy of this application, on all "incumbent" MDS licensees, conditional licensees and/or applicants for which a written statement of "no objection" has not been submitted.</p>	<p>[] <u>Yes</u> <u>No</u></p>
<p>3. The applicant certifies that it has, on or before the date of submission of this application:</p> <p>(a) Served written notice of this filing, including a copy of this application, on all authorization holders for an adjoining BTA or partitioned service area, <u>provided</u> the proposed facilities would produce an unobstructed electromagnetic signal path to any location within an adjoining BTA or partitioned service area <u>or</u>, alternatively,</p> <p>(b) Has previously filed or is filing with this application a written statement(s) of "no objection" to the operation of the proposed station from the applicable service authorization holders. <u>Note</u>: These notification or consent provisions do not apply to an MDS authorization holder or licensee with respect to an adjoining area authorized to the same entity.</p>	<p>[] <u>Yes</u> <u>No</u></p>

<p>4. The applicant has prepared an analysis, which demonstrates that:</p> <p>(a) The proposed MDS station or signal booster would not produce a free space power flux density greater than - 73 dBW/m² at any point on the boundary of its protected service area for which there is an unobstructed electromagnetic signal path to the transmitting antenna <u>or</u>, alternatively, that</p> <p>(b) It has filed or is filing with this application, a written statement(s) of "no objection" to the operation of the proposed facility from authorization holders of an adjoining BTA or partitioned service area, permitting the power flux density to exceed the limiting value at the boundary.</p>	<p>[] <u>Yes</u> <u>No</u></p>
<p>5. The applicant has prepared an analysis, which demonstrates that:</p> <p>(a) The proposed MDS station or signal booster would not cause harmful interference to any authorized E-, F-, G- or D-channel ITFS station with a transmitter site within 80.5 kilometers (50 miles) of the site coordinates of the proposed station <u>or</u>, alternatively, that</p> <p>(b) It is submitting with this application, a written statement(s) of "no objection" to the operation of the proposed station from the ITFS licensees and/or permittees pursuant to 47 CFR Section 21.902(i).</p>	<p>[] <u>Yes</u> <u>No</u></p>
<p>6. The applicant certifies that it has, on or before the date of submission of this application, served the interference studies and a copy of this application on all ITFS licensees and permittees for which a written statement of "no objection" is not submitted with this application.</p>	<p>[] <u>Yes</u> <u>No</u></p>

Section IX. Other Information

<p>1. The applicant has entered into an agreement(s) to operate the proposed station on the basis of visual carrier frequency offset with respect to one or more authorized stations or pending applications. If "Yes", submit an exhibit that identifies the parties with whom an offset agreement has been reached; include the name of the licensee, conditional licensee or applicant, station location, channel(s), frequency offsets ("+" or "-") and the call sign or application file, if known. Also include a signed statement from each affected licensee, conditional licensee or applicant who agrees to operate on the basis of frequency offset.</p>	<input type="checkbox"/> <u>Yes</u> <u>No</u>		
<p>2. In addition to the other interference analysis and/or notification requirements, an applicant for an MDS signal booster</p>			
<p>a. certifies that the site of the proposed signal booster is located within the applicant's protected service area.</p>	<input type="checkbox"/> <u>Yes</u> <u>No</u>		
<p>b. has included with the application a written consent statement of the licensee of each MDS, ITFS and OFS station whose signal is to be retransmitted.</p>	<input type="checkbox"/> <u>Yes</u> <u>No</u>		
<p>3. Rule waivers and exceptions: Is the proposal contained in this application inconsistent with any of the Commission's Rules? If "Yes", submit an exhibit describing all requests for waivers or exceptions, including justification and supporting documentation.</p>			
<p>4. Additional Exhibits. Provide any other information in attached exhibits that may be required by the Commission's Rules, but is not addressed in this form.</p>			
<u>Exhibit No.</u>	<u>Identity</u>	<u>Exhibit No.</u>	<u>Identity</u>

Partial Dissenting Statement of Chairman Reed E. Hundt

Amendments of Parts 21 and 74 of the Commission's Rules with Regard to Filing Procedures in the Multipoint Distribution Service and in the Instructional Television Fixed Service and Implementation of Section 309(j) of the Communications Act - Competitive Bidding (MM Docket No. 94-131 and PP Docket No. 93-253)

For too many years, the MDS -- or wireless cable -- service has been plagued by backlogs, delays and outright fraud. One reason is sadly no secret. The Commission's policy of licensing MDS spectrum by lottery was an utter failure. As Congress explained when it granted the Commission auction authority, "[l]otteries engendered rampant speculation, undermined the integrity of the FCC's licensing process and, more importantly, frequently resulted in unqualified persons winning an FCC license."¹ The lottery policy did as much to stymie competition in the cable market as to foster it, and it denied the public the revenues to which it is entitled for use of the spectrum.

The Report and Order we adopt today marks a significant break from that past. Taking advantage of the authority granted by the Omnibus Budget Reconciliation Act of 1993 (the "Budget Act"), the Report and Order announces that MDS spectrum will henceforth be distributed by auction.² That policy change and others described in the Report and Order replace the old lottery system with a market-based approach that encourages aggregation of

¹House Comm. on the Budget, Report to H.R. 2264, H.R. Rep. No. 111, 103d Cong., 1st Sess., p. 248 (1993) ("House Report").

²The Report and Order also uses "MDS" to include both Multichannel Multipoint Distribution Service (MMDS) stations as well as single-channel Multipoint Distribution Service stations, and I follow that lead in this statement.

channels by licensees who value them the most, who are most likely to construct wireless cable systems, and who are most likely to do so rapidly. The Commission has long held out the promise that wireless cable could emerge as an effective competitor in the video marketplace, leading to more consumer choice, better service and reduced prices. The portions of the order that set rules for new MDS applications will help keep that promise, and I am happy to vote to approve those new rules.

Regrettably, the Report and Order in one respect preserves the failed policy of the Commission's past. Although the Budget Act gives the Commission the authority to auction applications filed before July 26, 1993, a majority of the Commission has decided to resolve pending MDS applications by lottery. This will affect a minimum of 101 applications for five MDS license, and probably more. More than 4,000 applications for more than 350 MDS licenses filed before July 26, 1993, are still pending before the Commission, and there is no sure way to know how many of those licenses will now be distributed by lottery or simply handed out without a lottery if there are no mutually exclusive applications. And while the Commission has dismissed or returned roughly 3,000 applications pending before July 26, 1993, there is no way to know how many of those will be reinstated by the courts and then distributed for free. Because the giveaway the majority mandates cannot be reconciled with the public interest that the Communications Act requires our policies to serve, I dissent from that portion of the Report and Order.

Although this is only the second time I have dissented, in whole or in part, from a

Commission decision, it is not the first time I have dissented from a decision choosing lotteries over auctions. See Implementation of Section 309(j) of the Communications Act - Competitive Bidding, Memorandum Opinion and Order, PP Docket No. 93-253 (released July 14, 1994) (lotteries for unserved cellular areas) (Commissioners Ness and Chong not participating). I dissent again because the decision to use lotteries here is even less justifiable than in the context of unserved cellular areas. First, lotteries will result in significant windfalls to the successful applicants, who will receive licenses for sites that are 500 percent larger and far more valuable than the ones they applied for. The FCC is not supposed to be the Federal Christmas Present Commission -- particularly in June. Second, lotteries of licenses for small specific sites undermine the Commission's new and commendable policy of awarding authorizations for large geographical areas. That policy is designed to reduce roadblocks to the aggregation of MDS channels within boundaries that the market selects, so that wireless cable operators can put together truly competitive systems. The majority's decision means that fewer vacant channels will be available for those who win Basic Trading Area (BTA) authorizations at auction, and it may mean that BTA authorization holders' rights to vacant channels will be contingent on the Commission's resolution of applications still pending and on judicial review of those applications and those previously dismissed.

I dissent again on the issue of auctions vs. lotteries for another reason. While any single decision to use lotteries instead of auctions may seem in isolation not to be terribly costly, those decisions in the aggregate inflict serious harm on the public interest.

Today's decision is particularly disheartening in light of the eminently sensible alternative that is available. The Commission should recognize that pending MDS applications were filed to provide a service under rules that no longer exist and that the public interest is best served by applying the new MDS rules to pending applicants as well as new ones. The Commission should dismiss all pending applications, allowing applicants who desire to provide the new MDS service to participate in the auction for BTA authorizations.

* * * * *

It is not an oversimplification to say that the Commission's extensive experience with lotteries and its recent experience with auctions lead to two straightforward principles that should be the starting point for our thinking about all licensing decisions: Auctions are good. And lotteries are bad.

There is no longer any serious dispute that sound public policy requires auctioning spectrum licenses except where there are clear and compelling public interest reasons to the contrary. Auctions put licenses into the hands of those who value them most highly, and who are therefore most likely to provide service the public desires and to do so quickly and efficiently. Auctions also permit the U.S. Treasury to recover for the public a portion of the value of the public's spectrum.

Lotteries, meanwhile, do nothing to ensure that the licensee is the person or business

most likely to use the spectrum for the public good. They do nothing to ensure that the licensee will actually use the spectrum to provide any service, much less do so quickly. As Commissioner Ness points out, hundreds and hundreds of MDS licenses granted by lottery were eventually forfeited for failure to construct MDS stations. Under a lottery system, it is only by freakish accident that a spectrum license lands in the hands of those who will use it most productively.

Lotteries not only fail to further the public interest, they actually harm it. As the North American Securities Administrators Association and the Council of Better Business Bureaus have concluded, "[w]hen the federal government holds a lottery, con artists are among those who profit the most."³ Nothing proves that more than the Commission's unhappy experience with MDS lotteries. As numerous newspaper articles and federal and state investigations have demonstrated, the Commission's wireless cable lotteries have done "more to enrich con artists than to grant ordinary citizens entree into the cable business." A. Crenshaw, "No Jackpot in This Lottery," Washington Post, Apr. 19, 1992.

The mechanism for the con is the "application mill." The Commission's MDS lotteries have led to an "explosion in abusive application mills that seek to reel in unwary small investors with the lure of the latest in high tech and the promises of quick riches." Investor Alert, p. 1. This is not to say that there are no legitimate applications that arrive

³North American Securities Administrators Association and the Council of Better Business Bureaus, Investor Alert, p. 1 (April 1992).

through application mills. But there is no doubting that application mills have left many victims in their wake. Victims of application-mill scams include not only unlucky investors but the public as well. The public is harmed both because it is denied fair compensation for use of the public spectrum, and also because applications from application mills, even when granted, too often do not result in the construction of wireless cable facilities. The public is thus denied access to a competitor to wired cable and to the improved service and lower prices we can expect to accompany such competition.

Unfortunately, this discussion of application mills is highly relevant to the question before the Commission. Of the roughly 100 mutually exclusive applications for five sites that the Commission today commits to resolving by lottery, virtually all come through application mills with which the Mass Media Bureau is all too familiar. A single mill, Applied Telemedia Engineering and Management, Inc., is associated with 83 of the applications. That company was the target of a Federal Trade Commission investigation that resulted in the settlement of a federal-court complaint alleging deceptive conduct in connection with MDS applications. While the company denied wrongdoing, it nonetheless agreed, among other things, to the issuance of an injunction requiring that it pay \$100,000 to the FTC for consumer redress and that it refrain from deceptive activities.⁴ Each of the 83

⁴Federal Trade Commission v. Applied Telemedia Engineering and Management, Inc., Final Judgment and Order for Permanent Injunction and for Settlement of Claims for Monetary Relief as to Defendants Applied Telemedia Engineering and Management, Inc., and Gerald Seifer, No. 91-0635-CIV-UNGARO-BENAGES (S.D. Fl., Jan. 12, 1993). See also M. Carnevale, "Miami Firm Faces Lawsuit by the FTC Over TV Licenses; Company Mised Consumers About 'Wireless Cable' Operations, Agency says," *The Wall Street Journal*, B7, April 2, 1991.

pending MDS applications involving Applied Telemedia was filed before entry of that federal injunction, and most were filed before the FTC action was initiated.

In view of those facts, it strikes me as impossible to reconcile the majority's decision to award pending applications by random selection with one of Congress's main reasons for granting the Commission auction authority in the first place: deep dissatisfaction with lotteries. "[L]otteries have been characterized by 'get rich quick' appeals by firms that would submit an application for a fee, so-called 'licensing mills,' and by licenses landing in the hands of those ill equipped to build or operate a service properly utilizing radio spectrum." House Report, p. 248.

The majority offers equitable considerations and administrative costs as its reasons for choosing lotteries over auctions. Those were the arguments offered in the context of pending applications for unserved cellular areas. They were unpersuasive then. They are even less persuasive now.

With respect to equitable considerations, the majority ignores the critical fact: that what pending applicants applied for no longer exists. The Commission today significantly expands the protected service area for "incumbent" MDS licensees, which includes the pending applicants who have yet to be awarded licenses. Pending MDS applicants sought licenses to provide wireless cable service throughout a 710 square mile area. Lottery winners will receive far more valuable licenses to provide wireless cable service throughout a

3848 square mile area, an area five times as large.

This extraordinary windfall is entirely undeserved. It is highly unlikely that many pending applicants for lotteries invested a significant amount of time or money in developing detailed business plans. Why should they when their chances of obtaining a license were those associated with a lottery? And, at least as a general rule, bona fide businesses forced to apply for a lottery would prefer an auction even now, because competitive bidding is far more likely than random selection actually to reward investment and innovation. While it is true that application mill applicants may have been convinced to "invest" unfortunate sums of money in a chance to win a lottery, that is hardly the kind of investment that sound public policy should reward. The majority tries to make much of the long (and certainly regrettable) delays experienced by many applicants, but I simply do not see how that justifies the windfall the majority awards them, any more than the \$155 application fee entitles them to the significant benefit they will receive (the majority, of course, noting that the \$155 bet can be refunded, if necessary). These pending applicants never had a reasonable expectation that they would actually win a lottery and receive a license. And given clear Commission policy and judicial precedent, see infra, at 14-15, the applicants were on notice that the Commission might ultimately decline to award the licenses for which they applied, or award the licenses in a different way.

A serious analysis of the equities would have to consider not only the equitable claims of pending applicants, but the equitable claims of others. The majority never considers,

however, whether its decision is fair to those who chose not to apply for a small service area but who would have applied for the larger and more valuable area that will now be given away; or whether its decision is fair to the American public as a whole, which will now be denied compensation for commercial use of the spectrum. Nor does the majority ask whether its decision is fair to residents of the affected areas, who are now less likely to receive the benefits of competition. If, as the majority suggests, delays are critical to an equitable analysis, surely the majority is obliged to consider the delay in rolling out wireless cable service that a lottery will almost certainly cause.

The majority seeks to sidestep the likelihood of such a service delay by relying on a presumption that lottery winners will actually provide MDS service. See Report and Order, Par. 91 ("[T]here is no evidence before us that [application mill] applicants, if awarded an MDS station license by lottery, would not construct and operate an MDS station"). This presumption is contradicted by the Commission's experience with MDS lotteries, which, as I've mentioned, has resulted in the forfeiture of an embarrassing percentage of MDS licenses for failure to provide service. And it is precluded by the congressional finding that lotteries place licenses "in the hands of those ill equipped to build or operate a service properly utilizing radio spectrum." House Report, p. 248. If the Commission is to rely on a presumption in this area, it should rely on a presumption that is the exact reverse of the one it has selected. Lotteries should be spurned absent, at least, clear evidence that lottery applicants will actually construct and operate MDS stations.

With respect to administrative costs, the only issue the majority raises is a trivial one: that an auction would require applicants to update their applications. That strikes me as a cost easily worth bearing given the benefits of competitive bidding. Moreover, the majority fails to say how it can justify not requiring pending applicants to update their applications given that the Commission will now be giving away licenses to provide wireless cable service over vastly expanded areas. Even under our old rules, MDS applicants were required to certify that they have the financial ability to construct wireless cable facilities and to provide wireless cable service for 12 months. 47 C.F.R. 21.17. It strikes me as arbitrary to assume that certifications provided in connection with a small wireless cable service area suffice to demonstrate the financial ability to construct and run a wireless cable operation that would cover an area five times as large. A logical application of our rules, and the only one consistent with a desire to ensure that new lottery winners will actually provide wireless cable service, would require pending applicants to recertify that they are financially qualified.

The majority asserts that its decision "serves the public interest," but its public interest inquiry consists entirely of its (incomplete) equity analysis and its (unconvincing) administrative argument. The Commission, it seems to me, is obliged to engage in a more extensive analysis of the public interest before choosing lotteries over auctions. While the Budget Act does give the Commission the discretion to reject auctions for applications pending before July 26, 1993, proper exercise of that discretion requires considering the public interest factors Congress deemed important enough to place in the Budget Act itself. The majority quite rightly observes that the Budget Act, on its face, does not compel the

Commission to review each of the listed public interest factors in deciding how to resolve pending applications, but nor does it compel consideration of equitable or administrative factors. And contrary to the majority's apparent view, the legislative history of the Budget Act contains no support for the notion that Congress intended the Commission to focus exclusively on equitable concerns and administrative costs. The legislative history of the Section 6002(e), the "Special Rule," reads in full:

The Conference Agreement adopts the House approach and adds additional language which permits the Commission to use lotteries for applications that were accepted for filing before July 26, 1993. This provision will permit the Commission to conduct lotteries for the nine Interactive Video Data Service markets for which applications have already been accepted, and several other licenses.⁵

If anything, this sparse legislative history -- which suggests only a congressional willingness to tolerate licenses for nine IVDS markets plus "several other licenses" -- precludes the majority's approach, under which lotteries would be used for a far greater number of licenses, in MDS and other services. It certainly does not support the majority's apparent view that it is inappropriate to consider factors other than the equities and administrative costs. The question, to paraphrase the majority, is not whether we are *required* to consider the statutory public interest factors, but whether we *should*. I think the answer is obvious. And I think that the decision to resolve pending MDS applications by lottery cannot be squared with those statutory factors.

First, the majority's decision to distribute pending MDS applications by lottery will

⁵H.R. Rep. 103-213, 103d Cong., 1st Sess. 498-499 (1993) (Conf. Rep.).

not promote "the development and rapid deployment of new technologies, products, and services for the benefit of the public, including those residing in rural areas, without administrative or judicial delays." 47 U.S.C. 309(j)(3)(A). We can confidently infer from experience that the lottery winner is unlikely on its own to construct an MDS facility within one year, as required, at which point the spectrum will return to the Commission and have to be redistributed. Second, the majority's decision to distribute pending MDS applications by lottery will not promote "economic opportunity and competition" and will not ensure that new and innovative technologies are readily accessible to the public by encouraging small businesses, rural telephone companies, and businesses owned by minorities and women to become licensees. 47 U.S.C. 309(j)(3)(B). Random distribution of licenses is the antithesis of a Commission policy to ensure the diversity of licensees, and a spectrum licensing method that we know from experience to be inconsistent with a rapid build out ensures neither economic opportunity nor the ready accessibility of new technologies.

Third, the majority's decision to distribute pending MDS applications by lottery obviously does not promote the "recovery for the public of a portion of the value of the public spectrum resource made available for commercial use and avoidance of unjust enrichment through the methods employed to award uses of that resource." 47 U.S.C. 309(j)(3)(C). It is hard to predict the revenue that the U.S. Treasury will be denied as a result of the majority's decision, particularly when the universe of sites subject to lottery may expand if the Commission does not dismiss as-yet reviewed applications or if the court reinstates applications that have been dismissed. We can be certain, however, that a lottery