

§ 21.930

47 CFR Ch. I (10–1–03 Edition)

§ 21.930 Five-year build-out requirements.

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

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

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

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

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

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

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

(2) If the Commission finds that the BTA authorization holder has not pro-

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

(i) The competitive bidding procedures set forth in §§ 21.950 through 21.960 shall be followed by applicants seeking authority to provide MDS service to the unserved partitioned area.

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

[60 FR 36555, July 17, 1995, as amended at 68 FR 42998, July 21, 2003]

§ 21.931 Partitioned service areas (PSAs).

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

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

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

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

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

(ii) Applications for assignment or transfer of existing stations with the PSA; or

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

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

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

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

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

(f)(1) When any area within a BTA becomes a PSA, the remaining counties and other geopolitical subdivisions within that BTA will also be subsequently treated and classified as a PSA(s).

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

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

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

grant of the PSA authorization. The requirements of § 21.930(c)(1) also apply to the holders of authorizations for PSAs.

[60 FR 36556, July 17, 1995]

§ 21.932 Forfeiture of incumbent MDS station licenses.

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

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

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

[60 FR 36556, July 17, 1995]

§ 21.933 Protected service areas.

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

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