



PUBLIC NOTICE

Federal Communications Commission
445 12th St., S.W.
Washington, D.C. 20554

News Media Information 202 / 418-0500
Fax-On-Demand 202 / 418-2830
TTY 202 / 418-2555
Internet: <http://www.fcc.gov>
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DA 01-1072
April 25, 2001

IN THE MATTER OF EXTENSION OF THE FIVE-YEAR BUILD-OUT PERIOD FOR BTA AUTHORIZATION HOLDERS IN THE MULTIPOINT DISTRIBUTION SERVICE

Comment Date: May 9, 2001

Reply Comment Date: May 16, 2001

By the Chief, Mass Media Bureau:

1. Pursuant to Sections 1.3 of the Commission's rules, 47 C.F.R. § 1.3, the Mass Media Bureau ("Bureau"), on its own motion, hereby seeks comment on a proposal to extend the current five-year build-out requirement imposed upon Basic Trading Area ("BTA") authorization holders in the Multipoint Distribution Service ("MDS") by two years. In March 1996, the Commission completed its auction of the remaining unused MDS spectrum with the expectation that such spectrum would be used for the provision of wireless cable services. The United States was divided into 493 BTAs and these markets were auctioned to the highest bidders. Pursuant to 47 C.F.R. § 21.930, BTA authorization holders have five years from the grant date of the initial BTA authorization to construct, develop and expand MDS station operations in their respective protected service areas. Specifically, within five years of the grant, the BTA authorization holder must construct MDS stations to provide signals that are capable of reaching at least two-thirds of the population of the service area, excluding the populations within protected service areas of incumbent stations. The purpose of this requirement was to ensure that service was promptly delivered to the public. *See* 47 U.S.C. § 309(j)(4)(B).¹ On August 16, 1996, the Commission granted 334 of the 493 BTA authorizations to 54 different entities. These BTA authorization holders will be the first entities to reach the five-year build-out date of August 16, 2001. By this Public Notice, we seek comment on our proposal to extend the five-year build-out requirement set forth in 47 C.F.R. § 21.930 by two years, as described below.

2. Traditionally, MDS spectrum has been used to deliver multichannel video programming services similar to cable television. As noted above, the Commission auctioned 493 BTAs for the provision of these wireless cable services.² Since the 1996 auction, the MDS industry has been rapidly evolving. In

¹ The build-out requirement was also enacted to deter the warehousing of spectrum. *See In the Matter of Amendment 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*, 10 FCC Rcd 9589, 9613 (1995).

² Although a BTA holder has rights to transmit throughout its authorized area, incumbent licensees whose authorizations predate the 1996 auction continue to operate within any BTA as before the auction. *See* 47 C.F.R. § 21.902.

July 1996, the Commission's *Digital Declaratory Ruling* permitted licensees to digitize their MDS spectrum.³ In October 1996, the Commission allowed MDS operators to use their spectrum for high-speed digital data applications, including Internet access.⁴

3. In March 1997, the Wireless Cable Association International, Inc.,⁵ along with over 100 participants, petitioned the Commission to grant the industry the right to use MDS and Instructional Television Fixed Service ("ITFS") spectrum for two-way services. Two-way authorization would effectively enable voice, video, and data over the spectrum. In 1998, the Commission approved the use of two-way transmissions on MDS and ITFS frequencies. In the two-way proceeding, the Commission decided to: (1) permit both MDS and ITFS licensees to provide two-way services on a regular basis; (2) permit increased flexibility on permissible modulation types; (3) permit increased flexibility in spectrum use and channelization, including combining multiple channels to accommodate wider bandwidths, dividing 6 MHz channels into smaller bandwidths, and channel swapping; (4) adopt a number of technical parameters to mitigate the potential for interference among service providers and to ensure interference protection to existing MDS and ITFS; (5) simplify and streamline the licensing process for stations used in cellularized systems; and (6) modify the ITFS programming requirements in a digital environment.⁶

4. In the initial filing window for two-way service, which was held August 14 - 18, 2000, MDS and ITFS licensees filed approximately 2,267 applications. On April 6, 2001, the Bureau released its first Public Notice announcing the grant of 1,024 of these applications.⁷ The Bureau will continue to grant additional two-way applications and on April 16, 2001, the Bureau began the transition to the rolling one-day filing window procedure.⁸

5. Section 21.930(c)(1) of the Commission's rules, 47 C.F.R. § 21.930(c)(1), provides that within five years of the grant of a BTA authorization, the authorization holder must construct MDS stations to provide signals pursuant to Section 21.907, 47 C.F.R. § 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. In addition, 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 that the holder has met the build-out requirements. 47 C.F.R. § 21.930(c)(2).

6. The build-out benchmarks were originally established in order to ensure that BTA authorization

³ See *In the Matter of Request for Declaratory Ruling on the Use of Digital Modulation by Multipoint Distribution Service and Instructional Television Fixed Service Stations*, 11 FCC Rcd 18839 (1996).

⁴ See *Public Notice, The Mass Media Bureau Implements Policy for Provision of Internet Service on MDS and Leased ITFS Frequencies*, 11 FCC Rcd 22419 (1996).

⁵ The organization subsequently changed its name to the Wireless Communications Association International, Inc.

⁶ See *In the Matter of Amendment of Parts 21 and 74 to Enable Multipoint Distribution Service and Instructional Television Fixed Service Licensees to Engage in Fixed Two-Way Transmissions ("Two-Way Order")*, 13 FCC Rcd 19112 (1998), *recon.*, 14 FCC Rcd 12764 (1999), *further recon.*, 15 FCC Rcd 14566 (2000).

⁷ *Public Notice*, Report No. 337 (MMB April 6, 2001).

⁸ *Public Notice*, DA 01-751 (MMB March 26, 2001).

holders would promptly deliver their anticipated video programming service to the public. We propose to extend the five-year build-out requirement as set forth in Section 21.930(a)(1) of the Commission's rules, 47 C.F.R. § 21.930(a)(1), by two years. In light of the service rule changes promulgated in the *Two-Way Order*, the timing of the initial filing window, the recent two-way application grants allowing BTA authorization holders to provide broadband service, the forthcoming grants of other pending two-way applications, and the upcoming August 16, 2001 build-out deadline for many BTAs, we tentatively conclude that extension of the five-year build-out requirement by two years for all BTAs will promote the maximization of efficient and effective use of this service. We believe that it would be inequitable to require authorization holders to follow build-out criteria applicable to rules governing wireless cable operations since many of them are now providing high-speed broadband services. We tentatively conclude that requiring BTA authorization holders to meet the five-year construction build-out requirement would be unreasonable, would not promote efficient use of the spectrum, and would be contrary to the public interest.

7. Accordingly, by this Public Notice, we propose to extend the five-year build-out requirement by two years.⁹ For MDS BTA authorization holders whose build-out requirement ends on August 16, 2001, the new build-out deadline would be August 16, 2003. For BTA authorization holders whose build-out requirement ends after August 16, 2001, the new build-out deadline would be two years from the date that the original five-year deadline was to have taken place.

8. Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentations must contain summaries of the substance of the presentations and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented is generally required. See 47 C.F.R. § 1.1206(b). Other rules pertaining to oral and written *ex parte* presentations in permit-but disclose proceedings are set forth in Section 1.1206(b) of the Commission's rules, 47 C.F.R. § 1.1206(b).

9. Comments must be filed on or before May 9, 2001, and reply comments by May 16, 2001. All documents filed in this proceeding should indicate in the caption that this matter is before the Mass Media Bureau and reference Public Notice DA No. 01-1072. Comments may be filed via the Commission's Electronic Comment Filing System (ECFS) via the Internet to <http://www.fcc.gov/e-file/ecfc.html>. In completing the transmittal screen, commenters should include their full name and Postal Service mailing address, and reference Public Notice DA No. 01-1072. Parties may also submit electronic comments by

⁹ We note that in similar proceedings, Nextel subsidiary FCI 900 ("Nextel") and NeoWorld License Holdings, Inc. ("NeoWorld") filed respective expedited waiver requests with the Wireless Telecommunications Bureau regarding the five-year construction period for 900 MHz major trading area ("MTA") licenses. Nextel asks for extension of the deadline from August 12, 2001 to August 12, 2004, for all 900 MHz MTA licensees, while NeoWorld requests an extension until December 31, 2002. Commission rules require MTA licensees to provide coverage to at least two-thirds of the population within five years of licenses being granted. Nextel and NeoWorld assert that they need waivers because appropriate digital equipment is not yet available and that deployment of that broadband service would be delayed if they had to build analog 900 MHz systems to meet the August 12 construction deadline. The Wireless Telecommunications Bureau accepted comments on the waiver requests through February 1, 2001 and reply comments were due on February 8, 2001. See *Public Notice, Wireless Telecommunications Bureau Seeks Comment of FCI 900, Inc.'s Expedited Request for 3-year Extension of 900 MHz Band Construction Requirements*, DA 01-121 (Released January 18, 2001); *Public Notice, Wireless Telecommunications Bureau Seeks Comment on NeoWorld License Holdings, Inc.'s Request for Waiver of 900 MHz Band Construction Requirements and Petition for Declaratory Ruling*, DA 01-122 (Released January 18, 2001).

Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to: ecfs@fcc.gov, including "get form <your e-mail address>" in the body of the message. A sample form and directions will be sent in reply. Interested parties who choose to file by paper must file an original and four copies of their comments with the Office of the Secretary, Federal Communications Commission, 445 Twelfth Street, S.W., Room TW-A325, Washington, D.C. 20554. In addition, parties should send: one paper copy to Brad Lerner, Room 2-A733, Mass Media Bureau, Federal Communications Commission, 445 Twelfth Street, S.W., Washington, D.C. 20554; one paper copy to the Reference Information Center, Federal Communications Commission, 445 Twelfth Street, S.W., 20554; and one paper copy and one diskette copy to ITS, Room CYB-400, 445 Twelfth Street, S.W., Washington, D.C. 20554.

For further information, contact Brad Lerner of the Mass Media Bureau, at 202-418-7066 (email: blerner@fcc.gov).

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