

must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

A record has been established for this rulemaking under docket number [PP 3F4258/R2181] (including any objections and hearing requests submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The public record is located in Rm. 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Written objections and hearing requests, identified by the document control number [PP 3F4258/R2181], may be submitted to the Hearing Clerk (1900), Environmental Protection Agency, Rm. 3708, 401 M St., SW., Washington, DC 20460.

A copy of electronic objections and hearing requests filed with the Hearing Clerk can be sent directly to EPA at: opp-Docket@epamail.epa.gov

A copy of electronic objections and hearing requests filed with the Hearing Clerk must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer any objections and hearing requests received electronically into printed, paper form as they are received

and will place the paper copies in the official rulemaking record which will also include all objections and hearing requests submitted directly in writing. The official rulemaking record is the paper record maintained at the address in "ADDRESSES" at the beginning of this document.

Under Executive Order 12866 (58 FR 51735, Oct. 4, 1993), the Agency must determine whether the regulatory action is "significant" and therefore subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. Under section 3(f), the order defines a "significant regulatory action" as an action that is likely to result in a rule (1) having an annual effect on the economy of \$100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities (also referred to as "economically significant"); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Pursuant to the terms of the Executive Order, EPA has determined that this rule is not "significant" and is therefore not subject to OMB review.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the Federal Register of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: October 24, 1995.

Stephen L. Johnson,  
Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is amended as follows:

**PART 180—[AMENDED]**

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. By amending § 180.449(b) in the table therein by adding and alphabetically inserting an entry for bell peppers, to read as follows:

**§ 180.449 Avermectin B<sub>1</sub> and its delta-8,9-isomer; tolerances for residues.**

*	*	*	*
*			
(b)	*	*	*
	Commodity		Parts per million
*	*	*	*
Peppers, bell	.....		0.01
*	*	*	*

[FR Doc. 95-28069 Filed 11-14-95; 8:45 am]

BILLING CODE 6560-50-F

**FEDERAL COMMUNICATIONS COMMISSION**

**47 CFR Parts 21 and 74**

[MM Docket No. 94-131 and PP Docket No. 93-253, FCC 95-445]

**Filing Procedures in Multipoint Distribution Service and in the Instructional Television Fixed Service, Including Electronic Filing and Competitive Bidding**

AGENCY: Federal Communications Commission.

ACTION: Final rule; petition for reconsideration.

**SUMMARY:** This document addresses issues raised on reconsideration of the Multipoint Distribution Service (MDS) Report and Order, which modified the MDS application process and established competitive bidding procedures to select among mutually exclusive applicants for MDS. This proceeding is intended to resolve the issues presented in the petitions for reconsideration filed on various aspects of the MDS Report and Order. Clarification is needed in order to expedite the auction of the MDS spectrum, intended to enhance the delivery of wireless cable to the public.

**EFFECTIVE DATE:** November 15, 1995.

**FOR FURTHER INFORMATION CONTACT:** Charles Dzeidzic at (202) 418-1604, Sharon Bertelsen at (202) 416-0892, Jerrienne Timmerman at (202) 416-0881, Video Services Division, Mass Media Bureau.

**SUPPLEMENTARY INFORMATION:** The *Memorandum and Order on Reconsideration* addresses petitions for reconsideration filed in response to the MDS Report and Order, released June 30, 1995, summarized at 60 FR 36524 (July 17, 1995), which modified the MDS application process and established competitive bidding procedures for MDS. Thirteen petitions for reconsideration on various aspects of the *MDS Report and Order* were filed with the Commission. Petitioners include the Wireless Cable Association, Bell Atlantic, Pacific Telesis-Cross Country Wireless, Instructional Telecommunications Foundation, Network for Instructional Television, Trans Video Communications, as well as a number of individual wireless cable or Instructional Television Fixed Service (ITFS) operators.

The petitioners raise numerous legal and technical issues. Under the competitive bidding procedures established in the *MDS Report and Order*, a geographic licensing plan was developed under which the Commission would allot one MDS authorization for each of the 487 Basic Trading Areas (BTAs) and six additional BTA-like geographic areas. The BTA authorization holder would be able to construct and license facilities to provide wireless cable service on any usable MDS channels within the BTA, and would have preferred rights to the available ITFS frequencies and lease agreements within the BTA. The *MDS Report and Order* required the BTA authorization holder to protect currently authorized and previously proposed MDS stations, known as "incumbents," as well as the receive sites of ITFS systems, against harmful interference. In the *Report and Order*, the Commission also provided certain preferences for small businesses participating in the auction, established a five year build-out requirement for the BTA authorization holders, and established procedures to allow partitioning of the BTA.

Petitioners generally praised the Commission's efforts to facilitate the development of wireless cable services. However, petitioners asked for reconsideration or clarification of certain Commission rules and policies adopted in the *MDS Report and Order*. The Commission granted certain aspects of the petitions for reconsideration, most notably those requesting elimination of the BTA authorization holder's right of first refusal regarding new ITFS lease agreements. In addition, the Commission raised one issue, regarding unjust enrichment to prevent

abuse of the partitioning rules, on its own motion.

The complete text of the rule changes follows. The complete text of the *Memorandum and Order on Reconsideration* is also available for inspection and copying during normal business hours in the FCC Reference Center, Room 239, at the Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554, and it may be purchased from the Commission's copy contractor, International Transcription Service, Inc., 2100 M Street, NW., Suite 140, Washington, DC 20037, (202) 857-3800.

These rule changes will become effective immediately upon their publication in the Federal Register. Pursuant to 5 U.S.C. 553(d)(3) the Commission found good cause to have the rule amendments take effect immediately upon publication in the Federal Register. The MDS auction is scheduled to commence on November 13, 1995. The revised rules need to be effective in less than 30 days so that the auction may take place as scheduled and bidders are fully informed of the rules prior to the auction.

List of Subjects

47 CFR Part 21

Communications common carriers, Communications equipment, Reporting and recordkeeping requirements, Television.

47 CFR Part 74

Television broadcasting.

Federal Communications Commission, William F. Caton, Acting Secretary.

Rule Changes

Parts 21 and 47 of Chapter I of Title 47 of the Code of Federal Regulations are amended as follows:

**PART 21—DOMESTIC PUBLIC FIXED RADIO SERVICES**

1. The authority citation for Part 21 continues to read as follows:

Authority: Secs. 1, 2, 4, 201-205, 208, 215, 218, 303, 307, 313, 314, 403, 404, 410, 602; 48 Stat. 1064, 1066, 1070-1073, 1076, 1077, 1080, 1082, 1083, 1087, 1094, 1098, 1102, as amended; 47 U.S.C. 151, 154, 201-205, 208, 215, 218, 303, 307, 313, 314, 403, 602; 47 U.S.C. 552, 554.

2. Section 21.2 is amended by revising the definitions for "BTA service area" and "Partitioned service area" to read as follows:

**§ 21.2 Definitions.**

\* \* \* \* \*

*BTA service area.* The area within the boundaries of a BTA to which a BTA authorization holder may provide Multipoint Distribution Service. This area excludes the protected service areas of incumbent MDS stations and previously proposed and authorized ITFS facilities, including registered receive sites.

\* \* \* \* \*

*Partitioned service area (PSA).* The area within the coterminous boundaries of one or more counties or other geopolitical subdivisions, drawn from a BTA, to which an authorization holder may provide Multipoint Distribution Service or the area remaining in a BTA upon partitioning any portion of that BTA. This area excludes the protected service areas of incumbent MDS stations and previously proposed and authorized ITFS stations, including registered receive sites.

3. Section 21.15(g) is revised to read as follows:

**§ 21.15 Technical content of applications.**

\* \* \* \* \*

(g) Except for applications in the Multipoint Distribution Service filed on or after September 15, 1995, each application in the Point-to-Point Radio, Local Television Transmission and Digital Electronic Message Service (excluding user stations) proposing a new or replacement antenna (excluding omni-directional antennas) shall include an antenna radiation pattern showing the antenna power gain distribution in the horizontal plane expressed in decibels, unless such pattern is known to be on file with the Commission in which case the applicant may reference in its application the FCC-ID number that indicates that the pattern is on file with the Commission. Multipoint Distribution Service applicants who filed applications on or after September 15, 1995 must provide related information in completing an MDS long-form application.

\* \* \* \* \*

4. Section 21.42(d) is revised to read as follows:

**§ 21.42 Certain modifications not requiring prior authorization.**

\* \* \* \* \*

(d) Licensees may correct erroneous information on a license which does not involve a major change (i.e., a change that would be classified as a major amendment as defined by § 21.23) without obtaining prior Commission approval by filing a completed FCC Form 494, or for the Multipoint Distribution Service licensees, by filing the MDS long-form application.

5. Section 21.902 is amended by revising paragraph (g)(1) to read as follows:

**§ 21.902 Frequency interference.**

\* \* \* \* \*

(g)(1) All interference studies prepared pursuant to paragraph (c) of this section must be served on all licensees, conditional licensees, and applicants for the stations required to be studied by this section. This service must include a copy of the FCC application and occur on or before the date the application is filed with the Commission.

\* \* \* \* \*

6. Section 21.904 is amended by redesignating paragraph (c)(2) as paragraph (c)(3) and adding new paragraph (c)(2) to read as follows:

**§ 21.904 Transmitter power.**

\* \* \* \* \*

(c) \* \* \*  
(2) The interfered-with stations may increase its own power consistent with the rules; and

\* \* \* \* \*

7. Section 21.924 is amended by revising paragraph (c) to read as follows:

**§ 21.924 Service areas.**

\* \* \* \* \*

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

8. Section 21.925(a)(2) is revised to read as follows:

**§ 21.925 Applications for BTA authorizations and MDS station licenses.**

(a) \* \* \*

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

\* \* \* \* \*

9. Section 21.929 is amended by designating the undesignated paragraph as paragraph (b), and adding a new paragraph (a) to read as follows:

**§ 21.929 Authorization period for station licenses.**

(a)(1) A BTA authorization will be granted for a term of ten years, terminating ten years from the date of the Commission declared bidding closed in the MDS auction.

(2) A BTA authorization shall automatically terminate without further

notice to the licensee upon expiration of the ten-year license term unless prior thereto an application for renewal of such license has been filed with the Commission.

\* \* \* \* \*

10. Section 21.933 is revised to read as follows:

**§ 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 PSA, even if these protected service areas extend into adjacent BTAs. The protected service area also includes registered receive sites.

11. Section 21.938 is amended by redesignating paragraphs (c) through (g) as (d) through (h) respectively, revising newly redesignated paragraphs (d) and (f), and adding new paragraph (c), to read as follows:

**§ 21.938 BTA and PSA technical and interference provisions.**

\* \* \* \* \*

(c)(1) ITFS applicants may locate a new station in an unused portion of a BTA or PSA where interference to a previously-proposed or authorized MDS station of a BTA or PSA authorization holder would not be predicted.

(2) With respect to ITFS applications only and for purposes of determining the existence of harmful electromagnetic interference as caused to MDS stations licensed to BTA or PSA authorization holders by subsequently proposed ITFS stations within that BTA, MDS stations licensed to BTA and PSA authorization holders and will have a protected service area of 56.33 km (35 miles), centered on the antenna site of the MDS stations.

(3) The 56.33 km (35 mile) protected service area afforded to a previously-proposed or authorized MDS station of

a BTA or PSA authorization holder with respect to a subsequently proposed ITFS station is entitled to the interference protection standards of § 21.902.

(4) An ITFS station authorized before September 15, 1995 may be modified, provided the power flux density of that station does not exceed -73 dBw/m<sup>2</sup> at locations along the 56.33 km (35 mile) circle centered on the then-existing transmitting antenna site or service area of collocated incumbent MDS station, as applicable.

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

\* \* \* \* \*

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

\* \* \* \* \*

12. Section 21.960 is amended by revising paragraphs (b)(5)(i) and (d)(1)(i) to read as follows:

**§ 21.960 Designated entity provisions for MDS.**

\* \* \* \* \*

(b) \* \* \*

(5) \* \* \*

(i) If an eligible BTA authorization holder that utilizes installment financing under this paragraph seeks to assign or transfer control of its BTA authorization to an entity not meeting the eligibility standards for installment payments, the holder must make full payment of the remaining unpaid principal and any unpaid interest accrued through the date of assignment or transfer as a condition of approval. If an eligible BTA authorization holder that utilizes installment financing under this subsection seeks to partition, pursuant to § 21.931, a portion of its BTA containing one-third or more of the population of the area within its control in the licensed BTA to an entity not meeting the eligibility standards for installment payments, the holder must

make full payment of the remaining unpaid principal and any unpaid interest accrued through the date of partition as a condition of approval.

\* \* \* \* \*

(d) \* \* \*  
(1) \* \* \*

(i) If a BTA authorization holder that utilizes a bidding credit under this paragraph seeks to assign or transfer control of its BTA authorization to an entity not meeting the eligibility standards for bidding credits, the authorization holder must reimburse the government for the amount of the bidding credit, plus interest at the rate imposed for installment financing at the time the authorization was awarded, before assignment or transfer will be permitted. If an eligible BTA authorization holder that utilizes a bidding credit under this paragraph seeks to partition, pursuant to § 21.931, a portion of its BTA containing one-third or more of the population of the area within its control in the licensed BTA to an entity not meeting the eligibility standards for bidding credits, the authorization holder must reimburse the government for the amount of the bidding credit, plus interest at the rate imposed for installment financing at the time the authorization was awarded, before the partitioning will be permitted. The amount of the required reimbursement will be reduced over time. An assignment, transfer or partition in the first two years after issuance of the BTA authorization will result in a reimbursement of one hundred (100) percent of the value of the bidding credit; during year three, of seventy-five (75) percent of the bidding credit; in year four, of fifty (50) percent; in year five, twenty-five (25) percent; and thereafter, no reimbursement.

\* \* \* \* \*

13. Section 21.961 is amended by revising paragraph (b)(2) introductory text to read as follows:

**§ 21.961 Definitions applicable to designated entity provisions.**

\* \* \* \* \*

(b) \* \* \*  
(2) *Aggregation of gross revenues*

\* \* \* \* \*

**PART 74—EXPERIMENTAL, AUXILIARY, AND SPECIAL BROADCAST AND OTHER PROGRAM DISTRIBUTIONAL SERVICES**

1. The authority citation for Part 74 continues to read as follows:

Authority: Secs. 4, 303, 48 Stat. 1066, as amended; 47 U.S.C. 154, 303, 554.

2. Section 74.903 is amended by revising paragraph (b)(5) and by adding

a sentence in paragraph (d) between the first and second sentence to read as follows:

**§ 74.903 Interference.**

\* \* \* \* \*

(b) \* \* \*

(5) An analysis of the potential for harmful interference within the protected service area, as defined in paragraph (d) of this section, of any authorized or previously proposed station(s) described in paragraph (d) of this section.

\* \* \* \* \*

(d) \* \* \* Alternatively, an applicant, permittee, or licensee may select a 56.33 km (35 mile) circular protected area centered at the geographic latitude and longitude of the transmitting antenna site. \* \* \*

\* \* \* \* \*

[FR Doc. 95-28118 Filed 11-14-95; 8:45 am]  
BILLING CODE 6712-01-M

**47 CFR Part 73**

[MM Docket No. 94-116; RM-8507, RM-8567]

**Radio Broadcasting Services; Jefferson City, Cumberland Gap, Elizabethton, TN, and Jonesville, VA**

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** The Commission, at the request of Holston Valley Broadcasting Corporation (RM-8567), allots Channel 256A to Jonesville, Virginia. Channel 256A can be allotted to Jonesville in compliance with the Commission's minimum distance separation requirements with a site restriction of 7.8 kilometers (4.9 miles) southwest. The coordinates for Channel 256A at Jonesville are 36-38-08 and 83-10-04. The proposal filed by Eaton P. Govan, III and Berton B. Cagle, Jr. (RM-8507), see 59 FR 51540, October 12, 1994, requesting the substitution of Channel 256A for Channel 257A at Jefferson City, the reallocation of Channel 256A from Jefferson City to Cumberland Gap, Tennessee; and the substitution of Channel 257C2 for Channel 257C3 at Elizabethton, Tennessee, is denied. With this action, this proceeding is terminated.

**DATES:** Effective December 26, 1995. The window period for filing applications will open on December 26, 1995, and close on January 26, 1996.

**FOR FURTHER INFORMATION CONTACT:** Pam Blumenthal, Mass Media Bureau, (202) 418-2180.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's *Report and Order*, MM Docket No. 94-116, adopted October 26, 1995, and released November 8, 1995. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, ITS, Inc., (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

**PART 73—[AMENDED]**

1. The authority citation for part 73 continues to read as follows:

Authority: Secs. 303, 48 Stat., as amended, 1082; 47 U.S.C. 154, as amended.

**§ 73.202 [Amended]**

2. Section 73.202(b), the Table of FM Allotments under Virginia, is amended by adding Jonesville, Channel 256A.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 95-28119 Filed 11-14-95; 8:45 am]  
BILLING CODE 6712-01-F

**47 CFR Part 73**

[MM Docket No. 95-114; RM-8666]

**Radio Broadcasting Services; Raton, NM**

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** The Commission, at the request of N'Joy Broadcasting, allots Channel 243A to Raton, NM, as the community's second local FM service. See 60 FR 39142, August 1, 1995. Channel 243A can be allotted to Raton in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction, at coordinates 36-54-00 North Latitude; 104-24-00 West Longitude. With this action, this proceeding is terminated.

**DATES:** Effective December 26, 1995. The window period for filing applications will open on December 26, 1995, and close on January 26, 1996.