

**§ 21.953 Prohibition of collusion.**

(a) Except as provided in paragraphs (b), (c) and (d) of this section, after the filing of short-form applications, all applicants in an MDS auction are prohibited from cooperating, collaborating, discussing or disclosing in any manner the substance of their bids or bidding strategies, or discussing or negotiating settlement agreements, with other applicants until after the winning bidder makes the required down payment, unless such applicants are members of a bidding consortium or other joint bidding arrangement identified on the applicant's short-form application. Communications among applicants concerning matters unrelated to the MDS auction will be permitted after the filing of short-form applications.

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

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

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

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

§ 21.952(c)(2). However, any amendment which results in the change of control of an applicant will be considered a major amendment of the short-form.

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

[60 FR 36558, July 17, 1995]

**§ 21.954 Submission of up front payments.**

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

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

(c) The upfront payment(s) of a bidder will be credited toward any down payment required for the BTA service