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Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

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

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Georgia, is amended by adding Butler, Channel 245A.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 01-1981 Filed 1-23-01; 8:45 am]

BILLING CODE 6712-01-U

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 01-64; MM Docket No. 01-4; RM-10020]

Radio Broadcasting Services; Willow Creek, CA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on the proposed allotment of FM Channel 295A to Willow Creek, California, as that community's first local aural transmission service. Coordinates used for this proposal are 40-56-24 NL and 123-37-48 WL.

DATES: Comments must be filed on or before March 5, 2001, and reply comments on or before March 20, 2001.

ADDRESSES: Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: Howard M. Weiss and Alison J. Shapiro, Fletcher, Heald & Hildreth, P.L.C., 1300 North 17th Street, 11th Floor, Arlington, VA 22209.

FOR FURTHER INFORMATION CONTACT: R. Barthen Gorman, Mass Media Bureau, (202) 418-2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 01-4, adopted January 3, 2001, and released January 12, 2001. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center (Room CY-A257), 445 Twelfth Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857-3800.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR § 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR §§ 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR Part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

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

Authority: 47 U.S.C. §§ 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under California, is amended by adding Willow Creek, Channel 295A.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 01-1983 Filed 1-23-01; 8:45 am]

BILLING CODE 6712-01-U

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 101

[ET Docket No. 98-206, RM-9147, RM-9245; FCC 00-418]

Multichannel Video and Data Distribution Service (MVDDS)

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document proposes to authorize MVDDS in the 12.2-12.7 GHz band. The Commission seeks comment on various technical and service issues concerning authorizing MVDDS in the band, including: technical sharing criteria between MVDDS and Broadcast Satellite Services (BSS) and between MVDDS and Non-geostationary Orbit Fixed Satellite Services (NGSO FSS); service areas and frequency assignments; permissible operations, eligibility requirements and regulatory status of MVDDS; other service, technical and licensing rules; disposition of pending applications filed by Broadwave USA, PDC Broadband Corporation, and Satellite Receivers, Ltd.; and use of the Commission's general competitive bidding rules in the event an auction is conducted.

DATES: Comments are due on or before March 12, 2001 and reply comments are due on or before March 26, 2001.

FOR FURTHER INFORMATION CONTACT: MVDDS licensing and service issues: Jennifer Burton, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau, (202) 418-7581, or Nese Guendelsberger, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, (202) 418-0634, or via E-mail to jburton@fcc.gov or nguendel@fcc.gov. MVDDS spectrum sharing issues: Tom Derenge, Spectrum Policy Branch, Office of Engineering and Technology, (202) 418-2451 or via E-mail to tderenge@fcc.gov.

SUPPLEMENTARY INFORMATION:

1. This is a summary of the Commission's *Further Notice of Proposed Rule Making (Further NPRM)*, FCC 00-418 in ET Docket No. 98-206, adopted November 29, 2000, and

released on December 8, 2000. The full text of this *Further NPRM* is available for inspection and copying during normal business hours in the FCC Reference Center, Room CY-A257, 445 12th Street, SW., Washington, DC. The complete text may be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW, Washington, DC 20037. The full text may also be downloaded at: www.fcc.gov. Alternative formats are available to persons with disabilities by contacting Jenifer Simpson at (202) 418-0008 or TTY (202) 418-2555.

Summary of the Further Notice of Proposed Rule Making

2. Given the decision to permit MVDDS operations in the 12.2–12.7 GHz band, in the *Further NPRM*, the Commission seeks comment on technical sharing criteria between MVDDS and BSS and NGSO FSS, and on MVDDS service, technical, and licensing rules under part 101 of the Commission's rules. In addition, the Commission seeks comment on whether to license the 12.2–12.7 GHz band on the basis of geographic areas and on whether to license MVDDS to one spectrum block of 500 megahertz per geographic area.

3. Moreover, the Commission seeks comment on whether to allow partitioning of MVDDS and on whether to restrict spectrum disaggregation. The Commission also seeks comment on the permitted services, eligibility requirements and regulatory status of MVDDS in the 12.2–12.7 GHz band, including whether licensees should be required to meet must-carry obligations and provide all local TV channels to every subscriber.

4. Further, the Commission proposes to require incumbent non-public safety Private Operational Fixed Service ("POFS") licensees in the 12.2–12.7 GHz band to protect MVDDS and NGSO FSS operations from harmful interference. The Commission seeks comment on the disposition of pending 12.2–12.7 GHz applications filed by Broadwave USA, PDC Broadband Corporation, and Satellite Receivers, Ltd., as well.

5. Finally, in the event that an auction is conducted for MVDDS licenses in the 12.2–12.7 GHz band, the Commission proposes to use the general competitive bidding rules set forth in Part 1, Subpart Q, of its rules and to define three tiers of small businesses that would be eligible for bidding credits.

Initial Regulatory Flexibility Analysis

6. As required by the Regulatory Flexibility Act (RFA), the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the policies and rules proposed in this *Further Notice of Proposed Rule Making (Further NPRM)*. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the *Further NPRM* provided above in paragraph 346. The Commission will send a copy of the *Further NPRM*, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration. See 5 U.S.C. 603(a). In addition, the *Further NPRM* and IRFA (or summaries thereof) will be published in the **Federal Register**. See *id.*

A. Need for, and Objectives of, the Proposed Rules

7. This rule making is being initiated to adopt licensing, service and technical rules for the Multichannel Video Data and Distribution Service (MVDDS) at 12.2–12.7 GHz. Our objectives are: (1) to accommodate the introduction of innovative services; and (2) to facilitate the sharing and efficient use of spectrum.

B. Legal Basis for Proposed Rules

8. The proposed action is authorized under the Administrative Procedure Act, 5 U.S.C. 553; and sections 1, 4(i), 7, 301, 303, 308 and 309(j) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 157, 301, 303, 308 and 309(j).

C. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

9. The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act. A small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA). A small organization is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field."

10. The definition of small entity under the SBA rules for the radiotelephone industry provides that a

small entity is a radiotelephone company employing fewer than 1,500 persons. The 1992 Census of Transportation, Communications, and Utilities, conducted by the Bureau of the Census, which is the most recent information available, shows that only 12 radiotelephone firms out of a total of 1,178 such firms that operated during 1992 had 1,000 or more employees. As of 1992, there were approximately 275,801 small organizations nationwide. "Small governmental jurisdiction" generally means "governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than 50,000." As of 1992, there were approximately 85,006 such jurisdictions in the United States. This number includes 38,978 counties, cities, and towns; of these, 37,566, or ninety-six (96) percent, have populations of fewer than 50,000. The Census Bureau estimates that this ratio is approximately accurate for all governmental entities.

11. The proposed rules will affect all entities that intend to provide terrestrial MVDDS operations in the 12.2–12.7 GHz band. In the *Further NPRM*, the Commission seeks comment on whether to permit MVDDS licensees to use spectrum in the 12.2–12.7 GHz band for fixed one-way direct-to-home/business video and data services, as well as other types of services to which the spectrum may be used. The Commission states that it envisions the use of this spectrum for video service, but concedes that it does not know precisely the other types of services that licensees may seek to provide.

12. If an auction is conducted for MVDDS, the Commission proposes to define three tiers of small businesses for the purpose of providing bidding credits to small entities. The Commission proposes to define the three tiers of small businesses as follows: an "entrepreneur" would be an entity with average annual gross revenues not exceeding \$40 million for the preceding three years; a "small business" would be an entity with average annual gross revenues not exceeding \$15 million for the preceding three years; and a "very small business" would be an entity with average annual gross revenues not exceeding \$3 million for the preceding three years. The Commission will not know how many auction participants or licensees will qualify under these proposed definitions as entrepreneurs, small businesses, or very small businesses unless and until an auction is held. Even after that, the Commission will not know how many licensees will partition their license areas or disaggregate their spectrum blocks, if

partitioning and disaggregation are allowed. In view of our lack of knowledge about the entities that will seek MVDDS licenses, we assume that, for purposes of our evaluations and conclusions in the IRFA, all prospective licensees are entrepreneurs, small businesses, or very small businesses under our proposed definitions. We invite comment on this analysis.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

13. Applicants for MVDDS licenses may be required to submit applications. If an auction is held, applicants will be required under our proposed rules to submit an FCC Form 175 short-form application prior to the auction, and auction winners will be required to file an FCC Form 601 license application. Additionally, the Commission proposes to require the filing of certain documents (e.g., coverage maps) to substantiate renewal expectancies with information demonstrating substantial service upon license renewal. We request comment on how these proposed requirements can and/or should be modified to reduce the burden on small entities and still meet the objectives of the proceeding.

E. Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

14. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives: (1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from

coverage of the rule, or any part thereof, for small entities.

15. We have reduced burdens wherever possible. To provide opportunities for small entities to participate in any auction that is held, we propose to provide bidding credits for entrepreneurs, small businesses, and very small businesses as defined in Section C of this IRFA. The bidding credits proposed are 15 percent for entrepreneurs, 25 percent for small businesses, and 35 percent for very small businesses. In the *Further NPRM*, the Commission seeks comment on its proposed small business definitions and bidding credits, thus providing interested parties with an opportunity to suggest alternatives. Our proposed partitioning and disaggregation rules are also intended to help small entities acquire licenses. The regulatory burdens we have retained are necessary in order to ensure that the public receives the benefits of innovative new services in a prompt and efficient manner. We will continue to examine alternatives in the future with the objectives of eliminating unnecessary regulations and minimizing any significant economic impact on small entities. We seek comment on significant alternatives commenters believe we should adopt.

F. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules

16. None.

Ordering Clauses

17. Pursuant to the authority contained in Sections 1, 4(i), 7(a), 301, 303(c), 303(f), 303(g), 303(r), 308, and 309(j) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 157(a), 301, 303(c), 303(f), 303(g), 303(r), 308, and 309(j), this Further Notice of Proposed Rule Making IS ADOPTED.

18. The Commission's Consumer Information Bureau, Reference Information Center, SHALL SEND a copy of this Further Notice of Proposed Rule Making, including the Initial

Regulatory Flexibility Analysis, in a report to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996, *see* 5 U.S.C. 801(a)(1)(A); and shall also send a copy of the Further Notice of Proposed Rule Making, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration. A summary of the Further Notice of Proposed Rule Making will be published in the **Federal Register**. *See* 5 U.S.C. 605(b).

Lists of Subjects in 47 CFR Part 101

Communications equipment, Radio.

Federal Communications Commission.

Magalie Roman Salas,
Secretary.

Proposed Rule Changes

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 101 as follows:

PART 101—FIXED MICROWAVE SERVICES

1. The authority citation for part 101 would continue to read as follows:

Authority: 47 U.S.C. 154, 303.

2. Section 101.3 is amended by adding a new definition for Multichannel Video Distribution and Data Service in alphabetical order to read as follows:

§ 101.3 Definitions.

* * * * *

Multichannel Video Distribution and Data Service (MVDDS) is a microwave service licensed in the 12.2–12.7 GHz band that provides various wireless services.

* * * * *

3. Section 101.101 is amended by revising the entry for 12,200–12,700 MHz table to read as follows:

§ 101.101 Frequency availability.

Frequency band (MHz)	Radio Service				Notes
	Common carrier (Part 101)	Private radio (Part 101)	Broadcast auxiliary (Part 74)	Other (Parts 15, 21, 24, 25, 74, 78, & 100)	
* * * * *					
12,200–12,700	MVDDS	MVDDS, OFS		DBS, NGSO.	
* * * * *					

4. Section 101.103 is amended by revising paragraph (f) to read as follows:

§ 101.103 Frequency coordination procedures.

(f) When the proposed facilities are to be operated in the band 12,200–12,700 MHz, licensees must follow the procedures, technical standards, and requirements of § 101.105 in order to protect the stations authorized under part 100 of this chapter.

5. Section 101.105 is amended by adding paragraphs (a)(4) and (a)(5) and by revising paragraph (d) introductory text to read as follows:

§ 101.105 Interference protection criteria.

* * * * *

Option One for Paragraph (a)(4)

(a)(4) MVDDS stations must operate on a non-harmful interference basis to Direct Broadcast Satellite (DBS) receivers. Interference to DBS receivers shall not increase the total outage of any system by more than XX per year. Except for public safety entities, harmful interference protection from MVDDS stations to incumbent point-to-point 12 GHz fixed stations is not required. Incumbent point-to-point private operational fixed 12 GHz stations, except for public safety entities, are required to protect MVDDS stations under the process described in § 101.103(d).

Option Two for Paragraph (a)(4)

(a)(4) MVDDS stations must operate on a non-harmful interference basis to Direct Broadcast Satellite (DBS) receivers. Interference to DBS receivers shall not increase the total outage of any system by more than XX minutes per year. Except for public safety entities, harmful interference protection from MVDDS stations to incumbent point-to-point 12 GHz fixed stations is not required. Incumbent point-to-point private operational fixed 12 GHz stations, except for public safety entities, are required to protect MVDDS stations under the process described in § 101.103(d).

Option Three for Paragraph (a)(4)

(a)(4) MVDDS stations must operate on a non-harmful interference basis to Direct Broadcast Satellite (DBS) receivers. MVDDS shall not decrease the C/I of any system below XX. Except for public safety entities, harmful interference protection from MVDDS stations to incumbent point-to-point 12 GHz fixed stations is not required. Incumbent point-to-point private operational fixed 12 GHz stations, except for public safety entities, are

required to protect MVDDS stations under the process described in § 101.103(d).

(a)(5) All stations operating under this part must protect the radio quiet zones as required by § 1.924 of this chapter. Stations authorized by competitive bidding are cautioned that they must receive the appropriate approvals directly from the relevant quiet zone prior to operating.

* * * * *

(d) Effective August 1, 1985, when a fixed station that conforms to the technical standards of this subpart (or, in the case of the 12,200–12,700 MHz band for incumbent non-MVDDS stations, a direct broadcast satellite station) receives or will receive interference in excess of the levels specified in this section as a result of an existing licensee's use of non-conforming equipment authorized between July 20, 1961 and July 1, 1976, and the interference would not result if the interfering station's equipment complied with the current technical standards, the licensee of the non-conforming station must take whatever steps are necessary to correct the situation up to the point of installing equipment which fully conforms to the technical standards of this subpart. In such cases, if the engineering analysis demonstrates that:

* * * * *

6. Section 101.107 is amended by revising footnote 6 to the Table in paragraph (a) to read as follows:

§ 101.107 Frequency tolerance.

(a) * * *

(6) Applicable to private operations fixed point-to-point microwave stations and stations providing MVDDS service.

* * * * *

7. Section 101.109 is amended by revising the entry for 12,200–12,700 MHz and by adding footnote 8 in the Table at the end of the section to read as follows:

§ 101.109 Bandwidth.

* * * * *

(c) * * *

Frequency band (MHz)	Maximum authorized bandwidth
* * * * *	* * * * *
12,200 to 12,700	500 MHz ⁸
* * * * *	* * * * *

⁸ For incumbent private operational fixed point-to-point stations in this band the maximum bandwidth shall be 20 MHz.

8. Section 101.113 is amended by revising the entry for 12,200–12,700

MHz in the table and adding footnote 10 to the table in paragraph (a) to read as follows:

§ 101.113 Transmitter power limitations.

(a) * * *

Frequency band (MHz)	Maximum allowable EIRP (1)(2)	
	Fixed (dBW)	Mobile (dBW)
* * * * *	* * * * *	* * * * *
12,200 to 12,700 ¹¹ .	+50	
* * * * *	* * * * *	* * * * *

¹¹ The urban area eirp for MVDDS stations is limited to 12.5 dBm (–17.5 dBW) with two exceptions. The exceptions are those MVDDS systems where the transmitter is mounted on a mountain ridge that is over one kilometer from populated subscriber areas may use a higher eirp up to +10 dBw, provided that the increase will not cause the system to exceed the “unavailability criteria” we develop and MVDDS transmitting systems located on tall structures that are adjacent to bodies of water or other significant and clearly unpopulated areas, may use a higher eirp up to +10 dBw, provided that the increase will not cause the system to exceed the “unavailability criteria”. Incumbent point-to-point stations may use up to +50 dBW except for low power systems licensed under § 101.147(q).

9. Section 101.115 is amended by revising footnote 9 to the table in paragraph (c) to read as follows:

§ 101.115 Directional antennas.

* * * * *

(c) * * *

(⁹) Except for Temporary-fixed operations in the band 13200–13250 MHz with output powers less than 250 mW and as provided in § 101.147(q), and except for receive antennas in the MVDDS service which shall only be required to have a minimum antenna gain of 34 dBi and may use circular or linear polarization.

* * * * *

10. Section 101.139 is amended by revising the last sentence of paragraph (a) to read as follows:

§ 101.139 Authorization of transmitters.

(a) * * * Transmitters designed for use in the 31.0–31.3 GHz band and transmitters designed for MVDDS use in the 12,200–12,700 MHz band will be authorized under the verification procedure.

* * * * *

11. Section 101.141 is amended by revising paragraph (a) introductory text to read as follows:

§ 101.141 Microwave modulation.

(a) Microwave transmitters employing digital modulation techniques and

operating below 19.7 GHz must, with appropriate multiplex equipment, comply with the following additional requirements (except for MVDDS stations in the 12,200–12,700 MHz band):

* * * * *

12. Section 101.147 is amended by:

a. Revising the entries in the frequency assignment table in paragraph (a) for 12,200–12,500 MHz and 12,500–12,700 MHz with a new footnote 31.

b. Adding a new sentence immediately succeeding the last sentence of paragraph (p).

c. Adding a new sentence at the beginning of paragraph (q).

The additions and revisions are as follows:

§ 101.147 Frequency assignments.

(a) * * *

* * *

12,200–12,700 MHz ³¹

* * *

* * * * *

(p) * * * The 12.2–12.7 GHz band is also authorized for MVDDS service on a non-harmful interference basis to DBS receivers in this band and on a co-primary basis with NGSO FSS stations.

Option One for Paragraph (q)

(q) Applications for low power stations in the 12.2–12.7 GHz band are accepted. Existing stations are grandfathered. * * *

Option Two for Paragraph (q)

(q) Applications for low power stations in the 12.2–12.7 GHz band are no longer accepted. Existing stations are grandfathered. * * *

13. Section 101.601 is amended by adding a sentence immediately following the last sentence of the paragraph to read as follows:

§ 101.601 Eligibility.

* * * This subpart shall not apply to stations offering MVDDS in the 12.2–12.7 GHz band.

* * * * *

14. Subpart P is added to part 101 to read as follows:

Subpart P—Multichannel Video Distribution and Data Service Rules for the 12.2–12.7 GHz Band

- 101.1401 Service areas.
- 101.1403 Must carry rules.
- 101.1405 Channeling plan.
- 101.1407 Permissible operations for MVDDS.
- 101.1409 Treatment of incumbent licensees.
- 101.1411 Regulatory status and eligibility.
- 101.1413 License term and renewal expectancy.
- 101.1415 Partitioning and disaggregation.
- 101.1417 Annual report.
- 101.1421 Coordination of adjacent area MVDDS stations.
- 101.1423 Canadian and Mexican coordination.
- 101.1425 RF safety.
- 101.1427 Over-the-air reception devices rules (OTARD).
- 101.1437 MVDDS licenses subject to competitive bidding.
- 101.1438 Designated entities.

§ 101.1401 Service areas.

Option One for Section 101.1401

Multichannel Video Distribution and Data Service (MVDDS) is licensed on the basis of geographic areas. Each geographic area shall be licensed to one licensee.

Option Two for Section 101.1401

Multichannel Video Distribution and Data Service (MVDDS) is licensed on a site-by-site basis.

§ 101.1403 Must carry rules.

Option One for Section 101.1403

Licensees are required to provide all local television channels to subscribers within its area. If a license is partitioned, all relevant parties must provide every customer with all the local television channels in the entire area, not a portion thereof. MVDDS licensees are required to comply with the must-carry rules. See Multichannel Video and Cable Television Service Rules, subpart D (Carriage of Television Broadcast Signals), 47 CFR 76.51 through 76.70.

Option One for Section 101.1403

Licensees are not required to provide all local television channels to subscribers within its area. MVDDS licensees are not required to comply with the must-carry rules. See Multichannel Video and Cable Television Service Rules, subpart D (Carriage of Television Broadcast Signals), 47 CFR 76.51 through 76.70.

§ 101.1405 Channeling plan.

Option One for Section 101.1405

Each license shall have one spectrum block of 500 megahertz per geographic

area that can be divided into any size channels and should provide various digital wireless services to subscribers. Disaggregation is not allowed.

Option Two for Section 101.1405

Each license shall have one spectrum block of 500 megahertz per geographic area that can be divided into any size channels and should provide various digital wireless services to subscribers. Disaggregation is allowed.

§ 101.1407 Permissible operations for MVDDS.

MVDDS licensees must use spectrum in the 12.2–12.7 GHz band for digital fixed one-way direct-to-home/office wireless service. Mobile and aeronautical services are not authorized. Two-way services may be provided by using other spectrum or media for the return path.

§ 101.1409 Treatment of incumbent licensees.

Terrestrial point-to-point licensees in the 12.2–12.7 GHz band which were licensed prior to MVDDS or NGSO satellite stations are incumbent point-to-point stations and are not entitled to protection from harmful interference caused by later MVDDS or NGSO FSS entrants in the 12.2–12.7 GHz band, except for public safety stations which must be protected. MVDDS and NGSO FSS operators have the responsibility of resolving any harmful interference problems that their operations may cause to these incumbent point-to-point operations in the 12.2–12.7 GHz band. Incumbent public safety terrestrial point-to-point licensees may only make minor changes to their stations without losing this protection. This does not relieve current point-to-point licensees of their obligation to protect BSS operations in the subject frequency band. Point-to-point applications for new licenses, major amendments, or major modifications for the 12.2–12.7 GHz band are no longer accepted, including low-power operations.

§ 101.1411 Regulatory status and eligibility.

Option One for Paragraph (a)

(a) MVDDS licensees are allowed to provide one-way video programming and data services on a non-common carrier basis. MVDDS is not treated as a common carrier service and is prohibited from providing switched voice and data services.

Option Two for Paragraph (a)

(a) MVDDS licensees are allowed to provide one-way video programming and data services on a non-common

³¹ Frequencies in this band are shared with Direct Broadcast Satellites on a secondary non-harmful interference basis and on a co-primary basis with non-geostationary satellites and can be used only for incumbent private operational fixed point-to-point service on a site by site basis and MVDDS on a [geographical basis by geographic areas or other basis]. Incumbent public safety licensees shall be afforded protection from MVDDS and NGSO licensees, however all other licensees shall be secondary to MVDDS and NGSO licensees.

carrier basis. MVDDS is treated as a common carrier service and is permitted to provide switched voice and data services.

(b) MVDDS licensees in the 12.2–12.7 GHz band are subject to the requirements set forth in Section 101.7 of the Commission's Rules.

§ 101.1413 License term and renewal expectancy.

(a) The MVDDS license term is ten years, beginning on the date of the initial authorization grant.

(b) Application of a renewal expectancy is based on the substantial service requirement which we define as a service that is sound, favorable, and substantially above a level of mediocre service which might minimally warrant renewal. At the end of the license term, the Commission will consider factors such as:

(1) Whether the licensee's operations service niche markets or focus on serving populations outside of areas serviced by other licensees;

(2) Whether the licensee's operations serve populations with limited access to telecommunications services; and

(3) A demonstration of service to a significant portion of the population or land area of the licensed area.

(c) The renewal application of a MVDDS licensee must include the following showings in order to claim a renewal expectancy:

(1) A coverage map depicting the served and unserved areas;

(2) A corresponding description of current service in terms of geographic coverage and population served or links installed in the served areas; and

(3) Copies of any Commission Orders finding the licensee to have violated the Communications Act or any Commission rule or policy and a list of any pending proceedings that relate to any matter described by the requirements for the renewal expectancy.

§ 101.1415 Partitioning and disaggregation.

Option One for Section 101.1415

MVDDS operators are allowed to partition licensed geographic areas. Disaggregation will be permitted by MVDDS licensees in the 12.2–12.7 GHz band. "Partitioning" is the assignment of geographic portions of a license along geopolitical or other boundaries. "Disaggregation" is the assignment of discrete portions or "blocks" of spectrum licensed to a geographic licensee or qualifying entity.

Option Two for Section 101.1415

MVDDS operators are allowed to partition licensed geographic areas. Disaggregation will not be permitted by MVDDS licensees in the 12.2–12.7 GHz band. "Partitioning" is the assignment of geographic portions of a license along geopolitical or other boundaries. "Disaggregation" is the assignment of discrete portions or "blocks" of spectrum licensed to a geographic licensee or qualifying entity.

§ 101.1417 Annual report.

Each MVDDS licensee shall file with the Commission two copies of a report by March 1 of each year for the preceding calendar year. This report must include the following:

- (1) Name and address of licensee;
- (2) Station(s) call letters and primary geographic service area(s); and
- (3) The following statistical information for the licensee's station (and each channel thereof):
 - (i) The total number of separate subscribers served during the calendar year;
 - (ii) The total hours of transmission service rendered during the calendar year to all subscribers;
 - (iii) The total hours of transmission service rendered during the calendar year involving the transmission of local broadcast signals; and
 - (iv) A list of each period of time during the calendar year in which the station rendered no service as authorized, if the time period was a consecutive period longer than 48 hours.

§ 101.1421 Coordination of adjacent area MVDDS stations.

MVDDS licensees in the 12.2–12.7 GHz band are required to develop sharing and protection agreements based on the design and architecture of their systems, in order to ensure that no harmful interference occurs within the same geographic area or between adjacent licensees or between adjacent areas.

§ 101.1423 Canadian and Mexican coordination.

Pursuant to § 2.301 of this chapter, MVDDS systems in the United States within 56 km (35 miles) of the Canadian and Mexican border are granted conditional licenses, until final international agreements are approved. These systems may not cause harmful interference to stations in Canada or Mexico.

§ 101.1425 RF safety.

Stations with output powers that equal or exceed 1640 watts eirp will be

subject to the routine environmental evaluation rules for radiation hazards, as set forth in § 1.1307 of this chapter.

§ 101.1427 Over-the-air reception devices rule (OTARD).

The Over-the-Air Reception Devices Rule (OTARD) in § 1.4000 of this chapter shall apply to the receive-only MVDDS antennas at subscribers' homes or offices.

§ 101.1437 MVDDS licenses subject to competitive bidding.

Mutually exclusive initial applications for MVDDS licenses in the 12.2–12.7 GHz band are subject to competitive bidding procedures. The procedures set forth in part 1, subpart Q, of this chapter will apply unless otherwise provided in this part.

§ 101.1438 Designated entities.

(a) *Eligibility for small business provisions.*

(1) A very small business is an entity that, together with its controlling interests and affiliates, has average annual gross revenues not exceeding \$3 million for the preceding three years.

(2) A small business is an entity that, together with its controlling interests and affiliates, has average annual gross revenues not exceeding \$15 million for the preceding three years.

(3) An entrepreneur is an entity that, together with its controlling interests and affiliates, has average annual gross revenues not exceeding \$40 million for the preceding three years.

(4) For purposes of determining whether an entity meets any of the definitions set forth in paragraphs (a)(1), (a)(2), or (a)(3) of this section, the gross revenues of the entity, its controlling interests and affiliates shall be considered in the manner set forth in § 1.2110(b) and (c) of this chapter.

(5) A consortium of very small businesses is a conglomerate organization formed as a joint venture between or among mutually independent business firms, each of which individually satisfies the definition in paragraph (a)(1) of this section. A consortium of small businesses is a conglomerate organization formed as a joint venture between or among mutually independent business firms, each of which individually satisfies the definition in paragraph (a)(2) of this section. A consortium of entrepreneurs is a conglomerate organization formed as a joint venture between or among mutually independent business firms, each of which individually satisfies the definition in paragraph (a)(3) of this section. Where an applicant or licensee

is a consortium of small businesses (or very small businesses or entrepreneurs), the gross revenues of each small business (or very small business or entrepreneur) shall not be aggregated.

(b) *Bidding credits.* A winning bidder that qualifies as a very small business or a consortium of very small businesses as

defined in this section may use the bidding credit specified in § 1.2110(f)(2)(i) of this chapter. A winning bidder that qualifies as a small business or a consortium of small businesses as defined in this section may use the bidding credit specified in § 1.2110(f)(2)(ii) of this chapter. A

winning bidder that qualifies as an entrepreneur or a consortium of entrepreneurs as defined in this section may use the bidding credit specified in § 1.2110(f)(2)(iii) of this chapter.

[FR Doc. 01-1905 Filed 1-23-01; 8:45 am]

BILLING CODE 6712-01-P