

II. Final Action

A. Finding of Failure to Submit

Today, EPA is making a finding of failure to submit for the Fairbanks CO nonattainment area, due to failure of the State to submit a SIP revision addressing the serious area CO requirements of the CAA.

B. Effective Date Under the Administrative Procedures Act

EPA has issued this action as a rulemaking because the Agency has treated this type of action as rulemaking in the past. However, EPA believes that it would have the authority to issue this action in an informal adjudication, and is considering which administrative process-rulemaking or informal adjudication-is appropriate for future actions of this kind. Because EPA is issuing this action as a rulemaking, the Administrative Procedures Act (APA) applies. Today's action is effective as of April 3, 2000. Under the APA, 5 U.S.C. 553 (d)(3), agency rulemaking may take effect before 30 days after the date of publication in the **Federal Register** if an agency has good cause to mandate an earlier effective date. Today's action concerns a SIP submission that is already overdue and the State is aware of applicable provisions of the CAA relating to overdue SIPs. In addition, today's action simply starts a "clock" that will not result in sanctions for 18 months, and that the State may "turn off" through the submission of a complete SIP submittal. These reasons support an effective date prior to 30 days after the date of publication.

C. Notice-and-Comment Under the Administrative Procedures Act

This document is a final agency action, but is not subject to the notice-and-comment requirements of the APA, 5 U.S.C. 553(b). EPA believes that because of the limited time provided to make findings of failure to submit regarding SIP submissions, Congress did not intend such findings to be subject to notice-and-comment rulemaking. However, to the extent such findings are subject to notice-and-comment rulemaking, EPA invokes the good cause exception pursuant to the APA, 5 U.S.C. 553(d)(3). Notice and comment are unnecessary because no EPA judgment is involved in making a nonsubstantive finding of failure to submit SIPs required by the CAA. Furthermore, providing notice and comment would be impracticable because of the limited time provided under the statute for making such determinations. Finally, notice and comment would be contrary to the public interest because it would

divert Agency resources from the critical substantive review of submitted SIPs. See 58 FR 51270, 51272, note 17 (October 1, 1993); 59 FR 39832, 39853 (August 4, 1994).

III. Administrative Requirements

As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this notice, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the action in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the executive order. This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.). The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866, entitled "Regulatory Planning and Review."

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. However, section 808 provides that any rule for which the issuing agency for good cause finds (and incorporates the finding and a brief statement of reasons therefore in the rule) that notice and public procedure thereon are impracticable, unnecessary or contrary to the public interest, shall take effect at such time as the agency promulgating the rule determines. 5 U.S.C. 808(2). As stated previously, EPA has made such a good cause finding, including the reasons therefore, and established an effective date of April 3, 2000. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2). This rule is effective as of April 3, 2000.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United

States Court of Appeals for the appropriate circuit by June 2, 2000. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Intergovernmental relations.

Dated: March 20, 2000.

Jane Moore,

Acting Regional Administrator, Region 10.

[FR Doc. 00-7628 Filed 3-31-00; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 22 and 101

[WT Docket No. 97-81; FCC 99-415]

Multiple Address Systems

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Commission adopts rules to maximize the use of spectrum designated for Multiple Address Systems (MAS) in the Fixed Microwave Services. Specifically, the Commission lifts the application freeze for the 928/952/956 MHz bands and twenty channels in the 932/941 MHz bands; designates the 928/952/956 MHz bands and twenty channels in the 932/941 MHz bands for public safety and/or private internal services, indicating that these channels will be licensed on a first-come, first-served site-by-site basis; designates five of the twenty channel pairs for public safety/Federal Government use; will license the 928/959 MHz bands and the remaining twenty of the forty paired channels in the 932/941 MHz bands on a geographic-area basis; increases the licensees' technical and operational flexibility in order to allow licensees to provide services that are responsive to market demands; and provides incumbents with sufficient protection to avoid disruption of the marketplace or any undue unfairness.

DATES: Effective June 2, 2000 (except for § 101.1327 which contains an information collection that has not been

approved by the Office of Management Budget (OMB). The Commission will publish a document in the **Federal Register** announcing the effective date of this section. Written comments by OMB and the public on information collection requirements are due June 2, 2000.

FOR FURTHER INFORMATION CONTACT:

Shellie Blakeney, Michael Sozan, or Guy Benson at (202) 418-0680, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau, or Les Smith, AMD-PER, Office of Managing Director at (202) 418-0217. In addition to filing comments with the Office of the Secretary, a copy of any comments on the information collection requirements contained herein should be submitted to Judy Boley, Federal Communications Commission, Room 1-C804, 445 12th Street, SW, Washington, DC 20554, or via the Internet to jboley@fcc.gov.

SUPPLEMENTARY INFORMATION:

1. This is a summary of the Commission's *Report and Order*, FCC 99-415 in WT Docket No. 97-81, adopted on December 30, 1999, and released on January 19, 2000. The full text of this *Report and Order* is available for inspection and copying during normal business hours in the FCC Reference Center, Room CY-A257, 445 12th Street, S.W., Washington, D.C. The complete text may be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, N.W., Washington, D.C. 20037. The full text may also be downloaded at: www.fcc.gov. Alternative formats are available to persons with disabilities by contacting Martha Contee at (202) 418-0260 or TTY (202) 418-2555.

Summary of the Report and Order

2. The *Report and Order* maximizes the use of spectrum designated for MAS in the Fixed Microwave Services. MAS consists of 3.2 megahertz (MHz) of electromagnetic spectrum in the 900 MHz band and is licensed under parts 22 and 101 of our rules. The *Report and Order*: (1) Establishes a flexible regulatory framework for MAS spectrum that provides opportunities for continued development of competitive service offerings by allowing a variety of services; (2) expedites market entry through modified licensing procedures; and (3) promotes technological innovation by eliminating unnecessary regulatory burdens. The rules adopted in the *Report and Order* facilitate the further development and implementation of MAS and will ensure

that MAS spectrum is utilized to its fullest potential.

3. Specifically, the Commission designates the 928/952/956 MHz bands and twenty channels in the 932/941 MHz bands for public safety and/or private internal services, and provides that these bands will be licensed on a site-by-site basis. The Commission reserves five of the twenty channel pairs in the 932/941 MHz bands for public safety/Federal Government Services. Additionally, the Commission will license the 928/959 MHz bands and twenty of the forty paired channels in the 932/941 MHz bands on a geographic area basis; grandfather existing operations on the MAS bands and restricts expansion in the 928/959 MHz bands; establishes service areas based on the Federal Communications Commission's definition of Economic Areas (EAs) and on the U.S. Department of Commerce's definition of EAs; establishes construction/coverage requirements for EA licensees—specifically, coverage to at least one-fifth of the population in their service areas or substantial service within five years of the license grant—and a showing of substantial service within ten years of being licensed; allows licensees to provide mobile and fixed operations on a co-primary basis for point-to-point and point-to-multipoint operations; adopts a flexible approach for defining the regulatory status of MAS licensees by allowing the licensee to indicate its regulatory status; lifts the suspension on the acceptance of applications for the 928/952/956 MHz bands and the twenty channels in the 932/941 MHz bands designated for public safety/Federal Government and/or private internal services upon the release of the *Report and Order*; and adopts Part 1 competitive bidding rules for MAS spectrum.

Final Regulatory Flexibility Act and Final Analysis

1. As required by the Regulatory Flexibility Act (RFA), Initial Regulatory Flexibility Analyses (IRFA) were incorporated in the Amendment of the Commission's rules Regarding Multiple Address Systems, *Notice of Proposed Rule Making*, FCC 97-58, 62 FR 11407 (Mar. 12, 1997), and *Further Notice of Proposed Rule Making*, FCC 99-101, 64 FR 38617 (July 19, 1997). The Commission sought written public comment on the proposals in the *Notice* and *Further Notice*, including comment on the IRFA. This present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.

I. Reason for, and Objectives of, the Report and Order

2. These proceedings were initiated to secure public comment on proposals to maximize the efficient and effective use of spectrum allocated to Multiple Address Systems (MAS) in the Microwave Services and to analyze the impact of the Balanced Budget Act on these proposals. In attempting to maximize the use of MAS spectrum, we continue our efforts to improve the efficiency of spectrum use, reduce the regulatory burden on spectrum users, facilitate technological innovation, and provide opportunities for development of competitive new service offerings. The rules adopted in this *Report and Order* are also designed to implement Congress' goal of giving small businesses the opportunity to participate in the provision of spectrum-based services in accordance with section 309(j) of the Communications Act of 1934, as amended.

II. Summary of Significant Issues Raised by Public Comments in Response to the Initial Regulatory Flexibility Analyses

3. No petitions/comments were filed in direct response to the IRFA. In general, commenters and reply commenters supported our proposals to provide additional flexibility in the MAS Service. Moreover, many of the commenters and reply commenters were existing MAS licensees many of whom qualify as small businesses. These commenters overwhelmingly supported proposals that would permit (1) acquisitions by partitioning or disaggregation; and (2) MAS licensees and applicants to choose their regulatory status. Commenters generally supported our proposed definitions for "small business" and "very small business" and did not oppose our proposal to use "tiered" bidding credits for these entities. One commenter specifically suggested that the Commission recognize rural phone companies in the category of "designated entities" and create for rural telephone companies specific preferences that would enable them to participate in the provision of MAS services to rural parts of the country.

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

4. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. 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, unless the Commission has developed one or more definitions that are appropriate for its activities. Under the Small Business Act, a "small business concern" is one that: (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."

5. Last, the definition of "small governmental entity" is one with populations of fewer than 50,000. There are 85,006 governmental entities in the nation. This number includes such entities as states, counties, cities, utility districts and school districts. There are no figures available on what portion of this number has populations of fewer than 50,000. However, this number includes 38,978 counties, cities and towns, and of those, 37,556, or ninety-six percent, have populations of fewer than 50,000. The Census Bureau estimates that this ratio is approximately accurate for all government entities. Thus, of the 85,006 governmental entities, we estimate that ninety-six percent, or about 81,600, are small entities that may be affected by our rules. We further describe and estimate the number of small business licensees and regulatees that may be affected by the rules.

6. The rules adopted in this *Report and Order* affect a number of small entities who are either licensees, or may choose to become applicants for licenses, in the MAS Service. Such entities, in general, fall into two categories: (1) Those using MAS spectrum for profit based uses and (2) those using MAS spectrum for private internal uses.

7. With respect to the first category, the Commission has developed and received approval from the Small Business Administration for two definitions of small entities applicable to MAS licensees that do not provide private internal service. The Commission defines a small business as an entity that, together with its affiliates and persons or entities that hold interests in such entity and their affiliates, has average gross revenues for the preceding three years not to exceed \$15 million. We define a very small business as an entity that, together with

its affiliates and persons or entities that hold interests in such entity and their affiliates, has average gross revenues for the preceding three years not to exceed \$3 million. These tiers are consistent with those set forth in part 1, subpart Q. The majority of these entities will most likely be licensed in bands where the Commission has implemented a geographic area licensing approach that would require the use of competitive bidding procedures to resolve mutually exclusive applications. The Commission's licensing database indicates that, as of January 20, 1999, there were a total of 8,670 MAS station authorizations. Of these, 260 authorizations were associated with common carrier service.

8. With respect to the second category, which consists of entities that use, or seek to use, MAS spectrum to accommodate their own internal communications needs, we note that MAS serves an essential role in a range of industrial, safety, business, and land transportation activities. MAS radios are used by companies of all sizes, operating in virtually all U.S. business categories, and by all types of public safety entities. We note that some of these entities may seek to use spectrum in which geographic area licensing is implemented to satisfy their internal purposes, in which case they will be subject to the definitions for small business described herein. For the majority of private internal users, the definitions developed by the SBA would be more appropriate. The applicable definition of small entity in this instance appears to be the definition under the SBA rules applicable to establishments engaged in radiotelephone communications. This definition provides that a small entity is any entity employing no more than 1,500 persons. The Commission's licensing database indicates that, as of January 20, 1999, of the 8,670 total MAS station authorizations, 8,410 authorizations were for private radio service, and of these, 1,433 were for private land mobile radio service.

IV. Reporting, Recordkeeping, and Other Compliance Requirements

9. Given that we are using competitive bidding to award certain MAS licenses and have established a small business definition for competitive bidding purposes, then all small businesses that choose to participate in these services will be required to demonstrate that they meet the criteria set forth to qualify as small businesses. Any small business applicant wishing to avail itself of small business provisions will need to make the general financial disclosures

necessary to establish that the small business is in fact small.

10. Prior to auction, each small business applicant will be required to submit an FCC Form 175, OMB Clearance Number 3060-0600. The estimated time for completing an FCC Form 175 is forty-five minutes. In addition to filing an FCC Form 175, each applicant must submit information regarding the ownership of the applicant, any joint venture arrangements or bidding consortia that the applicant has entered into, and financial information which demonstrates that a business wishing to qualify for bidding credits is a small business. Applicants that do not have audited financial statements available will be permitted to certify to the validity of their showings. While many small businesses have chosen to employ attorneys prior to filing an application to participate in an auction, the rules are proposed so that a small business working with the information in a bidder information package can file an application on its own. When an applicant wins a license, it will be required to submit an FCC Form 601 (Long-form Application for Authorization), which will require technical information regarding the applicant's proposals for providing service. This application, and any appropriate schedules and attachments, will require information provided by an engineer who will have knowledge of the system's design. MAS applicants and/or licensees will be required to submit certain showings to indicate compliance with the Commission's rules.

V. Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

11. We have reduced the economic burden placed on small business where possible. In response to general comments filed in this proceeding, we have adopted final rules designed to maximize opportunities for participation by, and growth of, small businesses in providing wireless services. Specifically, we expect that allowing partitioning and disaggregation of licenses and bidding credits will specifically assist small businesses.

12. There were some entities that opposed our proposals related to implementing geographic area licensing in certain MAS bands because the filing of any mutually exclusive applications would require them to participate in auctions. However, we determined that the public interest would be best served by adopting our proposal. Many of the potentially affected entities would have

an opportunity to secure spectrum in other MAS bands where we retain first-come, first-served, site-based licensing with frequency coordination. However, as stated earlier, many commenters expressed general support for our proposals in the MAS proceeding because these new procedures streamline our licensing requirements, administrative burdens for both applicants and/or licensees, and the Commission, which would ultimately result in less economic burden to the applicants and/or licensees.

Report to Congress: The Commission will send a copy of the *Report and Order*, including this FRFA, in a report to be sent to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996. In addition, the Commission will send a copy of the *Report and Order*, including FRFA, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the *Report and Order* and FRFA (or summaries thereof) will also be published in the **Federal Register**.

Paperwork Reduction Analysis. The *MAS Report and Order* contains an information collection. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public to comment on the information collection(s) contained in this *Report and Order* as required by the Paperwork Reduction Act of 1995, Public Law 104-13. Public and agency comments are due June 2, 2000. Comments should address: (a) Whether the new or modified collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

OMB Control Number: 3060-xxxx.

Title: 101.1327 Renewal expectancy for EA licensees.

Form No.: N/A.

Type of Review: New collection.

Respondents: Business or other for-profit; not-for-profit institutions; and/or state, local or tribal governments.

Number of Respondents: 18,820.

Estimated Time per Response: 20 hours.

Total Annual Burden: 284,653 hours.

Cost to Respondents: \$18,820,000.

Needs and Uses: The information required by § 101.1327 is used to

determine whether a renewal applicant has complied with the requirement to provide substantial service by the end of the ten-year initial license term. The information is used by the Commission staff in carrying out its duties under the Communications Act. Without this information, the Commission would not be able to carry out its statutory responsibilities.

List of Subjects in 47 CFR Parts 22 and 101

Communications equipment, Radio, Reporting and recordkeeping requirements.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

Rule Changes

For reasons discussed in the preamble, the Federal Communications Commission amends parts 22 and 101 as follows:

PART 22—PUBLIC MOBILE SERVICES

1. The authority citation for parts 22 is amended to read as follows:

Authority: 47 U.S.C. 154, 222, 303, 309, and 332.

2. Section 22.621 is amended by removing paragraphs (a) and (b) and by revising the introductory text to read as follows:

§ 22.621 Channels for point-to-multipoint operation.

The following channels are allocated for assignment to transmitters utilized within point-to-multipoint systems that support transmitters that provide public mobile service. Unless otherwise indicated, all channels have a bandwidth of 20 kHz and are designated by their center frequencies in MegaHertz. No new licenses will be issued for any 900 MHz frequencies in this section. See part 101, subpart O of this chapter for treatment of incumbents and for new licensing procedures. Incumbents under part 22 are subject to the restrictions of part 101, subpart O of this chapter but may make permissible modifications, transfers, assignments, or renew their licenses using procedures, forms, fees, and filing requirements of part 22.

* * * * *

PART 101—FIXED MICROWAVE SERVICES

3. The authority citation for part 101 is amended to read as follows:

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

4. Section 101.3 is amended by adding the following definitions.

§ 101.3 Definitions.

* * * * *

MHz Service Bands

(1) *928/952/956 MHz Service.* A flexible radio service using frequencies in the 928.0—928.85 MHz band paired with frequencies in the 952.0—952.85 MHz band or using unpaired frequencies in the 956.25—956.45 MHz band licensed on a site-by-site basis and used for terrestrial point-to-point and point-to-multipoint fixed and mobile operations.

(2) *928/959 MHz Service.* A flexible radio service using frequencies in the 928.85—929.0 MHz band paired with frequencies in the 959.85—960.0 MHz band licensed by Economic Area and used for terrestrial point-to-point and point-to-multipoint fixed and mobile operations.

(3) *932/941 MHz Service.* A flexible radio service using frequencies in the 932.0—932.5 MHz band paired with frequencies in the 941.0—941.5 MHz band used for terrestrial point-to-point and point-to-multipoint fixed and mobile operations. The frequencies from 932.00625/941.00625 MHz to 932.24375/941.24375 MHz are licensed by Economic Area. The frequencies from 932.25625/941.25625 MHz to 932.49375/941.49375 MHz are licensed on a site-by-site basis.

* * * * *

5. Section 101.63 is amended by revising paragraph (c) to read as follows:

§ 101.63 Period of construction; certification of completion of construction.

* * * * *

(c) The frequencies associated with all point-to-multipoint authorizations which have cancelled automatically or otherwise been recovered by the Commission will again be made available for reassignment on a date and under terms set forth by Public Notice. See § 101.1331(d) for treatment of MAS incumbent site-by-site licenses recovered in EAs.

* * * * *

6. Section 101.101 is amended by revising the first six entries of the table and by revising the heading of the fifth column 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, 22, 24, 25, 74, 78 & 100)	
928–929	MAS	MAS		PRS	
932.0–932.5	MAS	MAS		PRS	
932.5–935.0	CC	OFS			(1)
941.0–941.5	MAS	MAS		PRS	
941.5–944.0	CC	OFS	Aural BAS		(1)
952–958		OFS/MAS		PRS	
958–960	MAS	OFS			
* * * * *	*	*	*	*	*

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7. Section 101.105 is amended by revising paragraphs (c)(3), (c)(3)(i), (c)(3)(ii), (c)(3)(iii) and (c)(5) as follows:

§ 101.105 Interference protection criteria.

* * * * *

(c) * * *

(3) Applicants for site-based frequencies listed in § 101.147 paragraph (b)(1) must make the following showings that protection criteria have been met over the entire service area of existing systems. Such showings may be made by the applicant or may be satisfied by a statement from a frequency coordinator.

(i) For site-based multiple address stations in the 928–929/952–960 MHz and the 932–932.5/941–941.5 MHz bands, a statement that the proposed system complies with the following co-channel separations from all existing stations and pending applications:

Fixed-to-fixed—145 km;
Fixed-to-mobile—113 km;
Mobile-to-mobile—81 km

Note to paragraph (c)(3)(i): Multiple address systems employing only remote stations will be treated as mobile for the purposes of determining the appropriate separation. For mobile operation, the mileage is measured from the reference point specified on the license application. For fixed operation on subfrequencies in accordance with § 101.147 the mileage also is measured from the reference point specified on the license application.

(ii) In cases where the geographic separation standard in paragraph (c)(3)(i) of this section is not followed, an engineering analysis must be submitted to show the coordination of the proposed assignment with existing systems located closer than those standards. The engineering analyses will include:

(A) Specification of the interference criteria and system parameters used in the interference study;

(B) Nominal service areas of each system included in the interference analysis;

(C) Modified service areas resulting from the proposed system. The propagation models used to establish the service boundary limits must be specified and any special terrain features considered in computing the interference impact should be described; and

(D) A statement that all parties affected have agreed to the engineering analysis and will accept the calculated levels of interference.

(iii) MAS EA licensees shall provide protection in accordance with § 101.1333.

* * * * *

(5) Mobile operation is permitted on any of the MAS frequency bands on a primary basis.

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6. Section 101.109(c) is amended by revising footnote 1 following the table to read as follows:

§ 101.109 Bandwidth.

* * * * *

(c) * * *

* * * * *

¹ The maximum bandwidth that will be authorized for each particular frequency in this band is detailed in the appropriate frequency table in § 101.147. If contiguous channels are aggregated in the 928–928.85/952–952.85/956.25–956.45 MHz, the 928.85–929/959.85–960 MHz, or the 932–932.5/941–941.5 MHz bands, then the bandwidth may exceed that which is listed in the table.

* * * * *

7. Section 101.135 is amended by adding paragraph (e) to read as follows:

§ 101.135 Shared use of radio stations and the offering of private carrier service.

* * * * *

(e) Applicants licensed in the MAS frequencies after June 2, 2000, shall not provide service to others on a non-profit, cost-shared basis or on a for-profit private carrier basis in the 928–928.85/952–952.85/956.25–956.45 MHz bands and the 932.25625–932.49375/941.25625–941.49375 MHz bands.

8. Amend § 101.147 as follows:

a. In paragraph (a), revise the numbers in parentheses after the frequency bands; and

b. In paragraph (a), revise note (27) and add note (28).

c. Revise paragraph (b);

d. Revise the text in paragraph (b)(1) and remove the footnotes in Table 1 and Table 2;

e. Revise the text in paragraph (b)(2);

f. Revise the text in paragraph (b)(3) and revise the headings of Table 5 to read “TABLE 5—PAIRED FREQUENCIES (MHz)” and Table 6 to read “TABLE 6—PAIRED FREQUENCIES (MHz)”;

g. Revise paragraph (b)(4).

§ 101.147 Frequency assignments.

(a) * * *

928.0–929.0 MHz (28)

* * * * *

941.0–941.5 MHz (27)

941.5–944 MHz (17)(18)

952.0–960.0 MHz (28)

* * * * *

(27) Frequencies in the 932 to 932.5 MHz and 941 to 941.5 MHz bands are shared with Government fixed point-to-multipoint stations. Frequencies in these bands are paired with one another and are available for flexible use for transmission of the licensee's products and information services, excluding video entertainment material. 932.00625/941.00625 MHz to 932.24375/941.24375 MHz is licensed by Economic Area. 932.25625/941.25625 MHz to 932.49375/941.49375 MHz is licensed on a site-by-site basis.

(28) Subsequent to July 1, 1999, MAS operations in the 928/952/956 MHz bands are reserved for private internal use. The 928.85–929.0 MHz and 959.85–960.0 MHz bands are licensed on a geographic area basis with no eligibility restrictions. The 928.0–928.85 MHz band paired with the 952.0–952.85 MHz band, in addition to unpaired frequencies in the 956.25–956.45 MHz band, are licensed on a site-by-site basis and used for terrestrial point-to-point and point-to-multipoint fixed and mobile operations. The 928.85–929.0 MHz band paired with the 959.85–960.0 MHz band is licensed by Economic Area and used for terrestrial point-to-point and point-to-multipoint fixed and mobile operations.

(b) Frequencies normally available for assignment in this service are set forth with applicable limitations in the following tables: 928–960 MHz Multiple address system (MAS) frequencies are available for the point-to-multipoint and point-to-point transmission of a licensee's products or services, excluding video entertainment material, to a licensee's customer or for its own internal communications. The paired frequencies listed in this section are used for two-way communications between a master station and remote stations. Ancillary one-way communications on paired frequencies are permitted on a case-by-case basis. Ancillary communications between interrelated master stations are permitted on a secondary basis. The normal channel bandwidth assigned will be 12.5 kHz. EA licensees, however, may combine contiguous channels without limit or justification. Site-based licensees may combine contiguous channels up to 50 kHz, and more than 50 kHz only upon a showing of adequate justification. When licensed for a larger bandwidth, the system still is required to use equipment that meets the ± 0.00015 percent tolerance requirement. (See § 101.107). Any bandwidth (12.5 kHz, 25 kHz or greater) authorized in accordance with this section may be subdivided into narrower bandwidths to create additional (or sub) frequencies without the need to specify each discrete frequency within the specific bandwidth. Equipment that is used to create additional frequencies by narrowing bandwidth (whether authorized for a 12.5 kHz, 25 kHz or greater bandwidth) will be required to meet, at a minimum, the ± 0.00015 percent tolerance requirement so that all subfrequencies will be within the emission mask. Systems licensed for frequencies in these MAS bands prior to August 1, 1975, may continue to operate as authorized until June 11, 1996, at which time they must comply with current MAS operations based on the 12.5 kHz channelization set forth in this paragraph. Systems licensed between August 1, 1975, and January 1, 1981, inclusive, are required to comply with the grandfathered 25 kHz standard bandwidth and channelization requirements set forth in this paragraph. Systems originally licensed after January 1, 1981, and on or before May 11, 1988, with bandwidths of 25 kHz and above, will be grandfathered indefinitely.

(1) Frequencies listed in this paragraph are designated for private

internal use and are subject to site-based licensing.

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(2) Frequencies listed in this paragraph are designated for private internal use and are subject to site-based licensing.

* * * * *

(3) Frequencies listed in this paragraph are not restricted to private internal use and are licensed by geographic area. Incumbent facilities must be protected.

* * * * *

(4) Frequencies listed in this paragraph are licensed by either economic area or on a site-by-site basis.

TABLE 7.—PAIRED FREQUENCIES

Remote transmit	Master transmit
Licensed by Economic Area	
(12.5 kHz bandwidth):	
932.00625	941.00625
932.01875	941.01875
932.03125	941.03125
932.04375	941.04375
932.05625	941.05625
932.06875	941.06875
932.08125	941.08125
932.09375	941.09375
(50 kHz bandwidth):	
932.12500	941.12500
(12.5 kHz bandwidth):	
932.15625	941.15625
932.16875	941.16875
932.18125	941.18125
932.19375	941.19375
932.20625	941.20625
932.21875	941.21875
932.23125	941.23125
932.24375	941.24375
Reserved for public safety and private internal use. Licensed on site-by-site basis.	
(12.5 kHz bandwidth):	
932.25625	941.25625
932.26875	941.26875
932.28125	941.28125
932.29375	941.29375
932.30625	941.30625
932.31875	941.31875
932.33125	941.33125
932.34375	941.34375
932.35625	941.35625
932.36875	941.36875
932.38125	941.38125
932.39375	941.39375
932.40625	941.40625
932.41875	941.41875
932.43125	941.43125
Reserved for Public Safety and Federal Government Use. Licensed on site-by-site basis.	
(12.5 kHz bandwidth):	
932.44375	941.44375
932.45625	941.45625
932.46875	941.46875
932.48125	941.48125
932.49375	941.49375

* * * * *

10. Subpart O is added to part 101.

Subpart O—Multiple Address Systems

General Provisions

- 101.1301 Scope.
- 101.1303 Eligibility.
- 101.1305 Private internal service.
- 101.1307 Permissible communications.
- 101.1309 Regulatory status.

System License Requirements

- 101.1311 Initial EA license authorization.
- 101.1313 License term.
- 101.1315 Service areas.
- 101.1317 Competitive bidding procedures for mutually exclusive MAS EA applications.
- 101.1319 Competitive bidding provisions.
- 101.1321 License transfers.
- 101.1323 Spectrum aggregation, disaggregation, and partitioning.

System Requirements

- 101.1325 Construction requirements.
- 101.1327 Renewal expectancy for EA licensees.
- 101.1329 EA Station license, location, modifications.
- 101.1331 Treatment of incumbents.
- 101.1333 Interference protection criteria.

General Provisions

§ 101.1301 Scope.

This subpart sets out the regulations governing the licensing and operation of Multiple Address Systems (MAS). The rules in this subpart are to be used in conjunction with applicable requirements contained elsewhere in the Commission's rules, such as those requirements contained in parts 1 and 22 of this chapter.

§ 101.1303 Eligibility.

Authorizations for stations in this service will be granted in cases where it is shown that:

- (a) The applicant is legally, financially, technically and otherwise qualified to render the proposed service;
- (b) There are frequencies available to enable the applicant to render a satisfactory service; and
- (c) The public interest, convenience or necessity would be served by a grant thereof.

§ 101.1305 Private internal service.

A private internal service is a service where entities utilize frequencies purely for internal business purposes or public safety communications and not on a for-hire or for-profit basis.

§ 101.1307 Permissible communications.

MAS users may engage in terrestrial point-to-point and point-to-multi-point fixed and mobile operations.

§ 101.1309 Regulatory status.

(a) The Commission will rely on each applicant to specify on FCC Form 601

the type of service or services it intends to provide. Each application for authorization in the bands designated for private internal use must include a certification stating why the application satisfies the definition of private internal use.

(b) Any interested party may challenge the regulatory status granted an MAS licensee.

System License Requirements

§ 101.1311 Initial EA license authorization.

(a) Winning bidders must file an application (FCC Form 601) for an initial authorization in each market and frequency block.

(b) Blanket licenses are granted for each market and frequency block. Applications for individual sites are not required and will not be accepted, except as specified in § 101.1329.

§ 101.1313 License term.

The license term for stations authorized under this subpart is ten years from the date of original issuance or renewal.

§ 101.1315 Service areas.

In the frequency bands not licensed on a site-by-site basis, the geographic service areas for MAS are Economic Areas (EAs). EAs are 175 areas, including U.S. territories and possessions, defined by the Department of Commerce's Bureau of Economic Analysis, as modified by the Commission.

§ 101.1317 Competitive bidding procedures for mutually exclusive MAS EA applications.

Mutually exclusive initial applications for licenses in the portions of the MAS bands licensed on a geographic area basis 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.

§ 101.1319 Competitive bidding provisions.

For the purpose of establishing eligibility requirements and bidding credits for competitive bidding for MAS licenses, pursuant to § 1.2110 of this chapter, the following definitions apply:

(a) *Eligibility for small business provisions.*

(1) A small business is an entity that, together with its affiliates and persons or entities that hold interests in such entity and their affiliates, has average gross revenues for the preceding three years not to exceed \$15 million, as determined pursuant to § 1.2110 of this chapter.

(2) A very small business is an entity that, together with its affiliates and persons or entities that hold interests in such entity and their affiliates, has average gross revenues for the preceding three years not to exceed \$3 million, as determined pursuant to § 1.2110 of this chapter.

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

(c) *Unjust enrichment.* See § 1.2111 of this chapter.

§ 101.1321 License transfers.

(a) An MAS system license acquired through competitive bidding procedures (including licenses obtained in cases of no mutual exclusivity), together with all appurtenances may be transferred, assigned, sold, or given away only in accordance with the provisions and procedures set forth in § 1.2111 of this chapter.

(b) An MAS system license obtained through site-based licensing procedures, together with all appurtenances may be transferred, assigned, sold, or given away, to any other entity in accordance with the provisions and procedures set forth in § 1.948 of this chapter.

§ 101.1323 Spectrum aggregation, disaggregation, and partitioning.

(a) *Eligibility.* (1) Parties seeking approval for partitioning and disaggregation shall request from the Commission an authorization for partial assignment of license. Geographic area licensees may participate in aggregation, disaggregation, and partitioning within the bands licensed on a geographic area basis. Site-based licensees may aggregate spectrum in any MAS bands, but may not disaggregate their licensed spectrum or partition their licensed sites.

(2) Eligible MAS licensees may apply to the Commission to partition their licensed geographic service areas to eligible entities and are free to determine the portion of their service areas to be partitioned. Eligible MAS licensees may aggregate or disaggregate their licensed spectrum at any time following the grant of a license.

(b) *Technical standards—(1) Aggregation.* (i) There is no limitation on the amount of spectrum that an MAS licensee may aggregate.

(ii) Spectrum licensed to MAS licensees does not count toward the CMRS spectrum cap discussed in § 20.6 of this chapter.

(2) *Disaggregation.* Spectrum may be disaggregated in any amount. A licensee need not retain a minimum amount of spectrum.

(3) *Partitioning.* In the case of partitioning, applicants and licensees must file FCC Form 603 pursuant to § 1.948 of this chapter and list the partitioned service area on a schedule to the application. The geographic coordinates must be specified in degrees, minutes, and seconds to the nearest second of latitude and longitude, and must be based upon the 1983 North American Datum (NAD83).

(4) *Combined partitioning and disaggregation.* The Commission will consider requests from geographic area licensees for partial assignment of licenses that propose combinations of partitioning and disaggregation.

(c) *Unjust enrichment.* See § 1.2111(e) of this chapter.

(d) *Construction requirements.* (1) *Disaggregation.* Partial assignors and assignees for license disaggregation have two options to meet construction requirements. Under the first option, the disaggregator and disaggregatee would certify that they each will share responsibility for meeting the applicable construction requirements set forth in § 101.1325 for the geographic service area. If parties choose this option and either party fails to meet the applicable construction requirements, both licenses would be subject to forfeiture at renewal. The second option allows the parties to agree that either the disaggregator or disaggregatee would be responsible for meeting the requirements in § 101.1325 for the geographic service area. If parties choose this option, and the party responsible for meeting the construction requirement fails to do so, only the license of the non-performing party would be subject to forfeiture at renewal.

(2) *Partitioning.* Partial assignors and assignees for license partitioning have two options to meet construction requirements. Under the first option, the partitionor and partitionee would each certify that they will independently satisfy the applicable construction requirements set forth in § 101.1325 for their respective partitioned areas. If either licensee fails to meet its requirement in § 101.1325, only the non-performing licensee's renewal application would be subject to dismissal. Under the second option, the partitionor certifies that it has met or will meet the requirement in § 101.1325

for the entire market. If the partitionor fails to meet the requirement in § 101.1325, however, only its license would be subject to forfeiture at renewal.

(3) All applications requesting partial assignments of license for partitioning or disaggregation must certify in the appropriate portion of the application which construction option is selected.

(4) Responsible parties must submit supporting documents showing compliance with the respective construction requirements within the appropriate construction benchmarks set forth in § 101.1325.

(e) *License term.* The license term for a partitioned license area and for disaggregated spectrum shall be the remainder of the original licensee's license term as provided for in § 101.1313.

System Requirements

§ 101.1325 Construction requirements.

(a) Incumbent site-based licensees are subject to the construction requirements set forth in § 101.63 of subpart B (Applications and Licenses).

(b) Each MAS EA licensee must provide service to at least one-fifth of the population in its service area or "substantial service" within five years of the license grant. In addition, MAS EA licensees must make a showing of continued "substantial service" within ten years of the license grant. Licensees must file maps and other supporting documents showing compliance with the respective construction requirements within the appropriate five- and ten-year benchmarks of the date of their initial licenses.

(c) Failure by any licensee to meet these requirements will result in forfeiture or non-renewal of the initial license, and the licensee will be ineligible to regain it.

§ 101.1327 Renewal expectancy for EA licensees.

(a) A renewal applicant shall receive a renewal expectancy at the end of the license period as long as the applicant:

(1) Demonstrates that the licensee has provided continued "substantial service," *i.e.*, service which is sound, favorable, and substantially above a level of mediocre service which just might minimally warrant renewal, during its past license term;

(2) Demonstrates that the licensee has substantially complied with applicable Commission Rules, policies, and the Communications Act of 1934, as amended;

(3) Provides an explanation of the licensee's record of expansion, including a timetable of the

construction of new facilities to meet changes in demand for services provided by the licensee; and (4) Provides a description of investments made by the licensee in its system.

(b) In determining whether a renewal applicant has complied with the "substantial service" requirement by the end of the ten-year initial license term, the Commission may consider factors such as:

(1) Whether the licensee is offering a specialized or technologically sophisticated service that does not require a high level of coverage to be of benefit to customers; and (2) Whether the licensee's operations service niche markets or focus on serving populations outside of areas served by other licensees. The "substantial service" requirement can, however, be met in other ways, and the Commission will review each licensee's showing on a case-by-case basis.

(c) A "substantial service" assessment will be made at renewal pursuant to the procedures contained in § 1.949 of this chapter.

§ 101.1329 EA Station license, location, modifications.

EA licensees may construct master and remote stations anywhere inside the area authorized in their licenses, without prior approval, so long as the Commission's technical and other Rules are complied with, except that individual licenses are required for any master station that:

(a) Requires the submission of an environmental assessment under § 1.1307 of this chapter;

(b) Requires international coordination; or

(c) Would affect the radio frequency quiet zones described in § 1.924 of this chapter.

§ 101.1331 Treatment of incumbents.

(a) Any station licensed by the Commission prior to July 1, 1999, as well as any assignments or transfers of such station as of January 19, 2000, shall be considered incumbent.

(b) Incumbent operators in the 928.0–928.85/952.0–952.85/956.25–956.45 MHz bands are grandfathered as of January 19, 2000, and may continue to operate and expand their systems pursuant to the interference protection and co-channel spacing criteria contained in § 101.105.

(c) Incumbent operators in the 928.85–929.0/959.85–960.0 MHz bands are grandfathered as of January 19, 2000, and may expand their systems provided that the signal level of the additional transmitter(s) does not increase the composite contour that occurs at a 40.2

kilometer (25-mile) radius from the center of each master station transmitter site. Incumbent operators and geographic area licensees may negotiate alternative criteria.

(d) The frequencies associated with incumbent authorizations in the 928/959 MHz bands that have cancelled automatically or otherwise been recovered by the Commission will automatically revert to the applicable EA licensee.

(e) The frequencies associated with incumbent authorizations in the 928/952/956 MHz bands that have cancelled automatically will revert to the Commission.

§ 101.1333 Interference protection criteria.

(a) *Frequency coordination.* All EA licensees are required to coordinate their frequency usage with co-channel adjacent area licensees and all other affected parties.

(b) EA licensees are prohibited from exceeding a signal strength of 40 dBμV/m at their service area boundaries, unless a higher signal strength is agreed to by all affected co-channel, adjacent area licensees.

(c) EA licensees are prohibited from exceeding a signal strength of 40 dBμV/m at incumbent licensees' 40.2 kilometer (25-mile) radius composite contour specified in § 101.1329(b).

(d) In general, licensees shall comply with the appropriate coordination agreements between the United States and Canada and the United States and Mexico concerning cross-border sharing and use of the applicable MAS frequencies.

(1) *Canada—932.0–932.25 MHz and 941.0–941.25 MHz:*

(i) Within Lines A, B, C, and D, as defined in § 1.928(e) of this chapter, along the U.S./Canada border, U.S. stations operating in the 932.0–932.25 MHz and 941.0–941.25 MHz bands are on a secondary basis and may operate provided that they shall not transmit a power flux density (PFD) at the border greater than -100 dBW/m² nor -94 dBW/m², respectively. The U.S. has full use of the frequencies in these regions up to the border in the bands 932.25–932.50 MHz and 941.25–941.50 MHz, and Canadian stations may operate on a secondary basis provided they do not exceed the respective PFDs shown above. PFD can be determined using the following formula: $PFD \text{ (dBW/m}^2\text{)} = 10 \log [EIRP/4\pi(D^2)]$, where EIRP is in watts, D is in meters, and the power is relative to an isotropic radiator. The technical parameters are also limited by tables 1 and 2:

TABLE 1.—MAXIMUM RADIATED POWER

Class of station	Band MHz	Maximum EIRP		Maximum ERP ¹	
		Watts	dBW	Watts	dBW
Master	941.0–941.5	1000	30	600	27.8
Fixed Remote and Master	932.0–932.5	50	17	30	14.8

¹ Where ERP = EIRP/1.64.

(ii) Maximum antenna height above average terrain for master stations operating at a maximum power shall not exceed 150 meters. Above 150 meters, the power of master stations shall be in accordance with following table:

TABLE 2.—ANTENNA HEIGHT—POWER REDUCTION TABLE

Antenna height above average terrain (meters)	EIRP		ERP	
	Watts	dBW	Watts	dBW
Above 305	200	23	120	20.8
Above 275 to 305	250	24	150	21.8
Above 245 to 275	315	25	190	22.8
Above 215 to 245	400	26	240	23.8
Above 180 to 215	500	27	300	24.8
Above 150 to 180	630	28	380	25.8

Note to Table 2: This information is from the *Arrangement between the Federal Communications Commission and the National Telecommunications and Information Administration of the United States of America, and Industry Canada concerning the use of the bands 932 to 935 MHz and 941 to 944 MHz along the United States-Canada border* signed in 1994. This agreement also lists grandfathered stations that must be protected.

(2) *Canada—928–929 MHz and 952–960 MHz:*

Between Lines A and B and between Lines C and D, as defined in § 1.928(e) of this chapter, along the U.S./Canada border, U.S. stations operating in the 928.50–928.75 MHz and 952.50–952.75 MHz bands are on an unprotected basis and may operate provided that they shall not transmit a power flux density (PFD) at or beyond the border greater than -100 dBW/m². The U.S. has full use of the frequencies in these regions up to the border in the bands 928.25–928.50 MHz and 952.25–952.50 MHz, and Canadian stations may operate on

an unprotected basis provided they do not exceed the PFD above. Frequencies in the bands 928.00–928.25 MHz, 928.75–929.00 MHz, 952.00–952.25 MHz, and 952.75–952.85 MHz are available for use on a coordinated, first-in-time, shared basis subject to protecting grandfathered stations. New stations must provide a minimum of 145 km (90 miles) separation or alternatively limit the actual PFD of the proposed station to -100 dBW/m², at the existing co-channel master stations of the other country, or as mutually agreed upon on a case-by-case basis. Coordination is not required if the PFD at the border is lower than -100 dBW/m². The technical criteria are also limited by the following:

Maximum EIRP for master stations in the MHz band: 1000 watts (30 dBW) 952–953

Maximum EIRP for fixed remote stations or stations in the 928–929 MHz band: 50 watts (17 dBW) master

Maximum EIRP for mobile master stations: 25 watts (14 dBW)

Maximum antenna height above average master or control stations: 152 m at 1000 watts terrain for EIRP, power derated in accordance with the following table:

Antenna height above average terrain (m)	EIRP	
	Watts	dBm
Above 305	200	53
Above 275 to 305	250	54
Above 244 to 274	315	55
Above 214 to 243	400	56
Above 183 to 213	500	57
Above 153 to 182	630	58
Below 152	1000	60

Note to Table in paragraph (d)(2): This information is from the *Arrangement between the Department of Communications of Canada and the Federal Communications Commission of the United States of America Concerning the Use of the Bands 928 to 929 MHz and 952 to 953 MHz along the United States-Canada Border* signed in 1991. This agreement also lists grandfathered stations that must be protected.

(3) *Mexico:*

Within 113 kilometers of the U.S./Mexico border, U.S. stations operating in the 932.0–932.25 MHz and 941.0–941.25 MHz bands are on a secondary basis (non-interference to Mexican primary licensees) and may operate provided that they shall not transmit a power flux density (PFD) at or beyond the border greater than –100 dBW/m². Upon notification from the Commission, U.S. licensees must take proper measures to eliminate any harmful interference caused to Mexican primary assignments. The U.S. has full use of the frequencies in these regions up to the border in the bands 932.25–932.50 MHz and 941.25–941.50 MHz, and Mexican stations may operate on a secondary

basis (non-interference to U.S. primary licensees) provided they do not exceed the PFD shown above. Stations using the 932–932.5 MHz band shall be limited to the maximum effective isotropic radiated power of 50 watts (17 dBW). Stations using the 941–941.5 MHz band shall meet the limits in the following table:

Antenna height above average mean sea level (meters)	EIRP	
	Watts	dBW
Above 305	200	23
Above 274 to 305	250	24
Above 243 to 274	315	25
Above 213 to 243	400	26
Above 182 to 213	500	27
Above 152 to 182	630	28

Antenna height above average mean sea level (meters)	EIRP	
	Watts	dBW
Up to 152	1000	30

Note to Table in paragraph (d)(3): This information is from the *Agreement between the Government of the United States of America and the Government of the United Mexican States Concerning the Allocation and Use of Frequency Bands by Terrestrial Non-Broadcasting Radiocommunication Services Along the Common Border, Protocol #6 Concerning the Allotment and Use of Channels in the 932–932.5 and 941–941.5 MHz Bands for Fixed Point-to-Multipoint Services Along the Common Border* signed in 1994.

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