

1. All lands within the exterior boundaries of Indian reservations within or abutting the State of Wisconsin;

2. Any land held in trust by the U.S. for an Indian tribe; and

3. Any other land, whether on or off an Indian reservation that qualifies as Indian country. Therefore, this action has no effect on Indian country. EPA will continue to implement and administer the RCRA program in Indian country.

#### **J. What Is Codification and Is EPA Codifying Wisconsin's Hazardous Waste Program as Authorized in This Rule?**

Codification is the process of placing the State's statutes and regulations that comprise the State's authorized hazardous waste program into the Code of Federal Regulations. We do this by referencing the authorized State Rules in 40 CFR part 272. We reserve the amendment of 40 CFR part 272, subpart YY for this authorization of Wisconsin's program changes until a later date.

#### **K. Administrative Requirements**

The Office of Management and Budget (OMB) has exempted RCRA authorizations from the requirements of Executive Order 12866 (58 FR 51735, October 4, 1993), and therefore, a decision to authorize Wisconsin for these revisions is not subject to review by OMB. Furthermore, this rule is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866. This action authorizes State requirements for the purpose of RCRA 3006 and imposes no additional requirements beyond those imposed by State law. This authorization will effectively suspend the applicability of certain Federal regulations in favor of Wisconsin's program, thereby eliminating duplicative requirements for handlers of hazardous waste in the State. Authorization will not impose any new burdens on small entities. Accordingly, I certify that these revisions will not have a significant economic impact on a substantial number of small entities under the Regulator Flexibility Act (5 U.S.C. 601 *et seq.*). Because this action authorizes pre-existing requirements under State law and does not impose any additional enforceable duty beyond that required by State law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates

Reform Act of 1995 (Public Law 104-4). This action does not have tribal implications within the meaning of Executive Order 13175 (65 FR 67249, November 9, 2000). This action will not have substantial direct effects on the states, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely authorizes State requirements as part of the State RCRA hazardous waste program without altering the relationship or the distribution of power and responsibilities established by RCRA. A decision to authorize Wisconsin for these revisions also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant and it does not make decisions based on environmental health or safety risks. This action does not include environmental justice related issues that require consideration under Executive Order 12898 (59 FR 7629, February 16, 1994).

Under RCRA 3006(b), EPA grants a State's application for authorization as long as the State meets the criteria required by RCRA. It would thus be inconsistent with applicable law for EPA, when it reviews a State authorization application, to require the use of any particular voluntary consensus standard in place of another standard that otherwise satisfies the requirements of RCRA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996) in issuing this rule, 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 rule in accordance with any Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings issued under the Executive Order. A decision to authorize Wisconsin's revisions will not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

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. EPA will submit a report containing this document 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 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).

#### **List of Subjects in 40 CFR Part 271**

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous waste, Hazardous waste transportation, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements.

**Authority:** This Action is issued under the authority of sections 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act as amended 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: June 12, 2002.

**Bharat Mathur,**

*Acting Regional Administrator, Region 5.*

[FR Doc. 02-16031 Filed 6-25-02; 8:45 am]

**BILLING CODE 6560-50-P**

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## **FEDERAL COMMUNICATIONS COMMISSION**

### **47 CFR Parts 25 and 101**

[ET Docket No. 98-206; RM-9147; RM-9245; FCC 02-116]

#### **Order To Permit Operation of NGSO FSS Systems Co-Frequency With GSO and Terrestrial Systems in the Ku-Band Frequency Range; Authorize Subsidiary Terrestrial Use of the 12.2-12.7 GHz Band by Direct Broadcast Satellite Licensees and Their Affiliates; and in Re Applications of Broadwave USA, PDC Broadband Corporation, and Satellite Receivers, Ltd. in the 2.2-12.7 GHz Band**

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

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**SUMMARY:** In this document, the Commission addresses petitions for reconsideration and establishes technical, service and licensing rules for Multichannel Video Distribution and Data Service (MVDDS) in the 12 GHz band. MVDDS will facilitate the delivery of new communications services, such as video and broadband

services, to a wide range of populations, including those that are unserved or underserved. These rules adopted will allow MVDDS licensees to share the 12 GHz band with new operators on a co-primary basis and on a co-primary, non-harmful interference basis with incumbent Direct Broadcast Satellite service providers.

**DATES:** Effective August 26, 2002, except for §§ 25.139, 101.103, 101.1403, 101.1413, 101.1417 and 101.1440 which contain information collection requirements that have not been approved by OMB. Written comments by the public on the new or modified information collections are due August 26, 2002. Written comments must be submitted by the OMB on the new or modified information collections on or before October 25, 2002. The Federal Communications Commission will publish a document in the **Federal Register** announcing the effective date.

**FOR FURTHER INFORMATION CONTACT:** For MVDDS/Direct Broadcast Satellite (DBS) and MVDDS/non-geostationary satellite orbit (NGSO) fixed-satellite services (FSS) sharing issues, contact the Office of Engineering and Technology "Thomas Derenge at (202) 418-2451, Gary Thayer at (202) 418-2290 or Ira Keltz at (202) 418-0616. For MVDDS service rules, contact the Wireless Telecommunications Bureau " Michael Pollak, Jennifer Burton, or Brian Wondrack at (202) 418-0680, TTY (202) 418-7233.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Federal Communications Commission's *Memorandum Opinion and Order and Second Report and Order*, FCC 02-116, adopted on April 11, 2002, and released on May 23, 2002. The full text of this document is available for inspection and copying during normal business hours in the FCC Reference Center, Room CY-A257, 445 12th Street, SW., Washington, DC 20554. The complete text may be purchased from the Commission's copy contractor, Qualex International, 445 12th Street, SW., Room CY-B402, Washington, DC 20554. The full text may also be downloaded at: [www.fcc.gov](http://www.fcc.gov). Alternative formats are available to persons with disabilities by contacting Brian Millin at (202) 418-7426 or TTY (202) 418-7365.

#### Paperwork Reduction Analysis

1. This *Second Report and Order* contains either a new or modified information collection. As part of the Commission's continuing effort to reduce paperwork burdens, we invite the general public and the Office of Management and Budget (OMB) to take

this opportunity to comment on revision to the information collections contained in the *Second Report and Order* as required by the Paperwork Reduction Act of 1995. Public and agency comments are due August 26, 2002. Comments should address:

- 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.
- The accuracy of the Commission's burden estimates.
- Ways to enhance the quality, utility, and clarity of the information collected.
- 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.

Written comments by the public on the new or modified information collections are due August 26, 2002. Written comments must be submitted by the OMB on the new or modified information collections on or before October 25, 2002. In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to Judith B. Herman, Federal Communications Commission, Room 1-C804, 445 12th Street, SW., Washington, DC 20554, or via the Internet to [jboley@fcc.gov](mailto:jboley@fcc.gov), and to Jeanette Thornton, OMB Desk Officer, Room 10236 New Executive Office Building, 725 Seventeenth Street, NW., Washington, DC 20503, or via the Internet to [JThornton@omb.eop.gov](mailto:JThornton@omb.eop.gov).

**OMB Control No.:** 3060-xxxx  
**Title:** 25.139 NGSO FSS coordination and information sharing between MVDDS licensees in the 12.2 GHz to 12.7 GHz band.

**Form No:** N/A.  
**Type of Review:** New.  
**Number of Respondents:** 6.  
**Frequency of Response:** On occasion.  
**Total Annual Burden:** 6.  
**Total Annual Cost:** 0.

**Needs and Uses:** This rule is needed for NGSO FSS licensees to maintain a subscriber database in a format that can be readily shared with MVDDS licensees for the purpose of determining compliance with the MVDDS transmitting antenna spacing requirement relating to qualifying existing NGSO FSS subscriber receivers set forth in § 101.129 of this chapter.

**OMB Control No.:** 3060-xxxx.  
**Title:** 101.103 Frequency coordination procedures.  
**Form No:** N/A.  
**Type of Review:** New collection.

**Frequency of Response:** On occasion.  
**Total Annual Burden:** 177 hours.  
**Total Annual Cost:** 0.  
**Needs and Uses:** This rule is necessary to require MVDDS licensees to provide notice of intent of construct a proposed antenna to NGSO FSS licensees.

**OMB Control No.:** 3060-xxxx.  
**Title:** 101.1403 Broadcast Carriage Requirements.  
**Form No:** N/A.  
**Type of Review:** New.  
**Frequency of Response:** On occasion.  
**Number of Respondents:** 354.  
**Total Annual Burden:** 354.  
**Total Annual Cost:** 0.  
**Needs and Uses:** This rule is needed for the purpose of coming into compliance with the broadcast carriage requirements.

**OMB Control No.:** 3060-xxxx.  
**Title:** 101.1413 License term and renewal expectancy.  
**Form No:** N/A.  
**Type of Review:** New collection.  
**Frequency of Response:** On occasion.  
**Total Annual Burden:** 7080 hours.  
**Total Annual Cost:** 0.  
**Needs and Uses:** The information required in § 101.1413 is used to determine whether a renewal applicant of a MVDDS has complied with the requirements to provide substantial service by the end of the ten-year initial license term. The FCC uses the information to determine whether an applicant's license will be renewed at the end of the license period.

**OMB Control No.:** 3060-xxxx.  
**Title:** 101.1417 Annual Report.  
**Form No:** N/A.  
**Type of Review:** New.  
**Frequency of Response:** Annually.  
**Total Annual Burden:** 354.  
**Total Annual Cost:** 0.  
**Needs and Uses:** This rule requires MVDDS licensees to file two copies of a report by March 1 of each year for the preceding calendar year. This report must include name and address of licensee; station(s) call letters and primary geographic service area(s); and statistical information for the licensee's station.

**OMB Control No.:** 3060-xxxx.  
**Title:** 101.1440 MVDDS protection of DBS.  
**Form No:** N/A.  
**Type of Review:** New.  
**Frequency of Response:** On occasion.  
**Total Annual Burden:** 14,522.  
**Total Annual Cost:** 0.  
**Needs and Uses:** This rule requires MVDDS licensees conduct a survey to determine the location of all DBS customers of record and obtain a signed written agreement from the DBS

customers of record agreeing to their DBS system receiving MVDDS signal in excess of appropriate EFPD.

1. In this *Memorandum Opinion and Order and Second Report and Order*, we make the following major determinations regarding the licensing of MVDDS in the 12 GHz band:

#### MO&O

- We find that the Commission provided clear notice that the Commission was considering authorizing MVDDS in the 12 GHz band in the *November 24, 1998 Notice of Proposed Rulemaking*, 64 FR 7565 (January 12, 1999) (Amendment of Parts 2 and 25 of the Commission's Rules to Permit Operation of NGSO FSS Systems Co-Frequency with GSO and Terrestrial Systems in the Ku-Band Frequency Range; Amendment of the Commission's Rules to authorize subsidiary Terrestrial Use of the 12.2–12.7 GHz Band by Direct Broadcast Satellite Licensees and Their Affiliates, ET Docket No. 98–206, ET Docket No. 98–206, 14 FCC Rcd 1131 (1998)), as required by the *Administrative Procedure Act* (5 U.S.C. Chapter 5, *et. seq.*).

- The MVDDS authorization complies with the provisions, and fosters the goals, of the *Satellite Home Viewer Improvement Act of 1999* (SHVIA) and the *Rural Local Broadcast Signal Act* (RLBSA) (Public Law 106–113 Stat. 1501 (enacting S. 1948, including the SHVIA and the RLBSA, Titles I and II of the Intellectual Property and Communications Omnibus Reform Act of 1999)).

- The technical rules and regulatory safeguards we are adopting in the *Second Report and Order* will protect the primary allocation status of incumbent DBS/Broadcast Satellite Service (BSS) and the co-primary NGSO FSS operators in the 12 GHz band.

- The Commission's decision to authorize MVDDS in the 12 GHz band was carefully considered and rationally explained based upon all of the available information in the record.

- The technical rules we are establishing for MVDDS operation are technologically neutral because they do not specify a particular equipment configuration or methodology, proprietary or not, that must be used within the fixed terrestrial MVDDS service.

- The Commission's decision to authorize MVDDS in the 12 GHz band does not violate International Telecommunication Union (ITU) recommendations and constitutes an appropriate exercise of domestic regulatory authority.

- We deny the petitions for reconsideration with respect to the Commission's decision to authorize MVDDS in the 12 GHz band.

- We find to be substantively without merit, and dismiss on our own motion as procedurally untimely, a "Petition for Consolidation of Rulemaking Proceedings and for a Declaration that Alternative Spectrum is Suitable for the Proposed Multichannel Video Distribution and Data Service," which seeks to disallow MVDDS operation in the 12.2–12.7 GHz band and instead seeks consideration of alternative spectrum in the 12.7–13.25 GHz Cable Television Relay Service (CARS) band or the 2500–2690 MHz Multichannel Multipoint Distribution Service (MMDS) in the context of two other rule making proceedings.

#### R&O

- We will require an MVDDS operator to operate with a maximum power limit of 14 dBm per 24 megahertz Effective Isotropic Radiated Power (EIRP).

- We specify an equivalent power flux density (EPFD) limit for each of four regions across the United States. The regions and corresponding EPFD limits are: East: –168.4 dBW/m<sup>2</sup>/4kHz, Midwest: –169.8 dBW/m<sup>2</sup>/4kHz, Southwest: –171.0 dBW/m<sup>2</sup>/4kHz, and Northwest: –172.1 dBW/m<sup>2</sup>/4kHz.

- Using a prescribed methodology and a predictive model to calculate EPFD values, we used a criterion that would limit the amount of increased BSS unavailability due to the presence of MVDDS to ten percent over a baseline level of BSS unavailability. The unavailability allowance ascribed to MVDDS is in addition to the unavailability allowance ascribed to NGSO FSS operations in the 12.2–12.7 GHz band.

- MVDDS must site and design its transmitting antennas to avoid causing harmful interference to existing DBS customers.

- We will require the MVDDS operator to ensure that the prescribed EPFD limits are not exceeded at any DBS customer of record location. If the EPFD limits are exceeded, the MVDDS operator will be required to discontinue service until such time that the limits can be met.

- To promote MVDDS and NGSO FSS band sharing, MVDDS signals shall not exceed a power flux density (PFD) of –135dBW/m<sup>2</sup>/4kHz measured and/or calculated at the surface of the earth at distances greater than 3 km from the MVDDS transmitting site.

- We adopt a minimum MVDDS transmitting antenna spacing of 10 km from pre-existing NGSO FSS receive

antennas with the option for NGSO FSS licensee agreement to accept shorter spacing. We also conclude that NGSO FSS receivers must accept any interference from pre-existing MVDDS transmitting antennas.

- We adopt basic information sharing and coordination requirements that MVDDS and NGSO FSS operators must follow to facilitate mutual sharing of the 12 GHz band as co-primary services.

- We adopt MVDDS emission mask values for protecting NGSO FSS operations in the adjacent 11.7–12.2 GHz band and CARS and Broadcast Auxiliary Service (BAS) operations in the adjacent 12.7–13.25 GHz band from out-of-band MVDDS emissions.

- We adopt low elevation angle PFD radiation limits on NGSO FSS operations that will afford protection to MVDDS receivers from NGSO FSS interference for the portion of the non-geostationary orbital path near the horizon.

- We dismiss, without prejudice, all applications for terrestrial use of the 12 GHz band. All interested parties may reapply under the new licensing rules established in this proceeding.

- We adopt a geographic area licensing scheme that permits the filing of mutually exclusive applications. Consistent with our statutory mandate to resolve such applications through the use of auctions, any mutually exclusive initial applications for the MVDDS service will be resolved by competitive bidding.

- We find that the ORBIT Act does not bar the assignment of licenses for MVDDS in the 12.2–12.7 GHz band by competitive bidding.

- We adopt our proposal to auction MVDDS licenses in conformity with the general competitive bidding rules set forth in Part 1, Subpart Q, of the Commission's Rules.

- We adopt three small business definitions and three levels of bidding credits for MVDDS. We define a very small business as an entity with average annual gross revenues not exceeding \$3 million for the preceding three years; a small business as an entity with average annual gross revenues not exceeding \$15 million for the preceding three years; and an entrepreneur as an entity with average annual gross revenues not exceeding \$40 million for the preceding three years. Very small businesses will receive a bidding credit of 35 percent, small businesses will receive a bidding credit of 25 percent, and entrepreneurs will receive a bidding credit of 15 percent.

- We decline to adopt a set-aside of MVDDS spectrum or special bidding credits for DBS licensees.

- We decline to adopt a prohibition against transfers of MVDDS licenses.
- We adopt geographic license service areas for MVDDS on the basis of Component Economic Areas (CEAs).
- We adopt a channel plan consisting of one spectrum block of 500 megahertz per service area.
- We permit fixed one-way operations, but exclude mobile and aeronautical operations. Permissible operations include the flexibility for two-way services whereby the 12 GHz band could be used for the downstream path, and any upstream (or return) path could be located in other spectrum or over a wireline.
- We decline to adopt must-carry rules.
- We require incumbent non-public safety Private Operational Fixed Service (POFS) licensees in the 12 GHz band to protect MVDDS and NGSO FSS operations.
- We require MVDDS and NGSO FSS operations to protect incumbent traditional public safety POFS licensees in the 12 GHz band.
- We suspend the acceptance of POFS applications for new licenses, amendments to applications for new and modified licenses and major modifications to existing licenses.
- We decline to permit dominant cable operators from acquiring an attributable interest in an MVDDS license for a service area where significant overlap is present.
- We adopt a ten-year license term for MVDDS, beginning on the date of the initial authorization grant, and adopt a renewal expectancy based on the substantial service requirement.
- We restrict the placement of transmitting systems near the Canadian and Mexican borders.

### **I. Final Regulatory Flexibility Certification (Second Report and Order)**

2. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the Amendment of Parts 2 and 25 of the Commission's Rules to Permit Operation of NGSO FSS Systems Co-Frequency with GSO and Terrestrial Systems in the Ku-Band Frequency Range; Amendment of the Commission's Rules to Authorize Subsidiary Terrestrial Use of the 12.2–12.7 GHz Band by Direct Broadcast Satellite Licensees and Their Affiliates; and Applications of Broadwave USA, PDC Broadband Corporation, and Satellite Receivers, Ltd. to Provide A Fixed Service in the 12.2–12.7 GHz Band, *First Report and Order and Further Notice of Proposed Rule*

*Making*, 66 FR 30361 (June 6, 2001) (*First Report and Order and Further Notice of Proposed Rule Making*), FCC 00–418, ET Docket No. 98–206, 16 FCC Rcd 4096 (2000). The Commission sought written public comment on the proposals in the *Further Notice of Proposed Rule Making* including comment on the IRFA. This Final Regulatory Flexibility Analysis (FRFA) examines the possible significant economic impact of our actions on small entities and conforms to the RFA.

#### *A. Need for, and Objectives of, the Second Report and Order*

3. By this action, Multichannel Video Distribution and Data Service (MVDDS) providers will share the 12.2–12.7 GHz band with new NGSO FSS operators on a co-primary basis and on a non-harmful interference basis with incumbent direct broadcast satellite (DBS) providers. The objective of this *Second Report and Order* is to adopt licensing, service and technical rules for the MVDDS. Specifically, we seek: (1) to accommodate the introduction of innovative services; and (2) to facilitate the sharing and efficient use of spectrum. Furthermore, the rules adopted in this *Second Report and Order* are designed to implement Congress's 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. Thus, we believe that this service will facilitate the delivery of communications services, such as video and broadband services, to various populations including those that are deemed to be unserved and/or underserved.

#### *B. Summary of Significant Issues Raised by Public Comments in Response to the IRFA*

4. Although we did not receive any comments in direct response to the IRFA, commenters suggested approaches that would foster participation in the MVDDS service by smaller entities. For instance, several commenters favored allowing MVDDS licensees to partition their geographic service areas into smaller areas. In addition, the Rural Telecommunications Group (RTG) suggested the use of smaller service areas—Metropolitan Statistical Areas (MSAs), Rural Service Areas (RSAs) or Component Economic Areas (CEAs)—to facilitate opportunities for small and rural carriers to obtain MVDDS licenses and to ensure that rural regions benefit from the 12.2–12.7 GHz band. Likewise, Pegasus supported licensing MVDDS on

the basis of basic trading areas (BTAs) and major trading areas (MTAs) because the population served would be smaller and the cost of licenses likely lower, thus providing greater economic opportunity for a wider variety of applicants. Thus, the need to establish opportunities for smaller entities to have access to MVDDS spectrum was a sentiment expressed by various commenters in the MVDDS rule making proceeding.

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

5. 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 rules adopted herein. 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).

6. *Small Multichannel Video Programming Distributors (MVPDs)*. SBA has developed a definition of small entities for cable, which includes all such companies generating \$11 million or less in annual receipts. This definition includes cable system operators and DBS services. According to the Census Bureau data from 1992, there were 1,758 total cable and other pay television services and 1,423 had less than \$11 million in revenue. We address each service individually to provide a more precise estimate of small entities.

7. *Cable Services*. The Commission has developed, with SBA's approval, our own definition of a small cable system operator for the purposes of rate regulation. Under the Commission's rules, a “small cable company” is one serving 400,000 or fewer subscribers nationwide. We last estimated that there were 1439 cable operators that qualified as small cable companies. Since then, some of those companies may have grown to serve over 400,000 subscribers, and others may have been involved in transactions that caused them to be combined with other cable operators. Consequently, using this definition, we estimate that there are fewer than 1439 small entity cable system operators that may be affected by the decisions and

rules adopted in this *Second Report and Order*.

8. The Communications Act defines a small cable system operator as "a cable operator that, directly or through an affiliate, serves in the aggregate fewer than one percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed \$250,000,000." The Commission has determined that there are 61,700,000 subscribers in the United States. Therefore, an operator serving fewer than 617,000 subscribers shall be deemed a small operator under the Communications Act definition, if its annual revenues, when combined with the total annual revenues of all of its affiliates, do not exceed \$250 million in the aggregate. Based on available data, we find that the number of cable operators serving 617,000 subscribers or less totals approximately 1450. Although it seems certain that some of these cable system operators are affiliated with entities whose gross annual revenues exceed \$250,000,000, we are unable at this time to estimate with greater precision the number of cable system operators that would qualify as small cable operators under the definition in the Communications Act.

9. *DBS Service*. Because DBS provides subscription services, DBS falls within the SBA definition of Cable Networks (NAIC 513210) and Cable and Other Program Distribution (NAIC 513220). This definition provides that a small entity is expressed as one with \$11 million or less in annual receipts. The operational licensees of DBS services in the United States are governed by Part 100 of the Commission's Rules. The Commission, however, does not collect annual revenue data for DBS and, therefore, is unable to ascertain the number of small DBS licensees meeting this definition that could be impacted by these rules. DBS service requires a great investment of capital for operation, and we acknowledge that there are entrants in this field that may not yet have generated \$11 million in annual receipts, and therefore may be categorized as a small business by the SBA, if independently owned and operated.

10. *Auxiliary, Special Broadcast and other program distribution services*. This service involves a variety of transmitters, generally used to relay broadcast programming to the public (through translator and booster stations) or within the program distribution chain (from a remote news gathering unit back to the station). The Commission has not developed a definition of small entities

applicable to broadcast auxiliary licensees. Therefore, the applicable definition of small entity is the definition under the SBA rules applicable to radio networks (NAICS 513111), radio stations (NAICS 513112), and television broadcasting (NAICS 513120). These definitions provide, respectively, that a small entity is one with either \$5 million or less in annual receipts or \$10.5 million in annual receipts. The numbers of these stations are very small. The Commission does not collect financial information on these auxiliary broadcast facilities. We believe, however, that most, if not all, of these auxiliary facilities could be classified as small businesses by themselves. We also recognize that most of these types of services are owned by a parent station which, in some cases, would be covered by the revenue definition of small business entity. These stations would likely have annual revenues that exceed the SBA maximum to be designated as a small business (as noted, either \$5 million for a radio station or \$10.5 million for a TV station). Furthermore, they do not meet the SBA's definition of a "small business concern" because they are not independently owned and operated.

11. *Private Operational Fixed Service*. Incumbent microwave services in the 12.2–12.7 GHz bands are private operational fixed (POF) services. Presently, there are approximately 22,015 common carrier licensees, and approximately 61,670 POF licensees and broadcast auxiliary radio licensees in the microwave service. Inasmuch as the Commission has not yet defined a small business with respect to these incumbent microwave services, we will utilize the SBA's definition applicable to cellular and other wireless telecommunications companies (NAICS 513322); *i.e.*, an entity with no more than 1500 persons. We estimate, for this purpose, that all of the Fixed Microwave licensees (excluding broadcast auxiliary licensees) would qualify as small entities under the SBA definition for radiotelephone companies.

12. The rules set forth in this *Second Report and Order* will affect all entities that intend to provide terrestrial MVDDS operations in the 12.2–12.7 GHz band. In this *Second Report and Order*, we state that licensees are permitted to use MVDDS spectrum for, among other things, fixed one-way direct-to-home/business video and data services.

13. Additionally, in the *Second Report and Order*, we adopt definitions for three tiers of small businesses for the purpose of providing bidding credits to small entities. Specifically, we define

the three tiers of small businesses as follows: an "entrepreneur" is an entity with average annual gross revenues not exceeding \$40 million for the preceding three years; a "small business" is an entity with average annual gross revenues not exceeding \$15 million for the preceding three years; and a "very small business" is an entity with average annual gross revenues not exceeding \$3 million for the preceding three years. We will not know how many auction participants or licensees will qualify under these definitions as entrepreneurs, small businesses, or very small businesses until an auction is held. However upon reviewing the record in the MVDDS proceeding, we assume that, for purposes of our evaluations and conclusions in the FRFA, a number of the prospective licensees will be entrepreneurs, small businesses, or very small businesses under our adopted definitions.

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

14. Applicants for MVDDS licenses are required 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, we will apply the Part 101 rules governing reporting requirements to MVDDS systems. Specifically, each MVDDS licensee is required to file with the Commission two copies of a report no later than March 1 of each year for the preceding calendar year, which must include the following: (a) name and address of licensee; (b) station(s) call letters and primary geographic service area(s); and (c) 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 forty-eight hours. In addition, we require each MVDDS licensee to file actual data on cases of harmful interference to DBS operations and measures taken to alleviate such interference. We believe that the information compiled in this report will assist us in analyzing trends and competition in the marketplace.

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

15. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its 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.

16. We have taken significant steps to reduce burdens on small entities wherever possible. To provide opportunities for small entities to participate in any auction that is held, we provide bidding credits for entrepreneurs, small businesses, and very small businesses as defined in section C of this FRFA. The bidding credits adopted are 15 percent for entrepreneurs, 25 percent for small businesses, and 35 percent for very small businesses. Our decision to adopt CEAs as service areas for MVDDS and to permit the partitioning of these service areas is also intended to provide small entities an opportunity to acquire licenses. There are currently 348 CEAs and we believe that the use of these service areas will encourage smaller business entities to participate in the MVDDS auction. Participation in the MVDDS auction by smaller business entities would foster the buildout of services to local and/or rural areas which are traditionally deemed underserved or unserved. 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.

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

17. None.

18. *Report to Congress.* The Commission will send a copy of the *Second Report and Order*, including this FRFA, in a report to be sent to Congress pursuant to the Congressional Review Act. In addition, the

Commission will send a copy of the *Second Report and Order*, including this FRFA, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the *Second Report and Order* and FRFA (or summaries thereof) will also be published in the **Federal Register**.

**II. Ordering Clauses**

19. *Authority.* Accordingly, it is ordered that pursuant to the authority contained in sections 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. 154(i), 157(a), 301, 303(c), 303(f), 303(g), 303(r), 308, 309(j), this *Memorandum Opinion and Order and Second Report and Order* is adopted.

20. *It is further ordered* that, parts 25 and 101 of the Commission's rules ARE AMENDED as specified in rule changes, effective August 26, 2002, except for §§ 25.139, 101.103, 101.1403, 101.1413, 101.1417 and 101.1440 which contain information collection requirements that have not been approved by OMB. The Federal Communications Commission will publish a document in the **Federal Register** announcing the effective date. This action is taken pursuant to sections 4(i), 303(c), 303(f), 303(g), 303(r), and 309(j) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(c), 303(f), 303(g), 303(r) and 309(j).

21. *It is further ordered* that pursuant to sections 4(i), 302, 303(e), 303(f), 303(g), 303(r) and 405 of the Communications Act of 1934, as amended, the petitions for reconsideration filed by SkyBridge, DirecTV, Inc., EchoStar Satellite Corporation, Satellite Broadcasting and Communications Association, the Boeing Company, and SkyTower, Inc. as they relate to our decision to allocate MVDDS in the 12 GHz band *are denied*.

22. *It is further ordered* that pursuant to sections 4(i), 302, 303(e), 303(f), 303(g), 303(r) and 405 of the Communications Act of 1934, as amended, the DBS Petition for Consolidation and Declaration filed by DirecTV and EchoStar *is dismissed*.

23. *It is further ordered* that pursuant to sections 4(i), 303(r) and 309(j) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(r), 309(j), and section 1.934(d) of the Commission's Rules, 47 CFR 1.934(d), the Broadwave Network, LLC Applications for Licenses to Provide a New Terrestrial Transport Service in the 12 GHz band, Various DMAs, filed on January 8, 1999, *are dismissed*.

24. *It is further ordered* that pursuant to sections 4(i), 303(r) and 309(j) of the Communications Act of 1934, as

amended, 47 U.S.C. 154(i), 303(r), 309(j), and section 1.934(d) of the Commission's Rules, 47 CFR 1.934(d), the PDC Broadband Corporation Applications for Licenses to Provide Terrestrial Service in the 12 GHz Band in All DMAs, filed on April 18, 2000, *are dismissed*.

25. *It is further ordered* that pursuant to sections 4(i), 303(r) and 309(j) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(r), 309(j), and section 1.934(d) of the Commission's Rules, 47 CFR 1.934(d), the Satellite Receivers, Ltd. Applications for Licenses to Provide Terrestrial Television Broadcast and Data Services in the 12.2–12.7 GHz Band in Illinois, Indiana, Iowa, Michigan, Minnesota and Wisconsin, filed on August 25, 2000, *are dismissed*.

26. *It is further ordered* that, effective as of the date of the release of this *Memorandum Opinion and Order and Second Report and Order*, NO NEW APPLICATIONS WILL BE ACCEPTED FOR FILING in the 12.2–12.7 GHz band for private operational fixed service, except for applications for minor modifications or for license assignment or transfer of control.

27. *It is further ordered* that pending applications, as of the release date of this *Memorandum Opinion and Order and Second Report and Order*, for Private Operational Fixed Service licenses in the 12.2–12.7 GHz band *will be processed* on a first-come, first-served basis.

28. *It is further ordered* that the Commission's Consumer Information Bureau, Reference Information Center, *shall send* a copy of this *Memorandum Opinion and Order and Second Report and Order*, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

**List of Subjects**

*47 CFR Part 25*

Communications common carriers, Communications equipment, Radio, Reporting and recordkeeping requirements, Satellites, Securities, and Telecommunications.

*47 CFR Part 101*

Communications equipment, Radio, and Reporting and recordkeeping requirements.

Federal Communications Commission.

**Marlene H. Dortch,**  
*Secretary.*

**Rule Changes**

For the reasons discussed in the preamble, the Federal Communications

Commission amends 47 CFR parts 25 and 101 as follows:

**PART 25—SATELLITE COMMUNICATIONS**

1. The authority citation for part 25 continues to read as follows:

**Authority:** 47 U.S.C. 701–744. Interprets or applies sec. 303.47 U.S.C. sections 154, 301, 302, 303, 307, 309, and 332, unless otherwise noted.

2. Section 25.139 is added to read as follows:

**§ 25.139 NGSO FSS coordination and information sharing between MVDDS licensees in the 12.2 GHz to 12.7 GHz band.**

(a) NGSO FSS licensees shall maintain a subscriber database in a format that can be readily shared with MVDDS licensees for the purpose of determining compliance with the MVDDS transmitting antenna spacing requirement relating to qualifying existing NGSO FSS subscriber receivers set forth in § 101.129 of this chapter.

(b) Within ten business days of receiving notification of the location of a proposed MVDDS transmitting antenna, the NGSO FSS licensee shall provide sufficient information from the database to enable the MVDDS licensee to determine whether the proposed

MVDDS transmitting site meets the minimum spacing requirement.

(c) If the location of the proposed MVDDS transmitting antenna site does not meet the separation requirements of § 101.129 of this chapter, then the NGSO FSS licensee shall also indicate to the MVDDS licensee within the same ten day period specified in paragraph (b) of this section whether the proposed MVDDS transmitting site is acceptable at the proposed location.

(d) Nothing in this section shall preclude NGSO FSS and MVDDS licensees from entering into an agreement to accept MVDDS transmitting antenna locations that are shorter-spaced from existing NGSO FSS subscriber receivers than the distance set forth in § 101.129 of this chapter.

3. Section 25.208 is amended by adding paragraph (n) to read as follows:

**§ 25.208 Power flux density limits.**

\* \* \* \* \*

(n) In the band 12.2–12.7 GHz, for NGSO FSS space stations, the low-angle power flux-density at the Earth’s surface produced by emissions from a space station for all conditions and for all methods of modulation shall not exceed the lower of the following values:

(1) 158 dB(W/m<sup>2</sup>) in any 4 kHz band for angles of arrival between 0 and 2 degrees above the horizontal plane; and

(2) 158+ 3.33(δ-2) dB(W/m<sup>2</sup>) in any 4 kHz band for angles of arrival (δ) (in degrees) between 2 and 5 degrees above the horizontal plane.

**Note to paragraph (n):** These limits relate to the power flux density, which would be obtained under assumed free-space propagation conditions.

\* \* \* \* \*

**PART 101—FIXED MICROWAVE SERVICES**

4. The authority citation for part 101 continues to read as follows:

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

5. Section 101.3 is amended by adding a definition for MVDDS in alphabetical order to read as follows:

**§ 101.3 Definitions.**

\* \* \* \* \*

*Multichannel Video Distribution and Data Service (MVDDS).* A fixed microwave service licensed in the 12.2–12.7 GHz band that provides various wireless services. Mobile and aeronautical operations are prohibited.

\* \* \* \* \*

6. Section 101.101 is amended by revising the entry for 12,200–12,700 MHz in the 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, POFS		DBS, NGSO FSS.	*

\* \* \* \* \*

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

**§ 101.103 Frequency coordination procedures.**

\* \* \* \* \*

(f) (1) *Coordination and information sharing between MVDDS and NGSO FSS licensees in the 12.2 GHz to 12.7 GHz band.* Prior to the construction or addition of an MVDDS transmitting antenna in this frequency band, the MVDDS licensee shall provide notice of intent to construct the proposed antenna site to NGSO FSS licensees operating in the 12.2–12.7 GHz frequency band and maintain an Internet web site of all existing transmitting sites and transmitting antennas that are scheduled for operation within one year

including the “in service” dates. In addition to the location of a proposed new transmitting antenna, MVDDS licensees shall provide to the NGSO FSS licensees a technical description of the operating characteristics of the proposed transmission facility. At a minimum, the following information must be included in each notification:

- (i) Name of MVDDS licensee;
- (ii) Geographic location (including NAD83 coordinates) of proposed MVDDS transmitting antenna;
- (iii) Maximum EIRP per 24 MHz;
- (iv) Height above average terrain of the transmitting antenna;
- (v) Type of antenna to be utilized;
- (vi) Main beam azimuth and altitude orientation for the proposed transmitting antenna;
- (vii) Theoretically modeled antenna radiation pattern;

- (viii) Type(s) of emissions, and;
- (ix) Description of the proposed service area.

(2) If the proposed MVDDS antenna site does not meet the minimum spacing requirements on the date of original notification or on subsequent annual anniversary dates of non-operation as set forth in § 101.129, then the MVDDS licensee shall not construct the proposed transmission facility unless all NGSO FSS licensees having active subscribers within the minimum separation distance agree to a shorter spacing. Nothing in this section shall preclude MVDDS and NGSO FSS licensees from agreeing to accept the siting of new MVDDS transmitting antennas that do not meet the minimum distance set forth in § 101.129. Incumbent point-to-point licensees’

(those not licensed as MVDDS) facilities are to be operated in the band 12,200–12,700 MHz following the procedures, technical standards, and requirements of § 101.105 in order to protect stations providing Direct Broadcast Satellite Service.

\* \* \* \* \*

8. Section 101.105 is amended by adding paragraphs (a)(4) and (a)(5) to read as follows:

**§ 101.105 Interference protection criteria.**

(a) \* \* \*

(4) 12.2–12.7 GHz band.

(i) To accommodate co-primary NGSO FSS earth stations in the 12.2–12.7 GHz band, the PFD of an MVDDS transmitting system must not exceed –135 dBW/m<sup>2</sup> in any 4 kHz band at a reference point at the surface of the earth at a distance of 3 kilometers from the MVDDS transmitting antenna.

(ii) To accommodate co-primary Direct Broadcast Satellite Service earth stations, an MVDDS transmitting system must not exceed the EPPD levels specified in the appropriate region below at any DBS subscriber location in accordance with the procedures listed in § 101.1440.

(A) 168.4 dBW/m<sup>2</sup>/4kHz in the Eastern region consisting of the following states: Maine, New Hampshire, Vermont, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, West Virginia, Kentucky, Tennessee, North Carolina, South Carolina, Georgia, Alabama, Mississippi, Louisiana, and Florida.

(B) 169.8 dBW/m<sup>2</sup>/4kHz in the Midwestern region consisting of the following states: Ohio, Michigan, Indiana, Wisconsin, Illinois, Minnesota,

Iowa, Missouri, Arkansas, South Dakota, Nebraska, Kansas, Oklahoma, and Texas.

(C) 171.0 dBW/m<sup>2</sup>/4kHz in the Southwestern region consisting of the following states: Wyoming, Colorado, New Mexico, Utah, Arizona, Nevada, and California (south of 37° North Latitude).

(D) 172.1 dBW/m<sup>2</sup>/4kHz in the Northwestern region consisting of the following states: Washington, Oregon, California (north of 37° North Latitude), Idaho, Montana, North Dakota, Alaska, and Hawaii.

(iii) 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).

(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 entity prior to operating.

\* \* \* \* \*

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

**§ 101.107 Frequency tolerance.**

(a) \* \* \*

<sup>6</sup> Applicable to private operations fixed point-to-point microwave stations and stations providing MVDDS service.

\* \* \* \* \*

10. Section 101.109(c) is amended by revising the entry for 12,200–12,700 MHz and by adding footnote 8 in the Table to read as follows:

**§ 101.109 Bandwidth.**

\* \* \* \* \*

(c) \* \* \*

Frequency band (MHz)	Maximum authorized bandwidth
* * * * *	* * * * *
12,200 to 12,700 <sup>8</sup> .....	500 megahertz
* * * * *	* * * * *

<sup>8</sup>For incumbent private operational fixed point-to-point stations in this band (those not licensed as MVDDS), the maximum bandwidth shall be 20 MHz.

\* \* \* \* \*

11. Section 101.111 is amended by revising the definition of “B” following the equation in paragraph (a)(2)(i) to read as follows:

**§ 101.111 Emission limitations.**

\* \* \* \* \*

B = Authorized bandwidth in MHz. MVDDS operations in the 12.2–12.7 GHz band shall use 24 megahertz for the value of B in the emission mask equation set forth in this section.

\* \* \* \* \*

12. Section 101.113 is amended by revising the entry for 12,200–12,700 MHz in the table and adding footnote 11 to the table in paragraph (a) to read as follows:

**§ 101.113 Transmitter power limitations.**

(a) \* \* \*

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

<sup>1</sup> Per polarization.

<sup>2</sup> For multiple address operations, see § 101.147. Remote alarm units that are part of a multiple address central station projection system are authorized a maximum of 2 watts.

<sup>11</sup> The EIRP for MVDDS stations is limited to 14.0 dBm per 24 MHz (–16.0 dBW per 24 MHz). Incumbent point-to-point stations may use up to +50 dBW except for low power systems which were licensed under § 101.147(q).

\* \* \* \* \*

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

**§ 101.115 Directional antennas.**

\* \* \* \* \*

(c) \* \* \*

<sup>9</sup> 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 antennas in the MVDDS service in the band 12.2–12.7 GHz.

\* \* \* \* \*

14. Section 101.129 is amended by adding paragraph (b) to read as follows:

**§ 101.129 Transmitter location.**

\* \* \* \* \*

(b) In the 12.2–12.7 GHz band, licensees must not locate MVDDS transmitting antennas within 10 km of



any qualifying NGSO FSS receiver unless mutual agreement is obtained between the MVDDS and NGSO FSS licensees. Such agreements must be retained by the licensees and made available for inspection by interested parties upon request.

(1) A qualifying NGSO FSS receiver, for the purposes of this section, is deemed to be one that is in regular use by an NGSO FSS subscriber for normal reception purposes in the 12.2–12.7 GHz band and not one for monitoring or testing purposes. In addition, qualifying receivers must either be in operation on the date or already be under construction and then operating within thirty days of the date that the MVDDS licensee notifies the NGSO FSS licensee of its intent to construct a new MVDDS transmitting antenna at a specified location.

(2) Except as provided in paragraph (b)(3) of this section, the 10 kilometer spacing requirement for each MVDDS transmitting antenna site shall not apply with respect to NGSO FSS receivers that might be installed or become operational (except for those under construction and operating within thirty days as specified in paragraph (b)(1) of this section) subsequent to the original date that the MVDDS licensee provided notice of its intention to construct a given transmission facility.

(3) In the event that a proposed MVDDS transmitting antenna for which notice has been duly given to the NGSO FSS licensees has not been placed in normal operation within one calendar year of the date of notice, then the MVDDS licensee loses the benefit of the original notice. Upon such anniversary, the MVDDS licensee must re-determine compliance with the minimum 10 kilometer spacing requirement based upon locations of qualifying NGSO FSS receivers on that anniversary date. A new determination of compliance with the spacing requirement shall be made for each succeeding anniversary of non-operation for each proposed MVDDS transmission site or additional antenna. This provision contemplates that failure to commence normal operation at a given MVDDS transmitting antenna site within one year of the date of NGSO FSS notification may require successive relocations of the proposed transmitter site in order to meet the minimum spacing distance as determined on each anniversary of non-operation.

15. 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.

\* \* \* \* \*

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

\* \* \* \* \*

17. Amend § 101.147 as follows:  
a. Revise the entry in paragraph (a) from “12,200–12,700 MHz (22)” to read “12,200–12,700 MHz (31)”.

b. Add note (31) to the notes following the table in numerical order; and

c. Revise paragraphs (p) and (q) to read as follows:

**§ 101.147 Frequency assignments.**

(a) \* \* \*

12,200–12,700 MHz (31)

\* \* \* \* \*

(31) This frequency band can be used for Multichannel Video Distribution and Data Service (MVDDS) shared with Direct Broadcast Satellite (DBS) Services on a co-primary non-harmful interference basis and on a co-primary basis with NGSO FSS satellite earth stations. Incumbent private operational fixed point-to-point licensees can also use these frequencies on a site by site basis.

\* \* \* \* \*

(p) 12,000–12,700 MHz. The Commission has allocated the 12.2–12.7 GHz band for use by the Direct Broadcast Satellite Service (DBS), the Multichannel Video Distribution and Data Service (MVDDS), and the Non-Geostationary Satellite Orbit Fixed Satellite Service (NGSO FSS). MVDDS shall be licensed on a non-harmful interference co-primary basis to existing DBS operations and on a co-primary basis with NGSO FSS stations in this band. MVDDS use can be on a common carrier and/or non-common carrier basis and can use channels of any desired bandwidth up to the maximum of 500 MHz provided the EIRP does not exceed 14 dBm per 24 megahertz. Private operational fixed point-to-point microwave stations authorized after September 9, 1983, are licensed on a non-harmful interference basis to DBS and are required to make any and all adjustments necessary to prevent harmful interference to operating domestic DBS receivers. Incumbent

public safety licensees shall be afforded protection from MVDDS and NGSO FSS licensees, however all other private operational fixed licensees shall be secondary to DBS, MVDDS and NGSO FSS licensees. As of May 23, 2002, the Commission no longer accepts applications for new licenses for point-to-point private operational fixed stations in this band, however, incumbent licensees and previously filed applicants may file applications for minor modifications and amendments (as defined in § 1.929 of this chapter) thereto, renewals, transfer of control, or assignment of license. Notwithstanding any other provisions, no private operational fixed point-to-point microwave stations are permitted to cause harmful interference to broadcasting-satellite stations of other countries operating in accordance with the Region 2 plan for the Broadcasting-Satellite Service established at the 1983 WARC.

(q) Special provisions for incumbent low power, limited coverage systems in the band segments 12.2–12.7 GHz.

(1) As of May 23, 2002, the Commission no longer accepts applications for new stations in this service and incumbent stations may remain in service provided they do not cause harmful interference to any other primary services licensed in this band as described in paragraph (p) of this section. However, incumbent licensees and previously filed applicants may file applications for minor modifications and amendments (as defined in § 1.929 of this chapter) thereto, renewals, transfer of control, or assignment of license.

(2) Prior to December 8, 2000, notwithstanding any contrary provisions in this part, the frequency pairs 12.220/12.460 GHz, 12.260/12.500 GHz, 12.300/12.540 GHz and 12.340/12.580 GHz, were authorized for low power, limited coverage systems subject to the following provisions:

(i) Maximum equivalent isotropically radiated power (EIRP) shall be 55 dBm;

(ii) The rated transmitter output power shall not exceed 0.5 watts;

(iii) Frequency tolerance shall be maintained to within 0.01 percent of the assigned frequency;

(iv) Maximum beamwidth shall not exceed 4 degrees. However, the sidelobe suppression criteria contained in § 101.115 shall not apply, except that a minimum front-to-back ratio of 38 dB shall apply;

(v) Upon showing of need, a maximum bandwidth of 12 MHz may be authorized per frequency assigned;

(vi) Radio systems authorized under the provisions of this section shall have

no more than three hops in tandem, except upon showing of need, but in any event the maximum tandem length shall not exceed 40 km (25 miles);

(vii) Interfering signals at the receiver antenna terminals of stations authorized under this section shall not exceed -90 dBm and -70 dBm respectively, for co-channel and adjacent channel interfering signals, and

(viii) Stations authorized under the provisions of this section shall provide the protection from interference specified in § 101.105 to stations operating in accordance with the provisions of this part.

18. Section 101.601 is amended by adding a sentence at the end 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.

19. Add subpart P to read as follows:

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

Sec.

- 101.1401 Service areas.
- 101.1403 Broadcast carriage requirements.
- 101.1405 Channeling plan.
- 101.1407 Permissible operations for MVDDS.
- 101.1409 Treatment of incumbent licensees.
- 101.1411 Regulatory status and eligibility.
- 101.1412 MVDDS eligibility restrictions for cable systems.
- 101.1413 License term and renewal expectancy.
- 101.1415 Partitioning and disaggregation.
- 101.1417 Annual report.
- 101.1421 Coordination of adjacent area MVDDS stations and incumbent public safety POFs stations.
- 101.1423 Canadian and Mexican coordination.
- 101.1425 RF safety.
- 101.1427 MVDDS licenses subject to competitive bidding.
- 101.1429 Designated entities.
- 101.1440 MVDDS protection of DBS.

**§ 101.1401 Service areas.**

Multichannel Video Distribution and Data Service (MVDDS) is licensed on the basis of Component Economic Areas (CEAs). CEAs are based on Economic Areas delineated by the United States Department of Commerce. Each CEA consists of a single economic node and the surrounding counties that are economically related to the node. The United States has a total of 348 CEAs, and each CEA shall be licensed by auction to one licensee.

**§ 101.1403 Broadcast carriage Requirements.**

MVDDS licensees are not required to provide all local television channels to

subscribers within its area and thus are not required to comply with the must-carry rules, nor the local signal carriage requirements of the *Rural Local Broadcast Signal Act*. See Multichannel Video and Cable Television Service Rules, Subpart D (Carriage of Television Broadcast Signals), 47 CFR 76.51–76.70. If an MVDDS licensee meets the statutory definition of Multiple Video Programming Distributor (MVPD), the retransmission consent requirement of section 325(b)(1) of the Communications Act of 1934, as amended (47 U.S.C. 325(b)(1)) shall apply to that MVDDS licensee. Any MVDDS licensee that is an MVPD must obtain the prior express authority of a broadcast station before retransmitting that station's signal, subject to the exceptions contained in section 325(b)(2) of the Communications Act of 1934, as amended (47 U.S.C. 325(b)(2)). Network nonduplication, syndicated exclusivity, sports blackout, and leased access rules shall not be imposed on MVDDS licensees.

**§ 101.1405 Channeling plan.**

Each license shall have one spectrum block of 500 megahertz per geographic area that can be divided into any size channels. Disaggregation is not allowed.

**§ 101.1407 Permissible operations for MVDDS.**

MVDDS licensees must use spectrum in the 12.2–12.7 GHz band for any digital fixed non-broadcast service (broadcast services are intended for reception of the general public and not on a subscribership basis) including 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 or upstream path.

**§ 101.1409 Treatment of incumbent licensees.**

Terrestrial private operational fixed point-to-point licensees in the 12.2–12.7 GHz band which were licensed prior to MVDDS or NGSO FSS 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 public safety 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. All point-to-point applications, including low-power operations, for new licenses, major amendments to pending applications, or major modifications to existing licenses for the 12.2–12.7 GHz band are no longer accepted except for renewals and changes in ownership. See § 1.929 of this chapter for definitions of major and minor changes.

**§ 101.1411 Regulatory status and eligibility.**

(a) MVDDS licensees are permitted to provide one-way video programming and data services on a non-common carrier and/or on a common carrier basis. MVDDS is not required to be treated as a common carrier service unless it is providing non-Internet voice and data services through the public switched network.

(b) MVDDS licensees in the 12.2–12.7 GHz band are subject to the requirements set forth in § 101.7.

(c) Any entity, other than one precluded by §§ 101.7 and 101.1412, is eligible for authorization to provide MVDDS under this part. Authorization will be granted upon proper application filing in accordance with the Commission's rules.

**§ 101.1412 MVDDS eligibility restrictions for cable operators.**

(a) Eligibility for MVDDS license. No cable operator, nor any entity owning an attributable interest in a cable operator, shall have an attributable interest in an MVDDS license whose geographic service area significantly overlaps such cable operator's service area, as defined in paragraph (d) of this section.

(b) Definition of cable operator. For the purposes of paragraph (a) of this section, the term "cable operator" means a company that is franchised to provide cable service.

(c) Waiver of restriction. Upon completion of the initial award of MVDDS licenses, a cable operator may petition for a waiver of the restriction on eligibility based upon a showing that the petitioner no longer has market power in its service area as the result of the entry of new competitors, other than an MVDDS licensee, into such service area.

(d) Significant overlap with service area. For purposes of paragraph (a) of this section, significant overlap occurs when cable operator's subscribers in a CEA make up thirty-five percent or more of the households in that CEA.

(e) Definition of attributable interest. For purposes of paragraph (a) of this

section, an entity shall be considered to have an attributable interest in a cable operator or MVDDS licensee pursuant to the following criteria:

(1) A controlling interest shall constitute an attributable interest.

Controlling interest means majority voting equity ownership, any general partnership interest, or any means of actual working control (including negative control) over the operation of the entity, in whatever manner exercised.

(2) Any general partnership interest in a partnership;

(3) Partnership and similar ownership interests (including limited partnership interests) amounting to 20 percent or more of the total partnership interests, calculated according to both the percentage of equity paid in and the percentage of distribution of profits and losses;

(4) Any stock interest amounting to 20 percent or more of the outstanding voting stock of an entity;

(5) Any stock interest, (including non-voting stock) amounting to 20 percent or more of the total outstanding stock of an entity;

(6) Stock interests held in trust that exceed the limit set forth in paragraph (e) of this section shall constitute an attributable interest of any person who holds or shares the power to vote such stock, of any person who has the sole power to sell such stock, and, in the case of stock held in trust, of any person who has the right to revoke the trust at will or to replace the trustee at will. If the trustee has a familial, personal, or extra-trust business relationship to the grantor or the beneficiary, the stock interests held in trust shall constitute an attributable interest of such grantor or beneficiary, as appropriate.

(7) Debt and interests such as warrants and convertible debentures, options, or other interests (except non-voting stock) with rights of conversion to voting interests shall not constitute attributable interests unless and until conversion is effected.

(8) An interest in a Limited Liability Company (LLC) or Registered Limited Liability Partnership (RLLP) amounting to 20 percent or more, shall constitute an attributable interest of each such limited partner.

(9) Officers and directors of a cable operator, an MVDDS licensee, or an entity that controls such cable operator or MVDDS licensee, shall be considered to have an attributable interest in such cable operator or MVDDS licensee.

(10) Ownership interests that are held indirectly by any party through one or more intervening corporations or other entities shall be determined by

successive multiplication of the ownership percentages for each link in the vertical ownership chain and application of the relevant attribution benchmark to the resulting product, except that, if the ownership for any interest in any link in the chain exceeds 50 percent or represents actual control, it shall be treated as if it were a 100 percent interest.

(11) Any person who manages the operations of a cable operator or an MVDDS licensee pursuant to a management agreement shall be considered to have an attributable interest in such cable operator or MVDDS licensee, if such person or its affiliate has authority to make decisions or otherwise engage in practices or activities that determine, or significantly influence:

(i) The nature or types of services offered by such entity;

(ii) The terms upon which such services are offered; or

(iii) The prices charged for such services.

(12) Any person or its affiliate who enters into a joint marketing arrangement with a cable operator, an MVDDS licensee, or an affiliate of such entity, shall be considered to have an attributable interest in such cable operator, MVDDS licensee, or affiliate, if such person or its affiliate has authority to make decisions or otherwise engage in practices or activities that determine:

(i) The nature or types of services offered by such entity;

(ii) The terms upon which such services are offered; or

(iii) The prices charged for such services.

(f) Divestiture. Any cable operator, or any entity owning an attributable interest in a cable operator, that would otherwise be barred from acquiring an attributable interest in an MVDDS license by the eligibility restriction in paragraph (a) of this section, may be a party to an MVDDS application (i.e., have an attributable interest in the applicant), and such applicant will be eligible for an MVDDS license, pursuant to the divestiture procedures set forth in paragraphs (f)(1) through (f)(6) of this section.

(1) Divestiture shall be limited to the following prescribed means:

(i) An MVDDS applicant holding an attributable interest in a cable operator may divest such interest in the cable company.

(ii) Other MVDDS applicants disqualified under paragraph (a) of this section, will be permitted to:

(A) Partition and divest that portion of the existing service area that causes it to exceed the overlap restriction in

paragraph (a) of this section, subject to applicable regulations of state and local governments; or

(B) Partition and divest that portion of the MVDDS geographic service area that exceeds the overlap restriction in paragraph (a) of this section.

(iii) Divestiture may be to an interim trustee if a buyer has not been secured in the required period of time, as long as the MVDDS applicant has no interest in or control of the trustee and the trustee may dispose of the license as it sees fit.

(2) The MVDDS applicant shall certify as an exhibit to its short form application that it and all parties to the application will come into compliance with paragraph (a) of this section.

(3) If such MVDDS applicant is a successful bidder in an auction, it must submit with its long-form application a signed statement describing its efforts to date and future plans to come into compliance with the eligibility restrictions in paragraph (a) of this section.

(4) If such an MVDDS applicant is otherwise qualified, its application will be granted subject to a condition that the applicant shall come into compliance with the eligibility restrictions in paragraph (a) of this section, within ninety (90) days of final grant of such MVDDS license.

(5) An MVDDS applicant will be considered to have come into compliance with paragraph (a) of this section if:

(i) In the case of the divestiture of a portion of an MVDDS license, it has successfully completed the assignment or transfer of control of the requisite portion of the MVDDS geographic service area.

(ii) In all other cases, it has submitted to the Commission a signed certification that it has come into compliance with paragraph (a) of this section by the following means, identified in such certification:

(A) By divestiture of a disqualifying interest in a cable operator, identified in terms of the interest owned, the owner of such interest (and, if such owner is not the applicant itself, the relationship of the owner to the applicant), the name of the party to whom such interest has been divested, and the date such divestiture was executed; or

(B) By divestiture of the requisite portion of the cable operator's existing service area, identified in terms of the name of the party to whom such interest has been divested, the date such divestiture was executed, the name of any regulatory agency that must approve such divestiture, and the date on which

an application was filed for this purpose with the regulatory agency.

(6) If no such certification or application is tendered to the Commission within ninety (90) days of final grant of the initial license, the Commission may cancel or rescind the license automatically, shall retain all monies paid to the Commission, and, based on the facts presented, shall take any other action it may deem appropriate.

**Note to paragraph (f):** Waivers of § 101.1014(e) may be granted upon an affirmative showing: that the interest holder has less than a fifty percent voting interest in the licensee and there is an unaffiliated single holder of a fifty percent or greater voting interest; that the interest holder is not likely to affect the local market in an anticompetitive manner; that the interest holder is not involved in the operations of the licensee and does not have the ability to influence the licensee on a regular basis; and that grant of a waiver is in the public interest because the benefits to the public of common ownership outweigh any potential anticompetitive harm to the market.

**§ 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 is defined 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 MVDDS 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 an 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 transmitter locations 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.**

(a) MVDDS licensees are permitted to partition licensed geographic areas along county borders (Parishes in Louisiana or Territories in Alaska). 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.

(b) *Eligibility.* (1) Parties seeking approval for partitioning shall request from the Commission an authorization for partial assignment of a license pursuant to § 1.948 of this chapter.

(2) MVDDS licensees may apply to the Commission to partition their licensed geographic service areas to eligible entities and are free to partition their licensed spectrum at any time following the grant of a license.

(3) Any existing frequency coordination agreements shall convey with the assignment of the geographic area or spectrum, and shall remain in effect for the term of the agreement unless new agreements are reached.

(c) *Technical standards.* (1) 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.

(2) 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).

(d) *Unjust enrichment.* 12 GHz licensees that received a bidding credit and partition their licenses to entities not meeting the eligibility standards for such a bidding credit, will be subject to the provisions concerning unjust enrichment as set forth in § 1.2111 of this chapter.

(e) *License term.* The MVDDS license term is ten years, beginning on the date of the initial authorization grant. The license term for a partitioned license area shall be the remainder of the original licensee's license term as provided for in § 101.1413.

(f) *Construction requirements.* Applications requesting approval for partitioning must include a certification by each party stating that one or both parties will satisfy the construction requirement set forth in § 101.1413. Failure by a party to meet its respective

construction requirement will result in the automatic cancellation of its license without further Commission action.

**§ 101.1417 Annual report.**

Each MVDDS licensee shall file with the Public Safety & Private Wireless Division of the Wireless Telecommunications Bureau of the Commission two copies of a report by March 1 of each year for the preceding calendar year. This report must include the following:

(a) Name and address of licensee;

(b) Station(s) call letters and primary geographic service area(s); and

(c) The following statistical information for the licensee's station (and each channel thereof):

(1) The total number of separate subscribers served during the calendar year;

(2) The total hours of transmission service rendered during the calendar year to all subscribers;

(3) The total hours of transmission service rendered during the calendar year involving the transmission of local broadcast signals; and

(4) 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, and

**§ 101.1421 Coordination of adjacent area MVDDS stations and incumbent public safety POFS stations.**

(a) 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 between adjacent geographical area licensees. MVDDS licensees shall:

(1) Engineer systems to be reasonably compatible with adjacent and co-channel operations in the adjacent areas on all its frequencies; and

(2) Cooperate fully and in good faith to resolve interference and transmission problems that are present on adjacent and co-channel operations in adjacent areas.

(b) Harmful interference to public safety stations, co-channel MVDDS stations operating in adjacent geographic areas, and stations operating on adjacent channels to MVDDS stations is prohibited. In areas where the CEAs are in close proximity, careful consideration should be given to power requirements and to the location, height, and radiation pattern of the transmitting and receiving antennas. Licensees are expected to cooperate fully in attempting to resolve problems of potential interference before bringing

the matter to the attention of the Commission.

(c) Licensees shall coordinate their facilities whenever the facilities have optical line-of-sight into other licensees' areas or are within the same geographic area. Licensees are encouraged to develop operational agreements with relevant licensees in the adjacent geographic areas. Incumbent public safety POFS licensee(s) shall retain exclusive rights to its channel(s) within the relevant geographical areas and must be protected in accordance with the procedures in § 101.103. A list of public safety incumbents is attached as Appendix I to the Memorandum Opinion and Order and Second Report and Order, Docket 98–206 (released May 23, 2002). Please check with the Commission for any updates to that list.

**§ 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 will be granted conditional licenses, until final international agreements are approved. These systems may not cause harmful interference to stations in Canada or Mexico. MVDDS stations must comply with the procedures outlined under § 101.147(p) and § 1.928(f)(1) and (2) of this chapter until final international agreements concerning MVDDS are signed. Section 1.928(f) of this chapter states that transmitting antennas can be located as close as five miles (eight kilometers) of the border if they point within a sector of 160 degrees away from the border, and as close as thirty-five miles (fifty-six kilometers) of the border if they point within a sector of 200 degrees toward the border without coordination with Canada. MVDDS licensees shall apply this method near the Canadian and Mexican borders. No stations are allowed within 5 miles of the borders.

**§ 101.1425 RF safety.**

MVDDS stations in the 12.2–12.7 GHz frequency band do not operate with output powers that equal or exceed 1640 watts EIRP and therefore will not be subject to the routine environmental evaluation rules for radiation hazards, as set forth in § 1.1307 of this chapter.

**§ 101.1427 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. The general competitive bidding procedures set

forth in part 1, subpart Q of this chapter will apply unless otherwise provided.

**§ 101.1429 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) 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.

(5) For purposes of determining whether an entity meets any of the definitions set forth in paragraphs (a)(1), (a)(2), (a)(3), or (a)(4) 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.

(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.

**§ 101.1440 MVDDS protection of DBS.**

(a) An MVDDS licensee shall not begin operation unless it can ensure that the EPFD from its transmitting antenna at all DBS customers of record locations is below the values listed for the appropriate region in § 101.105(a)(4)(ii). Alternatively, MVDDS licensees may obtain a signed written agreement from DBS customers of record stating that they are aware of and agree to their DBS system receiving MVDDS signal levels in excess of the appropriate EPFD limits specified in § 101.105(a)(4)(ii). DBS customers of record are those who had their DBS receive antennas installed prior to or within the 30 day period after notification to the DBS operator by the MVDDS licensee of the proposed MVDDS transmitting antenna site.

(b) MVDDS licensees are required to conduct a survey of the area around its proposed transmitting antenna site to determine the location of all DBS customers of record that may potentially be affected by the introduction of its MVDDS service. The MVDDS licensee must assess whether the signal levels from its system, under its deployment plans, would exceed the appropriate EPFD levels in § 101.105(a)(4)(ii) at any DBS customer of record location. Using EPFD calculations, terrain and building structure characteristics, and the survey results, an MVDDS licensee must make a determination of whether its signal level(s) will exceed the EPFD limit at any DBS customer of record sites. To assist in making this determination, the MVDDS provider can use the EPFD contour model developed by the Commission and described in Appendix J of the *Memorandum Opinion and Order and Second Report and Order*, ET Docket 98–206 or on the OET website at <http://www.fcc.gov/oet/dockets/et98-206>.

(c) If the MVDDS licensee determines that its signal level will exceed the EPFD limit at any DBS customer site, it shall take whatever steps are necessary, up to and including finding a new transmit site, to ensure that the EPFD limit will not be exceeded at any DBS customer location.

(d) Coordination between MVDDS and DBS licensees. (1) At least 90 days prior to the planned date of MVDDS commencement of operations, the MVDDS licensee shall provide the following information to the DBS licensee(s):

(i) Geographic location (including NAD 83 coordinates) of its proposed station location;

(ii) Maximum EIRP of each transmitting antenna system;

(iii) Height above ground level for each transmitting antenna;

(iv) Antenna type along with main beam azimuth and altitude orientation information, and description of the antenna radiation pattern;

(v) Description of the proposed service area; and

(vi) Survey results along with a technical description of how it determined compliance with the appropriate EPFD level at all DBS subscriber locations.

(2) No later than forty-five days after receipt of the MVDDS system information in paragraph (d)(1) of this section, the DBS licensee(s) shall provide the MVDDS licensee with a list of any new DBS customer locations that have been installed in the 30-day period following the MVDDS notification. In addition, the DBS licensee(s) could indicate agreement with the MVDDS licensee's technical assessment, or identify DBS customer locations that the MVDDS licensee failed to consider or DBS customer locations where they

believe the MVDDS licensee erred in its analysis and could exceed the prescribed EPFD limit.

(3) Prior to commencement of operation, the MVDDS licensee must take into account any new DBS customers or other relevant information provided by DBS licensees in response to the notification in paragraph (d)(1) of this section.

(e) Beginning thirty days after the DBS licensees are notified of a potential MVDDS site under paragraph (d)(1) of this section, the DBS licensees have the responsibility of ensuring that all future installed DBS receive antennas on its system are located in such a way as to avoid the MVDDS signal. These later installed receive antennas shall have no further rights of complaint against the notified MVDDS transmitting antenna(s).

(f) In the event of a major modification as defined in § 1.929 of this chapter, such as the addition of an

antenna, to an MVDDS station, the procedures of paragraphs (d) and (e) of this section and rights of complaint begin anew. Exceptions to this are renewal, transfer of control, and assignment of license applications.

(g) *Interference complaints.* The MVDDS licensee must satisfy all complaints of interference to DBS customers of record which are received during a one year period after commencement of operation of the transmitting facility. Specifically, the MVDDS licensee must correct interference caused to a DBS customer of record or cease operation if it is demonstrated that the DBS customer is receiving harmful interference from the MVDDS system or that the MVDDS signal exceeds the permitted EPFD level at the DBS customer location.

[FR Doc. 02-15779 Filed 6-25-02; 8:45 am]

**BILLING CODE 6712-01-P**