

for compliance with the applicable requirements of paragraph (a) of this AD.

#### Alternative Methods of Compliance

(c) In accordance with 14 CFR 39.19, the Manager, Los Angeles Aircraft Certification Office, FAA, is authorized to approve alternative methods of compliance for this AD.

Issued in Renton, Washington, on June 4, 2003.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03-14525 Filed 6-9-03; 8:45 am]

BILLING CODE 4910-13-P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[KS 179-1179; FRL-7510-3]

#### Approval and Promulgation of Implementation Plans; State of Kansas

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** EPA proposes to approve a revision to the State Implementation Plan (SIP) submitted by the State of Kansas. The purpose of this revision is to delete the Wyandotte County Air Pollution Control Regulations from the Federally-Approved Regulations. These regulations were originally incorporated into the SIP to assure that local-specific air quality issues were addressed with Federally-enforceable provisions. Due to the continued evolution of the Kansas Air Quality Regulations, these local regulations are no longer necessary to assure continued maintenance of air quality standards in Wyandotte County.

In the final rules section of the **Federal Register**, EPA is approving the state's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no relevant adverse comments to this action. A detailed rationale for the approval is set forth in the direct final rule. If no relevant adverse comments are received in response to this action, no further activity is contemplated in relation to this action. If EPA receives relevant adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed action. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. Please note that if EPA

receives adverse comment on part of this rule and if that part can be severed from the remainder of the rule, EPA may adopt as final those parts of the rule that are not the subject of an adverse comment.

**DATES:** Comments on this proposed action must be received in writing by July 10, 2003.

**ADDRESSES:** Comments may be mailed to Heather Hamilton, Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101, or E-mail her at [hamilton.heather@epa.gov](mailto:hamilton.heather@epa.gov).

**FOR FURTHER INFORMATION CONTACT:** Heather Hamilton at (913) 551-7039.

**SUPPLEMENTARY INFORMATION:** See the information provided in the direct final rule which is located in the rules section of the **Federal Register**.

Dated: May 30, 2003.

James B. Gulliford,

Regional Administrator, Region 7.

[FR Doc. 03-14457 Filed 6-9-03; 8:45 am]

BILLING CODE 6560-50-P

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Parts 1, 21,74 and 101

[WT Docket No. 03-66; RM-10586; WT Docket No. 03-67; MM Docket No. 97-217; WT Docket No. 02-68; RM-9718; FCC 03-56]

#### Facilitate the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150-2162 and 2500-2690 MHz Bands

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rules.

**SUMMARY:** In this document the Federal Communications Commission (FCC) proposes rules that would require Multipoint Distribution Service (MDS) and Instructional Television Fixed Service (ITFS) operators to limit the strength of some or all of the radio signals they transmit to levels that would make it possible for operators in adjacent service areas to provide two-way, low-power cellular services. The new rules would also expand ITFS eligibility criteria to include commercial as well as non-profit educational entities and perhaps merge ITFS with MDS, but they would maintain the amount of educational content provided on those channels at levels comparable to those attained under existing requirements. The purpose of the

proposals is to facilitate provision of high-speed wireless Internet access services and mobile radio services in a band that has traditionally been used primarily for high-powered, one-way television.

**DATES:** Comments are due on or before September 8, 2003 and reply comments are due on or before October 23, 2003.

**FOR FURTHER INFORMATION CONTACT:** Nancy Zaczek or Charles Oliver at (202) 418-0680, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau or via the Internet to [nzaczek@fcc.gov](mailto:nzaczek@fcc.gov) or [coliver@fcc.gov](mailto:coliver@fcc.gov).

**SUPPLEMENTARY INFORMATION:** This is a summary of the FCC's Notice of Purposed Rulemaking, FCC 03-56, adopted on March 13, 2003, and released on April 2, 2003. The full text of this document is available for inspection and copying during normal business hours in the FCC Reference Center, 445 12th Street, SW., Washington, DC 20554. The complete text may be purchased from the FCC's copy contractor, Qualex International, 445 12th Street, SW., Room CY-B402, Washington, DC 20554. The full text may also be downloaded at: <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 or at [bmillin@fcc.gov](mailto:bmillin@fcc.gov).

1. By this *Notice of Proposed Rulemaking (NPRM)*, the FCC initiates a comprehensive examination of the FCC's rules and policies governing the licensing of the Instructional Television Fixed Service (ITFS), the Multipoint Distribution Service (MDS), and the Multichannel Multipoint Distribution Service (MMDS) (collectively, the Services) in the 2500-2690 MHz band. By this action, the FCC seeks to promote competition, innovation and investment in wireless broadband services, and to promote educational services. Additionally, the FCC also seeks to foster the development of innovative service offerings to consumers as well as educational, medical and other institutions, simplify the licensing process and delete obsolete and unnecessary regulatory burdens. The FCC believes that it is appropriate and prudent to take this action at this time because the Services and the potential uses for the spectrum allotted to them have evolved significantly since the inception of the Services. Those uses present a significant opportunity to provide alternatives for the provision of broadband services to consumers in urban, suburban and rural areas and to improve opportunities for distance

learning and telemedicine services. In addition, this proceeding has been prompted, in part, by the request of a group of representatives of licensees in the Services—namely, the Wireless Communications Association International (WCA), the National ITFS Association (NIA) and the Catholic Television Network (CTN) (collectively, the Coalition)—that the FCC substantially change the rules governing the Services. The FCC's proposals are intended to foster the provision of innovative and traditional service offerings to consumers as well as educational, medical and other institutions, to simplify the licensing process, and to remove obsolete rules and unnecessary regulatory burdens.

2. The rule changes proposed in this NPRM would facilitate the provision of high-speed data and voice services accessible to mobile as well as fixed users on channels that today are used primarily for one-way video operations to fixed locations. These changes would ultimately affect between 142 and 190 MHz of spectrum, depending upon which of the alternative sets of rules proposed in this NPRM are adopted. The FCC emphasizes, however, that it does not intend to evict any incumbent licensees from the affected band if they have been in compliance with the FCC's rules and continue to comply with the FCC's rules when the FCC modifies or augments them nor does it intend to undermine the educational mission of ITFS licensees. Far from evicting existing licensees, the FCC anticipates that the streamlined regulations and revised spectrum plan adopted in this proceeding will facilitate the provision of advanced wireless communications services by incumbent licensees.

3. The following is a summary of the FCC's major proposals and determinations. In the NPRM, the FCC:

- Seek comment on whether and how to reconfigure the 2500–2690 MHz band;
- Seek comment on the best means of ensuring the efficient utilization of unassigned ITFS spectrum, including geographic area licensing and unlicensed operation;
  - Propose to convert site-by-site licenses of MDS and ITFS incumbents to geographic service areas;
  - Seek comment on how best to promote increased access to and efficient utilization of ITFS spectrum;
  - Propose technical rules to increase licensee flexibility and protect incumbent operations in the 2500–2690 MHz band;
  - Propose technical and service rules for mobile operations;

- Propose to simplify and streamline the licensing process for the Services;
- Propose application filing and processing procedures to facilitate implementation of the Services into the Universal Licensing System (ULS) administered by the Wireless Telecommunications Bureau; and
- Propose to consolidate all service-specific rules for the Services under parts 27 and 101 but seek comment on alternatives.

## I. Procedural Matters

### A. Ex Parte Rules—Permit-But-Disclose

4. This is a permit-but-disclose notice and comment rulemaking proceeding. *Ex parte* presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed pursuant to the FCC's rules.

### B. Comment Period and Procedures

5. Pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the FCC's rules, interested parties may file comments on this NPRM on or before September 8, 2003, and reply comments on or before October 23, 2003. Comments and reply comments should be filed in WT Docket No. 03–66, and may be filed using the FCC's Electronic Comment Filing System (ECFS) or by filing paper copies. All relevant and timely comments will be considered by the FCC before final action is taken in this proceeding.

6. Comments filed through the ECFS can be sent as an electronic file via the Internet to <http://www.fcc.gov/e-file/ecfs.html>. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the applicable docket number. Parties may also submit an electronic comment by e-mail via the Internet. To obtain filing instructions for e-mail comments, commenters should send an e-mail to [ecfs@fcc.gov](mailto:ecfs@fcc.gov), and should include the following words in the body of the message: "get form <your e-mail address>." A sample form and directions will be sent in reply.

7. Parties who choose to file by paper must file an original and four copies of each filing. If parties want each FCC Commissioner to receive a personal copy of their comments, they must file an original plus nine copies. All filings must be sent to the FCC's Secretary, Marlene H. Dortch, Office of the Secretary, Federal Communications Commission, 445 12th Street, SW., Room TW–A325, Washington, DC 20554. Furthermore, parties are requested to provide courtesy copies for the following FCC staff: (1) Nancy Zaczek, Charles Oliver and Stephen

Zak, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau, Federal Communications Commission, 445 12th Street, SW., Room. 3–C124, Washington, DC 20554; and (2) Gary Michaels and Andrea Kelly, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, Federal Communications Commission, 445 12th Street, SW., Room 4–A760, Washington, DC 20554. One copy of each filing (together with a diskette copy, as indicated below) should also be sent to the FCC's copy contractor, Qualex International, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, 202–863–2893.

8. Parties who choose to file by paper should also submit their comments on diskette. These diskettes should be attached to the original paper filing submitted to the Office of the Secretary. Such a submission should be on a 3.5 inch diskette formatted in an IBM compatible format using Microsoft™ Word 97 for Windows or compatible software. The diskette should be accompanied by a cover letter and should be submitted in "read only" mode. The diskette should be clearly labeled with the commenter's name, proceeding, type of pleading (comment or reply comment), date of submission, and the name of the electronic file on the diskette. The label should also include the following phrase "Disk Copy—Not an Original." Each diskette should contain only one party's pleadings, preferably in a single electronic file. In addition, commenters should send diskette copies to the FCC's copy contractor, Qualex International, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, 202–863–2893.

9. The public may view the documents filed in this proceeding during regular business hours in the FCC Reference Information Center, Federal Communications Commission, 445 12th Street, SW., Room CY–A257, Washington, DC 20554, and on the Commission's Internet Home Page: <http://www.fcc.gov>. Copies of comments and reply comments are also available through the FCC's duplicating contractor: Qualex International, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, 202–863–2893. Accessible formats (computer diskettes, large print, audio recording and Braille) are available to persons with disabilities by contacting Brian Millin, of the Consumer & Governmental Affairs Bureau, at (202) 418–7426, TTY (202) 418–7365, or at [bmillin@fcc.gov](mailto:bmillin@fcc.gov).

10. As required by the Regulatory Flexibility Act of 1980 (RFA), the FCC has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the

possible significant economic impact on small entities of the policies and rules proposed in the NPRM. The analysis is found in Appendix A. The FCC requests written public comment on the analysis. Comments must be filed in accordance with the same deadlines as comments filed in response to the NPRM, and must have a separate and distinct heading designating them as responses to the IRFA. The FCC's Consumer and Governmental Affairs Bureau, Reference Information Center, will send a copy of this NPRM, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration.

## II. Initial Regulatory Flexibility Analysis

11. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), the FCC has prepared this present Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in this *Notice of Proposed Rule Making (NPRM)*. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines specified in the NPRM for comments. The FCC will send a copy of this NPRM, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA). In addition, the NPRM and IRFA (or summaries thereof) will be published in the **Federal Register**.

### *Need for, and Objectives of, the Proposed Rules*

12. In this NPRM the FCC proposes a number of changes and ask for comments concerning the rules governing the 2500–2690 MHz band, for the Multipoint Distribution Service (MDS), the Multichannel Multipoint Distribution Service (MMDS), and the Instructional Television Fixed Service (ITFS). The FCC's proposals include:

- Proposing technical rules to increase licensee flexibility;
- Seeking comment on revising the band plan;
- Proposing service rules for mobile operation;
- Proposing to encourage entrepreneurial efforts to develop new technologies and services by opening ITFS spectrum to a wide range of applicants;
- Proposing to simplify and streamline the licensing process;
- Proposing application filing and processing to facilitate electronic filing in ULS;

- Proposing to consolidate these services under Part 101;
- Tentatively concluding that MDS and ITFS licensees should receive a six-month transition period after application processing in ULS begins before requiring mandatory electronic filing in ULS;
- Suspending the acceptance and processing of applications in this band, with certain exceptions, until the completion of this rulemaking proceeding;
- Suspending the current August 16, 2003 construction deadline for BTA authorization holders; and
- Proposing to assign ITFS licenses through competitive bidding.

13. The FCC believes that its proposals will encourage the enhancement of existing services using this band and the development of new innovative services to the public such as providing wireless broadband services, including high-speed Internet access and mobile services. The FCC also believes that its proposals will allow licensees to adapt quickly to changing market conditions and the marketplace, rather than the government, to determine how this band will best be used.

### *Legal Basis*

14. The proposed action is authorized under sections 1, 2, 4(i), 7, 10, 201, 214, 301, 302, 303, 307, 308, 309, 310, 319, 324, 332, 333 and 706 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154(i), 157, 160, 201, 214, 301, 302, 303, 307, 308, 309, 310, 319, 324, 332, 333, and 706.

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

15. 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. 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 SBA. A small organization is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field." Nationwide, as of

1992, there were approximately 275,801 small organizations. The definition of "small governmental jurisdiction" is one with a population of fewer than 50,000. There are 85,006 governmental jurisdictions in the nation. This number includes such entities as states, counties, cities, utility districts and school districts. There are no figures available on how many of these entities have populations of fewer than 50,000. However, this number includes 38,978 counties, cities and towns, and of those, 37,556, or 96 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, the FCC estimates that 96 percent, or about 81,600, are small entities that may be affected by the FCC's rules.

16. Nationwide, there are 4.44 million small business firms, according to SBA reporting data. In this section, the FCC further describes and estimates the number of small entity licensees and regulatees that may be affected by rules adopted pursuant to this NPRM. The most reliable source of information regarding the total numbers of certain common carrier and related providers nationwide, as well as the number of commercial wireless entities, appears to be the data that the FCC publishes in its *Trends in Telephone Service* report. The SBA has developed small business size standards for wireline and wireless small businesses within the three commercial census categories of Wired Telecommunications Carriers, Paging, and Cellular and Other Wireless Telecommunications. Under these categories, a business is small if it has 1,500 or fewer employees. Below, using the above size standards and others, the FCC discusses the total estimated numbers of small businesses that might be affected by its actions.

17. *Multipoint Distribution Service, Multichannel Multipoint Distribution Service, and ITFS*. Multichannel Multipoint Distribution Service (MMDS) systems, often referred to as "wireless cable," transmit video programming to subscribers using the microwave frequencies of the Multipoint Distribution Service (MDS) and Instructional Television Fixed Service (ITFS). In connection with the 1996 MDS auction, the FCC established a small business size standard as an entity that had annual average gross revenues of less than \$40 million in the previous three calendar years. The MDS auctions resulted in 67 successful bidders obtaining licensing opportunities for 493 Basic Trading Areas (BTAs). Of the 67 auction winners, 61 met the

definition of a small business. MDS also includes licensees of stations authorized prior to the auction. In addition, the SBA has developed a small business size standard for Cable and Other Program Distribution, which includes all such companies generating \$12.5 million or less in annual receipts. According to Census Bureau data for 1997, there were a total of 1,311 firms in this category, total, that had operated for the entire year. Of this total, 1,180 firms had annual receipts of under \$10 million and an additional 52 firms had receipts of \$10 million or more but less than \$25 million. Consequently, the FCC estimates that the majority of providers in this service category are small businesses that may be affected by the rules and policies adopted herein. This SBA small business size standard also appears applicable to ITFS. There are presently 2,032 ITFS licensees. All but 100 of these licenses are held by educational institutions. Educational institutions are included in this analysis as small entities. Thus, the FCC tentatively concludes that at least 1,932 licensees are small businesses.

18. In connection with the 1996 MDS auction, the FCC defined "small business" as an entity that, together with its affiliates, has average gross annual revenues that are not more than \$40 million for the preceding three calendar years. The FCC established this small business definition in the context of this particular service and with the approval of SBA. The MDS auction resulted in 67 successful bidders obtaining licensing opportunities for 493 Basic Trading Areas (BTAs). Of the 67 auction winners, 61 met the definition of a small business. At this time, the FCC estimates that of the 61 small business MDS auction winners, 48 remain small business licensees. In addition to the 48 small businesses that hold BTA authorizations, there are approximately 392 incumbent MDS licensees that are considered small entities. After adding the number of small business auction licensees to the number of incumbent licensees not already counted, the FCC finds that there are currently approximately 440 MDS licensees that are defined as small businesses under either the SBA or the FCC's rules. Some of those 440 small business licensees may be affected by the proposals in this *NPRM*.

19. MDS is also heavily encumbered with licensees of stations authorized prior to the auction. The SBA has developed a definition of small entities for pay television services that includes all such companies generating \$11 million or less in annual receipts. This definition includes multipoint

distribution systems, and thus applies to MDS licensees and wireless cable operators that did not participate in the MDS auction. Information available to us indicates that there are 832 of these licensees and operators that do not generate revenue in excess of \$11 million annually. Therefore, for purposes of this IRFA, the FCC finds that there are approximately 892 small MDS providers as defined by the SBA and the FCC's auction rules, and some of these providers may take advantage of the FCC's amended rules to provide two-way MDS.

20. There are presently 2032 ITFS licensees. All but 100 of these licenses are held by educational institutions (these 100 fall in the MDS category, above). Educational institutions may be included in the definition of a small entity. ITFS is a non-profit non-broadcast service that, depending on SBA categorization, has, as small entities, entities generating either \$10.5 million or less, or \$11.0 million or less, in annual receipts. However, the FCC does not collect, nor is the FCC aware of other collections of, annual revenue data for ITFS licensees. Thus, the FCC finds that up to 1932 of these educational institutions are small entities that may take advantage of the FCC's amended rules to provide additional flexibility to ITFS.

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

21. As noted previously, applicants for MDS or ITFS licenses would be required to apply through the Universal Licensing System using FCC Form 601, and other appropriate forms. Licensees will also be required to apply for an individual station license by filing FCC Form 601 for those individual stations that (1) require submission of an Environmental Assessment of the facilities under § 1.1307 of the FCC's rules; (2) require international coordination of the application; or (3) require coordination with the Frequency Assignment Subcommittee (FAS) of the Interdepartment Radio Advisory Committee (IRAC). While these requirements are new with respect to potential licensees in the ITFS and MDS bands, the FCC has applied these requirements to licensees in other bands. Moreover, the FCC is also proposing to eliminate many burdensome filing requirements that have previously been applied to MDS and ITFS.

#### *Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered*

22. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives: "(1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for such 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."

23. In this *NPRM*, the FCC seeks comment on a number of proposals and alternatives regarding the use of the 2500–2690 MHz band. This *NPRM* seeks to adopt rules that will reduce regulatory burdens, promote innovative services and encourage flexible use of this spectrum. It opens up economic opportunities to a variety of spectrum users, including small businesses. The FCC considers various proposals and alternatives partly because the FCC seeks to minimize, to the extent possible, the economic impact on small businesses.

24. The FCC has reduced the burdens wherever possible. To minimize any further negative impact, however, the FCC proposes certain exclusive incentives for small entities that will redound to their benefit. The FCC proposes the use of bidding credits for small entities that participate in auctions of licenses that are conducted pursuant to the rules proposed in this *NPRM*. The FCC proposes to define a "small business" as an entity with average annual gross revenues for the preceding three years not exceeding \$40 million, a "very small business" as an entity with average gross revenues for the preceding three years not exceeding \$15 million, and an "entrepreneur" as an entity with average annual gross revenues for the preceding three years not exceeding \$3 million. The FCC proposes that entities qualifying as small businesses will receive a 15% bidding credit, that entities qualifying as very small businesses will receive a 25% bidding credit, and that entities qualifying as entrepreneurs will receive a 35% bidding credit. Qualifying small businesses, very small businesses, and entrepreneurs can reduce their winning bids by the amount of their bidding credits. The FCC believes that these bidding credits will help small entities

compete in the FCC's auctions and acquire licenses. The FCC seeks comment on its proposed small business definitions and bidding credits, including information on factors that may affect the capital requirements of the type of services a licensee may seek to provide.

25. The regulatory burdens contained in the NPRM, such as filing applications on appropriate forms, are necessary in order to ensure that the public receives the benefits of innovative new services, or enhanced existing services, in a prompt and efficient manner. The FCC will continue to examine alternatives in the future with the objectives of eliminating unnecessary regulations and minimizing any significant economic impact on small entities. The FCC seeks comment on significant alternatives commenters believe the FCC should adopt.

*Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rule*

26. None.

**III. Ordering Clauses**

27. Accordingly, *it is ordered*, pursuant to sections 1, 2, 4(i), 7, 10, 201, 214, 301, 302, 303, 307, 308, 309, 310,

319, 324, 332, 333 and 706 of the Communications Act of 1934, 47 U.S.C. 151, 152, 154(i), 157, 160, 201, 214, 301, 302, 303, 307, 308, 309, 310, 319, 324, 332, 333, and 706, that this Notice of Proposed Rulemaking is hereby *adopted*.

*It is further ordered* that the FCC's Consumer and Governmental Affairs Bureau, Reference Information Center, shall send a copy of this NPRM, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

**List of Subjects**

*47 CFR Part 1*

Administrative practice and procedures, and Reporting and recordkeeping requirements.

*47 CFR Parts 74 and 101*

Communications equipment, Radio, Reporting and recordkeeping requirements.

Federal Communications Commission.

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

**Rule Changes**

For the reasons discussed in the preamble, the Federal Communications

Commission proposes to amend 47 CFR parts 1, 21, 74 and 101 as follows:

**PART 1—PRACTICE AND PROCEDURE**

1. The authority citation for part 1 continues to read:

**Authority:** 47 U.S.C. 151, 154(i), 154(j), 155, 225, 303(r), 309 and 325(e).

2. Section 1.933 is amended by adding paragraphs (c)(8) and (9) to read as follows:

**§ 1.933 Public notices.**

\* \* \* \* \*

(c) \* \* \*

(8) Multipoint Distribution Service.

(9) Instructional Television Fixed Service.

\* \* \* \* \*

3. Section 1.1102 is amended by revising entry 20 to the table to read as follows:

**§ 1.1102 Schedule of charges for applications and other filings in the wireless telecommunications services.**

\* \* \* \* \*

Action	FCC Form No.	Fee amount	Payment type code	Address
20. Multipoint Distribution Service (including Multi-channel MDS)				
a. Conditional License .....	304 & 159 or 331 & 159.	\$220.00	CJM .....	Federal Communications Commission, Wireless Bureau Applications, P.O. Box 358155, Pittsburgh, PA 15251-5155.
b. Major Modification of Conditional Licenses or License Authorization.	304 & 159 or 331 & 159.	220.00	CJM .....	Federal Communications Commission, Wireless Bureau Applications, P.O. Box 358994, Pittsburgh, PA 15251-5155.
c. Certification of Completion of Construction.	304-A & 159 .....	645.00	CPM* .....	Federal Communications Commission, Wireless Bureau Applications, P.O. Box 358155, Pittsburgh, PA 15251-5155.
d. License Renewal .....	405 & 159 .....	220.00	CJM .....	Federal Communications Commission, Wireless Bureau Applications, P.O. Box 358155, Pittsburgh, PA 15251-5155.
e. Assignment or Transfer:				
(i) First Station on Application .....	702 & 159 or 704 & 159.	80.00	CCM .....	Federal Communications Commission, Wireless Bureau Applications, P.O. Box 358155, Pittsburgh, PA 15251-5155.
(ii) Each Additional Station .....	702 & 159 or 704 & 159.	50.00	CAM .....	
f. Extension of Construction Authorization ...	701 & 159 .....	185.00	CHM .....	Federal Communications Commission, Wireless Bureau Applications, P.O. Box 358155, Pittsburgh, PA 15251-5155.
g. Special Temporary Authority or Request for Waiver of Prior Construction Authorization.	Corres & 159 .....	100.00	CEM .....	Federal Communications Commission, Wireless Bureau Applications, P.O. Box 358155, Pittsburgh, PA 15251-5155.
h. Signal Booster:				
(i) Application .....	304 & 159, 331 & 159.	75.00	CSB .....	Federal Communications Commission, Wireless Bureau Applications, P.O. Box 358155, Pittsburgh, PA 15251-5155.
(ii) Certification of Completion of Construction (Electronic Filing Only).	304A & 159 .....	80.00	CCB .....	Federal Communications Commission, Wireless Bureau Applications, P.O. Box 358155, Pittsburgh, PA 15251-5155.

Action	FCC Form No.	Fee amount	Payment type code	Address
*	*	*	*	*

**PART 21 [REMOVED]**

4. Part 21 is removed.

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

5. The authority citation for part 74 continues to read as follows:

**Authority:** 47 U.S.C. 154, 303, 307, 336(f), 336(h) and 554.

6. Section 74.1 is amended by revising paragraph (b) to read as follows:

**§ 74.1 Scope.**

\* \* \* \* \*

(b) Rules in part 74 which apply exclusively to a particular service are contained in that service subpart, as follows: Experimental Broadcast Stations, subpart A; Remote Pickup

Broadcast Stations, subpart D; Aural Broadcast STL and Intercity Relay Stations, subpart E; TV Auxiliary Broadcast Stations, subpart F; Low Power TV, TV Translator and TV Booster Stations, subpart G; Low Power Auxiliary Stations, subpart H; FM Broadcast Translator Stations and FM Broadcast Booster Stations, subpart L.

**Subpart I [Removed and Reserved]**

7. Subpart I of part 74 is removed and reserved.

**PART 101—FIXED MICROWAVE SERVICES**

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

**Authority:** 47 U.S.C. 154 and 303, unless otherwise noted.

9. Section 101.3 is amended by adding the following definitions in alphabetical order to read as follows:

**§ 101.3 Definitions.**

\* \* \* \* \*

*Instructional Television Fixed Service.*

A fixed or mobile service intended primarily for video, data, or voice transmissions of instructional, cultural, and other types of educational material to one or more receiving locations.

\* \* \* \* \*

*Multipoint Distribution Service.*

A domestic public radio service rendered on microwave frequencies from one or more stations transmitting to multiple receiving facilities.

\* \* \* \* \*

10. Section 101.101 is amended by revising the following entries to the table to read as follows:

**§ 101.101 Frequency availability.**

Radio service						Notes
Frequency band (MHz)	Common carrier (Part 101)	Private radio (Part 101)	Broadcast auxiliary (Part 74)	Other (Parts 15, 21, 22, 24, 25, 74, 78 & 100)		
*	*	*	*	*	*	*
2450–2500 .....	LTTS .....	OFS .....	TV BAS .....	ISM .....		F/M/TF
2500–2650 .....	ITFS MDS .....	ITFS MDS .....				
2650–2690 .....	ITFS MDS .....	OFS MDS/ITFS .....				
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ITFS: Instructional Television Fixed Service—(part 101, subpart P)

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MDS: Multipoint Distribution Service—(part 101, subpart Q)

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11. Add subpart Q to part 101 to read as follows:

**Subpart Q—Instructional Television Fixed Service**

Sec.

- 101.1501 Purpose and permissible service.
- 101.1502 BTA license authorization.
- 101.1503 Service areas.
- 101.1504 Conversion of incumbent ITFS stations to geographic area licensing.
- 101.1505 Performance requirements.
- 101.1506 Partitioning and disaggregation.

- 101.1508 Unattended operation.
- 101.1509 License term.

**§ 101.1501 Purpose and permissible service.**

(a)(1) Instructional television fixed stations are intended primarily through video, data, or voice transmissions to further the educational mission of accredited public and private schools, colleges and universities providing a formal educational and cultural development to enrolled students. Authorized instructional television fixed station channels must be used to further the educational mission of accredited schools offering formal educational courses to enrolled students.

(2) In furtherance of the educational mission of accredited schools,

instructional television fixed station channels may be used for:

(i) In-service training and instruction in special skills and safety programs, extension of professional training, informing persons and groups engaged in professional and technical activities of current developments in their particular fields, and other similar endeavors;

(ii) Transmission of material directly related to the administrative activities of the licensee, such as the holding of conferences with personnel, distribution of reports and assignments, exchange of data and statistics, and other similar uses; and

(iii) Response channels transmitting information associated with formal educational courses offered to enrolled

students, including uses described in paragraphs (a)(2)(i) and (ii) of this section, from ITFS response stations to response station hubs.

(b) Stations may be licensed in this service as originating or relay stations to interconnect instructional television fixed stations in adjacent areas, to deliver instructional and cultural material to, and obtain such material from, commercial and noncommercial educational television broadcast stations for use on the instructional television fixed system, and to deliver instructional and cultural material to, and obtain such material from, nearby terminals or connection points of closed circuit educational television systems employing wired distribution systems or radio facilities authorized under other parts of this chapter, or to deliver instructional and cultural material to any CATV system serving a receiving site or sites which would be eligible for direct reception of ITFS signals under the provisions of paragraph (a) of this section.

(c) When an ITFS licensee makes capacity available on a common carrier basis, it will be subject to common carrier regulation.

(1) A licensee operating as a common carrier is required to comply with all policies and rules applicable to that service. Responsibility for making the initial determination of whether a particular activity is common carriage rests with the ITFS licensee.

(2) An ITFS licensee also may alternate, without further authorization required, between rendering service on a common carrier and non-common carrier basis, provided that the licensee notifies the Commission of any service status changes at least 30 days in advance of such changes. The notification shall state whether there is any affiliation or relationship to any intended or likely subscriber or program originator.

#### **§ 101.1502 BTA 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. Blanket licenses cover all mobile and response stations. Blanket licenses also cover all fixed stations anywhere within the authorized service area, except as follows:

(1) A fixed station (other than a response station) would be required to be individually licensed if:

(i) International agreements require coordination;

(ii) Submission of an Environmental Assessment is required under § 1.1307 of this chapter; and

(iii) The station would affect the radio quiet zones under § 1.924 of this chapter.

(2) Any antenna structure that requires notification to the Federal Aviation Administration (FAA) must be registered with the Commission prior to construction under § 17.4 of this chapter.

#### **§ 101.1503 Service areas.**

Most ITFS service areas are Basic Trading Areas (BTAs). BTAs are based on the Rand McNally 1992 Commercial Atlas & Marketing Guide, 123rd Edition, at pages 38–39. The following are additional ITFS service areas in places where Rand McNally has not defined BTAs: American Samoa; Guam; Northern Mariana Islands; Mayaguez/Aguaadilla-Ponce, Puerto Rico; San Juan, Puerto Rico; and the United States Virgin Islands. The Mayaguez/Aguaadilla-Ponce, PR, service area consists of the following municipios: Adjuntas, Aguada, Aguadilla, Anasco, Arroyo, Cabo Rojo, Coamo, Guanica, Guayama, Guayanilla, Hormigueros, Isabela, Jayuya, Juana Diaz, Lajas, Las Marias, Maricao, Maunabo, Mayaguez, Moca, Patillas, Penuelas, Ponce, Quebradillas, Rincón, Sabana Grande, Salinas, San German, Santa Isabel, Villalba and Yauco. The San Juan service area consists of all other municipios in Puerto Rico.

#### **§ 101.1504 Conversion of incumbent ITFS stations to geographic area licensing.**

(a) Any ITFS station licensed by the Commission prior to date to be decided as well as assignments and transfers approved by the Commission and consummated as of [date to be decided] shall be considered incumbent and grandfathered (may continue to operate under their licensed parameters).

(b) As of [date to be decided], all incumbent ITFS licenses shall be converted to a blanket license. Pursuant to that geographic area license, such incumbent licensees may modify their systems provided the signal level [specific level to be decided] does not increase outside their pre-existing protected service area. The blanket license covers all fixed stations anywhere within the authorized service area, except as follows:

(1) A fixed station (other than a response station) would be required to be individually licensed if:

(i) International agreements require coordination;

(ii) Submission of an Environmental Assessment is required under § 1.1307 of this chapter; and

(iii) The station would affect the radio quiet zones under § 1.924 of this chapter.

(2) Any antenna structure that requires notification to the Federal Aviation Administration (FAA) must be registered with the Commission prior to construction under § 17.4 of this chapter.

Incumbent operators and geographic area licensees may negotiate alternative criteria.

(c) The frequencies associated with incumbent authorizations that have been cancelled automatically or otherwise been recovered by the Commission will automatically revert to the applicable BTA licensee.

#### **§ 101.1505 Performance requirements.**

(a) Incumbent site-based licensees are subject to the construction requirements set forth in § 101.63.

(b) All ITFS BTA licensees must demonstrate substantial service at the time of license renewal. A licensee's substantial service showing should include, but not be limited to, the following information for each channel for which it holds a license, in each BTA or portion of a BTA covered by their license, in order to qualify for renewal of that license. The information provided will be judged by the Commission to determine whether the licensee is providing service which rises to the level of "substantial."

(1) A description of the ITFS licensee's current service in terms of geographic coverage;

(2) Copies of all orders or other adjudications that the licensee has violated the Communications Act or the Commission's rules or policies;

(3) A description of the ITFS band licensee's current service in terms of population served, as well as any additional service provided during the license term;

(4) A description of the ITFS licensee's investments in its system(s) (type of facilities constructed and their operational status is required); and

(b) Any ITFS licensees adjudged not to be providing substantial service will not have their licenses renewed.

#### **§ 101.1506 Partitioning and disaggregation.**

(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.

(2) Eligible ITFS 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 ITFS licensees may aggregate or disaggregate their licensed spectrum at any time following the grant of a license.

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

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

(3) 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) *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 Disaggregate would certify that they each will share responsibility for meeting the applicable construction requirements set forth in § 101.1506 for the geographic service area. If parties choose this option and either party fails to demonstrate substantial service, both licenses would be subject to forfeiture at renewal. The second option allows the parties to agree that either the disaggregator or disaggregate would be responsible for meeting the requirements in § 101.1505 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 provide substantial service for their respective partitioned areas. If either licensee fails to meet its requirement in § 101.1505, 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 § 101.1505 for the entire market. If the partitionor fails to meet the requirement in § 101.1505, 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 as required by § 101.1505.

(d) *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.

(e) *Remote Control Operation.* Licensed ITFS stations may be operated by remote control without further authority.

#### § 101.1508 Unattended operation.

Unattended operation of licensed ITFS stations is permitted without further authority. An unattended relay station may be employed to receive and retransmit signals of another station provided that the transmitter is equipped with circuits which permit it to radiate only when the signal intended to be retransmitted is present at the receiver input terminals.

#### § 101.1509 License term.

(a) Incumbent ITFS licenses shall be issued for a period of 10 years beginning with the date of grant.

(b) A BTA authorization shall be issued for a period of ten years from the date the Commission declared bidding closed in the ITFS auction.

12. Add subpart R to part 101 to read as follows:

### Subpart R—Multipoint Distribution Service

Sec.

- 101.1601 Purpose and permissible service.
- 101.1602 BTA license authorization.
- 101.1603 Service areas.
- 101.1604 Conversion of incumbent MDS stations to geographic area licensing.
- 101.1605 Performance requirements.
- 101.1606 Partitioning and disaggregation.
- 101.1607 Remote control operations.
- 101.1608 Unattended operation.
- 101.1609 License term.

#### § 101.1601 Purpose and permissible service.

Multipoint Distribution Service stations may provide any fixed or mobile services for which its frequency bands are allocated, subject to the

technical and other rules contained in this part and subpart.

#### § 101.1602 BTA 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. Blanket licenses cover all mobile and response stations. Blanket licenses also cover all fixed stations anywhere within the authorized service area, except as follows:

(1) A fixed station (other than a response station) would be required to be individually licensed if:

(i) International agreements require coordination;

(ii) Submission of an Environmental Assessment is required under § 1.1307 of this chapter; and

(iii) The station would affect the radio quiet zones under § 1.924 of this chapter.

(2) Any antenna structure that requires notification to the Federal Aviation Administration (FAA) must be registered with the Commission prior to construction under § 17.4 of this chapter.

#### § 101.1603 Service areas.

Most MDS service areas are Basic Trading Areas (BTAs). BTAs are based on the Rand McNally 1992 Commercial Atlas & Marketing Guide, 123rd Edition, at pages 38–39. The following are additional MDS service areas in places where Rand McNally has not defined BTAs: American Samoa; Guam; Northern Mariana Islands; Mayaguez/ Aguadilla-Ponce, Puerto Rico; San Juan, Puerto Rico; and the United States Virgin Islands. The Mayaguez/ Aguadilla-Ponce, PR, service area consists of the following municipios: Adjuntas, Aguada, Aguadilla, Anasco, Arroyo, Cabo Rojo, Coamo, Guanica, Guayama, Guayanilla, Hormigueros, Isabela, Jayuya, Juana Diaz, Lajas, Las Marias, Maricao, Maunabo, Mayaguez, Moca, Patillas, Penuelas, Ponce, Quebradillas, Rincón, Sabana Grande, Salinas, San German, Santa Isabel, Villalba and Yauco. The San Juan service area consists of all other municipios in Puerto Rico.

#### § 101.1604 Conversion of incumbent MDS stations to geographic area licensing.

(a) Any MDS station licensed by the Commission prior to [date to be decided] as well as assignments and transfers approved by the Commission and consummated as of [date to be decided] shall be considered incumbent and grandfathered (may continue to

operate under their licensed parameters).

(b) As of [date to be decided], all incumbent MDS licenses shall be converted to a blanket license. Pursuant to that geographic area license, such incumbent licensees may modify their systems provided the signal level [specific level to be decided] does not increase outside their pre-existing protected service area. The blanket license covers all fixed stations anywhere within the authorized service area, except as follows:

(1) A fixed station (other than a response station) would be required to be individually licensed if:

(i) International agreements require coordination;

(ii) Submission of an Environmental Assessment is required under § 1.1307 of this chapter; and

(iii) The station would affect the radio quiet zones under § 1.924 of this chapter.

(2) Any antenna structure that requires notification to the Federal Aviation Administration (FAA) must be registered with the Commission prior to construction under § 17.4 of this chapter.

(c) The frequencies associated with incumbent authorizations that have been cancelled automatically or otherwise been recovered by the Commission will automatically revert to the applicable BTA licensee.

#### § 101.1605 Performance requirements.

(a) Incumbent site-based licensees are subject to the construction requirements set forth in § 101.63.

(b) All MDS BTA licensees must demonstrate substantial service at the time of license renewal. A licensee's substantial service showing should include, but not be limited to, the following information for each channel for which it holds a license, in each BTA or portion of a BTA covered by their license, in order to qualify for renewal of that license. The information provided will be judged by the Commission to determine whether the licensee is providing service which rises to the level of "substantial."

(1) A description of the MDS licensee's current service in terms of geographic coverage;

(2) Copies of all orders or other adjudications that the licensee has violated the Communications Act or the Commission's rules or policies;

(3) A description of the MDS licensee's current service in terms of population served, as well as any additional service provided during the license term;

(4) A description of the MDS licensee's investments in its system(s)

(type of facilities constructed and their operational status is required);

(5) Any MDS licensees adjudged not to be providing substantial service will not have their licenses renewed.

#### § 101.1606 Partitioning and disaggregation.

(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.

(2) Eligible MDS 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 MDS licensees may aggregate or disaggregate their licensed spectrum at any time following the grant of a license.

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

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

(3) 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) *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 disaggreatee would certify that they each will share responsibility for meeting the applicable construction requirements set forth in § 101.1605 for the geographic service area. If parties choose this option and either party fails to demonstrate substantial service, both licenses would be subject to forfeiture at renewal. The second option allows the parties to agree that either the disaggregator or disaggreatee would be responsible for meeting the requirements in § 101.1605 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 provide substantial service for their respective partitioned areas. If either licensee fails to meet its requirement in § 101.1605, 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 § 101.1605 for the entire market. If the partitionor fails to meet the requirement in § 101.1605, 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 as required by § 101.1505.

(d) 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.

#### § 101.1607 Remote control operation.

MDS stations may be operated by remote control without further authority.

#### § 101.1608 Unattended operation.

Unattended operation of licensed MDS stations is permitted without further authority. An unattended relay station may be employed to receive and retransmit signals of another station provided that the transmitter is equipped with circuits which permit it to radiate only when the signal intended to be retransmitted is present at the receiver input terminals.

#### § 101.1609 License term.

(a) Incumbent MDS licenses shall be issued for a period of 10 years beginning with the date of grant.

(b) A BTA authorization shall be issued for a period of ten years from the date the Commission declared bidding closed in the MDS auction.

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