

## DELEGATION STATUS FOR PART 63 STANDARDS—NEVADA—Continued

Subpart	Description	NDEP <sup>1</sup>	WCAQMD <sup>2</sup>	CCDAQM <sup>3</sup>
000 .....	Manufacture of Amino/Phenolic Resins .....	X		

<sup>1</sup> Nevada Division of Environmental Protection.

<sup>2</sup> Washoe County Air Quality Management Division.

<sup>3</sup> Clark County Department of Air Quality Management.

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## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Parts 25 and 101

[ET Docket No. 98-206; RM-9147; RM-9245; DA 04-1554]

#### Amendment of the Commission's Rules Governing Multichannel Video Distribution and Data Service in the 12.2-12.7 GHz Band

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** On April 11, 2002, the Commission adopted rules to establish technical, service and licensing rules governing Multichannel Video Distribution and Data Service (MVDDS) in the 12 GHz band. Because an error was made in the publication of the final rules, this document contains correcting amendments to the final rules that were published in the *Federal Register*. This document also updates § 101.1417 to reflect the Commission's reorganization of the Wireless Telecommunications Bureau in 2003.

**DATES:** Effective on June 7, 2004.

**FOR FURTHER INFORMATION CONTACT:** Jennifer Mock, Broadband Division, Wireless Telecommunications Bureau at (202) 418-2487.

**SUPPLEMENTARY INFORMATION:** The Federal Communications Commission published in the *Federal Register* final rules, 67 FR 43031, (June 26, 2002), in the above captioned proceeding (*Memorandum Opinion and Order and Second Report and Order*). In six rules related to MVDDS, there were errors in the version published in the *Federal Register*. This document corrects them to conform to the rules adopted by the Commission on April 11, 2002, and released on May 23, 2002, in addition to amendments to the rules subsequently adopted by the Commission. The subsequent rule changes were adopted by the Commission and published in the *Federal Register* in 68 FR 4953, (January

31, 2003), (Report and Order in WT Dkt. 00-19), 68 FR 16446, April 4, 2003, (Third Memorandum Opinion and Order); 68 FR 42610, (July 18, 2003), (Third Report and Order); 68 FR 43942, (July 25, 2003), (Fourth Memorandum Opinion and Order); 68 FR 34336, (June 9, 2003), (Second Memorandum Opinion and Order); as well as in errata released on July 31, 2003 (18 FCC Rcd 15310), and August 14, 2002 (17 FCC Rcd 15849).

The rules require correction as follows:

- In section 25.208(o)(1) and (2), negative signs must be inserted to precede numbers at the beginning of each paragraph.
- Section 101.105 must be revised to conform to the adopted version of the rule and to correct other editorial errors.
- Section 101.111 must be revised because the instruction published at 68 FR 43946 (Fourth MO&O revisions to § 101.111) neglected to reflect revisions to this rule that were published in the *Federal Register*, 68 FR 4956, (January 31, 2003).
- Section 101.1412 must be revised to conform to the adopted version of the rule, which applies the cable cross-ownership rule where a particular percentage of households that subscribe to one or more Multichannel Video Program Distributors (MPVDs) within the MVDDS operator's license area.
- The title of § 101.1421 must be revised to conform to the title appearing in the Table of Contents.
- Section 101.1440(f) requires revision to conform to the adopted version of the rule, specifically clarifying circumstances under which a modification to an MVDDS station would trigger requirements to protect DBS receivers.

In this document, revisions to §§ 25.208, 101.105, and 101.111, reflect the specific revisions. The rules in part 101, subpart P (§§ 101.1401-101.1440) are republished in their entirety for clarity; however, only §§ 101.1412, 101.1421, and 101.1440 require editorial correction. In addition, § 101.1417 requires a nonsubstantive update to reflect the Commission's reorganization of the Wireless Telecommunications Bureau, effective November 13, 2003, under which the relevant duties of the

former Public Safety and Private Wireless Division were assumed by the Broadband Division. See Reorganization of the Wireless Telecommunications Bureau, Order, 18 FCC Rcd 25414 (2003). Because we are publishing the Order, DA 04-1554 (rel. May 28, 2004), the Erratum, DA 04-336 (rel. Feb. 9, 2004), 19 FCC Rcd 2355 (WTB BD 2004) will not be published in the *Federal Register*.

#### Procedural Matters

Any impact as defined by the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13, the Congressional Review Act (CRA), and the Regulatory Flexibility Act of 1980, as amended (RFA) was addressed at the time of adoption and release of the *Memorandum Opinion and Order and Second Report and Order*, FCC 02-116, adopted on April 11, 2002, and released on May 23, 2003, 67 FR 43031 (June 26, 2002). Therefore, the PRA, CRA and RFA requirements have already been fulfilled for these rules.

#### List of Subjects in 47 CFR Parts 25 and 101

Communications common carriers, Communications equipment, Radio. Federal Communications Commission. Andrew S. Fishel, Managing Director.

■ 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 sections 4, 301, 302, 303, 307, 309 and 332 of the Communications Act, as amended, 47 U.S.C. 154, 301, 302, 303, 307, 309 and 332, unless otherwise noted.

■ 2. Section 25.208 is amended by revising paragraphs (o)(1) and (2) to read as follows:

#### § 25.208 Power flux density limits.

\* \* \* \* \*

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

\* \* \* \* \*

**PART 101—FIXED MICROWAVE SERVICES**

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

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

■ 4. Section 101.105 is amended by revising paragraph (a)(4) and paragraph (d) introductory text 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 greater than 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 EPFD levels specified in paragraph (a)(4)(ii)(B) of this section at any DBS subscriber

location in accordance with the procedures listed in § 101.1440 of this part.

(A) Definition of equivalent power flux density: The equivalent power flux density (EPFD) is the power flux density produced at a direct broadcast service (DBS) receive earth station, taking into account shielding effects and the off-axis discrimination of the receiving antenna assumed to be pointing at the appropriate DBS satellite(s) from the transmitting antenna of a multichannel video distribution and data service (MVDDS) transmit station. The EPFD in dBW/m<sup>2</sup> in the reference bandwidth is calculated using the following formula:

$$EPFD = 10 * \log_{10} \left[ \frac{P_{out} * G_m(\theta_m, \phi_m) * G_e(\theta_e, \phi_e) * I}{G_{e,max} * 4 * \pi * d^2} \right]$$

Where:

$P_{out}$  = Total output power of the MVDDS transmitter (watts) into antenna

$G_m(\theta_m, \phi_m)$  = Gain of the MVDDS antenna in the direction of the DBS earth station

$G_e(\theta_e, \phi_e)$  = Gain of the earth station in the direction of the MVDDS antenna

$I$  = Interference scaling factor for the earth station (1 dB for MVDDS transmitters employing the modulation discussed in Section 3.1.5 of the MITRE Report (*i.e.*, a QPSK modulated signal passed through a square-root raised cosine filter). For other modulation and filtering schemes, the interference scaling factor can be measured using the procedures described in Appendix A of the MITRE Report available at [http://www.fcc.gov/oet/info/mitrereport/mitrereport\\_4\\_01.pdf](http://www.fcc.gov/oet/info/mitrereport/mitrereport_4_01.pdf)).

$G_{e,max}$  = Maximum gain of the DBS earth station

$d$  = the distance between the MVDDS transmitting antenna and the DBS earth station (meters)

(B) Regional equivalent power flux density levels:

(1)  $-168.4$  dBW/m<sup>2</sup>/4kHz in the Eastern region consisting of the District of Columbia and 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;

(2)  $-169.8$  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;

(3)  $-171.0$  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);

(4)  $-172.1$  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) of this part.

(d) Effective August 1, 1985, when a fixed station that conforms to the technical standards of this subpart (or, in the case of the 12,200–12,700 MHz band, for an incumbent non-MVDDS station or a direct broadcast satellite station) receives or will receive interference in excess of the levels specified in this section as a result of an existing licensee's use of non-conforming equipment authorized between July 20, 1961 and July 1, 1976, and the interference would not result if the interfering station's equipment complied with the current technical standards, the licensee of the non-

conforming station must take whatever steps are necessary to correct the situation up to the point of installing equipment which fully conforms to the technical standards of this subpart. In such cases, if the engineering analysis demonstrates that:

\* \* \* \* \*

■ 5. Section 101.111 is amended by revising paragraph (a)(2)(i) to read as follows:

**§ 101.111 Emission limitations.**

(a) \* \* \*

(2) \* \* \*

(i) For operating frequencies below 15 GHz, in any 4 KHz band, the center frequency of which is removed from the assigned frequency by more than 50 percent up to and including 250 percent of the authorized bandwidth: As specified by the following equation but in no event less than 50 decibels:

$$A = 35 + 0.8(P - 50) + 10 \text{ Log}_{10} B.$$

(Attenuation greater than 80 decibels or to an absolute power of less than  $-13$  dBm/1MHz is not required.) where:

$A$  = Attenuation (in decibels) below the mean output power level.

$P$  = Percent removed from the center frequency of the transmitter bandwidth.

$B$  = Authorized bandwidth in MHz.

**Note:** 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. The emission mask limitation shall only apply at the 12.2–12.7 GHz band edges and does not restrict MVDDS channelization bandwidth within the band.

\* \* \* \* \*

■ 6. Part 101, subpart P is revised 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 operators.
  - 101.1413 License term and renewal expectancy.
  - 101.1415 Partitioning and disaggregation.
  - 101.1417 Annual report.
  - 101.1421 Coordination of adjacent area MVDDS stations.
  - 101.1423 Canadian and Mexican coordination.
  - 101.1425 RF safety.
  - 101.1427 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 Designated Market Areas (DMAs). The 214 DMA service areas are based on the 210 Designated Market Areas delineated by Nielsen Media Research and published in its publication entitled U.S. Television Household Estimates, September 2002, plus four FCC-defined DMA-like service areas.

(a) Alaska—Balance of State (all geographic areas of Alaska not included in Nielsen's three DMAs for the state: Anchorage, Fairbanks, and Juneau);

(b) Guam and the Northern Mariana Islands;

(c) Puerto Rico and the United States Virgin Islands; and

(d) American Samoa.

**§ 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 if such cable operator's service area significantly overlaps the MVDDS license area, as "significantly overlaps" is defined in paragraph (e) 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, as defined in 47 CFR 76.5(ff) of this chapter, in all or part of the MVDDS license area.

(c) For the purpose of this section, the term "MVPD household" refers to a household that subscribes to one or more Multichannel Video Program Distributors (MVPDs), as defined in 47 CFR 76.1000(e) of this chapter.

(d) Waiver of restriction. Upon completion of the initial award of an MVDDS license, a cable operator may petition for a waiver of the restriction on eligibility based upon a showing that changed circumstances or new evidence indicate that no significant likelihood of substantial competitive harm will result from the operator retaining an attributable interest in the MVDDS license.

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

(f) 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 voting or non-voting stock interest, 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 (f) 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.

**Note to paragraph (f)(6):** Waivers 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.

(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.

(g) *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 (g)(1) through (g)(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) 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 service area, 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.

**§ 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 a showing of substantial service at the end of five years into the license period and ten years into the license period. The substantial service requirement 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 five years into the license term and ten years into the license period, 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 Broadband 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.

**§ 101.1421 Coordination of adjacent area MVDDS 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 DMAs 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 (f)(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 km) 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 in this subpart.

**§ 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.

(b) *Bidding credits.* A winning bidder that qualifies as a very small business, as defined in this section, or a consortium of very small businesses may use the bidding credit specified in § 1.2110(f)(2)(i) of this chapter. A winning bidder that qualifies as a small business, as defined in this section, or a consortium of small businesses may use the bidding credit specified in § 1.2110(f)(2)(ii) of this chapter. A winning bidder that qualifies as an entrepreneur, as defined in this section, or a consortium of entrepreneurs 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 only those new DBS customer locations that have been installed in the 30-day period following the MVDDS notification and that the DBS licensee believes may receive harmful interference or where the prescribed EPFD limits may be exceeded. 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 in paragraph (d)(1) of this section, the DBS licensees are responsible for providing information they deem necessary for those entities who install all future DBS receive antennas on its system to take into account the presence of MVDDS operations so that these DBS receive antennas can be located in such a way as to avoid the MVDDS signal. These later installed DBS receive antennas shall have no further rights of complaint against the notified MVDDS transmitting antenna(s).

(f) In the event of either an increase in the EPFD contour in any direction or 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.

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 660

[Docket 980702167-4150-03; I.D. 031901A]

RIN 0648-AK26

#### Fisheries off West Coast States and in the Western Pacific; Pacific Coast Groundfish Fishery; Groundfish Observer Program

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Interim final rule; request for comments.

**SUMMARY:** NMFS is publishing this interim final rule to amend the regulations implementing the Pacific Coast Groundfish Fishery Management Plan (FMP) to provide for a mandatory, vessel-financed observer program on at-sea processing vessels.

This action is necessary to satisfy the standardized bycatch reporting methodology requirements of the 1996 Sustainable Fisheries Act amendments to the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

**DATES:** Effective July 7, 2004, except for § 660 360(f)(3)(iv) which is effective 60 days after the date of publication in the **Federal Register** of a notice announcing approval of the Paperwork Reduction Act clearance request for this information collection.

Comments are due by July 7, 2004.

**ADDRESSES:** You may submit comments, identified by (docket number and or RIN number), by any of the following methods:

- E-mail:

*WhitingObservers.nwr@noaa.gov.*

Include (docket number and/or RIN number) in the subject line of the message.

- Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.

- Fax: 206-526-6736

- Mail: D. Robert Lohn, Administrator, Northwest Region, NMFS, 7600 Sand Point Way NE, Seattle, WA 98115-0070, Attn: Becky Renko.

Comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this interim final rule may be submitted to Becky Renko, NMFS,

Northwest Region, and to David Rostker, Office of Management and Budget (OMB), by e-mail at *David\_Rostker@omb.gov*, or fax to 202-395-7285.

Copies of the environmental assessment/regulatory impact review/initial regulatory flexibility analysis (IRFA) may be obtained from the Pacific Fishery Management Council (Council) by writing to the Council at 7700 NE Ambassador Place, Portland, OR 97220, or by contacting Don McIsaac at 503-326-6352. Copies may also be obtained from William L. Robinson, Northwest Region, NMFS, 7600 Sand Point Way N.E., BIN C15700, Bldg. 1, Seattle, WA 98115-0070.

#### FOR FURTHER INFORMATION CONTACT:

William L. Robinson, Northwest Region, NMFS, telephone: 206-526-6140; fax: 206-526-6736; and e-mail:

*bill.robinson@noaa.gov* or Svein Fougner, Southwest Region, NMFS, telephone: 562-980-4000; fax: 562-980-4047; and e-mail: *svein.fougner@noaa.gov.*

#### SUPPLEMENTARY INFORMATION:

##### Electronic Access

This rule is also accessible via the Internet at the Office of the Federal Register's website at *http://www.access.gpo.gov/su\_docs/aces/aces140.html.*

A proposed rule was published on September 10, 2003 (68 FR 53334), and public comment was requested through October 10, 2003. During the comment period, NMFS received one letter. The comments and responses are presented later in the preamble to this interim final rule. See the preamble to the proposed rule for additional information on the affected fishery and this rule.

NMFS believes it is necessary to implement a mandatory observer program for the at-sea processing sector before the start of the 2004 whiting fishery. However, new standards for how vessel-funded observer services may be paid have been established by NMFS. These new standards have resulted in this rule being published as an interim final rule rather than a final rule. As described later in the preamble, NMFS intends to publish a proposed and final rule before the start of the 2005 whiting season to modify the program slightly from what is being defined by this interim final rule.

##### Background

The Federal groundfish fishery off the Washington, Oregon, and California (WOC) coasts is managed pursuant to the Magnuson-Stevens Act and the Pacific Coast Groundfish FMP. The FMP