

§ 101.1401

Common Border, Protocol #6 Concerning the Allotment and Use of Channels in the 932-932.5 and 941-941.5 MHz Bands for Fixed Point-to-Multipoint Services Along the Common Border signed in 1994.

[65 FR 17450, Apr. 3, 2000, as amended at 68 FR 4961, Jan. 31, 2003]

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

SOURCE: 67 FR 43040, June 26, 2002, unless otherwise noted.

§ 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.

[68 FR 42612, July 18, 2003]

§ 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

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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.

EFFECTIVE DATE NOTE: At 67 FR 43040, June 26, 2002, §101.1403 was added. This section contains information collection and record-keeping requirements and will not become effective until approval has been given by the Office of Management and Budget.

§ 101.1405 Channeling plan.

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

§ 101.1407 Permissible operations for MVDDS.

MVDDS licensees must use spectrum in the 12.2–12.7 GHz band for any digital fixed non-broadcast service (broadcast services are intended for reception of the general public and not on a subscribership basis) including one-way direct-to-home/office wireless service. Mobile and aeronautical services are not authorized. Two-way services may be provided by using other spectrum or media for the return or upstream path.

§ 101.1409 Treatment of incumbent licensees.

Terrestrial private operational fixed point-to-point licensees in the 12.2–12.7 GHz band which were licensed prior to MVDDS or NGSO FSS satellite stations are incumbent point-to-point stations and are not entitled to protection from harmful interference caused by later MVDDS or NGSO FSS entrants in the 12.2–12.7 GHz band, except for public safety stations which must be protected. MVDDS and NGSO FSS operators have the responsibility of resolving any harmful interference problems that their operations may cause to these public safety incumbent point-to-point operations in the 12.2–12.7 GHz band. Incumbent public safety terrestrial point-to-point licensees may only make minor changes to their stations

without losing this protection. This does not relieve current point-to-point licensees of their obligation to protect BSS operations in the subject frequency band. All point-to-point applications, including low-power operations, for new licenses, major amendments to pending applications, or major modifications to existing licenses for the 12.2-12.7 GHz band are no longer accepted except for renewals and changes in ownership. See §1.929 of this chapter for definitions of major and minor changes.

§ 101.1411 Regulatory status and eligibility.

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

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

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

§ 101.1412 MVDDS eligibility restrictions for cable operators.

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

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

(c) Waiver of restriction. Upon completion of the initial award of MVDDS licenses, a cable operator may petition for a waiver of the restriction on eligibility based upon a showing that the petitioner no longer has market power

in its service area as the result of the entry of new competitors, other than an MVDDS licensee, into such service area.

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

(e) Definition of attributable interest. For purposes of paragraph (a) of this section, an entity shall be considered to have an attributable interest in a cable operator or MVDDS licensee pursuant to the following criteria:

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

(2) Any general partnership interest in a partnership;

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

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

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

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