

§21.912

47 CFR Ch. I (10-1-03 Edition)

(c) A copy of each year's report shall be retained in the principal office of the licensee and shall be readily available to the public for reference and inspection.

[55 FR 46011, Oct. 31, 1990]

§21.912 Cable television company eligibility requirements and MDS/cable cross-ownership.

(a) Notwithstanding the provisions of §21.900 of this part, initial or modified authorizations for stations in the 2150-2162 MHz and 2596-2680 MHz frequency bands may not be granted to a cable operator if a portion of the Multipoint Distribution Service (MDS) station's protected services area is within the portion of the franchise area actually served by the cable operator's cable system. No cable operator may acquire such authorization either directly, or indirectly through an affiliate owned, operated, controlled by or under common control with a cable operator.

(b) No licensee of a station in this service may lease transmission time or capacity to a cable operator either directly, or indirectly through an affiliate owned, operated, controlled by, or under common control with a cable operator, if a portion of the Multipoint Distribution Service (MDS) station's protected services area is within the portion of the franchise area actually served by the cable operator's cable system.

(c) Applications for new stations, station modifications, assignments or transfers of control by cable operators of stations in the 2150-2162 MHz and 2596-2680 MHz frequency bands shall include a showing that no portion of the protected service area of the MDS station is within the portion of the franchise area actually served by the cable operator's cable system, or of any entity indirectly affiliated, owned, operated, controlled by, or under common control with the cable operator.

NOTE 1 TO §21.912: In applying the provisions of this section, ownership and other interests in MDS licensees or cable television systems will be attributed to their holders and deemed cognizable pursuant to the following criteria:

(a) Except as otherwise provided herein, partnership and direct ownership interests

and any voting stock interest amounting to 5% or more of the outstanding voting stock of a corporate MDS licensee or cable television system will be cognizable;

(b) Investment companies, as defined in 15 U.S.C. 80a-3, insurance companies and banks holding stock through their trust departments in trust accounts will be considered to have a cognizable interest only if they hold 20% or more of the outstanding voting stock of a corporate MDS licensee or cable television system, or if any of the officers or directors of the MDS licensee or cable television system are representatives of the investment company, insurance company or bank concerned. Holdings by a bank or insurance company will be aggregated if the bank or insurance company has any right to determine how the stock will be voted. Holdings by investment companies will be aggregated if under common management.

(c) Attribution of ownership interests in an MDS licensee or cable television system that are held indirectly by any party through one or more intervening corporations will 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 wherever the ownership percentage for any link in the chain exceeds 50%, it shall not be included for purposes of this multiplication. For purposes of paragraph (i) of this note, attribution of ownership interests in an MDS licensee or cable television system that are held indirectly by any party through one or more intervening organizations will 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, and the ownership percentage for any link in the chain that exceeds 50% shall be included for purposes of this multiplication. [For example, except for purposes of paragraph (i) of this note, if A owns 10% of company X, which owns 60% of company Y, which owns 25% of "Licensee," then X's interest in "Licensee" would be 25% (the same as Y's interest because X's interest in Y exceeds 50%), and A's interest in "Licensee" would be 2.5% (0.1×0.25). Under the 5% attribution benchmark, X's interest in "Licensee" would be cognizable, while A's interest would not be cognizable. For purposes of paragraph (i) of this note, X's interest in "Licensee" would be 15% (0.6×0.25) and A's interest in "Licensee" would be 1.5% ($0.1 \times 0.6 \times 0.25$). Neither interest would be attributed under paragraph (i) of this note.]

(d) Voting stock interests held in trust shall be attributed to any person who holds or shares the power to vote such stock, to any person who has the sole power to sell such stock, and to 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 grantor or beneficiary, as appropriate, will be attributed with the stock interests held in trust. An otherwise qualified trust will be ineffective to insulate the grantor or beneficiary from attribution with the trust's assets unless all voting stock interests held by the grantor or beneficiary in the relevant MDS licensee or cable television system are subject to said trust.

(e) Subject to paragraph (i) of this note, holders of non-voting stock shall not be attributed an interest in the issuing entity. Subject to paragraph (i) of this note, holders of debt and instruments such as warrants, convertible debentures, options or other non-voting interests with rights of conversion to voting interests shall not be attributed unless and until conversion is effected.

(f)(1) A limited partnership interest shall be attributed to a limited partner unless that partner is not materially involved, directly or indirectly, in the management or operation of the MDS or cable television activities of the partnership and the licensee or system so certifies. An interest in a Limited Liability Company ("LLC") or Registered Limited Liability Partnership ("RLLP") shall be attributed to the interest holder unless that interest holder is not materially involved, directly or indirectly, in the management or operation of the MDS or cable television activities of the partnership and the licensee or system so certifies.

(2) For a licensee or system that is a limited partnership to make the certification set forth in paragraph (f)(1) of this note, it must verify that the partnership agreement or certificate of limited partnership, with respect to the particular limited partner exempt from attribution, establishes that the exempt limited partner has no material involvement, directly or indirectly, in the management or operation of the MDS or cable television activities of the partnership. For a licensee or system that is an LLC or RLLP to make the certification set forth in paragraph (f)(1) of this note, it must verify that the organizational document, with respect to the particular interest holder exempt from attribution, establishes that the exempt interest holder has no material involvement, directly or indirectly, in the management or operation of the MDS or cable television activities of the LLC or RLLP. The criteria which would assume adequate insulation for purposes of this certification are described in the Memorandum Opinion and Order in MM Docket No. 83-46, 50 FR 27438, July 3, 1985, as modified on reconsideration in the Memorandum Opinion and Order in MM Docket No. 83-46, 52 FR 1630, January 15, 1987. Irrespective of the terms of the certificate of limited partnership or partnership agreement, or other or-

ganizational document in the case of an LLC or RLLP, however, no such certification shall be made if the individual or entity making the certification has actual knowledge of any material involvement of the limited partners, or other interest holders in the case of an LLC or RLLP, in the management or operation of the MDS or cable television businesses of the partnership or LLC or RLLP.

(3) In the case of an LLC or RLLP, the licensee or system seeking installation shall certify, in addition, that the relevant state statute authorizing LLCs permits an LLC member to insulate itself as required by our criteria.

(g) Officers and directors of an MDS licensee or cable television system are considered to have a cognizable interest in the entity with which they are so associated. If any such entity engages in businesses in addition to its primary business of MDS or cable television service, it may request the Commission to waive attribution for any officer or director whose duties and responsibilities are wholly unrelated to its primary business. The officers and directors of a parent company of an MDS licensee or cable television system, with an attributable interest in any such subsidiary entity, shall be deemed to have a cognizable interest in the subsidiary unless the duties and responsibilities of the officer or director involved are wholly unrelated to the MDS licensee or cable television system subsidiary, and a statement properly documenting this fact is submitted to the Commission. [This statement may be included on the Licensee Qualification Report.] The officers and directors of a sister corporation of an MDS licensee or cable television system shall not be attributed with ownership of these entities by virtue of such status.

(h) Discrete ownership interests will be aggregated in determining whether or not an interest is cognizable under this section. An individual or entity will be deemed to have a cognizable investment if:

(1) The sum of the interests held by or through "passive investors" is equal to or exceeds 20 percent; or

(2) The sum of the interests other than those held by or through "passive investors" is equal to or exceeds 5 percent; or

(3) The sum of the interests computed under paragraph (h)(1) of this note plus the sum of the interests computed under paragraph (h)(2) of this note is equal to or exceeds 20 percent.

(i) Notwithstanding paragraphs (e) and (f) of this note, the holder of an equity or debt interest or interests in an MDS licensee or cable television system subject to the MDS/cable cross-ownership rule ("interest holder") shall have that interest attributed if:

(1) the equity (including all stockholdings, whether voting or nonvoting, common or

preferred) and debt interest or interests, in the aggregate, exceed 33 percent of the total asset value (all equity plus all debt) of that MDS licensee or cable television system; and

(2) The interest holder also holds an interest in an MDS licensee or cable television system that is attributable under paragraphs of this note other than this paragraph (i) and which operates in any portion of the franchise area served by that cable operator's cable system.

(j) The term "area served by a cable system" means any area actually passed by the cable operator's cable system and which can be connected for a standard connection fee.

(k) As used in this section "cable operator" shall have the same definition as in §76.5 of this chapter.

NOTE 2 TO §21.912: The Commission will entertain requests to waive the restrictions in paragraph (a) of this section where necessary to ensure that all significant portions of the franchise area are able to obtain multi-channel video service. Such waiver requests should be filed in accordance with special relief procedures set forth in §76.7.

(d) The provisions of paragraphs (a) through (c) of this section will not apply to one MDS or MMDS channel used to provide locally-produced programming to cable headends. Locally-produced programming is programming produced in or near the cable operator's franchise area and not broadcast on a television station available within that franchise area. A cable operator will be permitted one MDS channel in an MMDS protected service area for this purpose, and no more than one MDS channel in an MMDS protected service area may be used by a cable television company or its affiliate or lessor pursuant to this paragraph. The licensee for a cable operator providing local programming pursuant to a lease must include in a notice filed with the Wireless Telecommunications Bureau a cover letter explicitly identifying itself or its lessees as a local cable operator and stating that the lease was executed to facilitate the provision of local programming. The first application or the first lease notification in an area filed with the Commission will be entitled to the exemption. The limitations on one MDS channel per party and per area include any cable/MDS operations grandfathered pursuant to paragraph (f) of this section or cable/ITFS operations grandfathered pursuant to §74.931(e) of this chapter. The cable operator must demonstrate in its MDS/

MMDS application that the proposed local programming will be provided within one year from the date its application is granted. Local programming service pursuant to a lease must be provided within one year of the date of the lease or one year of grant of the licensee's application for the leased channel, whichever is later. If an MDS license for these purposes is granted and the programming is subsequently discontinued, the license will be automatically forfeited the day after local programming service is discontinued.

(e) Applications filed by cable television companies, or affiliates, for MDS channels prior to February 8, 1990, will not be subject to the prohibitions of this section. Applications filed on February 8, 1990, or thereafter will be returned. Lease arrangements between cable and MDS entities for which a lease or a firm agreement was signed prior to February 8, 1990, will also not be subject to the prohibitions of this section. Leases between cable television companies, or affiliates, and MDS/MMDS station licensees, conditional licensees, or applicants executed on February 8, 1990, or thereafter, are invalid.

(1) Applications filed by cable operators, or affiliates, for MMDS channels prior to February 8, 1990, will not be subject to the prohibitions of this section. Except as provided in paragraph (e)(2) below, applications filed on February 8, 1990, or thereafter will be returned. Lease arrangements between cable and MDS entities for which a lease or a firm agreement was signed prior to February 8, 1990, will also not be subject to the prohibitions of this section. Except as provided in paragraph (e)(2) below, leases between cable operators, or affiliates, and MDS/MMDS station licensees, conditional licensees, or applicants executed on or before February 8, 1990, or thereafter are invalid.

(2) Applications filed by cable operators, or affiliates for MDS channels after February 8, 1990, and prior to October 5, 1992, will not be subject to the prohibition of this section, if, pursuant to the then existing overbuild or rural exceptions, the applications were allowed under the then existing cable/MMDS cross-ownership prohibitions.

Federal Communications Commission

§21.913

Lease arrangements between cable operators and MDS entities for which a lease or firm agreement was signed after February 8, 1990, and prior to October 5, 1992, will not be subject to the prohibitions of this section, if, pursuant to the then existing rural and over-build exceptions, the lease arrangements were allowed.

(3) The limitations on cable television ownership in this section do not apply to any cable operator in any franchise area in which a cable operator is subject to effective competition as determined under section 623(l) of the Communications Act.

(f) Interested persons may file a petition to deny an application filed pursuant to paragraph (d) of this section within 30 days after the Commission gives public notice that the application or petition has been filed. Petitions must be served upon the applicant, and must contain a complete and detailed showing, supported by affidavit, of any facts or considerations relied upon. The applicant may file an opposition to the petition to deny within 30 days after the filing of the petition, and must serve copies upon all persons who have filed petitions to deny. The Commission, after consideration of the pleadings, will determine whether the public interest, convenience and necessity would be served by the grant or denial of the application, in whole or in part. The Commission may specify other procedures, such as oral argument, evidentiary hearing or further written submission directed to particular aspects, as it deems appropriate.

NOTES: In these grandfathered situations, we will consider granting waivers to permit the use of a second MDS channel for the delivery of locally produced programming. Because allocating a second channel to this use would further reduce the channel capacity available for wireless cable service, we will require an applicant for the second channel to demonstrate, at a minimum, that it is ready and able to provide additional locally produced programming to area cable systems, and that no other practical means of delivering the programming are available to it. In considering requests for waiver, we will also take into account the competitive environment for the production and delivery of

locally produced programming in the relevant markets.

[55 FR 46011, Oct. 31, 1990, as amended at 56 FR 57818, Nov. 14, 1991; 58 FR 42018, Aug. 6, 1993; 58 FR 45064, Aug. 26, 1993; 61 FR 15387, Apr. 8, 1996; 64 FR 50644, Sept. 17, 1999; 66 FR 9971, Feb. 13, 2001; 67 FR 13224, Mar. 21, 2002]

§21.913 Signal booster stations.

(a) An MDS booster station may reuse channels to repeat the signals of MDS stations or to originate signals on MDS channels. The aggregate power flux density generated by an MDS station and all associated signal booster stations and all simultaneously operating cochannel response stations may not exceed -73 dBW/m² (or the appropriately adjusted value based on the actual bandwidth used if other than 6 MHz, see §21.902(b)(7)(i)) at or beyond the boundary of the protected service area, as defined in §§21.902(d) and 21.933, of the main MDS station whose channels are being reused, as measured at locations for which there is an unobstructed signal path, unless the consent of the affected cochannel licensee is obtained.

(b) A licensee or conditional licensee of an MDS station, or the capacity lessee of such MDS station upon the written consent of the licensee or conditional licensee, may secure a license for a high power signal booster station that has a maximum EIRP in excess of -9 dBW + $10 \log(X/6)$ dBW where X is the channel width in MHz, if it complies with the out-of-band emission requirements of §21.908. Any licensee of a high-power booster station that is a capacity lessee shall, upon termination or expiration of the capacity lease, automatically assign the booster station license to the licensee or conditional licensee of the MDS station by and upon written notice to the Commission signed by the lessee and such licensee or conditional licensee. If upon termination or expiration of the capacity lease the licensee or conditional licensee no longer desires or needs the high-power booster station license, such a license must be returned to the Commission. The applicant for a high-power station, or for modification thereto, where not subject to §21.41 or §21.42, shall file FCC Form 331 with Mellon Bank, and certify on that form