

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

that the applicant has complied with the additional requirements of this paragraph (b), and that the interference data submitted under this paragraph is complete and accurate. Failure to certify compliance and to comply completely with the following requirements of this paragraph (b) shall result in dismissal of the application or revocation of the high-power MDS signal booster station license, and may result in imposition of a monetary forfeiture. The applicant is additionally required to submit (see §21.902(m) for permissible format(s) and media) to the Commission's Reference Room the following information:

(1) A demonstration that the proposed signal booster station site is within the protected service area, as defined in §§21.902(d) and 21.933, of the MDS station whose channels are to be reused; and

(2) A study which demonstrates that the aggregate power flux density of the MDS station and all associated booster stations and simultaneously operating cochannel response stations licensed to or applied for by the applicant, measured at or beyond the boundary of the protected service area of the MDS station whose channels are to be reused, does 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 locations for which there is an unobstructed signal path, unless the consent of the affected licensees has been obtained; and

(3) In lieu of the requirements of §21.902(c) and (i), a study which demonstrates that the proposed booster station will cause no harmful interference (as defined in §21.902(f)) to cochannel and adjacent channel, authorized or previously-proposed ITFS and MDS stations with protected service area center coordinates as specified in §21.902(d), to any authorized or previously-proposed response station hubs, booster stations or I channel stations associated with such ITFS and MDS stations, or to any ITFS receive sites registered as of September 17, 1998, within 160.94 kilometers (100 miles) of the proposed booster station's transmitter site. Such study shall consider the undesired signal levels generated by the proposed signal booster station,

the main station, all other licensed or previously-proposed associated booster stations, and all simultaneously operating cochannel response stations licensed to or applied for by the applicant. In the alternative, a statement from the affected MDS or ITFS licensee or conditional licensee stating that it does not object to operation of the high-power MDS signal booster station may be submitted; and

(4) A description of the booster service area; and

(5) A demonstration either

(i) That the booster service area is entirely within the protected service area to which the licensee of a station whose channels are being reused is entitled by virtue of its being the licensee of an incumbent MDS station, or by virtue of its holding a Basic Trading Area or Partitioned Service Area authorization; or

(ii) That the licensee entitled to any cochannel protected service area which is overlapped by the proposed booster service area has consented to such overlap; and

(6) A demonstration that the proposed booster service area can be served by the proposed booster without interference; and

(7) A certification that copies of the materials set forth in paragraph (b) of this section have been served upon the licensee or conditional licensee of each station (including each response station hub and booster station) required to be studied pursuant to paragraph (b)(3) of this section, and upon any affected holder of a Basic Trading Area or Partitioned Service Area authorization pursuant to paragraph (b)(2) of this section.

(8) If the applicant is a capacity lessee, a certification that:

(i) The licensee or conditional licensee has provided its written consent to permit the capacity lessee to apply for the booster station license; and

(ii) The applicant and the licensee or conditional licensee have entered into a lease that is in effect at the time of such filing.

(c) Except as provided in §21.27(d), applications for high-power MDS signal booster station licenses may be filed at any time. Notwithstanding any other provision of part 21 (including §21.31),

applications for high-power MDS signal booster station licenses meeting the requirements of paragraph (b) of this section shall cut-off applications that are filed on a subsequent day for facilities that would cause harmful electromagnetic interference to the proposed booster stations.

(d) Notwithstanding the provisions of §21.30(a)(4) and except as provided in §21.27(d), any petition to deny an application for a high-power MDS signal booster station license shall be filed no later than the sixtieth (60th) day after the date of public notice announcing the filing of such application or major amendment thereto. Notwithstanding §21.31 and except as provided in §21.27(d), an application for a high-power MDS signal booster station license that meets the requirements of paragraph (b) of this section shall be granted on the sixty-first (61st) day after the Commission shall have given public notice of the acceptance for filing of it, or of a major amendment to it if such major amendment has been filed, unless prior to such date either a party in interest timely files a formal petition to deny or for other relief pursuant to §21.30(a), or the Commission notifies the applicant that its application will not be granted. Where an application is granted pursuant to the provisions of this paragraph, the conditional licensee or licensee shall maintain a copy of the application at the MDS booster station until such time as the Commission issues a high-power MDS signal booster station license.

(e) A licensee or conditional licensee of an MDS station, or the capacity licensee of such MDS station upon the written consent of the licensee or conditional licensee, shall be eligible to install and operate a low power signal booster station that has a maximum EIRP of $-9 \text{ dBW} + \log_{10}(X/6) \text{ dBW}$, where X is the channel width in MHz. A low-power MDS signal booster station may operate only on one or more MDS channels that are licensed to the licensee of the MDS booster station, but may be operated by a third party with a fully-executed lease or consent agreement with the MDS conditional licensee or licensee. Any licensee of a low-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 low-power booster station license, such a license must be returned to the Commission. An MDS licensee, conditional licensee, or capacity lessee thereof, may install and commence operation of a low-power MDS signal booster station for the purpose of retransmitting the signals of the MDS station or for originating signals. Such installation and operation shall be subject to the condition that for sixty (60) days after installation and commencement of operation, no objection or petition to deny is filed by the licensee of a, or applicant for a previously-proposed, co-channel or adjacent channel ITFS or MDS station with a transmitter within 8.0 kilometers (5 miles) of the coordinates of the low-power MDS signal booster station. An MDS licensee, conditional licensee, or capacity lessee thereof seeking to install a low-power MDS signal booster station under this rule must submit a FCC Form 331 to the Commission within 48 hours after installation. In addition, the MDS licensee, conditional licensee, or capacity lessee must submit the following information (see §21.902(m) for permissible format(s) and media) to the Commission's Reference Room:

(1) A description of the booster service area; and

(2) A demonstration either

(i) That the booster service area is entirely within the protected service area to which each licensee of a station whose channels are being reused is entitled by virtue of its being the licensee of an incumbent MDS station, or by virtue of its holding a Basic Trading Area or Partitioned Service Area authorization; or

(ii) That the licensee entitled to any cochannel protected service area which is overlapped by the proposed booster service area has consented to such overlap; and

(3) A demonstration that the proposed booster service area can be served by the proposed booster without interference; and

(4) A certification that:

(i) The maximum power level of the signal booster transmitter does not exceed $-9 \text{ dBW} + 10 \log(X/6) \text{ dBW}$, where X is the channel width in MHz; and

(ii) Where the booster is operating on channel D4, E1, F1, E2, F2, E3, F3, E4, F4 and/or G1, no registered receiver of an ITFS E or F channel station, constructed prior to May 26, 1983, is located within a 1.61 km (1 mile) radius of the coordinates of the booster, or in the alternative, that a consent statement has been obtained from the affected ITFS licensee; and

(iii) The applicant has complied with §1.1307 of this chapter; and

(iv) Each MDS and/or ITFS station licensee (including the licensees of booster stations and response station hubs) with protected service areas and/or registered receivers within a 8 km (5 mile) radius of the coordinates of the booster has been given notice of its installation; and

(v) The signal booster site is within the protected service area of the MDS station whose channels are to be reused; and

(vi) The aggregate power flux density of the MDS station and all associated booster stations and simultaneously operating cochannel response stations licensed to or applied for by the applicant, measured at or beyond the boundary of the protected service areas of the MDS stations whose channels are to be reused, does not exceed -73 dBW/m^2 (or the appropriately adjusted value based on the actual bandwidth used if other than 6 MHz, see §21.902(b)(7)(i)) at locations for which there is an unobstructed signal path, unless the consent of the affected licensees has been obtained; and

(vii) The antenna structure will extend less than 6.10 meters (20 feet) above the ground or natural formation or less than 6.10 meters (20 feet) above an existing manmade structure (other than an antenna structure); and

(viii) The applicant understands and agrees that, in the event harmful interference is claimed by the filing of an objection or petition to deny, it must

terminate operation within two (2) hours of notification by the Commission, and must not recommence operation until receipt of written authorization to do so by the Commission; and

(ix) If the applicant is a capacity lessee, a certification that:

(A) The licensee or conditional licensee has provided its written consent to permit the capacity lessee to apply for the booster station license; and

(B) The applicant and the licensee or conditional licensee have entered into a lease that is in effect at the time of such filing.

(f) Commencing upon the filing of an application for a high-power MDS signal booster station license and until such time as the application is dismissed or denied or, if the application is granted, a certification of completion of construction is filed, an applicant for any new or modified MDS or ITFS station (including a response station hub, high-power booster station, or I Channels station) shall demonstrate compliance with the interference protection requirements set forth in §§21.902 (b)(3) through (b)(5), 21.938 (b) (1) and (2) and (c), or 74.903 of this chapter with respect to any previously-proposed or authorized booster service area both using the transmission parameters of the high-power MDS signal booster station (e.g., EIRP, polarization(s) and antenna height) and the transmission parameters of the MDS station whose channels are to be reused by the high-power MDS signal booster station. Upon the filing of a certification of completion of construction of an MDS booster station applied for pursuant to paragraph (b) of this section, or upon the submission of an MDS booster station notification pursuant to paragraph (e) of this section, the MDS station whose channels are being reused by the MDS signal booster shall no longer be entitled to interference protection pursuant to §§21.902 (b)(3) through (b)(5), 21.938 (b) (1) and (2) and (c), and 74.903 of this chapter within the booster service area based on the transmission parameters of the MDS station whose channels are being reused. A booster station shall not be entitled to protection from interference caused by facilities proposed on or

prior to the day the application or notification for the booster station is filed. A booster station shall not be required to protect from interference facilities proposed on or after the day the application or notification for the booster station is filed.

(g) Where an application is granted under paragraph (d) of this section, if a facility operated pursuant to that grant causes harmful, unauthorized interference to any cochannel or adjacent channel facility, it must promptly remedy the interference or immediately cease operations of the interfering facility, regardless of whether any petitions to deny or for other relief were filed against the application during the application process. The burden of proving that a high-power MDS signal booster station is not causing harmful, unauthorized interference lies on the licensee of the alleged interfering facility, following the filing of a documented complaint of interference by an affected party.

(h) In the event any MDS or ITFS receive site suffers interference due to block downconverter overload, the licensee of each non-co/adjacent channel signal booster station within five miles of such receive site shall cooperate in good faith to expeditiously identify the source of the interference. Each licensee of a signal booster station contributing to such interference shall bear the joint and several obligation to remedy promptly all interference resulting from block downconverter overload at any ITFS registered receive site or at any receive site within an MDS or ITFS protected service area applied for prior to the submission of the application or notification for the signal booster station, regardless of whether the receive site suffering the interference was constructed prior to or after the construction of the signal booster station(s) causing the downconverter overload; provided, however, that the licensee of the registered ITFS receive site or the MDS or ITFS protected service area must cooperate fully and in good faith with efforts by signal booster station licensees to prevent interference before constructing the signal booster station and/or to remedy interference that may occur. In the event that more than one

signal booster station licensee contributes to block downconverter interference at an MDS or ITFS receive site, such licensees shall cooperate in good faith to remedy promptly the interference.

[63 FR 65109, Nov. 25, 1998; 64 FR 4054, Jan. 27, 1999, as amended at 64 FR 63736, Nov. 22, 1999; 65 FR 46619, July 31, 2000]

EFFECTIVE DATE NOTE: At 65 FR 46619, July 31, 2000, §24.913 was amended by revising paragraphs (b) introductory text, (b)(8), and (e)(4)(ix). These paragraphs contain information collection and recordkeeping requirements and will not become effective until approval has been given by the Office of Management and Budget.

§ 21.914 Mutually-exclusive MDS applications.

Notwithstanding the provisions of § 21.31 (b)(2)(i) and (ii) of this part, to be entitled to be included in a random selection process or to comparative consideration with one or more conflicting applications, an application for frequencies at 2150-2162 MHz, 2596-2644 MHz, 2650-2656 MHz, 2662-2668 MHz, or 2674-2680 MHz must be received by the Commission in a condition acceptable for filing on the same calendar day as the first of the conflicting applications is received by the Commission in a condition acceptable for filing.

[55 FR 46012, Oct. 31, 1990, as amended at 56 FR 57819, Nov. 14, 1991]

§ 21.915 One-to-a-market requirement.

Each applicant may file only a single Multipoint Distribution Service application for the same channel or channel group in each area. The stockholders, partners, owners, trustees, beneficiaries, officers, directors, or any other person or entity holding, directly or indirectly, any interest in one applicant or application for an area and channel or channel group, must not have any interest, directly or indirectly, in another applicant or application for that same area and channel or channel group.

[58 FR 11799, Mar. 1, 1993]

§ 21.920 Applicability of cable television EEO requirements to MDS and MMDS facilities.

Notwithstanding other EEO provisions within § 1.815 of this chapter and