

Federal Communications Commission

§ 101.1411

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. Con-

trolling 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.

(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.