List of Subjects in 47 CFR Part 15

Communications equipment, Labeling, Radio, Reporting and recordkeeping requirements.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 03–9688 Filed 4–18–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 03–1110, MB Docket No. 03–97, RM–10683]

Digital Television Broadcast Service; Juneau, AK

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Capital Community Broadcasting, Inc., licensee of noncommercial educational station KTOO–TV, Juneau, Alaska, proposing the substitution of DTV channel *10 for DTV channel *6 at Juneau. DTV Channel *10 can be allotted to Juneau, Alaska, at reference coordinates 58–18–04 N. and 134–25–21 W. with a power of 0.748, a height above average terrain HAAT of 320.3 meters. Since the community of Juneau is located within 400 kilometers of the U.S.-Canadian border, concurrence from the Canadian government must be obtained for this allotment.

DATES: Comments must be filed on or before June 5, 2003, and reply comments on or before June 20, 2003.

ADDRESSES: The Commission permits the electronic filing of all pleadings and comments in proceeding involving petitions for rule making (except in broadcast allotment proceedings). *See Electronic Filing of Documents in Rule Making Proceedings,* GC Docket No. 97–113 (rel. April 6, 1998). Filings by paper can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Vistronix, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW., Washington, DC 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Lawrence M. Miller, Schwartz, Woods & Miller, 1350 Connecticut Avenue, NW., Suite 300, Washington, DC 20036–1717 (Counsel for Capital Community Broadcasting, Inc.).

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MB Docket No. 03–97, adopted April 4, 2003, and released April 14, 2003. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com.*

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. *See* 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, *see* 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Digital television broadcasting, Television.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR Part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.622 [Amended]

2. Section 73.622(b), the Table of Digital Television Allotments under Alaska is amended by removing DTV channel *6 and adding DTV channel *10, Juneau.

Federal Communications Commission.

Barbara A. Kreisman,

Chief, Video Division, Media Bureau.

[FR Doc. 03–9666 Filed 4–18–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 101

[ET Docket No. 98–206; RM–9147; RM–9245; FCC 03–85]

Permit Operation of NGSO FSS Systems Co-Frequency With GSO and Terrestrial Systems in the Ku-Band Frequency Range

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document the Commission seeks comment on the appropriate service area definition for the Multichannel Video Distribution and Data Service (MVDDS) in the 12.2–12.7 GHz band (12 GHz band). This action is taken in response to comments received in response to a January 30, 2003, auction public notice which sought comment on an MVDDS auction based on either CEAs or DMAs. Given that we are revisiting the service area definition, we also take this opportunity to explore whether the current build out requirement sufficiently promotes expeditious deployment of service. By these actions, we seek to deploy the new MVDDS in a manner that most efficiently and effectively allows for flexible use of the spectrum.

DATES: Comments are due on or before April 28, 2003, and reply comments are due on or before May 5, 2003.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., TW–A325, Washington, DC 20554. *See* **SUPPLEMENTARY INFORMATION** for filing instructions.

FOR FURTHER INFORMATION CONTACT: Jennifer Burton, Public Safety and Private Wireless Division, Wireless

Telecommunications Bureau at (202) 418–0680, e-mail *jburton@fcc.gov*.

SUPPLEMENTARY INFORMATION: This is a summary of the FCC's Further Notice of Proposed Rulemaking, FCC 03–85, adopted on April 10, 2003, and released on April 15, 2003. The full text of this document is available for inspection and copying during normal business hours in the FCC Reference Center, 445 12th Street, SW., Washington, DC 20554. The complete text may be purchased from the FCC's copy contractor, Qualex International, 445 12th Street, SW., Room CY–B402, Washington, DC 20554. The full text may also be downloaded at: *www.fcc.gov*. Alternative formats are available to persons with disabilities by contacting Brian Millin at (202) 418–7426 or TTY (202) 418–7365 or at *bmillin@fcc.gov*.

1. In this Second Further Notice of Proposed Rulemaking (*NPRM*), we seek further comment on the appropriate service area definition for the Multichannel Video Distribution and Data Service (MVDDS) in the 12.2–12.7 GHz band (12 GHz band). Specifically, we seek comment on the most appropriate service area definition for the geographic licensing of MVDDS. We also seek comment on whether Designated Market Areas (DMAs) will facilitate delivery of advanced wireless services, such as video and data broadband services, to a wide range of populations, including those areas that are unserved and underserved. In addition, we seek comment on whether we should modify the MVDDS build out requirement as a means to foster expeditious deployment of advanced wireless services, such as video and data broadband services, to these communities as well.

Procedural Matters

Initial Regulatory Flexibility Analysis

2. As required by section 603 of the Regulatory Flexibility Act, the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the expected impact on small entities of the proposals suggested in this document. Below contains the IRFA. We request written public comments on the IRFA. In order to fulfill the mandate of the Contract with America Advancement Act of 1996 regarding the Final Regulatory Flexibility Analysis, we ask a number of questions regarding the prevalence of small businesses in the affected industries.

3. Interested parties must file comments in accordance with the same filing deadlines as comments filed in this *NPRM*, but they must have a separate and distinct heading designating them as responses to the IRFA. The Commission's Consumer Information Bureau, Reference Information Center, shall send a copy of this *NPRM*, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with section 603(a) of the Regulatory Flexibility Act.

Ex Parte Rules—Permit-But-Disclose Proceedings

4. This is a permit-but-disclose notice and comment rule making proceeding. Our rules permit *ex parte* presentations, except during the Sunshine Agenda period, provided they are disclosed as provided in the Commission's rules. *See generally* 47 CFR 1.1202, 1.1203, and 1.2306(a).

Comment Dates

5. Pursuant to §§ 1.415 and 1.419 of our rules, interested parties may file comments on or before 7 days from the date of publication in the **Federal Register** and reply comments on or before 14 days from the date of publication in the **Federal Register**. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS), *http://www.fcc.gov/e-file/ecfs.html*, or by filing paper copies.

6. Comments filed through the ECFS can be sent as an electronic file via the Internet to *http://www.fcc.gov/e-file/ecfs.html*. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to *ecfs@fcc.gov*, and should including the following words in the body of the message, ''get form <your e-mail address.'' A sample form and directions will be sent in reply.

7. Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rule making number appear in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commissioner's contractor, Vistronix, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW., TW–A325, Washington, DC 20554. All filings must be addressed to the Commissioner's Secretary, Office of the Secretary, Federal Communications Commission.

8. Parties who choose to file by paper should also submit their comments on diskette. Such a submission should be on a 3.5-inch diskette formatted in an IBM compatible format using Microsoft Word or compatible software. The diskette should be accompanied by a cover letter and should be submitted in ''read only'' mode. The diskette should be clearly labeled with the commenter's name, proceeding (including the lead docket number, type of pleading (comment or reply comment), date of submission, and the name of the electronic file on the diskette. The label should also include the following phrase ''Disk Copy—Not an Original.'' Each diskette should contain only one party's pleading, preferably in a single electronic file. In addition, commenters must send diskette copies to the Commission's copy contract, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com*.

9. Alternative formats (computer diskette, large print, audio cassette and Braille) are available to persons with disabilities by contacting Brian Millin at (202) 418–7426, TTY (202) 418–7365 or via e-mail to *bmillin@fcc.gov*. This *NPRM* can also be downloaded at *http://www.fcc.gov/wtb*.

Further Information

10. The World Wide Web addresses/URLs that we give here were correct at the time this document was prepared but may change over time. They are included herein in addition to the

conventional citations as a convenience to readers. We are unable to update these URLs after adoption of this *NPRM*, and readers may find some URLs to be out of date as time progresses. We also advise readers that the only definitive text of FCC documents is the one that is published in the FCC Record. In case of discrepancy between the electronic documents cited here and the FCC Record, the version in the FCC Record is definitive.

Initial Regulatory Flexibility Analysis

11. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), the Commission has prepared this present Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in this Second Further Notice of Proposed Rulemaking (*NPRM*). Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the *NPRM* provided in paragraph 124 of the item. The Commission will send a copy of this *NPRM*, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA). In addition, the *NPRM* and IRFA (or summaries thereof) will be published in the **Federal Register**.

Need for, and Objectives of, the Proposed Rule

12. In this *NPRM*, we revisit the issues of the geographic licensing scheme for MVDDS and build-out requirements. In the Second Report and Order, the Commission adopted geographic license service areas for MVDDS on the basis of Component Economic Areas (CEAs). Based on the previously-established record in this proceeding, and on subsequent discussions between Commission staff and Nielsen representatives which indicate that, although Nielsen remains unable to enter into a formal agreement to allow the Commission to use its Designated Market Area (DMA) designation for the MVDDS service areas, Nielsen does not object to the Commission's use of DMAs in this manner, subject to certain parameters. Specifically, in a letter received on March 26, 2003, it appears that Nielsen would agree to extend a perpetual, royalty-free license to the Commission, without the right to sublicense, to its DMA mark and regions, provided that the Commission:

(i) Agrees, and continues to communicate to prospective MVDDS suppliers, that a territorial license from the Commission to supply MVDDS does not confer the right to use Nielsen Media Research's DMA mark, regions or data, and that such right must be obtained from Nielsen Media Research on such terms as may be mutually acceptable to Nielsen Media Research and the supplier, in their sole and respective discretion, and (ii) does not republish DMA regions or data in any statute, regulation or rule or otherwise.

13. We are concerned that Nielsen's conditions on the use of DMAs may unduly limit the business plans and opportunities for MVDDS licensees. By its most recent letter, Nielsen makes it clear that it is unwilling to consent to allowing the Commission's MVDDS licensees use the DMA mark, regions or data in their MVDDS business without an individual license from Nielsen. Thus, it does not appear that the license Nielsen described would give Commission licensees sufficient flexibility to make practical use of the DMA designation in connection with their MVDDS operations. Additionally, although the Commission could cross-reference DMAs in its rules, Nielsen's limitations may interfere with our enforcement flexibility, since Nielsen does not want us to ''republish DMA regions or data in any statute, regulation or rule or otherwise.'' We seek comment on whether the conditions described by Nielsen are so restrictive that use of DMAs would be of limited utility to small businesses. We also request comment on the potential impact on small business plans if we change the service area designation.

14. Given that we are revisiting the service area definition, we also take this opportunity to explore whether the current build out requirement sufficiently promotes expeditious deployment of service, particularly for those communities that are traditionally unserved or underserved. As indicated earlier, the Second R&O establishes a ten-year build out requirement for the MVDDS licensees based on substantial service as a basis for a renewal expectancy. MDS America has expressed concern that a ten-year build out period for MVDDS licenses was too long given the potential for anti-competitive warehousing of spectrum in this service and the great demand for rural broadband service. MDS America supports a five-year build out period, a requirement advocated by other commenters in this record.

15. We seek limited comment on the timing of whether a 10-year build out requirement is optimal for fostering expeditious delivery of advanced wireless services to all communities, in particular communities that are traditionally unserved or underserved. In addition, we seek comment on whether a shorter build out requirement will facilitate more effective deployment of these services as well as the appropriate benchmark for a buildout requirement. Finally, we seek comment on the potential impact on small business plans if we change the build out requirement.

16. We seek comment on the following issues under consideration in this *NPRM*:

- The appropriate service area designation for MVDDS.
- The appropriate buildout requirement for MVDDS.

Legal Basis

17. The proposed action is authorized under the Administrative Procedure Act, 5 U.S.C. 553; and sections 1.4(i), 7, 301, 303, 308 and 309(j) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 157, 301, 303, 308 and 309(j).

Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

18. The RFA directs agencies to provide a description of, and, where feasible an estimate of, the number of small entities that may be affected by the rules adopted herein. The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).

19. Small Multichannel Video Programming Distributors (MVPDs). SBA has developed a definition of small entities for cable, which includes all such companies generating $11 million or less in annual receipts. This definition includes cable system operators and DBS services. According to the Census Bureau data from 1992, there were 1,758 total cable and other pay television services and 1,423 had less than $11 million in revenue. We address below each service individually to provide a more precise estimate of small entities.

20. Cable Services. The Commission has developed, with SBA's approval, our own definition of a small cable system operator for the purposes of rate regulation. Under the Commission's rules, a ''small cable company'' is one serving 400,000 or fewer subscribers nationwide. We last estimated that there

were 1439 cable operators that qualified as small cable companies. Since then, some of those companies may have grown to serve over 400,000 subscribers, and others may have been involved in transactions that caused them to be combined with other cable operators. Consequently, using this definition, we estimate that there are fewer than 1439 small entity cable system operators that may be affected by the decisions and rules adopted in the Second Report and Order.

21. The Communications Act defines a small cable system operator as ''a cable operator that, directly or through an affiliate, serves in the aggregate fewer than one percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed $250,000,000.'' The Commission has determined that there are 61,700,000 subscribers in the United States. Therefore, an operator serving fewer than 617,000 subscribers shall be deemed a small operator under the Communications Act definition, if its annual revenues, when combined with the total annual revenues of all of its affiliates, do not exceed $250 million in the aggregate. Based on available data, we find that the number of cable operators serving 617,000 subscribers or less totals approximately 1450. Although it seems certain that some of these cable system operators are affiliated with entities whose gross annual revenues exceed $250,000,000, we are unable at this time to estimate with greater precision the number of cable system operators that would qualify as small cable operators under the definition in the Communications Act.

22. DBS Service. Because DBS provides subscription services, DBS falls within the SBA definition of Cable Networks (NAIC 513210) and Cable and Other Program Distribution (NAIC 513220). This definition provides that a small entity is expressed as one with $11 million or less in annual receipts. The operational licensees of DBS services in the United States are governed by part 100 of the Commission's Rules. The Commission, however, does not collect annual revenue data for DBS and, therefore, is unable to ascertain the number of small DBS licensees meeting this definition that could be impacted by these rules. DBS service requires a great investment of capital for operation, and we acknowledge that there are entrants in this field that may not yet have generated $11 million in annual receipts, and therefore may be categorized as a small business by the SBA, if independently owned and operated.

23. Auxiliary, Special Broadcast and other program distribution services. This service involves a variety of transmitters, generally used to relay broadcast programming to the public (through translator and booster stations) or within the program distribution chain (from a remote news gathering unit back to the station). The Commission has not developed a definition of small entities applicable to broadcast auxiliary licensees. Therefore, the applicable definition of small entity is the definition under the SBA rules applicable to radio networks (NAICS 513111), radio stations (NAICS 513112), and television broadcasting (NAICS 513120). These definitions provide, respectively, that a small entity is one with either $5 million or less in annual receipts or $10.5 million in annual receipts. The numbers of these stations are very small. The Commission does not collect financial information on these auxiliary broadcast facilities. We continue to believe, however, that most, if not all, of these auxiliary facilities could be classified as small businesses by themselves. We also recognize that most of these types of services are owned by a parent station which, in some cases, would be covered by the revenue definition of small business entity discussed above. These stations would likely have annual revenues that exceed the SBA maximum to be designated as a small business (as noted, either $5 million for a radio station or $10.5 million for a TV station). Furthermore, they do not meet the SBA's definition of a ''small business concern'' because they are not independently owned and operated.

24. Private Operational Fixed Service. Incumbent microwave services in the 12.2–12.7 GHz bands include common carrier, private operational fixed (POF), and BAS services. Presently, there are approximately 22,015 common carrier licensees, and approximately 61,670 POF licensees and broadcast auxiliary radio licensees in the microwave service. Inasmuch as the Commission has not yet defined a small business with respect to these incumbent microwave services, we utilized the SBA's definition applicable to cellular and other wireless telecommunications companies (NAICS 513322); *i.e.*, an entity with no more than 1500 persons. We estimate, for this purpose, that all of the Fixed Microwave licensees (excluding broadcast auxiliary licensees) would qualify as small entities under the SBA definition for radiotelephone companies.

25. The rules set forth in the Second Report and Order will affect all entities that intend to provide terrestrial MVDDS operations in the 12.2–12.7 GHz band. In the Second Report and Order, the Commission stated that licensees are permitted to use MVDDS spectrum for, among other things, fixed one-way direct-to-home/business video and data services.

26. Additionally, in the Second Report and Order, the Commission adopted definitions for three tiers of small businesses for the purpose of providing bidding credits to small entities. Specifically, we defined the three tiers of small business as: (a) An ''entrepreneur'' is an entity with average annual gross revenues not exceeding $40 million for the preceding three years; (b) a ''small business'' is an entity with average annual gross revenues not exceeding $15 million for the preceding three years; and (c) a ''very small business'' is an entity with average annual gross revenues not exceeding $3 million for the preceding three years. We will not know how many auction participants or licensees will qualify under these definitions as entrepreneurs, small businesses, or very small businesses until an auction is held. However, upon reviewing the record in the MVDDS proceeding, we assume that, for purposes of our evaluations and conclusions in the FRFA, a number of the prospective licensees will be entrepreneurs, small businesses, or very small businesses under our adopted definitions.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

27. This *NPRM* imposes no new reporting, recordkeeping or other compliance requirements not previously adopted in this proceeding Paperwork Reduction Act of 1995, Pub. L. No. 104–13.

Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

28. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design standards; and (4) an exemption from

coverage of the rule, or any part thereof, for small entities.

29. With respect to its decision to use CEAs as the basis for the MVDDS service, the Commission noted that adopting CEAs would provide similar benefits as DMAs but would better promote its objectives and address commenters' concerns. Specifically, the Commission premised its decision on three factors. First, the smaller CEA service areas would better track actual deployment of fixed services. Second, CEAs would encourage rapid service deployment to less populated and rural regions because they will permit additional opportunities for small businesses to provide MVDDS. Third, the use of CEAs would encourage the meaningful participation of small businesses better than a nationwide or regional geographic licensing approach because the smaller areas would likely require a lower minimum investment. Further, the Commission noted that for those seeking a regional or national footprint, the use of CEAs would not prevent them from aggregating areas to create such larger networks.

30. While we do not prejudge the type of services licensees will offer in the 12 GHz band, we nonetheless believe that it is appropriate to adopt a service area definition that will afford MVDSS licensees the opportunity to provide a wide array of services. Based on the record in this proceeding, we believe that utilizing DMAs may be more effective in this regard. DMAs, as compared to CEAs, provide a better method to delineate television markets based on viewing patterns. Consequently, for those MVDDS licensees seeking to provide MVPD service offerings involving the retransmission of broadcast programming, the use of DMAs could provide additional economic benefits. For example, MVDDS licensees with service offerings involving the delivery of television programming may find the use of DMAs to be administratively easier due to the close nexus between the television viewer market areas as determined by the DMA delineation and the proposed use of the service.

31. As to other uses, including fixed services, we believe that DMAs and CEAs are equally advantageous because they are both local in nature. While we recognize that CEAs are smaller than DMAs, we continue to believe that DMAs, which are county-based, provide a viable option in facilitating local access to cable, non-cable, and MVDDS service offerings. Consequently, we believe that both DMAs and CEAs would encourage rapid service deployment in unserved or underserved areas and encourage meaningful participation by small businesses. Additionally, entities desiring a national footprint, may aggregate either DMAs or CEAs to create such larger networks.

Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rule

32. None.

Ordering Clauses

33. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, shall send a copy of this Second Further Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with section 603(a) of the Regulatory Flexibility Act, 5 U.S.C. 603(a).

34. Pursuant to the authority contained in sections 4, 4(i), 7, 303, 303(g), 303(r), 307 and 332(c)(7) of the Communications Act of 1934, as amended, 47 U.S.C. 154, 154(i), 157, 303, 303(g), 303(r), 307, this Second Further Notice of Proposed Rulemaking is adopted.

List of Subjects in 47 CFR Part 101

Communication equipment, Radio, Reporting and recordkeeping requirements.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Rule Changes

For the reasons discussed in the preamble the FCC proposes to amend 47 CFR part 101 as follows:

PART 101—FIXED MICROWAVE SERVICES

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

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

2. Section 101.1401 is revised to read as follows:

§ 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 pamphlet 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.

3. Section 101.1421 is amended by revising paragraphs (b) and (c) to read as follows:

§ 101.1421 Coordination of adjacent area MVDDS stations and incumbent public safety POFS stations.

* * * * *

(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 of this part. A list of public safety incumbents is attached to the released 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.

[FR Doc. 03–9681 Filed 4–18–03; 8:45 am]

BILLING CODE 6712–01–P