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to-subscriber transmissions, as provided in §§ 25.257 and 101.103(h).

(3) 31,075–31,225 MHz is authorized on a primary protected basis and is shared with private microwave point-to-point systems licensed prior to March 11, 1997, as provided in § 101.103(b).

(c) In Block B licenses, the frequencies are authorized as follows:

(1) On a primary protected basis if LMDS shares the frequencies with systems licensed as Local Television Transmission Service (LTTS) licensed prior to March 11, 1997, as provided in § 101.103(b).

(2) On a co-equal basis with systems not licensed as LTTS prior to March 11, 1997, as provided in § 101.103(g).

§ 101.1007 Geographic service areas and number of licenses.

LMDS service areas are Basic Trading Areas (BTAs) as defined in the Rand McNally 1992 Commercial Atlas & Marketing Guide, 123rd Edition, at pages 38–39, that identifies 487 BTAs based on the 50 States and as defined to include the BTA-like areas of the United States Virgin Islands, American Samoa, Guam, Mayaguez/Aguadilla-Ponce, Puerto Rico, San Juan, Puerto Rico, and the Commonwealth of Northern Marinas, for a total of 493 BTAs.

§ 101.1009 System operations.

(a) The licensee may construct and operate any number of fixed stations anywhere within the area authorized by the license without prior authorization, except as follows:

(1) A station would be required to be individually licensed if:

(i) International agreements require coordination;

(ii) Submission of an Environmental Assessment is required under § 1.1307 of this chapter.

(iii) The station would affect areas identified in § 1.924 of this chapter.

(2) Any antenna structure that requires notification to the Federal Aviation Administration (FAA) must be registered with the Commission prior to construction under § 17.4 of this chapter.

(b) Whenever a licensee constructs or makes system changes as described in paragraph (a) of this section, the licensee is required to notify the Com-

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mission within 30 days of the change under § 1.947 of this chapter and include a statement of the technical parameters of the changed station.

[62 FR 23168, Apr. 29, 1997, as amended at 63 FR 68984, Dec. 14, 1998; 69 FR 17959, Apr. 6, 2004]

§ 101.1011 Construction requirements and criteria for renewal expectancy.

(a) LMDS licensees must make a showing of “substantial service” in their license area within ten years of being licensed. “Substantial” service is defined as service which is sound, favorable, and substantially above a level of mediocre service which might minimally warrant renewal. Failure by any licensee to meet this requirement will result in forfeiture of the license and the licensee will be ineligible to regain it.

(b) A renewal applicant involved in a comparative renewal proceeding shall receive a preference, commonly referred to as a renewal expectancy, that is the most important comparative factor to be considered in the proceeding as long as the applicant’s past record for the relevant license period demonstrates that:

(1) The renewal applicant has provided “substantial” service during its past license term; and

(2) The renewal applicant has substantially complied with applicable FCC rules, policies, and the Communications Act of 1934, as amended.

(c) In order to establish its right to a renewal expectancy, an LMDS renewal applicant involved in a comparative renewal proceeding must submit a showing explaining why it should receive a renewal expectancy. At a minimum, this showing must include:

(1) A description of its current service in terms of geographic coverage and population served;

(2) An explanation of its record of expansion, including a timetable of new construction to meet changes in demand for service;

(3) A description of its investments in its LMDS system; and

(4) Copies of all FCC orders finding the licensee to have violated the Communications Act or any FCC rule or

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policy; and a list of any pending proceedings that relate to any matter described in this paragraph.

(d) In making its showing of entitlement to a renewal expectancy, a renewal applicant may claim credit for any system modification applications that were pending on the date it filed its renewal application. Such credit will not be allowed if the modification application is dismissed or denied.

§ 101.1013 Permissible communications services.

(a) Authorizations for stations in the Local Multipoint Distribution Service will be granted to provide services on a common carrier basis or a non-common carrier basis or on both a common carrier and non-common carrier basis in a single authorization.

(b) Stations may render any kind of communications service consistent with the Commission's rules and the regulatory status of the station to provide services on a common carrier or non-common carrier basis.

(c) An applicant or licensee may submit a petition at any time requesting clarification of the regulatory status required to provide a specific communications service.

§ 101.1017 Requesting regulatory status.

(a) *Initial applications.* An applicant will specify on FCC Form 601 if it is requesting authorization to provide services on a common carrier basis, a non-common carrier basis, or on both a common carrier and non-common carrier basis.

(b) *Amendment of pending applications.* (1) Any pending application may be amended to:

(i) Change the carrier status requested, or

(ii) Add to the pending request in order to obtain both common carrier and non-common carrier status in a single license.

(2) Amendments to change, or add to, the carrier status in a pending application are minor amendments pursuant to § 1.927 of this chapter.

(c) *Modification of license.* (1) A licensee may modify a license to:

(i) Change the carrier status authorized, or

(ii) Add to the status authorized in order to obtain both common carrier and non-common carrier status in a single license.

(2) Applications to change, or add to, the carrier status in a license are modifications not requiring prior Commission authorization filed under § 1.927 of this chapter. If the change results in the discontinuance, reduction, or impairment of an existing service, the licensee is also governed by § 101.305(b) or (c) and submits the application under § 1.927 of this chapter in conformance with the time frames and requirements of §§ 101.305 (b) or (c).

[62 FR 23168, Apr. 29, 1997, as amended at 63 FR 68984, Dec. 14, 1998]

Subpart M—Competitive Bidding Procedures for LMDS

SOURCE: 62 FR 23172, Apr. 29, 1997, unless otherwise noted.

§ 101.1101 LMDS service subject to competitive bidding.

Mutually exclusive initial applications for LMDS licenses are subject to competitive bidding procedures. The general competitive bidding procedures set forth in part 1, subpart Q of this chapter will apply unless otherwise provided in this subpart.

[67 FR 46379, July 9, 2002]

§ 101.1102–101.1105 [Reserved]

§ 101.1107 Bidding credits for very small businesses, small businesses and entrepreneurs.

(a) A winning bidder that qualifies as a very small business, as defined in § 101.1112, or a consortium of very small businesses may use a bidding credit of 45 percent to lower the cost of its winning bid.

(b) A winning bidder that qualifies as a small business, as defined in § 101.1112, or a consortium of small businesses may use a bidding credit of 35 percent to lower the cost of its winning bid.

(c) A winning bidder that qualifies as an entrepreneur, as defined in § 101.1112, or a consortium of entrepreneurs may use a bidding credit of 25 percent to lower the cost of its winning bid.