

**§ 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. Controlling 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;