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which an application was filed for this purpose with the regulatory agency.

(6) If no such certification or application is tendered to the Commission within ninety (90) days of final grant of the initial license, the Commission may cancel or rescind the license automatically, shall retain all monies paid to the Commission, and, based on the facts presented, shall take any other action it may deem appropriate.

NOTE TO §101.1412: Waivers of §101.1412(f) may be granted upon an affirmative showing:

(a) That the interest holder has less than a fifty percent voting interest in the licensee and there is an unaffiliated single holder of a fifty percent or greater voting interest;

(b) That the interest holder is not likely to affect the local market in an anticompetitive manner;

(c) That the interest holder is not involved in the operations of the licensee and does not have the ability to influence the licensee on a regular basis; and

(d) That grant of a waiver is in the public interest because the benefits to the public of common ownership outweigh any potential anticompetitive harm to the market.

[69 FR 31746, June 7, 2004, as amended at 69 FR 59146, Oct. 4, 2004]

§ 101.1413 License term and renewal expectancy.

(a) The MVDDS license term is ten years, beginning on the date of the initial authorization grant.

(b) Application of a renewal expectancy is based on a showing of substantial service at the end of five years into the license period and ten years into the license period. The substantial service requirement is defined as a service that is sound, favorable, and substantially above a level of mediocre service which might minimally warrant renewal. At the end of five years into the license term and ten years into the license period, the Commission will consider factors such as:

(1) Whether the licensee’s operations service niche markets or focus on serving populations outside of areas served by other MVDDS licensees;

(2) Whether the licensee’s operations serve populations with limited access to telecommunications services; and

(3) A demonstration of service to a significant portion of the population or land area of the licensed area.

(c) The renewal application of an MVDDS licensee must include the following showings in order to claim a renewal expectancy:

(1) A coverage map depicting the served and unserved areas;

(2) A corresponding description of current service in terms of geographic coverage and population served or transmitter locations in the served areas; and

(3) Copies of any Commission Orders finding the licensee to have violated the Communications Act or any Commission rule or policy and a list of any pending proceedings that relate to any matter described by the requirements for the renewal expectancy.

§ 101.1415 Partitioning and disaggregation.

(a) MVDDS licensees are permitted to partition licensed geographic areas along county borders (Parishes in Louisiana or Territories in Alaska). Disaggregation will not be permitted by MVDDS licensees in the 12.2–12.7 GHz band. “Partitioning” is the assignment of geographic portions of a license along geopolitical or other boundaries. “Disaggregation” is the assignment of discrete portions or “blocks” of spectrum licensed to a geographic licensee or qualifying entity.

(b) Eligibility. (1) Parties seeking approval for partitioning shall request from the Commission an authorization for partial assignment of a license pursuant to §1.948 of this chapter.

(2) MVDDS licensees may apply to the Commission to partition their licensed geographic service areas to eligible entities and are free to partition their licensed spectrum at any time following the grant of a license.

(3) Any existing frequency coordination agreements shall convey with the assignment of the geographic area or spectrum, and shall remain in effect for the term of the agreement unless new agreements are reached.

(c) Technical standards. (1) Partitioning. In the case of partitioning, applicants and licensees must file FCC Form 603 pursuant to §1.948 of this chapter and list the partitioned service area on a schedule to the application.

(2) The geographic coordinates must be specified in degrees, minutes, and

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seconds to the nearest second of latitude and longitude and must be based upon the 1983 North American Datum (NAD83).

(d) *Unjust enrichment.* 12 GHz licensees that received a bidding credit and partition their licenses to entities not meeting the eligibility standards for such a bidding credit, will be subject to the provisions concerning unjust enrichment as set forth in §1.2111 of this chapter.

(e) *License term.* The MVDDS license term is ten years, beginning on the date of the initial authorization grant. The license term for a partitioned license area shall be the remainder of the original licensee's license term as provided for in §101.1413.

(f) *Construction requirements.* Applications requesting approval for partitioning must include a certification by each party stating that one or both parties will satisfy the construction requirement set forth in §101.1413. Failure by a party to meet its respective construction requirement will result in the automatic cancellation of its license without further Commission action.

§ 101.1417 Annual report.

Each MVDDS licensee shall file with the Broadband Division of the Wireless Telecommunications Bureau of the Commission two copies of a report by March 1 of each year for the preceding calendar year. This report must include the following:

- (a) Name and address of licensee;
- (b) Station(s) call letters and primary geographic service area(s); and
- (c) The following statistical information for the licensee's station (and each channel thereof):
 - (1) The total number of separate subscribers served during the calendar year;
 - (2) The total hours of transmission service rendered during the calendar year to all subscribers;
 - (3) The total hours of transmission service rendered during the calendar year involving the transmission of local broadcast signals; and
 - (4) A list of each period of time during the calendar year in which the station rendered no service as authorized,

if the time period was a consecutive period longer than 48 hours.

§ 101.1421 Coordination of adjacent area MVDDS stations.

(a) MVDDS licensees in the 12.2-12.7 GHz band are required to develop sharing and protection agreements based on the design and architecture of their systems, in order to ensure that no harmful interference occurs between adjacent geographical area licensees. MVDDS licensees shall:

(1) Engineer systems to be reasonably compatible with adjacent and co-channel operations in the adjacent areas on all its frequencies; and

(2) Cooperate fully and in good faith to resolve interference and transmission problems that are present on adjacent and co-channel operations in adjacent areas.

(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. A list of public safety incumbents is attached as Appendix I to the 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.