

and Order, MB Docket No. 03–86, adopted July 1, 2003, and released July 3, 2003. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center, 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, 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](mailto:qualexint@aol.com).

#### List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended 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.

■ 2. Section 73.202(b), the Table of FM Allotments under Texas, is amended by adding Channel 250A at George West.

Federal Communications Commission.

**John A. Karousos,**

*Assistant Chief, Audio Division, Media Bureau.*

[FR Doc. 03–18251 Filed 7–17–03; 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 03–152]

#### Commission's Rules To Permit Operation of NGSO FSS Systems Co-Frequency With GSO and Terrestrial Systems in the Ku-Band Frequency Range

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** In this document we revise our service area definition and build out requirement for the Multichannel Video Distribution and Data Service (MVDDS) in the 12.2–12.7 GHz band (12 GHz band). Specifically, we adopt Designated Market Areas (DMAs) as the service area definition for MVDDS. We also conclude that a five-year substantial service build out requirement is more appropriate for the

MVDDS. We believe that these actions will better facilitate the delivery of advanced wireless services in the 12 GHz band and promote expeditious deployment of such services to a wide range of populations, including unserved and underserved communities.

**DATES:** Effective September 16, 2003.

**ADDRESSES:** Federal Communications Commission 445 12th Street, SW., TW–A325, Washington, DC 20554.

#### FOR FURTHER INFORMATION CONTACT:

Jennifer Burton, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau at (202) 418–0680, email [jburton@fcc.gov](mailto:jburton@fcc.gov).

**SUPPLEMENTARY INFORMATION:** This is a summary of the FCC's *Third Report and Order*, FCC 03–152, adopted on June 25, 2003, and released on July 7, 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: <http://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](mailto:bmillin@fcc.gov).

1. In the *Third R&O*, we revise our service area definition and build out requirement for the Multichannel Video Distribution and Data Service (MVDDS) in the 12.2–12.7 GHz band (12 GHz band). In the *Second Further Notice of Proposed Rule Making (Second Further Notice)*, 68 FR 19486, (April 21, 2003), in this proceeding, we sought further comment on the most appropriate service area definition for the geographic licensing of MVDDS. In this connection, we sought comment on whether use of the DMAs defined by Nielsen Media Research (Nielsen) 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 sought comment on whether we should modify the MVDDS build out requirement as a means to foster expeditious deployment of advanced wireless services to these communities as well.

2. Upon consideration of the record in this proceeding, including but not limited to the comments filed in response to the *Second Further Notice*, we adopt DMAs as the service area definition for MVDDS. We also

conclude that a five-year substantial service build out requirement is more appropriate for the MVDDS. We believe that these actions will facilitate delivery of advanced wireless services in the 12 GHz band and promote expeditious deployment of such services to a wide range of populations, including unserved and underserved communities.

#### Procedural Matters

##### *Final Regulatory Flexibility Analysis*

3. The Final Regulatory Flexibility Analysis, required by section 603 of the Regulatory Flexibility Act, as amended by the Congressional Review Act, Public Law No. 104–121 (1996).

##### *Paperwork Reduction Act*

4. The *Third R&O* contains modified information collection(s) subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. It will be submitted to the Office of Management and Budget (OMB) for review under the PRA. OMB, the general public and other Federal agencies are invited to comment on the modified information collection(s) contained in this proceeding.

##### *Final Regulatory Flexibility Analysis*

5. As required by the Regulatory Flexibility Act (RFA), we incorporated an Initial Regulatory Flexibility Analysis (IRFA) in the *Second Further Notice of Proposed Rule Making*. In view of the fact that we have adopted a further rule amendment in the *Third Report and Order*, we have included this Final Regulatory Flexibility Analysis (FRFA). This present FRFA conforms to the RFA.

##### *Need for, and Objectives of the Third Report and Order*

6. In the *Third Report and Order*, we revisit the geographic licensing plan adopted in the *Second Report and Order*, 67 FR 63279, (October 11, 2002), and adopt a revised licensing framework for MVDDS. In the *Second Report and Order*, the Commission adopted a service area definition for MVDDS on the basis of Component Economic Areas (CEAs). Based on the previously-established record in this proceeding, differing responsive comments to the January 20, 2003 *Auction PN* received from Northpoint Technology, Ltd. (Northpoint) and MDS America on the issue of service area designations, and on subsequent discussions between Commission staff and Nielsen representatives concerning the use of its DMAs, we revisited the service area designation. We are persuaded to adopt a service area definition for MVDDS on

the basis of DMAs instead of CEAs. We believe that licensing MVDDS on the basis of DMAs may place wireless competitors on the same economic footing as cable systems, which generally have a royalty-free statutory copyright license to retransmit local television programming within the DMA of the station being rebroadcast. In addition, we believe that the use of DMAs may be administratively easier for licensees due to the close nexus between the television viewer market areas as determined by the DMA delineation and the proposed use of the service (the delivery of television programming).

7. We also took the opportunity to explore whether the current build out requirement sufficiently promotes expeditious deployment of service. We believe that reducing the build out period from ten years to five years will ensure effective use of the spectrum and a faster deployment of service to the public.

*Summary of Significant Issues Raised by Public Comments in Response to the FRFA*

8. We received no comments in response to the IRFA in the *Second Further Notice*.

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

9. 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).

10. *Small Multichannel Video Programming Distributors (MVPDs)*. The SBA has developed a small business size standard for Cable and Other Program Distribution, which includes all such companies generating \$12.5 million or less in annual receipts. According to Census Bureau data for 1997, there were a total of 1,311 firms in this category, total, that had operated for the entire year. Of this total, 1,180 firms had annual receipts of under \$10 million and an additional 52 firms had

receipts of \$10 million or more but less than \$25 million. Consequently, we estimate that the majority of providers in this service category are small businesses that may be affected by the rules and policies adopted herein. We address below each service individually to provide a more precise estimate of small entities.

11. *Cable Services*. The Commission has developed, with SBA's approval, a 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. In 1996, the Commission estimated that 1,439 cable operators 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 merge with other cable operators. Consequently, using this definition, we estimate that the decisions and rules may affect fewer than 1,439 small entity cable system operators.

12. The Communications Act defines a small cable system operator as "a cable operator that, directly or through an affiliate, serves in the aggregate less 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, we deem an operator serving fewer than 617,000 subscribers to be 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 1,450. 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.

13. *DBS Service*. DBS falls within the SBA definition of Cable and Other Program Distribution (NAICS 513220). As noted, this definition provides that a small entity has \$12.5 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.

14. *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 stations (NAICS 513112), and television broadcasting (NAICS 513120). These definitions provide, respectively, that a small entity is one with either \$6 million or less in annual receipts or \$12 million in annual receipts. The numbers of these stations are very small. The Commission does not collect financial information on these auxiliary broadcast facilities. The Commission, however, continues to believe 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 \$6 million for a radio station or \$12 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.

15. *Private Operational Fixed Service*. Incumbent microwave services in the 12.2–12.7 GHz bands include common carrier, private operational fixed (POF), and broadcast auxiliary service (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 1,500 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.

16. The rules set forth in the *Third Report and Order* will affect all entities that intend to provide terrestrial MVDDS operations in the 12.2–12.7 GHz band.

*Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements*

17. The *Third Report and Order* modifies the reporting, recordkeeping or other compliance requirements previously adopted in this proceeding. We are changing the service area designation from CEAs to DMAs, resulting in a change in the number and definition of the service areas. In addition, we are changing the build out period from ten years to five years, resulting in compliance with these rules in half the time. However, we believe that these rule changes will not have a burdensome result, especially in light of our finding that small businesses will benefit from the new service area designation and because the record indicates that interested parties will have no difficulty complying with the new five year build out.

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

18. 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.

19. Regarding our revisiting the service area issue to utilize DMAs in the *Third Report and Order* in lieu of the CEA service area designation adopted in the *Second Report and Order*, we do not anticipate any adverse impact on small entities. We believe that the use of

DMAs better comports with the proposed service and that this decision will place wireless competitors to cable services on the same economic footing as cable systems, which generally have a royalty-free statutory copyright license to retransmit local TV programming within the DMA of the station being rebroadcast.

20. We also revisited the build out requirement to establish a five-year construction period in the *Third Report and Order*, in lieu of the ten-year construction period established in the *Second Report and Order*. We do not anticipate any adverse impact on small entities. We determined that the revised time frame was necessary in order to promote timely service to the public, and that those interested in providing service will have ample time to modify their business plans prior to a competitive bidding procedure.

*Report to Congress*

21. The Commission will send a copy of the *Third Report and Order*, including this FRFA, in a report to Congress pursuant to the Congressional Review Act. In addition, the Commission will send a copy of the *Third Report and Order*, including this FRFA, to the Chief Counsel for Advocacy of the Small Business Administration.

**Ordering Clauses**

22. Pursuant to the authority contained in sections 4(i), 7(a), 301, 303(c), 303(f), 303(g), 303(r), 308, and 309(j) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 157(a), 301, 303(c), 303(f), 303(g), 303(r), 308, 309(j), the *Third Report and Order* is adopted.

23. Part 101 of the Commission's Rules is amended as specified in rule changes, effective September 16, 2003. This action is taken pursuant to sections 4(i), 303(c), 303(f), 303(g), 303(r), and 309(j) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(c), 303(f), 303(g), 303(r) and 309(j).

**List of Subjects in 47 CFR Part 101**

FCC equipment, Radio, Reporting and recordkeeping requirements.

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary.*

**Rule Changes**

■ For the reasons discussed in the preamble the FCC amends 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 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.

■ 3. Section 101.1413 is amended by revising paragraph (b) introductory text to read as follows:

**§ 101.1413 License term and renewal expectancy.**

\* \* \* \* \*

(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:

\* \* \* \* \*

■ 4. 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 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.

[FR Doc. 03–18221 Filed 7–17–03; 8:45 am]

BILLING CODE 6712–01–P

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 600

[Docket No. 030509119–3168–02; I.D. 032603D]

RIN 0648–AQ99

#### Magnuson-Stevens Act Provisions; Fishing Capacity Reduction Program; Pacific Coast Groundfish Fishery; California, Washington, and Oregon Fisheries for Coastal Dungeness Crab and Pink Shrimp

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration, Commerce.

**ACTION:** Final notice of proposed fishing capacity reduction program.

**SUMMARY:** NMFS issues this final notice about a voluntary fishing capacity reduction program in the Pacific Coast groundfish fishery. After a successful referendum, harvesters accepted to participate would be paid to surrender their fishing permits and restrict their vessels. A loan, which would be repaid by fishermen remaining in the fishery, will finance the majority of the program's cost. The program will invite bids from owners of groundfish trawl

permits (except those harvesting whiting and processing it at sea) that are willing to surrender their fishing privileges, score the bids in a reverse auction against the value of bidders' harvests, and then conduct a referendum regarding repayment of the loan. If the referendum is successful, accepted bidders must relinquish their California, Oregon, and Washington fishing licenses for coastal Dungeness crab and pink shrimp. Accepted bidders must also surrender their Federal groundfish permits, as well as all other Federal fishing licenses, fishery permits, area and species endorsements, and any other fishery privileges issued to vessels named in their bids (or to persons on the basis of their operation or ownership of those vessels). The fishing vessels involved will never again be eligible to fish. If the referendum is not successful, bidders are excused from all such obligations. The groundfish program aims to increase the remaining harvesters' productivity, help financially stabilize the fishery, and help conserve and manage its fish. This notice also contains the groundfish program's invitation to bid and bidding document.

**DATES:** The final notice is effective July 18, 2003.

**ADDRESSES:** Copies of the environmental assessment and regulatory impact review are available from NMFS upon request from Michael L. Grable, Chief, Financial Services Division, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910–3282. Comments involving the reporting burden estimates or any other aspects of the collection of information requirements should be sent both to Michael L. Grable at the above address and to the National Oceanic and Atmospheric Administration Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503. Comments sent by Internet or e-mail will not be accepted.

**FOR FURTHER INFORMATION CONTACT:** Michael L. Grable, (301) 713–2390.

#### SUPPLEMENTARY INFORMATION:

##### I. General

Enacted on February 20, 2003, Section 212 of Division B, Title II, of Pub. L. 108–7 (section 212) authorizes a fishing capacity reduction program (program) for that portion of the limited entry trawl fishery under the Pacific Coast Groundfish Fishery Management Plan whose permits, excluding those registered to whiting catcher-processors, are endorsed for trawl gear operation (reduction fishery). The program's

objective is to reduce the number of vessels and permits endorsed for the operation of groundfish trawl gear. Vessels that catch and process whiting at sea are ineligible to participate. The program also involves corollary fishing capacity reduction in the California, Oregon, and Washington fisheries for coastal Dungeness crab and pink shrimp (fee-share fisheries). Sections 1111 and 1112 of the Merchant Marine Act, 1936 (46 App. U.S.C. 1279f and 1279g) (Title XI) authorize loans for financing the cost of fishing capacity reduction programs (reduction loans).

The program has two appropriations. A \$10 million appropriation, authorized by section 501(b) of Division N, Title V, of Public Law 108–7, directly funds part of the program's cost. The second, a \$0.5 million appropriation, included in Pub. L. 107–206, funds the Federal Credit Reform Act cost of authorizing a \$36 million reduction loan.

Section 212 supersedes some of the provisions of both the fishing capacity reduction framework regulations (50 CFR 600.1000 *et seq.*) and the Magnuson-Stevens Act fishing capacity reduction provisions (16 U.S.C. 1861a(b)–(e)).

When fishing capacity reduction is undertaken pursuant to the Magnuson-Stevens Act provisions, NMFS implements each reduction program by adding an implementing section to the framework regulations. Section 212, however, renders some of the Magnuson-Stevens Act provisions and the framework regulations inapplicable. Among other things, the groundfish program applies to more than one fishery. Section 212 also requires NMFS to implement the groundfish program by publishing a notification and an invitation to bid in the **Federal Register** rather than by promulgating additional regulations. In addition, section 212 supersedes one provision of Title XI, by extending the reduction loan's term to 30 years.

##### II. Reduction Cost

The amount paid to harvesters in exchange for relinquishing their fishery privileges (reduction cost) may equal, but may not exceed, \$46 million. A \$10 million appropriation will fund part of the reduction, and future harvesters will finance any remainder.

##### III. Summary of Comments

NMFS received comments from nine entities. Comments from both individuals and organizations represent the views of many parties. Most of the comments supported fishing capacity reduction in the reduction fishery, although some comments disagreed