

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 MVDDS 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.

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