

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