

436. IT IS ORDERED that the actions of the Commission herein ARE TAKEN pursuant to Sections 4(i), 257, 303(r), and 309(j) of the Communications Act of 1934, 47 U.S.C. §§ 154(i), 257, 303(r), 309(j).

437. IT IS FURTHER ORDERED that the Commission's Rules ARE AMENDED as set forth in Appendix A, effective 60 days after publication of this Order in the Federal Register.

438. IT IS FURTHER ORDERED that the Petitions for Reconsideration of the Memorandum Opinion and Order in Application of Hye Crest Management, Inc., for License Authorization in the Point-to-Point Microwave Radio Service in 27.5-29.5 GHz Band and Request for Waiver of the Rules, File No. 10380-CF-P-88, filed by the University of Texas-Pan American, RioVision of Texas, Inc., the City of Gustine, California, Video/Phone Systems, Inc., Northeast Wireless, High Band Broadcasting Corporation, FM Video Broadcasters, Western Sierra Bancorp, M3 Illinois Telecommunications Corporation, Perry W. Haddon as President of GHz Equipment Company; Connecticut Home Theater Corporation, Alliance Associates, Stevan A. Birnbaum, BMW Associates, Joseph B. Buchwald, Celltel Communications Corporation, Linda Chester, Thomas F. Clark, the Committee to Promote Competition in the Cable Industry, Arnold Cornblatt, CT Communications Corporation, Evanston Transmission Company, Judy Feinberg, Lawrence Fraiberg, Freedom Technologies, Inc., Rosalie Y. Goldberg, Harry A. Hall, Lloyd Hascoe, L.D.H. International, Inc., Paul R. Likins, William Lonergan, Herbert S. Meeker, James L. Melcher, Frederick Myers, Frederick M. Peyser, PMJ Securities, Inc., Robert E. La Blanc Associates, Inc., Jeanne P. Robertson, Sanford Robertson, Robert Rosenkranz, R&R Telecommunications Partners, SCNY Communications, Inc., Seaview Telesystems Partners, Lewis W. Siegel, Michael S. Siegel, Kim Sloan, SMC Associates, Charles D. Snelling, Telecom Investment Corp., Telecommunications/Haddock Investors, Video Communications Corporation, Diane Wechsler, and Ivan Wolff ARE DENIED.

439. IT IS FURTHER ORDERED that Local Multipoint Distribution Service licensees SHALL ATTACH appropriate labels to every subscriber transceiver antenna and provide notice to users regarding the potential hazard of remaining within the Maximum Permissible Exposure separation distance of these high gain antennas, as indicated herein.

440. IT IS FURTHER ORDERED, that, effective upon adoption of this Order, applications WILL NOT BE ACCEPTED for filing under Part 101 of the Commission's Rules either for new services or for license modifications in the 31 GHz band, except those filed by incumbent city licensees and private business users pursuant to the terms of this Order, and that all such applications for license modifications SHALL BE FILED no later than 15 days following the effective date of this Order.

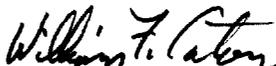
441. IT IS FURTHER ORDERED that the applications filed for authorization to operate under the existing licensing rules for the 31,000-33,000 MHz band and pending review under

the existing rules SHALL BE DISMISSED, and applicants that submitted filing fees with the applications SHALL BE REFUNDED.

442. IT IS FURTHER ORDERED that, pursuant to Section 1.402(h) of the Commission's Rules,⁶³⁷ the Chief, Office of Engineering and Technology, SHALL SELECT a panel of experts to review the specific technologies set forth in the pioneer preference request that was filed by the Suite 12 Group, on September 23, 1991, as amended on November 19, 1991, and that was accepted and placed on Public Notice on December 16, 1991.⁶³⁸

443. IT IS FURTHER ORDERED that, pursuant to Section 5(c) of the Communications Act of 1934,⁶³⁹ the Chief, Wireless Telecommunications Bureau, IS GRANTED DELEGATED AUTHORITY to implement and modify auction procedures in the Local Multipoint Distribution Service, including the general design and timing of the auction; the number and grouping of authorizations to be offered in a particular auction; the manner of submitting bids; the amount of bid increments; activity and stopping rules; and application and payment requirements, including the amount of upfront payments; and to announce such procedures by Public Notice.

FEDERAL COMMUNICATIONS COMMISSION


William F. Caton
Acting Secretary

⁶³⁷ 47 CFR § 1.402(h).

⁶³⁸ Suite 12 Group, Petition, RM 7872, PP-22, Public Notice, Report No. 21049, released Dec. 16, 1991; *see First NPRM*, 8 FCC Rcd at 565 (para. 56).

⁶³⁹ 47 U.S.C. § 155(c).

APPENDIX A

Final Rules

Part 1 of Title 47 of the Code of Federal Regulations is amended as follows:

Part 1 - PRACTICE AND PROCEDURE

1. The authority citation for Part 1 continues to read as follows:

AUTHORITY: 47 U.S.C. §§ 151, 154, 303 and 309(j), unless otherwise noted.

2. Section 1.1307 is amended by adding a new entry at the end of Table 1 in paragraph (b)(1) as follows:

§ 1.1307 Actions which may have a significant environmental effect, for which Environmental Assessments (EAs) must be prepared.

* * * * *

TRANSMITTERS, FACILITIES, AND OPERATIONS SUBJECT TO
ROUTINE ENVIRONMENTAL EVALUATION

Service (Title 47 CFR Rule Part)	Evaluation required if:
***	***
Local Multipoint Distribution Service (subpart L of part 101)	<p><u>Non-rooftop antennas:</u> Height above ground level to radiation center < 10 m and power > 1640 W EIRP</p> <p><u>Rooftop antennas:</u> Power > 1640 W EIRP</p> <p>LMDS licensees are required to attach a label to subscriber transceiver antennas that (1) provides adequate notice regarding potential radio frequency safety hazards, e.g., information regarding the safe minimum separation distance required between users and transceiver antennas; and (2) references the applicable FCC radio frequency emission guidelines contained in FCC OST Bulletin 65, 2d Edition.</p>

Subpart Q or Part 1 of Subchapter A of Chapter I of Title 47 of the Code of Federal Regulations is amended as follows:

PART 1 - PRACTICE AND PROCEDURE

3. Section 1.77 is amended by revising paragraph (i) to read as follows:

§ 1.77 Detailed application procedures, cross references

* * * * *

(i) Rules governing applications for authorizations in the Common Carrier and Private Radio terrestrial microwave services and Local Multipoint Distribution Services are set out in Part 101.

4. Section 1.2102 is amended by adding paragraph (a)(9) as follows:

§ 1.2102 Eligibility of applications for competitive bidding.

(a) * * *

(9) Local Multipoint Distribution Service (LMDS) (see 47 CFR Part 101).

Part 2 of Chapter I of Title 47 of the Code of Federal Regulations is amended as follows:

5. Section 2.106 is amended by revising Column 6 for the entries 27.5-29.5 GHz and 31.0-31.3 GHz to read as follows:

§ 2.106 Table of Frequency Allocations.

International table			United States table		FCC use designators	
Region 1 -- allocation GHz	Region 2 -- allocation GHz	Region 3 -- allocation GHz	Government	Non-Government	Rule part(s)	Special-use frequencies
(1)	(2)	(3)	Allocation GHz (4)	Allocation GHz (5)	(6)	(7)
*	*	*	*	*	*	*
27.5-29.5	27.5-29.5 FIXED SATELLITE (Earth-to-space) MOBILE		27.5-29.5	27.5-29.5 FIXED FIXED-SATELLITE (Earth-to-space) MOBILE	SATELLITE COMMUNICATIONS (25) FIXED MICRO-WAVE (101)	
*	*	*	*	*	*	*
31.0-31.3	31.0-31.3 FIXED MOBILE Standard Frequency and Time Signal-Satellite (space-to-Earth) Space Research		31.0-31.3 Standard Frequency and Time Signal-Satellite (space-to-Earth)	31.0-31.3 FIXED MOBILE Standard Frequency and Time Signal-Satellite (space-to-Earth)	FIXED MICRO-WAVE (101)	
*	*	*	*	*	*	*

Part 74 of Chapter I of Title 47 of the Code of Federal Regulations is amended as follows:

6. In § 74.602, paragraph (h) is removed and paragraphs (i) and (j) are redesignated as paragraphs (h) and (i).

Part 78 of Chapter I of Title 47 of the Code of Federal Regulations is amended as follows:

7. In § 78.18, paragraph (a)(5) is removed and paragraphs (a)(6) through (a)(8) are renumbered as paragraphs (a)(5) through (a)(7).

Part 95 of Chapter I of Title 47 of the Code of Federal Regulations is amended as follows:

8. In § 95.1, paragraph (b) is removed and paragraph (c) is redesignated as (b).

Part 101 of Chapter I of Title 47 of the Code of Federal Regulations is amended as follows:

PART 101 - FIXED MICROWAVE SERVICE

9. The authority citation for Part 101 continues to read as follows:

AUTHORITY: 47 U.S.C. §§ 154, 303, 309(j), unless otherwise noted.

10. Section 101.1 is amended by revising paragraph (a) to read as follows:

§ 101.1 Scope and authority.

(a) The purpose of the rules in this part is to prescribe the manner in which portions of the radio spectrum may be made available for private operational, common carrier, and Local Multipoint Distribution Service fixed, microwave operations that require transmitting facilities on land or in specified offshore coastal areas within the continental shelf.

* * * * *

11. Section 101.3 is amended by revising the two paragraphs in alphabetical order to read as follows:

* * * * *

Local Multipoint Distribution Service Hub Station. A fixed point-to-point or point-to-multipoint radio station in a Local Multipoint Distribution Service System that provides one-

way or two-way communication with Local Multipoint Distribution Service Subscriber Stations.

* * * * *

Local Multipoint Distribution Service System. A fixed point-to-point or point-to-multipoint radio system consisting of Local Multipoint Distribution Service Hub Stations and their associated Local Multipoint Distribution Service Subscriber Stations.

* * * * *

12. Section 101.5 is amended by revising paragraph (d) to read as follows:

§ 101.5 Station authorization required.

* * * * *

(d) For stations authorized under Subpart H (Private Operational Fixed Point-to-Point Microwave Service), Subpart I (Common Carrier Fixed Point-to-Point Microwave Service), and Subpart L (Local Multipoint Distribution Service), construction of new or modified stations may be initiated prior to grant of an authorization. As a condition to commencing construction under this subparagraph (d), the Commission may, at any time and without hearing or notice, prohibit such construction for any reason. Any construction conducted hereunder is at the applicant's sole risk.

13. Section 101.11 is amended by revising paragraph (a) to read as follows:

§ 101.11 Filing of applications, fees, and number of copies.

(a) Part 1 of this chapter contains information on application filing procedures and requirements for all services authorized under this part. All filings, unless they are filed electronically, must include the original application plus one copy. Instructions for electronic filing will be provided by public notice.

14. Section 101.15 is amended by revising paragraph (a) to read as follows:

§ 101.15 Application forms for common carrier fixed stations.

(a) *New or modified facilities.* Except for Local Multipoint Distribution Service in Subpart L, FCC Form 415 must be submitted and a license granted for each station. FCC Form 415 also must be submitted to amend any license application, to modify any license

pursuant to §§ 101.57(a) and 101.59, and to notify the Commission of modifications made pursuant to § 101.61. Cancellation of a license may be made by letter.

* * * * *

15. Section 101.19 is amended by revising paragraph (a)(5) to read as follows:

§ 101.19 General application requirements.

* * * * *

(a) * * *

* * * * *

(5) Show compliance with the special requirements applicable to each radio service and make all special showings that may be applicable (*e.g.*, those required by §§ 101.103(d), 101.701, 101.1001-101.1015, *etc.*).

* * * * *

16. Section 101.21 is amended by revising the introduction and adding paragraph (g) as follows:

§ 101.21 Technical content of applications.

Applications, except FCC Form 175, must contain all technical information required by the application form and any additional information necessary to fully describe the proposed facilities and to demonstrate compliance with all technical requirements of the rules governing the radio service involved (see Subparts C, F, G, I, J, and L, as appropriate). The following paragraphs describe a number of technical requirements.

* * * * *

(g) Each application in the Local Multipoint Distribution Service must contain all technical information required by FCC Form 600 and any other applicable form or associated Public Notices and by any applicable rules in this part and Subpart L.

17. Section 101.29 is amended by revising paragraph (a) to read as follows:

§ 101.29 Amendment of pending applications.

(a) Any pending application may be amended as a matter of right if the application has not been designated for hearing, or for comparative evaluation pursuant to § 101.51, or for the random selection process, or is not subject to the competitive bidding process, provided, however, that the amendments must comply with the provisions of § 101.41 as appropriate.

* * * * *

18. Section 101.35 is amended by adding paragraph (e) as follows:

§ 101.35 Preliminary processing of applications.

* * * * *

(e) Competitive bidding applications will be processed pursuant to part 1, subpart Q, of this chapter and subpart M of this part.

19. Section 101.37 is amended by revising paragraph (a) and adding paragraph (e) to read as follows:

§ 101.37 Public notice period.

(a) At regular intervals, the Commission will issue a public notice listing:

(1) The acceptance for filing of common carrier applications, Local Multipoint Distribution Service applications, and major amendments thereto;

(2) Significant Commission actions concerning these applications;

(3) The receipt of common carrier applications and Local Multipoint Distribution Service applications for minor modifications made pursuant to § 101.59;

(4) Information which the Commission in its discretion believes of public significance; and

(5) special environmental considerations as required by Part 1 of this chapter.

* * * * *

(e) Paragraphs (a) through (c) of this section shall not apply to FCC Form 175.

20. Section 101.45 is amended to revise the introduction to paragraph (b) as follows:

* * * * *

(b) A common carrier application, except in the Local Multipoint Distribution Service, will be entitled to be included in a random selection process or to comparative consideration with one or more conflicting applications only if:

* * * * *

21. Section 101.47 is amended by revising the introduction of paragraph (f) to read as follows:

§ 101.47 Consideration of applications.

* * * * *

(f) Except with respect to applications subject to Subpart L of this part, whenever the public interest would be served thereby, the Commission may grant one or more mutually exclusive applications expressly conditioned upon final action on the applications, and then either conduct a random selection process (in specified services under this rule part), designate all of the mutually exclusive applications for a formal evidentiary hearing or (whenever so requested) follow the comparative evaluation procedures of § 101.51, as appropriate, if it appears:

22. Section 101.57 is amended by revising paragraph (a) to read as follows:

§ 101.57 Modification of station license.

(a)(1) Except as provided in § 101.59, and except in the case of licenses authorized for operation in the 31,000-31,300 MHz band prior to March 11, 1997, and except in the Local Multipoint Distribution Service as provided in § 101.61(c)(10), no modification of a license issued pursuant to this part (or the facilities described thereunder) may be made except upon application to the Commission.

(2) Notwithstanding the provisions of subparagraph (1) of this paragraph, licensees (other than licensees in the Local Television Transmission Service) authorized to operate in the 31,000-31,300 MHz band prior to March 11, 1997, may submit applications to the Commission for modification of such licenses not later than the end of the 15-day period following [the effective date of this rule].

23. Section 101.59 is amended by revising paragraphs (a) and (b)(1) to read as follows:

§ 101.59 Processing of applications for facility minor modifications.

(a) Except in the Local Multipoint Distribution Service as provided in § 101.61(c)(10), unless an applicant is notified to the contrary by the Commission, as of the twenty-first day following the date of public notice, any application that meets the requirements of paragraph (b) of this section and proposes only the change specified in paragraph (c) of this section will be deemed to have been authorized by the Commission.

(b) An application may be considered under the procedures of this section only if:

(1) It is in the Private Operational Fixed Point-to-Point Microwave, Common Carrier Fixed Point-to-Point Microwave, Local Television Transmission, Digital Electronic Message Services, and Local Multipoint Distribution Services;

* * * * *

24. Section 101.61 is amended by revising paragraph (b)(3), adding paragraphs (c)(9) and (10), and revising paragraph (d) to read as follows:

§ 101.61 Certain modifications not requiring prior authorization.

* * * * *

(b) Licensees of fixed stations in the Private Operational Fixed Point-to-Point Microwave, Common Carrier Fixed Point-to-Point Microwave, Local Television Transmission, Digital Electronic Message Services, and Local Multipoint Distribution Services may make the facility changes listed in paragraph (c) of this section without obtaining prior Commission authorization, if:

* * * * *

(3) The Commission is notified of changes made to facilities by the submission of a completed FCC Form 415 within 30 days after the changes are made, except that licensees in the Local Multipoint Distribution Service must notify the Commission by the submission of a completed FCC Form 600 within 30 days or, if the change is subject to § 101.305(b) or 101.305(c), within the time periods required in those subparts.

* * * * *

(c) * * *

(9) In the Local Multipoint Distribution Service, changes in regulatory status from common carrier to non-common carrier status or non-common carrier to common carrier status, or from the addition of common carrier or non-common carrier status to an existing license in order to be authorized to provide both common carrier and non-common carrier services; except that changes that result in the discontinuance, reduction, or impairment of the existing service are subject to the requirements of § 101.305(b) and (c).

(10) In the Local Multipoint Distribution Service, the addition, removal, or relocation of facilities within the area authorized by the license, except as provided in § 101.1009.

(d) Licensees may notify the Commission of permissible changes or correct erroneous information on a license not involving a major change (*i.e.*, a change that would be classified as a major amendment as defined by § 101.29) without obtaining prior commission approval by filing FCC Form 415, except in Local Multipoint Distribution Service by filing FCC Form 600.

25. Section 101.63 is amended by revising paragraph (a) to read as follows:

§ 101.63 Period of construction; certification of completion of construction.

(a) Each station, except in the Local Multipoint Distribution Services, authorized under this part must be in operation within 18 months from the initial date of grant. Modification of an operational station must be completed within 18 months of the date of grant of the applicable modification request.

* * * * *

26. Section 101.101 is amended by revising the table entries for the 27,500-29,500 MHz and 31,000-31,300 MHz bands and by adding below the table a line for LMDS in alphabetical order to read as follows:

§ 101.101 Frequency availability.

FREQUENCY BAND (MHz)	RADIO SERVICE				
	COMMON CARRIER (Part 101)	PRIVATE RADIO (Part 101)	BROADCAST AUXILIARY (Part 74)	OTHER (Parts 15, 21, 24, 25, 74, 78 & 100)	NOTES
27,500-28,350	LMDS				
29,100-29,250	LMDS			SAT	
31,000-31,300	CC LMDS LTTS	OFS			F/M/TF

* * * * *

ITFS: Instructional Television Fixed Service -- (Part 74)

LMDS: Local Multipoint Distribution Service (including non-common carrier and common carrier services) -- (Part 101, Subpart L)

LTTS: Local Television Transmission Service -- (Part 101, Subpart J)

* * * * *

27. Section 101.103 is amended by revising paragraph (b) and adding new paragraphs (g) and (h) to read as follows:

§ 101.103 Frequency coordination procedures.

* * * * *

(b)(1) Operations in the bands 31,000-31,075 MHz and 31,225-31,300 MHz licensed prior to March 11, 1997, were licensed on an unprotected basis and are subject to harmful interference from similarly licensed operations in that band.

(i) Operations licensed in the Local Multipoint Distribution Service and those operations licensed prior to March 11, 1997, except in the Local Television Transmission Service, operating in these bands are equally protected against harmful interference from each other.

(ii) In the case of operations licensed prior to March 11, 1997, except in the Local Television Transmission Service, that are licensed on a point-to-radius basis, LMDS licensees shall be subject to the protection requirement established in this section in the case of existing links operated by such licensees, and in the case of links added by such licensees in the future in accordance with the terms of their point-to-radius licenses.

(iii) An LMDS licensee may not initiate operations within the point-to-radius area licensed to an operator (other than an operator in the Local Television Transmission Service) prior to March 11, 1997, even if such operator has not initiated operations to the fullest extent of the license. An LMDS licensee, however, may initiate operations at the border of such operator's license area without prior coordination if the LMDS licensee's operations would not cause harmful interference to the other operator's existing operations.

(iv) An operator (other than an operator in the Local Television Transmission Service) licensed on a point-to-radius basis prior to March 11, 1997, may add additional stations within its license area. Such operator shall coordinate with any affected LMDS licensee if its new operations might cause harmful interference to the existing operations of such LMDS licensee.

(v) Operations licensed prior to March 11, 1997, on a point-to-point basis may not be extended or otherwise modified through the addition of point-to-point links. Such operations shall be limited to the use of frequency pairs licensed as of March 11, 1997. Operations licensed in the Local Television Transmission Service as of March 11, 1997, may continue to operate, but such operators may not expand existing operations nor initiate new operations.

(2) Operations in the 31,075-31,225 MHz band licensed prior to March 11, 1997, shall receive no protection against harmful interference from authorized operations in the Local Multipoint Distribution Service in that band.

* * * * *

(g) *Licensees operating in Basic Trading Areas authorized in the Local Multipoint Distribution Service.*

(1) When the transmitting facilities in a Basic Trading Area (BTA) are to be operated in the bands 27,500-28,350 MHz; 29,100-29,250 MHz; and 31,000-31,300 MHz and the facilities are located within 20 kilometers of the boundaries of a BTA, each licensee must complete the frequency coordination process of subsection 101.103(d)(2) with respect to neighboring BTA licensees that may be affected by its operations prior to initiating service. In addition, all licensed transmitting facilities operating in the bands 31,000-31,075 MHz and 31,225-31,300 MHz and located within 20 kilometers of neighboring facilities must complete the frequency coordination process of § 101.103(d)(2) with respect to such authorized operations before initiating service.

(2) Response to notification should be made as quickly as possible, even if no technical problems are anticipated. Any response to notification indicating potential interference must specify the technical details and must be provided to the applicant, either electronically or in writing, within the 30-day notification period. Every reasonable effort should be made by all

licensees to eliminate all problems and conflicts. If no response to notification is received within 30 days, the licensee will be deemed to have made reasonable efforts to coordinate and commence operation without a response. The beginning of the 30-day period is determined pursuant to subsection 101.103(d)(v).

(h) *Special requirements for operations in the band 29,100-29,250 MHz.*

(1)(i) Local Multipoint Distribution Service (LMDS) receive stations operating on frequencies in the 29,100-29,250 MHz band within a radius of 75 nautical miles of the geographic coordinates provided by a non-GSO-MSS licensee pursuant to §§ 101.113(c)(2) or (c)(3)(i) (the "feeder link earth station complex protection zone") shall accept any interference caused to them by such earth station complexes and shall not claim protection from such earth station complexes.

(i) LMDS licensees operating on frequencies in the 29,100-29,250 MHz band outside a feeder link earth station complex protection zone shall cooperate fully and make reasonable efforts to resolve technical problems with the non-GSO MSS licensee to the extent that transmissions from the non-GSO MSS operator's feeder link earth station complex interfere with an LMDS receive station.

(2) No more than 15 days after the release of a public notice announcing the commencement of LMDS auctions, feeder link earth station complexes to be licensed pursuant to § 25.257 of this chapter shall be specified by a set of geographic coordinates in accordance with the following requirements: no feeder link earth station complex may be located in the top eight (8) metropolitan statistical areas (MSAs), ranked by population, as defined by the Office of Management and Budget as of June 1993, using estimated populations as of December 1992; two (2) complexes may be located in MSAs 9 through 25, one of which must be Phoenix, AZ (for a complex at Chandler, AZ); two (2) complexes may be located in MSAs 26 to 50; three (3) complexes may be located in MSAs 51 to 100, one of which must be Honolulu, Hawaii (for a complex at Waimea); and the three (3) remaining complexes must be located at least 75 nautical miles from the borders of the 100 largest MSAs or in any MSA not included in the 100 largest MSAs. Any location allotted for one range of MSAs may be taken from an MSA below that range.

(3)(i) Any non-GSO MSS licensee may at any time specify sets of geographic coordinates for feeder link earth station complexes with each earth station contained therein to be located at least 75 nautical miles from the border of the 100 largest MSAs.

(ii) For purposes of subsection (h)(3)(i), non-GSO MSS feeder link earth station complexes shall be entitled to accommodation only if the affected non-GSO MSS licensee preapplies to the Commission for a feeder link earth station complex or certifies to the Com-

mission within sixty days of receiving a copy of an LMDS application that it intends to file an application for a feeder link earth station complex within six months of the date of receipt of the LMDS application.

(iii) If said non-GSO MSS licensee application is filed later than six months after certification of the Commission, the LMDS and non-GSO MSS entities shall still cooperate fully and make reasonable efforts to resolve technical problems, but the LMDS licensee shall not be obligated to re-engineer its proposal or make changes to its system.

(4) LMDS licensees or applicants proposing to operate hub stations on frequencies in the 29,100-29,250 MHz band at locations outside of the 100 largest MSAs or within a distance of 150 nautical miles from a set of geographic coordinates specified under subsection (h)(2) of (h)(3)(i) shall serve copies of their applications on all non-GSO MSS applicants, permittees or licensees meeting the criteria specified in § 25.257(a). Non-GSO MSS licensees or applicants shall serve copies of their feeder link earth station applications, after the LMDS auction, on any LMDS applicant or licensee within a distance of 150 nautical miles from the geographic coordinates that it specified under §§ 101.113(c)(2) or (c)(3)(i). Any necessary coordination shall commence upon notification by the party receiving an application to the party who filed the application. The results of any such coordination shall be reported to the Commission within sixty days. The non-GSO MSS earth station licensee shall also provide all such LMDS licensees with a copy of its channel plan.

28. Section 101.107 is amended by revising the Table entry for the frequency band 19,700 to 40,000 MHz line and adding a footnote in sequence to reads as follows:

§ 101.107 Frequency tolerance.

* * * * *

Frequency (MHz)	FREQUENCY TOLERANCE (PERCENT)		
	All fixed and Base stations	Mobile stations Over 3 Watts	Mobile stations 3 Watts or less
19,700 to 27,500 (6)	0.03		
27,500 to 28,350	0.001		
29,100 to 29,250	0.001		
31,000 to 31,075 (8)	0.001		
31,075 to 31,225 (8)	0.001		
31,225 to 31,300 (8)	0.001		

Frequency (MHz)	FREQUENCY TOLERANCE (PERCENT)		
	All fixed and Base stations	Mobile stations Over 3 Watts	Mobile stations 3 Watts or less
31,300 to 40,000 (6)	0.03		

* * * * *

(8) For stations authorized prior to March 11, 1997, transmitter frequency tolerance shall not exceed 0.03 percent.

29. Section 101.109 is amended by revising paragraph (c) by removing the Table entry on the lines 27,500 MHz to 29,500 MHz and 31,000 to 31,300 MHz line and adding lines to the Table to read as follows:

§ 101.109 Bandwidth.

* * * * *

(c) * * *

Frequency Band (MHz)	Maximum Authorized Bandwidth
21,200 to 23,600	100 MHz /4/
27,500 to 28,350	850 MHz
29,100 to 29,250	150 MHz
31,100 to 31,075	75 MHz
31,075 to 31,225	150 MHz
31,225 to 31,300	75 MHz

* * * * *

30. Section 101.113 is amended by revising paragraph (a) by removing the Table entry on the line 27,500 to 29,500 MHz frequency band and the line 31,000 to 31,300 MHz frequency band, adding lines in sequence to the Table, revising footnote (7), and adding footnotes (8) and (9) in sequence to read as follows:

§ 101.113 Transmitter power limitations.

(a) * * *

Frequency Band (MHz)	Maximum allowable EIRP (1)*	
	Fixed (dBW)	Mobile (dBW)
27,500 to 28,350 ⁽⁹⁾	+ 30 dBW/MHz	
29,100 to 29,250	⁽⁷⁾	
31,000 to 31,075 ^{(8), (9)}	30 dBW/MHz	30 dBW/MHz
31,075 to 31,225 ^{(8), (9)}	30 dBW/MHz	30 dBW/MHz
31,225 to 31,300 ^{(8), (9)}	30 dBW/MHz	30 dBW/MHz

* * * * *

⁽⁷⁾ See § 101.113(c).⁽⁸⁾ For stations authorized prior to March 11, 1997, transmitter output power shall not exceed 0.05 watt.⁽⁹⁾ For subscriber transceivers authorized in these bands, the EIRP shall not exceed 55dBW or 42 dBW/MHz.

* * * * *

31. Section 101.147 is amended by revising the introductory statement in paragraph (a), revising the list of frequencies in paragraph (a) by removing the line 27,500-29,500 MHz and the line 31,000-31,300 MHz and adding lines in sequence, revising the footnote /16/ in paragraph (a), removing paragraph (x), redesignating paragraphs (t) through (w) as paragraphs (u) through (x), adding a new paragraph (t), and revising paragraph (u), as follows:

§ 101.147 Frequency assignments

(a) Frequencies in the following bands are available for assignment for fixed microwave services.

* * * * *

27,500-28,350 MHz¹⁶29,100-29,250 MHz^{5, 16}31,000-31,300 MHz¹⁶

* * * * *

¹⁶ As of [the effective date of this rule], frequencies in these bands are available for assignment only to LMDS radio stations. Stations initially authorized prior to that date may continue to operate within the existing terms of the outstanding licenses.

* * * * *

(t) 27,500-28,350; 29,100-29,250; 31,000-31,300 MHz. These frequencies are available for LMDS systems. Each assignment will be made on a BTA service area basis, and the assigned spectrum may be subdivided as desired by the licensee.

(u) 31,000-31,300 MHz. Stations licensed in this band prior to March 11, 1997, may continue their authorized operations, subject to license renewal, on the condition that harmful interference will not be caused to LMDS operations licensed in this band after [the effective date of this rule]. In the sub-bands 31,000-31,075 and 31,225-31,300 MHz, stations initially licensed prior to March 11, 1997, except in LTTS, and LMDS operations authorized after [the effective date of this rule], are equally protected against harmful interference from each other in accordance with the provisions of § 101.103(b). For stations, except in LTTS, permitted to relocate to these sub-bands, the following paired frequencies are available:

(1) 25 MHz authorized bandwidth channels

TRANSMIT (receive) (MHz)	RECEIVE (transmit) (MHz)
31,012.5	31,237.5
31,037.5	31,262.5
31,062.5	31,287.5

(2) 75 MHz authorized bandwidth channel

TRANSMIT (receive) (MHz)	RECEIVE (transmit) (MHz)
31,037.5	31,275.0

* * * * *

32. Section 101.305 is amended by revising paragraphs (a) through (c) to read as follows:

§ 101.305 Discontinuance, reduction, or impairment of service.

(a) If the public communication service provided by a station in the Common Carrier Radio Services and the Local Multipoint Distribution Service is involuntarily discontinued, reduced or impaired for a period exceeding 48 hours, the station licensee must promptly notify the Commission, in writing, at Federal Communications Commission, Common Carrier Radio Services, 1270 Fairfield Road, Gettysburg, Pennsylvania 17325. In every such case, the licensee must furnish full particulars as to the reasons for such discontinuance, reduction or impairment of service, including a statement as to when normal service is expected to be resumed. When normal service is resumed, prompt notification thereof must be given in writing to the Federal Communications Commission, Common Carrier Radio Services, 1270 Fairfield Road, Gettysburg, Pennsylvania, 17325.

(b) No station licensee subject to title II of the Communications Act of 1934, as amended, may voluntarily discontinue, reduce or impair public communication service to a community or part of a community without obtaining prior authorization from the Commission pursuant to the procedures set forth in part 63 of this chapter. In the event that permanent discontinuance of service is authorized by the Commission, the station licensee must promptly send the station license to the Federal Communications Commission, Common Carrier Radio Services, 1270 Fairfield Road, Gettysburg, Pennsylvania 17325 for cancellation; except that station licensees in the Local Multipoint Distribution Service need not surrender the license for cancellation if the discontinuance is a result of a change of status by the licensee from common carrier to non-common carrier pursuant to § 101.61.

(c) Any licensee not subject to title II of the Communications Act of 1934, as amended, who voluntarily discontinues, reduces or impairs public communication service to a community or a part of a community must give written notification to the Commission within 7 days thereof. In the event of permanent discontinuance of service, the station licensee must promptly send the station license to the Federal Communications Commission, Common Carrier Radio Services, 1270 Fairfield Road, Gettysburg, Pennsylvania 17325 for cancellation; except that station licensees in the Local Multipoint Distribution Service need not surrender the license for cancellation if the discontinuance is a result of a change of status by the licensee from non-common carrier to common carrier pursuant to § 101.61.

* * * * *

33. Section 101.311 is revised to read as follows:

§ 101.311 Equal employment opportunities.

Equal opportunities in employment must be afforded by all common carrier licensees and all Local Multipoint Distribution Service licensees in accordance with the provisions of § 21.307.

* * * * *

34. Section 101.803 is amended by revising note (7) of paragraph (a), revising note (9) of paragraph (d), and removing paragraph (e) to read as follows:

§ 101.803 Frequencies.

(a) * * *

- ⁽⁷⁾ As of [the effective date of this rule], frequencies in these band only are available for assignment to LMDS radio stations. Stations authorized prior to that date may continue to operate within the existing terms of the outstanding licenses, subject to renewal.

* * * * *

(d) * * *

- ⁽⁹⁾ As of [the effective date of this rule], frequencies in these band only are available for assignment to LMDS radio stations. Stations authorized prior to that date may continue to operate within the existing terms of the outstanding licenses, subject to renewal.

35. A new Subpart L is to be added, as follows:

Subpart L - Local Multipoint Distribution Service

Sec.

101.1001 Eligibility

101.1003 LMDS eligibility restrictions for incumbent LECs and cable companies.

101.1005 Frequencies available.

101.1007 Geographic service areas and number of licenses.

101.1009 System operations

101.1011 Construction requirements and criteria for renewal expectancy.

101.1013 Permissible communications services.

101.1015 Application form and contents.

101.1017 Requesting regulatory status.

§ 101.1001 Eligibility.

Any entity, other than one precluded by § 101.7 and by § 101.1003 of this part, is eligible for authorization to provide Local Multipoint Distribution Service (LMDS) under this subpart. Authorization will be granted upon proper application filed under the rules in this part and this subpart.

§ 101.1003 LMDS eligibility restrictions for incumbent LECs and cable companies.

(a) *Eligibility for LMDS license.* Except as provided in paragraph (b) of this section, no incumbent LEC or incumbent cable company, as defined in paragraph (c) of this section, nor any entity owning an attributable interest in an incumbent LEC or incumbent cable company, shall have an attributable interest in an LMDS license whose geographic service area significantly overlaps such incumbent's authorized or franchised service area.

(1) *Termination of restriction.* This restriction shall terminate three years following [the effective date of this rule] unless the Commission extends its applicability based on a determination that incumbent LECs or incumbent cable companies continue to have substantial market power in the provision of local telephony or cable television services.

(2) *Waiver of restriction.* Upon completion of the initial award of LMDS licenses, an incumbent LEC or incumbent cable company may petition for a waiver of the restriction on eligibility based upon a showing that the petitioner no longer has market power in its authorized or franchised service area as the result of the entry of new competitors, other than an LMDS licensee, into such service area.

(b) *Exception to eligibility restriction.* The restriction set forth in paragraph (a) of this section shall not apply to any license for the 31,000-31,075 megahertz and 31,225-31,300 megahertz bands of LMDS spectrum.

(c) *Incumbent LECs and cable companies defined.* The terms incumbent LEC and incumbent cable company shall be defined as follows:

(1) *Incumbent LEC.* The term incumbent local exchange carrier or incumbent LEC shall be defined, in accordance with § 251(h) of the Communications Act, to mean, with respect to an area, that:

(A) On February 8, 1996, the LEC provided telephone exchange service in such area and was deemed to be a member of the exchange carrier association pursuant to § 69.601(b) of this chapter; or

(B) Is a person or entity that, on or after February 8, 1996, became a successor or assign of a member described in paragraph (c)(1)(A) of this section; or

(C) Is an entity, or a member of a class or category of entities, that the Commission has determined under § 251(h)(2) of the Communications Act to treat as a local exchange carrier.

(2) *Incumbent Cable Company.* The term incumbent cable company means a company that is franchised to provide cable service and is not subject to effective competition under the following definition of effective competition in § 623(l) of the Communications Act:

(A) Fewer than 30 percent of the households in the franchise area subscribe to the cable service of a cable system; or

(B) The franchise area is:

(i) Served by at least two unaffiliated multichannel video programming distributors each of which offers comparable video programming to at least 50 percent of the households in the franchise area; and

(ii) The number of households subscribing to programming services offered by multichannel video programming distributors other than the largest multichannel video programming distributor exceeds 15 percent of the households in the franchise area; or

(C) A multichannel video programming distributor operated by the franchising authority for that franchise area offers video programming to at least 50 percent of the households of that franchise area; or

(D) A local exchange carrier or its affiliate (or any multichannel video programming distributor using the facilities of such carrier or its affiliate) offers video programming services directly to subscribers by any means (other than direct-to-home satellite services) in the franchise area of an unaffiliated cable operator which is providing cable service in that franchise area, but only if the video programming services so offered in that area are comparable to the video programming services provided by the unaffiliated cable operator in that area.

(d) *Significant overlap with authorized or franchised service area.* For purposes of paragraph (a) of this section, a significant overlap of an incumbent LEC's or incumbent cable company's authorized or franchised service area occurs when at least 10 percent of the population of the authorized or franchised service area, as determined by the 1990 census figures for the counties contained in such service area, is within the LMDS licensed service area.

(e) *Definition of attributable interest.* For purposes of paragraph (a) of this section, an entity shall be considered to have an attributable interest in an incumbent LEC, incumbent cable company, or LMDS 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) Partnership and similar ownership interests and any stock interest amounting to 20 percent or more of the equity, or outstanding stock or outstanding voting stock of an entity.

(3) Stock interests held in trust that exceed the limit set forth in paragraph (e)(2) of this section shall constitute an attributable interest of any person who holds or shares the power to vote such stock, of any person who has the sole power to sell such stock, and, in the case of stock held in trust, of any person who has the right to revoke the trust at will or to replace the trustee at will. If the trustee has a familial, personal, or extra-trust business relationship to the grantor or the beneficiary, the stock interests held in trust shall constitute an attributable interest of such grantor or beneficiary, as appropriate.

(4) Non-voting stock shall constitute an attributable interest in the issuing entity if it exceeds the limit set forth in paragraph (e)(2) of this section.

(5) Debt and interests such as warrants and convertible debentures, options, or other interests (except non-voting stock) with rights of conversion to voting interests shall not constitute attributable interests unless and until conversion is effected.

(6) Limited partnership interests amounting to 20 percent or more, calculated according to both the percentage of equity paid in and the percentage of distribution of profits and losses, shall constitute an attributable interest of each such limited partner.

(7) Officers and directors of an incumbent LEC or incumbent cable company, an LMDS licensee, or an entity that controls such incumbent LEC, incumbent cable company, or LMDS licensee, shall be considered to have an attributable interest in such incumbent LEC, incumbent cable company, or LMDS licensee.

(8) Ownership interests that are held indirectly by any party through one or more intervening corporations or other entities shall be determined by successive multiplication of the ownership percentages for each link in the vertical ownership chain and application of the relevant attribution benchmark to the resulting product, except that, if the ownership for any

interest in any link in the chain exceeds 50 percent or represents actual control, it shall be treated as if it were a 100 percent interest.

(9) Any person who manages the operations of an incumbent LEC or incumbent cable company or an LMDS licensee pursuant to a management agreement shall be considered to have an attributable interest in such incumbent LEC, incumbent cable company or LMDS licensee, if such person or its affiliate has authority to make decisions or otherwise engage in practices or activities that determine, or significantly influence:

- (i) The nature or types of services offered by such entity;
- (ii) The terms upon which such services are offered; or
- (iii) The prices charged for such services.

(10) Any person or its affiliate who enters into a joint marketing arrangement with an incumbent LEC, an incumbent cable company, an LMDS licensee, or an affiliate of such entity, shall be considered to have an attributable interest in such incumbent LEC, incumbent cable company, LMDS licensee, or affiliate, if such person or its affiliate has authority to make decisions or otherwise engage in practices or activities that determine:

- (i) The nature or types of services offered by such entity;
- (ii) The terms upon which such services are offered; or
- (iii) The prices charged for such services.

(f) *Divestiture.* Any incumbent LEC or incumbent cable company, or any entity owning an attributable interest in an incumbent LEC or incumbent cable company, that would otherwise be barred from participating in an LMDS auction by the eligibility restriction in paragraph (a) of this section, may be a party to an LMDS application (*i.e.*, have an attributable interest in the applicant), and such applicant will be eligible for an LMDS license, pursuant to the divestiture procedures set forth in paragraphs (f)(1) through (f)(6) of this section.

(1) Divestiture shall be limited to the following prescribed means:

(A) An LMDS applicant holding an attributable interest in an incumbent LEC or incumbent cable company may divest such interest in the incumbent LEC or cable company.

(B) Other LMDS applicants disqualified under paragraph (a), will be permitted to: