In addition, pursuant to section 605(b) of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the Agency has determined that SNUR revocations, which eliminate requirements without imposing any new ones, have no adverse economic impacts. The Agency's generic certification for SNUR revocations appears on June 2, 1997 (62 FR 29684) (FRL–5597–1), and was provided to the Chief Counsel for Advocacy of the Small Business Administration.

V. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 721

Environmental protection, Chemicals, Hazardous substances, Reporting and recordkeeping requirements.

Dated: February 13, 1998.

Ward Penberthy,

Acting Director, Chemical Control Division, Office of Pollution Prevention and Toxics.

Therefore, 40 CFR part 721 is amended as follows:

PART 721—[AMENDED]

1. The authority citation for part 721 continues to read as follows:

Authority: 15 U.S.C. 2604, 2607, and 2625(c).

§§ 721.700, 721.2840, 721.2860, 721.2880, 721.2940, 721.3200, 721.4640, 721.5990, 721.8125, 721.9260, 721.9780, 721.9962 [Removed]

2. By removing §§ 721.700, 721.2840, 721.2860, 721.2880, 721.2940, 721.3200, 721.4640, 721.5990, 721.8125, 721.9260, 721.9780, and 721.9962.

[FR Doc. 98–4791 Filed 2–24–98; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 101

[CC Docket No. 92–297; FCC 98–15]

Reconsideration of the Rules and Policies for Local Multipoint Distribution Service

AGENCY: Federal Communications Commission.

ACTION: Final rule; petitions for reconsideration.

SUMMARY: The Federal Communications Commission has adopted a Third Order on Reconsideration (Third Reconsideration Order) in the Local Multipoint Distribution Service (LMDS) proceeding, reaffirming its commitment to the rapid implementation of LMDS and the broad range of one-way and two-way voice, video, and data service capabilities that LMDS offers. LMDS is a fixed, point-to-multipoint wireless service that has the flexibility and potential to promote competition in the telephony and cable distribution marketplaces, as well as to introduce new and innovative services to the public. The action is taken to resolve petitions for reconsideration of the service rules, except the competitive bidding rules, adopted in the Second Report and Order, Order on Reconsideration, and Fifth Notice of Proposed Rulemaking (Second Report and Order) to implement LMDS in the 27.5–28.35 GHz, 29.1–29.25 GHz , and 31.0–31.3 GHz frequency bands. The limited revisions to the Commission's rules adopted in this Third Reconsideration Order will permit certain point-to-point operations on a secondary basis to LMDS in the 31 GHz band under the previous service rules replaced by LMDS without adversely affecting LMDS or the initiation of the auction and licensing of LMDS under the LMDS service rules.

EFFECTIVE DATE: April 27, 1998.

FOR FURTHER INFORMATION CONTACT: Barbara Reideler or Jay Whaley, Policy Division, Wireless Telecommunications Bureau, (202) 418–1310.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Third Reconsideration Order in CC Docket No. 92–297, FCC 98–15, adopted on February 3, 1998, and released on February 11, 1998. The complete text of this decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, N.W., Washington, D.C., and also may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 1231 20th Street, N.W., Washington, DC 20036.

Synopsis of Third Reconsideration Order

1. On March 11, 1997, the Commission adopted a Second Report and Order, Order on Reconsideration, and Fifth Notice of Proposed Rulemaking (Second Report and Order) [1] in this proceeding, which designated the 31.0–31.3 GHz frequency band (31 GHz band) for Local Multipoint Distribution Service (LMDS) and adopted competitive bidding and service rules to implement LMDS in the 27.5–28.35 GHz and 29.1–29.25 GHz frequency bands (28 GHz band) and the 31 GHz band. In this Third Order on Reconsideration (Third Reconsideration Order), the Commission addressed petitions for reconsideration and clarification of the Second Report and Order, except petitions for reconsideration of the LMDS competitive bidding rules.[2] The petitions were denied, with one exception that resulted in limited revisions to the rules adopted in the Second Report and Order. The Third Reconsideration Order deferred consideration of the comments filed in response to the Fifth Notice of Proposed Rulemaking, which was issued in conjunction with the Second Report and Order, to a separate Report and Order to be issued in the near future.

2. The Second Report and Order adopted an ownership rule that imposed a three-year restriction on the eligibility of incumbent local exchange companies (LECs) and incumbent cable companies to hold an attributable interest in the larger LMDS license of 1,150 megahertz whose geographic service area significantly overlaps such incumbent's authorized or franchised service area. The Third Reconsideration Order reviewed the portion of the eligibility restriction that permits incumbent LECs and incumbent cable companies to bid

[1] Rulemaking To Amend Parts 1, 2, 21, and 25 of the Commission's Rules To Redesignate the 27.5–29.5 GHz Frequency Band, To Reallocate the 29.5–30.0 GHz Frequency Band, To Establish Rules and Policies for Local Multipoint Distribution Service and for Fixed Satellite Services, Petitions for Reconsideration of the Denial of Applications for Waiver of the Commission's Common Carrier Point-to-Point Microwave Radio Service Rules, CC Docket No. 92–297, Suite 12 Group Petition for Pioneer Preference, PP–22; Second Report and Order, Order on Reconsideration, and Fifth Notice of Proposed Rulemaking, 12 FCC Rcd 12545 (1997), 62 FR 23148, April 29, 1997, and 62 FR 16514, April 7, 1997.

[2] The petitions for reconsideration of the LMDS competitive bidding rules were considered in the Second Order on Reconsideration at 62 FR 48787, September 17, 1997.

on and acquire such an in-region LMDS license, so long as they subsequently come into compliance with the eligibility restriction through divestiture of the ineligible interests or areas within 90 days of the grant of such license.

3. The Commission affirmed that the divestiture rule is consistent with similar rules in similar ownership eligibility restrictions and would not undermine the restriction. Ineligible incumbents would not be able to distort the auction process, which is protected by several provisions that prevent various anticompetitive strategies. The rule also is consistent with the Commission's goal to structure the eligibility restriction as flexibly as possible to minimize potential adverse limitations on incumbent LECs and incumbent cable companies by permitting them to compete for the LMDS license and then decide which business to pursue or divest.

4. The Third Reconsideration Order also reviewed the portion of the eligibility rule that defines an ownership interest of 20 percent or higher as an attributable interest for eligibility purposes. The Commission affirmed that the 20 percent attribution level better serves the competitive goals for LMDS than a 10 percent attribution level for several reasons. The 20 percent level maximizes the opportunity for competition and increases the availability of financing by permitting a wide variety of players to enter the markeplace and provide financing, while preventing anticompetitive activities of incumbents. The 20 percent level was reasonably based upon a market analysis and predictive judgments that weighed and balanced several competing interests, and was adopted because it is more reasonable than other levels in achieving the goals of the eligibility restriction. In addition, there are safeguards in the LMDS attribution rule that make incumbent cable companies ineligible to hold a controlling interest in an LMDS licensee, even if their attributable ownership interest is less than 20 percent.

5. The Commission found that the 20 percent level is consistent with the ownership restriction that applies to similar wireless services and that was adopted to achieve similar goals to promote competition and prevent the concentration of spectrum among entities with the incentive to prevent competition. Although the Commission uses a 5 percent level in another ownership restriction, the circumstances are different and require a more restrictive approach than LMDS. Different ownership attribution standards have been adopted in the context of different rulemakings, depending on the particular circumstances and objectives in each case.

6. The Commission also reviewed the portion of the eligibility rule that does not treat debts, warrants and similar convertible interests as attributable interests until conversion is effected. The Third Reconsideration Order affirmed the rule, which is consistent with similar ownership restrictions adopted by the Commission. The different treatment of such debts and interests in the attributable interest provisions of the LMDS designated entity auction rules also adopted in the Second Report and Order was based on the different circumstances and objectives of the designated entity rules and was consistent with the auction rules adopted in other services. The Third Reconsideration Order found that existing Commission rules prevent incumbent LECs and incumbent cable companies that hold such convertible instruments from engaging in anticompetitive activities and undermining the eligibility restriction. In addition, the Commission has adopted ownership disclosure requirements that the Third Reconsideration Order directs LMDS applicants to address in the long-form applications to be filed by the LMDS auction winners and that provide additional safeguards to ensure that anticompetitive conduct does not materialize.

7. The Third Reconsideration Order determined that the policies and criteria used in establishing ownership restrictions in various rulemakings for different services would benefit from a comprehensive evaluation. Accordingly, the Commission decided to initiate a proceeding to examine the various ownership restrictions, including their ownership attribution standards and their treatment of convertible interests, later this year.

8. The Third Reconsideration Order reviewed the decision to apply the eligibility restriction to all incumbent LECs and incumbent cable companies, including rural incumbent LECs. The Commission affirmed that the rule is consistent with the policy objectives of section 309(j) of the Communications Act to promote competition in all areas, ensure prompt delivery of service to rural areas, and provide opportunities for rural telephone companies. Rural incumbent LECs have the same incentives for anticompetitive use of LMDS licenses as other incumbent LECs to bar the entry of new competitors. The eligibility restriction reserves the initial licensing of LMDS for entrants without market power to ensure new competitors to all areas, including rural areas.

9. The Commission also concluded that the eligibility restriction does not subject rural incumbent LECs to greater disqualification under its definition of a significant overlap, which occurs when the service area of an incumbent LEC or incumbent cable company includes at least 10 percent of the population of the LMDS licensed service area. Whether applied to an entire licensed area or a smaller partitioned licensed area, a significant overlap was determined to create the potential for exercise of undue market power by incumbent LECs, including rural incumbent LECs. The Commission affirmed that if an incumbent LEC or incumbent cable company, including a rural incumbent LEC, is prevented from acquiring an LMDS license that significantly overlaps its service area, it is not barred altogether from acquiring an LMDS license and several alternatives are available. The incumbent LEC or incumbent cable company may acquire an LMDS license that does not significantly overlap, that overlaps so long as it divests the overlapping area within 90 days of a grant of the license, or that is partitioned from a larger LMDS license and complies with the eligibility restriction. Incumbents also may acquire the 150 megahertz LMDS license to which the eligibility restriction does not apply.

10. The Third Reconsideration Order noted that in the Second Report and Order, the Commission has committed to initiate a review of the eligibility restriction in the year 2000, in order to determine whether the restriction should be extended to promote competition. The Commission determined, on reconsideration, to begin this review prior to 2000 and to provide a framework for the use of the Commission's resources in carrying out the review. Therefore, the Chief Economist, the Chief of the Cable Services Bureau, the Chief of the Common Carrier Bureau, the Chief of the Mass Media Bureau, the Chief of the International Bureau, the General Counsel, and the Chief of the Wireless Telecommunications Bureau were instructed to prepare jointly a study examining whether there has been sufficient entry and increases in competition to sunset the eligibility restriction on incumbent LECs and incumbent cable companies. The results of this study, together with a joint recommendation, are to be submitted to the Commission no later than June 30, 1999. Based on the report and joint

recommendation, the Commission intends to determine whether to initiate a rulemaking proceeding to extend the date for the termination of the eligibility restriction.

11. The Third Reconsideration Order identified safeguards that exist, even after the eligibility restriction is terminated, to ensure that proposed license acquisitions by incumbent LECs or incumbent cable operators will not be inconsistent with the pro-competitive policies on which the restriction is based. After the initial auctioning of LMDS licenses, licenses are acquired under the Commission's transfer and assignment rules, which require prior Commission approval. The Third Reconsideration Order determined that the Commission would consider whether a particular market is sufficiently competitive before granting approval, and would rely on an examination of the same factors identified in the Second Report and Order for determining whether a market is sufficiently competitive to grant a waiver of the eligibility restriction under section 101.1003(a)(2) of the Commission's Rules (47 CFR 101.1003(a)(2)).

12. The Third Reconsideration Order granted a petition for clarification of the LMDS technical rules concerning frequency coordination and emission masks. The Second Report and Order imposed a frequency coordination requirement on LMDS licensees that requires licensees to initiate the coordination procedures in the Commission's rules to avoid interference problems with any neighboring LMDS licensee located within 20 kilometers of the boundaries of its service area. The Commission clarified that the identity of any such neighboring licensees is readily available in the Commission's database in order for the LMDS licensee to fulfill its obligation to provide notification of its operations to such neighbors. The Commission further clarified that such neighbor is required to respond to the notification with specific information concerning any problem, providing the LMDS licensee with sufficient information to further enable it to fulfill its obligation to complete the coordination process. The Third Reconsideration Order also clarified that the emission mask requirements in part 101 of the Commission's Rules apply to LMDS and that LMDS will be governed by the emission specifications set out in section 101.111 of the Rules (47 CFR 101.111(a)(2)).

13. The Third Reconsideration Order reviewed whether the flexible LMDS construction rule, which requires LMDS licensees to demonstrate substantial service during the 10-year licensed period in order to be granted license renewal, adversely impacts rural LECs and is inconsistent with section 309(j) of the statute. The Commission affirmed that the flexibility of the rule will promote efficient use of the spectrum, encourage service to rural areas, and prevent the warehousing of spectrum, which are consistent with the policies in section 309 (j). The Commission affirmed that specific construction benchmarks were not devised because of the broad range of new and innovative LMDS services, many of which are in the design stage. Stricter requirements could discourage participation in LMDS because the services and equipment are under development.

14. The Third Reconsideration Order upheld the decision to designate the entire 300 megahertz in the 31 GHz band for LMDS and to terminate licensing under the previous service rules, which provided a point-to-point localized service in the 31 GHz band. In denying the petition for reconsideration to designate only 150 megahertz in the 31 GHz band plan for LMDS, the Commission found that there was adequate support for its finding that the entire 300 megahertz should be designated to LMDS to ensure its potential for development of a full range of broadband telecommunications and video distribution services and to fulfill the Commission's obligation to designate spectrum for the most effective and efficient use.

15. The Third Reconsideration Order reviewed the decision to dismiss the applications that were filed under the previous point-to-point 31 GHz service rules and were pending at the Commission when the LMDS service rules were adopted for the 31 GHz band on March 11, 1997, in the Second Report and Order. On reconsideration, the dismissed applicants were allowed to refile the dismissed applications within 60 days of the effective date of the Third Reconsideration Order under existing application rules in part 101 of the Commission's Rules (47 CFR 101.1, *et seq.*). Operating rules were modified to permit the 31 GHz operations under the technical parameters that applied to previously authorized 31 GHz licenses.

16. The Third Reconsideration Order permitted authorization of the same stations and services requested in the dismissed applications, but prohibited expansion of the authorized operations beyond the scope of the initial license. The new licensees and the existing 31 GHz licensees were directed to share the band with each other consistent with such authorizations under the previous rules. However, all operations in the new licenses will be authorized on a secondary basis to LMDS operations, and any such new 31 GHz operations are required not to interfere with LMDS operations and to accept any interference from LMDS. The Commission concluded that these unique circumstances prevented any adverse impact on LMDS operations to be provided in the 31 GHz band and on the future licensing of the band under the LMDS service rules.

17. Only entities that had applications dismissed when the Second Report and Order was adopted were eligible to refile such applications under the previous 31 GHz application rules for secondary authorization to LMDS. Similar treatment was not accorded to entirely new applications for future licensing under the previous 31 GHz services, because that would not alleviate concerns of potential harm to LMDS or benefit such future licensees in the face of incompatible LMDS operations. The Third Reconsideration Order, however, recognized the important public interest objectives of governmental entities that requested ongoing licensing of the 31 GHz band under the previous 31 GHz service rules for traffic control systems that meet Federal goals to reduce vehicular traffic congestion and air pollution. Several alternative means were identified by which such governmental entities may still acquire authorization for spectrum use or can otherwise obtain the traffic services they need.

18. The Third Reconsideration Order reviewed the Order on Reconsideration issued in conjunction with the Second Report and Order that upheld the decision to dismiss several hundred waiver applications for authority to provide LMDS in the 28 GHz band under the previous 28 GHz service rules. The Commission denied petitioners' claims on further reconsideration that dismissal of their 28 GHz waiver applications was the result of retroactive rulemaking and disparate treatment, and should not have been summarily dismissed. The Commission explained that an applicant has no vested right to a continuation of the substantive standards in effect at the time an application was filed and, thus, the waiver applicants had no vested rights that were affected. In addition, unless a waiver of the rules was granted as the applicants requested, applications that failed to comply with the 28 GHz licensing rules under which they were filed may be dismissed summarily.

Supplemental Final Regulatory Flexibility Analysis

19. As required by the Regulatory Flexibility Act, see 5 U.S.C. 603 (RFA), a Final Regulatory Flexibility Analysis (FRFA) was incorporated in the Second Report and Order, Order on Reconsideration, and Fifth Notice of Proposed Rulemaking (Second Report and Order) in this proceeding. The Commission's Supplemental Final Regulatory Flexibility Analysis (SFRFA) in this Third Reconsideration Order reflects revised or additional information to that contained in the FRFA. The SFRFA thus is limited to matters raised in response to the Second Report and Order that are granted on reconsideration in the Third Reconsideration Order. This SFRFA conforms to the RFA, as amended by the Contract with America Advancement Act of 1996 (CWAAA), Public Law 104–121, 110 Stat. 846 (1996), codified at 5 U.S.C. 601 *et seq.*

I. Need For and Objectives of the Action

20. The actions taken in this Third Reconsideration Order are in response to petitions for reconsideration or clarification of the service rules, except competitive bidding rules, adopted in the Second Report and Order to implement the new Local Multipoint Distribution Service (LMDS) in the 28 GHz and 31 GHz frequency bands. The petitions are denied, except the petitions seeking reconsideration of the decision to dismiss the pending applications requesting authorization of 31 GHz services under the previous service rules. The rule changes adopted in the Third Reconsideration Order allow the dismissed applicants to refile their applications for the same 31 GHz authorization, but on a secondary basis to LMDS. The rule changes are intended to permit the limited 31 GHz services requested in the dismissed applications that include traffic control systems, among other services in the public interest, while reaffirming the Commission's decision to terminate future licensing of new applications under the previous 31 GHz service rules and designate the 31 GHz band for LMDS, which offers a wide array of telecommunications and video programming distribution services.

II. Summary of Significant Issues Raised by the Public in Response to the Final Regulatory Flexibility Statement

21. No comments were received in direct response to the FRFA. In response generally to the Second Report and Order, the Commission received petitions, as well as *ex parte* letters and letters in support, that seek reconsideration, and also received oppositions to those petitions. Sierra Digital Communications, Inc (Sierra) requests that the dismissed 31 GHz applications be reinstated and the licensees given the same interference protections and relocation procedure that the Commission accorded incumbent 31 GHz licensees when it redesignated the 31 GHz band for LMDS. Sierra argues that the potential public interest benefits in authorizing the requested services in the dismissed applications, which include public safety services and public expenditures, outweigh any benefits that may come from licensing 31 GHz for LMDS free of the requested services. Nevada Department of Transportation (Nevada DOT) requests that its applications and the applications of the Las Vegas Cities (Cities) for a traffic control system be granted on a temporary basis and secondary to LMDS in order to allow the implementation of equipment that was purchased and installed and to provide public safety services while the licensees seek an alternative technology or frequency band.

22. CellularVision USA, Inc. (CellularVision) and Texas Instruments (TI) oppose the requests. They contend that authorization of the 31 GHz operations in the dismissed applications is inconsistent with the decision to designate the 31 GHz for LMDS and that the operations would interfere with LMDS, result in enforcement problems for LMDS, and precipitate other applications for similar relief.

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

23. The rule changes adopted in the Third Reconsideration Order would apply to a specific number of entities that had pending applications for authorization of 31 GHz services on file that were dismissed when the Commission adopted the Second Report and Order on March 11, 1997. We estimate that there are approximately 10 dismissed applicants with several dismissed applications, based on Commission records. The dismissed applicants are permitted to refile the dismissed applications and obtain a license to provide the 31 GHz services designated in the band before the Commission designated the band for LMDS. No new applicants may request such 31 GHz authorization. Also, no new applications may be filed by the dismissed applicants, which may only refile the dismissed applications.

24. The FRFA found that the rules adopted at that time would apply to all incumbent 31 GHz licensees providing 31 GHz services under the previous 31 GHz service rules. The Commission determined the description and estimate of the number of small entities among the total number of 31 GHz licensees based on the licensed services and their qualifications as small entities. Of the total number of 86 licensees, 59 were Local Television Transmission Service (LTTS) licensees, 8 were private business licensees, and 19 were governmental entities. To determine which of the licensees qualified as small entities, the Commission estimated the number of governmental entities with populations less than 50,000, but was unable to determine which of LTTS licensees or private business licensees were small. To ensure that no small interests were overlooked, the Commission assumed that most of the licensees were small entities and estimated that at least 50 of the 86 licensees to be small entities.

25. Since the revisions adopted in the Third Reconsideration Order do not apply to incumbent 31 GHz licensees, the estimates of small entities in the FRFA is not affected and does not need to be adjusted. The revisions instead apply to the small and specific number of dismissed applicants that requested 31 GHz licenses and are permitted to refile for the same services requested in the dismissed applications. There are a variety of dismissed applicants, including governmental entities and private businesses. Inasmuch as the total number of dismissed applicants is very small and only ten are estimated, the Commission assumed that all of these are small entities in order to ensure that no small interests are overlooked.

IV. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

26. The dismissed applicants have the option to refile applications for the same services requested in the dismissed applications within 60 days following the effective date of the Third Reconsideration Order. Not all of the dismissed applicants may decide to refile their dismissed applications. The filing fees were refunded to the dismissed applicants that paid fees. The applicants may only apply for the same stations and services contained in the dismissed applications, and the licenses will be secondary to LMDS licenses. All of the dismissed applications requested service authorizations that are governed by the established licensing, operating, and technical rules and procedures in part 101 of the Commission's Rules (47 CFR 101.1 *et seq.*). Thus, the data

required for refiling the dismissed applications were collected on the dismissed applications and the refiling requirement does not require new information nor impose any undue burdens on the dismissed 31 GHz applicants, including small businesses.

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

27. The rule changes adopted in the Third Reconsideration Order are in response to petitions for reconsideration filed by entities that, for purposes of this analysis, we have considered to be small entities. The changes minimize any significant economic impact on small entities consistent with our objectives in adopting the rule changes and consistent with the comments we received.

28. The requests of Sierra, Nevada DOT, and other commenters are granted to permit the 31 GHz operations requested in the dismissed applications. Although the Commission determined that terminating future licensing under the 31 GHz rules is consistent with the public interest in designating the 31 GHz band for LMDS, the Commission found that permitting the operations reflected in the dismissed applications and modified by the Order is an exception based on unique circumstances that is in the public interest. Nevada DOT demonstrates that dismissal of the considerable number of applications to implement the Las Vegas traffic control system would not spare the unnecessary expenses identified in the Second Report and Order, but rather would prevent the use of purchased and installed equipment until a replacement technology is found. To the extent that applicants have already invested in constructing these systems, the system could be implemented during the inception of LMDS without substantial additional investment for retooling or relocation at this time.

29. Although Sierra requests that the Commission reinstate the dismissed applications, the Commission decided that providing the dismissed applicants with the opportunity to refile the applications is a more reasonable approach to licensing the dismissed applications. The filing fees were returned to the dismissed applicants that paid fees. The Third Reconsideration Order reaffirmed the dismissal of the pending applications, but without prejudice to their being refiled within 60 days of the effective date of the Third Reconsideration Order to provide applicants time to consider whether to refile. Circumstances have changed since the pending applications were filed and reinstated applications may not reflect the applicant interests or intentions. The new licenses will be secondary to LMDS licenses and limited to the scope of the services authorized, without modification for expansion. Dismissed applicants that do not wish to operate in this manner have the option to not reapply.

30. The Commissioners decided to permit the dismissed applicants to refile the applications for licensed authorization under the established licensing procedures in part 101, which governed the dismissed applications. Licenses will be issued for a 10-year period and may be renewed, which provides Nevada DOT more opportunity to implement its services than the temporary license it requested. As for CellularVision's concern that allowing the refiling of the dismissed applications will encourage the filing of similar applications, only the applications that were dismissed in the Second Report and Order may be refiled and they are limited to the same stations and services contained in the pending applications. The number of applicants are very few and the scope of their services is already identified in the dismissed applications, so that uncertainties about the impact of the refiling opportunity should be reduced.

31. The Commission decided to authorize any licenses based on the dismissed applications on a secondary basis to LMDS, so that such 31 GHz licensees may not interfere with LMDS and must accept any interference from LMDS. As noted, the Commission considered the concerns of CellularVision and TI about potential interference with LMDS operations. Under a license that is secondary to LMDS licenses, the licensees are prevented from adversely impacting LMDS and are required to modify their systems to eliminate interference or seek alternative access to frequencies. As the Commission concluded, it is in the public interest to allow these important traffic control facilities to continue to operate as long as they do not interfere with future LMDS operations. In addition, the new licensees may provide service to the full extent permitted under the license, but are not permitted any expansion or increase in operations, further minimizing any impact of the new 31 GHz services on LMDS.

32. Thus, the Commission declined to grant Sierra's request to accord the new licensees the same interference protection against LMDS that the Commission adopted in the Second Report and Order for non-LTTS licensees in the outer 150 megahertz segment of the 31 GHz band. That protection was based on the needs of existing 31 GHz licensees that had well-established traffic control systems or private business services that were licensed before LMDS was designated for the band, circumstances which do not apply here. Moreover, Nevada DOT requests that the dismissed applications, including the considerable number of its own and those of the Cities, be subject to secondary status to LMDS to accommodate LMDS concerns and facilitate the authorization of the dismissed applications in light of the redesignation of the band for LMDS. On balance, permitting the licensing of the limited operations requested in the few dismissed applications on a secondary basis to LMDS will prevent the undue economic hardships to small entities that seek to implement the proposed services, while preventing any chilling effect on the potential development of LMDS in 31 GHz by new LMDS licensees that are small entities.

VI. Report to Congress

33. The Commission will send a copy of this Supplementary Final Regulatory Flexibility Analysis, along with the Third Reconsideration Order, in a report to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996, see 5 U.S.C. 801(a)(1)(A). A copy of the Third Reconsideration Order and this SFRFA (or summary thereof) be sent to the Chief Counsel for Advocacy for the Small Business Administration.

Ordering Clauses

34. *Accordingly,* 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).

35. *It is further ordered* that the late-filed letters of CommPare, Inc., CSG Wireless, Inc., State of Nevada Department of Transportation, Parsons Transportation Group, Inc., and Westec Communications, Inc., are accepted.

36. *It is further ordered* that the Petitions for Reconsideration filed by the Independent Alliance, LBC Communications, LDH International, Inc., M3 Illinois Telecommunications Corporation, the Rural Telecommunications Group, Sierra Communications, Inc., and Webcel Communications, Inc., are granted to the extent indicated herein and otherwise are denied.

37. *It is further ordered* that the Motion for Stay Pending Review of Petition for Reconsideration filed by LDH International, Inc., is denied.

38. *It is further ordered* that the Commission's Rules are amended as set forth in the Rule Changes.

39. *It is further ordered* that the applications that were dismissed in the Second Report and Order are permitted to be refiled under the terms and conditions in this Third Reconsideration Order and shall be filed no later than 60 days following the effective date of this Order.

40. *It is further ordered* that the provisions of this Order and the Commission's Rules, as amended in the Rule Changes, shall become effective 60 days after publication in the **Federal Register**.

41. *It is further ordered* that the Director, Office of Public Affairs, shall send a copy of this Order, including the Supplemental Final 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).

List of Subjects in 47 CFR Part 101

Radio, Reporting and recordkeeping requirements.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

Rule Changes

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

PART 101—FIXED MICROWAVE SERVICE

1. The authority citation for part 101 continues to read as follows:

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

2. Section 101.57 is amended by revising paragraph (a)(1) to read as follows:

§ 101.57 Modification of station license.

(a)(1)(i) Except as provided in paragraph (a)(1)(ii) of this section and in § 101.59, no modification of a license issued pursuant to this part (or the facilities described thereunder) may be made except upon application to the Commission.

(ii) The provisions of paragraph (a)(1)(i) of this section shall not apply in the case of:

(A) Licenses authorized for operation in the 31,000–31,300 MHz band prior to March 11, 1997;

(B) Non-Local Multipoint Distribution Service licenses authorized for such operation in the band pursuant to applications refiled no later than April 27, 1998; and

(C) The Local Multipoint Distribution Service as provided in § 101.61(c)(10).

* * * * *

3. Section 101.103 is amended by adding paragraph (b)(3) as follows:

§ 101. 103 Frequency coordination procedures.

* * * * *

(b) * * *

(3) Non-LMDS operations in the entire 31,000–31,300 MHz band licensed after March 11, 1997, based on applications refiled no later than April 27, 1998 are unprotected with respect to each other and subject to harmful interference from each other.

(i) Such operations and any operations licensed prior to March 11, 1997, in the band are unprotected with respect to each other and subject to harmful interference from each other.

(ii) Such operations are licensed on a secondary basis to LMDS operations licensed in the band, may not cause interference to LMDS operations, and are not protected from interference from LMDS operations.

(iii) Such operations licensed on a point-to-point basis may not be extended or otherwise modified through the addition of point-to-point links. Such operations licensed on a point-to-radius basis may add additional stations within the licensed area.

* * * * *

4. Section 101.107 is amended by revising footnote 8 in paragraph (a) to read as follows:

§ 101.107 Frequency tolerance.

(a) * * *

[8] For stations authorized prior to March 11, 1997, and for non-Local Multipoint Distribution Service stations authorized pursuant to applications refiled no later than April 27, 1998, the transmitter frequency tolerance shall not exceed 0.030 percent.

* * * * *

5. Section 101.113 is amended by revising footnote 8 in paragraph (a) to read as follows:

§ 101.113 Transmitter power limitations.

(a) * * *

[8] For stations authorized prior to March 11, 1997, and for non-Local Multipoint Distribution Service stations authorized pursuant to applications refiled no later than April 27, 1998, the transmitter output power shall not exceed 0.050 watt.

* * * * *

6. Section 101.147 is amended by revising footnote 16 in paragraph (a) and by revising the introductory text of paragraph (u) to read as follows:

§ 101.147 Frequency assignments

(a) * * *

[16] As of June 30, 1997, frequencies in these bands are available for assignment only to LMDS radio stations, except for non-LMDS radio stations authorized pursuant to applications refiled no later than April 27, 1998.

* * * * *

(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 June 30, 1997. Non-LMDS stations licensed after March 11, 1997, based on applications refiled no later than April 27, 1998 are unprotected and subject to harmful interference from each other and from stations licensed prior to March 11, 1997, and are licensed on a secondary basis to LMDS. In the sub-bands 31,000–31,075 MHz and 31,225–31,300 MHz, stations initially licensed prior to March 11, 1997, except in LTTS, and LMDS operations authorized after June 30, 1997, 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: * * *

* * * * *

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

§ 101.803 Frequencies.

(a) * * *

[7] As of June 30, 1997, frequencies in this band only are available for assignment to LMDS radio stations, except for non-LMDS radio stations authorized pursuant to applications refiled no later than April 27, 1998. Stations authorized prior to June 30, 1997, may continue to operate within the existing terms of the outstanding licenses, subject to renewal. Non-LMDS stations authorized pursuant to applications refiled no later than April 27, 1998 shall operate on an unprotected basis and subject to harmful interference from similarly licensed stations or stations licensed prior to June 30, 1997, and on a secondary basis to LMDS radio stations.

(d) * * *

* * * * *

[9] As of June 30, 1997, frequencies in this band only are available for assignment to LMDS radio stations, except for non-LMDS stations authorized pursuant to applications refiled no later than April 27, 1998. Stations authorized prior to June 30, 1997, may continue to operate within the existing terms of the outstanding licenses, subject to renewal. Non-LMDS stations authorized pursuant to applications refiled no later than April 27, 1998 shall operate on an unprotected basis and subject to harmful interference from each other or stations licensed prior to June 30, 1997, and on a secondary basis to LMDS radio stations.

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