

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Requests of Ten Licensees of 191 Licenses in the	)	File Nos. 0003516339 <i>et al.</i>
Multichannel Video and Data Distribution Service	)	
for Waiver of the Five-Year Deadline for	)	
Providing Substantial Service	)	

**ORDER**

**Adopted: July 27, 2010**

**Released: July 28, 2010**

By the Chief, Wireless Telecommunications Bureau:

**I. INTRODUCTION**

1. In this Order, we grant the requests of ten Multichannel Video and Data Distribution Service (MVDDS) licensees (Licensees) for waiver and extension of the five-year buildout deadlines for a total of 191 MVDDS licenses.<sup>1</sup> This will allow additional time for the development of MVDDS equipment for the provision of innovative wireless services, including broadband.

**II. BACKGROUND**

2. MVDDS is a fixed wireless terrestrial service at 12.2-12.7 GHz that may be used for any digital fixed non-broadcast service, including one-way direct-to-home/office wireless service.<sup>2</sup> MVDDS is authorized on a co-primary, non-harmful interference basis with incumbent Direct Satellite Services (DBS) providers and on a co-primary basis with non-geostationary satellite orbit fixed-satellite service (NGSO FSS) stations.<sup>3</sup> MVDDS is licensed on a geographic area basis according to Nielsen's 2002 Designated Market Areas and several FCC-defined areas.<sup>4</sup> The Commission adopted specific service and

<sup>1</sup> Bruce E. Fox, Request for Waiver (filed Jul. 25, 2008) ("Bruce E. Fox Waiver Request"). Cass Cable TV, Inc., Request for Waiver (filed May 26, 2009) ("Cass Cable Waiver Request"). DTV Norwich, LLC, Request for Waiver (filed Jul. 25, 2008) ("DTV Norwich Waiver Request"). MDS Operations, Inc., Request for Waiver (filed Apr. 21, 2009) ("MDS Operations Waiver Request"). MVD Number 53 Partners, Request for Waiver (filed Jan. 28, 2009) ("MVD Number 53 Partners Waiver Request"). Satellite Receivers, Ltd., Request for Waiver (filed Jan. 7, 2009) ("Satellite Receivers Waiver Request"). SOUTH.COM LLC, Request for Waiver (filed Dec. 18, 2009) ("SOUTH.COM Waiver Request"). Story Communications, LLC, Request for Waiver (filed Jul. 17, 2009) ("Story Communications Waiver Request"). Vision Broadband, LLC, Request for Waiver (filed Jun. 9, 2009) ("Vision Broadband Waiver Request"). WCS Communications, Inc., Request for Waiver (filed Jun. 19, 2009) ("WCS Communications Waiver Request").

<sup>2</sup> See 47 C.F.R. § 101.1407. Two way services can be provided using spectrum in other bands for the return link. See *id.*

<sup>3</sup> See, e.g., Amendment of Parts 2 and 25 of the Commission's Rules to Permit Operation of NGSO FSS Systems Co-Frequency with GSO and Terrestrial Systems in the Ku-Band Frequency Range, ET Docket No. 98-206, *First Report and Order and Further Notice of Proposed Rule Making*, 16 FCC Rcd 4096, 4099-4100 ¶ 2 (2000) (*First R&O*); see also 47 C.F.R. § 2.106.

<sup>4</sup> See 47 C.F.R. § 101.1401. Designated Market Area (DMA®) is a registered trademark of Nielsen Media Research, Inc. (Nielsen). Although Nielsen revises DMAs periodically, the MVDDS license areas remain fixed to (continued....)

technical rules to permit MVDDS operators to share the 12.2-12.7 GHz band with DBS and NGSO FSS without causing harmful interference.<sup>5</sup>

3. In 2002, the Commission adopted a ten-year license term for MVDDS and gave licensees a renewal expectancy upon a showing of substantial service at license renewal, *i.e.*, ten years after license grant.<sup>6</sup> Substantial service means “service that is sound, favorable, and substantially above a level of mediocre service which might minimally warrant renewal.”<sup>7</sup> The Commission also adopted safe harbors to assist MVDDS licensees in satisfying the substantial service requirement, as well as additional factors that it would take into consideration in determining whether a licensee satisfies the substantial service standard.<sup>8</sup> The Commission declined to adopt an interim deadline, stating that because of various operating restrictions and the complexity and contention surrounding the issues involving band sharing, a ten-year buildout period was appropriate.<sup>9</sup> However, in 2003 the Commission added a five-year interim build out requirement to prevent spectrum warehousing and to promote the rapid deployment of service to the public, at the request of a few industry commenters.<sup>10</sup> If a given licensee fails to construct, the Commission noted that having a five-year build out period would allow for the auctioning of a new license in a more compressed timeframe.<sup>11</sup> The Commission applies a renewal expectancy to MVDDS licenses based on a showing of substantial service within five years into the license term and again at ten years into the license term.<sup>12</sup>

---

(...continued from previous page)

the boundaries of the 2002 DMAs. To avoid confusion with Nielsen’s current DMAs, MVDDS license areas are designated as “MVDs” in the Universal Licensing System.

<sup>5</sup> See Amendment of Parts 2 and 25 of the Commission’s Rules to Permit Operations of NGSO FSS Systems Co-Frequency with GSO and Terrestrial Systems in the Ku-Band with Frequency Range; ET Docket No. 98-206, 17 FCC Rcd 9614 (2002) (*Second Report and Order*).

<sup>6</sup> *Second Report and Order*, 17 FCC Rcd 9614, 9684 ¶ 177. See also, 47 C.F.R. § 101.1413(b).

<sup>7</sup> 47 C.F.R. § 101.1413(b).

<sup>8</sup> *Second Report and Order*, 17 FCC Rcd 9614, 9684 ¶ 177. See also, 47 C.F.R. § 101.1413(b).

<sup>9</sup> *Second Report and Order*, 17 FCC Rcd at 9684 ¶ 176.

<sup>10</sup> Amendment of Parts 2 and 25 of the Commission’s Rules to Permit Operation of NGSO FSS Systems Co-Frequency with GSO and Terrestrial Systems in the Ku-Band Frequency Range, ET Docket No. 98-206, *Third Report and Order*, 18 FCC Rcd 13468, 13475 ¶¶ 15-16 (2003) (*Third Report and Order*). Earlier in 2003, the Commission sought further comment on the appropriate MVDDS service area. And, in response to a concern that ten years was too long, the Commission also took this opportunity to seek limited comment on the timing of the ten-year build out requirement. See Amendment of Parts 2 and 25 of the Commission’s Rules to Permit Operation of NGSO FSS Systems Co-Frequency with GSO and Terrestrial Systems in the Ku-Band Frequency Range, ET Docket No. 98-206, *Second Further Notice of Proposed Rulemaking*, 18 FCC Rcd 7589, 7595 ¶¶ 16-17 (2003) *citing* Letter from Helen E. Disenhaus, Counsel for MDS America, Inc., to Marlene H. Dortch, Secretary, FCC (Oct. 3, 2002 Notice of *Ex Parte* Meeting); Letters from Nancy Killien Spooner, Counsel for MDS America, Inc., to Marlene H. Dortch, Secretary, FCC (Oct. 11, 2002, Mar. 7, 2003 and Mar. 25, 2003 Notice of *Ex Parte* Meeting).

<sup>11</sup> *Id.*, 18 FCC Rcd at 13475 ¶ 16. “Although we previously believed that a longer build out period was necessary in order to provide MVDDS licensees ample time and flexibility to work with other service providers in the 12 GHz band, the commenters contend that a five-year period is sufficient time to deploy MVDDS services in this band.” *Id.* at 13475 ¶¶ 15, 16, *citing* comments of MDS America (an affiliate of MDS Operations Inc., which holds 60 of the licenses that are the subject of the instant proceeding), and two other commenters that did not bid in the MVDDS auctions. See *id.*, n.33. MDS America also argued that a shorter build out deadline would prevent spectrum warehousing and promote the rapid deployment of service to the public. See *id.* at 13470, 13475 ¶¶ 5, 16.

<sup>12</sup> 47 C.F.R. § 101.1413(a).

4. In 2004, the Commission held Auction No. 53,<sup>13</sup> and awarded 192 of the 214 MVDDS licenses to the Licensees listed in the Appendix or their predecessors.<sup>14</sup> The Commission granted the licenses won at Auction No. 53 on July 26, 2004, August 18, 2004, and September 23, 2004,<sup>15</sup> with each license granted for a period of ten years. The five-year deadlines for demonstrating substantial service for licenses won at Auction No. 53 were July 26, 2009,<sup>16</sup> August 18, 2009,<sup>17</sup> and September 23, 2009,<sup>18</sup> as applicable, and the ten year deadlines are July 26, 2014,<sup>19</sup> August 18, 2014,<sup>20</sup> and September 23, 2014,<sup>21</sup> as applicable.

5. Between July 2008 and July 2009, the Commission received ten timely-filed requests for waiver of Section 101.1413 of the Commission's Rules and for an extension of time to construct under Section 1.946(e)(1) of the Commission's Rules.<sup>22</sup> Most Licensees ask for a five-year extension of time to construct, which would be ten years from license grant and is the original construction deadline adopted by the Commission in the *Second Report and Order*.<sup>23</sup> All of the Licensees maintain that they cannot construct their respective systems because there is no viable, affordable equipment that is capable of

---

<sup>13</sup> Auction of Multichannel Video Distribution and Data Services Licenses, *Public Notice*, DA 02-1258 (rel. WTB May 24, 2002).

<sup>14</sup> One of the 192 licenses sold at Auction 53, Call Sign WQAR709 (MVD202 – Zanesville) was assigned to Blumenthal DTV LLC (BDTV) in 2005. *See* File No. 0002022243. BDTV did not report that it satisfied the five-year buildout requirement or request an extension of time to meet the five-year deadline. Accordingly, the license for Call Sign WQAR709 cancelled automatically and was terminated effective July 26, 2009.

<sup>15</sup> *See* Wireless Telecommunications Bureau Grants Multichannel Video Distribution and Data Service Licenses; Auction Event No. 53, *Public Notice*, 19 FCC Rcd 14083 (WTB 2004); Wireless Telecommunications Bureau Grants Multichannel Video Distribution and Data Service Licenses; Auction Event No. 53, *Public Notice*, 19 FCC Rcd 15615 (WTB 2004); DTV Norwich, LLC, Application for Multichannel Video Distribution and Data Service License, MVD001-New York, *Order*, 19 FCC Rcd 18701 (WTB BD 2004).

<sup>16</sup> Bruce E. Fox (24 licenses), Cass Cable TV, Inc. (2 licenses), DTV Norwich, LLC (44 licenses), MDS Operations (60 licenses), MVD Number 53 Partners (10 licenses), Satellite Receivers, Ltd. (3 licenses), Vision Broadband, LLC (7 licenses), Story Communications, LLC (2 licenses), and WCS Communications, Inc. (1 license). *See also* Appendix.

<sup>17</sup> SOUTH.COM (37 licenses). *See also* Appendix.

<sup>18</sup> DTV Norwich, LLC (1 license). *See also* Appendix.

<sup>19</sup> Bruce E. Fox (24 licenses), Cass Cable TV, Inc. (2 licenses), DTV Norwich, LLC (44 licenses), MDS Operations (60 licenses), MVD Number 53 Partners (10 licenses), Satellite Receivers, Ltd. (3 licenses), Vision Broadband, LLC (7 licenses), Story Communications, LLC (2 licenses), and WCS Communications, Inc. (1 license). *See also* Appendix.

<sup>20</sup> SOUTH.COM (37 licenses). *See also* Appendix.

<sup>21</sup> DTV Norwich, LLC (1 license). *See also* Appendix.

<sup>22</sup> 47 C.F.R. § 1.946(e).

<sup>23</sup> Bruce E. Fox Waiver Request at 1. DTV Norwich Waiver Request at 1-2. MDS Operations Waiver Request at 1. MVD Number 53 Partners Waiver Request at 1. Satellite Receivers Waiver Request at 1. SOUTH.COM Waiver Request at 5. Vision Broadband Waiver Request at 1. WCA Communications Waiver Request at 4. MDS Operations asks for a five-year extension if we deny its separate request for waiver of certain MVDDS technical rules, or a two-year extension if we grant it. The Bureau recently granted MDS Operations technical-rules waiver request in part and otherwise denied it. *See* MDS Operations, Inc., *Order*, DA 10-1103 (WTB, rel. Jun. 22, 2010) (*MDS Operations Order*). Because this grant was partial, we consider MDS Operations to be seeking a five-year extension of time for each of its licenses. Cass Cable requests a two-year extension of time to July 26, 2011. Cass Cable Waiver Request at 1.

operating under the technical requirements applicable to the 12.2-12.7 GHz band.<sup>24</sup> Citing their own or other MVDDS licensees' experiences, most of the Licensees state that a number of manufacturers have cited the difficult coordination rules, the stringent power limits, and perceived resistance to alternative technologies by incumbents as reasons for terminating support of development projects.<sup>25</sup> Two Licensees provide additional reasons for an extension of time to construct. DTV Norwich asks for additional time to conduct two trials of MVDDS equipment.<sup>26</sup> Vision Broadband (Vision) contends that it should be granted additional time, in part, because a regulatory delay in the approval of its applications to acquire MVDDS licenses made compliance impossible in light of the prior coordination requirements of the MVDDS rules.<sup>27</sup> Licensees maintain that an extension of time to construct furthers the Commission's goal of providing broadband access, multichannel video, and other advanced services to consumers given the ongoing experiences and efforts towards developing the service (as compared to the delay and uncertainty of recovering and reassigning all of the licenses).<sup>28</sup> Most Licensees note that a five-year extension of time would result in the construction deadline that the Commission originally adopted for MVDDS.<sup>29</sup> They further argue that in other instances where the Bureau has granted an extension of time to construct under Section 1.946(e) of the Rules, the licensees had originally had ten years rather than five years to construct their facilities.<sup>30</sup>

6. DIRECTV opposes grant of the extension requests. DIRECTV argues that a grant of a five-year extension of time to construct would allow Licensees to warehouse spectrum, cause a significant delay in re-auctioning licenses, and prevent other parties from achieving more rapid deployment of service to the public.<sup>31</sup> Moreover, DIRECTV argues, it is not a lack of equipment that has prevented Licensees from deploying MVDDS in the 12.2-12.7 GHz band, but a business decision by Licensees to seek regulatory relief because Licensees are unconvinced by the economics of operating under existing technical limitations.<sup>32</sup> In fact, DIRECTV disputes whether there is a lack of commercially available equipment that complies with the Commission's Rules.<sup>33</sup> While Dish Network states that it neither

<sup>24</sup> Bruce E. Fox Waiver Request at 4-5. Cass Cable Waiver Request at 3. DTV Norwich Waiver Request at 6. MDS Operations Waiver Request at 3. MVD Number 53 Partners Waiver Request at 4. Satellite Receivers Waiver Request at 3-4. SOUTH.COM Waiver Request at 5. Story Communications Waiver Request at 3. Vision Broadband Waiver Request at 3. WCS Communications Waiver Request at 3.

<sup>25</sup> SOUTH.COM Waiver Request at 6-8. MDS Operations Comments at 2-3. MVD Partners Waiver Request at 7. Bruce E. Fox Waiver Request at 7-8. Satellite Receivers, Ltd. Waiver Request at 6-7. DTV Norwich Waiver Request at 8-9.

<sup>26</sup> DTV Norwich Waiver Request at 7. DTV Norwich Comments at 1. DTV Norwich subsequently reported that it has completed these field tests. *See* para. 7, *infra*.

<sup>27</sup> Vision Broadband Waiver Request at 1, 5 (stating that it applied for authority to acquire MVDDS licenses in 2005 but did not receive FCC approval until less than 90-days prior to July 26, 2009, which made compliance impossible in light of the 90-day satellite coordination provisions of 47 C.F.R. §§ 101.1409, 101.1440(d)(1)). Vision "acknowledges that the Commission's rules do not permit an extension of time based on [unusual regulatory delay] alone," *id.*, Waiver Request at 1, and our records reflect that the Commission granted consent to the assignment application in 2008. *See* Application for Assignment of Authorizations from Edward A. Shergalis III, to Vision Broadband, LLC., File No.0002056604 (filed Feb. 24, 2005, amended, Oct. 17, 2007, and Jul. 21, 2008, consented Dec. 24, 2008, consummated April 13, 2009). Accordingly, we are not considering this argument. *See also* 47 C.F.R. § 1.946(e)(3) (extension requests will not be granted due to assignments or transfers).

<sup>28</sup> MDS Operations Waiver Request at 5.

<sup>29</sup> *Second Report and Order*, 17 FCC Rcd 9614, 9684-9685 ¶ 177.

<sup>30</sup> *See, e.g.*, MDS Operations Waiver Request at 5.

<sup>31</sup> DIRECTV Opposition at 8.

<sup>32</sup> *Id.* at 7.

<sup>33</sup> *Id.* at 5-6.

opposes nor supports the extension requests, it indicates that it seeks to ensure that MVDDS Licensees do not misuse the buildout extension process to reopen the DBS/MVDDS interference and sharing rules to the detriment of the 30 million DBS subscribers nationwide.<sup>34</sup> DIRECTV and Dish Network allege that Licensees seek an additional five years, not to construct MVDDS systems, but to lobby for relief from the technical rules and interference coordination obligations currently applicable to MVDDS.<sup>35</sup> Dish Network recommends that we require each individual licensee that has not initiated at least one DBS/MVDDS coordination to demonstrate with specificity what steps have been taken to deploy services, including which specific equipment vendor inquiries were made, the results of those inquiries, and what specific investments in compliant MVDDS equipment and/or technology have been made in the past five years.<sup>36</sup>

7. On May 4, 2010, DTV Norwich reported that it had successfully completed field trials that confirm the technical feasibility of MVDDS services and requested that the Bureau act on its Waiver Request and extension of time to construct.<sup>37</sup> DTV Norwich stated that its next step is to conduct a market-trial to assess the commercial viability of MVDDS, but that assessment cannot begin until the Bureau acts on its Waiver Request and removes the regulatory uncertainty surrounding its licenses.<sup>38</sup> DTV Norwich further stated it anticipates starting a market trial in the first quarter of 2011 with a feasibility evaluation completed by the middle of 2012, if its extension request is granted.<sup>39</sup>

8. On June 23, 2010, MDS Operations reported that it would be able to make a prompt assessment of its MVDDS deployment plans within 90-120 days following the Bureau's recent action on MDS Operations' technical-rules waiver request.<sup>40</sup> Following the market assessment, MDS Operations stated that it will establish construction and deployment priorities for all 60 of its licensed markets.<sup>41</sup> MDS Operations indicated that it may deploy wireless broadband services rather than wireless cable programming services.<sup>42</sup> MDS Operations indicated that it could begin deploying MVDDS operation in some markets as early as the first quarter of 2011 depending on market assessments and favorable weather and financial conditions for the balance of 2010.<sup>43</sup> MDS Operations concludes that construction and deployment of a majority of its 60 stations could be accomplished as soon as two years following the Bureau's action on its Waiver Request.<sup>44</sup>

---

<sup>34</sup> Dish Network Comments at 1.

<sup>35</sup> DIRECTV Opposition at 9. Dish Network Reply at 1-2 *citing, e.g.*, MDS Operations' [then-pending] request for permanent waiver of the power level limits for one site in the Albuquerque, New Mexico MVD. *See generally* note 23, *supra*.

<sup>36</sup> Dish Network Comments at 3.

<sup>37</sup> *Ex Parte* Letter from Wayne D. Johnsen, Counsel to DTV Norwich to Marlene H. Dortch, Federal Communications Commission at 1 (dated May 5, 2010).

<sup>38</sup> *Id.*

<sup>39</sup> *Id.*

<sup>40</sup> *Ex Parte* Letter from Frederick M. Joyce, Counsel to MDS Operations, Inc. to Marlene H. Dortch, Federal Communications Commission at 2 (dated Jun. 23, 2010). *See also* note 23, *supra*.

<sup>41</sup> *Id.*

<sup>42</sup> *Id.*

<sup>43</sup> *Id.*

<sup>44</sup> *Id.*



### III. DISCUSSION

9. Section 1.946(e) provides that licensees may request to extend a construction period or coverage period before the expiration of the construction or coverage period and that an extension request may be granted if the licensee shows that failure to meet the construction or coverage deadline is due to involuntary loss of site or other causes beyond its control.<sup>45</sup> However, extension requests will not be granted for failure to meet a construction or coverage deadline due to delays caused by a failure to obtain financing, to obtain an antenna site, or to order equipment in a timely manner.<sup>46</sup> If we were to deny the instant requests, all 191 licenses would terminate automatically under Section 1.946(c) of the Commission's Rules, which automatically terminates an authorization for failure to meet a substantial service obligation on the date the construction period expires.<sup>47</sup> Section 1.925 of the Commission's Rules provides that a waiver of the Commission's Rules may be granted if it is shown that either (1) the underlying purpose of the rule(s) would not be served or would be frustrated by application to the instant case, and that a grant of the requested waiver would be in the public interest; or (2) in view of the unique or unusual circumstances of the instant case, application of the rule(s) would be inequitable, unduly burdensome or contrary to the public interest, or the applicant has no reasonable alternative.<sup>48</sup>

10. Here, we find that the record demonstrates that there is a lack of viable, affordable equipment for MVDDS that can be deployed in the 12.2-12.7 GHz band. Moreover, we find that the lack of equipment and the resulting challenge in deploying MVDDS service affects every MVDDS Licensee and is thus widespread. Accordingly, we conclude that Licensees have met the requirements of Section 1.946(e) because it is well-established that the lack of viable, affordable equipment is a factor beyond a licensee's control.<sup>49</sup> In considering equipment availability, we note the distinction between cost-prohibitive "prototype" equipment and viable, affordable, commercially available equipment.<sup>50</sup> We further find that, given the lack of viable, affordable equipment, there is no reason to conclude that re-auctioning the licenses would result in more expeditious build out than allowing the Licensees to continue their efforts towards deployment. Under these circumstances, we determine that strict enforcement of the five-year buildout deadline would tend to slow, rather than accelerate, equipment development and service deployment. We believe the public interest would best be served by granting these MVDDS

---

<sup>45</sup> 47 C.F.R. § 1.946(e)(1).

<sup>46</sup> 47 C.F.R. § 1.946(e)(2).

<sup>47</sup> 47 C.F.R. § 1.946(c).

<sup>48</sup> *Id.*; see also *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990); *WAIT Radio v. FCC*, 418 F.2d 1153 (D.C. Cir. 1969), *aff'd*, 459 F.2d 1203 (1972), *cert. denied*, 409 U.S. 1027 (1972); 47 C.F.R. § 1.3.

<sup>49</sup> Applications Filed by Licensees in the Local Multipoint Distribution Service (LMDS) Seeking Waivers of Section 101.1011 of the Commission's Rules and Extensions of Time to Construct and Demonstrate Substantial Service, *Memorandum Opinion and Order*, 23 FCC Rcd 5894, 5905 ¶ 24 (WTB 2008) (*LMDS MO&O*). Consolidated Request of the WCS Coalition for Limited Waiver of Construction Deadline for 132 WCS Licenses, *Order*, 21 FCC Rcd 14134, 14140 ¶ 11 (WTB 2006) (*WCS Order*). In both the *LMDS MO&O* and *WCS Order*, the Bureau granted extensions of time to construct under Section 1.946(e) of the Commission's Rules because LMDS and WCS licensees could not obtain viable, affordable equipment. See also Requests of Progeny LMS, LLC and PCS Partners, L.P. for Waiver of Multilateration Location and Monitoring Service Construction Rules, *Order*, 23 FCC Rcd 17250 (WTB 2008) (*LMS Order*) (granted industry-wide extensions based on record developed by some licensees due to, *inter alia*, lack equipment).

<sup>50</sup> See, e.g., *LMDS MO&O*, 23 FCC Rcd at 5896-97, 5905 ¶¶ 5, 24 (found that licensees had demonstrated factors beyond their control after, *inter alia*, licensees explained that the only equipment available was limited operationally or cost prohibitive and that vendors offered no timetable for the availability of affordable equipment and that to obtain a firm commitment for the production of a sufficient number of product units to ensure affordability would take years.)

licensees additional time in which to construct their licenses, to allow the equipment market to develop further.<sup>51</sup>

11. Eleven licensees won 192 licenses in Auction 53 to operate MVDDS service in the 12.2-12.7 GHz band: yet, to date, none has been able to purchase viable, affordable MVDDS equipment that complies with the Commission's technical rules, none has deployed service, and one licensee allowed its license to cancel automatically, despite their combined investment of over \$118 million to purchase MVDDS licenses at two auctions.<sup>52</sup> While DIRECTV is correct that MVDDS equipment is deployed overseas, the record reflects that this equipment does not comply with Commission's MVDDS rules, and absent significant modifications, cannot be deployed in the United States. Specifically, MDS Operations reports that its affiliate MDS America has found that manufacturing equipment for the U.S. market has proven more difficult than it originally anticipated when it asked the Commission to adopt a five-year buildout period.<sup>53</sup> Additionally, DTV Norwich states that to conduct field trials of MVDDS equipment, it spent a year and hundreds of thousands of dollars to develop prototype equipment and was required to purchase minimum amounts of equipment.<sup>54</sup> SOUTH.COM states that it tried for more than four years purchase equipment, but was unable to do so because of "limited manufacturer interest, continuing technical limitations, and high per-unit costs."<sup>55</sup> SOUTH.COM further reports that although it aggressively pursued the possibility of funding the development of equipment it has been unable to reach mutually agreeable terms with any manufacturer and has been forced to reject proposals with prohibitively expensive non-recurring engineering costs and the scale of equipment order guarantees.<sup>56</sup> Five additional licensees state that they have been working closely with an MVDDS equipment manufacturer that has been beta testing equipment that could be used with their respective licenses, but that this MVDDS equipment manufacturer has not yet deployed its MVDDS product in the United States on a commercial basis.<sup>57</sup> Story Communications indicates that it has not been able to build out its licensed service area because of a lack of vendors.<sup>58</sup>

12. We conclude that granting Licensees a five year extension is appropriate. We note that by granting this relief, we retain the ten-year buildout requirement in Section 101.1413 of the Commission's Rules, which is commensurate with the length of the license term and well within precedent. In other cases where the Bureau has granted extensions of time to construct under Section 1.946(e) of the Commission's Rules, the Bureau has granted construction extensions beyond the license term. For instance, in the *LMDS MO&O*, the Bureau granted LMDS licensees a four-year extension

<sup>51</sup> Accord, *LMDS MO&O*, 23 FCC Rcd at 5906 ¶ 26.

<sup>52</sup> Multichannel Video Distribution and Data Service Spectrum Auction Closes, *Public Notice*, 19 FCC Rcd 1834 (WTB 2004), Report No. AUC-04-53-G, Attachment A.

<sup>53</sup> MDS Operations Comments at 3. According to MDS Operations, MDS America initially thought that it could adapt the MVDDS equipment that it deployed overseas to the technical rules applicable to MVDDS in the United States, but has unable to do so because the overseas equipment is designed to operate under higher power than is permitted under the Commission's Rules. *Id.* See also text accompanying notes 10 and 11, *supra*.

<sup>54</sup> DTV Norwich Waiver Request at 5-6. DTV Norwich Comments at 4-5. DTV Norwich states that it tested two separate configurations, a point-to-multipoint configuration suitable for Cape Coral, Florida, and other similarly situated areas, and a point-to-point backhaul operation suitable for Long Island, New York, and other urban and suburban areas. *Id.*

<sup>55</sup> SOUTH.COM Waiver Request at 5.

<sup>56</sup> *Id.* at 7.

<sup>57</sup> Cass Cable Waiver Request at 3-4. WCS Communications Waiver Request at 3. Bruce E. Fox Waiver Request at 4-5. MVD Number 53 Partners Waiver Request at 4-5. Satellite Receivers Waiver Request at 3-4. Vision Broadband Waiver Request at 3.

<sup>58</sup> Story Communications Waiver Request at 2-3.

beyond the license term.<sup>59</sup> In the *WCS Order*, the Bureau granted WCS licensees a three-year extension beyond the license term.<sup>60</sup> We also note that, at this juncture, only four years remain on the relevant licenses. Thus, we find the request by Licensees for a five-year extension of time to construct to be reasonable.

13. Under the Commission's Rules and Bureau precedent, the central question before us is whether the record demonstrates the need for an extension of time due to causes beyond each licensee's control. As discussed above, we have found that the record so demonstrates. Accordingly, we reject DIRECTV's and DISH Network's allegations related to Licensees' motivations for requesting extensions.<sup>61</sup> Further, because the record establishes that there is no viable, affordable, commercial equipment available that meets the MVDDS technical rules, we also reject Dish Network's recommendation to require each individual licensee to specify the steps that it took to acquire equipment.<sup>62</sup>

#### IV. CONCLUSION

14. Granting extensions will enable DTV Norwich to conduct a market trial and feasibility analysis of deploying MVDDS service in the 12.2-12.7 GHz band and will permit MDS Operations to conduct a market assessment of its MVDDS operations, establish construction and deployment priorities for its licensed markets, and begin deploying service.<sup>63</sup> As these efforts progress towards the development of viable, affordable equipment, we expect the remaining eight licensees also will progress toward providing substantial service in their licensed areas.

15. For the reasons discussed above, we grant the requests for extension of time to construct under Section 1.946(e) of the Commission's Rules and waive the five-year build out requirement in Section 101.1413 of the Commission's Rules. Thus, under the *Order* we adopt today, Licensees must demonstrate substantial service ten years from license grant, *i.e.*, at license renewal, which is consistent with the second buildout requirement in Section 101.1413 of the Commission's Rules.

#### V. ORDERING CLAUSES

16. Accordingly, IT IS ORDERED that, pursuant to sections 4(i) and 303(r) of the Communications Act, as amended, 47 U.S.C. §§ 154(i), 303(r), and sections 0.331 and 1.946(e) of the Commission's rules, 47 C.F.R. §§ 0.331, 1.946(e), that the above-captioned requests for waivers and extensions of time to demonstrate substantial service ARE GRANTED to the extent indicated and are otherwise DENIED, and the deadlines for the Multichannel Video and Data Distribution Service licenses listed in the Appendix are EXTENDED to the dates shown in the Appendix.

<sup>59</sup> *LMDS MO&O*, 23 FCC Rcd 5894, 5906 ¶ 26.

<sup>60</sup> *WCS Order*, 21 FCC Rcd 14134, 14139 ¶ 9.

<sup>61</sup> See text accompanying note 35, *supra*.

<sup>62</sup> See text accompanying note 36, *supra*. Accord, *LMS Order*, note 49, *supra*.

<sup>63</sup> See paras. 7- 8, *supra*.



17. IT IS FURTHER ORDERED that the licensing staff of the Broadband Division SHALL UPDATE each license listed in the Appendix in accordance with this *Order*.

18. These actions are taken under delegated authority pursuant to Sections 0.131 and 0.331 of the Commission's Rules, 47 C.F.R. §§ 0.131 and 0.331.

FEDERAL COMMUNICATIONS COMMISSION

Ruth Milkman  
Chief, Wireless Telecommunications Bureau

## APPENDIX

LIST OF 191 MVDDS LICENSES GRANTED EXTENSION/WAIVER  
OF THE 5-YEAR BUILDOUT DEADLINE

<i><b>LICENSEE NAME</b></i>	<i><b>FILE NUMBER OF EX REQUEST</b></i>	<i><b>CALL SIGN</b></i>	<i><b>10-YEAR DEADLINE</b></i>
DTV Norwich, LLC	0003516339	WQAR665	07/26/2014
DTV Norwich, LLC	0003516340	WQAR666	07/26/2014
DTV Norwich, LLC	0003516341	WQAR667	07/26/2014
DTV Norwich, LLC	0003516342	WQAR668	07/26/2014
DTV Norwich, LLC	0003516343	WQAR669	07/26/2014
DTV Norwich, LLC	0003516344	WQAR670	07/26/2014
DTV Norwich, LLC	0003516345	WQAR671	07/26/2014
DTV Norwich, LLC	0003516346	WQAR672	07/26/2014
DTV Norwich, LLC	0003516347	WQAR673	07/26/2014
DTV Norwich, LLC	0003516348	WQAR674	07/26/2014
DTV Norwich, LLC	0003516349	WQAR675	07/26/2014
DTV Norwich, LLC	0003516350	WQAR676	07/26/2014
DTV Norwich, LLC	0003516351	WQAR677	07/26/2014
DTV Norwich, LLC	0003516352	WQAR678	07/26/2014
DTV Norwich, LLC	0003516353	WQAR679	07/26/2014
DTV Norwich, LLC	0003516354	WQAR680	07/26/2014
DTV Norwich, LLC	0003516355	WQAR681	07/26/2014
DTV Norwich, LLC	0003516356	WQAR682	07/26/2014
DTV Norwich, LLC	0003516357	WQAR683	07/26/2014
DTV Norwich, LLC	0003516358	WQAR684	07/26/2014
DTV Norwich, LLC	0003516359	WQAR685	07/26/2014
DTV Norwich, LLC	0003516360	WQAR686	07/26/2014
DTV Norwich, LLC	0003516361	WQAR687	07/26/2014
DTV Norwich, LLC	0003516362	WQAR688	07/26/2014
DTV Norwich, LLC	0003516363	WQAR689	07/26/2014
DTV Norwich, LLC	0003516364	WQAR690	07/26/2014
DTV Norwich, LLC	0003516365	WQAR691	07/26/2014
DTV Norwich, LLC	0003516366	WQAR692	07/26/2014
DTV Norwich, LLC	0003516367	WQAR693	07/26/2014
DTV Norwich, LLC	0003516368	WQAR694	07/26/2014
DTV Norwich, LLC	0003516369	WQAR695	07/26/2014
DTV Norwich, LLC	0003516370	WQAR696	07/26/2014
DTV Norwich, LLC	0003516371	WQAR697	07/26/2014
DTV Norwich, LLC	0003516372	WQAR698	07/26/2014
DTV Norwich, LLC	0003516373	WQAR699	07/26/2014
DTV Norwich, LLC	0003516374	WQAR700	07/26/2014
DTV Norwich, LLC	0003516375	WQAR701	07/26/2014
DTV Norwich, LLC	0003516376	WQAR702	07/26/2014
DTV Norwich, LLC	0003516377	WQAR703	07/26/2014
DTV Norwich, LLC	0003516378	WQAR704	07/26/2014
DTV Norwich, LLC	0003516379	WQAR705	07/26/2014
DTV Norwich, LLC	0003516380	WQAR706	07/26/2014
DTV Norwich, LLC	0003516381	WQAR707	07/26/2014
DTV Norwich, LLC	0003516382	WQAR708	07/26/2014
DTV Norwich, LLC	0003516418	WQBD526	09/23/2014

<i><b>LICENSEE NAME</b></i>	<i><b>FILE NUMBER OF EX REQUEST</b></i>	<i><b>CALL SIGN</b></i>	<i><b>10-YEAR DEADLINE</b></i>
FOX, BRUCE E	0003678779	WQAR535	07/26/2014
FOX, BRUCE E	0003678785	WQAR534	07/26/2014
FOX, BRUCE E	0003678789	WQAR533	07/26/2014
FOX, BRUCE E	0003678791	WQAR532	07/26/2014
FOX, BRUCE E	0003678803	WQAR531	07/26/2014
FOX, BRUCE E	0003678808	WQAR530	07/26/2014
FOX, BRUCE E	0003678817	WQAR529	07/26/2014
FOX, BRUCE E	0003678822	WQAR528	07/26/2014
FOX, BRUCE E	0003678824	WQAR527	07/26/2014
FOX, BRUCE E	0003678825	WQAR526	07/26/2014
FOX, BRUCE E	0003678828	WQAR525	07/26/2014
FOX, BRUCE E	0003678832	WQAR524	07/26/2014
FOX, BRUCE E	0003678846	WQAR523	07/26/2014
FOX, BRUCE E	0003678851	WQAR522	07/26/2014
FOX, BRUCE E	0003678906	WQAR521	07/26/2014
FOX, BRUCE E	0003678920	WQAR520	07/26/2014
FOX, BRUCE E	0003678922	WQAR519	07/26/2014
FOX, BRUCE E	0003678924	WQAR518	07/26/2014
FOX, BRUCE E	0003678926	WQAR517	07/26/2014
FOX, BRUCE E	0003678929	WQAR516	07/26/2014
FOX, BRUCE E	0003678931	WQAR515	07/26/2014
FOX, BRUCE E	0003678932	WQAR514	07/26/2014
FOX, BRUCE E	0003678936	WQAR513	07/26/2014
FOX, BRUCE E	0003678940	WQAR512	07/26/2014
SOUTH.COM LLC	0003682191	WQAW335	08/18/2014
SOUTH.COM LLC	0003682192	WQAW336	08/18/2014
SOUTH.COM LLC	0003682193	WQAW337	08/18/2014
SOUTH.COM LLC	0003682194	WQAW338	08/18/2014
SOUTH.COM LLC	0003682195	WQAW339	08/18/2014
SOUTH.COM LLC	0003682196	WQAW340	08/18/2014
SOUTH.COM LLC	0003682197	WQAW341	08/18/2014
SOUTH.COM LLC	0003682198	WQAW342	08/18/2014
SOUTH.COM LLC	0003682199	WQAW343	08/18/2014
SOUTH.COM LLC	0003682200	WQAW344	08/18/2014
SOUTH.COM LLC	0003682201	WQAW345	08/18/2014
SOUTH.COM LLC	0003682202	WQAW346	08/18/2014
SOUTH.COM LLC	0003682203	WQAW347	08/18/2014
SOUTH.COM LLC	0003682204	WQAW348	08/18/2014
SOUTH.COM LLC	0003682205	WQAW349	08/18/2014
SOUTH.COM LLC	0003682206	WQAW350	08/18/2014
SOUTH.COM LLC	0003682207	WQAW351	08/18/2014
SOUTH.COM LLC	0003682208	WQAW352	08/18/2014
SOUTH.COM LLC	0003682209	WQAW353	08/18/2014
SOUTH.COM LLC	0003682210	WQAW354	08/18/2014
SOUTH.COM LLC	0003682211	WQAW355	08/18/2014
SOUTH.COM LLC	0003682212	WQAW356	08/18/2014
SOUTH.COM LLC	0003682213	WQAW357	08/18/2014
SOUTH.COM LLC	0003682214	WQAW358	08/18/2014
SOUTH.COM LLC	0003682215	WQAW359	08/18/2014
SOUTH.COM LLC	0003682216	WQAW360	08/18/2014

<i><b>LICENSEE NAME</b></i>	<i><b>FILE NUMBER OF EX REQUEST</b></i>	<i><b>CALL SIGN</b></i>	<i><b>10-YEAR DEADLINE</b></i>
SOUTH.COM LLC	0003682217	WQAW361	08/18/2014
SOUTH.COM LLC	0003682218	WQAW362	08/18/2014
SOUTH.COM LLC	0003682219	WQAW363	08/18/2014
SOUTH.COM LLC	0003682220	WQAW364	08/18/2014
SOUTH.COM LLC	0003682221	WQAW365	08/18/2014
SOUTH.COM LLC	0003682222	WQAW366	08/18/2014
SOUTH.COM LLC	0003682223	WQAW367	08/18/2014
SOUTH.COM LLC	0003682224	WQAW368	08/18/2014
SOUTH.COM LLC	0003682225	WQAW369	08/18/2014
SOUTH.COM LLC	0003682226	WQAW370	08/18/2014
SOUTH.COM LLC	0003682227	WQAW371	08/18/2014
Satellite Receivers, Ltd.	0003695158	WQAR507	07/26/2014
Satellite Receivers, Ltd.	0003695159	WQAR506	07/26/2014
Satellite Receivers, Ltd.	0003695160	WQAR505	07/26/2014
MVD Number 53 Partners	0003719347	WQAR538	07/26/2014
MVD Number 53 Partners	0003719348	WQAR539	07/26/2014
MVD Number 53 Partners	0003719349	WQAR540	07/26/2014
MVD Number 53 Partners	0003719350	WQAR541	07/26/2014
MVD Number 53 Partners	0003719351	WQAR542	07/26/2014
MVD Number 53 Partners	0003719352	WQAR543	07/26/2014
MVD Number 53 Partners	0003719353	WQAR544	07/26/2014
MVD Number 53 Partners	0003719354	WQAR545	07/26/2014
MVD Number 53 Partners	0003719355	WQAR546	07/26/2014
MVD Number 53 Partners	0003719356	WQAR547	07/26/2014
MDS Operations, Inc.	0003813915	WQAR560	07/26/2014
MDS Operations, Inc.	0003813916	WQAR561	07/26/2014
MDS Operations, Inc.	0003813917	WQAR562	07/26/2014
MDS Operations, Inc.	0003813918	WQAR563	07/26/2014
MDS Operations, Inc.	0003813919	WQAR564	07/26/2014
MDS Operations, Inc.	0003813920	WQAR565	07/26/2014
MDS Operations, Inc.	0003813921	WQAR566	07/26/2014
MDS Operations, Inc.	0003813922	WQAR567	07/26/2014
MDS Operations, Inc.	0003813923	WQAR568	07/26/2014
MDS Operations, Inc.	0003813924	WQAR569	07/26/2014
MDS Operations, Inc.	0003813925	WQAR570	07/26/2014
MDS Operations, Inc.	0003813926	WQAR571	07/26/2014
MDS Operations, Inc.	0003813927	WQAR572	07/26/2014
MDS Operations, Inc.	0003813928	WQAR573	07/26/2014
MDS Operations, Inc.	0003813929	WQAR574	07/26/2014
MDS Operations, Inc.	0003813930	WQAR575	07/26/2014
MDS Operations, Inc.	0003813931	WQAR576	07/26/2014
MDS Operations, Inc.	0003813932	WQAR577	07/26/2014
MDS Operations, Inc.	0003813933	WQAR578	07/26/2014
MDS Operations, Inc.	0003813934	WQAR579	07/26/2014
MDS Operations, Inc.	0003813935	WQAR580	07/26/2014
MDS Operations, Inc.	0003813936	WQAR581	07/26/2014
MDS Operations, Inc.	0003813937	WQAR582	07/26/2014
MDS Operations, Inc.	0003813938	WQAR583	07/26/2014
MDS Operations, Inc.	0003813939	WQAR584	07/26/2014
MDS Operations, Inc.	0003813940	WQAR585	07/26/2014

<i><b>LICENSEE NAME</b></i>	<i><b>FILE NUMBER OF EX REQUEST</b></i>	<i><b>CALL SIGN</b></i>	<i><b>10-YEAR DEADLINE</b></i>
MDS Operations, Inc.	0003813941	WQAR586	07/26/2014
MDS Operations, Inc.	0003813942	WQAR587	07/26/2014
MDS Operations, Inc.	0003813943	WQAR588	07/26/2014
MDS Operations, Inc.	0003813944	WQAR589	07/26/2014
MDS Operations, Inc.	0003813945	WQAR590	07/26/2014
MDS Operations, Inc.	0003813946	WQAR591	07/26/2014
MDS Operations, Inc.	0003813947	WQAR592	07/26/2014
MDS Operations, Inc.	0003813948	WQAR593	07/26/2014
MDS Operations, Inc.	0003813949	WQAR594	07/26/2014
MDS Operations, Inc.	0003813950	WQAR595	07/26/2014
MDS Operations, Inc.	0003813951	WQAR596	07/26/2014
MDS Operations, Inc.	0003813952	WQAR597	07/26/2014
MDS Operations, Inc.	0003813953	WQAR598	07/26/2014
MDS Operations, Inc.	0003813954	WQAR599	07/26/2014
MDS Operations, Inc.	0003813955	WQAR600	07/26/2014
MDS Operations, Inc.	0003813956	WQAR601	07/26/2014
MDS Operations, Inc.	0003813957	WQAR602	07/26/2014
MDS Operations, Inc.	0003813958	WQAR603	07/26/2014
MDS Operations, Inc.	0003813959	WQAR604	07/26/2014
MDS Operations, Inc.	0003813960	WQAR605	07/26/2014
MDS Operations, Inc.	0003813961	WQAR606	07/26/2014
MDS Operations, Inc.	0003813962	WQAR607	07/26/2014
MDS Operations, Inc.	0003813963	WQAR608	07/26/2014
MDS Operations, Inc.	0003813964	WQAR609	07/26/2014
MDS Operations, Inc.	0003813965	WQAR610	07/26/2014
MDS Operations, Inc.	0003813966	WQAR611	07/26/2014
MDS Operations, Inc.	0003813967	WQAR612	07/26/2014
MDS Operations, Inc.	0003813968	WQAR613	07/26/2014
MDS Operations, Inc.	0003813969	WQAR614	07/26/2014
MDS Operations, Inc.	0003813970	WQAR615	07/26/2014
MDS Operations, Inc.	0003813971	WQAR616	07/26/2014
MDS Operations, Inc.	0003813972	WQAR617	07/26/2014
MDS Operations, Inc.	0003813973	WQAR618	07/26/2014
MDS Operations, Inc.	0003813974	WQAR619	07/26/2014
Cass Cable TV, Inc.	0003849945	WQAR488	07/26/2014
Cass Cable TV, Inc.	0003849946	WQAR489	07/26/2014
Story Communications, L. L. C.	0003904436	WQAR509	07/26/2014
Story Communications, L. L. C.	0003904437	WQAR510	07/26/2014
Vision Broadband, LLC	0003863087	WQAR716	07/26/2014
Vision Broadband, LLC	0003863088	WQAR717	07/26/2014
Vision Broadband, LLC	0003863089	WQAR718	07/26/2014
Vision Broadband, LLC	0003863090	WQAR719	07/26/2014
Vision Broadband, LLC	0003863091	WQAR720	07/26/2014
Vision Broadband, LLC	0003863092	WQAR721	07/26/2014
Vision Broadband, LLC	0003863093	WQAR722	07/26/2014
WCS Communications, Inc.	0003876140	WQAR723	07/26/2014