

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

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| In the matter of |) | |
| |) | |
| |) | |
| Amendment of Parts 2 and 25 of the Commission's |) | ET Docket No. 98-206 |
| Rules to Permit Operation of NGSO FSS Systems |) | RM-9147 |
| Co-Frequency with GSO and Terrestrial Systems in |) | RM-9245 |
| the Ku-Band Frequency Range; |) | |
| |) | |
| Amendment of the Commission's Rules to Authorize |) | |
| Subsidiary Terrestrial Use of the |) | |
| 12.2-12.7 GHz Band by Direct Broadcast Satellite |) | |
| Licensees and Their Affiliates; and |) | |
| |) | |
| Applications of Broadwave USA, |) | |
| PDC Broadband Corporation, and |) | |
| Satellite Receivers, Ltd. to Provide |) | |
| A Fixed Service in the 12.2-12.7 GHz Band |) | |

FOURTH ERRATUM

Released: September 17, 2004

By the Deputy Chief, Broadband Division, Wireless Telecommunications Bureau:

1. On May 23, 2002, the Commission released a *Memorandum Opinion and Order and Second Report and Order (MVDDS Second R&O)*, FCC 02-116, in the above captioned proceeding.¹ Appendix D of the *MVDDS Second R&O* contained final rules including Section 101.1412 (MVDDS eligibility restrictions for cable operators).² On June 7, 2002,³ and August 14, 2002,⁴ the staff released corrections to

¹ 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; Amendment of the Commission's Rules to Authorize Subsidiary Terrestrial Use of the 12.2-12.7 GHz Band by Direct Broadcast Satellite Licensees and Their Affiliates; and Applications of Broadwave USA, PDC Broadband Corporation, and Satellite Receivers, Ltd. to Provide a Fixed Service in the 12.2-12.7 GHz Band, ET Docket No. 98-206, *Memorandum Opinion and Order and Second Report and Order*, 17 FCC Rcd 9614 (2002) (*MVDDS Second R&O*).

² 47 C.F.R. § 101.1412 (2002); *see also MVDDS Second R&O*, 17 FCC Rcd at 9720-38, App. D.

³ *See* ET Docket No. 98-206, [*Second*] *Erratum* (rel. June 7, 2002) (incorporated into the version of the *MVDDS Second R&O* published in the FCC Record). Earlier, on June 4, 2002, the staff released a [*First*] *Erratum* to the *MVDDS Second R&O* that added procedural text that was published at 67 FR 43031, 43032 (June 26, 2002).

⁴ *See* ET Docket No. 98-206, *Third Erratum*, 17 FCC Rcd 15849 (PSPWD 2002). The *Third Erratum* will not be published separately in the Federal Register because subsequent actions in the captioned proceeding have modified or corrected all three of the rules that were discussed in the *Third Erratum*.

Appendix D of the *MVDDS Second R&O*. Thereafter, on May 28, 2004, an *Order* was released to correct errors in the Federal Register publication of the rules that were adopted in the *MVDDS Second R&O*.⁵

2. The instant *Fourth Erratum* to the *MVDDS Second R&O* corrects Section 101.1412. Specifically, we are correcting a cross-reference in a note to the rule that states that “waivers . . . may be granted upon an affirmative showing” In the adopted version, the cross reference was to “paragraph (f)(6).” However, to conform Section 101.1412 to the text of the Commission’s decision in the *MVDDS Second R&O*, we are correcting the cross-reference to read: “paragraph (f).”⁶

3. Therefore, with this *Fourth Erratum*, we correct Section 101.1412 to conform the rule to the text of the *Memorandum Opinion and Order and Second Report and Order*.

4. In Section 101.1412, the “Note to paragraph (f)(6)” is removed.

5. Section 101.1412 is amended by adding a Note at the end of the section to read as follows:

§ 101.1412 MVDDS eligibility restrictions for cable operators.

* * * * *

Note to Section 101.1412: Waivers of § 101.1412(f) may be granted upon an affirmative showing:

1. That the interest holder has less than a fifty percent voting interest in the licensee and there is an unaffiliated single holder of a fifty percent or greater voting interest;
2. That the interest holder is not likely to affect the local market in an anticompetitive manner;
3. That the interest holder is not involved in the operations of the licensee and does not have the ability to influence the licensee on a regular basis; and
4. That grant of a waiver is in the public interest because the benefits to the public of common ownership outweigh any potential anticompetitive harm to the market.

6. Any impact as defined by the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13, the Congressional Review Act (CRA), and the Regulatory Flexibility Act of 1980, as amended (RFA), was addressed at the time of adoption and release of the *Memorandum Opinion and Order and Second Report and Order*. Therefore, the PRA, CRA and RFA requirements have already been fulfilled for this rule.

⁵ See Amendment of Parts 25 and 101 of the Commission’s Rules Governing Multichannel Video Distribution and Data Service in the 12.2-12.7 GHz Band, *Order*, ET Docket No. 98-206, 19 FCC Rcd 9727 (OMD 2004).

⁶ The definition of an attributable interest under the MVDDS/cable-cross ownership rule was modeled after a similar rule for the Local Multipoint Distribution Service (LMDS). See *MVDDS Second R&O*, 17 FCC Rcd at 9682 (¶ 170), wherein the Commission noted that it was adopting a 20 percent attribution threshold modeled on the LMDS rule on eligibility restrictions for incumbent Local Exchange Companies (LECs) and cable companies. See *id.* citing *LMDS Second Report and Order*, CC Docket No. 92-297, 12 FCC Rcd 12545, 12630-31 (1997) (wherein, for LMDS, the Commission adopted 47 C.F.R. § 101.1003 (1998)).

7. Accordingly, IT IS ORDERED that this *Fourth Erratum* is issued pursuant to Section 0.331 of the Commission's rules on delegated authority, 47 C.F.R. § 0.331.

FEDERAL COMMUNICATIONS COMMISSION

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