

spectrum between Multichannel Video Distribution and Data Service (MVDDS) and Direct Broadcast Satellite (DBS) and Non-geostationary (NGSO) fixed satellite service (FSS) in the 12.2–12.7 GHz band that the Commission adopted in the *Memorandum Opinion and Order and Second Report and Order (Second R&O)*. The Commission also affirms the dismissal of the pending license applications to provide terrestrial service in the 12.2–12.7 GHz band. The Commission takes these actions in the course of addressing the petitions for reconsideration that were filed in response to the *Second R&O* in this proceeding. The Commission amends or clarifies certain rule sections, but otherwise denies the petitions for reconsideration. The adoption of the amended rules and the disposition of the petitions for reconsideration will facilitate initiation of MVDDS in the 12.2–12.7 GHz band.

**DATES:** Effective August 25, 2003, except § 25.146 which contains information collection requirements that have not been approved by OMB. The Federal Communications Commission will publish a document in the **Federal Register** announcing the effective date. Written comments on the new and/or modified information collection(s) must be submitted by the public, Office of Management and Budget (OMB) and other interested parties on or before September 23, 2003.

**FOR FURTHER INFORMATION CONTACT:** Gary Thayer, Office of Engineering and Technology, (202) 418–2290, TTY (202) 418–2989, e-mail: [gthayer@fcc.gov](mailto:gthayer@fcc.gov); Jennifer Burton, Wireless Telecommunications Bureau, (202) 418–7581, TTY (202) 418–7581, e-mail [jburton@fcc.gov](mailto:jburton@fcc.gov). For additional information concerning the information collections contained in this document, contact Les Smith at (202) 418–0217, or via the Internet at [Leslie.Smith@fcc.gov](mailto:Leslie.Smith@fcc.gov).

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's *Fourth Memorandum Opinion and Order*, ET Docket No. 98–206, FCC 03–97, adopted April 22, 2003, and released April 29, 2003. The full text of this Commission decision is available on the Commission's Internet site at <http://www.fcc.gov>. It is available for inspection and copying during normal business hours in the FCC Reference Information Center, Room CY–A257, 445 12th Street, SW., Washington, DC 20554. The complete text of this document also may be purchased from the Commission's copy contractor, Qualex International, 445 12th Street, SW., Room, CY–B402, Washington, DC 20554. Alternative formats are available

to persons with disabilities by contacting Brian Millin at (202) 418–7426 or TTY (202) 418–7365. File comments with the Office of the Secretary, a copy of any comments on the information collection contained herein should be submitted to Les Smith, Federal Communications Commission, Room 1–A804, 445 12th Street, SW., Washington, DC 20554 or via the Internet to [Leslie.Smith@fcc.gov](mailto:Leslie.Smith@fcc.gov), and to Kim A. Johnson, OMB Desk Officer, Room 10236 NEOB, 725 17th Street, NW., Washington, DC 20503 or via the Internet to [Kim.A.Johnson@omb.eop.gov](mailto:Kim.A.Johnson@omb.eop.gov).

#### Summary of the Fourth Memorandum Opinion and Order

1. *DBS Issues.* In this *Fourth Memorandum Opinion and Order (Fourth MO&O)*, the Commission affirms that the four regional EPFD limits and the 14 dBm EIRP limit adopted for MVDDS operation constitute objective standards that will prevent harmful interference to DBS as defined by § 2.1 of the Commission's rules and will provide certainty that, along with other reasonable procedures that were adopted, can be discerned and relied upon by DBS operators. The Commission declines to adopt higher EIRP and EPFD limits for rural areas because the adopted standards are sufficiently conservative to protect DBS in general application while preserving the flexibility for each MVDDS provider to make its own business decisions about what type of transmission system best suits its needs.

2. The Commission affirms that the rules and procedures adopted in the *Second R&O*, (ET Docket No. 98–206), 67 FR 43031, June 26, 2002 comply with the legislative history and provisions of the *Rural Local Broadcast Signal Act (RLBSA)* and the *Satellite Home Viewer Protection Act (SHVIA)*<sup>1</sup> that prohibit harmful interference to DBS. The Commission finds that, under the powers granted by the Communications Act, it was proper to define interference standards in terms of EPFD and EIRP limits on MVDDS that it concluded would prevent harmful interference to DBS. The Commission further finds that the adoption of these standards complies with the *Administrative Procedure Act (APA)* because they were

developed through the usual notice and comment rule making process.

3. The Commission affirms that the rules and procedures adopted in the *Second R&O* do not violate other Commission rules or international radio regulations, and are consistent with the regulatory history of DBS and FS allocations in the 12 GHz band because MVDDS, unlike previous FS operations, is designed to coexist with DBS and because the adopted rules and procedures will prevent harmful interference to DBS.

4. The Commission affirms the self-mitigation responsibilities adopted in the *Second R&O* for new DBS receivers and finds that they are consistent with the primary status of DBS because, due to their modest, effective and infrequently required nature, they strike an appropriate public interest balance that will result in more efficient spectrum utilization and will facilitate compliance with the non-harmful interference provisions of the statutes while allowing initiation of a new service.

5. The Commission finds that adequate notice was given for the computer model used to derive the EPFD limits on MVDDS, and that the various inputs for this model—including using a 10% increase in DBS unavailability as a starting point rather than as a hard limit, the “double averaging” of EPFDs, and the decision not to include “wing satellites”—are reasonable and supported by the evidence of record particularly in light of the deficiencies or impracticalities involved in other models that were considered.

6. The Commission affirms that the “safety valve” rule, as written, is sufficiently specific and is a useful tool to ensure that MVDDS operations fully protect DBS. Consistent with past practice, the Commission notes that in many cases it has provided opportunities for licensees to petition for adjustments to rules (outside the waiver process) without specifying in exacting detail how such a filing should be made.

7. The Commission affirms its decision to require that MVDDS conduct a site survey as specified in § 101.1440(b) of the Commission's rules and finds that, in conjunction with other adopted procedures, it has provided sufficient detail and specificity—similar in nature to the broad good-faith-based guidelines that have proven to be both workable and beneficial in other proceedings—that the Commission concludes will protect DBS customers in this proceeding.

<sup>1</sup> *Satellite Home Viewer Improvement Act Of 1999 (SHVIA)/Rural Local Broadcast Signal Act (RLBSA)*. See Public Law 106–113, 113 STAT. 1501, 1501A–544 TO 101A–545, Act of Nov. 29, 1999 (enacting S.1948, including the SHVIA and RLBSA. Titles I and II of the Intellectual Property and Communications Omnibus Reform Act of 1999).