

8. The Commission affirms the 45-day DBS response time specified in § 101.1440(d)(2) of the Commission's rules, because it provides a reasonable balance between the needs of DBS licensees to ensure protection of their customers before MVDDS begins operation while affording MVDDS licensees the ability to initiate service on a reasonably expeditious basis. Further, the Commission concludes that DBS customers are protected once MVDDS begins operation because the MVDDS provider must correct interference or cease operation if it causes harmful interference to or exceeds the permitted EPFD limits to a DBS customer of record.

9. The Commission amends § 101.1440(e) of the rules to clarify the responsibility of DBS licensees in regard to future DBS receive antenna installations. The Commission recognizes that § 101.1440(e) of the rules adopted in the *Second R&O* appears to require a DBS licensee to oversee all future DBS receive antenna installations, which they currently may not do. It was not intent of the Commission to alter these arrangements. Rather, the Commission only expects a DBS licensee to provide information that they deem necessary so that other entities installing DBS receive antennas may take into account the presence of MVDDS operations. Typically, this information could be conveyed with installation guidelines for DBS equipment.

10. The Commission amends § 101.1440(d)(2) of the rules to allow DBS providers to identify—instead of all DBS customers of record—only those new DBS customers of record that they believe would receive harmful interference from the proposed MVDDS transmitter during the 30-day period specified in the rule. The Commission takes this action to address petitioners' concern regarding the possible uses to which other parties could put such information.

11. The Commission declines to adopt a methodology for measuring EPFD values in the field because any measurement techniques that might be described would artificially limit the flexibility of the licensees to perform these measurements, and could seemingly prohibit the use of a technique that is satisfactory for this purpose.

12. Concerning dispute resolution procedures, the Commission clarifies that an MVDDS transmitter can be turned on after expiration of the 90-day period specified in § 101.1440 of the rules. The Commission believes that the adopted EPFD contour methodology

will reduce disputes to a minimum, and this time frame will ensure that licensees participate in conflict resolution in good faith.

13. The Commission affirms its decision to dismiss the pending applications of Broadwave Network, LLC (Northpoint), PDC Broadband Corporation (Pegasus), and Satellite Receivers, Ltd. (SRL) because the original *Ku-band Cut-Off Notice* did not provide adequate notice for all entities interested in filing applications for licenses to provide terrestrial services in the 12 GHz band. The Commission further finds that its decision to dismiss the pending applications is consistent with the *LOCAL TV Act* because there is no evidence that Congress explicitly ordered the Commission to limit terrestrial applications in this band to those already on file and validated by independent testing.

14. The Commission finds that the rules and procedures adopted in the *Second R&O* do not violate the *Administrative Procedure Act (APA)* because the decisions were fully explained and rationally based upon all the information in the record and, therefore, are not arbitrary, capricious or contrary to law.

15. The Commission finds that the adoption of the *Second R&O* did not violate the provisions of the *Government in the Sunshine Act (Sunshine Act)* because the item was not adopted at an open meeting as defined by the Act and that, therefore, the *Sunshine Act* is not applicable.

16. The Commission dismisses, as repetitious, the petitions for reconsideration to the extent that they challenge the underlying decision in the *First Report and Order*, 66 FR 10601, February 16, 2001, and *Further Notice of Proposed Rulemaking*, 66 FR 7607, January 24, 2001, in this proceeding to authorize MVDDS in the 12 GHz band, and to the extent they challenge the determination made in the memorandum opinion and order portion of the *Second R&O* that MVDDS is authorized on a primary, rather than secondary, non-harmful interference basis as to DBS.

17. The Commission denies as not ripe, because it relies upon purely speculative conjecture, a petition for reconsideration that asserts that DBS providers might at some time in the future suffer a "regulatory taking" as the result of being required to increase satellite power to overcome MVDDS interference.

18. *NGSO FSS Issues*. The Commission affirms the -135 dBW/m²/4kHz PFD limit at 3 km, and the 10 km separation rules for MVDDS because

they provide reasonable interference protection to NGSO FSS and strike a reasonable balance between affording the first in service provider with easier and better use of the band while not unduly precluding deployment by the later-in provider. The Commission affirms its finding that an alternate NGSO FSS protection scheme proposed by one petitioner is unduly complex and provides no benefit over the adopted limits.

19. The Commission amends § 25.139(a) to reflect that the information NGSO FSS licensees are required to provide MVDDS should be construed narrowly and that only information necessary to achieve the required 10 km separation under § 25.139(b) needs to be provided.

20. The Commission clarifies the NGSO FSS low-angle PFD limit of § 25.208(o) for MVDDS protection. The limit will be treated in a manner consistent with the rules for NGSO FSS and BSS sharing where validation (*i.e.*, "hard limit") and operational (*i.e.*, can be exceeded so long as they are not exceeded into an operational receiver) EPFD limits were adopted. The low-angle PFD limit adopted by the Commission in the *Second R&O* for MVDDS protection is therefore intended to be an operational limit which means that it does not need to be met in all cases so long as it is not exceeded into an operational MVDDS receiver. To clarify this intent, the Commission modifies § 25.146 to add paragraph (g) to specify that the required technical showing shall demonstrate the NGSO FSS system is *capable* of meeting the limits specified in § 25.208(o). The Commission also amends § 25.208(o) to require that the specified power flux density shall not be exceeded into an *operational* MVDDS receiver.

21. The Commission clarifies the MVDDS emission mask by amending the footnote immediately after the definition of "B" in § 101.111(a)(2)(i) to add the proviso that the emission mask only applies at the 12.2–12.7 GHz band edges and does not restrict MVDDS channelization bandwidths within the band.

22. *Paperwork Reduction Act Analysis*: This Fourth Memorandum Opinion and Order contains a new or modified information collections. This Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget to comment on the information collections contained in the Fourth Memorandum Opinion and Order, as required by the Paperwork Reduction Act of 1995,