

**Before the  
Federal Communications Commission  
Washington, DC 20554**

In the Matter of

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 Satellite  
Service in the 12.2-12.7 GHz Band

ET Docket No. 98-206  
RM-9147  
RM-9245

**Comments on Petitions for Reconsideration**

Digital Broadband Applications Corp. ("DBAC"), by its attorneys, pursuant to Section 1.106 of the Rules of the Federal Communications Commission ("FCC" or "Commission"), 47 C.F.R. §1.106, hereby comments on the petitions for reconsideration filed by SES Americom, Inc. ("SES") and jointly by EchoStar Satellite Corporation ("EchoStar") and DirecTV, Inc. ("DirecTV") (collectively, "Petitioners") in the above-captioned proceeding.<sup>1</sup>

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<sup>1</sup> SES Americom, Inc., Petition for Reconsideration, ET Docket No. 98-206, RM-9147, RM-9245 (filed July 26, 2002) ("SES Petition"); Joint Petition of EchoStar Satellite Corporation and DirecTV, Inc. for Reconsideration of Second Report and Order, ET Docket No. 98-206, RM-9147, RM-9245 (filed July 26, 2002) ("EchoStar and DirecTV Joint Petition").

DBAC has a strong interest in the outcome of this proceeding. On January 9, 2002, DBAC filed an application with the Commission to provide U.S. consumers interactive video service and high-speed Internet access via an integrated architecture that includes the Canadian-licensed Nimiq and Nimiq 2 satellites using the 12.2-12.7 GHz band.<sup>2</sup> Thus, the technical rules recently adopted in the *Second Report and Order*<sup>3</sup> for the implementation of terrestrial fixed Multichannel Video Distribution and Data Service (“MVDDS”) in the 12.2-12.7 GHz band could adversely affect DBAC’s U.S. operations following grant of its pending application.<sup>4</sup>

The Petitioners raise substantial questions about whether the FCC’s rules adequately will protect satellite operations in the 12.2-12.7 GHz band. DBAC agrees with these Petitioners’ concerns as set forth below.

First, DBAC agrees with SES that the Commission’s decision to permit operation of MVDDS facilities in the 12.2-12.7 GHz band “does not concern only U.S. systems.”<sup>5</sup> In particular, DBAC notes that the Commission did not evaluate interference to U.S. terminals receiving signals in the 12.2-12.7 GHz band from non U.S.-licensed satellites when establishing the equivalent power flux density (“EPFD”) level for U.S. terrestrial MVDDS operations.<sup>6</sup> The

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<sup>2</sup> *Digital Broadband Applications Corp. Consolidated Application for Authority to Operate U.S. Earth Stations With a U.S.-licensed Ku-Band FSS Satellite and Canadian-Licensed Nimiq and Nimiq 2 Satellites to Offer Integrated Two-Way Broadband Video Data Service Throughout the United States*, File No. SES-LIC-20020109-00023 (filed Jan. 9, 2002).

<sup>3</sup> Memorandum Opinion and Order and Second Report and Order, 17 FCC Rcd 9614, FCC 02-116 (May 23, 2002) (“*Second Report and Order*”).

<sup>4</sup> DBAC’s application to operate in the 12.2-12.7 GHz band was filed after expiration of the time to file comments on the Further Notice of Proposed Rulemaking and the MITRE report, both of which led to the issuance of the *Second Report and Order*, and thus it was not possible for DBAC to participate in the earlier stages of this proceeding. *Cf.* 47 C.F.R. §1.106(b)(1).

<sup>5</sup> SES Petition at 12.

<sup>6</sup> *See Second Report and Order*, para. 82 n.200 (relying on three U.S.-licensed full CONUS satellites to establish an EPFD limit for MVDDS operations).

FCC recognized and took action to protect Canadian operations in the 12.2-12.7 GHz band when offered in Canada, but did not extend that same protection to operations offered to U.S. consumers.<sup>7</sup> Specifically, the FCC required U.S. MVDDS operations located within thirty-five miles of the Canadian and Mexican borders not to cause interference to Canadian and Mexican receivers of satellite service in the 12.2-12.7 GHz band.

As a result of this omission in the Commission's order, DBAC's service to U.S. consumers might receive insufficient protection from MVDDS operations (except perhaps within 35 miles of the Canadian and Mexican borders). Thus, the FCC should reconsider and amend its rules to protect U.S. consumers that will receive service in the 12.2-12.7 GHz band from non-U.S. licensed satellites or condition any MVDDS licenses on protecting U.S. services provided on non-U.S. satellites in the 12.2-12.7 GHz band once authorized in the future.

DBAC also shares Petitioners' concerns that the Commission's Rules do not require MVDDS operators to protect satellites operations in the 12.2-12.7 GHz deployed after selection of an MVDDS site.<sup>8</sup> DBAC agrees that this failure directly contradicts Congress' mandate that "the Commission shall ensure that no facility-licensed or authorized...causes harmful interference to the primary users of that spectrum."<sup>9</sup> Unquestionably, thus, the FCC should have adopted rules that protect future satellite-delivered service in the 12.2-12.7 GHz band from interference from earlier deployed MVDDS systems. This is of particular importance to DBAC, which should soon receive FCC approval to begin operations in this frequency band.

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<sup>7</sup> See *Second Report and Order*, para. 195.

<sup>8</sup> EchoStar and DirecTV Joint Petition at 2; SES Petition at 4.

<sup>9</sup> Rural Local Broadcast Signal Act of Nov. 29, 1999, Pub. L. No. 106-113, Div B, § 2000(b)(2), 113 Stat. 1501 (Nov. 29, 1999); EchoStar and DirecTV Joint Petition at 2; SES Petition at 13.

Thus, DBAC respectfully joins Petitioners in urging the FCC to provide equal protection from terrestrial MVDDS interference to all U.S. customers of satellite-delivered services in the 12.2-12.7 GHz band. Specifically, DBAC requests that the FCC amend its Rules to require terrestrial MVDSS to protect satellite terminals operating in the 12.2-12.7 GHz band regardless of whether those U.S. customers receive service initiated before or after the deployment of MVDDS or using capacity on U.S. or non-U.S. licensed satellites.

Respectfully submitted,

Digital Broadband Applications Corp.

By: \_\_\_\_\_ /s/

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