Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 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 Service in the 12.2-12.7 GHz Band	)	ET Docket No. 98-206 RM-9147 RM-9245

To: The Commission

<u>REPLY COMMENTS OF GENARACORP, LLC</u>

Genaracorp, LLC ("Genaracorp"), by its attorneys and pursuant to Section 1.415(c) of the Commission's Rules,[1] hereby files its reply comments in response to the Second Further Notice of Proposed Rulemaking ("Second Further NPRM"), FCC 03-85, released April 15, 2003. Genaracorp was formed for the purpose of applying for Multichannel Video Distribution and Data Service ("MVDDS") licenses and developing the markets obtained to provide video and data services to the public. As discussed below, Genaracorp urges the Commission to (1) use Nielsen Media Research's Designated Market Areas ("DMAs") rather than Department of Commerce Component Economic Areas ("CEAs") to define the market areas for MVDDS

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1 All references to the Commission's Rules are cited at 47 C.F.R. §§ 0.1 *et seq.*

licensing and (2) shorten the required build-out period in which to provide substantial service from ten years to five years.

Market Areas

It is Genaracorp's intent to develop the MVDDS markets to provide both video and data services. The March 26, 2003 letter from Nielsen Media Research ("Nielsen") to the Commission attached as Appendix C to the Second Further NPRM provides the Commission with the royalty-free licensing that the Commission needs to use DMAs for the purpose of defining MVDDS market areas. Cross-referencing to Nielsen DMAs has worked well for the Commission in regard to the broadcast and cable rules, and there is no reason why it should not work equally well in regard to the MVDDS rules. MVDDS applicants will not need anything further from Nielsen in order to receive licenses based on DMA market boundaries from the Commission. Neither will MVDDS licensees need anything further from Nielsen to construct and operate in the markets. To the extent Genaracorp may intend to use the DMA mark, regions or data or otherwise use the DMA designation in connection with the provision of service, Genaracorp will work with Nielsen to obtain the requisite licensing.

On the other hand, one of the essential components in the provision of video services will be the retransmission of local television programming. Cable systems, including wireless cable systems such as MVDDS, are entitled to rebroadcast local television programs within the DMA of the originating television station without the need to pay royalties. If the Commission were to define market areas on the basis of CEAs, because there is no consistency between CEA and DMA boundaries, each MVDDS applicant would need to obtain multiple CEAs in order to retransmit local television broadcasting within a single DMA. This would defeat the Commission's intention of using small market areas to make it possible to rapidly bring service to the public and to encourage small businesses to do so. To make matters worse, many CEAs would include significant areas that are not part of the same DMA. As a result, to retransmit local television programming in the parts of the CEA not covered by the DMA, an MVDDS provider would either need to pay substantial royalties to the television broadcaster or obtain programming from another DMA. Either solution would be detrimental to Genaracorp's business plans. Therefore, Genaracorp supports the use of DMAs rather than CEAs to define market areas.

Build-Out Requirements

The Commission's rules do not limit cross-ownership between direct broadcast satellite ("DBS") service and MVDDS. With a ten-year build-out requirement, it is possible that a DBS provider could obtain MVDDS licenses for the purpose of warehousing the licenses for many years to prevent a new MVDDS competitor from coming into the market. On the other hand, a five-year build-out period is short enough that the incentive for warehousing would be considerably reduced, provided that the build-out requirement remains substantial service and is not reduced to merely an initial deployment of service. The problem with a mere initial deployment requirement would be that a very modest investment in equipment would preserve the license for warehousing purposes. Lastly, a five-year build-out period forces even the best intentioned MVDDS licensee to build at a faster pace than would be the case with a ten-year period. In short, a five-year build out period coupled with a substantial service requirement increases competition and brings service to the public faster.

Conclusion

In view of the foregoing, Genaracorp strongly encourages the Commission to adopt DMAs rather than CEAs to define market areas, reduce the ten-year build-out period to five years, and maintain the requirement of providing substantial service at the end of the build-out period.

Respectfully submitted,

GENARACORP, LLC

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