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March 13, 2002

William Caton, Acting Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: Ex Parte Submission of MDS America, Incorporated
ET Docket No. 98-206; RM-9147; RM-9245

Dear Mr. Caton:

MDS America, Incorporated ("MDS America"), submits this *ex parte* filing enclosing a copy of its application amending its recently filed modification application for its experimental license, Call Sign WC2XPU. As explained in the exhibit to the amendment, MDS America elected to request two additional changes to the technical parameters of the experimental license, in order to fully demonstrate its MVDDS technology's capability to coexist with DBS. As Commission staff previously requested, MDS America is including this filing as part of the above-referenced docket. This letter supplements MDS America's March 5, 2002, filing to this docket. Please direct any questions concerning this filing to the undersigned.

Respectfully submitted,



Nancy K. Spooner
Helen Disenhaus
Counsel for MDS America, Incorporated

cc: Kirk Kirkpatrick



FEDERAL COMMUNICATIONS COMMISSION ANTENNA REGISTRATION FORM FOR FILE NUMBER: 0005-EX-ML-2002								
1. * The purpose of this application is to: <input checked="" type="radio"/> Edit data pertaining to this antenna <input type="radio"/> Delete this antenna from the application/license								
2a. * Proposed location of transmitter and transmitting antenna: <input checked="" type="radio"/> FIXED/BASE <input type="radio"/> MOBILE <input type="radio"/> BASE AND MOBILE								
2b. If permanently located at a FIXED location, give below: <table style="width:100%; border: none;"> <tr> <td style="border: none;">State:</td> <td style="border: none;">County:</td> <td style="border: none;">City or Town:</td> </tr> <tr> <td style="border: none;"> <input type="text" value="FLORIDA"/> </td> <td style="border: none;"> <input type="text" value="HENDRY"/> </td> <td style="border: none;"> <input type="text" value="Clewiston"/> </td> </tr> </table>			State:	County:	City or Town:	<input type="text" value="FLORIDA"/>	<input type="text" value="HENDRY"/>	<input type="text" value="Clewiston"/>
State:	County:	City or Town:						
<input type="text" value="FLORIDA"/>	<input type="text" value="HENDRY"/>	<input type="text" value="Clewiston"/>						
Number and street (or other indication of location): <input type="text" value="5 miles SE of Clewiston on the grounds of U.S. Sug"/>								
2c. If mobile, describe the exact area of operation: <input type="text"/>								
2d. *If fixed, enter the geographical coordinates exact to the nearest second. If mobile or base and mobile, enter either the area of operation or the fixed/center coordinates and the radius of operation.								
North Latitude(DD-MM-SS): <input type="text" value="26"/> ° <input type="text" value="42"/> ' <input type="text" value="35"/> "	West Longitude(DDD-MM-SS): <input type="text" value="80"/> ° <input type="text" value="54"/> ' <input type="text" value="0"/> "	Radius of Operation: Km <input type="text" value="37"/>						
3. * Datum: <input checked="" type="radio"/> NAD 27 <input type="radio"/> NAD 83								
4. *Is a directional antenna (other than radar) used? If "YES", give the following information:		<input checked="" type="radio"/> Yes <input type="radio"/> No						
(a) Width of beam in degrees at the half-power point: <input type="text" value="360"/>								
(b) Orientation in horizontal plane: <input type="text" value="180"/>								
(c) Orientation in vertical plane: <input type="text" value="5"/>								
5. * Will the antenna extend more than 6 meters above the ground, or if mounted on an existing building, will it extend more than 6 meters above the building, or will the proposed antenna be mounted on an existing structure other than a building? If "YES", give the following:		<input checked="" type="radio"/> Yes <input type="radio"/> No						
(a) Overall height above ground to tip of antenna is <input type="text" value="181"/> meters.								
(b) Elevation of ground at antenna site above mean sea level is <input type="text" value="5"/> meters.								
(c) Distance to nearest aircraft landing area is <input type="text" value="0"/> kilometers.								
(d) List any natural formations of existing man-made structures (hills, trees, water tanks, towers, etc.) which, in the opinion of the applicant, would tend to shield the antenna from aircraft and thereby minimize the aeronautical hazard of the antenna.								
<input type="text" value="Please see the attached Exhibit in support of modifying the height of this antenna."/>								
(e) Submit as an exhibit a vertical profile sketch of total structure including supporting building, if any, giving heights in meters above ground for all significant features. Clearly indicate existing portion, noting particulars of aviation obstruction lighting already available. Submit this sketch								

under the "Antenna Drawing" exhibit type.

[Click here to view frequencies for this antenna](#)

You will be presented with the FCC FORM 159, Fee Remittance Advice after submitting your application and obtaining a confirmation number.

FCC FORM 442 - FEDERAL COMMUNICATIONS COMMISSION APPLICATION FOR NEW OR MODIFIED RADIO STATION UNDER PART 5 OF FCC RULES - EXPERIMENTAL RADIO SERVICE (OTHER THAN BROADCAST)		Approve 3060 - 00 Expires 0
1. * Applicant's Name (company) MDS America, Incorporated		File No 0005-E
2. Mailing Address:		
Attention:* Harold (Kirk) Kirkpatrick		
Street Address: 729 S. Federal Highway		
P.O. Box: Suite 212		
City:* Stuart	State:* FL	Zip Code:* 34994
E-Mail Address: kirk@mdsameric.com		
3(a). * Application is for: MODIFICATION OF EXISTING LICENSE		3(b). For Modification indicate below: File No: 0095-EX-PL-2001 Callsign: WC2XPU
4. * Is this authorization to be used for fulfilling the requirement of a government contract with an agency of the United States Government? If "YES", include as an exhibit a narrative statement describing the government project, agency and contract number.		C
5. * Is this authorization to be used for the exclusive purpose of developing radio equipment for export to be employed by stations under the jurisdiction of a foreign government? If "YES", include the contract number and the name of the foreign government concerned as an exhibit.		C
6. * Is this authorization to be used for providing communications essential to a research project? (The radio communication is not the objective of the research project)? If "YES", include as an exhibit the following information: a. A description of the nature of the research project being conducted. b. A showing that the communications facilities requested are necessary for the research project involved. c. A showing that existing communications facilities are inadequate.		C
7. If all the answers to Items 4, 5, 6 are "NO", include as an exhibit a narrative statement describing in detail the following: a. The complete program of research and experimentation proposed including description of equipment and the operation. b. The specific objectives sought to be accomplished. c. How the program of experimentation has a reasonable promise of contribution to the development, extension, or utilization of the radio art, or is along a line not already investigated.		
8. * Give an estimate of the length of time that will be required to complete the program of experimentation proposed in this application: 12 in Months		
9. * Would a commission grant of this application come within Section 1.1307 of the FCC Rules, such that it may have a significant environmental impact? If "YES", include as an exhibit an Environmental Assessment as required by Section 1.1311.		C

10. List below transmitting equipment to be installed (if experimental, so state) if additional rows are required, please equipment list as an exhibit :

MANUFACTURER	MODEL NUMBER	NO. OF UNITS	EXPER
MDS International S.A.R.L.	No model no.	1	<input checked="" type="radio"/> Y
MDS International S.A.R.L.	No Model No.	1	<input checked="" type="radio"/> Y
			<input type="radio"/> Y
			<input type="radio"/> Y
			<input type="radio"/> Y

11. * Is the equipment listed in Item 10 capable of station identification pursuant to Section 5.115?

12. *Applicant is:
 INDIVIDUAL ASSOCIATION PARTNERSHIP CORPORATION OTHER
 If "OTHER" is selected, include as an exhibit a narrative statement describing the type of applicant.

13. * Is applicant a foreign government or a representative of a foreign government?

14. *
 Has applicant or any party to this application had any FCC station license or permit revoked or any application for permit, license or renewal denied by this Commission?
 If "YES", include as an exhibit a statement giving call sign of license or permit revoked and relate circumstances.

15. * Will applicant be owner and operator of the station?

16. Give the following information of person who can best handle inquiries pertaining to this application:

* Last Name:
 Kirkpatrick

* First Name:
 Harold (Kirk)

* Title:
 President and CEO

* Phone Number (include area code):
 877-677-MDSA

E-Mail Address:
 kirk@mdsamerica.com

17. * APPLICANT ANTI-DRUG ABUSE CERTIFICATION:
 By checking "YES", the individual applicant certifies that he or she is eligible for this license. This requires that he or she is not subject to a denial of federal benefits, including FCC benefits, as a result of a drug offense conviction pursuant to Section 5301 of the Anti-Drug Abuse Act of 1988, 21 U.S.C. 862. A non-individual applicant, e.g., corporation, partnership or other unincorporated association, certifies that no party to the application is subject to a denial of federal benefits, pursuant to that section. For definition of a "party" for these purposes, see 47CFR 1.2002(b).

18. CERTIFICATION:

THE APPLICANT CERTIFIES THAT:

- a. Copies of the FCC Rule Parts 2 and 5 are on hand; and
- b. Adequate financial appropriations have been made to carry on the program of experimentation which will be co-qualified personnel; and
- c. All operations will be on an experimental basis in accordance with Part 5 and other applicable rules, and will be in such a manner and at such a time as to preclude harmful interference to any authorized station; and
- d. Grant of the authorization requested herein will not be construed as a finding on the part of the Commission:
 - 1. that the frequencies and other technical parameters specified in the authorization are the best suited for program of experimentation, and
 - 2. that the applicant will be authorized to operate on any basis other than experimental, and
 - 3. that the Commission is obligated by the results of the experimental program to make provision in its rules table of frequency allocations for applicant's type of operation on a regularly licensed basis.

THE APPLICANT FURTHER CERTIFIES THAT:

- e. All the statements in the application and attached exhibits are true, complete and correct to the best of the applicant's knowledge; and
- f. The applicant is willing to finance and conduct the experimental program with full knowledge and understanding of the above limitations; and
- g. The applicant waives any claim to the use of any particular frequency or of the electromagnetic spectrum as a regulatory power of the USA.

Name of Applicant:

MDS America, Incorporated

* Signature (Authorized person filing form):

Harold (Kirk) Kirkpatrick

Signature Date

person filing fo
Feb 28 2002 1

* Title of Person Signing Application:

President and CEO

*Check appropriate classification:

- Individual Applicant Member of applicant partnership
- Authorized employee Office of applicant corporation or association

WILLFUL FALSE STATEMENTS MADE ON THIS FORM ARE PUNISHABLE BY FINE AND/OR IMPRISONMENT (18 USC 1001), AND/OR REVOCATION OF ANY STATION LICENSE OR CONSTRUCTION PERMIT (47 USC 503), AND/OR FORFEITURE (47 USC 505).

NOTIFICATION TO INDIVIDUALS UNDER PRIVACY ACT OF 1974 AND THE PAPERWORK REDUCTION ACT

Information requested through this form is authorized by the Communications Act of 1934, as amended, and specified by Section 1.405 of the Commission's rules. The information will be used by Federal Communications Commission staff to determine eligibility for issuing authorization of the frequency spectrum and to effect the provisions of regulatory responsibilities rendered by the Commission by the Act. Information requested by this form will be available to the public unless otherwise requested pursuant to 47 CFR 0.459 of the FCC Rules and Regulations. Your response is required to obtain this authorization.

Public reporting burden for this collection of information is estimated to average four (4) hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to the Federal Communications Commission, Paperwork Project (3060-0065), Washington DC 20554. **DO NOT send completed applications to this address.** Individuals are not required to provide information unless it is requested by the Commission.

respond to this collection unless it displays a currently valid OMD control number.

THE FOREGOING NOTICE IS REQUIRED BY THE PRIVACY ACT OF 1974, P.L. 93-579, DECEMBER 31, 1974, 5 U.S 552a(e)(3), AND THE PAPERWORK REDUCTION ACT OF 1980, P.L. 96-511, DECEMBER 11, 1980, 44 U.S.C. 3507.

The following is a List of antennas associated with this license. To view this antenna and its frequencies, please select the row by selecting the "View Antenna Detail" button.

View Antenna Detail	Antenna type	City	State	Latitude Direction	Latitude Degrees	Latitude Minutes	Latitude Seconds	Longitude Direction	Longitude Degrees	Longitude M
	Fixed/Base	Clewiston	FL	North	26	42	35	West	80	54

**Exhibit 1 – Statement in Support of Amendment to Modification to
Experimental Station Call Sign WC2XPU**

On March 4, 2002, MDS America, Incorporated (“MDS America”), requested authority from the Commission for certain modifications to MDS America’s current experimental license under Call Sign WC2XPU. *See* FCC File No. 0005-EX-ML-2002. MDS America hereby amends its pending application to request further modifications to its experimental license to change some antenna characteristics. Specifically, MDS America requests modification of the width of beam in degrees at the half-power point, and the orientation in the vertical plane. MDS America proposes these modifications to demonstrate further the non-interfering characteristics of its Multichannel Video Distribution and Data Service (“MVDDS”) equipment. Grant of this request to amend MDS America’s pending application to modify its experimental license will also permit MDS America to demonstrate that its MVDDS system is capable of bringing economically viable broadband services to rural America, due to the technical operating parameters of the equipment.

The Commission has stated that permitting MVDDS in the 12 GHz band would be in the public interest because it would contribute to innovations in technology and advanced services, encourage robust competition in the video programming and broadband service markets, and help provide local broadcast signals to unserved or underserved areas.¹ Given that: (1) MDS America has conducted tests under its existing experimental license without causing any harmful interference to DBS operations; (2) based on these tests and prior experience with this MVDDS equipment overseas, there is little risk to existing DBS subscribers under expanded operations; and (3) there are significant benefits that will be derived from expanded experimental operations with the MDS America MVDDS equipment, grant of MDS America’s proposed amendment to its application to modify its experimental license would serve the public interest.

¹ *See 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*, ¶ 291, ET Docket No. 98-206, FCC 00-418, First Report and Order and Further Notice of Proposed Rule Making, 16 FCC Rcd 4096 (2000).

CERTIFICATE OF SERVICE

I hereby certify that on this 13th day of March, 2002, a true and correct copy of the foregoing was served via electronic filing or first class United States mail, postage prepaid, on the following individuals:

William Caton†
Acting Secretary
Federal Communications Commission
445 12th Street, S.W.
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Washington, D.C. 20554

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