

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

Amendment of Parts 2 and 25 of the)	
Commission's Rules to Permit Operation of)	
NGSO FSS Systems Co-Frequency with GSO)	ET Docket No. 98-206
and Terrestrial Systems in the Ku-Band)	RM-9147
Frequency Range;)	RM-9245
)	
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 12.2-12.7GHz Band)	

**REPLY OF MDS AMERICA, INCORPORATED
TO COMMENTS ON
PETITIONS FOR RECONSIDERATION OF
DIGITAL BROADBAND APPLICATIONS CORP.**

MDS America, Incorporated ("MDS America"), by its undersigned counsel, hereby responds to the Digital Broadband Applications Corp. ("DBAC") "Comments on Petitions for Reconsideration" of the Commission's *Memorandum Opinion and Order and Second Report and Order*¹ that, in the *Second R&O*, adopted technical rules for MVDDS operations.

¹ *Memorandum Opinion and Order and Second Report and Order*, 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, FCC 02-116 (released May 23, 2002), *appeals docketed sub nom. Northpoint Technology, Ltd., et al. v. FCC* (D.C. Cir. Nos. 02-1194, 02-1195, 02-1209, 02-1234, 02-1235, 02-1236, and 02-1270 (*consolidated*) filed Jun. 21, 2002; *stay granted Aug. 29, 2002*) [hereafter "*Decision*," and, individually, "*MO&O*" and "*Second R&O*"].

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. DBAC's Comments do not address the specific rule modifications requested in MDS America's Petition for Reconsideration. In brief, DBAC's Comments should be dismissed as essentially a tardy petition for reconsideration that affords no basis for modification of the rules adopted for the MVDDS service and its frequency-sharing with the DBS service.

In its Comments, DBAC, which had not previously filed any comments or *ex parte* presentations in this docket, asserts that it should be treated in the same manners as EchoStar Satellite Corporation and DirecTV, Inc. (the "DBS Operators") with respect to protection from interference from MVDDS operations. While DBAC, unlike SES AMERICOM, Inc. ("SES AMERICOM"), does plan to use satellites included in the Region 2 DBS frequency plan, the concerns expressed by DBAC were previously addressed by MDS America in its Opposition to the Petition for Reconsideration of SES AMERICOM. In the interests of brevity, that pleading is therefore hereby incorporated by reference,² except to the extent that pleading addresses the issue of operations via satellites not included in the Region 2 DBS plan.³

As shown in MDS America's response to the SES AMERICOM reconsideration petition, DBAC is being treated equally *vis-à-vis* the DBS Operators because all DBAC service reception will be protected in accordance with the Commission's DBS/MVDDS general technical rules

² Opposition of MDS America, Incorporated to SES Americom, Inc., Petition for Reconsideration (filed September 3, 2002).

³ *Id.* at 5-6.

governing spectrum sharing between the services.⁴ Moreover, any DBAC earth stations qualified as belonging to “customers of record” as deployed within 30 days of notification of planned MVDDS transmitter deployment will be given the additional protections to which such earth stations are entitled. DBAC is not, however, entitled to special protection for earth stations coming into service after MVDDS deployment merely because it has entered the market after the DBS Operators.

CONCLUSION

The DBAC Comments should be dismissed as warranting no modification of the Commission’s rules.

Respectfully submitted,

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⁴ To the extent that the DBAC operations, while using Region 2 Plan DBS satellites, do not conform to the Region 2 technical plan, however, they are not entitled to protection from co-primary services such as MVDDS except to the extent such protection is extended to them by the Commission’s domestic service rules. *See* Opposition of MDS America, Incorporated to DBS Petitions for Reconsideration at 3 (filed September 3, 2002).

CERTIFICATE OF SERVICE

I hereby certify that on this 13th day of September, 2002, a true and correct copy of the foregoing was served via electronic filing (denoted by †), e-mail (denoted by *) or first class United States mail, postage prepaid, on the following individuals:

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A handwritten signature in cursive script, reading "Linda C. Gaylor". The signature is written in black ink and is positioned in the lower right quadrant of the page.