

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

In the Matter of)	
)	
Amendment of Parts 2 and 25 of the)	ET Docket No. 98-206
Commission's Rules to Permit Operation of)	RM-9147
NGSO FSS Systems Co-Frequency with GSO)	RM-9245
and Terrestrial Systems in the Ku-Band)	
Frequency Ranges;)	
)	
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)	
Broadwave Corporation, and Satellite)	
Receivers, Ltd. to Provide a Fixed Service in)	
the 12.2-12.7 GHz Band)	

REPLY OF SES AMERICOM, INC.

SES AMERICOM, Inc. ("SES AMERICOM"), by its attorneys, hereby replies to the oppositions to the Petition for Reconsideration of SES AMERICOM (the "SES AMERICOM Petition") of the *Second Report and Order* in the above-captioned proceeding.¹ The oppositions were filed by Northpoint Technology, Ltd., and Broadwave USA, Inc. (collectively "Northpoint") and MDS America, Incorporated ("MDS").²

¹ FCC 02-116, released May 23, 2002.

² Consolidated Response of Northpoint Technology, Ltd., and Broadwave USA, Inc., to Petitions for Reconsideration of Second Report and Order, ET Docket No. 98-206, RM-9147, RM-9245 (September 3, 2002) (the "Northpoint Opposition"); Opposition of MDS America, Incorporated to SES AMERICOM, Inc., Petition for

I. INTRODUCTION

SES AMERICOM has proposed a direct broadcast satellite (“DBS”) platform – known as AMERICOM2Home – on which customers of SES AMERICOM will be able to lease capacity to be used to offer television programming directly to U.S. consumers.³ The new satellite, which SES AMERICOM hopes to launch by 2004, will be placed at the 105.5° W.L. orbital location.

In its Petition, SES AMERICOM urged the Commission to require Multichannel Video Distribution and Data Service (“MVDDS”) providers to protect all Direct Broadcast Satellite Service (“DBS”) customers, whether their receivers are deployed before or after a given MVDDS transmitter. The Commission’s decision to protect only existing DBS receivers will chill the introduction of competition to the incumbent DBS providers, by placing new entrants, such as SES AMERICOM, at a distinct disadvantage.⁴ Furthermore, as demonstrated in the SES AMERICOM Petition, the Commission may not lawfully permit harmful interference from terrestrial systems into DBS systems, regardless of when the DBS receivers are deployed.⁵

II. MVDDS OPERATORS SHOULD BE REQUIRED TO PROTECT FUTURE DBS RECEIVERS TO THE SAME LEVELS AS RECEIVERS THAT EXISTED BEFORE A GIVEN MVDDS TRANSMITTER IS SITED.

No party disputed SES AMERICOM’s demonstration that a sharing regime that discriminates in the protection afforded to existing, as compared to future,

Reconsideration, ET Docket No. 98-206, RM-9147, RM-9245 (September 3, 2002) (the “MDS Opposition”).

³ See *SES AMERICOM, Inc., Petition for Declaratory Ruling To Serve the U.S. Market Using BSS Spectrum from the 105.5° W.L. Orbital Location*, SAT-PDR-20020425-00071 (filed April 25, 2002) (the “SES AMERICOM Petition for Declaratory Ruling”). See also Consolidated Reply of SES AMERICOM, Inc., SAT-PDR-20020425-00071, July 3, 2002 (the “SES AMERICOM Reply”).

⁴ SES AMERICOM Petition at 17-19.

⁵ *Id.* at 4-16.

DBS receivers will threaten competition in the DBS market. The development of the DBS service will simply stall if future customers, and even existing customers that relocate, are not protected from interference to the same extent as current customers.⁶ Moreover, SES AMERICOM's system, and any other new DBS systems, will be affected to a significantly greater extent than incumbent DBS systems. The consequences of such a result could be particularly dire, given that the only two incumbent providers have proposed to merge, leading to the possibility of a single DBS operator providing service in the United States.⁷

Ignoring these considerations, MDS argued in its opposition that "it was a perfectly reasonable decision for the Commission to grandfather a higher level of protection to existing DBS receiver installations than to later installations."⁸ MDS disregarded, however, the substantial and detailed evidence to the contrary presented by SES AMERICOM. As demonstrated in the SES AMERICOM Petition, the Commission record has been clear, since the earliest U.S. DBS regulations, that terrestrial operations must operate on a strict non-interference basis with respect to DBS systems, *even DBS systems deployed many years after a given terrestrial link*.⁹ The Congressional record is similarly clear that any primary satellite service in the DBS band is entitled to protection from terrestrial systems, no matter when deployed.¹⁰ MDS provided no evidence to refute the SES AMERICOM showing, and MDS's unsupported assertions, that discrimination in the protection afforded to DBS receivers is reasonable, should be rejected by the Commission.

⁶ See SES AMERICOM Petition at 17.

⁷ *Id.* at 18.

⁸ MDS Opposition at 3. See also *id.* at 5-6.

⁹ SES AMERICOM Petition at 9.

Northpoint similarly opposed the SES AMERICOM Petition, ignoring the clear showing made by SES AMERICOM that future DBS receivers are entitled to the same protection as existing ones. Northpoint's only apparent disagreement with SES AMERICOM on this issue relates to SES AMERICOM's demonstration that application of a "first-come, first-served" regime to an overlay of two ubiquitous consumer services is unworkable and unprecedented. Northpoint argued that the approach is unprecedented only because the overlay of geographically-licensed ubiquitous services itself is unprecedented.¹¹

Northpoint ignored, however, the arrangement for sharing between DBS systems and non-geostationary satellite orbit ("NGSO") Fixed-Satellite Service ("FSS") systems in the very same band. As SES AMERICOM explained in its Petition, it was taken for granted by all parties that the rules for such DBS/NGSO sharing must provide the same level of protection to all DBS customers.¹² The equivalent power flux-density ("EPFD") limits on NGSO FSS systems must be honored for current and future DBS receivers alike. Any other result would violate the principles of co-primary operation of these ubiquitous services. Northpoint provided no reason whatsoever why the same reasoning should not apply, with even greater force, to terrestrial systems that are required, by the terms of their allocation, to protect current and future DBS systems. The fact that a regime honoring this principle would be more complicated than the one adopted by the Commission is not a sufficient justification.¹³

¹⁰ *Id.* at 13-16.

¹¹ Northpoint Opposition at 27.

¹² SES AMERICOM Petition at 10.

¹³ Indeed, such a regime would still be less complicated than that applied to NGSO FSS systems for the protection of DBS systems.

MDS also argued that, “[g]iven that SES AMERICOM’s system is far from deployment, and the characteristics of its equipment are unavailable, SES AMERICOM is really requesting that the future of MVDDS operations be subject to a possible time bomb, depending on what deployment decisions SES AMERICOM should decide to make.”¹⁴ This is not the case. The adopted power limits on MVDDS operation are generic. All that SES AMERICOM requested is that the same limits apply equally to all DBS receivers, no matter when deployed, to ensure that all are protected against harmful interference, as required by Commission and International Telecommunication Union (“ITU”) rules, and by Congressional mandate. SES AMERICOM’s proposal would not subject MVDDS operators to a “time bomb”; the obligation of an MVDDS operator toward a new AMERICOM2Home receiver would be exactly the same as toward a new receiver of any of the incumbent DBS providers.

Interestingly, Northpoint claimed that it “intends to build its system so that the Commission’s EPFD limits are met in all populated areas, regardless of whether DBS dishes are present.”¹⁵ If this is the case, its operations would not be significantly burdened by SES AMERICOM’s proposal to apply these limits to future DBS receivers. Given this circumstance, and the enormous benefits to potential entrants in the DBS market that would come with an explicit assurance that their receivers will be protected to the same degree as those of incumbents, Northpoint’s opposition to the SES AMERICOM proposal should be rejected.

III. THE AMERICOM2HOME PLATFORM IS ENTITLED TO PROTECTION FROM MVDDS SYSTEMS.

Northpoint and MDS both argued that SES AMERICOM’s proposed system is not entitled to protection from MVDDS operations, because the SES

¹⁴ MDS Opposition at 4.

AMERICOM system would operate from an orbital slot not yet included in the Region 2 broadcasting-satellite service (“BBS”) Plan.¹⁶ As the Commission well knows, few of the current U.S. DBS satellites are included in the Region 2 BSS Plan. This is because all modern DBS systems require a modification of the Plan, and the ITU process for such modifications takes years to complete. However, like the current U.S. operators, SES AMERICOM is following the ITU procedures for entry into the BSS Plan, and, as demonstrated in the SES AMERICOM Petition for Declaratory Ruling, it is expected that this process will be completed successfully.¹⁷ SES AMERICOM is no different in this respect than the incumbent U.S. DBS operators, and should not be treated any differently by the DBS/MVDDS sharing rules.¹⁸

Finally, Northpoint’s accusation that the SES AMERICOM Petition is “brazenly hypocritical” also must be rejected.¹⁹ Northpoint claimed that “SES AMERICOM’s own chances for success in the marketplace appear to depend upon existing DBS customers’ tolerating some minor inconveniences in the name of increased competition – which is precisely what SES AMERICOM seems to claim is unacceptable,

¹⁵ Northpoint Opposition at 23.

¹⁶ MDS Opposition at 3; Northpoint Opposition at 26.

¹⁷ SES AMERICOM Petition for Declaratory Ruling at 8-11. MDS also argued that SES AMERICOM’s proposed operation should not be protected because it is “not even licensed through a Region 2 Administration.” MDS Opposition at 5. Again, this comment reflects a lack of understanding of the BSS Plan. Administrations may have assignments in any of the three ITU Regions, and indeed the United States has filed for assignments in Regions 1 and 3. *See, e.g.*, SES AMERICOM Reply at 9, n.28. It is simply not relevant to the current debate that SES AMERICOM is licensed by a Region 1 Administration. Once the Plan modification process for the SES AMERICOM satellite is complete, SES AMERICOM will operate from a legitimate assignment in the Region 2 Plan.

¹⁸ In particular, for the reasons given above, and despite MDS’s claims to the contrary, SES AMERICOM should be entitled to the benefits of the “safety valve” procedure in the Commission’s Rules. *See* MDS Opposition at 6.

¹⁹ Northpoint Opposition at 26.

even as a theoretical possibility, in the case of MVDDS.”²⁰ However, SES AMERICOM did not address in its Petition the MVDDS power limits or their levels. All that SES AMERICOM sought is application of those limits to *all* DBS receivers, a proposition that does not even appear to be particularly burdensome for Northpoint. If MVDDS operators are not required to honor the power limits into future DBS receivers, the impact on SES AMERICOM will not be a “minor inconvenience,” as claimed by Northpoint. Rather, the rules will provide no assured protection whatsoever for future DBS systems from MVDDS emissions, threatening competition in the DBS market.

III. THE COMMISSION SHOULD NOT RECONSIDER the 14 dBm EIRP LIMIT ON MVDDS TRANSMITTERS.

Both MDS and Northpoint seek reconsideration of the 14 dBm equivalent isotropically radiated power (“EIRP”) limit on MVDDS transmitter emissions, arguing that it is unduly restrictive and jeopardizes the viability of rural MVDDS operations.²¹ This request should be rejected. Clearly, it would be more economical for MVDDS operators to be able to use higher power levels in rural areas. However, these operators have chosen to enter a band already allocated to DBS services, and protection of DBS operations in rural areas must be assured. Indeed, DBS services are particularly important to residents of rural areas, which lack cable infrastructure. Furthermore, relaxation of this limit would further exacerbate the inadequacy of protection afforded by the rules to future DBS receivers.

²⁰ *Id.*

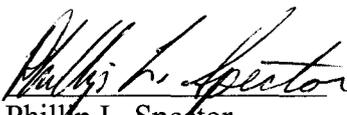
²¹ MDS America, Incorporated, Petition for Reconsideration, ET Docket No. 98-206, RM-9147, RM-9245 (June 24, 2002) (the “MDS Petition”) at 2-22; Northpoint Opposition at 8-13.

CONCLUSION

For the above reasons, the oppositions of Northpoint and MDS to the SES AMERICOM Petition should be rejected by the Commission.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Reply of SES AMERICOM, Inc. was served this 18th day of September, 2002, by first class U.S. mail, postage prepaid, on the following:

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