

September 18, 2002

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Mr. James Burtle
Experimental License Branch Chief
Electromagnetic Compatibility Division
Office of Engineering and Technology
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

*Re: MDS America, Incorporated; Pending Application to Modify
Experimental License, Call Sign WC2XPU, FCC File No. 005-EX-ML-
2002*

Dear Mr. Burtle:

On behalf of DIRECTV, Inc. ("DIRECTV") and EchoStar Satellite Corporation ("EchoStar") (collectively the "DBS Operators"), we write to express for the record the DBS Operators' concerns associated with the above-referenced proposed modification of the experimental license of MDS America, Incorporated ("MDS").

While the DBS Operators understand the Commission's general desire from a policy perspective to accommodate the licensing of experimental operations, they remain concerned with the harmful interference effects to DBS service that could be engendered by the revisions proposed by MDS to its experimental authorization.¹ This is particularly because (i) MDS's proposed revised license would transmit effective radiated power that is far in excess of the limit

¹ MDS misleadingly implies that the DBS Operators have somehow been silent in expressing their concerns regarding MDS's proposed MVDDS technology and its potential effects on DBS operations. That is not the case. As the Commission well knows, the DBS Operators have consistently opposed the creation of an MVDDS service in the 12.2-12.7 GHz band, and have specifically opposed the operations and proposals of MDS associated with that band. *See, e.g.,* Joint Opposition of DIRECTV, Inc. and EchoStar Satellite Corporation (Sept. 3, 2002) (opposing MVDDS proposals contained in MDS's petition for reconsideration); Emergency Petition for a Cease and Desist Order and for a Freeze Order of EchoStar Satellite Corporation and DIRECTV, Inc., File No. 0095-EX-PL-2001 (June 15, 2001).

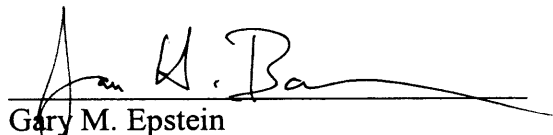
that the Commission has identified in its rules as necessary to protect DBS subscribers from harmful MVDDS interference;² (ii) MDS proposes to operate its system in rainy conditions, which makes it more probable that DBS subscribers in surrounding areas could suffer harmful interference; and (iii) MDS does not identify mysterious proprietary "mitigation techniques" it plans to use to mitigate harmful interference.³

It may be that the choice of a relatively remote Clewiston, Florida location, combined with the procedures that MDS has specified in Attachment C to its recently-filed supplement, will provide enough protection to proceed with a time-limited test of its technology. However, the DBS Operators caution that an absence of customer complaints during the proposed test is irrelevant from the standpoint of determining the presence of harmful MVDDS interference. Although MDS (like Northpoint before it) may attempt to attribute significance to a lack of DBS customer complaints during the testing, as MITRE noted, because of the invidious nature of MVDDS interference, "DBS customers may not know what is causing a particular outage, or the reason for its duration."⁴ In fact, customers are likely to assume that it is the actions of their DBS provider that are causing the outages.

Because of the heightened risks to DBS subscribers associated with MDS's proposed expansion of its experimental license, the DBS Operators request, at a minimum, that the Commission carefully monitor and enforce the parameters of the testing, including all of the steps set forth in Exhibit C to MDS's supplement and all previous conditions that the Commission has imposed on MDS's testing, and ensure that it is of extremely limited duration.

Thank you in advance for your consideration of the DBS Operators' views.

Very truly yours,



Gary M. Epstein
James H. Barker
Latham & Watkins
555 11th Street, N.W.
Suite 1000
Washington, D.C. 20004

Counsel for DIRECTV, Inc.



Pantelis Michalopoulos
Steven Reed
Steptoe & Johnson LLP
1330 Connecticut Avenue NW
Washington, D.C. 20036
(202) 429-3000

Counsel for EchoStar Satellite Corporation

² See new § 101.147(p), Appendix D, *Second Report and Order*, ET Docket No. 98-206 (rel. May 23, 2002).

³ See MDS Supplement (Sept. 13, 2002).

⁴ MITRE Report, § 6.3, at 6-8.