

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

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In the Matter of)	FEDERAL COMMUNICATIONS COMMISSION
)	OFFICE OF THE SECRETARY
Facilitating the Provision of)	
Spectrum-Based Services to Rural Areas and)	WT Docket No. 02-381
Promoting Opportunities for)	
Rural Telephone Companies)	
To Provide Spectrum-Based Services,)	
)	
2000 Biennial Regulatory Review)	
Spectrum Aggregation Limits)	WT Docket No. 01-14
For Commercial Mobile Radio Services, and)	
)	
Increasing Flexibility to Promote Access to)	
And the Efficient and Intensive Use of Spectrum)	WT Docket No. 03-202
And the Widespread Deployment of Wireless)	
Services, and To Facilitate Capital Formation)	

REPLY COMMENTS OF SKYBRIDGE L.L.C.

SkyBridge L L C (“SkyBridge”), by its attorneys, hereby replies to the comments of MDS America, Incorporated (“MDSA”) in the above-captioned proceeding.¹ In its comments, MDSA urges the Commission to amend the technical rules recently adopted for the Multichannel Video Distribution and Data Service (“MVDDS”) to increase the permissible power levels for MVDDS operations in rural areas.² In the alternative, MDSA requests that the Commission provide for streamlined treatment of waivers of these power requirements.³

¹ Comments of MDSA America, Incorporated in Response to Notice of Proposed Rulemaking, WT Docket No. 02-381, WT Docket No. 01-14, WT Docket No. 03-202, December 29, 2003 (the “MDSA Comments”)

² *Id.* at 2

³ *Id.* at 6

No. of Comments filed 0+5
List Attached

The frequency band to be used for MVDDS service -- 12.2-12.7 GHz -- is shared with two distinct satellite services. The non-geostationary satellite orbit ("NGSO") fixed-satellite service ("FSS") and the direct broadcast satellite service ("DBS") are both allocated in the band on a primary basis, SkyBridge is an applicant for an NGSO FSS system.⁴ The power limits that MDSA seeks to relax were adopted for the protection of these satellite services. From the point of view of a NGSO FSS operator, it is irrelevant whether its customer terminals are deployed in urban or rural areas; their protection requirements are the same in both cases. The MVDDS power limits cannot be relaxed in rural areas without causing harmful interference to NGSO FSS customers.⁵

These very same technical issues were examined less than a year ago in the rulemaking that established the MVDDS service rules.⁶ There, the Commission considered and rejected the very same arguments now raised by MDSA.⁷ The MDSA Comments in the instant proceeding are nothing but an untimely and procedurally defective petition for reconsideration of the *Fourth Memorandum Opinion and Order*

⁴ See Application of SkyBridge L.L.C. for Authority to Launch and Operate The SkyBridge System, A Global Network of Low Earth Orbit Communications Satellites Providing Broadband Services In the Fixed Satellite Service, SAT-LOA-19970228-00021, February 28, 1997.

⁵ See Reply of SkyBridge L.L.C., ET Docket No. 98-206, RM-9147, RM-9245, September 18, 2002 ("SkyBridge Reply"), at 6-7. While the power limits adopted by the Commission were not derived based on NGSO FSS protection requirements, they are essentially the only limits that serve to protect later-deployed NGSO FSS receivers, and are absolutely necessary to ensure that high MVDDS power levels will not exclude NGSO FSS systems from the band. *Id.*

⁶ 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, *Fourth Memorandum Opinion and Order*, ET Docket No. 98-206, RM-9147, RM-9245 (Apr. 29, 2003), ¶87, ¶101.

⁷ See MDSA America, Incorporated, Petition for Reconsideration, ET Docket No. 98-206, RM-9147, RM-9245 (July 24, 2002) (the "MDSA Petition"), at 2, 4, 5, 9-12.

Moreover, the instant MDSA Comments suggest that the MVDDS proponents were not entirely candid with the Commission in ET Docket No. 98-206. In that proceeding, the proponents of a new MVDDS allocation convinced the Commission that MVDDS systems could coexist with satellite systems by assuring the Commission that MVDDS transmitters could operate, even in rural areas, with power levels that (at least in their view) would not interfere with satellite receivers. The MVDDS applicants repeatedly represented to the Commission that they were ready, willing and able to expedite the provision of service in rural areas, and these promises formed one of the Commission's principal justifications for accommodating MVDDS in the heavily-used 12.2-12.7 GHz band.⁸ SkyBridge and others had challenged the assertion that MVDDS systems could provide extensive service in rural areas, noting, *inter alia*, that the number of transmitters that would be required to cover rural areas at power levels needed to protect satellite services would make the service economically unviable.⁹ In response, MVDDS proponents assured the Commission that they could provide service at the low power levels needed to protect satellite services. Indeed, MDSA claimed that its system "easily" meets all the technical rules adopted by the Commission.¹⁰

Now, notwithstanding such recent, unequivocal assurances, MDSA claims that maintaining rural power limits as low as urban ones jeopardizes the entire business case

⁸ 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, *Memorandum Opinion and Order and Second Report and Order*, ET Docket No. 98-206, RM-9147, RM-9245 (May 23, 2002), ¶¶ 21-23

⁹ See *Petition for Reconsideration of SkyBridge L.L.C.*, ET Docket No. 98-206, RM-9147, RM-9245 (Mar. 19, 2001), at 15-17. Indeed, due to the economic inefficiency of using terrestrial systems to provide blanket coverage in rural areas, satellite services are heavily relied upon by rural residents, and rural areas are key markets for such services.

¹⁰ MDSA *Petition* at 4.

for building MVDDS systems in rural areas,¹¹ and proposes to increase power in rural areas (or to provide a streamlined treatment of waivers of such requirements) to levels well in excess of any examined in any sharing studies.¹² Put simply, MDSA should not be permitted to use this proceeding to reexamine issues settled less than a year ago.

Nonetheless, it is worth noting that the instant MDSA Comments undermine much of the Commission's rationale for permitting MVDDS into the 12.2-12.7 GHz band in the first place. It appears that the NGSO FSS proponents were correct in their well-documented showings in ET Docket No. 98-206 that it was exceedingly unlikely that MVDDS systems could economically serve rural areas (with or without causing massive interference to satellite services). While the Commission may indeed wish to reconsider some of its fundamental conclusions regarding the credibility of the MVDDS proponents' expansive claims and promises, the instant proceeding is an inappropriate forum for such an undertaking.

¹¹ MDSA Comments at 7. *See also* MDSA Petition at 2, 4, 5, 9-12. Curiously, while claiming that it can operate under the Commission's Rules, and that its concerns regarding the power limits are not for itself (but for the service), MDSA has stated that with the 14 dB EIRP limit "*no one* will be able to deploy an MVDDS system in a highly rural area, purely as a matter of economics." MDSA Petition at 4 (emphasis in original). MDSA does not let the facts get in the way of its rhetoric.

¹² For example, there are no sharing studies in the record that can support a conclusion that NGSO FSS systems will be adequately protected if the EIRP limit is any higher than 12.5 dBm. *See, e.g.*, SkyBridge Reply at 7.

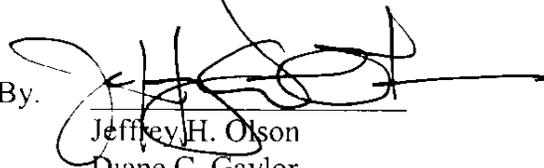
CONCLUSION

For the above reasons, the proposal of MDSA to relax in rural areas the power limits applicable to MVDDS operators, or to provide for a streamlined treatment of waivers, 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 Comments of SkyBridge
L L C was served this 26th day of January, 2004, by First-Class U.S. Mail, postage prepaid,
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