

KELLOGG, HUBER, HANSEN, TODD & EVANS, P.L.L.C.

MICHAEL K. KELLOGG
PETER W. HUBER
MARK C. HANSEN
K. CHRIS TODD
MARK L. EVANS
STEVEN F. BENZ
NEIL M. GORSUCH
GEOFFREY M. KLINEBERG
REID M. FIGEL

SUMNER SQUARE
1615 M STREET, N.W.
SUITE 400
WASHINGTON, D.C. 20036-3209

(202) 326-7900
FACSIMILE:
(202) 326-7999

HENK BRANDS
SEAN A. LEV
EVAN T. LEO
ANTONIA M. APPS
MICHAEL J. GUZMAN
AARON M. PANNER
DAVID E. ROSS
SILVIJA A. STRIKIS
RICHARD H. STERN, OF COUNSEL

May 9, 2001

VIA HAND DELIVERY

EX PARTE

Ms. Jane Mago
Office of the General Counsel
Federal Communications Commission
The Portals
445 Twelfth Street, S.W.
Washington, D.C. 20554

Re: Misrepresentation by MDS America

Dear Ms. Mago:

We write to alert you to a serious misrepresentation made to the Commission and to the public by MDS America ("MDS"). In support of its assertion that it can provide a terrestrial service on the same frequencies as DBS¹ without causing interference, MDS has claimed that its French parent company "currently uses the shared 12.2 - 12.7 GHz band to offer video and high speed internet services to subscribers in more than 20 international markets."² As presented, MDS's claims are utterly lacking in support and represent an apparent attempt to deceive the Commission and the American business community.

MDS's support for its claim of twenty installations is found in an Appendix to Comments filed with the Commission on March 12, listing eight sites that MDS claims are "representative" of its operations.³ If the sites listed by MDS are in fact representative, it appears that MDS is not actually serving *any* subscribers on frequencies that are shared with DBS services in the 12.2 - 12.7 band, much less in the twenty countries claimed. In fact, as shown below and summarized in Table 1, the claimed MDS installations, if they exist at all, are not operating co-channel in the same geographic location with DBS satellite services.

¹ Direct Broadcast Satellite provided with a small dish antenna (typically 18 inches) and sold directly to consumers also known as DTH, or Direct to Home service.

² MDS America press release, Business Wire2015, May 7, 2001.

³ Appendix 2, "Representative Installed MDS Systems and DBS Footprint Overlap."

Analysis

This analysis reviews each of the eight purported installations identified by MDS. Although we could find no evidence of MDS operations in most of these locations, we have analyzed each location as if there were MDS equipment present as asserted by MDS.

New Zealand—Here MDS claims its equipment is used to provide service in a portion of Auckland. In this instance, MDS claims that its equipment operates in a bandwidth of 72 MHz, from 12.338-12.410 GHz. As support for its claim that its services overlap with DBS, MDS lists a number of transponders from PanAmSat's PAS 8 satellite in addition to transponders from the Optus B1 and B3 satellites. However, it is clear from service footprints that these transponders serve Australia and do not operate anywhere near New Zealand.⁴ The sole exception is a transponder where there is a potential overlap of 3 MHz. This transponder operates as a variable "feed" for both Australian and New Zealand, not as a DBS service. There is no evidence that it in fact ever operated in Auckland, the only area where MDS service is supposed to be active.

Almaty, Kazakhstan—The MDS showing on its "Central Asian Overlap" is equally unconvincing. MDS claims to be operating in Almaty, Kazakhstan on a 25 MHz band from 12.750 – 12.775. However, the Eurasiasat 1 that MDS claims to be sharing with is operating below the frequency 12.750 GHz and thus has no overlap with MDS operations, and no co-channel operations could be occurring.⁵

Korea—The final Asian "representative" system was a "demo" system that MDS claimed to have operated in March 1998 in an undisclosed area in Korea. MDS claims that this system used 250 MHz from 12.500 – 12.750. Without a stated location for these operations we cannot know if the footprint of the referenced satellite actually covered the area where the "demo" occurred. In any case, there are no current MDS operations and therefore no sharing of MDS with any DBS satellite.

The other purported MDS locations are in Europe. DBS services in Europe are provided through several geostationary locations, but service itself is country-selective. Due to language and cultural differences, different entertainment packages are offered in different countries, if they are offered at all. For example, certain French language programming is not offered in Ireland. These French language DBS frequencies are therefore not used for service in Ireland.

DBS services are also not offered in all countries. For example, Astra offers service only in the following countries: Austria, Belgium, Croatia, The Czech Republic, Denmark, Germany, Spain, France, Hungary, Ireland, Italy, Luxembourg, The Netherlands, Norway, Poland, Portugal, The Slovak Republic, Slovenia, Sweden, and Switzerland. See <http://www.ses-astra.com/>.

Finally, the majority of European satellite customers are not receiving a direct satellite broadcast at all. Most (more than 70%) of these customers receive their

⁴ See http://www.tbs-satellite.com/tse/online/prog_optus_b_eirp_as.html, and <http://www.panamsat.com/sat/p8info.htm>, also presented as Exhibits 1 and 2 hereto.

⁵ See <http://www.eurasiasat.com/sats/foot/sl.htm>, "Downlink 12.50 – 12.75" GHz, presented as Exhibit 4 hereto.

programming through a cable system, and in this case, the satellite is providing not a direct broadcast signal, but a feed for a cable system.⁶ With these facts as a guide, we can now examine the MDS claimed operations in Europe.

Macedonia—The first “representative” European location listed by MDS is Macedonia where MDS claims to “overlap” with Astra’s 1F satellite, among others. However, the footprint of the Astra transponder cited does not cover the region where MDS claims to operate.⁷ MDS also cites Hot Bird 2 as coexisting with its purported operations at 11.7895 GHz. However, on this frequency, Hot Bird 2 broadcasts on the “Superbeam,” whose focus is over Western Europe and has insufficient strength over Macedonia to provide DBS service.⁸

Serbia—Serbia is listed next and presents a situation analogous to that of Macedonia. MDS says it is using 11.907 GHz in Serbia, and again MDS cites Astra’s 1F satellite; however, as Astra’s web site makes clear, Astra does not offer service in Serbia.⁹ On this frequency, the Hot Bird 2 cited by MDS as “co-frequency” with DBS operations is in Italian, again operated on the “Superbeam” and has insufficient strength over Serbia to provide DBS service.¹⁰

Cork, Ireland—In Ireland, MDS states that it had a “successful experimental test,” with Southcoast Community Television, a 25,000-subscriber system in Cork. However, from the Southcoast Web site it is clear that there is no MDS service being offered now.¹¹ Subscribers are using an over-the-air UHF television antenna to pick up the Southcoast broadcasts. As to the “test” itself: the sole provider of DBS service in Ireland is SkyDigital, using the Astra satellites.¹² MDS claimed that its test was performed at the frequency 12.355 GHz. At this frequency, Astra broadcasts the French “Canal” series of programming,¹³ which is not offered in any part of Ireland.¹⁴ Likewise, Hot Bird broadcasts the D+ Italian language programming, also not offered in Ireland.¹⁵ Therefore, a test at this frequency could not have operated co-frequency with any DBS broadcast into Ireland.

Andorra—MDS offered few details about its Andorra installation. Andorra is a jurisdiction about 25 square miles in size where MDS claims to be operating on the frequency 12.0845 GHz. MDS claims that Astra 1F, Astra 1G, Astra 2A, Astra 1H and Hot Bird 2 are operating co-frequency with the Andorra installation. As explained above,

⁶ Of the 84.4 million homes served through Hot Bird, “61.2 million receive HOT BIRD™ programmes via cable.” http://www.eutelsat.com/pdf/5_8/home_gb.pdf.

⁷ See http://www.ses-astra.com/satellites/footprints/images/1g_1h.gif.

⁸ See <http://www.lyngsat.com/hotbird.shtml>. On the frequency claimed by MDS to be in use in Macedonia, Hot Bird 2 broadcasts a Spanish language channel, not Macedonian or Albanian, the principal languages of Macedonia.

⁹ Astra does not offer services in Macedonia, Serbia or Andorra, as claimed by MDS.

¹⁰ See <http://www.lyngsat.com/hotbird.shtml>, and Exhibit 3 hereto. On the frequency MDS claims to use in Serbia, Hot Bird 2 broadcasts an Italian language channel, not Serbian or Albanian, the principal languages of Serbia.

¹¹ <http://www.southcoasttv.net/>

¹² “Irish Cable and Digital Guide” <http://gofree.indigo.ie/~rdeegan/irishcable/dsat.htm>

¹³ See <http://www.lyngsat.com/astra1h.shtml>

¹⁴ “Irish Cable and Digital Guide” http://gofree.indigo.ie/~rdeegan/irishcable/tuning_sky.htm

¹⁵ <http://www.lyngsat.com/hb3.shtml>

Astra does not offer service to Andorra, which leaves Hot Bird 2. At the claimed Andorra frequency of 12.0845 GHz, Hot Bird broadcasts in Arabic, not Catalan, the national language of Andorra.

Lyon, France—The final location listed in Europe is the MDS “demo” location in Lyon, France where MDS claims to be able to operate at 12.645. No MDS subscribers are served from this location, and in fact, there is no allocation to the BSS or DBS in the band 12.500 – 12.750 in Europe, so MDS could not be operating co-frequency with any DBS or BSS satellite at this location.

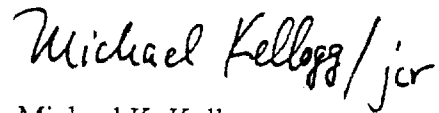
Table 1: Summary of MDS Claimed Co-Frequency Operations

Location	MDS Claimed Operational Frequency	MDS Claimed Co-Channel Overlap with DBS Service	Actual DBS operations in MDS operational area or frequency
New Zealand	12.338-12.410 GHz	PAS 8	None
		Optus B1	None
		Optus B3	None
Korea	No MDS Operations	Koreasat 3	None
Almaty, Kazakhstan	12.750 – 12.775	Eurasiasat 1	None
Macedonia	11.7895 GHz	Astra 1F	None
		Astra 1G	None
		Astra 2A	None
		Astra 1H	None
		Hot Bird 2	None
Serbia	11.907 GHz	Astra 1F	None
		Astra 1G	None
		Astra 2A	None
		Astra 1H	None
		Hot Bird 2	None
Cork, Ireland	No MDS Operations	Astra 1F	None
		Astra 1G	None
		Astra 2A	None
		Astra 1H	None
		Hot Bird 2	None
Andorra	12.08450 GHz	Astra 1F	None
		Astra 1G	None
		Astra 2A	None
		Astra 1H	None
		Hot Bird 2	None
Lyon, France	No MDS Operations	Astra 1F	None
		Astra 1G	None
		Astra 2A	None
		Astra 1H	None
		Hot Bird 2	None

Summary

MDS has misrepresented itself before the Commission. The review above indicates that MDS is not "currently us[ing] the shared 12.2 – 12.7 GHz band to offer video and high speed internet services to subscribers in more than 20 international markets." In fact, it appears that MDS does not even have one site where this is occurring. We respectfully submit that the Commission should conduct an investigation and take appropriate action.

Yours sincerely

A handwritten signature in black ink that reads "Michael Kellogg/jcr". The signature is written in a cursive, flowing style.

Michael K. Kellogg

cc: David Solomon, Chief, Enforcement Bureau
Bruce Franca, Acting Chief, Office of Engineering and Technology
Donald Abelson, Chief, International Bureau
Thomas Sugrue, Chief, Wireless Telecommunications Bureau

Exhibit 1: Pas 8 Coverage

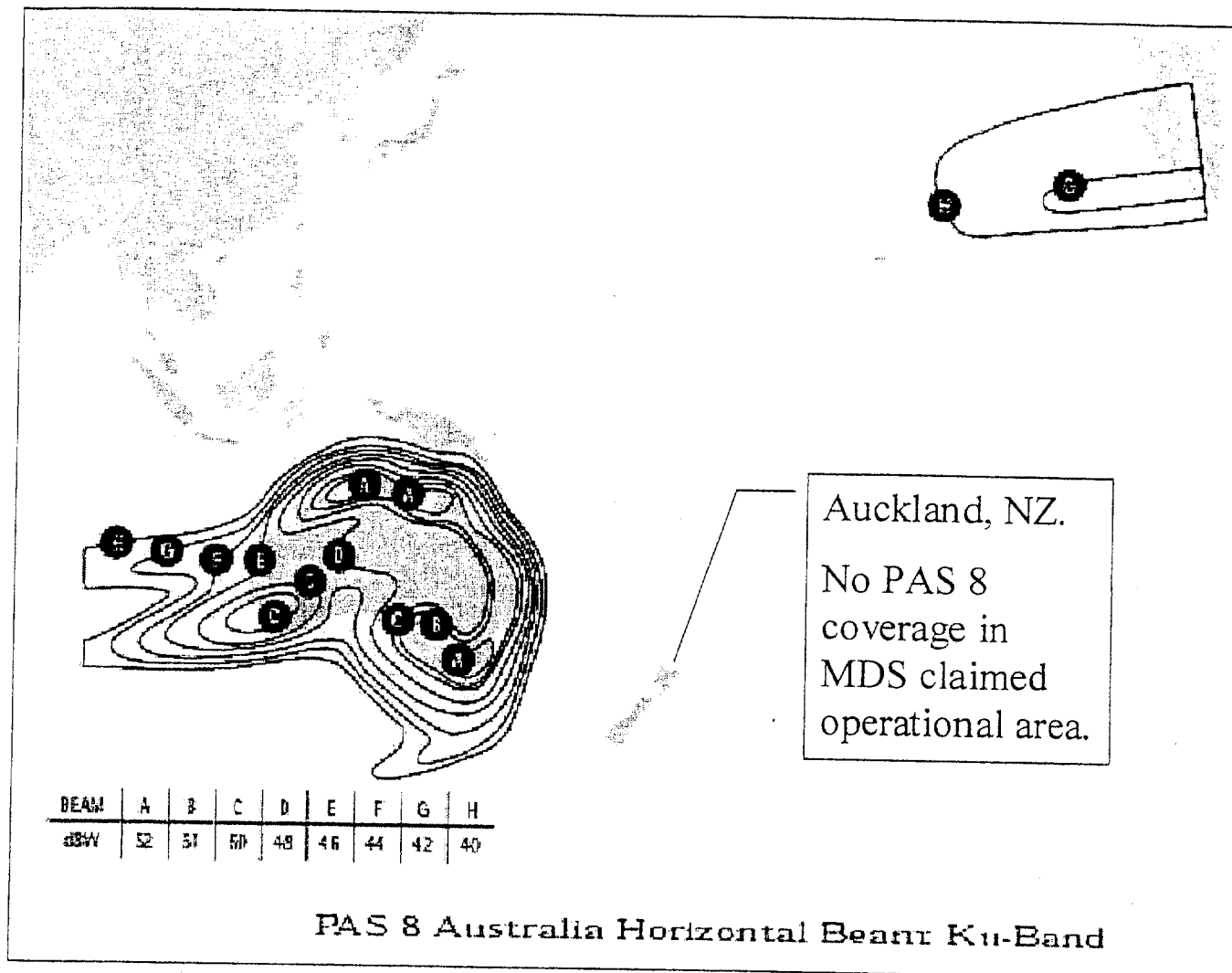


Exhibit 2 Optus Footprint does not cover New Zealand

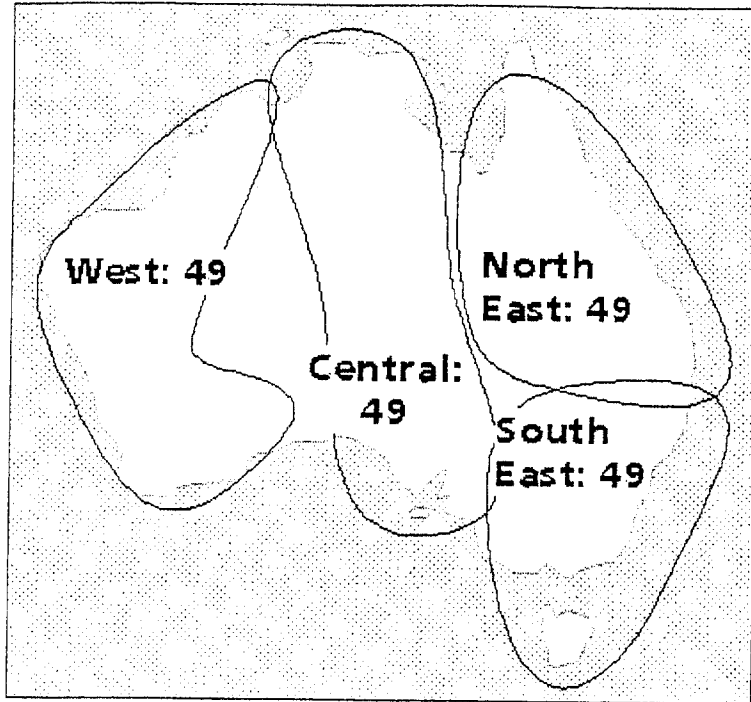


Exhibit 3: Hot Bird 2 "Superbeam" Coverage does not provide "DBS" service to Macedonia or Serbia.

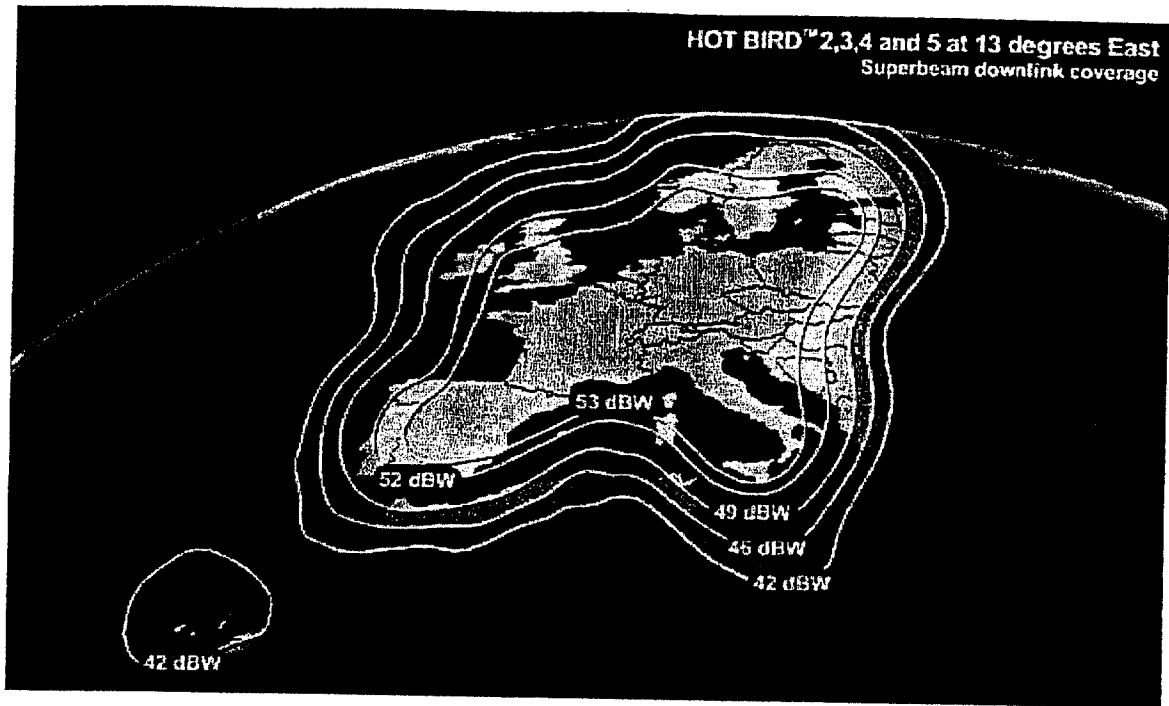
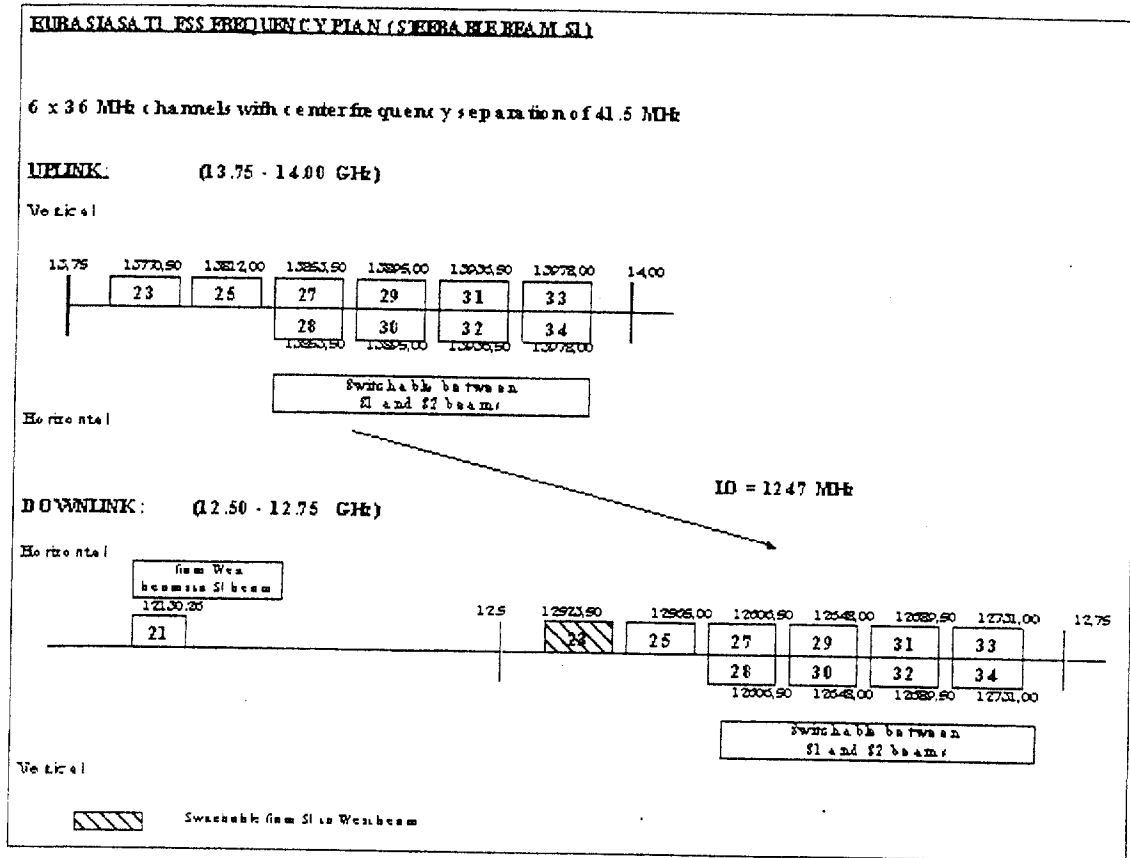


Exhibit 4: Eurasiasat 1 is FSS, not BSS and its operations stop at 12750, and do not overlap those purported by MDS from 12750 - 12775 MHz.



CERTIFICATE OF SERVICE

I, Shannon Thrash, hereby certify that on this 9th day of May, 2001, copies of the foregoing were served by hand delivery* and/or first class United States mail, postage prepaid, on the following:

Magalie Roman Salas*
Secretary
Federal Communications Commission
445 12th Street, S.W.
Room TW-B204
Washington, D.C. 20554

Bruce Franca, Acting Chief*
Office of Engineering and Technology
Federal Communications Commission
445 12th Street, SW
Washington, D.C. 20554

Jane Mago, Acting General Counsel*
Office of the General Counsel
Federal Communications Commission
445 12th Street, SW
Washington, D.C. 20554

David Solomon, Bureau Chief*
Enforcement Bureau
Office of the General Counsel
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Donald Abelson, Bureau Chief*
International Bureau
Federal Communications Commission
445 12th Street, SW
Washington, D.C. 20554

Thomas J. Sugrue, Bureau Chief*
Wireless Telecommunications Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Antoinette Cook Bush, Esq.
Northpoint Technology, Ltd.
400 North Capitol Street, N.W.
Suite 368
Washington, D.C. 20001

James W. Olson
Gregory F. Intoccia
Howrey Simon Arnold & White LLP
1299 Pennsylvania Ave., NW
Washington, D.C. 20004


Shannon Thrash
Legal Assistant