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June 14, 2001

Ex Parte

VIA HAND DELIVERY

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

Re: Response of MDS America to Northpoint June 7, 2001 Letter; Ex Parte Communication in ET Docket No. 98-206

Dear Ms. Mago:

We regret that Northpoint has once again filed with your office a communication rife with errors and misstatements of fact. Notably, Northpoint fails to make any attempt to correct the flagrant errors in its earlier filing, as pointed out in MDS America's May 21, 2001 response, while at the same time making new and, if anything, even more inaccurate charges. We respond to those charges in detail below.

Northpoint's Failure To Be Candid About The Existence Of Rival MVDDS Technologies

At this point, one must ask also what is Northpoint's motivation? Is it to assist the FCC in ferreting out wrongdoers, or is it an attempt to intimidate and eliminate a competitor? The reality is that MDS America presents an intractable competitive problem for Northpoint: if there exists a viable MVDDS alternative to Northpoint, how can Northpoint justify to the Commission and the American people its plea to be given for free monopoly licenses to spectrum worth somewhere from millions to billions of dollars?

Moreover, if MDS International's technology is viable, as we can and have demonstrated, how does Northpoint explain its repeated statements that it alone has "created new bandwidth out of thin air" through its "breakthrough technology."[1] In particular, how can Northpoint justify such representations to the Commission, when it has known about MDS International's

[1] Comments of Northpoint Technology, Ltd., ET Docket No. 98-206 at 2 and 4 (March 12, 2001).

technology since at least 1998? At that time, Northpoint founder Saleem Tawil responded to a contact to Northpoint President Sophia Collier, by requesting MDS International to "Please forward technical info to our Texas office." Upon receiving that information, including a link to the MDS International website, which contains extensive product information, Mr. Tawil replied with the following message:

> Objet : [subject] Re: 12.2 to 12.7Ghz signal transport equipment
> Envoyé le [sent on]: 13/12/98 4:14
> Reçu le [received on]: 13/12/98 19:43
> Expéditeur [sender]: TXTV@aol.com
> Adressé à [Addressee]: mds@mds.fr
>
> Thank you for responding. I have looked at you [sic] web site and see a lot of capability that can be useful to us. I would like to receive availability and pricing information.
>
> Also if you could, please let me know what you have available for the following requirement. L-band input amplifier having 12.2Ghz to 12.7Ghz output and has at least one watt output. I look forward to your response.
>
> Thanks
> Saleem Tawil

[Our translations in brackets]

One only can conclude that Northpoint has chosen to conceal its knowledge of MDS International's systems so that it can maintain the charade that "it makes no sense to speak of a 'new terrestrial wireless service' distinct from Northpoint's technology."[2]

Northpoint's Campaign To Stop MDS America's Testing

Not only has Northpoint failed to be candid with Congress, the public and the Commission about the existence of alternative sources of MVDDS technology, it appears also to be engaged in a desperate campaign to prevent the MDS technology from even being tested in the United States. Consider this sequence of events. On May 2, 2001 the Commission granted MDS America's Experimental License application. On the morning of May 7, 2001 the license grant was announced in Communications Daily. The license application contained the information that the United States Sugar Corporation had agreed to allow MDS America to use its facilities in rural Florida as a test site. On the very day the Communications Daily story appeared, May 7, Northpoint President Sophia Collier and Northpoint Director Katherine (Chula) Reynolds called U.S. Sugar's executive vice president and told him that MDS America was in violation of Northpoint's patents and thought U.S. Sugar might want to know this. Two

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[2] *Id.* at 6.

days later, on May 9, 2001, Northpoint filed its attack at the Commission, charging MDS America with misrepresentation.[3] After MDS America refuted Northpoint's charges on May 21,[4] Northpoint has now filed an even more inaccurate letter in a transparent attempt to stop MDS America's testing. **What is Northpoint afraid of?** Is Northpoint afraid to see how its technology stacks up against that of a company with years of real-world experience?

Northpoint Refuses To Acknowledge Its Misstatements

As detailed in our May 21, 2001 letter, Northpoint's original submission contained glaring errors. The most significant of these errors, and one that went to the heart of Northpoint's claims, was the allegation that DBS services in Europe did not operate at the frequencies used by MDS equipment installations.

Northpoint claimed that because there was no BSS allocation at 12.500 to 12.750 GHz in Europe, MDS could not be sharing that band with DBS or BSS satellites.[5] MDS America's May 21 response listed an entire page of television channels available in France, on Astra alone, in the 12.500 to 12.750 GHz band, as well as other television channels available on Hot Bird, and radio stations in that band available on both Astra and Hot Bird.[6] Yet, does Northpoint admit that it was wrong? No, it chooses to perpetuate its error. First, it claims that MDS America stated something it did not, that Northpoint erred in writing that there was no BSS allocation in Europe at 12.500 to 12.750 GHz. What MDS America said was that there were a large number of direct-to-home channels available in Europe in the 12.500 to 12.750 GHz band and it documented that statement. Second, Northpoint chose to ignore this real world evidence, citing an allocation chart to "prove" that "MDS cannot be sharing with BSS at any claimed frequency within this (12.500-12.750 GHz) band."[7] Northpoint chose deliberately to ignore the detailed channel listings in MDS America's filing. Perhaps they will not dispute Astra itself. Here are excerpts from a June 5, 2000 e-mail from SES/Astra's Thomas Wrede [MDS America edits in brackets]:

> Kirk,
>
> Sorry for the late response but I was traveling a lot in the last two weeks. Please find below my comments in red. However, I am sure that the FCC has a very good understanding about the DBS situation in Europe and will quickly realize that the statements made by your competitor are completely wrong.

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[3] Northpoint Technology May 9, 2001 Letter to Jane Mago. ("Northpoint May 9 Letter")

[4] MDS America, Incorporated May 21, 2001 Letter to Jane Mago. ("MDS America May 21 Letter")

[5] The BSS (Broadcast Satellite Service) is the ITU designation for the service also known as DBS (Direct Broadcast Satellite) in the United States.

[6] MDS America May 21 Letter at 4-5 and Exhibits 3 and 6.

[7] Northpoint Technology June 7, 2001 Letter to Jane Mago at 4-5. ("Northpoint June 7 Letter")

Please let me know if you need more specific details or any confirmation in writing.

Best regards,

Thomas Wrede
Manager, Technical Marketing Services
SES/ASTRA

[From Kirkpatrick] …This company has accused us of "serious misrepresentations" before the FCC and two of the charges they have accused us of, I will quote from their letter to the FCC.

[Quote from Northpoint]… "...and in fact, there is no allocation to the BSS or DBS in the band 12.500-12.750 in Europe, "

[SES-Astra response] …Our clients use the 12.500-12.750 GHz for digital direct-to-home broadcasts since the launch of ASTRA-1G in 1997. However, that range has historically not been allocated as BBS band but as FSS band. However, since 1989 DBS services in Europe use de facto both the FSS and BSS allocations. …

[From Kirkpatrick] …We claimed that DBS was much more ubiquitous in Europe than in the US. [Northpoint's] response was:
[Quote from Northpoint] …"... The majority of Europeans are not receiving a satellite broadcast at all..."

[SES-Astra response] This statement is wrong as 31 million households receive ASTRA directly via DTH or SMATV antenna installations. There is about 57 million cable households in Europe. [Astra is only one of the European DTH providers.]

[Quote from Northpoint] …"as Astras's web site makes clear, Astra does not offer service in Serbia..."

[SES-Astra response] There is no pay-TV services of our clients offered in Serbia and there are no specific free-to-air programmes targeting Serbia but the ASTRA footprint is definitively covering Serbia. For practical reasons (political situation last year) we had not included Serbia in our market research. …

Why does Northpoint so obstinately refuse to accept that direct-to-home satellite service is offered on the frequencies cited by MDS America, in the face of evidence flatly to the contrary? Because if it does so, it must concede, as described below in more detail, in relation to Lyon, France and Ireland, that MDS International unquestionably has demonstrated that its technology successfully shares frequencies with DBS services. Northpoint's claim for special treatment would therefore have no merit and Northpoint would be forced to compete for spectrum rather than be awarded free monopoly licenses.

Northpoint Misinformation About Lyon

Northpoint claims that MDS International's site at Taluyers, near Lyon, France "is an example of band segmentation, *not a demonstration of satellite – terrestrial sharing*".[8] Northpoint's website defines band segmentation as "an approach where satellites use one set of frequencies and terrestrial services use another."[9] Northpoint's claim that MDS International's Lyon site practices only band segmentation and not frequency sharing is false and the chart it supplies as evidence is misleading and demonstrably inaccurate.

Northpoint filed the following chart with the Commission purporting to show that when the MDS Lyon transmitter used the 12.645 GHz frequency, it did not share with Astra channels received at 12.6105 and 12.669 GHz:

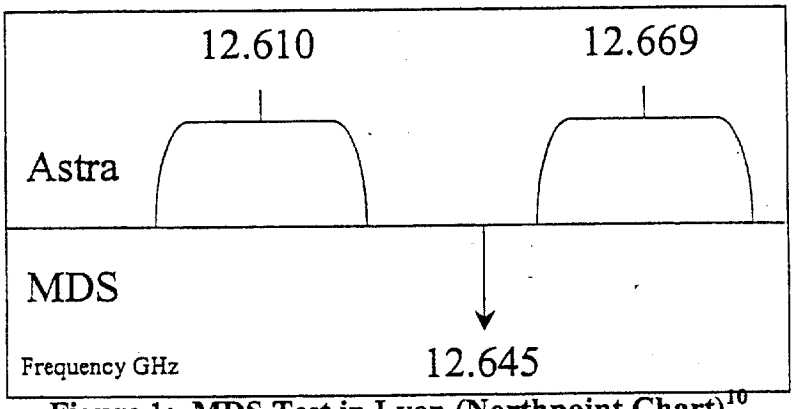

Figure 1: MDS Test in Lyon (Northpoint Chart)[10]

Notice that for the Astra channels, Northpoint shows a range on either side of the center point frequency, as is appropriate. Northpoint does the same in its second chart, purporting to show "[p]roper use of frequency offset mitigation technique".[11] But for MDS, Northpoint just shows an arrow with no bandwidth for the system. Why? Because if MDS was shown properly, with its 39 MHz of bandwidth, the chart would show overlap of the MDS signal at both ends of its range, as depicted below:

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8 Northpoint June 7 letter at 4 (italics in original).

9 www.NorthpointTechnology.com/html/band_segmentation.html.

10 Northpoint June 7 letter at 4, Figure 1.

11 Northpoint June 7 letter at 7.

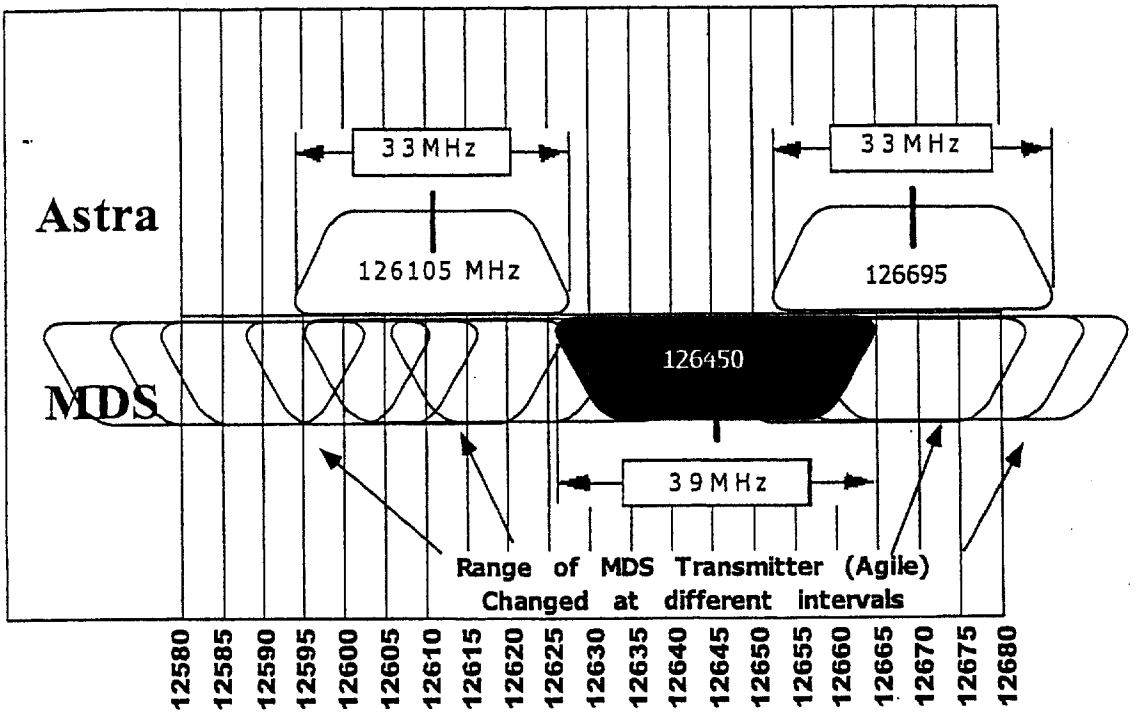

Figure 2: Northpoint misinformation graph *Accurately Redrawn*

Figure 2 also reflects, as we explained in our May 21 Letter, that the MDS transmitter is adjustable and has operated throughout the 12.500 to 12.750 GHz band. The 12.645 GHz frequency happened to be that used at the time of our earlier letter. Thus, Northpoint's statement that Lyon is merely an example of band segmentation is totally false and would have been revealed as such if Northpoint had submitted an accurate diagram to the Commission. An accurate chart shows clearly that Lyon is an instance of overlap or co-frequency use. In fact, the overlap today is even greater than when we last reported. Astra now offers an Internet service at 12.640 GHz,[12] close to the center point of the MDS frequency. This is another reminder of the point we made earlier: within the frequencies used by DBS satellites abroad there often is shifting, so that a service that is not co-frequency today with a terrestrial system may become such tomorrow.

Northpoint Misinformation About Ireland

The Northpoint statements about the Irish test are flagrantly inaccurate. "MDS now admits its claimed Cork, Ireland location was a test site and is not operational"[13]. MDS America's prior filings clearly have stated this to be a test site. In fact, the whole point of the

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[12] http://www.lyngsat.com/astra19.shtml

[13] Northpoint June 7 Letter at 6.

independent test done by Southcoast TV (and paid for by Southcoast TV) was as part of due diligence before purchasing. Again, the reason this glowing evaluation of the MDS International technology is so useful to MDS America is that the test was not paid for by MDS, but by a prospective customer. These types of casual misstatements, unfortunately, are typical of Northpoint attacks on MDS America.

Northpoint goes on to claim: "That leaves MDS's claim that the system (sic) 12.355 GHz operations were sharing with 12.363 GHz BSS signals. This arrangement does not demonstrate co-frequency operations, nor is it an example of the 'frequency offset' interference mitigation technique ..."[14]

Again these statements are flatly wrong. The Southcoast TV installation is an example of both co-frequency and offset. In fact, Northpoint's argument makes no sense. Immediately after stating that the 8 MHz center channel offset in Ireland between Astra and the MDS installation is not an example of frequency offset, Northpoint produces a chart (full of inaccuracies as described below) showing 7 MHz between center channels and calls that the "[p]roper use of frequency offset mitigation techniques."[15]

Why is a 7 MHz offset "proper" and an 8 MHz offset "improper"? Northpoint fails to address this question. Further, Northpoint is wrong in saying the Irish system was not an example of co-frequency sharing. Use of overlapping frequencies is co-frequency sharing. Interestingly, unlike for Lyon, Northpoint produces no chart for Ireland. Perhaps that is because an honestly rendered chart, as below, would show the following:

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[14] *Id.*

[15] *Id* at 7, Figure 2.

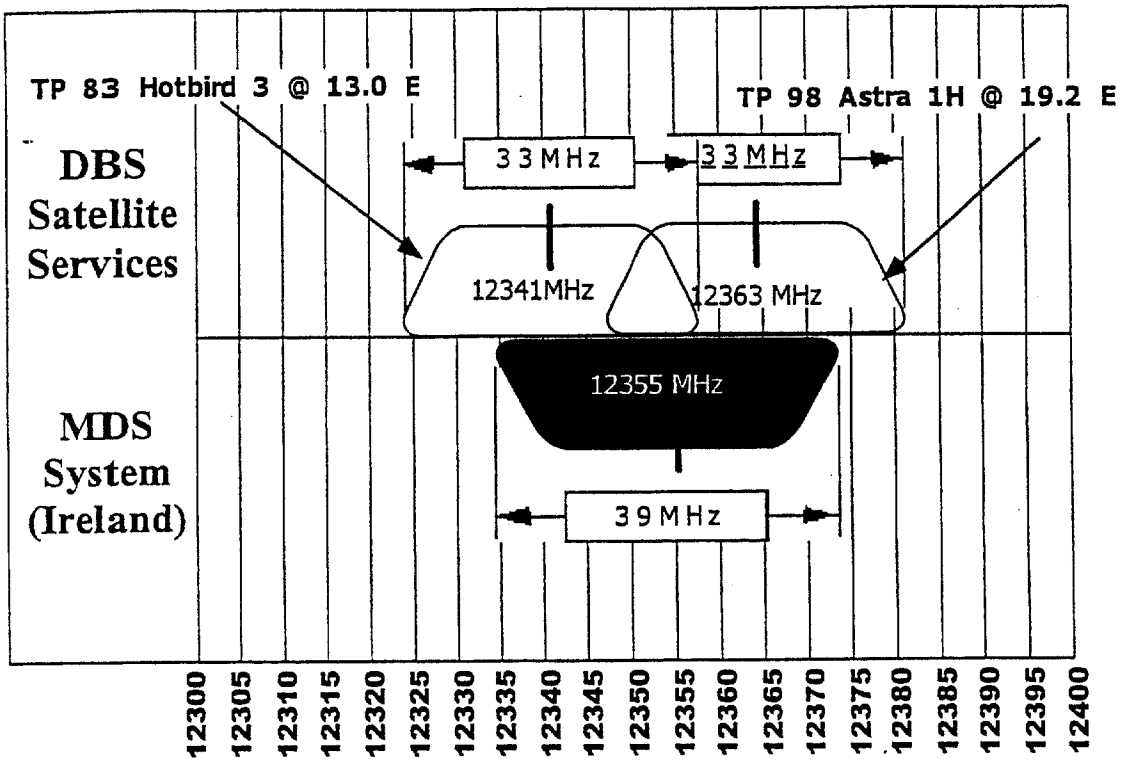

Figure 3: Graph of a real world MDS test that ran for 6 months

As Figure 3 clearly shows, there are substantial overlaps between both Astra and Hotbird transponders and the MDS International signal. In fact, the two DBS signals overlap one another as well. Despite this very extensive degree of overlap, over a period of six months there were no interference complaints nor interference observed in nearly 300 test measurements.[16]

If Northpoint had produced a chart for Ireland, it would have been apparent to all that its claim of "a minimal overlap, if any ..." between MDS and the satellite services, was untrue.[17] It would also have been clear that Northpoint's claim, that the DBS signal at 12.341 GHz was not co-frequency with the MDS signal at 12.355 GHz, was similarly inaccurate.

Northpoint's own Hypothetical Chart is Incomprehensible

Not content with filing a misleading chart about MDS International's Lyon test site, Northpoint provides its own chart of "proper" use of frequency offset mitigation techniques which we reproduce here:

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[16] Report of Edward O'Gorman, Consultant to Southcoast Community Television, May 10, 2001.

[17] Northpoint June 7 Letter at 6.

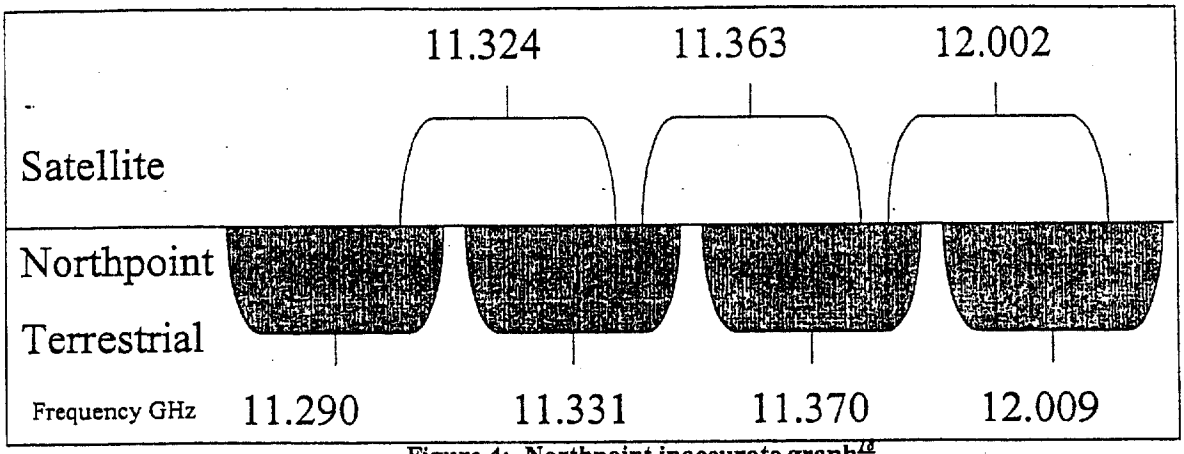

Figure 4: Northpoint inaccurate graph[18]

This chart is absolutely incomprehensible. First, it deals with frequencies far away from the 12.2 to 12.7 GHz band which is at issue in this proceeding. Second, we also assume it is purely hypothetical because as far as we know, there has never been an operational Northpoint system, commercial or otherwise, in these frequencies or with this many transmitters. However, to give Northpoint the benefit of the doubt, we have re-plotted the data below in accord with the bandwidth of the Northpoint transmitter (also 24 MHz) and the DIRECTV and EchoStar transponders (24 MHz), even though the frequencies depicted in the chart are not used by DBS in the United States.

[18] Northpoint June 7 Letter at 7, Figure 2.

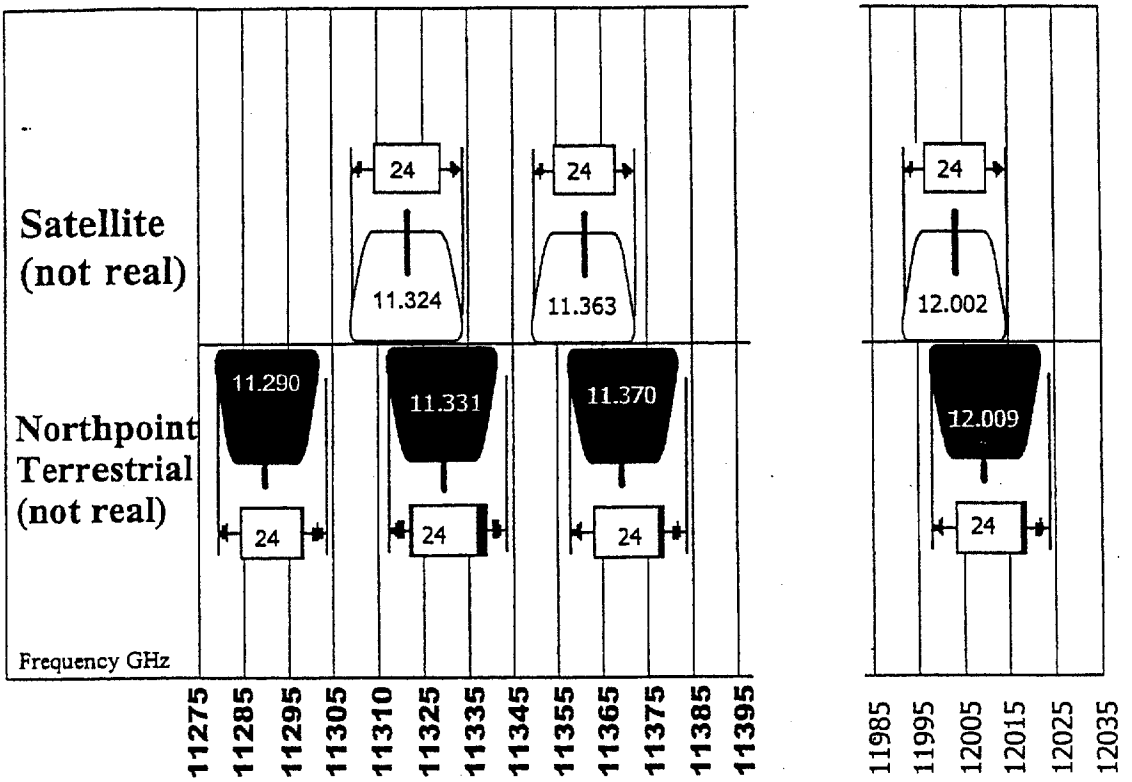

Figure 4: Northpoint graph *Accurately Redrawn*

Notice that the overlap between 11.290 and 11.324 GHz disappears, as does that between 11.331 and 11.363 GHz. Also, there is now a 632 MHz gap (formerly an overlap) between 11.370 GHz and 12.002 GHz. What the point of this innumerate chart was in the first place is unclear. In any event, it cannot be a demonstration of "proper" offset techniques because Northpoint has absolutely no real-world experience with frequency offset as a mitigation technique.

Additional Northpoint Distortions and Inaccuracies

Northpoint's June 7 letter contains many other sloppy or purposeful inaccuracies. We will simply point out the most egregious and refrain from rebutting attacks we answered previously.

Andorra

Northpoint claims that MDS America "admits" that the MDS International equipment there is a "point-to-point microwave rely system."[19] MDS America admitted no such thing. The

[19] Northpoint June 7 Letter at 8.

Andorra system, which consists of four transmitters at two sites, is used by the state television system of Andorra to relay its UVF/VHF television signals by using repeaters and reflectors. These transmitters use MDS International's standard antennas. This means that the potential interference with direct-to-home satellite customers is the same as if the MDS system had every home in Andorra as a customer. It is the transmitters, not the number of MVDDS receivers, that are at issue for the interference question.[20]

Embassy of France Letter

Northpoint attacks the letter from the French Embassy's Telecommunications Attaché as not supporting the claims of satellite-terrestrial sharing.[21] The letter was not produced for that purpose, but rather as refutation of Northpoint's insinuation that MDS installations might not "exist at all."[22] However, since Northpoint brings it up, MDS International has confirmed that it has sold several of its terrestrial systems to a French government defense agency, and that the transmitters for those systems, which are employed in France, operate within Ku frequency bands used by direct-to-home services in Europe.

International Telecommunication Union

The most inexplicable of Northpoint's assertions is its attack on the ITU endorsement of MDS International technology as a possible means of supplying Africa with television and Internet access service. Northpoint breathlessly reveals that "the ITU Report clearly references a *terrestrial only system.*" [23] Yes, we agree. That is the type of MDS system that Northpoint insinuated may not "exist at all." We thought it relevant that the International Telecommunication Union, the main world body dealing with telecommunications issues, not only thought MDS International existed, but wrote favorably about the potential for using the terrestrial technology we hope to bring to the United States, for the development of communications in Africa. We have yet to see an ITU endorsement of Northpoint's technology.

Conclusion

Northpoint's original May 9, 2001 attack on MDS America was vastly over-generalized, raising the question of whether MDS equipment installations "exist at all". Following MDS America's detailed refutation of that claim, Northpoint's new assault is micro-specific, claiming that Docket 98-206 is about "ubiquitous sharing" meaning sharing "at *the exact same frequency*

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[20] Northpoint's claim regarding the Macedonian equipment suffers from the same illogic. There, too, it is standard MDS International broadcast transmitters, not point-to-point devices that are used.

[21] Northpoint June 7 Letter at 8.

[22] Northpoint May 9 Letter at 1.

[23] Northpoint June 7 Letter at 9.

at the exact same time in the *exact same location* and that the system does *not causing* [sic] *harmful interference to DBS at that exact location."*[24] Northpoint claims MDS technology does not live up to this definition.

MDS America has presented its detailed analysis of the Lyon and Irish installations to conclusively refute this claim. Northpoint's specific allegations are simply wrong; MDS systems do share ubiquitously and operate co-frequency with DBS satellites. However, Northpoint is wrong in a larger sense as well. This proceeding is not about center channels or co-frequency. It is about whether satellite and terrestrial broadband systems can co-exist using the same spectrum band to deliver services to American consumers. This question is what MDS America has tried to address in its pleadings, based on the real-world experience of MDS International. MDS America believes that with proper safeguards the answer to that question is yes and that all the parties to this proceeding should concentrate their efforts on assisting the Commission in resolving the technical issues raised by that question.

Northpoint, unfortunately, has concentrated its efforts elsewhere: on lobbying, political machinations and public relations. MDS America is only its latest target; Northpoint must deny the existence of any alternative MVDDS technology if it is to justify to Congress, this Commission and the American people its plea to be given, for free, monopoly licenses to 500 MHz of valuable spectrum. However, Northpoint cannot overcome the reality of the existence of the MDS technology. MDS America suggests Northpoint concentrate on competing with it in the marketplace. Let the market determine who has the best technology; that is the American way, not the use of political connections to extract without payment that which should be won through competition.

Sincerely yours,

James W. Olson

[24] *Id* at 3.

CERTIFICATE OF SERVICE

I hereby certify that on this 14th day of June, 2001, a true and correct copy of the foregoing was served by hand delivery upon the following:

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