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July 3, 2001

VIA HAND DELIVERY

EX PARTE

Norman Goldstein, Esq.
Investigations & Hearings Division
Enforcement Bureau
Federal Communications Commission
Room 3A465
445 12th Street, S.W.
Washington, D.C. 20554

Re: Ex Parte Communication in ET Docket No. 98-206 and Application of MDS America, Inc., for Radio Station Under Part 5 of FCC Rules – Experimental Radio Service, File No. 0095-EX-PL-2001.

Dear Mr. Goldstein:

I write on behalf of Northpoint Technology, Ltd. ("Northpoint"), in response to the June 14, 2001, letter from MDS America, Inc. ("MDS") to FCC General Counsel Jane Mago. We understand that Ms. Mago has referred this matter to the Enforcement Bureau and will therefore address future correspondence to you.

On May 9, 2001, we wrote on behalf of Northpoint to alert the Commission to apparent misrepresentations by MDS in connection with the above-referenced proceedings. In particular, when applying for its experimental radio license, MDS indicated that it or its affiliates were successfully operating on a commercial basis "more than 20" installations worldwide like the one proposed in the experimental application¹ – namely, a point-to-multipoint terrestrial service that would share frequencies with DBS operations. MDS further claimed that these installations had experienced no interference problems with existing DBS systems in "years of commercial

¹ Application of MDS America, Inc., for Radio Station Under Part 5 of FCC Rules – Experimental Radio Service, File No. 0095-EX-PL-2001, Exh. 2, at 1 (FCC filed April 23, 2001) ("MDS Experimental Application"); *see also* Comments of MDS America, Inc., on Further Notice of Proposed Rulemaking, ET Docket 98-206, at 9 (FCC filed March 12, 2001) ("MDS International has provided systems for a score of locations") ("MDS Comments on FNPRM"); MDS America press release, Business Wire2015, May 7, 2001 ("more than 20 international markets").

Norman Goldstein, Esq.

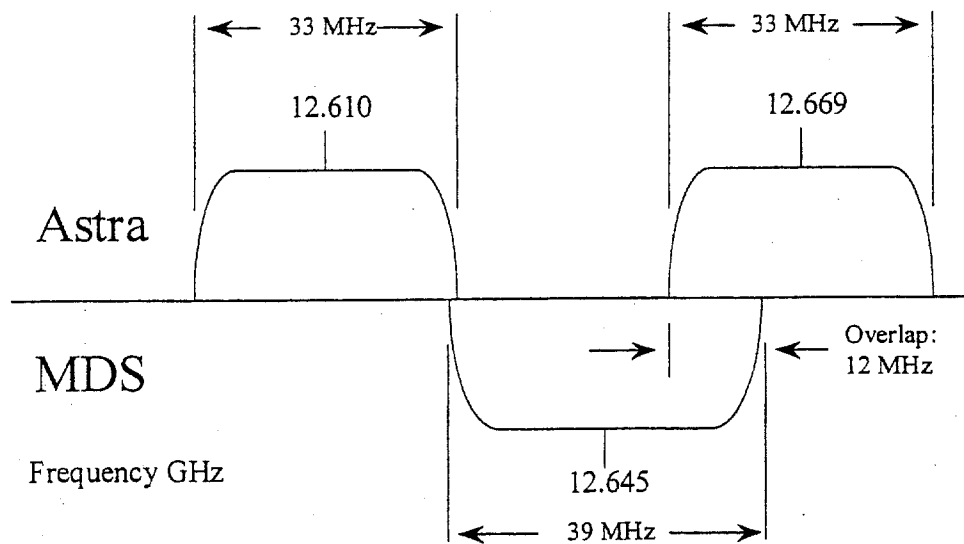
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operation.”² Although MDS provided few details of its installations in its application for an experimental radio license, it described eight “representative” installations in an appendix to comments filed with the Commission in ET Docket 98-206.³

Northpoint’s May 9 letter states that Northpoint was unable, upon initial investigation, to substantiate many of the claims MDS made for its eight supposedly representative sites. After a further exchange of letters, MDS has effectively conceded that six of the eight representative sites are *not* operating on a point-to-multipoint basis and sharing frequencies with DBS broadcasts, as the experimental site in Florida is supposed to do. With regard to the remaining two “representative” sites, the Cork, Ireland site never operated commercially and currently is not operating at all. The Lyon, France, site is a demonstration site that has never operated commercially and appears to use band segmentation rather than actual co-frequency operation with DBS.

In its June 14 filing MDS supplemented its prior FCC submissions with a new claim that it was using a 39 MHz wide carrier centered at 12.645 GHz in the demonstration site at Lyon. Thus, MDS admits its system had minimal overlap and relied on band segmentation as shown below.



² MDS Experimental Application, Exhibit 2, at ; *see also* MDS Comments on FNPRM at 9 (MDS system “co-existed” with satellite service “without any problem”; MDS technology is “deployed commercially and successfully now”).

³ *See* MDS Comments on FNPRM, App. 2.

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It should be noted that the configuration shown at Lyon is completely unworkable for the 12.2-12.7 GHz sharing environment under consideration in ET Docket 98-206. In the United States DBS operators use all the channels available between 12.2 and 12.7 GHz, so there are no gaps where an MDS band segmentation scheme can be employed as it was in Lyon.

To sum up, MDS has utterly failed to support its repeated assertions that it has over 20 commercially operating MVDDS installations around the world that are operating on a co-frequency basis with DBS. MDS's original description of its eight so-called representative sites was demonstrably false in many respects, as MDS has now largely admitted. Moreover, throughout its several filings and ex parte letters to the Commission, MDS has to date not even identified, much less provided details about, the 12 or more other commercial operations it supposedly has in place around the world.

Northpoint does not know whether MDS's misstatements to the Commission were intentional, but they clearly were material. The Commission's decisions regarding MDS's fitness to be a licensee and the appropriateness of granting an experimental radio license for MDS's proposed Florida tests were based on those misstatements.

Yours sincerely,

A handwritten signature in black ink, appearing to read "Michael K. Kellogg", with a stylized flourish at the end.

Michael K. Kellogg
Counsel for Northpoint Technology, Ltd.

cc: Jane Mago, General Counsel
David Solomon, Enforcement Bureau
Charles Kelley, Enforcement Bureau
Bruce Franca, Office of Engineering and Technology
Donald Abelson, International Bureau
Thomas Sugrue, Wireless Telecommunications Bureau

CERTIFICATE OF SERVICE

I, Shannon Thrash, hereby certify that on this 3rd day of July, 2001, copies of the foregoing were served by hand delivery and/or first class United States mail, postage prepaid, on the following:

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