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September 24, 2002

Mr. James Burtle  
Office of Engineering Technology  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, DC 20554

Re: **MDS America, Incorporated**  
**Reply to Northpoint Technology's Response to MDS America's**  
**Supplement to Pending Application to Modify Experimental License,**  
**Call Sign WC2XPU, FCC File No. 0005-EX-ML-2002**

Dear Jim:

MDS America, Incorporated ("MDS America"), respectfully requests that the Commission decline to further countenance the attempts of Northpoint Technology, Ltd. ("Northpoint") to delay grant of MDS America's application to modify its experimental license. Northpoint, throughout the Multichannel Video Distribution and Data Service ("MVDDS") docket and beyond, has consistently sought an exclusive, nationwide MVDDS license without paying a penny. To achieve this goal, Northpoint is yet again attempting to secure Congressional legislation to obtain MVDDS spectrum without an auction. This legislation would require that MVDDS licensees use technology proven, through independent testing completed prior to submitting an MVDDS application, not to interfere with Direct Broadcast Satellite ("DBS") operations. Meanwhile, here at the Commission, it is hardly coincidental that Northpoint has made a massive effort to prevent such testing by MDS America. Thus, it is important to understand that Northpoint is driven by its well-publicized goal of foreclosing competition, and delaying grant of the instant experimental application is one way to further that objective.

MDS America concurs that the Commission should obtain a full record. However, Northpoint's Petition and related filings simply serve to muddy the waters by concentrating on erroneous or irrelevant issues. Northpoint tries again to suggest that MDS America is "exaggerating" or attempting to hide information, and here it skates dangerously close to pure malice. Northpoint knows full well that these allegations have been dismissed in their entirety by the Commission in its recent MVDDS Order, but it is nonetheless trying to revive them here.

Northpoint would be well advised to throw *less* energy into maligning MDS America and more energy into conducting sound RF engineering, where its efforts might be more rewarded.

Northpoint erroneously claims that it has an interest here because any adverse results of the testing might be “detrimental” to MVDDS service. Implicit in this statement, however, is Northpoint’s recognition that Northpoint may not have standing, after all, to challenge MDS America’s experimental license application. MDS America has remained silent on this subject long enough. Northpoint has no operations, customers, or equipment of any type whatsoever that could be affected in the least by MVDDS testing. Northpoint, the company whose “northpointing” theory was dismissed as unworkable in the MITRE report, and who has never produced a single piece of MVDDS equipment, nonetheless has the *gall* to say it fears for the existence of MVDDS. What Northpoint actually fears is that the truth about the superiority of the MDS America technology will emerge through a scientific study conducted for the sake of advancing technology and broadband services for rural America.

If the Commission permits itself to be distracted, Northpoint will be left as the only potential MVDDS provider. This is contrary to the public interest in several respects, not the least of which is the loss of a viable competitor, MDS America. Delay in issuing the grant could adversely affect MDS America’s ability to conduct the full range of planned tests, because of the limited duration of the current rainy season at the test locale. Moreover, delaying experimentation that would lead to new information about spectrum sharing frustrates the important public interest in efficient spectrum utilization. A review of the spurious allegations that Northpoint raises in its response to MDS America’s supplement demonstrates that, to say the least, they do not warrant such harmful delay:

1. MDS America intends to conduct its demonstrations beyond the EPFD limits established in the Commission’s MVDDS Order. To operate precisely in accordance with or below the existing MVDDS EPFD limits would not be useful; that would not be an “experiment.” Northpoint wishes to trap MDS America in a catch-22, by suggesting that there is no point in doing testing below the EPFD limits, because the rules are established, and that there is no point in testing above the EPFD limits either, because...well, the rules are established. Obviously, this is a false choice; otherwise, experiments using radio frequencies could *never* be conducted once service rules are established. Instead, it is in the public interest to maximize the efficiency of spectrum sharing by conducting these demonstrations of real world MVDDS equipment in a rural setting.
2. Northpoint purports to know, better than MDS America, what MDS America’s antenna pattern should look like. Mind you, Northpoint has never operated or tested one of these antennas (although it would dearly love to do so). Suffice it to say that the antenna pattern provided depicts the worst-case scenario.
3. With regard to producing an EPFD contour, MDS America respectfully submits that because it is testing beyond the established EPFD limits, there is little to be gained in submitting an EPFD contour. MDS America openly acknowledges that one purpose of its tests is to demonstrate that its licensed equipment can be operated *above* the FCC EPFD limits without causing harmful interference to U.S. DBS operations, and therefore that these limits are too

conservative for operations in rural areas. If the Commission insists that MDS America provide an EPFD contour as a condition to issuing an experimental license, MDS America will readily provide one, although all of the information to derive such a contour is a matter of public record. MDS America has no wish to be coy; it is absolutely committed to responding to the Commission staff if it requires a response on this matter.

4. MDS America deeply appreciates Northpoint's heartfelt concern for DBS subscribers. One might even think, for a nanosecond, that Northpoint was a DBS operator. However, the actual DBS providers evidently do not share Northpoint's concern. Oddly, Northpoint cites the DBS providers' unsuccessful June 2001 attempt to block the first MDS America experiment. MDS America is not sure why this is relevant now, except perhaps to cause confusion. However, staff knows full well that DBS has not objected to MDS America's latest application. Also, as the Commission knows from the Phase I testing, during which purported interference claims were immediately investigated and shown to be unfounded, MDS America has made ample provision for promptly informing the Commission and addressing any interference claims on a real-time basis. MDS America remains committed to this standard.

5. Northpoint also purports to be concerned that MDS America's testing may not collect useful data; the relevance of Northpoint's views on this point are inexplicable. Moreover, coming from a company whose "technology" is theoretical in the extreme, this statement cannot be given any credence. Northpoint's comment that the proposed testing suffers "from the problem that any attempt to shield one dish would also shield out other sources of noise, such as adjacent DBS satellites, thus rendering the proposed test data useless"—makes no sense. First, it should be noted that adjacent DBS satellites are sources of interference—not noise. Second, it would be absurd to assume that any type of shielding would necessarily have a measurable impact on the DBS antenna. If that were true, then it would be impossible to perform any outdoor measurement on any type of system because any part of the surrounding environment could be considered a possible source of interference to the antenna gain pattern. Furthermore, even the measurement of antenna characteristics in anechoic chambers would not be acceptable because even anechoic materials have some degree of backscattering. Finally, a simple calibration of the two systems can determine any measurable discrepancies.

6. Northpoint, rather transparently, is attempting to use this proceeding to get access to proprietary MDS America technology. The Commission should be mindful that MDS America and Northpoint are engaged in litigation over who first developed MVDDS technology (as if there could be any question). MDS America is quite reasonably concerned about sharing any proprietary technology even with the Commission, but it is *adamantly* opposed to sharing it with Northpoint or anyone connected to or acting on behalf of Northpoint on any terms.

7. Additionally, as part of its on-going campaign to impugn the demonstrated excellence of MDS America's technology, Northpoint seeks to discredit MDS International's construction of an MVDDS system in the United Arab Emirates. The Commission probably would not be surprised to find out that, in the recent past, Northpoint apparently attempted, but failed, to discredit MDS International with the responsible authorities in the U.A.E. Northpoint doesn't mention the date of the news article provided by MDS America, which was August 15, nearly 3 weeks *before* the meeting with Commission staff. Naturally the news article described the state

of the system at that time, not on September 4, or September 24. Further, regardless of Northpoint's inability to understand its feasibility, a single tower is in fact being used to cover Al Ayn. Indeed, a key purpose of the subject testing is to demonstrate that in the U.S., just as in the U.A.E. and other locales where MDS International technology is used, wide area, tall tower MVDDS coverage is feasible without harmful interference to DBS reception.

8. Finally, Northpoint makes the baseless allegation that the U.A.E. system does not demonstrate co-existence of an MDS International MVDDS system with co-frequency satellite-delivered television service in the Ku band. Nor has Northpoint done its homework with respect to its allegation that there is no relevant channel overlap between the DTH service received in the UAE and the MDS International system being deployed there. In fact, Eutelsat's W2 bird has a footprint that covers the Middle East and carries programming of obvious interest to Arabic-language viewers. For example, Nile TV, carrying Arabic-language programming from Egypt, a major source of Arabic-language programming, is at 11474.00 MHz. This frequency is in the band used by the MDS International system in the United Arab Emirates. Also, the Jamahiriya Satellite Channel, carrying programming from Libya, is on the same satellite at 11328.00 MHz, overlapping the MDS International channels, and it too is an Arabic-language service. Other Arabic-language programming, as well as programming in other languages likely to be of interest to UAE residents, is carried on other overlapping frequencies. See <http://www.eutelsat.com/satellites/16e.html> (providing the satellite footprint) and <http://www.lyngsat.com/ew2.shtml> (providing the current channel line-up).

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MDS America therefore respectfully requests that the Commission dismiss Northpoint's petition forthwith and promptly grant the subject modification application.

Very truly yours,

A handwritten signature in black ink that reads "Nancy Killien Spooner". The signature is written in a cursive, flowing style.

Nancy Killien Spooner  
Helen E. Disenhaus  
Counsel for MDS America, Incorporated

**CERTIFICATE OF SERVICE**

I hereby certify that on this 25<sup>th</sup> day of September, 2002, a true and correct copy of the foregoing was served via e-mail (denoted by \*) and hand delivery, on the following individuals:

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