

EX PARTE OR LATE FILED



1299 PENNSYLVANIA AVE., NW
WASHINGTON, DC 20004-2402
PHONE 202.783.0800
FAX 202.383.6610
A LIMITED LIABILITY PARTNERSHIP

JAMES W. OLSON
PARTNER
202.383.7246
olsonj@howrey.com

July 16, 2001

RECEIVED

JUL 16 2001

VIA HAND DELIVERY

EX PARTE

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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

Re: **Notification of Ex Parte Communication in ET Docket No. 98-206; Experimental License File No. 0095-EX-PL-2001**

Dear Ms. Salas:

On July 16, 2001, the attached letter was provided to the Commission on behalf of MDS America, Incorporated. Four copies of the letter are enclosed for inclusion in the two dockets referenced above. Please contact me if you have any questions.

Sincerely,

A handwritten signature in dark ink, appearing to be "JW Olson", written over the typed name.

James W. Olson
Counsel for MDS America, Incorporated

Attachment

July 16, 2001

RECEIVED

JUL 16 2001

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

VIA HAND DELIVERY

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

EX PARTE

Re: Ex Parte Communication in ET Docket No. 98-206 and Experimental License File No. 0095-EX-PL-2001.

Dear Mr. Goldstein:

This letter is written on behalf of MDS America, Incorporated ("MDS America") in response to Northpoint Technology Ltd.'s ("Northpoint") letter to you of July 3, 2001.¹ In that letter Northpoint continued its unremitting campaign of distortions transparently aimed at eliminating a competitor from the market, while resolutely failing to admit the errors and omissions in its earlier letters.

Northpoint's technique is to skillfully weave a series of statements of its own devising into a position that is not defensible, then attribute that position to MDS America and claim it is a "misrepresentation". For instance, Northpoint claims at the beginning of its July 3 letter that:

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 application – namely, a point-to-multipoint terrestrial service that would share frequencies with DBS operations.²

This statement misrepresents what MDS America said in its experimental license application, which was:

¹ Northpoint Technology Ltd., July 3, 2001 letter to Norman Goldstein ("Northpoint July 3 letter").

² *Id.* at 1.

. . . MDS's technology is the only commercially functioning MVDDS system in the world with more than 20 installations worldwide.³

MDS America's statement was true. To the best of MDS America's knowledge, MDS International ("MDSI") has the only commercially functioning MVDDS system in the world. "Commercial" means an MVDDS system for which real customers have paid real money. Northpoint certainly has no such system. Furthermore, as the Declaration of Peter Blond, MDS America's Executive Vice President, stated,⁴ he confirmed with MDSI that it had sold more than 20 systems worldwide, the overwhelming majority of which operate on the Ku-band and most of which have been installed or shipped to locations with DBS service. As Mr. Blond further explained, because MDSI is not an operator, he could not verify the current operational status or usage of every MDSI system.⁵

Northpoint's July 3 letter also claims that MDS America 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 . . ." MDS America has made no such concession. MDS America's May 21, 2001 letter furnished voluminous detail about BSS (DBS) service to the areas where the MDSI systems were installed.⁶ Most tellingly, MDS America twice demonstrated conclusively that Northpoint simply was wrong in its claim that DBS services in Europe did not operate at the frequencies used by MDSI equipment installations.⁷

MDS America's June 14, 2001 letter⁸ also corrected Northpoint's claim that the MDSI system in Andorra, one of the eight sites discussed, was a "point-to-point microwave relay system."⁹ In fact, that system, used by the state television service of Andorra to relay programming, uses standard MDSI equipment. Thus, if the MDSI system caused interference, DBS receivers in Andorra would be affected the same as with any other MDSI system. Once again, in its July 3 letter, Northpoint ignores the fact that its original claim was discredited. Instead, it cleverly changes its wording to a claim that the system does not operate on a "point-

³ Application of MDS America, Incorporated for Radio Station under Part 5 of FCC Rules-Experimental Radio Service, File No. 0095-EX-PL-2001, Exhibit 2 at 1 (filed April 20, 2001).

⁴ Declaration of Peter Blond, Exhibit 8 to MDS America, Incorporated May 21, 2001 letter to Jane Mago ("MDS America May 21 letter").

⁵ *Id.*, paragraph 9.

⁶ MDS America May 21 letter, Exhibits 3, 5, 6, 7, 10, 11, 12, 13, 16, 17, 18, 19, 20 and 21.

⁷ See, MDS America May 21 letter at 4-5 and Exhibits 3 and 6; MDS America, Incorporated June 14, 2001 letter to Jane Mago at 3-4 ("MDS America June 14 letter").

⁸ MDS America June 14 letter at 10-11.

⁹ Northpoint Technology, Ltd. June 7, 2001 letter to Jane Mago at 8 ("Northpoint June 7 letter").

to-multipoint basis. . .”¹⁰ As described above, that statement is irrelevant to the question of whether MDSI systems interfere with reception by DBS receivers. It is unlikely that the state television service of Andorra would operate a system that interfered with reception by Andorran citizens.

Northpoint also continues its preposterous effort to maintain that the MDSI site in Lyon “appears to use band segmentation rather than actual co-frequency operation with DBS.” The Commission will recall that MDS America’s June 14 filing exposed the Lyon chart in Northpoint’s June 7 letter as misleading and demonstrably inaccurate because it failed to show the overlaps that existed between the MDSI site and the Astra DBS system.¹¹ In its July 3 letter, Northpoint finally submits a chart drawn properly, showing overlap of Astra at both ends of the MDSI signal (without attempting to refute in any way the showing that its first chart was misleading). Stubbornly, though, despite the fact that its own chart shows frequency overlap, Northpoint still claims that this is “band segmentation.”¹² Northpoint makes this claim despite the fact that its own website defines band segmentation as “an approach where satellites use one set of frequencies and terrestrial services use another.”¹³ Obviously, that is not the case in Lyon.

Nor does Northpoint mention that MDS America’s June 14 letter pointed out that Astra now offers an Internet service at 12.640 GHz, which at 5 MHz from the center point of the MDSI frequency at 12.645 GHz, is closer than the 7 MHz overlap that Northpoint cites as the “[p]roper use of frequency offset mitigation technique.”¹⁴ Northpoint also totally fails to deal with the fact that the MDSI transmitter in Lyon is adjustable and has operated throughout the 12.500 GHz to 12.750 GHz band, as explained in MDS America’s June 14 letter.¹⁵

Northpoint goes on to claim that the configuration shown at Lyon “is completely unworkable” for sharing with DBS in the United States. MDS America could expend further ink demonstrating that Northpoint is wrong and that what is done in Lyon is quite applicable in the United States. But there is a better answer. MDS America’s independent testing firm, LCC International has been testing the MDS technology in Florida since July 5. Northpoint has been monitoring those tests extensively. Let us see what the results of those tests are. That will be the true measure of whether the MDS technology will work in the United States.

¹⁰ Northpoint July 3 letter at 2.

¹¹ MDS America June 14 letter at 5-6.

¹² Northpoint July 3 letter at 2.

¹³ www.NorthpointTechnology.com/html/band_segmentation.html

¹⁴ Northpoint June 7 letter, Figure 2 at 7.

¹⁵ MDS America June 14 letter at 6.

July 16, 2001

Page 4

Northpoint's focus is to have the Enforcement Bureau remove an intractable problem for Northpoint. That intractable problem is that if the MDS technology works, the entire rationale underlying Northpoint's demand that it should receive for free monopoly spectrum licenses worth millions or even billions of dollars, collapses.

MDS America suggests that it is time for Northpoint to cease its attempts to eliminate competition through lawyering and lobbying and instead match its MVDDS technology against that developed by MDSI. MDS America is confident that the proven and commercially deployed MDS technology will prevail, if it is given the chance to compete.

Sincerely,



James W. Olson
Counsel for MDS America, Incorporated

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, Kazena Smith, hereby certify that on this 16th day of July, 2001, copies of the foregoing were served by hand delivery on the following:

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

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

Charles Kelley, Chief
Investigations & Hearings Division
Enforcement Bureau
Federal Communications Commission
445 12th Street, SW
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, General Counsel
Office of the General Counsel
Federal Communications Commission
445 12th Street, SW
Washington, D.C. 20554

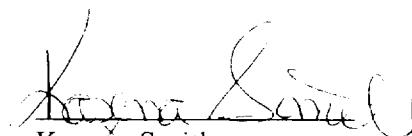
David Solomon, Bureau Chief
Enforcement Bureau
Federal Communications Commission
445 12th Street, SW
Washington, D.C. 20554

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, SW
Washington, D.C. 20554

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

Michael K. Kellogg
Kellogg, Huber, Hansen, Todd & Evans
1615 M Street, N.W.
Suite 400
Washington, D.C. 20036


Kazena Smith