LMDS Holdings, Inc.
FCC Form 702
***Pro Forma* Assignment**

Request for Rule Waiver

The attached application seeks the consent of the Federal Communications Commission ("FCC" or "Commission") to the *pro forma* assignment of an experimental authorization held by XO LMDS Holdings No. 1, Inc. ("XO") to LMDS Holdings, Inc. ("Holdings"). Because this request for FCC consent is not submitted in accordance with the provisions of Section 5.79 of the Commission's rules, which otherwise requires that holders of experimental authorizations seek prior approval of the assignment of their licenses, pursuant to Section 5.65(c)(2) of the FCC's rules, XO hereby requests waiver of Section 5.79.

XO holds a license (the "License) covering the operation of an experimental station bearing the call sign WC9XHQ (the "Station"). On November 10, 2005, XO was merged into Holdings. Because the ownership of Holdings is identical to the former ownership of XO, this action constituted a *pro forma* assignment from XO to Holdings under the FCC's rules. Holdings is (and XO before it was) the licensee of numerous local multipoint distribution service ("LMDS") and 39 GHz authorizations. The FCC's rules governing the wireless services generally require notification of *pro forma* assignments within thirty (30) days of the assignment. Accordingly, on November 6, 2005, XO and Holdings notified the FCC of the *pro forma* assignment of XO to Holdings with respect to these other authorizations.[1/] Holdings submitted a revised ownership report on the same date.[2/]

XO inadvertently neglected to take the same or similar measures with respect to the License covered by this application. Moreover, unlike the regulations that govern the wireless services which permit post-transaction notification, Part 5 of the FCC's regulations, which govern experimental authorizations, require *prior* approval of *pro forma* assignments. Accordingly, XO hereby requests waiver of Section 5.79 of the FCC's rules.

Waiver of the rules is appropriate in this instance because Holdings has otherwise substantially complied with the FCC's regulations that require notification of a *pro forma* assignment of an entity holding FCC authorizations. It is in the public interest for the FCC to waive its rules because the ownership of the Station is the same as it was prior to the assignment. Moreover, operation of the Station continues exactly as it had under XO. Thus, there is no effect on the operation of the Station. If the FCC declined to approve this waiver request, Holdings would apply for an experimental authorization with the precise parameters under which XO is currently authorized. Such an exercise would be administratively inefficient because it would require the FCC to expend resources to approve an application seeking a license for which authorization was already granted.

1/ *See* FCC ULS File No. 0002401245.
2/ *Id*.

Therefore, it is in the public interest to grant this request for waiver and approve the assignment of the Station from XO to Holdings.

If there are any questions regarding this notification, the FCC is asked to contact Russell Fox of Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C., outside counsel for Holdings at 202-434-7483 or rfox@mintz.com