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April 5, 2001

VIA HAND DELIVERY

Magalie Roman Salas
Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554

RE: In the Matter of Amendment of Parts 2 and 25 of the Commission's Rules to Permit Operation of NGSO FSS Systems Co-Frequency with GSO and Terrestrial Systems in the Ku-Band Frequency Range; Amendment of the Commissions' Rules to Authorize Subsidiary Terrestrial Use of the 12.2-12.7 GHz Band by Direct Broadcast Satellite Licensees and Their Affiliates; and Application of Broadwave USA, PDC Broadband Corporation, and Satellite Receivers, Ltd. To Provide A Fixed Service in the 12.2-12.7 GHz Band, ET Docket No. 98-206; RM-9147; RM-9245

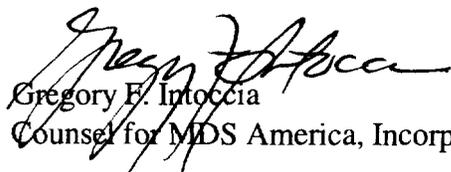
Dear Ms. Salas:

Enclosed please find an original and four (4) copies of *Reply Comments of MDS America, Incorporated*, with respect to the *Further Notice of Proposed Rulemaking*, FCC 00-418, in the above-captioned proceeding.

An extra copy of the filing is enclosed. Please date-stamp the extra copy and return it to the courier for return to me.

Please direct any correspondence concerning this filing to the undersigned counsel.

Respectfully submitted,


Gregory F. Intoccia
Counsel for MDS America, Incorporated

Enclosure

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**Before the
Federal Communications Commission
Washington, D.C. 20554**

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)	
Amendment of Parts 2 and 25 of the)	
Commission's Rules to Permit Operation)	
of NGSO FSS Systems Co-Frequency)	
with GSO and Terrestrial Systems in the)	
Ku-Band Frequency Range;)	ET Docket No. 98-206
)	RM-9147
)	RM-9245
Amendment of the Commission's Rules)	
to Authorize Subsidiary Terrestrial Use of)	
the 12.2-12.7 GHz Band by Direct)	
Broadcast Satellite Licensees and Their)	
Affiliates; and)	
)	
Applications of Broadwave)	
USA, PDC Broadband Corporation, and)	
Satellite Receivers, Ltd. to Provide)	
A Fixed Service in the 12.2-12.7)	
GHz Band)	

REPLY COMMENTS OF MDS AMERICA, INCORPORATED

MDS America, Incorporated ("MDS America"), by its attorneys, hereby submits its Reply Comments in the above-captioned proceeding.¹

INTRODUCTION AND SUMMARY

MDS America's Comments² described the innovative technology developed by MDS International S.A.R.L. ("MDS International") to deliver terrestrial broadband wireless service,

¹ First Report and Order and Further Notice of Proposed Rulemaking, FCC 00-418, ET Docket No. 98-206, RM-9147, RM-9245 (rel. Dec. 8, 2000) ("First Report and Order and FNPRM").

² MDS America Comments, March 12, 2001.

including both video and high-speed Internet data service, at frequencies including those in the 12.2 to 12.7 GHz band, without causing interference to satellites operating in the same range.

MDS International has over a score of installations employing its technology worldwide, most of which utilize the same Ku-band frequencies as do satellites servicing the same localities. None of these installations has had interference problems with satellite services. Thus, MDS International has answered conclusively the main question that has been argued over for years and in excruciating detail in this proceeding: a terrestrial system can co-exist successfully with satellite systems in the 12.2 to 12.7 GHz frequency band. MDS International has demonstrated this through real-world operational systems, not through an abstract paper war.

The worldwide co-existence of MDS International systems and DBS satellites is strong corroboration of Northpoint Technology Ltd.'s ("Northpoint's") position that terrestrial use can be made of the 12.2 to 12.7 GHz spectrum without causing harmful interference to satellite services. However, the existence and viability of MDS International's systems should strike a fatal blow at the same time to Northpoint's attempt to seize control of terrestrial use of the 12.2 to 12.7 GHz band without facing competition.

Northpoint's essential argument is that only it has a technology capable of being used terrestrially at 12.2 to 12.7 GHz without causing interference. ("No one but Northpoint has technology proven capable of sharing the very same frequencies used for satellite transmissions, so no one else has the capability actually to launch the pro-competitive terrestrial service that Northpoint is proposing.")³ This argument is simply not true, as Northpoint should know; the existence of MDS International's systems demonstrates that it lacks any basis. MDS International's systems have been put to the test successfully in the most unforgiving environment, real-world commercial installations.

³ Comments of Northpoint Technology, Ltd. and Broadwave USA, Inc. ("Northpoint Comments") at 19 (Mar. 12, 2001). "Northpoint" is used here to refer to Northpoint Technology Ltd. and Broadwave USA, Inc., collectively.

If there were interference problems raised by these installations, the DBS operators in those areas would surely have made their objections known and caused the systems to cease operations. To the extent that the Commission or any party to this proceeding wishes to verify the ability of MDS systems to co-exist with DBS satellites without interference problems, we invite a visit to MDS International's demonstration site in Lyon, France or will be glad to arrange a visit to one of its operational systems around the globe. In addition, MDS America is preparing to test its systems in the United States, to further verify the experience elsewhere, and welcomes participation in this program by any interested party.

The "facts on the ground" established by MDS International's working systems should help the Commission simplify this proceeding. First, they answer the self-interested arguments put forth by the satellite companies, in particular by DirecTV and EchoStar, that they cannot share their spectrum with (potentially competitive) terrestrial services. Second, they refute Northpoint's egregious attempt to seize the terrestrial rights to the 12.2 to 12.7 GHz band spectrum, without any compensation to the taxpayers or consideration of other potential applicants, on the unfounded basis that only Northpoint has technology allowing such a use.

With these issues disposed of, the appropriate course for the Commission becomes clear: it should follow its traditional course by: (1) promptly setting flexible, technology-neutral service rules; (2) asking for applications; and, (3) if there are mutually exclusive applicants, holding an auction. The free market will then decide which competitors succeed. Northpoint's arguments against this straight-forward process, while understandable, are totally specious and fly in the face of long-standing Commission precedent. They could be justified only if Northpoint were the sole company with a terrestrial technology in the 12.2 to 12.7 GHz band; unfortunately for Northpoint this simply is not the case.

DISCUSSION

I. Northpoint's Argument That It Should Be Granted Licenses Exclusively And Immediately Is Fatally Flawed

Northpoint's Comments are centered on – indeed, obsessed with – the concept that Northpoint deserves to have the Commission grant it terrestrial licenses in the 12 GHz band immediately, without allowing any other potential applicant the opportunity to bid for such licenses. The rationale for urging this departure from standard Commission procedure is Northpoint's alleged unique technology. One variant or another of this claim is made over thirty times in Northpoint's Comments and in its attached Declaration of Thomas W. Hazlett.⁴ The only problem with this repeated claim is that it is based on a fatally flawed premise. Northpoint does not have uniquely a technology that allows non-interfering terrestrial use of the 12GHz band. MDS International has deployed such technology at numerous sites around the world for many years, as Northpoint should be aware. When this is understood, Northpoint's entire case for special treatment evaporates without a trace.

A. Northpoint's Argument For Special Treatment Is Based On The Inaccurate Premise That It Alone Has Technology Capable Of Non-Interfering Use Of The 12.2-12.7 GHz Band

Northpoint's introduction to its comments claims that:

One company – Northpoint – has invented, developed, tested, and patented a remarkable technology that makes possible new terrestrial uses of 12.2-12.7 GHz spectrum without causing harmful interference to the ten existing and planned satellite operators in that band. Northpoint has created new bandwidth out of thin air by re-using spectrum previously allocated to other uses⁵

It goes on to complain that:

the Commission is considering, in effect, an auction not of spectrum but rather of the right to use a specific technology – the Northpoint technology

⁴ Declaration of Thomas W. Hazlett, Ph.D. ("Hazlett Declaration").

⁵ Northpoint Comments at 2.

that makes possible the provision of a new service within spectrum bands already assigned to other users.⁶

Northpoint argues that it should be granted the licenses without an auction because:

[O]nly Northpoint's applications were filed within the relevant filing window and ... no other applicant has the proven capability to provide terrestrial service in the 12 GHz band without causing harmful interference to DBS broadcasts.⁷

Northpoint claims that it has a "breakthrough technology"⁸ and that:

[I]t makes no sense to speak of a "new terrestrial wireless service" distinct from Northpoint's technology. The "new service" the Commission proposes to define is no more or less than the technology itself.⁹

Once again, Northpoint argues that:

[O]nly one applicant has developed and validated the technology that can do this, and the Commission's entire analysis has been developed and framed, line by line, around that specific technology. The Commission is not called upon to decide which among many applicants can make the most economically efficient use of new spectrum. It only has to decide whether a new technology can make more efficient technical use of spectrum already licensed and already in use.

The only economic effect of conducting an auction here will be to appropriate for the Government some share of the economic value of the proprietary technology that Northpoint has painstakingly developed and validated before the Commission.¹⁰

Later, it warns that:

Indeed, it is far from clear that an auction would succeed in capturing any value for the federal treasury because the Commission could be made to disgorge the auction proceeds to the extent that such proceeds represent a taking of Northpoint's property without just compensation.¹¹

⁶ *Id.*

⁷ *Id.* at 3.

⁸ *Id.* at 4.

⁹ *Id.* at 6.

¹⁰ *Id.* at 8.

¹¹ *Id.* at 25.

Northpoint's comments are replete with the claim that its technology is unique:

[O]nly Northpoint has demonstrated its ability to provide terrestrial service without causing harmful interference to satellite broadcasts.¹²

Northpoint has the technology All the rest have no technology¹³

and

Northpoint's low-cost repeater infrastructure can get digital wireless services to rural areas on a very fast timetable – within two years of licensing. No other party has the technology or has committed to roll out the service quickly.¹⁴

It argues that Congress shares this view:

Northpoint has developed and owns the only technology proven capable of doing this [delivering local broadcast signals to satellite television subscribers], and the legislative history of the RLBSA leaves no doubt that Congress had Northpoint in mind when setting this deadline.¹⁵

The Hazlett Declaration is based on the same faulty premise. Hazlett asserts that:

No firm simultaneously developed a competing system for spectrum re-use in the 12 GHz band;¹⁶

[Northpoint is] the unrivaled creator of the service in question ...;¹⁷

It is clear that Northpoint created the very service the FCC now seeks to license, initiating the Rule Making and developing the technology that now makes spectrum re-use in this band possible. No other firm or individual has any competing claim.¹⁸

¹² *Id.* at 17.

¹³ *Id.* at 21.

¹⁴ *Id.* at 24.

¹⁵ *Id.* at 27.

¹⁶ Hazlett Declaration at 5.

¹⁷ *Id.* at 6.

¹⁸ *Id.* at 14.

Hazlett refers to “[t]he technology Northpoint has pioneered”¹⁹ and Northpoint’s “substantial investments [that] enabled it to discover the opportunity to provide more communications over an already allocated band of frequencies.”²⁰

Hazlett also assumes, erroneously, that because “Northpoint has patented its technology,”²¹ an auction would have one of two results: Northpoint might bid and win, or “[a] firm other than Northpoint could win the auction, and then negotiate ... to use Northpoint technology in exchange for a share of revenues or profits.”²² Hazlett then reasons that: “While Northpoint’s innovative technology will be used regardless of the license assignment method, efficiency will still be affected.”²³

Because of his apparent incomplete knowledge of what is actually occurring in terms of terrestrial usage of the 12.2 to 12.7 GHz frequency band around the world, Hazlett ignores another equally likely possibility: one or more auction participants also will bid who plan to use MDS International’s technology and the outcome will be efficiency-enhancing because the better technology is likely to be adopted by the winner(s) of the auction.

Thus, both Northpoint and its expert, Dr. Hazlett, rest their pleading for an unprecedented level of special treatment on the flawed assumption that Northpoint has invented and developed a technology uniquely able to make use terrestrially of the 12.2 to 12.7 GHz band without interfering with satellite services. As is discussed below, this assumption is contrary to fact and, without it, Northpoint’s entire argument for special consideration collapses.

¹⁹ *Id.* at 18.

²⁰ *Id.* at 22.

²¹ *Id.* at 9.

²² *Id.* at 9-10.

²³ *Id.* at 10.

B. MDS International Has Operational Systems Today That Co-Exist With DBS Satellites

MDS International was established in 1984 and sold its first terrestrial broadband wireless system to the United States government in 1996 to provide video services to United States armed forces stationed in Oman. That three transmitter system has been operational since 1997 and offers television, radio and high-speed Internet access in the 3.4-3.6 GHz frequency range. When established, there was existing C-band satellite service in the area with which MDS International's satellite system co-existed without any problem.

Since that original commercial system, MDS International has installed its innovative broadband wireless systems in more than a score of locations. Most of these systems use Ku-band frequencies, like DirecTV and EchoStar, and are within the footprint of one or more DBS satellites. Most recently, in March 2001, an MDS International system began test operations in Iceland with a full roll-out scheduled for later this year. Other operational MDS International systems include one in Auckland, New Zealand, which provides 40 television channels, a system in Seoul, Korea, which provides television and high speed Internet service, one in Almaty, Kazakhstan, which provides high speed Internet services to ISPs in that country, and several systems providing television service in European locations, including Andorra, Macedonia and Serbia.

MDS America's initial comments detailed how each of these systems co-exists with DBS satellites using the same frequency, identifying the exact frequencies used by each MDS International system and the DBS satellites that served the same area utilizing the same frequencies.²⁴ We will not replicate that full analysis here, but will mention the New Zealand system as illustrative. It transmits at 12.338-12.410 GHz. At least three DBS satellites, PAS 8, Optus B1 and Optus B3, cover New Zealand; and each has channels that directly overlap or are very close to the frequency used by the MDS International system in Auckland.

²⁴ See MDS America Comments at 10-11 and Appendices 2 and 3.

Nor should it come as any surprise to Northpoint that such systems are in operation around the world. While Northpoint acts as if the idea of terrestrial and satellite frequency sharing was its own idea, the International Telecommunication Union long-ago formulated recommendations for frequency sharing between terrestrial services and systems in the fixed-satellite service using the same frequency bands.²⁵

Further, Northpoint had reason to know at least as long ago as 1998 that MDS International was offering a terrestrial service using the 12 GHz spectrum band. In that year, Fabrice Ducasse of MDS International contacted Sophia Collier of Northpoint after viewing Northpoint's website and was himself then contacted by Northpoint founder Saleem Tawil, who asked for information regarding MDS International equipment and pricing. Mr. Tawil received a detailed reply from Mr. Ducasse.

C. Northpoint Itself Admits That When Competitive Technologies Exist Their Deployment Should Be Approved

The extensive deployment by MDS International of operational terrestrial broadband systems utilizing the Ku-band should eliminate any claim by Northpoint that its alleged "unique" technology justifies its unprecedented demand that the Commission waive its established procedures and grant its license applications without consideration of other potential applicants.

In fact, Northpoint appears to admit as much, perhaps because of a misapprehension that it has the field to itself.

Of course, other technologies may be developed that will also be able to share the 12 GHz band with existing uses without causing harmful interference. When those technologies are developed and proved, the Commission should approve their deployment as well. But the First Report and Order that accompanied the current FNPRM is based entirely upon Northpoint's Technology. Nothing in the record of these proceedings indicates that terrestrial service is currently possible

²⁵ See, International Telecommunication Union, *ITU-R Recommendations, Frequency Sharing Between the Fixed-Satellite Service and the Fixed Service*, Vol. 1997, SF Series; International Telecommunication Union, *Recommendations of the CCIR, 1990, Frequency Sharing and Coordination Between Systems in the Fixed-Satellite Service and Radio-Relay Systems*, Vols. IV and IX-Part 2 (Dusseldorf 1990) (citing recommendations going back as far as 1963).

in the 12 GHz band (without causing harmful interference to other operations) without using Northpoint's patented inventions.²⁶

Northpoint extends its generosity even to the point of saying that “[I]f other innovators subsequently develop other technology that makes possible other, non-interfering uses of the same spectrum, the Commission should grant further waivers, on case-by-case basis.”²⁷

Dr. Hazlett shares this view, saying of Northpoint: “It does not seek exclusive use of this band. It does not oppose further sharing in this band. Further applicants may also be licensed to offer service in this band on a non-interfering basis.”²⁸

MDS America agrees with the position of Northpoint and Dr. Hazlett on this issue. The MDS technology is demonstrably capable of providing terrestrial service in the 12 GHz band without causing harmful interference; therefore, the Commission should promptly establish service rules and allow proponents of both technologies (and any other that can operate under the Commission rules) to apply for licenses.

II. It Would Be Inappropriate For The FCC To Tailor Its Order To One Company And One Technology

Northpoint believes that its lobbying efforts entitle it to an order tailored to it specifically. Indeed, it claims that is exactly what has occurred to date.

The Commission does not have to choose among multiple indistinguishable applicants here; only one applicant has developed and validated the technology that can do this, and the Commission's entire analysis has been developed and framed, line by line, around that specific technology.²⁹

MDS America has demonstrated previously that this remarkable display of hubris is misplaced. Northpoint did not invent the idea of sharing between fixed satellite services and

²⁶ Northpoint Comments at 4 n.10.

²⁷ Id. at 31.

²⁸ Hazlett Declaration at 6.

²⁹ Northpoint Comments at 8.

terrestrial use and is not the only company that has developed technology capable of such sharing. In fact, MDS International has far more advanced capabilities of this type, inasmuch as it has multiple operational systems in place reusing Ku-band spectrum.

However, even if it were not the case that MDS America has a proven technology, it would be inappropriate for the FCC to grant a license tailored just to Northpoint, for the reasons discussed below.

A. Tailoring A License Grant To A Specific Company Will Stifle Innovation And Limit Consumer Welfare Gains

If the Commission were to grant Northpoint's waiver requests and licenses without further ado, as that company has proposed, it would do more than unjustly enrich one company. It would also be choosing among technologies capable of offering terrestrial systems on a non-interfering basis to satellite systems. This would be an inappropriate role for the Commission to play; rather, the Commission's job is to set the stage so that market forces can determine outcomes to the maximum extent possible. It is in that manner that long-run consumer welfare can best be maximized.

The example cited in MDS America's Comments is applicable here. If the Pentagon wanted a fighter aircraft with certain performance characteristics, such as speed, range and munition carrying ability, and only aluminum was currently capable of meeting those criteria, it still would be unwise to specify that the plane be made of aluminum. Such a specification not only would preclude the innovative and superior use of titanium, but would discourage innovation. No one would even look for something better than titanium (perhaps carbon fiber?). Here, Northpoint, so to speak, not only wants to mandate the use of aluminum in the planes, but proclaims it is the inventor of and only producer of aluminum planes that should be considered.

The Commission should resist these entreaties. Instead it should focus on its goal – increasing spectrum usage by allowing terrestrial systems that do not cause interference problems

with satellite usage – and set appropriate, technology-neutral standards to achieve that purpose. It should then accept applications from all those who can meet the standards it has established.

B. The Commission Should Be Wary Of Northpoint’s Attempt To Have An Order Tailored For It Alone

Northpoint claims that “the Commission’s entire analysis has been developed and framed, line by line, around [Northpoint’s] specific technology.”³⁰ Northpoint also asserts that this technology is patented (“Northpoint – has invented, developed, tested and patented a remarkable technology. . .”).³¹ Northpoint apparently takes the position that PDC Broadband (“Pegasus”) and Satellite Receivers proposed to use “the Northpoint patented technology” in the tests undertaken pursuant to the Omnibus Consolidated Appropriations Act,³² and made it clear it would not extend them a license for the testing (“any such use is strictly prohibited.”).³³

Given this position by Northpoint, the Commission should be particularly wary of granting Northpoint’s requested waivers and license grants. As Boeing points out, Commission policy has been to refuse to incorporate patented technologies in its rules unless the patent is made available to all parties ‘on reasonable terms and conditions without unfair discrimination.’³⁴ This Commission position is consistent with the policies of standard-setting organizations, which refuse to include patented technology in a standard unless a patent holder

³⁰ Northpoint Comments at 8.

³¹ *Id.* at 2.

³² Pub. L. 106-553, 114 Stat. 2762 (2000).

³³ Letter of Michael K. Kellogg to The Honorable Chairman Kennard, January 12, 2001 at 2.

³⁴ Comments of the Boeing Company at 41-42 (Mar. 12, 2001) (citation omitted); *see Revision of the Commission’s Rules To Ensure Compatibility with Enhanced 911 Emergency Calling Systems*, 14 FCC Rcd 10954, 10984 n.114 (1999) (citing consistency with *Advanced Television Systems and Their Impact Upon the Existing Television Broadcast Service*, 6 FCC Rcd 1024 (1991) and *Revised Patent Procedures of the Federal Communications Commission*, Public Notice (Dec. 1961), reprinted, 3 FCC 2d 26 (1966); *see also Advanced Television Systems and Their Impact Upon Existing Television Broadcast Service*, Fourth Report and Order, 11 FCC Rcd 17771, 17794 (1996) (DTV testing participants agreed to license their technology at no cost or on reasonable, non-discriminatory terms).

certifies that a license will be made available either without cost or on reasonable and non-discriminatory terms.³⁵

In these circumstances, and particularly given Northpoint's patent stance, the Commission can best serve its goal of fostering marketplace competition by establishing and implementing rules that are technology-neutral and will allow more than one company and more than one technology to compete for the provision of Multichannel Video Distribution and Data Services ("MVDDS"). If it fails to do so, the likely result is that a monopolist with an inferior technology will come to dominate MVDDS.

III. The Commission Should Move Promptly To Adopt Technology-Neutral And Pro-Competitive Service Rules

MDS America commends the Commission for its decision to establish MVDDS service. This decision has two extremely significant public interest benefits; it allows for creative use of scarce spectrum without disadvantaging incumbents, and it permits the entry of new competitive forces into communications markets.

The Commission should now ensure that its pro-competitive public interest goals are furthered by acting to adopt promptly service rules that, to the greatest extent possible, foster marketplace outcomes.

³⁵ The American National Standards Institute ("ANSI") states:

[W]here a candidate standard may require the use of a patented invention, ... *the identified party or patent holder* must supply ANSI with either: [1.] a general disclaimer to the effect that such party does not hold and does not anticipate holding any invention the use of which would be required for compliance with the proposed standard, or [2.] a written assurance that either: [a.] a license will be made available without compensation to applicants desiring to utilize the license for the purpose of implementing the standard, or [b.] a license will be made available to applicants under reasonable terms and conditions that are demonstrably free of any unfair discrimination. *Guidelines For Implementation Of The ANSI Patent Policy An Aid To More Efficient And Effective Standards Development In Fields That May Involve Patented Technology*, available at www.ansi.org/public/library/guides/ppguide.html;

See also Implementation of Section 273 of the Communications Act of 1934 as amended by the Telecommunications Act of 1996, Notice of Proposed Rulemaking, 11 FCC Rcd 21784, 21815 (1996).

Such service rules should be technology neutral and, in particular, should resist Northpoint's attempts to give credibility to its claim that "the Commission's entire analysis has been developed, framed, line by line, around [Northpoint's] specific technology."³⁶ If the Commission simply acts to ensure that applicants meet sensible standards ensuring non-interference, it can then let applicants for the spectrum calculate how best to comply.

To that end, MDS America's Comments³⁷ recommended that the Commission modify two proposals in Paragraph 315 of its First Report and Order and FNPRM in this matter.³⁸ Those proposals are that transmitting antennas "generally point southward" and that receiving antennas have a "minimum unidirectional gain of 34 dBi." As explained in the Comments, if the Commission's goal is to minimize interference to other users operating within the band, it should focus on that objective directly, rather than on the details of how to achieve it. The specific method of achieving compliance should be left to potential license applicants.

The Commission should also favor flexibility by permitting partition and disaggregation and by exercising a light regulatory hand, rather than imposing rules applicable to more-established services. MDS America believes that the best way to reduce or eliminate regulation is by minimal regulation of new, innovative services. When those services become competitive with incumbent services, the Commission should eliminate the regulations for the incumbents as they face competition from the new services. In that manner, there can be a steady march away from regulation and toward the free marketplace that is the best guarantor of consumer welfare.

³⁶ Northpoint Comments at 8.

³⁷ MDS America Comments at 11-12.

³⁸ First Report and Order and FNPRM ¶ 315.

CONCLUSION

Over the past several years this proceeding has generated a large record and enormous controversy. As radio frequency spectrum becomes an ever more precious commodity, battles such as the one here are certain to intensify.

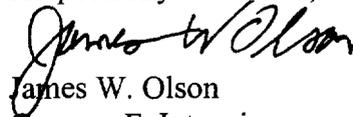
MDS America believes that in the face of such controversies, the Commission should be guided by a determination to see that as much spectrum is made available as is feasible and that it should be made available in a manner that will maximize innovation and competition. Here, the Commission has followed such a course in its two basic decisions. First, it overrode the self-interested objections of the satellite industry and found that the 12.2 to 12.7 GHz frequency band could be used also by terrestrial service providers. That decision opens up a large swath of spectrum to creative use with very large competitive benefits likely. Second, the Commission has resisted the demands by Northpoint for special treatment in terrestrial usage of the newly freed-up spectrum, demands which would stifle innovation and limit competition.

We note that during the time that this matter has been before the Commission, MDS International has installed working MVDDS systems in a score of locations, real-world activities (as opposed to paper arguments) that support the Commission's decisions. At one and the same time, these systems prove that satellite and terrestrial uses can co-exist at 12.2 to 12.7 GHz and that Northpoint does not uniquely have technology capable of such terrestrial use.

Finally, MDS America agrees that the Commission should follow its standard procedures by (1) establishing flexible, technology-neutral service rules; (2) accepting applications for licenses; and (3) if there is mutual exclusivity, promptly holding auctions. If the Commission does so it will create a structure that will allow entrepreneurs and inventors the opportunity to

compete to offer the best products and technologies at the best prices. That is the way our system is meant to work and should work here. MDS America looks forward to competing in such a context.

Respectfully submitted,



James W. Olson

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Dated: April 5, 2001

CERTIFICATE OF SERVICE

I hereby certify that on this 5th day of April, 2001, a true and correct copy of the foregoing was served by hand delivery and/or First Class United States mail, postage prepaid, upon the following:

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A handwritten signature in cursive script that reads "Patricia A. Anderson". The signature is written in black ink and is positioned above a horizontal line.

Patricia A. Anderson