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September 21, 2001

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VIA HAND DELIVERY

FEDERAL COMMUNICATIONS COMMISSION
 OFFICE OF THE SECRETARY

Ex Parte Presentation

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

Re: **Ex Parte Presentation – ET Docket No. 98-206**

Dear Ms. Salas:

On September 20, 2001, Kirk Kirkpatrick, CEO of MDS America, Incorporated and the undersigned met with Commissioner Kathleen Abernathy and her Senior Legal Advisor, Bryan Tramont.

The purpose of the meeting was to discuss MDS America's views regarding ET Docket No. 98-206. The MDS America representatives endorsed the use of auctions as the best way to ensure that MVDDS spectrum is placed in the hands of those who will use it most efficiently. They further pointed out that there was no statutory compulsion on the part of the FCC to grant licenses for free, to any party. To the extent any party claims patent protection, the appropriate role for the Commission is not to adjudicate such claims, but rather let potential investors (*i.e.* free, capital markets) evaluate such claims when deciding whether to support a particular technology.

The MDS America representatives also explained their view that sharing between MVDDS and satellite systems was feasible and that interference by terrestrial MVDDS systems with DBS satellites was no more likely than interference between DBS systems themselves. However, to the extent that any doubts remain on the interference issue, MDS America would support a quick round of real world field tests of MVDDS systems by MITRE. Such tests would allow for evaluation of the mitigation techniques identified by MITRE.

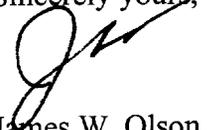
A copy of the attached handout was distributed at the meeting.

An original and one copy of this notice are provided to your office as required by Section 1.1206 of the Commission's rules. Please contact me if you have any questions.

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Magalie Roman Salas
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Sincerely yours,



James W. Olson

cc: Commissioner Kathleen Abernathy
Bryan Tramont

MDS America Advocates MVDDS Service And Supports FCC Auctions

MDS America commends the FCC's decision to authorize MVDDS service at 12.2 to 12.7 GHz as a creative means to reuse scarce spectrum and make new services available to the public. The MITRE testing and MDS America's own testing in Florida, as well as deployments of MDS International technology abroad, make it clear that MVDDS sharing with DBS without harmful interference is feasible. If any doubts remain on the interference issue, MDS America would support a quick round of real world field tests of MVDDS systems by MITRE, utilizing to the extent feasible the mitigation techniques identified by MITRE.

Auctions Are Mandated By Law And The Public Interest And Will Maximize Competition And The Efficient Use Of Spectrum

- The Commission is required to use competitive bidding, with limited exceptions not applicable here. 47 U.S.C. 309(j).
- As the Commission and courts have found, auctions ensure that spectrum licenses end up in the hands of those most likely to achieve the congressional objectives of rapid deployment of new technologies and services, competition and economic growth. Chairman Powell recently put it succinctly: auctions are "both a mechanism for encouraging competition and a valuable source of revenue for the U.S. Treasury." Testimony Before the Subcommittee on Commerce Justice, State and the Judiciary of the Senate Committee on Appropriations, June 28, 2001.
- The alternative to auctions is license assignment by government fiat. Such an approach rewards lobbying, but creates the likelihood that licenses will not be awarded to the most efficient potential user of the spectrum. The government is ill-situated to pick technological winners and losers; free markets and investors are much better suited to make such determinations.

Northpoint Essentially Is Demanding A Pioneer's Preference, A Discredited Approach For Which The Commission Has No Authority

- Congress outlawed pioneer's preferences to reward technological innovation four years ago because the program was a failure. Even when the program was in effect, no party was awarded what Northpoint has the audacity to demand: nationwide monopoly licenses to 500 MHz of spectrum.

- True technological innovation is protected by the patent system, which enables a party with a better product to bid more at auctions and still earn higher returns than anyone else. No government give-away of spectrum is necessary for innovators to achieve their reward.

Northpoint's Claims To A Unique Technology Are Without Merit

- Northpoint claims it deserves a pioneer's preference because it "created new bandwidth out of thin air" through the invention of "a remarkable technology" for terrestrial use of the 12.2 to 12.7 GHz band. Yet MITRE found that the central element of Northpoint's "technology", on which its very name is based, transmission of MVDDS signals from the North to North-pointing receiver dishes, is actually the worst approach to reduce interference. Further, MDS International has been selling MVDDS systems successfully abroad for years, so Northpoint's claims that only it has the technology to offer a terrestrial service lack any basis in fact.

There Are No Legitimate Applications On File For MVDDS Service

- The *Ku-Band Cut-Off Notice* created a window solely for NGSO satellites. It had nothing to do with terrestrial services. If the Commission accepts Northpoint's applications it would violate the requirements of Ashbacker Radio Corp. v. FCC, 326 U.S. 327(1945) and fundamental due process principles.
- The Commission should follow its usual course of action: set service rules for MVDDS, accept applications for licenses and, if there is mutual exclusivity, promptly hold auctions.

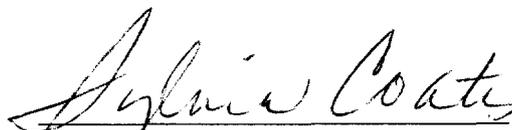
CERTIFICATE OF SERVICE

I hereby certify that on this 21st day of September 2001 a true and correct copy of the foregoing was served via hand delivery upon the following:

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

Bryan Tramont, Senior Legal Advisor
Office of Commissioner Kathleen Abernathy
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Ms. Kathleen Abernathy
Commissioner
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Sylvia Coates