

# SWIDLER BERLIN SHEREFF FRIEDMAN, LLP

3000 K STREET, NW, SUITE 300  
WASHINGTON, DC 20007-5116  
TELEPHONE (202)424-7500  
FACSIMILE (202) 424-7643

NEW YORK OFFICE  
405 LEXINGTON AVE.  
NEW YORK, NY 10174

November 28, 2001

Magalie Roman Salas, Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W., Room 204 B  
Washington, D.C. 20554

**Re: MDS America, Incorporated**  
***Ex Parte* Presentation, ET Docket No. 98-206**

Dear Ms. Salas:

Pursuant to section 1.1206 of the Commission's Rules, MDS America, Incorporated ("MDS America"), through its undersigned counsel, writes to report an *ex parte* presentation to the Commission in the above-referenced docket. On November 27, 2001, Kirk Kirkpatrick, President and CEO of MDS America, Bahman Badipour, of LCC International, Inc., Charles Black and Dennis Shea of BKSH & Associates, and Helen Disenhaus and Nancy Killien Spooner of Swidler Berlin Shereff Friedman, met with FCC Chairman Michael Powell and his Senior Legal Advisor Peter Tenhula.

MDS America described its technology's ability to rapidly bring high-quality broadband Internet services and video programming to rural America. The group also discussed the importance of technology-neutral rules for MVDDS, particularly given the economics of deployment in rural areas. Because small, restricted coverage areas will not prove to be economically feasible for any MVDDS provider, even if they receive the spectrum for free, it is important that the Commission's rules do not circumscribe cell size for rural systems through rules that favor a particular MVDDS technology. The group also briefly discussed MDS America's support for the Commission's proposal to auction MVDDS spectrum.

MDS America also presented the Chairman with a copy of LCC International's independent test report, which is already part of this docket.<sup>1</sup> MDS America's representatives discussed the report's results, which conclusively demonstrate that MDS America's Multichannel Video Distribution and Data Service ("MVDDS") technology easily co-exists with Direct Broadcast

---

<sup>1</sup> See MDS America *ex parte* submissions of October 17, 2001, October 18, 2001, and October 23, 2001. Due to the great length of the test report, a copy is not attached hereto, and therefore this letter cross-references the report previously submitted in this docket.

Satellite ("DBS") operations in the 12 GHz band, under real-world conditions, even if those conditions are far from optimal.

Please date-stamp the extra copy of this filing and return it in the enclosed self-addressed, stamped envelope.

Respectfully submitted,

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

Nancy Kullien Spooner  
Counsel for MDS America, Incorporated

Enclosures

cc: Kirk Kirkpatrick  
Helen Disenhaus

**CERTIFICATE OF SERVICE**

I hereby certify that on this 28<sup>th</sup> day of November, 2001, a true and correct copy of the foregoing was served via hand delivery (denoted by \*) or first class United States mail, postage prepaid, on the following individuals:

Magalie Roman Salas  
Secretary  
Federal Communications Commission  
445 12th Street, S.W.  
Room TW-B204  
Washington, D.C. 20554  
(Electronic Submission to the Docket)

Peter Tenhula, Senior Legal Advisor  
to Chairman Michael Powell \*

Federal Communications Commission  
445 12th Street, S.W.  
Washington, D.C. 20554

David R. Goodfriend  
Director, Legal and Business Affairs  
Echostar Satellite Corporation  
5701 South Santa Fe Drive  
Littleton, CO 80120

Merrill S. Spiegel  
Vice President, Government Affairs  
DIRECTV  
555 11<sup>th</sup> Street, N.W., Suite 810  
Washington, D.C. 20004

Antoinette Cook Bush  
Northpoint Technology, Ltd.  
444 North Capitol Street, N.W.  
Suite 645  
Washington, D.C. 20554

  
Denelle Dixon