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April 2, 2004

Ms. Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12th Street, S.W.  
Washington, D.C. 20554

**Re: *Ex Parte* Submission of MDS America, Incorporated  
ET Docket No. 98-206; RM-9147; RM-9245;  
Experimental License Call Sign WC2XPU,  
FCC File Nos. 0005-EX-ML-2002, 0074-EX-RR-2003**

Dear Ms. Dortch:

We file this letter on behalf of MDS America, Incorporated (“MDSA”) to supplement MDSA’s letter of March 26, 2003 and the letter of Northpoint Technology, Ltd. (“Northpoint”) of that same date regarding the status of the patent litigation case, *Northpoint Technology, Ltd., v. MDS America, Inc. and MDS International, S.A.R.L.*, Case No. 01-14207-CIV-COHN (S.D. Fla.). Northpoint’s letter stated that it “writes separately [from MDSA] to emphasize the narrowness of the jury’s verdict, which affects only three of the 35 claims of the two patents in suit.”

MDSA strongly disagrees with Northpoint’s improper narrowing of the scope of the verdict with respect to the Northpoint patents at issue – Patent Nos. 5,761,605 and 6,169,878 (the “Patents”). While this Commission is not the proper forum to provide a detailed rebuttal to Northpoint’s letter, Northpoint’s mischaracterizations must be corrected.

In the litigation, Northpoint elected to prosecute its patent infringement claims by presenting three claims that it characterized as “representative” of all of its claims. In so doing, Northpoint chose not to separately put its other 32 claims before the jury. Northpoint and the District Court recognized that the validity of the Patents would stand or fall based on the three representative claims presented by Northpoint. Consequently, the jury’s verdict resulted in all claims under the Patents being deemed invalid. Northpoint’s attempt to back away from the decision it made at trial is troubling and its assertions that its other claims survive is simply erroneous.

This letter is being filed electronically. If there are any questions concerning this matter, please contact this office.

Very truly yours,

A handwritten signature in black ink, appearing to read "Paul O. Gagnier". The signature is fluid and cursive, with a long horizontal flourish extending to the right.

Paul O. Gagnier  
Jeanne W. Stockman

Counsel for MDS America, Incorporated

cc: Kirk Kirkpatrick

## CERTIFICATE OF SERVICE

I hereby certify that on this 2nd day of April, 2004, a true and correct copy of the foregoing was served via e-mail (denoted by \*) and first class mail, on the following individuals:

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