

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

In the Matter of Application of	)	
	)	
NEVADA MDS, INC.	)	File No. BPMDH-20010814AAI
	)	
For Authority to Construct and Operate a	)	
Response Station Hub Associated with the	)	
Multipoint Distribution Service Station WHT722,	)	
Las Vegas, Nevada.	)	
	)	

**MEMORANDUM OPINION AND ORDER**

**Adopted: March 16, 2004**

**Released: March 17, 2004**

By the Deputy Chief, Broadband Division, Wireless Telecommunications Bureau:

**I. INTRODUCTION**

1. In this *Memorandum Opinion and Order*, we address the Petition for Reconsideration and Reinstatement<sup>1</sup> filed on February 24, 2003, by Nevada MDS, Inc. (Nevada MDS) seeking reconsideration of the dismissal of the above-captioned application for authority to construct and operate a response station hub associated with the Multipoint Distribution Service<sup>2</sup> (MDS) Station WHT722 in Las Vegas, Nevada.<sup>3</sup> For the reasons stated below, we deny the Petition.

2. *Background.* An MDS response station hub is a fixed facility authorized to receive signals from one or more MDS response stations. An MDS response station is authorized to provide communication by voice, video and/or data signals with its associated MDS response station hub or associated MDS station.<sup>4</sup> In response to the demands for data, telephony and broadband access services in the competitive marketplace, the Commission adopted new rules on September 17, 1998, to enhance service to consumers and permit both MDS and ITFS licensees to provide wireless two-way communications on MDS and ITFS frequency bands.<sup>5</sup> Before the adoption of new Rules, MDS spectrum was primarily used for the provision of one-way video service to MDS subscribers. On June 30, 2000, the Mass Media Bureau released a public notice providing detailed information regarding application

<sup>1</sup> Petition for Reconsideration (filed Feb. 24, 2003) (Petition).

<sup>2</sup> Multipoint Distribution Service is used to refer collectively to the single channel (MDS) and multichannel Multipoint Distribution Service (MMDS) authorizations.

<sup>3</sup> File No. BPMDH-20010814AAI (filed Aug. 14, 2001).

<sup>4</sup> 47 C.F.R. § 74.939(a).

<sup>5</sup> In the Matter of Amendment of Parts 21, and 74 of the Commission's Rules and Regulations to enable Instructional Television Fixed Service and Multipoint Distribution Service Licensees to Engage in Fixed Two-Way Transmission. *Report and Order* in MM Docket No. 97-217, File No. RM-9060, 13 FCC Rcd 19112 (1998) (subsequent history omitted).

filing procedures for ITFS and MDS two-way high-power signal booster stations, response station hubs and I channel transmission licenses.<sup>6</sup>

3. Nevada MDS is the licensee of MDS station WHT722 on the F group channels<sup>7</sup> in Las Vegas, Nevada. On August 14, 2001, Nevada MDS filed the above-captioned application for a response station hub associated with its MMDS station WHT722. On October 29, 2002, Nevada MDS's application was returned for additional information regarding the antenna structure registration.<sup>8</sup> Nevada MDS did not respond to the Return Letter.<sup>9</sup> On January 23, 2003, the Chief, Licensing and Technical Analysis Branch, Public Safety and Private Wireless Division dismissed Nevada MDS' application for failure to respond to the Return Letter.<sup>10</sup> On February 24, 2003, Nevada MDS filed the instant Petition.

4. *Discussion.* Nevada MDS states that it did not respond to the Commission's letter because of lay offs at its company.<sup>11</sup> It admits that it did not know that it had not responded to the Return Letter until it received the Dismissal Letter.<sup>12</sup> Nevada MDS argues that reinstating its application would serve the public interest by allowing it to test new two-way Internet equipment.<sup>13</sup> It also responds substantively to the Return Letter by admitting that the information on antenna structure provided in the application was incorrect.<sup>14</sup> Nevada MDS submitted some required information on antenna supporting structure and requests that its application be reinstated for the public interest.

5. Section 21.28(d) of the Commission's Rules provides that an application will be dismissed for failure to prosecute or for failure to respond substantially within a specified time frame to the Commission's request for additional information.<sup>15</sup> The return letter specified that Nevada MDS had 60 days from the letter date to provide the requested information, and that Nevada MDS's application would be dismissed if no response were received within the specified time frame.<sup>16</sup> Nevada MDS did not respond to the Commission within 60 days as specified in the return letter.

6. Nevada MDS fails to present a persuasive argument for its failure to comply with the Commission's request, and fails to persuade us that reinstatement of its application is warranted. Therefore, we deny the Petition.

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<sup>6</sup> Mass Media Bureau Announces Further Information on Application Filing Procedures and Announces Availability of Electronic Filing for Two-Way Multipoint Distribution Service and Instructional Television Fixed Service, *Public Notice*, 15 FCC Rcd 11466 (MMB 2000).

<sup>7</sup> The F group channels consist of the frequencies 2602-2608 MHz, 2614-2620 MHz, 2626-2632 MHz, and 2638-2644 MHz. *See* 47 C.F.R. § 21.901

<sup>8</sup> *See* Letter from Mary Shultz, Chief, Licensing and Technical Analysis Branch, Public Safety and Private Wireless Division, to Nevada MDS, Inc. (dated Oct. 29, 2002) (Return Letter).

<sup>9</sup> *See* Petition at 2.

<sup>10</sup> *See* Letter from Mary Shultz, Chief, Licensing and Technical Analysis Branch, Public Safety and Private Wireless Division, to Nevada MDS, Inc. (dated Jan. 23, 2003) (Dismissal Letters). Public notice of the dismissal was given on February 12, 2003. *See* Wireless Telecommunications Bureau Site-By-Site Action, Report No. 1413, *Public Notice* (rel. Feb. 12, 2003).

<sup>11</sup> Petition at 1.

<sup>12</sup> *Id.* at 2.

<sup>13</sup> *Id.* at 1.

<sup>14</sup> *Id.* at 2-3.

<sup>15</sup> 47 C.F.R. § 21.28(d).

<sup>16</sup> *See* Return Letter.

7. Accordingly, IT IS ORDERED, pursuant to Sections 4(i) and 309 of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), 309 and Section 21.28 of the Commission's rules, 47 C.F.R. § 21.28, the Petition for Reconsideration and Reinstatement filed by Nevada MDS, Inc, on February 24, 2003 IS DENIED.

8. This action is taken under delegated authority pursuant to Sections 0.131 and 0.331 of the Commission's rules, 47 C.F.R. § 0.131, 0.331.

FEDERAL COMMUNICATIONS COMMISSION

John J. Schauble  
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