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May 9, 2002

OUR FILE NUMBER
621,602-5

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The Honorable Vaughn R. Walker
United States District Court Judge
450 Golden Gate Avenue
San Francisco, CA 94102

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Re: *Group Canal+, S.A. v. NDS Group plc, et al.*
Case No. C02-01178 VRW

Dear Judge Walker:

Defendants NDS Group and NDS Americas submit this letter brief in preparation for the telephone conference set for 10:00 a.m. on Friday, May 10, 2002. Defendants oppose plaintiffs' request to postpone the briefing and hearing on Defendants' Motion to Dismiss or Transfer for Improper Venue ("Venue Motion"), which is currently scheduled for hearing on May 30, 2002. Defendants also oppose plaintiffs' request, mentioned for the first time in their letter brief sent earlier today, for an order compelling defendants to provide unspecified "venue-related discovery" to plaintiffs.

Defendants have never claimed that plaintiffs were not entitled to legitimate venue-related discovery. Nor do defendants challenge this Court's discretion to order discovery. Defendants do, however, oppose plaintiffs' requests for relief from their tardy efforts to seek overbroad discovery, and the Court should exercise its discretion to deny the orders plaintiffs now seek.

Plaintiffs simply delayed too long to seek discovery in response to defendants' Venue Motion. Over a month ago, on April 2, 2002, in their opposition to plaintiffs' motion to expedite discovery, defendants indicated their intent to challenge plaintiffs' choice of venue. In their reply, plaintiffs argued only that venue was proper because one of the plaintiffs had been injured in this district: They made no mention of needing discovery on the issue of venue. Defendants filed their Venue Motion on April 22, 2002. Plaintiffs waited until May 1, 2002, to request discovery specifically directed to the issue of venue. In response, defendants immediately offered the deposition of a corporate-designee to answer plaintiffs' questions about defendants'

contacts with the Northern District. Had they accepted this offer, plaintiffs would have had nearly a week to incorporate the results of that discovery into their opposition. But plaintiffs declined, and they instead sent a message late on May 2, 2002 asking for 4 depositions and production of 15 exceptionally broad categories of documents, all with only a few days notice. Although the defendants have continued to attempt to reach an agreement with plaintiffs, this chronology strongly suggests that plaintiffs' goal is delay, not discovery.

The breadth of discovery sought by plaintiffs likewise indicates that they have an agenda that goes beyond simply opposing the Venue Motion. Certain of the categories requested by plaintiffs under the umbrella of "venue-related discovery" are hardly designed to test defendants' contacts with the District. For example, plaintiffs have requested all documents that "discuss, refer or relate" "to any of the Plaintiffs," "to Canal+ smartcards or their security," or "to competition with any of the plaintiffs." Plaintiffs have likewise asked for NDS Americas's financial statements, business plan and agreements with NDS Group. While these broad categories of documents may be relevant to the action as a whole, they are not reasonably designed to address the proper venue for this action.

Finally, plaintiffs have made no showing to justify a delay in briefing and hearing defendants' Venue Motion. Plaintiffs claim only that they want "to test the veracity and completeness" of defendants' declarations. Plaintiffs do not dispute that the alleged claims have no connection to the Northern District or that no relevant act occurred in the Northern District. Likewise, plaintiffs do not dispute that the convenience of the parties and the witnesses would be better served by transferring this action to the Southern Division of the Central Division of California. The delay plaintiffs seek is unnecessary and should not be ordered.

Respectfully submitted,

Darin W. Snyder
of O'MELVENY & MYERS LLP

DWS:jk

cc: James A. DiBoise

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