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June 9, 2000

Via Hand Delivery

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

Re: PDC Broadband Corporation
Application to Provide Terrestrial
Services in the 12.2-12.7 GHz Band

Ex Parte File Nos. ET Docket No. 98-206,
48-SAT-P/LA-97, 89-SAT-AMEND-97,
130-SAT-AMEND-98

Dear Madam Secretary:

This letter is written on behalf of SkyBridge LLC ("SkyBridge") with regard to: (1) the above-referenced application (the "PDC Application"), filed April 8, 2000, by PDC Broadband Corporation ("PDC"); and (2) a Motion to Dismiss ("Motion") the PDC Application, filed May 23, 2000, by Northpoint Technology, Ltd. ("Northpoint").

SkyBridge has an obvious interest in the instant proceeding, in light of its application (the "SkyBridge Application") to launch and operate a nongeostationary orbit ("NGSO") satellite system operating in the fixed satellite service ("FSS") at Ku-band, including in the 12.2-12.7 GHz band.^{1/} The PDC Application, and several similar applications previously filed by various "affiliates" of Northpoint (collectively referred to as "Broadwave"), seek to operate terrestrial systems in the 12.2-12.7 GHz band.^{2/} The Commission has yet to place either the Broadwave Applications or the PDC Application on public notice as acceptable for filing, and SkyBridge reserves the right to address the respective merits of those applications in response to such a public notice. The instant

^{1/} See File No. SAT-LOA-19971222-00221 (filed February 27, 1997).

^{2/} The SkyBridge Application predates, by a considerable margin, Application and the January 8, 1999, Broadwave Applications.

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letter focuses not on the merits of these terrestrial proposals, but rather on certain arguments raised in Northpoint's Motion.^{3/}

The central underlying premise of Northpoint's Motion is that the proposed regulations for NGSO FSS system operations -- which are under consideration in ET Docket No. 98-206 -- are somehow inextricably intertwined with various proposals for a terrestrial system raised by Northpoint in a 1998 petition for rulemaking ("Northpoint Petition").^{4/} As demonstrated below, this premise is flawed.

Northpoint claims that the PDC Application threatens to delay the Commission's consideration of the relief sought in the Northpoint Petition. Taking that conclusion at face value, Northpoint then reasons that because some of the issues raised in the the Northpoint Petition also are being considered (at least superficially) in ET Docket No. 98-206, the existence of the PDC Application will require the Commission also to delay its consideration of the NGSO regulations proposed in the NPRM. It appears to be Northpoint's view that the NGSO regulations cannot be adopted until regulations governing Northpoint's proposed terrestrial systems also are adopted. Thus, Northpoint posits the proposition that the PDC Application is inconsistent with the public interest because its existence will delay consideration of both the NGSO regulations and the terrestrial system proposal under review in the NPRM.

SkyBridge expresses no position at this time as to the effect, if any, of the PDC Application on either the Broadwave Applications or the issues of concern to Northpoint in the NPRM. However, there is no legal, factual or logical basis for Northpoint's central premise, that a decision on the NGSO issues must be delayed until the terrestrial issues are resolved; review of the NPRM refutes Northpoint's position.

^{3/} Northpoint's standing to seek dismissal of PDC's Application is not at all clear. It is not an applicant in the 12.2-12.7 GHz band and Northpoint makes no separate showing of statutory interest of the sort required by 47 U.S.C. § 309(d)(1). Moreover, many of Northpoint's arguments regarding the alleged inadequacy of the PDC Application (e.g., PDC's request for a blanket-type waiver of all inconsistent Commission rules, see Motion at 17-18) appear to be equally applicable to the similar waiver requests made in the Broadwave Applications.

^{4/} The Notice of Proposed Rulemaking ("NPRM") in ET Docket No. 98-206, see Amendment of Parts 2 and 25 of the Commission's Rules, 14 FCC Rcd 1131 (1998), was initiated by the Commission in response to SkyBridge's July 1997 petition for rulemaking ("SkyBridge Petition"). Northpoint mistakenly claims that the SkyBridge Petition was filed in 1998, contemporaneously with the Northpoint Petition. See Motion at 8.

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In the NPRM, over 45 pages of in-depth discussion of literally dozens of technical issues and policy questions were presented with respect to NGSO FSS operations in Ku-band. Regulations are proposed which, if adopted, effectively would grant the SkyBridge Petition by enacting a regulatory scheme to support NGSO FSS operations at Ku-band. By contrast, with respect to the Northpoint Petition, the Commission devoted only 4 pages in the NPRM to a general overview of Northpoint's proposals. The Commission proposed no regulatory actions vis-à-vis Northpoint, "find[ing] it premature to make any proposals based on Northpoint's petition at this time."^{5/} Instead, the Commission sought only to elicit additional information regarding Northpoint's technology and the ability of that technology to coexist with DBS and NGSO systems.^{6/}

There is, quite simply, nothing about the PDC Application that requires the Commission to pause in its consideration of the NGSO-related portions of the NPRM; whether consideration of Northpoint's proposals should be delayed because of the existence of the PDC Application is irrelevant to that fact. Particularly now that WRC-2000 has concluded, with the finalization of appropriate international regulations for NGSO FSS systems, the NGSO portion of the NPRM is ripe for Commission action, regardless of the eventual fate of any terrestrial applicant or service.^{7/}

As a matter of fundamental administrative procedure, a further notice of proposed rulemaking that actually proposed some regulatory action vis-à-vis the Northpoint Petition would appear to be required before the Commission could lawfully grant any of the relief sought by Northpoint. There is no public interest rationale for

^{5/} NPRM at 1180-81.

^{6/} Id.

^{7/} With or without the PDC Application, debate still rages with respect to the extent of interference that a Northpoint-type system would cause to both DBS and NGSO systems and whether such terrestrial systems should be reintroduced into this satellite band at all.

The fact that Northpoint may engage in technical discussions with various satellite applicants regarding its ability to co-exist in the band, see Motion at 13-14, is inapposite to whether the NGSO issues in ET Docket No. 98-206 should be decided at the earliest opportunity. Even if it is assumed arguendo that Northpoint may successfully devise a way for its technology to coexist with, e.g., a particular NGSO system, such an arrangement may have no relevance for either another NGSO system or a DBS system. The existence or outcome of such discussions provides no basis for delaying action on the NGSO issues; rather, it is just one of many factors to be considered in determining whether terrestrial systems should be permitted into the band and, if so, on what basis. See also n.8 infra.

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holding the finalization of the NGSO FSS rules hostage until the Northpoint-related issues can be considered.^{8/}

Finally, Northpoint's claims regarding the scope of the Public Notice^{9/} that established a cut-off date for NGSO FSS applications covering, inter alia, the 12.2-12.7 GHz band must be addressed. Northpoint relies on this Public Notice to buttress its claim regarding the nexus between the NGSO issues in the NPRM and its terrestrial proposals. Northpoint asserts that the January 8, 1999, cut-off date established by the Public Notice applied to any system, satellite or terrestrial, that sought access to, inter alia, the 12.2-12.7 GHz band. Hence, according to Northpoint, consideration of NGSO operational regulations and the question of whether new terrestrial systems should be introduced into the band are forever intertwined.^{10/}

First, of course, the discussion above completely refutes Northpoint's underlying premise. The NGSO and terrestrial issues are completely severable, both factually and legally. Moreover, Northpoint undermines its own argument regarding the scope of the Public Notice by acknowledging that the Public Notice speaks, in

^{8/} Implicit in Northpoint's reasoning appears to be the unstated assumption that its terrestrial system would be co-primary in the 12.2-12.7 GHz band with NGSO FSS systems. Even assuming arguendo that the Commission were to adopt such a rule (and there is no logical basis for doing so), it provides no basis for delaying action on the NGSO regulations while the various controversies surrounding Northpoint's scheme are resolved. The NPRM itself provides the best proof on this point.

The NPRM explicitly proposes to make NGSO FSS systems co-primary with direct broadcast satellite ("DBS") systems in the 12.2-12.7 GHz band, consistent with the relevant international regulations. On the other hand, the NPRM makes no proposals whatsoever with respect to Northpoint's proposed terrestrial service (this is consistent with the Northpoint Petition, which offers no insight into what its status vis-à-vis NGSO FSS systems should be). There is no rational reason for permitting any terrestrial service to be anything but secondary to all satellite services in this band, assuming arguendo that they should be permitted into the band at all. The point here, though, is that the fact that issues regarding the status of a terrestrial system in the band remain open should not delay Commission action on the NGSO issues.

^{9/} Public Notice, Report No. SPB-141 (rel. Nov. 2, 1998).

^{10/} See Motion at 10-12.

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completely unambiguous terms, only of satellite or satellite-related (i.e., earth station) applications.^{11/} There simply is no factual or legal support for Northpoint's argument.

As noted supra, it is not SkyBridge's purpose here to litigate the adequacy or acceptability of either PDC's or Broadwave's (Northpoint's) Applications, there will be adequate opportunity for that in response to an appropriate public notice, assuming arguendo that any of those applications ever are accepted for filing. SkyBridge's purpose here is to demonstrate that there is no basis for Northpoint's attempt to link the timing of a decision on the issues raised by the Northpoint Petition with the NGSO issues in ET Docket No. 98-206. The latter are, by any measure, ripe for decision. However the Commission chooses to deal with the PDC Application and the Broadwave Applications, and the issues related thereto in ET Docket No. 98-206, it need not -- and should not -- delay taking action on the NGSO issues in that proceeding.

Respectfully submitted,



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^{11/} See id. at 8 n.13. The fact that this was an International Bureau ("IB") Public Notice underscores this point. It is not clear under what delegation of authority the IB could establish a cut-off for terrestrial systems of the sort contemplated by Northpoint. See 47 C.F.R. § 0.261.