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June 16, 2000

Magalie Roman Salas, Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

**Re: Permitted Written Ex Parte Presentation; ET Docket No. 98-206,
RM-9147, RM-9245; FCC File No. SAT-LOA-19990108-00006**

Dear Secretary Salas:

The Boeing Company submits this letter to urge the Commission to immediately adopt an order that will govern sharing between non-geostationary orbit (“NGSO”) and geostationary orbit (“GSO”) fixed satellite systems (“FSS”) in the Ku-band. The release of such an order is at the heart of the Notice of Proposed Rulemaking (“NPRM”) in ET Docket No. 98-206¹ and should not be delayed by separate, independent problems arising from the desired use of the spectrum by terrestrial point-to-multipoint applicants. Because the issues underlying NGSO FSS/GSO sharing have essentially been resolved, Boeing urges the Commission to advance the public interest by authorizing the operation of NGSO FSS systems in the Ku-band, independent of any concerns regarding the proposed use of the same spectrum by new terrestrial applicants or services.

On April 8, 2000, PDC Broadband Corporation (“PDC”) filed an application to provide terrestrial point-to-multipoint services in 12.2-12.7 GHz band. The application proposed to deliver data transmission, Internet services, and multichannel video programming via a terrestrial radio system that would employ directional antennas and northward-oriented receivers. In response, on May 23, 2000, Northpoint Technology, Ltd. and its affiliate, BroadwaveUSA, (collectively “Northpoint”) filed a Motion to Dismiss the PDC application. Northpoint had previously filed with the Commission applications to provide terrestrial point-to-multipoint services in the 12.2-12.7 GHz band in a manner apparently identical to that proposed in the PDC application.² On June 7, 2000, PDC filed an Opposition to Northpoint’s Motion to Dismiss, in which it replied to the allegations contained in Northpoint’s motion.

¹ *In the Matter of Amendment of Parts 2 and 25 of the Commission’s Rules to Permit Operation of NGSO FSS Systems Co-Frequency with GSO and Terrestrial Systems in the Ku-Band Frequency Range*, ET Docket No. 98-206, Notice of Proposed Rulemaking, 14 FCC Rcd 1131 (1998) (“NPRM”).

² *See, e.g.*, Broadwave Albany, L.L.C., Application for License to Provide a New Terrestrial Transport Services in the 12.2-12.7 GHz Band (filed Jan. 8, 1999).

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Boeing takes no position at this time on the merits of the PDC application or on the majority of the arguments and allegations underlying the Northpoint Motion to Dismiss. Boeing believes, however, that it is necessary to address one erroneous assertion that Northpoint makes in its Motion to Dismiss – that the PDC application will require the Commission to delay the issuing of an order governing NGSO FSS/GSO sharing in the Ku-band. This assertion is plainly wrong. Nothing in the PDC application requires the Commission to refrain from issuing an order establishing the NGSO FSS/GSO sharing rules. The separate issue of which terrestrial systems should be licensed in the Ku-band – and more fundamentally, whether such systems should be licensed at all – can and should be decided independently at an appropriate later date, without delaying the implementation of the new and innovative services that NGSO FSS systems can bring to the public.

In its Motion to Dismiss, Northpoint argues that proposals for terrestrial services in the Ku-band are “fundamentally and uniquely intertwined” with the NGSO FSS/GSO sharing proceeding³ and that acceptance of a new terrestrial point-to-multipoint terrestrial application “would seriously delay the innovative services proposed by the NGSO FSS applicants and Northpoint.”⁴ As previously demonstrated by another NGSO FSS applicant, such assertions misstate the nature of the NPRM in ET Docket No. 98-206.⁵ Although the NPRM includes both NGSO FSS/GSO sharing rules and Northpoint’s petition for use of the Ku-band for terrestrial point-to-multipoint systems, these issues are addressed separately and are not dependent on each other. As PDC itself points out, there are two distinct issues involved in the NPRM: the first is the authorization of NGSO FSS service and *how* that service should be regulated, and the second is the petition for an additional terrestrial service in the Ku-band and *whether that service should be authorized at all*.⁶

The first of these issues is ready for Commission action. After years of hard work, the issues surrounding NGSO FSS/GSO sharing in the Ku-band have been essentially resolved. Although a few minor issues remain to be discussed, the finalization of spectrum sharing limits for NGSO FSS systems at WRC-2000 has paved the way for the Commission to authorize the operation of NGSO FSS systems in the United States. Such action need not be delayed by the controversies posed by the proposed use of the Ku-band by terrestrial point-to-multipoint applicants and services. Delay would not serve the public, which would be denied the benefits of competitive broadband satellite services while this independent issue is decided. Therefore, the Commission should take action in that part of the NGSO FSS/GSO NPRM which is its primary focus – and is now ripe for resolution – and resolve the separate issue of the proposed use of the Ku-band by additional terrestrial services at an appropriate later date.

³ See Northpoint Motion to Dismiss at 11.

⁴ See *id.* at 12.

⁵ See Letter from Jeffrey H. Olson, Attorney for SkyBridge L.P., to Magalie Roman Salas, Secretary - Federal Communications Commission (filed June 9, 2000).

⁶ See PDC Opposition to Motion to Dismiss at 7.

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As a final matter, Boeing wishes to note that Northpoint is incorrect in its repeated assertions that it has “successfully demonstrated” or “proven” that its system is capable of operating in the Ku-band without causing serious harmful interference to satellite operators.⁷ Northpoint has acknowledged that its proposed service will cause exclusion zones in which customers will be denied service from Boeing’s NGSO FSS system. As Boeing has demonstrated in numerous filings with the Commission, it would be prohibitively expensive to attempt to mitigate these blackout zones.⁸ Northpoint’s opposition to the PDC application simply underscores the immense difficulty that terrestrial systems will have in being able to co-exist with satellite in the Ku-band.

For all these reasons, Boeing respectfully requests that the Commission take action in that portion of the Ku-band NPRM that is ripe for resolution – namely, the rules and regulations governing the sharing of the Ku-band by NGSO FSS and GSO systems. The public good that will result from such action should not be held hostage to the separate issue of the proposed terrestrial use of the Ku-band.

Sincerely,

/s/ David A. Nall

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cc: R. Craig Holman
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⁷ See, e.g., Northpoint Motion to Dismiss at 6, 7, and 12.

⁸ See, e.g., Letter from David Nall, Counsel for The Boeing Company, to the Hon. William E. Kennard, Chairman - Federal Communications Commission (filed May 1, 2000).