

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.**

_____)	
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)	ET Docket No. 98-206
Frequency Range;)	RM-9147
)	RM 9245
Amendment of the Commission's Rules to)	
Authorize Subsidiary Terrestrial Use of the)	
12.2-12.7 GHz Band by Direct Broadcast)	
Satellite Licensees and Their Affiliates; and)	
)	
Applications of Broadwave USA, PDC)	
Broadband Corp., and Satellite Receivers,)	
Ltd., to Provide a Fixed Service in the 12.2-)	
12.7 GHz Band)	
_____)	

To: Chief, Office of Engineering and Technology

OPPOSITION TO MOTION FOR EXTENSION OF TIME

Northpoint Technology, Ltd., and Broadwave USA, Inc., (collectively, "Northpoint") hereby oppose the motion of DirecTV, Inc., and EchoStar Satellite Corp. (collectively, the "DBS operators") for a 30-day extension of the upcoming March 26 deadline to file reply comments in this proceeding.

The DBS operators' request for an extension of time is untimely and should therefore not be considered by the Commission. *See* 47 C.F.R. § 1.46(b). Even if the Commission were to consider the request, the DBS operators have failed to show good cause for their belated request to triple the reply comment period from two weeks to a

total of six weeks. It is the express policy of the Commission “that extensions of time shall not be routinely granted.” 47 C.F.R. § 1.46(a). The Commission should honor that policy here and deny the DBS operators’ baseless, untimely request.

I. The DBS Operators’ Request for an Extension of Time is Untimely and Not Justified by any Emergency

The Commission’s rules governing requests for extension of time in notice and comment rulemaking proceedings unequivocally command that such requests “shall be filed at least 7 days before the filing date.” 47 C.F.R. § 1.46(b). The DBS operators have failed to comply with that simple rule. After waiting nearly two weeks since the initial round of comments was filed, the DBS operators have filed their request only 4 days before the filing is due, and with only one day left in the work week. The DBS operators’ tardiness not only denies the Commission sufficient time to consider the request but also fails to give adequate notice to the other parties that might be affected by the delay.¹ Such an ambush at this late date should not be tolerated.

In proceedings *other than* notice and comment rulemaking proceedings, parties may file requests for extension of time less than 7 days prior to the filing day, provided that they “notify other parties and Commission staff personnel responsible for the motion that the motion has been (or is being) filed.” *Id.* § 1.46(c). But in notice and comment rulemaking proceedings, there is no such leniency. The only safety valve available in

¹ If the DBS operators had made a *timely* request that the Commission ultimately denied, then the replies of Northpoint and the other commenters would not need to be filed until 2 business days after the Commission acted on the motion. 47 C.F.R. § 1.46(b). But there is no corresponding extension of time for all filers when an *untimely* motion for extension is filed. Instead, everyone must proceed on the assumption that comments will be due on March 26, as set forth in the public notice governing this comment cycle. Since everyone must be ready to go on the prescribed filing day in any event, fairness to the other parties in this proceeding requires that the Commission reject the DBS operators’ late-filed request.

notice and comment proceedings is for “emergency situations,” in which the Commission “will consider a late-filed motion for a brief extension of time *related to the duration of the emergency.*” *Id.* § 1.46(b) (emphasis added). The DBS operators do not assert that theirs is an “emergency situation,” much less that their request for a month-long extension is in any way related to a month-long emergency.

The DBS operators had a full week after comments were filed in which to weigh whether they would need more time to respond to those comments. The *only* reason given in support of their request is that “[v]oluminous comments were filed by several parties, with detailed technical appendices and analyses pertaining to complex . . . sharing issues.”² But the volume of the comments submitted was obvious well before the time for requesting a non-emergency extension came and went last Monday, March 19. There is simply no excuse for waiting so long. In the absence of a bona fide emergency situation, the Commission’s rules require that the Commission decline to consider the DBS operators’ belated request. They must file reply comments on March 26 like everyone else.

II. The Commission Should Reject the Request for an Extension of Time as an Effort to Delay Commission Action in these Proceedings

Even if the Commission were to consider the DBS operators’ late-filed request for more time, the Commission should reject the request as a mere delaying tactic. Once again, the *only* reason given in support of their request is that the DBS operators need more time to address spectrum sharing issues.³ But the technical issues relevant to

² Motion for Extension of Time at 1.

³ In a sneaky move, the DBS operators say that they need at least “30 days” in which to respond to the various technical issues in the comments and argue that “[a] thirty day timeframe in which to file reply comments in this type of proceeding is not uncommon.” Motion for Extension of Time at 2 & n.1. But by asking for a 30-day extension in

terrestrial and NGSO-FSS sharing of the 12 GHz band with DBS operators have been examined *ad nauseam* in the course of the more than 7 years that Northpoint has been before the commission seeking permission to provide terrestrial service in that band. In all that time, the DBS operators have never wavered in their implacable opposition to sharing the band with terrestrial users. There is no reason to hold up the Commission's consideration of this docket while they rehearse the same tired arguments about their inability to share the spectrum. If the DBS operators have some new technical insight to add that they cannot formulate on the same timetable as all the other participants in this proceeding, then they can submit it later on an *ex parte* basis. But they should not hold up the Commission's consideration of the important issues raised in this proceeding in the meantime.

The DBS operators argue that their proposed tripling in length of the reply comment period will not result in any real delay because, before resolving any issues in this proceeding, the Commission must await the completion of the statutorily mandated independent tests being conducted by the MITRE corporation, "as well as the subsequent public comment period on the test results."⁴ But there is no reason for the Commission to await the end of the MITRE testing and comment period before resolving many of the issues presented in this docket. The Commission has already decided that terrestrial services can share spectrum with DBS and NGSO-FSS operators;⁵ the Commission can proceed with its deliberations about licensing while the MITRE Corporation sorts out which applicants have the requisite technology to offer terrestrial service. If it is relevant

addition to the two weeks that have already passed, the DBS operators hope to delay the filing of reply comments by some 45 days – far more time than was allowed in any of the proceedings they cite in their footnote 1.

⁴ Motion for Extension of Time at 2.

at all, the 30-day comment period for the MITRE test results is a reason *not* to extend the current reply comment period. Because that upcoming window for comments will provide yet another opportunity for comment on spectrum sharing issues, the DBS operators can tie up then any loose ends they think they cannot address adequately now.

The DBS operators have an unmistakable interest in delaying the onset of terrestrial competition in the markets for MVPD and broadband Internet access. Put simply, every month's delay in these proceedings means more money in the DBS operators' pockets. The current request for an extension of time is just the most recent in a long series of delaying tactics aimed at keeping terrestrial service at bay as long as possible. The Commission should not countenance such tactics.

CONCLUSION

The DBS operators' request for an extension of time was filed less than 7 days before the filing date in a notice and comment rulemaking proceeding, in violation of the Commission's rules. Instead of describing an emergency situation that might justify a late-filed extension of time, the DBS operators offered nothing other than a bland assertion that there are many comments to be answered. In view of the Commission's clear policy that extensions of time shall not be routinely granted, the request should be denied.

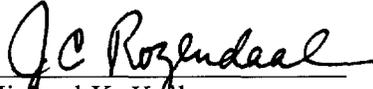
⁵ See First Report and Order and Further Notice of Proposed Rulemaking ¶ 213.

Respectfully submitted,

NORTHPOINT TECHNOLOGY, LTD.,
AND BROADWAVE USA, INC.

March 23, 2001

Antoinette Cook Bush
Northpoint Technology, Ltd.
400 North Capitol Street, N.W.
Suite 368
Washington, D.C. 20001

By: 
Michael K. Kellogg
J.C. Rozendaal
Kellogg, Huber, Hansen,
Todd & Evans, P.L.L.C.
Sumner Square
1615 M Street, N.W.
Suite 400
Washington, D.C. 20036
(202) 326-7900

*Counsel for Northpoint Technology, Ltd.,
and Broadwave USA, Inc.*

CERTIFICATE OF SERVICE

I, Shannon Thrash, hereby certify that on this 23rd day of March, 2001, copies of the foregoing *Opposition to Motion for Extension of Time* were served via electronic filing and/or both facsimile and first class United States mail, postage prepaid on the following:

Ms. Magalie Roman Salas*
Secretary
Federal Communications Commission
445 12th Street, SW
Room TW-B204
Washington, DC 20554

Peter A. Tenhula
Office of Chairman Michael Powell
Federal Communications Commission
The Portals
445 Twelfth Street, SW
Washington, D.C. 20554

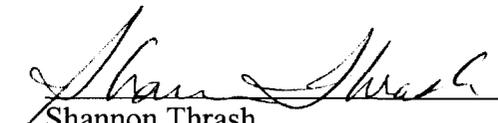
Bruce Franca, Acting Chief
Rebecca Dorch, Deputy Chief
Office of Engineering and Technology
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554

Pantelis Michalopoulos, Esq.
Steptoe & Johnson, L.L.P.
1330 Connecticut Ave., N.W.
Washington, D.C. 20036

Thomas J. Sugrue, Bureau Chief
Kathleen O'Brien Hamm, Deputy Chief
Wireless Telecommunications Bureau
Federal Communications Commission
445 Twelfth Street, SW
Washington, D.C. 20054

James H. Barker, III, Esq.
Latham & Watkins
1001 Pennsylvania Ave., N.W.
Suite 1300
Washington, D.C. 20004-2505

*Denotes delivery by electronic filing


Shannon Thrash
Legal Assistant