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April 6, 2001

VIA HAND DELIVERY

RECEIVED

EX PARTE

Ms. Magalie Roman Salas  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, D.C. 20554

APR 6 2001

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

**Re: Ex Parte Communication in ET Docket No. 98-206; RM-9147; RM-9245; Applications of Broadwave USA et al., PDC Broadband Corporation, and Satellite Receivers, Ltd., to provide a fixed service in the 12.2-12.7 GHz Band; Requests of Broadwave USA et al. (DA 99-494), PDC Broadband Corporation (DA 00-1841), and Satellite Receivers, Ltd. (DA 00-2134) for Waiver of Part 101 Rules.**

Dear Ms. Salas,

I write on behalf of Northpoint Technology, Ltd., and its Broadwave USA affiliates (collectively, "Northpoint") to complain of a violation by PDC Broadband Communications, Inc. ("Pegasus") of Commission policy in connection with the independent technical demonstration mandated by section 1012 of H.R. 5548 (enacted on December 21, 2000, as part of Pub. L. 106-553). The Commission has engaged the MITRE Corporation ("MITRE") to conduct the required independent demonstration.

Northpoint recently learned that Pegasus has made some kind of confidential submission to MITRE for consideration in connection with MITRE's testing of terrestrial service technology proposed for use in the 12.2 - 12.7 GHz frequency band. The very notion of a confidential submission is inconsistent with the statutory requirements that any proposed technology be available for independent *demonstration* and subject to *public notice and comment*, which are to be completed by specific, tight deadlines set forth in the statute.

Pegasus's confidential submission also constitutes a violation of the Commission's explicit directive governing ex parte communications in these proceedings. At the organizational meeting for MITRE's testing program, attended by representatives of Pegasus, the Commission's representatives directed that submissions to

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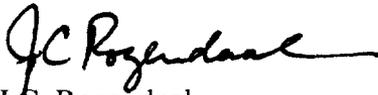
Ms. Magalie Roman Salas  
April 6, 2001  
Page 2

MITRE to be served on other parties and filed on an ex parte basis in ET Docket No. 98-206. Rebecca Dorch, Deputy Chief of the Commission's Office of Engineering and Technology, confirmed this explicit directive in a letter sent to interested parties on March 23, a copy of which is attached hereto. Because the independent technical demonstrations undertaken by MITRE are inextricably intertwined with the ongoing rulemaking proceeding in ET Docket No. 98-206, Pegasus's failure to file its communications with MITRE represents a serious breach of the Commission's ex parte rules and the specific directive issued in connection with the MITRE testing.

Despite repeated requests, Pegasus has failed to make copies of its submission available to Northpoint. The Commission should refuse to consider any materials submitted to MITRE in this clandestine manner, in violation of both the statute the Commission's rules.

Eighteen copies of this letter are enclosed – two for inclusion in each of the above-referenced files. Please contact me if you have any questions.

Yours sincerely,

  
J.C. Rozendaal

cc: Bruce Franca, Office of Engineering and Technology  
Rebecca Dorch, Office of Engineering and Technology  
Thomas Sugrue, Wireless Telecommunications Bureau  
Kathleen Hamm, Wireless Telecommunications Bureau  
Peter Tenhula, Office of the Chairman

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Federal Communications Commission  
Washington, D.C. 20554

March 23, 2001

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**Re: Communications Regarding the Independent Demonstration  
Required by Section 1012 of the CJSJ Appropriations Act.**

Dear Madame/Sirs:

On January 24, 2001, several entities and counsel interested in the congressionally mandated independent demonstration of MVDDS systems met at MITRE headquarters in McLean, Virginia. At that meeting, several process and ground rule questions were discussed. This letter is intended to serve as a reminder to ensure that the interested parties and their counsel continue to all follow the same procedures.

Question: Will the Statement of Work be publicly available?

Answer: Yes. A copy is attached and has been placed in the record in ET Docket No. 98-206.

**Federal Communications Commission**

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Question: Will MITREs test plan and interim progress reports be publicly available?

Answer: No. Pursuant to Section 0.457 of the Commission's Rules, this category of materials would not routinely be available for public inspection.

Question: How can transparency of communications with MITRE be facilitated?

Answer: Consistent with the preliminary agreement among the interested parties present at the January 24, 2001 meeting, each of the addressees of this letter should serve copies of their communications with MITRE, pertaining to this project, on all parties identified as addressees of this letter. In addition, each of the addressees of this letter should submit to the Commission's Secretary for inclusion in ET Docket No. 98-206, two copies of all such written communications, and full and complete summaries of the substance of all such oral communications. Copies should also be sent to Mr. James Chadwick at The MITRE Corporation.

Question: Will MITRE maintain a log of all communications with the parties?

Answer: No. The filings in ET Docket No. 98-206 will serve as the log of communications between MITRE and the interested parties.

Question: Will MITRE set up individual meetings with the relevant interested parties?

Answer: Pursuant to the contractual agreement between the FCC and MITRE, the design and conduct of the independent demonstration or analysis is within the discretion of MITRE. As such, the degree to which MITRE interacts with the interested parties is entirely within the discretion of MITRE.

Should other process questions arise, please do not hesitate to contact me.

Sincerely,



Rebecca Dorch  
Deputy Chief, Office of Engineering and Technology  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, DC 20554

Attachment

Cc: Mr. James Chadwick  
The MITRE Corporation  
Mail Stop W300  
1820 Dolley Madison Blvd.  
McLean, VA 22102-3481

## CERTIFICATE OF SERVICE

I, Tracey Erwin, hereby certify that on this 6th day of April, 2001, copies of the foregoing were served by hand delivery\* or first class United States mail, postage prepaid, on the following:

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Secretary  
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