

ORIGINAL

ORIGINAL

SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP

1440 NEW YORK AVENUE, N.W.

WASHINGTON, D.C. 20005-2111

TEL: (202) 371-7000

FAX: (202) 393-5760

FIRM/AFFILIATE OFFICES

BOSTON
CHICAGO
HOUSTON
LOS ANGELES
NEWARK
NEW YORK
PALO ALTO
SAN FRANCISCO
WILMINGTON

BEIJING
BRUSSELS
FRANKFURT
HONG KONG
LONDON
MOSCOW
PARIS
SINGAPORE
SYDNEY
TOKYO
TORONTO

DIRECT DIAL
(202) 371-7297
DIRECT FAX
(202) 661-9097
EMAIL ADDRESS
STROBINS@SKADDEN.COM

EX PARTE OR LATE FILED

April 20, 2001

RECEIVED

APR 20 2001

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
445 12th Street, S.W., The Portals
TW-A325
Washington, D.C. 20554

RE: ET Docket No. 98-206; RM-9147; RM-9245;
DA 99-494; DA 00-1841; DA 00-2134
Applications of Broadwave Albany, L.L.C. et al., PDC
Broadband Corporation, and Satellite Receivers, Ltd. to
Provide a Fixed Service in the 12.2-12.7 GHz Band
Written *Ex-Parte* Submission of Northpoint
Technology, Ltd.

Dear Ms. Salas:

In accordance with Section 1.1206 of the Commission's rules, 47
C.F.R. § 1.1206, this letter is written to notify you that, on April 20, 2001,
Northpoint Technology, Ltd. ("Northpoint") made a written *ex parte* presentation to
Kathleen O'Brien Ham, Deputy Chief, Wireless Telecommunications Bureau.

An original and twelve (12) copies of this letter and the written *ex
parte* presentation are submitted for inclusion in the public record for the above-

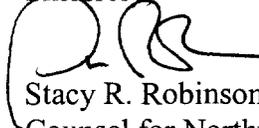
No. of Copies rec'd
List ABCDE

0 + 12

Ms. Magalie Roman Salas
April 20, 2001
Page 2

captioned proceedings. Please direct any questions regarding this matter to the undersigned.

Sincerely,

A handwritten signature in black ink, appearing to read 'SR', with a long horizontal stroke extending to the right.

Stacy R. Robinson
Counsel for Northpoint Technology, Ltd.

Enclosures

cc: Kathleen O'Brien Ham, Deputy Chief, WTB
Jennifer Burton, WTB
Shellie Blakeney, WTB
International Transcription Services, Inc.

SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP

1440 NEW YORK AVENUE, N.W.

WASHINGTON, D.C. 20005-2111

TEL: (202) 371-7000

FAX: (202) 393-5760

DIRECT DIAL
(202) 371-7297
DIRECT FAX
(202) 661-9097
EMAIL ADDRESS
STROBINS@SKADDEN.COM

FIRM/AFFILIATE OFFICES

BOSTON
CHICAGO
HOUSTON
LOS ANGELES
NEWARK
NEW YORK
PALO ALTO
SAN FRANCISCO
WILMINGTON

BEIJING
BRUSSELS
FRANKFURT
HONG KONG
LONDON
MOSCOW
PARIS
SINGAPORE
SYDNEY
TOKYO
TORONTO

April 20, 2001

RECEIVED

APR 20 2001

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Ms. Kathleen O'Brien Ham
Deputy Chief, Wireless
Telecommunications Bureau
Federal Communications Commission
445 12th Street, S.W., The Portals
Washington, D.C. 20554

RE: ET Docket No. 98-206; RM-9147; RM-9245;
DA 99-494; DA 00-1841; DA 00-2134
Applications of Broadwave Albany, L.L.C. et al., PDC
Broadband Corporation, and Satellite Receivers, Ltd.
to Provide a Fixed Service in the 12.2-12.7 GHz Band
Ex-Parte Submission of Northpoint Technology, Ltd.

Dear Ms. O'Brien Ham:

As a follow-up to the meeting you and your staff had with Sophia Collier and Antoinette Cook Bush of Northpoint Technology, Ltd. ("Northpoint") and the undersigned on April 9, 2001, we are providing a list and short summary of cases in which the Federal Communications Commission ("FCC or Commission") did not admonish or otherwise sanction parties for violation of the Commission's *ex parte* rules. We believe the cases cited below support the conclusion that there should be no sanctions where, as the Wireless Telecommunications Bureau, in Broadwave Albany, L.L.C., DA 01-109 (WTB, rel. Jan. 17, 2001), found, "Northpoint's conduct manifests no intent to prejudice Pegasus, and no showing has been made of prejudice to Pegasus . . ."

In Re Heidi Damsky – 14 FCC Rcd. 370 (1998) – One party's counsel clearly violated *ex parte* rules by improperly contacting a Commission official, but none of the principals of the entity knew of or participated in the meeting. In view of

Ms. Kathleen O'Brien Ham
April 20, 2001
Page 2

the circumstances, the Commission said there was “no substantial and material question” before it to warrant disqualification of the party and the Commission imposed no sanctions on the party for the *ex parte* violation.

In Re Applications of Nextwave Personal Communications, Inc. – 12 FCC Rcd. 2030 (WTB 1997) – The Commission’s Wireless Telecommunications Bureau noted that a party’s conversations with FCC staff “went beyond mere status inquiries,” but they involved “little more than issues of timing, and neither involved the merits of Petitioner’s allegations.” Under the circumstances, the Bureau determined that no sanction was warranted.

In Re Applications of Portland Cellular Partnership – 11 FCC Rcd. 19997 (1996) – The proceeding presented the FCC with a close call as to whether a party improperly solicited a member of Congress to make inquiries to the Commission on the party’s behalf. The party, an applicant for an FCC license, sent a letter to a U.S. Senator “bringing to [his] attention a very troubling matter” regarding its application and asking for a chance to meet with the Senator to discuss the matter further. The letter prompted the Senator to submit his own letter of inquiry to the FCC. The Senator’s letter discussed the merits of the case – making it an *ex parte* presentation – but it was not served on other parties. Despite the ambiguity about whether the applicant’s initial letter to the Senator constituted an improper solicitation, the FCC said parties should be careful to advise their elected representatives of a proceeding’s restricted status to avoid even inadvertently violating the rules. “We strongly advise that in the future all parties follow this practice.”

Henry M. Rivera – 11 FCC Rcd. 5583 (Letter 1995) – The Commission’s managing director recognized that the FCC had not “previously delineated fully the parameters” of the rule exempting from *ex parte* restrictions any presentation directly related to an emergency involving substantial loss of property. In this case, the managing director determined that a party’s *ex parte* presentation did not qualify for the exemption because the “potential loss of property occasioned by default of contractual obligations would not, absent more, come within the purview” of the term “emergency.” However, “in view of the fact that disclosure of the existence of the *ex parte* presentation was promptly made,” the FCC’s managing director said no further action was warranted.

In Re Catherine L. Waddill – 8 FCC Rcd. 2170 (1993) – A party’s submissions to the Commission clearly violated the *ex parte* rules because they were directed to decision-making personnel on the merits of the issues and were not served on other interested participants in the proceeding. Nonetheless, the Commission found that the violations were not “so severe as to warrant remedial

Ms. Kathleen O'Brien Ham
April 20, 2001
Page 3

sanction. We caution, however, that future violations of the *ex parte* rules will be met with appropriate administrative sanction.”

In Re Open Media Corp. – 8 FCC Rcd. 4070 (1993) – The Commission ruled that, to the extent there was a “technical” violation of the *ex parte* rules because a party to the proceeding was not served, it was “harmless error” because no one suffered any prejudice. Thus, the Commission took no further action.

J. Geoffrey Bently, Esq. – 4 FCC Rcd. 3422 (Letter 1989) – A letter to the Commission violated the *ex parte* rules because it addressed the merits of the proceeding and was not served on other parties. “There is no evidence before us that [the] violation . . . was intentional or that it prejudiced [other parties].” Consequently, the Commission’s managing director cautioned the party to exercise more care with respect to its responsibilities under the *ex parte* rules, but recommended to the Commission that no sanctions be imposed.

In Re Northern New England Television – 83 FCC 2d 418 (1980) – A party solicited an *ex parte* presentation by a governor to the FCC chairman, in violation of the Commission’s rules. The Commission decided the proceeding on the merits without giving “consideration to the fact that a violation of our *ex parte* rules has occurred.” Still, it strongly cautioned the party against the occurrence of any such violations in the future.

In Re Smaller Market UHF Television Station Groups – 81 FCC 2d 429 (1980) – The Commission expressed concern that a party’s submissions may have violated the *ex parte* rules because the party failed to serve other interested participants in the proceeding. “Because any alleged violation . . . appears to have been inadvertent and because the [party] does not appear to have committed any other *ex parte* rule violations, we will not take any further action at this time. We caution the [party], however, that violations of our *ex parte* rules will be met by appropriate administrative sanction.”

In Re Teleprompter of Quincy – 83 FCC 2d 431 (1980) – The FCC decided not to take any action regarding an entity’s failure to serve other interested parties with its *ex parte* filings. The Commission did “caution these and other Commission regulatees that in the future failure scrupulously to observe the *ex parte* rules would result in appropriate administrative sanction.”

In Re Stearns County Broadcasting Co. – 71 FCC 2d 412 (1979) – Status inquiries that would normally violate the *ex parte* rules “never reached decision-making personnel and appear to have been initiated in ignorance” of the

Ms. Kathleen O'Brien Ham
April 20, 2001
Page 4

Commission's rules. The FCC therefore decided not to sanction the party, but cautioned that future violations would face appropriate administrative action.

In Re Jackson Cable TV – 64 FCC 2d 920 (1977) – The Commission noted that an entity apparently solicited politicians to inquire about the status of a special relief proceeding. However, the Commission also acknowledged that it was a prior holding in another proceeding – and not a particular rule pertaining to the cable television service – that announced the *ex parte* rules applicable to special relief proceedings. Thus, since the entity “appears to have been ignorant of the Commission’s position regarding such matters,” the FCC decided not to apply any sanctions. “We caution [the entity], however, that future violations will be met with appropriate administrative action.”

Please direct any questions regarding this matter to the undersigned.

Sincerely,



Stacy R. Robinson

Counsel for Northpoint Technology, Ltd.

cc: Sophia Collier
Antoinette Cook Bush