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Before the
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)	
)	
Amendment of Parts 2 and 25 of the)	
Commission's Rules to Permit Operation)	ET Docket No. 98-206
of NGSO FSS Systems Co-Frequency with)	RM-9147
GSO and Terrestrial Systems in the Ku-Band;)	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;)	
)	
Applications of Broadwave, USA,)	
PDC Broadband Corporation, and)	
Satellite Receivers, Ltd. To Provide)	
A Fixed Service in the 12.2-12.7 GHz Band)	

REPLY TO OPPOSITIONS

SkyBridge L.L.C. ("SkyBridge"), by its attorneys, hereby replies to oppositions filed by Northpoint Technology, Ltd. ("Northpoint") and PanAmSat Corporation ("PanAmSat") in response to SkyBridge's petition for reconsideration of certain aspects of the First Report and Order in the above captioned proceeding.¹

¹ These oppositions (the "Northpoint Opposition" and "PanAmSat Opposition") were filed on April 24, 2001, in response to SkyBridge's petition for reconsideration filed on March 19, 2001 (the "SkyBridge Petition"), seeking reconsideration of certain rules adopted in the First Report and Order and Further Notice of Proposed Rulemaking, FCC 00-418, released December 8, 2000. Herein, the First Report and Order will be denoted "Report & Order" or "R&O." The Further Notice of Proposed Rulemaking will be denoted "Further Notice" or "FNPRM." SkyBridge also filed an opposition to petitions for reconsideration filed by certain other parties (the "SkyBridge Opposition") on April 24, 2001.

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I. NORTHPOINT OPPOSITION

In its Petition, SkyBridge demonstrated, *inter alia*, that the Commission's decision to permit Multichannel Video Distribution and Data Service ("MVDDS") systems in the 12.2-12.7 GHz band at this juncture violates the Administrative Procedures Act ("APA"), because the Commission had explicitly stated in the NPRM that it was "premature to make any proposals based on Northpoint's petition [for authorization of its MVDDS system] at this time."² Northpoint opposes this argument, stating that the Commission did not adopt any "rules" relating to MVDDS in the Report & Order.³

To suggest that the Commission's decision -- apparently final -- to create the MVDDS service and to permit such systems to enter the 12.2-12.7 GHz band is not a "rule" is to elevate form over substance. The fact that further rules for frequency sharing in the band are yet to be developed pursuant to the Further Notice in no way diminishes the status of the Commission's decision in the Report & Order to create MVDDS and permit its entry in the band.⁴

Regarding the unresolved technical obstacles generated by the Commission's decision, Northpoint makes a number of grossly misleading statements,

² FCC 98-310 (rel. Nov. 24, 1998) (the "NPRM") at ¶ 98. See also SkyBridge Petition at 2-5. The APA requires an agency to provide notice of its intention to adopt new rules prior to the adoption thereof. See 5 U.S.C. § 553(b); see also Arizona Public Service Co. v. Environmental Protection Agency, 211 F.3d 1280, 1299 (D.C. Cir. 2000).

³ Northpoint Opposition at 12.

⁴ Indeed, the Commission just reaffirmed the scope of its action taken in the Report and Order in the Notice of Proposed Rulemaking in IB Docket No. 01-96, FCC 01-134, released May 3, 2001 ("NGSO/NGSO Sharing NPRM") at ¶ 8.

including, *inter alia*, that “interference from Northpoint’s low-power terrestrial transmitters can be mitigated throughout the transmitter’s entire service area.”⁵ As SkyBridge has repeatedly and exhaustively demonstrated in numerous pleadings, Northpoint’s claim assumes facts not in evidence. *Only* if the Commission adopts all of the restrictions on MVDDS transmitter operations previously proposed by SkyBridge is there any rational basis for co-existence among non-geostationary (“NGSO”) Fixed-Satellite Service (“FSS”) systems and MVDDS systems. Northpoint has vigorously opposed any such restraints on its operations.⁶

Finally, in response to SkyBridge’s repeated demonstrations that terrestrial service is economically unsuitable for providing service in rural areas (a key goal of the “SHVIA” legislation⁷), Northpoint points only to its promise to provide “nationwide

⁵ Northpoint Opposition at 13. See also Comments to Petitions for Reconsideration of Pegasus Broadband Corporation, ET Docket No. 98-206, April 24, 2001, at 6, n.14.

⁶ See Comments of SkyBridge, ET Docket No. 98-206, March 12, 2001 at 26-29; *Ex Parte* Communication of SkyBridge, ET Docket No. 98-206, July 10, 2000. See also Petition for Reconsideration of the Boeing Company, ET Docket No. 98-206, March 19, 2001, at 7-12. These restrictions -- which do no more than define the “low-power terrestrial transmitters” to which Northpoint refers -- are vitally important to ensure adequate protection of NGSO FSS user terminals, and they impose minimal burdens on MVDDS operations. In essence, Northpoint would be required to abide by its prior representations in this proceeding regarding the expected operation of such systems. Now, however, Northpoint appears uncomfortable with that prospect.

Moreover, Northpoint continues to exhibit its penchant for misleading technical statements when it claims that over 3,000 MHz is available for NGSO FSS operations, “leaving at least 2,500 MHz to be used creatively to avoid interference in the 12.2-12.7 GHz band.” Northpoint Opposition at 7. As Northpoint well knows, in reality, that spectrum is subdivided into a variety of different permitted uses by the Commission. For NGSO FSS *user terminal downlinks*, only 1000 MHz has been allocated, half of which has been claimed by Northpoint.

⁷ See Satellite Home Viewer Improvement Act, Act of Nov. 29, 1999, Pub. L. 106-113, 113 Stat. 1501.

service, in all 211 local television designated market areas (“DMAs”) within two years of licensing.”⁸ If, as it appears, Northpoint is claiming that it will be capable of serving every single household in the U.S. within two years, Northpoint’s promise to do what no other terrestrial provider has even attempted to do is sorely lacking in credibility.⁹ As SkyBridge has detailed in this proceeding, to date, no terrestrial wireless system has yet found a way to serve significant non-urban areas on an economically viable basis.¹⁰ Northpoint has provided not a shred of probative evidence to support its claims to the contrary.

In short, Northpoint has failed to refute any aspect of SkyBridge’s demonstrations regarding the unlawful and irrational nature of the MVDDS allocation adopted in the Report & Order. Perhaps to compensate for this shortcoming, Northpoint put forth a number of procedural objections to the SkyBridge Petition. These too are without merit.¹¹

⁸ Northpoint Opposition at 14.

⁹ If, on the other hand, Northpoint is promising only *some* service in each of the DMAs within two years, its argument is grossly and willfully misleading, because such a promise says *nothing* about its commitment to provide service in rural areas.

¹⁰ See, e.g., Ex Parte Communication of SkyBridge in ET Docket No. 98-206, February 18, 2000, at 3, and Annex at 6-8. Northpoint’s technology, with its “typical” tower spacing of 10 miles, is far less efficient in covering terrain than the 2.5 GHz Multichannel Multipoint Distribution Service (“MMDS”) systems of MCI and Sprint, which remain centered almost exclusively on urban and suburban areas.

¹¹ For example, Northpoint argues that SkyBridge exceeded the allowed page limit for a petition for reconsideration without filing a timely request for a waiver. Northpoint Opposition at 11. However, simultaneously with its petition, SkyBridge did file a request for a waiver of the relevant rules, detailing the reasons why such a waiver would be in the public interest. SkyBridge did not file the request 10 days before the March 19 filing date (which fell 3 days before the filing date of the comments on the FNPRM on March 12) because it was making every effort to meet the page limit. In

III. PANAMSAT OPPOSITION

PanAmSat opposes SkyBridge's proposal to eliminate *pre-operational* requirements to verify compliance with the operational and additional operational limits.

The reasons for SkyBridge's position on this point are well-detailed in its Petition.¹²

PanAmSat does not refute any of SkyBridge's arguments in this regard.¹³

the end, the need for detailed comments and proposals on the intricate NGSO/GSO and NGSO/FS sharing rules adopted in the Report & Order rendered it impossible to meet the page limit, and SkyBridge therefore filed its request for a waiver of the Commission's rules concurrently with its Petition.

As noted in that waiver request, the Report & Order covered a broad range of topics, including the allocations for NGSO FSS and MVDDS, and the extensive and detailed rules for NGSO FSS systems, to govern sharing with GSO FSS, GSO BSS, FS, Radiolocation, Space Science, and Radioastronomy, all of which affect the SkyBridge system. The majority of SkyBridge's filing examined the NGSO/GSO and NGSO/FS sharing rules -- none of which relate to Northpoint -- and the portion related to Northpoint was well under 25 pages. Northpoint has provided no indication of any harm caused to it by the length of SkyBridge's filing. And none of the GSO or other operators raised any objection to the length of the SkyBridge Petition (indeed some of these parties also found it necessary to exceed the page limit). In short, the public would be served by granting SkyBridge's waiver request.

Northpoint also argues that SkyBridge's Petition did not present new technical or other evidence and that the Petition relates more to the rules for MVDDS (which are covered in the Further Notice) than to the allocation made in the Report & Order. Northpoint Opposition at 3. As Northpoint notes, however, the Commission is entitled to consider any facts raised in a petition for reconsideration, if required in the public interest. 47 C.F.R. § 1.429(b). More importantly, all of SkyBridge's comments in its petition, without exception, relate to the to the specifics of the Commission's adopted scheme for entry of MVDDS systems, and the Commission's apparent reliance on the SHVIA legislation for support of its premature actions. The Report & Order introduces a number of troubling consequences and regulatory inconsistencies, which have yet to be fully resolved, and SkyBridge's comments were narrowly tailored to elucidate those issues. See SkyBridge Petition at 7-10.

¹² SkyBridge Petition at 32-42.

¹³ PanAmSat does, however, erroneously state that SkyBridge has suggested that the fact that an NGSO system meets the validation limits "will guarantee against it

Instead, PanAmSat claims that, if a violation of these limits occurs once a system is in operation, “the Commission will have very limited flexibility in taking remedial steps to enforce its rules.”¹⁴ However, as SkyBridge has emphasized, the Commission must: (1) ensure that each NGSO FSS system has the technical capability to immediately modify its operations, in case of a violation of these limits; and (2) enforce the limits notwithstanding any adverse economic impact on the NGSO FSS system.¹⁵ This is entirely consistent with the Commission’s enforcement of other service rules related to satellite systems, including PanAmSat’s own systems. PanAmSat’s concerns do not necessitate departing from the international agreements on the operational-type limits, nor imposing requirements on NGSO FSS systems that are not imposed on other kinds of systems licensed by the Commission.

In addition, PanAmSat argues that the Commission should “reject the suggestions of SkyBridge that it would be inordinately difficult to implement and enforce [the] aggregate EPFD_{down} [limits].”¹⁶ However, in its Petition, SkyBridge did not object

violating the operational limits.” PanAmSat Opposition at 4. This is obviously not the case; if it were, the operational limits would be meaningless.

¹⁴ PanAmSat Opposition at 3.

¹⁵ SkyBridge Petition at 38-39, SkyBridge Opposition at 10. As the Commission knows, SkyBridge has also played a critical role in ITU-R efforts to develop measurement and simulation tools that can be used to determine compliance with any of the operational limits, once a system is in operation.

¹⁶ PanAmSat Opposition at 5.

to inclusion of the aggregate limits in the Commission's rules; its sole concern in that context was that such rules not impose an impossible burden on individual licensees.¹⁷

Compliance with the aggregate limits depends on the operation of all the NGSO FSS systems, and it would be impossible for any given applicant to guarantee the actions of others, including systems not even licensed by the Commission.¹⁸ The issue of compliance with the aggregate limits therefore must be dealt with in the context of the NGSO/NGSO sharing rules or licensing process, as the Commission concluded in the Report & Order.¹⁹ Indeed, the International Bureau has just commenced a rulemaking which addresses these issues.²⁰ PanAmSat provided no reason why this approach would not be satisfactory.

PanAmSat also argues that the GSO providers should be able to provide test points to the Commission for use with the software for assessing compliance with the "Validation Limits." As SkyBridge explained in its Opposition, however, this proposal would lead to unreasonably lengthy computation times and licensing proceedings, and is

¹⁷ In the Report & Order, the Commission stated that each applicant must certify that it will meet the aggregate limits. R&O, ¶ 107. By definition, each individual system that meets the single-entry limits will operate within the aggregate limits; certification thereof would be superfluous. If what the Commission seeks is a certification by each licensee that all licensees, in the aggregate, will not exceed the aggregate, this, as SkyBridge pointed out in its Petition, is illogical, because no individual licensee can reasonably make such a commitment. See SkyBridge Petition at 43; SkyBridge Opposition at 12.

¹⁸ See SkyBridge Petition at 43; SkyBridge Opposition at 12.

¹⁹ R&O, ¶¶ 107, 198.

²⁰ See NGSO/NGSO Sharing NPRM at ¶¶ 59-62.

unnecessary for determining compliance with the Validation Limits.²¹ Moreover, *the GSO operators will have all the tools and input data they need to make such computations themselves.*²² There is no rational reason -- and PanAmSat has proffered none -- for adding a significant cost and administrative burden on NGSO operators without any countervailing public interest benefits. PanAmSat is free to run its own simulations to its heart's content.

In its Opposition, PanAmSat cites a number of developments within ITU-R Working Party 4A related to the above proposals. However, all of the Recommendations being developed provide tools to assist operators and administrations, and are not intended to introduce additional regulatory burdens, or in any way affect the Radio Regulations themselves.²³ PanAmSat's effort to introduce such tools into the

²¹ SkyBridge Opposition at 5.

²² SkyBridge Petition at 31; SkyBridge Opposition at 5.

²³ For example, PanAmSat erroneously suggests that the Preliminary Draft New Recommendation ("PDNR") contained in Document 4A/TEMP/18(Rev.1) (which was recently converted into a "DNR" at the Seattle 4A meeting) "would allow GSO operators to select test points [for the ITU-R validation software] for critical locations that may receive interference." PanAmSat Opposition at 7. However, the methodology in this DNR has nothing to do with the test points for the ITU-R BR validation software. It is explicitly a method to be used by GSO operators themselves. It takes into account the exact locations of their own GSO satellites, and is not intended, or suitable, for use as a generic regulatory tool.

PanAmSat cites the same DNR in urging the Commission to require NGSO applicants to submit maps of peak EPFD levels. *Id.* As noted above, however, the maps generated by the methodology are specific to each GSO satellite, and are not intended to serve a regulatory purpose. Moreover, the motivation of PanAmSat's proposal is entirely unclear. In its petition for reconsideration, PanAmSat argued that such maps would help demonstrate compliance with the operational limits. PanAmSat Petition at 6. However, the DNR provides no method for generating maps based on detailed simulations using actual operational parameters. In its Opposition, PanAmSat re-characterizes its request as one that would "assist NGSO applicants to

Commission's rules not only changes substantially the nature of these Recommendations, but is entirely counterproductive to the efforts of the ITU-R working groups to successfully complete this work. The Commission should encourage the develop of relevant ITU-R recommendations, and employ them as needed in dispute resolution, for example, but should refrain from using them as an excuse to alter the international agreements finalized at WRC-2000 related to the NGSO FSS power limits and compliance verification.

Finally, PanAmSat states, without any explanation whatsoever, that "the off-axis EIRP limits that presently appear in Part 25 are more restrictive of GSO FSS earth stations than the limits adopted at WRC-2000," and that therefore the WRC-2000 limits are unnecessary in this country.²⁴ As SkyBridge detailed in its Petition, however, the Part 25 limits do not appear to be as strict as the WRC-2000 limits in all cases.²⁵ PanAmSat provides no evidence to the contrary. Therefore, SkyBridge urges the Commission to adopt the WRC-2000 limits, for the reasons given in the SkyBridge Petition.

identify those areas . . . where their NGSO system may exceed the validation EPFD limits." PanAmSat Opposition at 7. However, the validation software developed by the ITU-R working groups, with full U.S. participation and support, already determines compliance with the validation limits, and the maps would not provide any additional information other than that EPFD levels are all below the maximum EPFD level calculated by the BR validation software. Furthermore, the GSO operators will have all the information on each NGSO FSS system necessary to compute such levels themselves.

²⁴ PanAmSat Opposition at 7.

²⁵ SkyBridge Petition at 43-45.

CONCLUSION

As the result of the foregoing, SkyBridge requests that those portions of Northpoint and PanAmSat Oppositions that are addressed herein be denied. There is no technical, factual, legal, or public policy basis to support their proposals.

Respectfully submitted,

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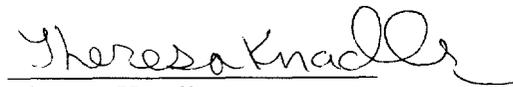
CERTIFICATE OF SERVICE

I hereby certify that the foregoing Reply to Oppositions of SkyBridge L.L.C. was served by hand delivery, this 4th day of May, 2001, on the following persons:

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