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EX PARTE OR LATE FILED

KELLOGG, HUBER, HANSEN, TODD & EVANS, P.L.L.C.

SUMNER SQUARE
1615 M STREET, N.W.
SUITE 400
WASHINGTON, D.C. 20036-3209

(202) 326-7900
FACSIMILE:
(202) 326-7999

MICHAEL K. KELLOGG
PETER W. HUBER
MARK C. HANSEN
K. CHRIS TODD
MARK L. EVANS
STEVEN F. BENZ
NEIL M. GORSUCH
GEOFFREY M. KLINEBERG
REID M. FIGEL

HENK BRANDS
SEAN A. LEV
EVAN T. LEO
ANTONIA M. APPS
MICHAEL J. GUZMAN
AARON M. PANNER
DAVID E. ROSS
SILVIJA A. STRIKIS
RICHARD H. STERN, OF COUNSEL

August 15, 2001

VIA HAND DELIVERY

RECEIVED

AUG 15 2001

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

EX PARTE

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

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:

On August 14, 2001, Antoinette Cook Bush of Northpoint Technology, Ltd. ("Northpoint"), and Michael K. Kellogg and J.C. Rozendaal of this firm met with Barry Ohlson, Scott Delacourt, and Martha Stancill of the Commission's Wireless Telecommunications Bureau ("WTB").

Also on August 14, 2001, Ms. Bush of Northpoint met with Bryan Tramont, Senior Legal Advisor to Commissioner Abernathy.

The purpose of the meeting with WTB staff was to discuss the processing of Northpoint's pending applications to provide terrestrial service in the12.2-12.7 GHz band. Northpoint argued that it would be inappropriate to auction the licenses, in view of several factors, including the following: Without Northpoint, there would be no terrestrial service in the 12.2-12.7 GHz band, because Northpoint invented the only technology capable of ubiquitously sharing of the band with existing DBS and planned NGSO satellite users.. Equally important, Northpoint is the only applicant qualified for a license because only Northpoint has proven its ability to share with DBS operations in independent tests required by statute and carried out earlier this year by the MITRE Corporation on behalf of the Commission. Northpoint urged that the Commission should promptly grant its pending license applications so that Northpoint can begin providing

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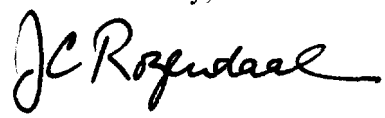
service that will bring real competition to the markets for MVPD and broadband Internet access. The enclosed materials served as a basis for discussion at the WTB meeting.

At the meeting with Mr. Tramont, Northpoint stressed the unfairness of forcing Northpoint to bid at auction to use a spectrum resource that would not exist but for Northpoint's 7-year effort to demonstrate to the Commission that ubiquitous sharing of the 12.2-12.7 GHz band between terrestrial and satellite users is feasible. Northpoint also noted that the ORBIT Act prohibits auctions in the band and that no other company met the statutorily mandated independent MITRE test. In addition, Northpoint discussed various outstanding technical issues and urged the adoption of the sharing criteria outlined in its comments and reply comments in ET Docket 98-206. No handouts were distributed at the meeting with Mr. Tramont.

Eighteen copies of this letter and its attachments 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

Counsel for Northpoint Technology, Ltd.

enclosures

cc: meeting participants

A

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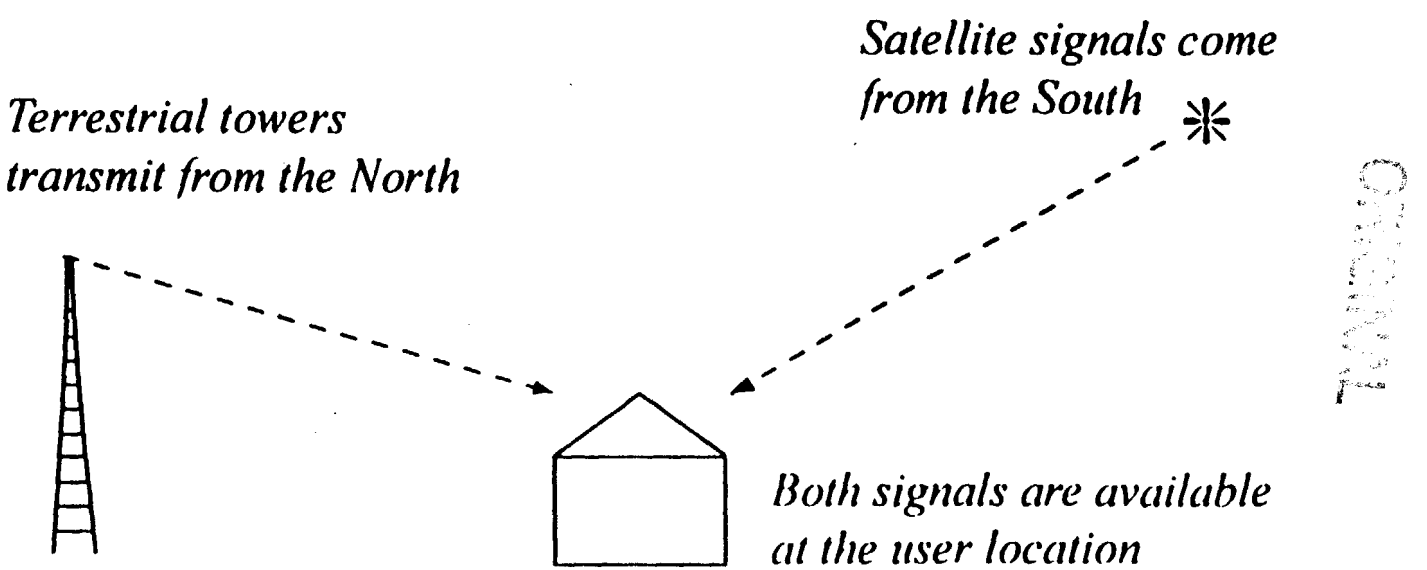
Bringing It Down to Earth

- Northpoint Technology uses the currently unused northern horizon: By transmitting from terrestrial towers or buildings located to the north into directional receive antennas similar to satellite dishes, consumers can gain competitive services.



Northpoint Technology FCC Application Process

1994

- Northpoint Technology first came to FCC

1995

- Northpoint Technology filed first experimental license application (King Ranch) with FCC

1996

- Northpoint Technology application pending at FCC

1997

- FCC grants Northpoint Technology's first experimental license
- Skybridge files petition for rulemaking for satellite service

1998

- Jan: Report on King Ranch testing filed with FCC
- Mar: Northpoint Technology files petition for rulemaking for its terrestrial service
- Jul: FCC grants Austin, TX experimental testing license
- Nov: FCC calls for Satellite, but not terrestrial, applications to use DBS band
- Nov: FCC consolidates Skybridge and Northpoint Technology petitions into one proceeding

1999

- Jan: Austin test report filed at FCC
- Jan: Eight satellite applicants and 69 Northpoint "Broadwave" affiliates file applications
- Mar: FCC Public Notice asking for comments on Broadwave applications
- Mar: FCC accepts for filing Satellite applications, but not the Broadwave applications
- May: FCC grants experimental license to Northpoint to test in Washington, DC
- Oct: Northpoint Technology files Washington, DC test results
- Nov: Legislation enacted requiring FCC action on Broadwave applications within 1 year

2000

- Feb: EchoStar and DirecTV granted license to test Northpoint's technology
- Mar: Northpoint Technology and Virtual Geosatellite agree they can share spectrum
- Mar: Orbit bill enacted prohibiting auctions of satellite spectrum
- Jul: Skybridge files letter saying that it can share with Northpoint Technology
- Jul: DBS submits test results on testing in Washington, DC
- Nov: FCC concludes Northpoint's technology works and that Northpoint can share with both DBS operators and 8 other satellite applicants
- Nov: FCC seeks comment on whether to subject Northpoint Technology's Broadwave applications to auctions
- Dec: Legislation enacted requiring independent testing of Northpoint's technology
- Dec: FCC appropriation language re-affirms deadline for action on Northpoint's Broadwave affiliate applications

2001

- Congressionally mandated independent testing report concludes that Northpoint Technology can share and recommends licensing process

Northpoint Technology, Ltd., 400 North Capitol Street, N.W., Ste. 368, Washington, D.C. 20001
For More Information Contact: Antoinette Cook Bush (202) 737-5711

B

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NORTHPOINT TECHNOLOGY LTD.

EX PARTE PRESENTATION CONCERNING LICENSING ISSUES

I. Procedural History of Northpoint/Broadwave Applications

- The Northpoint/Broadwave Applications. Northpoint's Broadwave affiliates filed applications in each of the major DMAs in the U.S. (approximately 211). Northpoint developed the patented technology that will be used by each of the Broadwave affiliates in their respective markets.

- Northpoint before FCC since 1994. Northpoint first brought its technology to the FCC in 1994, and since that time has been diligently working for FCC approval.

- Experimental Licenses. Northpoint has operated successfully under three FCC experimental licenses: Kingsville, TX (1997); Austin, TX (1998); and Washington, DC (1999). Independent firms, including Lucent Technologies, participated in the design and performance of each of the tests and issued independent analyses verifying the results. In addition, the DBS industry obtained an experimental license in 2000 to test a "Northpoint transmitter."

- Northpoint Petitioned for Rulemaking in 1998. On March 6, 1998, Northpoint filed a petition for rulemaking at the FCC seeking to provide its innovative service. (See RM-9245)

- Northpoint Petition Consolidated with Skybridge Petition. On November 24, 1998, the FCC consolidated Northpoint's petition for rulemaking with Skybridge's July 1997 petition for rulemaking into a single notice of proposed rulemaking dealing with Ku-band issues. (See Docket 98-206)

- Broadwave Applications. On January 8, 1999, the Broadwave affiliates, along with seven other applicants, filed applications at the FCC in response to a November 2, 1998 Public Notice establishing a cut-off for filing NGSO FSS system applications in portions of the Ku-band. (See Report No. SPB-141)

- Public Notice by Wireless Bureau. On March 11, 1999, the Wireless Telecommunications Bureau issued a Public Notice seeking comment on the *waiver requests* (and not the applications) of the Broadwave affiliates. (See DA 99-494)

- Satellite Applications Accepted for Filing. On March 23, 1999, the Satellite Policy Branch accepted all of the satellite applications for filing but did not accept the Broadwave applications for filing. (See Report No. SAT-00013)

II. Northpoint Seeks Parity With Other Applicants

- Northpoint has demonstrated that it can share spectrum with the two DBS carriers as well as with eight satellite applicants that applied on the same day for the same spectrum. These satellite applicants – which include DirecTV's parent, Hughes, and other

industry giants, Boeing and Alcatel – will not be subject to an auction.

- FCC Has Statutory Duty to Avoid Mutual Exclusivity. The auction statute permits the FCC to conduct auctions only if it accepts "mutually exclusive applications," and it explicitly directs the FCC to pursue "engineering solutions" and "other means in order to avoid mutual exclusivity in application and licensing proceedings." (See 47 U.S.C. 309(j)(1) and (6))

- Northpoint is Only Terrestrial System to Pass Congressionally-Mandated Independent Test. Northpoint is the only qualified applicant because it alone submitted its technology for the congressionally-mandated independent demonstration of spectrum sharing capability with DBS satellites. (See Sec. 1012, FY 2001 CJS Appropriations, PL 106-553) MITRE concluded that satellite-terrestrial spectrum sharing is feasible and specifically demonstrated Northpoint's technology can eliminate interference to satellite reception.

- Consumer Groups and Broadcasters Oppose Auction in FCC Comments. Consumer groups say Northpoint "will bring instant competition and rapid deployment of broadband services to the entire country," and caution, "auctions would delay and possibly undermine the expansion of competition to incumbent cable and satellite companies."

    - The NAB and well over 100 individual station owners similarly oppose an auction and endorse Northpoint for the competition it would bring to the marketplace and for its carriage of all local television stations.

- An Auction Would Delay Service, Penalize Northpoint, and Stifle Future Innovation. If the FCC were to pursue an auction, it would delay introduction of this new service for perhaps years and inevitably increase the cost to consumers. Moreover, auctions have never facilitated the deployment of service for rural areas.

    - An auction would force a start-up to compete for the product of its own patented innovation against deep-pocketed companies, and rises to an unconstitutional taking.

    - Auctioning this spectrum would have the effect of taxing innovation.

- The FCC should do all it can to encourage innovation that expands the productive use of spectrum. Subjecting Northpoint to an auction -- the very party whose technology made this spectrum available for terrestrial use – would send precisely the wrong message to future innovators.

C

PUBLIC LAW 106–553—DEC. 21, 2000

FEDERAL FUNDING, FISCAL YEAR 2001

*Public Law 106–553
106th Congress

An Act

Dec. 21, 2000
[H.R. 4942]

Making appropriations for the government of the District of Columbia and other activities chargeable in whole or in part against the revenues of said District for the fiscal year ending September 30, 2001, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Incorporation by reference.

Repealed.

SECTION 1. (a) The provisions of the following bills of the 106th Congress are hereby enacted into law:

(1) H.R. 5547, as introduced on October 25, 2000.

(2) H.R. 5548, as introduced on October 25, 2000.

Publication.
1 USC 112 note.

(b) In publishing this Act in slip form and in the United States Statutes at Large pursuant to section 112 of title 1, United States Code, the Archivist of the United States shall include after the date of approval at the end appendixes setting forth the texts of the bills referred to in subsection (a) of this section.

Approved December 21, 2000.

LEGISLATIVE HISTORY—H.R. 4942 (S. 3041):

HOUSE REPORTS: Nos. 106–786 (Comm. on Appropriations) and 106–1005 (Comm. of Conference).

SENATE REPORTS: No. 106–409 accompanying S. 3041 (Comm. on Appropriations).

CONGRESSIONAL RECORD, Vol. 146 (2000):

July 26, Sept. 14, considered and passed House.

Sept. 27, considered and passed Senate, amended, in lieu of S. 3041.

Oct. 26, House agreed to conference report.

Oct. 27, Senate agreed to conference report.

*ENDNOTE: The following appendixes were added pursuant to the provisions of section 1 of this Act. Appendix A was repealed and deemed never to have been enacted by section 406 of Public Law 106–554 (114 Stat. 2763A–189).

○

(2) NONSERVED AREA.—The term "nonserved area" means any area that—

(A) is outside the grade B contour (as determined using standards employed by the Federal Communications Commission) of the local television broadcast signals serving a particular designated market area; and

(B) does not have access to such signals by any commercial, for profit, multichannel video provider.

(3) UNDERSERVED AREA.—The term "underserved area" means any area that—

(A) is outside the grade A contour (as determined using standards employed by the Federal Communications Commission) of the local television broadcast signals serving a particular designated market area; and

(B) has access to local television broadcast signals from not more than one commercial, for-profit multichannel video provider.

(4) COMMON TERMS.—Except as provided in paragraphs (1) through (3), any term used in this Act that is defined in the Communications Act of 1934 (47 U.S.C. 151 et seq.) has the meaning given that term in the Communications Act of 1934.

SEC. 1011. AUTHORIZATIONS OF APPROPRIATIONS.

(a) COST OF LOAN GUARANTEES.—For the cost of the loans guaranteed under this Act, including the cost of modifying the loans, as defined in section 502 of the Congressional Budget Act of 1974 (2 U.S.C. 661(a)), there are authorized to be appropriated for fiscal years 2001 through 2006, such amounts as may be necessary.

(b) COST OF ADMINISTRATION.—There is hereby authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act, other than to cover costs under subsection (a).

(c) AVAILABILITY.—Any amounts appropriated pursuant to the authorizations of appropriations in subsections (a) and (b) shall remain available until expended.

SEC. 1012. PREVENTION OF INTERFERENCE TO DIRECT BROADCAST SATELLITE SERVICES.

(a) TESTING FOR HARMFUL INTERFERENCE.—The Federal Communications Commission shall provide for an independent technical demonstration of any terrestrial service technology proposed by any entity that has filed an application to provide terrestrial service in the direct broadcast satellite frequency band to determine whether the terrestrial service technology proposed to be provided by that entity will cause harmful interference to any direct broadcast satellite service.

(b) TECHNICAL DEMONSTRATION.—In order to satisfy the requirement of subsection (a) for any pending application, the Commission shall select an engineering firm or other qualified entity independent of any interested party based on a recommendation made by the Institute of Electrical and Electronics Engineers (IEEE), or a similar independent professional organization, to perform the technical demonstration or analysis. The demonstration shall be concluded within 60 days after the date of enactment of this Act and shall be subject to public notice and comment for not more than 30 days thereafter.

D

(c) DEFINITIONS.—As used in this section:

(1) DIRECT BROADCAST SATELLITE FREQUENCY BAND.—The term "direct broadcast satellite frequency band" means the band of frequencies at 12.2 to 12.7 gigahertz.

(2) DIRECT BROADCAST SATELLITE SERVICE.—The term "direct broadcast satellite service" means any direct broadcast satellite system operating in the direct broadcast satellite frequency band.

TITLE XI—ENCOURAGING IMMIGRANT FAMILY REUNIFICATION

SEC. 1101. SHORT TITLE.

This title may be cited as—

(1) the "Legal Immigration Family Equity Act"; or

(2) the "LIFE Act".

SEC. 1102. NONIMMIGRANT STATUS FOR SPOUSES AND CHILDREN OF PERMANENT RESIDENTS AWAITING THE AVAILABILITY OF AN IMMIGRANT VISA; PROVISIONS AFFECTING SUBSEQUENT ADJUSTMENT OF STATUS FOR SUCH NONIMMIGRANTS.

(a) IN GENERAL.—Section 101(a)(15) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)) is amended—

(1) in subparagraph (T), by striking "or" at the end;

(2) in subparagraph (U), by striking the period at the end and inserting "; or"; and

(3) by adding at the end the following:

"(V) subject to section 214(o), an alien who is the beneficiary (including a child of the principal alien, if eligible to receive a visa under section 203(d)) of a petition to accord a status under section 203(a)(2)(A) that was filed with the Attorney General under section 204 on or before the date of the enactment of the Legal Immigration Family Equity Act, if—

"(i) such petition has been pending for 3 years or more; or

"(ii) such petition has been approved, 3 years or more have elapsed since such filing date, and—

"(I) an immigrant visa is not immediately available to the alien because of a waiting list of applicants for visas under section 203(a)(2)(A); or

"(II) the alien's application for an immigrant visa, or the alien's application for adjustment of status under section 245, pursuant to the approval of such petition, remains pending.

(b) PROVISIONS AFFECTING NONIMMIGRANT STATUS.—Section 214 of the Immigration and Nationality Act (8 U.S.C. 1184) is amended by adding at the end the following:

"(o)(1) In the case of a nonimmigrant described in section 101(a)(15)(V)—

"(A) the Attorney General shall authorize the alien to engage in employment in the United States during the period of authorized admission and shall provide the alien with an 'employment authorized' endorsement or other appropriate document signifying authorization of employment; and

106TH CONGRESS 2d Session | HOUSE OF REPRESENTATIVES | REPORT 106–1005

MAKING APPROPRIATIONS FOR THE GOVERNMENT OF THE DISTRICT OF COLUMBIA AND OTHER ACTIVITIES CHARGEABLE IN WHOLE OR IN PART AGAINST REVENUES OF SAID DISTRICT FOR THE FISCAL YEAR ENDING SEPTEMBER 30, 2001, AND FOR OTHER PURPOSES

OCTOBER 26 (legislative day, OCTOBER 25), 2000.—Ordered to be printed

Mr. ISTOOK, from the committee of conference, submitted the following

CONFERENCE REPORT

[To accompany H.R. 4942]

The committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 4942) "making appropriations for the government of the District of Columbia and other activities chargeable in whole or in part against revenues of said District for the fiscal year ending September 30, 2001, and for other purposes", having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the House recede from its disagreement to the amendment of the Senate, and agree to the same with an amendment, as follows:

In lieu of the matter stricken and inserted by said amendment, insert:

Section 1. (a) The provisions of the following bills of the 106th Congress are hereby enacted into law:

(1) H.R. 5547, as introduced on October 25, 2000.

(2) H.R. 5548, as introduced on October 25, 2000.

(b) In publishing this Act in slip form and in the United States Statutes at Large pursuant to section 112 of title 1, United States Code, the Archivist of the United States shall include after the date of approval at the end appendixes setting forth the texts of the bills referred to in subsection (a) of this section.

Communications Act of 1934 (47 U.S.C. 151 et seq.) has the meaning given that term in the Communications Act of 1934.

SEC. 1011. AUTHORIZATIONS OF APPROPRIATIONS.

(a) COST OF LOAN GUARANTEES.—For the cost of the loans guaranteed under this Act, including the cost of modifying the loans, as defined in section 502 of the Congressional Budget Act of 1974 (2 U.S.C. 661(a)), there are authorized to be appropriated for fiscal years 2001 through 2006, such amounts as may be necessary.

(b) COST OF ADMINISTRATION.—There is hereby authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act, other than to cover costs under subsection (a).

(c) AVAILABILITY.—Any amounts appropriated pursuant to the authorizations of appropriations in subsections (a) and (b) shall remain available until expended.

SEC. 1012. PREVENTION OF INTERFERENCE TO DIRECT BROADCAST SATELLITE SERVICES.

(a) TESTING FOR HARMFUL INTERFERENCE.—The Federal Communications Commission shall provide for an independent technical demonstration of any terrestrial service technology proposed by any entity that has filed an application to provide terrestrial service in the direct broadcast satellite frequency band to determine whether the terrestrial service technology proposed to be provided by that entity will cause harmful interference to any direct broadcast satellite service.

(b) TECHNICAL DEMONSTRATION.—In order to satisfy the requirement of subsection (a) for any pending application, the Commission shall select an engineering firm or other qualified entity independent of any interested party based on a recommendation made by the Institute of Electrical and Electronics Engineers (IEEE), or a similar independent professional organization, to perform the technical demonstration or analysis. The demonstration shall be concluded within 60 days after the date of enactment of this Act and shall be subject to public notice and comment for not more than 30 days thereafter.

(c) DEFINITIONS.—As used in this section:

(1) DIRECT BROADCAST SATELLITE FREQUENCY BAND.—The term "direct broadcast satellite frequency band" means the band of frequencies at 12.2 to 12.7 gigahertz.

(2) DIRECT BROADCAST SATELLITE SERVICE.—The term "direct broadcast satellite service" means any direct broadcast satellite system operating in the direct broadcast satellite frequency band.

TITLE XI—ENCOURAGING IMMIGRANT FAMILY REUNIFICATION

SEC. 1101. SHORT TITLE.

This title may be cited as—

(1) the "Legal Immigration Family Equity Act"; or

(2) the "LIFE Act".

FEDERAL COMMUNICATIONS COMMISSION

SALARIES AND EXPENSES

The conference agreement includes a total of $230,000,000 for the salaries and expenses of the Federal Communications Commission (FCC), instead of $207,909,000 as provided in the House bill, and $237,188,000 as proposed in the Senate-reported amendment. Of the amounts provided, $200,146,000 is to be derived from offsetting fee collections, as provided in both the House bill and the Senate-reported amendment, resulting in a net direct appropriation of $29,854,000, instead of $7,763,000 included in the House bill, and $37,042,000 included in the Senate-reported amendment. Receipts in excess of $200,146,000 shall remain available until expended but shall not be available for obligation until October 1, 2001.

The conference agreement directs the Commission to submit, no later than December 15, 2000, a financial plan proposing a distribution of all the funds in this account, subject to the reprogramming requirements under section 605 of this Act.

From within the funds provided, the FCC is urged to support public safety, emergency preparedness and telecommunications functions of the 2002 Olympic Winter Games.

The Senate report included language on public broadcasting stations' access to spectrum. The House included no similar language. The FCC is examining this issue, which is also pending in the Court of Appeals. The conference agreement reflects the belief that this issue can be resolved through the administrative or judicial process, so no legislative action is required at this time. The Chairman of the FCC should report to the House and Senate Committees on Appropriations on any action the Commission takes on this issue by April 1, 2001.

The FCC shall take all actions necessary to complete the processing of applications for licenses or other authorizations for facilities that would provide services covered by the Satellite Home Viewers Improvement Act (Public Law 106–113, 113 Stat. 1501), specifically to deliver multi-channel video services including all local broadcast television station signals and broadband services in unserved and underserved local television markets by November 29, 2000, as required by Public Law 106–113, 113 Stat. 1501.

The Senate report language with respect to a broadcast industry code of conduct for the content of programming is incorporated by reference.

FEDERAL MARITIME COMMISSION

SALARIES AND EXPENSES

The conference agreement includes $15,500,000 for the salaries and expenses of the Federal Maritime Commission, instead of $14,097,000 as proposed in the House bill and $16,222,000 as proposed in the Senate-reported amendment.

CERTIFICATE OF SERVICE

I, Shannon Thrash, hereby certify that on this 15th day of August, 2001, copies of the foregoing were served by hand delivery* or first class United States mail, postage prepaid, on the following:

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

Bryan Tramont, Sr. Legal Advisor*
Office of Commissioner Kathleen Abernathy
Federal Communications Commission
445 12th Street, SW
Washington, D.C. 20554

Brian Ohlson, Legal Advisor*
Public Safety & Private Wireless Division
Wireless Telecommunications Bureau
Federal Communications Commission
445 12th Street, SW
Washington, D.C. 20554

Scott, Delacourt, Legal Advisor*
Auctions & Industry Analysis Division
Wireless Telecommunications Bureau
Federal Communications Commission
445 12th Street, SW
Washington, D.C. 20554

Martha A. Stancill, Economist*
Auctions & Industry Analysis Division
Wireless Telecommunications Bureau
Federal Communications Commission
445 12th Street, SW
Washington, D.C. 20554

Antoinette Cook Bush
Northpoint Technology, Ltd.
444 North Capitol Street, N.W.
Suite 645
Washington, D.C. 20001

Nathaniel J. Hardy
Irwin, Campbell & Tannenwald, P.C.
1730 Rhode Island Ave, NW
Suite 200
Washington, D.C. 20036-3101

David C. Oxenford
Shaw Pittman
2300 N. Street, NW
Washington, D.C. 20037

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

Pantelis Michalopoulos
Steptoe & Johnson LLP
1330 Connecticut Avenue, NW
Washington, D.C. 20036

James W. Olson
Gregory F. Intoccia
Howrey Simon Arnold & White LLP
1299 Pennsylvania Ave., NW
Washington, D.C. 20004

Shannon Thrash