

EX PARTE OR LATE FILED

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

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

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

(202) 326-7900

FACSIMILE:
(202) 326-7999

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

September 14, 2001

VIA HAND DELIVERY

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SEP 14 2001

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

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Re: Notification of 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 September 13, 2001, Sophia Collier and Antoinette Cook Bush of Northpoint Technology, Ltd. ("Northpoint"), met with the following officials in the Commission's Mass Media Bureau: Roy J. Stewart, Mania Baghdadi, Rick Chessen, Jamila Bess-Johnson, Jim J. Brown, Gordeon W. Godfrey, Roger Holberg, Barbara Kreisman, Mary Beth Murphy, and Clay Pendarvis.

The purpose of the meeting was to discuss the pending applications of Northpoint's Broadwave USA affiliates for licenses to provide terrestrial service in the 12 GHz band. Northpoint urged that the Commission should act quickly in reaching a decision regarding its applications, in order that it can begin providing service that will bring real competition to the markets for MVPD and broadband Internet access. Northpoint also emphasized the ability of its technology to carry local television signals to subscribers all over the United States, including those living in rural areas.

In addition Northpoint observed that it is the only company to have fulfilled the statutory requirement of submitting its technology to the MITRE Corporation ("MITRE") for independent demonstration. Because the technology validation mandated by Congress is such an integral part of the application process, and because only

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Northpoint's technology has been successfully demonstrated by MITRE, as required by law, Northpoint is the only qualified applicant for terrestrial licenses in the 12 GHz band. Thus, the FCC should grant Northpoint's license applications without further delay.

Two handouts were distributed at the meeting: the attached handout with excerpts from comments filed in the proceedings to date, and a recent study by EARN (Equal Airwaves Right Now) of the capability of proposed satellite television spot beams to provide local television to American communities. The EARN study has been filed with the Commission as an attachment to the September 12, 2001, ex parte letter from Peter Pitts, Executive Director of EARN, to Magalie Roman Salas in CS Docket 01-129.

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

*Counsel for Northpoint
Technology, Ltd.*

attachment

cc: meeting participants

FCC FILINGS IN SUPPORT OF NORTHPOINT

**(Contained in FCC Comments and
Reply Comments -- ET Docket No. 98-206)**

Broadcasters:

National Association of Broadcasters (NAB)
National Association of Black Owned Broadcasters (NABOB)
Local Broadcast Station Owners (130 stations):

Joint Comments:

Benedek Broadcasting Corporation
Corridor Television, LLP
Eagle III Broadcasting, LLC
Granite Broadcasting Corporation
Lin Television Corporation

Separate Comments:

Gray Communications Systems
Paxson Communications Corporation
Second Generation of Iowa

Consumer and Minority Advocacy Groups:

Consumers Union, *et. al.*
Center for Media Education
Consumer Federation of America
Consumers Union
Leadership Conference on Civil Rights
League of United Latin American Citizens
Media Access Project
National Indian Telecommunications Institute (NITI)

Others:

Tom Hazlett (Economist)
*Virtual Geosatellite, LLC (NGSO)

*Comments support spectrum sharing

FCC Should Grant Licenses Promptly

"CU, *et al.* urge the Commission to grant the license and waiver applications of Northpoint and its Broadwave Affiliates. . . . The public interest will be best served by prompt approval [of] Northpoint's applications to provide a terrestrially-based Multichannel Video Programming Distribution ("MVPD") service that will bring instant competition and rapid deployment of broadband services to the entire country, including unserved and underserved rural and urban areas. The authorization of a new Multichannel Video and Data Distribution Service ("MVDDS") and possible auctions would delay and possibly undermine the expansion of competition to incumbent cable and satellite companies." (CU, *et al.* Reply Comments, pp. 2-3)

"NAB supports [Northpoint's] applications and request for a waiver of the rules. Prompt initiation of Northpoint's plans could: 1) promote much needed competition in the MVPD marketplace. . . ; and 2) facilitate local into local carriage of all local television stations." (NAB Reply Comments, p. 2)

"For the reasons set forth above, the Commission should not proceed with commencement of a new MVDDS service and should terminate its rulemaking proceeding." (NAB Reply Comments, p. 7)

"A one-year delay – assuming lightning fast allocation rules and auction implementation – could (conservatively estimated) result in \$2 billion in lost consumer surplus in cable television service, and another \$250 million lost in reduced competition for high-speed Internet access. A three-year lag would likely exceed \$6 billion in lost (aggregate) consumer surplus." (Hazlett Affidavit, p. 21)

"The short-run interest of consumers is to have service commence quickly. The long-run interest of consumers is to have entrepreneurship rewarded rather than taxed. From either perspective, the public's interest lies in having the FCC grant Northpoint's January 1999 request for permission to commence service without delay." (Hazlett Affidavit, p. 22)

Call for Auctions Should be Rejected

"[A]uctions will only serve to delay and possibly even destroy, competition and innovation." (CU, *et al.* Reply Comments, p. 4)

"As Northpoint correctly observes, auctions could 'postpone for many more years the delivery of local broadcast signals to rural users, and it would delay the emergence of new competitive alternatives to cable.'" (NAB Reply Comments, p. 3)

"There are several reasons why the Commission should decline to hold auctions here. The first is a matter of equity. . . . The second is a matter of law." (CU, *et al.* Reply Comments, pp. 6-7)

"Moreover, Section 309(j)(3) of the Communications Act obligates the Commission to avoid mutual exclusivity and auctions when there are public interest reasons for doing so. What the incumbent MVPDs do not and cannot, dispute is that significant public interest benefits will flow from the grant of the Northpoint applications." (CU, *et al.* Reply Comments, p. 5)

Only Northpoint Can Deploy Technology

"Northpoint – and only Northpoint – has developed a technology for video programming delivery that may quickly be implemented across the country to provide competition to cable and direct broadcast satellite (DBS)." (Joint Broadcasters Comments, p. 2)

"Northpoint would be the only terrestrial provider in the 12.2-12.7 GHz band because only Northpoint has invested the creativity and resources to develop the technology to use this particular spectrum for terrestrial video delivery." (Joint Broadcasters Comments, p. 7)

"If other terrestrial competitors eventually develop, then they can make the same applications and the same showings of technical compatibility as Northpoint, and the Commission may consider them on a case-by-case basis." (Joint Broadcasters Comments, p. 7)

Northpoint Would Bring Price Competition, Promote Local TV

"Northpoint plans to deliver 96 channels of video programming, including all local broadcast signals, for fees that are 10%-15% below existing cable television rates. If we assume that Northpoint's entry succeeds in pushing cable rates down 5% nationally, the annual savings for U.S. households exceeds \$2 billion." (Hazlett Affidavit, p. 17)

"If its applications are approved, Northpoint could provide instant MVPD competition to all 210 DMAs in the United States. Because its services are almost certain to be comparable with cable and DBS yet far less expensive, competitors will be pressured to lower their prices. The final result: more choice, better service and lower cost for all Americans." (CU, *et al.* Reply Comments, pp. 14-15)

"Joint Broadcasters enthusiastically support the introduction of another competitor and another carrier of their signals in this highly concentrated market to help benefit the public with price, service, and innovation competition." (Joint Broadcasters Comments, p. 2)

"Paxson notes that Northpoint and its local Broadwave affiliates are committed to carrying the analog and digital signals of local television stations to the same extent required of cable systems by the FCC and Paxson believes that the final rules adopted by the FCC will mandate full digital must carry for all local stations. This will certainly provide additional competition in the multi-channel video programming market, will assist local television station in their DTV transition efforts and strengthen the role of free, over-the-air television broadcasting." (Paxson Reply Comments, pp. 1-2)

"Gray believes that it is imperative that the Commission facilitate the introduction of another competitor and another carrier of local television signals in this highly concentrated market to help benefit the public with price, service, innovation and competition as quickly as possible." (Gray Reply Comments, p. 2)

Northpoint Serves Broad Range of Public Interests

"[I]t is difficult for us to imagine a potential licensee that could make a stronger public interest showing warranting its license. Northpoint brings to the table the prospect of immediate competition, an immediate increase of minority ownership in the MVPD marketplace, and immediate deployment of advanced services to rural and underserved areas. We ask the Commission to reject the incumbents' claims that the public interest would best be served by embarking on a lengthy new process that may not lead to more MVPD competition, and instead grant Northpoint's license without delay." (CU, *et al.* Reply Comments, p. 3)

"[No commenters in this docket] refute the fact that Northpoint's proposed service would result in numerous public interest benefits, including: Increased competition in the market for multiple video program distribution and other broadband services; lower priced MVPD and broadband services for all Americans; greater and more rapid deployment of broadband services, especially to unserved and underserved communities; and a significant increase in the number of minority and female owners and employees in the media industry." (NABOB Reply Comments, p. 2)

Northpoint Promotes Minority and Female Media Industry Ownership

"The Northpoint application provides an opportunity for the Commission to promote minority ownership and employment and its benefits without reliance on disfavored regulatory mechanisms." (CU, *et al.* Reply Comments, p. 20)

"No participant to this proceeding denies the fact that, should Northpoint obtain the approval it seeks from the Commission, the landscape of minority media ownership in this country would be altered dramatically. Not only are the majority of Northpoint's Broadwave affiliates minority and female owned, they are overwhelmingly so." (NABOB Reply Comments, p. 5)

Northpoint Promotes Specific Needs of Minority Consumers

"Commission approval of the Broadwave applications is the only realistic course of action that will enable tribal communities and other low-income, high-cost communities to receive digital audio, video and data services in the near future." (NITI Comments, p. 6)

"Northpoint's low-cost digital wireless system would offer many Native Americans their first opportunity for broadband access to the Internet." (NIT! Comments, p. 6)

Northpoint Will Bring Broadband to Many

"Should the Commission thwart Northpoint's attempts to deploy broadband services by instituting auctions for terrestrial MVPD licenses, it would run contrary to Section 706's mandate that the Commission 'utiliz[e]...regulatory forbearance, measures that promote competition in the local telecommunications market or other regulating methods that remove barriers to infrastructure investment' to encourage broadband deployment." (CU, *et al.* Reply Comments, p. 17)

"Entry by Northpoint could considerably speed the "race for bandwidth." In creating a first, second or third broadband high-speed access option for residential customers, millions of additional Internet users could avail themselves of broadband services." (Hazlett Affidavit, p. 19)

Opponents' Motivation is Not in the Public Interest

"The Commission must take the opposition to Northpoint's applications and the subsequent support for auctions for what it really is – an attempt by incumbent MVPDs to misuse governmental processes to delay and eventually destroy a low cost, innovative competitive broadband MVPD service. Once the victims of cable operators' attempts to block their service, the two DBS providers now employ similar tactics in seeking governmental protection for their duopoly. The Commission should not allow a legitimate license distribution process for new spectrum – auctions – to be misused for anticompetitive purposes in this secondary licensing proceeding." (CU, *et al.* Reply Comments, p. 4)

"The majority of commenters supporting auctions in this proceeding have done so not with the public interest in mind, but to protect themselves from competition. The Commission has the authority to declare that auctions for MVDDS licenses are not in the public interest and that grant of Northpoint's applications is in the public interest. It should do so without further delay." (NABOB Reply Comments, p. 7)

"While cable and DBS basically built their industries by retransmitting broadcast signals . . . both industries have fought tooth and nail against must carry, carry one carry all, retransmission consent, program exclusivity rules and virtually every other regulatory provision Congress or the FCC has considered to preserve the very free over-the-air broadcast system Now, like a breath of fresh air, comes Northpoint Technology, Ltd., and its local Broadwave affiliates (collectively, "Northpoint"). Northpoint too wants to retransmit broadcast signals. But it also appears willing voluntarily to undertake the full signal carriage and program exclusivity protection that its larger competitors have so steadfastly resisted." (NAB Reply Comments, p. 2)

Support for Satellite-Terrestrial Sharing In 12 GHz Band

"Virtual Geo adheres to its belief in the compatibility of NGSO FSS systems and Northpoint-type MVDDS stations. It urges the Commission to adopt rules that facilitate the introduction of both types of services into the 12.2-12.7 GHz band in a manner that does not cause undue constraint to NGSO FSS systems and that take into account the constraints that such systems have accepted in order to successfully share the band with geostationary satellite systems." (Virtual Geosatellite Comments, p. 4)

- o **Note: Virtual Geo is one of eight applicants to operate a non-geostationary fixed-satellite service (NGSO FSS) in the same 12 GHz spectrum band in which Northpoint would operate its terrestrial service and limited its comments to spectrum sharing issue.**

CERTIFICATE OF SERVICE

I, Shannon Thrash, hereby certify that on this 14th day of September, 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

Mania Baghdadi
Roy J. Stewart
Rick Chessen
Jamila Bess-Johnson
Barbara Kreisman
Roger Holberg
Gordon W. Godfrey
Mary Beth Murphy
Clay Pendarvis
Jim J. Brown
Mass Media 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