ORIGINAL

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

September 19, 2001

VIA HAND DELIVERY **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:

The attached letter was delivered on behalf of Northpoint Technology, Ltd., and Broadwave USA, Inc., via facsimile to FCC General Counsel Jane Mago on September 17, 2001. Copies were also delivered via facsimile to Peter Tenhula, Senior Legal Advisor to the Chairman, and Marsha J. MacBride, Chief of Staff, on September 18, 2001. 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. and Broadwave USA, Inc.

enclosure

LAW OFFICES OF
KENYON & KENYON
1500 K STREET, N.W., SUITE 700
WASHINGTON, D.C. 20005-1257
TEL. (202) 220-4200
FAX. (202) 220-4201

NEW YORK OFFICE
ONE BROADWAY
NEW YORK, N.Y. 10004-1050
TEL. (212) 425-7200
FAX. (212) 425-5288

SILICON VALLEY OFFICE
RIVERPARK TOWERS, SUITE 600
333 W. SAN CARLOS ST.
SAN JOSE, CA 95110-2731
TEL. (408) 975-7500
FAX. (408) 975-7501

FRANKFURT OFFICE
SCHILLERSTRASSE 18-25
60313 FRANKFURT AM MAIN
FEDERAL REPUBLIC OF GERMANY
TEL. (49) (69) 97 58 05 0
FAX. (49) (69) 97 58 05 99

WWW.KENYON.COM

September 17, 2001

VIA Facsimile

Ms. Jane Mago
General Counsel
Federal Communications Commission
445 12th Street SW
Washington, DC 20554

Re: Ex Parte Commumications in ET Docket No. 98-206; RM-9147; RM 9245; Applications of Broadwave USA et al., PDC BroadBand Corporation, and Satellite Recievers, 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. Mago:

We are counsel to Broadwave, USA in connection with matters relating to intellectual property. Thank you for agreeing to reschedule the meeting with representatives of Broadwave for Tuesday September 18th. In advance of our meeting, we wanted to restate the concerns that Broadwave has expressed in past communications to the Commission about the care that is needed to avoid violations of the patent rights of Northpoint Technology Ltd. ("Northpoint") under which Broadwave USA is licensed. Broadwave's concerns arise both from actions which the Commission itself may undertake and actions which other applicants may undertake with the Commission's authorization or in compliance with rules the Commission may adopt.

To assist the Commission in understanding Broadwave's concerns, we have included an exemplary claim of one of the Northpoint patents (claim 18 of U.S. Patent No. 6,169,878 ("the '878 patent"), accompanied by comments describing aspects of this claim. This description is not meant to be a binding interpretation, but rather is presented to assist the Commission in gaining some perspective of the scope of the Northpoint patented technology. The claim encompasses any terrestrial transmitter that broadcasts signals on a common frequency with DBS satellite signals from a direction outside the directional reception range of receivers pointed to receive the DBS satellite signals. This would, of course, not only include any such terrestrial

transmitter that points generally southward, but also would encompass omnidirectional transmissions provided they are outside of a satellite reception range by, for example, being on a lower elevation.

Under its '878 patent, Northpoint has the right to exclude anyone from, among other things, building, testing, deploying and operating a terrestrial broadcasting system in the U.S. having the claimed features. Broadwave is concerned that the Commission intends to adopt rules that would require that any terrestrial system broadcasting in the 12.2-12.7 GHz band transmit from a direction outside the directional reception range of receivers pointed to receive DBS satellite signals. We note that in the Commission's First Report and Order and Further Notice of Proposed Rulemaking released on December 8, 2000 ("Notice"), the Commission stated: "we propose to require MVDDS transmitting antennas to ... (2) generally point southward." If such a requirement were adopted, and if the license to provide MVDDS services were granted to anyone other than Broadwave, the Commission's requirement would be tantamount to a mandate that the licensee infringe Northpoint's '878 patent.

We note that a potential requirement for MVDDS antennas to point in certain directions is not the only area of Broadwave's concern. Broadwave is also concerned that rules involving limitations in transmission power could be encompassed within the claims of U.S. Patent No. 6,208,834 ("the '834 patent"), also issued to Northpoint and licensed to Broadwave. For purposes of assisting the Commission's understanding, we include an exemplary claim from the '834 patent, along with (as above) a short form description of the claim elements.

Adopting rules such as those already suggested in the Notice would place the Commission in irreconcilable conflict with the U.S. Patent and Trademark Office, which, by issuing the '878 and the '834 patents, has granted Northpoint the right to exclude others from doing what the Commission may propose to require they do.

We look forward to discussing Broadwave's concerns at our meeting on Tuesday. In the meantime, if you have any questions, please feel free to contact me.

Very truly yours,

Walter E. Hanley, Jr.

cc: Sophia Collier
Antoinette Bush, Esq.
Brian S. Mudge, Esq.
Michael K. Kellogg, Esq.

U.S. Patent No. 6,169,878 Claim 18	Comments
1. An apparatus for simultaneously transmitting terrestrial signals on a common frequency with satellite signals transmitted from a satellite, the satellite transmitting satellite signals at a first frequency to a user location for reception only within a satellite directional reception range about the user location, the apparatus comprising:	The purpose of this technology is to share spectrum with satellite services such as the kind that are received with a satellite dish.
(a) a terrestrial transmitter for transmitting terrestrial signals at the first frequency from a fixed terrestrial location which forms a fixed geometry with the user location and the satellite, the terrestrial transmitter being located with respect to the user location such that the terrestrial transmitter transmits to the user location along a route which is outside of the satellite directional reception range about the user location.	This includes any terrestrial transmitter broadcasting signals at a frequency used by a satellite but along a route different than the satellite transmissions.

U.S. Patent No. 6,208,834 Claim 16	Comments
1. A method for reusing a first transmission frequency already in use for transmitting satellite signals from a satellite along a satellite signal route to a first location for reception at a satellite receiving antenna which may be at the first location, the satellite receiving antenna producing a maximum gain for signals received along a satellite receiving antenna centerline and less gain at angles from said centerline, the satellite signals having a signal power level at the first location such that, when the satellite receiving antenna is placed in a satellite reception position in which the satellite transmission route lies within a satellite reception look angle about the satellite receiving antenna centerline, the satellite signals produce satellite input signals from the satellite receiving antenna which are at least at	This claim describes a method for reusing a satellite transmission frequency, where the frequency is used to transmit a signal from the satellite to a user location. The method includes the following steps:

a minimum usable satellite input signal level, the method comprising the steps of:	
(a) determining the satellite signal power level;	Determining (through any means) the satellite signal power level.
(b) setting the transmission power of a first terrestrial transmitter to a non-interfering level based upon the determined satellite signal power level, the non-interfering level being a level ensuring that substantially each location within an effective transmission area around the first terrestrial transmitter receives terrestrial signals from the first terrestrial transmitter at a power level to produce non-interfering terrestrial input signals from a satellite receiving antenna aligned to receive the satellite signals at said location, the non-interfering terrestrial input signals being at a power level less than an interference level with respect to the satellite input signals produced by the satellite receiving antenna at said location; and	Setting the terrestrial transmitter to a power level that will not interfere with the satellite signals. Non-interference allows the satellite user to receive the satellite signals.
(c) transmitting terrestrial signals at the non-interfering power level and first transmission frequency from the first terrestrial transmitter to the effective transmission area.	Transmitting signals within the transmission area at the same frequency used for satellite transmissions.

CERTIFICATE OF SERVICE

I, Shannon Thrash, hereby certify that on this 19th 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

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