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November 27, 2001

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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

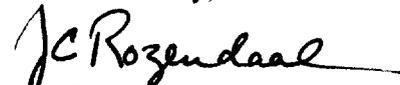
Re: Ex Parte Communication in ET Docket No. 98-206, RM-9147; RM-9245; Applications of Broadwave USA et al., PDC Broadband Corporation, and Satellite Receivers, Ltd., to provide a fixed service in the 12.2-12.7 GHz Band; Requests of Broadwave USA et al. (DA 99-494), PDC Broadband Corporation (DA 00-1841), and Satellite Receivers, Ltd. (DA 00-2134) for Waiver of Part 101 Rules.

Dear Ms. Salas:

The attached ex parte letter from Robert A. Combs of Northpoint Technology, Ltd., and Broadwave USA, Inc., was delivered by hand on November 27, 2001, to Julius Knapp of the Commission's Office of Engineering and Technology and the other Commission officials listed on the attached certificate of service.

This letter will be filed electronically in ET Docket 98-206, RM-9147, and RM-9245. In addition, twelve copies of this letter will be filed in paper form – two for inclusion in each of the above-referenced application files. Please contact me if you have any questions.

Yours sincerely,



J. C. Rozendaal
Counsel for Northpoint
Technology, Ltd. And
Broadwave USA, Inc

enclosure

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November 26, 2001

Mr. Julius P. Knapp
Deputy Chief
Office of Engineering and Technology
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Dear Mr. Knapp:

I write in response to an ex parte presentation made on behalf of Pegasus Broadband Corporation ("Pegasus"), filed on September 27, 2001.¹ In its presentation, Pegasus advocates various technical criteria for terrestrial service in the 12.2 – 12.7 GHz frequency band. Although Pegasus purports to support terrestrial systems, Pegasus's proposals would in fact hinder, rather than promote, terrestrial deployment. And, as the largest distributor of DirecTV, Pegasus has incentive to hinder competition.

Pegasus asks the Commission to impose a multi-tiered system of regulations on terrestrial systems. The Pegasus approach would require that terrestrial providers not only meet C/I limits, but also comply with numerous additional and unnecessary protection requirements. This multi-tiered approach does nothing to advance the goal of preventing harmful interference, and was unanimously rejected by other commenters in the comment phase of the FNPRM.

Pegasus proposes the following combination of restrictions:

- A limit on the carrier to interference ratio (C/I ratio),² and:
- A limit on the terrestrial transmitter EIRP,³ plus:
- A limit on the PFD value at any DBS receiver to $-181.5 \text{ dBw/M}^2/\text{MHz}$,⁴ in combination with:

¹ Ex parte letter to Ms. Magalie Roman Salas, Secretary, FCC, from Tony Lin, Shaw Pittman LLP, Re: Ex Parte presentation of Pegasus Broadband Corporation, with attached briefing ("Pegasus Briefing") (FCC filed September 27, 2001).

² Pegasus Briefing at 2, ("C/I, in range of 22-27 dB"), see also Comments of Pegasus Broadband Corporation ("Pegasus Comments") at 6, ("[no] DBS receiver shall experience a C/I degradation of more than 23 dB").

³ Pegasus Briefing, at 6, ("Limit eirp per 500 MHz to 12.5 dBm").

⁴ "Pegasus Comments" at 5, (FCC filed March 12, 2001).

- A limit on the transmitting antenna azimuth.⁵

Such multi-tiered limits are wholly unnecessary. The C/I limit (or the EPFD based upon a C/I ratio) defines the acceptable level of interference. If the C/I (or EPFD) limit is met, then by definition, there is no harmful interference, and it cannot possibly matter what the transmitting antenna azimuth or EIRP might be.⁶ Burdensome regulations beyond the C/I limit (or the EPFD limit) serve only to hamper MVDDS deployment and protect incumbent DBS and cable operators from new terrestrial wireless competition.

More importantly, certain specific proposals by Pegasus would prevent any terrestrial system from operating in the real world. For example, Pegasus proposes to limit "eirp per 500 MHz to 12.5 dBm."⁷ This proposal would reduce by over 13 dB the power in the typical Northpoint transmitter (currently, 12.5 dBm per 24 MHz). Although Pegasus's draconian eirp limit would probably be effective in preventing harmful interference, it would also shrink the radial transmitting distance of a typical Northpoint transmitter to about 1/10th the distance Northpoint has proposed. Therefore, each Northpoint cell would cover an area only about 1/100th the size of what Northpoint has proposed. As a result, the number of transmitters would increase by a factor of about 100 in order to provide service. In rural areas where Pegasus has its customers, the Pegasus eirp limit would effectively require a Northpoint transmitter or repeater for each rural customer -- an outlandish proposal indeed.⁸

Another example of the anti-MVDDS nature of Pegasus's proposals can be found in the suggestion that the MVDDS 500 MHz band be split into four separate "unaffiliated" blocks, providing only 125 MHz of spectrum to any one company.⁹ This scheme would mimic the rules which doomed MMDS to failure. Most cable companies and both DBS companies have at least 500 MHz of available bandwidth to provide content. A company with only 125 MHz would have capacity for only about 25 channels, and could never compete with a DBS and cable systems having four times as much network capacity. As noted by the FCC: "Since the 33-channel analog capacity of

⁵ *Id.* at 6 ("[the] radiation of the 3 dB beamwidth of the transmitting antenna [be] at least 48 degrees from the boresight azimuth of the DBS antennas in the region.").

⁶ *See, e.g.,* Comments of DirecTV at 27, ET Docket No. 98-206 (FCC filed March 12, 2001); Comments of AT&T at 17, , ET Docket No. 98-206 (FCC filed Mar 12, 2001).

⁷ *See* footnote 3 (above).

⁸ The other two proposals mentioned herein are equally outrageous. A pfd of -181.5 dBW/m²/MHz would provide a C/I protection ratio of about 90 dB. As for Pegasus proposed limit on transmitting azimuth, it would restrict Northpoint from transmitting except in a narrow 60° azimuth window.

⁹ Pegasus Comments at 15

MMDS systems is generally not competitive with that of most cable systems, MMDS subscribership has declined."¹⁰

In contrast to these impossible Pegasus proposals, both Northpoint and DIRECTV agree that the appropriate interference criterion is the EPFD limit, which Pegasus has never even addressed in these proceedings. Northpoint proposes that the Commission adopt an EPFD limit on a per-region basis.¹¹ The Northpoint proposal follows the contours of the DBS transmitting antenna (EIRP contours) and would provide 20 dB of isolation between the DBS carrier and the interference for all DBS primary modes (23 dB for DBS high-powered mode). Northpoint's proposed EPFD limits would protect DBS from harmful interference; they would meet the FCC's proposal to limit the increase in outage to 10 minutes in any given month,¹² and they would meet the MITRE recommendation for no more than a 10% increase in outage.¹³

In summary, the Pegasus proposals do nothing to advance the Commission's goal promoting deployment of terrestrial systems. Indeed, Pegasus's unreasonable proposals would effectively prevent any such system from deploying. For these reasons, the FCC should disregard the proposals made by Pegasus for operation of terrestrial systems in the 12.2 – 12.7 GHz band and should adopt the EPFD limits proposed by Northpoint.

Respectfully submitted,



Robert A. Combs
Director, System Development

cc: Shellie Blakeney, Jennifer Burton, Rosalee Chiara, Thomas Derenge, Saj Durrani, Ira Keltz, Paul Locke, Geraldine Matisse, Michael Pollack, Tom Stanley and Gary Thayer.

¹⁰ Sixth Annual Report, Annual Assessment of the Status of Competition in Markets for the Delivery of Video Programming, 15 FCC Rcd 978, ¶ 86 (2000).

¹¹ The continental U.S. can be divided into regions of approximately equal DBS signal strength. For example, observing the antenna patterns of the DBS satellites, we find that the DBS EIRP is within 1 dB of 49 dBW (low power transponder) for all portions of the Western U.S., including: California, Arizona, Colorado, Montana, Washington and all points in between. See also Technical Annex to Comments of Northpoint Technology at 6-7, ET Docket 98-206 (FCC filed March 12, 2001).

¹² See FNPRM, ET Docket 98-206 et al, FCC 00-418 Annex E, §101.105 (FCC rel. Dec. 8, 2000)..

¹³ The MITRE Corp., MITRE Technical Report, "Analysis of Potential MVDDS Interference in the 12-2 - 12-7 GHz Band" at 6-6. (FCC Sponsored Report, Project No. 1201, FCC 2-01, April 2001).

CERTIFICATE OF SERVICE

I, Shonn Dyer, hereby certify that on this 27th day of November, 2001, copies of the foregoing were served by hand delivery* and/or first class United States mail, postage prepaid, on the following:

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