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November 29, 2001

HAND DELIVERY

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EX PARTE

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

NOV 29 2001

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

**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.**

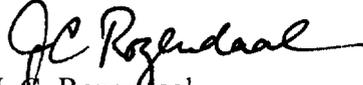
Dear Ms. Salas:

The attached ex parte letter from Sophia Collier of Northpoint Technology, Ltd., and Broadwave USA, Inc., was delivered by hand on November 28, 2001, to Chairman Powell. It is being delivered today to the other Commission officials listed on the attached certificate of service.

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.

No. of Copies rec'd 18  
List A B C D E

Yours sincerely,

  
J. C. Rozenaal  
Counsel for Northpoint  
Technology, Ltd., and  
Broadwave USA, Inc.

attachment  
cc: service list.

November 28, 2001

**BY HAND**

The Honorable Michael K. Powell  
Chairman  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, DC 20554

**RECEIVED**

**NOV 29 2001**

**FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY**

Dear Chairman Powell:

I was struck by your recent comment that the DBS-Northpoint sharing proceeding is "the most challenging set of issues the Commission has ever faced." Our company shares your apparent frustration because we have been at the Commission for over seven years seeking approval to offer our services to the public.

We propose a simple solution: end the Commission's industrial policy which favors satellites and begin to regulate all similar services seeking to use the same spectrum from the same rulebook. This "single rulebook" system would greatly simplify the DBS-Northpoint proceeding and every proceeding that follows. It would allow the Commission to stop being in the business of "picking a winner" and start to license companies in a technology-neutral manner. Ending this regulatory disparity is particularly important given the reduced competitive environment that will result from the sale of DirecTV to Echostar.

If there is any doubt that the satellite industry is king at the Commission, consider the following fact: in August 2001, the Commission granted – without competitive bidding – licenses for 66,000 MHz of spectrum in the Ka-band to 11 satellite companies.<sup>1</sup> *This single spectrum grant allocated - without an auction - more spectrum than the FCC has made available in total to all radio, television and PCS operators in the United States.* Amazingly, 2/3 of the Ka-band grant went to one entity, Hughes Electronics and its 80% owned subsidiary PanAmSat. With the planned sale of DirecTV, this spectrum

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<sup>1</sup> See Order, Second Round Assignment of Geostationary Satellite Orbit Locations to Fixed Satellite Service Space Stations in the Ka-Band Adopted August 2, 2001 adding to 84,000 MHz previously allocated in the first round order.

could end up in the hands of Echostar, another party that has also benefited greatly from free spectrum grants.<sup>2</sup>

In the Ka-band proceeding there was no assertion that the Orbit Act prohibited competitive bidding on auctions – the Commission just set up the proceeding to make sure there wasn't one. The Commission's satellite licensing proceedings are custom designed to avoid mutual exclusivity and thus auctions.

In our own proceeding, the preference given to the satellite industry results in extraordinary market distortion. We applied on the same day as eight satellite systems who seek a total of 25,400 MHz of spectrum. All of these companies will be granted licenses without an auction. One reason in this case is that, in 2000, the satellite industry obtained legislation barring the auction for spectrum used for certain satellite services. But even before this law was passed, the Commission was actively employing the same process used this year in the Ka-band to avoid auctions for the satellite industry.

By contrast, our group of local affiliates seeks to offer a terrestrial service in 500 MHz using a new technology sharing spectrum with satellites. We have been seeking a license at the FCC for over seven years and may still face an auction – not because we are mutually exclusive with the eight satellite applicants or because there is another mutually exclusive applicant at the Commission now – but because the Commission may wait to accept our application until it has another applicant.

Some might say that our disparate treatment is the result of a Commission practice of always auctioning off of ground based services. Yet, this would be inaccurate. In the year 2001 alone, the Commission granted – without an auction – 10,259 wireless licenses for both mobile and fixed microwave services.<sup>3</sup> Almost all of these licenses were awarded to large companies that sell commercial telecommunications services. By contrast, only 759 licenses were purchased through an auction.<sup>4</sup> While the spectrum awarded to these licensees was much less than that the Commission gave to the satellite industry in the same period, it was much more than we seek. The fact that 93% of the licenses awarded to ground based services this year were processed without an auction demonstrates that in no way is it typical for the Commission to use auctions to allocate spectrum to ground based companies.

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<sup>2</sup> See Appendix C - Spectrum Granted to Echostar Without Auctions.

<sup>3</sup> See Wireless Bureau Public Notices 1/2/01 – 11/2/01.

<sup>4</sup> Period from 12/20/00 – 11/2/01 includes the re-auction of 422 licenses reclaimed from NextWave.

The Commission's process of spectrum allocation and licensing seems arbitrary and it has what is surely an unintended effect: discrimination against small companies and new technologies. It cannot be considered desirable for the government to allow one company free use of a Federal resource, and then expect a new entrant and future competitor to pay to use the same resource. This is particularly true in our case where our efforts, and our efforts alone, have created the technological and regulatory opportunity to share this spectrum with satellite users.

To put the disparity in perspective, consider that our largest future competitor Hughes Electronics (soon to be EchoStar) could be granted without an auction twelve times the spectrum that Northpoint is seeking in the very same proceeding.<sup>5</sup> After this grant, Hughes (including PanAmSat) will have 79,525 MHz of spectrum, all of which will have been granted to it without an auction. We believe this will make Hughes the largest holder of spectrum in the United States.

Using two rulebooks to regulate the same spectrum is not good for our country. By favoring the satellite industry and giving it preferential access to spectrum, the Commission relies too heavily on one solution and allows public needs to remain unmet. A prime example is the provision of local signals. The DBS industry cannot fully comply with the Satellite Home Viewer Improvement Act requirement to carry all local stations in the markets where it carries any local stations. The reason is that satellite technology – unlike the Northpoint system – is poorly suited to the task of providing local channels. Satellite capacity is limited and is best used for programming of national rather than local interest.

EchoStar has announced that come January 2002 it will turn off local television stations in an undisclosed number of markets. This will mean that these DBS subscribers will have no access to the emergency alert system at a time when our nation needs this resource to be fully available. Of course some of these subscribers may have the option of switching back to cable or getting rabbit ears, but this should not be necessary when a seamless solution of satellite and terrestrial services is technically feasible.

The way to immediately enact our suggested "single rulebook" policy would be to grant our applications in the same course and manner as the satellite companies with whom we applied and will share spectrum. Almost a year ago, the Commission issued an order declaring terrestrial services based on our technology could share with the eight satellite systems in our proceeding. Northpoint further demonstrated its unique

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<sup>5</sup> NGSO FSS applications pending.

The Honorable Michael K. Powell  
November 28, 2001  
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qualifications when it was the only party to submit equipment for Congressionally-mandated independent testing.

Northpoint is ready to go and there are no mutually exclusive applications before the Commission. Northpoint has demonstrated that it can share with eight other applicants with whom it applied in 1999. Basic fairness, as well as the public interest, convenience and necessity call out for our applications to be granted.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Sophia Collier", with a horizontal flourish extending to the right.

Sophia Collier  
President

**Appendix A**  
**Spectrum Used by Terrestrial Services in United States**

**Representative Terrestrial Spectrum Users**

	Stations/ Licenses	Use/Station (MHz)	Total spectrum allocated (MHz)
Total stations in United States			
AM radio stations	4716	0.1	472
FM radio stations	8216	0.2	1,643
Television stations	4074	6	24,444
PCS licenses	2071	10 – 30	32,550
Spectrum used			59,109

Source: FCC Broadcast Station Totals as of June 30, 2001; FCC PCS license listing

## Appendix B

### Spectrum Provided to Hughes Electronics and its Subsidiaries without Auctions

Entity	Satellite Name or Orbital Slot	Spectrum Used (MHz)
<b>Hughes Electronics</b>		
DirecTV		
	101	1,000
	110	100
	119	325
Ka-Band Licenses granted		
	131° W.L.	2,000
	101° W.L.	2,000
	99° W.L.	2,000
	49° W.L.	2,000
	26.2° W.L.	2,000
	7.5° W.L.	2,000
	164° E.L.	2,000
	111° E.L.	2,000
	103° E.L.	2,000
	101° E.L.	2,000
	54° E.L.	2,000
	25° E.L.	2,000
NGSO-FSS applications pending		5,800
Subtotal for Hughes		31,225
<b>PanAmSat (80% owned by Hughes)</b>		
Satellites in orbit serving the U.S.		
	Galaxy IR	1,000
	Galaxy IIIIR (C)	1,000
	Galaxy IIIIR (Ku)	750
	Galaxy IVR (C)	1,000
	Galaxy IVR (Ku)	1,000
	Galaxy V	1,000
	Galaxy VI	1,000
	Galaxy IX	1,000
	Galaxy XR (C)	1,000
	Galaxy XR (Ku)	1,000
	Galaxy XI (C)	1,000
	Galaxy XI (Ku)	1,000
	PAS-1R (C)	1,000

	PAS-1R (Ku)	1,000
	PAS-3 (Ku)	1,000
	PAS-5 (C)	1,000
	PAS-5 (Ku-1)	1,000
	PAS-5 (Ku-2)	750
	PAS-9 (C)	1,000
	PAS-9 (Ku)	800
	SBS 6	1,000
Launch pending in next quarter		
	Galaxy III C (C)	1,000
	Galaxy III C (Ku)	1,000
Ka-Band Licenses granted		
	133° W.L.	2,000
	103° W.L.	2,000
	58° W.L.	2,000
	45° W.L.	2,000
	173° E.L.	2,000
	166° E.L.	2,000
	149° E.L.	2,000
	124.5° E.L.	2,000
	72.7° E.L.	2,000
	68.5° E.L.	2,000
	40° E.L.	2,000
	48° E.L.	2,000
	36° E.L.	2,000
	Subtotal for PanAmSat	48,300
<b>Total Hughes controlled</b>		<b>79,525</b>

Source: PanAmSat web site; FCC records and Sky Report

## Appendix C

### Spectrum Granted to Echostar Without Auctions

System	Satellite Name or Orbital Slot	Spectrum Used (MHz)
Echostar DBS (Ku band)		
	61.5° W.L	525
	110° W.L	900
	119° W.L	650
	175° W.L	1,000
	Subtotal for Echostar DBS	3,075
Ka-Band Licenses granted		
	121° W.L	1,000
	83° W.L.	1,000
	Subtotal for Echostar Ka Band	2,000
<b>Total Echostar controlled</b>		<b>5,075</b>

Source: FCC records and Sky Report

Note: Slot at 110 was purchased at auction by MCI but was later transferred to Echostar with other assets in settlement of a legal claim. Echostar did not pay the Treasury anything for this slot.

## CERTIFICATE OF SERVICE

I, Shonn Dyer, hereby certify that on this 29th 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:

Magalie Roman Salas\*  
Secretary  
Federal Communications Commission  
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Room TW-B204  
Washington, D.C. 20554

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Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Washington, D.C. 20554

Kathleen Q. Abernathy\*  
Commissioner  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
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Michael J. Copps\*  
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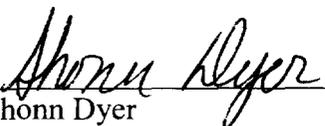
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