

PAUL. WEISS. RIFKIND. WHARTON & GARRISON
1615 L STREET, NW WASHINGTON, DC 20036-5694

TELEPHONE (202) 223-7300
FACSIMILE (202) 223-7420

JEFFREY H. OLSON
COMMUNICATIONS COUNSEL

TELEPHONE (202) 223-7326
E-MAIL: jolson@paulweiss.com

ORIGINAL

EX PARTE OR LATE FILED

1285 AVENUE OF THE AMERICAS
NEW YORK, NY 10019-6064
TELEPHONE (212) 373-3000
FACSIMILE (212) 757-3990

62, RUE DU FAUBOURG SAINT-HONORÉ
75008 PARIS, FRANCE
TELEPHONE (33 1) 53 43 14 14
FACSIMILE (33 1) 53 43 00 23

FUKOKU SEIMEI BUILDING
2-2 UCHISAIWAICHO 2-CHOME
CHIYODA-KU, TOKYO 100-0011, JAPAN
TELEPHONE (81-3) 3597-8101
FACSIMILE (81-3) 3597-8120

2918 CHINA WORLD TOWER II
NO. 1 JIANGUOMENWAI DAJIE
BEIJING, 100004
PEOPLE'S REPUBLIC OF CHINA
TELEPHONE (86-10) 6505-6822
FACSIMILE (86-10) 6505-6830

12TH FLOOR, HONG KONG CLUB BUILDING
3A CHATER ROAD, CENTRAL
HONG KONG
TELEPHONE (852) 2536-9933
FACSIMILE (852) 2536-9622

December 20, 2001

VIA FACSIMILE AND HAND DELIVERY

The Honorable Michael Powell
Chairman
Federal Communications Commission
445 12th Street, N.W.
Washington, DC 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Re: Ex Parte Communication in ET Docket No. 98-206; 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 Mr. Chairman:

I am writing on behalf of SkyBridge LCC ("SkyBridge") in response to a letter addressed to you from Sophia Collier, president of Northpoint Technologies ("Northpoint"), dated November 28, 2001 (the "Collier Letter"). The Collier Letter attempts to create the impression that Northpoint has been the victim of a bias in the Commission's licensing processes that favors certain satellite services and disfavors certain terrestrial services. More particularly, the Collier Letter proffers the theory that it is somehow inherently unfair that licenses for a domestic terrestrial microwave service, such as that proposed by Northpoint, might be awarded by auction while various satellite licenses are not. In her effort to make this case, Ms. Collier grossly mischaracterizes a number of relevant facts and regulatory policies. SkyBridge will not attempt to correct all of Ms. Collier's erroneous assertions (they are legion), only the more glaring ones.

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At the outset, one point must be reaffirmed: Whether Northpoint or any other MVDDS applicant is awarded a license to operate in the 12.2-12.7 GHz band is of concern to SkyBridge only to the extent that such a system may cause interference to its satellite services. MVDDS systems such as Northpoint's will not compete with SkyBridge in the marketplace, and the imposition of appropriate technical limits on MVDDS operators should eliminate SkyBridge's interference concerns. Nonetheless, the extent to which the Collier Letter distorts the facts and policies underlying various satellite regulatory matters, including ones that directly affect SkyBridge, compels SkyBridge to correct the record.

In her letter, Ms. Collier complains that the Commission awarded (without an auction) some 66,000 MHz of spectrum to various Ka-band satellite applicants in August of 2001 (plus 84,000 MHz previously awarded for Ka-band satellite services). She finds the Commission's "largess" troubling, compared to the Commission's failure to expeditiously grant Northpoint's request for "only" 500 MHz.¹

Ms. Collier's calculus is more than slightly misleading. Obviously, there are not 150,000 MHz (66,000 plus 84,000) of spectrum allocated for satellite services at Ka-band. This past August, licenses were awarded covering a total of 34 Ka-band orbital locations. Each satellite was authorized to operate in the same approximately 2000 MHz (66,000 divided by 34). If Ms. Collier's concern is that Ka-band satellites are licensed to operate in a wider band of spectrum than the 500 MHz sought by Northpoint, 2,000 MHz provides a more accurate and useful comparison.

Alternatively, if Ms. Collier insists that 66,000 MHz of Ka band spectrum is the proper basis for comparison, then, using her calculus in a consistent manner, the 500 MHz that Northpoint seeks must be multiplied by the 10-15,000 individual transmitter sites that Northpoint claims that it and its affiliates will operate nationwide. In other words, Northpoint is, in reality, seeking between 5 million and 7.5 million MHz of spectrum just for its own use, compared to the 150,000 MHz awarded to multiple Ka-band satellite applicants over the past several years. Northpoint cannot have it both ways.

Ms. Collier uses this same misleading type of comparison later in her letter, claiming that the Ku-band NGSO FSS applicants in the above-referenced proceedings (including SkyBridge) are seeking a total of 24,500 MHz (compared to Northpoint's more "modest" request for 7.5 million MHz).² In reality, each of the NGSO FSS applicants seeks, on average, approximately 3000 MHz of shared spectrum (there is considerable variation, depending on the particulars of each applicant's technical

¹ See Collier Letter at 1.

² Id. at 2.

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approach and business plan; for example, Skybridge has requested a minimum of one GHz in both the uplink and downlink bands). These NGSO systems must share this 3000 MHz in a manner that avoids interference into other NGSO systems (as well as avoiding interference to GSO satellites (both FSS and DBS) and various point-to-point terrestrial services). Indeed, the Commission presently is conducting a separate rulemaking to develop this NGSO/NGSO spectrum sharing plan.³

Moreover, it is worth noting that both the Ka-band systems and the Ku-band NGSO FSS systems that so concern Northpoint will be providing two-way services, while Northpoint's is only a one-way service (Northpoint's "upstream" link is the telephone network). So, to continue to use Northpoint's comparative formula in a consistent manner, the relevant satellite bandwidth must be halved, or Northpoint's request doubled, to 10-15 million MHz. Again, Northpoint cannot have it both ways.⁴

In addition to her mischaracterizations regarding the relative bandwidth needs and desires of various unrelated applicants and services, Ms. Collier expresses concern that the operators of certain satellite systems do not have to compete for licenses at auction, while many terrestrial services (particularly ones indistinguishable from Northpoint's proposed service) do.⁵ Again, Ms. Collier's discussion of this point is distinctly misleading.

First, many satellite licenses, including most of the domestic DBS licenses which appear to be of greatest interest to Ms. Collier, were awarded prior to the 1993 enactment of Section 309(j); no auction could have been held in those cases under any circumstances. Second, the number of orbital locations that were available in those early DBS processing rounds was sufficiently large that mutual exclusivity was avoided; even if Section 309(j) had then been in effect, no auction would have been required. Finally, Ms. Collier complains that the ORBIT Act's narrow exemption from Section 309(j) for international satellite systems is somehow unfair to Northpoint.⁶ Ms. Collier's criticism

³ Establishment of Policies and Service Rules for the Non-Geostationary Satellite Orbit Fixed-Satellite Service in the Ku-Band, FCC 01-134, released July 19, 2001.

⁴ Ms. Collier's analysis totally ignores the differing bandwidth requirements for different services (e.g., broadband versus narrowband) operating in different frequency bands (e.g., 2.5 GHz versus 38 GHz) using different technologies (e.g., low earth orbit satellite versus geostationary satellite versus terrestrial microwave). Under Northpoint's theory, a 3G system should be assigned the same bandwidth as a one-way paging channel.

⁵ See Collier Letter at 3.

⁶ Id. at 2.

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completely ignores the unassailable rationale that Congress explicitly relied on in creating that narrow exception to its general rule favoring auctions in cases involving mutually exclusive applications, a rationale wholly inapplicable to a domestic terrestrial microwave system such as that proposed by Northpoint. Allegations of Commission favoritism toward satellite services are absurd.⁷

Examined in the light of reality, Ms. Collier's assertions can be seen for what they are: the complaints of an applicant obviously dissatisfied with the Commission's regulatory process, but unable to identify anything unfair, unlawful or otherwise inappropriate with regard to the manner in which that process has been applied to its application.⁸ Nothing required Northpoint to attempt to force its terrestrial service into a band reserved for satellite services, particularly when several other bands are specifically allocated for the sort of services proposed by Northpoint (e.g., 2.5 GHz, 24 GHz, 28 GHz, 38 GHz), bands that would permit Northpoint to provide true two-way service. Nothing required Northpoint to propose a technology, and insist upon power levels that are guaranteed to cause substantial harmful interference to those satellite services.⁹ In brief, Northpoint's problems are entirely of its own making.

⁷ See Collier Letter at 1. In pursuit of her theory that the Commission discriminates against terrestrial services such as those proposed by Northpoint, Ms. Collier notes the obvious fact that even some terrestrial services are not awarded by auction, citing to "10,259 wireless licenses for both mobile and fixed microwave services" that were awarded in 2001 without an auction. *Id.* at 2. However, Ms. Collier fails to provide any details regarding how many of these licenses were, by statute, exempt from Section 309(j), because, *inter alia*: (1) there was no mutual exclusivity involved; (2) those grants involved renewal applications; or (3) the licenses were for private radio or public safety services, or for state or local governments or educational uses. The fact that 10,259 terrestrial licenses may have been granted without an auction is not evidence of unfairness or prejudice to Northpoint or anyone else.

⁸ Indeed, the Northpoint/Broadwave applications, which have never been accepted for filing, are, in reality, not applications at all. Instead, they vaguely describe the Northpoint technology and then ask for a blanket waiver of any and all rules that might otherwise be violated by Northpoint's proposal. Even in the absence of the debate over Northpoint's interference potential, these applications could not even begin to be processed, let alone granted, in their current state.

⁹ Ms. Collier's claim that "almost a year ago, the Commission issued an order declaring terrestrial services based on [Northpoint's] technology could share with the eight [proposed Ku-band NGSO FSS] systems" is misleading. All the Commission concluded in the Report and Order referenced by Ms. Collier is that, as an abstract proposition, NGSO FSS and certain MVDDS systems may be able to share spectrum,

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In sum, fundamental fairness has nothing at all to do with Ms. Collier's stated concerns; nor do issues of regulatory uncertainty or delay. Northpoint wants free spectrum, while its competitors -- MMDS, DEMS, LMDS -- had to pay for theirs, either at auction or in the aftermarket. There is no statutory basis or public interest rationale that supports affording Northpoint the special dispensation that it seeks.

If there are any questions regarding this matter, please contact the undersigned.

Respectfully submitted,



Jeffrey H. Olson

Attorney for SkyBridge LLC

cc: Via Facsimile & Hand Delivery
Magalie Roman Salas, Secretary
Commissioner Kathleen Abernathy
Commissioner Michael Copps
Commissioner Kevin Martin
Jane Mago, Esq.
Robert Pepper
Peter Tenhula, Esq.
Bryan Tramont, Esq.
Paul Margie, Esq.
Monica Shah Desai, Esq.
Don Abelson
Thomas Tycz
Bruce Franca
Julius Knapp

provided appropriate power limits and other technical constraints are imposed on the terrestrial system. To date, Northpoint has yet to propose, let alone accept, technical limits that would adequately protect most, if not all, of the NGSO FSS systems.

With respect to Northpoint's dispute with the DBS operators regarding interference to DBS systems, SkyBridge would only note that the MITRE Report cannot be fairly read as supporting Northpoint's claim that its operations will be benign vis-à-vis DBS systems.