

ORIGINAL

EX PARTE COMMUNICATIONS 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
COURTNEY SIMMONS ELWOOD
EVAN T. LEO
ANTONIA M. APPS
MICHAEL J. GUZMAN
AARON M. PANNER
DAVID E. ROSS
RICHARD H. STERN, OF COUNSEL

January 8, 2002

VIA HAND DELIVERY

RECEIVED

EX PARTE

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

JAN - 8 2002

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

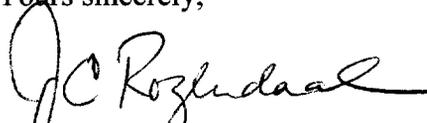
Re: Notification of Ex Parte Communication in ET Docket 98-206/RM-9147; RM-9245; Applications of Broadwave USA et al., PDC Broadband Corporation, and Satellite Receivers, Ltd., to provide a fixed service in the 12.2-12.7 GHz Band; Requests of Broadwave USA et al. (DA 99-494), PDC Broadband Corporation (DA 00-1841), and Satellite Receivers, Ltd. (DA 00-2134) for Waiver of Part 101 Rules.

Dear Ms. Salas:

I write on behalf of Northpoint Technology, Ltd. to inform you that on January 7, 2002, J. Allen Martin of the Livingston Group sent an e-mail containing the attached message to W. Kenneth Ferree, Chief of the Commission's Cable Services Bureau.

Eighteen copies of this letter and its attachment 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: W. Kenneth Ferree, Chief, Cable Services Bureau

No. of Copies rec'd 0118
List ABCDE

Dear Ken:

One of the things that I hope you will take interest in is how the new MVDDS service is actually licensed because this will have a great impact on how much competition will actually be created as a result.

If the FCC decides to chop up the country into markets and auction them off to the highest bidder it is very unlikely that a new viable cable competitor will emerge from this action. This is a formula to repeat the recent failure of "wireless cable" in the MMDS band where local and regional companies attempted and failed to compete. Similarly, the local telephone companies found it expensive and difficult to compete on a community-by-community basis. Moreover, given the consolidation in both the cable and DBS industry over the last decade (and what may still come), it is unrealistic to think that new entities will be able to compete if they only have licenses to operate in a few markets. The only version of "wireless cable" to succeed has been DBS where the Commission granted without auction a set of national licenses that spawned a new industry.

Later the FCC did auction two DBS licenses but this was well after the industry was established and auctions for DBS-type services have not continued (one of those auctioned slots has never been used!). You may know that in August of 2001 the Commission gave out over 30 nationwide licenses for video and data services to satellite operators in the Ka-band without an auction.

Northpoint strongly opposes an auction for licenses to operate a terrestrial service in the 12.2 - 12.7 GHz band. Northpoint feels it is fundamentally unfair to treat companies that will operate in the same spectrum and offer the same or similar services differently.

DBS the incumbents were granted access to nationwide licenses without auction to launch their services. The same companies (EchoStar, Hughes Electronics and Pegasus) were granted new Ka-Band licenses in August of this year. Northpoint can not understand why it should be treated in a less favorable manner, particularly when its efforts and patented technology, and only Northpoint's were the reason that the Commission decided to allow terrestrial operation in the 12.2 - 12.7 GHz band in the first place.

CERTIFICATE OF SERVICE

I, Shonn Dyer, hereby certify that on this 8th day of January, 2002, 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
445 12th Street, SW
Room TW-B204
Washington, D.C. 20554

Kenneth Ferree*
Chief
Cable Services 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

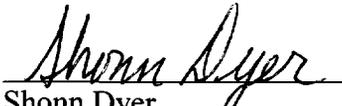
Tony Lin
David C. Oxenford
Shaw Pittman
2300 N. Street, NW
Washington, D.C. 20037

Nathaniel J. Hardy
Irwin, Campbell & Tannewald, PC
1730 Rhode Island Avenue, NW
Suite 200
Washington, D.C. 20036

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

Nancy K. Spooner
Swidler Berlin Shereff Friedman, LLP
The Washington Harbor
3000 K Street N.W., Suite 300
Washington, D.C. 20007-5116


Shonn Dyer