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January 14, 2002

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 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. and Broadwave USA, Inc. (collectively, "Northpoint") in response to an October 30, 2001 ex parte letter from Satellite Receivers, Ltd. ("Satellite Receivers"). Satellite Receivers' letter does nothing to alter the fact that Satellite Receivers is not qualified to receive a license to provide terrestrial service in the 12.2-12.7 GHz frequency band (the "12 GHz band"), and the Commission should accordingly dismiss Satellite Receivers' application without further ado.

Section 1012 of the LOCAL TV Act requires that the Commission "provide for an independent technical demonstration of any terrestrial service technology proposed by any entity that has filed an application to provide terrestrial service in the [12 GHz band] to determine whether the terrestrial service technology proposed to be provided by that entity will cause harmful interference to any direct broadcast satellite service."¹

¹ Launching Our Communities Access to Local Television Act of 2000, Pub. L. No. 106-553, App. B, Tit. X, § 1012(a), 114 Stat. 2762, 2763A-128, 2762A-141 ("LOCAL TV Act").

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On its face, this law requires that “any entity” that has applied for a terrestrial license for the 12 GHz band must come forward with technology for an “independent technical demonstration” in order to be sure that, if the applicant receives a license, it will not “cause harmful interference to any direct broadcast satellite service.” Satellite Receivers has applied for a terrestrial license in the 12 GHz band but has failed to come forward with technology for testing. Satellite Receivers notes that the MITRE Corporation has carried out statutorily mandated testing and then says: “The law having been complied with, it is now time for the rules and licensing procedures to be promulgated by the Commission.”² By this curious passive sentence construction, Satellite Receivers seeks to draw attention away from the fact that it itself has *not* complied with the law. It did not even attempt to describe the technology it proposes to use, much less submit technology for independent testing. In fact Satellite Receivers has repeatedly informed the Commission that it does not have any technology of its own (as shown, for example, by Satellite Receivers’ letter to MITRE stating that it would not provide technology for testing and its efforts to license Northpoint’s technology.) Accordingly, the Commission can have no assurance that Satellite Receivers is capable of operating a terrestrial service in the 12 GHz band without causing harmful interference to direct broadcast satellite services. In this respect, Satellite Receivers stands in sharp contrast to Northpoint, which has repeatedly proven itself capable of doing just that – as MITRE’s independent demonstration confirmed.

Satellite Receivers says it “strenuously disagrees with any interpretation of Section 1012 as requiring each applicant’s specific equipment to be tested.”³ This is unsurprising given Satellite Receivers’ apparent lack of any technology to test, but it is also unavailing, since the statute’s plain meaning is clear: if you’ve applied for a license, then you’ve got to show that your technology can operate without causing harmful interference to DBS. Satellite Receivers has pointedly failed to fulfill this requirement and therefore is not qualified for a license in the 12 GHz band. Also unavailing is Satellite Receivers’ suggestion that the Commission consider on the merits “the applications of all legally, technically and financially qualified applicants.”⁴ The long, long record of these proceedings is utterly devoid of any indication that Satellite Receivers is technically qualified, and so it cannot be legally qualified for a license.

In a further tacit admission that it has no technology of its own to use in the 12 GHz band, Satellite Receivers asks that the Commission require that Northpoint license its own technology to Satellite Receivers on “fair and reasonable terms.”⁵ Satellite Receivers claims that such a requirement would be “in keeping with the Commission’s Revised Patent Procedures,” yet Satellite Receivers provides no citation to those procedures or any other Commission document in support of this plea for the Commission to exercise an unauthorized taking of Northpoint’s patented property.

² Satellite Receivers Oct. 30, 2001, *ex parte* at 1-2.

³ *Id.* at 2.

⁴ *Id.*

⁵ *Id.*

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Satellite Receivers's plea for compulsory licensing appears to be based on the erroneous notion that Northpoint advocates the adoption of rules that require terrestrial licensees in the 12.2-12.7 GHz band to operate systems encompassed within the claims of Northpoint's patents. In fact, just the opposite is true. Northpoint does not want its technology enshrined as a standard for all terrestrial operations in the 12 GHz band. Nor, does Northpoint seek to be the exclusive provider of terrestrial broadcast services in the 12.2-12.7 GHz band. Others may create and use their own technologies, if they are ingenious enough to do so – so long as they do not infringe Northpoint's patent rights in the process.

So far, however, only Northpoint has developed technology to provide non-interfering terrestrial broadcast service in the 12.2-12.7 GHz band. Only Northpoint has demonstrated, both before the Commission and in MITRE's statutorily mandated independent technical demonstration, that terrestrial sharing of the band with existing and planned satellite services is feasible. Satellite Receivers, by contrast, is technologically bankrupt. It was a no-show at MITRE. Its application for terrestrial licenses should be dismissed.

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.

Yours sincerely,



J.C. Rozendaal

*Counsel for Northpoint Technology, Ltd.
and Broadwave USA, Inc.*

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CERTIFICATE OF SERVICE

I, Shonn Dyer, hereby certify that on this 14th 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:

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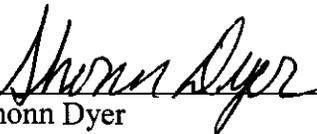
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