

January 28, 2002

Ms. Monica Shah Desai  
Office of Commissioner Kevin J. Martin  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, DC 20554

*Re: ET Docket No. 98-206; RM-9147; RM-9245 EX PARTE*

Dear Monica,

Thank you for the opportunity to meet with you on Monday, January 14, to discuss the satellite industry's opposition to the application of Northpoint Technology to operate its proposed terrestrial wireless cable service in the Direct Broadcast Satellite (DBS) spectrum band. In numerous technical filings with the Commission, the SBCA and its DBS member companies have proved that the sharing of the 12.2-12.7 GHz band by terrestrial users will indisputably cause harmful interference to the reception of DBS satellite signals by American consumers. That fact was corroborated by the results of the tests conducted for the Commission by the MITRE Corporation, tests mandated by Congress because of its concern about the very interference that the MITRE results confirmed.

I am writing in response to your question as to whether other wireless cable providers have paid for spectrum. Northpoint has argued that their service is precluded from participating in auctions for use of the DBS band. Northpoint is essentially asking the government to favor Northpoint over its wireless and DBS competitors. Auctions for spectrum that is assigned for wireless cable and broadband services functionally identical to the service proposed by Northpoint (including Local Multipoint Distribution Service, Multipoint/ Multichannel Distribution Service, Wireless Communications Service and 39 GHz) have raised over \$1.26 billion for the Treasury (please see Attachment A). Northpoint now asserts that the Commission should give it a competitive advantage over its wireless services competitors who already paid for their spectrum and who must obtain any additional spectrum by auction. If Northpoint is licensed to operate in any spectrum band, the law requires the Commission to follow the normal process of opening a filing window and soliciting applications for service.

In response to Northpoint's efforts to get an amendment added to an Appropriations bill that would have prohibited the Commission from auctioning the terrestrial use of the 12.2-12.7 GHz spectrum, the Administration issued this Statement of Administration Policy (SAP): "We also understand that an amendment regarding the Federal Communication Commission (FCC) may

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be offered during Senate floor debate. The Administration would strongly oppose any amendment that would restrict the FCC's ability to assign, via competitive bidding, spectrum licenses that could be used by terrestrial (i.e., non-satellite) services. Such a provision would interfere with the efficient allocation of Federal spectrum licenses, provide a windfall to certain users, and reduce Federal revenues.”

Numerous parties, such as Pegasus Communications, MDS America, Inc., AT&T Wireless Services, and many other potential competitors are willing to participate in an auction for the right to offer terrestrial wireless services in the DBS band. Giving Northpoint preferential treatment by granting it this valuable public resource would limit competition and would cost the U.S. Treasury an estimated \$1 billion over five years. Accordingly, should the Commission ultimately decide to license a terrestrial service in the DBS spectrum band, despite the proven interference it would cause, the law states that it must do so through its normal licensing procedure.

Sincerely,

Andy Wright  
President  
SBCA

cc: Peter Tenhula, Senior Legal Advisor to Chairman Powell  
Bryan Tramont, Senior Legal Advisor to Commissioner Abernathy  
Paul Margie, Spectrum and International Legal Advisor to Commissioner Copps  
Catherine Crutcher Bohigian, Legal Advisor to Commissioner Martin

Encl.

# **ATTACHMENT A**

# AMOUNTS PAID FOR WIRELESS CABLE SPECTRUM AT AUCTION<sup>1</sup>

## 1996-2000

AUCTION	DATES	WINNING BIDDERS	NET BIDS
Multipoint/ Multichannel Distribution Service (MMDS) -- 2596- 2644 MHz	December 13, 1995- March 28, 1996	67 winning bidders	\$216,397,391
Wireless Communications Service -- 2305-2350 MHz	April 15- April 29, 1997	17 bidders won 126 licenses	\$13,638,940
Local Multipoint Distribution Service (LMDS ) – 27.5-28.35 GHz; 29.1-29.25 GHz; 31-31.3 GHz	February 18 – March 25, 1998	104 small business bidders won 864 licenses.	\$578,663,029
LMDS Re-auction	April 27- May 12, 1999	40 winning bidders	\$45,064,450
39 GHz	April 12- May 8, 2000	29 bidders won 2173 licenses	\$410,649,085
<b>TOTAL</b>			<b>\$1,264,412,895</b>

<sup>1</sup> Source: <http://wireless.fcc.gov/auctions/>, visited January 15, 2002