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February 22, 2002

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EX PARTE

FEB 22 2002

Mr. William Caton
Acting Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

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 Mr. Caton:

On February 21, 2002, Antoinette Cook Bush met on behalf of Northpoint Technology, Ltd., with Peter Tenhula, senior legal advisor to the Chairman. The purpose of the meeting was to urge the Commission to issue licenses to Northpoint's Broadwave affiliates to provide terrestrial service in the 12.2-12.7 GHz frequency band without competitive bidding.

Ms. Bush pointed out that that the Commission's licensing procedures in these proceedings have been biased against Northpoint and in favor of satellite operators; that Northpoint has, through its patented technology, created the bandwidth that it is seeking to use; and that the Commission has issued GSO FSS, NGSO FSS, and terrestrial FS licenses without auctions. For example, Ms Bush noted that the FCC gave Boeing licenses for 800 earth stations to operate its new Connection service in December of this past year, in spectrum that is part of this proceeding.¹ Boeing also has licenses pending for two satellite systems in this proceeding. In addition, Boeing would then have the

¹ Order and Authorization, *The Boeing Company Application for Blanket Authority to Operate Up to Eight Hundred Technically Identical Transmit and Receive Mobile Earth Stations Aboard Aircraft in the 14.0-14.5 and 11.7-12.2 GHz Frequency Bands*, DA 01-3008 (Int. Bur. rel. Dec. 21, 2001).

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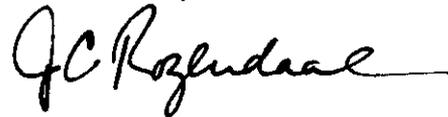
opportunity to bid for the terrestrial right to use the same spectrum! Thus, Boeing will have four bites at the same spectrum apple, three of which did not involve even the prospect of an auction!

Ms. Bush also noted that no other party in this proceeding has demonstrated that it has a terrestrial technology that is capable of sharing this spectrum with satellite operations. Ms. Bush touched on many of the issues that were covered the materials presented in the February 8, 2002, meeting with Chairman Powell (and filed in these proceedings as an attachment to the February 11, 2002, notification of that *ex parte* meeting). Ms Bush also expressed the concerned that the disparities in the FCC's satellite and terrestrial licensing policies would discourage other innovators of novel technologies that do not fit neatly into the Commissions current licensing scheme from seeking licenses from the Commission.

Finally, Ms. Bush discussed the fact that an auction for the terrestrial licenses in this spectrum is not likely to result in the development of competition to cable or DBS. First, auctions raise the cost of providing service. Neither the cable industry nor the DBS industry originally purchased their spectrum in auction.² In fact, as recently as August of 2001 the FCC provided Pegasus, PanAmSat and Hughes a total of fifteen *new* nationwide 1000 MHz licenses without auction.³ Second, the FCC's past efforts to promote competition by licensing a variety of companies in different markets were unsuccessful, the main reason being that the cost of providing service is too high if an entity only has a few markets. Programming costs much more if a company only has access to a small number of subscribers. Given the consolidation in the cable industry and the DBS industry over the recent years, it is critical for new competitors to have scope and scale if they want to compete successfully.

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.

cc: Peter Tenhula

² The auction of certain orbital locations and licenses reclaimed from an original DBS licensee that did not meet the FCC-imposed build-out requirement was an anomaly.

³ Order, *Second Round Assignment of Geostationary Satellite Orbit Locations to Fixed Satellite Service Space Stations in the Ka-Band*, DA 01-1693 (Int. Bur. rel. Aug. 3, 2001).

CERTIFICATE OF SERVICE

I, Shonn Dyer, hereby certify that on this 22nd day of February, 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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