

ORIGINAL

KELLOGG, HUBER, HANSEN, TODD & EVANS, P.L.L.C.

SUMNER SQUARE
1615 M STREET, N.W.
SUITE 400
WASHINGTON, D.C. 20036-3209

(202) 326-7900

FACSIMILE:
(202) 326-7999

EX PARTE OR LATE FILED

February 27, 2002

VIA HAND DELIVERY

RECEIVED

EX PARTE

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

FEB 27 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 Mr. Caton:

I write on behalf of Northpoint Technology, Ltd., and Broadwave USA, Inc. (collectively, "Northpoint"), in response to an ex parte letter filed in the above-referenced proceedings on January 31, 2002 by DIRECTV Inc., and EchoStar Satellite Corp. (collectively, the "DBS operators.")

The DBS operators' expression of concern with harmful interference was perhaps understandable at the beginning of these proceedings because two systems use the same frequencies in the same places at the same time, a potential for interference arises. Now however, the DBS operators are simply beating a dead horse. Although *no one else* has come forward with a technology proven capable in independent demonstrations of sharing the 12.2-12.7 GHz band ubiquitously with the DBS operators and NGSO FSS operators, *Northpoint's* ability to do so without causing harmful interference to DBS broadcasts has been demonstrated so many times, by so many people, that it is no longer open to serious dispute. At this late stage of the proceedings, the DBS operators' rehashing of their tired arguments about interference must be attributed to a fear of

No. of Copies rec'd
L B A B C D E

0+17

healthy, facilities-based competition from Northpoint rather than any legitimate concern with interference.

Most of the points raised in the DBS operators' letter have already been addressed and refuted by Northpoint many times in these proceedings, and Northpoint will not repeat all of its points here. The DBS operators do raise two new points in their letter that are worth responding to directly, however.

The first has to do with the fact that no DBS subscriber ever reported harmful interference due to the operation of Northpoint's system – not even during the tests of Northpoint's system carried out by the DBS operators themselves. The DBS operators now claim that Northpoint's claim of no complaints has now been "contradicted as a factual matter." In support of this bold allegation, the DBS operators cite a letter from a Mr. Harish Patel to Chairman Powell discussing interference caused by a test of equipment Mr. Patel obtained from MDS International. It is clear from Mr. Patel's letter, however, that he was *not* using Northpoint technology. Any interference that may have been caused by MDS's unproven system does nothing to alter Northpoint's still unblemished record of sharing without causing harmful interference to DBS.

The second point has to do with the DBS operators' belated proposal to move terrestrial operations from the 12.2-12.7 GHz band into the CARS band. Northpoint will not repeat here all of the reasons why the 12.2-12.7 GHz band is the most suitable home for its proposed service. It suffices for present purposes to note that one reason is that scale economies for equipment are available in the 12.2-12.7 GHz band. In their January 31 *ex parte*, the DBS operators cite a letter from a manufacturer of Low Noise Blocks ("LNBS") for the proposition that Northpoint could obtain equipment for other bands as cheaply as it could for the 12.2-12.7 GHz band.

But in fact the letter they cite supports Northpoint's position rather than their own. The letter says that the cost of LNBS for other bands would be "similar" to the costs for those in the 12.2-12.7 GHz band "assuming similar specification, *and similar production volumes.*"¹ But because the DBS operators generate orders for millions of receivers in the 12.2-12.7 GHz band, it would be impossible to attain similar production volumes in any other band – at least, a new terrestrial entrant could not hope to achieve such volumes in another band for many, many years. And until those volumes are achieved, the cost of the equipment will be much higher. That is what Northpoint means when it says that scale economies in equipment are one feature that makes the 12.2-12.7 GHz band optimal for its service. Rather than disproving that point, the DBS operators have now confirmed it.

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.

¹ Letter from Robert J. Hannah, California Amplifier, to David Pattillo, DIRECTV (Jan. 30, 2002) (attached as exhibit to DBS operators' Jan. 31 *ex parte* letter).

Mr. William Caton
February 27, 2002
Page 3

Yours sincerely,

A handwritten signature in black ink, appearing to read "J.C. Rozendaal". The signature is fluid and cursive, with a horizontal line extending from the end of the name.

J.C. Rozendaal
Counsel for Northpoint Technology, Ltd.

CERTIFICATE OF SERVICE

I, Shonn Dyer, hereby certify that on this 27th 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:

William F. Caton*
Acting Secretary
Federal Communications Commission
445 12th Street, SW
Room TW-B204
Washington, D.C. 20554

Peter Tenhula, Senior Legal Advisor*
Office of the Chairman
Federal Communications Commission
445 12th Street, SW
Washington, D.C. 20554

Bryan Tramont, Senior Legal Advisor*
Office of Commissioner Abernathy
Federal Communications Commission
445 12th Street, SW
Washington, D.C. 20554

Paul Margie, Legal Advisor*
Office of Commissioner Copps
Federal Communications Commission
445 12th Street, SW
Washington, D.C. 20554

Monica Shah Desai, Legal Advisor*
Office of Commissioner Martin
Federal Communications Commission
445 12th Street, SW
Washington, D.C. 20554

Thomas Sugrue, Chief*
Wireless Telecommunications Bureau
Federal Communications Commission
445 12th Street, SW
Washington, D.C. 20554

Donald Abelson, Chief*
International Bureau
Federal Communications Commission
445 12th Street, SW
Washington, D.C. 20554

Edmond J. Thomas, Chief
Bruce Franca, Deputy Chief
Office of Engineering & Technology*
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
Step toe & 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