

March 5, 2002



William F. Caton
Acting Secretary,
Federal Communications Commission
TW-A325
44512th Street., SW
Washington, DC 20554

Re: ET Docket No. 98-206
Notice of *Ex Parte* Presentation

Dear Mr. Caton:

On Monday, March 4, 2002, I met with Commissioner Michael Copps and his Spectrum and Legal Advisor Paul Margie with respect to the above-captioned matter and the rela Northpoint application.

I began by stating that I believed that Northpoint's application should not be regarded as mutually exclusive, but that I had little to add beyond what others have already filed on this issue. I then proceeded to explain why I believe that the Commission should exercise its discretion not to hold an auction with respect to this spectrum in the event it were to decide not to treat Northpoint's application as mutually exclusive.

First, Northpoint offers the last and best opportunity to bring additional price competition to the MVPD market. I pointed out that auctions are not intended to be a revenue generating device, and that they are an inappropriate allocational mechanism in this case

Second, auctions have a poor track record in bringing new competition to market. Of particular relevance here is that fact that the winners of market by market auctions would be unable to engage in cost-effective national marketing campaigns. Where, as here, the incumbents obtained their spectrum for free, the debt burden of auction payments is an especially significant impediment. .

Third, I noted that even though DBS is a broadcast service some DBS operators have sought to avoid accepting the trade offs which come with the benefits of FCC licensure. By contrast, Northpoint has shown a willingness to serve the needs of the public and to respect the principle of localism.

Commissioner Copps asked whether the Commission could be certain that Northpoint's buildout would proceed as promised. I replied that the Commission has the power to insure that the build out remains on schedule. License terms set out in the Communications Act are maxima, and I indicated I would not oppose grant of licenses of shorter duration to insure such compliance.

Commissioner Copps also inquired as to whether there were unintended consequences which might follow from granting Northpoint's application. I said that the possible benefits of bringing new competition through efficient spectrum sharing justify the risk. Moreover, I said, to the extent that there might be unintended consequences here, the circumstances of this case are so unique that it is unlikely that adverse precedents would be set.

Respectfully submitted,

Andrew Jay Schwartzman
President and CEO

cc. Commissioner Copps
Paul Margie