

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

October 31, 2002

EX PARTE

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

**Re: Notification of Ex Parte Communication in ET Docket 98-206; RM-9147;
RM-9245**

Dear Ms. Dortch:

On October 30, 2002, Antoinette Cook Bush of Northpoint Technology, Ltd., ("Northpoint") met with Sam Feder, Legal Advisor to Commissioner Martin and, separately, with Paul Margie, Legal Advisor to Commissioner Copps. The purpose of the meetings was to discuss issues raised in the pending petitions for reconsideration in ET Docket 98-206. Ms. Bush handed out a copy of the attached presentation in each meeting.

In both meetings, Ms. Bush also urged the Commission promptly to complete action on the pending petitions for Reconsideration in Docket 98-206. In particular, she suggested that the Commission consider acting immediately on the auction issues raised in the Petition for Reconsideration filed by Pegasus Broadband Corp. It was on the basis of Pegasus's petition alone that the FCC sought and obtained an order from the D.C. Circuit holding in abeyance Northpoint's appeal of the Commission's Second Report and Order in this docket. Commission action on the narrow issues raised in that petition should allow Northpoint's appeal to proceed, even as the Commission continues to consider the technical issues raised in other petitions for reconsideration.

Ms. Bush also pointed out that Pegasus erroneously claimed in its petition that it "passed" the MITRE test. In fact, the MITRE report indicated that the information Pegasus had submitted was insufficient to determine if it had a viable system at all. With regard to Pegasus's suggestion that the Commission might hold an auction with the pool of bidders limited to Pegasus, Northpoint, and Satellite Receivers, Ms. Bush observed that the Commission had already considered and rejected that suggestion, and that there is

Ms. Marlene H. Dortch

October 30, 2002

Page 2

no need to revisit that issue. *Compare First Report and Order*, ¶ 329 & n.667 (seeking comment on proposal to limit license to one or more of the terrestrial applications already submitted) *with Second Report and Order* ¶¶ 210 *et seq.* (discussing status of previously submitted applications, dismissing them without prejudice, and permitting their resubmission in new filing window together with other applications). Finally, she inquired about the status of the Compass Systems, Inc., DBS application.

This letter is being filed electronically. Please contact me if you have any questions.

Yours sincerely,



J.C. Rozendaal

Counsel for Northpoint Technology, Ltd.

cc: Sam Feder (Office of Commissioner Martin)
Paul Margie (Office of Commissioner Copps)

CERTIFICATE OF SERVICE

I, Shonn Dyer, hereby certify that on this 31st day of October, 2002, copies of the foregoing were served by first class United States mail, postage prepaid, on the following:

Sam Feder, Legal Advisor
Office of Commissioner Martin
Federal Communications Commission
445 12th Street, SW
Washington, D.C. 20554

Nathaniel J. Hardy
Irwin, Campbell & Tannewald, PC
1730 Rhode Island Avenue, NW
Suite 200
Washington, D.C. 20036

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

James H. Barker, III
Latham & Watkins
1001 Pennsylvania Ave., NW
Suite 1300
Washington, D.C. 20004-2505

Antoinette Cook Bush
Northpoint Technology, Ltd.
444 North Capitol Street, N.W.
Suite 645
Washington, D.C. 20001

Pantelis Michalopoulos
Steptoe & Johnson LLP
1330 Connecticut Avenue, NW
Washington, D.C. 20036

Tony Lin
David C. Oxenford
Shaw Pittman
2300 N. Street, NW
Washington, D.C. 20037

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