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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

March 3,2003

**EX PARTE**

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

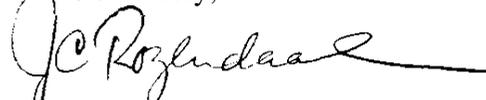
**Re: Notification of Ex Parte Communication in ET Docket 98-206; RM-9147;  
RM-9245; Application of Compass Systems, Inc. for Authority to Construct  
an International Direct Broadcast Satellite System.**

Dear Ms. Dortch:

On February 28, 2003, Sophia Collier and Antoinette Cook Bush of Northpoint Technology, Ltd., and Compass systems, Inc., met with Commissioner Adelstein and his legal advisor Barry Ohlson. The attached presentation was given at the meeting and summarizes the points discussed. In addition, Ms. Bush gave Mr. Ohlson a copy of the comments tiled by filed Northpoint Technology, Ltd., in response to the Second Report and Order in ET Docket 98-206.

Eight copies of this letter and its attachment 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  
and for Compass Systems, Inc.*

cc: meeting participants

**Briefing to Federal Communications Commission  
Commissioner Jonathan Adelstein**

Northpoint Technology

February 28, 2003

# Northpoint – A Revolutionary Technology

- Northpoint is a patented technology that allows the terrestrial reuse of spectrum used by satellites
- Northpoint accomplishes a “triple play,” allowing terrestrial sharing with satellites in the same time, place and frequency
- Prior to Northpoint, complete satellite-terrestrial spectrum sharing was considered to be impossible
- Northpoint seeks to create a new wireless broadband network and offer low-cost multi-channel video and high-speed Internet service to consumers nationwide
- Northpoint has applied to the Commission to launch Compass – a next generation DBS system that will operate as a combined terrestrial-satellite network and achieve radical improvements in spectrum efficiency and offer highly competitive service to the public
- Northpoint will provide needed competition to cable and DBS

## Northpoint Regulatory Timeline

- 1994: Northpoint first brings its technology to the FCC
- 1997: Northpoint is granted first experimental license
- 1998: Northpoint and Skybridge file Petitions to use the DBS band. FCC joins Petitions; calls for satellite, but not terrestrial applications
- 1999: Seven satellite applicants and Northpoint file on same day
- 2000:
  - Congress passed ORBIT Act prohibiting auction of spectrum “used for international satellite service;” also requires independent testing of terrestrial applicants
  - FCC establishes MVDDS and NGSO satellite service; determines to grant all satellite applications, but seeks comment on MVDDS auction

## Regulatory Timeline, Continued...

- 2001:
  - Northpoint is sole company to provide equipment for mandated independent testing; MITRE confirms Northpoint can share spectrum
  - FCC grants, without auction, a nationwide license to Boeing Connexion for 800 ground stations using shared spectrum
- 2002:
  - Northpoint files Compass DBS application
  - FCC issues final technical rules for MVDDS; dismisses Northpoint's applications and calls for auction
- 2003 : Auction scheduled for June 25, 2003. Despite 2000 statute, there is no independent testing requirement for applicants

## Current Status



- Northpoint marks 9<sup>th</sup> year of effort to commercialize its revolutionary technology
- Northpoint appealed the dismissal of its license applications – FCC opposed expedition of appeal pending reconsideration
- Petitions for Reconsideration are pending at FCC
- Compass application – now pending almost one year – still not “accepted for filing,” even though another later filed, non-conforming DBS application has been accepted (SES DBS application)
- Cable rates increased over 7% last year

## **Compass Application Should Be Granted In Light of the MSS Order**

- The Compass application:
  - Seeks to integrate a fixed terrestrial platform with DBS service by re-using satellite spectrum
  - Achieves radical improvements in spectral efficiency, system capacity and infrastructure cost
  - Provides significant improvement in service to the public (e.g., meaningful cable competition, service to rural areas, carriage of all local television channels)
- The FCC should accept the Compass application for filing and grant license for integrated satellite-terrestrial service

## MSS Order Rationale

- Allowed Mobile Satellite Service (MSS) operators to use terrestrial spectrum (“ancillary terrestrial components” or ATCs ) without an auction
- FCC found several public interest benefits: “improved spectrum efficiency, reduced costs, and increased competition.” (para.65)
- The MSS Order expressly rejected calls for auction for shared terrestrial use of satellite spectrum
  - “We are also not persuaded that allowing MSS operators to incorporate ATCs without going through a competitive bidding process is inequitable to CMRS carriers or will unjustly enrich those MSS operators.” (para. 226)
- To maintain consistent policy, the FCC should not conduct an auction for MVDDS licenses, which will also make terrestrial use of satellite spectrum

## Applying the MSS Standard to Compass

"Improved spectrum efficiency"	Combined DBS-terrestrial system is at least 50 times more efficient than a satellite only system (Compass Amended Application, 6/4/02)
"Reduced costs"	Combined system will require many fewer cells and eliminate redundant head-end equipment, <i>significantly</i> lowering costs (Northpoint <i>ex parte</i> , 4/5/02)
"Increased competition"	Combined system will compete with cable and DBS, providing 300 video channels and have 2 mbps internet (Northpoint <i>ex parte</i> , 4/5/2002)
"Inequitable" to satellite operators?	Equal treatment, not better treatment: DBS was granted all of its original spectrum without auction (5,800 MHz of capacity); NGSO applicants given licenses for same spectrum without auction (Northpoint <i>ex parte</i> , 1/23/02)
"Unjust enrichment"?	"Northpoint arrived at the Commission many years ago with a proposal for a new and innovative way to share the DBS spectrum. . . . There is little question that had it not been for Northpoint, the MVDDS service would not be ready to move forward today." (Joint Statement of Chairman Powell and Commissioner Abernathy accompanying MVDDS Report and Order, 4/23/02)

## Auctions Have Not Proven To Be Successful in Launching New Technologies

Failure	Success
New entrants purchasing licenses in auctions often ended in bankruptcy	Wi-Fi is flourishing in unlicensed spectrum
Wall Street analysts identified that spectrum auctions drained cash needed to build networks	Air-Cell and Boeing Connexion are providing innovative services to aircraft using authorizations provided without auction
Companies buying licenses were forced to compete with others previously been granted licenses without auction	AT&T and others are providing fixed wireless services with licenses granted without auction through "site based" licensing system
Case: Over 60% of the licenses sold in the last fixed wireless auction (39 GHz) are now bankrupt	Numerous applications are planned for ultrawide band applications - no auctions required

## **Back Up Slides**

## DBS Operators and Auction Facts

- When the DBS service was established, all DBS licenses were issued without auction
  - DBS is currently using 5,800 MHz of spectrum capacity granted to it without auction
  - DirecTV has never participated in an auction
  - The two slots that were auctioned in 1996 were anomalies and the Commission has returned to its no-auction policy for DBS operators with its August 2001 Ka-Band grants
    - Notably Pegasus, DirecTV's largest distributor – who has advocated an auction for Northpoint – was given five nationwide licenses in the Ka-Band *without an auction*. Hughes Electronics, parent of DirecTV, got eight nationwide licenses, again without an auction

## FCC Decisions on When to Auction or Not Auction Seem Arbitrary

- MSS Order (2003): Giving satellite companies right to use terrestrial portion of satellite spectrum without auction
- Satellite systems: Aug. 2001: 11 companies granted 66,000 MHz of spectrum without auction; no assertion that ORBIT prohibited auction; licenses given to Hughes, Pegasus, Echostar, et al.
- Ground based wireless licenses: Over 11,000 granted in 2001 without auction, primarily to large commercial telecommunications companies such as Nextel, AT&T Wireless, Verizon, et al.
- Cable Relay Licenses: Licenses granted without auction
- MVDDS: Auction. Northpoint seeks license to operate using 500 MHz of spectrum capacity created through its own technology
  - Will share with the seven systems with whom it applied on the same day, sharing the very same spectrum, offering the same or similar services that will not be subject to auction

## Auctions Are Discretionary; Not Mandatory

- As the FCC licensing activity demonstrates, the Commission can easily grant licenses without an auction when it chooses to do so
- No law requires an auction for Northpoint
- Auctions have significant legal impediments in this case
  - Lack of mutual exclusivity by qualified applicants
  - Congressional testing requirement; Patents
    - Local TV Act requires independent testing; FCC risks “1498 taking” if testing infringes Northpoint patents
  - Procedural fairness (disparity treatment of similarly situated applicants)
  - ORBIT Act prohibits auction of spectrum used for international satellite systems – Northpoint uses same spectrum as international satellites

## Senate Support

(As expressed in letters to FCC, floor statements, and/or cosponsorship of  
Emergency Communications and Competition Act)

Sen. Max Baucus (D-MT)	Sen. Ted Kennedy (D-MA)
Sen. Conrad Burns (R-MT)	Sen. John Kerry (D-MA)
Sen. Hillary Rodham Clinton (D-NY)	Sen. Mary Landrieu (D-LA)
Sen. Susan Collins (R-ME)	Sen. Patrick Leahy (D-VT)
Sen. Christopher Dodd (D-CT)	Sen. Joe Lieberman (D-CT)
Sen. Byron Dorgan (D-ND)	Sen. Trent Lott (R-MS)
Sen. Judd Gregg (R-NH)	Sen. Barbara Mikulski (D-MD)
Sen. Kay Bailey Hutchison (R-TX)	Sen. Patty Murray (D-WA)
Sen. Daniel Inouye (D-HI)	Sen. Arlen Specter (R-PA)
Sen. Jim Jeffords (I-VT)	Sen. Debbie Stabenow (D-MI)
Sen. Tim Johnson (D-SD)	Sen. Ted Stevens (R-AK)

# National Public Interest Support

(Expressed to FCC and Congress in filings, letters, and testimony)

Consumer Federation of America

Consumers Union

Leadership Conference on Civil Rights

League of United Latin American Citizens

National Congress of American Indians

National Council of La Raza

National Grange

National Indian Telecommunications Institute

American College of Emergency Physicians

American Telemedicine Association

Association of Clinicians for the Underserved

Center for Media Education

Tex Hall (*Chair, Mandan, Hidatsa & Arikara Nation*)

Wilma Mankiller (*former Principal Chief, Cherokee Nation*)

Nancie Marzulla, Esq. (*property rights advocate*)

Media Access Project

Nat'l Ass'n of Community Health Centers

Nat'l Ass'n of Rural Health Clinics

Nat'l Center for Missing & Exploited Children

National Coalition of Hispanic Organizations

Organizations Concerned About Rural Education

# State/Regional Public Interest Support

(Expressed to FCC and Congress in filings and letters.)

Affiliated Construction Trades Foundation (WV)

Anaconda Local Development Corp. (MT)

Avoyel-Taensa Tribe of Louisiana

Catholic Committee of Appalachia

Community & Residential Services Ass'n (LA)

Economic Development Corporation (NE)

Iowa Chamber of Commerce Executives

Louisiana Rural Hospital Coalition, Inc.

Louisiana School Boards Association

Montana Public Interest Research Group

Montana Rural Development Partners, Inc.

Montana Rural Education Association

Nat'l Ass'n of Social Workers (WV Chapter)

Office of Emergency Preparedness (E Baton Rouge)

Professional Developers of Iowa

Southern Appalachian Labor School

West Virginia Citizen Action

West Virginia Environmental Action

# Television Broadcaster Support

(Expressed to FCC and Congress in filings and letters)

National Association of Broadcasters

Ass'n of Public Television Stations

California Oregon Broadcasting, Inc.

Colorado Broadcasters Association

Corridor Television, LLP

Eagle III Broadcasting LLC

Granite Broadcasting Corporation

Gray Communications Systems

Liberty Corporation

Lin Television Corporation

MD/DE/DC Broadcasters' Ass'n

Nat'l Ass'n of Black Owned Broadcasters

Paxson Communications Corporation

Prime Time Christian Broadcasting, Inc.

Roberts Broadcasting, Inc.

Schurz Communications, Inc.

Second Generation, Ltd.

South Carolina Broadcasters Association

# Local Broadcast Stations Support

WTVY	Dothan	AL	KFXA	Cedar Rapids	IA	WZPX	Battle Creek	MI	WIVB	Buffalo	NY	KMLM	Odessa	TX
WPXH	Gadsden	AL	KPXR	Cedar Rapids	IA	WDWB	Detroit	MI	WKBW	Buffalo	NY	KXII	Sherman	TX
WSFA	Montgomery	AL	KFPX	Newton	IA	WOOD	Grand Rapids	MI	WPXN	New York	NY	KPCB	Snyder	TX
KAIT	Jonesboro	AR	WCPX	Chicago	IL	WILX	Lansing	MI	WSPX	Syracuse	NY	KLTV	Tyler	TX
KBPX	Flagstaff	AZ	WIFR	Freeport	IL	KBJR	Duluth	MN	WTVH	Syracuse	NY	KPXL	Uvalde	TX
KPPX	Tolleson	AZ	WPXS	Mt. Vernon	IL	KDLH	Duluth	MN	WYPX	Amsterdam	NY	KWTX	Waco	TX
KSEE	Fresno	CA	WEEK	Peoria	IL	KPXM	St. Cloud	MN	WVPX	Akron	OH	KAUZ	Wichita Falls	TX
KPXF	Porterville	CA	WHOI	Peoria	IL	KMIZ	Columbia	MO	W O L	Toledo	OH	KUPX	Provo	UT
KSPX	Sacramento	CA	WIPX	Bloomington	IN	KHQA	Hannibal	MO	WYTV	Youngstown	OH	WHSV	Harrisonburg	VA
KPXN	San Bernardino	CA	WFIE	Evansville	IN	KPXE	Kansas City	MO	KOPX	Okla. City	OK	WPXW	Manassas	VA
KBWB	San Francisco	CA	WANE	Fort Wayne	IN	KYTV	Springfield	MO	KTPX	Okmulgee	OK	WPXV	Norfolk	VA
KKPX	San Jose	CA	WPTA	Fort Wayne	IN	WHSL	St. Louis	MO	KPXG	Salem	OR	WAVY	Portsmouth	VA
KNTV	San Jose	CA	WISH	Indianapolis	IN	WLOX	Biloxi	MS	WQPX	Scranton	PA	WDBJ	Roanoke	VA
KTVJ	Boulder	CO	WSBT	South Bend	IN	WLBT	Jackson	MS	WKPV	Ponce	PR	WPXR	Roanoke	VA
KKTV	Colo. Springs	CO	WLFI	West Lafayette	IN	W O K	Meridian	MS	WJPX	San Juan	PR	WPXO	Christiansted	VI
KPXC	Denver	CO	KLBY	Colby	KS	WGPX	Burlington	NC	WJWN	San Sebastian	PR	KWPX	Bellevue	WA
KKCO	Grand Junction	CO	KUPK	Garden City	KS	WFPX	Fayetteville	NC	WPXQ	Block Island	RI	KGPX	Spokane	WA
WTNH	New Haven	CT	WIBW	Topeka	KS	WEPX	Greenville	NC	WIS	Columbia	SC	WTPX	Antigo	WI
WHPX	New London	CT	KAKE	Wichita	KS	WPXU	Jacksonville	NC	WNPX	Cookeville	TN	WEAU	Eau Claire	WI
WXPX	Bradenton	FL	WBKO	Bowling Green	KY	WRPX	Rocky Mount	NC	WPXK	Jellico	TN	WPXE	Kenosha	WI
WPXP	Lake Worth	FL	WYMT	Hazard	KY	WITN	Washington	NC	WVLT	Knoxville	TN	WMTV	Madison	WI
WOPX	Melbourne	FL	WKYT	Lexington	KY	W A Y	Wilmington	NC	KPXD	Arlington	TX	WSAW	Wausau	WI
WPXM	Miami	FL	WAVE	Louisville	KY	KGIN	Grand Island	NE	KXAN	Austin	TX	WLPX	Charleston	WV
WJHG	Panama City	FL	KPLC	Lake Charles	LA	KOLN	Lincoln	NE	KBTX	Bryan	TX	WWPX	Martinsburg	WV
WCTV	Thomasville	FL	KPXJ	Minden	LA	W O W	Omaha	NE	KPXB	Conroe	TX	WTAP	Parkenburg	WV
WALB	Albany	GA	WBPX	Boston	MA	KSTF	Scottsbluff	NE	KPTF	Farwell	TX	W R F	Wheeling	WV
WAGT	Augusta	GA	WWLP	Springfield	MA	WPXG	Concord	NH	KGBT	Harlingen	TX	KGWC	Casper	WY
WRDW	Augusta	GA	WDPX	Vineyard Haven	MA	WPXB	Merrimack	NH	KXAM	Llano	TX	KGWN	Cheyenne	WY
WBSG	Brunswick	GA	WMPX	Waterville	ME	KAPX	Albuquerque	NM	KCBD	Lubbock	TX	KGWL	Lander	WY
WPXA	Rome	GA	WPXD	Ann Arbor	MI	KRPV	Roswell	NM	KPTB	Lubbock	TX	KGWR	Rock Springs	WY
KPXO	Kaneohe	HI	WOTV	Battle Creek	MI	WPXJ	Batavia	NY	KTRE	Lufkin	TX			

## Excerpts From Commissioners' Statements

- Commissioner Copps dissented on the eligibility and auction portions and the decision not to impose television must-carry rules.
  - “...[F]aced with an auction process where incumbent DBS companies can buy spectrum that I hoped would be used to heighten competition....Given the choice between a bad auction and no auction, I must choose no auction.”
  - “In order to protect local broadcasting and to eliminate a carry-one, carry-all loophole, therefore, I would have at least asked whether MVDDS should have must carry responsibilities. and, if so, what responsibilities.”
- Chairman Powell and Commissioner Abernathy recognized Nortpoint's critical role in this proceeding but concluded an auction is necessary for policy reasons.
  - “There is little question that had it not been for Northpoint, the MVDDS service would not be ready to move forward today.”
  - “We also do *not* believe other licensing distribution mechanisms that avoid mutual exclusivity are appropriate for this service.”
- Commissioner Martin dissented on certain technical issues and indicated flexibility on the auction issue.
  - “I believe that all DBS customers are entitled to interference protection. I support a 10% limit per service area for increased interference caused by MVDDS. A 10% limit strikes a reasonable balance among the services sharing this band.”
  - “As a general policy matter I agree that competitive bidding can be a useful mechanism for distributing licenses, but auctions are not a goal in and of themselves. For me, this was a very close call, and it is with some difficulty that I support the recommended decision to support auctions in this case. I am sensitive, however, to the impact that the Commission's Lengthy delay has had on all the parties to this proceeding, and proceed today to avoid the harms resulting from even further delay.”