

**Briefing to Federal Communications Commission  
Commissioner Kathleen Abernathy**

Northpoint Technology, Ltd.

April 16, 2003

## Northpoint Regulatory Timeline

- 1994: Northpoint first brings its terrestrial 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: FCC establishes MVDDS and NGSO satellite service
  - Congress passes ORBIT Act prohibiting auction of spectrum “used for international satellite service;” also requires independent testing of terrestrial applicants
  - FCC 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
  - On 12/25/01 FCC grants without auction Boeing a nationwide license for 800 ground stations using shared satellite spectrum
- 2002: Northpoint files Compass DBS application; FCC issues final technical rules for MVDDS, dismisses Northpoint's terrestrial applications and calls for auction
- 2003: MVDDS Auction scheduled for June 25, 2003; despite 2000 statute, there is no independent testing requirement for applicants; Compass application dismissed, DBS auction scheduled for August 2003

## Current Status



- Northpoint marks 9<sup>th</sup> year of effort to commercialize its revolutionary technology
- Northpoint has filed appeal of license dismissal – FCC opposed expedition of appeal pending reconsideration; appeal is being held in abeyance
- Petitions for Reconsideration are pending at FCC
- Compass application dismissed and auction scheduled for August 2003

## **Auction Should Be Delayed Until After Appeal (Timeline)**

- June 2002 - Northpoint filed appeal and requested expedited treatment\*
- July 26, 2002 - FCC requested appeal be held in abeyance pending completion of reconsideration of auction issue raised by Pegasus – Court grants FCC request
- October 21, 2002 - Northpoint requests that FCC act on Pegasus issue so appeal can proceed
- January 30, 2003 - FCC moves auction date up from August to June 3
- April 16, 2003 - reconsideration still pending

\* Appeals to the DC Circuit typically take about one year to complete

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

- MSS Order (2003): Satellite companies given 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
- Northpoint: Auction. 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

## **Auction Should Be Stayed Pending Appeal**

- Public interest not served by holding auction prior to completion of Appeal
- Waste of both parties' and Commission's resources
- Two statutory provisions to be considered by court for the first time (ORBIT Act, 47 U.S.C. Section 765f; testing statute 47 U.S.C. Section 1110)
- Lack of mutual exclusivity
- Procedural fairness, disparate treatment of similarly situated applicants
- Technical rules concerning MVDDS/NGSO sharing effectively prejudice MVDDS operators who appeal decision
- Nextwave demonstrates how difficult and costly it is to undo auctions