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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

December 21, 2001

VIA HAND DELIVERY

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
445 12th Street, SW
Room TW-A325
Washington, D.C. 20554

Re: ET Docket No. 98-206; RM-9147; RM-9245;
CS Docket No. 99-250; RM-9257;
ET Docket No. 00-258

Dear Ms. Salas:

Enclosed for filing please find an original and twelve copies of the *Opposition Of Northpoint Technology, Ltd., And Broadwave USA, Inc. To DBS Petition For Consolidation And For Declaration That Planned Terrestrial Service In The 12.2-12.7 GHz Band Should Be Moved To Alternate Spectrum*, in the above-referenced dockets – four copies for inclusion in each of ET Docket No. 98-206; CS Docket No. 99-250, and ET Docket No. 00-258.

I have enclosed an additional copy for date-stamp and return in the self-addressed envelope provided. Thank you for your assistance in this matter.

Yours truly,

JC Rozendaal

J.C. Rozendaal
Counsel for Northpoint Technology, Ltd., and Broadwave USA, Inc.

enclosures

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of Amendment of Parts 2 and 25 of the Commission's Rules to Permit Operation of NGSO FSS Systems Co-Frequency with GSO and Terrestrial Systems in the Ku-Band Frequency Range;	ET Docket No. 98-206; RM-9147; RM-9245
In the Matter of Petition for Rulemaking to Amend Eligibility Requirements in Part 78 Regarding 12 GHz Cable Television Relay Service; and	CS Docket No. 99-250; RM-9257
In the Matter of Amendment of Part 2 of the Commision's Rules to Allocate Spectrum Below 3 GHz For Mobile and Fixed Services to Support The Introduction of New Advanced Wireless Services, Including Third Generation Wireless Systems	ET Docket No. 00-258

OPPOSITION OF NORTHPOINT TECHNOLOGY, LTD., AND BROADWAVE USA, INC. TO DBS PETITION FOR CONSOLIDATION AND FOR DECLARATION THAT PLANNED TERRESTRIAL SERVICE IN THE 12.2-12.7 GHZ BAND SHOULD BE MOVED TO ALTERNATE SPECTRUM

Northpoint Technology, Ltd. & Broadwave USA, Inc. (collectively, "Northpoint") hereby oppose recent petition of DBS operators DIRECTV, Inc. ("DIRECTV") and EchoStar Satellite Corp. ("EchoStar") (collectively, in view of their announced merger, "the DBS industry") to consolidate the above-captioned proceedings

and move Northpoint's planned terrestrial service out of the 12.2-12.7 frequency band.[1] The Commission should reject the petition as a transparent delaying tactic aimed at forestalling terrestrial wireless competition to DBS.[2]

I. DBS's Baseless Petition Is Designed to Cause Confusion and Delay

The DBS industry has attempted to block Northpoint's plans to compete with it in the 12.2-12.7 GHz band for nearly eight years. A key tactic in the DBS industry's long-running campaign against Northpoint has been scaremongering that terrestrial use of the 12.2-12.7 GHz band would cause harmful interference to DBS subscribers. In making this argument, the DBS industry conveniently glosses over the fact that DIRECTV and EchoStar ubiquitously share the 12.2-12.7 GHz spectrum with one another without causing harmful interference. This sharing is possible because DBS systems use highly directional receiving antennas. By exploiting this directionality, together with other innovative engineering techniques, Northpoint's patented and proprietary technology can share with DIRECTV and EchoStar much as to two systems share with one another.

This is not to say that ubiquitous terrestrial-satellite sharing is easy. *Any time* two services wish to use exactly the same spectrum at exactly the same time, there is a potential for electrical interference – and electrical interference can be a problem. But Northpoint has succeeded in solving this problem where others have failed. Northpoint's technology has been proven effective in at least five different field tests conducted by

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[1] DIRECTV, Inc. & EchoStar Satellite Corp., Petition for Consolidation of Rulemaking Proceedings and for a Declaration that Alternative spectrum is Suitable for the Proposed "Multichannel Video Distribution and Data Service," ET Docket No. 98-206, CS Docket No. 99-250; ET Docket No. 00-258 (FCC filed Dec. 3, 2001) ("DBS Petition").

[2] The present rulemaking proceeding has been going on for more than three years, and Northpoint has been before the FCC for more than 8 years seeking permission to provide

Lucent Technology, by the MITRE Corporation, by Northpoint, and by the DBS industry itself. In none of these tests – not even the DBS industry's own hostile tests – did a single DBS subscriber ever suffer any harmful interference from Northpoint's terrestrial operations. Never. Not even once.

The Commission has acknowledged that "throughout Northpoint's and DIRECTV/EchoStar's experimental tests, there were no reported DBS outages attributable to the tests."[3] Furthermore, the Commission found that further testing would not yield any useful information "and would only further delay a decision" regarding deployment of Northpoint's technology.[4] Based on the extraordinarily voluminous record in ET Docket 98-206, and recognizing Northpoint's demonstrated success in sharing spectrum with DBS without causing harmful intereference, the Commission decided to allow deployment of the technology: "we will permit a terrestrial point-to-multipoint video and data distribution service, which we will refer to the MVDDS, to operate under Part 101 of our Rules in the 12.2-12.7 GHz band."[5]

Thus, the Commission has *already* approved new terrestrial service in the 12.2-12.7 GHz band.[6] The soundness of this decision was confirmed by the MITRE Corporation, which concluded independently that ubiquitous satellite-terrestrial sharing

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terrestrial service in the 12.2-12.7 GHz band. It is far too late in the process for the Commission to start looking at new, different spectrum.

[3] *First Report and Order and Further Notice of Proposed Rulemaking,* ET Docket No. 98-206 ¶ 215, FCC 00-418 (FCC rel. Dec. 8, 2000).

[4] *Id.*

[5] *Id.* ¶ 217.

[6] *See id.* ¶ 353 (ordering clause) (granting in relevant part Northpoint's petition for rulemaking to allow terrestrial use of the 12.2-12.7 GHz spectrum).

using Northpoint's technology is feasible.[7] The DBS industry responded to the Commmission's decision to allow terrestrial service in the 12.2-12.7 GHz band with petitions for reconsideration that sought, among other things, to have Northpoint relegated to other, inferior spectrum. Those petitions are still pending and the Commission may consider the DBS operators' arguments in that context. Chairman Powell has stated publicly that the Commission will issue details about the licensing procedures for terrestrial service in the 12.2-12.7 GHz spectrum by the end of this year.[8]

Now, just weeks before the Commission is scheduled to announce those rules, the DBS industry has filed an eleventh-hour petition that, for the most part, rehashes previous arguments that Northpoint should be relegated to less desirable spectrum than the one band it has been repeatedly proven capable of operating in successfully.

There are two new twists to the DBS proposal this time around: First – in a move apparently designed to cause problems for the DBS industry's cable industry competitors as well as for Northpoint – the DBS industry wants to park Northpoint in the CARS spectrum along with thousands of pre-existing terrestrial relay operators. Second, the DBS industry proposes to cause a procedural train wreck by consolidating ET Docket No. 98-206 with two completely unrelated proceedings just weeks before the Commission's next order in the docket is due to be released. Such an ambush at this late date cannot be tolerated. The Commission should reject out of hand this belated attempt to forestall competition by further delaying the launch of Northpoint's service.

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[7] The MITRE Corp., MITRE Technical Report, *Analysis of Potential MVDDS Interference to DBS in the 12.2-12.7 GHz Band Id.* § 6.3, at 6-8 (FCC sponsored report, Project No. 1201FCC2-01, Apr. 2001) ("MITRE Report").

[8] *See, e.g.* Communications Daily at 3 (Oct. 24, 2001) ("Powell reiterated 'commitment' to resolve Northpoint-DBS spectrum battle by end of year.").

II. The 12.2-12.7 GHz Spectrum Is Especially Well Suited For Northpoint's Operations

As Northpoint and other commenters have previously explained, the 12.2-12.7 GHz band has particularly beneficial transmission characteristics that make it more favorable for spectrum sharing than the lower MMDS wavelengths and more reliable in inclement weather than, for example, the higher LMDS wavelengths.[9] Moreover, the 12.2-12.7 GHz band is one of the few portions of spectrum in which adequate bandwidth is available to provide a commercially viable MVPD offering. The Commission itself has recognized that the capacity limits of MMDS are "generally not competitive with that of most cable systems."[10] The DBS industry argues that digital compression technologies are increasing the number of channels that can be carried in a given bandwidth.[11] But that development does nothing to change the fundamental competitive disadvantage suffered by MMDS because those same compression technologies are available to cable operators and the DBS industry, which continue to have more bandwidth available for more and different services, including such revenue-generators as pay-per-view, video on demand, and broadband Internet access.

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[9] *See, e.g.,* Comments of AT&T Corp., ET Docket No. 98-206, at 11 (FCC filed Mar. 12, 2001); Reply Comments of Northpoint Technology Ltd. & Broadwave USA, Inc., ET Docket No. 98-206, at 12-14 (FCC filed Apr. 5, 2001).

[10] Sixth Annual Report, *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, 15 FCC Rcd 978, ¶ 86; *see also* Seventh Annual Report, *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, CS Docket No. 00-132, FCC 01-1, 2001 WL 300715, ¶ 87 (rel. Jan. 8, 2001) ("[I]t appears that most MMDS licenses will not be used in the future to compete in the MVPD market...The MMDS industry is currently transitioning from offering video programming to offering data services.").

[11] DBS Petition at 3.

Perhaps most important, scale economies for both transmission and receiving equipment are available in the 12.2-12.7 GHz band that are not available with any other spectrum. Northpoint proposes to offer terrestrial service using equipment that is already widely available commercially at attractive price points.[12] By leveraging the scale economies and existing distribution network associated with this equipment, including existing DBS dish antennas, Northpoint can provide service in the 12.2-12.7 GHz band without the crippling capital costs that have hobbled previous "wireless cable" ventures.[13] The DBS industry's effort to banish Northpoint to other, less favorable spectrum, is just one more way to raise Northpoint's costs, possibly to prohibitively high levels.[14] Nor do the economies available in the 12.2-12.7 GHz band benefit Northpoint alone. Consumers also benefit from having ready access to receiving equipment that is readily available in the marketplace at comparatively low cost. New, specialized equipment for another band would be substantially more expensive and harder for consumers to get.

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[12] *See, e.g.,* Comments of Northpoint Technology, Ltd., ET Docket No. 98-206 at 15-17 (Mar. 2, 1999).

[13] *See id* at 16 and sources cited therein. Other technical factors likewise make the 12 GHz band more economically attractive for terrestrial service than other bands. The Commission has recognized, for instance, that "LMDS requires more transmission towers to cover a given area, increasing LMDS deployment cost. Moreover, LMDS requires cellularization to limit rain attenuation, and the cells are small—five kilometers (3 miles) or less in radius." *See* Third Report and Order and Memorandum Opinion and Order, *Rulemaking to Amend Parts 1, 2, 21, and 25 of the Commission's Rules to Redesignate the 27.5-29.5 GHz Frequency Band, to Reallocate the 29.5-30.0 GHz Frequency Band, to Establish Rules and Policies for Local Multipoint Distribution Service and for Fixed Satellite Services*, 15 FCC Rcd 11857, ¶ 27 (2000).

[14] The DBS industry also mentions using the DEMS band, the LMDS band and the 38 GHz band as possible, inferior alternatives for Northpoint's service but does not even attempt to provide an argument as to why those bands might be suitable. See DBS Petition at 10.

Moreover, the Commission has an obligation to promote the efficient use of spectrum,[15] and the scale economies and technical advantages available in the 12 GHz band make it the most efficient place to create new bandwidth through spectrum sharing, in fulfillment of that obligation. Given the increasing spectrum demands the FCC faces every day, the Commission must strive to ensure that *all* spectrum is utilized to its fullest capability. Northpoint's revolutionary technology can harvest new bandwidth through ubiquitous sharing of already allocated and licensed spectrum. It may well be that, someday, Northpoint or another company develops and demonstrates the capability to harvest bandwidth out of some other spectrum band. But until then, there is no reason – and no excuse – for the Commission to delay licensing Northpoint in the 12.2-12.7 GHz band.

III. The CARS Band Is Not Suitable for Northpoint's Operations

The CARS band has similar bandwidth to the 12.2-12.7 GHz band, but it is populated by an estimated 100,000 high-power microwave links that transmit TV program material from distribution hubs to individual cable headend sites. These high-powered links, operating in all directions, are incompatible with Northpoint's direct-to-home service. Even if it were technically possible, which is doubtful (and certainly unproven), coordinating Northpoint's service with these thousands of terrestrial microwave operations would be infinitely more complicated and expensive than

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[15] *See* 47 U.S.C. §§ 151, 157, 303(g), 309(j)(3); *see also, e.g.,* Order, *Aircell, Inc.; Petition Pursuant to Section 7 of the Act, For a Waiver of the Airborne Cellular Rule, or, in the Alternative, for a Declaratory Ruling,* 14 FCC Rcd 806, ¶ 17 (1998) ("[T]he Commission has repeatedly indicated that it is under a statutory mandate to make services available which are in the public interest, convenience and necessity. This mandate includes the public interest obligation to promote the efficient use of spectrum resource, as well as to promote new technologies and make available new services to the public.")

coordinating service with a handful of DBS satellites orbital slots, all of which are in the southern sky.

Conclusion

Northpoint's technology was designed to operate in the 12.2-12.7 GHz band. No other band offers the same technical and economic advantages, which are the keys to creating a viable new facilities-based competitor in the markets for multichannel video program distribution and broadband Internet access. In various field tests, including those carried out on behalf of the Commission and those carried out by the DBS industry itself, Northpoint's technology has repeatedly proven itself capable of sharing the 12.2-12.7 GHz band with satellite operations. No similar tests have been carried out in any other frequency bands.

The DBS industry has produced no evidence that any DBS subscriber has ever suffered harmful interference as a result of Northpoint's operations. Even more important, the Commission has *already* approved a new terrestrial service in the 12.2-12.7 GHz band.

Under these circumstances, there is no reason even to consider another frequency band. The DBS industry's belated petition to consolidate ET Docket 98-206 with other, unrelated proceedings just as the Commission is due to announce a licensing scheme for MVDDS is plainly designed to delay Northpoint's deployment with endless, baseless procedural wrangling.

The Commission should dismiss the DBS industry's petition forthwith.

Respectfully submitted,

NORTHPOINT TECHNOLOGY, LTD.,
AND BROADWAVE USA, INC.

December 21, 2001

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I, Shonn Dyer, hereby certify that on this 21st day of December, 2001, copies of the foregoing were served by hand delivery* and/or first class United States mail, postage prepaid, on the following:

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