

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

RECEIVED

AUG - 6 2001

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)

Application of DIRECTV Enterprises, Inc.)
for authority to Launch and Operate)
DIRECTV 4S (USABBS-13))

File No. S2430

SAT-LOA-20010518-00045

Received

AUG 8 2001

Satellite Policy Branch
International Bureau

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

DIRECTV Enterprises, Inc. ("DIRECTV") has requested summary dismissal of the Petition by Northpoint Technology, Ltd., and Broadwave USA, Inc. (collectively, "Northpoint") to stay proceedings regarding DIRECTV's application for authority to launch and operate the DIRECTV 4S direct broadcast satellite until such time as more complete data regarding the satellite's operation is made available to the public. DIRECTV's request for dismissal is unfounded and should be denied.

As indicated in Northpoint's Petition, DIRECTV's paper application provides insufficient information to evaluate the precise strength and other characteristics of the planned signals at any particular location. At the time comments were due on DIRECTV's application, Northpoint was awaiting – and is still now awaiting – access to a CD-ROM that DIRECTV submitted as part of its application that may contain the necessary data. The International Bureau subsequently informed Northpoint's counsel that Northpoint will be given access to the requested data but that the International Bureau requires additional time to make or obtain another copy of the CD-ROM.

The gravamen of DIRECTV's opposition to Northpoint's petition is that Northpoint lacks standing as a "party in interest" under Section 309(d)(1) of the Communications Act to file a petition to deny DIRECTV's application. Northpoint has two responses to this point. First, it is as a general matter necessary to review an application in its entirety in order to determine whether a given party is a "party in interest" within the meaning of Section 309(d)(1). For all Northpoint knows, the information on the CD-ROM, which DIRECTV placed in the public record without any confidentiality designation or request for protective order, may be germane to determining whether Northpoint is in fact a party in interest. Hence, DIRECTV's argument is at best premature.

Second, even assuming that Northpoint would lack standing to file a petition to deny DIRECTV's application, it by no means follows that Northpoint would lack standing to *comment upon* DIRECTV's application. Indeed, the Commission's rules contemplate the filing of "comments" on satellite applications as well as the filing of "petitions to deny" and "petitions for other forms of relief." *See, e.g.*, 47 C.F.R. § 25.154(a); *see also id.* § 25.154(b) (discussing "informal objections" to satellite applications). The Commission has an independent statutory duty to determine whether granting DIRECTV's application would serve the public interest, convenience, and necessity. 47 U.S.C. § 309(a). In fulfilling this duty, the Commission is obliged to consider not only the application itself but also "such other matters as the Commission may officially notice," including comments from the public. *Id.*

Accordingly, Northpoint urges the Commission not to take action upon DIRECTV's application on the basis of technical information that, although submitted

into the public record, has not actually been made available for public inspection (as required by, among other things, the Commission's own rules, *see, e.g.*, 47 C.F.R. § 0.453(a)(2)(iv)(A)).

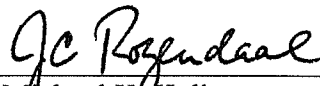
Finally, Northpoint notes that, to the extent DIRECTV was genuinely interested in ensuring rapid processing of its application, it could have simply made the requested data available to Northpoint and to other members of the public. Instead, DIRECTV sought to foreclose public comment on its application with its request for summary dismissal. The Commission should reject DIRECTV's request and should stay these proceedings until the public has been given a reasonable opportunity to review and comment upon the *entire* application under consideration.

Respectfully submitted,

NORTHPOINT TECHNOLOGY, LTD.
AND BROADWAVE USA, INC.

August 6, 2001

Antoinette Cook Bush
Northpoint Technology, Ltd.
400 North Capitol Street, N.W.
Suite 368
Washington, D.C. 20001
(202) 737-5711

By: 

Michael K. Kellogg
J.C. Rozendaal
Kellogg, Huber, Hansen,
Todd & Evans, P.L.L.C.
Sumner Square
1615 M Street, N.W.
Suite 400
Washington, D.C. 20036
(202) 326-7900

*Counsel for Northpoint Technology, Ltd.
and Broadwave USA, Inc.*

CERTIFICATE OF SERVICE

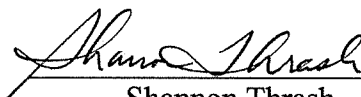
I, Shannon Thrash, hereby certify that on this 6th day of August, 2001, copies of the foregoing, *Reply of Northpoint Technology, Ltd., and Broadwave USA, Inc.*, were served by hand delivery* or first class United States mail, postage prepaid, on the following:

Magalie Roman Salas*
Secretary
Federal Communications Commission
445 12th Street, SW
Room TW-B204
Washington, D.C. 20554

Rocky Patterson
Jennifer Gilsenan
Rosalee Chiaral
International Bureau*
Federal Communications Commission
445 12th Street, SW
Washington, D.C. 20554

Antoinette Cook Bush, Esq.
Northpoint Technology, Ltd.
400 North Capitol Street, NW
Suite 368
Washington, D.C. 20001

James H. Barker, III, Esq.*
Latham & Watkins
555 11th Street, NW
Suite 1000
Washington, D.C. 20004



Shannon Thrash