

**JOINT PRESS STATEMENT OF  
CHAIRMAN MICHAEL POWELL AND  
COMMISSIONER KATHLEEN ABERNATHY**

***In re: 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)***

This proceeding has challenged the Commission to balance conflicting goals, promote competition through new technology, and minimize interference to existing licensees. We believe the Commission and its wonderful staff have done an admirable job.

A few aspects of the decision deserve particular attention, which we will lay out in more detail upon release of the Order. First, the Commission has wisely chosen not to saddle MVDDS licensees with regulatory burdens based on the types of services that may be provided. Instead, the Commission has exercised regulatory restraint to allow MVDDS to evolve in the marketplace first, and as a topic of regulation second. In addition, we believe the Commission wisely adopted a reasonable, but strict interference limit on MVDDS operations to ensure a regulatory regime that is clear and enforceable, yet flexible. Although several well-intentioned proposals were considered, including compensation formulas, mandated service calls, and hundreds of precision measurements, we believe the Commission correctly chose an acceptable interference approach that limits the equivalent power flux density (EPFD) at DBS receive sites.

Electromagnetic interference issues are among the most vexing aspects of public policy faced by the Commission in the spectrum area. The agency has defined "harmful interference"<sup>1</sup> – but the Commission's service rules are generally based on an acceptable level of interference that far more narrowly restricts operations than a harmful interference standard would. Here, the Commission defines permissible interference levels and determines that MVDDS service cannot exceed the EPFD limits at existing DBS sites. The EPFD limits are based on a complex predictive model, which in turn is based on certain assumptions and technical criteria in various parts of the country, including the general assumption that the limits would not noticeably increase DBS outage during rain events. Other variables include the power levels of different satellites, the weather variations in a given region from year to year and the elevation angle and size of DBS dishes. Outage increases are also easily avoidable at most consumer receive sites through a variety of mitigation techniques that are available to DBS providers.

We believe simplicity, clarity, and ease of implementation necessitate the majority's approach. We also believe the noticeable impact, if any, on DBS customers will be minimal and is outweighed by the overall consumer benefits to be derived from a new service. We also acknowledge, however, that the Commission's predictive model is

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<sup>1</sup> See 47 C.F.R. 2.1 ("harmful interference" is defined as "interference which endangers the functioning of a radionavigation service or of other safety services or seriously degrades obstructs, or repeatedly interrupts a radiocommunication service...")

just that -- a prediction. Therefore, the Commission has also adopted a “safety valve” that allows individual DBS licensees or distributors to present evidence that the appropriate EPFD for a given service area should be different from the EPFD applicable in that zone. Thus, to the extent that DBS providers can show that our predictive judgment requires fine-tuning, they have a readily available recourse.

The end result is one that this Commission can and should be proud of – efficient and effective spectrum sharing on a broad scale that allows us to license an entirely new service. Broadwave USA (commonly known as Northpoint), and its affiliates, have vigorously argued that an auction is not required or in the public interest for these licenses. Northpoint arrived at the Commission many years ago with a proposal for a new and innovative way to share the DBS spectrum. Today, thanks in large part to its fine work and diligence, that service will go forward. Many have claimed that Northpoint deserves a nationwide 500 MHz terrestrial license for free based on its regulatory and technical efforts to make this service a reality. We sympathize with the sentiments that underlie these claims. There is little question that had it not been for Northpoint, the MVDDS service would not be ready to move forward today. Northpoint has put significant time and resources into developing its service model as well as its Commission and congressional advocacy over a long period of time. We applaud these efforts. But the statute does not support exempting this spectrum from auction nor does it grant Northpoint the exclusive privilege it seeks. We also do not believe other licensing distribution mechanisms that avoid mutual exclusivity are appropriate for this service. While we understand the equitable basis for Northpoint’s claims, we cannot support that equitable concern trumping the auction regime Congress created in the statute, or the value of allowing other competitors to vie for a chance to offer service to the public. If Northpoint’s service model is a winner, the market will reward it just as it has done for other technology companies.

This has been an extremely difficult proceeding for the Commission, but we believe the Commission has arrived at a policy that appropriately balances the competing interests while allowing an important new service to move forward. We look forward to an auction for these licenses in the near future and the provision of the corresponding new services to the American people.