

Spectrum lobbyists create heat on Capitol Hill

By Demetri Sevastopulo in Washington

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In the corridors of Capitol Hill a group of politically connected investors are squaring up to the lobbying juggernaut of Charlie Ergen, chief executive of EchoStar, and the rest of the US satellite TV industry.

The prize is a licence, possibly worth more than \$100m, to provide wireless communications services.

The battle revolves around an innovation by Northpoint Technology, a start-up venture founded by Sophia Collier, former treasurer of the New Hampshire State Democratic party, and a group of high-profile Washingtonians that includes Bonnie Newman, executive dean of Harvard University's Kennedy School.

Northpoint demonstrated to the Federal Communications Commission that providers of terrestrial wireless services - broadband and multi-channel video - could share spectrum used by direct broadcast satellite (DBS) companies such as EchoStar and DirecTV. The company says it can provide these services well below the rates charged by cable and satellite companies, even in rural areas.

But the satellite industry and MDS America, a company that operates a terrestrial wireless system in the United Arab Emirates, are not convinced. They say Northpoint, which has five full-time employees, is simply a lobbying machine with no engineering muscle.

Not having a commercially tested system, Northpoint's rivals say, would not be a problem, but for one crucial point: the company is lobbying Congress to get a licence for free.

The Senate commerce and appropriations committees have passed amendments that would preclude Northpoint, and other companies offering terrestrial-based services, from having to buy a licence at auction.

The FCC determined that Northpoint was not exempt from the auction process, although it applauded its efforts to bring MVDDS (multichannel video distribution and data service) closer to the market. But now the commission says the company should buy the licence like everyone else.

"The statute does not support exempting this spectrum from auction . . . If Northpoint's service model is a winner, the market will reward it just as it has done for other technology companies," said a spokesman for FCC chairman Michael Powell.

Kirk Kirkpatrick, chief executive of MDS America, which is being sued by Northpoint for patent infringement, pointed out testily that Mr Powell "did not applaud their technology. He applauded their lobbying efforts".

Ms Collier admits Northpoint has an impressive team of paid lobbyists, including Bob Livingston, former Democrat chairman of the House appropriations committee and a network of 68 influential companies and personalities such as Hollywood actress Lily Tomlin. She says the company spent \$580,000 on lobbying in 2002 and 2003.

Each member of this network of affiliates has agreed to put up 75 per cent of the capital in its region to build the terrestrial network if Northpoint gets the spectrum free. Mr Livingston also has an option to become an affiliate, adds Ms Collier, who says you cannot be heard in Washington without good lobbyists.

Ms Collier argues that Northpoint should be awarded the licence free because it was the first to the FCC gate.

"I believe in first come, first served. Spectrum is a potentially infinite resource that will be made so through innovation. If the government taxes and allows industry opponents to kill in the cradle new technologies they're not going to happen."

But MDS America and the satellite industry argue that the company is simply using political connections to get something for nothing. The Congressional Budget Office has estimated that not auctioning the spectrum licence could cost the US Treasury more than \$100m.

"This is a very dangerous precedent for one politically connected company to circumvent established law - the spectrum auction process - at the expense of the taxpayer and competition," says David Murray, lobbyist for the Satellite Broadcasting and Communications Association.

Privately, Northpoint's rivals say the company may be gearing up to sell to the highest bidder once they obtain the spectrum, a charge Ms Collier dismisses.

"Should we have the right to sell our company in the future just like anyone else. Absolutely. But do we want to do that? No. We want the chance to operate.

"We kind of see ourselves like Southwest Airlines. We have invented a wonderful technology that will enable us to offer a lower-cost service to the public. And just like Southwest we have had to fight regulatory battles and legal battles to get the 'landing rights'."

The intensity of the lobbying reveals what is at stake. Ms Collier's opponents accuse her of buying support from lawmakers such as John Sununu, the New Hampshire senator who sponsored one of the amendments.

"John Sununu has been receptive to listening to me and has helped me. Why? Because he would like to come back to the state and say to his constituents 'You had cable rates that went up 8 per cent last year and I did something about that'," she says.

Ms Collier, who manages an investment fund with assets over \$1bn, adds that her opponents are also high-powered lobbyists with political connections. She says the DBS satellite companies have spent over \$3m in lobbying fees to defeat Northpoint.

"There are 107 lobbyists working against us - all of them trying to preserve the status quo," she said. "This is micro-David versus mega-Goliath."

While Northpoint has achieved some success on Capitol Hill it still faces formidable hurdles. The White House, John McCain, chairman of the Senate commerce committee, and Billy Tauzin, chairman of the House energy and commerce committee, are all opposed to free spectrum.

"This is dead as far as we are concerned. The bottom line is Northpoint is trying to circumvent the auction process in order to obtain the licenses for free," said Ken Johnson, a spokesman for Mr Tauzin. "We all know that spectrum in the past has been parceled out in a willy nilly fashion. One of the things we are trying to do is to craft a comprehensive spectrum management plan to ensure that the federal government and the tax payers get a fair return on this very valuable resource."

"That is wrong-headed thinking," responds Ms Collier. "I don't know what motivates Billy Tauzin. At one point he was helping us and then turned against us."

Northpoint says it should be provided with free spectrum because some of its rivals were living in the past. But the satellite industry and MDS America auction, say the auction is the best way to ensure the spectrum is allocated in the most efficient way.

With opposition from Mr McCain and Mr Tauzin, Northpoint's best hope is the appropriations committees. Ted Stevens, the Republican chairman of the Senate appropriations committee, supports the company's efforts. Lobbyists say all eyes are now on the Alaskan senator who is hoping that Northpoint can roll out services in the rural areas of his state.

The outcome of the battle also has implications about how spectrum will be allocated in the future.

"The problem is two wrongs [referring to past allocations of free spectrum] don't make a right," says Adam Thierer, director of telecommunications studies at the Cato Institute. "There are good reasons why we should keep moving in the direction of auctioning and yet there is a very valid question that Northpoint has raised which is whether auctions are always the best policy or solution to the spectrum allocation question."

Mr Thierer says that only one thing is clear. "Nobody on Capitol Hill is going to decide this on the merits."

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