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## FACSIMILE TRANSMISSION

DATE: January 6, 2000

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FROM: Jim Barker

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MESSAGE: See Attached.

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

In the Matter of	)	
	)	
Request for Special Temporary	)	
Authorization to test for 120 days the	)	
interference caused to typical	)	
Direct Broadcast Satellite receivers	)	File No. 0418-EX-ST-1999
from the system proposed by	)	
Diversified Communications	)	
Engineering, Inc. in the	)	
12.2 – 12.7 GHz band	)	

**REPLY TO OPPOSITION TO REQUEST FOR  
SPECIAL TEMPORARY AUTHORIZATION**

DIRECTV Enterprises, Inc. and EchoStar Satellite Corporation (collectively, the "DBS Operators"), hereby reply to the Opposition to Request for Special Temporary Authorization ("Northpoint Opposition") filed by Northpoint Technology, Ltd. ("Northpoint") in the above-captioned proceeding. Northpoint has opposed the above-captioned request by the DBS Operators for special temporary authority ("STA") on the basis of specious procedural and policy arguments. The DBS Operators' STA application should be granted expeditiously.

**I. THERE IS NO PROCEDURAL DEFICIENCY IN THE DBS OPERATORS' PENDING STA REQUEST**

The primary basis of Northpoint's opposition to the requested STA is its claim that the DBS Operators must have a preexisting experimental license in order to be granted such an authorization.<sup>1</sup> The point does not merit extended discussion; Northpoint is simply wrong. Indeed, it appears that Northpoint has neglected to review the Commission's revision of its

<sup>1</sup> Northpoint Opposition at 2-3.

experimental licensing rules in October, 1998. Had Northpoint done so, it would have seen that the Commission addressed this very point:

We agree with commenters that there is no reason to require a regular experimental license as a precondition for obtaining an STA. Permitting STAs to be granted on a stand-alone basis will decrease the burden on applicants and will increase administrative efficiency.<sup>2</sup>

Thus, the provisions from the FCC's rules that are quoted and highlighted in Northpoint's opposition have either been substantially modified or no longer exist.<sup>3</sup> Even a cursory review of the current version of Commission rules shows that the DBS Operators' STA request fully complies with the procedural requirements for receiving an STA.

## II. THERE IS A COMPELLING NEED FOR ADDITIONAL TESTING OF NORTHPOINT'S SPECTRUM-SHARING CLAIMS

Northpoint's position that there is no "need" for the requested STA<sup>4</sup> is as unpersuasive as its legal analysis. Notwithstanding Northpoint's rhetoric, the Northpoint D.C. tests did not in any sense attempt to replicate conditions of "real-world" co-existence between Northpoint technology and DBS satellite systems. They were instead politicized and largely subjective exercises in data collection, the results of which are now being proffered by Northpoint as definitive evidence of the ability of the two services to co-exist at 12 GHz. Tests conducted by the DBS Operators will allow the issues to be joined at the technical level. Indeed, in the wake of the sweeping assertions and dispositive weight Northpoint seeks to give to this testing, the DBS industry is now in the process of addressing the Northpoint claims in two separate ways.

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<sup>2</sup> Amendment of Part 5 of the Commission's Rules to Revise the Experimental Radio Service Regulations, ET Docket No.96-256, FCC 98-283, *Report and Order* (released Oct. 27, 1998) ("Experimental Licensing Order"), at ¶ 17.

<sup>3</sup> Of course, Northpoint should know the spuriousness of its argument in any event because it has itself taken advantage of the new Commission rule to its full extent (albeit perhaps unwittingly). Northpoint received its own STA to test in Washington, D.C. without any underlying experimental license to operate in that geographic area.

<sup>4</sup> Northpoint Opposition at 3.

First, accepting the D.C. testing as Northpoint's "best case" interference environment for DBS/Northpoint co-existence, the DBS Operators already have documented significant harmful interference generated even by these tests.<sup>5</sup> A more extensive analysis will soon be submitted for the Commission's consideration, which establishes conclusively that Northpoint's own tests demonstrate that its system will cause harmful interference to DBS service.

Second, the DBS Operators have applied for the above-captioned authorization to conduct their own experiments to test the Northpoint claims. There is no question that the request is legitimate and necessary. The limited testing performed by Northpoint to date was by Northpoint's own admission designed and implemented to minimize the measurable interference to DBS from Northpoint's operation. Among other things, Northpoint located its main transmitter at the USA Today Building in Rosslyn, Virginia and oriented it in a southeasterly direction, meaning that the most heavily affected area coincided with the Potomac River and uninhabited parklands. This "best case" circumstance might be ideal for Northpoint, but it is certainly no basis from which the Commission can support adopting a nationwide licensing regime for Northpoint service at 12 GHz.

Indeed, for Northpoint to spurn the DBS Operators' request as mere "dilatory tactics" by the DBS industry, based on alleged competitive concerns,<sup>6</sup> is absurd.<sup>7</sup> By way of comparison,

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<sup>5</sup> See, e.g., EchoStar Preliminary Report on the Impact of Northpoint on the Direct Broadcast Satellite Service Based Upon Testing Performed to Date (filed Oct. 29, 1999); Joint Emergency Petition of EchoStar and DIRECTV to Reimpose "No Rain" Condition for Northpoint Testing filed Sept. 22, 1999); see also Comments of DIRECTV Enterprises, Inc., ET Docket No. 98-206 (Mar. 2, 1999) & App. B.

<sup>6</sup> See Northpoint Opposition at 4.

<sup>7</sup> Indeed, on this point, the DBS Operators requested from Northpoint in connection with their STA application that they be able to use an actual Northpoint transmit antenna, which would greatly facilitate the DBS Operators' testing. Northpoint's categorical rejection of this request, see Letter from Antoinette Cook Bush, Counsel to Northpoint, to James H. Barker and Pantelis Michalopoulos, Counsel to the DIRECTV and Echostar (Dec. 21, 1999), hardly constitutes "dilatory tactics" on the part of the DBS Operators.

the DBS industry has spent several years working through the ITU process and with the Commission to determine whether co-existence between non-geostationary satellite ("NGSO") systems and DBS systems is possible at 12 GHz. Whatever the ultimate outcome of that process, which is still ongoing, the debate has been open, detailed and technically rigorous. By contrast, Northpoint has not even come close to offering that type of effort or detailed analysis. As for the alleged competitive concerns, the DBS Operators would simply note for the record that, as the Northpoint business plan has continually changed over time, they opposed the Northpoint service even in the days when it was being touted by Northpoint as a "complementary" rather than competitive service to DBS operations.<sup>8</sup>

The DBS industry has never made an effort to forestall competition from terrestrial services – for example, when the Commission proposed the allocation of substantial spectrum to Location Multipoint Distribution Service ("LMDS") or to allow digital Multipoint Distribution Service ("MDS"). The DBS Operators' concern here is not competition – it is purely one of electrical interference. Rather than acquire spectrum that was expressly allocated for the types of terrestrial wireless services that it proposes, such as LMDS, MDS or DEMS, Northpoint instead has decided to attempt to avoid paying for such licenses, either in the aftermarket or at auction, by seeking authorization to operate on a secondary basis at 12 GHz. That decision has certain consequences, not the least of which is the fact that the 12 GHz band happens to be the primary,

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<sup>8</sup> Northpoint's claim that the DBS Operators have somehow "waived" or are not entitled to conduct their own testing, see Northpoint Opposition at 4, makes little sense. First, Northpoint's suggestions that the DBS Operators were offered the opportunity to provide meaningful input into the Northpoint testing and/or accompany Northpoint during its testing simply are not true. Northpoint well knows that, in spite of the lip service paid in its pleading, it has consistently provided notice of its tests to the DBS Operators only after the fact, if at all, see, e.g., Letter from James H. Barker and Pantelis Michalopoulos to Dale N. Hatfield, Chief, OET (Sept. 23, 1999), and offered to facilitate the monitoring of its tests and a cursory, inadequate test plan only after vigorous objection by the DBS industry and some attempted mediation by the OET. In any event, however, the DBS Operators have long objected to the dubious methodology and staged conclusions that Northpoint attempts to draw from its lobbying demonstrations, and are more than entitled to provide their own test data regarding a dramatic source of interference to their primary DBS operations.

mission-critical frequency band used by DBS operators – a ubiquitous mass-market consumer service, deployed on a nationwide basis after billions of dollars of investment by the DBS Operators, that today is offering tremendous benefits to American consumers in the form of competition to incumbent cable television operators.<sup>9</sup>


Northpoint cannot be authorized at 12 GHz in any fashion until the Commission can conclude with certainty that its proposed terrestrial fixed service will not cause harmful interference to DBS operations. Under the most charitable view of the tests conducted by Northpoint, these tests, designed so that the area of maximum interference coincided with a river, do not permit such a conclusion. The above-captioned STA will yield highly relevant additional data to aid the Commission's determination.

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<sup>9</sup> A secondary service may not cause harmful interference to stations of primary or permitted services to which frequencies are already assigned or to which frequencies may be assigned at a later date, nor can a secondary service claim protection from harmful interference from stations of a primary or permitted service. See 47 C.F.R. §§ 2.104(d); 2.105(c)(3).

Respectfully submitted,

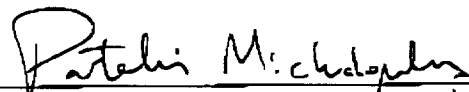
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Dated: January 6, 2000

**CERTIFICATE OF SERVICE**

I, James H. Barker, hereby certify that on this 6th day of January, 2000 that copies of the foregoing Reply to Opposition to Request for Special Temporary Authorization were delivered by prepaid, first class U.S. mail or hand delivery (\*) to the following:

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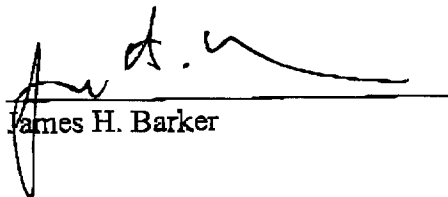
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