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January 18, 2000

BY HAND DELIVERY

Mr. Dale Hatfield, Chief
Office of Engineering and Technology
Federal Communications Commission
445 12th Street, S.W.
7th Floor
Washington, DC 20554

**Re: EchoStar/DIRECTV Joint Request for Special Temporary Authorization
To Conduct Testing of Northpoint's Proposed System - File No. 0418-EX-ST 1999**

Dear Mr. Hatfield:

On behalf of EchoStar Satellite Corporation and DIRECTV, Inc. (collectively "the DBS operators"), we are writing to urge the Office of Engineering and Technology ("OET") to take prompt action on the above-referenced request of the DBS operators. As set forth in that request, the DBS operators have requested special temporary authority to test for 120 days the interference caused to typical DBS receivers from the system proposed by Diversified Communications Engineering, Inc. ("Northpoint") in the 12.2-12.7 GHz band, which is allocated on a primary basis to the DBS service.

In addition, the DBS operators write to request the Commission's assistance in facilitating the testing: as the Commission is aware, Northpoint has refused to provide the DBS operators with the one single item that the DBS requested for their testing - a Northpoint antenna. The DBS operators' request for that antenna is reasonable (it would avoid the need for replication and a Northpoint argument that the equipment used is not comparable), and Northpoint's refusal to provide it exposes its motives as suspect at best. Evidently, Northpoint would like its own testing, which was done so that the area of maximum interference from its transmitter fell over the Potomac River and uninhabited federal parklands, to be the one and last technical word on the issue, and does not want the issue to be joined at the testing level. The Commission should not tolerate such an attempt. It should signal to Northpoint the obvious - that it cannot reasonably be prepared to proceed with a decision on the matters of these issues based on such an one-sided record. The Commission should also ask Northpoint to present its reasons for its refusal to provide its antenna for the proposed tests.

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In any event, the DBS operators request the expeditious grant of their STA request: even without a Northpoint antenna, the DBS operators can and will replicate it. The main objection of Northpoint to the STA grant (that the DBS operators do not have an underlying experimental authorization) was a frivolous one, as it was based on a rule that the Commission has expressly abolished.

DISCUSSION

As set forth in prior submissions by the DBS operators, the limited testing performed to date by Northpoint was designed and implemented in such a manner as to minimize the measurable interference to DBS from Northpoint's operations. 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) and Appendix B. Indeed, Northpoint's testing was designed so that the most heavily affected area of its operations coincided with the Potomac River and uninhabited parklands – data that cannot reasonably form the basis for licensing Northpoint on a nationwide basis. As set forth in the above-referenced STA request, the DBS operators intend to provide OET with more meaningful data to assess the real interference caused by Northpoint's proposed system. While Northpoint has opposed the DBS operators' STA request, its objections have been summarily dismissed in the DBS operators' Reply filed earlier this month, and accordingly, the time is ripe for OET to take action on the DBS operators' STA request. See EchoStar and DIRECTV Reply to Opposition to Request for Special Temporary Authorization (Jan. 6, 2000).

Use of the Northpoint antenna in those tests would greatly facilitate them, as it would obviate the need to replicate the antenna and would also avoid a wasteful debate with Northpoint over whether the equipment used in the testing is comparable. While the DBS equipment used in Northpoint's testing is readily available in the open market, Northpoint's equipment is not. Accordingly, on December 2, 1999, the DBS operators requested temporary use of Northpoint's equipment for the purpose of conducting its tests. See Letter from James H. Barker (DIRECTV counsel) and Pantelis Michalopoulos (EchoStar counsel) to Antoinette Cook Bush (Northpoint counsel) (Dec. 2, 1999). Northpoint has declined the DBS operators' request on the grounds that: (1) their equipment is proprietary; and (2) the DBS operators' request is simply an attempt to delay the implementation of the Northpoint system. See Letter from Antoinette Cook Bush to James H. Barker and Pantelis Michalopoulos (Dec. 21, 1999). As set forth in the DBS operators' Reply to Northpoint's Opposition, Northpoint's claims based on alleged competitive concerns have no basis in fact since the DBS operators have repeatedly objected to Northpoint's system out of a concern for harmful interference even when the

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proposed system was argued to be complementary to DBS operations. See EchoStar and DIRECTV Reply to Opposition to Request for Special Temporary Authorization at 3-4 (Jan. 6, 2000).

Northpoint's motives are clear. Northpoint would like to have the last and only word on whether its system will cause harmful interference at the empirical technical level. Obviously, the Commission should not tolerate such an effort. Moreover, by withholding access to its equipment, Northpoint apparently intends to preserve a line of "attack" on any testing results produced by the DBS operators that shows harmful interference. Indeed, to the extent that the DBS operators must replicate Northpoint's equipment themselves, Northpoint is sure to argue in its response that the DBS operators' testing results are skewed because their equipment did not precisely replicate Northpoint's antenna. If Northpoint truly believed that its system does not cause any harmful interference to DBS operations, it would readily provide a transmit antenna for use by the DBS operators. Any concerns that Northpoint has over the misuse of proprietary information could be addressed through a protective order issued by the Commission. Rather than explore this alternative, Northpoint has flatly denied the DBS operators' request — evidence that strongly suggests Northpoint is concerned that its system does in fact cause harmful interference.

To address this critical issue, the DBS operators suggest that OET promptly (either prior to or after action on the above-referenced STA) require Northpoint to provide a full explanation of why it is not willing to provide its equipment to the DBS operators and signal to Northpoint that it cannot rationally proceed with a decision on the merits unless the issues have been joined at the technical level.

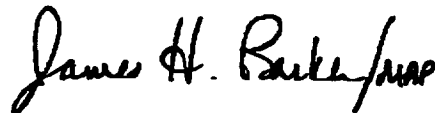
In any event, the DBS operators are fully prepared to move forward with testing by obtaining the necessary equipment to replicate Northpoint's antenna. While not ideal, the DBS operators remain confident that even without Northpoint's equipment they will be able to produce meaningful data for the Commission that demonstrates that Northpoint's proposed system will cause harmful interference to DBS operations and request immediate action of the Commission on their request.

In sum, the DBS operators urge OET to act on its STA Request so that it may conduct testing operations and provide the Commission with more meaningful data to assess the impact of Northpoint's proposed system on DBS operations. The DBS operators believe that access to Northpoint's transmit antenna is important for conducting these operations.

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Accordingly, it further urges OET to do everything within its authority to prompt Northpoint to provide its equipment (on a temporary basis) to the DBS operators. In any event, however, the DBS operators are prepared to proceed with testing operations by using equipment that replicates Northpoint's antenna.

Sincerely,



James H. Barker
Counsel for DIRECTV, Inc.



Pantelis Michalopoulos
Counsel for EchoStar Satellite Corporation

cc: Tom Derenge (OET)
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