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April 13, 1998

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VIA HAND DELIVERY

Steve Sharkey
Chief, Satellite Engineering Branch
Federal Communications Commission
2000 M Street, N.W.
Washington, DC 20554

Re: Opposition to Diversified Communication Engineering, Inc.'s
Application To Modify Experimental License, Call Sign
WA2XMY

Dear Mr. Sharkey:

The Commission has before it an application from Diversified Communication Engineering, Inc. ("DCE") to modify its experimental radio service license (call sign WA2XMY) to add a second test location at Austin, Texas where additional tests of a terrestrial 12 GHz transmit facility will be conducted. United States Satellite Broadcasting Company, Inc. ("USSB"), by its attorneys, believes the test, as proposed, will not serve the public interest because it will cause harmful interference to existing DBS subscribers. Therefore, USSB hereby submits its opposition to DCE's application to modify its experimental license, and urges the Commission to deny DCE's application.¹

¹ We understand that DirecTV is filing an opposition to DCE's application to modify experimental license, call sign WA2XMY. USSB supports DirecTV's opposition.

Part 5 of the Commission's Rules governs experimental radio service ("ERS").² The primary purpose of the ERS is to provide for experimental uses of radio frequencies and for development of techniques and systems that are not otherwise permitted under existing service rules. In order to encourage innovation, the experimental radio service rules provide great flexibility with regard to allowable frequency range, power, and emission. However, in order to protect allocated services, ERS licenses are issued on the condition that experimental operations not cause interference to authorized stations of such services. Specifically, Section 5.67(b) states, "[f]requency assignments will be made only on the condition that harmful interference will not be caused to any station operating [in the allocated service]."³ Further, Section 5.151(a)(2) states, in relevant part, "[i]f harmful interference to an established radio service develops, the licensee shall cease transmissions and such transmission shall not be resumed until it is certain that harmful interference will not be caused."⁴ Consequently, the Commission's Rules prohibit a service operating under an experimental radio service license whenever that operation causes harmful interference to any authorized station in that service.

In its engineering report to supplement the experimental license modification application, DCE acknowledges that DBS subscribers of existing 101° and 119° services, residing within 2100 feet (slightly less than one-half mile) of DCE's proposed Austin transmitter, will receive harmful interference. *DCE Engineering Report*, ¶¶ 9, 10. USSB is one of the licensees at the 101° orbital location. USSB believes there are 500 - 1000 active DBS subscribers within the test area. Thus, according to DCE's report, the DBS subscribers residing within the acknowledged interference area will receive harmful interference if DCE's modification application is granted. Therefore, the grant of DCE's modification application, would, on its face, cause significant harmful interference to USSB's authorized DBS service and contravene the Commission's rules.

Finally, notwithstanding the harmful interference that DCE acknowledges will result if its modification application is granted, USSB believes that other harmful interference, which is not fully discussed in DCE's Engineering Report, will result. For example, DCE's interference analysis does not adequately account for, and has made no provision for, occurrences of signal degradation due to rain fade attenuation and multipath effects.

DCE's Engineering Report shows that harmful interference will result to existing DBS subscribers if its modification application is granted. The grant of an application for an experimental radio service that is known to cause harmful interference violates the Commission's

² 47 C.F.R. part 5.

³ 47 C.F.R. § 5.67(b).

⁴ 47 C.F.R. § 5.151(a)(2).

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rules. In light of this, USSB respectfully requests the Commission to deny DCE's application. However, if DCE can show, through additional engineering studies, that it can operate the experimental station in an environment which satisfies the interference criteria, and thereby cause no interference to existing DBS service, USSB will withdraw its objection to DCE's application to modify its experimental license.

Very truly yours,

HOLLAND & KNIGHT LLP

A handwritten signature in black ink, reading "Randall W. Sifers". The signature is written in a cursive, flowing style.

Randall W. Sifers*

cc: Paul Marrangoni, Chief of Experimental Licensing Branch
Kimberly M. Baum, Satellite Engineering Branch
Eric W. DeSilva, Esq.