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July 7, 2003

Via HAND DELIVERY

~~Ms. Marlene Dortch~~ *Satellite Division*
Secretary
Federal Communications Commission
445 Twelfth Street, SW
Washington, D.C. 20554

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Re: *In the Matter of EchoStar Satellite Corporation -- Application for Authority to Make Minor Modification to Direct Broadcast Satellite Authorization and for Authority to Launch and Operate EchoStar 7 Satellite;*
File Nos. **SAT-MOD-20010810-00071**; SAT-A/O-20010810-00073

Dear Ms. Dortch:

Due to an administrative oversight, EchoStar Satellite Corporation ("EchoStar") was not aware until recently of the Petition for Reconsideration filed in the above-captioned matter on February 11, 2002 by Northpoint Technology, Ltd. and Broadwave USA, Inc (hereafter, the "Petition for Reconsideration"). EchoStar therefore requests leave to submit the following brief comments concerning Northpoint's petition.

Northpoint's Petition for Reconsideration does nothing more than repeat arguments already considered and rejected by the International Bureau (the "Bureau") in granting EchoStar's application for authority to launch the EchoStar 7 satellite. Accordingly, the Petition for Reconsideration should be denied, and the Commission should resist the punitive and gratuitous action requested by Northpoint – the issuance of an edict preventing EchoStar from using one of EchoStar 7's spot beams.

It is strange that Northpoint would have requested reconsideration of the EchoStar 7 license since neither Northpoint nor any other party had petitioned for denial of the EchoStar 7 application. Rather, Northpoint had filed *and withdrawn* a "Petition to Stay Proceedings Pending Disclosure and Analysis of Data Regarding Planned Signals" ("Petition to Stay")

claiming that EchoStar had not made all the technical data in its application publicly available.¹ Significantly, the bulk of Northpoint's Petition to Stay was devoted to arguing that the proposed spot beam pattern for EchoStar 7 was inconsistent with the public interest in expanded local-into-local service pursuant to the Satellite Home Viewer Improvement Act of 1999 ("SHVIA").²

EchoStar opposed Northpoint's Petition to Stay pointing out, among other things, that it had submitted to the Commission additional technical data concerning the EchoStar 7 application. EchoStar also explained why Northpoint's public interest arguments, which concerned a spot beam directed at Mexico, were simply wrong. Contrary to Northpoint's suggestion, the single beam pointed toward Mexico was not depriving any U.S. market of satellite service. Rather, the beam was pointed toward Mexico because technological limitations prevented it from being used to serve the United States, and no purpose would be served by simply allowing this spot beam slot go unused. Moreover, EchoStar noted, while it had no immediate plans to serve Mexico, it would not be unlawful for EchoStar to do so. Indeed, international DBS service has been encouraged by the Commission.³

Northpoint responded by withdrawing its Petition to Stay.⁴ In any event, the Bureau considered and rejected Northpoint's arguments made in that petition, holding that SHVIA does not require DBS operators to use all satellite beams for local-into-local service.⁵ The Bureau also acknowledged that U.S. DBS licensees may lawfully serve other countries if the

¹ Petition of Northpoint Technology, Ltd., and Broadwave USA, Inc., To Stay Proceedings Pending Disclosure and Analysis of Data Regarding Planned Signals (dated Sept. 24, 2001), at 2.

² See *In the Matter of EchoStar Satellite Corporation -- Application for Authority to Make Minor Modification to Direct Broadcast Satellite Authorization and for Authority to Launch and Operate EchoStar 7 Satellite*, File Nos. SAT-MOD-20010810-00071; SAT-A/O-20010810-00073, Order and Authorization, DA 02-118 (Satellite and Radiocommunication Division, International Bur. rel. Jan. 16, 2002), at ¶ 4 ("EchoStar 7 Launch Order") (characterizing the public interest argument as the "primary concern[]" raised by Northpoint in the Petition to Stay and associated reply).

³ See *id.* at 6-8.

⁴ Notice of Withdrawal of Motion to Stay; Opposition to Motion to Strike; and Reply Comments of Northpoint Technology, Ltd., and Broadwave USA, Inc. (dated Oct. 15, 2001).

⁵ EchoStar 7 Launch Order at ¶ 5.

Ms. Marlene Dortch
July 7, 2003
Page 3

service is approved by such other countries.⁶ The Bureau concluded that the EchoStar 7 application was in the public interest.

Northpoint's subsequent Petition for Reconsideration merely repeats the same assertions made in connection with its Petition to Stay,⁷ and offers no new or persuasive argument as to why the Bureau supposedly erred in its findings. It should also be noted that the EchoStar 7 satellite was launched in February 2002 and is now operating at the 119° W.L. orbital location. Even if the Bureau acted as Northpoint demands, the remedy – a prohibition on the use of the spot over Mexico – would be purely punitive and would vindicate no other purpose. Notably, it would be of absolutely no benefit to Northpoint. The Petition for Reconsideration should, therefore, be denied.

Respectfully submitted,



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Rhonda M. Bolton

Counsel for EchoStar Satellite Corporation

cc: Thomas Tycz, Satellite and Radiocommunications Division, International Bureau, FCC
J.C. Rozendaal, Counsel for Northpoint Technology, Ltd. and Broadwave USA, Inc.

⁶ *Id.*

⁷ See Northpoint Petition for Reconsideration at 3 (“It very clearly does not serve the U.S. public interest to devote precious resources for potential service to Mexico City when there is such a pressing need for service in this country.”).