

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

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)

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)
Application of EchoStar Satellite Corp.)
for Authority to Make Minor Modification)
to Direct Broadcast Satellite Authorization)
and for Authority to Launch and Operate)
EchoStar 7 Satellite)
_____)

File Nos. DBS 88-01;DBS 88-02;
SAT-MOD-20010810-00071;
SAT-A/O-20010810-00073

**PETITION OF NORTHPOINT TECHNOLOGY, LTD.,
AND BROADWAVE USA, INC., TO STAY PROCEEDINGS PENDING
DISCLOSURE AND ANALYSIS OF DATA REGARDING PLANNED SIGNALS**

Northpoint Technology, Ltd., and Broadwave USA, Inc. (collectively, “Northpoint”), through their undersigned counsel, hereby request that the Commission stay proceedings regarding the application of EchoStar Satellite Corporation (“EchoStar”) for authority to launch and operate the EchoStar 7 satellite until such time as the complete application is made available for public comment.

EchoStar’s paper application provides insufficient information to evaluate the precise strength and other characteristics of the planned signal beams at any particular location. EchoStar purports in its paper filing to have submitted, as part of its application, electronic files that may contain the necessary data. *See* EchoStar Application, Technical Annex, Appendix 1, at 2 (referring reader to certain named “electronic files” for co-polar and cross-polar gain contours of proposed beams). When Northpoint sought through its counsel to obtain access to the named electronic files from the Commission’s International Bureau, Northpoint’s counsel was informed that the Commission had no record of any electronic files having been filed as part of EchoStar’s

application. Northpoint then sought to obtain copies of the electronic files directly from EchoStar. In response, EchoStar confirmed that the files had not yet been submitted to the Commission and declined to provide a copy to Northpoint.

Having explicitly made the missing electronic files a part of its application, EchoStar must supply the *entire* application to the Commission for inspection and public comment. *See* 47 C.F.R. §§ 25.112, 25.154. The missing data regarding EchoStar's proposed beam pattern are essential in order to carry out proper electromagnetic compatibility studies. Absent the precise information about the beam shape and other attributes of the proposed signals, meaningful public comment on these crucial aspects of EchoStar's application is not possible.

To the extent that comment on EchoStar's incomplete application is possible, Northpoint wishes to draw the Commission's attention to EchoStar's plan to direct one of its proposed spot beams outside the United States, to locations in Mexico. Northpoint questions whether it is consistent with the public interest, convenience, and necessity for EchoStar to provide service to Mexico while refusing to carry local television signals to millions of subscribers in the United States – predominantly those living in rural areas. As the Commission noted in a report to the Congress released earlier this year, "DBS carriers currently serve only the top 40 markets and have not announced plans to extend beyond the top 45 markets, which would leave one-third of the 100.8 million television households (roughly 33.6 million) without access to local-into-local service on satellite."¹

¹ Report, *Report to Congressional Committees Pursuant to the Rural Local Broadcast Signal Act*, FCC 00-454, ¶ 32 (rel. Jan. 2, 2001).

EchoStar claims that its proposed satellite “will increase EchoStar’s ability to provide local-into-local broadcast services to an expanded number of cities,”² thus permitting EchoStar “to provide service that is a closer substitute to cable offerings, as envisioned by Congress when it enacted the Satellite Home Viewer Improvement Act of 1999”³ It is doubtful in the extreme, however, that Congress intended to improve competition to cable offerings in Mexico at the expense of improving competition to cable offerings in the United States.

EchoStar’s proposal so serve Mexico is also at odds with EchoStar’s attempt to justify expedited processing of its application by reference to the must-carry obligations for DBS operators that come into effect in January 2002. According to EchoStar, “[m]ust-carry necessitates a dramatic expansion of EchoStar’s capacity if EchoStar is to serve a substantial number of U.S. cities with local broadcast signals, and EchoStar 7 represents a step towards marshalling some of that additional capacity.”⁴ EchoStar could, however, serve more U.S. cities if it directed all of its proposed spot beams to locations within the United States. EchoStar offers no explanation in its application for its decision not to do so.

The public interest concerns raised by the information EchoStar has made available for public inspection make it all the more important for the Commission to consider the entire application before coming to a conclusion on whether granting the application would serve the public interest, convenience, and necessity. Northpoint urges the Commission not to take action on EchoStar’s application until the complete

² EchoStar Application at 2.

³ *Id.* at 6.

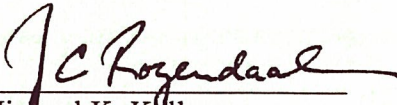
⁴ *Id.* at 7.

application, including the missing electronic files, has been made available to the public and adequate time has been given to analyze the missing data and to provide comments to the Commission thereon.

Respectfully submitted,
NORTHPOINT TECHNOLOGY, LTD.
AND BROADWAVE USA, INC.

September 24, 2001

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CERTIFICATE OF SERVICE

I, Shannon Thrash, hereby certify that on this 24th day of September, 2001, copies of the foregoing, *Petition of Northpoint Technology, Ltd., and Broadwave USA, Inc., To Stay Proceedings Pending Disclosure and Analysis of Data Regarding Planned Signals*, were served by hand delivery on the following:

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