

ORIGINAL

STEPTOE & JOHNSON LLP

ATTORNEYS AT LAW

1330 Connecticut Avenue, NW  
Washington, DC 20036-1105  
Telephone 202.429.3000  
Facsimile 202.429.3902  
www.steptoelaw.com  
RECEIVED  
NOV 03 1999  
FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

FX PARTE OR LATE FILED

Pantelis Michalopoulos  
202.429.6494  
pmichalo@steptoelaw.com

October 29, 1999

RECEIVED

NOV 03 1999

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

Ms. Magalie Salas  
Secretary  
Federal Communications Commission  
445 Twelfth Street, S.W.  
Washington, D.C. 20554

Re: **Ex Parte Presentation In File No. 0094-EX-ST-1999**  
**ET Docket No. 98-206, RM-9147; RM-9245**

Dear Ms. Salas:

Pursuant to Section 1.206 of the Commission's Rules and Regulations, 47 C.F.R. § 1.1206, EchoStar Satellite Corporation ("EchoStar") hereby submits a written ex-parte presentation in the above-captioned matters entitled "Preliminary Report on the Impact of Northpoint on the Direct Broadcast Satellite Service Based Upon Testing Performed to Date."

This Report draws the following main conclusions regarding the test conducted by Diversified Communications Engineering, Inc. ("Northpoint") in the Washington, D.C. area: **first**, Northpoint's own submissions reveal that it designed its tests to conceal interference problems by, among other things, taking advantage of unique geographical characteristics (like the predictable lack of DBS subscribers on the Potomac River) that cannot be the basis for nationwide licensing. Northpoint's trumpeting that its testing produced no consumer complaints is meaningless in light of the test design as well as its failure to provide adequate notice to DBS providers, effectively preventing them from monitoring Northpoint's rain testing.

Even so, **second**, Northpoint's own purported measurements reveal the occurrence of harmful interference into many of the receive sites where Northpoint states it has conducted its measurements. To explain away its own measurements, Northpoint resorts to the completely unscientific method of "averaging" - *i.e.*, it tries to make something of its assertion

No. of Copies rec'd \_\_\_\_\_  
List ABCDE

WASHINGTON

PHOENIX

LOS ANGELES

that the *average* measurement reflected a slight degradation of DBS signal reception. Even if it were true, averaging is an invalid method for assessing harmful interference into ubiquitous users: simply put, the consumers suffering from the interference cannot take any comfort from the fact that other consumers may be in a better position.

In essence, therefore, Northpoint is telling the Commission: you should allow us to operate throughout the country in the DBS band because we will be able to locate our transmitters in all U.S. cities so that the worst-impact areas will be rivers and deserts or parklands; and you should disregard the harmful interference received from Northpoint by a DBS subscriber if other DBS consumers receive less interference. These are unreasonable requests, and Northpoint's own claims cannot sustain a Commission decision to license its system.

In any event, *third*, what little monitoring was afforded by Northpoint's dubious methods has revealed a picture that is even bleaker than Northpoint's own measurements. Even in these circumstances, Northpoint's "result-oriented" testing produced harmful interference that exceeded by many orders of magnitude any acceptable standard.

In its aggressive public relations campaign, Northpoint has been discounting the technical concerns of DBS operators. According to Northpoint, these concerns hide EchoStar's "true" reason for opposing Northpoint's system – fear of competition. This carefully orchestrated campaign of innuendo and intimation may help Northpoint portray itself as the righteous new entrant, but it is irresponsibly false. EchoStar has long welcomed competition from, and has never opposed, terrestrial wireless technologies for delivering multichannel video. EchoStar did not oppose the Commission's proposal and eventual decision to allocate 1,000 MHz of spectrum for Local Multipoint Distribution Services. Nor did EchoStar object to the Commission's proposal to allow digital wireless cable services (Multichannel Multipoint Distribution Services). EchoStar's objection to Northpoint is not based on fear of competition, but on fear that Northpoint's service would wipe out reliable DBS reception for many subscribers. The attached preliminary technical report, documenting the harmful interference to result from Northpoint, and the further technical studies being prepared by EchoStar, are all based on technical concerns alone, and should help further dispel Northpoint's innuendo about the DBS operators' motives.

Ms. Magalie Salas  
October 29, 1999  
Page 3

An original and one copy of this presentation are submitted for inclusion in the above-captioned file numbers.

Very truly yours,



Pantelis Michalopoulos  
*Attorney for EchoStar Satellite Corporation*

cc: Antoinette Cook Bush, Skadden Arps Slate  
Meagher & Flom, LLP (Northpoint) (w/encl.)  
Tom Derenge (OET) (w/encl.)  
Jim Burtle (OET) (w/encl.)  
Bruno Pattan (OET) (w/encl.)  
Charles Iseman (OET) (w/encl.)  
Tom Stanley (WTB) (w/encl.)  
Michael Pollak (WTB) (w/encl.)  
Harry Ng (IB) (w/encl.)  
Kim Baum (IB) (w/encl.)  
Donald Abelson, Bureau Chief (IB) (w/encl.)  
Bruce Franca, Deputy Chief (OET) (w/encl.)  
Dale Hatfield, Chief (OET) (w/encl.)  
Chairman William E. Kennard (w/encl.)  
Commissioner Susan Ness (w/encl.)  
Commissioner Harold W. Furchtgott-Roth (w/encl.)  
Commissioner Michael K. Powell (w/encl.)  
Commissioner Gloria Tristani (w/encl.)

**DOCUMENT AVAILABLE  
IN THE LEAD  
DOCKET/RULEMAKING**

**SEE DOCKET NO. *98-206* FOR THE DOCUMENT.**