

ORIGINAL

May 07, 2001

**VIA HAND DELIVERY**

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

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**MAY - 7 2001**

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

**Re: *DIRECTV, Inc.; File No. 0094-EX-ST-1999; ET Docket No. 98-206/DA 99-494; EX PARTE***

Dear Ms. Salas:

This is to advise you that on Monday, April 30, 2001, Merrill Spiegel of DIRECTV, Inc. ("DIRECTV"), Karen Watson of EchoStar Satellite Corporation ("EchoStar") and Andrew Paul of the Satellite Broadcasting & Communications Association ("SBCA") met with Peter Tenhula, Senior Legal Advisor to Chairman Michael Powell. On Friday, May 4, 2001, Merrill Spiegel and the undersigned on behalf of DIRECTV, Karen Watson and Pantelis Michalopoulos on behalf of EchoStar, and Andrew Wright of the SBCA, met with Bryan Tramont, Senior Legal Advisor to Commission Furchtgott-Roth, and Adam Krinsky, Legal Advisor to Commissioner Gloria Tristani.

At these meetings, there was discussion of the implications of the "Analysis of Potential MVDDS Interference to DBS in the 12.2-12.7 GHz Band" performed by the MITRE Corporation (the "MITRE Report") for proposed sharing of proposed terrestrial systems and DBS systems in the 12.2-12.7 GHz band, as well as the positions set forth in the attached letter. The DIRECTV, EchoStar and SBCA representatives pointed out that MITRE's conclusions as to the significant interference that would be generated by a Northpoint Technology system and the impracticality of various mitigation techniques were completely consistent with DBS operator findings already in the record, and urged that the conclusion that spectrum sharing is possible at 12 GHz be re-examined.

Please do not hesitate to contact the undersigned should you have any questions.

Respectfully submitted,

  
James H. Barker  
LATHAM & WATKINS  
Counsel for DIRECTV, Inc.

Attachment  
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MAY - 3 2001

May 3, 2001

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

Chairman Michael K. Powell  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, D.C. 20554

Re: *ET Docket No. 98-206; DA Nos. 99-494; 00-1841; 00-2134; EX PARTE*

Dear Chairman Powell:

Northpoint Technology, Inc. and its BroadWave affiliates (collectively, "Northpoint") have urged the Commission to take precipitous action on Northpoint's pending applications to provide mass-market point-to-multipoint terrestrial services in the 12.2-12.7 GHz band, which is currently used on a primary basis to downlink programming to direct broadcast satellite ("DBS") subscribers across the United States. Now that independent testing conducted by the MITRE Corporation ("MITRE") has confirmed the significant interference threat that introduction of Northpoint's proposed system into the 12 GHz band would pose to tens of millions of viewers' receipt of DBS service,<sup>1</sup> we write to reiterate that it would be wholly inappropriate, and contrary to statute and Commission rules, for the Commission to take the action that Northpoint requests.

We are aware of efforts by Northpoint to distort the results of MITRE's testing, including the recent distribution of an "annotated version" of the Executive Summary of the MITRE Report with Northpoint commentary in the margins.<sup>2</sup> We urge the Commission to read the *full text* of the MITRE Report, or, at a minimum, the Report's Executive Summary. After doing so, it is difficult to refute the following assessment of that document in the attached April 30 column by Bob Scherman, editor and publisher, *Satellite Business News*:

The report was such a setback to Northpoint that it sent out an "annotated version" of the report several days later that underlined a handful of words or half a sentence here or there to try to make Northpoint's case. But that only reinforced MITRE's conclusion that terrestrial services will interfere with DBS, and it was a bizarre document that was almost reminiscent of those notes sent by kidnappers in the movies.<sup>3</sup>

<sup>1</sup> The MITRE Corporation, "Analysis of Potential MVDDS Interference to DBS in the 12.2-12.7 GHz Band" (April 2001) ("MITRE Report").

<sup>2</sup> See, e.g., Northpoint *Ex Parte* Letter (April 27, 2001) (attaching annotated Executive Summary of MITRE Report).

<sup>3</sup> Satellite Business News Fax Update (April 30, 2001), at 2 (attached).

The DBS and other satellite operators will soon be offering more extensive commentary on the MITRE Report in response to the Public Notice of its release.<sup>4</sup> However, we highlight a few of the most important facts here:

- **The MITRE test found unequivocally that: “MVDDS sharing of the 12.2-12.7 GHz band currently reserved for DBS poses a *significant interference threat* to DBS operation in many realistic operational situations.”<sup>5</sup> This finding – *the very first finding of the MITRE report* – demolishes Northpoint’s claim that deploying its service in the DBS spectrum band will not cause harmful interference. There should be no more disputes as to whether or not interference from Northpoint poses a major problem for many of the 40 million DBS viewers. It does. Period.**
- Northpoint is claiming publicly that MITRE’s report “makes clear that only Northpoint demonstrated a system that was able to share effectively with DBS,” and that it is something called “generic” MVDDS that MITRE found to be an interference threat, not Northpoint’s transmitting equipment.<sup>6</sup> These are outrageous, and demonstrably false, assertions.
  - In fact, it was *Northpoint’s* transmitting equipment – and *only* Northpoint’s equipment – that was used by MITRE in making its determination that terrestrial operations pose a “significant interference threat.” The only MVDDS interference generated during MITRE testing was Northpoint interference.<sup>7</sup>
  - Indeed, MITRE’s report suggests that the system Northpoint intends to use may actually *magnify* the harmful interference problem. The essence of Northpoint’s proposed system has always been its view that it can lessen the interference into DBS service by locating its terrestrial towers in the north. *MITRE’s report thoroughly debunks this idea.* MITRE has concluded that locating the towers in the north would in fact *aggravate* interference into

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<sup>4</sup> *Public Notice*, “Comments Requested on The MITRE Corporation Report on Technical Analysis of Potential Harmful Interference to DBS from Proposed Terrestrial Services in the 12.2-12.7 GHz Band (ET Docket 98-206),” DA 01-933 (rel. April 23, 2001).

<sup>5</sup> MITRE Report at xvi, 6-1 (emphasis added).

<sup>6</sup> *See, e.g.*, Press Release, “Northpoint Technology Passes FCC Mandated Independent testing – Only Company to Do So” (released April 24, 2001) (“MITRE concluded significant interference could result from generic terrestrial operations. From the report it was clear that only Northpoint demonstrated a system that was able to share effectively with DBS.”) (statement of Sophia Collier); Northpoint *Ex Parte* Letter (April 27, 2001) (annotation at xvi).

<sup>7</sup> *See, e.g.*, MITRE Report at § 3.2 (entitled “Testing of DBS Set-Top Boxes in the Presence of Northpoint MVDDS Interference”).

DBS!<sup>8</sup> So much for the "epiphany" that allegedly will "revolutionize how many Americans get their television signals."<sup>9</sup>

- The MITRE report finds that, "MVDDS/DBS bandsharing appears feasible *if and only if* suitable mitigation measures are applied."<sup>10</sup> However, the type of mitigatory measures necessary to make sharing even "feasible" are expensive and burdensome, and will not be able to eliminate the interference to all DBS subscribers.
- MITRE asks a more fundamental question: "**Do the potential costs of applying the necessary mitigatory measures, together with the impact of the *residual* MVDDS-to-DBS interference that might remain after applying such measures, outweigh the benefits that would accrue from allowing MVDDS to coexist with DBS in this band?**"<sup>11</sup>

We believe that the Commission can and should answer MITRE's question in the negative. *The benefits do not outweigh the costs.* The "mitigatory measures" mentioned by MITRE would be extremely burdensome and uneconomical. They include raising the height of Northpoint's thousands of transmitting towers to anywhere from 100 to 200 meters above the level of surrounding DBS receive antennas (New York's Trump Tower is 202 meters tall).<sup>12</sup>

By the same token, other mitigation methods suggested in the MITRE Report would unjustly place the burden on DBS consumers and require many currently satisfied consumers to have their small, 18-inch dishes replaced with larger antennas, relocated to another location on the consumer's property, and/or fitted with cumbersome "shielding." Consumers might even be required to replace their current set-top boxes. This type of mitigation is an unheard of intrusion in an effort to shoehorn a secondary service into the frequency band of a primary user. In addition, there is the question of who would be forced to pay for these changes that has yet to be addressed.

Fundamentally, the MITRE Report highlights the reasons that Northpoint cannot and should not be licensed on the merits.<sup>13</sup> Northpoint has often pointed to Congress'

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<sup>8</sup> See MITRE Report at xviii, 6-2-6-3.

<sup>9</sup> S. Labaton, "An Earthly Idea for Doubling the Airwaves" The N.Y. Times (April 8, 2001), at Sec. 3, pg.

1.

<sup>10</sup> MITRE Report at xvii (emphasis added).

<sup>11</sup> *Id.*

<sup>12</sup> See *id.* at xvii.

<sup>13</sup> Many parties, including the undersigned entities, have already addressed the reasons why Northpoint's applications to the Wireless Telecommunications Bureau for waivers to provide MVDDS also fail as a procedural matter and should be dismissed. If and when the Commission ultimately resolves the complex interference, service rule and licensing issues attending the introduction of secondary point-to-multipoint microwave services into the 12 GHz band (or some other frequency band), it must open a filing window and solicit applications to provide such services in accordance with its normal spectrum licensing processes.

enactment of the Rural Local Broadcast Signal Act ("RLBSA") as supporting its contention that the Commission must act quickly to grant its pending MVDDS license applications.<sup>14</sup> However, the text of the RLBSA is clear – and consistent with Commission rules<sup>15</sup> – that the Commission *cannot* authorize Northpoint or any other provider purporting to offer local channel services unless and until it can be established conclusively that "primary users of the spectrum," in this case DBS operators and their customers, will suffer no "harmful interference."<sup>16</sup> Indeed, this is why Congress wisely required the Commission in its FY 2001 budget authorization to conduct the independent testing that led to the MITRE Report.

Northpoint no longer can distort the record to claim that its technology will not cause harmful interference to the primary DBS service and its millions of customers. MITRE's report confirms definitively that Northpoint's proposed system *will* cause harmful interference -- *in complete corroboration* of tests and analyses conducted by U.S. DBS operators. Given the MITRE Report's findings, there certainly is no affirmative basis for granting Northpoint's pending applications at this time, and in fact, they should be dismissed.

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<sup>14</sup> We note that it is plain from the text of the RLBSA that Congress required nothing of the sort. Section 2002(a) of the RLBSA requires the Commission to "take all actions necessary to make a determination regarding licenses or other authorizations for facilities that will utilize, for delivering local broadcast television station signals to satellite television subscribers in unserved and underserved local television markets, spectrum otherwise allocated to commercial use." As a threshold matter, it is unclear whether Northpoint even can claim standing to invoke this statutory section; to do so, Northpoint must affirm that its business plan will be focused primarily on the deployment of facilities that will be providing local channel service in rural and underserved areas, as opposed to broadband services or urban deployments. In any event, however, the Commission has already complied with this section. By November 29, 2000 (the one-year anniversary of the RLBSA), it had undertaken the actions necessary to allow it to "make a determination" regarding the creation of a new proposed MVDDS service and the processing of proposed MVDDS licenses. The statute does not require that any such "determination" actually be made by a date certain, only that all actions be undertaken by November 29, 2000, in order to put the Commission in a position to make one. The statute certainly does not require that the "determination" be a grant of specific pending license applications, as Northpoint contends. Where Congress intends to order the Commission to take such action, it is more than capable of expressing its intent with the requisite specificity, and has done so expressly with respect to the provision of rural area service in other contemporaneous statutes. *See, e.g.,* Launching Our Communities Access to Local Television Act of 2000, Pub. L. No. 106-553, §§ 1007(a)(b) (reinstating applicants as tentative selectees in specific proceeding, *In re Applications of Cellwave Telephone Services L.P. et al.*, 7 FCC Rcd 19 (1992), and directing Commission to "award licenses" in rural service area licensing proceeding "within 90 days of date of enactment of this Act.").

<sup>15</sup> *See, e.g.,* 47 C.F.R. § 2.106, S5.490 (stating that "[i]n Region 2 [the Americas], in the band 12.2-12.7 GHz, existing and future terrestrial radiocommunication services shall not cause harmful interference to" DBS services).

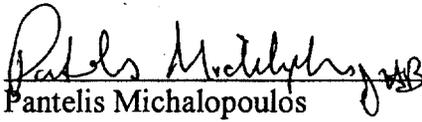
<sup>16</sup> RLBSA, § 2002(b)(2).

Very truly yours,



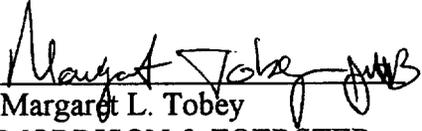
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Attachment

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**Scherman's  
Notebook**



Last week's release of the Mitre report on the interference terrestrial services such as the one proposed by Northpoint Technology will inflict on DBS was a devastating blow to Northpoint and the others who want to launch such a service. Mitre was under immense political pressure to write a report favorable to Northpoint. But it could not. The report was such a setback to Northpoint that it sent out an "annotated version" of the report several days later that underlined a handful of words or half a sentence here or there to try and make Northpoint's case. But that only reinforced Mitre's conclusion that terrestrial services will interfere with DBS, and it was a bizarre document that was almost reminiscent of those notes sent by kidnappers in the movies. There just is no escaping Mitre's conclusion that terrestrial service "poses a significant interference threat to DBS operation in many realistic operational situations." The words "many realistic operational situations" leap off the page. Translation? The real and everyday world where people live and DBS provides the only alternative to cable. Bowing to that political pressure, however, Mitre struggled to come up with something to help Northpoint. But it could only advance several kooky, unrealistic, and theoretical "mitigation techniques." Yet even those ideas, Mitre admitted, had to be "properly applied under appropriate circumstances." Translation? These ideas may look good on paper, but probably would not work too well in the field. At several points, Mitre actually suggested that one-way terrestrial services could share DBS spectrum would be for DirecTV and EchoStar to move or replace (with larger antennas) existing DBS antennas, retrofit them (guess Sophia would be going door to door across America with one humongous roll of aluminum foil!), and/or replace existing DBS receivers. Now there is a practical idea: just scrap millions of DBS systems. Or how about Mitre's proposal that terrestrial services raise their transmitting towers 100 or 200 meters above all DBS antennas in a particular area? Another practical solution. Just ask the cellular phone companies about placing antennas in urban and suburban areas. And that is a service that works and people actually want. In short, Mitre's report illustrates how ludicrous this whole mitigation concept really is. It is technically and economically infeasible, assumes terrestrial and DBS services will share confidential information about the location of their subscribers, and is predicated on a notion that any service infrastructure could administer such a program. For example, who pays for the first few service calls, assuming, of course, the consumer even knows who to call? If the FCC ignores the Mitre report and does move ahead and allow DBS spectrum to be shared, the report will one day become extremely effective ammunition for the cable industry to use in its anti-DBS campaigns. It was that straight-forward and that clear cut. So it is time, once and for all, to put this entire DBS spectrum sharing idea out of its misery. Were it not for its political connections and contributions, Northpoint would have been laughed out of the FCC two years ago. Now, Mitre has confirmed what DBS has been saying all along and it is the FCC that must do what it should have all along: allow 15 million (and counting) DBS homes to enjoy cable's only competitor without interference.

**NEWS & NOTES:** President Bush announced Friday he intends to nominate FCC Chairman Michael Powell to a second term, assuming he is confirmed by the Senate, Powell could remain Chairman until 2007. "If confirmed by the Senate, the extension of my term beyond next June's expiration date will provide a positive and helpful continuity to the important work that I, and the new commissioners who will be taking office later this year, will be engaged in," Powell said in a statement.

**LEADERSHIP.**

9.8 million DIRECTV customers.



**DIRECTV, INC., IS A UNIT OF HUGHES ELECTRONICS CORPORATION (NYSE:GMH)**

## CERTIFICATE OF SERVICE

I hereby certify that this 3rd day of May 2001, a true and correct copy of the foregoing was served via hand delivery upon the following:

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James H. Barker

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I hereby certify that this 7th day of May 2001, a true and correct copy of the foregoing was served via hand delivery upon the following:

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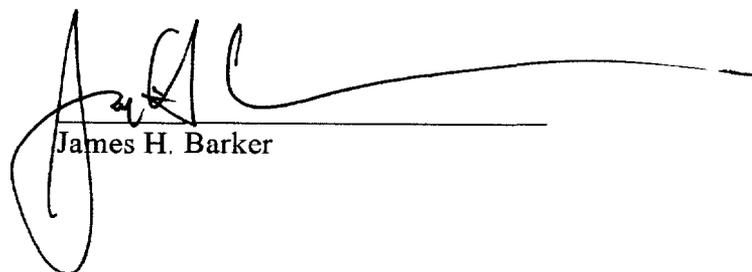
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