ORIGINAL

STEPTOE & JOHNSON LLP

ATTORNEYS AT LAW

1330 Connecticut Avenue, NW
Washington, DC 20036-1795

Telephone 202.429.3000
Facsimile 202.429.3902
www.steptoe.com

Pantelis Michalopoulos
202.429.6494
pmichalo@steptoe.com

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

EX PARTE OR LATE FILED

January 17, 2002

By HAND DELIVERY

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
445 Twelfth Street, SW – Room TW-A325
Washington, D.C. 20554

Re: Ex Parte Presentation – In the Matter of Amendment of the Commission's Rules to Authorize Subsidiary Terrestrial Use of the 12.2-12.7 GHz Band by Direct Broadcast Satellite Licensees and Their Affiliates – ET Docket No. 98-206, RM-9147, RM-9245; Petition for Rulemaking to Amend Eligibility Requirements in Part 78 Regarding 12 GHz Cable Television Relay Service CS Docket No. 99-250, RM-9257

Dear Ms. Salas:

In accordance with Section 1.1206 of the Commission's Rules, 47 C.F.R. § 1.1206, EchoStar Satellite Corporation ("EchoStar") submits this letter to report that, on January 14, 2002, representatives of EchoStar and DIRECTV, Inc. ("DIRECTV") and the Satellite Broadcasting and Communications Association ("SBCA") (together, "DBS Operators") met with Monica Desai, Legal Advisor to Commissioner Kevin J. Martin.

The DBS Operators expressed their view that the Cable Television Relay Service ("CARS") band, among others, is a suitable home for the terrestrial consumer service proposed by Northpoint and others. Use of that spectrum only requires coordination with a limited and apparently decreasing number of fixed links, not with the DBS service received by millions of households. The Northpoint claim that it needs to use the DBS band because of economies of scale is specious. There is no apparent reason why the equipment for a Northpoint service in the CARS band would cost one penny more than in the DBS spectrum.

While EchoStar remains adamantly opposed to introducing an interfering service to the DBS band, if the Commission decides to pursue this course, it should do so only under the following circumstances:

- There is no question that the Commission must submit applicants to auction if the requirements of 47 U.S.C. §309(j) are met. DBS providers have paid hundreds of millions of dollars to the government for DBS licenses issued after the Commission received auction authority.

- The Commission should do so starting with one test market, as was the case with the Local Multipoint Distribution Service. Here, this approach is even more warranted than it was in the case of LMDS. The threat of significant interference found in the independent tests of the MITRE Corporation and the heavy use of the band (incomparably heavier than the Ka-band at the time) require more, not less, caution.

- The Commission should provide for an escrow fund or a bond ensuring that the licensees of that service will adequately reimburse the DBS Operators for the mitigation work necessary to prevent harmful interference into DBS subscribers' satellite dishes and preserve the primary nature of the DBS service.

- The Commission should not effectively grant Northpoint a "pioneer's preference," but should follow its normal wireless license assignment process, open a filing window, and utilize competitive bidding procedures if mutually exclusive applications are filed.

- DBS providers should be eligible to apply for such licenses, but cable operators should not be allowed to bid on account of their market power and anti-competitive incentives.

An original and two copies of this Ex Parte Notice for each docket number are provided to your office as required by Section 1.1206 of the Commission's rules.

Sincerely,

Pantelis Michalopoulos
Counsel for EchoStar Satellite Corporation

cc: Monica Desai
Service List

CERTIFICATE OF SERVICE

I, Pantelis Michalopoulos, hereby certify that on this 17th day of January 2002, copies of the foregoing were served by hand delivery (indicated by *) or by U.S. mail, upon the following:

Magalie Roman Salas*
Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, DC 20554

Chairman Michael K. Powell*
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, DC 20554

Commissioner Kathleen Q. Abernathy*
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, DC 20554

Commissioner Michael J. Copps*
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, DC 20554

Commissioner Kevin J. Martin*
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, DC 20554

Peter A. Tenhula*
Senior Legal Advisor
Office of Chairman Michael K. Powell
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, DC 20554

Bryan Tramont, Sr.*
Legal Advisor
Office of Commissioner Kathleen Q. Abernathy
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, DC 20554

Paul Margie*
Spectrum and International Legal Advisor
Office of Commissioner Michael J. Copps
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, DC 20554

Susanna Zwerling*
Media and Consumer Protection
Legal Advisor
Office of Commissioner Michael J. Copps
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, DC 20554

Sam Feder*
Senior Legal Advisor
Office of Commissioner Kevin J. Martin
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, DC 20554

Monica Desai*
Legal Advisor
Office of Commissioner Kevin J. Martin
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, DC 20554

Bruce Franca*
Chief Engineer
Office of Engineering & Technology
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, DC 20554

Thomas J. Sugrue*
Bureau Chief
Wireless Communications Bureau
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, DC 20554

James H. Barker, III
Latham & Watkins
555 Eleventh Street, N.W.
Suite 1000
Washington, DC 20004
Counsel for DIRECTV, Inc.

Michael K. Kellogg*
Kellogg, Huber, Hansen,
Todd & Evans, P.L.L.C.
Sumner Square
1615 M Street, N.W.
Suite 400
Washington, DC 20036
Counsel for Northpoint Technology, Ltd. and Broadwave USA, Inc.

Antoinette Cook Bush
Northpoint Technology, Ltd.
400 North Capitol Street, N.W.
Suite 368
Washington, DC 20001

Bruce D. Jacobs
Tony Lin
Shaw Pittman
2300 N Street, N.W.
Washington, DC 20037
Counsel for Pegasus Broadband Corporation

Margaret L. Tobey
Morrison & Foerster
2000 Pennsylvania Avenue, N.W.
Suite 5500
Washington, DC 20006
Counsel for the Satellite Broadcasting and Communications Association

Nathaniel J. Hardy
Irwin, Campbell & Tannenwald, P.C.
1730 Rhode Island Ave., N.W.
Suite 200
Washington, DC 20036-3101
Counsel for Satellite Receivers, Inc.

James W. Olson
Gregory F. Intoccia
Howrey Simon Arnold & White LLP
1299 Pennsylvania Ave., N.W.
Washington, DC 20004
Counsel for MDS America, Incorporated

Marvin Rosenberg
Holland & Knight LLP
2099 Pennsylvania Avenue, N.W.
Suite 100
Washington, DC 20006
Counsel for Hubbard Broadcasting, Inc.

Pantelis Michalopoulos