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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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January 23, 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 22, 2002, representatives of EchoStar and DIRECTV, Inc. ("DIRECTV") (together, "DBS Operators") met with Peter A. Tenhula, Senior Legal Advisor to Chairman Powell.

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 the DBS Operators remain 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:

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- 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 diminish 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: Peter A. Tenhula
Service List

CERTIFICATE OF SERVICE

I, Pantelis Michalopoulos, hereby certify that on this 23rd day of January 2002, copies of the foregoing were served by hand delivery (indicated by *) or by U.S. mail, upon the following:

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