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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

March 13, 2002

VIA HAND DELIVERY

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

EX PARTE OR LATE FILED

Re: DIRECTV, Inc., EchoStar Satellite Corporation, Satellite Broadcasting & Communications Association; 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 Tuesday, March 12, 2002, the undersigned and Merrill Spiegel on behalf of DIRECTV, Inc. ("DIRECTV"), and David Goodfriend and Pantelis Michalopoulos on behalf of EchoStar Satellite Corporation ("EchoStar") (collectively, the "DBS Operators"), met with Monica Desai of the Office of Commissioner Kevin Martin.

At this meeting, there was discussion of the positions set forth in the filings of DIRECTV, EchoStar and the SBCA in the above-referenced proceedings, including the proper method of assigning licenses in a terrestrial wireless MVDDS service if one is created, *i.e.*, opening a filing window and soliciting applications for licenses to be assigned by competitive bidding. The DBS Operators explained why the position of Northpoint Technology, Ltd. ("Northpoint") on this issue is without merit. The DBS Operators noted that Northpoint's citation of the Orbit Act as a reason not to proceed with competitive bidding is an argument with no persuasive statutory basis: the ORBIT Act provision relied on by Northpoint, entitled "Satellite Auctions," has nothing to do with Northpoint's proposal. If Northpoint were right, that provision would require the US government to oppose in the ITU any auction worldwide for "3G" or other terrestrial services in any band shared with satellite services. Accepting Northpoint's argument would also seriously undermine the Commission's to conduct auctions in any of the myriad spectrum bands that have both a satellite and a terrestrial service allocation.

Northpoint is seeking radically different treatment than any other proponent of the creation of a new terrestrial point-to-multipoint wireless service. Northpoint cannot create some sort of equitable estoppel in its favor on the ground that its application has been pending for a long time: it was Northpoint that decided to file an application at the same time as its request for a fundamental rule change and not wait for the rule change before filing. While this is not an uncommon practice, it is well understood in such cases that disposition of the application must await evaluation of the proposed rule change.

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The DBS Operators further noted that Northpoint's request for special treatment amounts to a request for an unlawful "pioneer's preference" that would undermine almost ten years of assigning functionally identical licenses by auction. The DBS operators also discussed the inadequacy of EPFD limits proposed by Northpoint in the 12.2-12.7 GHz band; the impracticality of mitigation techniques advocated by Northpoint; the fact that residual interference would be present even if mitigation techniques were utilized; and urged that an adequate compensation mechanism be devised to allow the DBS Operators to be reimbursed by MVDDS licensees for subscriber mitigation costs if the service moves forward in the DBS downlink band (which, due to harmful interference concerns, it should not).

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

Respectfully submitted,



James H. Barker
LATHAM & WATKINS

Counsel for DIRECTV, Inc.

cc: The Honorable Kevin J. Martin
Monica Desai, Esq.