

SENATE SUBCOMMITTEE ON COMMUNICATIONS

TESTIMONY OF ANDREW S. WRIGHT, PRESIDENT

SATELLITE BROADCASTING AND COMMUNICATIONS ASSOCIATION

“RURAL WIRELESS TECHNOLOGY”

May 22, 2003

Thank you, Mr. Chairman, Senator Hollings, and members of the subcommittee, for inviting me to testify today. My name is Andy Wright, and I am the President of the Satellite Broadcasting and Communications Association. SBCA is the national trade association that represents the satellite services industry. Our members include satellite television, radio and broadband providers, programmers, equipment manufacturers, distributors and retailers.

The direct broadcast satellite (or DBS) operators SBCA represents provide the most advanced television choices in the multichannel video market, including high-definition television and other advanced services. The benefit of satellite-delivered technology like DBS is that it can reach consumers across the country without discriminating between rural and urban, sparsely or densely populated areas.

When Congress passed the Satellite Home Viewer Improvement Act in 1999, granting DBS providers the ability to offer local channels, DBS operators DIRECTV and EchoStar hoped to be able to offer local channels to consumers in 20 markets. However, with technological

improvements and increased broadcast center capabilities, today, DBS subscribers in over 70 markets can receive local channels, covering over 75 percent of U.S. television households. Further, both providers are working hard to expand the number of markets they can serve with local-into-local. By the end of this year, each DBS operator has said that they will bring local service to 100 markets or more. Recent consumer research shows that more than 85 percent of new DBS subscribers are purchasing packages that include their local channels if they are located in a market where local-into-local is available.

In addition to providing satellite television service to 20 million American households, satellite providers also offer one- and two-way high-speed Internet service to homes and businesses nationwide. Today, subscribers of the two providers of satellite broadband, DIRECWAY and StarBand, experience data rates that are up to ten times as fast as dial-up Internet service.

New entrants SPACEWAY and WildBlue are preparing to launch the next generation of satellite broadband service. This next-generation service should be especially appealing to the millions of homes and small offices that lack access to wireline broadband alternatives. The data rates for these new services will be comparable to cable modem or digital subscriber line (DSL) service. A “digital divide” will no longer exist in the market for high-speed Internet service because satellites reach across the country with a national footprint. Via satellite, millions of rural consumers that may never be served by wireline technology will have the opportunity to access the Internet at the fast data rates available to urban and suburban customers from cable and DSL.

However, satellite operators can not offer subscribers a competitive alternative to wireline technology if the satellite signals that currently provide service to consumers, businesses and the government are subjected to noise from other services that operate in or adjacent to the spectrum bands where DBS, satellite radio, and satellite broadband operate. Specifically, the ability of DBS to offer subscribers a competitive alternative to wireline technology would be greatly diminished if the satellite signals which carry DBS services to the American public are subjected to interference from a terrestrial wireless service operating in the spectrum that was allocated for DBS's primary use.

There are now over 20 million DBS subscriber households —comprising some 53 million individual viewers — which means that one in five television households across America receive their multichannel video service via satellite. The issue of permitting a terrestrial wireless cable service – as Northpoint Technology, Inc. and others propose – to operate in the spectrum band set aside for DBS is of concern to the DBS industry because of the threat of ruinous interference that would be caused to our current and future customers.

As Members of Congress, you should be extremely concerned by any proposal that would jeopardize the benefits of increased competition that your constituents now enjoy. Competitive rates, better customer service, and the quick deployment of advanced telecommunications offerings are the result of the tireless efforts of Congress and the Federal Communications Commission (FCC) to create public policy that spurs competition in the multichannel video program distribution (MVPD) market.

Last May, the FCC released an Order authorizing the terrestrial use of the DBS spectrum.

Unfortunately, it allows for this new service, called Multichannel Video Distribution and Data Service (MVDDS), to increase a DBS customer's signal unavailability by 30% or more. As FCC Commissioner Kevin Martin questioned, in his dissent to the Order, "does 'in the range of 30% or higher' mean 60-90%?...Unfortunately, these questions seem to lead to only one conclusion: the majority's technical requirements are driven by a desire for MVDDS deployment, regardless of cost to DBS licensees and their customers."

Commissioner Martin also shares our concern of protecting current and future DBS consumers from harmful interference. He states, "By law, DBS service is entitled to protection from 'harmful interference.' Even more important, existing DBS customers deserve to be protected from unreasonable interference. This [Order] does neither."

It is important to note that the increased interference that will result from Northpoint's proposed service operating in the DBS band is in addition to the 10% increase in unavailability that the DBS industry was forced to accept from another satellite service (Non-geostationary satellite orbit, fixed satellite service, or NGSO-FSS). A third ubiquitous consumer service should not be shoehorned into this spectrum band at the cost of harming the competition in the multichannel video marketplace that Congress and the Commission have worked for over a decade to foster.

In an effort to protect current and future DBS subscribers, SBCA and the DBS providers have asked the U.S. Court of Appeals for the District of Columbia Circuit to reverse the Commission's spectrum-sharing decision. We expect our appeal to be heard this fall.

We do not fear further competition. In fact, the DBS providers, DIRECTV and EchoStar, asked the FCC to place Northpoint's proposed service in an adjacent spectrum band, which has the same propagation characteristics and the same amount of spectrum available, but is not used to provide a ubiquitous consumer service to 20 million households and more than 53 million Americans.

We do, however, fear the devastating interference that will occur if this contamination of the DBS downlink by terrestrial services is ultimately permitted. Indeed, our fears have been confirmed by a Congressionally-mandated independent study, performed by the MITRE Corporation. Specifically, the very first finding of the MITRE Report is that the terrestrial sharing of the 12.2-12.7 GHz spectrum band, "poses a significant interference threat to DBS operation in many realistic operational situations."

While our greatest concern with this matter is protecting DBS customers from harmful interference, we feel strongly that should the FCC's spectrum-sharing decision ultimately be upheld, Northpoint should not be granted its request for a free, nationwide exclusive license. Northpoint filed suit in federal court as well, opposing the Commission's decision to assign MVDDS licenses via competitive bidding. Northpoint has also appealed to Congress to require the Commission to bypass the normal statutorily-mandated auction process and prefer Northpoint to its wireless cable and DBS competitors with a gift of publicly-owned spectrum. There is no legal or public policy justification to grant that request. Indeed, the Bush Administration opposes Northpoint's spectrum grab and has issued a Statement of Administration Policy, stating, "The Administration would strongly oppose any amendment that

would restrict the FCC's ability to assign, via competitive bidding, spectrum licenses that could be used by terrestrial (i.e., non-satellite) services. Such a provision would interfere with the efficient allocation of Federal spectrum licenses, provide a windfall to certain users, and reduce Federal revenues.”

Further, there are other service operators that have expressed a desire to provide MVDDS in the 12.2-12.7 GHz band. In filings to the FCC, both MDS America and Pegasus Broadband Corporation have opposed Northpoint’s spectrum grab, and urged the Commission to allow for more than one competitor in the MVDDS market. Even though we remain opposed to any terrestrial users operating in the DBS spectrum band due to the resulting interference to which our subscribers would be subjected, it would be anti-competitive to grant an exclusive nationwide license to one MVDDS operator for free.

The FCC rejected Northpoint’s requests for a free, nationwide exclusive license, and ruled that MVDDS licenses will be assigned via its normal competitive bidding procedures. In May 2002, the FCC correctly ruled on this issue by stating, “Assigning MVDDS licenses through competitive bidding also promotes efficient and intensive use of the spectrum and recovery for the public of a portion of the value of this scarce resource.” The auction for MVDDS licenses was recently postponed, but only until the Commission resolves the question of which geographic divisions to use to assign MVDDS licenses.

In arguing that the Commission should grant it free terrestrial use of the DBS spectrum, Northpoint continues its effort to misrepresent the plain meaning of the Open-market

Reorganization for the Betterment of International Telecommunications Act (“ORBIT Act”). The ORBIT Act states that, “the Commission should not have the authority to assign by competitive bidding orbital locations or spectrum used for the provision of international or global satellite communications services.” The ORBIT Act does not exempt domestic satellite services, such as DBS, from the normal auction process. In fact, the FCC has scheduled an auction for this August to assign the remaining DBS frequencies. The ORBIT Act most certainly does not exempt a non-satellite provided domestic point-to-multipoint terrestrial wireless cable service, as Northpoint proposes to provide, from participating in the normal competitive bidding procedure.

Other wireless cable systems, functionally-identical to the one proposed by Northpoint, have invested over \$1.6 billion at auction for their licenses, and the DBS industry has paid \$734 million to purchase spectrum at auction and in the aftermarket. Moreover, DBS service providers have invested over \$7 billion to bring DBS service to over 53 million viewers across America. This investment includes the acquisition of spectrum, as well as money spent to build, insure, launch and operate DBS satellites, ground systems, uplink facilities and call centers. DBS operators made their investments in reasonable reliance upon the Commission’s Orders that facilitated an interference-free environment in which to operate their systems.

In closing, DBS is currently offering consumers across America, including rural and underserved areas, a competitive option for video television, including high-definition video and other advanced services. The future looks bright. To threaten the technical integrity and picture quality of this proven service with guaranteed interference would harm rural consumers. We look forward to working with you and your staff as you continue to create communications

policy that benefits all Americans, particularly those in rural areas who otherwise have few options for the services DBS offers.

Thank you.