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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C.

Re: Ex Parte Presentation: Revision of Rules and Policies for the Direct Broadcast Satellite Service: IB Docket No. 95-168, PP Docket No. 93-253

Dear Mr. Caton:

The State of Hawaii (the "State"), by its attorneys, submits this written ex parte presentation to highlight the strong support for the Commission's proposal to require certain DBS permittees to provide DBS service to Alaska and Hawaii and to respond to the minor objections to the service rules by the Commission. In its previously filed comments, the State expressed its support for the thrust of the Commission's proposal to impose specific service requirements for Hawaii and Alaska on certain DBS permittees. The State, however, urged the Commission to adjust its proposed rules to ensure that they cause DBS service to become available in these states.

Many of the parties filing comments and reply comments agree with the State that the Commission should adopt rules that will ensure the timely provision of DBS service to Hawaii and Alaska.[1] Two commenters, BellSouth and United States Satellite Broadcasting ("USSB"), however, took positions that were inconsistent with the State's comments.

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[1] See Comments of Tempo DBS, Inc. at 38 (filed Nov. 20, 1995); Comments of Primestar Partners L.P. at 24 (filed Nov. 20, 1995); Comments of the National Rural Telecommunications Cooperative at 10 (filed Nov. 20, 1995); Comments of MCI Telecommunications Corporation at 23, 24 (filed Nov. 20, 1995); Reply Comments of the National Rural Telecommunications Cooperative at 8 (filed Nov. 30, 1995); Reply Comments of the State of Alaska at 1, 2 (filed Nov. 30, 1995).

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In their comments, both BellSouth and USSB questioned the need for service requirements for Hawaii and Alaska.[2] As explained by the State's comments, however, all available evidence points to the need for these requirements.[3] Indeed, no DBS permittee currently provides service to Hawaii; nor has any permittee even commenced construction of a satellite to be launched to a western orbital location. Plainly then, service requirements are necessary to achieve the Commission's stated goal of truly nationwide DBS service.

The State cannot overemphasize the critical nature of the need for service requirements. Like American Satellite Network Inc., the State believes that the Commission's actions in this proceeding "will shape the face of the DBS industry for years to come."[4] Accordingly, in its comments, the State urged the Commission to ensure that the rules adopted in this proceeding do not create any loopholes that could be exploited to frustrate one of the primary goals of this proceeding: to "ensure timely DBS service to Alaska and Hawaii."[5]

BellSouth has asked the Commission to create just such a loophole: it suggests that new DBS permittees should be required to provide service to Hawaii and Alaska "only where such service is technically feasible and economically reasonable."[6] The Commission should reject this request. As a threshold matter, there is no evidence to suggest that providing DBS service to these states would be economically unreasonable. Moreover, BellSouth's claim is based on the incorrect assumption that the prices paid at auction will not reflect the cost of providing service to Hawaii and Alaska. Contrary to BellSouth's belief, bidders will surely consider the cost of such service in preparing their bids. It therefore would be unfair to allow a new DBS permittee to benefit from a lower auction price as a result of the service obligations attached to the permit and then avoid the service obligations based on alleged economic hardship.[7]

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[2] See Comments of BellSouth Corporation at 10 (filed Nov. 20, 1995) ("BellSouth Comments"); Comments of United States Satellite Broadcasting Company, at 10 (filed Nov. 20, 1995).

[3] See Comments of the State of Hawaii at 1, 2.

[4] See Comments of the American Satellite Network, Inc. at 2 (filed Nov. 20, 1995).

[5] See Revision of Rules and Policies for the Direct Broadcast Satellite Service, Notice of Proposed Rulemaking, IB Docket No. 95-168, PP Docket No. 93-253, at ¶ 4 (rel. Oct. 30, 1995).

[6] BellSouth Comments at 10.

[7] See Comments of the State of Hawaii at 5-8.

In closing, the State again wishes to express its support for the rules proposed by the Commission and to urge the Commission to ensure that these rules do not create any loopholes that could be exploited to the further detriment of the residents of Hawaii and Alaska. In its comments, the State suggested a relatively straightforward means by which the Commission could achieve this goal. More specifically, the Commission should simply require all permittees for western orbital slots and new permittees for eastern orbital slots to provide service to Hawaii and Alaska. New permittees for eastern orbital slots[8] that believe service to Hawaii and Alaska is not technically feasible should be required to petition for a waiver of this service requirement. The Commission, however, should subject such waiver petitions to rigorous scrutiny.[9]

In accordance with Section 1.1206(a) of the Commission's rules, two copies of this written submission are being filed with the Secretary for inclusion in the public record.

Sincerely,

Herbert E. Marks
Counsel for the State of Hawaii, Department of Commerce and Consumer Affairs

cc: Chairman Reed E. Hundt
Commissioner James H. Quello
Commissioner Andrew C. Barrett
Commissioner Rachelle B. Chong
Commissioner Susan Ness
Scott Blake Harris
Thomas Tycz
Suzanne Hutchings
Bill Wiltshire
Diane Conley

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[8] Like the State, both the State of Alaska and MCI believe that service to Hawaii can be provided from western orbital locations. Accordingly, DBS permittees for western orbital slots should not be eligible for waivers based on technical infeasibility. See Reply Comments of the State of Alaska at 1; Comments of MCI at 23.

[9] The State notes that before Advanced Communications Corporation's ("ACC's") DBS permit was revoked, ACC and Tempo planned to implement service to Hawaii from the 110° W eastern orbital location next summer. See Comments of Tempo DBS at 38.