

LATHAM & WATKINS

ATTORNEYS AT LAW

1001 PENNSYLVANIA AVE., NEW
SUITE 1300
WASHINGTON, D.C. 20004-2505

TELEPHONE (202) 637-2200
FAX (202) 637-2201

PAUL R. WATKINS (1899 - 1973)
DANA LATHAM (1898 - 1974)

RECORDED DOCKET FILE COPY ORIGINAL

OCT 30 1997

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

NEW YORK OFFICE

885 THIRD AVENUE, SUITE 1000
NEW YORK, NEW YORK 10022-4802
TELEPHONE (212) 906-1200
FAX (212) 751-4864

ORANGE COUNTY OFFICE

650 TOWN CENTER DRIVE, SUITE 2000
COSTA MESA, CALIFORNIA 92626-1925
TELEPHONE (714) 540-1235
FAX (714) 755-8290

SAN DIEGO OFFICE

701 'B' STREET, SUITE 2100
SAN DIEGO, CALIFORNIA 92101-8197
TELEPHONE (619) 236-1234
FAX (619) 696-7419

SAN FRANCISCO OFFICE

505 MONTGOMERY STREET, SUITE 1900
SAN FRANCISCO, CALIFORNIA 94111-2562
TELEPHONE (415) 391-0800
FAX (415) 395-8095

SILICON VALLEY OFFICE

75 WILLOW ROAD
MENLO PARK, CALIFORNIA 94025-3658
TELEPHONE (650) 328-4600
FAX (650) 463-2600

TOKYO OFFICE

INFINI AKASAKA, MINATO-KU
TOKYO 107, JAPAN
TELEPHONE +813-3423-3970
FAX +813-3423-3971

CHICAGO OFFICE

SEARS TOWER, SUITE 5800
CHICAGO, ILLINOIS 60606
TELEPHONE (312) 876-7700
FAX (312) 993-9767

HONG KONG OFFICE

23RD FLOOR
STANDARD CHARTERED BANK BUILDING
4 DES VOEUX ROAD CENTRAL, HONG KONG
TELEPHONE + 852-2905-6400
FAX + 852-2905-6940

LONDON OFFICE

ONE ANGEL COURT
LONDON EC2R 7HJ ENGLAND
TELEPHONE + 44-171-374 4444
FAX + 44-171-374 4460

LOS ANGELES OFFICE

633 WEST FIFTH STREET, SUITE 4000
LOS ANGELES, CALIFORNIA 90071-2007
TELEPHONE (213) 485-1234
FAX (213) 891-8763

MOSCOW OFFICE

ULITSA GASHEKA, 7, DUCAT II, 9TH FLOOR
MOSCOW, RUSSIA 125047
TELEPHONE + 7-095 785-1234
FAX + 7-095 785-1235

NEW JERSEY OFFICE

ONE NEWARR CENTER
NEWARK, NEW JERSEY 07101-3174
TELEPHONE (973) 639-1234
FAX (973) 639-7298

October 30, 1997

BY HAND DELIVERY

Mr. William F. Caton
Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

Re: Petition of Consumers Union and Consumer Federation of America to Update Cable Television Regulations and Freeze Existing Cable Rates, MM Docket Nos. 92-264, 92-265, 92-266; RM No. 9167; Comments of DIRECTV, Inc.

Dear Mr. Caton:

Consumers Union and Consumer Federation of America ("CFA") have filed the above-referenced petition requesting the Commission to (1) freeze cable rates and develop rate regulations that ensure reasonable rates; (2) lift the stay of its regulations that establish horizontal ownership limits; and (3) reevaluate its current horizontal and vertical ownership limitations and rules prohibiting unfair practices, "in light of recent mergers, acquisitions and other developments in the cable industry that have significantly increased concentration and undercut competition in the cable television marketplace."¹

¹ Petition at 2.

024

William F. Caton
October 30, 1997
Page 2

On this last point, DIRECTV wishes to confirm petitioners' observations that the nation's largest cable operators are continuing to engage in anticompetitive behavior that has both the purpose and effect of denying alternative multichannel video programming distributor ("MVPD") competitors to cable television operators access to vital programming they require to see their businesses succeed. In particular, DIRECTV agrees that "the type of anticompetitive behaviors exhibited by cable operators" includes "refusals to sell based upon potential loopholes in the law requiring non-discriminatory access to programming."²

The behavior recounted in DIRECTV's recently-filed program access complaint against Comcast Corporation,³ one of the nation's largest cable multiple system operators ("MSOs"), offers a perfect example of this type of anticompetitive behavior. In that case, Comcast has deliberately attempted to circumvent the program access rules by replacing previously satellite-delivered regional sports programming with a new basic cable network carrying substantially similar programming, but using terrestrial rather than satellite facilities to distribute it. Comcast has used this subterfuge as a reason to refuse to sell that programming to DIRECTV, disenfranchising tens of thousands of Philadelphia-area DIRECTV sports subscribers and hundreds of thousands of other DIRECTV subscribers who enjoy out-of-market sports.⁴

DIRECTV believes that Comcast's conduct violates the Commission's program access rules. It also appears to violate the terms of the federal PRIMESTAR consent decree.⁵ Nevertheless, neither the program access rules nor the terms of the decree to date have constrained Comcast's behavior in attempting to actively undermine program access protections that are essential to a cable-competitive MVPD marketplace. To the extent that Consumers Union and CFA propose regulatory action by the FCC that will help remedy this problem, DIRECTV supports the petition.

² *Id.* at 18.

³ *DIRECTV, Inc. v. Comcast Corp.*, File No. CSR-5112-P (filed Sept. 23, 1997).

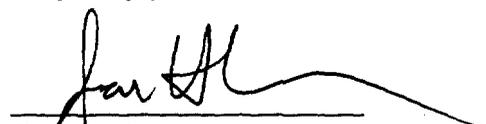
⁴ *Id.* at ¶ 20 and Exhibit 3.

⁵ *United States of America v. Primestar Partners*, 1994-1 Trade Cas. (CCH) ¶ 70,562 (S.D.N.Y. 1994). Specifically, Section IV.C.(3)(A) prohibits PRIMESTAR MSOs, such as Comcast, from implementing direct or indirect exclusive arrangements that preclude DBS providers from obtaining access to certain types of programming, specifically including regional sports programming.

LATHAM & WATKINS

William F. Caton
October 30, 1997
Page 3

Very truly yours,



Gary M. Epstein
James H. Barker

Counsel for DIRECTV, Inc.

cc: David Wittenstein, Esq.