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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."<sup>1</sup>

<sup>1</sup> Petition at 2.

No. of Copies rec'd 024  
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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."<sup>2</sup>

The behavior recounted in DIRECTV's recently-filed program access complaint against Comcast Corporation,<sup>3</sup> one of the nation's largest cable multiple system operators ("MSQs"), 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.<sup>4</sup>

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.<sup>5</sup> 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.

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<sup>2</sup> *Id.* at 18.

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

<sup>4</sup> *Id.* at ¶ 20 and Exhibit 3.

<sup>5</sup> *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.

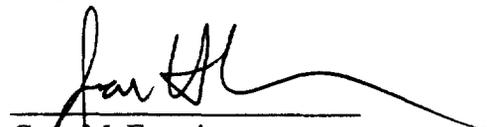
LATHAM & WATKINS

William F. Caton

October 30, 1997

Page 3

Very truly yours,



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Gary M. Epstein

James H. Barker

Counsel for DIRECTV, Inc.

cc: David Wittenstein, Esq.