

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the Matter of)
)
Annual Assessment of the Status of) CS Docket No. 00-132,
Competition in the Markets for the)
Delivery of Video Programming)

COMMENTS OF DIRECTV, INC.

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DIRECTV, Inc.¹ (“DIRECTV”) hereby submits the following comments in response to the Commission’s Notice of Inquiry in the above-captioned matter.

I. INTRODUCTION AND SUMMARY

As of the end of June 2000, DIRECTV had more than 8.7 million subscribers nationwide.² Using high-powered direct broadcast satellites at three orbital locations, DIRECTV currently offers more than 225 national channels of digitally-delivered entertainment, educational, and informational programming directly to homes and businesses equipped with the DIRECTV System, which features satellite dish antennas only 18 inches in diameter.

When DIRECTV launched its first satellite six years ago – the culmination of ten years and \$750 million worth of effort and investment – DIRECTV was dedicated to providing consumers with a multichannel video programming distributor (“MVPD”) alternative to incumbent cable television operators. DIRECTV remains dedicated to that goal.

¹ DIRECTV is a wholly owned subsidiary of DIRECTV Enterprises, Inc., a licensee in the DBS service and a wholly-owned subsidiary of Hughes Electronics Corporation.

² This figure includes customers subscribing to the *PRIMESTAR* by *DIRECTV* medium-power service.

By devoting an enormous amount of resources to state-of-the-art technologies, and by utilizing the additional DBS frequencies and orbital locations it has acquired in the past year, DIRECTV has been able to improve and increase the variety of its services and offer consumers more attractive program packages. This commitment of resources has enhanced DIRECTV's ability to compete with cable incumbents. Notwithstanding the addition of new services and advances in technology that DIRECTV has pioneered in the past year, the most dramatic change in the status of MVPD competition has been Congress' enactment of the Satellite Home Viewer Improvement Act of 1999,³ which, for the first time, explicitly permits DBS operators to offer consumers local broadcast channels in their local markets. Again committing enormous resources to increasing service options for its subscribers, DIRECTV launched local broadcast channel service as soon as the legislation was signed into law and is currently offering the four major networks in 31 markets.

As DIRECTV has pointed out extensively in other proceedings, the progress DIRECTV and other DBS operators have made thus far in introducing a viable competitive alternative to cable is threatened by three developments in the MVPD marketplace: (i) the serious threat of harmful interference posed by new, proposed services that seek to share the mission-critical frequency band designated for primary use by DBS operators; (ii) increasing regulatory demands on DBS capacity; and (iii) the evasion of the program access law that was enacted to prevent anticompetitive activity by vertically-integrated cable incumbents. These critical issues must be addressed by the Commission if DBS is to continue to progress as an MVPD competitor.

³ Pub. L. No. 106, 113, § 1000(i), 113 Stat. 1501 (1999).

II. REGULATORY IMPEDIMENTS TO VIGOROUS COMPETITION

The Commission seeks comment on the extent to which changes in the Communications Act and the Commission's rules encourage vigorous competition in the market for the delivery of video programming, as well as any remaining statutory or regulatory barriers to competition.⁴ DIRECTV has identified three major developments in the MVPD market that threaten DBS as a cable competitor:

A. Interference in the 12 GHz Frequency Band

Recognizing the importance of protecting and supporting the growth of DBS services, the Commission historically has been committed to clearing the 12 GHz frequency band⁵ – the primary downlink spectrum used by DBS providers – of sources of unacceptable interference.⁶ In the past few years, however, the Commission has begun to entertain the idea of allowing new sources of interference into the frequency band dedicated for DBS services. While the overwhelming majority of cable incumbents retain local monopoly status, DBS operators must compete with other wireless MVPDs both for market share and for the use of scarce spectrum. DIRECTV has repeatedly urged the Commission to refrain from introducing services into the 12 GHz frequency band that will degrade DBS service and thereby jeopardize the progress DBS operators have achieved to date in competing with cable incumbents. DIRECTV reiterates these concerns.

⁴ Notice at ¶ 7.

⁵ The references herein to the 12 GHz band refer to the 12.2-12.7 GHz portion of that band.

⁶ *See, e.g., Public Notice, Initiation of Direct Broadcast Satellite Service – Effect on 12 GHz Terrestrial Point-to-Point Licensees in the Private Operational Fixed Service*, 10 FCC Rcd 1211 (1994) (reminding remaining 12 GHz terrestrial licensees that they should relocate their operations to other available frequency bands or alternative facilities).

1. *Proposed NGSO Systems*

NGSO FSS systems, such as Skybridge and Virtual Geosatellite, have proposed to use frequencies designated for DBS service. Specifically, these systems have proposed to operate NGSO downlinks in frequencies ranging from 11.7-12.7 GHz, which would overlap with the entire 12.2-12.7 GHz band used by DBS for service downlinks. These NGSO FSS systems have also proposed to use the 17.3 to 17.8 GHz frequency band, which is designated for DBS uplinks.⁷ For reasons DIRECTV has explained in the NGSO rulemaking proceeding, and in its comments on individual applications, the Commission should make it a priority to preserve the interference-free use of the frequency bands designated for primary use by DBS services.⁸

Before the Commission licenses specific NGSO systems proposing to use the 12 GHz band, DIRECTV believes that the Commission must ensure that existing and future DBS operations – in which DBS operators collectively have invested billions of dollars and which today serve more than 14.5 million subscribers as of the end of June 2000⁹ – are not adversely affected by NGSO operations. While much progress has been made in international regulatory forums and at the Commission in developing criteria for the co-existence of DBS and NGSO systems, DIRECTV urges the Commission to proceed with care in processing NGSO system applications until such compatibility is conclusively established.

⁷ In the Matter of Redesignation of the 17.7 – 19.7 GHz Frequency Band, Blanket Licensing of Satellite Earth Stations in the 17.7 – 20.0 GHz and 27.5 – 30.0 GHz Frequency Bands, and the Allocation of Additional Spectrum in the 17.3 – 17.8 GHz and 24.75 – 25.25 GHz Frequency Bands for Broadcast Satellite Service Use, IB Docket No. 98-172, RM-9005, RM-9118, FCC 00-212, *Report and Order*, ¶ 96 (rel. June 22, 2000).

⁸ See Comments of DIRECTV, Inc., ET Docket No. 98-206 (Mar. 2, 1999); see also *Petition to Defer Consideration of, or Hold in Abeyance, and Comments of DIRECTV on Applications for Authority to Launch and Operate Non-Geostationary Satellite Systems at Ku Band* (filed June 30, 1999).

⁹ This estimate is provided at http://www.skyreport.com/skyreport/dth_us.html.

2. *Northpoint Technology*

During the past few years, Northpoint Technology, Ltd. and its affiliates, Broadwave USA and Diversified Communication Engineering (collectively “Northpoint”), have been engaged in an all-out political effort to re-introduce a terrestrial microwave service into the 12 GHz band on a secondary basis. The proposed service has emerged as one of the most serious interference threats to DBS to date. As DIRECTV has demonstrated in its filings before the Commission, Northpoint’s system operations pose grave risks of interference to the receipt of programming by DBS subscribers, and should not be introduced at 12 GHz given the interference scenarios that become clearer with every new test of the technology.¹⁰

The interference that the DBS operators have documented – in their own tests as well as in their analyses of Northpoint’s test results – show that DBS subscribers will experience a loss of picture at locations close to each of the 14,000 proposed Northpoint transmitters. Further

¹⁰ DIRECTV and Echostar recently reported on the harmful interference into DBS operations observed during tests conducted by the DBS operators in Oxon Hill, Maryland. See DIRECTV, Inc. and Echostar Satellite Corp., *Report of Interference Impact on DBS Systems from Northpoint Transmitter Operating at Oxon Hill, MD, May 22 to June 7, 2000* (July 25, 2000). The interference observed was consistent with interference observations made by DIRECTV during Northpoint’s Washington, D.C. demonstrations last year. See, e.g., DIRECTV Inc., *Conclusions to Date Regarding Harmful Interference From a Proposal Northpoint Technology Terrestrial System Operating in the DBS Downlink Band, 12.2 – 12.7 GHz* (Jan. 27, 2000). DIRECTV also provided extensive analysis of Northpoint’s Austin, Texas test data in its filings in ET Docket No. 98-206. See e.g., Comments of DIRECTV, Inc., *Amendment of Parts 2 and 25 of the Commission's Rules to Permit Operation of NGSO FSS Systems Co-Frequency, with GSO and Terrestrial Systems in the Ku-band Frequency Range*, ET Docket No. 98-206, (filed Mar. 2, 1999); Reply Comments of DIRECTV (filed Apr. 14, 1999); Opposition of DIRECTV, *In the Matter of Broadwave Albany, L.L.C., et al, Requests for Waiver of Part 101 of the Commission's Rules*, DA 99-494 (filed Apr. 12, 1999). See also *Application of DIRECTV, Inc., For Expedited Review and Request for Immediate Suspension of Testing, In the Matter of Diversified Communication Engineering, Inc., Experimental Special Temporary Authorization*, File No. 0094-EX-ST-1999, Call Sign WA2XMY (June 25, 1999).

away from the transmitters, the Northpoint technology seriously degrades DBS subscribers' service and will result in longer and more frequent rain outages, or "interruptions," to DBS service. If tolerated – let alone facilitated – by the Commission, the introduction of Northpoint technology at 12 GHz will seriously degrade and repeatedly interrupt DBS service.

Simply stated, if the Northpoint technology is introduced into the frequency band that is "mission critical" to the provision of DBS services to millions of consumers nationwide, it will undercut the benefits of MVPD competition that the Commission has spent decades attempting to promote.¹¹ DIRECTV is concerned that without adequately examining the Northpoint interference threat, the Commission may be inadvertently taking actions that are antithetical to the pro-competitive DBS policies it has pursued to date.

B. Increased Regulatory Demands on DBS Capacity

While the Commission is considering allowing increased interference in the frequency bands designated for DBS use and thereby diminishing the quality of DBS transmissions, the Commission also is imposing ever-greater regulatory burdens on DBS operators' system capacity. DBS systems, which already were subject to statutory capacity set-asides for non-commercial educational programming,¹² are now being required to provide video description

¹¹ Indeed, the Commission has established and followed for two decades the wise policy of allowing DBS to develop in an environment where terrestrial interference sources were cleared out of the 12 GHz band. *See, e.g., Public Notice, Initiation of Direct Broadcast Satellite Service -- Effect on 12 GHz Terrestrial Point-to-Point Licensees in the Private Operational Fixed Service*, 10 FCC Rcd 1211 (1994) (explicitly reminding remaining 12 GHz terrestrial licensees of their secondary status, and stating that "[i]n view of the imminent arrival of DBS service, terrestrial 12 GHz licensees should again consider relocating their operations to other available frequency bands or alternative facilities.").

¹² 47 U.S.C. § 335; *see also* In the Matter of Section 25 of the Cable Television Consumer Protection and Competition Act of 1992, *Direct Broadcast Satellite Public Interest Obligations*, Report and Order, 13 FCC Rcd 23254 (1998).

services for certain video programming.¹³ In addition, DBS operators may soon be subject to onerous compulsory carriage requirements that are tied to their ability to offer local broadcast channels in local markets.¹⁴ Thus, many of the regulatory burdens the Commission traditionally has imposed on cable operators are being applied to DBS operators with little thought as to how available capacity is affected. While cable operators may invest in infrastructure upgrades that can dramatically increase their available bandwidth, DBS spectrum is a finite resource. Such capacity requirements will severely impact DBS subscribers and consumer choice: fewer local markets will be served and capacity currently devoted to a diverse array of national offerings may have to be reallocated in order to comply with the regulations.

The Commission's order implementing video description and its proposals concerning the satellite carriage obligation suggest that the Commission is giving little thought to whether it is technically feasible for DBS systems to comply with such rules, and giving even less thought to the enormous costs such rules will require DBS operators to bear in order to modify their systems to comply with these rules. DIRECTV therefore cautions the Commission that excessive regulatory demands on DBS capacity and the enormous burdens associated with modifying the systems to comply with those demands threaten to erode competition in the MVPD market.

C. Dilution of The Program Access Law

As DIRECTV has explained in numerous proceedings before the Commission, access to programming controlled by vertically-integrated cable incumbents continues to be a crucial issue

¹³ In the Matter of Video Description of Video Programming, MM Docket No. 99-339, Report and Order (rel. Aug. 7, 2000).

¹⁴ In the Matter of Implementation of the Satellite Home Viewer Act of 1999, Broadcast Signal Carriage Issues, CS Docket No. 00-96, Notice of Proposed Rulemaking (rel. June 9, 2000).

for DBS operators.¹⁵ DIRECTV is extremely concerned that the Commission has all but abdicated its responsibility to enforce the program access law by refusing to apply it to satellite cable programming that was specifically migrated to a terrestrial delivery mode for the purpose of evading the law.¹⁶ This method of “terrestrial evasion,” coupled with a corresponding refusal to sell such programming to an entire class of MVPD competitors, falls squarely within the protective sweep of the program access law. DIRECTV is therefore gravely concerned that the Commission’s unduly narrow construction of the law has threatened the ability of DBS operators to secure crucial programming from increasingly clustered and vertically-integrated cable incumbents.

When Congress enacted Section 628 of the Communications Act¹⁷ more than seven years ago, it recognized that access by non-cable MVPDs to vital programming controlled by incumbent cable operators (or their vertically integrated programming affiliates) is essential to developing robust MVPD competition in local markets. Congress was particularly concerned that incumbent cable operators stood in a position, directly or indirectly, to exercise leverage over affiliated programmers in order to deny or restrict new entrants’ access to critical programming. Congress directed the Commission to “address and resolve the problems of unreasonable cable industry practices, including restricting the availability of programming and charging discriminatory prices to non-cable technologies.”¹⁸ Congress therefore designed a

¹⁵ See, e.g., *DIRECTV, Inc v. Comcast Corp., et al*, DA 98-2151, Application for Review (filed Nov. 25, 1998).

¹⁶ See *DIRECTV, Inc v. Comcast Corp., et al*, DA 98-2151, Memorandum Opinion and Order (rel. Oct. 27, 1998) (Application for Review Pending); *Echostar Communications Corp., v. Comcast Corp., et al*, DA 99-235, Memorandum Opinion and Order (rel. Jan. 26, 1999).

¹⁷ 47 U.S.C. § 548.

¹⁸ H. Rep. No. 862, 102d Cong., 2d Sess., 93 (1992).

regulatory framework intended to constrain the unfettered exercise of market power by cable operators and their affiliates, which otherwise have the incentive and ability to thwart emerging competition in the MVPD market.

As the Commission notes, the prohibition on cable exclusivity in the program access rules ceases to be effective on October 5, 2002, unless the Commission finds that the prohibition continues to be necessary to preserve and protect competition and diversity in the distribution of video programming.¹⁹ At this critical juncture in which DBS operators and other alternative MVPDs are finally making inroads in the MVPD market, the program access rules are more important than ever. The Commission therefore must utilize the process of reviewing these rules to strengthen, rather than dilute or remove, the program access rules. Technological advances that have vastly diminished the costs of delivering programming terrestrially, coupled with the efforts of cable MSOs to “cluster” or trade their systems to form broad, contiguous service areas, have created an environment in which terrestrial distribution has become a more viable method of delivering regional and national programming from production facilities to cable headends. With access to increasingly large geographic regions, incumbent cable operators have begun to use terrestrial distribution as a new tactic to insulate themselves from the program access requirements. For these reasons, DIRECTV urges the Commission to carefully examine the effects of terrestrial distribution in the context of its review of the program access rules.

¹⁹ Notice at ¶ 7.

III. RESPONSES TO SPECIFIC INFORMATION REQUESTS

A. Competitors In Markets For The Delivery Of Video Programming

The Commission seeks factual information and statistical data about the status of video programming distributors and any changes that have occurred during the past year, as well as financial and subscriber information.²⁰

1. *Subscribership*

All geographic areas in the continental U.S., including those areas not passed by cable, are served by DBS operators using satellites located at CONUS orbital locations. Thus, nearly every television household in the continental U.S. and much of Alaska²¹ is able to receive DIRECTV programming if the consumer purchases the DIRECTV System and installs it within the proper line of sight. In addition, later this month, DIRECTV will begin to provide service packages to residents of Hawaii.²² As of the end of June 2000, DIRECTV had approximately 8.7 million subscribers compared to about 7.4 million as of June 30, 1999.²³ DIRECTV added 857,000 net new subscribers to its high-power DIRECTV service in the first six months of 2000 – a 28.3% increase over the 668,000 net new subscribers added in the first six months of 1999. In addition, 705,000 subscribers were transitioned from the *PRIMESTAR* by *DIRECTV* medium-power service to the high-power service during the first six months of 2000.

²⁰ Notice at ¶¶ 9-11.

²¹ While residents in the continental United States receive DIRECTV using an 18-inch satellite dish, Alaska's geographic location requires Alaska residents to use larger dishes in order to receive DIRECTV programming.

²² See, e.g., DIRECTV, Inc., File No. SAT-LOA-20000505-0086, Ex Parte (August 25, 2000); DIRECTV, Inc., File No. SAT-LOA-20000505-0086, Ex Parte (June 30, 2000) (detailing new Hawaii service) Like Alaska residents, Hawaii residents will be required to use larger dishes in order to receive DIRECTV programming.

²³ See *supra* note 2.

2. *Financial Information*

For the first six months of 2000, DIRECTV U.S. had revenue of \$2,188 million – a 74% increase over 1999 revenues for this period. The large increase in revenues resulted primarily from an increased number of high-power DIRECTV subscribers and added revenues from *PRIMESTAR by DIRECTV* and premium channel services. Also, for the first six months of 2000, DIRECTV reported EBITDA of \$57 million compared to EBITDA of \$37 million for the first six months of 1999. The operating loss for the first six months of 2000 was \$133 million, compared with \$34 million for the same period in 1999.

3. *Substitution of MVPD Services*

According to internal subscriber data, roughly half of DIRECTV customers were cable subscribers at the time that they first subscribed to DIRECTV. Of these, the majority cancelled their cable subscription once they activated DIRECTV. A small percentage of DIRECTV subscribers retained some level of cable service in addition to DIRECTV.

B. *Direct-To-Home Satellite Services*

The Commission seeks information specific to DBS service providers concerning DBS subscriber attributes, programming packages, and the effects of new local television broadcast channel services on subscribership.²⁴

1. *Identifiable Differences Between DBS and Cable Subscribers*

As between DBS subscribers and subscribers to cable services, DBS subscribers are more likely to live in a single family home, and more likely to live in a rural area. Approximately 50% of DIRECTV's subscribers live in larger urban counties, defined by Nielsen as "A" or "B"

²⁴ Notice at ¶¶ 19-21.

counties, whereas 70% of cable subscribers are located in these areas. “A” counties are those counties in the largest 21 metropolitan areas. “B” counties are all counties with more than 85,000 households (according to the 1990 Census) in metropolitan areas that are not included as “A” counties. In addition, 80% of DIRECTV subscribers live in single family homes, compared with only 70% of cable subscribers. This statistic is tied to anti-competitive “evergreen” and exclusive service contracts between cable operators and multiple dwelling unit (“MDU”) owners and other barriers to MDU entry. DIRECTV discusses this issue further below in response to the Commission’s inquiries concerning MDU competition.

2. *Available Programming and Pricing*

In general, DIRECTV’s prices and program packages are comparable to those offered by cable operators. A price and channel list for DIRECTV’s program packages is included as Exhibit A.

3. *Local-into-Local Service*

DIRECTV currently offers local television broadcast channels in 31 markets.²⁵ These markets represent approximately 55% of the television households in the United States. In most markets, subscribers receive the local ABC, CBS, NBC, and Fox affiliates as well as a national PBS feed. In some markets, DIRECTV is carrying additional local stations such as a UPN or

²⁵ DIRECTV customers in the following markets currently have access to local network stations: Atlanta, Baltimore, Boston, Charlotte, Chicago, Cleveland, Dallas, Detroit, Denver, Greenville/Spartanburg (SC), Houston, Indianapolis, Los Angeles, Miami, Milwaukee, Minneapolis/St. Paul, New York, Orlando/Daytona, Philadelphia, Phoenix, Pittsburgh, Portland, Raleigh/Durham (NC), Sacramento/ Stockton/Modesto, Salt Lake City, San Diego, San Francisco, Seattle, St. Louis, Tampa, and Washington, D.C. DIRECTV plans to add service in the following markets by the end of the year: Cincinnati, Columbus, Kansas City, Memphis, Nashville, and San Antonio. The addition of these markets will allow DIRECTV to serve approximately 60% of the television households in the United States with local broadcast channels.

WB affiliated station. More than 40% DIRECTV subscribers in these markets subscribe to the local broadcast channel service at \$5.99 per month. Among newer customers who have subscribed to DIRECTV since local broadcast channel service became available, the subscription rate is 57%. While DBS subscriber levels have increased as a result of local broadcast channel service, it is not possible to isolate the increase that is attributable solely to the availability of this service from other market effects.

4. *Geographic Location of DBS Subscribers*

In general, DIRECTV subscribers are distributed evenly across of the continental United States. As noted above, approximately 50% of DIRECTV's total current subscribers live in urban counties, and 50% live in smaller, rural counties. Approximately two-thirds of new DIRECTV subscribers live in urban counties.

C. *Programming Issues*

The Commission seeks information concerning ownership of video programming and practices concerning access to such programming, as well as updated information concerning content and packaging.²⁶

1. *Affiliations with Programming Networks*

DIRECTV is not affiliated with any programming networks.

2. *Programming Choices*

DIRECTV offers a number of different packages in order to accommodate different household income levels and programming interests. DIRECTV's programming information is attached as Exhibit A.

²⁶ Notice at ¶¶ 40-43.

3. *Programming Descriptions*

DIRECTV carries the following regional sports networks (“RSNs”): Empire Sports Network, Home Team Sports, Madison Square Garden (MSG) , Midwest Sports Channel, New England Sports Network, Sportschannel Florida, Sunshine Network, and 16 Fox Sports Networks, Fox Sports Arizona, FS Bay Area, FS Chicago, FS Cincinnati, FS Detroit, FS Midwest, FS New England, FS New York, FS Northwest, FS Ohio, FS Pittsburgh, FS Rocky Mountain, FS South, FS Southwest, FS West, and FS West 2. Thus, with the exception of Philadelphia, DIRECTV carries the RSN in every market that has an RSN. As the Commission is aware, DIRECTV sought to carry the Philadelphia RSN, but was refused access to the programming by Comcast Sportsnet.²⁷

4. *Non-commercial Educational Programming*

DIRECTV currently carries the following nine channels pursuant to Section 335 of the Communications Act, which requires DBS operators to make at least 4% of their channel capacity available to national educational programming suppliers upon reasonable prices, terms and conditions: C-SPAN; Trinity Broadcast Network (TBN); PBS YOU (PBSU); WorldLink TV (LINK); Eternal Word Television Network (EWTN); Clara+Vision (CLAR); Inspirational Life (INSP); NASA-TV; and StarNet (STAR). DIRECTV also carries additional educational channels such as C-SPAN2, but does not include these as part of its carriage obligation under Section 335.

5. *Program Access Rules*

As explained in greater detail above, the program access rules are a crucial safeguard on competition in the MVPD market. While the rules, as drafted, accurately reflect the intent of

²⁷ See *supra* discussion of program access issues in Section II.C.

Congress in passing the program access law, DIRECTV believes that the Commission has not gone far enough in enforcing the law. Specifically, the Commission continually has refused to apply the rule in cases in which cable systems deny other MVPDs programming and purposely convert satellite-delivered programming to terrestrial means of delivery.

DIRECTV has experienced first-hand how this practice has undercut competition. In Philadelphia, the incumbent cable operator, Comcast, migrated cable programming formerly delivered by satellite to a terrestrial mode of delivery, and subsequently refused to sell that programming to DIRECTV and other DBS providers. Comcast maintained it did not have to sell the programming to DBS providers, as the programming no longer qualified as “satellite-delivered” programming. Construing the statute extremely narrowly, the Commission refused to apply the program access rule to Comcast’s programming essentially because Comcast had switched to a terrestrial means of delivery.²⁸ The Commission’s ruling essentially suggests that aggregating all of the transmission rights to virtually *every local professional sporting event* in a metropolitan area with the clear intent of eliminating DBS access to previously satellite-delivered regional sports programming is not an “unfair practice.”

As DIRECTV has explained in greater detail above, vigorous enforcement of the program access law is crucial to competition in the MVPD market and the Commission’s program access rules continue to be necessary to preserve and protect competition and diversity in the distribution of video programming, as increasing consolidation takes place in the cable industry. The Commission’s proceeding to review these rules must consider the effects of

²⁸ See *DIRECTV, Inc v. Comcast Corp., et al*, DA 98-2151, Memorandum Opinion and Order (rel. Oct. 27, 1998).

consolidation and vertical integration and must strengthen the program access safeguards in order to ensure that consumers continue to have competitive video programming options.

D. Technical Advances

The Commission seeks comment on the extent to which MVPDs are upgrading their systems and increasing capacity in order to expand their service offerings. The Commission also requests information as to specific services and equipment.²⁹

1. System Upgrades

DIRECTV has substantially reached current technological limits on digital compression with respect to capacity on its existing satellites. Although there are potentially very small gains still possible through the use of advanced algorithms, such technological developments can neither be predicted nor relied upon as a means of increasing system channel capacity.

DIRECTV currently has one additional spacecraft scheduled for launch and another spacecraft under construction that will more effectively use its assigned frequencies. DIRECTV has submitted its application to launch and operate its DIRECTV 5 satellite and the application is ripe for grant.³⁰ This satellite will enable DIRECTV to utilize its frequencies at the 119° W.L. orbital location more efficiently. DIRECTV has also begun construction of a spot beam satellite that will facilitate local broadcast channel service in markets across the nation. DIRECTV intends to apply for authorization to launch the spot beam satellite in the next year.

As DIRECTV has noted in its comments in the Commission's Video Description proceeding, only about one-third of DIRECTV's total video channels support a secondary audio

²⁹ Notice at ¶¶ 46-53.

³⁰ See File No. SAT-LOA-20000505-0086.

programming (“SAP”) channel.³¹ Of these, nearly 80% are already devoted to providing a Spanish-language audio track for pay per view movies and local television channels. Moreover, DBS systems utilize compression techniques that preclude the provision of multiple audio signals per channel. The Commission’s Video Description Order appears to require DIRECTV to modify its entire uplink and downlink systems in order to accommodate multiple audio channels, on channels carried nationally as well as on local broadcast channels.³² As DIRECTV has previously explained, this requirement will have severe adverse effects on DIRECTV and its subscribers, and will inevitably hamper its ability to compete with cable incumbents.

2. Consumer Equipment

Since its establishment in 1994, DIRECTV has had a rigorous test program for consumer equipment design before making commitments to large-scale production. This test program has encouraged multiple manufacturers to compete in the development and marketing of set-top boxes and other consumer equipment to serve the DBS subscriber market. DIRECTV consumer equipment (including set-top boxes and integrated high-definition television sets) is manufactured and/or distributed by a wide variety of consumer electronics manufacturers, including: Hughes Network Systems, Mitsubishi, Panasonic, Philips, Samsung, Sony, Thomson Consumer Electronics, Toshiba, and Zenith.

Virtually all DIRECTV consumer equipment is available at major retail outlets such as Circuit City, Best Buy, Radio Shack, and others; at discount retailers such as Wal-Mart and K-Mart; at independent retailers such as Ken Cranes, Dow, and others; and at specialized satellite TV dealers. DIRECTV subscribers who obtain services through Verizon, SBC (Southwestern

³¹ In the Matter of Implementation of Video Description of Video Programming, MM Docket No. 99-339, Comments of DIRECTV (Feb. 23, 2000).

³² Video Description Order at ¶¶ 33.

Bell), and Pacific Bell have the option of leasing their set-top boxes through those companies. Set-top box products are not interchangeable with those used by different MVPDs, as the major MVPD providers' (satellite and cable) all have significant technical, operating, and security differences. DIRECTV and other MVPD providers, however, have worked extensively with consumer electronics manufacturers to maximize compatibility at the chip level and thereby reduce the overall cost of equipment to the subscriber.

3. *Electronic Programming Guides*

All DIRECTV subscribers receive a full interactive electronic programming guide ("EPG"). DIRECTV's EPG is produced nationally but allows for local customization of channel lineups. DIRECTV's EPG was developed by and is owned by DIRECTV, and is specific to DIRECTV's digital DBS system. Because DIRECTV's EPG system is specific to its own encoding and processing infrastructure, only DIRECTV's subscribers may access it. In contrast with EPGs offered by cable operators, DIRECTV does not charge its subscribers any additional fees for the service, nor is DIRECTV's EPG supported by advertising.

E. *Multiple Dwelling Units ("MDUs")*

The Commission seeks information on what factors influence MVPD competition in MDUs, and information on the use of exclusive and "evergreen" video service contracts in MDUs.³³

1. *Competition in MDUs*

As DIRECTV has explained previously, many residents of MDUs do not enjoy a choice of video providers, as cable incumbents continue to control the market for the provision of video programming services to MDUs. The cable industry's success in thwarting competition is

³³ Notice at ¶ 56.

fundamentally due to exclusive service contracts or exclusive “rights of entry” that do not allow MDU property owners and landlords to procure video programming services from an alternative service provider. In many cases, such contracts include an “evergreen” term based on the incumbent’s franchise renewal. As a consequence, DIRECTV’s penetration, particularly in urban areas, has been affected. While DIRECTV’s penetration is roughly evenly distributed throughout the United States, DIRECTV has lower penetration rates in certain large metropolitan areas, such as New York City, in which a large percentage of consumers live in MDUs.

2. Effectiveness of OTARD Rule

DIRECTV supports the over-the-air reception device (“OTARD”) rule and the Commission’s vigorous enforcement of that rule. The FCC’s OTARD rule has been somewhat helpful to a select segment of MDU residents in obtaining DBS service; in particular, it has helped those residents who have balconies and/or patios within the proper line of sight to receive DBS signals.³⁴ The Commission’s OTARD decisions have encouraged some MDU landlords and owners to seek DTH distribution systems that use a single common dish for reception to prevent “dish clutter” in their MDU communities. However, the OTARD rule has not assisted residents of apartments, condominiums and other MDUs who lack an exclusive-use area suitable for antenna installation (*e.g.*, a south-facing balcony or patio). DIRECTV believes that the rule should be extended to renters and owners who do not have exclusive use of areas suitable for antenna installation.

³⁴ See *In the Matter of Restrictions on Over-the-Air Reception Devices: Television Broadcast, Multichannel Multipoint Distribution and Direct Broadcast Satellite Services, CS Docket No. 96-83, Second Report and Order*, 13 FCC Rcd 23874 (1998).

IV. CONCLUSION

DIRECTV hopes the foregoing information is useful to the Commission in taking action to promote the continued emergence of competition in the MVPD industry.

Respectfully submitted,

DIRECTV, Inc.

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EXHIBIT A

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MultiChannel 4 NEW! encore MultiChannel 8 Independent film channel	SHOWTIME 5 CHANNELS the movie channel east west FLIX sundance channel®	HBO THE WORKS 5 CHANNELS HBO Family 2 CHANNELS multi max FROM CINEMAX 3 CHANNELS	HBO THE WORKS 5 CHANNELS MultiChannel 4 HBO Family 2 CHANNELS NEW! encore MultiChannel 8	HBO THE WORKS 5 CHANNELS MultiChannel 4 HBO Family 2 CHANNELS multi max FROM CINEMAX 3 CHANNELS NEW! encore MultiChannel 8	HBO THE WORKS 5 CHANNELS HBO Family 2 CHANNELS the movie channel east west Independent film channel encore MultiChannel 8 GET ALL 32 PREMIUM MOVIE CHANNELS!

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Broadcast Networks

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Local Channels are available in the following markets: Atlanta, Boston, Chicago, Cleveland, Dallas, Denver, Detroit, Greenville, Houston, Los Angeles, Miami, Minneapolis, New York, Orlando, Philadelphia, Phoenix, Raleigh-Durham, Sacramento, San Francisco, Seattle, St. Louis, Tampa/St. Petersburg and Washington, DC. Other cities coming soon! In these markets, DIRECTV offers Local Channels for \$5.99/mo. Ask your retailer or visit www.directv.com for details on hardware/system requirements in your city. Eligibility for Local Channels is based on service address within certain designated market areas as defined by Nielsen Media Research, Inc.

Not living in a Local Channel market? You can still receive your Local Channels through an off-air antenna (rooftop or set-top antenna). Reception may vary based on geographic location.

DISTANT BROADCAST NETWORKS
You may be able to subscribe to out-of-market network affiliates. These networks are available only to customers who cannot receive, through the use of a conventional, stationary, outdoor rooftop receiving antenna, an over-the-air signal of a primary network station affiliated with that network of Grade B intensity as defined by the Federal Communications Commission.

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Some TOTAL CHOICE MOVIES and PLATINUM value packages are not available in the limited areas served by the members or affiliates of the National Rural Telecommunications Cooperative. *Blackout restrictions apply to sports programming. To receive sports and a la carte programming and to order pay per view by remote, a DIRECTV subscription is required (except NFL SUNDAY TICKET and a la carte premium movie channels) and the DIRECTV System receiver must be continuously connected to a land-based phone line. Most sports subscriptions automatically continue each year at a special renewal rate, provided DIRECTV carries these services, unless subscriber calls to cancel prior to the start of the season. Commercial locations require an appropriate license agreement. Commercial signal theft is subject to civil and criminal penalties.† A \$5.00 order assistance fee applies to all pay per view phone-in orders. Programming, pricing, terms and conditions subject to change. Pricing is residential. Receipt of DIRECTV programming is subject to terms of the DIRECTV Customer Agreement; a copy is provided with your first billing statement. Hardware and programming sold separately. Equipment specifications may vary in Alaska. "NFL," the NFL Shield and "NFL SUNDAY TICKET" are registered trademarks of the National Football League and its affiliates. "MLB," the MLB Shield and "MLB EXTRA INNINGS" are registered trademarks of the National Hockey League. "MLB," "MLB EXTRA INNINGS," "Major League Baseball" and the Major League Baseball silhouetted batter logo are service marks of Major League Baseball Properties, Inc. Major League Baseball trademarks and copyrights are used with permission of Major League Baseball Properties, Inc. ©2000 DIRECTV, Inc. DIRECTV and the Cyclone Design logo, DIRECTV PLUS, DIRECTV SPORTS, SELECT CHOICE and TOTAL CHOICE are trademarks of DIRECTV, Inc., a unit of Hughes Electronics Corp. All other trademarks and service marks are the property of their respective owners. 34000CM6155GEN Visit DIRECTV at www.directv.com



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Antena convencional: La mayoría de los clientes prefieren utilizar una antena para recibir los canales locales. (La recepción puede variar basado en la ubicación geográfica.) Su sistema de DIRECTV PARA TODOS™ le permite cambiar fácilmente de la programación de DIRECTV PARA TODOS™ a la local con sólo oprimir un botón de su control remoto. En mercados selectos, DIRECTV ofrece canales locales a través del sistema DIRECTV PARA TODOS™ o el sistema DIRECTV PARA TODOS™ con un LNB adicional por sólo \$5.99 al mes. Elegibilidad para canales locales está basada en la dirección del suscriptor en ciertas áreas designadas del mercado de acuerdo a lo definido por Nielsen Media Research, Inc. Pregúntele a su distribuidor o visite www.directv.com para más información.

Cadenas de Televisión Lejanas

Listed podría suscribirse a algunas cadenas de televisión afiliadas que transmiten desde el este y oeste. Los canales de Broadcast Network están disponibles únicamente para los suscriptores que no pueden recibir por medio de una antena convencional al aire libre la señal al aire de intensidad grado B (como está definido por la Comisión Federal de Telecomunicaciones) de una estación local afiliada con la cadena en pedido.

Broadcast Networks

Access to Local Channels

Rooftop or set-top antenna: Most customers prefer to use an antenna to receive their local channels. (Reception may vary based on geographic location.) Your DIRECTV PARA TODOS™ System remote lets you easily switch back and forth from your local TV channels to your DIRECTV channels. In select markets, DIRECTV offers local channels via the DIRECTV PARA TODOS™ System or the DIRECTV PARA TODOS™ System with an additional LNB for \$5.99/mo. Eligibility for local channels is based on service address within certain designated market areas as defined by Nielsen Media Research, Inc. Ask your retailer or visit www.directv.com for more information.

Distant Broadcast Networks

You may be able to subscribe to some East and West feeds of network affiliates. Distant Broadcast Networks are available only to subscribers who cannot receive, through the use of a conventional, stationary, outdoor rooftop antenna, an over-the-air signal of a primary network station affiliated with that network of grade B intensity (as defined by the Federal Communications Commission).

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