



March 16, 2001

VIA COURIER & E-MAIL

Magalie Roman Salas, Secretary
Federal Communications Commission
445 12th Street, S.W.
Room TW-A325
Washington, D.C. 20554

**Re: Direct Broadcast Satellite Service to Hawaii
IB Docket No. 98-21**

Dear Secretary Salas:

The State of Hawaii ("Hawaii" or "the State"), through its attorneys, submits this written ex parte presentation to refresh the record with respect to the inadequate direct broadcast satellite ("DBS") service that is being provided in the State. As discussed in previous pleadings and reiterated herein, the DBS offerings in the State are not comparable with the programming that is available in the rest of the country and is not competitive with cable television services in Hawaii. Of particular concern is the wholly inadequate offerings of Directv, which lack the most popular programming channels, including programming that is distributed exclusively by Directv and, as a result, is entirely unavailable in Hawaii.

In raising these concerns, the State acknowledges that Echostar has been making progress in improving its DBS offerings in Hawaii. While the progress of one provider is noteworthy, however, it does not mitigate the need for Commission action. The Commission must ensure that progress continues and that the quantity and quality of DBS services does not recede in the State following the completion of this proceeding. In order to accomplish this, the Commission must use this proceeding to clarify the requirements of the Commission's geographic service rules.

As the State has indicated in previous pleadings, in order to ensure that all Americans are able to enjoy the full competitive benefits of modern telecommunications and mass media, the Commission must interpret Section 100.53 of its rules to indicate that:

- **DBS licensees must use full-CONUS slots to provide services to Alaska and Hawaii that are generally comparable in price, quality and content to the services that are available in the mainland, and**

- Any services that are provided using *western* non-full CONUS DBS orbital slots must be made available to consumers in Alaska and Hawaii at prices and service levels (with respect to quality, reliability, outages, error rates, speed, total bandwidth and quantity of services) that are comparable with the services available to other customers.

The need for strenuous regulation is especially demonstrated by Directv's long history of refusal to serve Hawaii residents adequately – intransigence that continues today. While Directv initiated DBS service to the mainland in 1996, it did not include transmissions to Hawaii until late last year. According to retailers in Hawaii, which were surveyed by the State this week, Directv's service offerings are not attractive to most consumers and are not being sold in significant numbers.

While Directv's Hawaii Choice package includes about 44 channels of cable programming for \$21.99, the package lacks some of the most popular and informative programming available such as CNN, Headline News, The Weather Channel, Discovery Channel, ESPN, ESPN 2, TBS, TNT and USA Network. Directv is refusing to provide these important programming options not because of a contractual or judicial obligation, but apparently solely to enhance its perceived strategic posture in civil litigation against the National Rural Telecommunications Cooperative (“NRTC”), a Directv distributor.

Further frustrating consumers is the fact that Directv has exclusive rights to a number of popular programming services such as “NFL Sunday Ticket,” but Directv does not provide these exclusive services in Hawaii, making them completely unavailable to consumers in the State. Directv is offering a bilingual package that includes 20 Spanish language channels, but the service has only a limited potential subscriber base in Hawaii and requires the purchase of a second satellite dish – doubling the start up costs as compared to consumers in the rest of the United States. While Directv claims to offer 19 premium movie channels on an a la carte basis, all 19 channels appear to be time shifted versions of HBO and Showtime. Directv's offerings, in the aggregate, fall far short of the programming packages that it makes available in the mainland and also are not comparable to the programming made available by major cable operators in the State.

Because of the inadequate offerings, retailers in Hawaii appear reluctant to carry Directv's equipment. At the present time, none of Directv's national account holders (such as Circuit City, Sears and Radio Shack) carry Directv's service in their Hawaiian outlets. This is indicative of Directv's discriminatory approach to the Hawaii market. While there are reports that Radio Shack may start carrying the equipment in the future, there is no certainty that this will happen. Instead, Directv indicates on its website that five independent distributors are marketing its service. When contacted, only four of the retailers reported carrying Directv's equipment and they said customer interest in Directv's service is weak.

While Echostar has made better progress, there are still significant shortcomings with its service to the State. Echostar is now offering its American's Top 100 package in Hawaii for the same price as in the mainland (\$30.99 per month). While sales appear strong, retailers say there is a substantial demand

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among Hawaiians for EchoStar's heavily promoted America's Top 150 package. Unfortunately, the AT 150 package can be received in Hawaii only by purchasing two satellite dishes, doubling the equipment and installation costs to more than \$500.

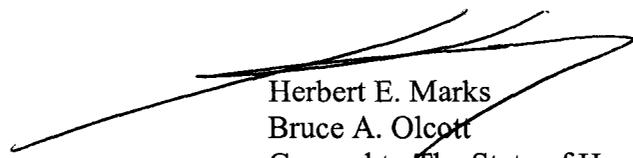
Frustration over the high start up costs for Echostar's AT 150 package was recently made worse when Echostar ran a brief promotion that permitted subscribers of EchoStar's AT 100 package to receive all of the AT 150 channels using only one 24 inch dish directed at 119° W. The temporary promotion demonstrated conclusively that Echostar has the technical capability to provide AT 150 to Hawaiians using only one small receive dish. Thus, the State does not understand why Echostar refuses to provide the service on a permanent basis.

In summary, one of the Commission's DBS licensees is making progress in providing adequate DBS programming to the State. The other DBS licensee does not appear to be even trying. Those DBS services that are being enjoyed by consumers in Hawaii are, without a doubt, the direct result of the close attention that the Commission has given to this issue during the past decade. The Commission's interest in securing DBS service for Alaska and Hawaii, as manifest in its rules and orders, has finally begun to show results. This is the time for the Commission to reaffirm its interest in providing DBS service to Americans in all fifty states, so that progress continues and is not transitory.

During the next year, both Directv and Echostar plan to launch several new satellites (Directv 4S and Echostar 7 and 8). The two operators will use these new satellites to improve service to Alaska and Hawaii only if the Commission makes it clear in its Part 100 Order that DBS licensees have an obligation to provide service to the States that is truly comparable to the services that are available in the rest of the United States.

Thank you for your continued attention to this matter. Please let us know if you have any questions.

Sincerely,



Herbert E. Marks
Bruce A. Olcott
Counsel to The State of Hawaii

Copy: Donald Abelson, Chief, International Bureau
Thomas Tycz, Chief, Satellite & Radiocommunication Division
Christopher Murphy, Legal Advisory, International Bureau
Rosalee Chiara, Deputy Chief, Satellite Policy Branch
Selina Khan, Attorney, Satellite Policy Branch
Rockie Patterson, Satellite Engineering Branch