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OFFICE OF THE SECRETARY

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July 6, 2001

EX PARTE OR LATE FILED

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

Re: Permitted Oral Ex Parte Presentation
IB Docket No. 98-21

Dear Secretary Salas:

On Friday, July 6, 2001, Herbert E. Marks and Bruce A. Olcott of Squire Sanders & Dempsey, L.L.P., as counsel for the State of Hawaii, met with Commissioner Kathleen Abernathy, along with Common Carrier Legal Advisor, Matthew Brill.

During the discussion, Marks and Olcott reiterated the position of the State of Hawaii that the Commission's geographic service rules, 47 C.F.R. § 100.53, already mandate that direct broadcast satellite ("DBS") licensees must provide service to Hawaii that is generally "comparable" in content and quality to DBS service in the rest of the United States. Marks and Olcott indicated that DBS licensees have failed to meet this standard and at least one of the current DBS licensees has provided no indication that it will attempt to meet this standard in the foreseeable future. The Commission was urged to address discrimination by DBS licensees against the residents of Hawaii in its upcoming Part 100 Order on the DBS service.

The attached materials were distributed during the meeting. Please contact the undersigned if you have any questions.

Sincerely,

Bruce A. Olcott

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List A B C D E

Copy: Commissioner Kathleen Abernathy
Matthew Brill, Common Carrier Legal Advisor
Linda Haller, Legal Advisor, International Bureau
Christopher Murphy, Legal Advisory, International Bureau
Rosalee Chiara, Deputy Chief, Satellite Policy Branch

# Direct Broadcast Satellite Service for Hawaii

## *Ex Parte* Presentation by The State of Hawaii in IB Docket No. 98-21

July 6, 2001

- The Commission adopted geographic service rules in 1995 mandating service to Hawaii and Alaska in recognition that these States have been subject to discriminatory treatment.
  - DBS orbital assignments are an important public resource because they can further "the statutory goal of providing equitable distribution of service throughout the nation" and can provide competitive choice with monopolistic cable television operators.
  - Additionally, the availability of DBS service can aid in the social, economic and technological integration of Alaska and Hawaii with other regions of the United States.
- The Commission should not retreat from its support for consumers in Hawaii and Alaska. Instead, it should reaffirm in its Part 100 Order that DBS licensees have an obligation to provide service to the States that is comparable to the services available in the mainland.
  - The FCC adopted geographic service rules not just to ensure that all states receive <u>some</u> DBS service, but also due to concern about the "extent of DBS service to Alaska and Hawaii" and the possibility that the States would never be "adequately served."
  - The Commission indicated that its geographic service rules require the provision of "full service" to Alaska and Hawaii, noting that a licensee's failure to provide "full service" would be a "violation of our regulations."
- While the Commission's actions have generated some progress, the DBS offerings, which were only recently introduced in the State, are not comparable with the programming that is available in the mainland and is not competitive with cable television services in Hawaii.
  - Directv's offerings in Hawaii are radically different and deficient from its offerings in the mainland. While Directv's Hawaii Choice package includes about 44 channels of cable programming for $21.99, the package lacks most of the more popular programming available, such as CNN, Headline News, The Weather Channel, Discovery Channel, ESPN, ESPN 2, TBS, TNT and USA Network. It also lacks programming that is distributed exclusively by Directv, such as NFL Sunday Ticket.
  - While Echostar has made better progress, there are still shortcomings with its service to the State. Retailers report that there is a substantial demand 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, which could double the equipment and installation costs to more than $500.
- 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 mainland United States.