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FEDERAL COMMUNICATIONS COMMISSION
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August 3, 2001

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VIA MESSENGER

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
445 12th Street, SW, #TW-A235
Washington, DC 20554

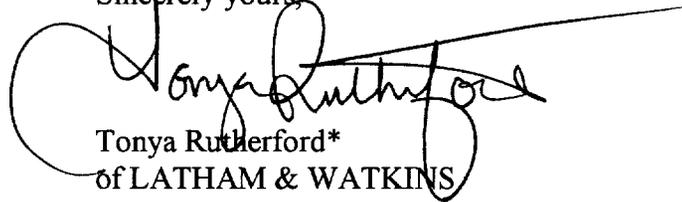
Re: Comments of DIRECTV, Inc. in CS Docket No. 01-129

Dear Ms. Salas:

Enclosed on behalf of DIRECTV, Inc. are an original and four copies of
Comments of DIRECTV, Inc. in the above-referenced Docket.

In the event there are any questions concerning this matter, please let me know.

Sincerely yours,


Tonya Rutherford*
of LATHAM & WATKINS

Enclosures

cc: James H. Barker, Esq.
Gary M. Epstein, Esq.

*Admitted to practice in Georgia only. Bar application in the District of Columbia pending.

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

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AUG 3 2001

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)

Annual Assessment of the Status of)
Competition in the Markets for the)
Delivery of Video Programming)

CS Docket No. 01-129

ORIGINAL

COMMENTS OF DIRECTV, INC.

Gary M. Epstein
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August 3, 2001

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TABLE OF CONTENTS

	<u>Page</u>
I. INTRODUCTION AND SUMMARY	1
II. REGULATORY IMPEDIMENTS TO VIGOROUS MVPD COMPETITION	3
A. Interference in the 12 GHz Band	3
1. Proposed NGSO Systems	3
2. Northpoint Technology	5
B. Increased Regulatory Demands on DBS Capacity	6
C. Dilution of The Program Access Law	8
III. RESPONSES TO SPECIFIC INFORMATION REQUESTS	10
A. Competitors In Markets For The Delivery Of Video Programming	10
1. Subscribership	10
2. Financial Information	11
3. Substitution of MVPD Services	11
B. Direct-To-Home Satellite Services	11
1. Identifiable Differences Between DBS and Cable Subscribers	11
2. Available Programming and Pricing	12
3. Local-into-Local Service	12
4. Geographic Location of DBS Subscribers	13
C. Programming Issues	13
1. Affiliations with Programming Networks	13
2. Programming Choices	13
3. Programming Descriptions	13
4. Non-commercial Educational Programming	14
5. Program Access Rules	14
D. Technical Advances	16
1. System Upgrades	16
2. Consumer Equipment	17
3. Electronic Programming Guides	18
E. Multiple Dwelling Units (“MDUs”)	18
1. Competition in MDUs	18
2. Effectiveness of OTARD Rule	19
IV. CONCLUSION	20

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

In the Matter of)	
)	
Annual Assessment of the Status of)	CS Docket No. 01-129
Competition in the Markets for the)	
Delivery of Video Programming)	

COMMENTS OF DIRECTV, INC.

DIRECTV, Inc.¹ (“DIRECTV”) hereby submits the following comments in response to the Commission’s Notice of Inquiry in the above-captioned matter.²

I. INTRODUCTION AND SUMMARY

As of the end of June 2001, DIRECTV® had more than ten million subscribers nationwide. 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 small satellite dish antennas.

When DIRECTV launched its first satellite seven years ago – the culmination of ten years and \$750 million worth of effort and investment – DIRECTV was committed 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 *In the Matter of Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, CS Docket No. 01-129, FCC 01-129, Notice of Inquiry (2001) (“Notice”).

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 recent years, 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. Of course, notwithstanding the addition of new services and advances in technology that DIRECTV has pioneered, the most dramatic change in the status of MVPD competition remains 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 customers, DIRECTV launched local broadcast channel service as soon as the legislation was signed into law, and currently is offering local channel service in 41 markets. The launch of DIRECTV's new spot beam satellite, DIRECTV 4S,⁴ will expand DIRECTV's capability to offer local channel service.

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).

⁴ See File No. SAT-LOA-20010518-00045, Report No. SAT-00073 (June 19, 2001).

II. REGULATORY IMPEDIMENTS TO VIGOROUS MVPD 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.⁵ As DIRECTV reported last year, there remain at least three major developments in the MVPD market that continue to threaten DBS as an effective cable competitor, as described below.

A. Interference in the 12 GHz Band

Recognizing the importance of protecting and supporting the growth of DBS services, the Commission historically has been committed to clearing the 12.2-12.7 GHz frequency band (the "12 GHz Band") – 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 explore the merits of re-introducing new sources of interference into the 12 GHz Band.

DIRECTV has repeatedly urged the Commission to refrain from introducing services into the 12 GHz 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 below.

1. Proposed NGSO Systems

NGSO FSS systems, such as Skybridge, Virtual Geosatellite, and Boeing, have proposed to use frequencies designated for DBS service. Specifically, these systems have proposed to operate NGSO downlinks in frequencies ranging from 10.7-12.7 GHz, which would overlap with

⁵ Notice at ¶ 5.

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).

the entire 12.2-12.7 GHz Band used by DBS for service downlinks.⁷ For reasons DIRECTV explained in the NGSO FSS rulemaking proceeding, its comments on individual NGSO FSS applications, and its pending reconsideration petition of the NGSO FSS proceeding, 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 16.1 million subscribers as of the end of June 2001 – 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 reiterates the need for 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* (rel. June 22, 2000), at ¶ 96. NGSO FSS systems had also proposed to use the 17.3 - 17.8 GHz frequency band, which is designated for DBS uplinks, for NGSO FSS gateways, but the Commission declined to adopt this proposal. *See First Report and Order and Further Notice of Proposed Rulemaking*, ET Docket No. 98-206 (Dec. 8, 2000) ("NGSO FSS/Northpoint Order"), at ¶ 158.

⁸ *See, e.g.*, Petition for Reconsideration of DIRECTV, Inc., ET Docket No. 98-206 (filed Mar. 19, 2001), at 23-26; Reply of DIRECTV, Inc., ET Docket No. 98-206 (filed May 9, 2001), at 11-17; Comments of DIRECTV, Inc., ET Docket No. 98-206 (Mar. 2, 1999), at 7-23 & Appendix A; Reply Comments of DIRECTV, Inc., ET Docket No. 98-206 (Apr. 14, 1999), at 30-39; *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).

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 effort to re-introduce a terrestrial microwave service into the 12 GHz band on a secondary basis. The proposed service has emerged as the most serious interference threat to DBS to date.

As DIRECTV has demonstrated in numerous filings before the Commission, Northpoint's proposed system should not be introduced at 12 GHz given the interference scenarios that become clearer with every new test of the technology.⁹ Recently, an independent report by the MITRE Corporation ("MITRE"), commissioned by the Commission at the behest of Congress, found that the introduction of a Northpoint service into the 12 GHz Band "currently reserved for DBS poses *a significant interference threat* to DBS operation in many realistic

⁹ DIRECTV and EchoStar 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. 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).

operational situations."¹⁰ The MITRE Report provides absolute confirmation of the DBS operators' predictive modeling and analyses of both Northpoint and DBS operator field tests, all of which demonstrated harmful interference similar in magnitude to the "significant" interference observed by MITRE.

The interference that the DBS operators have documented and that MITRE has confirmed will cause DBS subscribers to experience a loss of picture at locations close to each of the 14,000 proposed Northpoint transmitters. Further away from the transmitters, the Northpoint technology will seriously degrade DBS subscribers' service and will result in longer and more frequent rain outages, or service interruptions. If tolerated – let alone facilitated – by the Commission, the introduction of Northpoint technology at 12 GHz will seriously degrade and repeatedly interrupt DBS service, thereby undercutting the very benefits of MVPD competition that the Commission has spent decades attempting to promote.¹¹

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

¹⁰ The MITRE Corporation, *Analysis of Potential MVDDS Interference to DBS in the 12.2-12.7 GHz Band* (April 2001) (the "MITRE Report"), at xvii, 6-1 (emphasis supplied); see *Public Notice*, "Comments Requested on The MITRE Corporation Report on Technical Analysis of Potential Harmful Interference to DBS from Proposed Terrestrial Services in the 12.2-12.7 GHz Band (ET Docket 98-206)," DA 01-933 (rel. April 23, 2001).

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.").

capacity. DBS systems, which already were required to comply with the closed captioning and political broadcasting rules and to reserve 4% their channel capacity for noncommercial programming of an educational or informational nature,¹² are now also required to provide video description services for certain video programming.¹³

In addition, DBS operators are scheduled to be subject to onerous compulsory carriage requirements that are tied to their ability to offer local broadcast channels in local markets.¹⁴ As evidenced in DIRECTV's pending reconsideration of several aspects of these requirements,¹⁵ various 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.¹⁶

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).

¹³ In the Matter of Video Description of Video Programming. *Report and Order* 15 FCC Rcd 15,230 (2000), *aff'd*, *Memorandum Opinion and Order on Reconsideration*, 16 FCC Rcd 1251 (2001).

¹⁴ *See* In the Matter of Implementation of the Satellite Home Viewer Act of 1999, Broadcast Signal Carriage Issues, CS Docket No. 00-96, *Report and Order* (rel. Nov. 30, 2000) (petitions for reconsideration pending).

¹⁵ *See* DIRECTV, Inc., Petition for Reconsideration, CS Docket No. 00-96 (filed Feb. 22, 2001) ("DIRECTV Must Carry Reconsideration Petition"); Reply of DIRECTV, Inc., CS Docket No. 00-96 (filed April 25, 2001) ("DIRECTV Must Carry Reply"); *Ex Parte* Supplement to Reply of DIRECTV, Inc., CS Docket No. 00-96 (filed April 30, 2001). Judicial review of the constitutionality of the statutory satellite carrier must carry requirement has been sought by DIRECTV, the Satellite Broadcasting and Communications Association, and EchoStar Satellite Corporation. *See SBCA v. FCC*, 2001 U.S. Dist. LEXIS 9636 (June 19, 2001 E.D. Va.) (review pending 4th Cir.); *SBCA v. FCC*, No. 01-1151 (4th Cir.) (petition for review filed February 1, 2001); *EchoStar Satellite Corporation v. FCC*, No. 01-9503 (10th Cir.) (docketed Feb. 2, 2001). These proceedings have all been consolidated for review in the Fourth Circuit. DIRECTV supports prompt judicial resolution of the constitutional questions surrounding the satellite carrier must carry requirement, and has not addressed such issues in its petition for reconsideration.

¹⁶ For example, the Commission has created a far more expansive noncommercial educational ("NCE") station carriage obligation for satellite carriers than the current cable NCE carriage requirement, both in terms of the number of stations required to be carried

While cable operators may invest in infrastructure upgrades that can dramatically increase their available bandwidth, DBS spectrum is a finite resource. Such capacity requirements could severely impact DBS subscribers and consumer choice: fewer local markets may 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.

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 for DBS operators.¹⁷ 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.¹⁸ 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

and in terms of the overall channel capacity that must be devoted to NCE carriage. *See, e.g.,* DIRECTV Must Carry Reconsideration Petition at 7-12; DIRECTV Must Carry Reply at 2-7. In addition, the Commission has found that carriage by satellite carriers of additional program-related material in the Vertical Blanking Interval ("VBI") is "technically feasible" for existing, deployed satellite systems, an erroneous conclusion that could require the replacement of DIRECTV equipment for as many as almost ten million households, resulting in a cost of more than 2.8 billion dollars. *See* DIRECTV Must Carry Reconsideration Petition at 13-17; *Ex Parte* Supplement to Reply DIRECTV, Inc., CS Docket No. 00-96 (filed April 30, 2001).

¹⁷ *See, e.g., DIRECTV, Inc v. Comcast Corp., et al.*, DA 98-2151, Memorandum Opinion and Order (rel. Oct. 27, 1998), *aff'd*, *Memorandum Opinion and Order*, FCC 00-404 (rel. Nov. 20, 2000).

¹⁸ *See DIRECTV, Inc v. Comcast Corp., et al.*, 13 FCC Rcd 21,822 (1998), *aff'd*, *Memorandum Opinion and Order*, FCC 00-404 (rel. Nov. 20, 2000); *EchoStar Communications Corp.*, 14 FCC Rcd 2089 (1999) *aff'd* *Memorandum Opinion and Order*, FCC 00-404 (rel. Nov. 20, 2000), *Petition for Review pending, EchoStar v. FCC*, No. 01-1032 (D.C. Cir.).

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 Act¹⁹ more than eight 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."²⁰ Congress therefore designed a 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.²¹ 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

¹⁹ 47 U.S.C. § 548.

²⁰ H. Rep. No. 862, 102d Cong., 2d Sess., 93 (1992).

²¹ Notice at ¶ 10.

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.

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.²² DIRECTV provides responsive information below.

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 Alaska²³ is able to receive DIRECTV programming if the consumer purchases the DIRECTV System and installs it within the proper line of sight. In addition, in September 2000, DIRECTV began providing multiple

²² *Id.* at ¶¶ 13-14.

²³ 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.

service packages to residents of Hawaii.²⁴ As of the end of June 2001, DIRECTV had more than 10 million subscribers compared to about 8.7 million as of June 30, 2000.

2. *Financial Information*

For the first six months of 2001, DIRECTV (U.S.) had revenue of \$2.7 billion – a 22% increase over 2000 revenues for this period. Also, for the first six months of 2001, DIRECTV reported EBITDA of \$125 million compared to EBITDA of \$57 million for the first six months of 2000. The operating loss for the first six months of 2001 was \$92 million, compared with \$133 million for the same period in 2000.

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.²⁵ DIRECTV provides responsive information below.

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%

²⁴ 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 are required to use somewhat larger dishes in order to receive DIRECTV programming.

²⁵ Notice at ¶¶ 23-26.

of DIRECTV's subscribers²⁶ live in larger urban counties, defined by Nielsen as "A" or "B" 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.²⁷

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 41 markets.²⁸ 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 WB affiliated station. Forty-seven percent of DIRECTV customers take a local channel program package if it is available in their service areas. On January 1, 2002, DIRECTV will begin carrying additional stations in its 41 local channel markets pursuant to 47 U.S.C. § 338, unless the provision is declared unconstitutional. DIRECTV estimates that its overall subscriber levels

²⁶ This includes DIRECTV customers served by NRTC affiliates.

²⁷ Notice at ¶ 12.

²⁸ See www.DIRECTV.com for the specific markets served.

have increased by 20% as a result of local broadcast channel service, although it is not possible to isolate entirely 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 the continental United States. Approximately 50% of DIRECTV's total current subscribers²⁹ live in urban counties, and 50% live in smaller, rural counties. According to a DIRECTV consumer satisfaction study conducted in the first quarter of 2001, 71% of DIRECTV customers live in areas able to receive cable television service.

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.³⁰ DIRECTV provides responsive information below.

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.

3. Programming Descriptions

DIRECTV carries the following regional sports networks ("RSNs"): Empire Sports Network, Comcast SportsNet Mid-Atlantic, Madison Square Garden (MSG), New England

²⁹ This includes DIRECTV customers served by NRTC affiliates.

³⁰ Notice at ¶ 48.

Sports Network, Sunshine Network, and 18 Fox Sports Networks, Fox Sports Arizona, Fox Sports Bay Area, Fox Sports Chicago, Fox Sports Cincinnati, Fox Sports Detroit, Fox Sports Florida, Fox Sports Midwest, Fox Sports New England, Fox Sports New York, Fox Sports North, Fox Sports Northwest, Fox Sports Ohio, Fox Sports Pittsburgh, Fox Sports Rocky Mountain, Fox Sports South, Fox Sports Southwest, Fox Sports West, and Fox Sports 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.³¹

4. *Non-commercial Educational Programming*

DIRECTV currently carries the following eleven channels pursuant to Section 335 of the Communications Act, which requires DBS operators to make available 4% of their channel capacity for noncommercial programming of an educational or informational nature: 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; StarNet (STAR); The Word; and BYU-TV. DIRECTV also carries additional educational channels such as C-SPAN2 and PBS KIDS Channel, but does not include these as part of its carriage obligation under Section 335.³²

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

³¹ See *supra* discussion of program access issues in Section II.C.

³² See 47 C.F.R. § 100.5(c)(4) (limiting the number of channels a single national educational and informational programmer can use to one channel per programmer, until all qualified entities that have sought access have been offered access on at least one channel).

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 rules 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 EchoStar. 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 rules to Comcast’s programming essentially because Comcast had switched to a terrestrial means of delivery.³³ 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

³³ See *DIRECTV, Inc v. Comcast Corp., et al.*, 13 FCC Rcd 21,822 (1998), *aff’d*, *Memorandum Opinion and Order*, FCC 00-404 (rel. Nov. 20, 2000).

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.³⁴ The Commission also requests information as to specific services and equipment. DIRECTV provides responsive information below.

1. System Upgrades

DIRECTV constantly takes advantage of technical advances to improve and increase services available to its customers. These include advances in compression technology enabling additional video services; interactive television technologies (DIRECTV Interactive™ Powered by Wink®) providing information and e-commerce; High Definition Television ("HDTV") broadcast technologies to provide HDTV services (currently broadcasting 2 channels of HDTV programming); consumer electronics technologies enabling less expensive receivers and more receiver options for DIRECTV customers; digital video recording technologies enabling Personal Video Recorder ("PVR") capabilities for consumers, such as the DIRECTV™ Receiver with TiVo® and DIRECTV™ Receiver with UltimateTV®; integrated satellite receiver and internet access platforms such as DIRECTV™ Receiver with UltimateTV®; and spot beam spacecraft technologies enabling additional local channels and local markets.

DIRECTV has offered digitally compressed signals from its inception, and 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

³⁴ Notice at ¶¶ 54-55.

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 two additional spacecraft scheduled for launch that will more effectively use its assigned frequencies. Specifically, DIRECTV has received approval to launch and operate its DIRECTV 5 satellite,³⁵ which will enable DIRECTV to utilize its frequencies at the 119° W.L. orbital location more efficiently. DIRECTV also has applied for authority to launch and operate DIRECTV 4S, a spot beam satellite that will facilitate local broadcast channel service in markets across the nation.³⁶

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. Samsung will soon join this list of manufacturers.

Virtually all DIRECTV consumer equipment is available at more than 26,000 retail outlets. The channels of distribution include: major retail outlets such as Circuit City, Best Buy, Radio Shack, and others; discount retailers such as Wal-Mart and K-Mart; independent retailers such as Ken Cranes, Dow, and others; and specialized satellite TV dealers. DIRECTV subscribers who obtain services through Verizon, SBC (Southwestern Bell), and Pacific Bell

³⁵ See File No. SAT-LOA-20000505-0086. *Order and Authorization* (Nov. 27, 2000).

³⁶ See File No. SAT-LOA-20010518-00045, Report No. SAT-00073 (June 19, 2001).

have the option of leasing their set-top boxes through those companies. Set-top boxes are also available from Blockbuster, the DIRECTV web site, and through e-commerce.

Set-top box products are not interchangeable with those used by different MVPDs, as the major MVPDs (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 to 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.³⁷ DIRECTV provides responsive information below.

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

³⁷ Notice at ¶ 12.

programming services to MDUs. The cable industry's success in thwarting competition is 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 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.³⁸ 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.

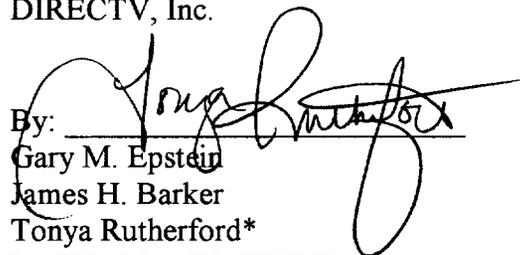
³⁸ See *In the Matter of Restrictions on Over-the-Air Reception Devices: Television Broadcast, Multichannel Multipoint Distribution and Direct Broadcast Satellite Services*, CS Docket No. 96-83, *Second Report and Order*, 13 FCC Rcd 23874 (1998), *aff'd*, *Building Owners and Managers Ass'n v. FCC*, No. 99-1021 (D.C. Cir. 2001).

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 market.

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