

July 23, 2002

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

Marlene H. Dortch, Secretary  
Federal Communications Commission  
445 12th Street, S.W.  
Room TW-A325  
Washington, DC 20554

Re: Permitted Oral Ex Parte Presentation  
FCC File No. SAT-PDR-20020425-00071 &  
IB Docket No. 98-21

Dear Secretary Salas:

On Monday, July 22, 2002, Clyde Sonobe, Cable Administrator, Cable Television Division, Hawaii Department of Commerce & Consumer Affairs, met with Commissioner Michael Copps, along with Legal Advisor, Alexis Johns. Also in attendance at the meeting were Herbert E. Marks and Bruce A. Olcott of Squire Sanders & Dempsey, L.L.P., as counsel for the State of Hawaii.

Sonobe expressed the State's appreciation for the Commission's decision to clarify and reinforce its geographic service requirements for DBS operators. The State indicated that its residents deserve access to DBS services that are comparable to the services available on the mainland and competitive with the offerings of monopolistic cable television providers. Sonobe indicated that the Commission's June 2002 order in IB Docket No. 98-21 should help in compelling DBS operators to provide comparable services to the State's residents. Sonobe further indicated that the State would monitor the situation and would inform the Commission if any lack of compliance is detected.

The State also expressed concern about a recent proposal by SES Americom to use a non-U.S. licensed satellite to provide DBS in the U.S. mainland, but possibility not to consumers in Alaska and Hawaii. Although the State welcomes new competition in the DBS industry, the State urged the Commission to refrain from authorizing SES Americom's service until the applicant develops a plan for providing DBS to consumers in all fifty States. The State also urged the Commission to refrain from granting SES Americom a waiver of its geographic service rules. The State indicated that compliance with the Commission's rules is important to ensure that consumers in Alaska and Hawaii remain fully integrated with the rest of the country through access to a full range of competitive telecommunications services.

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

Sincerely,

Bruce A. Olcott

Copy: Commissioner Michael Copps  
Alexis Johns, Legal Advisor  
Linda Haller, Legal Advisor, International Bureau  
Christopher Murphy, Legal Advisory, International Bureau  
Rosalee Chiara, Media Bureau  
Eloise Gore, Media Bureau  
Jennifer Gilsenan, Chief, Policy Branch, Satellite Division  
Selina Khan, Satellite Division, Policy Branch  
Laura Sherman, Counsel for SES Americom

## **Competitive Telecommunications Services for the State of Hawaii**

Clyde Sonobe, Cable Administrator,  
Cable Television Division, Hawaii Department of Commerce & Consumer Affairs

July 2002

- The State applauds the Commission for its long history of efforts to ensure that the residents of Hawaii have access to the same competitive wireline and satellite-based telecommunications services that are available to consumers in the mainland states.

### **Direct Broadcast Satellite Services**

- The Commission adopted geographic service rules in 1995 mandating service to Hawaii and Alaska in recognition that these states have been subject to discrimination by DBS licensees.
- In order to compel compliance, the Commission adopted another order in June of this year strengthening and clarifying its geographic service rules.
  - The Commission clarified that DBS licensees must provide packages of services that are “reasonably comparable” to the services available in the rest of the United States.
  - The Commission strongly encouraged DBS operators to serve consumers in Alaska and Hawaii using comparable receive earth station antenna sizes.
  - The Commission also reaffirmed that non-U.S. licensed DBS operators must comply with the Commission’s geographic service requirements.
  - Finally, the Commission indicated that DBS providers would be subject to liability for failure to comply with its rules 60 days after the order’s Federal Register publication.
- Shortly after the Commission’s order was released, EchoStar announced that it is initiating local-into-local broadcast programming for Honolulu.
- We have not yet received indication, however, that DirecTV has come into compliance with the rules.
- The State has also expressed concern to the Commission about a SES Americom proposal to use a Gibraltar license to provide DBS in the U.S. mainland, but not to Hawaii and Alaska.
- The State intends to monitor the situation and submit inquiries to the DBS operators. If the State perceives a lack of compliance, we will bring it to your attention.

### **Rate Integration Requirements of Section 254(g)**

- The Commission adopted rate integration and geographic averaging policies to ensure that “off shore points” – Alaska, Hawaii, and Puerto Rico/Virgin Islands – were integrated into the telecommunications rate and services structure prevailing in the Mainland States.
- Congress codified and expanded these policies by including them in Section 254(g) of the 1996 Telecommunications Act. Congress took this action even though the interexchange market was deemed competitive. The intent was to assure that all Americans, even those in remote areas, received the benefits of competition. Section 254(g) directs the FCC to:
  - mandate geographic rate averaging by requiring interexchange carriers (“IXCs”) to charge rates in rural areas that are no higher than the rates they charge in urban areas.
  - enforce rate integration by requiring IXCs to provide services to subscribers in each State at rates no higher than the rates charged to subscribers in any other State.
- The Commission continues to protect the integrity of Section 254(g)’s requirements. For example, the Commission recently affirmed the application of Section 254(g) to optional calling plans as a part of its MAG order.
- Despite the Commission’s continuing support, references to Section 254(g) are appearing in Commission proceedings with increasing frequency. Proceedings currently considering Section 254(g)-related issues include:
  - CLEC Access Charge Reform (CC Docket No. 96-262),
  - Primary Interexchange Carrier Charges Reform (CC Docket 02-53),
  - Alaska Bush Policy Termination (IB Docket 02-30),
  - MAG Order Reconsideration (CC Docket 96-45),
  - Separate Affiliates Requirements (CC Docket 00-175), and
  - the CNMI Transfer of Control Application (IB Docket 02-111).
- The State of Hawaii is concerned about any suggested departures from Section 254(g) because the State has been historically been subject to discrimination in telecommunications rates and services.
- The provisions of Section 254(g) must be protected because they help to ensure that discriminatory treatment does not return and impair access to competitive telecommunications services for the residents of Hawaii.