

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

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Annual Assessment of the Status of) MB Docket No. 03-172
Competition in the Market 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 2003, DIRECTV had 11.56 million subscribers nationwide. Using six high-powered direct broadcast satellites at three orbital locations,³ 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. Nine years after launching its first DBS satellite, DIRECTV remains committed to providing consumers with a multi-channel video programming distributor ("MVPD") alternative to incumbent cable television operators.

By devoting an enormous amount of resources to state-of-the-art technologies, and by utilizing the additional direct broadcast satellite ("DBS") frequencies and orbital locations it has

¹ DIRECTV is a wholly owned subsidiary of DIRECTV Enterprises, LLC, a licensee in the DBS service and an indirect 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*, MB Docket No. 03-172, FCC 03-185, Notice of Inquiry (2003) ("Notice").

³ A seventh satellite, DIRECTV 3, currently is in a storage orbit above the geo-stationary arc.

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acquired in the past decade, DIRECTV has been able to improve and increase the variety of its services and offer consumers more attractive program packages, including the offering of local broadcast channels via satellite in 64 local television markets (with plans to expand that service to approximately 100 DMAs upon the successful launch of the DIRECTV 7S spot beam satellite). This commitment of resources has enhanced DIRECTV's ability to compete with the cable incumbents that continue to dominate the MVPD marketplace.

DIRECTV also would emphasize, however, that it continues to face intense competition from other MVPD systems. For example, the number of digital cable subscribers for the first time is expected soon to surpass the number of DBS subscribers. It is therefore critical that DIRECTV continue to expand its business, grow and innovate. To that end, DIRECTV's parent companies, Hughes Electronics Corporation ("Hughes") and General Motors Corporation ("GM"), have agreed that, subject to Commission and Department of Justice approval, Hughes will be split off from GM and that The News Corporation Limited ("News Corp.") will acquire a 34% interest in Hughes.⁴ The proposed transaction will combine News Corp.'s vision, expertise and energy with Hughes's assets and talents, and in particular, will better permit DIRECTV to undertake strategic initiatives that may require additional capital and other resources – initiatives such as the deployment of enhanced interactive and digital video recorder capabilities; an even greater expansion of satellite-delivered local broadcast channels to more local television markets; and the retransmission of more satellite-delivered high-definition television programming. Thus, prompt Commission approval of the transaction is critical to ensuring DIRECTV's continued presence as a dynamic, innovative and competitive force in the MVPD market.

⁴ See General Motors *et al.*, Consolidated Application for Authority to Transfer Control, MB Docket No. 03-124 (filed May 2, 2003).

DIRECTV below addresses a number of issues and data requests raised in the Notice. 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 continues to be threatened by three regulatory developments in the MVPD marketplace: (i) the failure of the Commission to address the serious threat of harmful interference posed by new, proposed services or service providers that seek to share the mission-critical frequency band designated for primary use by U.S. 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 monitored and addressed by the Commission if DBS is to continue to progress as an MVPD competitor.

II. REGULATORY IMPEDIMENTS TO DBS PROVIDERS IN THE MVPD MARKETPLACE

The Commission seeks comment on the impact of the current regulatory environment in encouraging vigorous competition in the market for the delivery of video programming, as well as any remaining statutory or regulatory barriers to competition.⁵ From DIRECTV's perspective, there remain at least three major regulatory developments in the MVPD market that threaten DBS as an effective cable competitor, which are 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

⁵ Notice at ¶ 9.

unacceptable interference.⁶ In the past few years, however, the Commission has taken steps to introduce several 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 U.S. DBS service and thereby jeopardize the progress DBS operators have achieved to date in competing with cable incumbents. There is ample other spectrum available to accommodate new MVPD competitors. DIRECTV reiterates these concerns below.

1. ***Northpoint Technology***

Northpoint Technology, Ltd. and its affiliates, Broadwave USA and Diversified Communication Engineering (collectively “Northpoint”), have been engaged in an effort to introduce a terrestrial point-to-multipoint service into the 12 GHz band allegedly on a non-interference basis. The proposed service, designated by the Commission as Multichannel Video Distribution and Data Service (“MVDDS”), has emerged as the most serious interference threat to DBS to date.

As DIRECTV has demonstrated in numerous filings before the Commission, Northpoint and other proposed MVDDS systems should not be introduced at 12 GHz given the interference scenarios that become clearer with every new test of these technologies⁷ and the alternate

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).

⁷ 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*

spectrum available to house such a service. An independent report by the MITRE Corporation (“MITRE”), commissioned by the Commission at the behest of Congress, found that the introduction of a Northpoint-type service into the 12 GHz Band “currently reserved for DBS poses a significant interference threat to DBS operation in many realistic operational situations.”⁸ The MITRE Report confirmed 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.

Unfortunately, the Commission has continued down a path of grossly inadequate protection of DBS licensees' provision and their subscribers' receipt of service. In its *Second Report and Order* in the MVDDS proceeding,⁹ the Commission adopted technical parameters purportedly designed to protect DBS operators and subscribers from harmful interference, but that do nothing of the kind. To the contrary, the *Second Report and Order* “sanctions the severe

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).

⁸ 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).

⁹ *Second Report and Order*, ET Docket No. 98-206 (rel. May 23, 2002).

disruption of DBS service for an untold number of consumers,”¹⁰ and undercuts the very benefits of MVPD competition that the Commission has spent decades attempting to promote in fostering the growth of DBS.¹¹ Regrettably, DIRECTV’s request for the Commission to reconsider this potentially disastrous decision was recently denied, leaving DBS operators no alternative but to seek judicial review.¹²

2. ***Proposed DBS System of SES Americom at 105.5° W.L.***

SES Americom, Inc. (“SES”), a foreign satellite operator, filed a petition for declaratory ruling that it would be in the public interest for SES to build, launch and operate a new DBS satellite at the 105.5° W.L. orbital position. SES proposes to develop a platform that will offer satellite capacity to third parties who will provide direct-to-home services to consumers in the United States as well as certain British Overseas Territories in the Caribbean. The Commission has sought comment on this proposal.

¹⁰ *Id.*, Statement of Commissioner Kevin J. Martin at 15.

¹¹ The Commission’s actions are all the more egregious because it has already required DBS operators to share the 12 GHz band with the operations of non-geostationary satellite (“NGSO”) systems, yet another mass market consumer service. *See First Report and Order*, ET Docket No. 98-206 (rel. Dec. 8, 2000), at ¶ 166.

¹² *Fourth Memorandum Opinion and Order*, ET Docket No. 98-206 (rel. April 29, 2003). On July 18, 2002, DIRECTV filed in the United States Court of Appeals for the District of Columbia a Petition for Review of the Commission’s underlying decision that sharing between DBS and MVDDS is possible, arguing that the authorization of MVDDS operations in the 12 GHz band exceeds the Commission’s authority, is an abuse of discretion, is arbitrary and capricious, and is otherwise contrary to law. *DIRECTV, Inc. v. Federal Communications Comm’n and the United States of America*, D.C. Cir. (filed July 19, 2002). To the extent that the Commission may be upheld in its decision to authorize MVDDS operations in the 12 GHz band, DIRECTV has urged the Commission not to deviate from its decision to follow its ordinary competitive bidding procedures in assigning MVDDS licenses. In this regard, DIRECTV has opposed Northpoint’s attempts judicially and legislatively to overturn the Commission’s determination to hold an auction for MVDDS licenses.

DIRECTV has opposed the SES petition as procedurally defective, and on the merits, has shown that SES's proposal poses a threat to both current and future U.S. DBS operations.¹³ Although it has yet to design, construct, launch or obtain a license for its proposed satellite, SES asks the Commission to depart from the framework of nine degree spacing upon which U.S. DBS operators have relied in spending billions of dollars to launch and deploy U.S. DBS systems. If deployed, the SES satellite will interfere with currently-deployed U.S. DBS satellites. Worse, SES claims that its satellite should be accorded interference protection priority over a number of current and planned DBS satellites, including DBS spot-beam satellites that are critical to offering U.S. DBS subscribers satellite-delivered local broadcast signals. If SES's proposed satellite is accorded such interference protection, there is a significant risk that the number of local television markets that are served by DIRECTV will be dramatically reduced, and there will be a serious design constraint on the future growth and development of all U.S. DBS systems. Although DIRECTV does not oppose SES finding a less disruptive way to provide DTH service in the United States, for example, by using future orbital locations to be allocated for BSS service in "expansion" BSS frequencies at 17 GHz, the current SES proposal should be denied.

More generally, SES's petition has been the impetus for a number of other foreign and domestic filings that propose the introduction of "tweener" DBS satellites interleaved between currently deployed and future nine-degree spaced U.S. DBS satellites. Nine-degree orbital spacing has been the foundation of the U.S. DBS industry since its inception, and billions of dollars have been invested by DIRECTV and others to deploy a satellite infrastructure that provides competition to cable monopolies and that extends MVPD services to geographic areas

¹³ See In the Matter of SES Americom, Inc., SAT-PDR-20020425-00071, Opposition of DIRECTV, Inc. (June 17, 2002).

unreached by cable. Thus, DIRECTV has urged the Commission to examine systemically the question of whether short-spaced “tweener” satellites can feasibly be authorized in the 12 GHz Band, and if so, under what rules and technical parameters that will protect the current operations and future growth of deployed U.S. DBS systems.¹⁴

B. Increased Regulatory Demands on DBS Capacity

While the Commission is allowing increased interference in the frequency bands designated for primary 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 are required to comply with the closed captioning and political broadcasting rules and to reserve 4% of their channel capacity for noncommercial programming of an educational or informational nature.¹⁵ The Commission has attempted to impose on DBS operators a requirement to provide video description services for certain video programming, as well.¹⁶

¹⁴ See Petition of DIRECTV Enterprises, LLC for a Rulemaking on the Feasibility of Reduced Orbital Spacing in the U.S. Direct Broadcast Satellite Service (filed Sept. 5, 2003).

¹⁵ 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).

¹⁶ 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). On November 8, 2002, the U.S. Court of Appeals for the D.C. Circuit vacated the Commission’s video description rules, finding that they exceeded the Commission’s authority. *Motion Picture Association of America v. FCC*, 309 F.3d 796 (D.C. Cir. 2002).

In addition, DBS operators are subject to onerous mandatory carriage requirements that are tied to their ability to offer local broadcast channels in local markets.¹⁷ And the broadcast industry is attempting to expand that mandatory carriage obligation unreasonably, arguing for the mandatory carriage of multiple digital and HDTV broadcast signals, which would far exceed the capacity limits of deployed DBS systems.¹⁸

Finally, the bandwidth-intensive nature of new services that consumers desire, such as high-definition television services, only increases the pressure on DBS capacity. While cable operators may invest in infrastructure upgrades that can dramatically increase their available bandwidth, DBS spectrum is a finite resource.

Such capacity requirements over time could seriously affect the diversity of programming choices that can be made available to DBS subscribers.

C. Dilution of the Program Access Law

DIRECTV is very pleased that the Commission last year extended for five years the statutory prohibition on exclusive contracts between cable operators and cable-affiliated programmers. The Commission found that, absent the prohibition, programmers affiliated with cable providers would have the incentive to favor their cable affiliates over other MVPDs.¹⁹ As DIRECTV has explained in numerous proceedings before the Commission, access to programming controlled by vertically-integrated cable incumbents continues to be an important

¹⁷ See 47 U.S.C. § 338; 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).

¹⁸ See DIRECTV, Inc., *Ex Parte* Presentation, CS Docket No. 98-120 (Feb. 25, 2003).

¹⁹ Implementation of the Cable Television Consumer Protection and Competition Act of 1992, Development of Competition and Diversity in Video Programming Distribution: Section 628(c)(5) of the Communications Act, Sunset of Exclusive Contract Prohibition, FCC 02-176, *Report and Order* (rel. June 28, 2002).

issue for DBS operators. DIRECTV is concerned about the Commission's failure to apply the program access law to programming formerly delivered by satellite that was migrated to a terrestrial delivery mode specifically to evade the law.²⁰ Although the Commission appropriately retained the prohibition on cable exclusivity through October 5, 2007, it did not clarify that "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.²¹ DIRECTV is therefore 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.

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. Technological advances that have vastly diminished the costs of delivering programming terrestrially, coupled with the efforts of cable MSOs to "cluster"²² 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

²⁰ 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*, 15 FCC Rcd 22,802 (2000), *aff'd* *EchoStar v. FCC*, 292 F.3d 749 (D.C. Cir. 2002).

²¹ *Implementation of the Cable Television Consumer Protection and Competition Act of 1992; Development of Competition and Diversity in Video Programming Distribution: Section 628(c)(5) of the Communications Act; Sunset of Exclusive Contract Prohibition*, FCC 02-176, Report and Order (2002), at ¶¶ 75-80.

²² See, e.g., *Applications for Consent to the Transfer of Control of Licenses from Comcast Corporation and AT&T Corp., Transferors, to AT&T Comcast Corporation, Transferee*, 17 FCC Rcd 23246 (2002).

cable operators have begun to use terrestrial distribution as a more widespread tactic to insulate themselves from the program access requirements. For these reasons, DIRECTV continues to urge the Commission to carefully monitor the effects of terrestrial distribution of vertically integrated programming by cable operators.

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.²³ DIRECTV provides responsive information below.

1. *Subscribership and Penetration Rates*

As of the end of June 2003, DIRECTV had 11.56 million subscribers compared to about 10.7 million as of June 30, 2002. With respect to DBS penetration more generally, a recent Sky Trends report indicates that direct-to-home (“DTH”) satellite services have attained greater than 15% household penetration in 35 states in the U.S.²⁴

2. *Financial Information*

For the second quarter of 2003, DIRECTV (U.S.) had revenue of \$1.8 billion – a more than 16% increase over 2002 revenues for this period. Also, for the second quarter of 2003, DIRECTV reported operating profit before depreciation and amortization (“OPBDA”) of \$324.8 million, which more than doubled last year’s second quarter OPBDA.

3. *Substitution of MVPD Services*

According to internal subscriber data, approximately 70% of DIRECTV customers were cable subscribers at the time that they first subscribed to DIRECTV. Of these, the substantial

²³ Notice at ¶ 5.

²⁴ See Exhibit A.

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 programming packages, and the effects of new local television broadcast channel services on subscribership.²⁵ DIRECTV provides responsive information below.

1. Available Programming and Pricing

In general, DIRECTV's prices and program packages are comparable to those offered by cable operators. In fact, there is evidence that DIRECTV's prices are lower than those of some cable operators.²⁶ A price and channel list for DIRECTV's program packages is included as Exhibit B.²⁷ The cost of the DIRECTV system, which is dependent on the promotional offering or discount in place at the time of sale, is determined by the retailer.²⁸ DIRECTV and its retailers offer free installation for almost all standard DIRECTV systems.

As described in Exhibit C, DIRECTV recently launched a new high-definition programming package that includes ESPN HD, Discovery HD Theater™, HDNet, HDNet Movies and the broadcast of special events, such as the Masters Golf Tournament. With this

²⁵ Notice at ¶¶ 34-38.

²⁶ See e.g., Cable Industry 2Q Preview and Industry Outlook, Banc of America Securities, dated July 28, 2003 at 27.

²⁷ In addition to these packages, DIRECTV also has created programming packages especially tailored to serve subscribers residing in the State of Hawaii, also included in Exhibit B. These packages are reasonably comparable to the programming packages offered to subscribers residing in the continental United States, and are discussed in detail in DIRECTV's filings in MB Docket No. 03-82, which are incorporated herein by reference.

²⁸ The DIRECTV system also is available via a direct sales channel using an 800 telephone number or the Internet at www.directv.com, in which case DIRECTV sets the price.

addition, DIRECTV now offers seven HD channels to its customers nationwide, including subscribers in Alaska and Hawaii.²⁹

The Commission also seeks information on how video programming distributors package and market their programming, the extent to which they offer consumers “discrete programming choices (i.e., service on an ‘a la carte’ or individual channel, or ‘mini-tier’ basis rather than programming service packages (i.e., tiers of programming services),” and the economic, legal or other factors that affect an MVPD’s ability to offer a more customized service.³⁰ DIRECTV’s a la carte offerings, which include pay-per-view movies and certain international and sports offerings, are included on the attached Exhibit B. DIRECTV would emphasize, however, the general importance and significant benefits of program packaging to MVPDs, their subscribers and new or niche programmers.

Bundling programming channels as a “package” allows greater penetration of individual channels across a larger subscriber base, which lowers the per-subscriber price (or “rate card”) that an MVPD pays to programmers. In general, this lower rate card in turn helps to reduce the likelihood that the prices of the programming offered to subscribers will be raised by the MVPD.

In addition, packaging is an important way for new channels that are unknown to subscribers to gain the audience awareness necessary for the channel to survive. Unless a channel is associated with a “brand name” entity (and obtains significant customer recognition as a result), it is unlikely that subscribers will purchase the channel on an a la carte basis. The inclusion of the channel in a program package raises customer awareness of the new channel,

²⁹ DIRECTV recently moved its DIRECTV 1 and 6 satellites in order to facilitate the offering of its HD package to subscribers residing in Hawaii. See *DIRECTV, Inc.; Request for Special Temporary Authority to Move the DIRECTV 6 and DIRECTV 1 Direct Broadcast Satellites* (filed June 11, 2003).

³⁰ Notice at ¶ 15.

elevates its perceived status to the caliber of other programming in the package, and increases the prospects that the new channel will be viewed. In DIRECTV's experience, programming packages serve the mutual benefit of subscribers, the new or niche-market programming channel, and the MVPD.

In response to the Commission's inquiry about whether DBS operators have the ability and copyrights to insert advertising locally or regionally into broadcast or non-broadcast programming,³¹ DIRECTV notes that it has the contractual right to sell advertising on most national cable networks and the technical ability to do so. It also has the technical ability, although not the legal authority (copyright), to insert ads on distant network signals and superstations.

2. *Local-into-Local Service*

As of today, DIRECTV offers local broadcast channels in 64 DMAs. With the successful launch of the DIRECTV 7S spot beam satellite,³² and using advanced digital compression technology, DIRECTV plans to provide local broadcast channel service in a total of at least 100 DMAs.³³ As of June 30, 2003, over 75% of all residential customers were taking the local programming packages in markets in which such packages are available.

³¹ *Id.* at ¶ 36.

³² *See In the Matter of DIRECTV Enterprises, LLC, Application for Authority to Launch and Operate DIRECTV 7S (USABSS-18)*, File No. SAT-LOA-20030611-00115 (filed June 11, 2003).

³³ DIRECTV offers local broadcast channels in the following 64 DMAs: Atlanta, GA; Austin, TX; Baltimore, MD; Birmingham, AL; Boston, MA; Buffalo, NY; Charlotte, NC; Chicago, IL; Cincinnati, OH; Cleveland, OH; Colorado Springs, CO; Columbia, SC; Columbus, OH; Columbus-Tupelo-West Point, MS; Dallas/Ft. Worth, TX; Denver, CO; Des Moines, IA; Detroit, MI; Grand Rapids, MI; Green Bay, WI; Greensboro, NC; Greenville, SC; Hartford, CT; Houston, TX; Huntsville-Decatur, AL; Indianapolis, IN; Jackson, MS (select zip codes); Jacksonville, FL; Kansas City, MO; Knoxville, TN; Las Vegas, NV; Los Angeles, CA; Louisville, KY; Memphis, TN; Miami/Ft. Lauderdale, FL; Milwaukee, WI; Minneapolis/St. Paul, MN; Nashville, TN; New Orleans, LA; New

Customers who subscribe to DIRECTV's local-into-local service need to install only one satellite antenna.

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.³⁴ DIRECTV provides responsive information below.

1. Affiliations with Programming Networks

DIRECTV is not affiliated with any programming networks. DIRECTV's parent, Hughes Electronics, Inc., has a 5% passive equity interest in Crown Media Holdings, Inc., which owns the Hallmark channel.

2. Programming Choices

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

3. Programming Descriptions

DIRECTV carries the following regional sports networks ("RSNs"): Empire Sports Network, Comcast SportsNet (Mid-Atlantic), Madison Square Garden (MSG), New England Sports Network, Sunshine Network, YES, and 18 Fox Sports Networks: Fox Sports Net Arizona, Fox Sports Net Bay Area, Fox Sports Net Chicago, Fox Sports Net Cincinnati, Fox Sports Net

York, NY; Norfolk, VA; Oklahoma, OK; Orlando/Daytona, FL; Philadelphia, PA; Phoenix, AZ; Pittsburgh, PA; Portland, OR; Providence, RI; Raleigh/Durham, NC; Richmond, VA; Roanoke, VA; Sacramento/Stockton, CA; Salt Lake City, UT; San Antonio, TX; San Diego, CA; San Francisco/Oakland/San Jose, CA; Seattle/Tacoma, WA; Shreveport, LA; St. Louis, MO; Tampa/St. Petersburg, FL; Tucson, AZ; West Palm Beach, FL; Washington, D.C.; and Wilkes-Barre, PA.

³⁴ Notice at ¶¶ 14-17, 39.

Detroit, Fox Sports Net Florida, Fox Sports Net Midwest, Fox Sports Net New England, Fox Sports Net New York, Fox Sports Net North, Fox Sports Net Northwest, Fox Sports Net Ohio, Fox Sports Net Pittsburgh, Fox Sports Net Rocky Mountain, Fox Sports Net South, Fox Sports Net Southwest, Fox Sports Net West, and Fox Sports Net West 2. Thus, with the exception of Comcast in Philadelphia and Cox in New Orleans, DIRECTV carries the RSN in every market that has an RSN.

DIRECTV provides the following children's programming: ABC Family Channel, Boomerang, Cartoon Network, Discovery Kids, Disney Channel (East & West), Hallmark Channel (formerly Odyssey), Nickelodeon/Nick at Nite; Noggin/The 'N'; PBS Kids; Toon Disney, and TV Land.

DIRECTV also provides programming offered in languages other than English. DIRECTV provides the following non-English programming: CCTV-4 (Chinese); The Chinese Movie Channel; Cine Latino; CNN en Español; Discovery en Español; Fox Sports en Español; Galavisión (Spanish); Jade East (Chinese); Jade West (Chinese); Jadeworld Super Channel (Chinese); Maria+Visión (Spanish); mun2 (Spanish) – formerly GEMS; MTV Español; Phoenix TV (Chinese); Puma TV (Spanish); SUR (Spanish); Telefe International (Spanish); Telemundo East & West (Spanish); Telemundo Internacional; Television Espanola Internacional; TV Chile; Utilísima (Spanish); and Univision East & West (Spanish); and Casa Club TV (Spanish).

4. ***Non-commercial Educational or Informational 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; Link TV; Eternal Word Television Network (EWTN); Maria+Vision; I Life; NASA-TV; RFD-TV; The Word; Daystar; and BYU-TV.

DIRECTV also carries additional educational channels such as C-SPAN2 and PBS Kids, but does not include these as part of its carriage obligation under Section 335.³⁵

5. *Closed Captioning and Video Description*

DIRECTV passes through closed captioning on every channel that notifies DIRECTV that it carries closed captioning. DIRECTV currently provides video description for programmers and broadcast stations that notify DIRECTV that they carry video description. DIRECTV has 112 local channels and 37 cable channels for which it has added the Secondary Audio Program channel to carry Descriptive Video Services.

6. *Access to Programming*

The Commission asks whether there is specific programming unavailable to non-cable operators.³⁶ As demonstrated in Exhibit D, there are a number of cable program offerings that are carried exclusively by cable companies.

D. *Advanced Services*

The Commission seeks comment on the advanced service offerings and the new ways of offering service that MVPDs are deploying.³⁷ The Commission also requests information as to specific services and equipment as well as the deployment and development of video-on-demand, near video-on-demand, and subscription video-on-demand.³⁸ DIRECTV provides responsive information below.

³⁵ 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).

³⁶ Notice at ¶ 11.

³⁷ *Id.* at ¶¶ 20-23, 37.

³⁸ *Id.* at ¶ 23.

1. *Existing Technologies*

DIRECTV constantly takes advantage of technical advances to improve and increase services available to its customers. These include interactive television technologies (DIRECTV INTERACTIVE™ powered by Wink Communications®) providing up-to-the-minute information, including news, sports, and weather, and e-commerce; High Definition Television (“HDTV”) broadcast technologies to provide HDTV services (DIRECTV currently offers seven national channels of HDTV programming and some HDTV special events and pay-per-view offerings); consumer electronics technologies enabling less expensive receivers and more receiver options for DIRECTV customers; digital video recording (“DVR”) technologies, such as the DIRECTV DVR with TiVo®; and spot-beam spacecraft technologies enabling additional local channel markets.

Video-on-demand is an architecture deployed by cable where a central server with two-way capability provides video upon request by the subscriber for specific content, typically movies. DIRECTV offers a subscription video-on-demand service called Starz on Demand, which allows subscribers to download up to five movies per week onto their DVR hard drive. DIRECTV also offers a service, Impulse Pay-Per-View, that is similar to near video-on-demand. The DIRECTV DVR with TiVo® currently is available at retail throughout the United States, and via DIRECTV's direct sales distribution channel. Although pricing varies, the equipment price of a DIRECTV DVR ranges from \$99 to \$399.

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 the use of advanced algorithms, such technological developments can neither be predicted nor relied upon as a means of increasing system channel capacity.

Over the last two years, DIRECTV has launched two additional spacecraft so that DIRECTV can more effectively use its assigned frequencies. Specifically, DIRECTV launched its DIRECTV 5 satellite³⁹ on May 7, 2002, which has enabled DIRECTV to utilize its frequencies at the 119° W.L. orbital location more efficiently and with increased redundancy. In addition, on November 26, 2001, DIRECTV launched and now operates the DIRECTV 4S satellite⁴⁰ at the 101° W.L. orbital location. DIRECTV 4S is a spot-beam satellite that facilitates DIRECTV's current provision of satellite-delivered local broadcast channel service in 64 television markets across the nation. The launch of DIRECTV 7S, a second state-of-the-art spot-beam satellite, will allow DIRECTV to serve a total of approximately 100 DMAs.

2. *Internet Access*

DIRECTV offers its customers Internet access via DIRECWAY, a satellite-based Internet service offered by its affiliate, Hughes Network Systems. On August 27, 2003, DIRECTV and BellSouth announced that starting next year BellSouth customers will be able to purchase DIRECTV services bundled with their other communications services at packaged, discounted savings.⁴¹ The two companies also are exploring plans to integrate digital satellite and DSL technology.

3. *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

³⁹ See File No. SAT-LOA-20000505-0086, *Order and Authorization* (Nov. 27, 2000).

⁴⁰ *DIRECTV Enterprises, Inc. Application to Launch and Operate a Direct Broadcast Satellite Service Space Station*, Order and Authorization, 16 FCC 18530 (2001).

⁴¹ See Exhibit E.

boxes and other consumer equipment to serve the DIRECTV subscriber market. DIRECTV system equipment (including set-top boxes and integrated high-definition television sets) is and has been manufactured and/or distributed by a wide variety of consumer electronics manufacturers, including: Hughes Network Systems, Mitsubishi, Philips, Samsung, Sony, Thomson Consumer Electronics, Toshiba, and Zenith.

The Commission seeks specific comment on the number of households that have one or more set-top boxes, the retail availability of navigation devices, and whether subscriber agreements typically limit use of subscriber premises equipment.⁴² For DIRECTV customers only, 44% have only one receiver, 43% have 2 receivers, 9% have 3 receivers, and 4% have four or more receivers. For combined DIRECTV and NRTC customers, 46% have only one receiver, 41% have two receivers, 8% have 3 receivers, and 4% have four or more receivers. Virtually all DIRECTV consumer equipment is available at more than 30,000 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 Good Guys, Ultimate Electronics, and others; and thousands of independent satellite TV dealers nationwide. DIRECTV Systems also are available for purchase from Blockbuster, the DIRECTV direct sales channel (accessed either through www.directv.com or 1-800-DIRECTV), and through e-commerce.

Typically, there are restrictions on the use of DIRECTV system equipment. For example, the equipment may not be used to receive DIRECTV service outside the United States, and equipment installed as a residential account may not be used for commercial purposes. In

⁴² Notice at ¶ 24.

addition, access cards remain the property of DIRECTV, and may not be modified in any way. Further, access cards cannot be transferred to any individual or entity.

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.

4. *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 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**

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.⁴³ 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

⁴³ Notice at ¶ 8.

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.⁴⁴ 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.

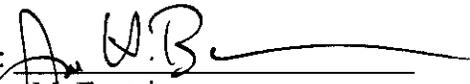
⁴⁴ See *In the Matter of Restrictions on Over-the-Air Reception Devices: Television Broadcast, Multichannel Multipoint Distribution and Direct Broadcast Satellite Services*, CS Docket No. 96-83, Second Report and Order, 13 FCC Rcd 23874 (1998), *aff'd*, *Building Owners and Managers Ass'n v FCC*, No. 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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