

March 21, 2006

VIA ELECTRONIC FILING

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street S.W.
Washington, D.C. 20554

Re: In the Matter of
Request for Comment on Petitions
Regarding Directv's DBS Service to
the States of Alaska and Hawaii
Media Bureau Docket No. 03-82

Dear Ms. Dortch:

More than two years ago, the State of Hawaii filed a Petition for Administrative Sanctions against Directv detailing Directv's lack of compliance with the geographic service requirements for direct broadcast satellite ("DBS") service licensees.¹ Since that time, the Commission has investigated Directv's inadequate service in Hawaii.² In addition, Congress has intervened, adopting legislation that required DBS licensees to provide local-into-local broadcast programming services to Hawaii and Alaska before the end of 2005.³

Despite the significant efforts of the Commission and Congress, Directv still does not provide a readily accessible or competitively attractive DBS service in Hawaii. The State therefore urges the Commission to conclude that Directv has not met its obligations to provide comparable DBS service to consumers in Hawaii and is subject to administrative sanctions.

¹ See *Petition for Administrative Sanctions of the State of Hawaii*, MB Docket No. 03-82 (Feb. 6, 2003).

² See *Public Notice, Media Bureau Action: Request For Comment On Petitions Regarding Directv's DBS Service To The States Of Alaska And Hawaii*, DA 03-869, MB Docket No. 03-82 (March 25, 2003).

³ See 47 U.S.C. § 338(a)(4); *Satellite Home Viewer Extension and Reauthorization Act of 2004*, Pub. L. No. 108-447 § 210, 118 Stat. 2809, 3428-29 (2004).

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The State's primary concern regarding Directv's service is that it is not readily accessible to consumers in the State through mass market retail distribution channels.⁴ In this regard, Directv claims that its service is readily available in Hawaii. For example, Directv's website states that its equipment and services can be purchased in Hawaii at such major retail outlets as a Wal-Mart Supercenter and two Best Buy stores.⁵ Directv highlighted this information in a letter to the Commission, dated March 9, 2006.⁶ In addition, Directv issued a news release stating that "information on how to order [Directv's] equipment is also available at Blockbuster stores."⁷

In reality, none of these major retail chains stock or sell Directv's equipment or services in their Hawaiian outlets. There is no display advertising or shelf space in the stores for Directv's service, or other suggestion that the service is available. If a customer is persistent enough to ask store employees about Directv, employees at some, but not all, of the stores may volunteer to give the customer a toll free telephone number for Directv on the mainland.

Of course, most consumers in Hawaii do not know to ask about Directv's service because they have little reason to believe that it is available in the State. Directv and its national retailers do not regularly promote Directv's service using local advertising channels in Hawaii. In contrast, Directv and its affiliates advertise its service heavily in the mainland and Directv's equipment can be purchased off the shelf at Circuit City and Best Buy retail outlets on the mainland.

The reason why Directv appears to be making little or no effort to market its service in Hawaii seems obvious. The DBS reception equipment that must be used by consumers in Hawaii to get Directv's service is too cumbersome for most residential settings:

- To receive Directv's basic services (Total Choice plus Hawaii local stations), consumers in Hawaii must purchase and install a 1.2 meter satellite antenna.⁸
- To receive Directv's HDTV programming or foreign language programming, consumers in Hawaii must purchase and install a second 1.2 meter satellite antenna.

⁴ The State highlighted this same issue in a letter to the Commission nearly two years ago. *See* Letter from Herbert E. Marks, Counsel for the State of Hawaii, to Marlene H. Dortch, Secretary, Federal Communications Commission, MB Docket No. 03-82 (May 4, 2004).

⁵ *See* http://www.directv.com/DTVAPP/buy/LocateDealerResults.jsp?_requestid=25321 (last visit March 9, 2006).

⁶ *See* Letter from Michael D. Nilsson, Counsel for Directv, Inc., to Marlene H. Dortch, Secretary, Federal Communications Commission, MB Docket No. 03-82 (March 9, 2006).

⁷ *See* News Release, *Directv Now Offers Local Channels in Hawaii; Local Honolulu Stations Roll Out Today; Will be Available to Customers Throughout the Hawaiian Islands* (Dec. 8, 2005). Directv provided a copy of this news release to the Commission.

⁸ *See id.* (disclosing the requirement for a 1.2 meter antenna).

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The installation of two 1.2 meter antennas would be unattractive and burdensome for the owners of most single family homes. About half of the residents in Hawaii, however, live in multifamily housing, where installation of even one 1.2 meter antenna may be physically difficult and prohibited by building and homeowner's association regulations. As the Commission is aware, the Over-the-Air Reception Devices ("OTARD") rules, which were designed to ensure that consumers have unfettered access to DBS services, do not protect antennas in excess of 1.0 meter in diameter.⁹

In raising this concern, the State acknowledges that the Commission refrained from adopting specific requirements for DBS licensees regarding the maximum permissible size of reception antennas.¹⁰ The Commission based this decision in part on the fact that both Echostar and Directv were already providing limited services to Hawaii using receive antenna diameters under one meter.¹¹ The Commission also strongly encouraged DBS licensees to provide comparable DBS service to Alaska and Hawaii in terms of receive earth station antenna size with the rest of the contiguous United States, to the extent technically feasible.¹²

In any event, the State is not requesting herein that the Commission conclude that Directv has violated its geographic service obligations based solely on its use of 1.2 meter reception equipment. The State believes that Directv's use of excessively large antennas is only one contributor to the commercial unattractiveness of its service, rather than the sole problem.

Instead, the State urges the Commission to conclude that Directv is in violation of the Commission's rules primarily because Directv has not made its service readily accessible to consumers through the same mass market distribution channels that Directv uses in the rest of the United States. Section 25.148(c) of the Commission's rules requires Directv to provide DBS service to Hawaii where such service is technically feasible from the authorized orbital location.¹³ In order to meet this requirement, Directv must not only use its satellite network to broadcast programming to Hawaii, Directv must also make its reception equipment readily available to consumers in the State.

Directv secures the vast majority of its customers through mass market advertising and retail distribution channels such as Best Buy and Circuit City.¹⁴ Directv should be required to

⁹ See 47 C.F.R. § 1.4000(a)(1)(i)(B) (2005).

¹⁰ See *Policies and Rules for the Direct Broadcast Satellite Service*, 17 FCC Rcd 11331, 11366 (2002) ("DBS Order").

¹¹ *Id.*

¹² *Id.*

¹³ See 47 C.F.R. § 25.148(c) (2005).

¹⁴ See *Directv Group, Inc.*, Form 10-K, at 44 (March 1, 2005).

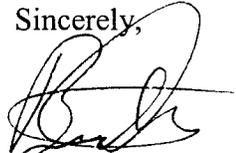
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make these same options available to consumers in Hawaii. Absent such requirements, most consumers in Hawaii may never consider Directv as a competitive option to entrenched cable television networks. Furthermore, the Commission's long standing and important goal of "establishing DBS as a competitor to cable in the multi-channel video programming distribution market in the States of Hawaii and Alaska" may never be fully realized.¹⁵

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

Sincerely,



Bruce A. Olcott
Herbert E. Marks
Counsel for the State of Hawaii

cc: M. Nilsson, Harris, Wiltshire & Grannis LLP

¹⁵ *DBS Order* at 11364.