

May 18, 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:

On March 21, 2006, the State of Hawaii submitted a letter to the Commission renewing its longstanding concern about Directv's continued refusal to make available to consumers in Hawaii a readily accessible or competitively attractive direct broadcast satellite ("DBS") service.¹ As the State has repeatedly indicated to the Commission, despite Directv's assertions to the contrary,² Directv's service cannot be purchased at the Hawaiian outlets of Directv's major retail distributors, Wal-Mart, Best Buy and Circuit City.

On April 4, 2006, Directv filed a response to the State's letter claiming that "[a] customer can purchase Directv services" from Wal-Mart and Best Buy in Hawaii.³ The letter further

¹ See Letter from Bruce Olcott and Herbert Marks, Counsel to the State of Hawaii, to Marlene H. Dortch, Secretary, Federal Communications Commission (March 21, 2006) ("*Hawaii Letter*").

² See http://www.directv.com/DTVAPP/global/findRetailer.jsp?assetId=500016&_requestid=109416 (last visited May 11, 2006). The website claims that Directv's service can be purchased at two Best Buy stores, one Wal-Mart store and one Circuit City store in Hawaii.

³ See Letter from William M. Wiltshire and Michael D. Nilsson, Counsel for Directv, Inc., to Marlene H. Dortch, Secretary, Federal Communications Commission, at 2 n.6 (April 4, 2006). Directv's letter made no reference to Circuit City, even though the Circuit City in Hawaii is listed on Directv's website as a retailer.

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claimed that “Directv services are advertised in such locations and point of sale material is provided.”⁴ Directv’s letter also chastised the State for failing to provide a supporting declaration or affidavit with its March 21 letter, arguing that absent such materials, it is “impossible for Directv to determine with any confidence the basis upon which Hawaii has made its latest allegations.”⁵

To assist the Commission, and Directv, in documenting the lack of availability of Directv’s DBS service in Hawaii, the State is supplementing the record with the attached affidavits of two State officials, Clyde Sonobe, State Cable Administrator, and Glen Chock, Program Specialist in the Cable Television Division of the State Department of Commerce and Consumer Affairs.

As the affidavits indicate, sales representatives in each of the Best Buy, Wal-Mart and Circuit City stores referenced in Directv’s website told Sonobe and Chock that consumers cannot purchase Directv’s service at their stores.⁶ Representatives in the two Best Buy stores and in the Circuit City store indicated that, if asked, they direct potential customers to call Directv on the mainland.⁷ The sales representative in the Wal-Mart store did not suggest that customers call Directv, stating simply that Wal-Mart does not carry Directv’s service in Hawaii.⁸

There was no in-store advertising or brochures available in the Circuit City, Wal-Mart and one of the Best Buy stores.⁹ In both of the Best Buy stores, however, a small number of Directv receivers were displayed on a shelf.¹⁰ In one of the Best Buy stores, there was a small sign indicating the receivers were available for purchase.¹¹ None of the stores, however, had satellite dishes available for purchase, or brochures regarding arrangements for installation or activation.¹²

⁴ *Id.*

⁵ *Id.* at 1 n.1.

⁶ See Affidavit of Clyde Sonobe, Cable Administrator, Cable Television Division, State Department of Commerce and Consumer Affairs, ¶¶ 5, 8 and 11 (May 11, 2006) (“*Sonobe Affidavit*”); Affidavit of Glen Chock, Program Specialist, Cable Television Division, State Department of Commerce and Consumer Affairs, ¶¶ 5 and 10 (May 11, 2006) (“*Chock Affidavit*”).

⁷ See *Sonobe Affidavit*, ¶¶ 5 and 12; *Chock Affidavit*, ¶¶ 5 and 10.

⁸ See *Sonobe Affidavit*, ¶ 9.

⁹ See *Sonobe Affidavit*, ¶¶ 3, 8 and 11; *Chock Affidavit*, ¶ 3.

¹⁰ See *Sonobe Affidavit*, ¶ 3; *Chock Affidavit*, ¶¶ 3 and 8.

¹¹ See *Chock Affidavit*, ¶ 8.

¹² See *Sonobe Affidavit*, ¶ 3, 8 and 11; *Chock Affidavit*, ¶¶ 3, 8 and 9.

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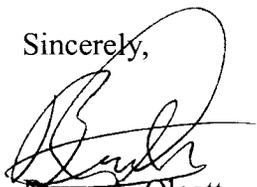
Sales representatives in both of the Best Buy stores told Sonobe and Chock that the receivers were available for customers who already subscribed to Directv's service and needed to replace an existing receiver or wanted to upgrade to a better model.¹³ The sales representatives said new customers were advised that they should not purchase Directv receivers from Best Buy, but instead should contact Directv for information.¹⁴

As the accounts of Sonobe and Chock confirm, Directv does not make its service readily accessible to consumers in the State through national retail chains – its primary mode of distribution on the mainland. Although Directv maintains a toll free telephone number for potential new subscribers, most consumers in Hawaii probably do not know about the telephone number because they have little or no reason to believe that Directv's service is available in the State. Directv and its national retailers do not regularly market Directv's service using local promotions or local advertising in Hawaii. In contrast, Directv and its affiliates promote its service heavily in the mainland and Directv's equipment and services can be purchased through large displays at Circuit City, Best Buy and Wal-Mart retail outlets on the mainland.

The State therefore continues to urge the Commission to conclude that Directv is in violation of the Commission's rules because Directv has not made its service readily accessible to consumers through the same retail 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.¹⁵ 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.

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

¹³ See *Sonobe Affidavit*, ¶ 4; *Chock Affidavit*, ¶¶ 4 and 9.

¹⁴ See *Sonobe Affidavit*, ¶ 5; *Chock Affidavit*, ¶¶ 5 and 10.

¹⁵ See 47 C.F.R. § 25.148(c) (2005).

**AFFIDAVIT
OF CLYDE SONOBE**

1. I, Clyde Sonobe, am the Cable Administrator for the Cable Television Division of the Department of Commerce and Consumer Affairs for the State of Hawaii.
2. As a part of my duties, my colleague, Glen Chock and I visited the Best Buy store on Kamehameha Highway in Aiea on or about April 28, 2006. The store is listed on Directv's website as a retail dealer of Directv's equipment and services.
3. During our visit, we saw a small number of Directv receivers on a shelf. We did not see any satellite dish antennas, in-store advertising or brochures for Directv's service.
4. During our visit, we spoke with a sales representative, who told us that the Directv receivers were for customers who already subscribed to Directv's service and needed to replace an existing receiver or who wanted to upgrade to a better model.
5. The sales representative told us that they were instructed to advise potential new customers of Directv that they should not purchase a Directv receiver from Best Buy, but instead should call Directv for information.
6. The sales representative could not recall any customer that had purchased a Directv receiver at the Best Buy store in Aiea.
7. As a part of my duties, I called the Wal-Mart SuperCenter on Kuala Street in Pearl City on May 11, 2006. The store is listed on Directv's website as a retail dealer of Directv's equipment and services.
8. I was told by a Wal-Mart store representative that they do not carry Directv's services. I was informed that they did not have any Directv equipment in stock, or any in-store advertising, brochures or displays.
9. The Wal-Mart store representative that I spoke with did not suggest that I call Directv.
10. As a part of my duties, I called the Circuit City on Kaonohi Street in Aiea on or about April 10, 2006. The store is listed on Directv's website as a retail dealer of Directv's equipment and services.
11. I was told by a Circuit City store representative that they do not carry Directv's services. I was informed that they did not have any Directv equipment in stock, or any in-store advertising, brochures or displays.

12. The Circuit City store representative that I spoke with said that, if I was interested in Directv's services, I should call Directv.

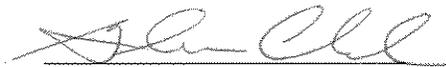
A handwritten signature in black ink that reads "Clyde Sonobe". The signature is written in a cursive style with a horizontal line underneath the name.

Clyde Sonobe
Cable Television Administrator

May 18, 2006

**AFFIDAVIT
OF GLEN CHOCK**

1. I, Glen Chock, am a Program Specialist for the Cable Television Division of the Department of Commerce and Consumer Affairs for the State of Hawaii.
2. As a part of my duties, my colleague, Clyde Sonobe and I visited the Best Buy store on Kamehameha Highway in Aiea on or about April 28, 2006. The store is listed on Directv's website as a retail dealer of Directv's equipment and services.
3. During our visit, we saw a small number of Directv receivers on a shelf. We did not see any satellite dish antennas, in-store advertising or brochures for Directv's service.
4. During our visit, we spoke with a sales representative, who told us that the Directv receivers were for customers who already subscribed to Directv's service and needed to replace an existing receiver or who wanted to upgrade to a better model.
5. The sales representative told us that they were instructed to advise potential new customers of Directv that they should not purchase a Directv receiver from Best Buy, but should call Directv for information.
6. The sales representative could not recall any customer that had purchased a Directv receiver at the Best Buy store in Aiea.
7. As a part of my duties, I visited the Best Buy store on Alakawa Street in Honolulu on or about April 18, 2006. The store is listed on Directv's website as a retail dealer of Directv's equipment and services.
8. During my visit, I saw two Directv receivers on a shelf with a small sign identifying them. I did not see any satellite dish antennas, in-store advertising or brochures for Directv's service.
9. During my visit, I spoke with a sales representative, who told me that they did not have any Directv satellite dish antennas available for sale. The representative told me the two Directv receivers on display were for customers who already subscribed to Directv's service and needed to replace an existing receiver or who wanted to upgrade to a better model.
10. The sales representative told me that new customers should not purchase a Directv receiver from Best Buy, but should call Directv for information.


Glen Chock
Program Specialist

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