

June 7, 2007

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

**Re: Written *Ex parte* Communication of National Association of Broadcasters
MB Docket No. 05-181**

Dear Ms. Dortch:

In a series of *ex parte* communications dated May 2, May 23, May 24, and June 1, 2007, DIRECTV, Inc. has notified the Commission that it will not be able to comply with Section 338(a)(4) of the Communications Act. That section, enacted as part of the Satellite Home Viewer Extension and Reauthorization Act of 2004 (“SHVERA”) in December 2004, requires DIRECTV and EchoStar to deliver the high-definition and multicast streams of television stations licensed to communities in Alaska and Hawaii to satellite subscribers in those respective states no later than June 8, 2007.

DIRECTV’s stated reason for not providing the required service is damage to a satellite launch platform that occurred on January 30, 2007. NAB notes, however, that DIRECTV’s argument in this regard illustrates that the real issue is not satellite capacity, but DIRECTV’s choices with regard to capacity. The fact of the matter is that DIRECTV has made business decisions about the allocation of its satellite capacity. Even since the January 30 event damaging the Sea Launch platform, DIRECTV has announced numerous business deals that utilize capacity in particular ways, including expanding its high definition program offerings.¹ But DIRECTV has failed to

¹ See, e.g., *MLB, DIRECTV Extend, Expand Multi-Year Agreement*, DIRECTV News Release (Mar. 8, 2007); *DIRECTV and Havoc TV Put Viewers in Charge with Havoc on The 101 Debating April 4*, DIRECTV News Release (Apr. 3, 2007); *DIRECTV First to Launch The History Channel HD (THC HD) Set to Debut in September 2007*, DIRECTV News Release (May 7, 2007); *DIRECTV Adds New HD Channels for Fall; Four Discovery HD Channels, Five Starz HD Channels, CNBC and Chiller to Join the HD Pack, More on the Way*, DIRECTV News Release (May 23, 2007); *DIRECTV Delivers Even More Greek Programming to Customers Nationwide*, DIRECTV News Release (May 30, 2007). DIRECTV has also rolled out local HD

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explain to the Commission why it cannot comply with SHVERA's statutory mandate for digital signals in Alaska and Hawaii while it advances its business interests in other areas.

It is also worthy of note that DIRECTV's competitor, EchoStar, has informed the Commission in an *ex parte* presentation of May 21, 2007, in this docket that it has made the necessary investments in order to comply with its legal obligations. As EchoStar has explained, compliance with the law required it to forego other revenue-generating services.

The Commission should carefully examine DIRECTV's reasons for not providing the delivery of high-definition and multicast streams in Alaska and Hawaii by June 8, 2007, as required by SHVERA. It should consider the need for factual evidence of DIRECTV's alleged capacity constraints – evidence that should be available to interested parties.² Absent such evidence, satellite subscribers in Alaska and Hawaii, who are entitled to the benefits of SHVERA, should not be penalized.

Sincerely,



Marsha J. MacBride

cc: Chairman Kevin J. Martin
Commissioner Michael J. Copps
Commissioner Jonathan S. Adelstein
Commissioner Deborah Taylor Tate
Commissioner Robert M. McDowell
Ms. Monica Desai, Chief, Media Bureau

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service in additional markets. See *DIRECTV Activates HD Local Channel Service in Four New Markets*, DIRECTV News Release (Mar. 28, 2007) (Greenville, Harrisburg, Jacksonville, and Spokane); *DIRECTV Delivers Local HD Programming to Four New Markets*, DIRECTV News Release (Apr. 4, 2007) (Albuquerque, Buffalo, New Orleans, and Tulsa); *DIRECTV Local HD Programming Now Available in 59 Markets Representing More Than 70 Percent of U.S. TV Households*, DIRECTV News Release (Apr. 18, 2007) (Oklahoma City and Santa Barbara); *DIRECTV Delivers Local HD Programming to Customers in Fort Myers, Fla.*, DIRECTV News Release (May 23, 2007) (Ft. Myers).

² NAB's ability to advocate on behalf of its members on this issue as well as others, such as the need for local-into-local service in all US television markets, is unfairly constrained without access to information about DIRECTV's claimed capacity restrictions.