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October 29, 2007

Marlene H. Dortch, Secretary
Fedederal Communications Commission
4345 12th Street, S.W.
Washington, DC 20054

Re: Consolidated application of News Corporation, The DirecTV Group, Inc., and Liberty Media Corporation for authority to Transfer Control (MB Docket No. 07-18)

Dear Ms. Dortch:

The DirecTV Group, Inc. ("DirecTV") submitted a letter from its attorneys arguing that no condition should be imposed on DirecTV requiring it to provide local-into-local service in the remaining 61 rural television markets in 31 states. In support of its argument, DirecTV attached a 507-page, supposedly independent, economic study by LECG, LLC ("LECG"). Not surprisingly, the study concluded that it would cost DirecTV $251 million to meet that condition. The North Dakota Broadcasters commissioned a review of that report, and its consultant, Dr.Bernhard Charlemagne, found that although LECG used standard economic methods in preparing its report, it also used questionable assumptions and source material, resulting in unjustified predictions and rendering questionable the validity of the report.

DirecTV's filing confirms the position of the North Dakota Broadcasters. Prior to the agreement between NewsCorp and Liberty, DirecTV was planning to use its satellite capacity to significantly expand its local-into-local television service. With the announcement of the proposed purchase by Liberty, DirecTV abandoned its plans to serve rural areas of America and instead chose to concentrate its satellite capacity on providing high definition television offerings in major markets. Then, when the Commission staff sent interrogatories to Liberty and DirecTV and asked for economic studies contrasting local-into-local service with high definition television, Liberty and DirecTV denied that any such studies existed. A week later, they filed the 507-page *undated* report. It is so counterintuitive as to be unbelievable that such a huge shift in corporate strategy about the use of its satellite capacity was done without a single economic study.

As noted in the attached analysis prepared by Dr. Charlemagne, the LECG report relies almost entirely on numbers provided by either DirecTV or Liberty, which immediately calls into question the value of that report, as well as its underlying assumption that DirecTV lacks the satellite capacity to immediately provide full local-into-local service. Because DirecTV's revised plan is to devote its existing satellite capacity to the more profitable provision of HDTV service in major markets, LECG factored the cost of a new satellite into its estimates of the cost to DirecTV of expanded local-into-local service.

The attached analysis relies instead on numbers derived from 10-Q SEC filings of publicly held EchoStar Corporation. EchoStar's publicly reported filing demonstrates that in fact the numbers are vastly different from those used by LECG and finds there are 5,940,000 households in these 60 markets, from which DirecTV should add to its base 564,300 subscribers at a per-subscriber acquisition cost of $645 each. This results in an increase in Shareholder Value of $629,194,500 and a revenue over 15 years of $6.7 billion.

The fact remains that DirecTV has existing satellite capacity. The only uncertainty is how much they would make, not how much they would lose. Virtually any business will make more money in New York City than it will in rural America. That should not be the deciding factor in the Federal Communication Commission's determination of the requirements of the public interest.

Respectfully submitted,

George R. Borsari, Jr.
Counsel for the North Dakota Broadcasters

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Ref.# 07-08.759

To: North Dakota Broadcasters

Re: LECG, LLC report in the DirectTV proceeding

The North Dakota Broadcasters engaged the Hermes Academic Research Institute to review and comment on the LECG economic report submitted in the DirecTV proceeding at the Federal Communications Commission. Specifically, we were asked to review the methodology and conclusions to determine if the conclusion as to the cost of providing local-into-local (LIL) service in 60 additional markets was justified by the analysis and the data. We found that the report was based on key information given to LECG by its client and, for the reasons set forth below, the assumptions overestimate cost and underestimate revenue. For purposes of this memorandum, We used the redacted version of the LECG report. We neither had nor needed access to the unredacted version. We compared and contrasted the findings of LECG with applicable industry standards, used established analytical tools, and obtained data from public sources.

We found that data supporting estimates of future growth in new markets were omitted or marginalized, and that cost estimates for DirecTV were based on assumption of costs which do not necessarily have to be considered. The bulk of the cost resulted from the assumption that a new satellite would have to be launched in order to provide the service. Without the assumed costs of a new satellite, DirecTV will likely make a profit by using its existing satellite capacity. We made no effort to contrast the amount of the profit from full LIL service with the profit that would be generated by the use of the satellite capacity for DirecTV's announced high definition service.

<u>The following LECG assumptions overestimate the costs associated with LIL.</u>

With respect to subscriber acquisition cost (SAC)[1], Mr. Klein and his team assume ".. these costs include hardware costs…and marketing costs." Mr. Klein and colleagues omit in this assumption the value of word of mouth advertising and overestimate hardware costs. In fact, hardware cost may shrink due to new technologies or market

[1] Benjamin Klein, An Economic Analysis of DirecTV Providing Local-into-Local Service via Satellite in all 210 DMAs" p. 22

saturation. This is clearly demonstrated in the computer and high tech field which is similar to the satellite field, e.g., today a powerful laptop computer is a fraction of the price of a computer in 1990 and offers much more capacity. Therefore, it can be concluded that satellite cost is likely to decline in the future, particularly considering the global satellite market and the continued development of compression technology, especially MPEC 4 compression.

Even assuming DirecTV needs to launch a new satellite, the LECG calculations do not match those of EchoStar Communications, a competitor and publicly held company which files detailed financial reports with the Securities and Exchange Commission. The 10-Q of EchoStar Communications indicates that its total capital costs for the installation of subscriber equipment and construction of satellites equates to $643 for each of its 13.585 million subscribers. DirectTV's costs for adding 564,000 subscribers should be in the range of $364 million. Echostar's 10-Q reveals that their average revenue per subscriber was $66.06 per month for the three months ended June 30, 2007, which equates to fifteen year (LECG's forecast period) revenue for 564,000 subscribers, attributable to the offering of LIL service in markets 150+ (*see* Table A below), of $6.7 billion. The offering of LIL in markets 150+ would appear to be highly profitable without accounting for any rate increases.

Another exaggerated assumption is the weighted average cost of capital (WACC).[2] This cost is inflated and does not represent the current cost of raising capital in the industry and on international capital markets. EchoStar Communications, in its latest 10-Q, reports its cost of long-term capital to be approximately 7%.

Another debatable issue of the report is the assumed net present value (NPV) and the level of risk associated with the investment.[3] By using existing satellite capacity, DirecTV would not have to launch a satellite and saves all associated costs and risks. DirecTV could shift its satellite capacities allocation from HD to LIL. This seems possible since DirecTV has been promoting its new high definition service.

In summary, the LECG analysis attempts to distort the impact of DirecTV meeting its obligations by misrepresenting to the Commission the following:

1) The Terminal Value of each subscriber acquired due to the offering of LIL service is far in excess of five times cash flow.
2) Using opportunity cost as opposed to actual costs is not appropriate for meeting a promised obligation.
3) A 12.5% discount rate for meeting an obligation that is self-liquidating and only a fraction of existing borrowing capacity is inappropriate.

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[2] Ibid p. 25
[3] Ibid p. 24

The following LECG assumptions underestimate the revenue available to DirecTV.

The market penetration created by supplying service to all 210 DMAs is underestimated, and synergy effects with the associated profits are neglected. The LECG report also neglects to acknowledge that if a new satellite were launched the available spare capacity of the new satellite could be sold on the market, creating additional revenue for DirecTV. This capacity could also be used for highly profitable HD projects.

The report neglects to point out that by using existing satellite capacity for LIL, revenue could be generated immediately without delay. DirecTV would win new customers and make profits by using existing satellite capacity because it is immediately available. This could have an important impact on the cash flow of DirecTV. And a very critical point for a company and its investors is cash flow. Cash flow is used as an input to financial models to evaluate a company and project performance. Cash flow also affects the net present value which is used in Mr. Klein's report.[4] If DirecTV were to use available satellite capacity rather than launching a new satellite, it could increase its cash flow and liquidity and generate a faster rate of return for investors. Mr. Klein assumes the timing of cash flow 30 months after a satellite is bought. [5] By using existing satellites or redirecting existing HD capabilities, cash flow could be generated immediately.

A longer product life than calculated could generate more revenue in the future. These numbers were supplied by LECG's client and appear, based on other satellite applications, to be understated. Numbers based exclusively on potentially biased information from DirecTV officials should be viewed with the utmost caution to avoid skewed results. Any economic report that relies for its analysis on the customer as source rather than independent sources should be questioned.

It can be summarized that the findings of Benjamin Klein and his team at LECG are based on standard economic methods. By using questionable assumptions, numbers, biased source material, and unjustified predictions, however, the findings of this study are questionable. Since LECG analysis was redacted, we cannot fully recalculate LECG's finding. Nevertheless, we are confident that if the Commission were to recalculate the analysis using a 7.8 times cash flow terminal value, $643 per subscriber acquired cost, and a 7% discount rate, the analysis would yield a different result.

By using existing in-house HD satellite capacity for local-into-local service, DirecTV would continue to have a competitive advantage and would increase its revenue. See Table A.

Hermes Academic Research Institute

October 22, 2007

By: ____________

Bernhard Charlemagne

[4] Ibid p. 24

[5] Ibid p. 26

Table A

Projected Financial Results From Direct TV's Offer of Local into Local service in markets 150+

Television Households in 150+ (5.4% of 110 million TVHH)		5,940,000
Average ADS penetration without LIL 140-164 (5 markets)		22.60%
Average ADS penetration with LIL 140-164 (20 markets)		32.10%
Increase in Basic Subscriber Penetration Due to LIL		9.50%
Projected Increase in number of Subscribers Due to LIL (% increase times TVHH 150+)		564,300
Current Market Value Per Subscriber Based Upon Closing Price of Echostar Comm. September 6, 2007	$	1,760
Market Value of Subscribers Added Due to LIL	$	993,168,000
Direct TV's Projected Costs to Acquire Shareholder Value:		
Per Subscriber Acquisition Costs	$	645
Added Subscribers Due to LIL times SAC ($645)	$	363,973,500
Increase in Shareholder value due to offering LIL 150+	$	629,194,500

Nielsen Media Services data published by TVB was used for household counts and ADS penetration as of July 2007. ADS penetration due to the offering of LIL in 1998 has grown from 6.1% to 27% as of July 2007 (a 20.9% increase or 442% of the penetration in 1996). Given that the subscriber rate differential between cable service and ADS has remained relatively constant and the number of channels used by subscribers has not increased dramatically over this period, it is clear that the offering of LIL has been a major contributor to the increase in ADS penetration. Consequently, the increase in penetration detailed in the above analysis may be overly conservative.

Echostar's June 30, 2007 quarterly report was used as a source for per subscriber valuation, cash flow and subscriber acquisition costs.

Some increased penetration of services will be shared with Echostar, although Echostar does not currently provide LIL service in a majority of the markets to be served by Direct TV.

In addition, it appears the costs contained in the LECG analysis are inflated. The latest technology will allow for decreased bandwidth for the retransmission of broadcasters' signals. It has been reported that MPEG4 compression will double capacity of existing satellites. Further, there exists excess capacity available for lease, reducing costs and the necessity of launching new satellites. The use of an opportunity costs is totally inappropriate when analyzing a required cost for license compliance.

If required, it is likely that Direct TV will find a cost efficient manner with which to provide universal services.

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Bernhard Charlemagne works as a senior researcher for Hermes Academic Research Institute, specializing in space commercialization and security studies. A trained economist, political scientist, and industrial engineer, he has acted as a consultant on a wide range of complex issues in economics and international politics and security matters for academic and public-sector entities. He has extensive experience working in Europe, Africa, and South America.

Mr. Charlemagne was a tutor coach during the Strategic Economic Needs & Security Simulation Exercise (S.E.N.S.E.) post-conflict development program conducted jointly by George Mason University, the U.S. Institute of Peace, and the National Defense University. He trained Iraqis for leadership positions within the new Iraqi Ministry of Defense. He led a team to identify the political considerations involved in encouraging and understanding future economic opportunities in the Middle East, weighing military and social trade-offs, and resulting in improved mutual understanding and decision-making among different multicultural teams.

Mr. Charlemagne received a Ph.D. in Economics from the International Division of the London Business School, University of London, where his dissertation research focussed on the legal framework of and policy prescriptions for promoting space commercialization. He completed Catholic University's Pentagon and World Politics Master's Program in Washington, DC, majoring in international political economy. He studied at the National Defense University in Ft. McNair, Washington, D.C., where he researched U.S. preemption in space and 4th generation chemical weapons. He completed a dual Master's program at Cologne University, earning a Master of Science degree in industrial engineering and a Master of Business Administration, with his thesis research concentrated on aircraft factory workplace design.

Mr. Charlemagne has an extensive aviation background, having begun flying gliders when he was 16 in Germany. He holds an FAA Airline Transport Pilot License, with DC 3 and Jet type ratings; an airframe and power plant mechanic license, with jet engine factory training; and an FAA Multi-engine, Instrument, and Glider Flight instructor license.