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Federal Communications Commission
Office of the Secretary

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October 25, 2007

BY HAND DELIVERY

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

**REDACTED – FOR PUBLIC
INSPECTION**

DOCKET FILE COPY ORIGINAL

Re: *MB Docket No. 07-18*

Dear Ms. Dortch:

This letter responds to assertions by four television station licensees serving the Minot-Bismarck-Dickinson DMA in North Dakota (collectively, the “Minot Broadcasters”) regarding DIRECTV’s plans for local-into-local service. In a response to the Commission’s Information Request, DIRECTV stated that, prior to the announcement of the proposed Transaction, it had no plans to expand such service beyond 150 markets over the next three years. The Minot Broadcasters, however, assert that DIRECTV actually *did* have such plans – but changed them as a result of the proposed Transaction and at the direction of Liberty Media Corporation (“Liberty Media”).¹ The Minot Broadcasters base this conclusion on press reports and limited interaction with a single DIRECTV contractor.

This speculation is erroneous. And DIRECTV stands by its earlier statement. Although DIRECTV engages in an ongoing assessment of the economic and technical feasibility of extending local service to more DMAs, DIRECTV had no firm plans to extend local service to Minot or any other market beyond the 150 DMAs on its list. The proposed Transaction between News Corporation and Liberty Media had no effect on that decision.

¹ The North Dakota Broadcasters’ Consolidated Comments on Responses (dated Aug. 20, 2007) (“Minot Consolidated Comments”).

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In order to demonstrate this, the remainder of this letter presents a timeline, supported by a sworn declaration,² of events leading up to DIRECTV's decisions on local-into-local service taken in the period *prior to* announcement of the proposed Transaction on December 22, 2006.

1. Background and Allegations

In response to the Commission's request for a "detailed description and explanation of DIRECTV's plans, prior to the announcement of the proposed Transaction, for carrying additional analog or digital local broadcast stations over the next three years,"³ DIRECTV stated as follows:

As a result of [its] sustained effort and investment, today DIRECTV carries local broadcast signals in [standard definition ("SD")] format in 142 DMAs, and is in the process of launching such service in another eight markets, which will bring the total by the end of this year to 150 DMAs covering nearly 95% of television households nationwide. Although DIRECTV continually looks for ways to improve its service offering – a process that includes an ongoing assessment of the economic and technical feasibility of extending local service to more DMAs – prior to the announcement of the proposed Transaction, DIRECTV did not have plans to launch SD local service in any additional markets beyond these 150 DMAs over the next three years.⁴

DIRECTV also stated that, prior to the announcement of the proposed Transaction, it planned to expand the number of markets with local-into-local service in high definition ("HD") format from 60 DMAs to a total of 100 DMAs by the end of 2008.⁵ In response to a similar question from the Commission, Liberty Media stated that it had no plans for local-into-local or HD services separate from or in addition to those discussed by DIRECTV in its response.⁶

² See Declaration of Robert M. Gabrielli, attached hereto as Exhibit A ("Gabrielli Dec.").

³ Information and Document Request for News Corporation, Item II.J (June 15, 2007) ("Information Request").

⁴ Letter from John C. Quale and William M. Wiltshire to Marlene H. Dortch, Attachment at 11 (July 10, 2007).

⁵ *Id.*

⁶ Letter from Robert L. Hoegle to Marlene H. Dortch, Attachment at 15 (July 10, 2007).

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The Minot Broadcasters assert that these responses are “clearly disingenuous” and “run[] contrary to other verified information.”⁷ They base these assertions on (1) an unsupported reference to statements by Dr. John Malone, Liberty Media’s Chairman, of his plan to increase DIRECTV’s profits by expanding HD programming in major cities, and (2) a Certification describing an October 2006 visit to a Bismarck, North Dakota station by a team of contractors performing a site survey for DIRECTV.⁸ The Certification includes an attached e-mail to the Bismarck station from an employee of National Teleconsultants, Inc. explaining that “we are under contract with DIRECTV and have been asked to perform a survey for the HD local channels in your area.”⁹ It also recounts a conversation in which the contractor’s personnel indicated they “saw records” that showed that local-into-local service would commence in Minot in 2008.¹⁰ From this – and the fact that DIRECTV has not yet launched local service in Minot – the Minot Broadcasters conclude that DIRECTV originally intended to use its satellite capacity to increase the number of markets (including Minot) with SD local-into-local service and that Liberty Media “redirected” this plan so that DIRECTV would concentrate on expanding HD television service in larger cities.¹¹

As demonstrated below, the Minot Broadcasters have leapt to an erroneous conclusion. The Minot site survey was part of DIRECTV’s ongoing evaluation of opportunities for expanding its local service offerings – nothing more. Similar surveys occurred in all of the 68 markets not yet served by DIRECTV. DIRECTV used these surveys, as well as other technical, demographic, and economic data, to identify the specific markets that offered the best business prospects under all the circumstances. With this information, DIRECTV reduced its list of “target markets” first to approximately thirty, and ultimately to a list of seven. This analysis was undertaken by DIRECTV alone, without consideration of any plans or objectives of Liberty Media and before the proposed Transaction between Liberty Media and News Corporation had been finalized.

⁷ Minot Consolidated Comments at 2.

⁸ *Id.* at 2-4 and attached Certification.

⁹ *Id.*, Certification exhibit.

¹⁰ *Id.*, ¶ 6.

¹¹ *Id.* at 4. Because DIRECTV offers all-digital service, it upconverts analog broadcast signals to SD digital format for retransmission.

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2. *DIRECTV's Ongoing Evaluation of Local-Into-Local Service*

At all times prior to 2006, DIRECTV delivered virtually all of its SD local-into-local service from Direct Broadcast Satellites ("DBS") operating in the Ku band, either from its own orbital locations at 101° W.L. and 119° W.L. or from a leased satellite at a Canadian-licensed orbital location at 72.5° W.L.¹² It had also begun HD local service in 12 markets and announced plans for service in 24 more cities using the Ka-band SPACEWAY satellites it had launched in 2005.

As part of its ongoing consideration of its service offering, in June 2006, DIRECTV initiated an analysis of the prospects for extending SD local-into-local service to the 68 DMAs in which it did not already provide such service.¹³ Such an analysis requires consideration of many interrelated technological, logistical, and business issues.¹⁴

For example, perhaps the most important threshold question is whether there is sufficient spot-beam capacity available to retransmit the broadcast signals in a particular market. While virtually all of the SPACEWAY capacity had been allocated to HD local carriage, the planned launch of two new Ka-band satellites (DIRECTV 10 and 11) created the prospect that some capacity could become available for reallocation to SD local signals in 2008. But given the inherent risks in the launch and operation of satellites, prudence often counsels a conservative course in making firm capacity commitments.

Moreover, while the availability of satellite capacity is a necessary precondition to extending service, it is not sufficient. DIRECTV must also assess the costs and availability of necessary infrastructure, including (1) a local collection facility ("LCF") in each market to receive and aggregate the broadcast signals, (2) arrangements to transport the signals from the LCF to a DIRECTV uplink center, and (3) additional processing equipment at the uplink center to digitize, encode, and multiplex the broadcast signals for transmission to the satellite. As part of the effort to collect the relevant data, DIRECTV hired contractors to evaluate the available resources in all 68 markets it did not serve – including Minot.¹⁵

¹² As of December 2005, DIRECTV began providing SD local-into-local service in Alaska and Hawaii from its Ka-band SPACEWAY satellites in order to comply with statutory requirements applicable only to those two states.

¹³ See Gabrielli Dec., ¶ 2.

¹⁴ *Id.*, ¶ 3.

¹⁵ *Id.*, ¶ 2.

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Once armed with this data, DIRECTV must then evaluate the economic opportunity presented by each market to determine whether it justifies the considerable costs of delivering local service. This evaluation is based on a number of factors, including market demographics, existing DIRECTV penetration, and whether the market is or is not provided local signals by DIRECTV's DBS competitor, EchoStar.

By mid-October 2006, DIRECTV had reduced the number of markets under consideration from 68 to approximately 30. The evaluation process continued as proposals became part of DIRECTV's internal budget process. In that context, the decision was ultimately made in late November 2006 to fund build-out and launch of SD local service in only seven additional DMAs in 2007 – [REDACTED]
¹⁶ DIRECTV deferred consideration of any further expansion of SD local service pending the successful launch and entry into operation of DIRECTV 10 and DIRECTV 11.¹⁷

DIRECTV does not deny that its contractors surveyed the Minot market. Its contractors visited *every* unserved market in 2006 as part of DIRECTV's evaluation of SD local-into-local services. Not surprisingly, this evaluation process was an iterative one, with various proposals considered, refined, and rejected as more data and analysis came into the mix. Because DIRECTV's contractors were not privy to the company's internal deliberations, it is also not surprising that they had an imperfect understanding of DIRECTV's strategic plans¹⁸ – and apparently communicated erroneous information to the Minot Broadcasters.

Nonetheless, the fact remains that by the end of November 2006 – nearly a month before the proposed Transaction was announced – DIRECTV had winnowed the markets targeted for the launch of SD local service from a possible universe of 68 to a firm list of seven. DIRECTV did so for reasons wholly unrelated to the proposed Transaction and without any influence from Liberty Media. The Minot Broadcasters' conjecture to the contrary is simply erroneous.

¹⁶ *Id.*, ¶ 4. The seven DMAs, which have not yet been publicly announced, are

[REDACTED]

¹⁷ *Id.* DIRECTV subsequently decided to launch SD service in the Laredo, TX market in April 2007 using capacity in one of its existing spot beams on the Ku-band satellite at 119° W.L. – bringing the total number of DMAs served to 143, where it stands today.

¹⁸ This confusion is further evidenced by the fact that the contractor apparently believed that the Minot site survey related to the provision of *HD* local channels – something that even the Minot Broadcasters do not assert was under consideration.

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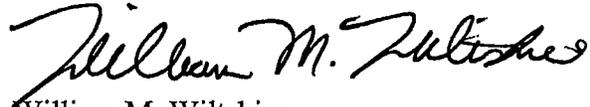
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Respectfully submitted,

A handwritten signature in black ink, reading "William M. Wiltshire". The signature is written in a cursive style with a large initial "W".

William M. Wiltshire

Counsel for The DIRECTV Group, Inc.

cc: Royce Sherlock
Mania Baghdadi
Tracy Waldon
Rosemary Harold
William Beckwith
Debra Sabourin
Jim Bird
Joel Rabinovitz
Marilyn Simon

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EXHIBIT A

REDACTED
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DECLARATION

I, Robert M. Gabrielli, certify under penalty of perjury as follows:

1. I am Senior Vice President, Programming Operations, of DIRECTV Enterprises LLP, and have held that position continuously since November 2005. In that position, my duties include the assessment of markets for launch of local-into-local service, and I took an active role in such an assessment in 2006.

2. Beginning in June 2006, DIRECTV initiated an analysis of the prospects for extending standard definition ("SD") local-into-local service to the 68 Designated Market Areas ("DMAs") in which it did not already provide such service. As part of that analysis, DIRECTV engaged independent contractors to conduct site surveys in each market - including Minot - to evaluate the available resources.

3. In such an evaluation process, DIRECTV considers many factors. The most important factor is the availability of sufficient satellite capacity. Although virtually all of the capacity on DIRECTV's two SPACEWAY satellites had been allocated to carriage of local high definition ("HD") signals, the planned launch of two new satellites (DIRECTV 10 and 11) created the prospect that some capacity could become available to be reallocated for SD local signals in 2008. Other important factors include market factors (demographics, competition, etc.) and the costs and availability of necessary infrastructure, such as local collection facilities, backhaul transport, and processing equipment at DIRECTV's uplink center.

4. Based upon technological, logistical, and business considerations, DIRECTV first reduced the number of target markets under consideration from 68 to approximately 30 by mid-October 2006. As the evaluation process continued and fed into the budget process, the list was winnowed still further until ultimately the decision was made in late November 2006 to fund build-out and launch of SD local service in only seven additional DMAs in 2007, **REDACTED**

DIRECTV deferred consideration of any further expansion of SD local service pending the successful launch and entry into operation of DIRECTV 10 and 11.

5. In determining which markets to launch local service, DIRECTV did not consider the interests of Liberty Media Corporation or any potential transaction between Liberty Media and News Corporation.



Robert M. Gabrielli
Senior Vice President,
Programming Operations

Date: October 25, 2007