



February 13, 2008

**BY ELECTRONIC FILING**

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

Re: ***MB Dockets No. 98-120, 00-96, and 07-91***

Dear Ms. Dortch:

DIRECTV, Inc. (“DIRECTV”) writes to urge the Commission to adopt a reasonable implementation schedule for any carriage requirement for high definition (“HD”) local signals. If such a requirement is to be imposed, DIRECTV strongly urges the Commission to implement a regime that: (1) treats all satellite carriers equitably; (2) establishes a dependable basis upon which to make business decisions; (3) does not unnecessarily disrupt service to tens of millions of consumers; and (4) preserves competition in the video marketplace. ***To achieve these policy goals, the Commission should adopt rules with reasonable and quantifiable local HD carriage benchmarks each year, with full compliance achieved within four years of the digital transition.***

\* \* \*

DIRECTV offers the best television experience in the world. Its unrivaled national and local HD programming represent a critical part of this offering, and are the cornerstone of DIRECTV’s strategy to compete with the bundled offerings of cable and telephone companies. DIRECTV has thus invested billions of dollars to develop and deploy the infrastructure to retransmit more than one hundred national HD channels and HD local channels in 76 markets, with many more coming soon. And it has designed its satellite fleet with the ability to carry additional local HD feeds in these and other markets over time.

This *ex parte* sets forth the two principal reasons why DIRECTV will need four years from the date of the digital transition before it can fully comply with a requirement to carry all broadcasters’ HD feeds in markets where it carries any broadcaster’s HD feed (“HD carry-one, carry-all”).

- ***DIRECTV must increase its satellite capacity.*** Retransmitting HD local signals is a bandwidth-intensive proposition. It has been made more difficult by an

anomaly on DIRECTV's newest satellite that limits capacity available in certain markets. Moreover, expected improvements to satellite-related technologies that would increase the satellite capacity available for local HD service have not yet materialized.

Even after the successful launch and operation of two next-generation satellites over the course of the next several years, and improvements to associated technologies, DIRECTV will not have sufficient satellite capacity for HD carry-one, carry-all. To reach full compliance, DIRECTV will have to consider other options, such as launching additional Ka-band or 17/24 GHz BSS satellites or repurposing CONUS spectrum. The design, construction, and launch of a new spot-beam satellite takes roughly four years – approximately six months to submit satellite specifications, three months to secure a manufacturer, thirty-six months to build and launch the satellite, three months to raise its orbit, and one month to test the satellite. And in the case of the 17/24 GHz BSS band, DIRECTV cannot even begin this process until licenses are issued later this year.

- ***DIRECTV must upgrade its ground-based facilities.*** If the Commission were to impose HD carry-one, carry-all, DIRECTV's entire HD ground network would have to be upgraded. This includes new equipment at Local Collection Facilities, additional fiber backhaul capacity, and new infrastructure in its uplink centers, including new transmission antennas. DIRECTV's ground-based infrastructure for HD local signals, moreover, is entirely separate from that used for standard definition ("SD") local signals. Thus, DIRECTV cannot rely on existing SD infrastructure and must upgrade its HD facilities separately.

DIRECTV's engineering resources are currently fully deployed in an effort to install ground-based facilities necessary to ensure continuity of SD service during the digital transition – a matter among the highest of the Commission's priorities. Such work is anticipated to continue for several months after February 2009. Thus, with few exceptions, DIRECTV cannot begin these upgrades until well after the digital transition is completed next February. Once DIRECTV is able to shift its focus to HD, completing upgrades in all HD markets would take several years.

As its space and ground segment capabilities improve, DIRECTV will be able to increase the number of stations it carries in HD over a period of years. But if the Commission were to impose an HD carry-one, carry-all requirement prematurely, DIRECTV would not be able to comply without having to drop a substantial number of existing local HD markets. The resulting disruption in service would affect millions of DIRECTV subscribers. An implementation schedule under which satellite carriers would be required to meet reasonable and quantifiable local HD carriage benchmarks each year, with full HD carry-one, carry-all compliance achieved within four years of the digital

transition, would avoid such disruption and preserve competition in the video marketplace.<sup>1</sup>

We recognize that an implementation schedule with quantifiable benchmarks would result in different carriage rules for cable and satellite operators. But this simply “reflect[s] practical and technical limitations of satellite operations now and in the future.”<sup>2</sup> This is the type of distinction based on differences in technology and capacity that Congress clearly contemplated when it adopted the Satellite Home Viewer Act and its progeny.<sup>3</sup> HD carriage is far more burdensome for satellite operators than for cable operators, who, as the Commission has found, actually *gain* capacity through the digital transition.<sup>4</sup> Because satellite carriers already deliver all signals in a digital format, an HD signal actually uses between five and six times the capacity as an SD signal. Moreover, satellite providers operate from a limited number of orbital locations with a limited spectrum allocation, unlike terrestrial competitors who can increase capacity at their discretion by adding to or upgrading their wireline facilities. In addition, because it takes four years to design, construct and launch a new satellite, DBS providers need significantly more lead time to respond to demands for capacity than do cable providers, who can more easily make changes on the ground. For constitutional, statutory, and public policy reasons, the Commission’s carriage rules should – indeed, must – account for these basic differences in technology.<sup>5</sup>

Clearly, the sort of implementation schedule discussed above would better serve the public interest than would setting a premature compliance deadline coupled with market-by-market waivers. Establishing a clear set of quantifiable benchmarks leading to a date certain for full compliance would provide satellite carriers a dependable basis upon which to make long-term decisions on investment, network management, and

---

<sup>1</sup> This would be comparable to the implementation schedule provided by Congress when satellite-delivered local service was first introduced in 1999. See *Implementation of the Satellite Home Viewer Improvement Act of 1999: Broadcast Signal Carriage Issues; Retransmission Consent Issues*, 16 FCC Rcd. 1918, ¶ 14 (2000) (“*Satellite Carriage Order*”) (describing implementation period provided by Congress).

<sup>2</sup> *FCC Written Response to the GAO Report on DTV* at 45 (rel. Dec. 11, 2007) (available at [http://hraunfoss.fcc.gov/edocs\\_public/attachmatch/DOC-278883A2.pdf](http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-278883A2.pdf)).

<sup>3</sup> See 47 U.S.C. § 338(j) (requiring carriage regulations on satellite operators that are “comparable to,” but not identical to, those imposed on cable operators); *Satellite Carriage Order*, ¶ 5 (2000) (“It is important to note that the satellite carriage requirement is different from the cable carriage requirement.”).

<sup>4</sup> See, e.g., *Carriage of Digital Television Broadcast Signals: Amendment to Part 76 of the Commission’s Rules*, 20 FCC Rcd. 21064, ¶ 62 (2007) (explaining that “transmission of digital signals requires far less bandwidth than that required for analog signals, so cable companies transmitting signals, including must-carry signals, in digital rather than analog will gain bandwidth”).

<sup>5</sup> *Turner Broadcasting Systems, Inc. v. FCC*, 520 U.S. 180, 227 (1997) (Breyer, J., concurring) (confirming that the government must balance the asserted government interest in mandating carriage against the corresponding burden on distributors’ free speech rights).

programming issues. Such a regime would also treat satellite competitors equally and fairly. By contrast, an artificial compliance date coupled with a waiver regime would introduce uncertainty, impose unnecessary regulatory burdens, and create inequity among satellite providers. A waiver regime would actually disserve the public interest by giving satellite providers an incentive to deploy facilities capable of only limited local HD carriage rather than making the investment required for full compliance on a set schedule. Clear rules applicable to all providers would prevent this result and would better serve the public interest.

\* \* \*

In closing, if the Commission determines that an HD carry-one, carry-all requirement is an appropriate way to maximize local HD service to the public, we believe it can best be implemented by establishing rules that: (1) ensure a digital transition with a minimum of disruption; (2) preserve competition among MVPD providers and avoid disrupting service to tens of millions of consumers; (3) allow sufficient lead time for business planning and investment in the necessary technology; and (4) treat satellite competitors equitably and fairly. ***To achieve these policy goals, the Commission should adopt rules with reasonable and quantifiable local HD carriage benchmarks each year, with full compliance achieved within four years of the digital transition.***

While DIRECTV reserves its right to challenge the legality of overly burdensome HD carriage regulations, it would much prefer to work with the Commission on rules that establish a manageable and reasonable implementation schedule for increased carriage of local HD signals. Such an approach will best serve the public and preserve and enhance competition in the video marketplace. We look forward to discussing these issues in more detail in the coming days.

Sincerely,

/s/

Susan Eid  
Senior Vice President, Government Affairs

cc: Michelle Carey  
Catherine Bohigian  
Amy Blankenship  
Rudy Brioché  
Rick Chessen  
Cristina Pauzé  
Monica Desai  
Eloise Gore