



March 4, 2008

Ms. Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street SW  
Washington DC 20554

**Re: Notice of Ex Parte Communication  
MB Docket No. 03-130; CS Docket Nos. 98-120, 00-96**

Dear Ms. Dortch:

On March 3, Jane Mago and the undersigned of NAB met with Michelle Carey, Advisor to Chairman Martin, to discuss two issues of concerns to NAB's small market radio and television members. First, we discussed the definition of radio markets in areas outside of Arbitron metro markets. We expressed the support of NAB's small market radio station members for retention of the modified contour overlap methodology that the Commission has used since 2003 to define radio markets in non-Arbitron areas. We noted that the Commission has utilized this market definition methodology for five years without any known problems, and that this contour-overlap approach properly identifies the radio stations that compete against each other for listeners and advertisers.

We also discussed the carriage of local stations' digital signals by DBS operators. We stressed that DBS operators' carriage of local television stations in all 210 DMAs, including local stations' high definition signals, would serve the public interest. As further described in the attached handout, the Commission should require satellite carriers to provide empirical evidence to support their claims that they lack capacity to offer local-into-local service in high definition.

Please direct any questions concerning this matter to the undersigned.

Respectfully submitted,

Jerianne Timmerman  
Senior Vice President and Deputy General Counsel  
Legal and Regulatory Affairs

Attachment

cc: Michelle Carey

# Satellite Capacity For Local-Into-Local Service In All 210 Markets

## I. Introduction

The FCC is currently considering whether to require satellite carriers to retransmit the signals of local television stations in high definition (“HD”) or to allow them to degrade and down-convert HD signals to standard definition. DIRECTV and DISH Network both claim they lack sufficient satellite capacity to offer local-into-local satellite service in HD in those television markets they have targeted for local-into-local service until at least five years from now.

The FCC should recognize that the public interest would be served by satellite delivered service in all 210 television markets. This would allow even those unable to receive regular over-the-air signals to receive important local news and emergency information from local stations. At this time, neither satellite carrier provides such service, and the FCC has not required them to do so.

The FCC should require satellite carriers to provide empirical evidence to support their capacity constraint arguments. The need for factual documentation is particularly acute in view of the public interest at stake and in light of the repeated claims by the satellite carriers of capacity limitations that have ultimately proved to be lacking in factual or engineering support and contradicted by subsequent actions satellite carriers have taken.

## II. The Facts

\* DIRECTV has repeatedly boasted to the investment community that it will be able to offer HD local-into-local service for 1,500 television stations—virtually *every* digital television station in every television market in the country—in 2008.<sup>1</sup> Yet DIRECTV

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<sup>1</sup> See, e.g., DirecTV Investor Relations, News Release, *DIRECTV Offers to Install HD in the New International Space Station Module; Ready to Bring HD to the Final Frontier* (Nov. 16, 2007), available at <<http://phx.corporate-ir.net/phoenix.zhtml?c=127160&p=irol-newsArticle&ID=1080131&highlight=>> (“The DIRECTV 11 satellite will be launched early next year [2008] to support further HD expansion. Combining DIRECTV 11 with existing satellite capacity, DIRECTV will have the ability to deliver 150 national HD channels and 1,500 local HD and digital channels in addition to new advanced programming services for customers.”); DirecTV Investor Relations, News Release, *Boeing Delivers Next-Generation Commercial Satellite to DIRECTV, Inc.* (Oct. 10, 2005), available at <<http://phx.corporate-ir.net/phoenix.zhtml?c=127160&p=irol-newsArticle&ID=766263&highlight=>> (concerning DIRECTV’s “initiative to deliver more than 1,500 local HD channels and more than 150 national HD channels and other advanced programming services to customers nationwide by 2007”); DirecTV Investor Relations, News Release, *DIRECTV’s Spaceway F1 Satellite Launches New Era in High-Definition Programming; Next Generation Satellite Will Initiate Historic Expansion of DIRECTV Programming* (Apr. 26, 2005), available at <<http://phx.corporate-ir.net/phoenix.zhtml?c=127160&p=irol-newsArticle&ID=700828&highlight=>> (“The launch of Spaceway F1, and Spaceway F2 in June, marks the

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currently offers analog local-into-local service in only 144 markets and HD local-into-local service of certain network stations in just 72 markets.

- \* DISH currently offers analog local-into-local satellite service in 174 markets and HD local-into-local service of Big 4 network stations in 35 markets. DISH has, however, announced the launch of three new satellites and its ability to deliver HD local-into-local service in at least 100 markets in 2008.<sup>2</sup>
- \* DIRECTV and DISH have a long history of understating their bandwidth capacity. For example, in 2002, DIRECTV and DISH both asserted that, due to capacity constraints, they would be unable to offer analog local-into-local service in more than 50 to 70 markets unless they were allowed to merge.<sup>3</sup> Yet today, *each* of them offers analog local-into-local service in 2 to 3 times as many markets.
- \* In 2005, DIRECTV and DISH both told the FCC that, due to capacity constraints, they would be unable to comply with the Satellite Home Viewer Extension and Reauthorization Act's requirement to provide full digital and high definition local-into-local service in Alaska and Hawaii. Yet today, one already does so and the other has committed to do so by June 30, 2008.
- \* In 2005, the ABC, CBS, and NBC Television Affiliate Associations demonstrated in a filing with the FCC that both satellite carriers had the bandwidth to retransmit the *full digital signal of every television station in the United States*.<sup>4</sup> That demonstration has never been rebutted, and the FCC has yet to take up the matter.

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beginning of a historic expansion of DIRECTV's capacity that will include the launch of two more next-generation satellites, DIRECTV 10 and DIRECTV 11, in 2007. The four satellites will provide additional capacity to deliver more than 1,500 local HD and more than 150 national HD channels and other advanced programming services to consumers.").

<sup>2</sup> DISH Network, Press Release, *DISH Network to Expand HD Line-Up in 2008; 100 National HD Channels, 100 HD Local Markets* (Jan. 8, 2008), available at <<http://dish.client.shareholder.com/releasedetail.cfm?ReleaseID=284873>>.

<sup>3</sup> See *EchoStar, DirecTV CEOs Testify On Benefits of Pending Merger Before U.S. Senate Antitrust Subcommittee* (Mar. 2, 2002), available at <<http://www.spacedaily.com/news/satellite-biz-02p.html>> ("Without the merger, the most markets that each company would serve with local channels as a standalone provider, both for technical and economic reasons, would be about 50 to 70." (quoting DirecTV executive)).

<sup>4</sup> See Reply of the ABC, CBS, and NBC Television Affiliate Associations in Support of the Opposition of the National Association of Broadcasters to Petitions for Partial Reconsideration, MB Docket No. 05-181 (Dec. 19, 2005).

- \* Similarly, in 2006, the Association of Public Television Stations (APTS) demonstrated that “both DIRECTV and EchoStar possess or will soon possess ample ability to carry the digital signals of local television stations in all 210 markets in the near future.”<sup>5</sup>
- \* It has been *nine years* since the Satellite Home Viewer Improvement Act of 1999 was passed, yet DIRECTV does not offer local-into-local service in 66 markets and DISH does not offer local-into-local service in 36 markets. Lack of this service is decidedly against the interest of consumers.
- \* DIRECTV and DISH have consistently proved wrong their own predictions of insufficient satellite bandwidth capacity. The FCC should fully investigate, including allowing third party verification, of the satellite carriers’ most recent assertions. The FCC should not allow *any delay* in HD carriage requirements pending completion of this investigation.

### **III. Conclusion**

The FCC should recognize that the public interest would be served by satellite delivered local-into-local service in all 210 television markets. It should require proof of capacity constraints and require all satellite carriers, as early as possible, to retransmit in high definition, the HD signal of any station whose signal the satellite carriers are retransmitting. In addition, the FCC should not permit satellite carriers to discriminate among stations in a market with respect to carriage or otherwise upset intra-market competition.

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<sup>5</sup> See Ex Parte Presentation, CS Docket No. 98-120; 00-96 filed by Association of Public Television Stations (March 31, 2006) p. 11.