



March 12, 2008

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

**Re: Ex Parte Communication
CS Docket Nos. 98-120, 00-96**

Dear Ms. Dortch:

This letter responds to the March 10, 2008, filing of DIRECTV in the captioned proceedings.¹ Simply stated, DIRECTV misinterprets NAB's ex parte filings and requests. As a result, the arguments advanced in the March 10 filing are inapposite, and should be rejected.

As reported in our ex parte filings, the National Association of Broadcasters (NAB) has asked the FCC to recognize that satellite delivered local-into-local service for all 210 designated market areas (DMAs) is in the public interest. In addition, we asked the Commission to take steps to ensure, either through a waiver process or through a Notice of Inquiry, that all concerned parties have the information needed to evaluate the DBS operators' proposed schedule for providing high definition (HD) local-into-local service. These modest requests are fully consistent with the FCC's authority and its responsibility to serve the public interest.

DIRECTV's March 10 filing is not responsive to NAB's actual requests. Instead, it incorrectly contends that NAB asked the FCC to immediately require carriage of all local broadcast signals in HD format in all 210 markets and then proceeds to attack that premise. Because that is not what NAB requested, however, the attacks are irrelevant. As clearly stated in our filing, NAB asked the FCC "to require all satellite carriers, as early as possible, to retransmit in high definition, the HD signal of any

¹ Letter from William M. Wiltshire and Michael D. Nilsson, Counsel for DIRECTV, Inc., to Marlene H. Dortch, CS Docket Nos. 98-120 and 00-96, MB Docket No. 07-91 (March 10, 2008) (DIRECTV March 10 Ex Parte).

station whose signal the satellite carriers are retransmitting.”² This request is neither unreasonable nor unlawful.

Indeed, NAB is somewhat perplexed by the antagonistic response of DIRECTV. DBS operators themselves have recognized that the ability to provide local-into-local television service has resulted in tremendous benefit for the operators, both in absolute terms and in their ability to compete with cable. *See, e.g.*, Comments of EchoStar Satellite Corporation in MB Docket No. 02-145 at 5 (filed Jul. 29, 2002) (“Historically, DBS providers’ inability to deliver local channels was a severe competitive disadvantage against cable ... The addition of local channels has made DBS more competitive with the incumbent cable providers. Indeed, the introduction of local service has led to an increase in DBS subscribership and a restraint on cable prices.”); Comments of DIRECTV, Inc. in CS Docket No. 01-129 at 12-13 (filed Aug. 3, 2001) (although other factors may be partly responsible, “DIRECTV estimates that its overall subscriber levels have increased by 20% as a result of local broadcast channel service”); Comments of DIRECTV, Inc. in CS Docket No. 00-132 at 2 (filed Sept. 8, 2000) (“... the most dramatic change in the status of MVPD competition has been Congress’ enactment of the Satellite Home Viewer Improvement Act of 1999, which, for the first time, explicitly permits DBS operators to offer consumers local broadcast channels in their local markets.”) [citations omitted]; Comments of the Satellite Broadcasting and Communications Association in CS Docket No. 00-132 at 5, 7-9 (filed Sept. 8, 2000) (“market data we describe in this filing appear to reflect the positive impact that ... SHVIA has had on subscriber growth since the inception of local-into-local in 1999. There have been impressive subscriber gains in the 9-month period that local-into-local has been available.”).

Surely, local-into-local is not only for the benefit of the satellite operators. NAB believes that all Americans should have the option of receiving vital local information and news when they choose to receive their television service from a DBS operator.

To the extent that DIRECTV’s March 10 filing provides additional information on its satellite system, NAB appreciates that information, but we note that it is not sufficient to evaluate whether the public interest would be served by the DBS operators’ plan for HD rollout. For example, frequency reuse across spot beams is one of the most important indicators of the number of stations that ultimately can be carried in HD or in SD, but in this filing DIRECTV does not discuss today’s “state of the art” reuse

² See, Letter from Jerianne Timmerman to Marlene H. Dortch, CS Docket Nos. 98-120 and 00-96, MB 03-130 (March 4, 2008), Attachment, p. 3.

number. Instead, DIRECTV criticizes the broadcasting industry for focusing on satellite capacity, contending that “the relevant inquiry is always how much capacity is available *on a particular spot beam*.”³ NAB agrees that this is an important inquiry, but NAB and other concerned parties lack access to this critical information.

Nor does NAB have access to other critical satellite information. According to DIRECTV’s filing, it has launched eight satellites since 2001. Decisions concerning the local markets to be served, the number of satellites to be launched, the design of those satellites, and the use of those satellites have all been made at the choice of DIRECTV. It then argues that because of those choices, its ability to respond to developments in particular markets or accommodate the digital transition is very limited. This is precisely why NAB believes that it is important for the FCC and all stakeholders have access to essential information about the satellites, so that they can understand what the true limitations are and set policy accordingly.

Due to the 12-15 year life span of a satellite and DBS providers’ continuing statements about their inability to reposition spot beams or to change frequencies once a satellite is launched, it is critical that DBS providers design, build and launch satellites that are compliant with the Commission’s carriage rules in order to truly serve the public interest. Indeed, DIRECTV acknowledges that it agrees with NAB on this point.⁴

DIRECTV’s assertion that NAB has raised issues solely relating to capacity is also incorrect. For example, Questions 5 and 9 through 12 attached to NAB’s March 8 ex parte filing seek information on such issues as ground infrastructure and consumer premises equipment.⁵ We also note that DIRECTV focuses much of its discussion on its ground infrastructure. NAB understands that there may be time-consuming issues on the ground, but none of those issues have the long-term public interest implications of ill-designed and launched satellites.

In sum, the Commission should not be misled by DIRECTV’s inaccurate characterization of NAB’s request. Nor should it agree to the DBS operators’ proposals for HD carriage without full input from all stakeholders and full consideration

³ DIRECTV March 10 Ex Parte Attachment at 4 (emphasis in original).

⁴ DIRECTV March 10 Ex Parte at 9.

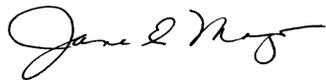
⁵ See, Letter from Jane Mago to Marlene H. Dortch, CS Docket Nos. 98-120 and 00-96 (March 6, 2008), Second Attachment, pp. 2-3.

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of relevant public interest considerations, including the technical capability to carry local stations.

Please direct any questions concerning this matter to the undersigned.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Jane E. Mago".

Jane Mago
Senior Vice President and General Counsel
Legal and Regulatory Affairs