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ATTORNEYS AT LAW

March 18, 2008

BY ELECTRONIC FILING

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

Re: *CS Docket Nos. 98-120 and 00-96, MB Docket No. 07-91*

Dear Ms. Dortch:

This is to inform you that today Stacy Fuller on behalf of DIRECTV, Inc. responded to a telephone inquiry from Amy Blankenship, Legal Advisor to Commissioner Tate, as to DIRECTV's views on whether Section 338(d) and (g) of the Communications Act give the Commission authority to impose a "viewability" mandate that would require DBS operators to provide subscribers both the standard definition ("SD") and high definition ("HD") version of each broadcaster's signal in each market where HD local signals are made available. Ms. Fuller argued that these statutory provisions do not support a dual carriage requirement.

Section 338(d) provides that satellite carriers "shall retransmit the signal of the local television broadcast stations to subscribers in the stations' local market on contiguous channels and provide access to such station's signals at a nondiscriminatory price and in a nondiscriminatory manner on any navigational device, on-screen program guide, or menu."¹ This provision does not impose a general nondiscrimination requirement. Rather, it relates specifically and solely to channel position, pricing, and treatment of stations in the on-screen program guide or menu.² Indeed, it is precisely *because* the scope of Section 338(d) is limited to on-screen program guides and menus that Congress had to promulgate what is now Section 338(g) to address EchoStar's practice of placing certain broadcasters within a market on a second dish.

¹ 47 U.S.C. § 338(d). This statutory mandate is codified in Section 76.66(i) of the Commission's rules.

² The Commission has previously recognized the limited scope of this provision, including the portion applicable to the on-screen program guide. *See, e.g., National Association of Broadcasters and Association of Local Television Stations; Request for Modification or Clarification of Broadcast Carriage Rules for Satellite Carriers*, 17 FCC Rcd. 6065, ¶ 28 (Med. Bur. 2002) ("The SHVIA and the Commission's rules prohibit satellite carriers from discriminating against local stations with regard to their placement on on-screen program guides and menus.").

Marlene H. Dortch
March 18, 2008
Page 2 of 2

Section 338(g) thus prohibits the use of two receive dishes to deliver local signals in a single market. Specifically, it provides that, if a satellite carrier retransmits digital television signals, it must “retransmit such digital signals in such market by means of a single reception antenna and associated equipment, but such antenna and associated equipment may be separate from the single reception antenna and associated equipment used for analog television service signals.”³

To the extent DIRECTV were to offer the HD local signals of every broadcaster in a market without also offering SD local signals as well, there is no reason to believe it would run afoul of any of these requirements. DIRECTV would provide all local HD signals in each market (1) at a uniform price, (2) on contiguous channels, (3) displayed similarly in its on-screen program guide, and (4) by means of a single customer receive antenna. Accordingly, nothing in Section 338 would support a requirement that DIRECTV provide duplicative local signals in SD format.

Ms. Fuller reiterated DIRECTV’s suggestion that, given the burden such a dual carriage regime would impose on satellite operators, the potential constitutional issues involved, and the dearth of input on this important issue in the current record, the Commission would be well served by either initiating a further notice to solicit additional comment or allowing Congress to determine the contours of the statutory authority for local signal carriage in the process of reauthorizing the Satellite Home Viewer Expansion and Reauthorization Act next year.

Sincerely yours,

/s/

William M. Wiltshire
Michael D. Nilsson
Counsel for DIRECTV, Inc.

cc: Amy Blankenship
Catherine Bohigian
Rudy Brioché
Michelle Carey
Rick Chesson
Cristina Pauzé

³ 47 U.S.C. § 338(g)(2).