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December 8, 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: *Ex Parte Notification*  
MB Docket No. 07-42

Dear Ms. Dortch:

In accordance with Section 1.1206 of the Commission's rules, this is to inform you that on December 5, 2008, Stacy Fuller on behalf of The DIRECTV Group, Inc. ("DIRECTV") spoke by telephone with Rudy Brioché, Legal Advisor to Commissioner Adelstein, to discuss the enclosed materials related to potential changes to the Commission's program carriage rules.

Sincerely yours,

\s\

William M. Wiltshire  
*Counsel for the DIRECTV Group, Inc.*

Enclosure

cc: Rudy Brioché

## **PROPOSED CHANGES TO THE PROGRAM CARRIAGE RULES WILL HARM CONSUMERS**

Many of the proposed changes to the program carriage rules would be detrimental to consumers by limiting programming choices and raising costs. Given DIRECTV's capacity constraints, forced carriage of one programming channel will likely require dropping, or not adding, another channel, which could include niche programming. Furthermore, changes in the rules could hamstring DIRECTV's ability to effectively manage its costs, which would lead to higher prices for consumers.

### **Affiliation**

- Today, the program carriage rules prevent MVPDs from discriminating in favor of *their own* affiliates. A proposal to prohibit discrimination in favor of *any MVPD's* affiliate would harm competitive MVPDs whether or not they own programming.
- From the DBS perspective, this proposal is a solution in search of a problem. Cable-affiliated programmers are unlikely to favor non-cable MVPDs. Comcast Sports Net, for example, would hardly cut a sweetheart deal with DIRECTV.
- This proposal, however, creates government-enforced monopoly pricing. Cable-affiliated programmers already use their market power to get unfair rates and terms from cable's competitors. Under this proposal, every other programmer can then claim discrimination if not given the same unfair rates and terms. The end result is higher prices to consumers.

### **Stay pending resolution of litigation**

- A proposal to stay litigation for program *carriage* complaints, but not for program *access* complaints, would unfairly give large programmers even more leverage in negotiations. Large programmers could file a carriage complaint and assure continued carriage, but a competitive MVPD could not similarly ensure continued access by filing a complaint.
- Stays will become routine and the FCC will be inundated with frivolous complaints. If a programmer gets a stay just by filing a complaint, complaints will be filed as a matter of course.
- Stays would allow a large programmer with inferior product to prolong carriage at the expense of an independent programmer with exciting niche programming that an MVPD would prefer to introduce.