

February 17, 2010

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 Twelve Street, S.W.
Washington, DC 20554

Re: Notice of Ex Parte Communications, MB Docket Nos. 07-29, 07-198,
and 07-51

Dear Ms. Dortch:

On February 16, 2010, Alexandra M. Wilson, Vice President of Public Policy and Regulatory Affairs, Cox Enterprises, Inc., Lauren M. Van Wazer, Chief Policy and Technology Counsel, Cox Enterprises, Inc., and the undersigned, acting as counsel for Cox Communications, Inc. ("Cox"), met with Austin Schlick, General Counsel, Office of General Counsel, Susan Aaron and William Scher of the Office of General Counsel, with Steven Broeckaert, David Konczal, Mary Beth Murphy, Nancy Murphy, John Norton and Diana Sokolow of the Media Bureau, and with Stuart Benjamin of the Office of Strategic Planning and Policy Analysis.

Cox discussed a letter filed on January 13 by DirecTV in MB Dockets No. 07-29 and No. 07-198.¹ The DirecTV ex parte seeks unsuccessfully to rebut Cox's assertion that DirecTV is a "satellite broadcast programming vendor" within the meaning of Section 628(b).² Cox explained that none of DirecTV's arguments show that DBS providers generally, or DirecTV specifically, are exempt from the unfair practices provisions of Section 628(b). The statute covers DirecTV, and its exclusive programming arrangements like NFL Sunday Ticket and Mega March Madness should be subject to the same scrutiny as that applied to cable operators' exclusive programming arrangements.

Section 628(i)(4) defines the term satellite broadcast programming vendor as "a fixed service satellite carrier that provides service pursuant to section 119 of title 17, United States Code, with respect to satellite broadcast programming." DirecTV does not dispute that it is a fixed service satellite carrier that provides service pursuant to section

¹ Letter from Stacy Fuller to Marlene H. Dortch, MB Docket Nos. 07-29, 07-198 (Jan. 13, 2010) ("DirecTV ex parte").

² Letter from David J. Wittenstein to Marlene H. Dortch, MB Docket Nos. 07-29, 07-198 (Jan. 12, 2010).

119, but it nonetheless argues that it is not a satellite broadcast programming vendor under Section 628(b) because it does not provide satellite broadcast programming. Each of DirecTV's arguments ignores the plain language of Section 628 and should be rejected.

I. SECTION 628(b) IS NOT LIMITED TO PROVIDERS OF SUPERSTATIONS, BUT EVEN IF IT WERE, DIRECTV PROVIDES A SUPERSTATION TO MILLIONS OF CUSTOMERS.

DirecTV first claims that a satellite broadcast programming vendor can only be an entity that provides a superstation, and that network stations do not qualify as satellite broadcast programming.³ Even if this were true, which it is not, DirecTV does in fact provide superstation WGN to millions of customers under Section 119. Attached to this letter is a copy of DirecTV's most recent copyright Statement of Account covering service under Section 119.⁴ The copyright statement shows that (1) DirecTV carried WGN as a superstation,⁵ (2) it provided WGN to more than 13 million private households each month from January through June 2009,⁶ and (3) it provided WGN to a rapidly-growing number of commercial establishments -- only slightly less than 200,000 by June, 2009.⁷ DirecTV's website programming material indicates that DirecTV still provides superstation WGN, which DirecTV describes as "the premier Chicago superstation."⁸ Thus, even if Section 628 only applied to entities providing superstations, DirecTV plainly qualifies.

Schedules A and B of the Statement of Account show that DirecTV *also* provides well over 50 broadcast network stations to many millions of customers under Section 119. DirecTV claims that its carriage of these stations is irrelevant because such stations cannot be "satellite broadcast programming."⁹ But nothing in Section 628 supports DirecTV's claim that Section 628 limits "satellite broadcast programming" to

³ DirecTV ex parte at 1-2.

⁴ DirecTV's copyright statements of account are publicly available at the U.S. Copyright Office. In the past few weeks, DirecTV presumably filed a statement of account covering the second half of 2009, but the attached statement of account is the most recent DirecTV statement of account that we were able to obtain.

⁵ The first entry on Schedule A lists carriage of WGN, which is correctly designated as "S," denoting a superstation.

⁶ See page 3, Space D, Part 1.

⁷ See page 3, Space D, Part 2.

⁸ https://www.directv.com/DTVAPP/new_customer/base_packages.jsp?footernavtype=-1 (last visited Feb. 17, 2010).

⁹ DirecTV ex parte at 1-2.

superstations and not network stations. The term is defined by Section 628(i)(3), which defines "satellite broadcast programming" as "broadcast video programming when such programming is retransmitted by satellite and the entity retransmitting such programming is not the broadcaster or an entity performing such retransmission on behalf of and with the specific consent of the broadcaster." This definition does not even mention, let alone distinguish between, superstations and network affiliates.

DirecTV offers two citations for its dubious proposition that "satellite broadcast programming" does not include network programming. The first is to a recent letter from a lawyer in a private law firm, who himself provides no authority for his assertion.¹⁰ The second citation is to Section 628(c)(3)(B). As an initial matter, this provision is only an exclusion from the coverage of Section 628(c) and has no relevance to Section 628(b). But more fundamentally, DirecTV conveniently omits the key language of the provision that demonstrates that the provision is not dispositive in any case. Section 628(c)(3)(B)(i) actually says that "[n]othing in this section shall apply...to the signal of any broadcast affiliate of a national television network... *that is not satellite broadcast programming...*" (emphasis added). Thus, the fact that a signal is a network signal does not disqualify it from coverage if the signal otherwise qualifies as "satellite broadcast programming." When DirecTV carries network affiliate signals pursuant to the compulsory license under Section 119, it is clear that those signals are "broadcast video programming," that they are retransmitted by DirecTV "by satellite," and that DirecTV "is not the broadcaster." Thus, DirecTV has failed to show that the 50+ network signals it carries pursuant to Section 119 are somehow automatically excluded from the statutory definition of satellite broadcast programming.

II. DIRECTV'S CLAIM THAT IT DOES NOT TRANSMIT BROADCAST SIGNALS UNDER SECTION 119 WITHOUT THE PERMISSION OF THE STATIONS IS SIMPLY INCORRECT.

DirecTV next claims that it cannot be a "satellite broadcast programming vendor" because it does not carry any satellite broadcast programming without the express consent of the broadcaster.¹¹ This claim likely rests on DirecTV's misconstruction of the meaning of "satellite broadcast programming" as discussed above, but in any case is untrue. The statutory, compulsory copyright license of Section 119 obviates the need for DirecTV to obtain copyright permission to retransmit superstation WGN's programming to millions of customers. Moreover, pursuant to Section 76.64(b)(2) of the Commission's rules, DirecTV does not have to obtain retransmission consent to retransmit the signal of superstation WGN. DirecTV may obtain retransmission consent to carry WGN in the comparatively small area of WGN's local market and neighboring counties, but Cox is

¹⁰ DirecTV ex parte at 1, n.3.

¹¹ DirecTV ex parte at 2.

confident that DirecTV does not obtain retransmission consent for its nationwide retransmission of superstation WGN.

Again, quite apart from DirecTV's retransmission of superstation WGN without the station's specific consent, DirecTV retransmits the signals of well over 50 other broadcast stations under the Section 119 compulsory copyright license. Many of the more than 50 stations listed on Schedules A and B of the attached Statement of Account are carried as part of DirecTV's so-called "white area service," i.e., DirecTV's provision of distant network signals to households that are not already served by a local signal of the relevant network.¹² As with superstation WGN, because Section 119 provides DirecTV with a statutory copyright license, DirecTV does not need and does not obtain specific copyright permission to carry the programming in these broadcast signals.

In addition, Section 76.64(b)(3)(ii) of the Commission's rules provides a specific exemption under which DirecTV is not required to obtain retransmission consent from the stations it retransmits as part of its extensive white area service to unserved households. Not only does DirecTV not need such consent, it generally cannot obtain such consent from network affiliates. Major broadcast network affiliation agreements generally prohibit station affiliates from granting retransmission consent to MVPDs in areas beyond the affiliates' local markets and other nearby counties in which they are significantly viewed.

Accordingly, DirecTV carries both superstation WGN and a number of white area network signals not "on behalf of" and without "the specific consent of the broadcaster" – satisfying the final piece of the Section 628 definition of "satellite broadcast programming."

III. DIRECTV'S CLAIM THAT THE PROGRAM ACCESS RULES ARGUABLY WOULD ONLY APPLY TO ITS PROVISION OF SATELLITE BROADCAST PROGRAMMING, AND NOT TO NFL SUNDAY TICKET OR OTHER EXCLUSIVE PROGRAMMING ARRANGEMENTS, WAS REJECTED IN THE COMMISSION'S JUST-RELEASED FIRST REPORT AND ORDER.

DirecTV's final argument that the Section 628(b) prohibitions do not reach its exclusive NFL Sunday Ticket arrangement and other exclusive sports programming arrangements is that the program access rules "arguably only restrict its conduct 'with

¹² 17 U.S.C. Section 119(a)(2). Note that DirecTV carries broadcast signals pursuant to two separate compulsory copyright licenses. The Section 119 license covers DirecTV's retransmission of *distant* signals, including (1) network stations transmitted to white area households, (2) superstations, and (3) a small number of other distant signals specifically authorized in special cases under Section 119(a). Section 122 covers DirecTV's "*local-into-local*" retransmissions, and is not relevant to this analysis because it is not mentioned in Section 628.

respect to [satellite broadcast] programming."¹³ This argument rests on the theory that DirecTV is a satellite broadcast programming vendor (and thus covered by Section 628(b)) for only one purpose -- the provision of satellite broadcast programming -- but is not a satellite broadcast programming vendor for any other purpose. Not only is this a tortured reading of the plain words of the definition of a satellite broadcast programming vendor in Section 628(i)(4), it is also inconsistent with the Commission's understanding of Section 628(b) and it would render meaningless the inclusion of satellite broadcast programming vendors within Section 628(b).

The Commission has just held in its First Report and Order that it is a misreading of the statute to treat entities as covered by Section 628(b) for some purposes but not for other purposes. In response to cable operator claims, the Commission explained that, "under Section 628(b), so long as a provider itself meets the statutory definition of a covered entity," it is covered by the statute with respect to "other activities" that are not "captured" within the definition that makes it an entity covered by Section 628(b).¹⁴ The Commission has thus concluded that, once an entity such as DirecTV has been found to fit within the scope of Section 628(b), the prohibitions of Section 628(b) apply to programming arrangements other than those identified in the narrow definitional provision.¹⁵

Finally, DirecTV's interpretation would render the inclusion of satellite broadcast programming vendors within the Section 628(b) prohibitions meaningless. Satellite broadcast programming is, by definition, programming that is available to multiple parties for the taking, subject to compliance with the Section 119 copyright license, and is carried without having to obtain consent. It is not programming that is unique to one satellite broadcast programming vendor, and the refusal of one such entity to provide it to other MVPDs would not prevent another satellite broadcast programming vendor from obtaining it and providing it. Thus the notion that satellite broadcast programming

¹³ DirecTV ex parte at 2, n.7.

¹⁴ *Review of the Commission's Program Access Rules and Examination of Programming Tying Arrangements*, First Report and Order, *MB Docket No. 07-198*, FCC 10-17, ¶ 49, n.192 (rel. Jan. 20, 2010). Cox and other cable operators have expressed doubts about the validity of this broader interpretation. In particular, the fact that the statute frequently and uniformly refers to "satellite cable programming" strongly suggests that the statute is not meant to regulate programming not delivered by satellite. Nevertheless, the Commission has adopted this broader interpretation of the scope of Section 628(b). There is no basis for applying this broader interpretation to cable operators but not to all other entities covered by Section 628(b).

¹⁵ DirecTV and the other members of the Coalition for Competitive Access to Content (CA2C) have also argued, not surprisingly, that Section 628(b) places "a blanket prohibition on unfair practices" by vertically-integrated satellite cable programming vendors, not merely a prohibition on practices relating to satellite cable programming. See, e.g., Letter from John Goodman, President, CA2C to Marlene H. Dortch, *MB Docket No. 07-198*, at 1, n.1 (Dec. 29, 2009).

Ms. Marlene H. Dortch

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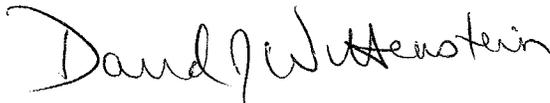
vendors are included within the Section 628(b) prohibitions *only* with respect to satellite broadcast programming is nonsense; these entities are not bottlenecks for such programming, nor do they control or monopolize it. Indeed, other entities could avail themselves of the provisions of Section 119 and provide such programming. The definitional language is a straightforward attempt to identify the types of entities covered by the statute. It is not an attempt to include an entity within the ambit of the statutory prohibitions, only to have the scope of covered programming render the entity's inclusion meaningless.

Accordingly, Section 628(b) can reach DirecTV's NFL Sunday Ticket arrangement and other exclusive programming arrangements if they are shown to be unfair acts or practices that significantly hinder another MVPD from providing its satellite cable and broadcast programming to customers. In the face of the plain language of the statute, DirecTV's three arguments that it is not covered are without merit. Section 628(b) applies to DirecTV and the company's exclusive programming arrangements should be subject to the same level of Commission scrutiny applied to exclusive cable programming contracts.

Pursuant to Section 1.1206(b)(2) of the Commission's rules, 47 C.F.R. Section 1.1206(b)(2), a copy of this notice is being filed electronically and a copy is being provided to each Commission participant in the meeting.

Please contact me if you have any questions regarding the foregoing.

Respectfully submitted,



David J. Wittenstein

Counsel for Cox Communications, Inc.

cc: Austin Schlick
Susan Aaron
William Scher
Steven Broeckaert
David Konczal
Mary Beth Murphy
Nancy Murphy
John Norton
Diana Sokolow
Stuart Benjamin

THIS FORM IS EFFECTIVE FOR THE ACCOUNTING PERIOD BEGINNING JANUARY 1, 2009.
 If you are filing for a prior accounting period, contact the Licensing Division for the correct form.

OFFICIAL BUSINESS
United States Copyright Office

FILING DEADLINE: The statement of account must be filed within 30 days after the last day of the accounting period.
 The filing deadline is July 30 for the January–June accounting period and January 30 for the July–December accounting period.

STATEMENT OF ACCOUNT
*for Secondary Transmissions
 by Satellite Carriers for Private
 Home Viewing and Viewing
 in a Commercial Establishment*

General instructions are at the end of
 this form (pages i–iv).

FOR COPYRIGHT OFFICE USE ONLY	
DATE RECEIVED	AMOUNT
LICENSING DIVISION JUL 31 2009 RECEIVED	\$ 29,175,321.84 JL
	REMITTANCE NUMBER

FORM SC

Return to:
 Copyright Office GC/I&R
 Satellite Statement of Acct
 P.O. Box 70400
 Washington, DC 20024-0400

(For courier deliveries,
 see page i of the instructions.)

Space A

ACCOUNTING PERIOD COVERED BY THIS STATEMENT: (Check one box and fill in the year)

January 1–June 30, 2009 July 1–December 31, _____

Space B

LEGAL NAME OF SATELLITE CARRIER: Your file is established under this name. Give the full name of the owner of the satellite carrier. If the owner is a subsidiary of another corporation, give the full corporate title of the subsidiary, not that of the parent corporation.

LEGAL NAME OF OWNER OF SATELLITE CARRIER

DirectTV, Inc.

BUSINESS NAME OF OWNER, IF DIFFERENT

N/A

MAILING ADDRESS

2230 East Imperial Highway
 El Segundo, CA 90245

DIRECTV, INC
SCHEDULE A
Details for Form SC, Page2, SPACE C - PRIMARY TRANSMITTERS: TELEVISION
For The Accounting Period From January 1 to June 30, 2009

1. Call Sign	2. Channel Number	3. Station Type (S or N)	4. Location of Station
WGN	9	S	Chicago
WABC	7	N	New York
WCBS	2	N	New York
WNBC	4	N	New York
WNYW	5	N	New York
KABC	7	N	Los Angeles
KCBS	2	N	Los Angeles
KNBC	4	N	Los Angeles
KTTV	11	N	Los Angeles
WFUT	68	N	New York
KTFF	41	N	Fresno
WNUV	11	N	Baltimore
KABB	39	N	San Antonio
KARE	11	N	Mineapolis
KDOF	26	N	Dallas
KFTR	46	N	Los Angeles
KGO	7	N	San Francisco
KIMO	13	N	Anchorage AK
KMAX	9	N	Sacramento
KMSG	55	N	Fresno
KMSP	9	N	Mineapolis
KREN	27	N	Reno
KSAT	12	N	San Antonio
KSTP	5	N	Mineapolis
KTBY	4	N	Anchorage AK
KBWB	42	N	San Francisco
WAMI	69	N	Miami
WAU	21	N	Orlando
WBNS	10	N	Columbus OH
WIS	10	N	Columbia SC
WJAN	41	N	West Palm Beach
WPCH	19	N	Johnstown-Altoona
WLBT	7	N	Jackson
WSYX	6	N	Columbus OH
WTIC	61	N	Hartford
WTTE	28	N	Columbus OH
WXFT	60	N	Chicago
WNUV	54	N	Baltimore
WMUR	9	N	Boston
WVNY	22	N	Burlington
WCAX	3	N	Burlington
WFFF	44	N	Burlington
WNNE	31	N	Burlington
WAPT	16	N	Jackson MS
WJTV	12	N	Jackson MS
WLBT	3	N	Jackson MS
KSTP1	5	N	Mineapolis
KMSP1	9	N	Mineapolis
KARE1	11	N	Mineapolis
WABC1	7-1	N	New York
WCBS1	2-1	N	New York
WNBC1	4-1	N	New York
WNYW1	5-1	N	New York
KABC1	7-1	N	Los Angeles
KCBS1	2-1	N	Los Angeles
KNBC1	4-1	N	Los Angeles
KTTV1	11-1	N	Los Angeles

DIRECTV, INC
SCHEDULE B

Details for Form SC, Page 4, Space D - COPYRIGHT ROYALTY FEE
PART 2 - CARRIAGE FOR PRIVATE HOME VIEWING
For The Accounting Period From Jan 1 to Jun 30, 2009

NETWORK STATIONS - ANALOG & DIGITAL (PRIVATE HOME VIEWING)							
CALL SIGN	SUBSCRIBERS FOR EACH MONTH OF ACCOUNTING PERIOD						Total
	Month 1 JAN	Month 2 FEB	Month 3 MAR	Month 4 APR	Month 5 MAY	Month 6 JUN	
WABC	545,761	536,664	527,415	522,049	517,162	510,972	3,160,023
WCBS	545,289	536,618	521,090	516,476	518,630	512,936	3,151,039
WNBC	539,796	532,425	524,231	519,406	514,957	509,588	3,140,403
WNYW	648,660	638,258	622,949	616,139	614,007	605,913	3,745,926
KABC	469,729	462,490	455,277	450,192	445,357	439,530	2,722,575
KCBS	462,036	455,759	449,684	444,879	440,162	434,525	2,687,045
KNBC	457,947	451,881	446,914	442,159	436,083	430,340	2,665,324
KTTV	531,916	523,912	516,045	510,237	504,278	496,664	3,083,052
KTFF	160,656	166,378	177,454	188,328	193,061	197,341	1,083,218
WNUV	81,098	81,811	81,556	81,194	81,868	83,568	491,095
KODF	42,463	43,205	42,622	41,273	40,607	40,382	250,552
KREN	33,736	34,405	34,971	35,376	35,594	35,710	209,792
WPCH	30,754	31,474	32,500	33,404	33,951	34,417	196,500
WTTV	0	0	0	0	746	1,368	2,114
WXIN	0	0	0	0	746	1,368	2,114
KTBY	2,102	2,158	2,232	2,310	2,370	2,423	13,595
WLBT	51,125	51,994	52,664	52,996	53,200	53,461	315,440
KXVO	0	0	0	0	0	24,601	24,601
KSAT	5,905	6,258	6,550	6,795	6,994	7,177	39,679
KBTZ	0	0	0	0	0	5,546	5,546
KSKN	38,472	40,374	42,052	43,267	43,966	44,498	252,629
KSTP	5,888	6,026	6,141	6,230	6,293	2,530	33,108
KMSP	5,888	6,026	6,141	6,230	6,293	2,530	33,108
KARE	5,888	6,026	6,141	6,230	6,293	2,530	33,108
KMAX	39,339	40,035	40,668	41,208	41,512	41,628	244,390
WJAN	297,714	298,603	298,757	297,427	295,077	292,317	1,779,895
WTHR	0	0	0	0	79,128	145,014	224,142
WRTV	0	0	0	0	46,546	145,014	191,560
WXFT	84,025	84,170	84,879	85,503	85,751	85,720	510,048
KGO	33,789	34,585	35,361	35,932	36,418	36,877	212,962
WIS	31,482	32,321	32,793	32,902	0	0	129,498
KOFY	260,315	263,717	266,975	269,692	271,752	273,431	1,605,882
KFTR	89,111	90,426	91,736	92,610	93,388	94,192	551,463
WTIC	27,980	28,522	29,122	29,660	29,881	29,856	175,021
WAU	186,463	186,293	183,174	175,856	168,723	163,530	1,064,039
WAMI	134,306	134,937	134,809	133,380	131,074	128,543	797,049
WSYX	5,624	5,673	5,718	5,747	5,762	5,769	34,293
WBNS	5,624	5,673	5,718	5,747	5,762	5,769	34,293
WTE	5,624	5,673	5,718	5,747	5,762	5,769	34,293
WNUV	404,166	388,737	397,614	406,511	413,159	418,092	2,428,279
KSTP1	5,888	6,026	6,141	6,230	6,291	6,350	36,926
KMSP1	5,888	6,026	6,141	6,230	6,291	6,350	36,926
KARE1	5,888	6,026	6,141	6,230	6,291	6,350	36,926
WMUR	13,029	13,238	13,401	13,700	14,011	14,218	81,597
WVNY	8,243	8,249	8,196	8,177	8,230	8,290	49,385
WCAX	8,243	8,249	8,196	8,177	8,230	8,290	49,385
WFFF	8,243	8,249	8,196	8,177	8,230	8,290	49,385
WNNE	8,243	8,249	8,196	8,177	8,230	8,290	49,385
WAPT	4,376	4,415	4,433	4,445	4,444	4,438	26,551
WJTV	4,376	4,415	4,433	4,445	4,444	4,438	26,551
WLBT	4,376	4,415	4,433	4,445	4,444	4,438	26,551
WABC1	42,535	40,292	39,401	38,853	38,209	38,080	237,370
WCBS1	44,721	42,264	41,257	40,807	40,470	40,030	249,549
WNBC1	42,860	40,373	39,493	38,856	38,104	37,943	237,629
WNYW1	67,366	62,649	60,910	59,538	58,134	57,653	366,250
KABC1	32,610	31,276	30,729	30,279	29,755	29,663	184,312
KCBS1	30,263	28,956	28,809	28,461	27,774	27,338	171,601
KNBC1	28,279	27,550	27,242	26,806	26,281	26,207	162,365
KTTV1	40,279	38,207	37,686	36,823	35,667	35,381	224,043
Grand total "Network Stations" subscribers (Private Home Viewing):							39,661,377

Give the legal name as it appears in space B:
DirectTV, Inc.

NETWORK STATIONS — ANALOG & DIGITAL (PRIVATE HOME VIEWING)

SUBSCRIBERS FOR EACH MONTH OF THE ACCOUNTING PERIOD							
Call signs	Month 1 (Jan/July)	Month 2 (Feb/Aug)	Month 3 (Mar/Sept)	Month 4 (Apr/Oct)	Month 5 (May/Nov)	Month 6 (June/Dec)	Total
* See schedule B for a complete list of stations							
Grand total network stations subscribers (private home viewing):							

SPACE D, PART 2 • Carriage for Viewing in a Commercial Establishment

NOTE: A commercial establishment is defined as an establishment used for commercial purposes, such as a bar, restaurant, private office, fitness club, oil rig, retail store, bank or other financial institution, supermarket, automobile or boat dealership, or any other establishment with a common business area. It does not include a multiunit permanent or temporary dwelling where private home viewing occurs, such as a hotel, dormitory, hospital, apartment, condominium, or prison.

- **FIRST:** Under the heading SUPERSTATIONS, enter those stations' call signs and the number of subscribers receiving those stations on the last day of each month of the accounting period. Then, for each station, total the number of subscribers for all six months of the accounting period and enter that figure under the column labeled TOTAL.

NOTE: Do not include those subscribers receiving a superstation retransmitted within that station's local market, nor those subscribers who reside in a community where that signal is deemed significantly viewed by the FCC, provided that those subscribers receive local-to-local service. See pages ii-iii of the general instructions for a definition of these terms.

- **NEXT:** Compute the grand total number of subscribers receiving superstations.

SUPERSTATIONS — ANALOG & DIGITAL (COMMERCIAL ESTABLISHMENTS)

SUBSCRIBERS FOR EACH MONTH OF THE ACCOUNTING PERIOD							
Call signs	Month 1 (Jan/July)	Month 2 (Feb/Aug)	Month 3 (Mar/Sept)	Month 4 (Apr/Oct)	Month 5 (May/Nov)	Month 6 (June/Dec)	Total
WGN	169,960	172,107	175,613	180,543	184,047	187,043	1,069,313
Grand total superstations subscribers (commercial establishments):							1,069,313

Give the legal name as it appears in space B:
DirectTV, Inc.

SPACE D, PART 3 • Computation of the Royalty Fee

- 1. Enter the grand total superstations for private home viewing subscribers here and multiply by \$0.24 79,763,838 x .24 = \$ 19,143,321.12
- 2. Enter the grand total network stations for private home viewing subscribers here and multiply by \$0.24 39,661,377 x .24 = \$ 9,518,730.48
- 3. Enter the grand total superstations for commercial establishments subscribers here and multiply by \$0.48 1,069,313 x .48 = \$ 513,270.24
- 4. Interest Charge. Enter the amount from line 4, space E, page 5 \$ _____
- 5. Add Lines 1-4. This is the satellite carrier's total royalty fee \$ 29,175,321.84

Remit this amount in the form of an electronic payment payable to *Register of Copyrights*.

NOTE: Royalty fees are required to be paid by an electronic payment. See page i of the general instructions for more information.

Space E — Worksheet for Computing Interest

You must complete this worksheet for those royalty fee payments submitted as a result of a late payment or underpayment. For an explanation of interest assessment, see page iv of the general instructions.

- 1. Enter the amount of late payment or underpayment \$ _____
 x _____ %
- 2. Multiply line 1 by the interest rate*
 and enter the sum here _____
 x _____ days
- 3. Multiply line 2 by the number of days late _____
 x .00274
- 4. Multiply line 3 by .00274**.
 Enter the amount here (unless \$5.00 or less) and on line 4,
 part 3, space D, (page 5) \$ _____
 (interest charge)

*To view the interest rate chart click on www.copyright.gov/licensing/interest-rate.pdf. For further assistance please contact the Licensing Division at (202) 707-8150 or licensing@loc.gov.

**This is the decimal equivalent of 1/365, which is the interest assessment for one day late.

NOTE: If you are filing this worksheet covering a statement of account already submitted to the Copyright Office, please list below the owner, address, and accounting period as given in the original filing.

OWNER _____
 ADDRESS _____

 ACCOUNTING PERIOD _____

Give the legal name as it appears in space B:
DirecTV, Inc.

Space F — Contact Information

Identify an individual we can write to or call about this statement of account:

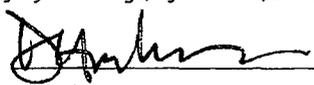
NAME Daniel Hartman
MAILING ADDRESS 2230 East Imperial Highway
El Segundo, CA 90245

TELEPHONE NUMBER (INCLUDE AREA CODE) _____
EMAIL (OPTIONAL) _____
FAX (OPTIONAL) _____

Space G — Signature

The statement of account must be signed in accordance with Copyright Office regulations.

I, the undersigned Owner or Agent of the Satellite Carrier, or Officer or Partner, if the Satellite Carrier is a corporation or partnership, have examined this statement of account and hereby declare under penalty of law that all statements of fact contained herein are true, complete, and correct to the best of my knowledge, information, and belief, and are made in good faith. [18 USC, Section 1001 (1986)]

SIGNATURE 
TYPED/PRINTED NAME Daniel Hartman
TITLE/CAPACITY SVP, Programming
DATE _____

General Instructions

Satellite Carriers and the Copyright Law

Satellite carriers are subject to copyright liability for their use of copyrighted material when they make "secondary transmissions" (retransmissions of television broadcasts) to the public for private home viewing or for viewing in a commercial establishment and they make a direct or indirect charge for that service. Satellite carrier retransmissions of the copyrighted programming embodied in the signals of superstations or network stations are eligible under an optional system of statutory licensing that is established in section 119 of the Copyright Act. A satellite carrier that chooses to obtain a statutory license to retransmit the signals of superstations or network stations to the public for private home viewing or for viewing in a commercial establishment must deposit a statement of account and a royalty fee with the Licensing Division of the Copyright Office twice a year.

How to File the Statement of Account and Royalty Fee

First Study the general information on these pages and the instructions in the statement of account form.

Second Fill out the statement of account form, giving all of the required information about your satellite carrier and about the television stations carried by it. Use a typewriter or print the information in dark ink. If you need more space, indicate that a continuation sheet is attached and use a blank page for that purpose.

Third Certify the statement of account by signing at space G.

Fourth Make an electronic payment (see note below) payable to *Register of Copyrights* in the amount you have calculated in part 3 of space D to cover the copyright royalty fee. *Royalty fees are required to be paid by an electronic deposit. See the Federal Register, August 10, 2006, 71 FR 45739.*

Fifth Send the completed statement of account, together with one legible copy of the statement of account, and all continuation sheets to *Copyright Office GC/I&R, Satellite Statement of Account, P.O. Box 70400, Washington, DC 20024-0400*. For courier deliveries, see www.copyright.gov/mail.html for updated information.

Sixth The Copyright Office will retain your statement of account and make it a part of its public records. You should therefore keep a copy of the entire statement as filed in case you need it for further reference.

NOTE: For detailed instructions concerning electronic payments, contact the Licensing Division for Circular 74, *How to Make Statutory License Royalty EFT Payments*, which is also available via the Internet at www.copyright.gov/circs/circ74.

The related statement of account must be filed by the appropriate deadline. Statements of account and electronic funds transfers received after the filing deadline are subject to interest assessment.

How the Statutory License Works

In general, having a statutory license means that a satellite carrier can retransmit the signals of superstations and, in some instances, network stations without violating the copyright law as long as it complies with certain statutory requirements.

- The satellite carrier can, without negotiated licenses or advance permission from copyright owners, retransmit the signals of any superstation to members of the public and retransmit the signals of any network station to persons who reside in unserved households so long as the retransmission is intended for private home viewing (except that superstations may also be retransmitted for viewing in commercial establishments) and the carrier makes a direct or indirect charge to each subscriber receiving the signals (or to a distributor, in the case of a carrier of superstations).
- The satellite carrier must file semiannual statements of account with the Copyright Office and must also deposit at the same time semiannual royalty payments. The related statement of account must be filed by the appropriate deadline accompanied by a cover letter. The amount of the royalty depends on the number of subscribers to each signal that is retransmitted outside the station's local market delivered by the carrier each month. However, certain subscribers receiving an out-of-market signal may be excluded from the royalty calculation so long as (1) that signal is deemed to be significantly viewed in the relevant community by the FCC, and (2) those subscribers receive local-into-local service. The royalty must be paid by electronic payment payable to *Register of Copyrights*.
- Any satellite carrier that retransmits the signals of a network station to unserved households must, 90 days after commencing such retransmission, submit to the network that owns or is affiliated with that station a list identifying (by name and address, including street or rural route number, city, state, and zip code) all subscribers to that service and a separate list, aggregated by designated market area (by name and address, including street or rural route number, city, state, and zip code), indicating those subscribers receiving significantly viewed stations. Then, on the 15th of each month, the satellite carrier must submit to the network a list so identifying any persons who have been added or dropped as subscribers since the last list was submitted and a separate list, aggregated by designated market area, so identifying those subscribers receiving significantly viewed stations whose service has been added or dropped. The carrier should contact the Licensing Division of the Copyright Office to determine the name and address of the network contact person to whom the subscriber lists should be submitted.

- The networks should submit to the Licensing Division of the Copyright Office the name and address of a contact person to whom subscriber lists should be submitted by satellite carriers that retransmit a signal of a station owned or affiliated with that network.

Why Having a Statutory License Is Important

Most television broadcasts contain copyrighted programming. Without a statutory license, a satellite carrier that scrambles the signal of a broadcast station and retransmits the signal to subscribers for a fee either has to negotiate licenses for all copyrighted programming it retransmits or risk substantial civil (or, in some cases, criminal) liability for multiple acts of copyright infringement.

Who Can Utilize the §119 Statutory License

Under the statute, the retransmission of a superstation is subject to statutory licensing only if it is made by a satellite carrier to the public for private home viewing or for viewing in a commercial establishment and the carrier makes a direct or indirect charge to the subscriber or to a distributor of the superstation.

The retransmission of a network station is subject to statutory licensing under the same circumstances with the additional requirement that the carrier must retransmit the network station only to unserved households.

If a satellite carrier has contracted with a distributor to market the carrier's retransmission service to the viewing public or otherwise act as an agent of the carrier, it is still the responsibility of the satellite carrier (and not the distributor) to obtain a statutory license for the retransmission service. If a cable system engages in distributorship activities on behalf of a satellite carrier, the cable system or distributor should segregate the subscription fees collected on behalf of the satellite carrier from those collected from cable subscribers pursuant to the section 111 cable statutory license. The cable system should only report in its section 111 statements of account the number of cable subscribers served and the amount of gross receipts collected pursuant to section 111 and should pay only royalties pursuant to the requirements of section 111.

Definitions

- A *satellite carrier* is defined as "an entity that uses the facilities of a satellite or satellite service licensed by the Federal Communications Commission, and operates in the Fixed Satellite Service under part 25 of title 47 of the *Code of Federal Regulations* or the Direct Broadcast Satellite Service under part 100 of title 47 of the *Code of Federal Regulations*, to establish and operate a channel of communications for point-to-multipoint distribution of television station signals, and that owns or leases a capacity or service on a satellite in order to provide such point-to-multipoint distribution, except to the extent that such entity provides such distribution pursuant to tariff under the Communications Act of 1934, other than for private home viewing pursuant to Section 119."
- A *superstation* is defined as "a television station, other than a network station, licensed by the Federal Communications Commission that is secondarily transmitted by a satellite carrier."
- *Private home viewing* is defined as "the viewing, for private use in a household by means of satellite reception equipment which is operated by an individual in that household and which serves only such household, of a secondary transmission delivered by a satellite carrier of a primary transmission of a television station licensed by the Federal Communications Commission."
- A *commercial establishment* means an "establishment used for commercial purposes, such as a bar, restaurant, private office, fitness club, oil rig, retail store, bank or other financial institution, supermarket, automobile or boat dealership, or any other establishment with a common business area; and does *not* include a multiunit permanent or temporary dwelling where private home viewing occurs, such as a hotel, dormitory, hospital, apartment, condominium, or prison."
- A *subscriber* is defined as "an individual or entity that receives a secondary transmission service by means of a secondary transmission from a satellite carrier and pays a fee for the service, directly or indirectly, to the satellite carrier or to a distributor in accordance with the provisions of Section 119."
- *Per subscriber per month* means each subscriber subscribing to the station in question, or to a package including such station, on the last day of a given month.
- A *network station* is defined as "(a) a television station licensed by the FCC, including any translator station or terrestrial satellite station that rebroadcasts all or substantially all of the programming broadcast by a network station, that is owned or operated by, or affiliated with, one or more of the television networks in the United States which offer an interconnected program service on a regular basis for 15 or more hours per week to at least 25 of its affiliated television licensees in 10 or more States; or (b) a noncommercial educational broadcast station (as defined in section 397 of the Communications Act of 1934)."
- A *distributor* is defined as "an entity which contracts to distribute secondary transmissions from a satellite carrier and, either as a single channel or in a package with other programming, provides the secondary transmission either directly to individual subscribers or indirectly through other program distribution entities in accordance with the provisions of Section 119."
- An *unserved household* is defined as a household that (a) cannot receive, through the use of a conventional, stationary, outdoor rooftop receiving antenna, an over-the-air signal of a primary network station affiliated with that net-

work of Grade B intensity as defined by the Federal Communications Commission under section 73.683(a) of title 47 of the *Code of Federal Regulations*, as in effect on January 1, 1999; (b) is subject to a waiver that meets the standards of subsection (a)(14) whether or not the waiver was granted before the date of the enactment of the Satellite Home Viewer Extension and Reauthorization Act of 2004; (c) is a subscriber to whom section 119(e) of title 17 of the *U.S. Code* applies, which provides that, until December 31, 2009, a subscriber who does not receive a signal of Grade A intensity (as defined in the regulations of the FCC under section 73.683(a) of title 47 of the *Code of Federal Regulations*, as in effect on January 1, 1999, or predicted by the FCC using the Individual Location Longley-Rice methodology described by the FCC in Docket No. 98-201) of a local network television broadcast station shall remain eligible to receive signals of network stations affiliated with the same network if that subscriber had satellite service of such network signal terminated after July 11, 1998, and before October 31, 1999, as required by this section, or received such service on October 31, 1999; (d) is a subscriber to whom section 119(a)(12) applies, which provides for (i) recreational vehicles as defined in regulations of the Secretary of Housing and Urban Development under section 3282.8 of title 24 of the *Code of Federal Regulations*; and (ii) commercial trucks that qualify as commercial motor vehicles under regulations of the Secretary of Transportation under section 383.5 of title 49 of the *Code of Federal Regulations*; or (e) is a subscriber to whom the exemption under section 119(a)(2)(B)(iii) applies, which provides for a subscriber to C-band service who received secondary transmission of network stations before any termination of such secondary transmissions before October 31, 1999.

- The term *local market*, in the case of both commercial and noncommercial television broadcast stations, is defined as “the designated market area in which a station is located, and (i) in the case of a commercial television broadcast station, all commercial television broadcast stations licensed to a community within the same designated market area are within the same local market; and (ii) in the case of a noncommercial educational television broadcast station, the market includes any station that is licensed to a community within the same designated market area as the noncommercial educational television broadcast station.” In addition, a station’s local market “includes the county in which the station’s community of license is located.” With respect to a low power television station, the term “local market” means “the designated market area in which the station is located.” Regarding certain areas outside of any designated market area, “any census area, borough, or other area in the state of Alaska that is outside of a designated market area, as determined by Nielsen Media Research, shall be deemed to be part of one of the local markets in the state of Alaska. A satellite carrier may determine which local market in the state of Alaska will be deemed to be the relevant local market in connection with each subscriber in such census area, borough, or other area.”

- The term *low power television station* means a “low power television station as defined under section 74.701(f) of title 47, *Code of Federal Regulations*, as in effect on June 1, 2004. For purposes of this paragraph, the term “low power television station” includes a low power television station that has been accorded primary status as a Class A television licensee under section 73.6001(a) of title 47, *Code of Federal Regulations*.”
- The *designated market area* is defined as “a designated market area, as determined by Nielsen Media Research and published in the 1999–2000 Nielsen Station Index Directory and Nielsen Station Index United States Television Household Estimates or any successor publication.”

NOTE: A satellite carrier does not pay a royalty fee for local retransmission of (1) superstation signals or (2) network signals to subscribers residing in unserved households.

NOTE REGARDING SIGNIFICANTLY VIEWED STATIONS: Pursuant to section 119(a)(3) of title 17 of the *United States Code*, as amended, satellite carriers are not required to pay a royalty for the retransmission of signals to a subscriber who resides in a community where that signal is significantly viewed, as determined by the FCC, so long as the satellite carrier provides local-into-local service to those subscribers under the section 122 statutory license. For a definition of “significantly viewed,” see 47 *CFR* §76.5 and §76.54 of FCC regulations (available at www.fcc.gov).

What a Statutory License Does Not Permit You to Do

The statutory authority given to satellite carriers to retransmit television broadcasts under a statutory license is limited in several ways:

- **Program Alteration or Commercial Substitution.** Satellite carriers are not permitted to alter the content of retransmitted programs; to change, delete, or substitute commercials or station announcements in or adjacent to programs being carried; or to combine the programs with programming from any other broadcast signal.
- **Geographic Limitation on Retransmissions.** Satellite carriers are not permitted to retransmit signals to subscribers that are not located in the United States (the United States includes its territories, trust possessions, and possessions).

Accounting Periods

The statute establishes two six-month accounting periods for purposes of computing the royalty fee and reporting the information called for in the statement of account. The first semiannual period runs from January through June of each calendar year, and the second runs from July through December. You must use these accounting periods whether or not they coincide with the beginning or ending of your satellite carrier’s fiscal year.

NOTE: If there were different owners during the accounting period, only the owner on the last day of the accounting period should submit a *single* statement of account and royalty fee payment covering the entire accounting period.

Filing Dates

Satellite carriers are given 30 days after the close of each accounting period in which to file their statements of account and royalty fees:

- For the January–June accounting period:
File between July 1 and July 30, inclusive;
- For the July–December accounting period:
File between January 1 and January 30, inclusive.

Statements of account and royalty fees received before the end of the accounting period will not be accepted. Statements and fees received after the July 30 or January 30 deadlines will be accepted for whatever legal effect they may have, if any. The Copyright Office takes no position as to what this effect will be, and a satellite carrier that files late runs a substantial risk of copyright infringement.

Interest Charges for Underpayments and Late Payments

Underpayments or late payments received after the filing deadline shall be subject to an interest assessment. Satellite carriers must calculate their own interest charge. (A worksheet is provided at space E, page 5.) The interest rate set for a specific accounting period is the U.S. Treasury Current Value of Funds Rate in effect on the first business day after the close of the filing deadline for that accounting period. Satellite carriers can obtain the interest rate for the applicable accounting period(s) at www.copyright.gov/licensing/interest-rate.pdf or by contacting the Licensing Division at (202) 707-8150 or licensing@loc.gov.

For underpayments and late payments, the interest shall begin to accrue on the first day after the close of the filing date for that accounting period. The accrual period ends on the date that the remittance is received in the Copyright Office.

NOTE: The Office shall not require, nor notify a satellite carrier of, an interest charge of \$5.00 or less.

Refunds

Refund requests must be received within 30 days after the close of the filing period (by March 1 or August 29), or before the expiration of 30 days from the date of receipt at the Copyright Office of the royalty payment that is the subject of the request, whichever time period is longer. Contact the Licensing Division for additional information.

<p>PRIVACY ACT ADVISORY STATEMENT (Required by Privacy Act of 1974, PL 93-579)</p> <p>Authority for Requesting This Information:</p> <ul style="list-style-type: none">• Title 17 USC §119 <p>Furnishing This Information Is:</p> <ul style="list-style-type: none">• Voluntary	<p>But If the Information Is Not Furnished:</p> <ul style="list-style-type: none">• It may be necessary to delay placement of this statement of account in the completed record of statements of account• You may be liable for civil or criminal penalties for copyright infringement with respect to retransmission of television stations (17 USC §§502–506, 509–510)	<p>Principal Uses of Requested Information:</p> <ul style="list-style-type: none">• Establishment and maintenance of a public record• Examination of the statement of account for compliance with legal requirements <p>Other Routine Uses:</p> <ul style="list-style-type: none">• Public inspection and copying• Preparation of public indexes• Preparation of search reports upon request	<p>Note:</p> <ul style="list-style-type: none">• No other advisory statement will be given to you in connection with this statement of account• Please retain this statement and refer to it if we communicate with you regarding this statement of account
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Special Notice about This Statement of Account

Satellite Royalty Fee Rates for Private Home Viewing

Under procedures set forth in the Satellite Home Viewer Extension and Reauthorization Act of 2004 (SHVERA), the royalty rates for analog superstations and network stations are 24 cents per subscriber per month. These same rates also apply to digital superstations and network stations. The rates are effective January 1, 2009. See the *Federal Register*, March 23, 2009, 74 FR 12092.

Satellite Royalty Fee Rates for Commercial Establishments

Under procedures set forth in the SHVERA, a satellite royalty fee rate of 48 cents per subscriber per month applies for the retransmission of analog and digital superstations in commercial establishments.

Space D under "Copyright Royalty Fee"

Space D of the form incorporates the rates that apply to analog and digital superstations and network stations for private home viewing and the rate that applies to superstations for viewing in a commercial establishment.

Electronic Payment of Royalty Fees Required

See the *Federal Register*, August 10, 2006 (71 FR 45739). For detailed instructions concerning electronic payments, contact the Licensing Division between 8:30 AM and 5:00 PM Eastern time by calling (202) 707-8150, faxing (202) 707-0905, or emailing licfiscal@loc.gov for circulars 74A (on payments via wire), 74B (on payments via Automated Clearing House credit), and 74C (on payments using pay.gov), which are also available at www.copyright.gov/circs/circ74. The remittance must be made payable to *Register of Copyrights*.

Photocopy Required

The Copyright Office amended Section 201.11 of Title 37 of the *Code of Federal Regulations* to require that a legible copy of the semiannual statement of account be submitted together with the original statement of account to the Copyright Office, effective July 1, 2005. See the *Federal Register*, May 26, 2005, 70 FR 30366.

Mailing Address

Return the completed statement of account to: *Copyright Office GC/1&R, Satellite Statement of Account, P.O. Box 70400, Washington, DC 20024-0400.*

If you have any questions concerning the use of this form, please contact the Licensing Division at:

PHONE: (202) 707-8150

FAX: (202) 707-0905

EMAIL: licensing@loc.gov

WEB: www.copyright.gov/licensing