

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554

In the Matter of )  
)  
)

Application of DISH Network L.L.C. for )  
Qualified Carrier Certification )  
)

MB Docket No. 10-124

FILED/ACCEPTED

JUN 30 2010

Federal Communications Commission  
Office of the Secretary

APPLICATION FOR QUALIFIED CARRIER CERTIFICATION

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[June 30, 2010]

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**Checklist of Qualified Carrier Certification Requirements Pursuant to Satellite Television Extension and Localism Act of 2010 (STELA)**

<b>General Statutory Requirements</b>	<b>Provision</b>
1. The satellite carrier provides an affidavit stating that, to the best of the affiant's knowledge, the carrier provides local service in all 210 DMAs, and listing those DMAs in which local service was provided as of STELA's enactment. <i>See</i> § 342(b)(1).	Shull Affidavit ¶¶ 2-3
2. The satellite carrier provides a list of each DMA in which local service was not provided as of STELA's enactment. <i>See</i> § 342(b)(2)(A).	Narrative at 2-3

<b>Requirements Where Local Service Not Provided Prior to STELA</b>	<b>Provision</b>
1. The satellite carrier provides the location of its local receive facility in each such DMA. <i>See</i> § 342(b)(2)(A).	Attachment D
2. The satellite carrier provides the number of households and maps showing the geographic distribution of such households in each such DMA based on the most recent census data. <i>See</i> § 342(b)(2)(B).	Attachment D
3. The satellite carrier provides maps showing that its satellite beams, as designed, are predicted to provide a "good quality satellite signal" to at least 90% of the households in each such DMA. <i>See</i> § 342(b)(2)(C).	Attachment D
4. The satellite carrier provides an affidavit stating that, to the best of the affiant's knowledge, there have been no satellite or sub-system failures subsequent to launch that would degrade the design performance to such a degree that a satellite transponder used to provide local service to each such DMA is precluded from delivering a "good quality satellite signal" to at least 90% of the households in each such DMA. <i>See</i> § 342(b)(2)(D).	Bair Affidavit ¶¶ 2-3
5. The "good quality satellite signal" determinations above used models of satellite antennas normally used by the satellite carrier's subscribers. <i>See</i> § 342(e)(2)(A)(i)(I).	Bair Affidavit ¶ 4
6. The "good quality satellite signal" determinations above used the same calculation methodology used to determine predicted signal availability in the top 100 DMAs. <i>See</i> § 342(e)(2)(A)(i)(II).	Bair Affidavit ¶ 4
7. Taking into account the factors set forth in § 342(e)(2)(A)(ii), the satellite carrier treats all television broadcast stations' signals the same with respect to the statistical multiplexor prioritization. <i>See</i> § 342(e)(2)(A)(ii)(I).	Povenmire Affidavit ¶ 2
8. Taking into account the factors set forth in § 342(e)(2)(A)(ii), the number of video signals carried on the satellite transponder used to provide local service to each such DMA is not more than the then current greatest number of video signals carried on any equivalent transponder serving the top 100 DMAs. <i>See</i> § 342(e)(2)(A)(ii)(II).	Povenmire Affidavit ¶ 2

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Qualified Carrier Certification	)	
	)	

**APPLICATION FOR QUALIFIED CARRIER CERTIFICATION**

DISH Network L.L.C. (“DISH”) hereby requests a qualified carrier certification pursuant to Section 342 of the Communications Act, 47 U.S.C. § 342, as enacted by the Satellite Television Extension and Localism Act of 2010 (“STELA”).<sup>1</sup> Under that provision, the Commission “shall issue” such a certification if:

- (1) DISH is providing local service pursuant to the statutory license under Section 122 of the Copyright Act, 17 U.S.C. § 122, in each of the 210 designated market areas (“DMAs”); and
- (2) with respect to each DMA in which DISH was not providing such local service as of the date of enactment of STELA:
  - (a) DISH’s satellite beams are designed, and predicted by the satellite manufacturer’s pre-launch test data, to provide a good quality satellite signal to at least 90 percent of the households in each such DMA based on the most recent census data released by the U.S. Census Bureau; and

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<sup>1</sup> Satellite Television Extension and Localism Act of 2010, Pub. L. No. 111-175, 124 Stat. 1218.

(b) there is no material evidence that there has been a satellite or sub-system failure subsequent to the satellite's launch that precludes the ability of DISH to satisfy the requirements of subparagraph (a) above.

Requirement (1) above is satisfied by the affidavit of David Shull, appended as Attachment A, which confirms that, since June 3, 2010, DISH has been providing, and now provides, local service pursuant to the statutory license under Section 122 of the Copyright Act, 17 U.S.C. § 122, to all 210 DMAs across the country.<sup>2</sup>

The affidavit of Mr. Shull also establishes that, as of February 27, 2010, the effective date of STELA's enactment,<sup>3</sup> DISH was providing local service to the 181 DMAs listed in his affidavit.<sup>4</sup> Thus, on that date, DISH was *not* providing local service in the following 29 DMAs:

1. Alpena, Michigan
2. Biloxi-Gulfport, Mississippi
3. Binghamton, New York
4. Bluefield-Beckley, West Virginia
5. Bowling Green, Kentucky
6. Columbus, Georgia
7. Elmira, New York
8. Eureka, California
9. Glendive, Montana
10. Greenwood-Greenville, Arkansas
11. Harrisonburg, Virginia
12. Hattiesburg-Laurel, Mississippi
13. Jackson, Tennessee
14. Jonesboro, Arkansas

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<sup>2</sup> See Affidavit of David Shull ¶ 2 (affirming that DISH provides local service in all 210 DMAs pursuant to the statutory license provided for in Section 122 of Title 17, United States Code).

<sup>3</sup> STELA § 307 ("Unless specifically provided otherwise, this Act, and the amendments made by this Act, shall take effect on February 27, 2010, and with the exception of the reference in subsection (b), all references to the date of enactment of this Act shall be deemed to refer to February 27, 2010, unless otherwise specified.").

<sup>4</sup> See Affidavit of David Shull ¶ 3 (listing the 181 DMAs in which DISH provided local service as of STELA's enactment).

15. Lafayette, Indiana
16. Lake Charles, Louisiana
17. Mankato, Minnesota
18. North Platte, Nebraska
19. Ottumwa, Iowa
20. Parkersburg, West Virginia
21. Presque Isle, Maine
22. Salisbury, Maryland
23. Springfield-Holyoke, Massachusetts
24. St. Joseph, Missouri
25. Utica, New York
26. Victoria, Texas
27. Watertown, New York
28. Wheeling, West Virginia
29. Zanesville, Ohio

Requirement (2)(a) above is satisfied by the affidavit of Rex Povenmire appended as Attachment B, the affidavit of David Bair appended as Attachment C, and the DMA-specific data and maps appended as Attachment D, which confirm that each of the satellite beams used by DISH to provide local service to each of these 29 DMAs is designed (and is predicted by the satellite manufacturer's pre-launch data) to provide a good quality satellite signal to at least 90 percent of the households in each such DMA based on the most recent census data released by the U.S. Census Bureau.

Mr. Bair's affidavit establishes that the power levels (as designed and as predicted by the satellite manufacturer's pre-launch tests, and as plotted on the maps included in Attachment D) of the satellite signals in each such beam are designed and predicted to achieve reception and demodulation at an availability level of at least 99.7 percent using models of satellite antennas normally used by DISH's subscribers and the same calculation methodology used by DISH to determine predicted signal availability in the top 100 DMAs.<sup>5</sup>

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<sup>5</sup> Affidavit of David Bair ¶ 4.

Mr. Povenmire's affidavit establishes that, taking into account the statutory factors set forth in 47 U.S.C. § 342(e)(2)(A)(ii), DISH treats all television broadcast stations' signals the same with respect to statistical multiplexer prioritization, and that the number of video signals in the relevant satellite transponders used to provide local service in each of the 29 DMAs listed above is not more than the current greatest number of video signals carried on any equivalent transponder serving the top 100 DMAs.<sup>6</sup>

Therefore, the affidavits of Messrs. Bair and Povenmire confirm that each of the satellite beams used by DISH to provide local service to each of the 29 DMAs listed above (as designed and as predicted by the satellite manufacturer's pre-launch tests, and as plotted on the maps included in Attachment D) meets the statutory definition of "good quality satellite signal."

Attachment D to this submission includes maps showing the geographic distribution of households in each of the 29 DMAs listed above based on the most recent census data released by the U.S. Census Bureau with superimposed effective isotropically radiated power predictions showing the contours of the satellite beams (as designed and tested) used by DISH to provide local service to each of those DMAs. These maps establish that 90 percent of such households in each of the 29 DMAs are located within the geographic area that such beams are designed to cover.

Therefore, because each of those satellite beams (as designed and as predicted by the satellite manufacturer's pre-launch tests, and as plotted on the maps included in Attachment D) meets the statutory definition of "good quality satellite signal" and 90 percent of households in each of the 29 DMAs are located within those beams, each of the satellite beams used by DISH to provide local service to each of these 29 DMAs is designed (and is predicted by the satellite

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<sup>6</sup> Affidavit of Rex Povenmire ¶ 2.

manufacturer's pre-launch tests) to provide a good quality satellite signal to at least 90 percent of the households in each such DMA.

Finally, requirement (2)(b) above is satisfied by the affidavit of David Bair, appended as Attachment C, which confirms that there have been no satellite or sub-system failures subsequent to the launch of the satellites used to provide local service in the 29 DMAs listed above that would degrade their design performance to such a degree that a satellite transponder used to provide local service to those DMAs is precluded from delivering a good quality satellite signal to at least 90 percent of the households in each such DMA based on the most recent census data released by the U.S. Census Bureau.<sup>7</sup>

Attachment E provides information on the 29 markets to which DISH was not providing local service prior to February 27, 2010. For each of those markets, the attachment identifies the local network stations being carried, any local network stations not being carried, the stations being imported to "fill" each short market under the temporary waiver issued by the U.S. District Court for the Southern District of Florida,<sup>8</sup> and the DMAs from which those stations are being imported.

Mr. Povenmire's affidavit also provides certain additional information requested by Commission officials. Specifically, the affidavit provides information regarding the criteria used by DISH to determine whether transponders used in the top 100 DMAs are "equivalent" to those used in the 29 DMAs where DISH was not providing local service as of February 27, 2010, as well as a list of the four distinct transponder configurations being used to provide local service to those 29 DMAs. Also, as requested by Commission officials, the affidavit of David Bair

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<sup>7</sup> Affidavit of David Bair ¶ 3.

<sup>8</sup> *CBS Broad. Inc. v. Echostar Commc'ns Corp.*, No. 98-2651 (S.D. Fla. June 2, 2010).

provides additional information regarding the calculation methodology used by DISH to determine predicted signal availability levels.

Based on the foregoing, DISH has met the statutory requirements for certification and respectfully requests that the Commission approve its request for qualified carrier certification under Section 342 of the Communications Act, 47 U.S.C. § 342, as enacted by STELA.

Respectfully submitted,

/s/

\_\_\_\_\_  
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June 30, 2010

**ATTACHMENT A**

**AFFIDAVIT OF DAVID SHULL**

## **AFFIDAVIT OF DAVID SHULL**

DAVID SHULL, being duly sworn, hereby deposes and says to the best of his knowledge and belief:

1. I am the Senior Vice President of Programming for DISH Network L.L.C. (“DISH”). In this capacity, I have direct knowledge of DISH’s retransmission of local broadcast signals and all matters covered by this affidavit.

2. Since June 3, 2010, DISH has been providing, and now provides, local service in all 210 designated market areas (“DMAs”) across the United States pursuant to the statutory license provided for in Section 122 of Title 17, United States Code.

3. As of February 27, 2010, the effective date of enactment of the Satellite Television Extension and Localism Act of 2010, DISH provided local service to the following 181 DMAs pursuant to the statutory license provided for in Section 122 of Title 17, United States Code:

1. Abilene-Sweetwater, TX
2. Albany, GA
3. Albany-Schenectady-Troy, NY
4. Albuquerque-Santa Fe, NM
5. Alexandria, LA
6. Amarillo, TX
7. Anchorage, AK
8. Atlanta, GA
9. Augusta, GA
10. Austin, TX
11. Bakersfield, CA
12. Baltimore, MD
13. Bangor, ME
14. Baton Rouge, LA
15. Beaumont-Port Arthur, TX
16. Bend, OR
17. Billings, MT
18. Birmingham (Anniston and Tuscaloosa), AL
19. Boise, ID

20. Boston, MA (Manchester, NH)
21. Buffalo, NY
22. Burlington, VT-Plattsburgh, NY
23. Butte-Bozeman, MT
24. Casper-Riverton, WY
25. Cedar Rapids-Waterloo-Iowa City and Dubuque, IA
26. Champaign and Springfield-Decatur, IL
27. Charleston, SC
28. Charleston-Huntington, WV
29. Charlotte, NC
30. Charlottesville, VA
31. Chattanooga, TN
32. Cheyenne, WY-Scottsbluff, NE
33. Chicago, IL
34. Chico-Redding, CA
35. Cincinnati, OH
36. Clarksburg-Weston, WV
37. Cleveland-Akron (Canton), OH
38. Colorado Springs-Pueblo, CO
39. Columbia, SC
40. Columbia-Jefferson City, MO
41. Columbus, OH
42. Columbus-Tupelo-West Point, MS
43. Corpus Christi, TX
44. Dallas-Ft. Worth, TX
45. Davenport, IA-Rock Island-Moline, IL
46. Dayton, OH
47. Denver, CO
48. Des Moines-Ames, IA
49. Detroit, MI
50. Dothan, AL
51. Duluth, MN-Superior, WI
52. El Paso, TX
53. Erie, PA
54. Eugene, OR
55. Evansville, IN
56. Fairbanks, AK
57. Fargo-Valley City, ND
58. Flint-Saginaw-Bay City, MI
59. Fresno-Visalia, CA
60. Ft. Myers-Naples, FL
61. Ft. Smith-Fayetteville-Springdale-Rogers, AR
62. Ft. Wayne, IN
63. Gainesville, FL
64. Grand Junction-Montrose, CO
65. Grand Rapids-Kalamazoo-Battle Creek, MI

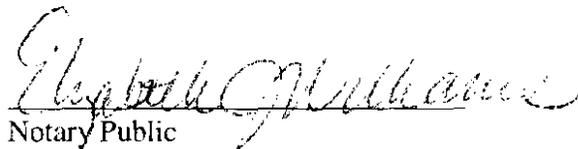
66. Great Falls, MT
67. Green Bay-Appleton, WI
68. Greensboro-High Point-Winston Salem, NC
69. Greenville-New Bern-Washington, NC
70. Greenville-Spartanburg, SC-Asheville, NC-Anderson, SC
71. Harlingen-Weslaco-Brownsville-McAllen, TX
72. Harrisburg-Lancaster-Lebanon-York, PA
73. Hartford and New Haven, CT
74. Helena, MT
75. Honolulu, HI
76. Houston, TX
77. Huntsville-Decatur (Florence), AL
78. Idaho Falls-Pocatello, ID
79. Indianapolis, IN
80. Jackson, MS
81. Jacksonville, FL
82. Johnstown-Altoona, PA
83. Joplin, MO-Pittsburg, KS
84. Juneau, AK
85. Kansas City, MO
86. Knoxville, TN
87. La Crosse-Eau Claire, WI
88. Lafayette, LA
89. Lansing, MI
90. Laredo, TX
91. Las Vegas, NV
92. Lexington, KY
93. Lima, OH
94. Lincoln and Hastings-Kearney, NE
95. Little Rock-Pine Bluff, AR
96. Los Angeles, CA
97. Louisville, KY
98. Lubbock, TX
99. Macon, GA
100. Madison, WI
101. Marquette, MI
102. Medford-Klamath Falls, OR
103. Memphis, TN
104. Meridian, MS
105. Miami-Fort Lauderdale, FL
106. Milwaukee, WI
107. Minneapolis-St. Paul, MN
108. Minot-Bismarck-Dickinson (Williston), ND
109. Missoula, MT
110. Mobile, AL-Pensacola (Ft. Walton Beach), FL
111. Monroe, LA-El Dorado, AR

112. Monterey-Salinas, CA
113. Montgomery-Selma, AL
114. Myrtle Beach-Florence, SC
115. Nashville, TN
116. New Orleans, LA
117. New York, NY
118. Norfolk-Portsmouth-Newport News, VA
119. Odessa-Midland, TX
120. Oklahoma City, OK
121. Omaha, NE
122. Orlando-Daytona Beach-Melbourne, FL
123. Paducah, KY-Cape Girardeau, MO-Harrisburg, IL
124. Palm Springs, CA
125. Panama City, FL
126. Peoria-Bloomington, IL
127. Philadelphia, PA
128. Phoenix, AZ
129. Pittsburgh, PA
130. Portland, OR
131. Portland-Auburn, ME
132. Providence, RI-New Bedford, MA
133. Quincy, IL-Hannibal, MO-Keokuk, IA
134. Raleigh-Durham (Fayetteville), NC
135. Rapid City, SD
136. Reno, NV
137. Richmond-Petersburg, VA
138. Roanoke-Lynchburg, VA
139. Rochester, MN-Mason City, IA-Austin, MN
140. Rochester, NY
141. Rockford, IL
142. Sacramento-Stockton-Modesto, CA
143. Salt Lake City, UT
144. San Angelo, TX
145. San Antonio, TX
146. San Diego, CA
147. San Francisco-Oakland-San Jose, CA
148. Santa Barbara-Santa Maria-San Luis Obispo, CA
149. Savannah, GA
150. Seattle-Tacoma, WA
151. Sherman, TX-Ada, OK
152. Shreveport, LA
153. Sioux City, IA
154. Sioux Falls (Mitchell), SD
155. South Bend-Elkhart, IN
156. Spokane, WA
157. Springfield, MO

158. St. Louis, MO
159. Syracuse, NY
160. Tallahassee, FL-Thomasville, GA
161. Tampa-St. Petersburg (Sarasota), FL
162. Terre Haute, IN
163. Toledo, OH
164. Topeka, KS
165. Traverse City-Cadillac, MI
166. Tri-Cities, TN-VA
167. Tucson (Sierra Vista), AZ
168. Tulsa, OK
169. Twin Falls, ID
170. Tyler-Longview (Lufkin and Nacogdoches), TX
171. Waco-Temple-Bryan, TX
172. Washington, DC (Hagerstown, MD)
173. Wausau-Rhineland, WI
174. West Palm Beach-Ft. Pierce, FL
175. Wichita Falls, TX-Lawton, OK
176. Wichita-Hutchinson, KS Plus
177. Wilkes Barre-Scranton, PA
178. Wilmington, NC
179. Yakima-Pasco-Richland-Kennewick, WA
180. Youngstown, OH
181. Yuma, AZ-El Centro, CA

\_\_\_\_\_  
David Shull  
Senior Vice President, Programming  
DISH Network L.L.C.

Sworn to before me this  
21<sup>st</sup> day of June, 2010

  
\_\_\_\_\_  
Notary Public

ELIZABETH J WILLIAMS  
NOTARY PUBLIC  
STATE OF COLORADO  
My Commission Expires 10/25/10

**ATTACHMENT B**

**AFFIDAVIT OF REX POVENMIRE**

## **AFFIDAVIT OF REX POVENMIRE**

REX POVENMIRE, being duly sworn, hereby deposes and says to the best of his knowledge and belief:

1. I am the Vice President, Corporate Initiatives for DISH Network L.L.C. (“DISH”). In this capacity, I am the technical interface with our subcontractors EchoStar Technologies L.L.C. and EchoStar Satellite Services L.L.C. on matters related to bandwidth, satellite receivers, and other technical issues. This affidavit is based upon my personal knowledge and upon information provided to me.

2. Taking into account the statutory factors set forth in 47 U.S.C. § 342(e)(2)(A)(ii), DISH treats all television broadcast stations’ signals the same with respect to statistical multiplexer prioritization; and the number of video signals carried in each of the satellite transponders being used to provide local service in the 29 designated market areas (“DMAs”) where DISH was not providing local service as of the date of enactment of the Satellite Television Extension and Localism Act of 2010 (February 27, 2010) is not more than the current greatest number of video signals carried on any equivalent transponder serving the top 100 DMAs.

3. To determine whether satellite transponders are “equivalent,” transponders are compared based on the following criteria:

- (a) forward error correction (“FEC”), which is influenced by the power level of the relevant satellite signal as designed; and
- (b) modulation.

4. Based on the above criteria, there are four distinct transponder configurations being used to provide local service in the 29 DMAs where DISH was not providing local service as of February 27, 2010:

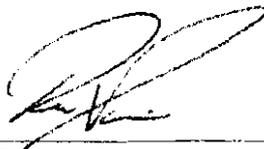
- (a) transponders using 5/6 FEC and QPSK modulation;
- (b) transponders using 7/8 FEC and QPSK modulation;
- (c) transponders using 5/6 FEC and QPSK-T modulation; and
- (d) transponders using 2/3 FEC and 8PSK modulation.

5. Since any given transponder may carry video signals that are in standard definition (“SD”) format, high definition (“HD”) format, or a combination of SD and HD formats and any given transponder may utilize MPEG-2, MPEG-4, or a combination of MPEG-2 and MPEG-4 compression, the number of video signals in a relevant transponder is converted to an equivalent number of MPEG-2 SD video signals using the proprietary conversion ratios described below.

6. The greatest number of equivalent MPEG-2 SD video signals in each distinct transponder configuration being used to provide local service in the 29 DMAs where DISH was not providing local service as of February 27, 2010, is then compared to the greatest number of equivalent MPEG-2 SD video signals carried on an equivalent transponder serving the top 100 DMAs.

7. The proprietary conversion ratios referenced above are derived from the then-current maximum number of SD format video signals that may be carried using MPEG-2 or MPEG-4 compression, and the then-current maximum number of HD format video signals that may be carried using MPEG-2 or MPEG-4 compression, on each distinct transponder configuration being used to provide local service in the 29 DMAs where DISH was not providing local service as of February 27, 2010. These conversion ratios are updated from time to time to reflect the utilization of advances in technology that do not circumvent the intent of 47

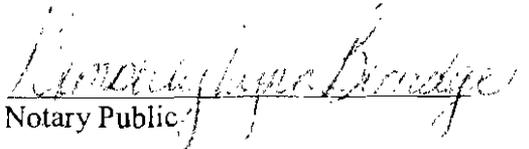
U.S.C. § 342(e)(2)(A)(ii) to provide for non-discriminatory treatment with respect to any comparable television broadcast station signal.



Rex Povenmire  
Vice President, Corporate Initiatives  
DISH Network L.L.C.

Sworn to before me this  
12<sup>th</sup> day of June, 2010



  
Notary Public

*My commission expires 6/30/2012*

**ATTACHMENT C**

**AFFIDAVIT OF DAVID BAIR**

## **AFFIDAVIT OF DAVID BAIR**

DAVID BAIR, being duly sworn, hereby deposes and says to the best of his knowledge and belief:

1. I am the Senior Vice President of Space Programs and Operations for EchoStar Satellite Services L.L.C., which has contracted to monitor and control satellite operations for DISH Network L.L.C. ("DISH"). This affidavit is based upon my personal knowledge and upon information provided to me.

### **Operational Status of Satellites**

2. The following satellites are being used to provide local service in the 29 designated market areas ("DMAs") where DISH was not providing local service as of the date of enactment of the Satellite Television Extension and Localism Act of 2010 (February 27, 2010):

EchoStar 14 at 118.9° W.L.  
EchoStar 10 at 110.2° W.L.  
Ciel-2 at 128.85° W.L.  
EchoStar 8 at 77° W.L.

3. As of the date of this affidavit, there have been no satellite or sub-system failures subsequent to the launch of these satellites that would degrade their design performance to such a degree that a satellite transponder used to provide local service to those 29 DMAs is precluded from delivering a good quality satellite signal to at least 90 percent of the households in each such DMA based on the most recent census data released by the United States Census Bureau.

### **Signal Availability Calculations**

4. Utilizing the same calculation methodology used by DISH to determine predicted signal availability in the top 100 DMAs and models of satellite antennas normally used by DISH subscribers, the power levels (as designed, and as plotted on the maps included in Attachment D) of the satellite signals used to provide local service in each of the 29 DMAs where DISH was not

providing local service as of the date of enactment of the Satellite Television Extension and Localism Act of 2010 (February 27, 2010) are predicted to achieve reception and demodulation of the signals at availability levels of at least 99.7 percent.

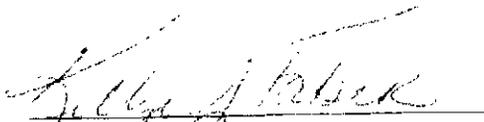
5. The calculation methodology described above takes into account the following principal parameters:

- (i) the uplink and downlink portions of the end-to-end satellite signal,
- (ii) rain loss using the International Telecommunication Union (“ITU”) 618.6 rain rate data and ITU rain region boundaries,
- (iii) atmospheric loss,
- (iv) carrier to interference ratio (“C/I”) terms due to adjacent satellite interference,
- (v) C/I terms due to aggregate adjacent beam interference,
- (vi) cross polarization degradation,
- (vii) forward error correction, and
- (viii) modulation.



David Bair  
Senior Vice President  
Space Programs and Operations  
EchoStar Satellite Services L.L.C.

Sworn to before me this  
22<sup>nd</sup> day of June, 2010



Notary Public

KELLYE J. FABER  
NOTARY PUBLIC  
STATE OF COLORADO  
My Commission Expires 01/07/12