



December 7, 2011

**BY ELECTRONIC FILING**

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

Re: *MB Docket No. 11-93*

Dear Ms. Dortch:

This is to inform you that, on December 5, 2011, Stacy Fuller of DIRECTV, Inc., Alison Minea of DISH Network L.L.C., and undersigned counsel met with Dave Grimaldi, Chief of Staff and Media Legal Advisor for Commissioner Clyburn, to highlight the especially heavy burdens that implementation of the CALM Act could impose on DBS operators that transmit hundreds of channels to subscribers nationwide. Specifically, they discussed the resources that would have to be reallocated if they were required to monitor commercial loudness on each of the channels they transmit for a continuous 24-hour period each year. Because there is no equipment currently available that can automatically determine whether a spike in loudness reflects an improperly calibrated commercial rather than a particularly loud portion of the long-form content (*e.g.*, a series of explosions), the burden imposed by such detailed monitoring for each of the several hundred channels DIRECTV and DISH Network transmit would be significant.

They also discussed two alternatives that could ameliorate this burden while still achieving the Commission's goals. First, the period during which each test is performed could be reduced (*e.g.*, from 24 hours to 6 hours). Second, the number of channels to be monitored each year could be reduced (*e.g.*, from 100% each year to 50%). Especially in combination, these two alternatives would significantly reduce the burden on MVPDs yet still ensure that each channel they transmit is subject to monitoring on a regular basis to detect overloud commercials.

In addition, they discussed the problematic potential for imposing what amounts to strict liability on a distributor for unresolved loudness issues caused by a programmer, even if that distributor took all reasonable steps to identify the source of a problem and work with the programmer to correct it. In such a case, it would be punitive to impose liability on a distributor that has done everything the Commission has required and could reasonably expect.

**WILTSHIRE & GRANNIS LLP**

Marlene H. Dortch  
December 7, 2011  
Page 2 of 2

Respectfully submitted,

/s/

William M. Wiltshire  
*Counsel for DIRECTV*

cc: Dave Grimaldi