

BEFORE THE
Federal Communications Commission
WASHINGTON, D.C. 20554

In re Petition of) MB Docket 12-8
) CSR-8562-E
)
) **PSID No. 000320**
Time Warner Cable Inc.) Island of Hawaii, Hawaii HI0022; HI0040; HI0079;
) HI0096; HI0101; HI0102;
) HI0103; HI0104; HI0105;
) HI0106; HI0109; HI0110;
) HI0111
) MB Docket 12-16
) CSR-8579-E
)
) **PSID No. 000295**
) Island of Hawaii, Hawaii HI0020; HI0023; HI0024;
) HI0025; HI0026; HI0027;
) HI0028; HI0029; HI0030;
) HI0031; HI0032; HI0056;
) HI0075; HI0078; HI0083;
) HI0093
)
For Determination of)
Effective Competition)

To: Chief, Media Bureau

REPLY

Craig A. Gilley
EDWARDS WILDMAN PALMER LLP
1255 23rd Street NW – Suite 800
Washington, D.C. 20037
(202) 939-7900

Counsel for Time Warner Cable Inc.

February 23, 2012

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SUMMARY

Time Warner Cable Inc. herein responds to the Opposition filed by State of Hawaii's Department of Commerce and Consumer Affairs (the "DCCA") in opposition to Time Warner Cable's Petition requesting confirmation that its cable system serving the Island of Hawaii, Hawaii is subject to effective competition pursuant to Section 623 of the Communications Act. As Time Warner Cable demonstrated in the Petition, effective competition exists in the Franchise Area under the competing provider 50/15 test because the DBS satellite providers DirecTV and DISH Network are each independently available to more than 50 percent, and are collectively subscribed to by more than 15 percent, of the households there.

In its Opposition, the DCCA presents four arguments against granting the Petition, each of which is responded to herein. First, the DCCA argues that because Time Warner Cable's Island of Hawaii cable system operates under two legacy state cable franchises, there should be two independent showings that the 50/15 test is met in each separate franchise area. But as demonstrated herein, regardless of whether the analysis considers the entire Island of Hawaii or the two separate franchise areas, the test is still met because DBS Penetration exceeds 15 percent in each legacy franchise area. Accordingly, regardless of whether the analysis is done on an island wide or on a dual legacy franchise basis, it is clear the DBS providers serve well in excess of 15 percent of the relevant households.

Second, the DCCA requests that the DBS penetration calculations be adjusted two ways to account for the presence of vacation homes and for areas unserved by Time Warner Cable. Neither is warranted. As demonstrated below, neither of these requests is warranted by Commission rules, precedent or the facts in this case. Third, notwithstanding the existence of thousands of DBS customers across the Island of Hawaii, the DCCA claims that the island's western geographic location restricts the ability of island residents to receive the DBS Providers'

services. The DCCA surmises that a severely shallow angle at which island residents have to orient their dishes to receive DBS service, most residents, and especially those whose line of sight is blocked by volcanoes, simply can not receive DBS service. As demonstrated herein, there is in fact low elevation angle problem on the Island of Hawaii as DBS customers on the island would have dishes installed at elevation angles that are much less severe than those of most customers in the continental 48 states. Finally, the DCCA argues that despite the existence of thousands of island DBS customers, island residents are not aware of their ability to obtain DBS service. As described herein, as there are two very active retailers on the island, both aggressively marketing and installing both DirecTV and Dish Network services, and as there are over 12,000 island households now subscribing to one of these services, the DCCA's argument falls short.

For all the reasons stated in the Petition, and for the reasons stated herein, the Commission should now expeditiously deem Time Warner Cable's cable system serving the Island of Hawaii subject to effective competition.

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)	Island of Hawaii, Hawaii	HI0020; HI0023; HI0024;
)		HI0025; HI0026; HI0027;
)		HI0028; HI0029; HI0030;
)		HI0031; HI0032; HI0056;
)		HI0075; HI0078; HI0083;
)		HI0093
For Determination of)		
Effective Competition)		

To: Chief, Media Bureau

REPLY

Time Warner Cable Inc. ("Time Warner Cable") by its attorneys, and pursuant to Sections 76.7 of the Commission's rules,¹ hereby responds to the Opposition filed by the State of Hawaii's Department of Commerce and Consumer Affairs (the "DCCA") in opposition to Time Warner Cable's Petition requesting confirmation that Time Warner Cable's cable system serving the Island of Hawaii, Hawaii is subject to effective competition and therefore exempt from any rate regulation imposed pursuant to Section 623 of the Communications Act of 1934 (the "Act").²

¹ 47 C.F.R. § 76.7.

² 47 U.S.C. § 543(a)(2).

Pursuant to Section 623(l)(1)(B) of the Act, a cable system is considered subject to effective competition (and therefore exempt from rate regulation) under the competing provider “50/15” test if the franchise area is:

(i) served by at least two unaffiliated multichannel video programming distributors each of which offers comparable video programming to at least 50 percent of the households in the franchise area; and

(ii) the number of households subscribing to programming services offered by multichannel video programming distributors other than the largest multichannel video programming distributor exceeds 15 percent of the households in the franchise area.³

As described in the Petition, effective competition exists on the Island of Hawaii because the direct-to-home (“DTH”) satellite providers DirecTV and DISH Network (collectively the “DBS Providers”), are each independently available to more than 50 percent, and are collectively subscribed to by more than 15 percent, of the households there.

In its Opposition, the DCCA presents four arguments against granting the Petition. First, it claims that because Time Warner Cable’s Island of Hawaii cable system operates under two legacy state cable franchises, the Petition’s island wide showing of DBS Provider subscriber penetration in excess of 15 percent is insufficient. Instead, the DCCA argues that each separate franchise area must independently meet the test. Second, the DCCA argues that the DBS Provider penetration calculations should be adjusted to account for vacation homes and areas of the island not served by Time Warner Cable. Third, the DCCA argues that because of the geographic location of the Island of Hawaii, there are technical limitations on the ability of island residents to receive the DBS Providers’ services. According to the DCCA, these limitations overcome the presumption that each of the DBS Providers offer their services to more than 50 percent of the island’s households. Finally, the DCCA asserts that the DBS Providers’ services are not widely marketed on the island, indicating that island residents are not reasonably aware that they may purchase DBS service. Each of these arguments fail for the following reasons.

³ 47 U.S.C. § 543(l)(1)(B); *see also* 47 C.F.R. § 76.905(b)(2).

I. DBS Penetration Exceeds 15 Percent, Regardless of Whether The Analysis Considers The Entire Island of Hawaii or Two Separate Legacy Franchise Areas.

The DCCA argues that because Time Warner Cable's Island of Hawaii cable system operates under two legacy state cable franchises, the Petition's island wide showing that DBS penetration exceeds 15 percent is insufficient. Instead, the DCCA argues there should be two independent showings that the test is met in each separate franchise area. But as demonstrated below, regardless of whether the analysis considers the entire Island of Hawaii or the two separate franchise areas, the test is still met because DBS Penetration exceeds 15 percent in each legacy franchise area.

Time Warner Cable operates a single cable system throughout the entire Island of Hawaii. The current unified system was at one time two systems, one serving the eastern half of the island, and the other serving the western half. Because of this, there remain two legacy franchise areas on the island (an east and a west), reflecting the service boundaries of the two systems that have now been integrated. Since April 2009, the cable system has been in the franchise renewal process with the DCCA for both franchises.⁴ As there is now only one cable system serving all of the island, Time Warner has requested as part of the renewal that the two franchises be consolidated into one island-wide cable franchise.⁵ While that request has not been opposed, and the parties have been negotiating the franchise renewal as if the request would eventually be granted, the DCCA is correct that as of this moment the system operates on the Island of Hawaii pursuant to the two separate franchises. But regardless of whether the effective competition analysis treats the Island of Hawaii as one or two franchise areas, effective competition still exists as DBS penetration well exceeds 15 percent in each franchise area.

⁴ The renewal originally scheduled to be completed in November 2011, has now been delayed until March 31, 2011. See Letter Agreement to Extend Deadline to March 1, 2012, *available at* <<http://hawaii.gov/dccaihar/catv/twefranchiserenewal/Letter-Agreement-to-Extend-Deadline-to-March-1-2012.pdf>>.

⁵ See Time Warner Cable's Request to Consolidate Renewal Proceedings and Issuance of Consolidated Franchise for East Hawaii and West Hawaii Franchises, *available at* <http://hawaii.gov/dccaihar/catv/twefranchiserenewal/twe_request_consolidate_renewal_proceedings_and_is.pdf>.

The western franchise area encompasses six of the island's twenty-one Census tract numbers (213 through 218). According to the 2010 Census, these tracts, and thus the western franchise area, contain 26,257 of the island's 67,096 occupied households.⁶ Of the 32 five digit zip codes used on the island, eleven (96704, 96719, 96725, 96726, 96737, 96738, 96739, 96740, 96745, 96750 and 96755) overlap entirely with this western franchise area, while one (96743) partially overlaps.⁷ According to the 2010 Census, these twelve zip codes contain 28,049 occupied households.⁸ According to the Satellite Broadcasting Communications Association ("SBCA"), which has been charged with the task of providing the required DBS Provider combined subscriber data for effective competition purposes, an aggregate total of 4,598 DBS Provider subscribers receive competing services within these twelve zip codes.⁹

The eastern franchise area encompasses all the remaining island Census tract numbers, (201 through 212, 219, 220 and 221). According to the 2010 Census, these tracts, and thus the eastern franchise area, contain a total of 40,839 occupied households.¹⁰ Of the 32 five digit zip codes used on the island, twenty (96710, 96718, 96720, 96721, 96727, 96728, 96743, 96749, 96760, 96764, 96771, 96772, 96773, 96774, 96776, 96777, 96778, 96780, 96781, 96783 and 96785) lie entirely within this eastern franchise area, with one zip code (96743 again) partially overlapping.¹¹ According to the 2010 Census, these twenty-one zip codes contain 43,386

⁶ Exhibit A, 2010 Census Household Counts for Census Tracts in the Hawaii West franchise area.

⁷ Exhibit B, Hawaii Zip Code / Franchise Area Boundary Map.

⁸ Exhibit C, 2010 Census Household Counts for Zip Codes Overlapping the Hawaii West franchise area. Note that there are no counts provided by the Census for zip codes 96739 and 96745 as both are entirely contained within zip code 96740, and thus their household counts are already included by the Census in the count for zip code 96740.

⁹ Exhibit D, SBCA DBS Subscriber Count Report for Zip Codes Overlapping the Hawaii West franchise area.

¹⁰ Exhibit E, 2010 Census Household Counts for Census Tracts in the Hawaii East franchise area.

¹¹ Exhibit B, Hawaii Zip Code / Franchise Area Boundary Map.

occupied households.¹² According to the SBCA, an aggregate total of 8,210 DBS Provider subscribers receive competing services within these twenty-one zip codes.¹³

Because there is one zip code (96743) that partially overlaps each of the two franchise areas, and thus the overlap between zip codes and the franchise areas is less than perfect, an allocation must be performed to accurately determine DBS Provider penetration rates in the two franchise areas. Below is a detailed calculation applying the Commission approved zip code allocation formula¹⁴ to the two franchise areas using the respective household and DBS subscriber data detailed above, with the DBS penetration results for each franchise area in column F.

Franchise Area	A	B	C	D	E	F
Hawaii West	26,257	28,049	0.94	4,598	4304.24	16.39%
Hawaii East	40,839	43,386	0.94	8,510	8010.42	19.61%

A = Total Franchise Households (from 2010 Census)

B = Total Five-Digit Zip Code Households (from 2010 Census)

C = Allocation % (A/B)

D = Total Five-Digit Zip Code DBS Subs (from SBCA)

E = DTH Subs Allocated to Franchise Area (CxD)

F = DTH Penetration in Franchise Area (E/A)

In both the western and eastern franchise areas, the DBS Provider penetration rate comfortably exceeds the 15 percent statutory threshold. Accordingly, regardless of whether the analysis is done on an island wide (*see* Petition) or on a dual franchise basis, it is clear the DBS providers serve well in excess of 15 percent of the relevant households.

II. Adjustments to The DBS Penetration Calculations Are Not Warranted.

The DCCA next requests that the DBS penetration calculations be adjusted two ways to account for the presence of vacation homes and for areas unserved by Time Warner Cable.

¹² Exhibit F, 2010 Census Household Counts for Zip Codes Overlapping the Hawaii West franchise area. Note that there are no counts provided by the Census for zip codes 96739 and 96745 as both are entirely contained within zip code 96740, and thus their household counts are already included in the count for 96740.

¹³ Exhibit G, SBCA DBS Subscriber Count Report for Zip Codes Overlapping the Hawaii East franchise area.

¹⁴ *See, e.g., Comcast of Dallas, L.P.*, 2005 WL 3041351 (MB November 14, 2005) at 2 (approving of a cable operator's use of a Media Business Corporation "allocation factor,

Neither is warranted. The first request, that DBS Provider penetration calculations be adjusted to account for vacation homes on the island is directly contrary to Commission rule 76.905(c) which unequivocally directs that for effective competition purposes “households shall not include those dwellings that are used solely for seasonal, occasional, or recreational use.”¹⁵ The Commission has explained that “the best and most constant indicator of local viewers’ choices is represented by the full-time residents of an area,” as “it is the full-time residents who are most affected by the determination whether their cable rates are subject to regulation” and that the alternative, including part-time residents in the effective competition counts, would “would eviscerate the validity of this measure as an indicator of the presence of effective competition.”¹⁶ Faithful to the rule and underlying policy, the Commission has never, as requested here, discounted DBS penetration rates to account for vacation or seasonal homes, or any other unoccupied households within a franchise area for that matter.

The second request, that the calculations be adjusted to account for areas on the island not passed by Time Warner Cable’s cable system, is equally unjustified. For a variety of reasons, a cable operator commonly does not build out a cable system to pass all of the households it is entitled to serve in a franchise area. Often, as here, there are a small number of households in remote locations, such that building out cable plant to every corner of the franchise area can not be financially justified. The Commission has acknowledged this fact, restricting franchise area calculation adjustment to only situations where a cable operator decides to serve only a small, discreet portion of a larger franchise areas.¹⁷ Here, where unserved households are interspersed

¹⁵ 47 C.F.R. § 76.905(c).

¹⁶ *Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation, Thirteenth Report and Order*, 9 FCC Rcd 4316, ¶ 17 (1994). Indeed, the wisdom of the Commission’s reliance on full-time residents as those most directly affected by rate regulation is borne out by the DCCA’s concession that the vast majority of part-time island residents own “high end vacation homes.” Opposition at 16.

¹⁷ *Implementation of Sections of the Cable Television Consumer Protection & Competition Act of 1992: Rate Regulation, First Reconsideration Order*, 9 FCC Rcd 1164, 1180 ¶ 25 (1993) (“[T]here may be some limited situations (such as, for example, where a system operator has county-wide operating rights but has determined to serve only a specific named community within that area) where use of a more restricted ‘franchise area’ definition may be both appropriate and consistent with the statutory language. . . Such a showing, however, will be limited to situations in which a system operator has itself, through its own conduct, self-defined the areas to be served to such

in a small number of particularly remote pockets throughout the franchise areas, there is no justification for any such adjustment.

III. There Are No Actual Technical Impediments to Receipt of DBS Service by Households On the Island of Hawaii.

As explained in the Petition, a satellite based multichannel video service is deemed to be technically available in a given franchise area if the service footprint of the service's satellites covers the franchise area.¹⁸ The Commission has repeatedly determined that the services of both DBS Providers are technically available throughout the entire United States due to the nature of the services being delivered by geostationary satellites and the DBS Providers' complete nationwide satellite footprint.¹⁹ Similarly, the DBS Providers are deemed to fully each independently satisfy the 50 percent threshold of the 50/15 test due to their nationwide satellite footprints.²⁰ As shown in the Petition, according to both DirecTV's and Dish Network's websites, each DBS Providers' satellite footprint includes all of the islands of Hawaii, which obviously include the Island of Hawaii and Time Warner Cable's franchise areas.²¹ And as demonstrated both in the Petition and again above, this is obviously factually the case as the DBS Providers have thousands of customers all over the Island of Hawaii, in both east and west franchise areas, and in every zip code. For all these reasons, there are obviously no technical impediments to the receipt of the DBS Providers' services by potential customers on the Island of Hawaii.

an extent that this redefined area accurately portrays the operator's 'franchise area.' The fact that a franchise area has not as yet been filled out by construction of a system would not by itself be taken as redefining the service area.”(emphasis added).

¹⁸ *Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation, Report and Order*, 8 FCC Rcd 5631, ¶ 32 (1993) (“Rate Order”).

¹⁹ *See, e.g., Bright House Networks, LLC, Petition for Determination of Effective Competition*, Memorandum Opinion and Order, 22 FCC Rcd 4390, ¶ 6 (Med. Bur. 2007) (“Bright House Networks”).

²⁰ *Id.*

²¹ *See* http://support.directv.com/app/answers/detail/a_id/1923/~is-directv-available-in-hawaii%3F, (“Is DIRECTV available in Hawaii? Yes. Hawaii residents can enjoy all DIRECTV programming, including local channels.”); http://www.dishnetwork.com/packages/hawaii/programming/default_es.aspx.

Notwithstanding the existence of thousands of DBS customers across the Island of Hawaii, the DCCA claims that the island's western geographic location restricts the ability of island residents to receive the DBS Providers' services. According to the DCCA's theory, "the relative low elevation angle between the DBS providers' satellites and the Island of Hawaii results in a large portion of the island being unable to receive DBS signals."²² The DCCA surmises that given the severely shallow angle at which island residents have to orient their dishes to receive DBS service, most residents, and especially those whose line of sight is blocked by volcanoes,²³ simply can not receive DBS service. Because of these limitations, the DCCA asserts there should be no presumption that the DBS Providers offer their services to more than 50 percent of the island's households. Notably, the DCCA provides no factual details or engineering analysis to back up any of these assertions.

The DCCA's theory is fantasy as there is, in fact, no current low elevation angle problem on the Island of Hawaii at all. The Island of Hawaii is located roughly in the 155-156°W longitudes, and much closer to the equator than the mainland United States. Dish Network provides multichannel video service to all of Hawaii via a spot beam from the geostationary satellite Ciel 2 operating at 129°W longitude.²⁴ To receive service from this satellite, a Dish Network customer on the Island of Hawaii would install a receive dish elevated to an angle of roughly 52 degrees relative to the horizon.²⁵ Similarly, DirecTV provides multichannel video service to Hawaii from the geostationary satellite DirecTV 7S operating at 119°W longitude.²⁶

²² Opposition at 5.

²³ Opposition at 5.

²⁴ See Exhibit H, Granted Application by Echostar Satellite Operating LLC to Modify Blanket Earth Station Authorization License to (1) Add Ciel 2, a Canadian-licensed DBS Satellite At 129 °W longitude as a Point of Communications, and (2) Increase the Number of Authorized Receive-only Earth Stations from 1,000,000 to 5,000,000), File No. SES-MFS-20080926-01242 (granted Int. Bur. Jan. 1, 2009) at 3 ("The satellite will use 16 DBS channels (channels 17-32) on one of two wide beams that cover the U.S. and Canada respectively. The remaining 16 DBS channels will be re-used multiple times across 53 spot beams focused on numerous areas in North America (including Alaska and Hawaii).") (*emphasis added*).

²⁵ Exhibit I, Report from Satcalculator.com for satellite dish orientation parameters and instructions for a residential Dish Network installation on the Island of Hawaii.

²⁶ See DirecTV Press Release, available at <investor.directv.com/releasedetail.cfm?releaseid=286611>.

To receive service from this satellite facility, a Dish Network customer on the Island of Hawaii would install a dish elevated to roughly 42 degrees relative to the horizon.²⁷ Given these non-acute dish elevation angles, in order for the DCCA's theory that most island residents are unable to receive DBS service to be correct, a majority of island residents would have to reside immediately under sheer volcanic cliffs. Not surprisingly, the DCCA does not, and could not, present any evidence that this is actually the case.

These elevation angles are also unremarkable as they are less shallow than elevation angles used by DBS customers in much of the continental United States. For example, a Dish Network customer in Annapolis, Maryland would have a much shallower elevation angle at approximately 30 degrees to the horizon;²⁸ a Dish Network customer in Madison, Wisconsin would have an elevation angle at approximately 34 degrees;²⁹ and a Dish Network customer in Portland, Oregon would have an elevation angle at approximately 37 degrees.³⁰

For all these reasons, the presumptions that the DBS Providers are technically available and actually available to more than 50 percent of households within the Island of Hawaii franchise areas remain valid.

IV. Because Thousands Have Actually Done So, Island Residents Are Obviously Well Aware That They Can Subscribe to the DBS Providers' Services.

The Commission has repeatedly held that the DBS Providers' extensive nationwide subscribership, combined with a local DTH penetration of more than 15 percent in any given franchise area, is an accurate sign that potential subscribers within that franchise area are "reasonably aware" of the availability of the DBS Providers' services.³¹ For these reasons, the

²⁷ Exhibit J, Report from Satcalculator.com for satellite dish orientation parameters and instructions for a residential DirecTV Network installation on the Island of Hawaii.

²⁸ Exhibit K, Report from Satcalculator.com for satellite dish orientation parameters and instructions for a residential Dish Network installation in Annapolis, Maryland.

²⁹ Exhibit L, Report from Satcalculator.com for satellite dish orientation parameters and instructions for a residential Dish Network installation in Madison, Wisconsin.

³⁰ Exhibit M, Report from Satcalculator.com for satellite dish orientation parameters and instructions for a residential Dish Network installation in Portland, Oregon.

³¹ Indeed, the Commission has "found households in a franchise area to be reasonably aware that they may purchase DBS service solely based on evidence of DBS's nationwide growth and local subscriptions, without reference to

Commission has not required 50/15 Test petitioners to submit evidence of the DBS Providers' marketing and advertising materials.³² Here, the presence of thousands of DBS Provide subscribers in the Franchise Area is sufficient evidence in and of itself that island residents are well aware of their ability to obtain video service from a DBS Provider.

Despite the existence of thousands of island DBS customers, the DCCA asserts that island residents are not aware of their ability to obtain competing MVPD service because the DBS Providers' services are not widely marketed on the island. In support of this claim, the DCCA cites to two 2006 filings that it made with the Commission explaining that DBS service was not widely marketed on the island at that time,³³ and to the Commission's 2009 Thirteenth Annual Report acknowledging one of those 2006 submissions. The DCCA claims that it is unaware of any circumstances that have changed since those filings.

But much has indeed changed since 2006. There are now two very active retailers on the island, MicroCom³⁴ in Kailua Kona and Big Island Satellite in Keaau,³⁵ actively marketing and installing both DirecTV and Dish Network services. Again, their success is attested to by the fact that over 12,000 island households now subscribe to one of the DBS Providers. Also since 2006, DBS Providers have launched new satellites and services to allow them to fully serve Hawaiian residents with hundreds of video programming channels. As described above, at the beginning of 2009, Dish Network began providing video signals via the Ciel 2 satellite from the 129°W longitude slot, and at the end of 2007, DirecTV began providing video service including local broadcast channels to Hawaii via its DirecTV 7S satellite operating at the 119°W longitude slot. As both of these satellites now allow Hawaiian DBS customers to access hundreds of

advertising or other promotion." *Adelphia Communications, et al., Nineteen Unopposed Petitions for Determination of Effective Competition in Forty-Seven Local Franchise Areas*, Memorandum Opinion and Order, 20 FCC Rcd 7503, ¶ 3 (Med. Bur. 2005).

³² *Id.*

³³ See Comments of the State of Hawaii in MB Docket 06-189, available at <http://apps.fcc.gov/ecfs/document/view?id=6518618319>.

³⁴ See MicroCom website at <microcom.tv/satellite-tv>.

³⁵ See Big Island Satellite website at <www.bisatellite.com>.

digital video programming channels that were unavailable in 2006, and eliminate any “low elevation angle” dish issues, it is no wonder that thousands of island residents are aware that they can and do subscribe to the DBS Providers’ services.

CONCLUSION

As previously demonstrated in the Petition, and unrebutted by the DCCA’s Opposition, effective competition exists on the Island of Hawaii under the competing provider 50/15 Test. For these reasons, the Commission should expeditiously find that Time Warner Cable’s cable system there is not subject to rate regulation as to basic service or other forms of rate regulation specified in 47 U.S.C. § 543. The undersigned verifies that he has read this Response and that to the best of his knowledge, information and belief formed after reasonable inquiry, it is well grounded in fact, warranted by existing law, and not interposed for any improper purpose.

Respectfully submitted,

TIME WARNER CABLE INC.

By: _____


Craig A. Gilley

EDWARDS WILDMAN PALMER LLP
1255 23rd Street NW – Suite 800
Washington, D.C. 20037
(202) 939-7900

Its Attorneys

Dated: February 23, 2012

EXHIBIT A

2010 Census Redistricting Data (Public Law 94-171)

NOTE: For information on confidentiality protection, nonsampling error, and definitions, see <http://www.census.gov/prod/cen2010/pl94-171.pdf>

NOTE: Change to the California, Connecticut, Mississippi, New Hampshire, Virginia, and Washington P. L. 94-171 Summary Files as delivered.

Geography	2010 Census Households	
	Total	Occupied
Census Tract 213, Hawaii County, Hawaii	2,759	2,246
Census Tract 214.02, Hawaii County, Hawaii	1,586	1,468
Census Tract 215.02, Hawaii County, Hawaii	2,085	1,816
Census Tract 215.04, Hawaii County, Hawaii	1,324	1,169
Census Tract 215.07, Hawaii County, Hawaii	3,810	3,012
Census Tract 215.09, Hawaii County, Hawaii	3,326	1,992
Census Tract 216.01, Hawaii County, Hawaii	3,782	2,940
Census Tract 216.04, Hawaii County, Hawaii	4,315	3,037
Census Tract 217.02, Hawaii County, Hawaii	3,613	3,273
Census Tract 217.04, Hawaii County, Hawaii	5,881	3,062
Census Tract 218, Hawaii County, Hawaii	2,583	2,242

EXHIBIT B

EXHIBIT C

H3: OCCUPANCY
 2010 Census Summary
 File 1

NOTE: For information
 on confidentiality
 protection, nonsampling
 error, and definitions,
 see
<http://www.census.gov/p>

Geography	2010 Census Households	
	Total:	Occupied
ZCTA5 96704	2,938	2,444
ZCTA5 96719	655	590
ZCTA5 96725	1,469	1,307
ZCTA5 96726	271	229
ZCTA5 96737	2,450	1,762
ZCTA5 96738	4,421	2,456
ZCTA5 96739	included in 96740	included in 96740
ZCTA5 96740	16,843	12,365
ZCTA5 96743	5,668	4,339
ZCTA5 96745	included in 96740	included in 96740
ZCTA5 96750	1,466	1,335
ZCTA5 96755	1,384	1,222

Source: U.S. Census

EXHIBIT D

ECTR – Effective Competition Tracking Report



Provided by
Satellite Broadcasting and Communications Association

Pursuant to Section 76.907(c) of the FCC Rules, and your effective competition tracking request dated February 14, 2012 please find the following Direct-to-Home (DTH) satellite subscriber numbers per zip code (and/or zip+4 where necessary). The provision and use of this Effective Competition Tracking Report is governed by and subject to the terms and conditions of the Agreement for Provision and Use of Confidential Data, between your company and SBCA.

Report Date: February 16, 2012

Franchise Area: Hawaii, HI (West)

ZIP Code DTH Count

96704	798
96719	171
96725	152
96726	104
96737	599
96738	256
96739	6

96740	1330
96743	816
96745	7
96750	152
96755	207
Total	4598

Data is current through 1/31/2012

Report Prepared by:
Martin Esteves
Manager, Membership and Data Management
202-349-3630
mesteves@sbca.org

Methodology: Direct-To-Home (DTH) subscriber data reflects aggregated DIRECTV and DISH Network residential subscriber totals. The following data collection procedures are applied by Members in the normal course of business: a) single accounts with multiple receivers are only counted once; b) commercial and test accounts are not included; c) each occupied unit served in a multiple dwelling unit building has been counted as a separate residential subscriber; d) zip codes are taken from service locations (not billing addresses, where different); e) inactive accounts are routinely removed; f) invalid (undeliverable) addresses have been corrected where known; g) courtesy or complimentary accounts are included; and h) zip code information for Members' subscribers is periodically updated to reflect changes to zip codes by the United States Postal Service.

EXHIBIT E

2010 Census Redistricting Data (Public Law 94-171)

NOTE: For information on confidentiality protection, nonsampling error, and definitions, see <http://www.census.gov/prod/cen2010/pl94-171.pdf>

NOTE: Change to the California, Connecticut, Mississippi, New Hampshire, Virginia, and Washington P. L. 94-171 Summary Files as delivered.

Geography	2010 Census Households	
	Total	Occupied
Census Tract 201, Hawaii County, Hawaii	2,108	1,911
Census Tract 202.02, Hawaii County, Hawaii	692	640
Census Tract 203, Hawaii County, Hawaii	1,874	1,623
Census Tract 204, Hawaii County, Hawaii	1,454	1,278
Census Tract 205, Hawaii County, Hawaii	2,389	2,131
Census Tract 206, Hawaii County, Hawaii	1,935	1,729
Census Tract 207.01, Hawaii County, Hawaii	1,866	1,745
Census Tract 207.02, Hawaii County, Hawaii	1,779	1,712
Census Tract 208.01, Hawaii County, Hawaii	1,472	1,381
Census Tract 208.02, Hawaii County, Hawaii	2,353	2,204
Census Tract 209, Hawaii County, Hawaii	1,730	1,633
Census Tract 210.03, Hawaii County, Hawaii	2,508	2,182
Census Tract 210.05, Hawaii County, Hawaii	4,414	3,786
Census Tract 210.10, Hawaii County, Hawaii	3,975	3,297
Census Tract 210.11, Hawaii County, Hawaii	1,892	1,476
Census Tract 210.13, Hawaii County, Hawaii	1,831	1,665
Census Tract 211.01, Hawaii County, Hawaii	2,084	1,644
Census Tract 211.06, Hawaii County, Hawaii	3,309	2,723
Census Tract 212.02, Hawaii County, Hawaii	4,202	3,154
Census Tract 219.02, Hawaii County, Hawaii	1,516	1,317
Census Tract 220, Hawaii County, Hawaii	1,024	883
Census Tract 221.02, Hawaii County, Hawaii	853	725

EXHIBIT F

H3: OCCUPANCY
 2010 Census Summary
 File 1

NOTE: For information
 on confidentiality
 protection, nonsampling
 error, and definitions,
 see
<http://www.census.gov/p>

Geography	2010 Census Households	
	Total:	Occupied
ZCTA5 96710	275	234
ZCTA5 96718	included in 96785	included in 96785
ZCTA5 96720	17,770	16,280
ZCTA5 96721	included in 96720	included in 96720
ZCTA5 96727	1,857	1,627
ZCTA5 96728	253	235
ZCTA5 96743	5,668	4,339
ZCTA5 96749	6,645	5,795
ZCTA5 96760	1,335	1,155
ZCTA5 96764	357	301
ZCTA5 96771	3,660	3,149
ZCTA5 96772	1,089	840
ZCTA5 96773	105	91
ZCTA5 96774	124	108
ZCTA5 96776	607	525
ZCTA5 96777	575	492
ZCTA5 96778	6,685	5,478
ZCTA5 96780	202	171
ZCTA5 96781	654	579
ZCTA5 96783	789	731
ZCTA5 96785	1,776	1,256

Source: U.S. Census

EXHIBIT G

ECTR – Effective Competition Tracking Report



Provided by
Satellite Broadcasting and Communications Association

Pursuant to Section 76.907(c) of the FCC Rules, and your effective competition tracking request dated February 14, 2012 please find the following Direct-to-Home (DTH) satellite subscriber numbers per zip code (and/or zip+4 where necessary). The provision and use of this Effective Competition Tracking Report is governed by and subject to the terms and conditions of the Agreement for Provision and Use of Confidential Data, between your company and SBCA.

Report Date: February 16, 2012

Franchise Area: Hawaii, HI (East)

ZIP Code DTH Count

96710	89
96718	6
96720	1081
96721	10
96727	442
96728	32
96743	816
96749	1659

96760	370
96764	60
96771	864
96772	314
96773	91
96774	35
96776	189
96777	65

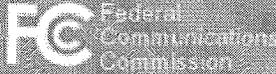
96778	1534
96780	40
96781	76
96783	99
96785	338
Total	8210

Data is current through 1/31/2012

Report Prepared by:
Martin Esteves
Manager, Membership and Data Management
202-349-3630
mesteves@sbca.org

Methodology: Direct-To-Home (DTH) subscriber data reflects aggregated DIRECTV and DISH Network residential subscriber totals. The following data collection procedures are applied by Members in the normal course of business: a) single accounts with multiple receivers are only counted once; b) commercial and test accounts are not included; c) each occupied unit served in a multiple dwelling unit building has been counted as a separate residential subscriber; d) zip codes are taken from service locations (not billing addresses, where different); e) inactive accounts are routinely removed; f) invalid (undeliverable) addresses have been corrected where known; g) courtesy or complimentary accounts are included; and h) zip code information for Members' subscribers is periodically updated to reflect changes to zip codes by the United States Postal Service.

EXHIBIT H



**INTERNATIONAL BUREAU
FCC SELECTED APPLICATION LISTING BY FILE NUMBER
REPORT WR07 - Fri Feb 17 14:44:10 US/Eastern 2012**

File Number = SESMFS2008092601242;

<p>File Number: SES-MFS-20080926-01242</p> <p>Callsign: E050029</p> <p>Streamlined: N/A</p> <p>Environmental Impact: N</p> <p>Status: Action Taken Public Notice</p> <p>Red Light: N</p> <p>Status Date: 02/04/2009</p> <p>Last Action: Grant of Authority</p> <p>Grant Date: 01/30/2009</p> <p>DA #: None</p> <p>Released Date: 02/03/2009</p> <p>Nature of Service: Direct Broadcast Satellite Service</p>	<p>Accepted For Filing PN Date: 12/03/2008</p> <p>Action Taken PN Date: 02/04/2009</p> <p>Term Begin Date: 01/30/2009</p> <p>Term End Date: 01/30/2019</p> <p>Date Filed: 09/26/2008</p> <p>Last Action Date: 01/30/2009</p> <p>Bond Date: None</p> <p>Adopted Date: 02/03/2009</p>
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Document Viewing

View License	Public Notice List	Licensee History
Other filings related to this application (Petitions, comments, etc)		
Attachment Menu		
PDF Version of this application.	HTML version of this application.	

Old File Number: None

<p>Applicant: DISH Operating L.L.C. 100 Inverness Terrace East Englewood, CO 80112- USA</p>	<p>Contact: PANTELIS MICHALOPOULOS STEPTOE & JOHNSON LLP 1330 CONNECTICUT AVE. N.W. WASHINGTON, DC 20036 USA</p>
----------------------------------------------------------------------------------------------------------------	-----------------------------------------------------------------------------------------------------------------------------------------

Description: Application to modify blanket receive-only earth station (E050029) to: (1) add the Canadian-licensed Ciel 2 satellite as a point of communication; and (2) increase the number of authorized earth stations from 1,000,000 to 5,000,000. See attached narrati

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)
)
)

ECHOSTAR SATELLITE OPERATING L.L.C.)
)

Application to Modify Blanket Earth Station)
License to (1) Add Ciel 2, a Canadian-licensed)
DBS Satellite at 129° W.L., as a Point of)
Communication, and (2) Increase the Number of)
Authorized Receive-only Earth Stations from)
1,000,000 to 5,000,000)
_____)

File No. SES-MFS-2008 _____
Call Sign E050029

MODIFICATION APPLICATION

EchoStar Satellite Operating L.L.C. (“DISH Network”) hereby requests a modification of its blanket receive-only earth station authorization to: (1) add Ciel 2 – a new Canadian-licensed Direct Broadcast Satellite (“DBS”) satellite – as a point of communication at the nominal 129° W.L. orbital location; and (2) increase the number of authorized receive-only earth stations from 1,000,000 to 5,000,000.¹ Upon successful launch, Ciel 2 will replace the EchoStar 5 satellite, which is currently operating at that location under an Industry Canada license issued to Ciel Satellite Limited Partnership, as assignee of Ciel Satellite Communications, Inc. (together,

¹ DISH Network is also requesting authority to provide service to somewhat smaller dishes (as small as 45 cm in diameter, *see* Schedule B), as well as a partial waiver of the processing fees payable for this application (*see Attachment A*). In addition to this application, DISH Network’s sister company, EchoStar Corporation (“EchoStar”), is separately applying to modify a number of its DBS feeder link earth station licenses (Call Signs E950288, E970394 and E980178) to enable DISH Network to uplink programming to the Ciel 2 satellite and to make other minor modifications. EchoStar is also applying for a number of new feeder link earth station licenses to enable programming to be transmitted from four regional uplink centers to the Ciel 2 satellite.

“Ciel”). Ciel has received an approval-in-principle from Industry Canada to develop the new Ciel 2 satellite and will also be the Canadian licensee of Ciel 2.² Affiliates of DISH Network and Ciel have entered into an amended agreement to allow DISH Network to provide DBS service to the United States using the Ciel 2 satellite.³

The Bureau has already determined that authorizing service to the United States from EchoStar 5 at the nominal 129° W.L. orbital location is in the public interest.⁴ The substitution of the state-of-the-art Ciel 2, with its spot-beam and CONUS capabilities, will allow significant improvements to that service. Among other things, this expanded capacity will help DISH Network meet the Commission’s February 17, 2010 digital carriage deadline. By that date, satellite carriers have to carry all local stations in high-definition (“HD”) format in at least 15% of the markets in which they carry any broadcast station in HD.⁵ Moreover, as explained below, grant of the requested modification will not disrupt or degrade any currently operating DBS service, and comports with the Commission’s *DISCO II* policies. Just as important, the deployment of Ciel 2 will free up EchoStar 5 for redeployment to 148° W.L., where it will be used to remedy the loss of EchoStar 2 and restore full DBS service. DISH Network, therefore,

² See Approval-in-Principle, *attached as Attachment B*.

³ See Amendment #1, dated March 9, 2006, and Ciel 2 Satellite Services Agreement, dated August 19, 2005, *together attached as Attachment C* (redacted). Unredacted versions of the Amendment #1 and Ciel 2 Satellite Services Agreement are being submitted separately subject to a request for confidential treatment.

⁴ See *EchoStar Satellite LLC*, 20 FCC Rcd 11755, at ¶¶ 6-11 (2005) (“*EchoStar 5 Order*”).

⁵ See 47 C.F.R. § 76.66(k)(2)(i), *inserted by Carriage of Digital Television Broadcast Signals: Amendment of Part 76 of the Commission’s Rules*, Second Report and Order, 23 FCC Rcd 5351 (2008).

respectfully requests the expeditious grant of this application by January 4, 2009, since the satellite is expected to be ready to commence service on or about that date.

I. BACKGROUND

In June 2005, the Bureau granted DISH Network authority to relocate the EchoStar 5 satellite to the nominal 129° W.L. orbital location, for operations as a Canadian satellite licensed to Ciel.⁶ In addition, the Bureau granted DISH Network authority to operate 1,000,000 receive-only earth stations in the U.S. with EchoStar 5 at 129° W.L.⁷

Ciel will soon be launching Ciel 2, a new CONUS- and spot-beam DBS satellite, to the same nominal orbital location – 128.85° W.L. to be exact⁸ – under a license issued by Industry Canada. The satellite will be owned and controlled by Ciel. Upon successful launch, Ciel 2 will replace EchoStar 5 at that orbital location. The satellite will use 16 DBS channels (channels 17-32) on one of two wide beams that cover the U.S. and Canada respectively. The remaining 16 DBS channels will be re-used multiple times across 53 spot beams focused on numerous areas in North America (including Alaska and Hawaii). The spectrum will be used to serve the United States. Service to Canada will consist of the Canadian government's rights to the use of one transponder on the satellite, and any channels that may be leased to Canadian DBS providers in the future.

⁶ See *EchoStar 5 Order* at ¶ 1.

⁷ See *id.*

⁸ Consistent with the *EchoStar 5 Order*, DISH Network is requesting that its authorized orbital location for Ciel 2 include any specific orbital location within the cluster defined by the Canadian 129° W.L. DBS assignment under the ITU Region 2 BSS Plan (including 128.85° W.L.). *Id.* at ¶ 1 n.1.

II. GRANT OF THIS APPLICATION IS IN THE PUBLIC INTEREST

The Bureau has already determined that DISH Network's provision of DBS service to the United States from the Canadian-licensed EchoStar 5 satellite at the nominal 129° W.L. orbital location is in the public interest.⁹ Replacement of the CONUS-only EchoStar 5 satellite with the new CONUS- and spot-beam capable Ciel 2 satellite will enable DISH Network to substantially expand service to the United States from that location. Grant of this application, therefore, will increase the public interest benefits associated with use of 129° W.L. to serve U.S. customers.

Specifically, authorizing service from the new Ciel 2 will expand the DBS capacity over the United States because the new spacecraft will more efficiently re-use DBS frequencies through a combination of spot beams and a CONUS beam. In that respect Ciel 2 is a product of the tremendous technical advancements that have enabled DBS operators to squeeze much more power into a satellite's payload since the mid-1990s, when EchoStar 5 was built. EchoStar 5 is a 16/32 transponder switchable satellite that can operate only on 16 transponders when in boost mode. In contrast, Ciel 2 can operate on all 32 transponders at power levels higher than EchoStar 5's boost mode. This will result in better reception and higher quality service to DISH Network subscribers from the nominal 129° W.L. orbital location. Consistent with DISH Network's plans to expand service to the United States from that location, DISH Network is also requesting an increase in the number of receive-only DBS earth stations authorized to receive signals from the satellite from 1,000,000 to 5,000,000.

Such expanded and improved service will be an important building block for DISH Network's plans to meet the Commission's February 17, 2010 digital carriage deadline for satellite carriers. Specifically, the Commission has required satellite carriers to carry all local

⁹ See *EchoStar 5 Order* at ¶ 6.

stations in HD format in at least 15% of the markets in which they carry any station in HD by that date. In addition, the increased capacity will enable DISH Network to compete more effectively in the multichannel video programming distributor (“MVPD”) market. The deployment of Ciel 2 to the nominal 129° W.L. orbital location will also free up the EchoStar 5 satellite for redeployment to the 148° W.L. slot. As the Commission is aware, DISH Network is licensed to operate on all 32 DBS channels at that location but has been unable to operate on 16 of those channels due to the recent failure of the EchoStar 2 satellite. DISH Network intends to seek Commission authority to redeploy EchoStar 5 to 148° W.L. to restore full 32-channel DBS service from that location.

No exchange of letters is necessary in this case to record the mutual understandings of the United States and Canada with respect to Ciel 2. In contrast with EchoStar 5, the present application does not involve a transfer of licensing responsibility from the United States to Canada, as Ciel 2 will be licensed by Industry Canada from the outset. There is therefore no need to reach mutual understandings with Canada on licensing responsibility for that satellite.

III. GRANT OF THIS APPLICATION WILL NOT DISRUPT OR DEGRADE ANY OTHER CURRENTLY OPERATING DBS SERVICE

The grant of this application will not present any significant risk of harmful interference to other U.S. and non-U.S. DBS satellites. Currently, there are no operational satellites using the 12.2-12.7 GHz DBS frequencies within 9 degrees of the 129° W.L. location and, as demonstrated in the attached Technical Annex, the operation of Ciel 2 from the nominal 129° W.L. orbital location will pose no risk of harmful interference to any existing DBS operator. The closest operational DBS satellites are EchoStar 7 and DIRECTV 7S at the nominal 119° W.L. orbital location, or about 10 degrees away. As a result, the proposed operations “will not

disrupt or degrade any currently operating DBS service.”¹⁰ The Administration of Canada is responsible for consulting with all administrations that may be deemed “affected” by Ciel 2, as that term is defined in the ITU Radio Regulations, and Ciel 2 will be operated in conformance with all coordination agreements reached through this process.

IV. GRANT OF THIS APPLICATION IS CONSISTENT WITH THE COMMISSION’S *DISCO II* POLICIES

Under the Commission’s *DISCO II* framework, the Commission considers a number of public interest factors in evaluating requests to provide DBS service to the United States from a foreign-licensed DBS satellite, including the effect on competition in the United States, compliance with eligibility and technical requirements, spectrum availability, and effects on national security, law enforcement, foreign policy and trade concerns.¹¹ As part of this analysis, the Commission examines the “effective competitive opportunities” afforded to U.S. satellite operators in the home market of the foreign satellite seeking U.S. market access (the “ECO-Sat” test).¹²

In the *EchoStar 5 Order*, the Bureau held that allowing DISH Network to use EchoStar 5 to provide DBS service into the U.S. from the Canadian orbital location at 129° W.L. was

¹⁰ See *EchoStar 5 Order* at ¶ 11.

¹¹ See *Amendment of the Commission’s Policies to Allow Non-U.S. Licensed Space Stations Providing Domestic and International Service in the United States*, 12 FCC Rcd 24094, 24170-72 (1997) (“*DISCO II*”).

¹² *Id.* at 24098 (“For satellites licensed by non-WTO Members and for all satellites providing Direct-to-Home (DTH), Direct Broadcasting Satellite (DBS), and Digital Audio Radio Services (DARS), we will examine whether U.S. satellites have effective competitive opportunities in the relevant foreign markets to determine whether allowing the foreign-licensed satellite to serve the United States would satisfy the competition component of the public interest analysis.”).

consistent with the Commission's *DISCO II* policies and the ECO-Sat test.¹³ In particular, the Bureau found that there was "no evidence that this access [to the 129° W.L. orbital location to provide DBS service into the U.S.] will create a competitive distortion by allowing [DISH Network] to carry out a predatory strategy."¹⁴ Further, the Bureau held that "[i]nasmuch as there is no competitive distortion associated with this authorization and grant of this authorization will facilitate the increase in provision of local broadcast channel service, we find that the benefits associated with grant of [DISH Network's] proposal are compelling and warrant approval of this request."¹⁵ Indeed, on numerous occasions since 2003, the Bureau has concluded that the provision of DBS service to the United States using Canadian-licensed satellites would serve the public interest.¹⁶

The Bureau's *EchoStar 5 Order* controls this case. For exactly the same reasons discussed therein, DISH Network's proposal to provide expanded and improved service to the United States from the Ciel 2 satellite is consistent with the Commission's *DISCO II* policies. As in the case of *EchoStar 5*, there is no evidence that the use of Ciel 2 to provide DBS service to the United States will cause any competitive distortions in the U.S. market. Ciel 2 will also be used to "facilitate the increase in provision of local broadcast channel service" in HD format to meet the Commission's 2010 deadline for satellite carriers to initiate HD carry-one-carry-all

¹³ *EchoStar 5 Order* at ¶¶ 8-10.

¹⁴ *Id.* at ¶ 9.

¹⁵ *Id.* at ¶ 10.

¹⁶ See *Digital Broadband Applications Corp.*, Order, 18 FCC Rcd 9455 (2003); *Pegasus Development Corp.*, Order, 19 FCC Rcd 6080, 6086 (2004). See also *DIRECTV Enterprises LLC*, File No. SES-MFS-20061213-02157 (granted Mar. 9, 2007) and *EchoStar Satellite LLC*, Order and Authorization, 20 FCC Rcd 11755 (2005).

service in at least 15% of the relevant markets. The public interest reasons for authorizing DBS service from the new Ciel 2 in this case are, indeed, even more compelling than those cited in the *EchoStar 5 Order* and the other Bureau decisions authorizing DBS service to the United States from other Canadian-licensed satellites.

DISH Network and the proposed Ciel 2 operations also meet all of the other requirements under *DISCO II* for grant of an authorization to provide service from a foreign-licensed DBS satellite. DISH Network's qualifications to hold Commission authorizations are a matter of record. This application does not raise any national security, law enforcement, foreign policy or trade concerns. In addition, a full technical description of the Ciel 2 satellite that complies with all of the requirements of Section 25.114 (except as discussed below) is included in the Schedule S and Attachment D to this application.

V. WAIVER REQUEST

Section 25.114(d)(3) of the Commission's rules requires submission of predicted antenna gain contours for each transmit and receive antenna beam in a .gxt format "at 2 dB intervals down to 10 dB below the peak value of the parameter and at 5 dB intervals between 10 dB and 20 dB below the peak values." A limited waiver of this rule section is requested in connection with Ciel 2.

The .gxt files submitted here with Schedule S supply all the contours identified in the rule for the spacecraft's CONUS and Canadian beams, and all but two of the specified contours for the spot beams. The only exception is that the -8 dB and -15 dB contours are not supplied for the spot beams.

The absence of these two contours is not material. In fact, the various contours for the spot beams are so close together that it is virtually impossible to distinguish among the contours as it is. Furthermore, the -2, -4, -6, -10 and -20 dB contours provided, along with the antenna

boresight data supplied in the technical materials, constitute sufficient information for an interested party to understand the planned operation of Ciel 2 and evaluate its impact on an adjacent network.

In these circumstances, grant of a waiver is consistent with Commission policy:

The Commission may waive a rule for good cause shown. Waiver is appropriate if special circumstances warrant a deviation from the general rule and such deviation would better serve the public interest than would strict adherence to the general rule. Generally, the Commission may grant a waiver of its rules in a particular case if the relief requested would not undermine the policy objective of the rule in question and would otherwise serve the public interest.¹⁷

The Commission has previously waived the requirements of Section 25.114(d)(3) in other cases in which contour information was not being submitted exactly as specified in the rule.¹⁸ In acting on these requests, the Commission recognized that the purpose of the rule is to ensure that adequate information is available to allow evaluation of the potential for harmful interference.¹⁹ Here sufficient data is provided to permit the Commission and any interested party to evaluate the antenna's interference potential, and a limited waiver of Section 25.114(d)(3) is accordingly appropriate.

¹⁷ *PanAmSat Licensee Corp.*, 17 FCC Rcd 10483, 10492 (Sat. Div. 2002) (footnotes omitted).

¹⁸ *See, e.g.*, Application of PanAmSat Licensee Corp., File No. SAT-RPL-20061219-00155, Call Sign S2715, grant stamp dated April 24, 2007 ("*Galaxy 17 Grant*") at ¶ 5; *see also Spectrum Five, LLC, Petition for Declaratory Ruling to Serve the U.S. Market Using Broadcast Satellite Service (BSS) Spectrum from the 114.5° W.L. Orbital Location*, Order and Authorization, DA 06-2439, File Nos. SAT-LOI-20050312-00062/00063 at ¶ 17 (IB rel. Nov. 29, 2006).

¹⁹ *Galaxy 17 Grant* at n.5.

VI. ORBITAL DEBRIS MITIGATION

Section 25.283(c) of the Commission's orbital debris rules requires space station licensees to ensure that, at the spacecraft's end-of-life, "all stored energy sources on board the satellite are discharged, by venting excess propellant, discharging batteries, relieving pressure vessels, and other appropriate measures."²⁰ The satellite will comply this directive with one qualification: certain helium tanks on the Ciel 2 spacecraft will not be fully vented at end-of-life, but instead will be permanently sealed and isolated following transfer orbit operations.²¹

The scope of Section 25.283(c) is somewhat uncertain.²² A number of applicants have presented to the Commission satellites that do not fully vent all pressure vessels at end-of-life, but which instead securely store oxidizer or inert gases on board the spacecraft.²³ In *Hughes*, the

²⁰ 47 C.F.R. § 25.283(c).

²¹ See Attachment D, p.A.9.2.

²² As a threshold matter, it is unclear whether section 25.283(c) applies to the Canadian-licensed Ciel 2 satellite. The Commission has said that applicants requesting authority to communicate with a foreign-licensed satellite may satisfy the Commission's disclosure rules "by showing that the satellite system's debris mitigation plans are subject to direct and effective regulatory oversight by the satellite system's national licensing authority." *Mitigation of Orbital Debris*, 19 FCC Rcd 11567, at ¶ 95 (2004). This suggests that, where a foreign-licensed satellite is subject to foreign debris mitigation rules, a further showing of compliance with U.S. debris mitigation rules is not required. In this case, Industry Canada has a policy of requiring its geostationary space station licensees to comply with the debris mitigation measures in Recommendation ITU-R S.1003 "Environmental Protection of the Geostationary Satellite Orbit." See Industry Canada, CPC-2-6-02, *Licensing of Space Stations*, at § 4.3(vi) (July 2008), at <http://www.ic.gc.ca/epic/site/smt-gst.nsf/en/sf01385e.html> (last visited Sep. 25, 2008).

²³ See *Hughes Communications, Inc.*, Stamp Grant, File Nos. SAT-MOD-20050523-00106, SAT AMD-20060306-00025 (granted Jun. 24, 2006) ("*Hughes*") (authorized without waiver); *PanAmSat H-2 Licensee Corp.*, Stamp Grant, File No. SAT-AMD-20070731-00108 (granted Nov. 30, 2007) ("*PanAmSat H-2*") (authorized with waiver); *PanAmSat Licensee Corp.*, Stamp grant, File No. SAT-AMD-20070716-00102 (granted Oct. 4, 2007) ("*Intelsat 11*") (authorized with waiver); *EchoStar Corporation*, File No. SAT-STA-20071221-00183, at ¶ 4 (granted Mar. 12, 2008) ("*AMC-14*") (authorized with waiver).

satellite provider explained that post-mission storage of inert gases, such as xenon and helium, “is fully in keeping with the intent” of the Commission’s rules because “it will neither pose a risk of deflagration nor lead to the ejection of material.”²⁴ The storage of residual helium in this case is indistinguishable from *Hughes*. The rule would therefore appear not to be implicated in this case, especially since Ciel 2 is a foreign-licensed satellite subject to Canada’s orbital debris mitigation requirements.

In any event, DISH Network respectfully requests a waiver of section 25.283(c) to the extent one is needed. The Bureau may waive compliance with Commission rules for “good cause shown.”²⁵ Here, there is good cause for a waiver of Section 25.283(c). The purpose of the rule would not be undermined at all. The post-mission storage of inert helium gas in secure tanks shielded by the rest of the spacecraft, and under pressures well below the tolerances of the storage tanks, would present a “a far lower risk of accidental explosion over time than would any attempt to completely depressurize the tanks during or after the spacecraft’s mission.”²⁶ Equally important, in similar cases, the Commission has waived this rule on the ground that requiring a modification to the satellite at a late stage of construction would cause undue hardship to the

²⁴ See *Hughes* (authorizing post-mission storage of helium and xenon without waiver). In *Hughes*, the applicant explained that secure storage of such gases “is both a responsible approach and results in a far lower risk of accidental explosion over time than would any attempt to completely depressurize the tanks during or after the spacecraft’s mission,” and “is fully in keeping with the intent” of the Commission’s rules. See Amendment at Attachment A, p.22, File No. SAT AMD-20060306-00025 (filed Mar. 6, 2006) (“*Hughes Amendment*”). See also *AMC-14* at ¶ 4 (finding that post-mission storage of “oxidizer” is not “the equivalent of” post-mission storage of “an inert gas such as xenon ... for purposes of assessing whether the intent of the rule would be satisfied.”).

²⁵ See 47 C.F.R. § 1.3.

²⁶ See *Hughes Amendment* at Attachment A, p.22.

applicant.²⁷ That justification also applies here. The construction of Ciel 2 is almost complete, and the satellite is in fact scheduled to be launched in early December and is expected to be ready to commence service on or about January 4, 2009. As noted above, the Bureau has licensed spacecraft and/or waived Section 25.283(c) on a number of occasions on similar grounds, and DISH respectfully requests that the Bureau follow its precedent here.

VII. CONCLUSION

For the foregoing reasons, DISH Network respectfully requests that the Bureau expeditiously grant this modification application by January 4, 2009.

Respectfully submitted,

/s/

Pantelis Michalopoulos
Petra A. Vorwig
Steptoe & Johnson LLP
1330 Connecticut Avenue, N.W.
Washington, D.C. 20036
(202) 429-3000
*Counsel for EchoStar Satellite
Operating L.L.C.*

Linda Kinney
Vice President, Law and Regulation
Brad Gillen
Director and Senior Counsel
EchoStar Satellite Operating L.L.C.
1233 20th Street, N.W.
Suite 302
Washington, DC 20036-2396
(202) 293-0981

September 26, 2008

²⁷ See *PanAmSat H-2; Intelsat 11; AMC-14*.

EXHIBIT I

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Get More For Less w/ DISH Promo Price Starting at \$19.99/mo. Don't Wait. Switch to DISH®! www.DISH.com

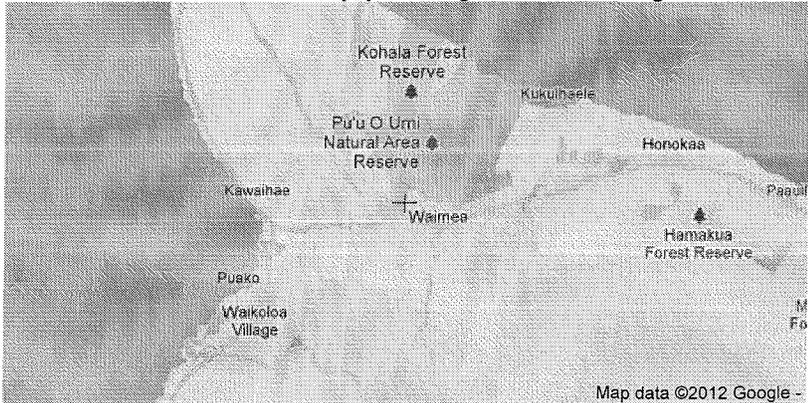
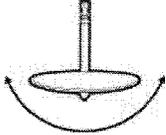
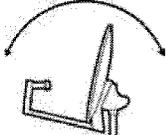
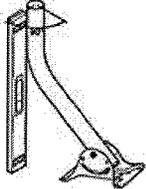
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Satellite look-angle results for Single Satellite

Pointing at: 119° DirecTV 7S

Your location: USA - HI - Kamuela		North Latitude: 20.0402 West Longitude: 155.7	
<p>Please verify that the center of the map is near your actual location, if it is within the map, you will get accurate readings.</p> 			
	<p>True Azimuth: 114.69 Magn. Azimuth: N/A</p> <p>Magnetic azimuth should be used when using an uncorrected compass.</p>		<p>Dish Elevation: 42.47</p>
	<p>N/A you will be using circular LNBS for this sat.</p>		

<h1>T1 for \$199/mo</h1>	<ul style="list-style-type: none"> <input checked="" type="checkbox"/> 3-5 Day Install <input checked="" type="checkbox"/> No Loop Charges <input checked="" type="checkbox"/> No Taxes 	 towerstream (866) 829-7916
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EXHIBIT J

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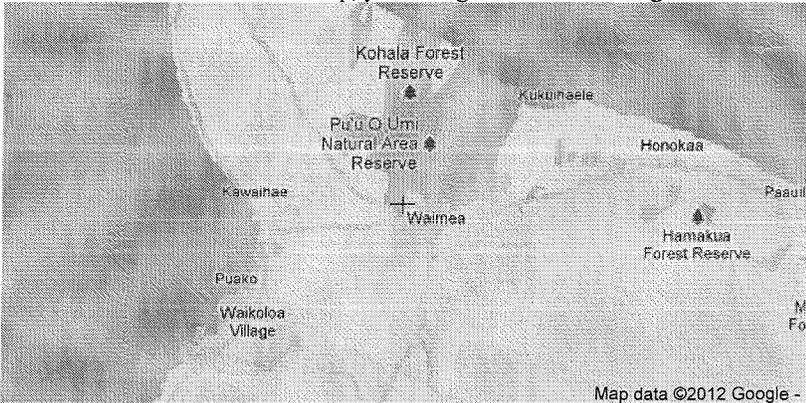
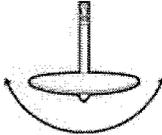
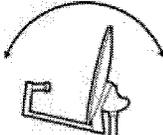
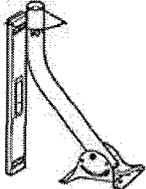
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Ads by Google: [DIRECTV Dish](#) [Satellite TV](#) [Dish SAT](#) [Dish Packages](#)

Satellite look-angle results for Single Satellite

Pointing at: 129° EchoStar 5

Your location: USA - HI - Kamuela		North Latitude: 20.0402 West Longitude: 155.7	
<p>Please verify that the center of the map is near your actual location, if it is within the map, you will get accurate readings.</p>  <p>Map data ©2012 Google -</p>			
	<p>True Azimuth: 124.27 Magn. Azimuth: N/A</p> <p>Magnetic azimuth should be used when using an uncorrected compass.</p>		<p>Dish Elevation: 51.69</p>
	<p>N/A you will be using circular LNBS for this sat.</p>		 <p>Always make sure your mast is installed correctly and that it's plumb all around or these settings may not work for you.</p>

<h1>T1 for \$199/mo</h1>	<ul style="list-style-type: none"> <input checked="" type="checkbox"/> 3-5 Day Install <input checked="" type="checkbox"/> No Loop Charges <input checked="" type="checkbox"/> No Taxes 	 towerstream (866) 829-7916
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EXHIBIT K

DIRECTV® Official Site Double Savings Event. First Time Ever. Lock In 2 Years Of Savings! www.DIRECTV.com

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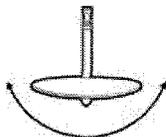
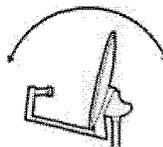
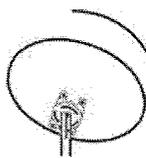
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Ads by Google: [DIRECTV Dish](#) [Satellite TV](#) [Dish SAT](#) [Dish Packages](#)

Satellite look-angle results for Dish Network Dish500

Pointing at: 110° Echostar 8/10 & 119° Echostar 7

Your location: USA - MD - Annapolis		North Latitude: 38.97 West Longitude: 76.49	
<p>Please verify that the center of the map is near your actual location, if it is within the map, you will get accurate readings.</p> 			
	<p>True Azimuth: 231.01 Magn. Azimuth: 242.09</p> <p>Magnetic azimuth should be used when using an uncorrected compass.</p>		Dish Elevation: 30.2
			<p>Skew Angle: 122.9</p>

<h1>T1 for \$199/mo</h1>	<ul style="list-style-type: none"> <input checked="" type="checkbox"/> 3-5 Day Install <input checked="" type="checkbox"/> No Loop Charges <input checked="" type="checkbox"/> No Taxes 	 towerstream (866) 829-7916
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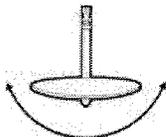
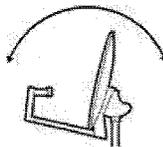
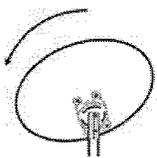
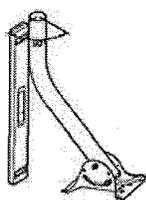
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Satellite look-angle results for Dish Network Dish500

Pointing at: 110° Echostar 8/10 & 119° Echostar 7

Your location: USA - WI - Madison		North Latitude: 43.07 West Longitude: 89.4	
<p>Please verify that the center of the map is near your actual location, if it is within the map, you will get accurate readings.</p> 			
	<p>True Azimuth: 214.29 Magn. Azimuth: 216.14</p> <p>Magnetic azimuth should be used when using an uncorrected compass.</p>		<p>Dish Elevation: 34.11</p>
	<p>DTV Dish Tilt: 69.8</p>		<p>Always make sure your mast is installed correctly and that it's plumb all around or these settings may not work for you.</p>

<h1>T1 for \$199/mo</h1>	<ul style="list-style-type: none"> <input checked="" type="checkbox"/> 3-5 Day Install <input checked="" type="checkbox"/> No Loop Charges <input checked="" type="checkbox"/> No Taxes 	 towerstream (866) 829-7916
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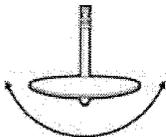
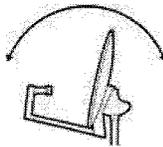
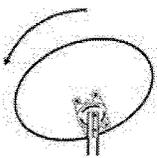
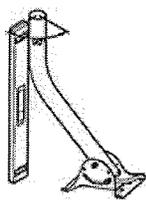
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Satellite look-angle results for Dish Network Dish500

Pointing at: 110° Echostar 8/10 & 119° Echostar 7

Your location: USA - OR - Portland		North Latitude: 45.52 West Longitude: 122.67	
<p>Please verify that the center of the map is near your actual location, if it is within the map, you will get accurate readings.</p> 			
	<p>True Azimuth: 168.69 Magn. Azimuth: 151.71</p> <p>Magnetic azimuth should be used when using an uncorrected compass.</p>		<p>Dish Elevation: 36.8</p>
	<p>Skew Angle: 83.8</p>		<p>Always make sure your mast is installed correctly and that it's plumb all around or these settings may not work for you.</p>

T1 for \$199/mo	<ul style="list-style-type: none"> <input checked="" type="checkbox"/> 3-5 Day Install <input checked="" type="checkbox"/> No Loop Charges <input checked="" type="checkbox"/> No Taxes 	 towerstream (866) 829-7916
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CERTIFICATE OF SERVICE

I, Glenda Thompson, a secretary at the law firm of Edwards Wildman Palmer LLP, hereby certify that copies of the foregoing "Reply" were served this 23rd day of February, 2012 via first-class mail, postage prepaid, upon the following:

William Lake, Esq.*
Chief, Media Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Bruce A. Olcott, Esq.
Steve F. Lederman, Esq.
Squire Sanders LLP
1200 19th Street
Suite 360
Washington, DC 20036

Keali'i S. Lopez, Director
State of Hawaii Dept. of Commerce and
Consumer Affairs
335 Merchant Street
Room 101
Honolulu, Hawaii 96813

*Via hand delivery


Glenda Thompson