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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

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

In the Matter of )  
 )  
DIRECTV Enterprises, Inc., )  
 )  
For Authority to )  
Launch and Operate )  
DIRECTV 4S )

Received

AUG 16 2001

Satellite Policy Branch  
International Bureau

File No. S2430-SAT-LOA-20010518-00045

**OPPOSITION OF DIRECTV ENTERPRISES, INC.**

DIRECTV Enterprises, Inc. ("DIRECTV")<sup>1</sup> hereby opposes the State of Hawaii's ("Hawaii") Petition to Deny or Hold in Abeyance<sup>2</sup> filed in reference to the above-captioned application ("Application") by DIRECTV to launch and operate a new, state-of-the-art spot beam direct broadcast satellite, DIRECTV 4S, into the 101° W.L. orbital location.

Hawaii has chosen to file its Petition as yet another vehicle to voice the State's dissatisfaction with the current level of direct broadcast satellite ("DBS") service being provided to the islands. In so doing, Hawaii wrongfully asserts that DIRECTV is not in compliance with current geographic service rules for DBS providers found in Part 100 of the Commission's rules. In the alternative, Hawaii maintains that the Commission should hold the processing of the Application in abeyance until sweeping changes advocated by Hawaii are made to the Commission's DBS geographic service requirements in the Commission's pending rulemaking

<sup>1</sup> DIRECTV Enterprises, Inc. ("DIRECTV") is a wholly-owned subsidiary of Hughes Electronics Corporation and a DBS licensee.

<sup>2</sup> Petition to Deny or Hold in Abeyance of the State of Hawaii, File No. S2430-SAT-LOA-20010518-00045 (July 19, 2001) ("Petition"). Because the Petition was not properly served on counsel for DIRECTV, DIRECTV only learned of it after the deadline for opposing it had expired. With Hawaii's consent, DIRECTV has requested that the deadline for filing the instant Opposition be extended through today.

proceeding to revise Part 100.<sup>3</sup>

As it has done previously, DIRECTV hereby responds to Hawaii's misguided assertions. As a threshold matter, DIRECTV wishes to point out that last year, Hawaii petitioned to deny DIRECTV's application for authority to launch and operate the DIRECTV 5 satellite, and raised *identical* arguments to those presented in the current Petition. The Commission rejected Hawaii's arguments as inappropriately raised in a satellite application proceeding, observing that (i) rescheduling a satellite launch on the basis of Hawaii's general dissatisfaction with the level of DBS service offered to the State's residents would impose a "serious financial burden" on DIRECTV that ultimately would harm DIRECTV's subscribers,<sup>4</sup> and (ii) Hawaii had already raised its geographic service concerns in detail in the Commission's pending Part 100 rulemaking proceeding.<sup>5</sup> The Commission *expressly found* that the Part 100 proceeding "is the proper venue to resolve" Hawaii's concerns.<sup>6</sup>

Given this finding, it is inexplicable why Hawaii has proceeded to lodge an identical petition against the very next satellite application DIRECTV has filed. While Hawaii of course is free to pursue its case on the merits in the Part 100 rulemaking proceeding, as it has done vigorously, the Commission has already found that Hawaii's arguments "do not warrant a denial"

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*See* DIRECTV Enterprises, Inc.'s Motion for Extension of Time, File No. S2430-SAT-LOA-20010518-00045 (Aug. 3, 2001).

<sup>3</sup> *See* Policies and Rules for the Direct Broadcast Satellite Service, *Notice of Proposed Rulemaking*, 13 FCC Rcd 6907 (1998) ("Part 100 Notice").

<sup>4</sup> In the Matter of DIRECTV Enterprises, Inc. for Authority to Launch and Operate a Direct Broadcast Satellite Service Space Station, *Order and Authorization*, 15 FCC Rcd 23630, 23634 (2000) ("DIRECTV 5 Order"), at ¶ 11.

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

of a DIRECTV satellite application.<sup>7</sup> For that reason alone, Hawaii's Petition should be rejected.

As discussed in the Application, the DIRECTV 4S satellite is critically important to the upgrading and enhancement of DIRECTV's DBS system. The satellite will provide important public interest benefits, including the incorporation of state-of-the-art spot beam technology into DIRECTV's existing DBS system. This will provide vital additional capacity for local channel service on a spectrally efficient basis, and thereby facilitate even greater DBS competition to incumbent cable television providers in the multichannel video programming distributor ("MVPD") market by enabling DIRECTV's DBS service to become a more complete substitute to cable television program offerings. In particular, the launch of DIRECTV 4S will enable DIRECTV to comply with its statutory carriage obligations under the Satellite Home Viewer Improvement Act of 1999 ("SHVIA"), which take effect on January 1, 2002.<sup>8</sup>

Hawaii raises no legitimate basis for denying the Application. Hawaii's criticisms of DIRECTV's efforts to introduce DBS service to Hawaiian citizens as "token" and "wholly inadequate gestures"<sup>9</sup> remain unfair and unfounded. Contrary to Hawaii's assertions, DIRECTV has not "intentionally disregard[ed]" the needs of Hawaiian subscribers nor the requirements of the Commission's rules.<sup>10</sup> Last year, as the Commission noted in connection with the DIRECTV 5 application, DIRECTV commenced DBS service to Hawaii with an offering, which, while not

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<sup>7</sup> *Id.* at 236634, ¶ 12.

<sup>8</sup> *See* In the Matter of Implementation of the Satellite Home Viewer Improvement Act of 1999, CS Docket No. 00-96, *Report and Order* (rel. Nov. 30, 2000) (implementing SHVIA must carry requirements).

<sup>9</sup> Petition at 5.

<sup>10</sup> *Id.*

identical to the service packages offered to subscribers in the continental United States ("CONUS"), nonetheless included "a choice of over 110 programming choices, which DIRECTV expects to expand."<sup>11</sup> Today, while there remain limits to DIRECTV's current signal coverage of Hawaii – only two satellites, DIRECTV 1R and DIRECTV 6, can reach the islands – DIRECTV has developed *four* programming packages for Hawaii that offer customers access to more than 120 channels, including a wide variety of Spanish-language channels, and more pay per view and premium movie channels than are offered by *any other* multichannel video provider that serves the islands.<sup>12</sup>

Furthermore, Hawaii continues to distort the current geographic service requirements in an effort to argue that DIRECTV is in "direct and continuing violation" of the Commission's rules.<sup>13</sup> Hawaii offers in the Petition its oft-repeated argument that Section 100.53 of the Commission's rules requires DBS providers to provide service to Hawaii that is "comparable" to the service offered to the rest of the United States.<sup>14</sup> DIRECTV has shown repeatedly that the provision does no such thing.<sup>15</sup> As explained in the attached exhibit, which summarizes the current requirement in more detail, the text of Section 100.53(b) is location-specific and straightforward – if DBS services are offered from a particular acquired "location" from which it is technically feasible to serve Hawaii, then a DBS provider "must provide DBS service" to

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<sup>11</sup> *DIRECTV 5 Order* at ¶ 11.

<sup>12</sup> *See, e.g.*, IB Docket No. 98-21, *Ex Parte* Letter from Gary M. Epstein, Counsel for DIRECTV, to Magalie Roman Salas, Secretary (July 20, 2001).

<sup>13</sup> Petition at 2.

<sup>14</sup> *See id.*

<sup>15</sup> *See, e.g.*, *Ex Parte* Response of DIRECTV, Inc., File No. SAT-LOA-20000505-00086 (Aug. 3, 2000). DIRECTV hereby incorporates its filings in connection with file No. SAT-LOA-20000505-00086 herein by reference, as Hawaii raised similar arguments in that proceeding, to which DIRECTV fully responded. *See also* DIRECTV's filings in IB Docket No. 98-21, which are incorporated herein by reference.

Hawaii from that location.<sup>16</sup> But the rule does not require that DBS providers redesign their systems at any cost or expend precious channel capacity to "double illuminate" programming channels so as to provide the Hawaiian islands with programming identical to that offered to mainland residents.<sup>17</sup> Indeed, the Commission acknowledged this point last year in denying Hawaii's petition against DIRECTV 5. While the Commission noted that the existing rule could change in the pending Part 100 proceeding, it observed that DIRECTV's Hawaiian subscribers "are not offered the same programming package as CONUS subscribers," and nowhere suggested that this fact triggered a violation of *current* geographic service requirements.<sup>18</sup>

Nor should the current rule be changed. Section 100.53 achieves successfully a complicated and delicate public interest balance – one which advances the goal of promoting service to Hawaii, but that also takes into account the physics of satellite transmission from different orbital locations, and the expectations of Congress and consumers that DBS operators will meet other important public interest goals and service objectives, as well. These other important goals and objectives include: (i) offering local broadcast channels via DBS satellites in

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<sup>16</sup> See Exhibit A and 47 C.F.R. § 100.53(b). Such service of course remains subject to other legal requirements and restrictions, *e.g.*, the restrictions contained in the compulsory copyright licenses. See 17 U.S.C. §§ 119, 122.

<sup>17</sup> Significantly, the rule recognizes that "due to various technical limitations not all DBS orbital positions necessarily will be capable of serving all areas of the United States with the same size receive antenna dishes." MCI Telecommunications Corp., Assignor and EchoStar 110 Corp., Assignee; For Consent to Assignment of Authorization to Construct, Launch, and Operate a Direct Broadcast Satellite System Using 28 Frequency Channels at the 110° W.L. Orbital Location; American Sky Broadcasting, LLC, Assignor and EchoStar North America Corp., Assignee; For Consent to Assignment of Transmit-Receive Earth Station Authorizations, *Order and Authorization* (1999) ("MCI-EchoStar Order"), at ¶ 41. Thus, it follows that the rule requires that those DBS services offered "from the acquired orbital location" be provided in Hawaii if it is technically feasible to do so. Even where service is technically feasible from an acquired orbital location, the rule does not require services from that location to be offered if such service "would require so many compromises in satellite design and operation as to make it economically unreasonable." *Revision of Rules and Policies for the Direct Broadcast Satellite Service*, Report and Order, 11 FCC Rcd 9712, ¶ 128 (1995); see *MCI-EchoStar Order* at ¶ 42.

<sup>18</sup> *DIRECTV 5 Order* at ¶ 11.

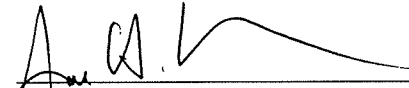
as many local U.S. markets as possible; (ii) continuing to dedicate capacity to noncommercial programming of an educational or informational nature; (iii) continuing to develop innovative offerings to serve ethnic and underserved constituencies; and (iv) exploiting DBS spectrum to offer high-definition and advanced service capabilities.

Denial of the Application would materially harm DIRECTV's subscribers and DIRECTV's business with no countervailing public interest benefit. In fact, ironically, denial of the Application would impede Hawaii's stated goal of improving DBS service to the State. DIRECTV expects that the launch of DIRECTV 4S will enable it to add a number of programming services to its Hawaii programming packages.

The Commission should deny Hawaii's Petition. Prompt grant of the Application is unquestionably in the public interest. While the program packages that DIRECTV offers to Hawaiian subscribers are not identical to the program packages that DIRECTV is able to provide to subscribers residing within CONUS, they offer significant programming choices to Hawaiian subscribers. Moreover, DIRECTV expects these packages to be upgraded over time. While this plan is not a perfect solution for Hawaiian subscribers, it is more than reasonable, given the formidable technical and economic challenges of serving the State. Hawaii's request that the DIRECTV 4S Application be denied or delayed in order to force a reconfiguration of DIRECTV's DBS system is neither tenable nor productive, and should be denied. As described above, grant of DIRECTV's Application clearly is in the public interest, and DIRECTV respectfully requests that the Commission promptly do so.

Respectfully submitted,

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CERTIFICATE OF SERVICE

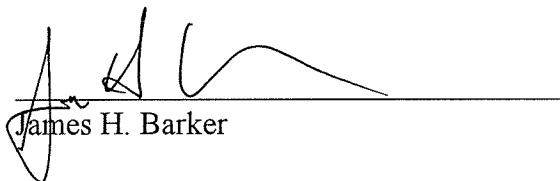
I hereby certify that a true and correct copy of the foregoing filing was sent by courier, this 10th of August, 2001, to the following:

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## EXHIBIT A

### Hawaii Has Misinterpreted the DBS Geographic Service Requirement

1. Section 100.53 of the Commission's rules provides as follows:
  - (a) Those holding DBS permits or licenses as of January 19, 1996 must either:
    - (1) Provide DBS service to Alaska or Hawaii from one or more orbital locations before the expiration of their current authorizations; or
    - (2) Relinquish their western authorizations after January 19, 1996 at the following orbital locations: 148° W.L., 157° W.L., 166° W.L., and 175° W.L.
  - (b) Those acquiring DBS authorizations after January 19, 1996 must provide DBS service to Alaska and Hawaii where such service is technically feasible from the acquired orbital location.
2. The rule strikes the proper balance in addressing the special challenges of DBS service provision to Alaska and Hawaii, accounting for the technical feasibility of providing DBS service to these states from particular orbital locations. The rule recognizes that "due to various technical limitations not all DBS orbital positions necessarily will be capable of serving all areas of the United States with the same size receive antenna dishes." MCI-EchoStar Order, 15 Comm. Reg. (P&F) 1038 (1999), at ¶ 41.
  - a. The rule requires that those DBS services offered "from the acquired orbital location" be offered to Alaska and Hawaii if it is technically feasible to do so.
  - b. Even where service is technically feasible from an acquired orbital location, the rule does not require services from that location to be offered if such service "would require so many compromises in satellite design and operation as to make it economically unreasonable." 1995 Report and Order, IB Docket No. 95-168, at ¶ 128; see MCI Telecommunications Corp., 15 Comm. Reg. (P&F) 1038 (1999), at ¶ 42.

3. In essence, Hawaii argues that once a satellite is introduced into a DBS system that is technically capable of offering service to Hawaii from a particular location, much more than the programming from that satellite and location must be offered, *i.e.*, the entire DBS system must be re-configured across satellites and orbital locations with the sole priority of ensuring that Hawaii subscribers receive programming that is "'comparable' in content and quality to DBS service in the rest of the United States." See, *e.g.*, 7/6/01 Hawaii Ex Parte Letter. This proposed interpretation (or rule revision) is unreasonable and leads to terrible public interest results. Hawaii's proposal:
  - a. Has no basis in the text of the current rule.
  - b. Would require tremendous expense and redesign of DIRECTV's DBS system.
  - c. Would require "double illumination" of programming channels to serve Hawaii and CONUS, which would require massive, duplicative waste of scarce channel capacity.
  - d. Ignores entirely other service priorities mandated by Congress, *e.g.*, designing system and allocating capacity to provide public interest programming, local-into-local service, and advanced services.
  - e. Ignores the benefits of attractive service packages currently offered by DIRECTV to Hawaiian residents.
4. DIRECTV is actively advancing the goal of providing robust DBS service to Hawaii.
  - a. DIRECTV has not "hidden" behind the literal requirements of the Commission's rule.
  - b. DIRECTV has undertaken the effort, cost and expense to develop and introduce specially created packages of programming for Hawaiian subscribers.
  - c. DIRECTV is committed to upgrading and improving Hawaii service.