

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

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Int'l Bureau

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

AUG 19 2003

In the Matter of)
Satellite Division)
Application of DIRECTV Enterprises, LLC)
for Authority to Launch and Operate)
DIRECTV 7S (USABSS-18))

Front Office

File No. SAT-LOA-20030611-00119

Received

AUG 27 2003

Policy Branch
International Bureau

REPLY COMMENTS OF DIRECTV ENTERPRISES, LLC

DIRECTV Enterprises, LLC ("DIRECTV") submits these Reply Comments in connection with the above-referenced application to launch and operate the DIRECTV 7S spot-beam direct broadcast satellite.

No party has opposed a grant of the DIRECTV 7S application. To the contrary, the application's grant is affirmatively supported by the State of Hawaii, and SES Americom, Inc. ("SES") explicitly "does not oppose it."¹ Furthermore, SES has no standing to formally comment on the DIRECTV 7S application and its allegation that there is a deficiency in DIRECTV's Appendix 30/30A analysis is without merit. Accordingly, DIRECTV requests that its DIRECTV 7S satellite application be granted promptly.

I. THE SUCCESSFUL LAUNCH AND OPERATION OF THE DIRECTV 7S SATELLITE IS IN THE PUBLIC INTEREST AND WILL PERMIT DIRECTV TO IMPROVE ITS DBS SERVICE IN HAWAII

The public interest benefits of the successful launch and operation of the DIRECTV 7S satellite are many. As discussed in the DIRECTV 7S application, for example, the satellite will provide DIRECTV with satellite capacity to expand its local-into-local service to consumers

¹ Comments of SES at 2.

such that DIRECTV will offer satellite-delivered local channels in more than 100 Nielsen-defined Designated Market Areas (“DMAs”), enabling DIRECTV to become an even more formidable multichannel video competitor to incumbent cable systems. It also will advance the state-of-the-art in spot-beam technology and allow for continued maximization of frequency reuse.

One particularly important benefit that will be realized is an enhancement to DIRECTV’s ability to provide improved DBS service in Hawaii. For several years, the State of Hawaii has questioned the robustness of DIRECTV’s service offerings in Hawaii, and, as detailed in the attached *ex parte* filing, to address these concerns, DIRECTV has recently outlined a number of planned improvements to its DBS service in Hawaii.² The centerpiece of these improvements is DIRECTV’s intention to add to its Hawaii programming packages at least 22 programming services that have been at issue in litigation between the National Rural Telecommunications Cooperative (“NRTC”) and DIRECTV. DIRECTV has committed unequivocally to provide these programming services to Hawaii upon the successful launch of DIRECTV 7S, which will make the programming services supplied to DIRECTV’s Hawaiian subscribers nearly identical to the services that DIRECTV provides to CONUS subscribers.

For this reason, the State of Hawaii has expressed its support for a grant of the DIRECTV 7S application. However, the State has also requested that the Commission “explicitly condition[] DIRECTV’s launch authorization on the rapid introduction of reasonably comparable DBS services in Hawaii, in part through the immediate provision of the missing 22 major programming services,” as well as “DIRECTV’s compliance with the outcome of the

² See *Ex Parte* Response of DIRECTV, Inc. (July 21, 2003), which is attached as Exhibit 1, and is hereby incorporated herein by reference.

Commission's ongoing investigation into DIRECTV's geographic service requirements."³ There is no need for the Commission to impose such conditions.

First, contrary to the assertions of the State of Hawaii, DIRECTV has always been and remains in compliance with the Commission's DBS geographic service rules. As recently as 1999, DIRECTV was unable to provide *any* services to Hawaii. Today, DIRECTV provides various packages containing more than 120 channels of programming to the islands. Thus, in compliance with the Commission's rules, DIRECTV currently "provide[s] DBS service to . . . Hawaii" from the "authorized orbital locations" where it is technically feasible to do so.⁴ In recognition of the fact that DIRECTV currently provides fewer channels to Hawaii as compared to its CONUS subscribers, and to meet the Commission's requirement, stated in the *DBS Rules Order*, that Hawaii service be "reasonably comparable," DIRECTV has developed specially tailored packages for Hawaiian residents. For example, DIRECTV includes in its Hawaii Choice Plus package two premium movie channels at no additional charge, and discounts all additional premium movie channels by approximately 30 percent compared to the CONUS prices.

Although DIRECTV's DBS service offerings in Hawaii are not identical to its CONUS offerings when considered on a program-by-program basis, DIRECTV nonetheless has gone to great lengths to create comparable service offerings, and to enhance its Hawaii programming packages through the inclusion and discounting of certain premium channels. DIRECTV thus offers a "reasonably comparable" service to Hawaii in compliance with the Commission's rules.⁵

³ Comments of the State of Hawaii at 2, 5.

⁴ 47 C.F.R. § 25.148(c).

⁵ *Policies and Rules for the Direct Broadcast Satellite Service*, 17 FCC Rcd 11331, ¶ 72 (2002) (requiring DBS providers to offer reasonably comparable service to Alaska and Hawaii as that offered in CONUS) ("*DBS Rules Order*").

Furthermore, DIRECTV has already committed unequivocally on the record to add the 22 programming channels referenced by the State upon the successful launch and operation of DIRECTV 7S. There is therefore no reason to condition DIRECTV's authorization to achieve this result.⁶

II. THE COMMENTS OF SES PROVIDE NO BASIS FOR DELAYING THE PROCESSING OR CONDITIONING THE GRANT OF THE DIRECTV 7S APPLICATION

SES notes that it “does not oppose” a grant of the DIRECTV 7S application,⁷ but comments that it is not clear whether all pending modifications to the Region 2 BSS Plan were included in DIRECTV's Appendix 30, Annex 1, Section 1 MSPACE analysis submitted with the DIRECTV 7S application. SES's specific concern is that its pending proposed modifications to the Region 2 BSS Plan filed through the United Kingdom, USAT-S1, USAT-S1 MOD-A, and USAT-S2, were not considered in DIRECTV's analysis.

Contrary to the suggestion of SES, DIRECTV's application fully satisfies the requirements of Section 25.111 of the Commission's rules. And there is no requirement under either Commission rules or ITU regulations that the United Kingdom's pending proposed modifications to the BSS plan be analyzed for interference protection purposes before the BSS Plan has even been modified to reflect the presence of these satellites. At present, the U.K.'s proposed modifications reference purely “paper” satellites that (i) have not been entered into the

⁶ It is a given that DIRECTV must comply with all applicable Commission rules, including geographic service requirements. DIRECTV believes that it is in full compliance with the Commission's geographic service rules. However, the Commission is in the process of considering this very issue at the State of Hawaii's request. *See Public Notice*, “Request for Comment on Petitions Regarding DIRECTV's DBS Service to the States of Alaska and Hawaii,” DA 03-862 (Mar. 25, 2003). To the extent that the launch and operation of DIRECTV 7S will improve DIRECTV's service in Hawaii, there is no reason to assume that such launch and operation would prejudice any such inquiry by the Commission.

⁷ Comments of SES at 2.

Region 2 BSS Plan, (ii) deviate radically from the nine degree spacing that has historically characterized the Region 2 BSS Plan and its implementation in the United States, and (iii) have not been licensed by the United States to provide service to subscribers residing in the United States. Under such circumstances, SES has no formal standing even to comment on the DIRECTV 7S application.

Indeed, each of networks USAT-S1 and USAT-S1 MOD-A at 105.5° W.L., and USAT-S2 at 114.5° W.L., affects United States assignments and United States modifications previously entered into the Region 2 BSS Plan. Consequently, it is certain that these networks will require substantial modifications to their operating characteristics before the United States could ever be in a position to give its agreement to these systems co-existing with United States DBS systems under Article 4 §4.2.3 of the ITU Radio Regulations. The final characteristics of these networks are as yet unknown, and it would therefore make little sense for DIRECTV to take these networks into account at this time.

The Commission is well aware of its obligations and rights under Appendix 30/30A of the ITU Radio Regulations. Therefore, the Commission licenses United States DBS satellites with a standard condition that requires the DBS licensee “to coordinate with any Administration having an affected Region 2 Plan assignment or prior-filed Plan modification, unless and until the Region 2 BSS Plan and its associated Feeder Link Plan are modified to include” the licensee’s parameters.”⁸ Under this condition, DIRECTV 7S’s satellite license may require DIRECTV and/or the United States to seek agreement from the United Kingdom if any of the United Kingdom-filed modifications to the Region 2 BSS Plan are affected, including any United

⁸ *EchoStar Satellite Corporation*, 17 FCC Rcd 11326 (2002), at ¶ 7. To date, the United Kingdom has neither an affected BSS assignment nor an affected filed modification to the BSS Plan.

Kingdom filings made on behalf of SES. The interference concern raised by SES is thus addressed by this condition.⁹

The reverse, of course, is also true. The United Kingdom has an ITU obligation to seek agreement with the United States if its proposed modifications to the Region 2 Plan affect United States assignments or earlier-filed modifications. With respect to the USAT-S1, USAT-S1 MOD-A and USAT-S2 filings, it is already known that these proposed systems affect US assignments and modifications entered into the Region 2 Plan. In fact, the United States is currently a party to the agreement-seeking process with the United Kingdom involving two of these proposed United Kingdom networks.

It is expected that during the agreement-seeking process, the technical parameters of the United Kingdom-filed networks will be modified. Once the final characteristics are known and these characteristics are filed with the BR, it will be possible to perform the Annex 1 analysis to determine if DIRECTV 7S affects any valid earlier-filed UK modifications. Since the final characteristics of the United Kingdom networks were not known at the time of DIRECTV 7S's analysis, DIRECTV is content to let the BR determine the affected Administrations under Article 4, §4.2.8, and to seek the agreement of the affected Administrations if such agreement is required. Until then, SES has raised no colorable basis for delaying the prompt grant of the DIRECTV 7S application.

⁹ SES knows this because the Commission addressed virtually identical arguments raised by SES in connection with the proposed launch and operation of the EchoStar VIII spot-beam satellite. The Commission found that the imposition of the condition discussed fully addressed SES's concerns. *See id.* The same is true in this case.

III. CONCLUSION

For the foregoing reasons, the DIRECTV 7S application should be granted.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "J. H. Barker", written over a horizontal line.

Gary M. Epstein
James H. Barker
of LATHAM & WATKINS, LLP

Counsel for DIRECTV Enterprises, LLC

Dated: August 18, 2003

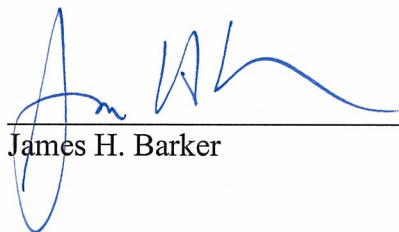
CERTIFICATE OF SERVICE

I, James H. Barker, certify that on this 18th day of August, 2003, a copy of the foregoing Reply Comments of DIRECTV Enterprises, LLC was sent by first-class mail, postage prepaid to the following parties:

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James H. Barker

EXHIBIT 1

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

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Petitions Regarding DIRECTV's DBS) MB Docket No. 03-82
Service to the States of Alaska and Hawaii) IB Docket No. 98-21

EX PARTE RESPONSE OF DIRECTV, INC.

DIRECTV, Inc. ("DIRECTV") submits this *ex parte* submission to respond further to the allegations raised in comments and *ex parte* filings in the above-captioned proceeding.

DIRECTV also presents additional detail regarding DIRECTV's action plan to improve service to Hawaiian consumers.

I. DIRECTV IS IN COMPLIANCE WITH THE COMMISSION'S GEOGRAPHIC SERVICE RULES

Contrary to the assertions of the State of Hawaii ("Hawaii"), the National Rural Telecommunications Cooperative ("NRTC"), and EchoStar Satellite Corporation ("EchoStar"), DIRECTV is in compliance with the Commission's DBS geographic service rules. As recently as 1999, DIRECTV was unable to provide *any* services to Hawaii. Today, DIRECTV provides various packages containing more than 120 programming channels to the islands. Thus, in compliance with the Commission's rules, DIRECTV currently "provide[s] DBS service to . . . Hawaii" from the "authorized orbital locations" where it is technically feasible to do so.¹ In recognition of the fact that DIRECTV currently provides fewer channels to Hawaii as compared to its CONUS subscribers, and to meet the Commission's requirement, stated in the *DBS Rules*

¹ 47 C.F.R. § 25.148(c).

Order, that Hawaii service be “reasonably comparable,”² DIRECTV has developed specially tailored packages for Hawaiian residents. For example, DIRECTV includes in its Hawaii Choice Plus package two premium movie channels at no additional charge, and discounts all additional premium movie channels by approximately 30 percent compared to the CONUS prices.

Hawaii now incorrectly alleges that DIRECTV has invited the Commission to conduct a “program-by-program content comparison” of its Hawaii service packages.³ To the contrary, DIRECTV has acknowledged that its service to Hawaii is not identical to its CONUS offerings when considered on a program-by-program basis. However, although DIRECTV is unable to provide identical service to the islands, it has nevertheless gone to great lengths to create comparable service offerings, and to enhance its Hawaii programming packages through the inclusion and discounting of certain premium channels. DIRECTV thus offers a “reasonably comparable” service to Hawaii in compliance with the Commission’s rules.⁴

Hawaii also misapplies the Commission’s rules when it suggests that DIRECTV was required to invoke the Commission’s exception for infeasibility due to the provision of non-identical service to Hawaii.⁵ The Commission’s rules do not require that DIRECTV provide Hawaii with identical service and, therefore, do not require that DIRECTV demonstrate technical infeasibility for not providing identical service to Hawaii.⁶ *All* of the programming that is carried on DIRECTV satellites technically capable of “seeing” Hawaii is offered to Hawaiian customers

² Response of the State of Hawaii at 7.

³ *Id.* at 4.

⁴ *Policies and Rules for the Direct Broadcast Satellite Service*, 17 FCC Rcd 11331, ¶ 72 (2002) (requiring DBS providers to offer reasonably comparable service to Alaska and Hawaii as that offered in CONUS) (“*DBS Rules Order*”).

⁵ Response of the State of Hawaii at 7.

⁶ 47 C.F.R. § 25.148(c).

from DIRECTV's authorized orbital locations, as the Commission's rules require. Furthermore, as set forth in Section III below, DIRECTV is embarking on a series of measures to improve its service to Hawaii even further.

II. NRTC HAS NO STANDING IN THIS PROCEEDING AND ITS EFFORTS TO MICROMANAGE DIRECTV'S PROGRAMMING AND FLEET MANAGEMENT DECISIONS SHOULD BE REJECTED

For years, the NRTC has attempted in this and other related matters to further its own private litigation interests by intruding on the pretense that it is arguing on behalf of Hawaii that DIRECTV has violated the Commission's geographic service rules. Along the way, the NRTC has asserted that DIRECTV must move 22 programming channels from a satellite that cannot "see" Hawaii at the 101° W.L. orbital position (such as DIRECTV 2) to a satellite that can (DIRECTV 1R), merely because NRTC believes that its position in private litigation against DIRECTV can be improved.⁷

As a threshold matter, the NRTC has no standing in this proceeding. NRTC does not serve Hawaii, has no constituent members in Hawaii, and no interest whatsoever in this proceeding other than a transparent attempt to advantage itself in a private contractual dispute.

Nor does the NRTC have any right to dictate DIRECTV's business decisions regarding the programming that will be carried on specific DIRECTV satellites. The Commission's rules do not permit or even contemplate such second-guessing of programming and fleet management decisions. To the contrary, in the *DBS Rules Order*, the Commission stated that it would "avoid dictating system design or business plans" in evaluating a DBS operator's compliance with its

⁷ See, e.g., Comments of the National Rural Telecommunications Cooperative ("NRTC"), MB Docket No. 03-82 (May 9, 2003), at 6.

geographic service rules.⁸ And in general, the Commission defers to satellite operators' judgment in rearranging "satellites in their fleet to reflect business and customer considerations."⁹

The NRTC's general evaluation of whether DIRECTV's programming in Hawaii is "reasonably comparable" to the programming offered to CONUS customers, or the NRTC's specific recommendations as to the most efficacious way to transition the 22 additional programming channels that are the subject of its private litigation with DIRECTV to satellites that can be accessed by Hawaii consumers, are of no relevance and moot in any event. As set forth below, DIRECTV has committed unequivocally to offer these 22 additional programming channels to Hawaii, contingent only upon the successful launch of the DIRECTV 7S spot beam satellite in the fourth quarter of this year.

DIRECTV also wishes to clear up a point (one of many) on which the NRTC has been continually confused. As DIRECTV explained in its Opposition in this proceeding, and has explained to the Commission for several years now,¹⁰ DIRECTV has been unwilling to subject

⁸ *DBS Rules Order* at ¶ 72.

⁹ *Amendment of the Commission's Space Station Licensing Policies*, IB Docket No. 02-34 (rel. June 20, 2003), at ¶ 15 (citing *GE American Communications, Inc.*, Memorandum Opinion and Order, 15 FCC Rcd 23538, 23588, ¶ 11 (Int. Bur. 2000); *Hughes Communications Galaxy, Inc.*, 5 FCC Rcd 4497 (Com. Car. Bur. 1990)).

¹⁰ *See, e.g.*, DIRECTV Enterprises, Inc., File No. SAT-LOA-2000505-0086 (DIRECTV 5) (June 30, 2000) (memorializing June 29 *ex parte* meeting and presentation to FCC staff and representatives of the State of Hawaii, and specific discussion of limitations on program offering due to NRTC litigation); DIRECTV Opposition and Reply Comments, File No. SAT-LOA-2000505-0086 (DIRECTV 5) (July 17, 2000), at 9, n.17 (noting that DIRECTV is "constrained by ongoing litigation and certain programmer packaging agreements from including certain additional programming services in the Hawaii Choice lineup" and that DIRECTV "expects this situation to improve over time"); Further *Ex Parte* Response of DIRECTV, Inc., File No. SAT-LOA-2000505-0086 (DIRECTV 5) (Sept. 20, 2000), at 2 (responding to identical NRTC allegations as those raised in this proceeding, and observing

itself to substantial economic exposure in the NRTC litigation to shift programming around and move some of the 22 programming channels at issue¹¹ onto the DIRECTV 1R satellite *precisely* because of the NRTC's view, expressed in this very proceeding, that such a move would cause "DIRECTV's existing contractual arrangement with NRTC" to "last longer."¹² However, the absence of the 22 programming channels at issue has not affected and should not be considered to affect DIRECTV's compliance with the Commission's geographic service rules.¹³ While it is certainly desirable for those 22 channels to be added to DIRECTV's Hawaii service packages – and indeed, DIRECTV has committed to add them – a review of DIRECTV's current Hawaii service packages illustrates that it is reasonably comparable to CONUS offerings *independent* of whether those channels are added. While section 25.121(c) requires DBS operators "who do not provide service to Alaska and Hawaii" to proffer analyses of technical infeasibility or economic

that "DIRECTV has explained to the Commission the circumstances surrounding its current litigation with the NRTC" and "sees no need to comment further").

¹¹ It is telling regarding NRTC's purpose and candor that NRTC's interest in having specific programming provided to Hawaii does not extend to customers in territories served by the NRTC. For example, NRTC's latest *ex parte* presentation to the staff includes arguments that WTBS, Headline News and the Cartoon Network were among the most popular networks not available in Hawaii and are essential to customers. See *Ex Parte of the NRTC Presentation*, MB Docket No. 03-82, IB Docket No. 98-21, File No. SAT-MOD-20030613-00120 (July 10, 2003), PowerPoint slides at 5. However, in its litigation with DIRECTV, NRTC requested that these three networks, and one other of the 22, be *removed* from the "core" package of programming provided to customers in its territories so that it could sell HBO, Showtime, Cinemax and The Movie Channel – programming DIRECTV already provides to Hawaii. Moreover, NRTC's hired expert asserted on behalf of the NRTC that the absence of these three networks would have *no impact* on customers in NRTC's territories because these networks are not important to consumers.

¹² NRTC Comments at 5.

¹³ Hawaii already receives the Disney Channel. Four of the other "core" programs identified by NRTC consist of distant network signals that are governed by Section 119 of the Copyright Act and will have little if any effect on Hawaii subscribers. Four other "core" programs were identified by the NRTC as vastly inferior to receiving HBO, Showtime, Cinemax and the Movie Channel, and, if NRTC is successful in its litigation, will be dropped from the 22 "core" programs in the NRTC contract.

unreasonableness justifying the lack of service,¹⁴ no such analysis or showing is required in this case because DIRECTV is already at a threshold level of compliance with the Commission's geographic service rules.¹⁵

Finally, DIRECTV once again observes that that there is absolutely no merit to the NRTC's truly puzzling assertion – submitted recently in multiple power point presentations to a number of Commission representatives – that DIRECTV “has not been candid with the Commission” regarding its level of service to Hawaii and the reasons for its need to create special Hawaiian service packages.¹⁶ To the extent that litigation with the NRTC has been cited by DIRECTV as one reason that certain programming channels have not yet been moved to satellites capable of serving Hawaii, DIRECTV has at all times been candid and consistent with both the Commission and Hawaii on this point. For example, DIRECTV met with staff *and* with counsel for Hawaii in June, 2000, in order to explain the NRTC situation as well as other technical constraints on DIRECTV's ability to offer programming packages to Hawaiian customers identical to those offered to CONUS customers.¹⁷ This was followed by subsequent

¹⁴ 47 C.F.R. § 25.148(c).

¹⁵ For this reason, Hawaii's call for DIRECTV “to provide economic and financial analysis supporting its arguments,” Response of the State of Hawaii at 7, is without merit. Whether the potential economic harm to which DIRECTV could be subject in the NRTC litigation as a result of the Commission forcing an immediate shift in DIRECTV programming from certain DIRECTV satellites to others could qualify under the “economic unreasonableness” exception to the geographic service requirements is a theory that, while eminently plausible, need not be considered by the Commission in this case, since the programming channels referenced by the NRTC and Hawaii will be made available to Hawaii in any event upon the launch of DIRECTV 7S.

¹⁶ See, e.g., *Ex Parte Presentation of the NRTC*, MB Docket No. 03-82, IB Docket No. 98-21 and File No. SAT-MOD-20030613-00120 (July 10, 2003), at 3.

¹⁷ DIRECTV Enterprises, Inc., File No. SAT-LOA-2000505-0086 (DIRECTV 5) (June 30, 2000) (memorializing June 29 *ex parte* meeting and presentation to FCC staff and

pleadings and *ex parte* exchanges among Hawaii, the NRTC and DIRECTV *expressly* debating the merits of DIRECTV's position.¹⁸ On November 27, 2000, in the *Order and Authorization* for the launch and operation of the DIRECTV 5 satellite, the Commission noted Hawaii's dissatisfaction with "DIRECTV's claim that it is constrained from offering certain programs due to pending litigation with a distributor, the [NRTC], involving programming packaging agreements."¹⁹ Indeed, as recently as its June 17, 2003 letter regarding DIRECTV's request of an STA to move and operate the DIRECTV 1 and DIRECTV 6 satellites, the NRTC itself argued that "DIRECTV *candidly admitted* on June 30, 2000, that certain 'litigation issues' stemming from its dispute with NRTC 'limit[ed]' its program offerings to Hawaii."

To the extent that the litigation with the NRTC remains a reason that certain programming cannot be moved to DIRECTV 1R at this time, DIRECTV fully explained the point again in its Opposition in this proceeding.²⁰ Thus, DIRECTV has taken a consistent position – acknowledged in meetings with Commission staff and to Hawaii directly, and

representatives of the State of Hawaii, and specific discussion of limitations on program offering due to NRTC litigation).

¹⁸ See, e.g., DIRECTV Opposition and Reply Comments, File No. SAT-LOA-2000505-0086 (DIRECTV 5) (July 17, 2000), at 9, n.17 (noting that DIRECTV is "constrained by ongoing litigation and certain programmer packaging agreements from including certain additional programming services in the Hawaii Choice lineup" and that DIRECTV "expects this situation to improve over time"); Further *Ex Parte* Response of DIRECTV, Inc., File No. SAT-LOA-2000505-0086 (DIRECTV 5) (Sept. 20, 2000), at 2 (responding to identical NRTC allegations as those raised in this proceeding, and observing that "DIRECTV has explained to the Commission the circumstances surrounding its current litigation with the NRTC" and "sees no need to comment further").

¹⁹ DIRECTV Enterprises, Inc., Order and Authorization, SAT-LOA-20000505-00086 (rel. Nov. 27, 2000), at ¶ 7. The Commission rejected the calls by Hawaii and the NRTC to delay the launch of DIRECTV 5. Hawaii also opposed the launch of the DIRECTV 4S satellite. In responding to Hawaii's arguments made in the DIRECTV 5 docket, including its explanation of the NRTC litigation. See Opposition of DIRECTV Enterprises, Inc., File No. S2430-SAT-LOA-20010518-00045 (Aug. 10, 2001), at 4 n.15.

²⁰ Opposition of DIRECTV, Inc. (Apr. 24, 2003) at 12-15.

reflected in publicly-filed *ex parte* notices, pleadings and in FCC Orders, over a period of more than three years – and which the NRTC described as “candid” not more than a month ago (when that description apparently suited its then-purpose). Its claim today that DIRECTV lacks candor is ridiculous, insulting and without merit. Indeed, in assessing the candor of the parties, the Commission should simply ask why the NRTC has expended many pages of power-point presentations and many hours of meeting time with Commission staff on the issue of the adequacy of DIRECTV’s service in Hawaii, when the NRTC *does not have a single member or subscriber in the State*. The reason is simply that the NRTC is motivated by its own litigation agenda, which DIRECTV agrees is a matter “properly left to the courts, not the Commission,”²¹ and can be summarily dismissed here.

III. DIRECTV’S ACTION PLAN TO FURTHER IMPROVE SERVICE TO HAWAII

A. DIRECTV Commits to Provide Hawaii With at Least 22 Additional Programming Channels by the First Quarter of 2004

In its Opposition, DIRECTV set forth different options that, independently or collectively, would allow it to add substantially to the number of programming channels offered by DIRECTV in Hawaii, including: (1) movement of programming to DIRECTV 1R upon resolution of the NRTC litigation; (2) launch of an additional satellite, DIRECTV 7S, at the end of this year; and (3) the possible acquisition of additional satellite capacity.²² Hawaii criticized DIRECTV in its Response, however, because it believed that each of DIRECTV’s proposed options was “qualified excessively.”²³ This criticism is unwarranted.

²¹ Comments of the NRTC (May 9, 2003), at 7.

²² Opposition of DIRECTV, Inc. (Apr. 24, 2003) at 11.

²³ Hawaii Response at 2.

DIRECTV clarifies herein its commitment to add to its Hawaii programming packages at least the 22 programming services at issue in the NRTC litigation by the first quarter of 2004 upon the successful launch of DIRECTV 7S. The precise satellites that DIRECTV will use need not be decided upon at this time, but could entail the use of DIRECTV 1R (upon successful resolution of the NRTC litigation), or the provision of the additional programming from another satellite upon the successful launch of DIRECTV 7S (if the NRTC litigation is not resolved). Thus, by the first quarter of 2004, DIRECTV will expand its service offerings to Hawaii by at least 22 channels, and its service to Hawaii will be nearly identical to the service that DIRECTV provides to CONUS subscribers.

B. DIRECTV Has Made Significant Efforts to Provide Its New High-Definition Programming Package to Hawaii Within The Same Time Frame As CONUS Subscribers

On July 1, 2003, DIRECTV launched a new high-definition ("HD") programming package that includes ESPN HD, Discovery HD Theater, HDNet and HDNet Movies, available by subscription for \$10.99 per month. In addition to these HD channels, subscribers to the HD package will also receive special events broadcast in HD, such as coverage of the Masters Tournament, NBA games and NBA TV programming blocks.

DIRECTV launched this HD programming package due to a groundswell of demand for HD programming, and it is anticipated that the new HD package will enhance DIRECTV's desirability on Hawaii. On June 11, 2003, DIRECTV requested Special Temporary Authority ("STA") to replace its DIRECTV 1 satellite at 110° W.L. with DIRECTV 6, a satellite with Hawaii coverage, and to move the DIRECTV 1 satellite to 101° W.L. These moves will allow DIRECTV to offer its new HD package to *all* U.S. subscribers, including consumers residing in Hawaii.

The Commission granted DIRECTV's STA request on July 2, 2003,²⁴ and DIRECTV has now positioned and is operating DIRECTV 6 at 110° W.L. Thus, DIRECTV's DBS subscribers in Hawaii are now able to receive its new HD package.

C. Additional Actions by DIRECTV

Hawaii raised certain issues in its pleading that are administrative in nature and relatively easy for DIRECTV to remedy. Ideally, Hawaii would have approached DIRECTV directly regarding these issues rather than seek relief at the Commission. That said, DIRECTV appreciates Hawaii's efforts and, in response, has taken or will take the following actions:

Addition of WGN to Hawaii Programming Packages. In its Response, Hawaii alleges that DIRECTV is "withholding" from Hawaii four non-NRTC implicated programming channels from Hawaii.²⁵ This assertion is incorrect. In fact, DIRECTV already provides three of the four channels – C-SPAN, Lifetime Television, and Nickelodeon – to Hawaii. The fourth channel, WGN, was not being offered to Hawaii as of the date that the Hawaii Petition was filed. However, as of June 16, 2003, DIRECTV commenced offering WGN in Hawaii.

Additional Retail Stores. As explained in its Opposition, DIRECTV has no control over whether its national retailers, or any retailers, carry DIRECTV equipment in their Hawaii locations. Notwithstanding this fact, DIRECTV is pleased to inform the Commission that, in 2003, Mountain Satellite intends to open six stores at various Hawaii locations to sell DIRECTV equipment and services. DIRECTV expects that this development will raise substantially DIRECTV's profile in Hawaii.

²⁴ *DIRECTV, Inc., Request for Special Temporary Authority to Move and Operate Direct Broadcast Satellites to 110° W.L., Order* (rel. July 2, 2003). The *Order* found these moves in the public interest in part because they would help "provid[e] U.S. consumers with HDTV programming." *Id.* at ¶ 4.

²⁵ Response of the State of Hawaii at 5.

Availability of DIRECTV Equipment for Hawaii Residents on the DIRECTV Web Site.

At the time that Hawaii submitted its Petition, Hawaii consumers were unable to purchase DIRECTV equipment on the DIRECTV web site because of the need for special equipment and professional installation associated with Hawaii service. DIRECTV is in the process of changing this situation, such that Hawaii residents will soon be able to purchase equipment directly from the DIRECTV website.

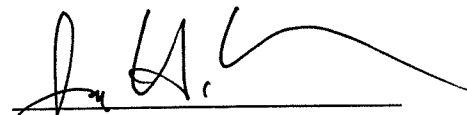
Promotions. Certain promotions that DIRECTV has offered in the past were not made available to Hawaii residents, an administrative oversight that was due to the fact that DIRECTV provides distinct programming packages to Hawaii that were not linked up with the promotions associated with DIRECTV's CONUS packages. DIRECTV has addressed this disconnect and will work to ensure that Hawaii is included in future promotions (or, if necessary due to package distinctions, comparable promotions).

Corrections to the DIRECTV Web Site. The Hawaii Petition informed DIRECTV of certain inaccuracies in the DIRECTV web site. DIRECTV has engaged in a top-down review of the information on its website to remedy these inaccuracies. In particular, DIRECTV is taking steps to ensure that the channel lineup for Hawaii programming packages listed on its website is accurate. In addition, DIRECTV is working to revise the store locator function on its website to correctly list Mountain Satellite and other retailers that sell DIRECTV products and services in Hawaii. In this way, DIRECTV will better facilitate access to DIRECTV in Hawaii.

IV. CONCLUSION

For the foregoing reasons, and for the reasons stated in its Opposition, DIRECTV respectfully requests that the Commission deny the Hawaii Petition and the Microcom Petitions.²⁶

Respectfully submitted,



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Jeffrey A. Marks
of LATHAM & WATKINS, LLP

Counsel for DIRECTV, Inc.

Dated: July 21, 2003

²⁶ DIRECTV provides Alaska residents with programming packages that are identical to those offered to all other U.S. consumers, albeit with a larger satellite dish in some portions of that state. Microcom has not raised any credible fact or argument to the contrary, nor has the State of Alaska in responding to Microcom's Petitions. See Comments of the State of Alaska (April 24, 2003). Indeed, in a supplemental e-mail, Microcom now has *admitted* that "it cannot reliably say whether [DIRECTV] programming is available or not available" in Alaska since "DIRECTV understands the engineering of their satellite fleet better than we do." *Undated e-mail from Microcom*, MB Docket No. 03-82 (filed June 6, 2003). In light of this further confirmation of the lack of support for Microcom's allegations, Microcom's Petitions in this proceeding should be dismissed.

CERTIFICATE OF SERVICE

I, James H. Barker, certify that on this 18th day of August, 2003, a copy of the foregoing Reply Comments of DIRECTV Enterprises, LLC was sent by first-class mail, postage prepaid to the following parties:

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