

EXHIBIT B

REQUEST FOR WAIVER OF SECTION 25.148(c)

Section 25.148(c) of the Commission's rules requires DBS operators to provide service in Alaska and Hawaii where such service is technically feasible from the authorized orbital location. Throughout its satellite fleet, DIRECTV has not only met this requirement, but has extended it by designing the national beams on its Ka-band satellites to cover those two states as well as the contiguous United States ("CONUS"). As a result, consumers in Alaska and Hawaii can subscribe to programming packages comparable to those available to consumers in CONUS, including high definition and local channels.

The Commission has recognized the technical challenge of providing service simultaneously to Alaska, Hawaii, and Puerto Rico from a single satellite.

Alaska, Hawaii and Puerto Rico are at the geographic extremes of the service area defined by the satellite antenna coverage patterns. While it may be possible to provide simultaneous service to all three regions, we recognize that there are technical and economic trade-offs that could significantly impact current service to existing customers. It may not be economically reasonable or technically possible for DBS providers to serve all three areas without service deterioration to existing subscribers.¹

It is precisely to avoid such "service deterioration" that DIRECTV proposes to reorient the DIRECTV 5 spacecraft to provide better coverage to Puerto Rico. But as the Commission foresaw, improving signal coverage in the Caribbean can result in loss of coverage over the Pacific.

As presently configured, the area covered by DIRECTV 5's downlink beam includes not only all of CONUS, but Alaska and Hawaii as well. However, as is true with most of DIRECTV's satellites, not all programming transmitted by the satellite is available to viewers in all coverage areas. Thus, for example, local signals are generally available only to subscribers in the areas where the transmitting broadcast stations are located. Similarly, regional sports networks are generally available only to subscribers within a service territory designated by the programmer. In this particular case, the programming transmitted by DIRECTV 5 is a subset of the programming transmitted by other DIRECTV satellites. Thus, U.S. subscribers outside of Puerto Rico – including those in Alaska and Hawaii – also have access to all of the programming carried by DIRECTV 5, but receive that programming from other DIRECTV satellites. Because the transmissions are redundant with respect to DIRECTV subscribers in areas outside of Puerto Rico, their loss will not change the services and packages available in those areas.

¹ *Policies and Rules for the Direct Broadcast Satellite Service*, 17 FCC Rcd. 11331, ¶ 80 (2002).

The Commission has made clear that a DBS operator satisfies the requirements of Section 25.148(c) if it “offers packages of services in Alaska and Hawaii that are reasonably comparable to what the provider offers in the contiguous 48 states.”² DIRECTV currently meets that requirement, providing programming packages with hundreds of digital channels in both locations. Nothing about the proposed modification would affect that fact. In these circumstances, it is not entirely clear that a waiver is even required. Nonetheless, DIRECTV seeks one in an abundance of caution.

The Commission may waive a rule for good cause shown.³ 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.⁴ In this case, waiver is clearly appropriate. The proposed modification will not affect the programming available in Alaska and Hawaii, as all programming carried by DIRECTV 5 is made available to subscribers in CONUS, Alaska, and Hawaii from other DIRECTV satellites. By contrast, DIRECTV 5 is the only source from which DTVLA subscribers in Puerto Rico receive this programming. Thus, reorienting the satellite to improve signal strength in Puerto Rico will improve the satellite’s service to those who receive it while having no effect on those in other parts of the country who do not.

Accordingly, to the extent necessary, DIRECTV requests a waiver of the geographic service requirement of Section 25.148(c).

² *Id.*, ¶ 72.

³ 47 C.F.R. § 1.3.

⁴ *See Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1166 (D.C. Cir. 1990); *Wait Radio v. FCC*, 418 F.2d 1153 (D.C. Cir. 1969).