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April 28, 2004

Via Hand Delivery

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
Office of the Secretary
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**Policy Branch
International Bureau**

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Re: Ex Parte Presentation

**In The Matter Of DIRECTV Enterprises, LLC Request For Special
Temporary Authority To Relocate DIRECTV 5 To 72.5° WL and to Conduct
Telemetry, Tracking and Command (TT&C) Operations For an Interim
Period, SAT-STA-20040107-00002**

Dear Ms. Dortch:

The National Rural Telecommunications Cooperative (NRTC), by its attorneys, hereby submits these comments in support of the above-captioned request by DIRECTV Enterprises, LLC (DIRECTV) for Special Temporary Authority (STA) to relocate DIRECTV 5 to 72.5° W.L. (DIRECTV STA). Grant of the DIRECTV STA will help to achieve one of the Commission's primary goals: increased deployment of local broadcast signals to rural areas.

I. BACKGROUND.

Pursuant to a contractual agreement with Telesat Canada (Telesat), DIRECTV has agreed, subject to approval by the Commission, to make its DIRECTV 5 satellite available for Telesat to develop the BSS orbital position at 72.5° W.L. assigned to Canada by the International Telecommunications Union (ITU).¹ In conjunction with the pending launch of DIRECTV 7S, the proposed arrangement will enable DIRECTV to dramatically increase the number of markets receiving local broadcast signals via Direct Broadcast Satellite (DBS).

¹ DIRECTV STA, p. 2. Telesat recently was granted approval from Industry Canada, the Canadian spectrum licensing authority, to develop and operate a BSS space station at Canada's BSS orbital position at 72.5 W.L. See Letter to Mr. Ted Ignacy, Vice President-Finance and Treasurer, Telesat Canada, from Jan Skora, Director General, Radiocommunications and Broadcasting Regulatory Branch, Industry Canada (December 17, 2003).

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Under the agreement, DIRECTV 5 will be positioned at the 72.5° WL orbital location and become operational through an Industry Canada authorization.² DIRECTV 5 essentially will become a “Canadian-flagged” satellite, although title to and ownership of the satellite will remain with DIRECTV.³

After an interim period, Telesat will assume TT&C for DIRECTV 5.⁴ DIRECTV, however, would retain the use of the transponder capacity at that location to provide DBS service to the United States, thus providing access to additional DBS channel capacity necessary for the deployment of additional local broadcast signals.⁵

The *DIRECTV STA* was placed on public notice on January 15, 2004.⁶ Only two parties filed comments opposing the *DIRECTV STA*: Pegasus Development Corporation (Pegasus) and EchoStar Satellite LLC (EchoStar).⁷ Telesat filed comments in support of the *DIRECTV STA*. NRTC is pleased to express its support, as well.

II. NRTC

NRTC is a not-for-profit cooperative comprised of 736 rural electric cooperatives, 147 rural telephone cooperatives and 203 independent rural telephone companies located throughout 48 States. Since its founding in 1986, NRTC’s mission has been to provide advanced technologies and telecommunications services to rural America. NRTC has long represented the views of rural Americans before the FCC, the National Telecommunications and Information Agency and the United States Congress.

In 1994, NRTC assisted in capitalizing the launch of the DIRECTV satellite business. Through a Distribution Agreement between NRTC and Hughes Communications Galaxy, Inc.

² *DIRECTV STA*, p. 4.

³ *Id.* at 2, 4, n.8.

⁴ *Id.* at 2. According to DIRECTV, “[o]nce DIRECTV 5 is positioned at 72.5° W.L., upon receipt of all necessary U.S. and Canadian regulatory approvals, DIRECTV expects to return to the Commission its space station license for DIRECTV 5... DIRECTV would then re-apply for a license for that satellite to provide service using a U.S. orbital location if that becomes necessary in the future... DIRECTV 5 would be located in the center of the cluster at 72.5° W.L. with its exact position to be determined once the satellite is relocated.” *See Id.* at 2, nn. 3, 4.

⁵ *Id.* at 4.

⁶ *See* Federal Communications Commission Report No. SAT-00187, *Satellite Space Applications Accepted for Filing*, SAT-STA-20040107-00002 (released January 15, 2004).

⁷ *See* Petition to Deny of Pegasus Development Corporation, submitted in response to the *DTV STA* (submitted February 17, 2004) (*Pegasus Petition*); Comments of EchoStar Satellite, LLC, submitted in response to the *DTV STA* (submitted February 17, 2004) (*EchoStar Comments*). DIRECTV responded to the *Pegasus Petition* and *EchoStar Comments*. *See* Opposition and Reply Comments of DIRECTV Enterprises, LLC, (submitted March 3, 2004) (*DIRECTV Opposition*).

(DIRECTV's predecessor-in-interest), NRTC received exclusive program distribution and other rights to market DIRECTV's DBS programming and other services throughout much of rural America. NRTC, its members and affiliates currently distribute DIRECTV programming to more than 1,500,000 rural households.⁸

III. COMMENTS.

A. The Commission's Expeditious Grant of DIRECTV's STA Will Ensure Increased Deployment of Local Broadcast Signals to Rural America.

The availability of local broadcast signals in rural communities is not just about the delivery of entertainment programming. To the contrary, access to local news and public affairs programming is an issue of critical importance to the safety, health and economic viability of each and every local community in the country, especially those in rural America with fewer media outlets.

In any natural disaster situation, local news provides vital information on safety procedures, emergency shelter locations, and how to obtain much-needed assistance. In recognition of this fact, as part of its homeland security efforts, the Commission created the Media Security and Reliability Council to address concerns regarding multichannel video programming distribution (MVPD) and broadcast capabilities "during terrorist attacks, natural disasters and all other threats or attacks nationwide."⁹ Access to local broadcast signals is a key component of that effort.

⁸ NRTC also provides dial-up Internet access, 220 MHz wireless services, long distance telephone services, automated meter reading and other telecommunications services to its members and affiliates who in turn provide these services to rural consumers. Additionally, during the past few years, NRTC has facilitated the deployment of broadband services in rural America, by supporting and serving its members who utilize wireline (DSL, cable modem) and wireless (terrestrial and satellite) technologies. NRTC provisions its members as Internet Service Providers and distributes broadband Internet access services via Ku-band satellite pursuant to agreements with StarBand Communications, Inc. and Hughes Network Systems. NRTC and its members also are testing the feasibility of broadband delivery via electric power lines. NRTC recently joined Liberty Satellite, LLC and Intelsat USA Sales Corporation in investing \$156 million (NRTC itself invested \$29 million) in WildBlue Communications, Inc. (WildBlue), a Ka-band satellite licensee. WildBlue is expected to begin offering the first viable Ka-band satellite service in 2004, using technology designed to lower the cost of providing consumers throughout the country with bundled video and high-speed Internet access via satellite.

⁹ Media Security and Reliability Council website, *Are We Ready* <<http://www.mediasecurity.org/>> (visited April 23, 2004). The Media Security and Reliability Council was created to assure the optimal reliability, robustness and security of the broadcast and multichannel video programming distribution industries. See FCC Press Release, FCC Announces Creation Of Media Security & Reliability Council; Tribune Company President Dennis Fitzsimons To Be Chairman (released February 28, 2002).

The coverage of news, sports, community affairs and other local events is essential to the social and economic well being of any local community.¹⁰ On numerous occasions, the Commission has stressed the importance of promoting localism through increased deployment of local broadcast signals.¹¹ Recently, the Commission acknowledged the “important public interest benefit of increased local channel service.”¹² NRTC strongly shares this view and believes that expeditious grant of the *DIRECTV STA* will help to ensure that the Commission achieves this laudable goal.

For many rural Americans, access to local broadcast signals has been -- and continues to be -- problematic. Some rural Americans cannot obtain local over-the-air signals due to distance or terrain shielding issues. Others may lack access to cable systems carrying local signals. Still others may reside in markets where neither DBS provider offers a local signal. Congress deems this problem to be of such importance from a public policy perspective that it passed legislation providing loan guarantees for the sole purpose of expanding deployment of local broadcast signals to underserved and unserved areas.¹³

NRTC believes that expeditious grant of the *DIRECTV STA* is an essential step for increased deployment of local broadcast signals to less densely populated areas. *DIRECTV*'s proposed use of the 72.5° WL Canadian BSS slot represents a timely and appropriate solution to this problem.

¹⁰ Communities without effective local coverage of important events will be severely disadvantaged both in building a sense of community spirit and in attracting and maintaining residents and businesses. Without effective local coverage, communities will be viewed as less desirable places within which to live and do business.

¹¹ In its most recent biennial review, the Commission stated that “localism continues to be an important policy objective. Localism is rooted in Congressional directives to this Commission and has been affirmed as a valid regulatory objective many times by the courts. We hereby reaffirm our commitment to promoting localism in the broadcast media.” Report and Order and Notice of Proposed Rulemaking, *In the Matter of 2002 Biennial Regulatory Review – Review of the Commission’s Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996*, 18 FCC Rcd. 13620, ¶73 (released July 2, 2003). See also, Memorandum Opinion and Order, *In the Matter of General Motors Corporation and Hughes Electronics Corporation, Transferors And The News Corporation Limited, Transferee, For Authority to Transfer Control*, 19 FCC Rcd. 473, ¶333 (released January 14, 2004) (*News Corp. DIRECTV Order*) (stating that the increase in local-into-local service “should benefit consumers through increased choice, lower prices, or both”); Fact Sheet: FCC’s Conditioned Approval of News Corp - DIRECTV Merger, p. 1 (released December 19, 2003) (discussing the Commission’s conclusion that “consumers will benefit, and the FCC’s goals of promoting localism and competition will be furthered, by the company increasing the number of markets that can receive local broadcast channels from their satellite TV provider).

¹² See Public Notice, *Subject to Conditions, Commission Approves Transaction Between General Motors Corporation, Hughes Electronics Corporation and The News Corporation Limited*, MB Docket No. 03-124 (released December 19, 2003).

¹³ See, *The Launching Our Communities’ Access to Local Television Act of 2000*, Pub. L. No. 106.553 (2000).

Although a number of other solutions have been discussed for expanding local coverage (e.g. reduced orbital spacing, MVDDS), the reality is that their implementation is years away. DIRECTV's proposed solution, however, will have an immediate and tangible effect on numerous rural communities. For this reason, NRTC urges the Commission to expeditiously grant the *DIRECTV STA*.

B. The Commission's *DBAC Order* Supports Grant of the *DIRECTV STA*.

Both EchoStar and Pegasus oppose Commission approval of the *DIRECTV STA*. Pegasus argues in its Petition to Deny that the *DIRECTV STA* is anti-competitive and violates an alleged Commission policy established in the Commission's *DBAC Order*.¹⁴ EchoStar maintains that due to ambiguities in the *DBAC Order*, a rulemaking proceeding is necessary prior to any grant of the *DIRECTV STA*.

Both Pegasus and EchoStar misinterpret the Commission's *DBAC Order*. Rather than barring a grant, the *DBAC Order* actually supports the *DIRECTV STA*.

In the *DBAC Order*, the Commission relaxed its long-standing restriction on the use of Canadian-licensed BSS satellites, concluding that Digital Broadband Application Corporation (DBAC) should be allowed to access Canadian-licensed BSS satellites from earth-stations licensed in the United States. The Commission concluded that grant of DBAC's application would enhance, rather than distort or harm, competition in the United States for broadband video and data services.¹⁵

To reach this conclusion, the Commission applied its effective competitive opportunities test (ECO-Sat), established in the *DISCO II Order*.¹⁶ The ECO-Sat test is applied in instances involving non-WTO covered services (e.g. DBS) by non-U.S. satellites. It is designed to ensure that entry by the foreign satellite does not distort competition in the U.S. market. Although concluding in the *DBAC Order* that Canada failed the ECO-Sat test, the Commission nonetheless

¹⁴ Order, *In the matter of Digital Broadband Applications Corp. Consolidated Application for Authority to Operate U.S. Earth Stations with a U.S.-Licensed Ku-Band FSS Satellite and Canadian-Licensed Nimiq and Nimiq 2 Satellites to Offer Integrated Two-Way Broadband Video and Data Service Throughout the United States*, 18 FCC Rcd. 9455 (released May 7, 2003).

¹⁵ *DBAC Order*, ¶16.

¹⁶ Report and Order, *Amendment of the Commission's Regulatory Policies to Allow Non-U.S. Licensed Space Stations to Provide Domestic and International Satellite Service in the United States*, 12 FCC Rcd 24094, ¶98 (released November 26, 1997). Under this test, the Commission examines effective competitive opportunities for U.S.-licensed satellites to serve the home market of the non-U.S. satellite seeking access to the United States. *DISCO II Order*, 12 FCC Rcd at 24136-7, 98. In particular, the Commission examines de jure and de facto barriers to entry for the provision of analogous services, and whether any such barriers would cause competitive distortions in the United States. *DISCO II Order*, 12 FCC Rcd at 24137 (para. 99); see also 47 C.F.R. § 25.137(a). Application of the ECO-Sat test is only one factor in its general public interest analysis framework.

approved DBAC's application after determining that there was a "compelling public interest" to overcome the failure of the ECO-Sat test -- namely, increased competition in the MVPD market.

In its opposition to the *DIRECTV STA*, Pegasus extrapolates beyond the Commission's *DBAC Order*, claiming that it establishes a principle whereby domestic use of Canadian-licensed BSS satellites will be limited to new entrants.¹⁷ The *DBAC Order*, however, establishes no such precedent. Although DBAC's status as a new entrant was noted as a factor considered by the Commission in reaching its conclusion, the *DBAC Order* in no way created the Commission "policy" that Pegasus suggests. Rather, the Commission's analysis reflected the policy framework set forth in the *DISCO II Order*. Under this framework, the Commission may consider a wide range of issues in applying its ECO-sat test, including the impact on competition.¹⁸

The Commission granted authority to DBAC because it believed DBAC's status as a new entrant into the MVPD market constituted a "compelling public interest."¹⁹ Applying the same standard to the *DIRECTV STA*, the Commission should easily find that the provision of local broadcast signals to 130 DMAs constitutes a similarly compelling public interest.²⁰ The Commission itself has recently noted that the increased provision of local broadcast signals into select DMAs benefits consumers through "increased choice, lower prices, or both."²¹ These are the same objectives that would be satisfied through grant of the *DIRECTV STA*.

For its part, EchoStar argues that a rulemaking should be initiated in order to resolve a number of issues it claims exist related to the *DIRECTV STA*. It claims that a rulemaking is needed to ensure "even-handed[]" access to non-U.S. DBS orbital locations. According to EchoStar, a rulemaking is also necessary to establish a requisite public interest for overcoming the lack of reciprocity with Canada. EchoStar even goes so far as to claim that a rulemaking is

¹⁷ *Pegasus Petition*, p. 3.

¹⁸ These issues may include the effect on competition in the United States, spectrum availability and matters relating to national security, law enforcement and trade concerns. *DISCO II Order*, ¶¶30-182.

¹⁹ *DBAC Order*, ¶15 (quoting *DISCO II NPRM*, 11 FCC Rcd at 18192) (emphasis in original).

²⁰ In addition, DIRECTV notes in its Opposition to the *Pegasus Petition* that the Commission's most recent competitive assessment of the MVPD marketplace determined that cable operators continue to dominate the MVPD market with a 75% share. See *DIRECTV Opposition*, pp. 5-6 (referencing Tenth Annual Report, *In the Matter of Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, MB Docket No. 03-172 (released Jan. 28, 2004), at ¶¶ 4, 124. DIRECTV also notes the Commission's observation that "[W]hile the two primary incumbent DBS competitors have attracted enough subscribers nationwide to rank them among the largest MVPDs, they rank far behind cable operators in most local markets, including all the most populous urban area. Cable remains the predominant provider of MVPD services in these markets." *DIRECTV Opposition*, p. 6 (quoting Memorandum Opinion and Order, *In the Matter of General Motors Corporation and Hughes Electronics Corporation, Transferors And The News Corporation Limited, Transferee, For Authority to Transfer Control*, 19 FCC Rcd. 473, ¶361 (released January 14, 2004) (footnotes omitted) (*News Corp Order*)).

²¹ *News Corp Order* at ¶ 333.

needed to determine the appropriate definition of the Commission's "compelling public interest" standard utilized in the *DBAC Order*.

EchoStar's analysis of the *DBAC Order*, however, ceases at the point where the Commission concludes that Canada failed the ECO-Sat test. EchoStar then claims that in order for the Commission to proceed to the second step -- determining whether a compelling public interest reason warrants grant of the application -- a rulemaking is needed.

EchoStar's demand for a rulemaking proceeding is unwarranted and will only delay the deployment of much needed local broadcast signals to rural Americans. The Commission already has addressed the relevant issues in its *DISCO II Order* and applied them in the *DBAC Order*. There are compelling public interest reasons (*i.e.*, significantly increased local television service) fully justifying grant of the *DIRECTV STA* under the DISCO II/DBAC framework.

IV. CONCLUSION.

NRTC urges the Commission to grant the *DIRECTV STA* as quickly as possible. The *DIRECTV STA* will serve the public interest and enable the Commission to achieve one of its primary public interest goals: ensuring that more Americans -- many of whom are located in rural areas -- have access to their local broadcast signals.

Sincerely,



Jack Richards
Kevin Rupy

Certificate of Service

CERTIFICATE OF SERVICE

I, HEREBY CERTIFY that on this 28th day of April, 2004, a true and correct copy of the foregoing correspondence of the National Rural Telecommunications Cooperative in the matter of DIRECTV Enterprises, LLC Request For Special Temporary Authority To Relocate DIRECTV 5 To 72.5° WL, SAT-STA-20040107-00002, was submitted via hand delivery to the Federal Communications Commission, and served via electronic mail and First Class Mail upon the following:

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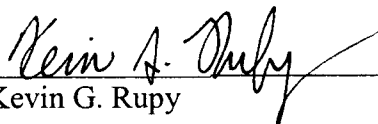
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