



February 19, 2008

Ms. Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12th Street SW  
Washington DC 20554

Re: Written *Ex parte* Communication of National Association of Broadcasters  
MB Docket No. 07-18

Dear Ms. Dortch:

As of the present date, DIRECTV is offering local-into-local satellite delivery of local television stations in only 144 local markets—some 66 markets short of the promise it made to the FCC in 2003 that, by the end of 2008, it would deliver local television stations by satellite in all of the country's 210 local television markets.

DIRECTV Group, Inc. has recently proposed, in connection with News Corp.'s application to transfer control of DIRECTV to Liberty Media, that, instead of delivering local stations by satellite in local markets, it will provide a "seamless, integrated" antenna in all markets.<sup>1</sup> As the North Dakota Broadcasters and others have shown, DIRECTV's proposal is neither seamless nor integrated since it does not actually contemplate the provision of local-into-local *satellite* television service in all 210 markets.<sup>2</sup>

In 2003, News Corp., in connection with its application to assume control of DIRECTV from General Motors Corp./Hughes Electronics Corp., and as an inducement for securing government approval of the transfer, committed DIRECTV to provide local-into-local satellite television service in all 210 DMAs by the end of 2008:

Accordingly, as early as 2006 and no later than 2008,  
(1) DIRECTV will offer a seamless, integrated local

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<sup>1</sup> Letter from William M. Wiltshire, on behalf of DIRECTV Group, Inc. to Marlene H. Dortch, MB Docket No. 07-18 (Jan. 30, 2008).

<sup>2</sup> See Letter from George R. Bosari, Jr., on behalf of North Dakota Broadcasters, to Marlene H. Dortch, MB Docket No. 07-18 (Feb. 13, 2008).

channel package in *all* 210 DMAs, and (2) DIRECTV will offer at least 200 to 300 channels of local and national HDTV programming. News Corp. and Hughes continue to believe that DIRECTV will be the strongest possible competitor to incumbent cable operators only if it can provide consumers with their local broadcast channels and with HDTV programming . . . . [T]hese public interest benefits will be realized *only* as a *direct result* of the proposed transaction.<sup>3</sup>

Although the Commission did not impose News Corp.'s commitment as condition of the grant of the transfer application, News Corp.'s commitment was important in demonstrating that the transaction offered "public interest benefits" and clearly served as an inducement for Commission approval of the application.

More importantly, while the language of the 2003 commitment appears to be the same as the new 2008 commitment—"a seamless, integrated local channel package"—the Commission and the television industry understood the original commitment to be a promise to deliver local television stations in their local markets by means of *satellite*. The Commission, in its *Memorandum Opinion and Order* approving the transaction, clearly understood the commitment by DIRECTV to be a commitment to deliver local stations in all markets by DBS—not by a separate antenna or by means of some integrated antenna and set-top box. The Commission stated:

The Commission has long recognized the importance of local broadcast television and its contribution to the Commission's goal of fostering localism in media. To the extent that the transaction results in an increase in the amount of *DBS-provided* local-into-local service and/or the number of HDTV channels offered to subscribers, this should increase competition in MVPD markets and should benefit consumers through increased choice, lower prices, or both. In addition, we find that increasing the number of DMAs in which DirecTV subscribers can receive local

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<sup>3</sup> See Letter from William M. Wiltshire *et al.*, on behalf of News Corp., General Motors Corp., and Hughes Electronics Corp., to Marlene H. Dortch, Secretary, MB Docket No. 03-124 (filed Sept. 22, 2003), at 4 (emphases added).

broadcast television stations furthers the Commission's goal of promoting localism.<sup>4</sup>

The promised "public interest benefits" of local-into-local satellite television service in all 210 DMAs and, in particular, the consumer benefits of effective competition to incumbent cable operators and other MVPDs for viewers in the smallest, most rural, and often most terrain-challenged television markets are just as important today as they were in 2003. News Corp.'s promise will be wholly empty if the Commission does not hold DIRECTV to the commitment of true local-into-local "DBS" service, as Congress, the Commission, and the public understood it to be at the time and not the revisionist contradiction of that promise that DIRECTV now advances. Clearly, News Corp. will have received the benefit of its bargain and a substantial return on its investment in four years. The public, especially America's *rural* public, should now receive the benefits of competition and of local-into-local satellite delivered service that DIRECTV promised to it. Only the Commission is in a position to ensure that the American public receives those promised benefits.

Notably, DIRECTV does not contend in its January 30 proposal that it cannot fulfill its commitment because it is technically unable to do so. Had it contended otherwise, that would be in direct conflict with DIRECTV's multiple boasts to Wall Street that, in 2008, it will be able to retransmit at least 1,500 local channels in digital *high definition* ("HD") format, not only in a digitized analog format. Indeed, DIRECTV has, for many years, including as recently as November 2007, been telling the world this fact.<sup>5</sup>

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<sup>4</sup> *In the Matter of General Motors Corporation et al.*, MB Docket No. 03-124, 19 FCC Rcd 473 (2004), ¶ 333 (emphasis added).

<sup>5</sup> See, e.g., DirecTV Investor Relations, News Release, *DIRECTV Offers to Install HD in the New International Space Station Module; Ready to Bring HD to the Final Frontier* (Nov. 16, 2007), available at <<http://phx.corporate-ir.net/phoenix.zhtml?c=127160&p=irol-newsArticle&ID=1080131&highlight=>>> ("The DIRECTV 11 satellite will be launched early next year [2008] to support further HD expansion. Combining DIRECTV 11 with existing satellite capacity, DIRECTV will have the ability to deliver 150 national HD channels and 1,500 local HD and digital channels in addition to new advanced programming services for customers."); DirecTV Investor Relations, News Release, *Boeing Delivers Next-Generation Commercial Satellite to DIRECTV, Inc.* (Oct. 10, 2005), available at <<http://phx.corporate-ir.net/phoenix.zhtml?c=127160&p=irol-newsArticle&ID=766263&highlight=>>> (concerning DIRECTV's "initiative to deliver more than 1,500 local HD channels and more than 150 national HD channels and other advanced programming services to customers nationwide by 2007"); DirecTV Investor Relations, News Release, *DIRECTV's Spaceway F1 Satellite Launches New Era in High-Definition Programming; Next Generation Satellite Will Initiate*

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These 1,500 channels would cover virtually every local television station it could ever be obligated to retransmit in HD.<sup>6</sup>

NAB respectfully requests that the Commission act in the public interest by requiring DIRECTV, through Liberty Media, to provide true local-into-local *DBS* delivery of local television stations in all 210 DMAs by December 31, 2008.

Sincerely,



Jane E. Mago  
Sr. Vice President and General Counsel  
Legal and Regulatory Affairs

cc: Chairman Kevin J. Martin  
Commissioner Michael J. Copps  
Commissioner Jonathan S. Adelstein  
Commissioner Deborah Taylor Tate  
Commissioner Robert M. McDowell  
Ms. Monica Desai, Chief, Media Bureau

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*Historic Expansion of DIRECTV Programming* (Apr. 26, 2005), available at <http://phx.corporate-ir.net/phoenix.zhtml?c=127160&p=irol-newsArticle&ID=700828&highlight=>> (“The launch of Spaceway F1, and Spaceway F2 in June, marks the beginning of a historic expansion of DIRECTV’s capacity that will include the launch of two more next-generation satellites, DIRECTV 10 and DIRECTV 11, in 2007. The four satellites will provide additional capacity to deliver more than 1,500 local HD and more than 150 national HD channels and other advanced programming services to consumers.”).

<sup>6</sup> According to the Commission’s latest tally, there are 1722 full power digital television stations. See *DTV Stations Authorized to Be on the Air*, available at <http://www.fcc.gov/mb/video/files/dtvonairsum.html>. There are 143 satellite stations, see TELEVISION & CABLE FACTBOOK 2008 at C-2 to C-3, most of which are ineligible for mandatory carriage pursuant to 47 U.S.C. § 338(c)(1). That leaves approximately 1579 stations potentially eligible for mandatory carriage, although some unknown number of NCE television stations would also be ineligible for mandatory carriage pursuant to 47 U.S.C. § 338(c)(2).