

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of )
)
DIRECTV Enterprises, Inc. )
) SAT-LOA-20000505-00086
For Authority to Launch and Operate )
A Direct Broadcast Satellite Service )
Space Station )
)
)

ORDER AND AUTHORIZATION

Adopted: November 24, 2000

Released: November 27, 2000

By the Chief, Satellite and Radiocommunication Division:

1. By this order, we grant DIRECTV Enterprises, Inc. ("DIRECTV") authority to launch and operate a direct broadcast satellite ("DBS"), DIRECTV 5, at the 119° W.L. orbital location, subject to the conditions set forth below. We also deny the State of Hawaii's petition to deny the application, and deny the State of Alaska's request to condition DIRECTV's authorization. This authorization will allow DIRECTV to use its frequencies at 119° W.L. more efficiently and expand its programming options, thereby serving the public interest.

I. BACKGROUND

2. DIRECTV provides DBS service to U.S consumers from the 101°, 110°, and 119° W.L. orbital locations. DIRECTV acquired 11 DBS channels at 119° W.L. from Tempo Satellite in May 1999.1 At that time, Tempo had already launched a satellite into 119° W.L., USABSS-7, but was not providing commercial service due to technical difficulties. After acquiring Tempo's authorization, DIRECTV was able to provide limited commercial service by offering its Spanish language programming package and high definition programs from USABSS-7. DIRECTV now seeks to launch and operate its new satellite, DIRECTV 5, and collocate it with USABSS-7 at the 119° W.L. orbital location.2 Following the successful launch and operation of DIRECTV 5, USABSS-7 will be used as an in-orbit spare. DIRECTV states that DIRECTV 5 is designed to use its eleven frequencies at 119° W.L. more efficiently than USABSS-7 and will provide additional capacity, allowing DIRECTV to expand programming choices to its subscribers. In addition, DIRECTV asserts that the operation of DIRECTV 5 will facilitate greater DBS competition to incumbent cable television providers by allowing DIRECTV to provide additional local channels to its subscribers.

1 Tempo Satellite, Assignor, and DIRECTV Enterprises, Inc., Assignee, Order and Authorization, 14 FCC Red 7946 (IB 1999).

2 DIRECTV proposes to operate DIRECTV 5 from the 119.000° W.L. orbit location.

3. The State of Alaska filed comments asserting that DIRECTV has to provide service to Alaska and Hawaii from its satellite at 119° W.L., but that DIRECTV's application is unclear as to whether it plans to do so. It also asks that the Commission require DIRECTV to provide service to Alaska that is comparable to service provided elsewhere, and that the size of the receiving antennas be limited to one meter or less.

4. The State of Hawaii filed a petition to deny DIRECTV's application. Hawaii asserts that DIRECTV is in violation of the Commission's geographic service rules and should be required to provide programming to Alaska and Hawaii from each of its orbital locations. Hawaii asserts that the launch of DIRECTV 5 will only compound the service problem because it will provide only niche programming, and not the full-service programming Hawaii argues is required. Hawaii asks that the application be denied and that DIRECTV be required to submit a new application acknowledging its geographic service obligations and detailing how it intends to achieve compliance. The National Rural Telecommunications Cooperative ("NRTC") filed comments in support of Hawaii's petition.

## II. DISCUSSION

5. We find that granting DIRECTV's application will allow DIRECTV to increase and improve its service offerings to consumers. In addition, the increased efficiency and additional capacity will allow DIRECTV to offer additional programming, including local-into-local channels, providing greater competition to incumbent cable television providers.

6. With respect to the geographic service rule issues raised by Alaska and Hawaii, we find that these are more appropriately addressed in our pending DBS rulemaking proceeding.<sup>3</sup> However, previously, in the *DBS Service Rules Report and Order*, the Commission adopted geographic service obligations which require DBS licensees licensed after January 19, 1996 to provide service to Alaska and Hawaii upon commencement of operations, where technically feasible.<sup>4</sup> DIRECTV commenced service to Hawaii in mid-September by offering "Hawaii Choice," a basic package of 52 channels including sports, news, children's and educational programming, and public interest programs from its satellite, DBS-1R, at the 101° W.L. orbit location.<sup>5</sup> DIRECTV also offers 20 additional a-la-carte and premium programs and pay-per-view channels.<sup>6</sup> In addition, DIRECTV will offer Hawaiian subscribers Spanish language and high definition programs from DIRECTV 5 at 119° W.L. DIRECTV states that it serves residential and commercial customers in Alaska, 90% of who receive the full complement of DIRECTV programming.<sup>7</sup> DIRECTV also states it only has three frequencies at the 110° W.L. orbital location, presently used to

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

<sup>4</sup> Revision of Rules and Policies for the Direct Broadcast Satellite Service, *Report and Order*, 11 FCC Rcd 9712, 9762 (1995).

<sup>5</sup> *But see* Ex parte letter filed by Hawaii on November 21, 2000, asserting that retailers are not actually marketing DIRECTV to Hawaiian subscribers.

<sup>6</sup> Attachment to Further *Ex Parte* Response of DIRECTV, Inc., filed September 20, 2000.

<sup>7</sup> Opposition and Reply Comments of DIRECTV Enterprises, Inc., ("*DIRECTV Opposition and Reply*"), filed July 17, 2000, at 4.

provide local broadcast channels in North and South Carolina.<sup>8</sup>

7. Hawaii objects to the launch of DIRECTV 5 based on DIRECTV's alleged failure to comply with the Commission's geographic service rules. Hawaii argues that under Section 100.53, DIRECTV must serve Hawaii and Alaska from its newly acquired channel assignments at each of its three orbital locations.<sup>9</sup> Hawaii claims that DIRECTV's proposed offering of Hawaii Choice from 101° W.L. is inadequate because it does not include programming that is comparable to services available in the continental United States ("CONUS"), and falls short of programming offered by cable systems in Hawaii.<sup>10</sup> In addition, Hawaii maintains that the "Hawaii Choice" package is insufficient because it lacks some of the most popular and informative programming.<sup>11</sup> Hawaii refutes DIRECTV's claim that it is constrained from offering certain programs due to pending litigation with a distributor, the National Rural Telecommunications Cooperative ("NRTC"), involving programming packaging agreements.<sup>12</sup> Hawaii also claims that the niche programming offered by DIRECTV 5 fails to satisfy DIRECTV's obligation to provide "full service" to Alaska and Hawaii.<sup>13</sup> While DIRECTV need not offer Hawaii programming identical to that provided on the mainland, Hawaii claims that the program offering must be of equal value and equivalent price.<sup>14</sup> Hawaii further asserts that DIRECTV has configured its DBS system to circumvent the Commission's geographic service rules since it is using channel assignments or satellites incapable of serving all 50 states for its core programming, while its newer satellites and orbital assignments offer local and niche services only.<sup>15</sup>

8. Similarly, Alaska comments that DIRECTV is required to provide service to the state from 119° W.L. as set forth in the Commission's geographic service rules.<sup>16</sup> Alaska also claims that the authorization DIRECTV acquired from Tempo was conditioned on the provision of service to Alaska and Hawaii. Alaska suggests that the application at issue is unclear as to whether DIRECTV intends to provide such service.<sup>17</sup> In any event, Alaska states that grant of the application should be conditioned on

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<sup>8</sup> *DIRECTV Reply and Opposition*, at 4-5.

<sup>9</sup> Petition to Deny of the State of Hawaii ("*Hawaii Petition to Deny*"), filed July 6, 2000, at 8.

<sup>10</sup> *Hawaii Petition to Deny*, at 3. See also Ex parte Letter filed November 9, 2000, where Hawaii urges the Commission to mandate "full" DBS service of comparable or equal value to that provided in the rest of the United States.

<sup>11</sup> *Id.* at 9.

<sup>12</sup> The NRTC filed comments in support of Hawaii's petition. The NRTC asserts that DIRECTV is using the pending litigation as a means to avoid providing full service to Hawaii. Comments of NRTC, filed September 7, 2000.

<sup>13</sup> *Id.* at 6.

<sup>14</sup> *Id.* at 7.

<sup>15</sup> Reply of the State of Hawaii ("*Hawaii Reply*") filed July 24, 2000.

<sup>16</sup> Comments of the State of Alaska ("*Alaska Comments*") filed July 6, 2000 at 2.

<sup>17</sup> *Alaska Comments*, at 7.

the provision of service that is comparable to the service provided elsewhere.<sup>18</sup> In addition, Alaska asks the Commission to require that the earth station receive antennas used to receive DIRECTV's programming be no larger than one meter in size.<sup>19</sup>

9. DIRECTV responds that it is not obligated to serve Hawaii and Alaska from each of its orbit locations and that it is in full compliance with the Commission's geographic service rules.<sup>20</sup> DIRECTV states that Section 100.53 is location specific – that whatever services are offered from a particular location must be made available to Alaska and Hawaii, if technically feasible.<sup>21</sup> With respect to authorizations acquired after January 1996, DIRECTV says it provides service within the technical constraints of its satellites and their orbital assignments, noting that 90% of subscribers in Alaska receive the full complement of DIRECTV programming.<sup>22</sup> DIRECTV explains that from 110° W.L. and 119° W.L. it is offering programming that serves underserved constituencies that help DIRECTV compete with cable, an important congressional objective.<sup>23</sup> To facilitate service to Hawaii, it introduced Hawaii Choice.<sup>24</sup> Under Hawaii's proposal, DIRECTV states that it would have to reconfigure its entire DBS system regardless of location in order to provide service to Hawaii that is comparable to that received by CONUS subscribers.<sup>25</sup> This plan should be rejected, DIRECTV claims, because it would result in a lack of capacity and “duplicative waste of spectrum” to provide the same programming to Hawaii and CONUS subscribers, leading to the demise of DBS service altogether.<sup>26</sup> Nonetheless, DIRECTV subsequently clarified that DIRECTV 5 will indeed cover both Alaska and Hawaii.<sup>27</sup> DIRECTV notes that the size of the receive antennas may be larger for certain subscribers in Alaska due to poor elevation angles relative to DIRECTV's satellites at 101° W.L. However, it states that the service to Alaskan subscribers is

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<sup>18</sup> *Id.* at 8.

<sup>19</sup> *Id.* at 9.

<sup>20</sup> *DIRECTV Opposition and Reply* at 3, 6.

<sup>21</sup> *DIRECTV Opposition and Reply*, at 6: *Ex Parte* Response of DIRECTV, Inc. (“*DIRECTV Ex Parte*”) filed August 3, 2000, at 4.

<sup>22</sup> *DIRECTV Opposition and Reply*, at 2.

<sup>23</sup> *DIRECTV Opposition and Reply* at 5.

<sup>24</sup> In response to NRTC's comments regarding the pending litigation over programming distribution agreements, DIRECTV notes that NRTC has no contractual right to distribute DIRECTV's programming to Hawaii and should not be permitted to obscure the benefits and services DIRECTV is providing to Hawaii. DIRECTV states that it has gone to considerable effort and expense to offer attractive programming to Hawaii subscribers. Further *Ex Parte* Response of DIRECTV, Inc., Filed September 20, 2000 (“*DIRECTV Further Ex Parte*”).

<sup>25</sup> *DIRECTV Opposition and Reply*, at 7.

<sup>26</sup> *DIRECTV Opposition and Reply*, at 7.

<sup>27</sup> In July 2000, Representatives of DIRECTV, Alaska and Hawaii met with Commission Staff to discuss issues relating to DIRECTV's existing and planned service to subscribers in Alaska and Hawaii. In response, DIRECTV supplemented its application to demonstrate that DIRECTV 5 covers Alaska and Hawaii from 119° W.L. See Letter to Magalie Roman Salas, FCC Secretary, from James H. Barker, Counsel for DIRECTV Enterprises, Inc., dated June 30, 2000.

reasonably comparable to that offered CONUS subscribers.<sup>28</sup>

10. Senators Inouye and Stevens also filed a joint ex parte letter expressing their concerns about DBS service to Hawaii and Alaska.<sup>29</sup> The letter has been included in the Part 100 Rulemaking record and will be considered by the Commission at the Report and Order phase of that proceeding.

11. The issues raised by Hawaii and Alaska, as to whether the geographic service rules require service to Alaska and Hawaii to be equal or comparable to that in the contiguous U.S. in terms of equipment, program offerings, and price equality, are also raised in the context of the pending Part 100 rulemaking. Because the Commission has sought comment on these issues in revising its DBS service rules, we find that the forthcoming Part 100 rulemaking is the proper venue to resolve these matters. Hawaii's and Alaska's comments in this application proceeding will be considered as part of the rulemaking. Consequently, we find it would not be in the public interest to delay the scheduled launch of a satellite that will increase DIRECTV's programming capacity based on Alaska's and Hawaii's concerns. Rescheduling a launch would impose a serious financial burden, which would ultimately be passed on to subscribers. Further, we note that DIRECTV has initiated service to Hawaii. Although Hawaiian subscribers will not be offered the same programming package as CONUS subscribers, DIRECTV's initial offering includes a choice of over 110 programming choices, which DIRECTV expects to expand.<sup>30</sup> In addition, the vast majority of Alaskan subscribers receive the full complement of DIRECTV programming.<sup>31</sup> Although we grant DIRECTV's application, we will continue to monitor compliance with geographic service rules and remain committed to ensuring that residents of Hawaii and Alaska have access to DBS service. If the outcome of the rulemaking is favorable to the arguments raised by Alaska and Hawaii, DIRECTV will be required to revise its offerings in accordance with the outcome of the pending rulemaking.

### III. CONCLUSION

12. Based on the foregoing, we find that the petition to deny filed by the State of Hawaii does not raise issues warranting a denial of DIRECTV's application to launch and operate its DIRECTV 5 satellite at the 119° W.L. orbital location. Nor do we find it appropriate to condition DIRECTV's authorization as requested by the State of Alaska. Rather these issues will be addressed in the Part 100 Rulemaking revising DBS policies and rules. In the meantime, we find that the launch and operation of DIRECTV 5 will enable DIRECTV to increase the efficient use of its frequencies at 119° W.L. and improve its services, thereby benefiting the public interest.

### IV. ORDERING CLAUSES

13. Accordingly, IT IS ORDERED, that the application of DIRECTV Enterprises, Inc., File

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<sup>28</sup> *DIRECTV Opposition and Reply*, at 9-10.

<sup>29</sup> Letter from the Honorable Daniel K. Inouye and Honorable Ted Stevens to Honorable William E. Kennard, Chairman, Federal Communications Commission, dated September 21, 2000.

<sup>30</sup> *DIRECTV Ex Parte*, at 3; and *Further Ex Parte*, Attachment.

<sup>31</sup> *DIRECTV Opposition and Reply*, at 4. DIRECTV notes that certain subscribers receive a more limited offering due to technical constraints but nonetheless receive a variety of more than 60 basic services. *Id.* at ft note 7.

No. SAT-LOA-20000505-00086, is GRANTED and DIRECTV is authorized to launch and operate its satellite, DIRECTV 5, at the 119° W.L. orbital location in accordance with the terms, representations, and technical specifications set forth in its application.

14. IT IS FURTHER ORDERED, that the Petition to Deny of the State of Hawaii filed on July 6, 2000 is DENIED.

15. IT IS FURTHER ORDERED, that the request of the State of Alaska to condition DIRECTV's authorization filed on July 6, 2000 is DENIED.

16. IT IS FURTHER ORDERED, that DIRECTV's authorization is subject to the following modified conditions: (1) until the International Telecommunication Union ("ITU") Region 2 BSS Plan and its associated Feeder Link Plan are modified to include the technical parameters of DIRECTV 5 and its associated feeder links, this satellite system shall not cause greater interference than that which would occur from the current USA Plan assignments at 119° W.L. to other BSS or feeder link assignments or other services or satellite systems, operating in accordance with the ITU Radio Regulations; and (2) no protection from interference caused by radio stations authorized by other administrations is guaranteed to DIRECTV 5 unless and until Appendices S30 and S30A plan modification procedures are successfully and timely completed.

17. IT IS FURTHER ORDERED, that DIRECTV shall coordinate all transfer orbit Telemetry, Tracking and Control ("TT&C") operations with other potentially affected in orbit DBS operators.

FEDERAL COMMUNICATIONS COMMISSION

Thomas S. Tycz  
Chief  
Satellite and Radiocommunication Division