

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of )  
)  
International Bureau Seeks Comment )  
On Proposals To Permit Reducing )  
Orbital Spacings Between U.S. Direct )  
Broadcast Satellites )

Report No. SPB-196

Received

JAN 28 2004

Policy Branch  
International Bureau

COMMENT OF  
THE STATE OF HAWAII

The State of Hawaii ("the State"), by its attorneys, hereby comments on the above referenced public notice addressing orbital spacing between U.S.-licensed satellites operating in the Direct Broadcast Satellite ("DBS") service.<sup>1</sup>

I. INTRODUCTION

The State generally supports the adoption of new spacing requirements for DBS satellites that decreases their separation ("short-spaced") in order to increase competition and the availability of additional facilities and new services to consumers. The State, however, is concerned about two issues that are implicated by proposals to short-space DBS satellites. First, it is extremely important that any new DBS satellites operating using short-spaced orbital positions provide services to consumers in all fifty states, including Hawaii and Alaska. Second, the addition of short-spaced satellites must not degrade the quality of existing services, making them either unavailable to some

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<sup>1</sup> The State herein comments through the Hawaii Department of Commerce and Consumer Affairs ("the Department"). A division of the Department – the Cable Television Division – is the State's cable franchise administrator.

consumers, or requiring the replacement of existing reception equipment with larger receive antennas. Alternatively, if some degradation to existing services is permitted, operators of short-spaced satellites should be required to incur the costs of replacing receive antennas in order to ensure that subscribers of existing services continue to enjoy the services at expected quality levels.

## **II. THE COMMISSION SHOULD REQUIRE SHORT-SPACED DBS SATELLITES TO COMPLY WITH BOTH THE LETTER AND INTENT OF THE COMMISSION'S GEOGRAPHIC SERVICE REQUIREMENTS**

Although the State supports the introduction of new competitors in the provision of DBS to consumers, the State opposes the addition of any services that are not made available in all fifty states, including Hawaii and Alaska. If new entrants are permitted to provide DBS services in only a portion of the United States, it would widen the already significant gap between the competitive multichannel video and direct-to-home data services that are available in the mainland 48 states and those that can be received in Alaska and Hawaii. Many programming services that are carried on short-spaced satellites may never be made available on other DBS satellites, raising the likelihood that they will not be available to consumers in Hawaii and Alaska.

Further, the introduction of short-spaced satellites that are unrestricted by geographic service mandates could have more pernicious effects. For example, if operators of short-spaced satellites are permitted to serve only limited regions of the country, then other DBS operators will be under pressure to divert capacity from the national market to meet the competitive pressures in the limited regions served by short-spaced satellites.

When the Commission created the DBS service two decades ago, it did so in recognition of its goal “of providing *equitable* distribution of service *throughout* the nation.”<sup>2</sup> The Commission recently reaffirmed this goal in its *Part 100 Order*, recognizing “the importance of establishing DBS as a competitor to cable in the MVPD market in the States of Alaska and Hawaii and is committed to establishing policies and rules that will promote service to underserved areas, improve the delivery and quality of service, and provide more competition in the MVPD market.”<sup>3</sup>

In requiring short-spaced DBS satellites to comply with the Commission’s geographic service requirements, the Commission should not permit any misuse of the Commission’s narrow exception for situations in which DBS service is not “technically feasible from the authorized orbital location.”<sup>4</sup> When the Commission created its exception for technical infeasibility, it did so because some DBS orbital positions are located too far to the east along the equatorial arc to have a sufficient elevation angle to serve Alaska and Hawaii. For example, the Commission has observed that it is technically feasible to provide service to Alaska and Hawaii from the 101° W.L.,

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<sup>2</sup> *The Development of Regulatory Policy in Regard to Direct Broadcast Satellites for the Period Following the 1983 Regional Administrative Radio Conference*, Report and Order, 90 FCC 2d 676, 680 (1982) (“1982 DBS Order”) (citing 47 U.S.C. § 307(b) (emphasis added)).

<sup>3</sup> *Revision of the Rules and Policies for the Direct Broadcast Satellite Service*, Report and Order, 17 FCC Rcd 11331, 11356 (2002) (“*Part 100 Order*”); see also *id.*, Joint Statement of Commissioners Kevin J. Martin and Kathleen Q. Abernathy (noting that “[c]onsumers in these two states deserve access to similar DBS service options as their counterparts in the Mainland”); *id.*, Separate Statement of Commissioner Michael J. Copps Dissenting in Part, Approving in Part (indicating that “I was open to going even further to ensure that the citizens of Alaska and Hawaii receive packages of services comparable in programming, price and quality to those available to citizens of the mainland states”).

<sup>4</sup> 47 C.F.R. § 25.148(c) (2002).

110° W.L. and 119° W.L. orbital positions, along with all four western locations, but not from the 61.5° W.L. orbital position.<sup>5</sup> In light of the Commission's conclusions, no question should remain regarding the technical feasibility of providing service to Alaska and Hawaii from any short-spaced DBS orbital position that is located to the west of the 101° W.L. orbital position. Furthermore, further investigation is necessary to determine whether short-spaced satellites east of the 101° W.L. orbital position (such as at the 96.5° W.L. orbital position) can be used to provide DBS service to Alaska and Hawaii.

The Commission should not permit operators of short-spaced DBS satellites to claim that service to Alaska and Hawaii is not technically feasible from an orbital position that is west of 101° W.L. simply because of difficulties in coordinating the service with operators of existing DBS satellite networks. If the Commission permits DBS operators to avoid serving Alaska and Hawaii simply because of coordination problems, then the resulting loophole would abrogate the Commission's geographic service rule and the public policy goals that it furthers.

Furthermore, the Commission should not delegate the process of coordinating the coverage areas of new DBS satellites to the unstructured, non-public, and unsupervised process of operator-to-operator negotiations. Instead, the Commission should ensure that the public interest is served by working closely with operators of both new and existing DBS satellites in order to identify technical solutions that permit the provision of new DBS services to all fifty states, including Alaska and Hawaii.

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<sup>5</sup> See *Part 100 Order*, 17 FCC Rcd at 11358-59.

**III. THE COMMISSION SHOULD ENSURE THAT SHORT-SPACED DBS SATELLITES DO NOT DEGRADE THE SIGNALS OF EXISTING DBS SERVICES**

The introduction of short-spaced DBS satellites has the potential to increase the number and types of services available to consumers throughout the United States. It is extremely important, however, that the addition of short-spaced satellites does not degrade appreciably the signals of existing DBS networks, potentially raising the costs for consumers of receiving existing services and, in certain regions, making existing services unavailable to current subscribers.

Concern has been expressed as a part of the Commission's consideration of the SES Americom proposal to operate a DBS satellite at 105° W.L. that the addition of short-spaced satellites could increase interference to adjacent DBS satellites and degrade the quality and availability of existing DBS services. This possibility is of particular concern in Hawaii, where the signal strength of existing DBS services is well below the signal strength of DBS services available in the mainland. The Commission needs to ensure that interference from adjacent DBS satellites does not reduce the signal strengths of existing DBS services even further, making them potentially unavailable to current subscribers.

The Commission should also adopt interference restrictions that prohibit degradation to existing services if the degradation necessitates the purchase of new and potentially larger receive equipment where required in order to permit existing subscribers to continue to receive existing services. Alternatively, if some degradation to existing services is permitted, operators of new short-spaced satellites must be required to

incur the costs of replacing consumer reception antennas in order to ensure that existing subscribers continue to enjoy DBS services at historic quality levels.

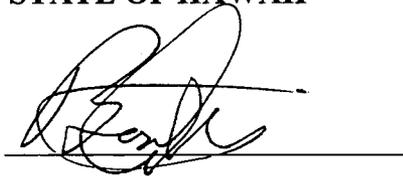
#### IV. CONCLUSION

For the reasons stated herein, the Commission should issue licenses for the launch and operation of short-spaced DBS satellites in the United States. The Commission should ensure, however, that short-spaced satellites are used to provide DBS service to all fifty states, including Alaska and Hawaii. The Commission should also ensure that the introduction of short-spaced satellites does not degrade appreciably the signals of existing services, potentially making them unavailable to existing subscribers in some areas of the country.

Respectfully submitted,

**THE STATE OF HAWAII**

By: \_\_\_\_\_



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