Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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In the Matter of	)	
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Annual Assessment of the Competition in the Market for the Delivery of Video Programming	)	CS Docket No. 96-133
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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

Before: the Commission

COMMENTS

TelQuest Ventures, L.L.C. ("TelQuest"), by its attorneys, hereby submits comments in response to the Commission's Notice of Inquiry, released June 13, 1996, regarding competition in the video programming market (hereinafter referred to as the "Notice"). TelQuest believes that the information provided below will assist the Commission in its preparation of the third annual report to Congress on competition in the video marketplace.

I. Introduction

TelQuest, an entrepreneurial U.S. company, plans to provide satellite-delivered nationwide television programming using a Canadian direct broadcast satellite ("DBS") to be located at the 91° W.L. orbital slot for the provision of a nationwide DBS service. TelQuest is a "small business" as defined by the Small Business Administration's regulations, 13 C.F.R. § 121.201, because it is a subscription television services firm with annual receipts (including its affiliates) below $11 million.[1]

[1] Although Jared E. Abruzzese serves on the boards of several companies, he only controls the boards of TelQuest Ventures, L.L.C., TelQuest Systems, Inc. and The Corotoman Company, L.L.C. Under 13 C.F.R § 121.103, TelQuest's affiliates are TelQuest Systems, Inc. and The Crotoman Company, L.L.C. Affiliation through "interlocking management" cannot arise when an official(s) of one company does not constitute a working majority of another company's (continued...)

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On March 13, 1996, TelQuest filed with the FCC an application for a fixed-satellite transmit/receive earth station license (File No. 758-DSE-P/L-96) and an application for a blanket license for one million receive-only earth stations (File No. 759-DSE-P/L-96)(hereinafter collectively referred to as the "Applications"). On July 15, 1996, the Commission dismissed TelQuest's Applications, without prejudice, on procedural grounds. Report and Order, DA 96-96-1128 (rel. July 15, 1996). TelQuest intends to file a Petition for Reconsideration of the dismissal and TelQuest is confident that such Petition will be granted.

II. The Grant of TelQuest's Applications Will Allow a New DBS Provider to Enter the Market

In paragraph 15(a) of the Notice, the Commission seeks information regarding the development of planned new DBS services. TelQuest's provision of a DBS service to the United States will help achieve the competition and diversity that Congress sought to promote in implementing Section 628 of the Communications Act, as amended.

Unlike other DBS services, TelQuest's proposed DBS service is capable of integrating its national digital video programming with local programming. TelQuest plans to distribute its programming through local video delivery systems, including independent Multichannel Multipoint Distribution Service ("MMDS" or "wireless cable") operators and other new market entrants. With access to a digital satellite feed at a fraction of what it otherwise would

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[1](...continued)
board of directors or officers, and when he does not have the power to control the other company. See Biospherics, Inc., SBA No. 2025 (1984). See also Elk Rapids Packing Co., SBA No. 2037 (1984).

cost wireless cable operators to invest in digital compression equipment at each headend, wireless cable operators will be able to provide their subscribers with over 100 digital channels. In addition, TelQuest's DBS service will allow U.S. MMDS operators to provide direct-to-home service to customers who currently cannot receive MMDS traditional wireless service because of line-of-sight limitations. As a result, wireless cable operators and other new market entrants such as rural telephone companies and small independent cable operators will be able to compete effectively in the multichannel U.S. video marketplace. TelQuest, however, will fail as a new DBS start-up company if its Applications are denied.

III. TelQuest's Proposed DBS Service Includes the Deployment of Digital Compression

In paragraph 16 of the Notice, the Commission seeks information on developments in the planned deployment of advanced technologies, such as digital compression. TelQuest plans to provide a unique video programming system using state-of-the-art digital compression and encryption technology. TelQuest will be able to offer U.S. wireless cable operators with a digital satellite feed for significantly less than it otherwise would cost wireless cable operators to purchase and install digital compression equipment at each head end. In addition, digital compression, which will give U.S. wireless cable operators access to over 100 digital channels, is crucial to the ability of wireless cable to compete with the entrenched hard wire cable operators. Without the grant of TelQuest's Applications, wireless cable operators will have only EchoStar or TCI to turn to for digital compression.

TelQuest also notes that its proposed DBS service is consistent with the goals of the 1996 Telecommunications Act. TelQuest's use of open and non-proprietary architecture technology will simplify the commercial availability of consumer equipment, which will ease access to multi-channel services. TelQuest also hopes to use set-top boxes that will be compatible with the proposed digital television ("DTV") broadcast standard. In contrast, Western Telecommunications, Inc. ("WTCI"), also an applicant for an earth station facility to establish a DBS service using a Canadian-licensed satellite to be located in the 82° W.L. orbital position, favors the use of a much more closed network facility.

IV. TelQuest's Applications Face Significant Opposition From Incumbent Video Programmers

In paragraph 24 of the Notice, the Commission requests information regarding impediments that deter entry or prevent increases in competition in the video program delivery market. The Commission indicates that "such impediments may include strategic behavior of incumbent firms and legal, regulatory and other impediments." A major impediment to TelQuest's entry into the market has been aggressive lobbying and administrative litigation opposing the grant of TelQuest's Applications by some of the largest U.S. and multinational corporations involved in the delivery of video programming.

Despite the advantages of TelQuest's proposed DBS service to both consumers and small businesses, TelQuest's Applications face

significant opposition from incumbent DBS providers.[2] For example, the News Corporation Limited ("News Corp."), one of the largest broadcasting companies in the world, teamed up with MCI Telecommunications Corporation ("MCI"), to win, at auction, the last remaining U.S orbital slot for DBS. In their opposition to TelQuest's Applications, News Corp. and MCI contend, inter alia, that the approval of TelQuest's Applications would contravene the Commission's competitive bidding policies. News Corp. and MCI claim that they were not aware that non-U.S. satellites might be used for domestic services.

As the Commission is well aware, small business bidding preferences were not adopted for the DBS auction. A small, start-up company like TelQuest would have had no chance of outbidding News Corp. or MCI. Furthermore, as TelQuest responded in its Consolidated Opposition, attached hereto as Exhibit B, MCI participated in the Commission proceeding that adopted the DBS auction rules in which the Commission notified potential bidders that it is considering the delivery of DBS to the U.S. from foreign-licensed satellites. The Commission specifically warned prospective bidders to factor in the effect of permitting non-U.S. satellites to provide domestic service when calculating bids in the DBS auction.[3] It would be short-sighted for companies with the experience and resources of MCI and News Corp. to ignore such warnings and not to anticipate that some entrepreneur would make

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[2] Attached hereto as Exhibit A is a complete list of the parties opposing and supporting TelQuest's Applications.

[3] See Revision of Rules and Policies for the Direct Broadcast Satellite Service Notice of Proposed Rulemaking, 11 FCC Rcd 1297 (1995) ¶10.

every effort to develop the ability to provide domestic service via a foreign orbital slot. In fact, TelQuest met with MCI prior to the auction and offered MCI the opportunity to participate in its plans to use the 91° W.L. orbital slot.[4] Thus, its objection to TelQuest's Applications is blatantly anticompetitive.

EchoStar Satellite Corporation and Echostar DBS Corporation (collectively "EchoStar") likewise have opposed TelQuest's Applications on the grounds, inter alia, that the Commission must defer consideration of the Applications until the completion of the DISCO II rulemaking proceeding.[5] EchoStar also claimed that TelQuest's Applications implicate issues of international trade between the U.S. and Canada that should be resolved before a decision is made with regard to TelQuest's Applications. EchoStar's opposition is disingenuous in light of EchoStar's own attempts to maneuver to take control of the 91° W.L. orbital slot.[6]

EchoStar already has one full-CONUS slot and controls 22 of 96 full-CONUS frequencies and 46 out of 160 partial-CONUS frequencies. Through a variety of transactions, EchoStar is attempting to acquire or gain control over 22 additional partial-CONUS

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[4] Declaration of Jared Abbruzzese attached as Exhibit 3 to TelQuest's Consolidated Opposition (attached hereto as Exhibit B).

[5] See 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, IB Docket No. 96-111, CC Docket No. 93-23, RM-7931, File No. ISP-92-007 (released May 14, 1996) ("DISCO II").

[6] Id.

frequencies. If it is successful, EchoStar will gain control over almost 34% of the full-CONUS capacity in North America and 43% of all U.S. partial-CONUS capacity. By aggregating as much DBS spectrum as possible EchoStar intends effectively to preclude entry of new DBS competitors. EchoStar's opposition to TelQuest's Applications is further evidence of the lengths it will go to prevent competition.

This opposition amounts to anticompetitive conduct that causes regulatory delay threatening TelQuest's very existence. Time favors the entrenched monopolies and is the enemy of entrepreneurs like TelQuest. Healthy and robust competition needs TelQuest's low cost, digital satellite service. There is, however, only a small window of opportunity for TelQuest to act. These time constraints yare real and unbending. First, TelQuest must provide service by 1997 to meet the digital compression requirements of those MMDS operators who have committed to receive TelQuest's services. Second, TelQuest must access the capital markets prior to Fall 1996 to raise funds for this project. TelQuest will not be able to obtain appropriate financing without the Commission's immediate approval of its Applications. Without such financing, TelQuest will cease operations by the end of 1996.

Wireless cable currently is not able to provide effective competition to the large, entrenched cable of incumbents cable operators. While telephone companies such as Bell Atlantic, NYNEX, US West, PacTel and Bell South have invested in wireless cable as one of their potential vehicles for entering the market for the delivery of video programming, such investment has not been sufficient to overcome wireless cable's major handicaps -- lack of

channel capacity and line of sight limitations, which TelQuest by its Applications proposes to remedy. As the Commission noted in its 1995 assessment of competition in the video marketplace, hard-wire cable provides over 91% of the video programming in the U.S. TelQuest, and the services it will provide, will enable both wireless cable and DBS to compete effectively against cable. The combination of wireless cable and TelQuest's DBS system will result in strong competition to the hard-wire cable TV incumbents. However, if TelQuest ceases operation because of regulatory delays, or the Commission's denial of TelQuest's Applications, wireless cable and DBS will continue to be ineffective competitors to large cable TV operators.

In sum, the incumbent cable operators continue to control the multichannel video marketplace in the United States. If the Commission grants TelQuest's Applications and acts aggressively to ensure that incumbents are not able to deter new entrants, vigorous competition will result. Competition means greater choice and lower prices for U.S. consumers.

Respectfully submitted,

TELQUEST VENTURES, L.L.C.

By: James U. Troup
Arter & Hadden
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Suite 400K
Washington, DC 20554
(202) 775-7100

Its Attorney

July 19, 1996

53827

EXHIBIT A

I. Parties that filed in Opposition to Telquest's Applications:

1. News Corporation Limited and MCI Telecommunications Corporation
2. EchoStar Satellite Corporation and EchoStar DBS Corporation
3. AT&T Corp.
4. DIRECTV, Inc.
5. United States Satellite Broadcasting Company, Inc.
6. AlphaStar Television Network, Inc.
7. PanAmSat Corporation
8. State of Hawaii
9. National Rural Telecommunications Cooperative

II. Parties in support of TelQuest's Applications:

1. Television Viewers of America
2. Wireless Cable Association International, Inc.
3. Strategic Micro Partners
4. Sullins, Johnston, Rohrbach & Magers
5. Terry Neese Personnel Services
6. Abalos & Associates, P.C.
7. Infomatrix
8. Lazer Graphix
9. JWF Concepts, Inc.
10. Voice-Tel
11. Public Images II
12. Breakthru
13. Stella Black
14. Agenda Inc.

15. Drivers Unlimited of Rochester, Inc.

16. Another Alternative Resources

17. Whitney Johns & Company

18. Solomon and Robinson

19. Telsat Canada

EXHIBIT B

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May 6, 1996

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

VIA HAND DELIVERY

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, DC 20554

Re: File Nos. 758-DSE-P/L-96
759-DSE-P/L-96

Dear Mr. Caton:

Transmitted herewith, on behalf of TelQuest Ventures L.L.C., are the original and four copies of a Consolidated Opposition to petitions to deny that were filed with regard to the above-referenced applications. Attached as Exhibit 3 to the Consolidated Opposition is a facsimile version of the Declaration by Jared E. Abbruzzese. The original executed version of the Declaration will be filed shortly. Also, attached as Exhibit 14 to the Consolidated Opposition is a facsimile version of a Declaration by Barbara Sparks. The original executed version of the Declaration will be filed shortly.

Please address any questions regarding this filing to undersigned counsel for TelQuest Ventures L.L.C.

Very truly yours,

James U. Troup/sthw

James U. Troup

Enclosures

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Before the

FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In re the Applications of	)	
	)	
TELQUEST VENTURES, L.L.C.	)	File Nos. 758-DSE-P/L-96
	)	759-DSE-P/L-96
For a License for a new Fixed-Satellite Transmit/Receive Earth Station for Communication with a Canadian DBS Satellite to be Located at 91 Degrees W.L. and for Blanket License Authority to Construct and Operate One Million Receive-Only Earth Stations for use with a Canadian DBS Satellite to be Located at 91 Degrees W.L.	)	

CONSOLIDATED OPPOSITION

TELQUEST VENTURES, L.L.C.
James U. Troup
ARTER & HADDEN
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(202) 775-7100

SUMMARY

TelQuest is a small, U.S. entrepreneurial firm. TelQuest plans to provide satellite-delivered nationwide television programming that can be integrated with locally-inserted programming. TelQuest will provide affordable national programming in a digitally compressed and encrypted format to U.S. Multichannel Multipoint Distribution Service ("MMDS" or "wireless cable") providers and other new market entrants. In addition, TelQuest will enable U.S. MMDS wireless cable operators to offer a direct-to-home service to consumers who currently cannot receive service because of line-of-sight limitations. TelQuest's venture will enable U.S. wireless cable companies, small cable companies and rural telephone companies to compete effectively in the multi-channel video marketplace. Grant of TelQuest's applications would fulfill the Commission's statutory mandate to ensure the participation of small U.S. businesses in the provision of new and innovative technologies -- both TelQuest and the companies it seeks to serve fall within this statutory umbrella. Granting TelQuest's applications will strengthen and foster competition between traditional cable providers and competing technologies such as MMDS and DBS.

TelQuest urges the Commission not to delay or deter the grant of its applications. Time favors the entrenched monopolies and is the enemy of entrepreneurs like TelQuest. Healthy and robust competition needs TelQuest's low cost, compressed digital satellite service. There is, however, only a small window of opportunity for TelQuest to act. These time constraints are real and unbending. First, TelQuest must provide service by the end of 1996 to meet the

digital compression requirements of those MMDS operators who have committed to receive TelQuest's services. Second, TelQuest must access the capital markets prior to August 1996 in order to raise funds for this project. TelQuest will not be able to obtain appropriate financing without the Commission's immediate approval of its applications. Without such financing, TelQuest will cease operation by the end of 1996. Wireless cable does not provide effective competition today to traditional, entrenched, cable. TelQuest, and the services it will provide, will enable both wireless cable and DBS to compete effectively against cable. If TelQuest ceases operation for want of timely Commission approval, wireless cable and DBS will continue to be ineffective competitors in the multichannel video marketplace.

As a threshold issue, TelQuest takes issue with several Petitioners' contentions that TelQuest needs a DBS license. The Commission's DBS rules focus on the authority to operate a U.S. space station in a U.S. orbital slot. Because TelQuest proposes to use a space station in a Canadian orbital slot, the construction and operation of which will be regulated by the Canadian government, TelQuest's applications fall outside the Commission's DBS space station rules. Thus, TelQuest appropriately filed only applications for earth station licenses.

Several Petitioners erroneously contend that TelQuest's applications are incomplete and that TelQuest fails to demonstrate its legal, technical and financial qualifications. The Commission's rules relating to the construction of a U.S. space station do not apply to earth station applications. TelQuest has

submitted all information necessary to establish its qualifications to construct and operate its proposed earth stations.

First, to be legally qualified, an applicant must establish compliance with the Commission's alien ownership rules. As evidenced in the FCC Form 430 that TelQuest filed with its applications, TelQuest is a U.S.-owned company and therefore is legally qualified to provide a DBS service in the U.S. Second, TelQuest's applications provide information regarding the frequencies to be used, power levels and the orbital slot to be used as a point of communication. In addition, TelQuest has retained frequency coordinators to assure that its spectrum use will not cause interference to others. Thus, TelQuest has provided sufficient information for the Commission to determine TelQuest's compliance with the technical requirements. Third, the Commission's requirements regarding financial qualifications address an applicant's ability to construct a U.S. space station and therefore are not relevant to TelQuest's earth station applications. TelQuest assures the Commission that it has the financial qualifications to carry out its business plan to offer the wholesale DBS service it proposes to offer in the United States.

MCI erroneously alleges that approval of TelQuest's applications would contravene Commission policies pertaining to the use of competitive bidding. First, the Commission's policies apply to United States spectrum only, not to Canadian spectrum and thus the Commission's competitive bidding policies are not relevant here. Second, the grant of TelQuest's applications would not permit TelQuest to enter the U.S. market for free. Canada fully

intends to assess license fees for the use of the spectrum. In addition, TelQuest's wireless cable partners already paid millions of dollars into the U.S. Treasury during the Commission's wireless cable auction.

Although TelQuest may pay less than MCI paid in the DBS auction, its entrance into the DBS market will enable the Commission to fulfill its statutory mandate under Section 309(j) of the Act. One of the objectives of Section 309(j) is to "ensure" that licenses for spectrum are distributed to small businesses like TelQuest. The FCC struggled in the Auction NPRM for a way for small businesses to participate in the spectrum-based services that will use the DBS spectrum that was auctioned. TelQuest's proposal represents an innovative means for a small U.S. company to enter the U.S. DBS market, albeit a little later than EchoStar, DIRECTV and MCI, and TelQuest's efforts should be rewarded with the grant of its applications, not thwarted by other DBS service providers who are motivated by the fear of competition.

The DBS incumbents urge delay in TelQuest's market entry. The grant of TelQuest's applications should not be delayed by the Commission's DISCO II rulemaking proceeding. First, the policy issues that will be addressed in the DISCO II proceeding are not relevant to the policy issues in TelQuest's applications. TelQuest, a U.S. company, plans to construct an earth station in the U.S. that will allow it to communicate with satellites in a Canadian orbital position and then transmit U.S. programming to U.S. subscribers. TelQuest is not a foreign company to which foreign entry rules apply. Nor is TelQuest a Canadian company seeking to provide DBS service to the U.S. TelQuest's choice of

Canadian hardware is no different than a U.S. telephone company using fiber optic cable manufactured in Germany to provide service to the U.S. This is not the proper forum to address Petitioners' concerns regarding service to Canada. The DISCO II proceeding, with its emphasis on entry by foreign entities does not apply to TelQuest's applications.

In addition, it is within the Commission's discretion to proceed either by rulemaking or on a case-by-case adjudication and thus the Commission may address policy issues in the context of TelQuest's applications. Even if the Commission were to complete the DISCO II proceeding prior to its consideration of TelQuest's applications, any reciprocity tests that were adopted would not be relevant to the case at hand because of the lack of satellite capacity in the United States.

Similarly, the Commission is not required to wait for the International Telecommunications Union ("ITU") modification of the Broadcast Satellite Service ("BSS") Plan for Region 2. The Commission's rules merely provide that transmit/receive earth station applications "may be subject to restrictions as a result of international agreements or treaties." There is no indication, however, that the Commission is precluded from taking any action on an application as a result of these treaties and agreements. Indeed, there is a clear precedent that permits the Commission to grant TelQuest's applications subject to ITU approval. Moreover, the issue presently before the Commission is not whether the BSS Region Plan should be modified, but rather whether TelQuest's earth station applications should be granted. The Commission has the

authority to grant TelQuest's applications absent resolution of the ITU process and it should do so.

In sum, if the public interest is to be served, the Commission will allow TelQuest's efforts to provide competition to move forward by granting the authorizations TelQuest seeks, and the Commission will not countenance the efforts of Petitioners, who seek to use the administrative process to crush a competitor. The grant of TelQuest's applications will allow a small U.S. company to seize a great opportunity -- the ownership of 22 transponders on a satellite located in a Canadian DBS orbital slot capable of full-CONUS coverage. The Commission can best pursue the pro-competitive agenda directed by the Telecommunications Act and expedite the delivery of DBS services to the U.S. consumer by granting TelQuest the opportunity to offer its proposed service and by granting its applications.

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Before the

FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In re the Applications of	)	
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TELQUEST VENTURES, L.L.C.	)	File Nos. 758-DSE-P/L-96
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For a License for a new Fixed-Satellite Transmit/Receive Earth Station for Communication with a Canadian DBS Satellite to be Located at 91 Degrees W.L. and for Blanket License Authority to Construct and Operate One Million Receive-Only Earth Stations for use with a Canadian DBS Satellite to be Located at 91 Degrees W.L.	)	

CONSOLIDATED OPPOSITION

TelQuest Ventures, L.L.C. ("TelQuest"), by its attorneys, respectfully submits this Consolidated Opposition to the following petitions to deny its above-captioned applications for authority to construct earth stations that will utilize DBS spacecraft at 91° W.L. to provide video programming providers and consumers in the U.S. with affordable, diverse programming services (hereinafter referred to as "TelQuest's applications"): (1) Consolidated Petition to Deny of MCI Telecommunications Corporation and The News Corporation Limited, filed on April 25, 1996 (hereinafter referred to as "MCI" or "MCI Petition"); (2) Petition to Deny or Dismiss of EchoStar Satellite Corporation and EchoStar DBS Corporation filed on April 26, 1996 (hereinafter referred to as "EchoStar" or "EchoStar Petition"); (3) Petition to Deny of DIRECTV, Inc. filed on April 26, 1996 (hereinafter referred to as "DIRECTV" or "DIRECTV Petition"); (4) Comments filed by AT & T on April 26, 1996; (5) Petition to Deny or Dismiss of United States Satellite Broadcasting Company, Inc. filed on April 26, 1996 (hereinafter referred to as

"USSB Petition"); and (6) Comments of AlphaStar Television Network Inc. filed on April 30, 1996 (hereinafter referred to as "AlphaStar Petition") (hereinafter collectively referred to as the "Petitioners," where appropriate).

I. INTRODUCTION

TelQuest is a small, U.S. entrepreneurial firm that plans to provide satellite-delivered nationwide television programming that can be integrated with locally inserted programming. TelQuest's services will provide independent Multichannel Multipoint Distribution Service ("MMDS" or "wireless cable") providers as well as other new market entrants with affordable national programming in a digitally compressed and encrypted format (hereinafter referred to as "wholesale DBS"). In addition, TelQuest will allow U.S. MMDS wireless cable operators to provide a direct-to-home service to customers who currently cannot receive service because of line-of-sight limitations. As a result of TelQuest's venture, wireless cable companies, small cable companies and rural telephone companies will be able to compete effectively in the multi-channel U.S. marketplace.

Currently, the delivery of video programming in the U.S. is dominated by the wired cable industry. The Commission's competition study for 1995 indicates that hard-wire cable provides over 91% of the video programming in the United States.[1] One reason for this market domination is that one potential competitor, MMDS, is at a severe disadvantage. Wireless cable operators are

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[1] Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming, Second Annual Report, FCC 95-491 (rel. Dec. 11, 1995)("1995 Competition Report") ¶¶ 5, 194.

unable to serve all households in a market because wireless cable technology is limited to providing service to those households in the line-of-sight of the local transmitter. In addition, MMDS can only access 12 full-time and 20 part-time analog channels absent MMDS digital compression, while DBS and wired cable can offer many more programming channels.

The success of the TelQuest applications will provide U.S. wireless cable operators with a digital satellite feed at a fraction of what it would otherwise cost them to invest in digital compression equipment at each headend. It will give U.S. wireless cable operators access to over 100 channels plus the potential to provide local programming, something the DBS operators are currently unable to provide. Lastly, it will give U.S. wireless cable operators the capability of supplying all households in a local market with multi-channel programming service.

As Robert Schmidt, president of Wireless Cable Association International, Inc. ("WCA") stated in WCA's letter supporting TelQuest's applications, wireless cable "has the potential to become a serious competitor to DTH DBS service because of its ability to provide local programming as part of its service."[2] The ability to provide local programming is crucial for any technology that expects to compete with wired cable television. In addition, by providing a service that aggregates, digitizes, compresses, encrypts and transmits the video signal, TelQuest will provide the most cost efficient method for wireless cable to compete with other

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[2] Letter to William F. Caton from Robert L. Schmidt, President, Wireless Cable Association International, Inc., dated April 25, 1996 ("WCA Letter"), attached hereto as Exhibit 1.

Multi-channel Video Programming Distributors ("MVPD"), thus allowing wireless cable operators to focus on marketing and service to the subscriber.

TelQuest's proposal, moreover, is completely aligned with Congress's purposes in enacting the Telecommunications Act of 1996 (the "1996 Act") and the Commission's efforts to implement the 1996 Act, as it will realize three key policy goals -- it will bring competition into the U.S. DBS marketplace, it will help fulfill Congress's mandate to promote the participation of U.S. small businesses, and above all it will serve the public interest.

In its comments to the Commission's Notice of Proposed Rulemaking regarding the auction of DBS spectrum, the Department of Justice expressed concern that only one company may be providing wholesale DBS service.[3] Thus, to ensure greater competition in the DBS, and even broader MVPD marketplaces, the Commission, in the ensuing Report & Order, established a one-time rule that prohibited any entity that already has access to a full-Continental United States ("CONUS") location from winning the auction for another full-CONUS orbital slot with 91° W.L.[4] TelQuest's plans further the Commission's goals.

TelQuest is a small U.S. business that has no other access to a full-CONUS orbital slot, and absolutely no foothold in the U.S.

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[3] See Department of Justice Comments at 15, attached hereto as Exhibit 2, filed with regard to the Revision of Rules and Policies for the Direct Broadcast Satellite Service, Notice of Proposed Rulemaking, 11 FCC Rcd 1297 (1995)("DBS Auction NPRM").

[4] Revision of Rules and Policies for the Direct Broadcast Satellite Service, Report and Order, IB Docket No. 95-168, PP Docket No. 93-253, FCC 95-507 (rel. Dec. 15, 1995) ¶ 54 ("DBS Auction Order").

DBS market. Through its proposed venture, however, TelQuest plans to become a wholesale DBS provider, implementing DBS technology to enable a number of different U.S. entities to better compete in the multi-channel video programming marketplace. Its effort is entirely consistent with Congress's vision to develop and diversify the U.S. telecommunications industry.

By contrast, EchoStar already has one full-CONUS orbital slot and now is maneuvering to take control of the 91° W.L. orbital slot. See Declaration of Jared Abbruzzese ("Abbruzzese Decl."), attached hereto as Exhibit 3. Currently, Echostar controls 22 of 96 full-CONUS frequencies and 46 out of 160 partial-CONUS frequencies. Through a variety of transactions, EchoStar is attempting to acquire or gain control over 32 of the 64 Canadian full-CONUS frequencies and 22 additional partial-CONUS frequencies.[5] If it is successful, EchoStar will successfully gain control over almost 34% of the full-CONUS capacity in North America and 43% of all U.S. partial-CONUS capacity. By aggregating as much DBS spectrum as possible, Echostar will effectively preclude entry of new DBS competitors.

The grant of TelQuest's applications will also allow the Commission to fulfill its statutory mandate under Section 309(j) of the Communications Act of 1934, as amended (the "1934 Act"), 47 U.S.C. § 309(j), to:

> promot[e] economic opportunity and competition and ensur[e] that new and innovative technologies are readily accessible to the American people by avoiding excessive concentration of licenses and by disseminating licenses among a wide variety of

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[5] Letter from Consumer Project on Technology to the Honorable Reed Hundt, dated April 16, 1996, attached hereto as Exhibit 4.