

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

RECEIVED

JUL 23 1997

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the Matter of

DOCKET FILE COPY ORIGINAL

Annual Assessment of the
Status of Competition in
Markets for the Delivery
of Video Programming

)
)
) CS Docket No. 97-141
)
)
)
)
)

**COMMENTS OF ECHOSTAR
COMMUNICATIONS CORPORATION**

David K. Moskowitz
Senior Vice President and General Counsel
EchoStar Communications Corporation
90 Inverness Circle East
Englewood, CO 80112

Philip L. Malet
Pantelis Michalopoulos
Colleen A. Sechrest
STEPTOE & JOHNSON LLP
1330 Connecticut Avenue, N.W.
Washington, D.C. 20036
202/429-3000

Karen E. Watson
Director Governmental Relations
EchoStar Communications Corporation
1850 M Street, N.W., Suite 1070
Washington, D.C. 20036

Its Attorneys

July 23, 1997

No. of Copies rec'd
List ABCDE

028

TABLE OF CONTENTS

PAGE

SUMMARY i

I. CABLE OPERATORS POSSESS MARKET POWER IN THE MVPD MARKET 2

 A. EchoStar's Competitive Efforts 2

 B. EchoStar's Constraints 3

 C. The Thwarted EchoStar/News Corp. Transaction 6

 D. Other DBS Providers 8

 E. Cable Rates, Revenues, Cash Flow and Stock Prices Are Increasing 10

II. IF APPROVED, THE PRIMESTAR/NEWS CORP./MCI TRANSACTION WOULD EXACERBATE THE CABLE OPERATORS' DOMINANCE 13

III. CONCLUSION 17

SUMMARY

EchoStar Communications Corporation ("EchoStar") hereby files its comments on the status of competition in the multi-channel video programming distribution ("MVPD") market. In short, EchoStar's report is not encouraging. Cable operators still possess substantial power in the market, as measured by all the relevant indicators that the Commission's Notice of Inquiry ("NOI") sets out to investigate. Cable rates, revenues and cash flow are once again on the rise. Moreover, decisive action by the Commission is necessary to prevent a dramatic set-back for its efforts to introduce effective competition in the market. If successful, the announced transaction among PRIMESTAR Partners, L.P. ("PRIMESTAR"), The News Corporation Limited ("News Corp.") and MCI Telecommunications Corporation ("MCI") would increase concentration in the already concentrated market; neutralize the most promising resource for introduction of viable competition against cable operators; and expand cable operators' affiliation with programming services to include News Corp.'s programming and sports rights empire.

EchoStar is a Direct Broadcast Satellite ("DBS") provider with two operational satellites at the 119° W.L. orbital location and close to 600,000 subscribers. EchoStar is virtually the only DBS provider pursuing a pure strategy of head-on, direct competition against cable. The second largest DBS provider (PRIMESTAR) is affiliated with the five largest Multiple System Operators ("MSO"s) in the country, and EchoStar believes that it does not strongly

compete for cable subscribers.^{1/} By contrast, EchoStar is targeting cable subscribers through aggressive pricing and special discounts. However, while DBS service remains the most likely alternative with the realistic potential of eroding the cable operators' dominance, EchoStar has been hampered in its efforts to realize that potential.

While the numbers of EchoStar's customers and overall DBS subscribers have increased, this increase is incremental compared to the total number of MVPD households. Even more tellingly, DBS offerings have not had a discernible downward effect on cable rates. In fact, the largest MSOs have announced dramatic rate increases in the last few months and the Consumer Price Index ("CPI") for Cable Television has outpaced the aggregate CPI increases over the period January-June 1997. The lack of an effect on prices from DBS competition is further demonstrated by a comparison between nationwide trends in cable rates and the dramatic rate decreases or other pro-competitive conduct observed by the Commission in the handful of communities where the cable operator faces localized competition.

The dominance of cable operators threatens to be exacerbated by attempts at increasing horizontal and vertical concentration in the MVPD market. In particular, the PRIMESTAR/News Corp./MCI transaction, which will presently be submitted for the Commission's approval, would represent the worst-ever set-back for the Commission's efforts to promote competition in the market. This transaction involves the proposed acquisition of 28 full-CONUS DBS channels by the five largest MSOs in their capacities as shareholders of the

^{1/} In contrast with EchoStar, the largest DBS operator (DIRECTV/USSB) is pursuing a high-end product differentiation strategy, and its offering is often not seen as directly competitive with cable.

restructured PRIMESTAR. It also contemplates a partnership between those MSOs and News Corp.

The PRIMESTAR/News Corp./MCI transaction would definitively thwart the consummation of a binding February 19, 1997 agreement between EchoStar and News Corp. That agreement contemplated the use of MCI's channels by EchoStar to assemble a two-slot, single-dish offering that would incorporate local network signals and compete against cable operators on a more equal footing. Instead, the PRIMESTAR/News Corp. transaction ensures that these channels will not be used by MCI or anyone else to compete vigorously against MSOs. It also confirms that another valuable competitive resource previously identified by the Commission -- the 11 channels at 119° W.L. licensed to PRIMESTAR partner TCI Satellite Entertainment, Inc. ("TSAT") -- will continue to be unused by the current licensee. Finally, it creates enormous vertical integration concerns by bringing in the fold of cable-affiliated programming services News Corp.'s vast empire of coveted programming and sports rights.

The problems identified above are confirmed by the financial community's views of developments in the MVPD market. In the last three months, most of the large MSOs' publicly held stocks have substantially out-performed the broader market, while EchoStar's stock has conversely under-performed the market. These trends reflect a belief that cable operators are poised to perpetuate and even tighten their current stranglehold over the MVPD customer. Indeed, the changes in TCI's and EchoStar's stock prices, plotted against public announcements relating to the EchoStar/News Corp. and PRIMESTAR/News Corp. transactions, are particularly instructive. They highlight Wall Street's perceptions about the missed pro-competitive potential

of the EchoStar/News Corp. combination and the benefit to cable operators from News Corp.'s failure to go forward with it.

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Annual Assessment of the)	CS Docket No. 97-141
Status of Competition in)	
Markets for the Delivery)	
of Video Programming)	
)	
)	

**COMMENTS OF ECHOSTAR
COMMUNICATIONS CORPORATION**

EchoStar Communications Corporation ("EchoStar") hereby files its comments on the status of competition in the multi-channel video programming distribution ("MVPD") market. In short, EchoStar's report is not encouraging. Cable operators still possess substantial power in the market, as measured by all the relevant indicators that the Commission's Notice of Inquiry ("NOI") sets out to investigate. Cable rates, revenues and cash flow are once again on the rise. Moreover, decisive action by the Commission is necessary to prevent a dramatic set-back for its efforts to introduce effective competition in the market. If successful, the announced transaction among PRIMESTAR Partners, L.P. ("PRIMESTAR"), The News Corporation Limited ("News Corp.") and MCI Telecommunications Corporation ("MCI") would increase concentration in the already concentrated market; neutralize the most promising

resource for introduction of viable competition against cable operators; and expand cable operators' affiliation with programming services to include News Corp.'s programming and sports rights empire.

EchoStar is a Direct Broadcast Satellite ("DBS") provider with two operational satellites at the 119° W.L. orbital location and close to 600,000 subscribers. EchoStar is virtually the only DBS provider pursuing a pure strategy of head-on, direct competition against cable. However, while DBS service remains the most likely alternative with the realistic potential of eroding the cable operators' dominance, EchoStar has been hampered in its efforts to realize that potential.

I. CABLE OPERATORS POSSESS MARKET POWER IN THE MVPD MARKET

A. EchoStar's Competitive Efforts

Ever since it commenced DBS service in the spring of 1996, EchoStar has viewed cable subscribers as its primary target market. Accordingly, EchoStar has priced and structured its offering with the primary purpose of attracting cable subscribers. *First*, EchoStar broke new ground among DBS providers in March 1996 by substantially reducing the upfront cost of the dish to the subscriber from \$499 to \$199. On June 1, 1997, EchoStar moved DBS pricing one step closer to the cable paradigm by eliminating the requirement that new subscribers purchase a prepaid one-year subscription.

Second, EchoStar has priced its packages at monthly rates well below comparable cable offerings. Thus, EchoStar offers its America's Top 40SM package at \$19.99 per

month, as compared to over \$30 for comparable cable service. *Third*, EchoStar has offered discounts to cable subscribers, available upon presenting a cable invoice.

As a result of its intense promotional efforts, aggressive pricing and consistent high quality of its DISH offering, EchoStar has been able to increase its subscriber base to about 582,000 as of June 30, 1997 and over 600,000 currently. Moreover, EchoStar believes that about 60% of its subscribers have switched to EchoStar from cable systems.

Nevertheless, EchoStar's subscribers base remains negligible compared to the 65 million cable households.^{1/} Furthermore, as discussed below, EchoStar's offering has not resulted in downward pressure on cable rates, which are indeed on the rise.

B. EchoStar's Constraints

In attempting to compete against the entrenched multi-channel providers, EchoStar is hampered by several constraints. *First*, unlike cable operators, EchoStar does not at present offer local programming. The Commission has recognized that the inability to offer local signals places DBS at a competitive disadvantage to other MVPDs.^{2/} Indeed, cable operators have seized on this significant and well-publicized handicap in their advertising campaigns against satellite programming distributors. EchoStar plans to start offering local network signals in the areas where these signals originate upon the launch of its third satellite, scheduled for September 1996. That satellite, however, will operate from a partial-CONUS location -- 61.5° W.L. Moreover, EchoStar's current satellites have no spot beam capacity, meaning that

^{1/} Paul Farhi, "Biggest Cable Operator To Raise Rates 7% in '97," The Washington Post (Mar. 14, 1997).

^{2/} See 1996 Cable Competition Report at ¶¶ 38, 43.

EchoStar cannot reuse the same spectrum to provide each market's local network signals into that market. EchoStar must instead dedicate almost an entire satellite transponder, corresponding to one DBS channel, to provide local signals to a single market. EchoStar's orbital and spectrum configuration and sunk investment in satellites that do not incorporate expensive spot beam technology will severely limit EchoStar's local offerings and the number of markets that EchoStar can reach (to no more than the largest 20 metropolitan markets).^{3/}

Second, EchoStar must deploy additional satellite capacity in a very short time frame or risk being overtaken by events. Its cable competitors are fast compounding the advantage of incumbency by adding fiber or satellite "digital tier" capacity, thereby upgrading their offering to hundreds of channels.^{4/} As Comcast Corporation's President Brian Roberts has stated, "[w]e have the advantage of being able to upgrade and take advantage of the digital technology curve. The cost structure involved with being able to take advantage of new technologies in satellite is prohibitive You get one shot at it." Stephen Donohue, *"Internet Over Cable: A Gold Mine,"* Internet Week (Mar. 24, 1997).

Third, EchoStar needs to be able to deploy additional spectrum at orbital locations that allow a seamless, integrated offering of more channels to the subscriber. EchoStar's existing channel assignments are dispersed over the orbital arc. Assembling a single

^{3/} EchoStar's local-into-local plan will also depend on the outcome of a pending proceeding before a Copyright Arbitration Royalty Panel (Docket No. 96-3 CARP SRA). In that proceeding, EchoStar and News Corp. have requested the imposition of a zero royalty rate -- the same as the rate available to cable operators -- for retransmission of network signals into those signals' service areas. Should the Panel or the Copyright Office set a royalty other than zero or revisit earlier indications that such retransmission falls within Section 119 of the Copyright Act, such rulings could cause further inequalities between cable operators and DBS providers.

^{4/} TSAT's announced "Cable-Plus" strategy for using satellite capacity to expand cable offerings instead of competing against cable operators is an example of such a digital upgrade.

offering to the consumer from such disparate assignments (*e.g.*, 61.5 and 148° W.L. in conjunction with EchoStar's two currently operational satellites at 119° W.L.) requires a relatively cumbersome and costly multiple dish installation that undermines, in part, the attractiveness of the services.

C. The Thwarted EchoStar/News Corp. Transaction

To alleviate all of the foregoing constraints, EchoStar entered into an agreement with News Corp. during February 1997. The Agreement contemplated the contribution by News Corp. to EchoStar of cash and substantial spectrum and satellite resources in exchange for EchoStar stock. Specifically, News Corp. would make available to EchoStar the use of MCI's 28 DBS channels at 110° W.L. By combining these channels with its existing assignments, EchoStar would have significantly more capacity, allowing it to provide local signals to approximately three-quarters of American households by the end of 1998. This new capability would have deprived cable operators of their main line of attack against DBS service and forced them instead to compete on price, service and programming, to the benefit of the American public.⁵¹

The News Corp. transaction would also have allowed EchoStar to deploy additional satellites from a location that allows a seamless offering to the consumer -- 110° W.L. For the first time, subscribers would have been able to receive service from two DBS orbital locations (a total of several hundreds of channels) by use of the same dish. The transaction

⁵¹ See *Cable Competition Report* at ¶ 38 (citing lack of local retransmission as impediment to DBS subscriber growth).

would also have made available for EchoStar several satellites, including one spot beam satellite under construction, and equity cash with which to invest in subscriber acquisition activities.

Several commenters, including the New York Times editorial page, hailed the EchoStar/News Corp. transaction as creating for the first time an MVPD distributor "that promises to provide its customers with a broadcast satellite service fully equal, if not superior, to their local cable service." New York Times, "Technology Threatens Monopolies," (March 1, 1997), p. 22. In the words of the Times:

Americans are used to squabbling with their local cable and telephone companies over installation, service repairs and rates. But if the new ventures succeed, the next time the local monopolist misbehaves, the customers can do more than fight. They can switch.

Id.

The press also reported that cable operators were profoundly concerned with the transaction and were planning a concerted effort to thwart it. *See Cable World, "The Sound and the Fury: ASkyB -- EchoStar Deal Gets 'Em Buzzin'"* (March 3, 1997); *Daily Variety, "DBS Threat Darkens Mood at NCTA"* (March 17, 1997); *Washington Post, "The Whole World in His Hands? Murdoch's Satellite TV Plan May Be His Shrewdest Move Yet -- If It Flies"* (March 17, 1997); *Multichannel News, "Cable Puts on Brave Face Amid Worries"* (March 24, 1997).

News Corp. has failed to go forward with the transaction despite the binding February 1997 agreement.^{6/} Instead of contributing the promised assets to EchoStar, News Corp. has made them available to the cable interests under a June 11, 1997 Asset Acquisition

^{6/} EchoStar and News Corp. are currently in litigation over the February 19, 1997 agreement.

Agreement among News Corp., MCI and the PRIMESTAR partners.^{7/} News Corp.'s refusal to proceed with the transaction marks a significant defeat for EchoStar, which would have become an equal competitor to cable operators, and for the MVPD consumer.

D. Other DBS Providers

While EchoStar is hampered by the constraints outlined above and the unfortunate outcome of the News Corp. transaction, competition to cable television from other DBS operators does not appear to be forthcoming either.

The only other operational DBS or Direct-to-Home providers with a sizable subscriber base are DIRECTV and PRIMESTAR.^{8/} Of these, PRIMESTAR is owned by subsidiaries of Time Warner Inc., Comcast Corporation, Cox Communications, Inc., Continental Cablevision, Inc., and TSAT. TSAT, a former wholly-owned subsidiary of Tele-Communications, Inc. ("TCI") was recently spun off to TCI's shareholders. TSAT appears to be effectively controlled by the same individuals that hold large equity stakes in its former parent, including TCI's chairman Dr. John Malone.

EchoStar believes that, in light of its affiliation with the largest MSOs, PRIMESTAR does not compete for cable subscribers, but rather targets populations in areas unserved by cable. EchoStar knows of no discounts or other special pricing plan offered by PRIMESTAR to induce cable subscribers to switch to PRIMESTAR's satellite offering.

^{7/} See Form 8-K, filed by TSAT with the Securities and Exchange Commission on July 1, 1997. PRIMESTAR filed the first application for Commission authority to a part of this transaction on July 18, 1997.

^{8/} Alphastar declared bankruptcy on May 27, 1997, marking a further negative development for the status of competition in the MVPD market since the time of the Commission's last report. Compare 1996 Cable Report at ¶ 41.

Furthermore, in contrast to the high percentage of EchoStar subscribers that have switched from cable, EchoStar believes that the percentage of PRIMESTAR subscribers switching from cable systems is minimal.^{2/} The NOI inquires, among other things, "[t]o what extent are viewers switching from cable to satellite service" NOI at ¶ 7. It is incumbent upon PRIMESTAR to provide the requested information with respect to its subscribers.

DIRECTV/USSB, the largest DBS provider, albeit unaffiliated with cable, has elected to pursue a high-end pricing and product packaging strategy. Thus, while DIRECTV/USSB has well over 2 million subscribers, EchoStar believes that the rates charged by DIRECTV for its packages are well above the levels that would attract the average cable subscriber. EchoStar also believes that a relatively high percentage of DIRECTV viewers may simultaneously subscribe to cable packages (other than lifeline service). While DIRECTV/USSB has more spectrum and satellite resources and financing than EchoStar and undoubtedly offers some competition to cable operators of the upper price ranges, it is not perceived as offering an affordable alternative across the board of the tens of millions of MVPD households.

Competition from terrestrial alternatives to cable has similarly not emerged in 1997. In fact, many signs indicate that the likelihood of success of these alternatives is as remote as it was in November 1996. Despite the Commission's July 1996 authorization of digital Multichannel Multipoint Distribution Service ("MMDS"), deployment of such systems in 1997 has been extremely sporadic. Indeed, according to many reports, telcos have "all but

^{2/} PRIMESTAR itself has reportedly stated that only 10% of PRIMESTAR homes are even passed by cable.

abandoned efforts to enter video quickly through wireless cable, or MMDS . . ." Interactive Daily, "Once-Ambitious Telcos Are Rethinking Their Video Strategies in 1997" (Jan. 3, 1997). In particular, the MMDS investment of Bell Atlantic and NYNEX in CAI Wireless Systems, Inc. continues to be on hold. *Id.* The plans of Americast and TeleTV remain similarly uncertain. Jeffrey P. Cunard, "Video Programming Competition Emerging, FCC Report Finds," Leader Publications, Inc. (Jan. 1997). Furthermore, the Commission has not yet even conducted the auction for Local Multipoint Distribution Service, and the potential of this service to develop into a meaningful MVPD alternative will remain unknown for the next few years.

E. Cable Rates, Revenues, Cash Flow and Stock Prices Are Increasing

Cable rates. In these circumstances, cable operators have been able to increase rates, revenues, cash flow and subscribers despite the existence of the DBS alternative. The NOI correctly observes that "cable rates have risen recently." NOI at ¶ 7. The NOI further observes that cable rates were flat in March 1997, marking the first such month for a considerable period, while the CPI index increased 0.1%. *See id.* The latest figures available from the Bureau of Labor Services, however, indicate that, with the single exception of March, cable rates have outpaced the CPI throughout 1997. The CPI for Cable Television increased 1.59% in February compared to a CPI increase of 0.31%. The respective increases for March were 0.18% and 0.25%; in April, cable rates increased by 0.58%, while the CPI rose by a fraction of that -- 0.13%. In May, cable rates rose by 0.49%, whereas the CPI index actually declined by 0.06%. In June, cable rates rose 0.93% compared to a CPI rise of only 0.12%. Overall, cable rates rose by 3.8% in the 5-month period from the end of January to the end of June 1997 -- an annualized

increase of 9.12%, more than 5 times faster than the CPI index, which rose 0.75% over the same period -- an annual rate of 1.8%.^{10/}

These numbers may reflect only part of the rate increases announced earlier this year by the largest cable operators. TCI has specifically announced plans to raise its rates almost 7% this year; Time Warner boosted the prices from 5% to 10% in January 1997. See Paul Farhi, "Biggest Cable Operator to Raise Rates 7% in '97," The Washington Post (Mar. 14, 1997), D1.

These rate hikes contrast markedly with the decreases in cable rates observed by the Commission in Dover Township, where the incumbent cable operator experienced competition on an experimental basis from Bell Atlantic. In that case, Adelphia had to reduce its basic service rates by 25% and expand its offering by 11 channels.^{11/} While use of Local Exchange Company facilities for the provision of Video Dial Tone on an other-than-experimental scale does not appear forthcoming at least in the near-term, the Dover Township case study does illustrate the type of cable operator conduct that the Commission must observe before certifying the presence of "effective competition." Subject to appropriate Commission action, DBS presents the potential for introducing such competition on a national level. So far, however, DBS providers have not posed a sufficient threat to elicit truly pro-competitive behavior from cable operators.

^{10/} These figures are based on non-seasonally adjusted data from the Bureau of Labor Services. A comparison of seasonally adjusted figures yields similar results: February increases were 0.86% (Cable) versus 0.25% (CPI); March increases were 0.04% versus 0.06%; April increases were 0.45% versus 0.06%; May increases were 0.49% versus 0.06%; June increases were 1.0% versus 0.12%. Thus, since the end of January, 1997, seasonally-adjusted cable rates have risen 2.9% -- again, more than 5 times faster than the seasonally-adjusted CPI's 0.50% increase. The increases in the CPI index for Cable Television are depicted in Exhibit 1 hereto.

MSO financial results. The cable operators' continuing dominance is reflected in sharply improved financial results for all large MSOs. TCI's revenues increased to \$1.8 billion in the first quarter of 1997 compared to \$1.6 billion for the same period in 1996.^{12/} Its operating cash flow (operating income before depreciation, amortization, compensation relating to stock appreciation rights and adjustments to compensation relating to stock appreciation rights) rose from \$533 million (first quarter 1996) to \$738 million (first quarter 1997). Operating income increased to \$349 from \$172 million. Time Warner's revenues from cable system operations (not including revenues from programming) similarly rose from \$217 million (first quarter 1996) to \$242 million (first quarter 1997).^{13/} Its operating income from cable operations increased to \$35 million from an operating loss of \$1 million.

Comcast Corporation likewise experienced a marked improvement in its results. It has reported an increase in its revenues from domestic cable communications from \$382 million in the first quarter of 1996 to \$501 million for the first quarter of 1997.^{14/} Operating income likewise increased from \$88.8 million in the first quarter of 1996 to \$91.5 million for the same quarter in 1997.^{15/}

MSO stock prices. The prices for publicly held MSO stocks reflect the financial community's view that the cable operators' market dominance is in no imminent danger. Over

^{12/} Form 10-Q filed by Tele-Communications, Inc. (May 15, 1997). The 1996 revenue number does not include net sales from electronic retailing sources.

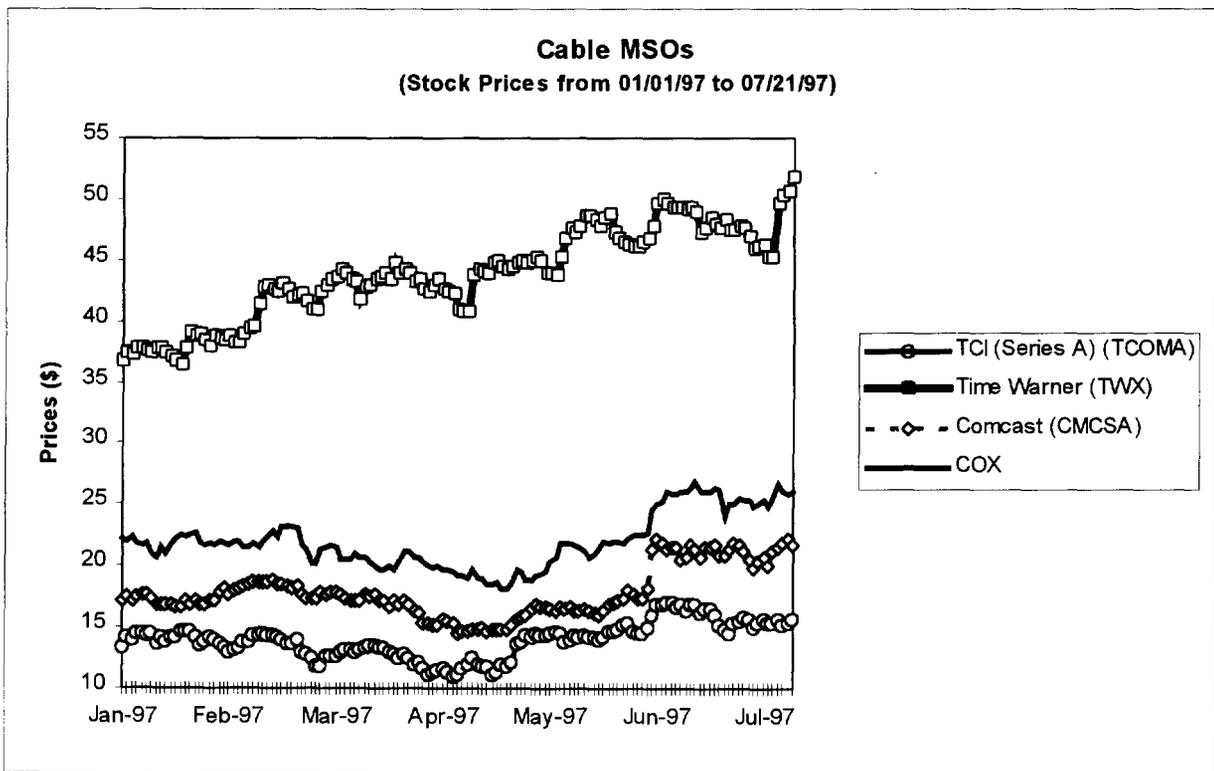
^{13/} Form 10-Q filed by Time Warner Inc. (May 10, 1997).

^{14/} Form 10-Q filed by Comcast Corporation (May 15, 1997).

^{15/} Of the largest MSOs, only Cox Communications, Inc. experienced a decline in its operating income (to \$49.7 million from \$62 million), despite increased revenues of \$383 million (from \$357 million). Form 10-Q filed by Cox Communications, Inc. (May 15, 1997).

the past three months, many MSO stocks have out-performed the market, reversing the decline in market valuation observed by the Commission in the 1996 Cable Report.^{16/} Thus, over that period, TCI's stock rose 28.68%, compared to a 15.22% increase in the Dow Jones Equity Market Index.^{17/} Comcast's stock has risen from a 52-week low of \$13.75 on July 31, 1996 to a 52-week high of \$22.8125 on June 10, 1997. Table 1 charts the stock prices for four large MSOs since January 1, 1997.

Table 1



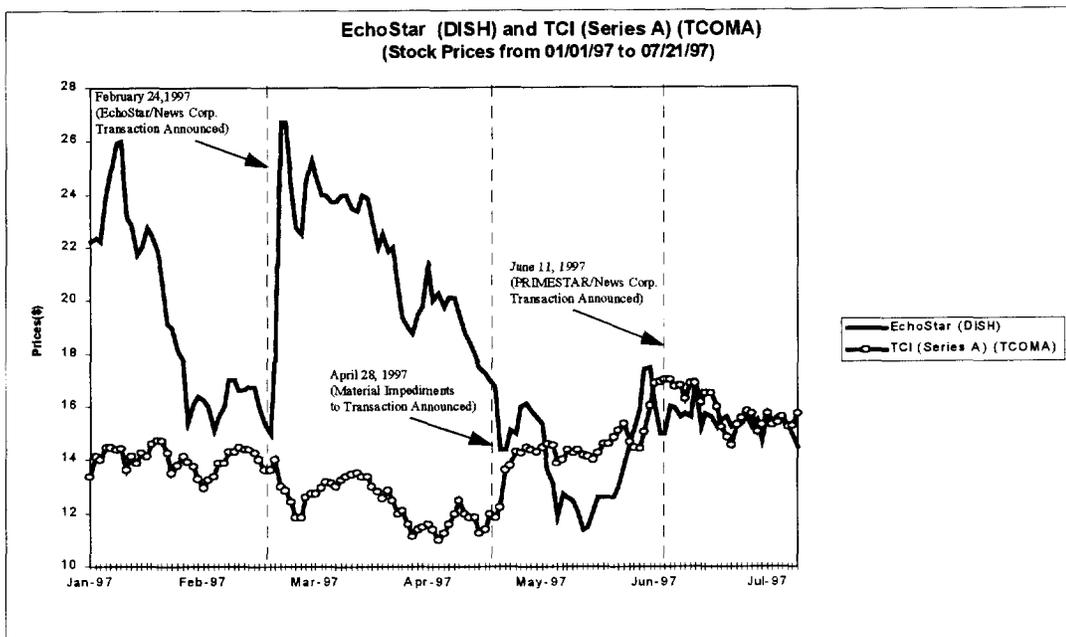
The changes in the MSOs' market valuation also eloquently illustrate the financial community's views with respect to the missed potential of the EchoStar/News Corp. transaction.

^{16/} See NOI at 917.

^{17/} Wall Street Journal Interactive Edition, IDD Information Services.

Table 2 plots TCI's and EchoStar's stock price against three relevant dates: February 24, 1997 -- when EchoStar and News Corp. publicly announced the transaction, April 28, 1997, when EchoStar announced material impediments to the transaction; and June 11, 1997 -- when the PRIMESTAR/News Corp./MCI transaction was officially announced.

Table 2



Plainly, Wall Street has viewed the thwarting of the EchoStar/News Corp. transaction as undermining the prospect of competition to cable on a more equal footing.

II. IF APPROVED, THE PRIMESTAR/NEWS CORP./MCI TRANSACTION WOULD EXACERBATE THE CABLE OPERATORS' DOMINANCE

If it were to be cleared by the Commission and the Department of Justice, the PRIMESTAR/News Corp./MCI transaction would render the cable operators' dominant position more secure than ever. EchoStar has not had the opportunity to analyze the transaction, which

has not yet been fully presented to the Commission. At a bare minimum, however, the transaction as described in various public filings and statements will have profound anti-competitive consequences on several fronts.

First, the transaction would definitively prevent EchoStar from securing access to the unique channel assignments covered by MCI's DBS permit. These assignments are necessary for EchoStar to put together the truly competitive multi-channel offering contemplated in the EchoStar/News Corp. transaction: a seamless, single-dish package of hundreds of channels, incorporating local network signals for 75% of the U.S. MVPD households.

Second, the PRIMESTAR deal would neutralize the spectrum and satellite resources made available to the new PRIMESTAR under the June 11, 1997 Asset Acquisition Agreement, precluding MCI or anyone else from using them to compete against cable operators.^{18/} There is simply no basis to assume that PRIMESTAR will use MCI's channels and News Corp.'s satellites to take subscribers away from its own shareholders -- the largest MSOs in the country or their affiliates. PRIMESTAR's announcements in connection with "local-into-local" network signals provide a characteristic illustration of its intentions in this regard. News Corp. had consistently emphasized its commitment to local-into-local service even prior to, and independent of, its investment in EchoStar. In stark contrast, at least one PRIMESTAR source -- PRIMESTAR's future president -- has reportedly stated that the new PRIMESTAR's "service will compete with cable -- not through local signals as [News Corp.]

^{18/} Even aside from PRIMESTAR's cable affiliation, the transaction would combine the second largest satellite MVPD and the most valuable available chunk of DBS channel assignments.

planned, but with expanded services.^{19/} News Corp., which has requested a zero royalty rate for local-into-local retransmissions in the pending CARP proceeding, recently indicated that its interest in the proceeding continues "pending approval and closing" of the Asset Acquisition Agreement.^{20/} PRIMESTAR has not asserted any interest in prosecuting the question of royalties for local-into-local retransmission in the proceeding.

Furthermore, PRIMESTAR has apparently decided not to purchase the spot-beam satellite under construction that News Corp. had promised to provide to EchoStar under the February 19, 1997 Agreement. That satellite is critically necessary for the efficient provision of local-into-local service, since it allows frequency reuse. Unless EchoStar were able to obtain specific performance with respect to that satellite in pending federal court litigation, it is very doubtful whether that valuable resource would ever be used to equalize the playing field between cable operators and DBS distributors. Nor has PRIMESTAR clarified whether it intends to pursue the "Cable-Plus" strategy announced by TSAT, whereby TSAT would use its satellite "as a complementary service to basic cable and other channel-constrained analog services, providing DBS services on a wholesale basis to these system operators wishing to avoid the high cost of digital plant upgrade."^{21/} That strategy further illustrates TSAT's and Primestar's predictable

^{19/} *Communications Daily*, "PRIMESTAR Gets News Corp./MCI DBS slot and 2 satellites in \$1.1 Billion Deal" (June 12, 1997), at 1-2. Other PRIMESTAR statements indicate that PRIMESTAR "still isn't ruling out offering local signals." "Legal/Regulatory," CableFAX (June 20, 1997).

^{20/} Docket No. 96-3 CARP SRA, Reply Findings of Fact and Conclusions of Law of American Sky Broadcasting L.L.C. (filed June 27, 1997), at 1 n. 1.

^{21/} *Communications Daily*, "PRIMESTAR Gets News Corp./MCI DBS slot and 2 satellites in \$1.1 Billion Deal" (June 12, 1997), at 1-2. Other PRIMESTAR statements indicate that PRIMESTAR "still isn't ruling out offering local signals." "Legal/Regulatory," CableFAX (June 20, 1997).

unwillingness to offer DBS as a genuine alternative, rather than a complement, to cable packages.

Third, the Asset Acquisition Agreement could also indefinitely delay the firm use of yet another DBS resource discussed by the Commission in the 1996 Report: the 11 channels at the 119° W.L. orbital location (channels 22-32) that are currently licensed to TSAT's wholly-owned subsidiary Tempo Satellite, Inc. In the Asset Acquisition Agreement, TSAT essentially agreed to the disposition of Tempo's license for these channels.^{22/} This appears to mean, at a minimum, that these channels will remain unused pending the unfolding of the "disposition" plan. Furthermore, the Commission should scrutinize extremely carefully any transaction involving the 119° W.L. location presented to it by TSAT and the competitive intentions of any proposed buyer, especially in light of the fact that, as TSAT has repeatedly emphasized, those channels are not enough for a stand-alone competitive offering.

Fourth, the PRIMESTAR/News Corp. transaction will mark a dramatic increase in the number of programming services affiliated with cable operators. This increase will not only reverse the decline in vertical integration found in the 1996 Report.^{23/} It will also exacerbate the problems associated with vertical integration by several orders of magnitude, as it will bring in the fold of the cable operator family of interests the unique, premium programming assets of News Corp.^{24/} Under the Asset Acquisition Agreement News Corp.'s affiliate

^{22/} EchoStar has requested Special Temporary Authority to operate its two satellites over these channels, which would otherwise remain unused.

^{23/} 1996 Cable Report at ¶ 142.

^{24/} See attached as Exhibit 2 a listing of News Corp.'s assets as presented on its Internet Home Page.

American Sky Broadcasting, LLC, will acquire a substantial non-voting equity interest in the new PRIMESTAR. Indeed, if it were to be permitted despite the Commission's rules and policies against media concentration, the affiliation of News Corp. with the five largest MSOs would further compound the concerns already expressed in connection with News Corp.'s recent substantial acquisitions in the programming and sports rights area.^{25/}

III. CONCLUSION

For the foregoing reasons, EchoStar believes that the MVPD market is still dominated by cable operators; and decisive Commission action is necessary to prevent the set-back threatened by further attempts at horizontal and vertical concentration in the area.

^{25/} See Variety, "Get Ready for the Rupe Group; Loner No More, Murdoch Ropes in Major Partners" (July 21-27, 1997), pp. 1, 50 (discussing acquisition of Family Channel's parent International Family Entertainment). See also Broadcasting & Cable, "Murdoch on the Move" (March 19, 1997) (discussing planned acquisitions of LA Dodgers' baseball team and Heritage Media Corporation). Earlier this year, the regional sports joint venture of News Corp. and TCI-affiliated Liberty Media had combined with Cablevision Systems Corporation, piecing together 17 combined regional sports networks, including some of the most valuable sports franchises in the nation.

Respectfully submitted,

EchoStar Communications Corporation

David K. Moskowitz
Senior Vice President and General Counsel
EchoStar Communications Corporation
90 Inverness Circle East
Englewood, CO 80112

Karen E. Watson
Director Governmental Relations
EchoStar Communications Corporation
1850 M Street, N.W., Suite 1070
Washington, D.C. 20036

By: 
Philip L. Male
Pantelis Michalopoulos
Colleen A. Sechrest
STEPTOE & JOHNSON LLP
1330 Connecticut Avenue, N.W.
Washington, D.C. 20036
202/429-3000

Its Attorneys

CERTIFICATE OF SERVICE

I, Colleen Sechrest, do hereby certify that a copy of the foregoing **Comments Of EchoStar Communications Corporation** has been sent, via first class mail, postage prepaid (or as otherwise indicated), on this 23rd day of July, 1997 to the following:

*Chairman Reed E. Hundt
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

*Commissioner James H. Quello
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

*Commissions Rachelle B. Chong
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

*Commissioner Susan B. Ness
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

*Meredith Jones, Esq.
Chief, Cable Services Bureau
Federal Communications Commission
2033 M Street, N.W., Room 918
Washington, DC 20554

*Jacqueline Spindler
Cable Services Bureau
Federal Communications Commission
2033 M Street, N.W.
Washington, DC 20554

*Brian Carter
International Bureau
Federal Communications Commission
2000 M Street, N.W.
Washington, DC 20554

*Peter Cowhey
International Bureau
Federal Communications Commission
2000 M Street, N.W.
Washington, DC 20554

*Thomas Tycz
International Bureau
Federal Communications Commission
2000 M Street, N.W.
Washington, D.C. 20554

*Selina Khan
Federal Communications Commission
2000 M Street, N.W.
Washington, DC 20554

*John Nakahata
Federal Communications Commission
1919 M Street, N.W.
Washington, DC 20036

*Ruth Milkman
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

* Via Hand Delivery