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

In the Matter of	)	
	)	
Annual Assessment of the Status of	)	CS Docket No. 98-102
Competition in Markets for the	)	
Delivery of Video Programming	)	

REPLY COMMENTS OF THE NATIONAL CABLE TELEVISION ASSOCIATION

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The National Cable Television Association ("NCTA") hereby submits its reply comments on the Notice of Inquiry in the above-captioned proceeding.

INTRODUCTION AND SUMMARY

In its initial comments, NCTA demonstrated that competition in the video marketplace has been growing steadily over the past five years and is here to stay. The comments of other parties confirm that competition is flourishing. While each of cable's competitors predictably seeks to portray its own industry as the single best source of competition – and to obtain regulatory advantages that will promote its own ability to attract existing cable subscribers – their comments only serve to highlight the proliferation of competitive alternatives to cable. Moreover, none of the comments suggest that continued regulation of cable's rates would be an appropriate response to current marketplace conditions.

Most consumers today can choose to purchase video programming from a number of substitutable alternatives to cable. It is the availability of substitutable alternatives – and not the number of consumers that opt for each alternative – that ensures that prices and service offerings in a marketplace will be competitive.

This point was squarely recognized by Chairman Kennard when he recently noted that PCS should be deemed a competitor in the market for local exchange service if it could be shown that PCS is used by some customers to "replace, rather than merely supplement, the traditional wireline service offered by the Bell Operating Company."[1] According to the Chairman, "even if a competing provider has relatively few customers, as long as the competing service is a substitute for the traditional wireline service offered by the Bell Operating Company, the Bell Operating Company is more likely to compete to retain its customers with some combination of lower prices and/or better quality service."[2]

This model applies directly to today's video marketplace. The record in this proceeding shows – and (as we previously noted) the Department of Justice has found – that DBS is now viewed by consumers as a substitute for cable service.

Some of cable's competitors assert that their ability to compete would be enhanced by changes to the Commission's program access and inside wiring rules. But the Commission has already, just recently, amended those rules to assist those competitors. Shortly after the initial comments in this proceeding were filed, the Commission completed its rulemaking proceeding on program access. It adopted changes to its rules that were hailed by Ameritech – one of the principal proponents of stronger program access rules – as "a terrific first step toward advancing cable competition."[3] And, as RCN Telecom Services, Inc. notes in its comments, the

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1 Letters from Chairman Kennard to Sen. John Breaux and Rep. Billy Tauzin, July 7, 1998.

2 *Id.* (emphasis added).

3 "FCC Sets Timetable, Remedies, for Program Access Complaints," *Communications Daily*, Aug. 7, 1998, p.3.

Commission has already "gone to great lengths to resolve the many complex bottleneck issues related to inside wiring within MDUs. . . ."[4]

In sum, the Commission has taken steps to promote a favorable environment for cable's competitors, and competition is a reality. When there are substitutable alternatives, rate regulation serves only to constrain cable operators' ability to package and price services in a flexible manner that responds to consumer demand. And regulations that provide an artificial competitive advantage to one or more of those substitutable alternatives in order to encourage consumers to switch from cable do nothing to promote competitive behavior or consumer welfare. They only protect those alternatives from the constraints and sanctions of the marketplace.

I. COMPETITION IS FLOURISHING IN THE VIDEO MARKETPLACE

The variety of industries commenting in this proceeding confirm the broad proliferation of competition in the video marketplace. They confirm that, while DBS is the most prominent and well established new competitor to incumbent cable systems, other competitors are also establishing themselves and flourishing.

"Private" Cable Operators. Optel, Inc. – an unfranchised "private cable operator" that uses networks of cable and microwave to provide service to MDUs and private residences – confirms that "the private cable industry is vibrant and growing."[5] It asserts that "private cable operators are increasingly making in-roads into markets long-dominated by the incumbent

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4 RCN Comments at 14.

5 OpTel Comments at 4.

franchised cable operators," and points out that "OpTel alone now has almost 400,000 passings and over 200,000 video subscribers in eleven major U.S. cities."[6]

OVS. Unfranchised open video system ("OVS") providers are also making their presence known. For example, RCN Telecom Services, an OVS provider in several large metropolitan areas, reports that its "entry into the telecommunications marketplace is robust, focused and well-financed."[7]

MMDS. The Wireless Communications Association International, Inc. ("WCA"), which represents providers of MMDS, ITFS and LMDS services, also confirms that its members are capable of competing effectively in the video marketplace: "First and foremost, WCA believes that the Commission can report to Congress with confidence that it has laid the foundation for a new regulatory environment that will promote *bona fide* competition between incumbent cable operators and alternative multichannel video programming distributors ("MVPDs").[8]

Telephone Companies. In addition, telephone companies are also competing vigorously with cable operators. Thus, Ameritech New Media proclaims that "the type of direct, head-to-head competition Ameritech is providing as a cable overbuilder . . . is working in precisely the way Congress hoped when it enacted the Cable Television Consumer Protection and Competition Act of 1992 and the Telecommunications Act of 1996."[9] And while Ameritech seeks to portray the competitive landscape outside its overbuild areas as "bleak," BellSouth shows that it, too, is providing wired and wireless video service in vigorous competition with incumbent cable operators in its telephone service areas:

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6 *Id.* at 1.

7 *Id.* at ii.

8 WCA Comments at 1.

9 Ameritech Comments at 1.

> BellSouth has launched competitive cable overbuild service in Vestavia Hills, Alabama; Chamblee, Lawrenceville, Cherokee County, DeKalb County, Gwinnett County and Duluth, Georgia; St. Johns' County, Florida; and Daniel Island, South Carolina. In addition, BellSouth is currently in negotiations to obtain cable franchises to serve communities in and around these and other metropolitan areas.
>
> Bell South also has launched digital wireless cable service in New Orleans (approximately 400,000 line-of-sight households) and Atlanta (approximately 900,000 line-of-sight households), and is scheduled to launch similar service in Orlando, Daytona Beach, Jacksonville, Miami and Louisville over the next two years. In Atlanta, for example, BellSouth's wireless system offers 160 channels (including 30 audio channels) of digital service in direct competition with cable MSOs MediaOne Group, Time Warner and Comcast. <u>To date, BellSouth has invested hundreds of millions of dollars to acquire wireless cable channel rights, deploy transmission and reception equipment, establish the operational infrastructure necessary to develop competitive digital wired and wireless cable systems, and provide distance learning opportunities for local ITFS licensees.</u>[10]

DBS. Meanwhile, the comments of the Satellite Broadcasting and Communications Association ("SBCA") echo and amplify what we showed in our comments – namely, that the rapid growth of DBS is continuing unabated and that DBS and cable are today substitutable competitors in the video marketplace. SBCA's data shows, for example, that

- DBS continues to add approximately two million subscribers each year;[11]
- The growth in DBS subscribership last year exceeded the growth in the previous year: "[P]er day DBS gains have increased from 5,879 to 6,047";[12]
- DTH penetration increased in just the last year <u>from 7.2% to 9.2%</u> of television households, and the number of states with penetration in excess of 15% almost tripled, from five to 14.[13]

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10 BellSouth Comments at 2-3 (emphasis added) (footnote omitted).

11 SBCA Comments at 7.

12 *Id.* at 8.

13 *Id.*

Thus, as one recent article reports,

> As an industry, satellite television itself is only about 4 years old. But just like a toddler, the business is growing like mad. Already, an estimated one in 10 U.S. households is fitted with a broadcast dish. The direct-satellite TV market is growing at an estimated rate of 40 percent a year, and [Antonette Garoch, vice president of research and consulting for The Carmel Group] projects it could hit 30 million subscribers within 10 years.[14]

SBCA's comments also provide data confirming that DBS and cable are competing in the <u>same</u> marketplace for the <u>same</u> subscribers. SBCA's survey shows that 55 percent of DBS subscribers are located in areas served by cable[15] – and most of those subscribers view DBS as a <u>substitute</u> for – not a <u>supplement</u> to – cable service. Thus, "only one-quarter of DBS households with access to cable actually subscribed to cable."[16] And even though DBS is currently restricted by law and technology from retransmitting local broadcast signals, only 13 percent of DBS subscribers rely on cable to receive such signals.[17] Most of them – 66 percent – simply use internal or external TV antennas.[18]

It is also becoming increasingly clear that the up-front equipment costs of subscribing to DBS, which the Commission cited last year as a possible impediment to choosing DBS as a substitute for cable, are diminishing to the point where DBS cannot conceivably be dismissed as a "high-end" product. In our initial comments, we described an EchoStar promotion that, by offering new subscribers two free months of service, effectively reduced the price of a dish and

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[14] "EchoStar's bright light," *Tribune-Review* (Pittsburgh, PA), Aug. 23, 1998.

[15] SBCA Comments at 9.

[16] *Id.* at 10.

[17] *Id.*

[18] *Id.*

receiver to as low as $89.[19] EchoStar, which manufactures its own set-top boxes, now reports that it expects "to further reduce box cost through design improvement."[20]

Moreover, the cost of receiving DBS service over a second set in a subscriber's home – as well as the cost of receiving local broadcast stations off-air – has also been substantially reduced:

> I think we have solved, by anyone's standard, the second-set problem by offering a second IRD for $99. We have enabled the retailers to give a free off-air antenna and include that in the $99 installation or give the install kit away for free.[21]

In our initial comments, we noted that the DBS and consumer electronics industries are promoting the development of sophisticated but inexpensive off-air antennas and are assisting consumers in determining the models most appropriate to their needs. Stanley Hubbard, President and CEO of United States Satellite Broadcasting ("USSB") recently described one of the promotional campaign of the Antenna Education Coalition:

> Starting at the end of this month, in Minneapolis/St. Paul, Indianapolis, and Philadelphia, there will be a pretty sophisticated mapping program. Walking into any DSS retailer, you will be able to see where you live and point to a spot on the map where your home is. The mapping technique we have used takes into account real terrestrial signal propagation issues, including buildings and terrain. If you are in a blue area, for example, you'll be able to go over to Circuit City and they'll say, "Here's your good, better, best antenna solution," based on the brands and models that they carry. If you're in Best Buy, there will be a different set of brands and models. By the end of the year, by the holiday season, that should be rolled out across the country in every retailer.[22]

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19 NCTA Comments at 21.

20 Transcript of Donaldson, Lufkin & Jenrette Satellite Industry Conference, July 1998, p.4 (Presentation of Rick Westerman, Director of Finance. EchoStar Communications). (A copy of the transcript is attached as Appendix A.)

21 *Id.*, p.6 (Presentation of Eddy W. Hartenstein, President, DirecTV, Inc.).

22 *Id.*, p.13 (Presentation of Stanley E. Hubbard, President and CEO, United State Satellite Broadcasting). *See also* "The Return of the Rabbit Ears," *US News*, May 25, 1998.

Ameritech, which seeks to portray its wireline overbuilds as the only worthy and effective competitors of cable systems, argues that DBS is not viewed by consumers as a good substitute for cable. As proof, Ameritech cites evidence comparing DBS penetration "in communities where there is no local alternative MVPD and communities where a cable operator, such as Ameritech, is present." That evidence purportedly shows that "[i]n Ameritech's service area, DBS service penetration lags behind the national average."[23] In other words, where DBS is the only community-wide competitor of the incumbent cable system, its market share (not surprisingly) is generally higher than where there is an additional competitor.

This proves only that Ameritech's service is, to some extent, viewed by consumers as a good substitute for DBS service – not that it is a better substitute than DBS for the incumbent's cable service. Indeed, if DBS and telco overbuilds were equally good substitutes for an incumbent's cable service, one would still expect DBS penetration to be significantly lower where there was an overbuild competitor than where there was none. The greater the number of substitutable competitors, the lower their market shares – which is all that Ameritech's penetration data confirm.

Ameritech also contends that "cable overbuilding spurs more competitive responses [on the part of incumbent cable operators] than DBS."[24] According to Ameritech, incumbents typically respond to its service by lowering their prices, while "the presence of DBS service nationwide has not prompted the same type of competitive response."[25] It is true that Ameritech and cable's DBS competitors have adopted somewhat different competitive strategies – and that

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23 Ameritech Comments at 17 (emphasis added).

24 *Id.* at 15.

25 *Id.* (emphasis added).

these different strategies have sometimes provoked different types of competitive responses by incumbent cable operators. Ameritech's strategy, like other overbuilders, appears to have relied to a greater extent than DBS on promotional rates and discounts and to a lesser extent than DBS on product differentiation.

Thus, Ameritech asserts that "DBS is not competing with cable primarily on cost but on quality of signal and service and quantity of programming." More precisely, DBS is betting that consumers will, in the long run, prefer more (and different)[26] programming and better signal quality, even at higher prices, to a less robust offering at a lower price. There is ample basis for such a strategy. Cable operators have found that when they invest in more and better programming and facilities, their subscribership and penetration increase even though rates necessarily increase as well.

Cable's rollout of digital tiers is a response to the market forces urging more program choices. When, in response to DBS's high quality digital transmissions and large channel capacity, cable operators accelerate their system upgrades and invest in new and improved programming, that is a competitive response that promotes consumer welfare.

Ameritech and other telco overbuilders initially appeared to be adopting a similar strategy of product differentiation to attract subscribers. Thus, Ameritech, SBC and BellSouth joined with Disney to create americast – a joint venture that was expected to create unique programming for those telcos' video services. Bell Atlantic, NYNEX and Pacific Telesis created Tele-TV for the same purpose. But despite hundreds of millions of dollars reportedly spent on

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[26] DBS, which has exclusive rights to several major league sports packages, has continued to enter into exclusive agreements with programmers. This month, for example, DirecTv announced that it would provide, on an exclusive basis, country singer Shania Twain's first televised concert. It also announced that it had acquired exclusive rights to provide "The Johnny Carson Show," weekly 60-minute programs consisting of excerpts from the Tonight Show starring Johnny Carson.

these ventures, they have produced virtually no unique programming. The telcos generally opted instead to offer the same array of programming as incumbent cable operators.[27]

Instead of successfully offering a differentiated product, Ameritech has chosen to offer a variety of price promotions and discounts – which appear, in many cases, to be tied to and subsidized by its local telephone service. For example, it offers its customers "Americhecks," which they may use "to help pay for any service offered by Ameritech – local phone, cable and wireless phone service, leaving it up to the customer's discretion as to what services they want the 'Americhecks' to pay for."[28] As Cox Communications points out, Ameritech's provision to cable subscribers of coupon discounts on its own telephone system and on long distance service from Qwest have both been discontinued by its Cleveland system "due to adverse regulatory rulings."[29]

As we acknowledged in our initial comments, overbuilders often use initially low prices and promotions to enter the market. But these low prices and promotions, as we showed, are generally either unsustainable[30] or unfairly subsidized by monopoly utility revenues.[31] In any event, wholly apart from any predatory and unfair aspects of overbuilders' pricing strategies,

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27 This decision was facilitated by the Commission's program access rules, which, as discussed below, generally permit overbuilders to carry all programming in which cable operators have an attributable interest without any of the risks incurred by the cable operators in creating or investing in such services. But the fact that the telcos have declined or been unable to develop their own programming hardly justifies making those rules even more restrictive and burdensome, as Ameritech proposes.

28 Ameritech Comments at 14.

29 Cox Communications, Inc. Comments at 10.

30 *See, e.g.,* "RCN Raises Rates in Boston System," *Cable World,* Feb. 23, 1998, p. 6; "Telco Raises Video Rates in N.J.," *Cable World,* Dec. 8, 1997, p.6.

31 *See, e.g.,* R. Rizzuto and M. Wirth, *Costs, Benefits and Long-Term Sustainability of Municipal Overbuilds* (May 1998).

Ameritech's suggestion that competing on the basis of "quality of signal and service and quantity of programming" somehow provokes a less competitive and less beneficial response by cable operators is simply wrong. Cable operators are responding to the competitive offerings of DBS, MMDS, SMATVs, OVS providers – and telco overbuilders – in the manner that consumers demonstrably prefer. They are continuing to enhance the value of cable service to subscribers by providing, dollar for dollar, more and better programming and higher quality service.

II. THERE IS NO BASIS FOR RECOMMENDING ADDITIONAL SPECIAL REGULATORY ADVANTAGES FOR CABLE'S COMPETITIORS

None of the commenting parties in this proceeding suggest that rate regulation remains necessary or desirable to constrain cable's conduct in what has become a competitive video marketplace. But most of cable's competitors do seek certain regulatory advantages and protections that, they contend, are necessary to make them more effective competitors. For example, they argue that the Commission's rules do not go far enough in guaranteeing them access to programming and to wiring owned and installed by cable operators in multiple dwelling units.

A. Program Access

Whether the changes to the program access rules proposed by Ameritech, BellSouth, and the Wireless Cable Association are generally desirable or not is almost beside the point. This is because, after the filing of those parties' initial comments in this proceeding, the Commission not only addressed all those proposals in its program access rulemaking proceeding but also substantially adopted most of them.[32] Ameritech had asked the Commission to impose time deadlines on the Commission's resolution of program access complaints, to shorten the pleading

[32] Report and Order, CS Docket No. 97-248 (FCC 98-189, released Aug. 10, 1998).

cycles for program access proceedings, to create a damages remedy for program access complaints, and to expand the discovery rights of complaining parties – and, although NCTA argued that no such changes were necessary to promote the objectives of the statutory program access requirements, the Commission did <u>all</u> of those things.

Ameritech hailed the Commission's rule changes as a "terrific first step toward advancing cable competition," and praised the Commission for "moving at near-warp speed to update its rules for the increasingly competitive cable marketplace."[33] It was "especially pleased" by the Commission's action with respect to discovery.[34] Similarly, "BellSouth said it's pleased that [the] agency is 'moving forward' on program access."[35]

Some parties in this proceeding argue that the program access rules should be further extended to apply not only to satellite-delivered services but also to terrestrially-delivered services. But the Commission addressed this issue in its rulemaking proceeding as well. While the Commission acknowledged the possibility that increased terrestrial distribution of programming could "eventually" have an impact on competition in the video marketplace, it found no evidence of any significant problem that required attention at this time.[36] It promised to "continue to monitor this issue and its impact on competition in the video marketplace."[37] But there is no reason to believe that circumstances have changed in the three weeks since the Commission's rulemaking decision was released.

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33 "FCC Sets Timetable, Remedies, for Program Access Complaints," *Communications Daily*, Aug. 7, 1998, p.3.

34 *Id.*, p.4.

35 *Id.*, p.3.

36 Report and Order, *supra*, ¶ 71.

37 *Id.*

B. Inside Wiring

The Commission has also recently addressed – or is in the process of addressing – the inside wiring issues raised in this proceeding by parties that compete with franchised cable operators in serving MDUs. In 1993, the Commission adopted rules, pursuant to the inside wiring provisions of the 1992 Cable Act, that require cable operators to offer to sell MDU subscribers the wiring inside their individual residences when such subscribers (or the owners of their buildings) terminate the cable operator's service.

While the provisions of the 1992 Act apply only to wiring inside individual apartments, the Commission last year adopted additional procedures governing the disposition of "home run" wiring – i.e., wiring that serves a particular residence but is located outside that residence – upon termination of service. The new rules require cable operators, when notified by an MDU owner or resident that its service contract will be terminated, to notify the owner or resident in advance of the termination date whether it will remove the home run wiring, abandon the wiring, or offer to sell the wiring to the owner or resident. This requirement is meant to prevent incumbents who, after termination, have no legally enforceable right to maintain their wiring in an MDU from thwarting competitive entry by threatening to remove inside wiring when they may have no real intention of doing so.

As RCN points out, the Commission "has gone to great lengths to resolve the many complex bottleneck issues related to inside wiring within MDUs, and has adopted regulations that attempt to successfully moderate the anticompetitive inclinations of incumbents."[38] WCA and Ameritech contend, however, that these rules do not go far enough. They argue that the fear that a cable operator will elect to remove the wiring that it installed and that it owns is still likely

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[38] RCN Comments at 14.

to deter landlords from entering into a contract with an alternative provider – although Ameritech concedes that, in fact, "[i]t is an extremely rare instance in which an MVPD removes wiring from an MDU."[39] WCA asks the Commission to recommend that Congress give it authority to require cable operators, in all circumstances, to offer to sell their home run wiring to their competitors or to MDU owners upon termination.[40]

The Commission's rules effectively remove any conceivable anticompetitive roadblocks to competitive providers who wish to serve MDUs. What Ameritech and WCA seek is not a fair opportunity to compete for MDU subscribers but a right to rely, in competing for such subscribers, on the investments and installed facilities of incumbent cable operators – just as they have insisted on a right to rely on the programming of incumbent cable operators instead of developing or investing in any of their own.

C. <u>Other Issues</u>

In addition to program access and inside wiring, cable's competitors propose a number of other regulatory and legislative measures designed to boost their ability to gain subscribers in the video marketplace. Most of these matters have been or are being addressed in other proceedings or in another forum and need not be dealt with separately in this proceeding. For example:

Retransmission of Local Broadcast Signals by DBS. SBCA and the National Rural Telecommunications Cooperative raise issues related to the ability of DBS to retransmit local broadcast signals pursuant to the Satellite Home Viewer Act ("SHVA"). NCTA has made clear that it does not oppose amending the law to permit the retransmission of local signals, provided

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[39] Ameritech Comments at 49.

[40] WCA Comments at 12.

that DBS operators are subject to the same must carry obligations as cable operators. Ameritech agrees with this specific point, noting correctly that

> [t]he very point of competition is to provide consumers real choices. Regulations which skew consumer choice in a competitive market by favoring one technology over another, no matter how well intentioned, operate to undermine the very competition they are intended to promote.[41]

Issues raised by SBCA and NRTC regarding the manner in which "white areas" and Grade B signals are defined for purposes of the SHVA are currently before the Commission in pending petitions for rulemaking.[42]

Electronic Program Guides. Gemstar/Starsight and Ameritech urge the Commission to use this proceeding to address their concerns that the EPG video market is subject to <u>potential</u> anti-competitive conduct by MVPDs against unaffiliated providers.[43] The Commission took note of these concerns and related arguments in its recently concluded rulemaking proceeding on navigation devices. It determined in that proceeding that it would continue to monitor developments in this area, but it found no reason to take action at this time.[44]

Gemstar/Starsight attempts, in its comments, to stretch section 628 of the Communications Act, which deals with the availability of satellite cable programming, to

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[41] Ameritech Comments at 17. As MediaOne's comments show, must-carry is only one of a large number of cable-specific regulatory burdens that are not imposed on DBS and other cable competitors. *See* MediaOne Comments at 10. While Ameritech is rightly concerned that rules that favor one technology over another subvert marketplace competition, it is, of course, equally true that rules that artificially skew consumer choice by favoring new competitors over incumbents using the *same* technology also promote inefficient and anticompetitive outcomes.

[42] *See* Petition for Declaratory Ruling and/or Rulemaking of EchoStar Communications Corporation, RM-9345 (filed Aug. 18, 1998); Petition for Rulemaking of NRTC, RM-9335 (filed July 8, 1998).

[43] Comments of Gemstar International Group Ltd. And Starsight Telecast, Inc. at 3.

[44] Implementation of Section 304 of the Telecommunications Act of 1996 – Commercial Availability of Navigation Devices, CS Docket No. 97-80, Report and Order, released June 24, 1998, ¶ 116.

encompass EPG services delivered via telephone lines to the MVPD.[45] But, as we showed in the navigation device proceeding, there is no statutory basis under section 628, or elsewhere in the Communications Act for the Commission to require cable operators to configure their systems to transmit a third party's program guide.

Horizontal Ownership. Ameritech complains at length about horizontal concentration in the cable industry and, in particular, about the "clustering" of cable systems by multiple system owners. These matters are the subject of a pending rulemaking proceeding in which NCTA and other parties have just this month submitted comments, so there is no need to address them again here.

It is, however, impossible to ignore the irony of a Regional Bell Holding Company complaining about horizontal ownership and clustering. The Regional Bell Holding Companies were created as clustered entities, and Ameritech's 11 million residential telephone subscribers have always been clustered in Illinois, Indiana, Michigan, Ohio and Wisconsin, where they serve nearly 100% of the homes in their service areas. Moreover, if Ameritech's acquisition by SBC (which has already acquired Pacific Telesis) is approved, the resulting company will serve 64.6 million of the nation's access lines in 12 states.

CONCLUSION

As we showed in our initial comments, competition has developed more rapidly in the video marketplace than in any other communications market. Competition from DBS, telephone companies and other substitutable alternatives to cable is here – and it is here to stay. Cable operators are responding positively to marketplace competition, and the value of cable service to consumers is increasing.

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45 Comments of Gemstar/Starsight at 2.

The comments in this proceeding generally confirm that competition is now a reality. Cable's competitors persist, however, in seeking additional regulatory advantages in the video marketplace. Such artificial boosts and protections from competition are unwarranted and would only interfere with the ability of the marketplace to meet the needs and demands of consumers.

Respectfully submitted,

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APPENDIX A

DBS PANEL

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Donaldson, Lufkin & Jenrette Securities

EchoStar Communications Corporation
Rick Westerman
Director of Finance

DirecTV®, Inc.
Eddy W. Hartenstein
President

Primestar
Carl Vogel
Chairman & CEO

United States Satellite Broadcasting
Stanley E. Hubbard
President & CEO

MR. ZIA: I have the pleasure of introducing the direct broadcast satellite area.

Our first speaker is Rick Westerman, of EchoStar. EchoStar, as many of you know, has been the fastest-growing company in the DBS industry. Rick's background as a former sell-side analyst should not be held against him, and actually I think you will find it gives him a very in-depth perspective of the industry.

ECHOSTAR COMMUNICATIONS

Rick Westerman
Director of Finance

MR. WESTERMAN: Good morning.

When most people think of EchoStar Communications, they think of the DISH Network, our DBS service of 1.3 million subscribers — and growing — but in fact we look at ourselves as three separate, but interrelated, companies.

• The first, and obviously the largest, part is DISH Network, representing about 70%–75% of our revenue base. The other two components, though, are equally important.

• Second is EchoStar Technologies Corporation (ETC), our R&D and digital manufacturing business.

• Third is Satellite Services. This is business television and international transponder leasing, as well as data services that will begin in the fourth quarter.

Let me start with DISH Network. The key success factors here are:

• Increased subscriber growth.

• Increasing revenue per subscriber.

• Controlling subscriber acquisition cost.

• Controlling churn.

• Increasing our retail distribution, which I think is a key leverage point for us.

Let me give you an update on where we are on each of these measures.

In terms of subscriber growth, I just mentioned we have about 1.3 million subscribers. On a year-over-year basis, we are doing pretty well in this area. Most recently, in the first quarter, we were up about 25% year-over-year, and we have announced very strong comparisons for April and May as well.

In terms of market share, our goal is to take about a third of the market. Since the early part of 1997, we have been pretty successful on that score. The only major dips that we had in 1997 came on the heels of our failed merger with News Corporation in the second quarter; and then, in the fourth quarter, we had a box shortage that was brought about by an extremely successful promotion we had in the third quarter. But so far in 1998, we are well on track.

In terms of revenue per subscriber, we had a nice upward trend in this statistic throughout 1996 and 1997, until we took a little bit of a stumble in the fourth quarter, falling from $39.50 to $38.00. We introduced a new, lower-priced package coupled with our Fall installation program that was very successful as a subscriber acquisition tool, but it dropped our revenue per subscriber down to the $38.00 level. We expect to see a steady increase going forward, and fully expect to be north of $40.00 by the end of the year.

In terms of subscriber acquisition cost, I think this tells a large part of our story and demonstrates why we think our economic model is more attractive than that of our competitors. At our current churn rate, we are extremely comfortable paying $300 per subscriber, and we get something north of a 40% internal rate of return on that investment. Since the second quarter of last year, we have been consistently below $300. On a going-forward basis, I think the landscape is getting a little bit more competitive, and, as I said, we are comfortable spending $300–$350, assuming we can keep turnover in check.

On turnover, we have been consistently below our internal goal of 1.25%, or 15% annualized, and right now we are running at approximately 1% per month.

In terms of retail distribution, we began 1997 with about 6,000 points of sale. At the end of the first quarter, we had effectively doubled that, and are in about 12,000 points of sale. About three-quarters of our distribution is the traditional TVRO channel, or mom-and-pop type satellite retailers. The balance of that distribution is consumer electronics based.

We think we will be at 15,000 points of presence, or north, by the end of the year, and the vast majority, if not all, of that increase will come on the consumer electronics side. We have established relationships with JVC and Philips that we think will drive us into major consumer electronics chains.

One new chain that we have not announced yet is that we are now being distributed by Price Costco nationwide. That is a new distribution chain that will add more than 250 stores across the country.

EchoStar Technologies Corporation, as I mentioned before, is our dedicated engineering staff. It designs our digital set-top boxes. This division is the primary driver behind the lower subscriber acquisition cost that you see, because we have continually been able to engineer cost out of the box.

At this point, we think we are the lowest-cost provider of digital video receivers in the United States, and there is a very good chance that we will be the number one manufacturer of those boxes this year.

In terms of our income statement, we transfer the boxes at cost from ETC to DISH Network, so you do not see revenues flowing through for our domestic DBS business. But we have developed international relationships, most notably with ExpressVu in Canada, which is owned by Bell Canada; and also with the telephone company of Spain, Telefonica, and its Via Digital service.

Two years ago, this was not a business for us, in terms of selling boxes to third parties. Last year, it was a $50 million business. This year, it could be upwards of a $200 million business. Our margins on these boxes are right around 30%, which is well above traditional consumer electronics manufacturers.

In terms of goals for ETC:

• We want to further increase external sales of boxes. We are actively bidding projects around the world right now.

• We want to further reduce box cost through design improvements.

• We develop integrated products as well. We already have, in conjunction with JVC, the world's first digital VCR and satellite receiver. We are also going to be coming out with a digital videodisc player and satellite receiver, and we will have a box that has a satellite receiver and allows you to view the Internet over the TV sometime late in the fourth quarter.

Today, Satellite Services is composed primarily of two areas:

• It is leasing transponder space on both a monthly and an hourly basis. In terms of monthly leases, we sell space segment to international customers and carry their programming on our birds at 61.5° and 148°.

• In terms of the hourly leasing, that's business television, where we have customers like Anheuser Busch, Harley Davidson, Sun Microsystems, Texas Instruments, and many others. Last year, this was an $11 million business for us. This year, we expect it will be double that. Going forward, we think this becomes somewhere between a $50 million and $100 million business, depending upon how successful our local-into-local strategy is.

The cash flow margins here are north of 80%.

Just a quick financial overview:

• We were almost a $500 million company last year, with pre-marketing cash flow of about $130 million. This year, we would expect to double just about every one of those revenue categories, and we should more than double the pre-marketing cash flow line.

• In terms of our capitalization, we are fully funded, with over $550 million on our balance sheet. We have about $1.4 billion of debt, or just over $1,000 per subscriber, which is a level that we are very comfortable with.

In summary:

• DISH Network: Here we think all the lines are going in the right direction. We have a rapidly growing subscriber base, increasing revenue per sub, and declining subscriber acquisition cost.

• ETC: We are leveraging everything that we are doing for the development of our domestic DBS network internationally.

• Satellite Services, we think, represents a lot of up-side.

In terms of how the Street perceived EchoStar and its weaknesses in 1997:

• First and foremost, I believe, was distribution. I showed you the slide earlier where we have pretty much doubled from just about this time last year, and we think we are poised for further expansion through our JVC and Philips relationships.

• The inability to receive local channels in the digital format we think was a drawback for the DBS industry as a whole. We are the only ones that are addressing that. By Fall, we expect to have roughly 20 cities, representing more than 40% of the population, up on our fringe satellites.

• In terms of product shortage that I mentioned in the fourth quarter of last year, we have expanded our production capacity with our subcontract manufacturer to 2.5 million boxes annually. We also signed up a second manufacturer in VTEC.

• Second-set cost: Through ETC and by successfully engineering cost out of the box, we have brought down second sets to a price point below $100.

• And then, there was the perception on the Street that management depth was an issue. We feel we have addressed that concern with the addition of John Reardon, who has a fairly extensive background from the cable television industry. You may well know him from his MTV Networks days, when he ran that division for Viacom. And we have elevated Michael Dugan to head our Technology Division as well.

Finally, in terms of our goals:

• In 1998, we would like to add more subscribers than we did last year, and we think we are on track to do that.

• The launch of EchoStar IV: In terms of an update, there is no new information to disclose. We still believe that it is most likely that the bird will go into its planned orbital slot at 119° West longitude, our primary orbital slot, and that will move EchoStar I over to 148° WL to do our local-into-local strategy.

• Our goals internally are to be a $1 billion company this year with at least $1.00 of positive EBITDA. Now, we could grow for growth's sake and go out and spend north of $400 to bring on subscribers, but at this point we don't feel that is a prudent course of action. We want to maintain our financial discipline as we grow our company.

I think that the Street at this point has us somewhere between $850 million and $900 million of revenues for this year, and most folks are expecting us to lose on the order of, say, $25 million in EBITDA. So we certainly have our work cut out for us on those particular measures.

Next year, we expect to be free cash flow positive, and in the year 2000 we believe we will become an earnings story.

Thank you very much.

Mr. Zia: Thanks, Rick.

Our next speaker is Eddy Hartenstein, who is President of DirecTV. Eddy has headed DirecTV since it was formed and has been instrumental in making DirecTV the leading DBS provider in the United States today. I would like to introduce Eddy.

DIRECTV®, INC.

Eddy W. Hartenstein

President

Mr. Hartenstein: Thanks, Karim. I will try to keep to the allocated five minutes.

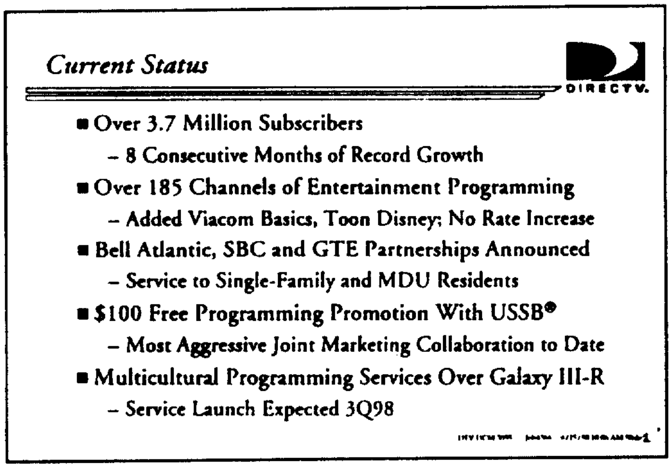

Figure 1

• We now have over 3.7 million subscribers. That is a really up-to-date number. That represents our eighth consecutive month of record growth measured against the same month in the previous year. I've got a chart on that in a minute.

• With over 185 channels just on DirecTV, when you add USSB channels on the same platform, we have basically got what few others have.

On the DirecTV side this year, since I last spoke to you, we added all of the Viacom basics, plus Comedy Central and Lifetime, as well as Toon Disney, to our most basic package, and did so without increasing the rate to subscribers.

We have, since the departure of the AT&T deal, signed on Bell Atlantic, SBC, and GTE to serve both single-family residences and multiple-dwelling-unit residences. Those are rolling out next month, as we speak, in terms of those organizations in their territories, providing service to consumers.

• We currently have a programming promotion jointly with USSB. It has been the most aggressive joint collaboration on the marketing front to date.

• We are beginning a suite of ethnic and multicultural programming services on an adjacent fixed satellite service from PanAmSat's Galaxy III-R, and we are launching that late this month.

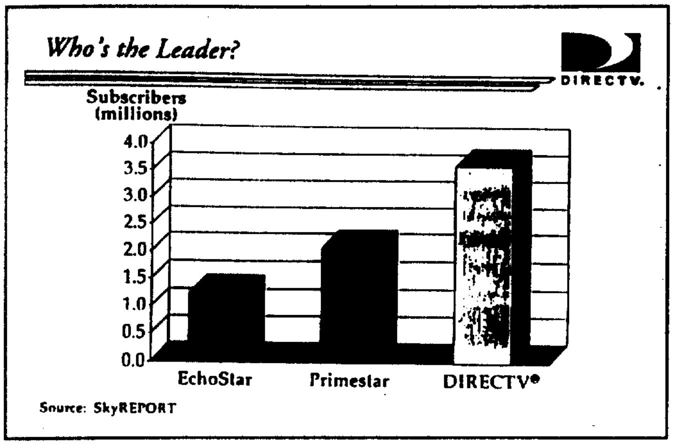

Figure 2

We are the leader, not only in terms of absolute numbers, in the DBS industry.

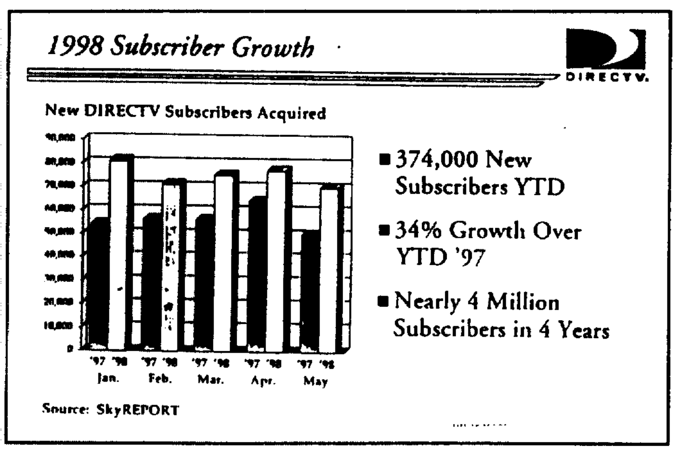

Figure 3

We continue to grow, as I said before. These are just the first five months since January. The chart compares our most recent numbers to the previous year, 1997. We are, so far this year, at a 34% growth rate over 1997. If you take the last three months of 1997, those were also an increase over the same period in 1996.

We like where we are. We are slightly ahead of our plan. I would caution there is a huge seasonality with us, given our extensive distribution in retail. Just to give you a benchmark, we did 180,000 net units in December 1997. We don't expect to be able to maintain that kind of 30%-plus growth rate we saw in December, when we were pretty much bursting at the seams in terms of our overall distribution and installation capacity, but it is good to have a headstart at this point in time in the year.

We are rapidly approaching the 4 million subscriber number.

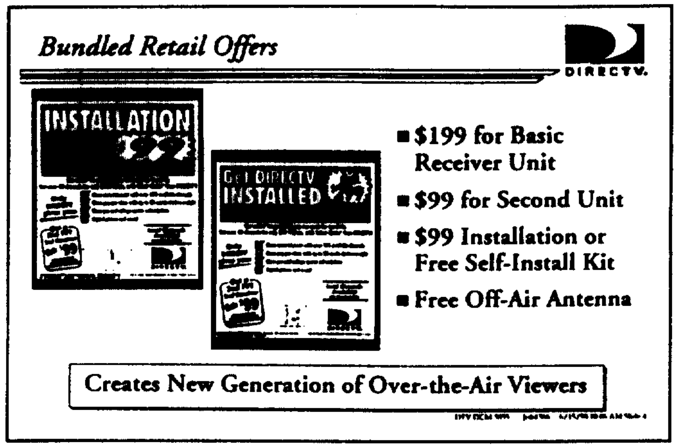

Figure 4

These are just some of our offers and promotions. It is highlighted by having enabled retailers to offer as an entry price point a fairly richly feature-loaded system for under $200.

I think we have solved, by anyone's standard, the second-set problem by offering a second IRD for $99. We have enabled the retailers to give a free off-air antenna and include that in the $99 installation or give the install kit away for free.

This is basically creating where we think the next huge push is, as digital terrestrial comes to play in the fourth quarter, at least in the first top 10 markets, and very rapidly after that a whole new wave of off-air antennas for consumers to get their local channels.

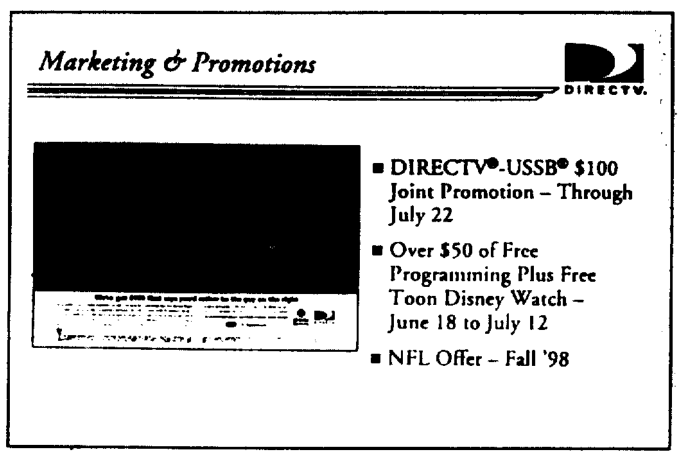

Figure 5

You have probably seen the promotions out there between us and USSB. At our 26,000 points of retail distribution, we are every six-to-eight weeks now going out there, taking down the end caps and the displays and putting up a new display with a new offer. The current offer, which starts tomorrow, will be $50 of programming plus a rather nice watch. The retailers like this kind of constant change and freshness in the advertising, and we intend to keep it that way.

DIRECTV® Capacity Expansion

PanAmSat's Galaxy III-R to Provide Platform for:

- Ethnic Channels Targeting Under-Served U.S. Markets
- Other Niche Services
  - Business-to-Home
  - Specialty Premium Services
- Two Channels of HDTV (Late '98)

Figure 6

Galaxy III-R is our adjacent satellite platform. It utilizes is a single dish, which is very consumer-friendly, as opposed to two separate dishes pointed 60-some degrees apart. Our consumers will, with the same platform, be able to get a whole variety of ethnic services, and we will be serving the Hispanic market later this year with a suite of some 15–20 additional services that will be blended in packages with some of our existing services.

The 2nd Coming of Digital Television

- **First National Entertainment System Ready to Broadcast HDTV Programming**
- **Capable of Instantaneous Delivery of HDTV Broadcasts to All 48 Contiguous States**

ALL RCA Digital Televisions to Include DSS® Technology

Figure 7

We will be the first with high-definition television as soon as those sets are available for demonstration at retailers in the fourth quarter. We demonstrated this in January of this year, in terms of being the first to do that. We will be, as I said, the first national entertainment distribution service for high-definition, and we will be able to do that ubiquitously across the states. That is something that both the retailers and consumers want.

We have done a deal with Thomson so that all GE, RCA, and Proscan television sets or digital television receivers will have a DirecTV receive capability.

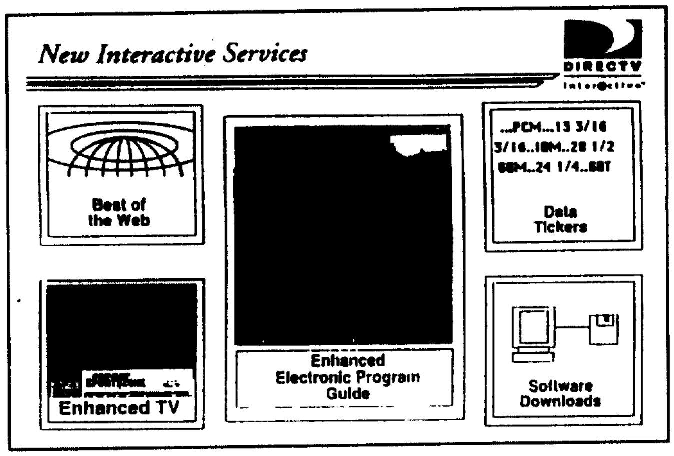

Figure 8

You will see a new enhanced program guide when we bring our suite of enhanced data services to the settop box later this year. You will see an enhanced program guide and have the different features there, in terms of different software downloads, data, ticker, enhanced television, and Web caching.

We are using, with our sister subsidiary HNS, the same platform architecture. We at DirecTV will focus this on TV-centric platforms and applications. HNS, through its DirectPC offering, will offer that through PC-oriented platforms. That is how we will bring those to market.

Strategy: 1998 and Beyond

✓ Simplify Offer to Consumer
✓ Expand Distribution
✓ Enhance Programming Offered
✓ Pursue Local/Digital Channel Solutions
___ Launch Foreign Language/Special Interest Channels
___ Introduce New Media Services
___ Introduce High-Definition Television Programming

Figure 9

This is our checklist of strategies for 1998 and beyond, and we have already completed a good portion of these:

- Simplification of the offer to consumers.
- We have expanded our distribution through our alliances with the RBOCs, and we have maintained and strengthened the alliances that we have in the consumer electronics industry.
- We have enhanced our programming offerings. We have not raised our prices, as opposed to our competition in cable.