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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

EX PARTE OR LATE FILED

September 21, 2001

BY HAND DELIVERY

Ms. Magalie R. Salas
Secretary
Federal Communications Commission
The Portals
445 Twelfth Street, S.W.
Washington, D.C. 20554

Re: EX PARTE PRESENTATION

**Advanced Television Systems and Their Impact upon the Existing
Television Broadcast Service, MM Docket No. 87-268**

**Carriage of the Transmissions of Digital Television
Broadcast Stations, CS Docket No. 98-120**

**Review of the Commission's Rules and Policies Affecting the
Conversion to Digital Television, MM Docket No. 00-39**

Dear Ms. Salas:

On behalf of EchoStar Communications Corporation, I am enclosing 6 copies of the enclosed letter to Chairman Michael Powell for inclusion in the public record of the above-referenced proceedings.

Also enclosed is an additional copy of these materials to be date-stamped and returned with our messenger. If you have any questions concerning this letter, please do not hesitate to contact me.

Respectfully submitted,

Pantelis Michalopoulos /MMP

Pantelis Michalopoulos

Counsel to EchoStar Communications Corporation



ECHO STAR COMMUNICATIONS CORPORATION

September 20, 2001

The Honorable Michael Powell, Chairman
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Dear Mr. Chairman:

I write to offer a proposal for spurring the digital television transition through an incentive-based system of conditional waivers.

The transition to digital television presents immeasurable potential benefits for American consumers. No one can dispute the advantages of digital, as opposed to analog, electronic communications. EchoStar and, indeed, the entire Direct Broadcast Satellite (DBS) industry operate entirely digital platforms and have invested billions of dollars on the promise of clearer pictures, greater functionality, and more robust service. Over 16 million Americans subscribe to our industry's service. By contrast, however, terrestrial digital broadcasting has been beset by technical, procedural, inter-industry, and legal bumps in the road that have deprived Americans of digital broadcasting and prevented policymakers from unleashing new and powerful wireless technologies dependent on the vast spectrum currently occupied by analog broadcasting.

DBS can help bring digital broadcasting to fruition.

Broadcasters apparently plan to seek Commission leniency with respect to digital buildout requirements.¹ I believe that if a network affiliated broadcaster has been unable to meet its deadline in a given market and seeks an extension or waiver from the Commission, the Commission should **condition such relief on the broadcaster granting digital distributors like EchoStar a distant network signal waiver** for the importation of that station's digital network feed.

In other words, if the broadcaster will not provide consumers with a digital signal, we will. You have spoken eloquently about the importance of infusing market incentives and discipline into traditionally regulated industries. You have an opportunity to do just that in the digital television realm.

¹ See, e.g., "Desperately Seeking DTV," *Broadcasting & Cable* (July 23, 2001) at p. 38 (NAB is "seeking permission for DTV stations to operate at reduced hours until digital sets are prevalent... [and is] asking for a streamlined process that will let individual stations fill out a simple form to request a waiver.")

Under existing law, EchoStar may import a distant network signal only into "unserved" households that cannot receive an adequate signal from the local network affiliate. EchoStar cannot import a distant network signal into an affiliate's market unless that affiliate grants our subscriber a waiver.² Thus, our ability to bring digital programming to our subscribers effectively is limited by broadcasters' willingness to give permission.

Under our proposal, a broadcaster who fails to meet its digital deadline would not be able to receive relief from the Commission while denying consumers digital television. Instead, it would have to allow consumers to receive a distant network signal via satellite until it completed the buildout. On the demand side, consumers in the broadcaster's local market would get a taste of compelling digital content, thereby addressing the "chicken and egg" problem of spurring demand for digital receivers. On the supply side, broadcasters would have an economic incentive to complete their buildout. Consumers therefore would face a win-win situation, receiving digital programming via satellite or, if broadcasters meet their deadline, receiving new advanced services facilitated by the analog broadcast spectrum ultimately made available to wireless service providers.

The Commission has authority to implement such a waiver policy. While the Commission may waive its rules for good cause shown,³ it generally may do so only where such an exception will serve the public interest.⁴ Where the Commission determines that additional actions by the party seeking relief are necessary to ensure that a waiver will serve the public interest, the Commission (or Bureau acting under delegated authority) may require such party to take certain action as a condition to receiving relief.⁵ In this case, if a broadcaster seeks relief from the digital buildout schedule, the Commission may determine that merely granting an extension or waiver, while addressing professed hardship faced by the broadcaster, would not be fully in the public interest. Granting such relief in a way that allows consumers to receive digital content and creates an incentive for broadcasters to complete the digital buildout, however, would undeniably serve the public interest.

I remain optimistic about the digital transition and continue to work with broadcasters, most recently the CBS television network, to devise new and innovative ways of bringing digital content to the American consumer. I believe that EchoStar's proposal would establish an incentive-based solution that would not embroil the Commission in ongoing

² See 47 U.S.C. 339(c)(2).

³ 47 C.F.R. 1.3.

⁴ See *WAT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969), *cert. denied*, 409 U.S. 1027 (1972); *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

⁵ See, e.g., *In Re: Startec Global Communications Corp.*, CC Doc. No. 94-129 (rel. Sept. 22, 2000) (action by Common Carrier Bureau granting a waiver of "slamming" rules, provided party receiving waiver implemented a customer notification process, including customer's right to change carriers).

regulatory oversight but instead would create a clear *quid pro quo* for broadcasters, to the benefit of consumers. I look forward to working with you and am ready to address any questions you might have.

Sincerely,



Charlie Ergen
Chairman and CEO

cc: **Commissioner Kathleen Q. Abernathy**
Commissioner Michael J. Copps
Commissioner Kevin J. Martin
Roy Stewart, Chief, Mass Media Bureau
W. Kenneth Ferree, Chief, Cable Services Bureau
Jane Mago, General Counsel
