

BEFORE THE

Federal Communications Commission

WASHINGTON, D.C.

In re: Applications of)
)
 EchoStar Communications Corporation,)
 General Motors Corporation,)
 Hughes Electronics Corporation,)
)
 Transferors,)
)
 and)
)
 EchoStar Communications Corporation,)
)
 Transferee,)
)
 For Authority to Transfer Control.)

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FEB - 4 2002

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

CS Docket No. 01-348 /

To: The Commission

PETITION TO DENY

UNIVISION COMMUNICATIONS INC.

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SUMMARY

During its tenure as a Commission licensee, EchoStar has sought to defeat every congressional and Commission effort to ensure that DBS licensees serve the needs of the public, including minority viewers. If the proposed merger is approved, EchoStar will become the sole gatekeeper for DBS programming in the United States – a particularly troubling proposition given EchoStar’s abysmal track record in carrying local broadcast stations and other programming services aimed at minority audiences. In the latest example, EchoStar is illegally discriminating against Hispanic audiences by hindering satellite access to local Spanish-language television stations. The Commission should not reward such behavior, nor augment EchoStar’s ability to cause further harm, by eliminating the only competitive alternative to EchoStar for programmers attempting to reach minority populations. Allowing any one entity to exercise absolute monopoly control over the flow of programming to geographically dispersed minorities would be an enormous public interest error; allowing an entity with EchoStar’s appalling record regarding minority-oriented programming to do so would be a public interest catastrophe. Univision Communications Inc. therefore urges the Commission to deny the proposed EchoStar/Hughes merger as contrary to the public interest.

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PETITION TO DENY

Univision Communications Inc. (“Univision”), by its attorneys, hereby submits this Petition to Deny opposing a grant of the above-captioned applications (“Transfer Applications”) seeking to transfer control of licenses and authorizations held by Hughes Electronics Corporation (“Hughes”) and its subsidiaries and affiliates (including DirecTV), and by EchoStar Communications Corporation (“EchoStar”) and its subsidiaries and affiliates, to a new EchoStar Communications Corporation. The existence of this proceeding is somewhat startling in that a licensee with EchoStar’s appalling track record for rule compliance would seem a much better candidate for a proceeding to determine if it should be allowed to retain its existing licenses than for a proceeding to determine whether it should be granted rights to own the entire broadcast sky. A Commission grant of the Transfer Applications would be contrary to the public interest, as EchoStar has willfully and repeatedly failed to meet its obligations as a Commission licensee, and

has also failed to demonstrate any compelling public interest benefit to the proposed transactions. Accordingly, the Commission should deny the Transfer Applications as contrary to the public interest.

BACKGROUND

On December 3, 2001, EchoStar's parent corporation and Hughes jointly submitted the Transfer Applications. The proposed license transfers will result from the spin-off of Hughes from General Motors Corporation, which currently owns all of the capital stock of Hughes, and the merger of EchoStar with and into Hughes. The new entity will be controlled by the same group that currently controls EchoStar. If the Transfer Applications are approved, as proposed, the combined entity will have authorizations to provide DBS service over 166 channels (approximately 1660 television channels), including *all* 96 of the full-CONUS DBS channels.¹ Thus, EchoStar and DirecTV have proposed a merger that would consolidate the only two facilities-based providers that have full-CONUS DBS coverage.

As FCC Chairman Powell recently acknowledged, the proposed merger raises serious DBS spectrum concentration issues that "will be rigorously scrutinized by ... the Commission."² As part of its rigorous scrutiny of the proposed merger, the Commission is required under Sections 214(a) and 310(d) of the Communications Act of 1934, as amended, to find that the transaction is in the public interest in order to grant its approval. The parties to the Transfer Applications bear the burden of showing by a preponderance of evidence that the proposed

¹ See Transfer Applications, Attachments C and D. See also Direct Broadcast Satellite Corporation, 13 FCC Rcd 6392, at ¶ 1 (1998).

² Press Release, Statement of Chairman Powell, at 1 (November 1, 2001).

transaction serves the public interest.³ In applying the public interest standard, the Commission has a mandate to ensure that proposed mergers do not adversely affect diversity. As the Supreme Court has stated, “assuring that the public has access to a multiplicity of information sources is a governmental purpose of the highest order, for it promotes values central to the First Amendment.”⁴ This is especially true where, as here, the proposed merger threatens to hinder consumer choice in programming and, more specifically, consumer access to Spanish-language programming.

In that regard, Univision has a strong interest in EchoStar’s efforts to become the sole gatekeeper for satellite audiences, as Univision is the leading Spanish-language television broadcaster in the United States. Currently, it indirectly owns and operates 30 full-power television stations and 19 low-power television stations located in the largest Hispanic markets, including nine of the top ten Hispanic markets. Univision also operates the Univision Network, the nation’s most-watched Spanish-language network. The Univision Network is currently available to 95% of all Hispanic households, and is the fifth largest full-time television network, delivering larger prime time audiences than all broadcast and cable networks except ABC, CBS, NBC, and Fox.⁵ Univision also operates Galavision, a Spanish-language cable network. In addition, Univision has launched within the past month a new Spanish-language television

³ See In re Applications of Time Warner Inc. and America Online, Inc., Transferors, and AOL Time Warner Inc., Transferee, Memorandum Opinion and Order, 16 FCC Rcd 6547 at ¶ 19 (rel. Jan. 22, 2001) (citing In re Applications of AT&T Corp. and Telecommunications, Inc. for Transfer of Control of Telecommunications, Inc. to AT&T Corp., Memorandum Opinion and Order, 14 FCC Rcd 3160, 3169-70 (1999)).

⁴ Turner Broadcasting Systems, Inc. v. FCC, 512 U.S. 622, 663 (1994).

⁵ Nielsen Hispanic Television Index and Nielsen Television Index (Adults 18-49, October 1, 2001 - December 30, 2001).

network called Telefutura, which is already carried by 44 full and low-power television stations in the largest Hispanic markets.

Univision's long history of serving minority audiences has made it acutely aware of the growing need for such programming in the United States, and the many difficulties that must be overcome to adequately serve those audiences. Indeed, meeting the growing needs of the Hispanic community was the impetus behind Univision's recent creation of Telefutura. In contrast, however, as is discussed below, EchoStar has sought to defeat every congressional and Commission effort to ensure that minority audiences can receive programming that serves their needs from those entrusted with extremely valuable and rare DBS licenses. Granting the Transfer Applications would eliminate the only competitive alternative to EchoStar for minority programmers trying to reach these audiences, while presenting minority satellite viewers with no other DBS provider to compete with EchoStar in either programming or price. Both minority programmers and viewers will be faced with EchoStar's "take it or leave it" attitude, and will have no practical options.

I. EchoStar Has Not Been Hesitant to Use Its Existing Gatekeeper Role to Obstruct the Efforts of Congress and the Commission to Ensure the Availability of Public Interest DBS Programming, and Will Be Far Better Positioned to Do So If Allowed to Operate a DBS Monopoly

A. The Commission Has Previously Ruled That EchoStar Illegally Deprived Subscribers of Access to Public Interest Programming Required by the Commission

Under the Commission's DBS rules, DBS licensees are required to dedicate four percent of their total channel capacity to programming of an educational or informational nature.⁶ This requirement was adopted by the Commission to ensure that DBS subscribers would continue to

⁶ See 47 C.F.R. § 100.5(c).

have access to the various types of public interest programming they regularly received from their local broadcast stations, as well as to ensure that those entrusted with highly valuable DBS licenses used those licenses in a manner that served the public interest.⁷

Rather than embracing its duty as a licensee to provide the public with public interest programming, or at least accepting that responsibility, EchoStar placed the required public interest programming on secondary non-CONUS satellites incapable of providing the programming to the entire contiguous U.S.⁸ Moreover, because reception of signals from the secondary satellites requires subscribers to install a second satellite dish, few EchoStar subscribers were actually able to receive the public interest programming that the Commission had gone to great lengths to ensure would be available to DBS subscribers.⁹

In response to a complaint filed with the Commission, the FCC ruled that EchoStar's use of secondary satellites to provide mandated public interest programming was illegal.¹⁰ The Commission issued a forfeiture against EchoStar, finding that EchoStar had willfully violated the Communications Act and the Commission's rules, that it had been "disingenuous" in its legal interpretations, and that "none of the circumstances EchoStar has presented to us support mitigation of the forfeiture."¹¹

⁷ See, e.g., Implementation of Section 25 of the Cable Television Consumer Protection Act of 1992, Direct Broadcast Satellite Public Interest Obligations, Report and Order, 13 FCC Rcd 23254 (1998).

⁸ See American Distance Education Consortium Request for an Expedited Declaratory Ruling and Informal Complaint, Declaratory Ruling and Order, 14 FCC Rcd 19976 (1999), at ¶¶ 10 and 11.

⁹ *Id.* at ¶ 12.

¹⁰ *Id.* at ¶ 10.

¹¹ In the Matter of EchoStar Satellite Corporation, Notice of Apparent Liability for Forfeiture, 15 FCC Rcd 5557 (2000), at ¶¶ 4, 5, 8, and 9.

It is thankfully infrequent that the word “disingenuous” need be used by the Commission to describe a Commission licensee. As the Commission’s Review Board once noted,

[i]n its Character Policy Statement, the Commission emphasized that “the trait of ‘truthfulness’ is one of the two key elements of character necessary to operate a broadcast station in the public interest.” The other is reliability in complying with the Communications Act and Commission requirements. The reason is simple. If the Commission cannot believe and rely on what applicants and licensees tell it, it cannot maintain the integrity of its processes.¹²

Unfortunately, this episode is only one of many where EchoStar has demonstrated a cavalier attitude toward its legal obligations as a DBS licensee. As is discussed throughout this petition, EchoStar has time and again taken the position that any activity in which it engages is legal until the Commission specifically intervenes to stop it. However, the Commission long ago rejected such an approach to regulatory compliance:

The Commission’s ability to fulfill its statutory responsibilities in the area of radio and television broadcasting rests in considerable measure on its being able to rely upon each of those whom it licenses to observe conscientiously the Rules of the Commission and the applicable license terms and conditions.¹³

Rewarding a licensee such as EchoStar with a DBS monopoly would constitute a horrific deviation from the public interest requirements of the Communications Act of 1934, and mark the beginning of an arduous regulatory endeavor in which the Commission, the public, and programmers must waste endless resources attempting to police EchoStar’s “catch me if you can” approach to regulatory compliance.

¹² Standard Broadcasting, Inc., 7 FCC Rcd 8571 (Rev. Bd. 1992), at ¶ 11 (footnote and citations omitted).

¹³ Nick J Chaconas, 28 FCC2d 231, 233 (1971), aff’d, 486 F.2d 1314 (D.C. Cir. 1973) (citations omitted).

B. EchoStar Continues to Disregard Its Statutory and Regulatory Carriage Obligations, Blatantly Discriminating Against Stations Serving Minority Audiences and Thereby Violating the Satellite Home Viewer Improvement Act and the Commission's Rules

In the latest episode of EchoStar testing the Commission's resolve, the Commission has recently commenced a proceeding to determine whether EchoStar has engaged in violations of the Satellite Home Viewer Protection Act of 1999 ("SHVIA")¹⁴ and the Commission's Rules through EchoStar's discriminatory implementation of "local into local" station carriage.¹⁵

After successfully lobbying Congress for the compulsory license necessary to carry local broadcast stations by claiming that it would allow DBS carriers a level playing field with cable systems, EchoStar and others judicially challenged the accompanying broadcast must-carry requirement in an effort to tilt the now level playing field in EchoStar's direction.¹⁶ When this judicial challenge failed, EchoStar returned to its familiar pattern of ignoring its statutory and regulatory obligations, and seeing what it could get away with before the Commission was sufficiently annoyed to intervene. Thus, when broadcast stations sent their must-carry election letters to EchoStar pursuant to the Commission's rules, EchoStar denied virtually every must-carry election without basis, responding with a form letter that claimed without support that the station duplicated the programming of another local station, that the station had failed to

¹⁴ 47 U.S.C. § 338.

¹⁵ See In the Matter of National Association of Broadcasters and Association of Local Television Stations Seek Modification or Clarification of Broadcast Carriage Rules for Satellite Carriers, CS Docket No. 00-96, DA 02-31 (Jan. 8, 2002).

¹⁶ See Satellite Broadcasting & Communications Ass'n v. FCC, No. 01-1271, 2001 U.S. App. LEXIS 26120 (4th Cir. Dec. 7, 2001).

demonstrate adequate signal strength, or that the station had failed some other EchoStar requirement.¹⁷

In September 2001, the Commission had to step in once again, criticizing EchoStar's blanket rejection of stations and stating that EchoStar's claimed rationale "is not a valid reason for rejecting a request for mandatory carriage." In an unequivocal repudiation of EchoStar's actions, the Commission stated that EchoStar's actions were "not consistent with the SHVIA or our rules" and required EchoStar to cease its unlawful practice.¹⁸

Having failed to obtain the right from Congress, the courts, or the Commission to cherry-pick the local stations it wished to carry, EchoStar once again decided to take the matter into its own hands, initiating a war of attrition with local stations that it did not wish to carry. By throwing every conceivable obstacle, including fictitious ones, into the path of stations seeking carriage, EchoStar sought to winnow down the number of "undesirable" stations it would have to carry. Particularly well represented among the "undesirable" stations were those stations featuring Spanish-language programming.

To cite just one of many examples, EchoStar obstructed carriage of Univision station WUVG(TV) in Atlanta (former call sign WHOT-TV) in contravention of the Commission's DBS must-carry rules. First, WUVG(TV) received from EchoStar the blanket rejection letter mentioned above that was sent to many stations, and which the Commission later found was inconsistent with the SHVIA and its rules. Then, after signal testing was conducted, WUVG(TV) received a letter from EchoStar dated September 12, 2001, acknowledging that the station meets

¹⁷ See Implementation of the Satellite Home Viewer Improvement Act of 1999: Broadcast Signal Carriage Issues, Order on Reconsideration, CS Docket 00-96, FCC 01-249 (rel. Sept. 5, 2001), at ¶ 59.

¹⁸ Id. at ¶ 61.

the Commission's signal strength requirements for carriage and affirming that the station would be carried on the EchoStar system.¹⁹ Three months later, however, *just three days before the January 1, 2002 carriage deadline*, EchoStar sent a letter attempting to rescind its earlier commitment to carry the station and announced for the first time that WUVG(TV)'s signal was inadequate for carriage.²⁰ However, there were no alterations in WUVG(TV)'s technical operations subsequent to EchoStar's September signal tests, and EchoStar certainly had ample opportunity before December 28 to notify the station of any concerns it may have had in that regard. To add insult to injury, EchoStar's December 28 letter actually had the temerity to note that because the January 1, 2002 deadline was only three days away, "[t]he signal delivery deadline for EchoStar to launch your station on or before Jan. 1, 2002 has expired."²¹

Given the many obstacles that EchoStar attempted to place in Univision's path with regard to local station carriage, Univision had to waste an inordinate amount of time and effort wrestling with EchoStar to obtain carriage of numerous stations that clearly qualified for carriage under SHVIA and the Commission's Rules. This effort was particularly burdensome at a time when Univision was busily working to create and launch the Telefutura network. If the Transfer Applications are granted, Univision can continue to look forward to diverting its programming resources to what should be unnecessary battles to get EchoStar to meet its statutory and

¹⁹ See Exhibit 1 for a copy of EchoStar's letter to Michael D. Wortsman, dated September 12, 2001, acknowledging that WUVG(TV) provides a good quality signal and confirming that EchoStar would carry WUVG(TV). Also included in Exhibit 1 is a copy of EchoStar's Signal Test Verification Report dated September 10, 2001, demonstrating that WUVG(TV) provides a good quality signal.

²⁰ See Exhibit 2 for a copy of EchoStar's letter to Michael D. Wortsman, dated December 28, 2001, rescinding its commitment to carry WUVG(TV).

²¹ Id.

regulatory obligations. The Commission can also be sure that its resources will be similarly wasted in dealing with EchoStar's combative behavior and disregard for the Commission's rules.

As for those determined Spanish-language stations that EchoStar was unable to confuse or exhaust – those that EchoStar had no choice but to carry – EchoStar created an illegal and discriminatory carriage scheme in which those stations, like the public interest programmers discussed above, were placed on secondary satellites that require installation of a second dish in order to be received. In fact, in some markets, the local Spanish-language station is the *only* local station carried on the secondary satellites, thus requiring subscribers to install a second dish if they wish to receive that one additional station.²² In short, EchoStar has placed most Spanish-language stations in a satellite Siberia to die a cold and lonely death.

As though this was not outrageous enough, EchoStar and its dealers have made no effort to inform the public that these Spanish-language stations are available by satellite, and in fact, when consumers have specifically asked to receive their local Univision station, they have often been falsely told that the station is not carried.²³ For those persistent and knowledgeable consumers that demanded to know why the station is not being carried, they were given ridiculous (and false) reasons ranging from the station “requested not to be carried” to the station is “not local” because “it is broadcast from Mexico and Venezuela.”²⁴ To add insult to injury, after being falsely told that their local Spanish-language station is not carried, callers were frequently advised

²² See Comments of Univision, CS Docket No. 00-96, filed January 23, 2002, at 2.

²³ Id. at 13-14.

²⁴ Id.

that if they were interested in Spanish-language programming, they should purchase EchoStar's expensive Spanish-language programming package.²⁵

Whether viewed as anti-competitive, or just plain vile, EchoStar's actions have placed these minority-oriented stations at an enormous competitive disadvantage in their local markets, and deprived the Hispanic community of the same easy satellite access to their favorite local stations enjoyed by other viewers. EchoStar's policy of discriminating against Spanish-language stations violates "one of the Commission's main objectives, to promote diverse programming – programming that airs different points of view and reflects the needs and interests of all sectors of the community, including minorities."²⁶

In this regard, it is worth noting that DirecTV has not engaged in the same carriage shenanigans as EchoStar, and has generally made all local stations, including Spanish-language stations, readily available to local subscribers on the same satellite. As a result, today, Hispanic viewers have a competitive alternative available to EchoStar if they want to be able to easily access local Spanish-language stations by satellite. The Commission's decision in this proceeding will determine whether that option is still available to them tomorrow. In this context, it is difficult to see how grant of the Transfer Applications serves the public interest.

²⁵ Id.

²⁶ See Review of the Commission's Broadcast and Cable Equal Employment Opportunity Rules and Policies, 15 FCC Rcd 2329 (2000), at ¶ 49, *vacated on other grounds*, MD/DC/DE Broadcasters Ass'n v. FCC, 236 F.3d 13 (D.C. Cir. 2001), *reh'g denied*, 253 F.3d 732 (D.C. Cir. 2001), *cert. denied sub nom*, Minority Media Council v. MD/DC/DE Broadcasters Ass'n, 2002 U.S. LEXIS 527, Office of Communications, Inc. v. MD/DC/DE Broadcasters Ass'n, 2002 U.S. LEXIS 528. *See also Spanish International Communications Corp.*, 45 RR 2d 1303 (1979). EchoStar's discriminatory carriage scheme is not limited to Spanish-language stations. The Word Network has raised serious questions as to whether EchoStar is intentionally excluding local broadcast stations from carriage, including programmers who "direct their non-commercial educational

Footnote continued on next page

While the brief description above can hardly do justice to EchoStar's efforts to create a discriminatory carriage scheme, attached hereto as Exhibits 3 and 4, respectively, are Univision's Comments and Reply Comments in the Commission's secondary satellite carriage proceeding. These filings carefully detail and document EchoStar's efforts to place Spanish-language stations in a technological ghetto, and the statutory and regulatory requirements EchoStar has chosen to ignore in implementing its discriminatory carriage scheme.²⁷ Once again, EchoStar has done what it pleases, regulations be damned, and wagered that the Commission will not intervene. This is hardly the behavior of a Commission licensee, much less of an entity asking that the Commission grant it ownership of the entire broadcast sky.

II. EchoStar Has Engaged in a Continuing Pattern of Misconduct That Makes It Unfit to Serve as the Sole DBS Gatekeeper, With the FCC Repeatedly Sanctioning and Admonishing EchoStar For Its Disregard of Its Responsibilities as a Commission Licensee

EchoStar's antagonistic behavior, often violating the spirit and letter of the law, has not gone entirely unnoticed by the Commission. The Commission has both criticized and levied

Footnote continued from previous page

programming at the African-American community." See Petition to Deny of The Word Network, CS Docket No. 01-348, filed January 28, 2002.

²⁷ Congress determined that DBS services must provide local channels on a non-discriminatory basis, because left to their own devices, "satellite operators would carry the major network affiliates and few other signals. Non-carried stations would face the same loss of viewership Congress previously found with respect to cable noncarriage." Joint Explanatory Statement of the Committee of Conference on H.R. 1554, 106th Cong. 145, Cong. Rec. H11769-01, H11795 (daily ed. Nov. 9, 1999). By imposing the carry one, carry all rule, Congress sought to "preserve free television for those not served by satellite or cable systems and to promote widespread dissemination of information from a multiplicity of sources." Satellite Broadcasting & Communications Ass'n. v. FCC, Nos. 01-1151, 01-1271, 01-1272, 2001 U.S. App. LEXIS 26120, at *45 (4th Cir. 2001) (citing H.R. Conf. Rep. No. 106-464 (1999) at 101).

forfeitures against EchoStar for its failure to abide by both Federal statutes and Commission rules, as well as for its “disingenuous” behavior and lack of candor. For example:

- In June 1998, the FCC’s International Bureau fined EchoStar, and its subsidiary Directsat, the maximum forfeiture amount permitted under the Commission’s rules for operating satellites from non-authorized locations.²⁸ The FCC justified the harsh forfeiture amount based on EchoStar’s “degree of misconduct, lack of voluntary disclosure and continuing violation of the [Commission’s] rules.”²⁹
- In November 1999, EchoStar tried to disregard its public interest programming requirements by placing all of its public interest programming on secondary satellites in violation of the Commission’s DBS Rules.³⁰ In this instance, the Commission assessed a forfeiture against EchoStar, finding that it had willfully violated the Communications Act and the Commission’s rules, that it had been “disingenuous” in its legal interpretations, and that “none of the circumstances EchoStar has presented to us support mitigation of the forfeiture.”³¹
- In August 2001, the Commission found that “EchoStar failed in its duty of candor”³² by withholding information from the Commission. In this instance, EchoStar continued to pursue a confidentiality request in connection with a Commission complaint – even after it had already publicly disclosed contents from the documents in question. The Commission admonished EchoStar not only for its lack of candor, but also for pursuing an “abuse of the Commission’s processes.”³³
- In September 2001, the Commission criticized EchoStar’s approach to implementing local-into-local must carry, in which it denied virtually every carriage election request through a form letter claiming that recipient stations failed to provide adequate signals

²⁸ See In the Matter of EchoStar Satellite Corporation; Notice of Apparent Liability, 13 FCC Rcd 16510 (1998) (“EchoStar Forfeiture NAL”); In the Matter of Directsat Corporation; Notice of Apparent Liability, 13 FCC Rcd 16505 (1998).

²⁹ EchoStar Forfeiture NAL at ¶ 5.

³⁰ See American Distance Education Consortium Request for an Expedited Declaratory Ruling and Informal Complaint, Declaratory Ruling and Order, 14 FCC Rcd 19976 (1999), at ¶ 10.

³¹ In the Matter of EchoStar Satellite Corporation, Notice of Apparent Liability for Forfeiture, 15 FCC Rcd 5557 (2000), at ¶¶ 5, 8, and 9.

³² EchoStar Satellite Corporation v. Young Broadcasting, Inc., Memorandum Opinion and Order, 16 FCC Rcd 15070 (rel. Aug. 2, 2001), at ¶ 12.

³³ Id.

to EchoStar's receive facilities.³⁴ The Commission stated that this approach was "not consistent with the SHVIA or our rules," and required EchoStar to cease its improper actions.³⁵

When these violations and abuses of the Commission's processes are considered in conjunction with EchoStar's increasingly well-documented cavalier attitude toward its responsibilities as a Commission licensee, EchoStar is a poor candidate to be a benevolent monopolist of DBS services. In assessing an application, "the fundamental purpose of . . . [the Commission's] character inquiry is to make predictive judgments relating to an applicant's propensity to deal honestly with the Commission and to comply with our rules and policies."³⁶ Given EchoStar's track record described above, the Commission does not need a crystal ball to predict the unnecessarily difficult future that consumers, programmers, and the Commission will face if EchoStar's Transfer Applications are granted.

III. Grant of the Transfer Applications Would Give EchoStar Absolute Monopoly Control Over a Substantial Minority Population Throughout the United States

If the merger application is approved, EchoStar will effectively be the sole gatekeeper for DBS programming in the United States. As described above, this is particularly troublesome given EchoStar's abysmal track record in carrying local broadcast stations and programming aimed at minority audiences. Moreover, as the D.C. Circuit stated in the cable context:

"[t]he Commission is on solid ground in asserting authority to be sure that no single company could be in a position single-handedly to deal a programmer a death blow.... As the Supreme Court stated in *Turner II*: "We have identified a corresponding 'government purpose of the highest

³⁴ See Implementation of the Satellite Home Viewer Improvement Act of 1999: Broadcast Signal Carriage Issues, Order on Reconsideration, CS Docket 00-96, FCC 01-249 (rel. Sept. 5, 2001), at ¶ 59.

³⁵ Id. at ¶ 61.

³⁶ Policy Regarding Character Qualifications in Broadcast Licensing, 102 FCC 2d 1179, 1232 (1986), at ¶ 114. See also 47 C.F.R. § 1.17 and notes.

order' in ensuring public access to 'a multiplicity of information sources.'" (citations omitted). If this interest in diversity is to mean anything in this context, the government must be able to ensure that a programmer have at least two conduits through which it can reach the number of viewers needed for viability -- independent of concerns over anticompetitive conduct.³⁷

Although EchoStar claims that local cable systems provide an adequate competitive alternative to EchoStar's proposed DBS monopoly, that is clearly not the case for millions of minority viewers scattered around the United States. As the owner of the Univision Network and the creator of Telefutera, Univision is keenly aware of the geographic distribution of minority populations in the U.S., particularly the Hispanic population. Once centered largely around urban areas, the increasingly diverse and growing Hispanic population can now be found in varying numbers across the country.

While it is economically feasible to operate full power Spanish-language broadcast stations in major cities that have large numbers of Hispanic viewers, in many Nielsen Designated Market Areas ("DMA's"), the number of Hispanic viewers, while significant, is not enough to economically support a full power Spanish-language television station. In those DMA's, if there are enough Hispanic viewers available, a low power Spanish-language television station may be economically viable. However, because of the limited signal coverage of such stations, many Hispanic viewers in the area may not be able to receive the signal over the air. In addition, because low power television stations have no must-carry rights, and the Hispanic population in such DMA's represents a limited portion of the overall population, local cable systems frequently do not carry the low power Spanish-language station. As a result, Hispanic viewers located in such DMA's, or located in DMA's where the Hispanic population is insufficient to support *any*

³⁷ Time Warner Entertainment Co., L.P. v. FCC, 240 F.3d 1126, 1132 (D.C. Cir. 2001).

broadcast or cable Spanish-language programming, are left with no choice but to rely on DBS providers like EchoStar and DirecTV for their Spanish-language programming. These viewers quite literally have no other option.

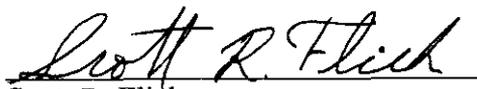
While these viewers may not represent a significant portion of the population in any one DMA, when aggregated, they represent a very large minority audience. Because DBS providers, unlike individual local cable systems and broadcasters, have the unique ability to reach every Hispanic household in the country, no matter where it is located, they can aggregate those viewers into an economically viable national audience. As a result, these geographically scattered minority viewers are 100% dependent upon DBS providers for access to Spanish-language programming. Allowing any one entity to exercise absolute monopoly control over the flow of programming to that vulnerable audience would be an enormous public interest error; allowing an entity with EchoStar's abysmal record regarding minority-oriented programming to do so would be a public interest catastrophe.

CONCLUSION

A Commission grant of the Transfer Applications would be contrary to the public interest, as EchoStar has repeatedly failed to live up to its responsibilities as a Commission licensee, and the Commission has no reason to believe EchoStar's conduct will improve once it obtains monopoly control over all of the Commission's DBS authorizations. In addition, EchoStar has failed to demonstrate any public interest benefit in granting the Transfer Applications that is not outweighed by a myriad of harms that would be created by the merger. Finally, grant of the Transfer Applications would give EchoStar absolute monopoly control over the viewing options of geographically scattered minority populations. Such a result is not in the public interest, and for the reasons outlined in this petition, the Commission should deny the Transfer Applications as contrary to the public interest.

Respectfully submitted,

UNIVISION COMMUNICATIONS INC.

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Dated: February 4, 2002

DECLARATION

I, Robert V. Cahill, do hereby declare under penalty of perjury that the following is true and correct:

1. I am Vice Chairman of Univision Communications Inc.
2. I have reviewed the attached "Petition to Deny." The facts stated therein, except those based on official records or other documents of which the Federal Communications Commission may take official notice, are true to the best of my personal knowledge and belief.



Robert V. Cahill

Dated: Feb. 4, 2002