

C5-01-348

From: jrp <jrp@adnc.com>
 To: <mpowell@fcc.gov>
 Date: Mon, Feb 4, 2002 2:21 PM

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>Dear Mr. Powell,

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>I am writing to you to object to the merger of ECHOSTAR and DIRECTV. I think
 >their arguments are full of holes. The "new" products and services they say
 >will result from the merger already exist in various forms. New
 >efficiencies have been created by both DIRECTV and Echostar for years
 >through the innovation necessary to compete with each other. Here are the
 >key points:

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>1) Cable prices do not constrain DBS prices in rural markets. If the merger
 >goes through, people living in rural areas will have zero choices for
 >service. This transaction is a complete monopoly in those geographic areas
 >and therefore is illegal. The proponents of the deal argue that DBS
 >competes against cable. This is true only to a limited extent. DBS offers
 >attractive prices to lure away cable customers, and to capture market share
 >from each other. Cable companies however, have consistently raised prices
 >over the years, so the "competition" between cable and DBS is not nearly as
 >relevant as the proponents of the merger suggest. The competition between
 >the 2 market segments is much less direct than it has been suggested.

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>There are other motivations to the pricing policies. Both ECHOSTAR and
 >DIRECTV run special offers to acquire market share. DIRECTV has always
 >offered premium options through major retail outlets that you could not get
 >from ECHOSTAR, including the "NFL Ticket", and products from SONY, Thomson
 >Consumer Electronics (RCA), Panasonic, and others. ECHOSTAR competed
 >primarily on price, offering more basic systems and services for less
 money.

>Most of these competitive maneuvers had nothing to do with cable, the DBS
 >offering has always offered features and functionality that differentiated
 >it from cable and lured subscribers away. The primary competition has for
 >years been between the 2 DBS companies because the offerings of the 2
 >companies directly compete against each other. The consumer, the
 >technology, and the economy all benefit hugely from that competition. This
 >merger eliminates competition in the DBS market segment.

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>Furthermore, if ECHOSTAR controls 90% of the spectrum how does anyone
 >else ever get into the DBS market? The FCC will have less than 10% to
 >allocate. Any company attempting to enter a marketplace controlled up to
 >90% by one entity will have no opportunity to effectively compete.

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>2) The Echostar/DIRECTV merger creates a complete monopoly in rural areas
 >for broadband services. Currently, both ECHOSTAR and DIRECTV/Hughes offer
 >competing high speed internet services. The 2 companies compete against
 >each other on price, features, and performance/functionality. This deal
 >eliminates competition and consumer choices for these services in all rural
 >areas. This deal will have no impact on the growth of these services
 >because they already exist.

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>The proponents argue that rural areas will gain access to new services not
 >economically available without the merger. This is a total misstatement of
 >the facts. Both companies currently offer 2 way internet services via

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>satellite. This offering is relatively new and represents an emerging
>market. Consumer adoption for an emerging market is slow, in part because
>initial prices are high. Since the services have only been available for a
>few months, it is much too early to determine that these services will
never be affordable without the merger. A merger on this basis is
unjustifiable.

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>Video on demand is another service often discussed as an element of
>broadband. This capability can be developed with the existing spectrum
>using the new Personal Video Recorders (PVRs) that now offer up to 100
hours of recording capacity. New software technologies make this service
>possible, and a natural consequence of the competitive market forces
>currently at work.

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>3) Proponents of the deal argue that the consolidation will improve the
>efficient use of the available spectrum. These companies have solved
>spectrum problems for years with better compression technologies and
>innovations such as spot beam satellites. Both companies now offer 2-way
>satellite internet services. Spot beam satellites enable both companies to
>offer a great number of local channels with the existing spectrum
>allocation.

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>More local markets could be served by launching more satellites, and
>eliminating competition so that a company can avoid investment and
>innovation is a bad precedent. This merger is not justified by a local
>market argument. The existence of competition in the DBS market was the
>engine for these innovations. Eliminating competition in this field only
>hurts the long term prospects for maximizing spectrum for the benefit of
>consumers. DIRECTV recently announced 10 new local markets due to their
new spot beam satellite. Expansion of local market coverage can be achieved
>without this merger.

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>4) Proponents of the merger have argued that the deal will expand the
>availability of HDTV. This is another false argument. HDTV has not
>expanded because consumers have not demanded it, and are not willing to pay
>extra for it. People select programs based on the content, not the
>resolution of the channel it's broadcast on. It is not a differentiator in
>the marketplace and offers no opportunity for expanded revenues or profits.
>This is why content providers have not offered extensive HD programming and
>why broadcasters do not transmit a great deal of HD content. The merger
does nothing to alter this basic truth.

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>5) Elimination of competition in the DBS market would also embolden the new
>ECHOSTAR to follow the price increases imposed by the cable companies over
>the past several years. Currently, competition between DTV and Echostar
>constrain price increases as each strives to gain market share. This
merger would eliminate that market dynamic.

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>Much has been made by ECHOSTAR management that they will
>'accept conditions' regarding Nationwide pricing to make the deal happen.
>Well, during recent "Charlie Chats" the CEO of ECHOSTAR advised that he
>considers the 4 M rural customers who currently have no access to cable as
>the set from which national pricing will be set. The comparison will not be
>pricing between Manhattan, NY and Billings, Montana. . . but, between
>Billings, Montana and Sundance, Utah. The rural customer will be charged
>whatever the market will bear. . . for the rural customer. Additionally,

>while ECHOSTAR may agree to service pricing limitations, how can this
>commitment be effectively monitored. Particularly if ECHOSTAR can hide
the additional costs to rural customer through more expensive equipment costs.

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>6) As a result of these factors, the merger would not create any new
>services or benefits for consumers, while providing no competitive
>protection against price increases. Furthermore, any cost savings generate
>by consolidation of the two companies will most likely be consumed by the
>new Echostar to service the enormous debt the merger created. The savings
>will be created by layoffs, broadcast center closures, and reduced
>investment in new products and technologies in a less competitive
>marketplace.

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>Consolidation of the two companies in view of the staggering debt created
by the merger will destroy AMERICAN JOBS. The first order of business for the
>combined entity would be the elimination of all redundant departments and
>services. Lost jobs for thousands of trained talented American workers. A
>cash strapped company will not invest in new products and technologies, nor
>will there be an incentive to add new channels of niche programming to
>attract new customers. The use of a combined platform cobbled together
>between the existing DIRECTV/ECHOSTAR integrated receiver decoder 'set top
>boxes' . . . or the elimination of one platform and the replacement by the
>other will also create significant cash drains on a new company. One word
>comes to mind. . . ENRON.

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>United States companies that service and support DIRECTV/ECHOSTAR will
>suffer as well. Less big ticket items will be acquired. For example, less
>satellites and launches will be purchased when there is only one company.
A typical satellite sells for \$200M the launch costs an additional \$100 M.
>The combined entity will not be in the market for an additional \$300 M
after the acquisition. More lost American jobs.

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>7)An argument made by proponents of the deal states that combining
>the two systems will enable the combined company to carry more diverse
>channels. THERE IS NO federal or other requirement directing how the
>bandwidth could be used. In order for the cash strapped company to make
>back it's dollars, it could easily broadcast an additional 30 channels of
>Pay Per View sporting events or adult entertainment. In view of how
>ECHOSTAR recently re-interpreted a contract with Disney resulting in
>ECHOSTARS threats to remove the ABC Family channel, supposedly for failure
>to perform on ratings. . . should we give one man, or company more ways to
>sell the Spice channel while attacking family values?

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>This merger is not in the public interest and should be rejected by the FCC
>and the Department of Justice.

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>Sincerely,
>James Pontious