

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

Application 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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To: The Commission

OPPOSITION TO PETITIONS TO DENY AND REPLY COMMENTS

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OVERVIEW & SUMMARY

Now that the merger's opponents have aired their objections, the Commission may confidently conclude that New EchoStar will provide consumers with numerous benefits, including:

- giving *all* Americans access by satellite to their local broadcast stations;
- creating a true broadband alternative when in many areas of the country there is no true broadband service whatsoever; and
- doubling (or better) the programming choices each company provides today, including moving to 12 or more High Definition Television channels.

These benefits translate directly into effective competition to cable systems, which have continued to raise their prices unrestrained by either EchoStar or DIRECTV standing alone, all to the benefit of consumers. The merger's pro-competitive potential is recognized by the constituency with the most direct stake in matters of competition and consumer choice – the consumers themselves. Under the guise of promoting the public interest, the handful of powerful organizations opposing the merger are pursuing rather obvious agendas that have nothing to do with the public interest: seeking to improve bargains they have struck; trying to preserve their competitive position or ability to continue overcharging rural customers, as they do today; and airing other unrelated grievances.

Many of the merger benefits will flow from the massive increase in Direct Broadcast Satellite (“DBS”) capacity that will result from the elimination of duplicative programming – a total of *more than 500 identical channels* – from the DIRECTV and EchoStar satellite systems once the companies merge. And as the Applicants announce here for the first

time, the merger will bring consumers across the United States access to local broadcast channels via satellite with digital-quality television picture and CD-quality sound *in every one of the 210 television Designated Markets Areas in the United States.*

Subsequent to the announcement of the merger agreement on October 28, 2001, as part of the pre-merger transition process, EchoStar and DIRECTV have been analyzing the technical and economic feasibility of a “Local Channels, All Americans” plan by which every U.S. consumer can have access to satellite-delivered local television signals. Today, in an Application being filed contemporaneously with this Opposition, New EchoStar will make that plan a reality by applying for Commission authority to launch and operate a new spot-beam satellite that, when combined with other existing and under-construction EchoStar and DIRECTV satellites, will allow the merged company to serve all 210 Designated Market Areas (“DMAs”), equaling *all* Americans, with local television stations.

New EchoStar will deploy new set-top boxes and satellite dishes capable of receiving satellite signals from multiple orbital positions. The new receiving equipment will be made available, free of charge, to all existing EchoStar and DIRECTV subscribers who will require new equipment in order to receive their local channels. Consumers across the country will pay the same price for this DBS service, *i.e.*, one nation, one rate card, regardless of a subscriber’s location. This means that whether for a town of 5 people or a city of 5 million people, the New EchoStar will provide the same service for the same rate. And implementation of the plan will begin immediately upon regulatory approval of the merger, becoming fully operational as soon as 24 months thereafter.

This “Local Channels, All Americans” service vision, however, is premised entirely upon the EchoStar-Hughes merger being successfully consummated. *Neither company*

standing alone could achieve the tremendous public interest benefit of being able to serve every television market in the country. Certain Petitioners speculate that each company alone might be able to replicate the merger benefits by building satellites of the Petitioners' own design. These proposals suffer from two fundamental defects: (i) they make invalid assumptions about *technical* feasibility, and (ii) they disregard entirely the question of *commercial* feasibility. Even if these super-satellites looked good on paper, no Petitioner has explained why no one in the world has deployed anything like them, or how it could be profitable for each company on a stand-alone basis. As Dr. Robert Willig explains in the attached Declaration, expansion of local channel service to every DMA would not be economically feasible absent the merger.

The merger will also create the first true broadband satellite alternative. For urban areas, this will translate into meaningful satellite-based competition to cable modem and DSL offerings. For tens of millions of other Americans, it will translate into their first affordable advanced service – a true move from zero to one provider. The “digital divide” in the United States is real: as many as 40 million households in the United States today do not have access to high-speed Internet and data services, in large part due to the high cost of delivering these services to homes in less densely populated areas. New EchoStar will create a more robust satellite platform that will liberate these digital “have nots” by offering them a more affordable, viable broadband service.

Here too, the Petitioners are wrong that each company could achieve these benefits on its own. The two companies' current broadband offerings are expensive “niche” products that are hampered by several constraints, do not even satisfy the Commission's definition of an “advanced service,” and have attracted fewer than 150,000 subscribers combined. The merger will allow New EchoStar to integrate these products and achieve a more

competitive price point. As for the future deployment of satellite service in the Ka-band, neither company standing alone would be able to achieve early and affordable service to consumers. The merger, on the other hand, will give New EchoStar the spectrum capacity, subscriber base and economies of scale needed to ensure that next-generation residential broadband service becomes a reality everywhere in the United States, rapidly and inexpensively enough to matter.

In addition to the consumers, many other parties have supported the EchoStar-Hughes merger. The most vociferous opposition comes from a handful of entities, including the National Rural Telecommunications Cooperative (“NRTC”), Pegasus Communications (“Pegasus”), the American Cable Association (“ACA”) and the National Association of Broadcasters (“NAB”).¹ The Commission should recognize the narrow self-interests of NRTC and Pegasus, who have been in active litigation against DIRECTV for years in a contractual dispute over distribution rights. Equally important, while lamenting the future fate of rural consumers, NRTC and Pegasus do not explain why they overcharge rural consumers today: in reselling DIRECTV’s service, they charge \$3.00 a month more than DIRECTV charges for the same service in other areas and than EchoStar charges for the equivalent package in the same areas. The sincerity of Pegasus’s concerns about competition is further impeached by reported statements of a Pegasus executive to the press that a buy-out of Pegasus by EchoStar would make the most financial sense for both companies.² As for the American Cable Association, it

¹ In contrast, businesses with an interest in greater competition and output in the MVPD market, such as television equipment manufacturers and electronics retailers, strongly support the merger. *See* Comments of Circuit City Stores, Inc. and Thomson Multimedia.

² *See* Ted Hearn, “Pegasus: Contract Bars Post-Merger Competition,” *Multichannel News* (Feb. 18, 2002).

expresses candidly its fear that the merger will result in price competition in rural areas.³ This is the sort of harm to *competitors* that the Commission should not take into account in its analysis, except as a benefit to *competition* and consumers.

The “Local Channels, All Americans” plan also disposes completely of the concerns expressed by NRTC and NAB with respect to local service. NRTC has alleged that New EchoStar “does not contemplate expanding local television service to rural America in DMAs beyond the top 100,” which the NRTC states “is no consolation to the millions of rural Americans who most need local service.”⁴ For its part, the NAB’s principal stated concern is that competition between the nation’s two DBS providers “has driven the expansion of local-into-local” and “will lead to more carriage of local stations.”⁵ New EchoStar’s commitment to serve all 210 DMAs could not answer those complaints more dispositively, leaving the NAB with no principled basis for continuing its opposition.⁶ The Applicants stand ready to achieve with one stroke what NAB’s members have not achieved in decades – extending the coverage of local broadcast stations to all areas of the country.

The “Local Channels, All Americans” plan will uniquely benefit rural subscribers, who without it might never enjoy digitally-delivered local channels via any distribution medium.

³ See ACA Petition at 14-16 (“EchoStar would have every incentive to [set its uniform national price] below small cable systems’ costs of providing similar services...”)

⁴ NRTC Petition at 60.

⁵ NAB Petition at iii.

⁶ *Id.* at 7 (opining that “if the merger is approved, it would still leave markets 101-210, in which 14 percent of the country’s population resides, with *no hope* of receiving local-to-local service.”) (emphasis added).

And, because of New EchoStar's one nation, one rate card plan, consumers in rural areas will reap an additional benefit – they will take advantage of the increased competition in the most populous areas of the country.⁷ Contrary to the claims of some Petitioners, national pricing makes economic sense. It has been the Applicants' past practice and it is a common practice for other national providers in network industries, such as Internet Service Providers and cellular telephone companies. Local promotions may continue to be a useful tool to the limited extent they have been in the past, and the Applicants are willing to commit to reasonable requirements in that regard.

New EchoStar has every incentive to set its national price at strongly competitive levels instead of extracting additional profits from its existing subscriber base as some parties allege. New EchoStar would be “leaving money on the table” if it restricted itself to existing subscribers. Instead, as Dr. Willig shows, New EchoStar will have to set the national price low to compete for new subscribers in the most densely populated and most heavily contested areas of the country. The one nation, one rate card plan will therefore be a more effective constraint on MVPD prices in rural areas than EchoStar is on NRTC's and Pegasus's prices today. Finally, the fears of collusion raised by Petitioners are equally unwarranted: this particular tango would require EchoStar to dance with 9 or 10 cable MSO partners at the same time or forego huge pools of potential subscribers. In the final analysis, the net benefits to consumers from the creation of New EchoStar far outweigh any anticompetitive concerns.

⁷ Pegasus and NRTC vastly exaggerate the number of homes not served by cable operators, in a stilted effort to argue that the merger would harm rural consumers.

There are other miscellaneous attempts by certain parties to litigate particular disputes or raise parochial concerns that have little bearing on the Commission's public interest inquiry here. The Applicants urge the Commission to restrict its analysis to merger-specific issues and remedies, to the extent applicable, and promptly approve the Application, so that New EchoStar may begin delivering on its promise of dramatic consumer and competitive benefits to all Americans, including the carriage of local broadcast channels in all 210 television markets and true broadband services to all Americans.

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