

Pantelis Michalopoulos  
202.429.6494  
[pmichalo@steptoelaw.com](mailto:pmichalo@steptoelaw.com)

June 7, 2002

**ELECTRONICALLY FILED**

Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12th Street, SW – Room TW-A325  
Washington, D.C. 20554

**Re: Ex Parte Notice, CS Docket No. 01-290**

Dear Ms. Dortch:

In accordance with Section 1.1206 of the Commission's Rules, 47 C.F.R. §1.1206, EchoStar Communications Corporation ("EchoStar") and DIRECTV, Inc. ("DIRECTV") submit this letter to report that David Goodfriend of EchoStar and Merrill Spiegel of DIRECTV met with Susan Eid of Chairman Powell's office on June 6, 2002, prior to the release of the Commission's Sunshine Agenda, to discuss issues associated with the above-reference docket. They underscored the general arguments made in the pleadings of EchoStar and DIRECTV regarding the necessity of maintaining the current prohibition on exclusive programming contracts to preserve and protect competition and diversity in the MVPD market.

Specifically, they addressed the evidence that, when given a chance, cable operators will exercise their dominant market power to foreclose programming to DBS providers. This is most evident in the behavior of COMCAST-affiliated programming companies refusing to sell key sports programming to either DIRECTV or EchoStar in the Philadelphia market, where DBS penetration is the lowest of any major market. In this connection, they discussed the attached analysis suggesting that Philadelphia's low DBS penetration rate cannot be explained by any other factor. They also discussed evidence that programmers charge cable operators a lower fee than they charge DBS operators for the same national service, demonstrating the market power that cable operators can and do exert in the programming market because of their ability to aggregate a majority of the television households in a given market.

Marlene H. Dortch

June 7, 2002

Page 2

All of these factors highlight what would happen if the Commission were to allow the current exclusivity prohibition to sunset. The current level of competition and diversity in the MVPD marketplace would decline, further entrenching incumbent cable operators' dominant market power. The EchoStar and DIRECTV representatives noted finally that cable operators are able to exert market power over their programming affiliates and withhold programming from DBS providers because they stand to benefit more than they stand to lose and, moreover, that cable operators gladly sell their programming to other cable operators because they do not compete with each other.

If you have questions concerning this meeting or this notice, please do not hesitate to contact the undersigned.

Respectfully submitted,



Pantelis Michalopoulos  
Carlos M. Nalda  
Steptoe & Johnson LLP  
1330 Connecticut Avenue, N.W.  
Washington, D.C. 20036  
(202) 429-6494

*Counsel for EchoStar Communications  
Corporation*

Attachment  
cc (w/ att.): Susan Eid

## **The Philadelphia Example of SportsNet**

A question was raised whether the DBS penetration rate in Philadelphia is explained by “other factors” or by Comcast’s decision to enter into an exclusive contract with SportsNet.

The DBS penetration rate in Philadelphia is the lowest of any of the largest 40 DMAs. We can estimate whether “other factors” explain the low DBS penetration rate by regressing demographic characteristics (e.g., the ratio of single unit dwellings to total housing units, ratio of rental occupied housing units to total housing units, ratio of population that are single and over 15 years old, average household size), economic characteristics (e.g., the average income of the DMA, the unemployment rate in December 2001), and DBS characteristics (e.g., the necessary elevation of the satellite to “see” the DBS satellites), and a “dummy” variable for Philadelphia on the DBS penetration rate in the DMA.

The results suggest that the DBS penetration rate in Philadelphia *cannot be explained* by these characteristics. See Table 1. That is, some other factor must be driving down the DBS penetration rate in Philadelphia and the lack of SportsNet *may* represent that factor.

Importantly, if we run similar regressions including a “dummy” variable for either San Diego or Boston – two cities that commentators have noted have low DBS penetration rates – the coefficients for San Diego or Boston are not statistically significant. That is, the above-mentioned characteristics explain the DBS penetration rates in those cities.

**Table 1:  
Regression Results**

**Percent of TV Households Who Subscribe to  
DBS Service in the Top 40 DMAs, January 2002**

	<b>Coefficient (t-statistic in parentheses)</b>
<b>Philadelphia Dummy Variable</b>	<b>-0.08* (-3.10)</b>
<b>Ratio of Single Unit Dwellings to Total Housing Units</b>	<b>0.28* (3.03)</b>
<b>Ratio of Rental Occupied Housing Units to Total Housing Units</b>	<b>0.12 (0.79)</b>
<b>Ratio of Population That Are Single and Over 15 Years Old</b>	<b>-1.62* (-3.11)</b>
<b>Average Household Size</b>	<b>0.14* (2.87)</b>
<b>Average Household Income</b>	<b>1.18 (1.48)</b>
<b>Unemployment Rate</b>	<b>-0.16 (-0.15)</b>
<b>Elevation of Satellite To "See" 110' Orbital Slot</b>	<b>0.01 (0.18)</b>
<b>Elevation of Satellite To "See" 119' Orbital Slot</b>	<b>-0.01 (-0.14)</b>
<b>Elevation of Satellite To "See" 148' Orbital Slot</b>	<b>0.00 (0.04)</b>
<b>Constant</b>	<b>-0.18 (-1.13)</b>
<b>R<sup>2</sup></b>	<b>0.76</b>
<b>Number of Observations</b>	<b>40</b>

\* Statistically significant at the 95% confidence level. Note: The model uses ordinary least squares (OLS) and is weighted by 2001 population.