BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC

In the Matter of	)	
	)	
Annual Assessment of the Status of	)	**MB Docket No. 02-145**
Competition in Markets for the	)	
Delivery of Video Programming	)	
	)	
	)	

To: The Commission

COMMENTS OF THE
NATIONAL RURAL TELECOMMUNICATIONS COOPERATIVE

Steven T. Berman, Senior Vice President
Business Affairs and General Counsel

NATIONAL RURAL TELECOMMUNICATIONS COOPERATIVE
2121 Cooperative Way, Suite 500
Herndon, VA 20171

By: Jack Richards
Kevin G. Rupy
Keller and Heckman LLP
1001 G Street, NW
Washington, D.C. 20001

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Pursuant to Section 1.430 of the Commission's Rules and Regulations, the National Rural Telecommunications Cooperative (NRTC), by its attorneys, hereby submits these Comments in response to the Notice of Inquiry (NOI) issued by the Commission in the above-captioned proceeding.[1]

I. Summary

As NRTC has made clear in previous Competition Reports, in order to gauge the status of competition in the multichannel video programming distribution (MVPD) market, the Commission should more accurately determine the number of homes "passed" by cable. In the past, the Commission has simply accepted the cable industry's representation that almost all of the country is passed. Establishing an accurate homes passed statistic will show that tens of millions of households do not have access to a cable alternative and must rely on satellite technology to receive a diversity of MVPD services.

NRTC continues to oppose the proposed merger (the Merger) between EchoStar Communications Corporation (EchoStar), General Motors Corporation (GM) and Hughes

Electronics Corporation (Hughes), a subsidiary of GM (collectively, the Applicants).[2] By combining the only two high-powered, nationwide direct broadcast satellite (DBS) providers, the proposed Merger would substantially reduce competition in the MVPD market throughout the country, and would eliminate competition completely in all areas -- mostly rural -- not passed by cable.[3]

NRTC supports the deployment of broadband services via satellite. Satellite technology offers an ideal opportunity to provide broadband to consumers who are not likely to receive similar services by terrestrial means.

II. Background

1. NRTC is a not-for-profit cooperative comprised of 705 rural electric cooperatives, 128 rural telephone cooperatives and 189 independent rural telephone companies located throughout 46 states. Since its creation in 1986, NRTC's mission has been to provide advanced telecommunications technologies and services to rural America. NRTC has long represented the views of rural Americans on telecommunications issues pending before the FCC, the National Telecommunications and Information Agency (NTIA) and the United States Congress.

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[1] Notice of Inquiry, *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, CS Docket No. 02-145, FCC 02-178 (released June 14, 2002) (*NOI*).

[2] Application of EchoStar Communications Corporation, General Motors Corporation and Hughes Electronics Corporation, Transferor; and EchoStar Communications Corporation, Transferee, For Authority to Transfer Control, File Number 01-348, p. 6 (filed December 3, 2001) (*Application*). *See also* Cable Service Bureau Action, *EchoStar Communications Corporation, General Motors Corporation, and Hughes Electronics Corporation Seek FCC Consent for a Proposed Transfer of Control*, CS Docket No. 01-348, DA 01-3005 (released December 21, 2001) (*Merger Notice*); Opposition to Petitions to Deny and Reply Comments of General Motors Corporation and Hughes Electronics Corporation and EchoStar Communications Corporation, CS Docket No. 01-348 (filed February 25, 2002) (*Opposition*).

[3] *See also* Petition to Deny of the National Association of Broadcasters, *In the Matter of EchoStar Communications Corporation, General Motors Corporation and Hughes Electronics Corporation*, CS Docket No. 01-348 (submitted February 4, 2002) (*NAB Petition*), Declaration of J. Gregory Sidak (included as Appendix B to the *NAB Petition*) (*Sidak Declaration*); Petition to Deny of Pegasus Communications Corporation, *In the Matter of EchoStar Communications Corporation, General Motors Corporation and Hughes Electronics Corporation*, CS Docket No. 01-348 (submitted February 4, 2002) (*Pegasus Petition*), Affidavit of Daniel L. Rubinfeld, (included as Attachment A to the *Pegasus Petition*).

2. NRTC, its members and affiliates currently distribute DIRECTV programming to approximately 1,800,000 rural households. NRTC also distributes satellite Internet access services pursuant to agreements with StarBand Communications, Inc. (StarBand) and Hughes Network Systems (DIRECWAY). Additionally, NRTC provides dial-up Internet access, 220 MHz wireless services, long distance telephone services, automated meter reading and other telecommunications services to its members and affiliates who in turn provide these services to rural consumers.

3. Since its inception, NRTC has championed the rights of rural Americans to enjoy fair and nondiscriminatory access to the same programming and advanced services that are readily available to consumers in more populated urban areas. NRTC has expressed its views on the development of competition in the video programming market by participating in all of the Commission's cable competition reports since the first in 1994.

III. Comments

A. The Commission Should Verify The Number Of Homes Passed By Cable.

4. In its NOI, the Commission asks "whether or not homes passed as a percent of television households is an accurate picture of cable availability."[4] The answer is a resounding "no."

5. Over the years, the Commission has reported cable industry statistics claiming that virtually every home in the United States has access to cable. As time has passed, this statistic has become a fossilized component of the Commission's annual cable competition reports.

[4] *NOI*, n. 23.

6. For years, NRTC and others have questioned the accuracy of this statistic, pointing out that it has had a serious adverse effect on the development of rural telecommunications policy. NRTC already has established a detailed record at the Commission regarding the flaws contained in the homes passed statistic. Rather than repeating the specifics of its earlier findings, NRTC incorporates by reference the following pleadings into the current proceeding.[5]

- Comments of NRTC, *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, CS Docket No. 00-132 (submitted September 8, 2000) (*NRTC 2000 Cable Comments*). NRTC raised questions concerning apparent flaws in the cable industry's homes passed rate.
- Comments and Reply Comments of NRTC, *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, CS Docket No. 01-129, (submitted August 3 and September 5, 2001) (*NRTC 2001 Cable Comments*; and *NRTC 2001 Cable Reply Comments*). As a follow-up to its *2000 Cable Comments*, NRTC conducted a more thorough analysis of the homes passed statistic based upon existing reports and a detailed study of US Census Bureau statistics. The *NRTC 2001 Cable Reply Comments* addressed the lack of any substantive discussion or analysis by the cable industry of the known deficiencies in the homes passed rate.
- Petition to Deny of the NRTC, *In the Matter of EchoStar Communications Corporation, General Motors Corporation and Hughes Electronics Corporation*, CS Docket No. 01-348 (submitted February 4, 2002) (*NRTC Petition*). NRTC stressed that the homes passed rate is premised on flawed data collection methods and does not accurately reflect the actual number of households throughout the country that are not passed by cable. NRTC also pointed out that the statistic represents a *national* number and is largely irrelevant in evaluating competition in *local* markets.
- Declaration of Dr. Paul W. MacAvoy, The Effects of the Proposed EchoStar – DIRECTV Merger on Competition in Direct Broadcast Satellite Rural Markets Where Cable Is Not Available (February 1, 2002) (Exhibit I to the *NRTC Petition*) (*MacAvoy Declaration*). Using the smallest geographic unit available (*i.e.* Census Blocks), Dr. MacAvoy identified 14 large regions of the country containing contiguous Census Block regions that were *not* passed by cable.
- Ex Parte Reply to Opposition of the NRTC, *In the Matter of EchoStar Communications Corporation, General Motors Corporation and Hughes Electronics Corporation*, CS Docket No. 01-348 (submitted April 4, 2002) (*NRTC Reply*). NRTC disputed the Applicants' claims that the tens of millions of homes not passed by cable

[5] All of these documents are available through the Commission's ECFS web site.

are "indisputably irrelevant,"[6] and not "decisionally significant,"[7] and exposed the flaws in the Applicants' criticisms of the *MacAvoy Declaration*.

7. In the above pleadings, NRTC demonstrated that the homes passed statistic is greatly affected by changes in the numerator (the number of "homes passed") and the denominator (the universe of homes for comparison purposes). For years, the cable industry has been inflating the homes passed rate by *overcounting* the numerator while simultaneously *undercounting* the denominator. As NRTC demonstrated, the national homes passed rate could be as low as 78%, meaning that 25 million homes do not have access to cable.

8. Over the years, the number of voices questioning the cable homes passed rate has been growing. The table below reflects *some* of the numerous reports regarding the cable industry's flawed homes passed statistic.

Organization	**Report Title**	**Date**	**Homes Passed**	**Remarks**
Yankee Group	*AT&T, Media One And the Art of Counting Cable Customers*	May 1999	N/A	Reported significant flaws in cable industry statistics and concluded that major MSOs were including such units as hotels, motels, bars and restaurants in their counts.
National Telecommunications and Information Administration and the Rural Utilities Service	*Advanced Telecommunications in Rural America*[8]	April 2000	78%	Concluded that the cable industry -- while reporting on "Television Homes" passed -- actually utilized the larger universe of "Housing Units" passed.
Yankee Group	*DBS Subscriber Study: 2000*	2000	60%[9] 42%[10]	A consumer survey revealed significantly reduced cable availability among DBS subscribers and those residing in rural areas.

[6] *Opposition*, p. 60.

[7] *Id*., p. 66.

[8] National Telecommunications and Information Administration and Rural Utilities Service, *Advanced Telecommunications In Rural America: The Challenge of Bringing Broadband Service to All Americans*, April, 2000, n. 62 (*NTIA/RUS Report*).

[9] Reflects percentage of total DBS Households with access to cable.

[10] Reflects percentage of rural DBS Households with access to cable.

Organization	Report Title	Date	Homes Passed	Remarks
Rural Utilities Service	*Ex Parte Comments of the RUS*[11]	June 2000	N/A	Reported to the Commission various flaws in the cable industry's calculation of homes passed. RUS also submitted a letter from Warren Publishing, Inc. disclosing its use of Housing Units -- not TV Households -- for its determination of the homes passed rate.
Credit Suisse First Boston	*Natural Selection, DBS Should Thrive as the Fittest to Serve Rural America.*[12]	October 2001	N/A	Concluded that over the next five to eight years, approximately 8,270 cable systems serving roughly 8.2 million subscribers are at risk of business failure. The loss of these cable systems will further erode the percentage of homes passed by cable.
New York Times	*Look, Up in the Sky! Big Bets on a Big Deal*[13]	October 2001	N/A	Reported that in 22 states more than 30% of homes are not passed by cable (*i.e.*, the cable pass rates for those states are less than 70%).
Pegasus Communications Corporation	*Pegasus Petition to Deny*[14]	February 2002	N/A	Discussed the numerous flaws contained in the cable industry's homes passed statistic. Provided a detailed breakdown of cable access on a county by county basis for each of the fifty states.
National Association of Broadcasters	*NAB Petition to Deny*[15]	February 2002	N/A	Discussed the growing criticism of the cable industry's homes passed statistic. Dr. J. Gregory Sidak provided a detailed analysis of twenty specific regional clusters not passed by cable.[16]

[11] Ex Parte Comments of the Rural Utilities Service, submitted June 22, 2000, in response to Notice of Inquiry, *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, CS Docket No. 99-230 (*RUS Filing*).

[12] Ty P. Carmichael, Jr., Credit Suisse First Boston Report, *Natural Selection, DBS Should Thrive as the Fittest to Serve Rural America*, October 12, 2001, pp. 11-14 (submitted as an *ex parte* filing in CS Docket No. 01-290 on November 9, 2001) (*CSFB Report*).

[13] *Look, Up in the Sky! Big Bets on a Big Deal*, N.Y. Times, October 30, 2001, at C-1 (*NYT Article*).

[14] *Pegasus Petition*, pp. 15-21.

[15] *NAB Petition*, pp. 44-48. *See also Sidak Declaration.*

[16] *Sidak Declaration*, Appendix 2.

Organization	Report Title	Date	Homes Passed	Remarks
Media Business Corporation	*Bandwidth Bridge Issue #1* [17]	May 2002	82.5%	Reported that up to 21 million homes are not passed by cable. Also highlighted the various flaws contained in the current homes passed statistic and suggested the use of Postal Service data with data compiled from the Commission's Form 325A.

9. Less than a year ago, DIRECTV informed the Commission that only 71% of its subscribers are able to receive cable television service.[18] Similarly, EchoStar is on record as noting that "[m]illions of potential DBS and/or High Power DBS customers live in areas that do not have access to cable such that, if there is no competition between DIRECTV and EchoStar, there is no competition at all."[19] Based upon growing evidence of its inaccuracy, the homes passed statistic in its current form is simply not useful as a tool for the Commission to measure MVPD competition.[20]

10. The Commission should aggressively pursue an accurate alternative to the cable industry's homes passed rate. Most parties analyzing the homes passed issue appear to agree that Housing Units -- not Television Households -- is the most useful basis for determining the universe of homes.[21] For example, at the request of RUS, Warren Publishing, Inc. (Warren)

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[17] Bandwidth Bridge Issue #1. Available from <http://www.skyreport.com/bandwidth_bridge.htm>

[18] Comments of DIRECTV, p. 13, submitted August 3, 2001, in response to Notice of Inquiry, *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, CS Docket No. 01-129, (released June 25, 2001) (*DIRECTV 2001 Cable Comments*).

[19] Memorandum of Law In Support of Request for Rule 56(f) Continuance to Respond to DIRECTV Defendants' Motion For Summary Judgment, *EchoStar Communications Corporation, et al. v. DIRECTV Enterprises, Inc., et al*., Civ. Action No. 00-K-212, p. 12 (D.Co. filed Nov. 6, 2000).

[20] Jack Richards, *Homes Passed Rate Needs Some Recalculating*, Multichannel News, p. 53 (July 22, 2002).

[21] Among other things, cable operators appear to count Housing Units, not Television Households, in determining the number of homes passed. Further, Housing Units is the most easily identifiable statistic for cable operators and the Commission to confirm. *See e.g.*, *NYT Article*, *NTIA/RUS Report*, n. 62, *Pegasus Petition*, pp. 15-18, n. 29; *NAB Petition*, pp. 44-48. In fact, EchoStar and Hughes recently appeared to concede that the use of Housing Units is the most appropriate measure for cable availability. *See* Ex Parte Notice of EchoStar and Hughes, CS Docket No. 01-348, pp. 68-71 (submitted June 28, 2002). Alternatively, the Commission could consider utilizing Postal Service (continued . . .)

clarified that its own use of the term "homes," actually means "housing units." Warren further conceded that "the wording is a bit confusing and therefore will be changed in the 2001 edition to read 'housing units.'"[22]

11. With respect to the actual count of homes passed, the Commission could utilize some of its own reporting assets,[23] or take steps to ensure a more accurate accounting from the cable industry.[24] Without an accurate number of homes passed, the Commission will never be positioned to evaluate with any certainty the status of competition in markets for the delivery of video programming.

12. Finally, in addition to its inaccuracy, the cable industry's traditional homes passed statistic reflects at best a *national* number. As NRTC has pointed out on several occasions, Commission precedent has consistently analyzed MVPD competition at the *local* level.[25] A national homes passed rate does little to shed any substantive light on local competition.

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statistics which are updated on a monthly basis in a commercially available product called "5 Digit ZIP." Information regading this product can be found at <http://www.usps.com/ncsc/addressinfo/fivedigitzip_print.htm>.

[22] *See* Letter from Gary B. Allen, Chief Universal Services Branch, Rural Utilities Service, to Michael Taliaferro, Managing Editor and Assistant Publisher, Television & Cable Factbook, Warren Publishing, Inc. (April 18, 2000) (appended as "Attachment A" to the *RUS Filing*) (copy attached hereto as **Exhibit 1**); Letter from Michael Taliaferro, Managing Editor and Assistant Publisher, Television & Cable Factbook, Warren Publishing, Inc., to Gary B. Allen, Chief Universal Services Branch, Rural Utilities Service (April 24, 2000) (appended as "Attachment B" to the *RUS Filing*) (copy attached hereto as **Exhibit 2**).

[23] For example, the recent *Bandwidth Bridge Issue #1* suggested that the Commission utilize its own Form 325A for determining the number of Homes Passed.

[24] Based on a comparison of the Seventh and Eighth Video Competition Reports, the statistics for Households and Homes Passed provided by Kagan World Media (Kagan) to the Commission spiked retroactively from 2000 to 2001. As of June 2000, Kagan estimated 100.5 million Television Households and 97.1 Homes Passed for 2000. By 2001, *those numbers increased by 6,000,000 each:* 106.4 million Television Households and 103.2 million Homes Passed (increases of 6.4% and 6.8%, respectively) in the last six months of 2000. Neither the Commission or Kagan offered any explanation as to how such an unprecedented increase could have occurred. In each of the previous eight years, the annual increase in either category was less than 1.2% (*Seventh Video Competition Report*, Appendix B, Table B-1; *Eighth Video Competition Report*, Appendix B, Table B-1) (*See* **Exhibit 3**).

[25] *See* Memorandum Opinion and Order, *In the Matter of Applications for Consent to Transfer of Control of Licenses and Section 214 Authorizations from Tele-Communications, Inc., Transferor to AT&T Corp., Transferee*, 14 FCC Rcd 3160 (February 18, 1999) at ¶21 (*AT&T TCI Order*); Memorandum Opinion and Order, *Applications for Consent to the Transfer of Control of Licenses and Section 214 Authorizations by Time Warner Inc. and America*
(continued . . .)

B. The Proposed Merger Of EchoStar And Hughes Is Anticompetitive And Should Be Denied.

13. Inextricably linked to the homes passed issue is the proposed merger of EchoStar and Hughes. In areas not passed by cable, consumers must rely on satellite technology to receive a diversity of multichannel programming services. If permitted, the Merger of the only two nationwide DBS providers would create an MVPD monopoly for tens of millions of rural Americans living in areas where no other comparable MVPD alternatives are available.

14. As demonstrated in the *NRTC Petition*, the merged entity would be able to isolate for discriminatory treatment large clusters of homes not passed by cable at the local level. According to NRTC's expert economist, consumer welfare loss from the Merger would be as much as $700 million each year, based solely on EchoStar's and Hughes' current DBS subscribers.[26] Other expert economists reached similar conclusions regarding the substantial consumer harms related to the Merger.[27]

15. Since the Merger was proposed, nothing has occurred to show that additional competition or technology somehow could replace the current competition between the two thriving DBS providers. To support their proposed Merger, the Applicants have pointed to potential competition from SES AMERICOM, Inc. (SES) and the newly established Multichannel Video Distribution and Data Service (MVDDS).[28] These views are somewhat

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Online, Inc., Transferors, to AOL Time Warner Inc., Transferee, 16 FCC Rcd 6547, ¶244 (January 22, 2001) (*AOL/Time Warner Order*).

[26] *NRTC Petition*, p. 30; *MacAvoy Declaration*, pp. 50-51.

[27] *See Sidak Declaration*, pp. 28-30 (concluding that the loss of consumer welfare as a result of the Merger would be more than $3 billion over five years); *Rubinfeld Declaration*, pp. 14-15, n. 59 (predicting consumer losses in the neighborhood of $600 million for new subscribers alone).

[28] *See Opposition*, p. 53 (stating that future MVDDS licensees would offer terrestrial competition to the merged entity); Paige Albiniak, *EchoStar's Chances: Slimmer*, Broadcasting & Cable, May 6, 2002 (quoting Charles Ergen, Chairman and CEO of EchoStar, as referring to SES as a potential competitor in the MVPD market). *See* Petition for Declaratory Ruling, SES AMERICOM, INC., April 25, 2002 (*SES Petition*). *See also* Federal Communications (continued . . .)

surprising, considering that EchoStar and Hughes are on record as opposing SES's plans and have appealed the Commission's MVDDS decision.[29] Regardless, any speculative competition from either SES[30] or MVDDS cannot be considered under the Department of Justice's *Merger Guidelines*;[31] neither should have any effect on the Commission's assessment of the status of competition to cable or the proposed Merger.

16. Section 3.2 of the *Merger Guidelines* states that only forms of competition that are "within two years from initial planning to significant market impact" will be considered in a merger review.[32] By its own admission, SES claims only that its satellite *"could be launched"* by 2004.[33] The launching of a satellite by SES within this time period would not rise to the level of "significant market impact" required by the *Merger Guidelines*. In fact, under a best-case scenario, SES would have one satellite with 32 full-CONUS DBS channels and no subscribers, while the merged EchoStar would have 15 satellites with 96 full-CONUS DBS channels and about 20 million subscribers.

17. Competition from potential MVDDS licensees within the relevant timeframe is even less promising. Although the Commission recently approved the creation of MVDDS, its

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Commission Report No. SAT-00110, *Satellite Space Applications Accepted for Filing*, SAT-PDR-20020425-00071 (released May 17, 2002) (*SES Public Notice*); *In the Matter of Amendment of Parts 2 and 25 of the Commission's Rules to Permit Operation of NGSO FSS Systems Co-Frequency with GSO and Terrestrial Systems in the Ku-Band Frequency Range; Amendment of the Commission's Rules to Authorize Subsidiary Terrestrial Use of the 12.2-12.7 GHz Band by Direct Broadcast Satellite Licensees and Their Affiliates; and Applications of Broadwave USA, PDC Broadband Corporation, and Satellite Receivers, Ltd. to Provide A Fixed Service in the 12.2-12.7 GHz Band*, ET Docket No. 98-206, FCC 02-116 (released May 23, 2002).

[29] Comments of EchoStar Satellite Corporation, Inc. in response to *SES Public Notice*, p. 4 (submitted June 17, 2002) (stating that SES's proposed operations would be "incompatible" with EchoStar's DBS operations); Opposition of DIRECTV, Inc. in response to *SES Public Notice* (submitted June 17, 2002); *EchoStar Satellite Corporation, v. FCC, et al*., (D.C. Cir. 2001), Petition for Review, July 19, 2002, Case No. ____.

[30] *See* Comments of NRTC, submitted in response to *SES Public Notice* (June 17, 2002).

[31] U.S. Department of Justice and Federal Trade Commission, *Revisions to Horizontal Merger Guidelines* (1997), reprinted in Trade Reg. Rep. (CCH) (1997) (*Merger Guidelines*).

[32] *Merger Guidelines*, at §3.2.

decision is under reconsideration.[34] The Commission has yet to issue any licenses, and there are no existing technologies for deploying the service. By the time any MVDDS licensee makes it to market (if ever), it would be significantly hindered due to the economics of providing such a service -- especially in rural, less populated areas. MVDDS, like the Multichannel Multipoint Distribution Service (MMDS), will be impractical in rural America, because of the high costs of building a fixed wireless infrastructure that would serve relatively few rural households. As a result, MVDDS also should not be considered by the Commission in its analysis of the proposed Merger.

18. There is no economic necessity for EchoStar and Hughes to merge in order to compete against cable, because the market is functioning effectively today with two healthy, facilities-based DBS competitors.[35] As the Commission recently determined, EchoStar and Hughes have made significant progress as competitors to cable over the last decade and have been relatively successful in attracting subscribers during the last few years in particular.[36]

19. While DBS is thriving, cable is struggling. USA Today noted earlier this year that basic cable TV growth is "flat."[37]

> Companies have wired nearly every town they can and signed up nearly everyone who cares. Faced with aggressive competition

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[33] *SES Petition*, p. 12.

[34] *See* Petitions For Reconsideration by MDS America, Inc., the Satellite Broadcasting and Communications Association, SES AMERICOM, Inc., SkyBridge L.L.C. and Pegasus Broadband Corporation, *In the Matter of Amendment of Parts 2 and 25 of the Commission's Rules to Permit Operation of NGSO FSS Systems Co-Frequency with GSO and Terrestrial Systems in the Ku-Band Frequency Range; Amendment of the Commission's Rules to Authorize Subsidiary Terrestrial Use of the 12.2-12.7 GHz Band by Direct Broadcast Satellite Licensees and Their Affiliates; and Applications of Broadwave USA, PDC Broadband Corporation, and Satellite Receivers, Ltd. to Provide A Fixed Service in the 12.2-12.7 GHz Band*, ET Docket No. 98-206, FCC 02-116.

[35] *NRTC Reply*, pp. 36-41.

[36] Report and Order, *In The Matter Of Implementation of the Cable Television Consumer Protection And Competition Act of 1992*, CS Docket No. 01-290, FCC 02-176, pp. 11, 30 (released June 28, 2002).

[37] David Lieberman, *Cable Waits On Large Tech Investments To Pay Off*, USA Today, May 12, 2002. A full text of the article is available at <http://www.usatoday.com/money/covers/2002-05-13-cable.htm> (*USA Today Article*).

> from satellite broadcasters DIRECTV and EchoStar, the top seven companies for the first time collectively lost subscribers in the first quarter of this year.[38]

The seven biggest companies, accounting for 80% of the cable market, say their basic customer total dropped more than 90,000, to 56.7 million, in the first three months of 2002. AT&T Broadband and Charter were hardest hit.[39]

20. Even with the roll-out of digital, the cable industry has been confronted with significant competitive problems. Not only has the growth rate for digital cable slowed, but "operators are alarmed about their digital 'churn rate' -- customers buying, then dropping the service. Close to half of all digital users each year change the service, disconnect it or fail to pay their bills."[40]

21. More DBS subscribers than ever before are former cable subscribers. According to a recent study commissioned by the Satellite Broadcasting and Communications Association (SBCA), 57% of DBS households previously subscribed to cable.[41] Digital cable is far more susceptible to consumer defection than DBS, with 21 percent of digital cable subscribers expressing an interest in switching to satellite television. Conversely, only 5 percent of DBS subscribers would consider switching to digital cable.[42]

22. As SBCA President Andy Wright noted:

> Despite the hopes and prayers of the cable industry that digital cable would be the killer application that would slow consumer defections to

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[38] *Id*.

[39] *Id*. Similarly, Cablevision Systems Corporation recently announced that in the first and second quarters of 2002, basic cable subscribers declined 7,000 and 10,000, respectively, for a total two-quarter decline of 17,000. Press Release, *Cablevision Systems Corporation Announces August 8th In Person Investor Meeting and Reaffirms 2002 Cash Flow Guidance*, July 26, 2002.

[40] *USA Today Article*.

[41] Press Release, Satellite Broadcasting & Communications Association, *New Study Confirms: DBS Beats Digital Cable On Value, Quality And Consumer Satisfaction*, May 23, 2002 (*SBCA Study*).

[42] *Id*.

> DBS, these studies confirm that DBS maintains a sizeable advantage in the most important customer categories -- value, quality and service . . . The research also shows that consumers continue to migrate to DBS because they believe that cable, including digital cable, cannot match the quantity and quality of programming offered by satellite television providers.[43]

23. The proposed Merger is clearly unnecessary for DBS to compete against cable and is grossly inconsistent with the Commission's long established goals of promoting facilities-based competition and consumer choice in the MVPD market. The Merger would eliminate consumer choice and result in higher prices, less innovation and lower quality service. These consequences will be especially profound for rural America, where tens of millions of consumers will have no choice but to accept the merged entity's services, or to do without MVPD programming altogether.

C. The Evolving Satellite Industry Will Have A Dramatic And Positive Impact On The Provision Of Video, Voice, And Data Services By Broadband Service Providers.

24. The Commission also seeks comment on the provision of video, voice and data services by broadband service providers.[44] In this regard, satellite based technologies -- particularly those in the Ka-band -- are uniquely situated to serve less populated, more remote areas with difficult geographic terrain, where ground-based technologies likely will not cover.

25. NRTC is pursuing several avenues to ensure the deployment of satellite broadband services to rural Americans. For example, NRTC has participated extensively in the RUS proceeding concerning the implementation of the Launching Our Communities' Access to Local

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[43] *Id*. The *SBCA Study* also found that DBS outscores digital cable for customer satisfaction in a number of specific performance measures. On value for the money, DBS earns a 68 percent approval rating, while analog cable scores 37 percent and digital cable just 36 percent. On signal transmission quality, DBS earns a 79 percent approval rating, while analog cable scores 67 percent and digital cable just 66 percent. Finally, on making customers feel valued, DBS earns a 64 percent approval rating, while analog cable scores at 46 percent and digital cable at just 44 percent.

[44] *NOI*, p. 12.

Television Act of 2000 (LOCAL Act).[45] The primary goal of the LOCAL Act is the issuance of loan guarantees to facilitate the provision of local television service and broadband services to households located in nonserved and underserved areas. NRTC believes that the incentives for broadband deployment contained in the LOCAL Act will be a valuable tool for delivering these services. NRTC encourages the Commission to support RUS's efforts.

26. In addition, through its membership, NRTC distributes broadband Internet access services via Ku-band satellite pursuant to agreements with StarBand Communications, Inc. (StarBand) (previously controlled by EchoStar) and Hughes (DIRECWAY). NRTC members are currently offering the StarBand and DIRECWAY services in various rural areas through NRTC's "TrueBand High-Speed Internet" program.

27. Other satellite licensees also are advancing their plans to meet consumers' growing broadband needs. For example, on June 18, 2002, the International Bureau determined that six of the eight First Round Ka-band Licensees with December 2001 or January 2002 construction targets had satisfied their respective milestones.[46] Once a multitude of Ka-band providers emerge, rural homes could gain access to new high-speed services even before some urban areas have access to extensive fiber networks, fixed wireless or mobile networks. NRTC urges the Commission to enforce its construction milestones as appropriate in individual cases and to ensure that Ka-band services are deployed in a timely manner.

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[45] *The Launching Our Communities' Access to Local Television Act of 2000*, Pub. L.No.106-553 (2000); *See* Joint Comments of the National Rural Telecommunications Cooperative, the National Rural Electric Cooperative Association and the National Rural Utilities Cooperative Finance Corporation, submitted in response to *Communities' Access to Local Television; Request For Information*, 66 Fed. Reg. 14,880 – 14,881 (submitted April 13, 2001) (*Rural Interest Comments*).

[46] Public Notice, *First Round Ka-Band Licensee Compliance with Construction Implementation Milestone*, Report No. SPB-179, DA 02-1432 (released June 18, 2002) (*Ka-Band Notice*).

28. The importance of broadband services to rural America cannot be overstated. The NTIA/RUS noted that "the rate of deployment of broadband services will be key to the future economic growth of every region, particularly in rural areas that can benefit from high-speed connections to urban and world markets."[47] Deployment of satellite broadband services will help to ensure that rural Americans will be able to compete, work and educate their children at the same level as suburban and urban Americans.

IV. Conclusion.

To evaluate the status of competition in markets for the delivery of video programming, the Commission should abandon the cable industry's long-standing, inaccurate and misleading statistic regarding cable availability at the national level. An accurate accounting of homes passed will reveal that an alarming number of American consumers -- particularly those in rural areas -- lack access to cable services at the local level and must look to satellite technology to receive a diversity of video programming.

The proposed Merger of EchoStar and Hughes would prove disastrous for the MVPD market. It would substantially reduce competition throughout the country, and would eliminate competition completely in all areas not served by cable. Tens of millions of rural consumers would fall victim to an MVPD monopoly in a post-Merger environment.

The evolving satellite broadband market will have a dramatic impact on all American consumers, but particularly those residing in rural areas, where terrestrial broadband services will likely never be available. The Commission should continue to encourage policies and programs that will hasten satellite broadband deployment.

[47] *NTIA/RUS Report*, pg. ii.

Respectfully Submitted,

Steven T. Berman, Senior Vice President
Business Affairs and General Counsel

NATIONAL RURAL TELECOMMUNICATIONS COOPERATIVE
2121 Cooperative Way, Suite 500
Herndon, VA 20171

By: Jack Richards
Kevin G. Rupy
Keller and Heckman LLP
1001 G Street, NW
Washington, D.C. 20001

July 29, 2002

Exhibit 1

USDA

United States Department of Agriculture
Rural Development

Rural Business–Cooperative Service • Rural Housing Service • Rural Utilities Service
Washington, DC 20250

COPY

April 18, 2000

Mr. Michael Taliaferro
Managing Editor and Assistant Publisher
Warren Publishing, Inc.
2115 Ward Court, NW
Washington, DC 20037

Dear Mr. Taliaferro:

This letter concerns two of the television statistics published annually in Warren's Television & Cable Factbook (Factbook). Recently, my associate, John Huslig, discussed this in a telephone conversation with Richard Koch, the assistant managing editor and editorial director of your organization. Specifically, the Rural Utilities Service is interested in the definition of "homes" in the statistics "homes passed by cable television facilities" and "homes in franchised area."

On page D-10 of the 1999 Factbook, "homes in franchised area" is defined as the number of "housing units" in the area for which the cable system holds the franchise. (According to the Census definition, housing units include all habitable structures, occupied or not.) In their conversation, Mr. Koch told Mr. Huslig that the same definition applies to "homes passed by cable." In other words, the definition of "homes" in both statistics refers to housing units as defined by the Census, not households, which are occupied housing units.

RUS would appreciate your confirming that the "homes passed" statistic is the number of housing units passed by cable, as reported to your organization by the individual cable systems. Please call Mr. Huslig at 202-720-0665 if you have any questions in regard to this request.

Sincerely,

GARY B. ALLAN

GARY B. ALLAN
Chief, Universal Services Branch
Advanced Services Division
Rural Utilities Service

Rural Development is an Equal Opportunity Lender
Complaints of discrimination should be sent to:
Secretary of Agriculture, Washington, DC 20250

Exhibit 2

WARREN COMMUNICATIONS NEWS 2115 Ward Court, N.W. Washington, D.C. 20037 202-872-9200 Fax: 202-293-3435 www.warren-news.com

April 24, 2000

Mr. Gary B. Allan
Chief, Universal Services Branch
Advanced Services Division
Rural Utilities Service
U.S. Department of Agriculture
Washington, DC 20250

Dear. Mr. Allan,

I received your letter of April 18th regarding Warren's definitions of "homes passed by cable" and "homes in franchised area" as presented on page D-10 of the 2000 Television & Cable Factbook.

In both cases, the term "homes" means the number of housing units. As you pointed out, the wording is a bit confusing and therefore will be changed in the 2001 edition to read "housing units".

Thank you for bringing this to my attention.

Sincerely,

Michael Taliaferro
Managing Editor, Television & Cable Factbook

Exhibit 3

Seventh Video Competition Report[49]

Federal Communications Commission FCC 01-1

APPENDIX B

TABLE B-1

Cable Television Industry Growth: 1992 - June 2000
(in millions)

Year	Television Households ("TH") Total	% Change	Homes Passed ("HP") Total	% Change	Basic Cable Subscribers ("Subs") Total	% Change	HHs Passed by Cable (HP/TH)	HHs Subscribing (Subs/TH)	U.S. Penetration (Subs/HP)
1992	93.1	1.1%	89.7	1.5%	55.2	3.4%	96.3%	59.3%	61.5%
1993	94.0	1.0%	90.6						
1994	94.9	1.0%	91.6						
1995	95.9	1.1%	92.7	1.2%	62.1	4.0%	96.7%	64.8%	67.0%
1996	97.0	1.1%	93.7						
1997	98.0	1.0%	94.6						
1998	99.0	1.0%	95.6	1.					
1999	100.0	1.0%	96.6	1.					
June 00[e]	100.5	0.5%	97.1	0.5%	67.7	0.6%	96.6%	67.4%	69.7%

In June 2000 Kagan reported the following estimates:

TV Households: 100.5 million

Homes Passed: 97.1 million

[e] June data based on year-end estimate by Paul Kagan Associates.

Sources:

1992 to 1997: U.S. Television Households: Paul Kagan Assocs., Inc., *Basic Cable Network Economics (1983-2007)*, Cable Program Investor, Mar. 13, 1998, at 2; Homes Passed and Basic Cable Subscribers: Paul Kagan Assocs., Inc., *History of Cable and Pay-TV Subscribers and Revenues*, Cable TV Investor, Apr. 14, 1998, at 3.

1998 to 1999: U.S. Television Households, Homes Passed, and Basic Cable Subscribers: Paul Kagan Assocs., Inc., *Paul Kagan's 10-Year Cable TV Industry Projections (1998-2009)*, The Cable TV Financial Databook 1999, Aug. 1999, at 10.

June 2000(e): U.S. Television Households, Homes Passed, and Basic Cable Subscribers: Paul Kagan Assocs., Inc., *Paul Kagan's 10-Year Cable TV Industry Projections (1999-2010)*, The Cable TV Financial Databook 2000, Aug. 2000, at 10.

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Eighth Video Competition Report[50]

Federal Communications Commission FCC 01-389

APPENDIX B

TABLE B-1
Cable Television Industry Growth: 1993 - June 2001
(in millions)

Year End	Television Households ("TH") Total		Homes Passed ("HP")		Basic Cable Subscribers ("Subs")		HHs	HHs	U.S.
1993	94.0								
1994	94.9								
1995	95.9	1.1%	92.7	1.2%	62.1	4.0%	96.7%	64.8%	67.0%
1996	97.0	1.1%	93.7						
1997	98.0	1.0%	94.6						
1998	99.0	1.0%	95.6	1.1%					
1999	100.0	1.0%	96.6	1.0%	67.5	1.8%	96.6%	67.5%	69.7%
2000	106.4	6.4%	103.2	6.8%	68.5	1.8%	97.0%	64.4%	66.4%
June 01[e]	107.1	0.7%	104.0	0.8%	69.0	0.7%	97.1%	64.4%	66.3%

One year later, Kagan's numbers for the same period increased in an unexplained and unprecedented fashion:

TV Households: 106.4 million.

Homes Passed: 103.2 million.

[e] June data is based on year-end estimate by Paul Kagan Associates.

Sources:
1993 to 1997: U.S. Television Households: Paul Kagan Assocs., Inc., *Basic Cable Network Economics (1983-2007)*, Cable Program Investor, Mar. 13, 1998, at 2; Homes Passed and Basic Cable Subscribers: Paul Kagan Assocs., Inc., *History of Cable and Pay-TV Subscribers and Revenues*, Cable TV Investor, Apr. 14, 1998, at 3.

1998 and 1999: U.S. Television Households, Homes Passed, and Basic Cable Subscribers: Paul Kagan Assocs., Inc., *Paul Kagan's 10-Year Cable TV Industry Projections (1998-2009)*, The Cable TV Financial Databook 1999, Aug. 1999, at 10.

2000 and 2001: U.S. Television Households, Homes Passed, and Basic Cable Subscribers: Paul Kagan Assocs., Inc., *Paul Kagan's 10-Year Cable TV Industry Projections (2000-2011)*, The Broadband Cable Financial Databook 2001, July 2001, at 10.

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[49] Seventh Annual Report, *In the Matter of Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, 22 CR 1414, FCC 01-1, Appendix B, Table B-1 (released January 8, 2001).

[50] Eighth Annual Report, *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, CS Docket No. 01-129, FCC 01-389, Appendix B, Table B-1 (released January 14, 2002).

CERTIFICATE OF SERVICE

I, HEREBY CERTIFY that on this 29th day of July, 2002, a true and correct copy of the foregoing Comments of the National Rural Telecommunications Cooperative in the Matter of the Annual Assessment of the Status of Competition in the Markets for the Delivery of Video Programming (MB Docket No. 02-145) was submitted via hand delivery to the Federal Communications Commission and served via courier or electronic mail upon the following:

Served via courier:

The Honorable Michael K. Powell
Chairman
Federal Communications Commission
445 Twelfth Street, S.W., Room 8-B201
Washington, D.C. 20554

Susan Eid
Legal Advisor to Chairman Powell
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554

The Honorable Kathleen Q. Abernathy
Commissioner
Federal Communications Commission
445 Twelfth Street, S.W., Room 8-A302
Washington, D.C. 20554

Peter A. Tenhula
Senior Legal Advisor to Chairman Powell
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554

The Honorable Michael J. Copps
Commissioner
Federal Communications Commission
445 Twelfth Street, S.W., Room 8-B115
Washington, D.C. 20554

Bryan Tramont
Senior Legal Advisor to Commissioner Abernathy
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554

The Honorable Kevin J. Martin
Commissioner
Federal Communications Commission
445 Twelfth Street, S.W., Room 8-A302
Washington, D.C. 20554

Alexis Johns
Legal Advisor to Commissioner Copps
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554

Marlene H. Dortch
Secretary
Federal Communications Commission
445 Twelfth Street, S.W., Room TW-B204
Washington, D.C. 20554

Jordan Goldstein
Senior Legal Advisor to Commissioner Copps
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554

Paul Margie
Spectrum and International Legal Advisor to Commissioner Copps
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554

Fern Jarmulnek
Satellite & Radiocommunication Division
International Bureau
Federal Communications Commission
445 Twelfth Street, S.W., 6th Floor
Room 6A767
Washington, D.C. 20554

Catherine Crutcher Bohigian
Legal Advisor on Cable and Mass Media Issues
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554

Cassandra Thomas
Deputy Chief
Satellite and Radiocommunications Division, International Bureau
Federal Communications Commission
445 Twelfth Street, S.W., 6th Floor
Room 6A624
Washington, D.C. 20554

Sam Feder
Senior Legal Advisor to Commissioner Martin
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554

Anna M. Gomez
Deputy Bureau Chief, International Bureau
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554

Donald Abelson
Chief, International Bureau
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554

Jennifer Gilsenan
Chief
Satellite Policy Branch
International Bureau
Federal Communications Commission
445 Twelfth Street, S.W., 6th Floor
Room 6A767
Washington, D.C. 20554

William H. Johnson
Deputy Chief, Media Bureau
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554

Jonathan Levy
Office of Plans and Policy
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554

Tom Tycz
Chief
Satellite and Radiocommunications Division, International Bureau
Federal Communications Commission
445 Twelfth Street, S.W., 6th Floor
Washington, D.C. 20554

Rosalee Chiara
Satellite and Radiocommunications Division, International Bureau
Federal Communications Commission
445 Twelfth Street, S.W., 6th Floor
Washington, D.C. 20554

Pantelis Michalopoulos
Philip L. Malet
Rhonda M. Bolton
Steptoe & Johnson LLP
1330 Connecticut Avenue, N.W.
Washington, D.C. 20036-1795
Counsel for EchoStar Communications Corporation

Marcia Glauberman
Media Bureau
Federal Communications Commission
445 12th Street, S.W.
Room 3-A738
Washington, D.C 20554

Gary M. Epstein
James H. Barker
Arthur S. Landerholm
Latham & Watkins
555 11th Street, N.W.
Suite 1100
Washington, D.C. 20004
Counsel for General Motors Corporation and Hughes Electronics Corporation

Julius Knapp
Office of Engineering and Technology
Federal Communications Commission
445 12th Street, S.W.
Room 7-B133
Washington, D.C. 20554

Served via electronic mail:
W. Kenneth Ferree
Chief, Cable Bureau
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554

JoAnn Lucanik
International Bureau
Federal Communications Commission
445 12th Street, S.W.
Room 6-C416
Washington, D.C. 20554

James Bird
Office of General Counsel
Federal Communications Commission
445 12 Street, S.W.
Room 8-C824
Washington, D.C. 20554

Simon Wilkie
Office of Plans and Policy
Federal Communications Commission
445 12th Street, S.W.
Room 7-C452
Washington, D.C. 20554

Barbara Esbin
Media Bureau
Federal Communications Commission
445 12 Street, S.W.
Room 3-C458
Washington, D.C. 20554

Royce Sherlock
Media Bureau
Federal Communications Commission
445 12th Street, S.W.
Room 3-A729
Washington, D.C. 20554

Douglas W. Webbink
Chief Economist
International Bureau
Federal Communications Commission
445 Twelfth Street, S.W., 6th Floor West
Washington, D.C. 20554

Qualex International
Portals II
445 12th Street, S.W.
Room CY-B402
Washington, D.C. 20554

Tammy Hines

Tammy Hines