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

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Annual Assessment of the Status of)
Competition in the Markets for the)
Delivery of Video Programming)

DOCKET FILE COPY ORIGINAL

MB Docket No. 02-145

REPLY COMMENTS OF DIRECTV, INC.

DIRECTV, Inc. ("DIRECTV") hereby submits the following reply comments in response to selected issues raised by commenters in the above-captioned matter.

There are several fundamental marketplace facts established by the comments in this proceeding. First, it is clear that cable operators continue to dominate the multichannel video programming distribution ("MVPD") market. Measured in terms of market share, the cable industry's percentage of MVPD subscribers is still approximately 76%,¹ down only two percentage points from approximately 78% last year. Although NCTA amazingly attempts to distance itself from the implications of cable's still-massive share of the MVPD market, the cable trade association has no explanation for how *cable rate increases of 45% since the enactment of the 1996 Telecommunications Act* – increases nearly three times the rate of inflation – can be characterized as pro-competitive.² Moreover, it is evident that, by maintaining their market power through consolidation, clustering, and digital and broadband bundling, there has been no material change in the cable industry's MVPD market power since last year, when

¹ See Comments of the National Cable & Telecommunications Ass'n (July 29, 2002) ("NCTA Comments"), at 2.

² See C. Murray, G. Kimmelman, and M. Cooper, Consumers Union, "Abusing Consumers and Impeding Competition: The State of the Cable Television Industry, 2002" (July 24, 2002), at 2.

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the Commission determined that “[c]able television still is the dominant technology for the delivery of video programming to consumers in the MVPD marketplace,”³ and that the market for the delivery of video programming “continues to be highly concentrated and characterized by substantial barriers to entry,”⁴ with findings in few markets that cable MVPDs are subject to effective competition.

Second, the overwhelming record evidence is that Direct Broadcast Satellite (“DBS”) operators have continued to develop as cable’s largest and most significant emerging competitors -- a conclusion that is reinforced by the cable commenters’ own statements in this proceeding.⁵

Third, the record establishes that the cable industry is now aggressively upgrading its plant and facilities to take advantage of its incumbency and unlimited ability to expand channel capacity. As the NCTA notes, digital cable offerings designed to compete with DBS are now well established;⁶ cable-delivered video-on-demand and high definition television offerings are a reality;⁷ interactive television is being deployed experimentally;⁸ and bundled high-speed cable broadband offerings are being deployed at a rapid rate.⁹

In light of these findings, the Commission should do all that it can to facilitate the continued growth of DBS as cable’s principal MVPD competitor and thereby bring to consumers

³ See 2001 MVPD Competition Report, CS Docket No. 01-129 (rel. Jan. 14, 2002), at ¶ 5.

⁴ *Id.* at ¶ 118.

⁵ See Comments of AT&T Corp. (July 29, 2002), at 5-8 (singling out growth of DBS as a cable competitor); Comments of Comcast Corporation (July 29, 2002), at 2 (same); NCTA Comments at 11-19 (same).

⁶ NCTA Comments at 29.

⁷ *Id.* at 31-34.

⁸ *Id.* at 35-37.

⁹ *Id.* at 27-28.

the benefits of increased MVPD competition. The most critical step that the Commission can take in this regard is to approve the merger of DIRECTV's parent company, Hughes Electronics Corporation ("Hughes"), with EchoStar Satellite Corporation ("EchoStar"). In large part enabled by the elimination of more than 500 programming channels that are duplicated by DIRECTV and EchoStar today, and the resulting dramatic increase in channel capacity available to the merged entity, the consumer welfare benefits of the Hughes-EchoStar merger are conservatively estimated to be in excess of \$1 billion a year.¹⁰

For example, due to spectrum capacity constraints, neither DIRECTV nor EchoStar is today capable of serving anything close to all 210 designated market areas ("DMAs") in the United States with satellite-delivered local broadcast channels. Yet, the Commission itself has acknowledged (and Hughes and EchoStar have presented significant additional data and evidence in the merger proceeding, CS Docket No. 01-348) that cable rates are lower and DBS penetration higher as a result of the introduction of DBS local-into-local service.¹¹ Approval of the Hughes-EchoStar merger will result in satellite-delivered local channels (with full compliance with Satellite Home Viewers Improvement Act mandatory carriage obligations) being made available in all 210 DMAs *to every United States consumer*, an enormous pro-competitive development that simply will not be possible absent a merger of the two providers. Similarly, approval of the Hughes-EchoStar merger will also free up the capacity necessary for DBS to compete with incumbent cable operators by enhancing and expanding national programming available on DBS, including more HDTV and international program offerings;

¹⁰ See R. Willig and A. Joskow, Ex Parte Presentation in CS Docket No. 01-348 on behalf of EchoStar, Hughes and General Motors Corporation, Analysis of the EchoStar-Hughes Merger: Competitive Effects and National Pricing (filed June 28, 2002), at Slide 5.

¹¹ See also Comments of EchoStar Satellite Corporation (July 29, 2002) ("EchoStar Comments"), at 4-6.

facilitating the introduction or expansion of new interactive, personal video recorder (“PVR”) and near-VOD offerings; and fostering the development of a viable and affordable residential satellite broadband offering to consumers.¹²

The record in this proceeding to date also is undisputed that, in order for DBS to remain and grow as a viable cable competitor, the Commission must preserve the very high reliability and availability of DBS service to U.S. consumers.¹³ In this regard, DIRECTV remains gravely concerned by the Commission’s actions to date in authorizing a proposed ubiquitously deployed terrestrial service to co-exist with both DBS systems and non-geostationary orbit fixed-satellite service systems in the 12.2-12.7 GHz band, which is the “mission critical” frequency band used by DBS operators to downlink programming to consumers. The record evidence provided by the proposed terrestrial system operators themselves, as well as by DBS operator studies and an independent study by the MITRE Corporation, strongly indicates that the introduction of ubiquitously-deployed terrestrial systems at 12 GHz will seriously degrade millions of DBS subscribers’ service.¹⁴ Such interference will seriously undercut the competitive advantages in reliability, sound and picture quality that DBS providers use affirmatively to differentiate

¹² DIRECTV notes that the NRTC has used its Comments in this proceeding primarily to reiterate its opposition to the Hughes-EchoStar merger. DIRECTV has fully responded to the NRTC’s merger-related arguments in CS Docket No. 01-348, and incorporates its responses herein by reference. To the extent that the NRTC has argued that the Commission should revisit its method of determining the number of “homes passed” by cable television systems, DIRECTV and EchoStar have shown that the NRTC’s claims of inaccuracy regarding the Commission’s data and methodology on this point are both exaggerated and fundamentally flawed. *See* Comments of EchoStar at 8-9 (*citing* Willig & Joskow Competitive Effects Presentation, Slide 72).

¹³ *See* DIRECTV Comments at 5-6; EchoStar Comments at 14-15; SBCA Comments at 10-14.

¹⁴ *See, e.g.,* DIRECTV Comments at 5-7; SBCA Comments at 3, 14-16.

themselves in the MVPD marketplace, and to offer meaningful cable-competitive choices to current and potential MVPD subscribers.¹⁵

Finally, DIRECTV rejects the suggestion of the State of Hawaii that DIRECTV is not in compliance with the Commission's DBS geographic service rules.¹⁶ As the Commission has observed, market forces along with certain minimum geographic service requirements have ensured steady progress by DBS providers in the difficult task of providing DBS service to the islands. Today, Hawaiian subscribers have access to a multiplicity of programming packages, and DIRECTV agrees that the Commission's current geographic service rules "are successfully promoting service" to the islands.¹⁷

While not identical to packages offered to continental United States subscribers, the DBS programming packages offered to Hawaiian subscribers are reasonably comparable to the programming packages offered to mainland subscribers, given the significant technical constraints, particularly from the 101° W.L. orbital location, of serving Hawaii. Furthermore, these packages are constantly improving and being upgraded over time. For example, the State of Hawaii itself notes that EchoStar recently has initiated local-into-local service in Honolulu,¹⁸ and DIRECTV expects that its own service to Hawaii will improve over time. Furthermore, once the Hughes-EchoStar merger is approved, Hawaiian subscribers will benefit from improved

¹⁵ See SBCA Comments at 14.

¹⁶ See Comments of the State of Hawaii (July 29, 2002) ("Hawaii Comments"), at 3.

¹⁷ In the Matter of Policies and Rules for the Direct Broadcast Satellite Service, Report and Order, IB Docket No. 98-21 (rel. June 13, 2002) ("DBS Rules Order"), at ¶ 59.

¹⁸ Hawaii Comments at 3.

coverage and service by the combined entity.¹⁹ In sum, DBS service in Hawaii is steadily expanding and no additional regulatory intervention by the Commission is warranted.

Respectfully submitted,



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¹⁹ See EchoStar, Hughes and General Motors Corporation, Consolidated Application for Authority to Transfer Control, CS Docket No. 01-348, at 33.