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 ARNOLD & PORTER
 

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Patrick J. Grant  
 Patrick\_Grant@aporter.com  
 202.942.6060  
 202.942.5999 Fax  
 555 Twelfth Street, NW  
 Washington, DC 20004-1206

September 6, 2002

RECEIVED

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY**By Hand & Electronically**

Ms. Marlene H. Dortch  
 Secretary  
 Federal Communications Commission  
 445 Twelfth Street, S.W.  
 Washington, D.C. 20554

Re: **Ex Parte Presentation – Consolidated Application of EchoStar,  
 General Motors and Hughes for Authority to Transfer Control  
 CS Docket No. 01-348**

Dear Ms. Dortch:

Please find enclosed, for filing in the above-referenced docket, a letter (and attachments) from Pegasus Communications Corporation to EchoStar Communications Corporation that addresses Pegasus' continuing concerns regarding EchoStar's recent commercial activities. This letter is a follow-up to the materials filed with the Commission on August 27, 2002.

Two additional copies of this letter and its enclosures are also being filed herewith.

If you have any questions regarding these materials or this ex parte presentation, please do not hesitate to contact me.

Sincerely yours,



Patrick J. Grant  
*Counsel for Pegasus Communications Corp.*

Enclosures

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Ms. Marlene H. Dortch

September 6, 2002

Page 2

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Douglas Webbink  
Harry Wingo  
Susanna Zwerling



September 6, 2002

Via Fedex &  
Facsimile to: (303) 723-1699

Christopher M. Melton  
Senior Counsel  
EchoStar Communications Corporation  
5701 S. Santa Fe Drive  
Littleton, CO 80120

Dear Mr. Melton:

I am writing to request EchoStar's response to our letter of August 27, 2002. In that letter, Pegasus identified numerous examples of DISH Network retailers and/or employees using false statements about the proposed merger between Hughes and EchoStar in order to convert Pegasus subscribers to EchoStar's DISH Network service. In our letter we demanded that EchoStar (i) investigate the practices described; (ii) investigate whether such practices are being more widely deployed; (iii) investigate whether such practices have been or are being encouraged by EchoStar employees, such as area sales managers; (iv) provide to Pegasus a written report detailing the nature and scope of the investigations, and the results of the investigations, including a list of retailers (and their geographic areas of operation) that have been engaged in these practices; and (v) take affirmative action to cause agents of EchoStar (and EchoStar employees if implicated) to cease and desist from such practices. To date we have not received your response to our demands or even an acknowledgment of our correspondence. Additionally, I would like to bring to your attention two more very troubling examples of merger based solicitations, the first of which appears to implicate EchoStar directly and the second of which evidences extraordinarily inappropriate sales tactics on the part of a DISH Network agent.

The first solicitation occurred on September 4, 2002, at the Grapevine Mills Mall located in Grapevine, Texas. The solicitation was made by an individual who appears to be an employee of EchoStar and was unknowingly directed at Bruce Giese, Pegasus' Vice President of Distributor Sales. Bruce reports being approached as he passed a mall kiosk and asked whether he had cable or satellite. When he responded that he had satellite, the EchoStar employee asked whether the service was DISH or DIRECTV. He responded "DIRECTV," and the EchoStar employee informed him that DISH had just bought out DIRECTV, that any day now the FCC would give DISH approval to start converting DIRECTV customers to the DISH Network system and that Bruce could save the wait by converting now. Bruce requested the EchoStar employee's business card before leaving. I have enclosed for your information a copy

Letter to Christopher M. Melton  
September 6, 2002  
Page 2 of 2

of the business card of one David Shoman, Target Marketer for EchoSphere Corporation which lists an email address of [tm\\_hr\\_dallas@echostar.com](mailto:tm_hr_dallas@echostar.com).

Another particularly egregious example of deceptive sales tactics engaged in by a DISH Network sales agent has been reported to us by a former Pegasus subscriber residing in Scotts, Michigan who converted to DISH as a result of what she has characterized as lies told her by the DISH agent. She reports converting because of misrepresentations that Pegasus had been acquired by DISH, and being told not to call Pegasus to confirm because Pegasus won't want to tell her that its been acquired by DISH. She further reports that the installer removed her DIRECTV System equipment and threw it into his truck, while cursing because he did not know how to properly set up the replacement equipment. The conduct of the installer so frightened the customer that her husband suggested that they tell the installer to leave. The customer reports that the telephone number for DISH Network was 800-448-2001. This number is answered by a satellite dealer/installer by the name of Future Vision. A transcript of our former subscriber's call to us reporting this solicitation is enclosed. The transcript clearly demonstrates that the consumer was lied to by the DISH agent who converted her.

EchoStar has represented that it does not condone the types of solicitations based on false representations that are described in the series of letters that we have sent to you over the past several months. EchoStar has further represented it believes that these solicitations emanate from a small number of its independent retailers and not its own employees. These most recent examples call these representations into question. As a result we renew our demand for immediate action from EchoStar both with respect to its dealers and with respect to its own sales and marketing practices.

Very truly yours,



Mark E. Eyer  
Assistant General Counsel

enclosures

Cc: Robert M. Hall, Esquire  
Via Fedex & facsimile to: (310) 964-4991  
David K. Moskowitz, Esquire  
Via Fedex & facsimile to: (310) 723-1699

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# ECHOSPHERE

ECHOSPHERE CORPORATION

David Shoman

Target Marketer - Dallas DMA



13900 Senlac Drive • Farmers Branch, TX 75234  
Tel: (469) 369-6510 • Fax: (972) 677-1952  
Voice Mail: (972) 677-1634  
Email: [sm\\_jr\\_dallas@echostar.com](mailto:sm_jr_dallas@echostar.com)

**SCOTTS, MICHIGAN MERGER SOLICITATION**  
**Transcript from call taken on August 20, 2002**  
**(Consumer and Pegasus employee names have been omitted by Pegasus)**

Customer Care Representative (CCR): Thanks for calling Pegasus. My name is [CCR Name]. How may I help you?

Customer (CUST): This is [Customer Name] calling and I had your service before. Now I don't know if it will show up under [first name] or [husband's first name], but I had your services and these people from DIRECTV called me, or DISH I mean, and they said that they were buying your company and they switched everything. Now what I need to know is can I have somebody come back out and hook me back up or can you use their equipment or whatever to get back with you?

CCR: OK, I can help you with that. So, actually you have the DISH network equipment?

CUST: It's a dish. It's called DISH network, I think.

CCR: So they took the equipment from DIRECTV?

CUST: No, it's not from you people. It just says DISH network. But they claim that they were buying your company and I don't know how to explain it. I'm not satisfied with the way they did it - they lied to me. If they haven't bought your company out - they lied to me.

CCR: Yes, ma'am. That's not true. Did they take your receiver and everything that you had with Pegasus?

CUST: Yeah!

CCR: Oh my goodness. Do you have your account number or telephone number?

CUST: You need mine?

CCR: Yes, ma'am. To pull up your account.

CUST: My account number, on my old, cause I know I owe a bill, but I thought I was going to get from them to pay all this and it never happened. The number is [customer account number].

CCR: Thank you. Also the name and the address.

CUST: Name on here is under [Customer Name], my husband.

CCR: Thank you ma'am. Can you verify your address on the account?

CUST: The address is [customer address located in Scotts, Michigan].

CCR: Thank you ma'am. May I place you on hold so I can research your account please?

CUST: Pardon?

CCR: I want to place you on hold to research your account so we can see what we can do.

CUST: OK

CCR: Please hold ma'am.

CUST: Thank you.

CCR: Ok, ma'am?

CUST: Yes.

CCR: Ok, I am still researching your account for you. Please hold ma'am.

CUST: No, that's fine.

CCR: Hello, [customer name].

CUST: Yes.

CCR: Ok, I am speaking to my manager at this time. When did they come out to switch the equipment?

CUST: This has been a couple of months ago hon, and they convinced me cause I said, uh, well shouldn't I call and talk with them? And this guy is like no, because he said, they just don't want to tell you that we have bought them out. You notice, you shouldn't even have nothing on there saying I called and cancelled. And that's what upsets me. Because I was just talking to my son and I told him, I said, I don't like this service I got and I said and according to the bill that I was just looking at, Pegasus is still here.

CCR: Yes, ma'am. This is solicitation. You said it came out 2, a couple of months ago?

CUST: Uh-huh.

CCR: This was solicited 2 months ago, do you know the dealer name?

CUST: All I know is the man's name was Powell [the name is not clearly audible] that I talked with.

CCR: Powell. And this happened how many months ago?

CUST: Couple months.

CCR: Ok, 2 months.

CUST: Ya know it's like, why do they want to lie to people like that? Cause the guy that come out here and switched boxes and stuff, he put them in his truck. He took my dish, my box put them in his truck, but then he didn't know how to set 'em up in here and excuse me, but he was sayin' that uh M F words because he couldn't get it hooked up. I told my husband, I said, he makes me scared. Of course my husband is saying, well we don't gotta deal with that, if you want me to tell him to get out. Well, I don't want to be without my cable, but the way he talked was that they had bought Pegasus out and that you guys didn't want nobody to know it.

CCR: Customer scared, ok yes, this is solicitation. I am speaking to my manager on the other line and we are trying to research your account further. And you said his name is Powell. You don't know the last name?

CUST: Pardon?

CCR: You don't know his last name? His name is just Powell, when you got his first name?

CUST: Nope. I didn't get that.

CCR: Ok, are you receiving programming from DISH network now?

CUST: Yeah.

CCR: Ok, but your account is still active with Pegasus?

CUST: Yeah. I wanted to.....I wanted to stay with Pegasus.

CCR: Let me explain to them what's going on ma'am. Please hold.

CCR: Can I place you on hold for a minute please?

CUST: about what?

CCR: Ok. I am going to place you on hold to tell them what is going on.

CUST: Ok.

CCR: Please hold ma'am.

CUST: Sure.

CCR: Ok ma'am. Thanks for holding. Do you have a number to DISH network?

CUST: The one I got, wrote down is 1-800, if I'm not mistaken, is 1-800-448-2001.

CCR: Actually you can call them to see if they can um, if you want to keep your account with Pegasus. It's still showing as still activated.

CUST: Really?

CCR: Yes ma'am. Your account is still activated.

CUST: Oh wow! How can these people send me a bill if I'm still with you?

CCR: Ok ma'am. I want you to know I am referring this to my supervisor so they can take care of this for you.

CUST: Could somebody come out and hook me up with you or whatever?

CCR: Yes ma'am.

CUST: Thank you very much.

CCR: Your welcome. [Customer Name], please hold ma'am ok?

CUST: Sure.