

KELLER AND HECKMAN LLP

Serving Business through Law and Science®

1001 G STREET, N.W.
SUITE 500 WEST
WASHINGTON, D.C. 20001
TELEPHONE 202.434.4100
FACSIMILE 202.434.4646
WWW.KHLAW.COM

September 20, 2002

Via Electronic Filing

Jack Richards
(202) 434-4210
Richards@khlaw.com

Marlene H. Dortch, Secretary
Federal Communications Commission
455 12th Street, S.W.
Washington, D.C. 20554

**Re: Notice of Ex Parte Presentation
Application of EchoStar Communications Corporation,
General Motors Corporation and Hughes Electronics Corporation,
Transferor; and EchoStar Communications Corporation, Transferee
(the Applicants), For Authority to Transfer Control;
CS Docket No. 01-348**

Dear Ms. Dortch:

On behalf of our client, the National Rural Telecommunications Cooperative (NRTC), and pursuant to Section 1.1206 of the Commission's Rules, this is to provide notice that representatives of NRTC met with members of Commission staff by conference call on September 19, 2002 in connection with the above-referenced matter. NRTC's representatives included Dr. Paul W. MacAvoy of Yale University; Dr. Li Gan of the University of Texas; Stephen M. Ryan, Stephen E. Coran and Martin J. Thompson of Manatt, Phelps & Phillips, LLP; and the undersigned of Keller and Heckman LLP. Commission staff members who participated in the conference call included Simon Wilkie and Donald Stockdale of the Office of Plans and Policy; James R. Bird and C. Anthony Bush of the Office of General Counsel; Marcia Glauberman of the Media Bureau; JoAnn Lucanik and Marilyn Simon of the International Bureau; and Tracy Waldon of the Wireline Competition Bureau.

During the conference call, Dr. MacAvoy summarized many of the important conclusions in his earlier presentations to the Commission. He discussed his identification of 14 regional "clusters" where cable television service is not available,¹ and noted that, in reliance on data supplied by NRTC, different prices for DBS services were apparent in each cluster.² Dr.

¹ See NRTC Petition to Deny, Exhibit I (filed February 4, 2002).

² *Id.*, p. 48.

MacAvoy opined that these price differentials were likely the result of promotions and “bounties” used to attract new subscribers. He reiterated his estimate that the welfare losses just for those rural consumers subscribing to EchoStar or DIRECTV and who have no cable alternative would be more than \$700 million per year if the merger were approved.³

Dr. MacAvoy stated that he attempted to determine the Applicants’ marginal cost, which he estimated at approximately \$27-30. He reiterated that the own-price elasticity of demand was approximately minus 1.5.⁴ Dr. MacAvoy estimated that, if the merger were to be completed, the single-firm price for DBS would be approximately \$75 per month.⁵ Dr. MacAvoy concluded that the consumer welfare losses would be “material” and that the harmful effects would be “substantial.”

In response to questions from Dr. Wilkie, Dr. MacAvoy stated that his estimate of marginal cost was taken from various public sources including estimates of Wall Street analysts. He also reiterated that the Applicants did not provide additional data necessary for further estimates of price and cost. Dr. MacAvoy stated that, in the clusters he studied, elasticity of demand can be estimated to be approximately minus 1.55. He also criticized the Goolsbee/Petrin paper, on which the Applicants rely, because it fails to include pricing data for DBS in its estimation of elasticity and assumes no DBS growth in the absence of price changes.

Commission staff inquired about Equation (1) contained in the September 30, 2002 Technical Statement of Drs. MacAvoy and Gan.⁶ Dr. MacAvoy responded that he was attempting to replicate the model used by Andrew Joskow and Robert Willig in their presentations filed in connection with a July 2, 2002 meeting with Commission staff. Dr. MacAvoy explained that their nested logit model fails for various reasons, including the false assumption of a single national price for DBS service. Dr. MacAvoy added that consumers do not pay “the” national price for service, but rather pay for programming, equipment, maintenance and other elements that comprise price.

Please contact undersigned counsel if there are any questions.

Sincerely,

/s/ Jack Richards

Jack Richards

³ *Id.*, p. 50.

⁴ *Id.*, p. 45.

⁵ *Id.*, p. 48.

⁶ *See* NRTC Ex Parte Comments, Exhibit C, p. 3 (filed September 4, 2002).

Marlene H. Dortch
September 20, 2002
Page 3

cc: James R. Bird
C. Anthony Bush
Neil A. Dellar
Barbara Esbin
W. Kenneth Ferree
Marcia Glauberman
Julius Knapp
JoAnn Lucanik
Linda Senecal
Royce Dickens Sherlock
Marilyn Simon
Donald Stockdale
Tracy Waldon
Douglas Webbink
Simon Wilkie
Pantelis Michalopoulos
Counsel for EchoStar Communications Corporation
Gary M. Epstein
*Counsel for General Motors Corporation and
Hughes Electronics Corporation*