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October 4, 2002

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VIA FAX

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

Re: CS Docket No. 01-348
Written Ex-Parte Presentation

Dear Ms. Dortch:

Dominion Video Satellite, Inc. ("Dominion") submits this letter in response to recent meetings by representatives of Cablevision Systems Corporation on behalf of Cablevision and R/L DBS Company, LLC. ("Rainbow") with members of the Commission's staff.

As reported in the *ex-parte* notifications, Rainbow seeks the divestiture of 17 channels operated by EchoStar at the 61.5° orbital location as a condition on the grant of the application for authority to merge EchoStar and DirecTV. Six of those seventeen channels are not licensed to EchoStar, but instead are licensed to Dominion.

EchoStar is the actual licensee of eleven of the 17 channels at the 61.5° orbital location that it operates. EchoStar operates the remaining six channels at 61.5° under a sublease from Dominion, the licensee of those six channels. Further,

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as the Commission is fully aware, under a Direct Broadcast Service Transponder Lease, Channel Use and Programming Agreement between EchoStar and Dominion, Dominion leases capacity on the EchoStar III satellite for its eight licensed channels at 61.5°.

Dominion here addresses only the six channels operated by EchoStar under its sublease with Dominion. The sublease, while subject to the Commission's rules and regulations, is a private agreement between two parties, EchoStar and Dominion.

In *Regents of the University System of Georgia v. Carroll*, 338 U.S. 586 (1950), the Supreme Court held that the Commission's authority is limited to licensing and its power does not extend to third party contracts. *Id.* at 589. The Court also stated that controversies as to rights between licensees and others are outside the ambit of its powers: "We do not read the Communications Act to give authority to the Commission to determine the validity of contracts between licensees and third parties." *Id.* at 602 (emphasis added) (citing *In re Petition of Fannie I Leese*, 5 F.C.C. 364; *Matter of Hearst Radio, Inc.*, 7 F.C.C. 292; *In re Assignment of License of Station WMCA*, 10 F.C.C. 241). Thus, the Commission cannot affect the rights of a lessee under a valid lease.

Therefore, according to *Regents of the University System of Georgia v. Carroll*, Rainbow's request for divestiture of all 17 channels operated by EchoStar at the 61.5° orbital location must be denied with respect to the six channels that EchoStar operates pursuant to a lease arrangement with Dominion. If EchoStar were to be precluded from operating at 61.5°, any termination of the sublease would be a matter to be resolved by EchoStar and Dominion as private parties to the sublease. A resolution of the parties' responsibilities with regard to EchoStar's and Dominion's rights under the sublease would not be a matter for the Commission to resolve. Under the *Regents* holding, the Commission does not have the power to order a termination of the sublease outside of a licensing procedure, and if it conditioned the approval of the EchoStar-DirecTV merger on the divestiture of six channels subject to a private lease agreement, such a decision would not be enforceable.

Given the above, any request by Rainbow with regard to the six channels licensed to Dominion cannot be at issue in the Commission's consideration of the proposed merger between EchoStar and DirecTV.

Very truly yours,

Marvin Rosenberg

cc: Marcia Glauberman

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bcc: Bob Johnson

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