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October 10, 2002

**VIA ELECTRONIC FILING**

Ms. Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12th Street, SW  
Washington, D.C. 20554

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

Dear Ms. Dortch:

This letter is submitted on behalf of R/L DBS Company, LLC (“Rainbow DBS”) in response to an ex parte filing in the above-mentioned proceeding made on October 4, 2002 by Dominion Video Satellite, Inc. (“Dominion”). The Dominion filing was a response to a proposal made by Rainbow DBS in connection with the EchoStar/DirecTV merger that would, among other things, result in EchoStar assigning to Rainbow DBS all of EchoStar’s current contractual rights to use six DBS channels at 61.5° W.L. licensed to Dominion.<sup>1/</sup>

Dominion claims that 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.”<sup>2/</sup> This conclusion mischaracterizes the Rainbow DBS proposal and it misstates the law.

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<sup>1/</sup> EchoStar’s rights to use the six Dominion channels arise from an agreement between EchoStar and Dominion entered into in 1996. Under the terms of that agreement, as subsequently modified, EchoStar supplied Dominion with eight channels on the EchoStar 3 satellite so Dominion could meet its “due diligence” obligations and commence DBS service. In exchange, Dominion subleased six of its eight channels back to EchoStar.

<sup>2/</sup> Letter from Marvin Rosenberg, Counsel for Dominion Video Satellite, Inc., to Marlene H. Dortch, Secretary, Federal Communications Commission, CS Docket No. 01-348, at 2 (Oct. 4, 2002).

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Rainbow DBS's proposal to the Commission focuses on the opportunity for the applicants to address competitive concerns with the proposed merger by entering into a private arrangement with Rainbow DBS. Part of that arrangement would have EchoStar assign to Rainbow DBS its contractual rights to use the six Dominion channels. This assignment would be a contract matter between EchoStar and Rainbow DBS; it is not intended to result from a specific Commission mandate. As Dominion is well aware, EchoStar has the right to assign the agreement "in whole or in part at any time without the consent of Dominion."<sup>3/</sup> Consequently, Dominion currently enjoys no protections from any assignment of EchoStar's rights under the contract.

Furthermore, even under the case cited by Dominion, the Commission would be permitted to condition approval of the EchoStar/DirecTV merger on EchoStar and Rainbow DBS reaching agreement on the assignment of the six channels. In *Regents of the University of Georgia System v. Carroll*, 338 U.S. 586 (1950), the Supreme Court was very clear that the Commission could condition a license upon a demonstration from an applicant that it had dealt appropriately with contractual relationships.<sup>4/</sup>

As we have previously stated, if Rainbow DBS acquires EchoStar's contractual rights to Dominion's six channels, it has no plans to disrupt Dominion's services on the remaining two channels and it is confident it could enter into an appropriate arrangement with Dominion should it be permitted to discuss these issues with Dominion. Until EchoStar gives its consent under its agreement with Dominion, however, Dominion is precluded from discussing these matters with Rainbow DBS.<sup>5/</sup>

Please feel free to contact the undersigned should you have any questions.

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<sup>3/</sup> Direct Broadcast Service Transponder Lease, Channel Use and Programming Agreement By and Among Dominion Video Satellite, Inc., EchoStar Satellite Corporation, Directsat Corporation, Direct Broadcasting Satellite Corporation, Direct Broadcast Satellite Corporation and EchoSphere Corporation § 16.11, at 60 (dated July 18, 1996).

<sup>4/</sup> 338 U.S. 586, 601 (1950).

<sup>5/</sup> Letter from Marvin Rosenberg, Counsel for Dominion Video Satellite, Inc., to W. Kenneth Ferree, Chief, Media Bureau, CS Docket No. 01-348, at 2 (July 23, 2002).

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Sincerely,

/s/

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Howard J. Symons

Benjamin J. Griffin

Christopher R. Bjornson

Counsel for R/L DBS Company, LLC

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