



ORIGINAL

ECHO STAR COMMUNICATIONS CORPORATION

November 19, 2002

Marlene H. Donch  
Secretary  
Federal Communications Commission  
Office of the Secretary  
445 12th Street, SW  
Washington, DC 20054

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

Re: **Ex Parte Notice – 2002 Biennial Regulatory Review – Review of the Commission’s Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996, Order, MB Docket No. 02-277, MM Docket No. 01-235, MM Docket No. 01-317, MM Docket No. 00-244**

Dear Ms. Dortch:

At the request of Ken Feme, Chief of the Media Bureau, and Paul Gallant, Chair, Media Ownership Working Group, EchoStar Communications Corp. (EchoStar) hereby submits for the record in the above-captioned proceeding information regarding “Most Favored Nation” (MFN) clauses in our distribution agreements with programmers.

In general, about 60% of our programming agreements include MFN clauses with respect to price (monthly fee per subscriber). While not true for much of EchoStar’s history, most of the MFN clauses in recently entered programming agreements (roughly 90%) are technology neutral, meaning that they apply to the programmers’ distribution agreements with all multichannel video programming distributors (MVPDs), not just Direct Broadcast Satellite (DBS) providers.

The Commission should note that even where MFN clauses are in effect, programmers usually are able to avoid offering EchoStar the best rate offered to another MVPD. The vast majority of MFN clauses include an exception for volume-based discounts. This allows programmers to lower their rates for the largest MVPDs, despite the presence of MFN clauses in agreements with other MVPDs. This issue typically is a matter of great concern to EchoStar during distribution negotiations with programmers, given that EchoStar’s subscribership is considerably smaller than that of the largest cable MSOs.

Moreover, volume based exceptions to MFN clauses tend to be structured in stair-step fashion, rather than on a sliding scale. To illustrate with a hypothetical example, a programmer

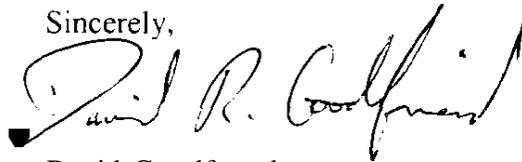
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that allows for volume-based discounts would agree to charge a rate of \$1 per subscriber to a MVPD with 0 to 100,000 subscribers. and \$0.50 per subscriber to a MVPD with 100,001 to 500,000 subscribers. The MVPD with 99,000 subscribers, therefore. would pay twice as much per subscriber as the MVPD with only 2,000 more subscribers. EchoStar believes that, due to this volume discount structure, it tends to pay more per subscriber than do the largest cable MSOs. even where the relative difference in subscribership between EchoStar and the MSO is not great.<sup>1</sup>

Finally. programmers subject to MFN clauses may be able to favor particular MVPDs with benefits apart from volume based fee reductions. For example. a programmer might pay a MVPD a premium for favorable channel positioning or for marketing and launch support.

EchoStar hopes that the Bureau finds this information helpful and responsive. If you would **like** more detail or additional information, please do not hesitate to contact me at (202) 293-0981

Sincerely,



David Goodfrend  
Director of Legal and Business Affairs  
EchoStar Communications Corporation

David K. Moskowitz  
Senior Vice President and  
General Counsel  
EchoStar Satellite Corporation  
5701 South Santa Fe Drive  
Littleton, CO 80120

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<sup>1</sup> As EchoStar has poinird out previously io the Commission, programming executives are on record acknowledging that they charge satellite providers more than they charge cable operators for the same programming. For example. in 2001. Sumner Redstone, the CEO of Viacom, **was** interviewed by the Los Angeles Times, in which he noted: "[W]hat a lot of people don't know is that satellite broadcasrers pay us more for **the** same programming than cable operators." 2001 WL 28929748 (November 18, 2001).

## CERTIFICATE OF SERVICE

I, Gregory Noll, hereby certify that on this 19<sup>th</sup> day of November, 2002, copies of the foregoing were served by first class United States mail, postage prepaid, on the following:

Daniel L. Brenner  
National Cable & Telecommunications  
Association  
1724 Massachusetts Avenue, NW  
Washington, DC 20036-1903

Jack Richards  
Kevin G. Rupy  
Keller and Heckman LLP  
1001 G Street, NW  
Washington, DC 20001  
*Counsel for the National Rural  
Telecommunications Cooperative*

Ben Ivins  
National Association of Broadcasters  
1771 N Street, NW  
Washington, DC 20036

Bruce A. Olcott  
Squire, Sanders & Dempsey, L.L.P.  
1201 Pennsylvania Avenue, NW  
P.O. Box 407  
Washington, DC 20044-0407  
*Counsel for the State of Hawaii*

James L. Casserly  
Mintz, Levin, Cohn, Ferris, Glovsky  
And Popeo, P.C.  
701 Pennsylvania Avenue, NW  
Suite 900  
Washington, DC 20004  
*Counsel for Comcast Corporation*

Jonathan A. Friedman  
Willkie Farr & Gallagher  
Three Lafayette Center  
1155 21<sup>st</sup> Street, NW  
Suite 600  
Washington, DC 20036-3384  
*Counsel for AT&T Corporation*

James H. Barker  
Latham & Watkins  
555 Eleventh Street, NW  
Suite 1000  
Washington, DC 20004-1304  
*Counsel for DIRECTV, Inc.*

Andrew S. Wright  
Satellite Broadcasting and  
Communications Association  
225 Reinekers Lane  
Suite 600  
Alexandria, VA 22314

Phillip L. Spector  
Paul, Weiss, Rifkind, Wharton & Garrison  
1615 L Street, NW, Suite 1300  
Washington, DC 20036  
*Counsel for SES Americom, Inc.*

Gerald J. Duffy  
Blooston, Mordkofsky, Dickens, Duffy &  
Prendergast  
2020 L Street, NW, Suite 300  
Washington, DC 20037  
*Counsel for South Dukoru Network, LLC*

Martin L. Stem  
Preston Gates Ellis & Rouvelas Meeds LLP  
1735 New York Avenue. NW  
Suite 500  
Washington, DC 20006  
*Counselfor Broadband Service Providers  
Association*

John Emerson  
31 North Street  
Lexington, MA 02420-1811

Rachel Lipman Reiber  
Everest Connections Corp.  
4740 Grand, Suite 200  
Kansas City, Missouri 64112

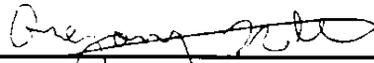
Arthur H. Harding  
Fleishman and Walsh L.L.P.  
1400 Sixteenth Street, NW  
Suite 600  
Washington, DC 20036  
*Counselfor Kansas City Cable Partners  
d/b/a Time Warner Cable*

Edgar Class, III  
Shook, Hardy & Bacon, LLP  
600 14<sup>th</sup> Street, NW  
Suite 800  
Washington, DC 20005  
*Counselfor Gemstar-TV Guide  
International, Inc*

Howard J. Symons  
Mintz, Levin, Cohn, Ferris, Glovsky &  
Popeo, P.C.  
701 Pennsylvania Avenue. NW  
Suite 900  
Washington, DC 20004  
*Counselfor Cablevision Systems  
Corporation*

Stephen Pastorkovich  
Organization for the Promotion and  
Advancement of Small Telecommunications  
Companies  
21 Dupont Circle, NW  
Suite 700  
Washington, DC 20036

Antoinette C. Bush  
Northpoint Technology  
444 North Capitol Street. NW  
Washington, DC 20001

  
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Gregory Noll