

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

<b>In the Matter of</b>	)	
	)	
<b>Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming</b>	)	<b>MB Docket No. 03-172</b>
	)	

**To: The Commission**

**REPLY COMMENTS OF THE  
NATIONAL RURAL TELECOMMUNICATIONS COOPERATIVE**

The National Rural Telecommunications Cooperative (NRTC), by its attorneys, hereby submits these Reply Comments in response to the comments filed in the above-captioned proceeding.<sup>1</sup> NRTC appreciates the Commission's increased focus on rural issues when considering the status of competition in the delivery of video programming. NRTC urges the Commission to expedite the provision of local television service by satellite throughout rural America and to focus its competitive inquiry particularly on areas not passed by cable.

**REPLY COMMENTS**

**A. DBS Carriers Should Provide Local Service In All 210 DMAs As Soon As Possible.**

1. The comments reveal two distinct perspectives of the multichannel video programming distributor (MVPD) market. According to the cable industry, the MVPD market is fully competitive, and virtually every American consumer now has a choice among three or

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<sup>1</sup> Notice of Inquiry, *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, MB Docket No. 03-172, FCC 03-185 (released July 30, 2003) (NOI).

more facilities-based MVPDs.<sup>2</sup> The cable industry claims that competition has become so intense that the Commission should declare the entire MVPD market “fully competitive.”<sup>3</sup>

2. The other perspective of the MVPD market, reflected in NRTC’s Comments and others, is quite different. It suggests that the benefits of competition between direct broadcast satellite (DBS) and cable are not yet available in many smaller, rural markets. Up to 23 to 25 million households may not be passed by cable and, therefore, may not have access to any of cable’s advanced services. Many of these households also do not have access to local television signals by satellite or any other source.

3. The delivery of local broadcast signals is of critical importance to the safety, health and economic viability of each and every local community in the country. According to the Satellite Broadcasting and Communications Association (SBCA), only 85 markets, or 79 percent of U.S. television households, currently are able to receive local broadcast stations via satellite from at least one DBS operator.<sup>4</sup> DIRECTV and EchoStar plan to offer local-into-local service to 125 total markets, reaching 90% of U.S. television households, by the end of 2003.<sup>5</sup>

4. DIRECTV and the News Corporation (News Corp) recently announced that if their proposed merger is approved, the merged company will deliver local signals to all 210 Designated Market Areas (DMAs) as early as 2006 and no later than 2008.<sup>6</sup> This

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<sup>2</sup> Comments of Comcast Corporation, MB Docket No. 03-172, p. 12 (submitted September 11, 2003) (*Comcast Comments*).

<sup>3</sup> Comments of the National Cable & Telecommunications Association, MB Docket No. 03-172, p. 69 (submitted September 11, 2003) (*NCTA Comments*).

<sup>4</sup> Comments of the Satellite Broadcasting and Communications Association, MB Docket No. 03-172, pp. 8-9 (submitted September 11, 2003) (*SBCA Comments*).

<sup>5</sup> *Id.*

<sup>6</sup> See Ex Parte Notice, The News Corporation Limited, General Motors Corporation, and Hughes Electronics, MB Docket No. 03-124, p. 4 (submitted September 22, 2003); See also SkyReport, *DBS Deal Companies Eye All DMAs for Locals*, September 24, 2003.

announcement is a positive step and warrants further review. The difference between 2006 and 2008 remains significant. Rural Americans already have waited too long to receive access to local signals that consumers in more populated areas take for granted.

5. As noted by the SBCA, the expansion of local-into-local service by DBS providers is the “principal reason customers subscribe to DBS.”<sup>7</sup> According to the SBCA, local satellite service “evens the competitive landscape by allowing DBS providers to offer highly-desirable local programming, as cable operators have done for years.”<sup>8</sup> DIRECTV also noted that its expansion of local markets has enhanced its ability to compete with cable.<sup>9</sup> Even the cable industry agreed that DBS’s “dramatic nine-year climb” was attributable in part to DBS’s ability to transmit local broadcast signals.<sup>10</sup>

6. The Commission and other government agencies share the view that local service enhances the competitive stance of DBS. For example, the Government Accounting Office (GAO) has found that the introduction of local channels by DBS providers increases “non-price competition.”<sup>11</sup> Whether its impact is felt in price and/or non-price competition, the availability of local signals via DBS is uniformly accepted as a positive competitive influence within the MVPD market.

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<sup>7</sup> *SBCA Comments*, p. 8.

<sup>8</sup> *Id.*

<sup>9</sup> Comments of DIRECTV, Inc., MB Docket No. 03-172, p. 2 (submitted September 11, 2003). Commenters from previous years suggested that local service from DBS acts as a restraint on cable prices. Comments of EchoStar Satellite Corporation, MB Docket No. 02-145, p. 5 (submitted July 29, 2002).

<sup>10</sup> *NCTA Comments*, pp. 12-13.

<sup>11</sup> Ninth Annual Report, *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, 17 FCC Rcd. 26901 ¶ 9 (released December 31, 2002) (citing U.S. General Accounting Office, *Issues in Providing Cable and Satellite Television Services*, GAO-03-130, pp. 9-10 (October 2002)). The GAO concluded that in areas where DBS operators provide local channels, the cable companies offer subscribers approximately six percent more channels. See also U.S. General Accounting Office, *Telecommunications: The Effect of Competition From Satellite Providers on Cable Rates*, GAO/RCED-00-164 (July 2000). That report suggested that higher cable rates often resulted in an increased likelihood of subscribers migrating to DBS.

7. While the provision of local service via satellite increases competition between DBS and cable in areas where cable services are available, it is even more important in areas unserved by cable. In those areas, consumers have no MVPD alternative other than DBS to receive local services. For many consumers residing outside the reach of cable, local service is available via DBS or it is not available at all.

8. Providing local television service by satellite will ensure the creation of a competitive MVPD environment and at the same time move rural Americans closer to parity with their urban counterparts. To promote competition to cable and to bring local service to areas that otherwise would not receive it, nationwide DBS carriers should provide local service to all 210 DMAs as soon as possible. NRTC stands ready to work with DIRECTV and others toward this goal.<sup>12</sup>

**B. Until The Commission Determines The Number Of Homes Passed (And Not Passed) By Cable, It Has No Way Of Assessing The Extent Of MVPD Competition In Rural America.**

9. The “extent” of competition between DBS and cable is entirely moot in markets where consumers lack access to cable services. In these markets, as many as 23-25 million households may be deprived of the benefits of vigorous MVPD (*i.e.*, DBS vs. cable) competition. Yet even at this late date, the Commission lacks an accurate determination of the actual number of homes passed and not passed by cable.

10. In recent years, the Commission has become increasingly aware of the questionable accuracy of the homes passed statistics traditionally proffered by the cable industry. In its

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<sup>12</sup> See Joint Comments of the National Rural Telecommunications Cooperative, the National Rural Electric Cooperative Association and the National Rural Utilities Cooperative Finance Corporation, *Comments on the Proposed Rule to Implement the LOCAL Television Loan Guarantee Program*, submitted to the Rural Utilities Service, September 15, 2003 in response to, *Proposed Rule 7 CFR Parts 2200 and 2201, LOCAL Television Loan Guarantee Program*, 68 FR 48814 (August 15, 2003).

Hearing Designation Order in the EchoStar/DIRECTV merger proceeding, the Commission concluded that “[i]n reality . . . many customers, particularly in rural areas, do not have access to cable.”<sup>13</sup> It further noted that, depending on the data set used, the number of homes not passed by cable “can vary from 9.86% to 21.28%”<sup>14</sup> (*i.e.*, a difference of between approximately 10,500,000 to 22,000,000 households, representing 26,000,000 to 58,000,000 persons).<sup>15</sup> In its NOI, the Commission continues to seek data that will be useful in determining the number of homes passed/not passed by cable, but the actual number remains elusive.<sup>16</sup>

11. Despite the Commission’s acknowledgement of the questionable nature of the homes passed statistic, the cable industry continues to claim that cable service is nearly ubiquitous. For example, Comcast Corporation (Comcast) provides a glowing picture of cable penetration without providing any background statistics. It simply claims that competitive MVPD choices for consumers “abound,”<sup>17</sup> and that consumers today have a choice of “at least three (and in some cases four or more) facilities-based” MVPDs “in almost every corner of America.”<sup>18</sup> Comcast characterizes the competition within the MVPD market as “pervasive”<sup>19</sup> and possibly “saturated.” It ultimately concludes that the “time has now arrived” whereby “consumers have adequate [MVPD] alternatives.”<sup>20</sup>

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<sup>13</sup> See Hearing Designation Order, *Application of EchoStar Communications Corporation, General Motors Corporation, and Hughes Electronics Corporation*, 17 FCC Rcd. 20559, ¶31 (released October 18, 2002) (*HDO*).

<sup>14</sup> *Id.*, n. 356.

<sup>15</sup> According to year 2000 Census Bureau statistics, there are 105,480,101 households in the United States with an average of 2.6 persons per household. See U.S. Census Bureau website, *Tables: General Demographic Characteristics (DP-1)*, available at <<http://www.census.gov/census2000/states/us.html>> (visited September 25, 2003).

<sup>16</sup> *NOI*, ¶32.

<sup>17</sup> *Comcast Comments*, p. 2.

<sup>18</sup> *Id.*, p. 12.

<sup>19</sup> *Id.*, p. 13.

<sup>20</sup> *Id.*, p. 12.

12. The National Cable & Telecommunications Association (NCTA) offers an equally glowing description of the homes passed statistic. First, it states that cable operators “serve all but the most sparsely populated areas.”<sup>21</sup> Then, it claims that “98 million homes” are passed by cable plant with a capacity of at least 550 MHz.<sup>22</sup>

13. Notwithstanding the cable industry’s claims, significant evidence shows that millions of Americans located in rural areas lack access to cable and are therefore not benefiting from intense MVPD competition. As the SBCA noted in its comments, only 68 percent of total DBS subscribers -- and only 43% of rural DBS subscribers -- have access to cable services.<sup>23</sup> NRTC’s own research indicates that up to 23-25 million rural households may lack access to cable.<sup>24</sup>

14. True MVPD competition exists only in markets where state-of-the-art digital cable services are available along with local service from competing DBS providers.<sup>25</sup> While cable’s

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<sup>21</sup> *NCTA Comments*, p. 25.

<sup>22</sup> *Id.*, p. 44. NCTA has previously disclosed that it uses TV Households to determine the percentage of homes passed by cable, which suggests a homes passed rate of 92.5%.

<sup>23</sup> *SBCA Comments*, p. 6.

<sup>24</sup> See Comments of NRTC, *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, CS Docket No. 00-132 (submitted September 8, 2000) (*2000 Cable Comments*). NRTC initially raised concerns regarding apparent flaws in the cable industry’s homes passed statistic; Comments and Reply Comments of NRTC, *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, CS Docket No. 01-129, (submitted August 3 and September 5, 2001). As a follow-up to its *2000 Cable Comments*, NRTC conducted a more thorough analysis of the homes passed statistic based upon existing reports and a detailed study of US Census Bureau statistics; Petition to Deny of the NRTC, *In the Matter of EchoStar Communications Corporation, General Motors Corporation and Hughes Electronics Corporation*, CS Docket No. 01-348 (submitted February 4, 2002) (*NRTC Petition*). NRTC stressed that the homes passed rate is premised on flawed data collection methods and does not accurately reflect the actual number of households throughout the country that are not passed by cable. NRTC also maintained that the statistic represents a *national* number and is largely irrelevant in evaluating competition in *local* markets. See also Declaration of Dr. Paul W. MacAvoy, *The Effects of the Proposed EchoStar – DIRECTV Merger on Competition in Direct Broadcast Satellite Rural Markets Where Cable Is Not Available* (February 1, 2002) (Exhibit I to the *NRTC Petition*). Using the smallest geographic unit available (*i.e.* Census Blocks), Dr. MacAvoy identified 14 large regions of the country containing contiguous Census Block regions that were *not* passed by cable. Ex Parte Reply to Opposition of the NRTC, *In the Matter of EchoStar Communications Corporation, General Motors Corporation and Hughes Electronics Corporation*, CS Docket No. 01-348 (submitted April 4, 2002).

<sup>25</sup> The Commission concluded in its *HDO*, that in order to gauge the level of competition in the MVPD market, it would need to determine the number of households in each of three separate geographic markets: 1) markets not

deployment of high definition TV, video on demand, digital cable and increased channels represents some of the benefits of competition, these benefits may not be reaching up to 23-25 million households. Until the Commission accurately determines the number of homes passed by cable, its Cable Competition reports will never reflect the true state of MVPD competition in rural America.

**Respectfully submitted,**

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served by any cable operator; 2) markets served by low-capacity cable systems (*i.e.* analog); and 3) markets served by high-capacity cable systems (*i.e.* digital). *HDO*, ¶125.

## CERTIFICATE OF SERVICE

I, HEREBY CERTIFY that on this 26<sup>th</sup> day of September, 2003, a true and correct copy of the foregoing Reply Comments of the National Rural Telecommunications Cooperative in the Matter of the Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming (03-172) was submitted electronically to the Federal Communications Commission, and served via electronic mail upon the following:

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