

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of:

Rainbow DBS Company LLC, Assignor

and

EchoStar Satellite L.L.C., Assignee

Consolidated Application for Consent to  
Assignment of Space and Earth Station Licenses,  
and Related Special Temporary Authorization

IB Docket No. 05-72

Call Signs: DBS 8701 and E020248

IB File No. SAT-ASG-20050128-00017:

IB File No. SES-ASG-20050131-00117:

IB File Nos. SAT-STA-20030623-00122;  
SAT-STA-20040319-00081; and SAT-  
STA-20040924-00191

**THE ASSOCIATION OF CONSUMERS  
TO PRESERVE AND PROMOTE DBS COMPETITION  
REPLY TO OPPOSITION TO JOINT PETITION TO DENY**

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The Association of Consumers to Preserve and Promote DBS Competition (the “Association”) hereby submits its Reply to the Opposition to Joint Petition to Deny filed by EchoStar Satellite L.L.C. (“EchoStar”) and Rainbow DBS Company LLC (“Rainbow DBS”) (collectively, the “Applicants”) in the above-referenced proceeding.

The purpose of this filing is to address certain allegations made by the Applicants in their Opposition to Joint Petition to Deny (“Opposition”) regarding the Association. Specifically, the Association welcomes this opportunity to rebut the assertion that it is “a mere fiction.” It also will address the claim that the Association lacks the standing necessary to participate in this proceeding.

First, the Association clearly does exist. It is an unincorporated non-profit association formed under Delaware law and its web site can be found at <http://www.savedbscompetition.org>. The Association has more than 200 members representing 37 states. It is comprised of DBS subscribers, including, but not limited to, subscribers to the VOOM service. The Association

believes, as does the FCC, that greater competition between facilities-based DBS providers will benefit all DBS subscribers through “such public benefits as greater price competition, additional new services, and increased technological innovation.”<sup>1</sup>

The Association clearly has the standing necessary to file a petition to deny in this proceeding as a representative group of consumers of DBS services who would suffer direct harm if this transaction is approved. Such harm likely would include decreased price competition, fewer new services (including less high-definition programming), and less technological innovation. Indeed, the competitive impact of the proposed transaction logically would be to eliminate even the *mere possibility* that a third viable facilities-based DBS provider might someday emerge.<sup>2</sup>

The longstanding right of viewers/listeners to participate in the FCC’s processes, first articulated in *Office of Communication of the United Church of Christ v. FCC*,<sup>3</sup> has been extended by the Commission beyond the broadcast context to include cable and DBS.<sup>4</sup> Moreover, the Commission expressly has chosen to forego in the DBS context its traditional method of addressing ownership consolidation concerns through the notice-and-comment rulemaking process. Instead, it has opted to analyze issues involving the distribution of DBS

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<sup>1</sup> *Auction of Direct Broadcast Satellite Licenses, AUC-03-52*, Order, 19 FCC Rcd 23,849, 23,860 (¶ 23) (2004).

<sup>2</sup> *See generally id.* at 23,859 (¶ 21) (discussing how “[o]pportunities for the development of an additional DBS competitor are limited”).

<sup>3</sup> 359 F.2d 994 (D.C. Cir. 1966).

<sup>4</sup> *See, e.g., MCI Telecomms. Corp.*, Order and Authorization, 16 FCC Rcd. 21608, 21624 (1999) (an assignment involving DBS licenses in which the FCC concluded that because the petitioner was not a member of the viewing public it could not “avail itself of the expansion of standing to the consuming public under *Office of Communication of the United Church of Christ v. FCC*”); *Focus Cable of Oakland*, Memorandum Opinion and Order, 46 F.C.C.2d 112, 114 (1974) (“The Commission has granted standing in broadcast matters to representatives of a station's listening and viewing audience, and a similar policy is recognized for cable television.”).

spectrum on a case-by-case basis in the context of specific assignment, transfer and auction proceedings.<sup>5</sup> Because the FCC does not establish its policies regarding DBS ownership concentration through the rulemaking process, in which members of the viewing public without question have the right to participate,<sup>6</sup> there can be no doubt that the Association has standing in the instant proceeding. For if it did not, then DBS subscribers effectively would be denied any opportunity whatsoever to participate in the formulation of agency policy with regard to ownership consolidation in the DBS sphere. Such a result clearly would be inconsistent with the public interest.

Finally, the Association would like to emphasize that its members certainly are not alone in their concerns about the impact that approval of the proposed transaction would have on the competitive DBS landscape. Indeed, over 250 individuals not affiliated with the Association have filed comments in this proceeding, an overwhelming majority of which urge the Commission to deny the instant application.

Thus, as the above facts demonstrate, and contrary to the assertions made by the Applicants in their Opposition, the Association exists and has standing to participate in this proceeding.

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<sup>5</sup> See Joint Petition to Deny at 5-7.

<sup>6</sup> *ACLU v. FCC*, 823 F.2d 1554, 1581 (D.C. Cir. 1987) ("Notice and comment rulemaking procedures obligate the FCC to respond to all significant comments, for 'the opportunity to comment is meaningless unless the agency responds to significant points raised by the public.' (quoting *Home Box Office, Inc. v. FCC*, 185 U.S. App. D.C. 142, 567 F.2d 9, 35-36 (D.C. Cir. 1977)) (citation omitted).

Respectfully submitted,

THE ASSOCIATION OF CONSUMERS TO PRESERVE  
AND PROMOTE DBS COMPETITION

By:   
Jerome J. Sandler  
President  
2893 Glenora Lane  
Rockville, Maryland 20850

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**DECLARATION OF JEROME J. SANDLER**

I, Jerome J. Sandler, declare under penalty of perjury under the laws of the United States that the foregoing is true and correct to the best of my knowledge, information, and belief.

Executed on April 18, 2005.

  
Jerome J. Sandler  
President

The Association of Consumers to Preserve and  
Promote DBS Competition