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Via HAND DELIVERY

January 25, 2006

Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> St., S.W.  
Washington, D.C. 20554

**RECEIVED**

JAN 25 2006

Federal Communications Commission  
Office of Secretary

**REDACTED – FOR PUBLIC INSPECTION**

Re: Proposed Acquisition of Adelphia Cable Systems by Comcast and Time Warner Cable  
*MB Docket No. 05-192*

Dear Ms. Dortch:

EchoStar Satellite L.L.C. ("EchoStar") is hereby submitting two copies of a redacted version of "Highly Confidential" submission that is being filed separately with the Commission today,<sup>1</sup> as required by the Second Protective Order in this proceeding. See DA 05-3226, at ¶ 8 (rel. Dec. 21, 2005).

Respectfully submitted,

A handwritten signature in black ink, appearing to read "David R. Goodfriend".

David Goodfriend  
Director of Business Development  
EchoStar Satellite L.L.C.

No. of Copies rec'd 0+1  
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<sup>1</sup> See "Highly Confidential" Letter from David K. Moskowitz, Executive Vice President and General Counsel, EchoStar Satellite L.L.C. to Marlene H. Dortch, Secretary, FCC, filed in MB Docket No. 05-192 (filed Jan. 25, 2005).

Marlene H. Dortch  
January 25, 2006  
Page 2 of 2

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cc:

Julie Salovaara  
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December 15, 2003

Via ELECTRONIC FILING

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

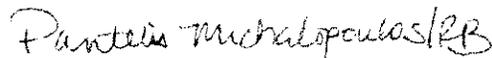
**Re: Ex Parte** – *Consolidated Application of General Motors Corporation, Hughes Electronics Corporation and The News Corporation Limited for Authority to Transfer Control*, MB Docket No. 03-124

Dear Ms. Dortch:

Enclosed for filing in the above-referenced matter is an ex parte submission of EchoStar Satellite Corporation. In accordance with the Second Protective Order, DA 03-2376, released on July 22, 2003 in this proceeding, a copy of this redacted filing is being provided to the Secretary's office. The Highly Confidential version of the submission is being filed under separate cover.

If you have questions regarding this filing, please contact us.

Respectfully submitted,



Pantelis Michalopoulos  
Rhonda M. Bolton

*Counsel for EchoStar Satellite Corporation*

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**REDACTED – FOR PUBLIC INSPECTION**

**Re: Ex Parte – Consolidated Application of General Motors Corporation, Hughes Electronics Corporation and The News Corporation Limited for Authority to Transfer Control, MB Docket No. 03-124**

Dear Ms. Dortch:

EchoStar Satellite Corporation (“EchoStar”) hereby responds to an ex parte submission made on December 10, 2003 by The News Corporation (“News Corp.”),<sup>1</sup> one of the applicants in the above-captioned proceeding. In that submission, News Corp. addresses the possibility that approval of the merger application may be conditioned on an arbitration requirement. *See also* Paul Davidson, “Conditions Possible on News Corp., DirecTV Deal,” USA Today, Nov. 19, 2003. Under that requirement, News Corp. would reportedly have to enter into binding arbitration with multichannel video programming distributors (“MVPDs”) when an agreement cannot be reached between these parties for the price or terms of regional sports and local network programming. News Corp., however, argues that the Commission “should not adopt a condition that would compel the Fox regional sports networks to continue providing their signals to cable operators even in the absence of a contractual agreement between the parties.”<sup>2</sup> In EchoStar’s view, an arbitration condition would lack teeth if it did not include a requirement that MVPDs be allowed to continue carrying the programming in question while the dispute is arbitrated.

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<sup>1</sup> See Letter from William M. Wiltshire, Harris, Wiltshire & Grannis LLP, to Marlene H. Dortch, Federal Communications Commission (Dec. 10, 2003) and Attachment (“News Corp. Letter”).

<sup>2</sup> News Corp. Letter at 1.

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The reason for this requirement is simple. The absence of regional sports or the local network station from an MVPD's package, even for a short period of time, has a debilitating effect on that distributor's ability to compete in the region in question. This means that most of the harm emanating from the carriage dispute will already have been done if News Corp. is allowed to withhold the programming during arbitration of the dispute, notwithstanding the result of the arbitration. Even if the distributor were to "win," the benefit that the Commission might hope to secure by imposing the arbitration condition in the first place would be totally vitiated. The distributor would have lost existing subscribers, potential new subscribers, and would have suffered a serious reputational blow. All of these losses would be irreparable – the subscribers who departed or chose another distributor would almost certainly not come back when the programming returns. In addition, because of the flight of sports fans, by the time the distributor is able to resume carriage the remaining subscriber base would consist of consumers with little or no interest in professional sports, meaning that they would be saddled with the cost of programming they do not care for.

An arbitration condition without a continuing carriage requirement would make arbitration an alternative that would be as tempting as, or even more tempting than, an outright denial of the programming if the condition did not exist. As EchoStar and others have pointed out in this proceeding, News Corp.'s stake in DIRECTV would give it the incentive to foreclose DIRECTV's competitors from access to the FOX programming, allowing DIRECTV to win subscribers. A temporary foreclosure could achieve the best of all worlds for News Corp., since it would satisfy both that incentive and its interest in continuing to receive programming revenues. This would be so especially because News Corp. could choose strategically the timing of the foreclosure to coincide with important games. News Corp. would thus be able to precipitate the arbitration at a critical time of its choosing, inflict most of the damage possible from lack of carriage during its pendency, and then start receiving revenue for the programming again if it loses – a true win-win.<sup>3</sup> The Commission should avoid a condition so crafted as to allow the same, or even worse, anti-competitive behavior as its absence, and should therefore impose the continuing carriage requirement.

This is not an academic issue, and News Corp. is completely off the mark in its attempt to minimize the harm to the MVPD by dismissing it as no more than "customer

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<sup>3</sup> In arguing that "Fox is likely to suffer significantly greater financial losses than the MVPD if the RSN signal is not carried," *see* News Corp. Letter, Attachment at 1, News Corp. disregards a key difference: its losses can be temporary if the MVPD wins the arbitration, while, as mentioned above, the subscribers lost by the MVPD will almost certainly not come back. News Corp.'s submission is also unconvincing in differentiating RSNs from its broadcast programming, *see id.* News Corp. submits no evidence whatsoever that it has any less power with respect to RSNs than it has with respect to its broadcast programming. Such a differential in leverage should be the only plausible basis for a difference in treatment.

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annoyance.”<sup>4</sup> Others, including not only commenters in this proceeding but DIRECTV itself in its complaint against Comcast’s conduct in Philadelphia, have already supplied real-world evidence of the impact on a distributor from the unavailability of must-have programming such as FOX’s, which is in fact exponentially greater than customer annoyance.<sup>5</sup> But EchoStar’s own experience also highlights graphically the effect that the lack of such key programming has had on EchoStar’s competitiveness – loss of existing subscribers, loss of prospective subscribers, loss of reputation or, in DIRECTV’s own words, the complete and deliberate disenfranchisement of its subscribers.<sup>6</sup> Philadelphia and New York are two examples, one of a case where EchoStar never had access to professional sports from the beginning, and one of a case where EchoStar had to discontinue carriage of a key subset of games. EchoStar hereby provides evidence of the damage inflicted on itself and its subscribers in these two cases, including the panicked calls and pleas for help that it regularly receives from retailers in the affected areas, reporting the stream of complaints from the customers themselves.

***Impact from denial of RSNs.*** In Philadelphia, Comcast has been able to deny EchoStar (and DIRECTV) access to the regional sports that it controls by transmitting the programming terrestrially to its own headends and thereby avoiding the exclusivity prohibition of the Communications Act. The result? Almost 190,000 subscribers lost. EchoStar has estimated this loss by comparing its penetration in the Philadelphia DMA, which was % as of November 2003, to the average penetration in other DMAs where EchoStar has local-into-local service<sup>7</sup> (as in Philadelphia) but also carries professional sports – about % at the same point in time. The loss of about % of the expected penetration rate,

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<sup>4</sup> *Id.*

<sup>5</sup> According to one survey, between 40 and 58 percent of cable subscribers would be less likely to subscribe to an MVPD provider if it lacked local sports; an additional 12 percent of subscribers indicated that they were unsure whether the absence of local sports programming would influence their decision to subscribe to an MVPD provider. See Letter from Kathy Cooper and L. Elise Dieterich to Marlene Dortch, *Ex Parte Notice*, MB Docket No. 03-124 (dated October 24, 2003) at 4-5. Cablevision recently supplied additional persuasive proof in connection with local network programming – a study of a 2000 retransmission consent dispute in Houston between Disney and Time Warner that resulted in Time Warner losing the ABC affiliate for nearly two days. See *Ex Parte* Letter from Tara Corvo, Esq., Mintz, Levin, Cohn, Ferris, Glovsky and Popeo PC, to Marlene Dortch, FCC (dated Nov. 20, 2003). The study revealed that Time Warner’s loss of critical programming resulted in a significant jump in subscriber growth for Time Warner’s competitors, including DIRECTV.

<sup>6</sup> *DIRECTV, Inc. v. Comcast Corp. et al.*, File No. CSR-5112-P, Reply of DIRECTV, Inc. (filed Nov. 13, 1997) (“DIRECTV Reply”) at 12-13 (DIRECTV’s “subscribers have been completely and deliberately disenfranchised.”).

<sup>7</sup> The relevant calculations are set forth in more detail in Exhibit 1.

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applied to the Philadelphia DMA population of 2.8 million television households points to a loss of \_\_\_\_\_ subscribers.

Consistent with these results, the econometric analysis conducted on behalf of EchoStar by Robert Willig, Professor of Economics and Public Affairs at Princeton University, and Jonathan Orszag, the managing director of Competition Policy Associates, estimates that EchoStar's market share in the Philadelphia Designated Market Area in July 2003 was about \_\_\_\_\_ % of what would be expected given Philadelphia's other market characteristics. The analysis suggests that EchoStar may have foregone irreparably \_\_\_\_\_ of the potential subscribers than it would otherwise have been able to secure in the Philadelphia DMA.

The Willig/Orszag analysis also econometrically estimated that Comcast's prices for the expanded basic tier in Philadelphia were, on average, between \$3.75 per month and \$7.47 per month higher than expected, after controlling for a variety of variables (such as demographic data, the number of channels in use, the number of premium channels available, etc.). These higher cable prices are yet another indication of EchoStar's (and DIRECTV's) reduced competitive appeal in Philadelphia.

The New York YES Network, which shows New York Yankees as well as New Jersey Nets games, is another telling example. Before the 2002 baseball season, DIRECTV reached an agreement with the YES Network to carry the channel. EchoStar and Cablevision, on the other hand, were unable to reach agreements with the YES Network before opening day. The result? A loss of about \_\_\_\_\_ subscribers and \_\_\_\_\_ subscribers for each of the 2002 and 2003 baseball seasons, during which EchoStar did not carry the network.<sup>8</sup> Specifically, EchoStar's subscriber "churn" for each of the 2002 and 2003 seasons in the New York DMA was about \_\_\_\_\_ % higher than it had been during the 2001 season, when EchoStar had carried the games. The monthly churn, which had been about \_\_\_\_\_ subscribers a month during the 2001 season, increased to almost \_\_\_\_\_ a month during each of the 2002 and 2003 seasons, resulting in an estimate of almost 50,000 subscribers (\_\_\_\_\_ and \_\_\_\_\_ respectively for each of the two seasons) lost due to the lack of the Yankees games. Stated in terms of a percentage penetration loss, EchoStar lost \_\_\_\_\_ % or more in market share in each of the two seasons in the New York DMA due to the lack of baseball games alone. And, since the basketball and baseball seasons largely do not coincide, this percentage does not even take into account additional subscribers that EchoStar has lost because of its inability to carry the New Jersey Nets games available on YES.

The Willig/Orszag econometric analysis of the effect of the inability to carry YES on EchoStar's subscriber growth also showed that many existing (or prospective) EchoStar subscribers appeared to have chosen another MVPD provider because EchoStar did not carry the YES Network. Specifically, EchoStar's penetration rate (relative to predicted values) began to decline sharply after March 2002 and began to recover slightly after September 2002 – two

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<sup>8</sup> See Exhibit 1.

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months that coincide with the beginning and the end of the 2002 baseball season, respectively. In the period between March 2002 and July 2003, EchoStar has experienced average monthly subscriber growth of only % in the New York DMA, or about the average % growth rate in DMAs with local-into-local service. One area retailer's sales were reportedly down % from normal levels due to the lack of YES. Of course, the impact of losing hockey, basketball, football and other regional sports programming, rather than one or two sports alone, would obviously cause the harm to be ever greater. Again, the benefits to its DIRECTV affiliate would create a foreclosure incentive for FOX, the owner of the programming, further intensifying the competitive harm to EchoStar.

**Retailer and customer complaints.** But perhaps even more telling than the statistics is the testimony of EchoStar's retailers, who must monitor the attractiveness of EchoStar's product day to day and can fully grasp the extent of the problems resulting from the absence of that key programming. In Philadelphia and New York, as well as in Cleveland where EchoStar did not have access to many of the Indians baseball games for the 2003 baseball season, the lack of regional sports has resulted in a veritable avalanche of letters and e-mail messages from irate or disappointed customers and retailers alike.<sup>9</sup> One dealer in Cleveland complained that the "majority of callers" to a pre-game show "referred to the Dish Network problem stating they will drop Dish and go with DIRECTV or cable." Another dealer, from the New Jersey area, reported his concern with the "future viability" of EchoStar's service in the area in light of the unavailability of the YES network. "I also fear," this dealer concluded, that "it will greatly impact our ability to sign on new subscribers, putting us in a situation similar to the Comcast conflict in Philadelphia." A third retailer, from New York, wrote: "Without the Yankees we are doomed." A fourth, again in Cleveland, reported that "[s]ales for Dish have become 'non-existent' as a result of the lack of many Indians games." Yet another one similarly sounded the alarm bell:

Please help! Since Dishnet work has decided to only carry 1/2 the Indians games we have been receiving up to 30 calls a day from upset customers who are telling us (IF THEY CAN'T WATCH THE INDIANS THEY WANT US TO PULL THERE SYSTEM) they will go to CABLE or DIRECT (who by the way can and are offering all the games.

at 30 calls a day it won't be long before we have no customers left. Cleveland people LOVE THEIR TEAMS

And a dealer from Philadelphia estimated "that 25% of our calls are not converted to sales because of the lack of this channel" [Comcast SportsNet]. Of course, perhaps the most

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<sup>9</sup> See, generally, Exhibit 2 for the e-mails referred to in the text. The messages have been redacted to remove the names and identifying information of EchoStar subscribers and dealers, as well as irrelevant information.

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eloquent testimonial of all is provided by the messages from EchoStar's customers explaining in no uncertain terms that they will cancel their subscriptions if EchoStar cannot carry their favorite teams' games.

In fact, evidence submitted by DIRECTV itself, and messages from its own subscribers, is exactly to the same effect. As a DIRECTV officer testified to Congress:

Comcast's action has disenfranchised tens of thousands of Philadelphia-area DIRECTV subscribers and hundreds of thousands of other DIRECTV subscribers who enjoy out-of-market sports. These subscribers, many of whom have contacted us over the course of the last 30 days, are angry and find it inexplicable that the new owners of the 76ers and Flyers have chosen to preclude them from continuing to watch those teams' games.<sup>10</sup>

And DIRECTV too submitted to the Commission a sampling from the "more than 2100" messages from disenfranchised Philadelphia subscribers it had received, expressing "extreme disappointment," "shock and outrage" and feelings of being "betrayed."<sup>11</sup> In the words of one DIRECTV subscriber, reported by DIRECTV, "it seems that by denying the channel to the DIRECTV audience, they [Comcast] are attempting to strong arm DIRECTV subscribers and DSS owners into purchasing cable service."<sup>12</sup>

***Impact from denial of network programming.*** Finally, Professor Willig and Dr. Orszag have also econometrically analyzed the impact from the lack of one local network station on EchoStar's effectiveness in a particular region. To do so, they identified the Designated Market Areas ("DMAs") in which EchoStar offered its local service with the full package of the four major local channels (i.e., ABC, CBS, NBC, and FOX) and the DMAs in which EchoStar offered its local service without at least one of the four major broadcast channels.<sup>13</sup> They found

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<sup>10</sup> Testimony of Lawrence N. Chapman, Executive Vice President, DIRECTV, Inc. on Video Competition: Access to Programming before the Subcommittee on Telecommunications, Trade and Consumer Protection, U.S. House of Representatives (Oct. 30, 1997) at 6.

<sup>11</sup> See DIRECTV Reply at 2 and Exhibit 1.

<sup>12</sup> *Id.* at 17 (footnote omitted).

<sup>13</sup> Since first introducing local-into-local service, EchoStar has offered local-into-local service without one or two major broadcast channels 17 different times. (On a total of 30 occasions, EchoStar did not offer a major broadcast channel for any period of time in a DMA. Since some of these incidents were short lived (e.g., a few days), Professor Willig and Dr. Orszag focused on the 17 incidents that lasted at least a full calendar month.) EchoStar offered local service without FOX seven different times (which is more than any of the other major networks).

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robust empirical evidence that when EchoStar offered local-into-local service in a DMA *without* one of the four major networks (ABC, NBC, CBS, or FOX), the omission significantly reduced the subscriber acquisition rate and the market share gains from offering local programming. Specifically, not offering FOX cut EchoStar's subscriber lift from local-into-local service by roughly     percent.<sup>14</sup> And the reduction in subscriber lift does not represent the full cost to EchoStar from not offering a full complement of major broadcast channels. EchoStar also discounts its local programming package when it offers local service without a major broadcast channel. EchoStar, therefore, loses some net revenues from the *existing* subscribers who still "take" local service and from the subscribers who newly subscribed to EchoStar because of the local channels other than FOX.

In sum, an arbitration condition can only be effective if it alleviates the concern with the market power that News Corp. has over regional sports and network programming and with the incentives that this transaction will give News Corp. But an arbitration condition without a continuing carriage requirement would allow News Corp. to exercise that power to inflict the harm detailed above, and do so at strategically chosen times for maximum benefit. Because there is no question that MVPDs sustain significant and irreparable subscriber and reputation losses when must-have programming is withdrawn during carriage disputes, EchoStar urges the Commission to require that carriage continue if arbitration of these disputes is required.<sup>15</sup> In the absence of such a requirement, arbitration will be of little benefit because the damage will already have been done.

Respectfully submitted,

*Pantelis Michalopoulos / RB*

Pantelis Michalopoulos  
Rhonda M. Bolton  
*Counsel for EchoStar Satellite Corporation*

cc: Marcia Glauberman  
Linda Senecal

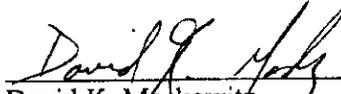
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<sup>14</sup> In the average DMA where EchoStar offered local service with all four major networks, its market penetration rate was     percentage points higher one year later. In contrast, when EchoStar introduced local-into-local service without the FOX network, its penetration rate was only     percentage points higher one year later.

<sup>15</sup> The Commission should also carefully craft the arbitration condition to avoid evasion, for example by News Corp. restructuring its RSN offerings.

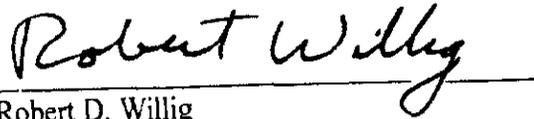
## DECLARATION

I, David K. Moskowitz, hereby declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information and belief.

  
\_\_\_\_\_  
David K. Moskowitz  
Senior Vice President and General Counsel  
**EchoStar Satellite Corporation**  
5701 South Santa Fe  
Littleton, CO 80120  
(303) 723-1000

Dated: December 15, 2003

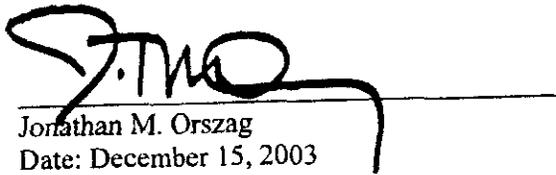
I declare that the description of our econometric analyses is true and correct:



Robert D. Willig

Date: December 15, 2003

I declare that the description of our econometric analyses is true and correct:



Jonathan M. Orszag

Date: December 15, 2003

**EXHIBIT 1**

**EXHIBIT 1**

**REDACTED**

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**EXHIBIT 2**

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Sent: Monday, April 14, 2003 6:42 PM

We must balance the cost of programming vs the needs of our entire customer base. Unfortunately the regional sports network is asking for an additional charge for all of our existing customers in the region if we want to provide the additional games. We would be happy to offer the games as an option with an additional charge but at this time, they will not provide us the option. Perhaps this will change in the future. Thanks for your understanding and continued support.

Sent: Fri Apr 11 13:20:23 2003

Mr. Ergan,

I have been a Dish Network dealer since May 1996. I have serviced my customers faithfully do to service is my business. I'm concerned with the Dish Network policy of only broadcasting half of the Cleveland Indians games. I believe 75 games will not be on Dish Network but on cable and Direct TV. Only one game was missed and local channel 6 WJW Thursday broadcast a piece for 5 min. about how Dish Network does not provide proper programming to their customers. Saturday radio station WWWE 1100 broadcast a pre-game show and the majority of callers referred to the dish network problem stating they will drop Dish and go with Direct TV or cable. Just so you know the press is bad on Dish Network in the Cleveland and northern Ohio area due to this. I have not been able to install systems since the news hit Thursday. That means 6 customers that were ready for Dish CANCELLED and went to Direct TV or CABLE. I have had a total of 16 phone calls and 8 e-mails concerning current customers asking when they activated and how to switch. I do not do Direct TV. Each customer takes this line "My Dish bill is high enough, why don't they pay the price because I am already paying too much" . "Drop the crap channels and give me my baseball".

Allot of customers state that now that they changed from cable to dish that their programming bill is higher than cable for the same channels! And I agree Top 100 + locals = \$39.98 on 1 recv, \$44.98 on two. Cable supply's the entire house for \$35.00. Mr. Ergan, I do not want this to affect my churn rate I am and always have been White or Green. This is not helping Dish Network, or mostly it is not helping my and your customers or future customers. As I write this I'm watching the Cleveland Indians HOME OPENER on CABLE next to my Dish Network monitor on Fox Ohio with a CHEERLEADING CHAMPIONSHIP on it. I am glad I'm treed in I have to keep cable at home lucky for me. I will see ALL the Cleveland Indians games with no price increase and if they had one I would pay it. Please reply. Thank you for your attention on this matter,

Sent: Wednesday, February 06, 2002 10:30 PM

I would just like to pass on my concern for the future viability of our service in the NJ market. As of today DirecTV joined the ranks of those that will carry YES, the YankeeNets, which will carry The NY Yankees, New Jersey Nets and New Jersey Devils. My fear is that without this service in our regional lineup we will lose a significant percentage of our customer base once their contracts are up. Consumers will convert to DirecTV, or even go back to cable for access to these events, leaving us with years of hard work and little to show. I also fear it will greatly impact our ability to sign on new subscribers, putting us in a situation similar to the Comcast conflict in Philadelphia.

With the NY market being the #1 DMA in the country, I certainly do not want to see DISH Network lose hard earned market share. It will be a tremendous setback to our marketing efforts. I know cost is always a consideration, but how much of the market will we be willing to give up to save a few cents per subscriber? Of course I realize the channel is more than a few pennies, but MSG can no longer be worth as much without these three teams.

I hope this matter is resolved in a positive and expedient manner, and with terms acceptable to DISH.

Thanks for listening,

Sent: Saturday, January 19, 2002 3:01 PM

I know you have heard from me before about this "YES" channel, and unfortunately you will hear from me again.

But I'm afraid I cannot even begin to stress the importance of this channel.

There are two scenario's:

1. the local cable company decides to carry it and "Dishnetwork" does not. In this case I fear we will be heading for the hills. Not only will current subscribers be deserting, but it would be almost impossible to get new customers. Without the "Yankees" we are doomed.

2. the local cable company decides not to carry this channel and "Dishnetwork" does, we will go thru this area like "Grant took Richmond". This of course would be the best possible scenario.

I urge you to really get involved with this channel and ensure that it gets carried on "Dishnetwork".

Thanks again for your attention.

**Sent:** Monday, November 18, 2002 2:40 PM

unfortunately, we are unable to get away from the YES network dilemma.

*On saturday, I was in the showroom myself and had the opportunity to talk to five customers.*

*Out of the five, I sold three customers.....one a 3 recvr system and the other (2) 4 recvr.*

*2 customers were taking top 100, locals,HBO, while one was taking America,s everything.*

*Everything was fine until the question of the YES network was raised. I was asked if I would be willing to state on the work order, that in the event we did not have the network come Baseball season, we would remove the system without any recourse to the customer. At this point there was no more to be said.*

*It is my guess that these customers went and purchased DIRECTV, because it came up in the conversation.*

*Is this the way that things are going to continue? Must we continue to "buck" the trend, in a manner that makes no sense to either of us.*

*I really do not understand the problem. Surely the data suggests that a different course of action is necessary. If DIRECTV were able to capture 80,000 customers in this region this past season, than that should make everyone "mad as hell".*

*Let's get back to work, and put pressure on the people in programming to get this deal done.*

Thanks for your attention

**Sent:** Tuesday, April 15, 2003 2:58 PM

I am sending this e-mail regarding the situation we have with Fox programming and the Indian's games. We are experiencing a drastic, negative impact on our business. Sales for Dish have become "non-existent"!

We are receiving way too many calls requesting that service be disconnected and can we switch service to Direct TV. To date, we have maintained an excellent retention record - but, I am sorry to say, that is about to change. I am very concerned about this situation and I hope something is being done to rectify it.

We have been monitoring incoming calls and to date we have received 117 of them and this total does not include the calls we received before we started counting.

We of course have recommended to our customers a reasonable "wait time" before disconnecting.

We also have people "on hold" waiting for installations - after they see the outcome of this situation.

This is a touchy one. Please advise us as soon as possible.

**Sent:** Tuesday, April 15, 2003 2:28 PM

In the last 2 weeks we have recieved aprox. 20 calls concerning the lack of Indians game on Fox Sports Ohio. Out of those 20 calls 2 people have switched to DirecTV and 8 other are ready to switch if nothing is done to solve this problem they are going to go to Cable or DirecTV.

We have been telling our customers to wait a month to see what happens because I thought it would get resloved.

One of the big problems is that Dish said they were going to put a list of televised games on there website and Never did and you list the games in the onscreen program guide and change it 10 min before game time ( I know this for a fact becuase it happened to me for the last 2 thursdays.).