

Comments Regarding the EchoStar / Direct TV Merger

I am opposed to the EchoStar / Direct TV merger because it may aid and perpetuate discrimination on the basis of disability. The circumstances of this merger present a historic opportunity for the FCC to uphold the mandate of Congress to end discrimination.

For years, Echostar has greatly benefited from the opportunities that Congress has provided in funding our space program. And Echostar is highly dependent on numerous federal agencies, such as the FCC, to even stay in business. As a matter of good corporate citizenship and good business practice, no company should be more highly motivated to assure employment opportunities for all Americans.

But for years, the Equal Employment Opportunity Commission (EEOC) has received complaints that EchoStar discriminates on the basis of disability in employment practices.

In March 2002, the EEOC filed suit against EchoStar. This is big news. According to EEOC litigation statistics, even though the EEOC received over 16,000 complaints of discrimination on the basis of disability in 2001, the EEOC filed only 62 suits. The EEOC is seldom wrong and does not advance frivolous cases.

The EEOC accused EchoStar of refusing to hire a blind man because of his disability in February 1999. Dale Alton tried to apply for a job as customer service representative after completing a six month full time training course at the Colorado Center for the Blind. A representative of EchoStar's human resources department told him the company did not have adaptive tools that would make it possible for him to do the job.

The EEOC suit alleges EchoStar failed and refused to hire Alton because of his disability, that he was deprived an equal employment opportunity, that the unlawful employment practices were intentional and done with malice or with reckless indifference to his federally protected rights.

Prior to the EEOC suit, the Colorado Civil Rights Division (CCRD) had issued a finding of probable cause against EchoStar in 1999. The EEOC also issued a similar finding in 2000.

Also in 2000, the EEOC received another complaint that another blind applicant for a customer service job was informed that EchoStar was not prepared to accommodate him. The EEOC issued a right to sue letter and a lawsuit is currently proceeding.

The FCC may be unaware of these complaints because discrimination on the basis of disability has never been included in broadcast license policy. Policy has included provisions prohibiting discrimination based on race, color, religion, national origin, or sex, and license holders are regularly required to report EEOC complaints on these basis. Interestingly, the policy may be working as Mayor Wellington Webb of Denver, as spokesperson for the National Conference of Black Mayors said " EchoStar has a proven track record as it relates to communities of color."

Long after the findings of the of the CCRD, the EEOC, and after a suit had been filed, at the time EchoStar announced its mega-merger plans with Direct TV in 2001, these complaints of discrimination were unresolved, EchoStar had no ADA coordinator, had no written policy or procedure for an employee with a disability to request an accommodation, and had not obtained the adaptive software that would allow the visually impaired to work as customer service representatives.

Apparently, since discrimination on the basis of disability was not part of FCC broadcast license policy, EchoStar was unconcerned that these complaints would affect their merger plans. So unconcerned that EchoStar agreed to pay Direct TV \$600 million if the FCC did not approve the deal by January 21, 2003.

EchoStar has created a historic situation for the FCC to decide the public interest versus corporate interest in unprecedented proportions. In the balance are the federally protected rights of over 43 million Americans, America's largest minority, versus \$600 million.

FCC Chairman Powell has said:

"Individuals that operate broadcast facilities pursuant to a license they obtain from the government (in effect from the people of the United States) must do so in the public interest. And, it is our statutory charge to ensure that they do so.

If the public interest means anything at all it cannot possibly tolerate the use of a government license to discriminate against the citizens from whom the license ultimately is derived. Discrimination is an insidious legacy that has unquestionably denied certain citizens equal opportunity to savor the fruits born by this great country. No one is entitled to rewards they did not earn. No one is entitled to jobs for which they are not qualified. But, they are entitled to an equal opportunity to vie for those rewards and to compete for those jobs."

I do not know why the FCC has done nothing about discrimination on the basis of disability in the past, but now is the time to do nothing again. It would be prudent for the FCC to neither approve nor deny the merger, but use its discretion to postpone its decision until it can be certain that it will not be aiding and perpetuating discrimination.

There is no law that says the FCC must approve merger applications within a specified time. In the absence of its own policy, the FCC should wait, with EchoStar, for guidance from government agencies and/or courts established to enforce nondiscrimination laws. This non-action would send a powerful message to all corporations that petition Federal agencies for benefits and services. It would establish a precedent that would further FCC goals and objectives, by encouraging all license holders to be proactive in assuring equal employment opportunities.

Under the terms of this merger agreement, no other Federal agency can have the impact of the FCC. No other Federal agency may ever have this opportunity again. Since EchoStar has put the national spotlight on the FCC and since the FCC absence of policy has contributed to this situation, evasion should not be an option.

Approval of the merger will only say with certainty that the FCC fast track regulatory approval process is a railroad run by corporate interests according to a corporate timetable.