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 Subject: attempt to file comments regarding proposed merger of EchoStar and
 DirecTV (CS Docket No. 01-348)
 From: "Peter J. Brown" <beechhill@acadia.net>
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FEDERAL COMMUNICATIONS COMMISSION
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Marcia:

re: attempt to file comments regarding proposed merger of EchoStar and DirecTV (CS Docket No. 01-348)

Thanks for your help on this. I will continue to attempt to get this logged onto the ECFS, but please stand by. With the deadline fast approaching, I may ask you to forward it if I do not succeed.

Thanks

Peter J. Brown

Public Comment

In the matter of the proposed merger of EchoStar Communications Corporation,
General Motors Corporation, and Hughes Electronics Corporation

re: CS Docket No. 01-348

From

Peter J. Brown
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I strongly oppose this proposed merger on the grounds that the creation of a single DBS service would be detrimental to the interests of rural Americans, and, on the grounds that the FCC has never previously set out to do anything but further the cause of competition in the DBS industry. This has been a consistent and common sense driven course of action at the FCC over the years.

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A series of decisions by the FCC have all underscored the need to sustain and maintain a competitive framework with respect to the satellite TV industry as a whole. Approval of this merger by the FCC would constitute an abandonment of this well designed and otherwise carefully crafted approach to the DBS industry. Further consolidation in the DBS sector is neither a prudent nor a welcome development.

Events surrounding the 110 degree auction in 1996 as well as the later acquisitions of both USSB and Primestar by DirecTV were allowed to proceed on the basis that competition would be enhanced in the process. A DBS industry model consisting of at least two independent and economically viable DBS service providers has always loomed in the background whenever DBS related issues have been on the table at the FCC. At no time was the creation of a single DBS company as the result of FCC decisionmaking held up as an attractive and beneficial objective.

The FCC has never implied in any other FCC proceeding involving DBS related matters that a single DBS company would be the end result. For example, to my knowledge, the FCC never informed any of the parties participating in the events leading up to and including the auction in 1996 involving the DBS spectrum at 110 degrees that a single DBS company, in effect a monopoly, would be the end result of these actions. Nor has any such signal regarding the acceptability of a DBS monopoly been sent by the FCC to the American people on any previous occasion where any large scale transfer of DBS licenses was unfolding such as in the case of the previously mentioned acquisitions of both USSB and Primestar by DirecTV.

There is need to view the DBS industry as part of evolving technology curve in general and not just as part of the trendy broadband revolution. Anyone who argues that rural America will not reap the benefits of broadband due to a slower rollout of two way satellite technology under the existing and competitive DBS framework seems to be suggesting that the development of broadband technology has reached its final objective, and that no further innovation will occur.

Indeed, how can this stance be justified when emerging satellite technologies and services such as Ka-Band which could fundamentally transform the broadband landscape are not even commercialized in North America?

In fact, what exists today in terms of broadband technology represents only the first wave. The rural broadband agenda has only taken shape over the past 5 years. As the broadband curtain is going up, it would be pure folly to turn the lock on millions of rural Americans, thus leaving them in the hands of a single company. Instead, the FCC must maintain its full and undivided commitment to a more stable and progressive broadband agenda based on competition nationwide.

Moving on, the recent antitrust case that was filed by Echostar reinforces the sound nature of the FCC's DBS decisionmaking to date. After all, Echostar is a profitable company today, and its market share has been experiencing steady growth over the past few quarters despite any alleged misbehavior by DirecTV in the DBS marketplace. Despite the alleged attempts by DirecTV to restrict Echostar's sales, among other things, Echostar has

established a very successful track record.

This is a strong statement in itself about how the FCC has correctly structured the DBS market to work to the advantage of the consumer even in suspect circumstances, even if Echostar has now withdrawn this antitrust lawsuit in attempt to mend fences with DirecTV, and set the stage for the completion of this merger.

The message to American consumers from this now defunct Echostar antitrust lawsuit is that further concentration of DBS market power is not a welcome or positive development, and it is something that should be avoided at all costs.

At the same time, the FCC must evaluate Ergen's claim that the DBS industry has failed to act as an inhibiting agent when it comes to the steady stream of cable rate increases. This is a valid claim. However, evidence of any structural deficiencies or disadvantages in the cable sector and of any adverse impacts upon consumers as a result does not in itself validate any attempt to engage in further consolidation of the DBS sector. If the cable industry is operating in a way that is exploiting or otherwise harmful to the interests of American consumers than the FCC is obligated to address and rectify this situation.

Creating a single nationwide DBS service is not a sound or reasonable remedy, and the notion that this merger is being legitimized or somehow gaining traction due to alleged misbehavior or misconduct on the part of the cable industry is unacceptable. Again, the FCC would have never granted permission to DirecTV to acquire the assets of Primestar and USSB, absent Echostar. In case after case, the FCC did what was right in order to strengthen competition in the fast-growing DBS industry.

At the end of the day, this is all about who holds the vast majority of valuable DBS licenses. These are issued and overseen by the FCC acting in turn on behalf of the American people. Company executives in Denver and Detroit must not be allowed to set the wheels in motion for the creation of a DBS monopoly. The FCC along with other federal agencies should maintain a steady course, and do what is necessary to ensure that American consumers have a choice of at least two DBS providers, now and for decades to come.

In a column published by the Rocky Mountain News in September, I appealed to Echostar CEO Charlie Ergen to withdraw his offer. I urged Echostar to put this proposal aside and go back to doing what Echostar has done so superbly in a remarkably short time. I renew this appeal, and urge the FCC to take whatever steps are necessary to terminate this proposed merger.

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