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# United States Senate

WASHINGTON, DC 20510-2603  
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November 28, 2001

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

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Merger  
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Michael K. Powell  
Chairman  
Federal Communications Commission  
445 12th Street S.W.  
Washington, DC 20554

Dear Chairman Powell:

I write to express my concerns with respect to the proposed merger of Echostar and DirecTV, and the resulting impact that this merger may have on both competition and consumer service in the multichannel video distribution industry.

As I understand it, proponents of this merger contend that such a merger would enable Echostar/DirecTV to better compete against cable. I am concerned, however, that the contemplated merger will have the practical effect of leaving many rural areas with only one provider of multichannel video distribution. Further, I am concerned that even though Echostar has committed to "nation-wide pricing" should the proposed merger be approved, customers located outside the top-100 markets will not receive local-to local programming unless they purchase such service from another provider, assuming such service is available. Thus, I encourage the Commission in its review of the proposed merger to examine the actual costs that customers located outside the top-100 markets will have to pay for both the satellite programming and the local-to-local programming and compare those costs to the cost incurred by customers located in the top-100 markets for such services.

Mr. Chairman, as I am sure you are aware, in Montana, roughly 40% of the multichannel video distribution market is served by the two major satellite providers, Echostar and DirecTV. While there has recently developed limited competition to direct-to-the-home ("DTTH") from small, rural cable companies that purchase programming from wholesalers of satellite programming, such competition is in its infancy, and, as such, offers negligible competition to Echstar and DirecTV. Thus, the proposed merger, in effect, contemplates the creation of a monopoly provider for the delivery of multichannel video distribution to these rural customers.

Further, Mr. Chairman, given that the proposed merger will effectively create such a monopoly provider, I am extremely concerned that these customers will not be offered "local-to-local" service. As I understand it, Echostar/DirecTV is pledging that, should the merger be allowed to go forward, the new company will provide local-to-local service in the top 80-100 markets. Unfortunately, that leaves the many media markets below the top-100 (and the roughly 1,000 or so broadcasters who serve these markets), including all media markets in my home state of Montana, left out.

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Finally, Mr. Chairman, I am concerned with respect to the market power that a combined Echostar and DirecTV would have with respect to controlling access to programming, should the merger be approved. The leverage that such an entity would have over small and mid-sized cable companies or even other wholesale providers of video programming is troubling. Therefore, as the program access rules expire next year, I believe that the Congress and FCC should work together to review these rules to decide if the program access rules should be extended to satellite providers.

I look forward to working with you as this proposed merger is reviewed by Congress and the FCC, and I appreciate your attention to this important matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Conrad Burns", written in a cursive style with a long horizontal stroke at the end.

Conrad Burns  
United States Senator