

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

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| <i>In re the Consolidated Application of</i> |) | |
| |) | |
| EchoStar Communications Corporation, |) | |
| General Motors Corporation, |) | |
| Hughes Electronics Corporation, |) | |
| |) | |
| Transferors, |) | |
| |) | |
| and |) | CS Docket No. 01-348 |
| |) | |
| EchoStar Communications Corporation, |) | |
| |) | |
| Transferee, |) | |
| |) | |
| For Authority to Transfer Control |) | |
| <hr style="width: 100%;"/> |) | |

**RESPONSE OF THE
NATIONAL RURAL UTILITIES COOPERATIVE FINANCE CORPORATION**

I. INTRODUCTION

The National Rural Utilities Cooperative Finance Corporation (“CFC”) urges the FCC to focus its review of the proposed merger of Hughes Electronics Corporation (“Hughes”) and EchoStar Communications Corporation (“EchoStar” or “ECC”) on the critical issue in this matter: the effect the merger will have on rural consumers.

CFC fully shares the many concerns expressed by the National Rural Telecommunications Cooperative (“NRTC”) in its petition to deny the proposed merger. The proposed merger of ECC and Hughes would reduce the number of direct broadcast satellite (“DBS”) service providers from two – DIRECTV and EchoStar – to one. It also would consolidate the only two current satellite broadband providers (DIRECWAY and

StarBand) and stifle competition from new Ka-band broadband entrants as well. We urge the FCC to ensure that rural Americans continue to have access to a variety of affordable satellite television services from a diversity of sources, including a not for profit cooperative with its roots in rural America.

CFC is a not-for-profit cooperative whose mission is to provide its member utility systems — through their unified, collective strength —with an assured source of capital, state-of-the-art financial products, and business management services. CFC raises funds primarily through equity investments made by its cooperative utility owners and by raising funds in the capital markets. CFC board members represent both cooperative utility management and directors elected by consumers of local cooperatives.

We believe the FCC must reject the merger in order to ensure that rural Americans continue to receive access to satellite television and broadband services on competitive terms and conditions.

II. RURAL CONSUMERS DEPEND ON DBS FOR MULTICHANNEL VIDEO PROGRAM DISTRIBUTION (MVPD) SERVICES

Using DBS technology, EchoStar and DIRECTV currently compete in delivering a wide variety of information and entertainment programming to rural America. The Satellite Broadcasting and Communications Association (“SBCA”) lists 10 states in which DBS penetration is 27 percent or more – up to as much as 40 percent¹ – compared to a national average DBS penetration of about 18 percent.² The list includes states such

¹ From the SBCA’s Web site, <http://www.sbca.com/mediaguide/factsfigures.htm> (visited January 28, 2002).

² *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming, Eighth Annual Report, (“Video Competition Report”)*, CS Docket Number 99-230, FCC 01-129 (January 14, 2002), at pp 29-30.

as Vermont, Mississippi, Arkansas, and Kentucky, where many small, rural communities often do not have access to competing cable TV services.

As NRTC noted in its petition to deny, up to 25,000,000 million or more rural households do not have access to any type of cable television services.³ As a result, they depend solely on satellite technology to receive a diversity of MVPD services. If the merger of DIRECTV and EchoStar is approved -- and competition between the two is eliminated -- there will be no MVPD alternative for any of these households. All of them will be required to take service from the new DBS for profit monopoly or to do without it.

Additionally, as NRTC noted, "The continued viability of many of the existing rural, analog cable systems is very much in doubt. Many, including EchoStar's investment bank, believe that large numbers of rural cable operators will go out of business if they cannot afford to upgrade to digital and compete with EchoStar and DIRECTV."⁴ With this anticipated reduction in the number of analog cable systems, even fewer rural American households will have access to any type of cable alternative if the merger is approved.⁵

The price impact of the EchoStar/DIRECTV merger on rural Americans will be staggering. Three different expert economists have shown that consumer welfare losses related

³ NRTC Petition to Deny, at pp. 5-20. *See also* Pegasus Communications Petition to Deny, at pp. 2-4; CWA Petition to Deny, at pp. 1-2; NRECA Comments, at pp. 3-5.

⁴ NRTC Petition to Deny, at p. 20. NRTC also pointed out that only digital (not analog) cable is reasonably interchangeable with DBS. *Id.*, at pp. 20-23.

⁵ The American Cable Association, which represents small-market cable operators, predicts: "The proposed DBS monopoly will squeeze out its smaller market cable competitors through a combination of price levels below small cable's costs, bottleneck control of programming, and exploitation of small cable's disparate regulatory burdens. Widespread failure of smaller market cable systems and the concomitant public

to the merger will total \$600-700 million or more every year.⁶

And even if national pricing held down the price impact of the monopoly, rural Americans would still not receive any of the benefits traditionally associated with competition. For instance, as the American Antitrust Institute succinctly stated, " Even if the price is right, to whom is the rural customer supposed to turn when he believes the monopolist's service stinks?"⁷ CFC particularly objects to the proposed merger because the remaining player would be a for profit monopoly whose primary objective is to enhance shareholder value, not to serve the rural consumer.

III. THE PROPOSED MERGER ALSO THREATENS TO ELIMINATE BROADBAND COMPETITION IN RURAL AMERICA

Some rural cooperatives are just beginning to offer high-speed residential Internet service from the two existing Ku-band satellite services – DIRECWAY and StarBand. Hughes owns DIRECWAY. ECC currently controls 32 percent of StarBand, in a partnership with Gilat Satellite Networks Ltd., Microsoft, and ING Furman Selz Investments. Under earlier announced plans, ECC expects to increase its investment and eventually control 60 percent of StarBand.⁸

interest harm are the predictable consequences. American Cable Association Petition to Deny at p. 9.

⁶ NRTC Petition to Deny, Declaration of Dr. Paul W. MacAvoy, pp. 52-53; Pegasus Petition to Deny, Report of Daniel L. Rubinfeld, pp. 14-15, n.59; National Association of Broadcasters Petition to Deny, Declaration of J. Gregory Sidak, pp. 28-30.

⁷ American Antitrust Institute comments at p. 3.

⁸ "EchoStar Completes \$50 Million Investment in StarBand," press release, September 27, 2001, from EchoStar Web site, http://www.corporate-ir.net/ireve/ir_site.zhtml?ticker=dish&script=410&layout=-6&item_id=210123 (visited February 21, 2002).

ECC/Hughes also appears to have an interest in a majority of the companies that actively are working to establish future satellite Internet service in the Ka band. CFC agrees with NRTC, when it states that: “While EchoStar and Hughes are both well positioned to offer broadband service in rural America, an EchoStar/Hughes combination should not be the only player able to operate in a marketplace, especially one that is still in the early stages. Competition must be given a chance.”⁹

In its petition to deny, NRTC pointed out that 30-40 million homes will never be covered by terrestrial broadband services (i.e., cable modem or digital subscriber lines).¹⁰ As with video services, these homes rely on satellite technology to receive any broadband services. Under the proposed merger, their choice will be eliminated.

If the FCC approves the proposed merger, Hughes and EchoStar will control all of the Ku-band satellite broadband offerings and will be poised to dominate the nascent Ka-band market as well. Rural Americans, again, will have no choice in service provider. Further, consumers nationwide who wish to receive combined video and high-speed Internet service by satellite -- a huge competitive advantage for the provider -- will be required to accept bundled service from the new merged entity. No other entity stands ready to offer both services via satellite.

IV. CONCLUSION

Up to 25,000,000 or more rural households have no access to cable television service and must rely upon satellite technology to receive multichannel video programming. Without DIRECTV and EchoStar competing on the basis of service and

⁹ NRTC Petition to Deny at p. 56.

price, all of these households will have no choice but to accept whatever programming and prices the new merged entity decides to provide. Even under the merged entity's promise of "national pricing," experts predict that the consumer welfare loss from the merger will be \$ 600-700 million or more every year.

The same problem exists for broadband. The new merged entity will control access to satellite broadband delivery in the existing Ku-band as well as the developing Ka-band for the 30-40 million households located beyond the reach of terrestrial services (cable modem or DSL). All of these households will be unable to choose from among competing broadband providers based on service, price and a desire to be served by a local community provider. Additionally, the new entity will be the sole provider of bundled multichannel video and broadband satellite services throughout the country.

In light of the above, the proposed merger is clearly inconsistent with the interests of rural America. It should be denied.

Respectfully submitted,

NATIONAL RURAL UTILITIES
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¹⁰ Id, pp. 44-45.

