

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
EchoStar Communications Corporation)
General Motors Corporation)
Hughes Electronics Corporation)
)
For a Transfer of Control)

CS Docket No. 01-348 /

To: Cable Services Bureau

PETITION TO DENY

Eagle III Broadcasting, LLC ("Eagle III"), by counsel, hereby petitions the Commission to deny the December 3, 2001, applications (the "Applications") of EchoStar Communications Corporation, General Motors Corporation and Hughes Electronics Corporation, and their subsidiaries and affiliates ("EchoStar") for consent to a transfer of control of licenses and other authorizations.

EchoStar proposes a merger that would remove DirecTV, the sole competitor to EchoStar's DISH Network satellite television service, from the Direct Broadcast Satellite (DBS) market. As explained below, absent certain conditions, the proposed merger is not consistent with the public interest. Accordingly, the Applications should be denied.

In a December 21, Public Notice (DA 01-3005), the Cable Services Bureau announced that it was consolidating the Applications and that "interested parties" could file comments and petitions to deny. Eagle III is the licensee of a full service commercial television station,

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KKCO, Grand Junction, Colorado. Eagle III is an interested party because EchoStar has a history of disregard for the carriage rights of local television stations such as KKCO, and the proposed transaction would render EchoStar the sole provider of DBS services in the United States.

As one of only two companies providing DBS services in this country, EchoStar has resisted any must carry obligations commiserate with its market power. In smaller markets such as the Grand Junction - Montrose market, EchoStar has refused to carry local stations altogether. Instead, EchoStar offers the signals of the stations in distant markets (such as Denver) to the potential audience for KKCO. At the same time, it advertises deceptively to Grand Junction residents that by becoming customers of the DISH Network they can receive their "local" stations! EchoStar should not be permitted to hold more market power unless and until it demonstrates greater responsibility with the market power it already enjoys.

The difficulties experienced by Eagle III are part of an overall pattern in which EchoStar has displayed a brazen disregard for the plight of local broadcasters, and especially those in smaller markets. In its *Opposition to Petition for Modification or Clarification*, CS Docket No. 00-96 (January 23, 2002), EchoStar chief executive Charles Ergen cited the pending transfer as an excuse for EchoStar's failure to satisfy its existing must carry obligations. "...[I]f and when EchoStar's pending merger with Hughes Electronics is approved," Ergen stated, "EchoStar will have enough capacity to carry all qualified local

stations on the central satellites and will move all local station signals to those central satellites.”

The Commission should view EchoStar’s pledges in the skeptical light that EchoStar’s performance on its past promises has warranted. For example, EchoStar’s current right to broadcast local stations was secured from Congress as part of the Satellite Home Viewers Improvement Act of 1999. EchoStar supposedly accepted a must carry obligation as the price for its local carriage rights. Yet, EchoStar has resisted complying with the Act’s requirements. Only recently, EchoStar has indicated that it will carry the signals of what it perceives as less desirable stations on a separate, secondary satellite, thereby requiring consumers to act affirmatively and request installation of additional equipment just to receive stations EchoStar must by law provide.

EchoStar’s selection of the stations to be placed on its secondary satellites is no accident. EchoStar has placed its choice of local network affiliates on its primary satellites while other stations are placed on satellites that require specialized receive equipment. EchoStar is therefore not treating its two slates of local channels equally.

EchoStar’s own employees have effectively admitted that some neglected channels are left out of the picture unless the customer takes the initiative. As reported in Multichannel News (December 24, 2001), EchoStar spokesman Marc Lumpkin has said that “If the customers want those more obscure local channels, we will provide them the second dish and the installation at no charge.” EchoStar’s placement of some stations on a secondary

satellite, together with the inability of the vast majority of its customers to view this satellite, effectively renders the compulsory carriage provisions of the law meaningless as to those stations.

The Commission's above-referenced Public Notice quoted the EchoStar Applications as arguing that "New EchoStar will more efficiently use spectrum to offer more local-into-local programming, provide a competitive alternative to cable television, offer more broadband services, provide better service to rural and outlying areas at nationally standardized prices, and offer more niche, educational and high-definition television programming." Yet, EchoStar has not shown any inclination to do any of these things previously. Rather than making niche programming available, it has characterized some programming as "obscure" and has relegated it to carriage on satellites that are not available to the vast majority of its viewers.

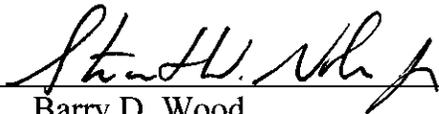
EchoStar has fought against any must carry obligation with great vigor, in Congress, at the Commission, and in the courts. EchoStar has obviously hoped that it would be allowed to continue to "cherry pick" the stations it carries. EchoStar clearly made no preparations to carry broadcasters in smaller markets by the statutory deadline for carrying local stations.

In view of the foregoing, granting the Applications would undermine the public interest in strong local television service. At the very least, the Commission should condition approval of the Applications on the mandatory, non-discriminatory carriage of all local stations by EchoStar, including smaller markets like Grand Junction. Increasing EchoStar's

market power without such conditions is contrary to the public interest. Accordingly, the Applications should be denied.

Respectfully submitted,

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Dated: February 4, 2002

CERTIFICATE OF SERVICE

I, Kerstin Koops Budlong, hereby certify that on this date I caused the foregoing "Petition to Deny" to be served by U.S. first class mail, postage prepaid, on the following:

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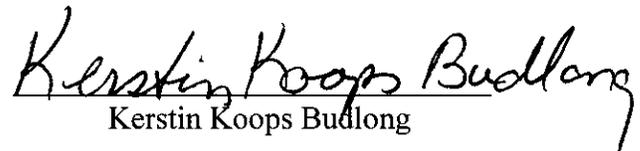
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