

Before the
Federal Communications Commission
Washington, DC 20554

In re Application of)	CS Docket No. 01-348
)	File Nos. SAT-LOA-20020225-0023
ECHOSTAR COMMUNICATIONS)	
CORPORATION, GENERAL MOTORS)	
CORPORATION, HUGHES ELECTRONICS)	
CORPORATION)	
(Transferors))	
)	
and)	
)	
ECHOSTAR COMMUNICATIONS)	
CORPORATION)	
(Transferee))	
)	
For consent to transfer of control)	

TO THE COMMISSION

REPLY TO JOINT OPPOSITION AND REPLY COMMENTS

Cecilia Munoz
Vice President
Office of Research, Advocacy and Legislation
National Council of La Raza
1119 19th St., N.W.
10th Floor
Washington, DC 20036

TABLE OF CONTENTS

	<u>Page(s)</u>
Summary and Background	3
I. MERCER REQUEST REMAINS VOID OF DIVERSE SERVICE.....3 TO THE COMMUNITY, AND MUST BE DENIED.	3
II. APPLICANTS' ANTI-COMPETITION AND BUSINESS CONSIDERATION POINTS...5 ARE WITHOUT MERIT AND DO NOT MEET SUFFICIENT PUBLIC INTEREST STANDARDS.	5
CONCLUSION	6

Before the
Federal Communications Commission
Washington, DC 20554

In re Application of)	CS Docket No. 01-348
)	File Nos. SAT-LOA-20020225-0023
ECHOSTAR COMMUNICATIONS)	
CORPORATION, GENERAL MOTORS)	
CORPORATION, HUGHES ELECTRONICS)	
CORPORATION)	
(Transferors))	
and)	
)	
ECHOSTAR COMMUNICATIONS)	
CORPORATION)	
(Transferee))	
)	
For consent to transfer of control)	

TO THE COMMISSION

REPLY TO JOINT OPPOSITION AND REPLY COMMENTS

The National Council of La Raza (NCLR) hereby submits its Reply to the Joint Opposition and Reply Comments (“Opposition”) filed by Echostar Satellite Corporation, Hughes Electronics Corporation, and Echostar (“Applicants”) on May 30, 2002. The Opposition was filed in response to NCLR’s Petition to Deny and Motion to Dismiss (“Petition”) filed on May 20, 2002 with respect to the above-referenced application. As demonstrated in our initial pleading, and reiterated below, the Commission should deny this Application unless and until it is provided sufficient information to ensure that relevant public interest standards have been met.

I. BACKGROUND AND SUMMARY

In the above-referenced Opposition, Applicants present claims of “tremendous public interest benefits” accruing to the public if its Application for merger of the above-referenced entities is approved and if its request to begin operation of the NEW ECHOSTAR 1 Satellite is granted by the Commission.

In light of the changing demographics and viewing preferences of the Latino community, NCLR maintain its position that Applicants have failed to present tangible, demonstrable benefits to the public interest as required by the Commission.

A blanket approval of Applicants’ strategy through its application relegates the industry, and subjects the Latino population to outdated approaches to inform and entertain diverse populations.

NCLR is not the only organization raising these issues. In fact LULAC, the Hispanic civil rights group cited by Applicants as supporting their Application (Opposition at 18), has also made known to Applicants its interest in having Latino themed programming in both English and Spanish.

For the Commission to rely upon and accept mere assertions by Applicants would require it to overlook heavily documented demographic developments with respect to the national viewing audience, thereby subverting long-standing public interest safeguards.

Applicants have failed to meet their burden in this Application to show that the merger is in the public interest. Accordingly, the Application should be denied.

II. MERGER REQUEST REMAINS VOID OF DIVERSE SERVICE TO THE COMMUNITY, AND MUST BE DENIED.

Over time, the Commission has firmly established that a determination of public interest is governed by various factors. Any analysis of the existence of public interest must be flexible in order to provide for those various considerations and factors that constantly evolve. This is especially true when one considers the television industry, which is usually the foremost medium for gauging changing preferences and demographics.

In light of television’s ability to reflect such indicators, this merger could perhaps serve as an excellent way for the industry to respond to such changes with dispatch.

Yet, despite a keen opportunity to do so, Applicants' willingness to acknowledge the English-speaking Latino community simply has been non-existent.

As provided in our Petition, and supported by additional data contained herein, the U.S. Latino community is not monolithic. Rather, it is a dynamic community consisting of several different national origin subgroups, both Spanish and Portuguese speaking, and with different cultures. It is a community that is younger than other groups in the United States; comprised of those who speak English well and enjoy things that are typically "American," such as television and radio.¹ In addition, U.S. Latinos are heavy watchers, viewing more television per week (57 hours) than the total population (53 hours).² A great majority of that programming is English-language.³

Meanwhile, the explosive growth of the Latino population in general, and the younger generation in particular continues to gain attention from Madison Avenue to social scientists.⁴ Still, despite utterances of offerings to "all consumers," (Opposition at 4) Applicants will almost certainly deny program delivery to such a growing consumer base nationwide.

Mere public interest assertions by Applicants, while overlooking heavily documented demographic developments in the viewing audience, are insufficient. They fail to make even a minimal showing about how the merger is more likely to expand viewer choices. It is clear, therefore, that this merger request remains laden with measures suggesting a dereliction of duty to present programming responsive to the entire community, *including significant minorities*,⁵ and must be denied.

¹ Recent studies show that 66% of the Latino market is acculturated into American society. *Strategy Research*, July, 2001.

² Nielsen Media Research, May, 2000.

³ "Almost 70% of the television programming that U.S. Hispanics watch is in English," Nielsen Media Research, *Wall Street Journal*, April 21, 2001.

⁴ see "A Word on the Hispanic Market: A New Media, Linguistic and Cultural Landscape," a special supplement article of "Reaching out to the Hispanic Community," *Multicultural News*, March 25, 2002.

⁵ See *In re Applications of Independence Broadcasting Co., et al.*, 53 FCC 2d 1161 (1975) quoting from *Chuck Stone v. FCC*, 505 F.2d 320 (D.C. Cir. 1972).

II. APPLICANTS' ANTI-COMPETITION AND BUSINESS CONSIDERATION POINTS ARE WITHOUT MERIT AND DO NOT MEET SUFFICIENT PUBLIC INTEREST STANDARDS.

As part of their public interest argument, Applicants cite “the tremendous⁶ benefits to competition and consumer advantages that will flow from such a dramatic expansion of satellite-delivered local broadcast television signals.” Opposition at 2.

By way of example, they propose the “Local Channels, All Americans” plan and the launching and operation of the New Echostar 1 Satellite. Opposition at 3,5.

Ironically, this merger request is offered as a way to “facilitate new and improved niche programming, including more ethnic and foreign language programming, providing audiences with expanded viewing opportunities.” Opposition at 18.

While heavy on the technological features, this Application leaves much to be desired as to whether a group widely-chronicled as an essential component of America’s multicultural landscape will benefit from these revolutionary delivery-enhanced services.⁷ Instead of providing a firm programming commitment in recognition of the numerical and multicultural influence of Latino-Americans, Applicants choose to punt this matter into the realm of possible future business considerations. (Opposition at 20,21). This pat “marketplace forces” response is one utilized far too often and continues to fuel a “Catch 22” situation where failure with respect to ethnic programming. The inability to secure a confirmed market deters the production of programming. In turn, this leads to a void in such programming, and thus making carriage seem “risky” from a business standpoint.

In absence of policy intervention by the Commission, the end result will be minimal diverse programming because of “business considerations.”⁸

Applicants’ insensitivity towards the concerns raised by NCLR is further demonstrated by their position that such measures serve as “special conditions.” Opposition at 2. Applicants must be reminded

⁶ As a point of correction, the use of the term “tremendous” is quite speculative for this stage of this proceeding, as it is not supported by any Commission finding. Secondly, contrary to Applicants’ assertions in their Opposition, NCLR’s Petition did indeed address specific detriments that would ensue to competition and the adverse interests to a growing consumer base. Our major case in point was Applicants’ refusal to provide English Language Spanish-Oriented programming.

that said special conditions are raised to protect our most cherished democratic values, and are consistent with, and not in excess of, the Commission's statutory mandate to uphold long-standing public interest standards of service to the total community.⁸⁹

IV. CONCLUSION

Applicants argue that their merged company's satellite assets will help them compete more effectively with cable, and thus contribute to a better quality of product, and improved pricing and service to the public. Opposition at 4. Yet, if such increased resources were all that would be required, then a sufficient "public interest" argument could be made for almost every merger. Such is not the case here.

One could just as well argue that a media company that has failed to compete effectively does not deserve anti-competitive protection; that instead, the government should be engaged (as it was when it stimulated the creation of the Fox Network in the 1980's) in trying to stimulate the creation of a third or fourth independently owned competitor. By allowing this merger, the creation of a third independent satellite company, one that truly respects the full range of American culture, may be impossible. Imagine, for example, in 1985, if instead of promoting the creation of the Fox network, the FCC had allowed (then third-running and weak) ABC to merge with NBC. Fox (and WB, and UPN) would probably never have emerged, at least not under independent ownership. The Latino community deserves the same diversity promoting policies that the general community enjoyed.

⁷ "A Word on the Hispanic Market: A New Media, Linguistic and Cultural Landscape," a special supplement article of "Reaching out to the Hispanic Community," *Multicultural News*, March 25, 2002, at pg. 1, recognizing the need to replace ethnic and social stereotypes with facts and understanding about the peoples and cultures of "America's new multicultural urban market." Besides pointing out urban Hispanics' high interest in new technology, the article also notes evidence showing their high orientation towards television with high rates of premium penetration, pay-per-view usage, and daily television watching.

⁸ In a related context, the Study on "Race and Radio: Preference Externalities, Minority Ownership, and the Provision of Programming to Minorities," released October 4, 2001 by Peter Siegelman of Fordham University Law School and Joel Waldfogel of The Wharton School, University of Pennsylvania and NBER, which indicated problems of inefficient programming underprovision more likely for small minority populations. In addition, at pg. 7, the authors noted that "to the extent that racial or ethnic minorities are less desirable advertising targets than whites, the market penalizes them with an additional handicap that might strengthen the case for some sort of government intervention."

⁹ see *In the Matter of Review of the Commission's Regulations Governing TV Broadcasting*, 14 FCC Rcd 12903(1999), where the Commission noted the importance of facilitating further development of competition in the video marketplace and *strengthening* the potential of broadcasters to serve the public interest.

Likewise, as opposed to merely increasing the competitive edge of one satellite operator in the industry, what is more likely to result in true programming diversity and enhanced service to the public is a full range of competition for the Latino viewing population. Latinos speak more than one language and are best served by programming that recognizes the richness and diversity of the Latino experience and population. The public interest is served as well by competitors that venture into a sector of the market that has been traditionally ignored, thus serving as a model for all operators. Eventually, this could lead to a much-needed opportunity for programming associated with each culture to find its greatest effective reach in the marketplace - unimpeded by artificial anti-competitive restraints. As such, in both legal precedent and in spirit, this Application falls far short of satisfying the Commission's desired aim to safeguard the public's right to receive diversity of views and information. *Turner Broadcasting System, Inc. v. FCC*, 512 U.S. 622, 663 (1997).

We respectfully request that the Commission withhold grant of the Application unless and until Applicants provide an adequate showing that the public interest will indeed be served.

Respectfully Submitted,

NATIONAL COUNCIL OF LA RAZA

By: _____

Cecilia Munoz
Vice President
Office of Research, Advocacy and Legislation

CERTIFICATE OF SERVICE

I, Cecilia Munoz, hereby certify that on this 4th day of June, 2002, I have caused a copy of the foregoing "Reply to Joint Opposition and Reply Comments" to be delivered by First Class Mail, postage prepaid, to the following:

Gary M. Epstein
James H. Barker
Arthur S. Landerholm
LATHAM & WATKINS
555 11th St., N.W.
Suite 1000
Washington, DC 20004

Pantelis Michalopoulos
Philip L. Malet
Rhonda M. Bolton
STEPTOE & JOHNSON
1330 Connecticut Avenue, N.W.
Washington, DC 20036-1795

Steven T. Berman
Senior Vice President
Business Affairs and General Counsel
NCTC
2121 Cooperative Way, Suite 500
Herndon, VA 20171

Robert J. Rini
Stephen E. Coran
Stephen M. Ryan
Manett, Phelps & Phillips, LLP
1501 M Street, NW, Suite 700
Washington, DC 20005-1700
*Counsel for National Rural Telecommunications
Cooperative*

Jack Richards
Kevin G. Ruby
Keller and Heckman LLP
1001 G St., NW
Washington, DC 20001
*Counsel for National Rural Telecommunications
Cooperative*

Philip L. Spector
Diane C. Gaylor
Patrick S. Campbell
Paul, Weiss, Rifkind, Wharton & Garrison
1615 L St., NW
Suite 1300
Washington, DC 20036
Attorneys for SES Americom, Inc.

Cecilia Munoz

CERTIFICATE OF SERVICE

I, Cecilia Munoz, hereby certify that on this 4th day of June, 2002, I have caused a copy of the foregoing "Reply to Joint Opposition to Petition to Deny" to be delivered to the following:

Honorable Michael Powell
Chairman
Federal Communications Commission
445 12th St., S.W. Suite 8-B201
Washington, DC 20554

Honorable Kathleen Abernathy
Federal Communications Commission
445 12th St., S.W. Suite 8-B15
Washington, DC 20554

Honorable Michael Copps
Federal Communications Commission
445 12th St., S.W. Suite 8-A302
Washington, DC 20554

Roy Stewart, Chief
Mass Media Bureau
Federal Communications Commission
445 12th St., S.W. Room 2-C337
Washington, DC 20554

Barbara Kreisman, Chief
Video Services Bureau
Federal Communications Commission
445 12th St., S.W. Room 2-A665
Washington, DC 20554

Linda Senecal
Cable Services Bureau
Federal Communications Commission
445 12th St., S.W. Room 3-A734
Washington, DC 20554

Qualex International, Portals II
445 12th St., S.W. Room CY-B402
Washington, DC 20554

Royce Sherlock
Cable Services Bureau
Federal Communications Commission
445 12th St., S.W. Room 3-A729
Washington, DC 20554

Marcia Glauberman
Cable Services Bureau
Federal Communications Commission
445 12th St., S.W. Room 3-A738
Washington, DC 20554

Barbara Esbin
Cable Services Bureau
Federal Communications Commission
445 12th St., S.W. Room C-458
Washington, DC 20554

James Bird
Office of the General Counsel
Federal Communications Commission
445 12th St., S.W. Room 8-C824
Washington, DC 20554

David Sappington
Federal Communications Commission
445 12th St., S.W. Room 7-C452
Washington, DC 20554

JoAnn Lucanik
Federal Communications Commission
445 12th St., S.W. Room 6-C416
Washington, DC 20554

Douglas Webbink
Federal Communications Commission
445 12th St., S.W. Room 6-C730
Washington, DC 20554

Julius Knapp
Federal Communications Commission
445 12th St., S.W. Room 7-B133
Washington, DC 20554

Cecilia Munoz

⁷ "Reaching out to the Hispanic Community," *Multichannel News*, at. Pg.1, featuring a study recognizing the need to "replace ethnic and social stereotypes with facts and understanding about the peoples and culture of "America's new multicultural urban market." Besides pointing out urban Hispanics' high interest in new technologies, the article also noted evidence showing urban Hispanics high orientation towards television with high rates of premium penetration, pay-per-view TV usage, and daily television viewing.

⁸