

February 4, 2002

Mr. William F. Caton,
Acting Secretary
Federal Communications Commission
236 Massachusetts Avenue, NE
Suite 110
Washington, DC 20002

*Re: Petition to Deny the Merger Application of EchoStar Communications and
Hughes Electronics CS Docket No. 01-348*

Dear Mr. Caton:

On behalf of the National Consumers League, the National Farmers Union and the National Grange, three long established, broad-based membership organizations representing family farmers, rural small businesses, rural cooperatives and rural consumers, we hereby file this petition to deny the proposed merger of EchoStar Communications Corporation and Hughes Electronics Corporation. If allowed to proceed, this merger would combine the only two sources of multichannel video programming and broadband Internet access available in many rural areas, creating a monopoly in these two vital services in large portions of the country. We predict that such a monopoly will lead to higher prices and less innovative services for consumers in rural areas. We therefore strongly urge the Federal Communications Commission to act quickly and decisively to deny the proposed transaction.

As you know, cable television service and other terrestrial multichannel video programming distribution (“MVPD”) services are either unavailable or prohibitively expensive for a great many people in rural America. However, satellite technology can efficiently cover the entire country. Therefore, Direct Broadcast Satellite (“DBS”) service offers the full range of digital MVPD services to these otherwise unserved households. At present, there are two major DBS services – EchoStar’s Dish Network and Hughes’ DirecTV – each of which offers a competitive alternative for rural consumers. The proposed merger would end that competition and create a single DBS operator for rural America – a perfect monopoly. There are currently few viable prospects for a new entrant to challenge this monopoly because EchoStar and DirecTV hold the licenses to all of the DBS channels allocated to the United States that are capable of serving the entire country. Even if additional licenses were readily available, any new entrant into the DBS market would have to invest billions of dollars to acquire alternative satellite infrastructure, distribution outlets, set-top box and receiving equipment, and programming for its new service.

Therefore, for most markets in the country, a merger of EchoStar and Hughes would reduce competition for MPVD services from three companies (one cable, two DBS) to two companies (one cable, one DBS). However in rural areas generally not served by cable, the merger would create a single national provider of MPVD service, reduce competition from two companies to only one

Recognizing the anti-competitive implications of its merger to monopoly, EchoStar has proposed that it will implement nationwide pricing so that rural areas pay the same rates for DBS services that urban areas do. While this proposal has facial appeal, it is not sufficient to address the problems inherent in any monopoly. First, the merged company can be expected to set a nationwide price that would maximize its revenues – a goal that can be achieved by overcharging all DBS subscribers, knowing that windfall profits from captive consumers in rural areas will more than compensate for any lost market share in urban areas. It is also likely that a new, expansive federal regulatory regime would have to be created and actively administered well into the foreseeable future in order to assure that the price controls proposed by EchoStar are equitably applied across the nation.

Second, EchoStar's Chairman, Charles Ergen, has already made comments backing away from the nationwide pricing policy by asserting that the merged entity would have to be allowed to offer promotions on equipment and other aspects of the service that vary depending upon the market. Such promotions are not likely to benefit rural consumers and would ensure that they are treated less favorably than urban consumers.

Third, and more importantly, antitrust policy is about more than just price. Even if a nationwide pricing policy could effectively ensure against discriminatory behavior (and would not require ongoing government oversight), such a policy would do nothing to address the non-price benefits of the current competitive market for DBS services – such as technological innovation, choice in program offerings, quality of services, and customer care. These non-price benefits would be lost in the non-competitive MVPD marketplace that the merger would establish for rural America. In an industry where future technological advancements seem likely, there is enormous dynamic efficiency in keeping the DBS companies pitted against each other and against the cable industry, instead of giving a single national DBS monopoly a free ride on prices and levels of service.

EchoStar and Hughes have also attempted to justify their merger to monopoly on the promise that they will use their combined spectrum assets to deliver the signals of local broadcast stations in more markets. While we would welcome the carriage of additional local-into-local service, there is no reason why the nation must accept a monopoly in order to achieve that goal. We are not convinced that either company faces a technology or spectrum based barrier to additional DBS broadcast capacity. As an expert witness hired by the Department of Justice on defense of the FCC recently demonstrated, both EchoStar and DirecTV could each independently carry all of the broadcast stations in the entire country using only a fraction of the DBS capacity they each already hold! Clearly, there is no technological or spectrum-based barrier to carriage of local channels in the 100 markets that EchoStar and Hughes has promised to carry if the merger is approved.

Moreover, without any competitive force to drive penetration in additional markets, local signals in the remaining 120 markets – most of which are smaller and more rural – are virtually certain never to achieve DBS carriage. Accordingly, there is no reason to capitulate to monopoly as a prerequisite to local-into-local DBS service.

The proposed merger would also combine the only two broadband services currently available in much of rural America: EchoStar's Starband service and Hughes' DirecPC/DirecWay service. Twenty-five percent of the nation's households cannot get broadband service from the two primary terrestrial broadband options, cable modem and digital subscriber lines. For these millions of Americans, satellite broadband is the only method for accessing the Internet in a manner that is taken for granted in urban areas. Moreover, EchoStar and Hughes also own the rights to six of the twelve most valuable satellite slots (Ka-band near DBS) for next-generation advanced broadband satellite services. Each company had previously promised it would independently launch and deliver true multi-megabit, advanced broadband services. In addition, because a single dish can be used for video services and broadband, the merger creates a monopolistic fortress against any other new satellite broadband service by combining all satellite DBS subscribers – who are the most natural targets for satellite broadband – under one company. Thus, the merger would enable EchoStar and Hughes to create a monopoly in current broadband satellite services that can be extended into next-generation telecommunications services in rural areas. And EchoStar has so far refused to propose any nationwide pricing policy or other regulatory safeguard to protect consumers against the effects of a monopoly in the broadband market.

For all of these reasons, the organizations indicated below believe that the merger application of EchoStar and Hughes should be denied, and that the government should act quickly so that these two companies can get back to the business of competing with each other – to the benefit of rural subscribers.

Thank you for your consideration of our views on this issue.

Sincerely,

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