

February 25, 2002

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

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

Dear Mr. Caton:

In a letter dated February 4, 2002, the National Consumers League and the National Grange petitioned the FCC to deny the proposed merger of EchoStar Communications Corporation and Hughes Electronics Corporation. Our organizations have extensive experience in representing the interests of rural small businesses, rural cooperatives and rural consumers. In our petition, we expressed our concern that the proposed merger would create a monopoly in much of rural America for two vital services: multichannel video programming distribution (“MVPD”) and broadband Internet. Other comments and petitions to deny filed in this proceeding provide *still* more evidence of the potential bad effects of the proposed merger. ***We want to strongly associate ourselves with these well reasoned comments.*** We ardently urge the FCC to deny the EchoStar/Hughes application.

Our petition stated our view that there are few viable entities that could challenge the combined EchoStar/Hughes market domination in rural America. Many of those that filed comments in this proceeding pointed to the lack of cable competition to Direct Broadcast Satellite (“DBS”) service providers in rural markets. Some also noted that, to the extent that cable service does exist in rural America, it tends to offer low-capacity, analog service. National Association of Broadcasters notes in its petition to deny the merger application, “Because of [analog cable TV’s] limited channel capacity, these systems presently are at best an imperfect substitute for DBS. In the long run, most of these systems cannot justify the investment to compete with DBS by upgrading to high-bandwidth digital cable, and face ultimate extinction.” The comments did not unearth any information about other wired or fixed wireless entities that *as of yet* could provide equivalent MVPD service in rural America.

The proposed merger, therefore, creates an MVPD duopoly in many markets, and an MVPD monopoly for the majority of rural consumers who do not have access to digital cable.

We have expressed our concern that the national pricing system EchoStar and Hughes propose in their application would not protect rural consumers. The merged company

would have more incentive to raise prices to the highest level that rural consumers will pay, rather than lower prices to compete with cable TV for urban market share.

Dr. Paul W. MacAvoy, a Professor of Management Studies at Yale University, confirms *this* analysis in a declaration submitted into the record by the National Rural Telecommunications Cooperative (“NRTC”). *In the NRTC comments*, MacAvoy estimates that in order to maximize its profit potential after the merger, EchoStar could implement “at least a 29 percent increase in markup.” The national service rate, he estimates, would be \$75.75 a month, which would represent an extremely sharp price increase in remote areas that are most heavily dependent on DBS. For example, in the Upper Midwest, where competition between EchoStar’s DISH Network and the Hughes’ DIRECTV is most vigorous, the current monthly rate for DIRECTV is \$44.13, the price would increase by \$31.62 (71.6 percent) to reach the \$75.75 national level, MacAvoy said. He also estimated a \$29.39 (63.2 percent) increase in Appalachian regions of the United States and a \$47.29 (60.1 percent) increase for the Northern Plains states.

Price is not the only issue. We believe that rural consumers are at risk of losing a number of non-pricing benefits as well. For example, *a rural MPVD monopoly would have complete control over the programming that rural consumers view*. As NRTC noted, “If any consumers in these areas are dissatisfied with New EchoStar’s programming, policies or prices, they will have no alternative but to accept whatever New EchoStar provides or to do without MVPD programming altogether. They will have no other choice.”

EchoStar’s monopoly control over programming will include access to local broadcast television signals. According to merger application, EchoStar plans to use the combined orbital capacity of the DISH and DIRECTV networks to offer local signals in little more than 100 out of a total 210 TV markets. As Paxson Communications Corp. writes, the EchoStar plan calls for “abandoning for all time those consumers who live in the remaining 110 television markets.”

Finally, we are concerned that the proposed merger could stall the provision of broadband Internet service to millions of rural Americans that do not have access to terrestrial broadband services. “Access to the Internet via broadband technologies has revolutionized business processes and revitalized the economy in many parts of our country. The ability to move a large amount of data quickly and reliably over great distances has enabled businesses to move from urban areas to rural areas where they can enjoy the quality of life afforded in those areas and provide those communities with economic development opportunities,” the Regulatory Commission of Alaska wrote in its comments opposing the proposed merger. The Alaska commission and many others filing comments in this proceeding shared our concern that proposed merger would give EchoStar dominant control over current Ku-band satellite Internet services. EchoStar also would control six of the 12 valuable Ka-band licenses that promise to provide the next generation of satellite broadband service.

The overwhelming weight of the evidence filed in response to the EchoStar/Hughes applications is that the proposed merger is not in the public interest. Again, we urge the Commission to deny the parties' application.

Sincerely,

Linda Golodner, President
National Consumers League
1701 K Street, NW
Suite 1200
Washington, DC 20006
202-835-3323
LindaG@nclnet.org

Leroy Watson, Legislative Director
The National Grange of the Order of Patrons of Husbandry
1616 H Street, NW
Washington, DC 20006
202-638-3507
lwatson@nationalgrange.org

Charles Conrad, Executive Director
Organizations Concerned with Rural Education
901 Monroe Street North
Arlington, VA 22201
703-469-1443