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November 20, 2001

The Honorable Michael Powell
Chairman
Federal Communications Commission
445 12th St. SW
Washington, D.C. 20554

Re: EchoStar/Hughes Proposed Merger

Dear Chairman Powell:

I am deeply concerned about the recently proposed acquisition of Hughes Electronics by EchoStar Communications. If allowed to be completed, the merger will have a profound effect on the market for the provision of multichannel television and other important communication services. A merger between these two DBS providers is not in the public interest. In my state, many areas do not have the option to receive cable television, so the merger will create a true monopoly. In other parts of my state, where cable is available, a serious reduction in choices will still occur. In both cases, the proposed acquisition is anti-competitive and detrimental to the welfare of consumers.

Nationwide, Hughes and its DirecTV unit owns 61.7% of the market for direct broadcast satellite (DBS) service, while EchoStar has 38.3% of that market.¹ Together, they would create a monopoly in the DBS market. This merger would also create a monopoly for multichannel services in areas where cable is not available because DBS and cable are the only viable options for this service.

Missouri has unique reason to be concerned. According to the U.S. Census, there are 2,442,017 housing units in Missouri.² But cable is an option in only 1,595,631, or two-thirds, of

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¹ Sources: Carmel Group, Morgan Stanley

² U.S. Census Bureau, Census 2000.

those units.³ Therefore, the proposed acquisition will leave nearly 846,386 Missouri houses – one third of our citizens – to deal with a monopolist for DBS and multichannel television services.

Another problem associated with this acquisition is the reduction in competition in emerging technologies such as broadband Internet. Presently cable is the primary source for high-speed Internet access, with provision of that service by satellite a still nascent but growing option. Again, rural Missouri will be particularly impacted by the merger. There is a terrific disparity between urban and rural areas for Internet technology.⁴ Yet such technology is important to economic development because it provides important business tools, such as videoconferencing, that factor into business decisions on where to locate. Allowing this acquisition would leave rural Missouri without this important service and create a market with little competitive incentive to provide the service. Thus rural Missouri will fall even further behind urban areas in the competition for economic development. Businesses are less likely to locate in areas where they do not have full access to the same tools as their urban competitors.

Furthermore, DBS technology is increasingly used to provide coverage of weather and disaster notices as well as important local, state and federal governmental meetings and information.⁵ It also provides access to entertainment avenues such as sporting events, music, movies and movie trailers. Healthy competition for DBS subscribers is the best way to ensure that those services continue and grow. Without it, rural Missouri will have difficulty attracting and keeping residents who do not have the same access and quality of life that suburban and urban dwellers enjoy.

Other technologies cannot be counted on to gain acceptance or penetration in order to discipline prices and services through competition. In recent years, there has been talk of new technologies that would allow some of these services to be provided through telephone lines and other avenues. These options have yet to materialize with any significant degree of penetration.

³ National Cable & Telecommunications Association, Industry Statistics as of December 2000. This low rate of cable penetration places Missouri with states such as Alaska 65.92%, Kentucky 66.07%, New Mexico 63.68%, North Dakota 69.68% and Wyoming 64.84%, in terms of cable penetration rates.

⁴ *Falling Through the Net: Toward Digital Inclusion; A Report on Americans' Access to Technology Tools*, October 2000, pg. xviii (rural areas are lagging behind cities and urban areas in broadband penetration, 7.3% penetration for rural areas, 12.2% for central cities and 11.85 for urban areas).

⁵ i.e., FCC meetings

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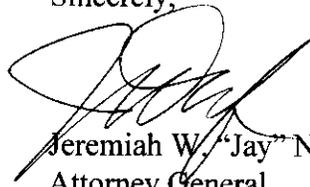
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With the economy as it is, many plans to develop such technology have been abandoned or back-burnered.

Mergers to monopoly should be considered very carefully and allowed only in the most extreme conditions. Such conditions do not exist in this industry. The alarming level of concentration already extant in this area and the level that would be attained through this proposed acquisition, warrant a very critical review. If this merger is allowed to go through, we will almost surely create an environment where prices will rise, services will fall and innovation will stagnate, particularly in our rural areas.

This office is committed to a thorough investigation of the merger and its effect in Missouri. I have also urged the Justice Department to thoroughly review this proposal. As currently structured, I believe the merger is not in the public interest and must be stopped by those of us who are sworn to protect the consumers.

Sincerely,

A handwritten signature in black ink, appearing to read 'Jay Nixon', written over a printed name and title.

Jeremiah W. "Jay" Nixon
Attorney General

cc: Charles James
Assistant Attorney General
Antitrust Division - DOJ