

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In re the Consolidated Application of)
)
EchoStar Communications Corporation,)
General Motors Corporation,)
Hughes Electronics Corporation,)
)
Transferors,)
)
and) CW Docket No. 01-348
)
EchoStar Communications Corporation,)
)
Transferee,)
)
For Authority to Transfer Control)
_____)

**COMMENTS OF THE
NATIONAL RURAL ELECTRIC COOPERATIVE ASSOCIATION**

I. INTRODUCTION

The National Rural Electric Cooperative Association (“NRECA”) submits comments in the above captioned proceeding¹ to share our insights into how the proposed merger of Hughes Electronics Corporation (“Hughes”) and EchoStar Communications Corporation (“ECC”), the two dominant providers of direct broadcast satellite (“DBS”) service – DIRECTV and the DISH Network – could affect TV viewers in the communities that NRECA members serve.

¹ See *In re the Consolidated Application of EchoStar Communications Corporation, General Motors Corporation, and Hughes Electronics Corporation Seek FCC Consent for a Proposed Transfer of Control*, Public Notice, CS Docket No. 01-348/DA 01-3005, (Released December 21, 2001.)

NRECA is the not-for-profit, national service organization representing 930 rural electric systems that provide electric service to 35 million customers, or approximately 12 percent of the U.S. population. Rural electric cooperatives are located in 46 states and 2,500 of the nation's 3,128 counties. Many NRECA members also provide telecommunications services, including satellite television, broadband and dial-up Internet access, cellular telephone, and long distance telephone services, to their local rural communities.

Much of the debate surrounding the proposed merger seems based on the assumption that a combined ECC/Hughes would provide greater competition to cable TV operators in the nationwide multichannel video program distribution ("MVPD") market. Based on our experience, however, we do not expect that cable TV operators will be able to offer any type of MVPD competition in many of our members' local rural service areas. Consequently, after the merger the only provider of MVPD services in many of our members' service territories will be the new merged entity.

As stand-alone companies, ECC and Hughes appear to be extremely successful. In competition with each other, they provide highly valued services to rural television viewers today. It is unclear how a single merged entity – in a noncompetitive environment – could improve service to rural America.

In the public interest, we ask the FCC to ensure that the diversity and quality of video services to rural America is not reduced. We also seek assurance that the development and deployment of broadband Internet service nationwide, especially to the rural communities that do not currently have access to cable modem or digital subscriber line ("DSL") Internet, is not delayed. Therefore we urge the FCC to reject the proposed

merger of ECC and Hughes.

II. RURAL AREAS ARE UNLIKELY TO BE SERVED BY WIRED FACILITIES

Eighty one percent of the communities served by NRECA's members are considered rural.² Rural electric cooperatives were created more than 60 years ago to wire rural America for electric service – areas where it proved to be uneconomic for investor-owned or publicly-owned electric utilities to extend service. Today, electric cooperatives still average just 6.6 customers per mile of electric distribution line and collect on average \$8,500 in annual revenue per mile of line. It is NRECA's belief that this low population density will continue to preclude the deployment of cable TV services in most of the communities served by NRECA members.

Indeed, the FCC's own research and analysis supports our belief. As the FCC's Eighth Annual Report on the status of video competition finds,³ DBS is a vitally important business that ensures that rural Americans have access to MVPD services at least equivalent to those offered in urban areas. The report refers to the Satellite Broadcasting and Communications Association estimate that DBS subscribers make up 10 percent or more of pay TV market share in 45 states and as much as 40 percent market share in some rural states.⁴ As compared to cable subscribers, the Commission found that "DirecTV subscribers are more likely to live in rural areas."⁵

NRECA knows that many rural communities, particularly very remote areas, have

² The proportion of communities served by electric cooperatives that is classified as "rural" is 81.2% using 1990 U.S. Census data+.

³ See *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming, Eighth Annual Report, ("Video Competition Report")*, CS Docket Number 99-230, FCC 01-129 (January 14, 2002).

no cable service at all. Even in those areas of rural America where there is some cable service, cable service may not extend to the entire community, that is, areas “outside of town” where population densities are very low. A fairly recent study of broadband deployment in rural America illustrates this point. The study suggests that 72 percent of communities with populations greater than 250,000 have some type of cable-based broadband service, but less than one-fifth of one percent (< 0.20 percent) of communities under 1,000 have cable modems deployed.⁶ This difference is reasonable given the costs associated with deploying cable and of upgrading cable facilities to provide broadband service.⁷ The economic realities of low consumer density led the National Telecommunications and Information Administration (“NTIA”) to conclude that “Cable television providers are generally unwilling to extend their cables into rural areas where the subscriber density is less than ten (10) per mile.”⁸ Therefore, absent significant increases in density, the rural communities where NRECA’s members serve, which are presently not passed by cable, are not likely to gain access in the near future.

In an April 2000 report, the NTIA and the Rural Utilities Service (“RUS”) calculated that cable TV service passes as few as 81 percent of U.S. homes, as opposed to the 97 percent widely publicized by the cable industry and adopted by the merger proponents.⁹ More recently, the *New York Times* published a state-by-state analysis of

⁴ See *Video Competition Report* at p. 30.

⁵ Id.

⁶ See Brian Staihr, *The Broadband Quandary for Rural America*, [The Main Street Economist](http://www.kc.frb.org/RuralCenter/mainstreet/MSE_0800.pdf), Center For The Study Of Rural America—Federal Reserve Bank of Kansas City (Aug. 2000) available at http://www.kc.frb.org/RuralCenter/mainstreet/MSE_0800.pdf.

⁷ See National Telecommunications and Information Administration, U.S. Department of Commerce, “Survey of Rural Information Infrastructure Technologies (Sept. 1995) at pp. 3-6), available at <http://www.its.bldrdoc.gov/its/spectrum/rural/rural.pdf>, and see *supra* note 6.

⁸ See *supra* note 8 at pp.

⁹ See, National Telecommunications and Information Administration and Rural Utilities Service, *Advanced Telecommunications In Rural America: The Challenge of Bringing Broadband Service to All Americans*,

housing units with cable access that shows seven states have 50-59 percent access; 15 states have 60-69 percent access; and 15 states have 70-79 percent access.¹⁰ It should be noted that these figures for homes passed by cable at the national level include both analog and digital cable systems, even though the features associated with analog cable are far below those offered by digital cable and are not comparable to DBS.

In NRECA's experience, the estimate of homes with access to cable by the NTIA and RUS and the *New York Times* is much more reflective of the actual availability of cable services in rural America than the cable industry's figures cited by the merger proponents. We know that many rural homes within the service territories of our members do not have access to cable television services, and are not likely to gain access any time soon given the low population density. If rural Americans wish to receive MVPD services, they must subscribe either to DISH Network or DIRECTV. It is not surprising, therefore, that rural viewers in homes not passed by cable are most likely to be seriously disadvantaged if the ECC/Hughes merger is approved, leaving them without choice in their MVPD service provider.

III. ECHOSTAR'S DISH NETWORK AND HUGHES' DIRECTV ARE HIGHLY SUCCESSFUL BUSINESSES THAT CURRENTLY SERVE RURAL AMERICA WELL

With more than 16 million viewers, DBS has grown to serve more than 18 percent

(*"NTIA/RUS Report"*) (April, 2000).

¹⁰ See *Look Up in the Sky! Big Bets on a Big Deal*, New York Times, Oct. 30, 2001 at C-1 (50-59 percent: Alaska, Arkansas, Mississippi, Montana, South Dakota, Utah, Vermont; 60-69 percent: Alabama, Idaho, Iowa, Kentucky, Louisiana, Maine, Missouri, New Mexico, North Carolina, Oklahoma, Rhode Island, Tennessee, Virginia, Wisconsin, Wyoming; 70-79% Delaware, Florida, Georgia, Indiana, Kansas, Michigan, Minnesota, New Hampshire, North Dakota, Oregon, Pennsylvania, South Carolina, Texas, Washington, West Virginia).

of the MVPD marketplace.¹¹ As stand-alone entities, DIRECTV is the second largest MVPD with more than 10 million subscribers, and the DISH Network is the sixth largest MVPD with more than 6 million subscribers.¹² Hughes reported fourth quarter 2001 revenues for DIRECTV of \$1.518 billion in the U.S., an increase of 12 percent over fourth quarter 2000. ECC reported third quarter 2001 revenues for DISH Network of \$1.023 billion, an increase of 46 percent over third quarter 2000. Hughes also reported 405,000 DIRECTV net subscriber growth during fourth quarter 2001. ECC reported 360,000 DISH Network net subscriber growth for third quarter 2001. It is difficult to understand how eliminating competition between these two companies, which serve rural Americans so well today in competition with each other, would serve the public interest.

NRECA is not comforted by ECC/Hughes' promise of "national pricing" as a remedy for rural consumers' lack of choice in MVPD providers after the merger. That type of promise seems difficult if not impossible to enforce. Moreover, it highlights the fact that in a noncompetitive environment our rural consumers will be required to accept whatever programming or level of service (including equipment installations, billing procedures and customer complaint processes) that the merged entity decides to provide. After the merger, rural Americans will have no place to turn if they are dissatisfied with the programming choices or level of service provided by the new merged entity.

ECC and Hughes have stated that combining their spectrum resources could result in higher-quality services to their subscribers. For example, the parties have said that by working together, they will be able to provide local broadcast TV signals to "100 or more" TV markets, compared to the 36 and 41 markets that ECC and Hughes now serve,

¹¹ See *Video Competition Report* at pp 29-30.

¹² *Id.*

respectively.¹³ ECC and Hughes also claim that more efficient use of their spectrum would allow them to provide more premium programming, high-definition television channels and other advanced services.

These claims raise additional questions. If more efficient use of spectrum will allow the parties to provide local channels in the top 100 TV markets, what amount of efficiency would allow the parties to offer local service to all 210 Nielsen markets on their own, without the merger? Would the public interest be better served if each of these companies launched additional satellites on its own to provide local signals, premium programming and other services to all markets?

Under the ECC/Hughes plan, rural subscribers will not have the same level of video service that the combined companies plan to offer in urban areas, since their improved spectrum efficiency will allow them to upgrade service to little more than the top 100 TV markets. Most rural Americans in markets 101 to 210 will receive no local service whatsoever under their plan. Indeed, after the merger, competition between the two would no longer spur either of them to extend local service into new, rural markets or to provide new, advanced services not offered by the other.

IV. RURAL AMERICA WILL BENEFIT FROM ACCESS TO HIGH-SPEED SATELLITE SERVICES

Congress has recognized that the rollout of advanced telecommunications services, such as broadband Internet, should be available to *all* Americans.¹⁴ The lack of

¹³ See *Application of EchoStar Communications Corporation, General Motors Corporation, and Hughes Electronics Corporation Seek FCC Consent for a Proposed Transfer of Control*, (filed December 3, 2001), at p. 28.

¹⁴ See Section 706 of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56.

advanced telecommunications services in rural areas, leaving many remote regions of the nation at an economic disadvantage, should be of keen concern to the FCC and a consideration in its review of the ECC/Hughes proposed merger. As the NTIA/RUS Report notes, the rate of deployment of broadband “has implications for the welfare of Americans and the economic development of our nation’s communities.”¹⁵ We therefore strongly support the recent policy objectives set forth by Chairman Powell that “The Nation should commit to achieving universal availability of broadband.”¹⁶ High-speed telecommunications services can help address a number of important rural economic and social concerns, such as economic and community development, access to quality educational options and distant medical expertise. The assertions of the merger proponents with regard to their ability as a combined entity to deliver high-speed services are therefore of particular interest to NRECA and its members.

Currently, both companies offer a high-speed Internet service choice for rural consumers. ECC, working with a subsidiary of Gilat International, offers StarBand high-speed satellite Internet service. Hughes operates a similar service called DIRECWAY. For many consumers served by NRECA’s members, these are the only available services faster than dial-up Internet access. The ECC/Hughes combination could result in a single satellite Internet provider for the foreseeable future in rural communities. NRECA believes that one of the FCC’s goals should be to ensure that rural consumers receive video and Internet services that are at least equivalent to those offered to urban consumers. The current estimate is that 65 percent of the U.S. population has access to

¹⁵ See NTIA/RUS Report at p. 2.

¹⁶ Michael K. Powell, Chairman, Federal Communications Commission, Press Conference, “Digital Broadband Migration” Part II (Oct. 23, 2001).

digital cable TV services that can support multichannel TV equivalent to DBS and cable modem service.¹⁷ The great majority of the population served by digital cable is in urban areas. NRECA has long advocated for comparability in services – electric, telecommunications, and otherwise – for rural America. Our concern is that the proposed merger will be a major step backward in ensuring that the rural consumers served by our members receive that level of service if the proposed merger is approved.

IV. CONCLUSION

The FCC should not assume that cable, or telephone companies for that matter, will be able to build out wireline facilities in rural America that will equal the multichannel video and high-speed Internet services that satellite, cable and telephone companies provide in urban areas. NRECA knows that building wired facilities to rural communities is a very difficult and expensive undertaking. Cable and telephone companies will not be able to provide satellite-equivalent services to rural America.

The merger of ECC and Hughes will eliminate MVPD competition in all parts of the country that are not passed by cable. In the broadband market, the same problem will occur in areas not reached by cable modem or DSL services. This lack of competition will particularly disadvantage rural Americans, who are likely to suffer from higher prices, poorer quality service and other consequences of having only a single MVPD and satellite broadband provider. NRECA strongly urges the FCC to give serious consideration to these and other adverse impacts on rural America and to reject the proposed ECC/Hughes merger.

¹⁷ Figured cited by Peter Jarich, director of broadband research, The Strategis Group, during Webcast, “Residential Broadband: Cable Modems, DSL & Fixed Wireless,” January 24, 2002.

Respectfully submitted,

NATIONAL RURAL ELECTRIC
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