

WRITER'S DIRECT ACCESS

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February 11, 2002

Via Electronic Filing With Attachments

Ms. Magalie Roman Salas
Office of the Secretary
Federal Communications Commission
445 12th Street, S.W.
Twelfth Street, Lobby, TW-A325
Washington, DC 20554

Re: Ex Parte Notice
CS Docket Number 01-348

Dear Ms. Salas:

On Friday, February 8, 2002, B. Robert Phillips, President and Chief Executive Officer, and Steven Berman, Senior Vice President, Business Affairs and General Counsel, of our client, the National Rural Telecommunications Cooperative (NRTC), met with Commissioner Kathleen Q. Abernathy and Bryan Tramont, Senior Legal Advisor, to discuss NRTC's Petition to Deny the proposed merger of EchoStar Communications Corporation and Hughes Electronics Corporation. Robert J. Rini from Manatt, Phelps and Phillips, LLP, and the undersigned attended the meeting on behalf of NRTC.

Copies of the attached one-page handout entitled "Rural Concerns with EchoStar/DIRECTV Merger," were distributed during the meeting and served as the basis for our discussions. Should you have any questions, or require any additional information, please feel free to contact the undersigned.

Sincerely,


Jack Richards

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KELLER AND HECKMAN LLP

cc: Commissioner Kathleen Q. Abernathy
Bryan Tramont
Barbara Esbin*
Julius Knapp*
JoAnn Lucanik*
Royce Dickens Sherlock*
Doug Webbink*
Marcia A. Glauberman*
James R. Bird*
David Sappington*
Qualex International*

*via e-mail

Rural Concerns with EchoStar/DIRECTV Merger

The National Rural Telecommunications Cooperative is a non-profit cooperative comprised of more than 1,000 rural utilities and affiliates located in 46 states. In 1992, NRTC and its members invested more than \$100 million toward launching DIRECTV as part of NRTC's mission to bring state-of-the-art telecommunications services to rural Americans. Today, NRTC's members and affiliates serve more than 1.8 million rural consumers, nearly 20% of all DIRECTV subscribers.

■ **EchoStar and DIRECTV compete effectively with cable today. There is no need to replace a functioning market with a regulated market.**

- * DBS is adding 8,500 subscribers a day.
- * Last year, DBS subscribership increased 24%.
- * DBS is growing at 2.5 times the cable growth rate

■ **Twenty-five million or more homes -- mostly in rural America -- would be subject to a DBS monopoly. Many millions more would see their choices reduced from 3 to 2.**

- * Only digital cable is "reasonably interchangeable" with DBS.
- * C-band, MMDS, SMATV and Northpoint are not substitutes for DBS.
- * NRTC is not positioned to compete against New EchoStar.

■ **Efficiencies are not considered in a merger to monopoly, and in a duopoly efficiencies are not considered where, as here, there are "high barriers to entry."** Even if efficiencies were relevant, in this case they are not merger specific. EchoStar and Hughes have failed to show -- as they must -- why the claimed efficiencies, including providing local-in-local service to markets 50-100, cannot be achieved without the merger.

- * The Merger would result in less Local TV (will not serve DMAs 100-210).
- * The Merger would result in less innovation (HDTV, ITV).

■ **A promise of "national pricing" will not work. It is easily "gamed" and will not protect against monopoly prices or practices.**

- * Dr. MacAvoy shows a loss in consumer welfare of \$700M per year.
- * The NAB shows a similar \$3B loss over 5 years.
- * Mr. Ergen says that New EchoStar needs to respond to local promotions.

■ **Over 40 million homes would be subject to a monopoly in broadband.**

- * The Merger would result in a monopoly in Ku-band (StarBand, DIRECWAY).
- * The Merger would crush competition in the nascent Ka-band.

■ **Given EchoStar's and DIRECTV's representations in their Application that they did not plan to vertically integrate, the FCC must closely examine their new relationship with Vivendi.**

■ **The proposed Merger should be denied.**

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