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Via Electronic Filing With Attachments

William F. Caton
Acting Secretary
Federal Communications Commission
Office of the Secretary
445-12th Street, SW
Washington, DC 20554

Re: Ex Parte Notice
CS Docket Number 01-348

Dear Ms. Salas:

On February 14, 2002, B. Robert Phillips, President and Chief Executive Officer, and Adam Schwartz, Vice President, External Affairs, of our client, the National Rural Telecommunications Cooperative (NRTC), met with Commissioner Kevin J. Martin and Catherine Bohigian, 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 discussion. In particular, we discussed deficiencies in New EchoStar's so-called "national pricing" scheme, including points raised by Dr. Paul W. MacAvoy in his Declaration supporting NRTC's Petition to Deny (Exhibit I):

- (1) the national price would *not* be based on the lowest price offered in competition to cable but would *exceed* competitive cable prices;
- (2) the national price would *increase* prices paid by rural Americans by at least \$700 million per year, as Dr. MacAvoy demonstrated;
- (3) it would be *impossible* for New EchoStar to price every component of its offering (*e.g.*, equipment sales and installations, service, programming packages, discounts and promotions) in identical fashion to all retailers and then to all subscribers;

(4) there are numerous ways in which national pricing could be “gamed” to benefit the New EchoStar monopoly (*e.g.*, giving away or reducing the price of local programming available only in urban areas, increasing pricing on programming more popular with rural than urban subscribers, special promotions with stores more prevalent in urban than rural areas); and

(5) Charlie Ergen, the CEO of EchoStar, indicated during a recent interview that the national price should be crafted so as to allow New EchoStar to respond to cable rebates and promotions at the *local* -- not *national* -- level.

We discussed the fact that a regulated monopoly with a guaranteed national price will *never* deliver the same benefits to consumers as facilities-based competition. Two facilities-based competitors have more incentive to innovate and compete between themselves and against cable, based on price and other terms and conditions of service. A regulated monopoly has no similar motivation.

We discussed how EchoStar and DIRECTV have competed against each other for many years, leading to lower prices, improvements in technology, and better service. We referred to Table 2 on pp. 33-34 of NRTC’s Petition to Deny, which provides numerous examples of promotions by one leading shortly thereafter to similar promotions by the other.

We also referred to Exhibit M of NRTC’s Petition to Deny, which shows how competition between EchoStar and DIRECTV has lead to the delivery of local-to-local service to increasing numbers of local markets. We pointed out that several parties, including NAB, Pegasus and NRTC, demonstrated how EchoStar and DIRECTV could independently provide local-to-local service to at least the top 100 DMAs and possibly all 210. We explained that even a commitment to provide local-to-local service in all 210 DMAs would still fail to produce the benefits of facilities-based competition (*e.g.*, consumer choice in provider, better service, lower price).

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 Kevin J. Martin
Catherine Bohigian
Barbara Esbin
Julius Knapp
JoAnn Lucanik
Royce Dickens Sherlock
Doug Webbink
Marcia A. Glauberman
James R. Bird
David Sappington
Qualex International

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, eliminating facilities-based competition.**

- * 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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