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Frank A. LoBiondo, M.C

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

OCT. 31, 2001

DEAR CONGRESSMAN LO BIONDO,

AS A SMALL BUSINESS OWNER AND PRIVATE CITIZEN, I WAS RATHER SHOCKED TO FIND OUT THAT MY SATELLITE PROVIDER, DIRECT T.V., HAS DECIDED TO MERGE WITH ECHOSTAR. TO SAY THE LEAST, IF THIS MERGER GOES THROUGH, IT WILL HAVE AN ADVERSE EFFECT ON EVERY SUBCRIBER TO DIRECT TV. AS SUCH, IT WILL CREATE A MONOPOLY THAT WILL DESTROY THE COMPETITION WHICH HAS, UP TO NOW, EXISTED IN THIS INDUSTRY. FURTHERMORE, BECAUSE OF THE FACT THAT BOTH COMPANIES USE INCOMPATIBLE TECHNOLOGIES, THOSE WHO SUBSCRIBE TO DIRECT T.V., WILL, MOST LIKELY, BE FORCED TO PURCHASE AND INSTALL COSTLY ELECTRONIC EQUIPMENT.

IN ENDING, IT IS ALWAYS THE CONSUMER OR INDIVIDUAL WHO MUST SHOULDER THE COST OF HIGHER RATES THAT WILL TAKE PLACE WHEN ECHOSTAR AND ITS CEO CHARLIE ERGEN HAVE TO PAY BACK THE VAST AMOUNT OF MONEY THAT WAS NEEDED TO FACILITATE THIS MERGER. PLEASE RELAY THIS CONCERN TO THE FCC.

SINCERELY YOURS,

[signature]

3102 Route 9, So. Rio Grande, N.J. 08242 (609) 463-0880

HOME 463-8403

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WAYNE R. JORGENSEN
3032 RT 9 SOUTH
RIO GRANDE, N.J.
08242

PHONE # 609-463-8403

FAX # SAME AS ABOVE

Combining systems could create glitches for consumers

NEW YORK – EchoStar CEO Charlie Ergen says his proposed deal to combine with DirecTV should simplify the satellite TV business for consumers. But the creation of a monopoly could complicate life in the short run for many, particularly the nearly 17 million who subscribe to one of the two services. Here's how things might shake out.

Q: Will I have to replace my DirecTV or EchoStar decoder box or reception dish?

A: Many current subscribers – probably today's DirecTV customers – will need to make a change at some point. The companies use different technologies to transmit signals, and they want to create a single nationwide satellite system. That also means some customers will need new satellite dishes, or will have to reposition current ones. But the companies haven't decided yet when the transition will take place and how long it could last.

Q: How will the change work, and who will pay?

A: The companies hope that once the merger is complete, many people will opt to buy new equipment – probably compatible with EchoStar's current system – to get the latest services, including interactive TV. Executives say they'll give consumers incentives to upgrade. Still, it's unclear what happens to those who don't change their service, particularly those who bought "smart" boxes such as those with digital personal video recorders. DirecTV Chairman Eddy Hartenstein says, "There'll be no cost and no inconvenience" to consumers. Ergen says $2 billion over 4 years is budgeted for the transition.

Q: Will new subscribers see any changes?

A: Even before the deal closes, EchoStar and DirecTV will try to rush to the market with boxes that are capable of receiving both services. That'll probably take at least 6 months. New customers will be encouraged to buy those units. Until then, it might be risky to buy a box that only receives DirecTV.

Q: What will happen to monthly rates?

A: Ergen vows he'll keep rate increases low so he'll be a more effective competitor to cable. He also says that he's prepared to offer a national subscription rate. That would ensure that rural customers in areas without cable don't pay more than subscribers in highly competitive markets. Still, some analysts say Ergen will have big incentives to raise prices to cover the debt and financing obligations he'll face.

Q: Will program offerings change? For example, will I still be able to get sports subscription packages, such as the NFL Sunday Ticket, games DirecTV offers but EchoStar doesn't?

A: Here, too, there's a lot that has to be worked out. But DirecTV has deals in place for its most popular offerings. The NFL deal runs through 2002; NBA basketball and NHL hockey through the 2001-2002 season, and Major League Baseball through 2003.

Q: Will I still be able to buy my satellite service at consumer electronics stores?

A: Possibly. The question is whether chains such as Best Buy, Circuit City, Radio Shack or Blockbuster will have much incentive to promote EchoStar's service, which will use the DirecTV brand. Retailers now get hefty commissions from DirecTV to offer that service exclusively. But that won't be an issue when there's no competition. And Ergen says he can save a lot of cash by slashing those payments.

EchoStar-DirecTV merger faces antitrust, consumer issues

Deal would create satellite monopoly

By David Lieberman
USA TODAY

NEW YORK – General Motors' agreement late Sunday to merge DirecTV with EchoStar provides a long-awaited answer to one question about the future of the No. 1 satellite service.

But it raises several more as consumers and policymakers assess how the companies' effort to create a national satellite monopoly with nearly 17 million subscribers will affect the marketplaces for television, the Internet and other services.

• Some say it will choke competition and innovation and result in higher prices. Others insist that just the opposite will happen as the new satellite giant amasses enough clout to challenge cable.

Antitrust regulators and lawmakers, particularly those from rural states, will certainly examine those issues and others in what could be the most important media merger since America Online combined with Time Warner in January.

EchoStar CEO Charlie Ergen's opponents say they don't see how he can escape the formidable debt he'll have. In addition, he'll have a massive job converting DirecTV customers to EchoStar's service.

The two use incompatible technologies to transmit video. It's unclear whether EchoStar or DirecTV customers will shoulder most of the costs for new decoder boxes or to reposition satellite dishes.

"How can a company with $11 billion in debt and as much as $7 billion more in transition costs effectively compete against cable?" says *Satellite Business News'* Bob Scherman. "And there's not a single example in the history of telecommunications where duopolies lower prices. It would be a disaster for consumers."

As the only provider of satellite services, Ergen would have the leverage to dictate what technologies will appear in decoder boxes, as well as their cost.

"If he's the only one building them, then the price he sets is the price you'll pay," says The Carmel Group's Jimmy Schaeffler.

Ergen's clout might be most keenly felt among makers of set-top boxes that contain digital personal-video recorders, which enable viewers to record TV shows and pause live programs. Satellite broadcasters say they can offer this service more cheaply than cable, because satellite transmits digital signals while cable needs an analog-to-digital converter.

Ergen: EchoStar to rival cable TV.

If Ergen misused his monopoly power, it would probably be felt first in rural areas, often too thinly populated or too poor to support cable. More than 30% of TV homes in Montana, Vermont, Wyoming, Mississippi and North Dakota use satellite services.

The switch to satellite services in rural America could accelerate. As cable penetration falls, it becomes less economical for small operators to upgrade their systems to provide additional channels and services, including high-speed Internet connections and video-on-demand.

Systems serving more than 8 million mostly rural subscribers could fold in the next 8 years, according to a report from Credit Suisse First Boston.

Ergen has said that he's prepared to sign a consent decree that would prevent him from charging rural customers more than urban customers. He also would continue to provide programming on a wholesale basis to Pegasus, which delivers DirecTV services mostly in rural areas.

But consumer advocates also want the federal government to provide broadcast licenses to a new company, Northpoint, to compete with cable and satellite. It would transmit terrestrial over-the-air signals on the same frequencies satellites use.

"Instead of losing a competitor, you'd just replace it," says Consumers Union's Gene Kimmelman. The Federal Communications Commission is trying to decide whether Northpoint signals interfere with satellite transmissions.

Others are more upbeat about Ergen's desire and ability to compete with cable.

"He'd provide more channels, more local channels and more services," says SG Cowen Securities' Rob Kaimowitz, one of Ergen's more vocal supporters. "My experience is that his goal is to beat cable, and you don't do that by raising prices."

Many add that this is a good time to combine the companies and their transponders. They will be under pressure in January, when federal regulations will bar them from offering only the most popular local channels in communities they serve. DirecTV and EchoStar have said that will keep them from providing any local services in some markets.

Ergen says he'd have the freedom to lower prices because he can squeeze as much as $56 billion by eliminating duplication and launching new services. And while analysts differ over the size of the savings, many agree with the point.

"There'd probably be improvement in subscriber economics by 30% to 40%," says Morgan Stanley Dean Witter's Vijay Jayant. "The combined entity becomes a more formidable competitor to cable and a better value proposition to consumers."

► Merger agreement, 1B

FRANK: IF THIS MERGER GOES THROUGH, IT WILL HAVE AN ADVERSE EFFECT ON EVERY SUBSCRIBER TO DIRECT T.V. AS SUCH, IT WILL CREATE A MONOPOLY THAT WILL DESTROY THE COMPETITION

THANKS,
WAYNE

DirecTV deal was down to wire

Murdoch felt success within his grasp as late as Friday

By David Lieberman
USA TODAY

NEW YORK — News Corp. CEO Rupert Murdoch was growing confident earlier this month. After 1½ years of tedious negotiations, he was about to strike a deal with General Motors to buy a controlling interest in its Hughes Electronics subsidiary, with its jewel, DirecTV, the USA's No. 1 satellite service.

Many thought it would be the capstone to his extraordinary career.

Last Friday, on the eve of a decisive GM board meeting, Murdoch was so sure of victory over his rival, EchoStar CEO Charlie Ergen, that he rented a hall in a Manhattan hotel. He envisioned a Monday press conference to announce that his satellite armada would span the globe. His media clout would rival that of AOL Time Warner. And it would be sweet vindication. His four previous attempts to become a U.S. satellite power — including a 1997 deal with Ergen — had ended in failure.

For good measure, he gave GM an ultimatum: Decide on his offer by Saturday, or he'd walk away.

What Murdoch didn't realize was that the winds had shifted.

GM was no longer stiff-arming Ergen the way it had before early August, when he startled the industry by making his offer for Hughes public. A few weeks later, GM executives began warming to Ergen's plan to merge DirecTV and EchoStar into a national satellite monopoly.

One concern, that federal antitrust regulators would never approve such a plan, was soothed by lawyer David Boies, who advised the Justice Department when it prosecuted Microsoft, and Al Gore when he battled to win Florida's electoral votes in last year's presidential election. Boies gave a forceful presentation to GM executives at the New York offices of their attorneys, Weil Gotshal and Manges.

Meanwhile, GM executives grew concerned about Murdoch's offer as stock prices plummeted for some of the assets he wanted to merge with Hughes. That exacerbated the fear that Murdoch's contribution, including privately held assets such as Star TV, were too hard to evaluate.

Some also feared that, if they threw their lot in with Murdoch, they'd be shortchanged if he cut deals to help out his backers, Liberty Media's John Malone and Microsoft's Bill Gates.

Then, key shareholders blessed a deal with EchoStar.

"We're really thrilled," says broadcaster Stanley E. Hubbard, a former satellite power who owns about 43 million Hughes shares. "Ergen is a believer in satellites. Our confidence in Hughes management was well-placed."

Still, GM executives had to determine how serious Ergen was. One key meeting was set to take place in New York on Sept. 11, the day of the terrorist attacks on the World Trade Center. EchoStar executives couldn't fly in, yet GM officials still wanted to meet via phone that day. The parties finally agreed to postpone it to the following Sunday at DirecTV's offices near Los Angeles. Ergen passed a crucial test that weekend when he rejected a condition that GM wanted to impose. Executives respected the fact that he wouldn't overpromise.

EchoStar had momentum. And the odds of a deal with GM grew the following week. With stocks seemingly in a free fall, including Hughes shares, Murdoch cut his offer by about $1 billion. By late September, Hughes executives were privately telling shareholders that the deal was Ergen's to lose.

That was a real possibility. Ergen hadn't locked up the $5.5 billion in cash he needed, mostly to buy out GM's stake in Hughes.

Still, GM intensified its talks with EchoStar. "We were told they were under a short time fuse," says EchoStar general counsel David Moskowitz. "We were negotiating literally 24 hours a day. People would go home, take a shower, get a bite to eat and then return."

All that work appeared to have been in vain by last Friday. After Sept. 11, investment banker UBS Warburg insisted on tacking onto its $2.7 billion, 2-year bridge loan an extensive "material adverse change" provision. That would give it a lot of leeway to scrap the offer. And the bank's terms were unacceptable to GM. That night — hours before the GM board was scheduled to meet and with Murdoch threatening to walk away — UBS backed out.

Following an afternoon conversation with GM's CFO John Devine, Murdoch believed that victory was just hours away. EchoStar executives in Denver thought that they had lost.

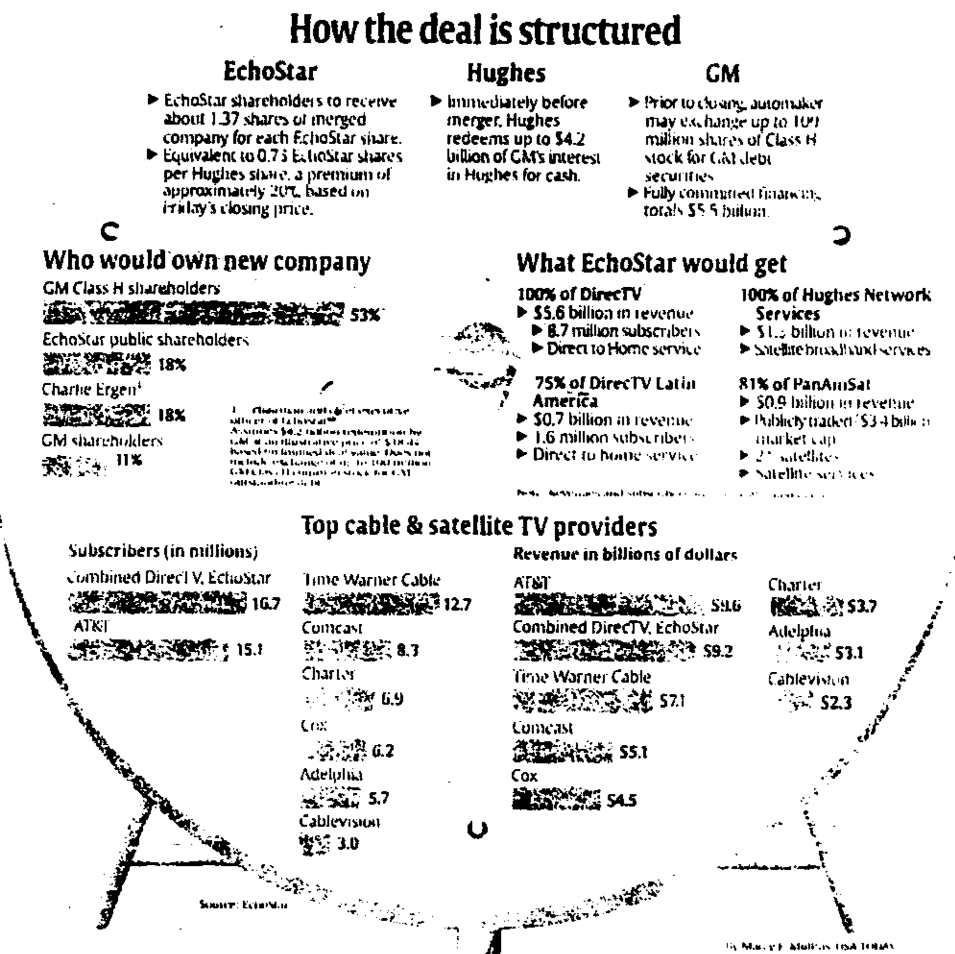
Indeed, Devine's case for Murdoch seemed to be winning as the Saturday board meeting got underway.

But the dynamics changed around 5 p.m. when an unusual fax arrived from Denver. Ergen agreed to pledge $2.75 billion worth of EchoStar stock that he owns as collateral for GM to front the cash — at least until they can line up one or more banks to make a more conventional loan.

While the board initially didn't want to accept, directors were impressed with Ergen's moxie. After a brief recess GM executives proposed around 6 p.m. that they adjourn for 48 hours to consider the proposal.

The message was clear. They had refused to meet Murdoch's ultimatum and were looking for a way to work with Ergen. From his New York apartment, Murdoch prepared a statement saying that he was withdrawing his proposal.

His satellite dream was over. On Sunday, Ergen's had just begun.



By Stuart Ramson, AP

Winner: EchoStar CEO Charlie Ergen talks about his DirecTV deal.

Wayne Jorgensen
3032 Rt. 9 South
Rio Grande, N.J. 08242

Phone 609-463-8403