

Congress of the United States

Washington, DC 20515

December 19, 2001

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The Honorable John Ashcroft
Attorney General of the United States
U.S. Department of Justice
950 Pennsylvania Ave., NW
Washington, D.C. 20530

The Honorable Michael Powell
Chairman
Federal Communications Commission
445 12th Street, N.W.
Washington, D.C. 20554

Dear General Ashcroft and Chairman Powell:

As Members who represent primarily Western and rural districts, we take a particular interest in policy developments that affect the quality of life for our constituents who live in such areas.

As you know, for many people in rural America, Direct Broadcast Satellite (DBS) television service is the only option for Multi-Channel Video Programming Distribution (MVPD), as cable television service is either unavailable or prohibitively expensive. After carefully reviewing the facts of the proposed merger between EchoStar and DirecTV, we have grave concerns that such a merger may increase costs and decrease options for our constituents who want DBS. Thus, we are writing to you to express our opposition to the merger as proposed and urge your agencies to exercise appropriate scrutiny.

We understand that under current antitrust analysis, market power may be measured by looking at the MVPD market rather than the number of DBS outlets that would exist post-merger. Regardless of which standard by which you measure the Echostar-DirecTV merger, we are high skeptical of the result. A merger between the two major players in any market is a source of concern. But in the EchoStar-DirecTV case, the result for rural America will be a monopoly with essentially no hope of future entrants in the marketplace.

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We are aware that EchoStar has suggested a national pricing policy as a remedy for this situation. From the standpoint of rural and Western consumers, we don't believe this is a viable solution. National pricing would not protect rural consumers from a situation where the merged company might choose to maximize revenues from captive consumers in rural areas, with the resulting windfall profits more than compensating for lost market share in urban areas. But more importantly, there is more to competition than just pricing – quality of services, bundling of programming, innovation, consumer choice and customer care are equally important. These issues are endemic of a monopolized marketplace and are in no way addressed by the national pricing proposal.

Others have suggested that the merged entity could function as a regulated monopoly. We believe that regulation is an extremely poor substitute for competition in terms of meeting consumer needs. Regulation should only be considered where no possibility for competition exists – that is not the case in this market unless your agencies allow for merger into a non-competitive environment.

Finally, we are concerned about the effect on competition that might result from a protracted review of this merger. Since the merger was announced, DirecTV has been effectively frozen in place, with no incentive to compete aggressively with their potential acquirer. We are disturbed by reports that competition-sensitive information about DirecTV may have already been shared with EchoStar, so that competition may suffer even if the merger is rejected. For this reason, we would urge you to act expeditiously in your consideration of this merger, hopefully rendering a decision in weeks rather than months.

We believe the problems outlined above are insurmountable. We cannot envision a regulatory regime or consent decree provision that would resolve our concerns. But if you're agencies attempt to craft such a compromise solution, we hope you will keep concerned Members of Congress informed about such developments.

Sincerely,



Richard Pombo, M.C.
Chairman
Western Caucus



Chris Cannon, M.C.
Vice-Chairman
Western Caucus

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