

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, DC 20554

In re )  
 )  
Transfer of Control Applications of ) **CS Docket No. 01-348**  
EchoStar Communications Corporation )  
and Hughes Electronics Corporation )

To: Chief, Cable Services Bureau

**EX PARTE COMMENTS**

1. R y F Broadcasting, Inc. ("RYF"), licensee of commercial television station WRFB(TV), Carolina, Puerto Rico, Southwestern Broadcasting Corporation ("SBC"), licensee of commercial station WVEO(TV), Aguadilla, Puerto Rico, and International Broadcasting Corporation ("IBC"), licensee of commercial television stations WVOZ-TV, Ponce, Puerto Rico, and WAVB-TV, San Juan, Puerto Rico, by their attorneys, hereby respectfully request that these *ex parte* comments be included in the record in the above-referenced docket.<sup>1</sup>

2. On February 25, 2002, EchoStar announced its "All Channels, All Americans" plan, pursuant to which the surviving entity of the EchoStar/DirecTV merger ("New EchoStar") would provide local-into-local service to all 210 Designated Market Areas in the United States, including the markets comprising Alaska and Hawaii.<sup>2</sup> However, EchoStar's plan does not, in

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<sup>1</sup> On November 20, 2001, RYF, IBC, and SBC asked the Commission to dismiss the satellite broadcast carriage complaints they had filed against EchoStar after EchoStar's director of programming swore under the penalty of perjury that EchoStar does not provide local-into-local service in Puerto Rico. On December 6, 2001, RYF, IBC, and SBC asked the Commission to dismiss the satellite broadcast carriage complaints they had filed against DirecTV and DirecTV Latin America, LLC ("DirecTV LA") after DirecTV LA's general counsel swore under the penalty of perjury that neither DirecTV nor DirecTV LA provide local-into-local service in Puerto Rico.

<sup>2</sup> See Paige Albiniak, *'One Nation,' Under Scrutiny*, Broadcasting & Cable, March 4, 2002, at 10 (noting that the carrier would carry "all 1,650 local TV stations" if merger is approved); and Jeremy Pelofsky and Derek Caney, *EchoStar, Hughes Aim for All U.S. Local Markets*, Reuters/Yahoo! Daily News, February 26, 2002 (stating that EchoStar and Hughes "said on Tuesday they would offer all local broadcast channels in all 210 U.S. markets, in an effort to quash criticism of their proposed deal.").

fact, include "All Americans" because it does not include a commitment to provide local-into-local service to the residents of Puerto Rico.<sup>3</sup>

3. Both EchoStar and DirecTV currently provide service to Puerto Rico. It is our understanding that DirecTV provides its Puerto Rico subscribers with local Channel 2 (WKAQ-TV, San Juan, Puerto Rico) and local Channel 11 (WLII(TV), Caguas, Puerto Rico) pursuant to private copyright arrangements. If the DirecTV/EchoStar merger is approved, New EchoStar should not be allowed to discontinue providing service to Puerto Rico or offer a lesser service than it offers residents on the mainland or in Alaska or Hawaii. The merger of EchoStar and DirecTV must be specifically conditioned on New EchoStar providing local-into-local service for the residents of Puerto Rico.

4. If the merger is approved, New EchoStar ultimately will control *all* high-powered direct broadcast satellite ("DBS") full-CONUS Ku-band satellite spectrum, plus five semi-CONUS Ku-band, five full-CONUS Ka-band, and eight semi-CONUS Ka-band orbital slots,<sup>4</sup> giving New EchoStar bottleneck control over satellite programming distribution. If the Commission does not condition the EchoStar/DirecTV merger on New EchoStar providing local-into-local service to Puerto Rico, New EchoStar will be under no obligation to provide local-into-local service in Puerto Rico and no other DBS provider will have the ability to offer local-into-local service there. Ultimately, the residents and local television stations in Puerto Rico will not be able to enjoy the benefits of satellite broadcast television service that Congress intended when it enacted the Satellite Home Viewer Improvement Act of 1999.

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<sup>3</sup> The residents of Puerto Rico are United States citizens. Although Puerto Rico is a self-governing commonwealth, it is in association with the United States. The term "United States," when used in a geographical sense on official documents, acts, and/or laws, includes the Commonwealth of Puerto Rico. Puerto Rico's chief of state is the President of the United States. Although Puerto Rico has authority over many of its internal affairs, the United States controls Puerto Rico's interstate trade, foreign relations and commerce, customs administration, air, land, and sea, immigration and emigration, nationality and citizenship, currency, maritime laws, military service and bases, legal procedures, highways, postal system, social security, and other areas generally controlled by the federal government on the mainland. Importantly, the Federal Communications Commission has jurisdiction over Puerto Rico's mass media and communications services. *See generally* [www.welcome.topuertorico.org](http://www.welcome.topuertorico.org).

<sup>4</sup> *See* Petition to Deny filed by Pegasus Communication Corporation, at page 8; *see, also*, Response to Petitions and Comments filed by Paxson Communications Corporation, at page 3.

5. Since Puerto Ricans are United States' citizens, they should also enjoy the benefits of SHVIA. The Commission, therefore, must specifically condition the EchoStar/DirecTV merger on New EchoStar providing local-into-local service in Puerto Rico.

Respectfully submitted,  
R y F BROADCASTING, INC.  
SOUTHWESTERN BROADCASTING CORPORATION  
INTERNATIONAL BROADCASTING CORPORATION

By: \_\_\_\_\_

Richard F. Swift  
Kevin M. Walsh

Their Attorneys

IRWIN, CAMPBELL & TANNENWALD, P.C.  
1730 Rhode Island Avenue, NW, Suite 200  
Washington, DC 20036  
(202) 728-0400

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