

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of )  
)  
In re Consolidated Applications of )  
)  
EchoStar Communications Corporation, )  
General Motors Corporation, and )  
Hughes Electronics Corporation, )  
)  
Transferors, )  
)  
and )  
)  
EchoStar Communications Corporation )  
)  
Transferee, )  
)  
For Authority to Transfer Control )

CS Docket 01-348 /

TO: The Commission

**REPLY COMMENTS OF SATELLITE RECEIVERS, LTD.**

1. Satellite Receivers, Ltd. ("Satellite Receivers"), by its attorneys, hereby submits this reply (the "Reply") to the Comments filed with the Commission in regards to the proposed transfer of licenses filed by EchoStar Communications Corporation ("EchoStar"), Hughes Electronics Corporation ("Hughes") and General Motors Corporation (collectively, the "Applicants") that would result in the merger of the two Direct Broadcast Satellite ("DBS") providers, EchoStar and DIRECTV, as well as the Petitions to Deny the proposed transfers. In its Comments, Satellite Receivers opposed the creation of a merged EchoStar and DIRECTV ("New EchoStar") as it is

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anticompetitive and will hinder the development of new services. As such, the proposed merger is not in the public interest.

2. One commenter stated that it was “impossible [for him] to think of a serious argument against the merger.”<sup>1</sup> From the well-reasoned comments and petitions that were submitted in this proceeding, it is clear that there are a number of serious arguments against the merger. In this Reply, Satellite Receivers will focus on two: the potential that New EchoStar would provide video programming and advanced services to rural America and the barriers to entry that creation of New EchoStar would pose to new broadband services.

### **Merger would Harm Rural Consumers**

3. The Applicants claim the merger will not harm rural consumers is mere lip service made in hopes of receiving approval of the merger. Satellite Receivers, as well as several other groups that oppose the merger, believes that the merger will reduce, if not eliminate, the growth of broadband service in rural areas.

4. As shown by the National Rural Telecommunications Cooperative (the “NRTC”) and Pegasus Communications, the merger will leave rural consumers with very little choice in multi-video programming providers.<sup>2</sup> Many rural households are served solely by analog cable systems. These analog programming providers are no real alternative to the multi-channel DBS providers.<sup>3</sup> Presently, EchoStar and DIRECTV compete for these customers and the consumers benefit from that

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<sup>1</sup> Comments of the Competitive Enterprise Institute, pg 2.

<sup>2</sup> NRTC’s Petition to Deny, CS Docket 01-348 pgs. 6-22 and Pegasus’ Petition to Deny, CS Docket 01-348 pgs. 11-18.

<sup>3</sup> NRTC, pgs. 20-22.

competition in the form of lower prices and, it is assumed, better service. These benefits will be erased should the merger be allowed to create one DBS licensee. Rural consumers will be left with two choices: an unrestrained New EchoStar, free from the checks and balances of competition, and analog cable. New EchoStar will be able to increase their service fees and reduce their level of service, as they would not face any substantial competition.

5. The NRTC points out that EchoStar and Hughes have fought, and continue to fight, Congressionally mandated local-into-local must-carry requirements tooth and nail.<sup>4</sup> EchoStar and Hughes denied a large number of must-carry requests in some of the nation's largest markets with specious reasoning; some of these denials have even been plainly contradictory to the law.<sup>5</sup> This is but a precursor of what is to come if the merger is allowed to take place. EchoStar and Hughes have sought to avoid their requirements to deliver local programming to the top markets. What will happen to the small rural communities? If past practice is of any indication, New EchoStar will ignore these communities and the provision of broadband service, which will include local programming, to rural areas will be left to new entrants, such as Satellite Receivers.

#### **Barriers to Entry that will be Created by the Merger**

6. If the Commission does decide to grant the merger, Satellite Receivers requests that the Commission do everything in its power to facilitate the entrance of new broadband providers into the marketplace; including the grant of Satellite Receivers'

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<sup>4</sup> NRTC's Petition to Deny, CS Docket No. 01-348 paras. 136-138.

<sup>5</sup> NRTC Petition to Deny, para. 137.

application for a Multi-Video and Data Distribution Service (“MVDDS”) license. The Commission has already determined that MVDDS is a viable service, if steps to mitigate interference to other licenses are taken. As previously noted, if the Commission were to grant the merger, a number of consumers would be without a choice of multi-video programming providers.<sup>i</sup> The grant of MVDDS licenses would result in three choices of program delivery for consumers: MSOs/cable companies, a consolidated DBS entity and MVDDS providers. This would ensure that there are at least two multi-video programming providers for consumers, DBS and MVDDS.

7. Another prospective MVDDS licensee, Northpoint Technologies, Inc., notes that without mandated open protocols and standards to New EchoStar’s delivery of broadband services, New EchoStar will be able to block new services from entering consumers’ homes.<sup>6</sup> New services like MVDDS may require the consumer to attach third party equipment to their set top boxes or be received through their DBS receivers. If New EchoStar is allowed to maintain a proprietary standard for its equipment, it will eliminate its customers from the pool of consumers who would benefit from new technologies such as MVDDS. Satellite Receivers joins with Northpoint and requests, if the merger is to be granted, that the Commission mandate that New EchoStar maintain open protocols and standards so as not to foreclose the introduction of new services into the broadband market.

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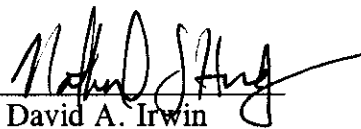
<sup>6</sup> Northpoint’s Petition to Deny, CS Docket No. 01-348 pgs. 8-11. Although Satellite Receivers agrees with Northpoint on this issue, Satellite Receivers objects to Northpoint’s insinuation that it is the sole MVDDS provider. *Id.* pgs. 5, 12-14. The FCC has not granted any entity a license to provide MVDDS. There are a number of applicants, including Satellite Receivers, who have requested MVDDS licenses.

8. NRTC suggests that MVDDS would not be a strong competitor to a New EchoStar.<sup>7</sup> The Commission, and more importantly, consumers, will never know if MVDDS would compete with a DBS monopoly, unless the Commission does all it can to ensure that new services will not be shut out of the marketplace if the merger is granted.

### Conclusion

9. The proposed merger will create a monopoly provider that could easily use its monopoly status to hurt consumers and hinder the growth of new technologies and new entrants to the broadband market. Satellite Receivers, as a proposed new entrant to the broadband market, urges the Commission to deny the transfer applications. If the merger is to be allowed, the Commission must provide for the future of new service providers and place conditions on the merger that will do so.

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Date: February 25, 2002

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<sup>7</sup> Comments of NRTC, para. 62-66.

## CERTIFICATE OF SERVICE

I, Donna L. Brown, hereby certify that on this 26th day of February 2002 a true and correct copy of the foregoing was served via hand delivery (indicated by \*) or by first-class mail, postage pre-paid upon the following:

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