ACC Satellite TV
1144 W. East Avenue, Chico, CA 95926

Chico: 530-893-3474 Redding: 530-222-1800 Sacramento: 916-419-3474
Ukiah: 707-462-1400 Yuba City: 530-673-4119 Toll Free: 800-870-8876
www.accsat.com Fax: 530-893-3491

January 30, 2002

Federal Communications Commission
445 12th Street S.W. TW-B204
Washington, DC 20554

Re: CS Docket 01-348
Proposed EchoStar-Hughes Merger

Introduction

I have been a satellite dealer since before DirecTV & DISH Network began their DBS services. And have been a dealer for each system since they began their DBS services. My company installs many thousands of DBS systems each year in an area of over 10,000 square miles in rural Northern California. We not only provide sales, installation and support for our own sales, but also a significant portion of our business involves the installation and support of DBS systems sold by various major retailers.

Additionally we sell, service and install the StarBand, DirecPC (Dial Return) and DirecWay (Satellite Return) systems that offer Broadband via satellite. We have supported these products since their inception. And once again our involvement goes beyond installation and support of systems that we have sold, to also include systems sold by others.

Program Access Rules

Program Access Rules should not be allowed to expire. Content providers ought to compete with other content providers, and video program distributors ought to compete with many other video program distributors on a level playing field. Please do not allow closed vertical integration to occur. Please extend the Program Access Rules, and expand them to include all forms of video delivery. Sadly, I believe that this is a case where the regulation is 10 years behind in technology, and is also 10 years behind in marketplace reality.

It is true that Vivendi's $1.5 Billion investment in Echostar would largely negate Echostar's claim of being "independent". However, any reasonable person should have fully expected significant involvement in DBS from a strong content supplier at some near term point in time, because having millions of subscribers in a distribution system is exactly the pheromone that would attract such a content company. However, with strong and healthy open Program Access Rules that cover all content regardless of delivery method, this ought not be an issue.

Need for More Channel Capacity & Local Channels

This problem area is significantly artificial today in that it was created in part, and is greatly exacerbated by Federal regulation. The "need" to carry every broadcast station in the United States is largely artificial. The marketplace did not create the need, federal regulation created the need.

A significant deterrent to DBS subscription is the lack of Network Channel availability (ABC, CBS, NBC, Fox) via satellite. Though not necessarily the lack of "Local" Network Channels. In fact many consumers would prefer (for a variety of valid reasons) to receive network channels from more than one town, or a town in which they work, or a state capital, etc, or they simply desire network programming via satellite in general without regard for point of origin. Sadly, Federal regulation disallows this freedom of consumer choice unless certain onerous specific conditions are met. In most of my service area, this relegates customers to poor performing off-air reception for network programming.

Federal “Must Carry” regulations force DBS companies to spend scarce channel capacity on the carriage of channels that a free marketplace would not otherwise support. Particularly when that “local” channel has virtually no local content but is substantially just a re-broadcast of a channel or programming that is already available on the DBS system. This is a classic “Non-Free-Market” inefficient waste of scarce resources.

Both of these issues are political baggage placed upon the backs of the DBS operators that largely created the need for more channel capacity that would not otherwise exist today.

Rural America

Other than the Federally created problem of distant network channel delivery restrictions that work against customers who receive poor quality off-air signals, I believe that Rural America is being serviced reasonably well in terms of channel selections and pricing. Spot beam technology, advancements in compression ratios, and other technologies make additional services quite likely to occur in both the near term and long term. Even without a DBS merger.

StarBand and Hughes DirecPC/DirecWay appear to be improving and growing data delivery via satellite services. And other services such as Hughes SPACEWAY and other Ka Band services on the horizon appear to be poised to take data delivery to the next level.

I do not believe for a moment that a national pricing scheme or other attempts at regulation of a DBS monopoly would be able to adequately address the perils of creating a DBS monopoly. If this merger occurs, the new company would be the monopoly for rural America in terms of TV program delivery, broadband delivery and other future satellite delivered services. There should be no question that there is no substitute for competition in the marketplace. A monopoly in this case would not somehow be different this time.

DBS Competitors

Cable TV is the only current real competitor to DBS. Other than Cable, I have great difficultly seriously looking at any other Video Delivery service as real competitors to DBS:

- **Terrestrial wireless services** such as Northpoint: May not ever serve but the most densely populated flat terrain areas, if any at all.

- **C-Band:** C-Band subscriber counts are rapidly shrinking; I believe that this speaks for itself about C-Band's long-term threat as a competitor. With its comparatively higher equipment costs, higher maintenance costs, the infeasibility of the needed 7.5'-10' dish size (motorized), and required view of multiple satellite locations throughout a wide swath of open sky, the BUD (Big Ugly Dish) is not growing in popularity. Quite the contrary. Even one of the largest C-Band programmers appears to invest a great effort in switching its C-Band subscribers over to the EchoStar DISH Network.

- **Other Satellite Entrants.** This area seems extremely unlikely, as while both Dominion and Cablevision do have FCC licenses to offer Satellite TV service, it appears that neither has access to full CONUS satellite locations and neither has enough bandwidth to offer much in the way of services. Instead it appears that those services would primarily be offering services to complement cable or other satellite delivered services. There appears to be no competitive threat from any satellite delivered service.

- NRTC/Pegasus: Currently appear to be mere resellers of the DirecTV service, without any DBS broadcasting infrastructure of their own.

Competition in the Video Delivery Marketplace

Many if not most of the arguments presented in favor of the merger are perfectly valid and logical. Including the fact that the merged company, if it retains all of its licenses, might have an opportunity to eliminate duplicate carriage, and could nearly double its total channel capacity. This is a potential advantage to rural America in terms of possible additional 'local channel' coverage, and to the industry in general due to the increase in bandwidth, and could make DBS more of a competitor to Cable TV. However, all of these potential advantages are uncertain.

A US Direct Broadcast Satellite receiver is like any other single product, such as a computer, CD player, dishwasher, or car. After the merger only one company would substantially if not completely control the design, manufacture and distribution of that single product in the United States.

Such a merger would virutally eliminate competition in the satellite TV business, and in the broadband (EG: internet access) via satellite business. In DBS we would go from a duopoly to a complete monopoly where one company would control ALL of the prime United States Direct Broadcast Satellite (DBS) orbital locations. I can think of no other area of public assets where one company is allowed to control 100% of those valuable public assets.

Even if you view this merger with the notion that Direct Broadcast Satellite TV services compete first and foremost in the broader Multichannel Video Programming Distribution (MVPD) market, you cannot escape the fact that most of the United States land mass would only be served by the single DBS monopoly. TV and broadband delivery to mobile users such as RV's, boats and trucks would be completely monopolized. Consumers in densely populated areas might have the luxury of choosing between the local Cable TV monopoly and the Nationwide Satellite TV monopoly, but rural customers would have no choice at all.

Haven't we all wrung our hands over the competitive problem of having only ONE cable company serve a given area? Why needlessly impose this same problem upon DBS at this point in time? Even those with access to cable would find their choices drop from 3 (Cable, DISH, DirecTV) to 2 choices, the local cable TV monopoly or the nationwide DBS monopoly.

If we accept the argument that DBS is merely a competitor in the broader MVPD market, then would it be OK for all of the Cable Companies to merge together? We could use the same reasoning that it would not be a "Cable TV Monopoly", but rather a healthy consolidation among competitors in the MVPD market. I submit to you that the answer is a resounding ‘No’. While cable companies compete with one another to a much lesser degree than DBS companies, that competitive struggle is a healthy thing for the marketplace, as each offers differing levels of content, services, prices, and customer service. Those differing service levels are compared in the marketplace, and used to pressure the lagers to catch up to the leaders in various subjects.

Similarly, we have listened to DBS consumers and found that perceived differences in DBS customer service, products, features, services and channels selections were and are strong and healthy competitive forces in the DBS market. No only in terms of the initial purchase, but today, an unhappy DBS customer can switch over to the competing system. That competition ought to continue.

Possessing more frequency spectrum might allow DBS to do many great things. However, a single cellular phone company could make the same argument in requesting all available frequencies in a single market. In this case that single market is the entire United States. And yet even in the cellular phone industry that started with a minimum of two competitors in each market, I don’t believe that anyone would realistically argue that one cell phone company be given a monopoly in a given market regardless of any advantages or services that may be possible by that concentration of bandwidth. And certainly not a monopoly of the entire United States.

The recent taste of credit scoring with certain DBS service promotions further illustrates the need for competition in the DBS industry. Not only must customers of certain promotions posses a valid major credit card to obtain service, but must also disclose their Social Security number and successfully pass a credit scoring process. A process that I believe many people will not submit themselves to and is therefore a barrier. And it is process where the passing score is a secret. What does the future hold? Will the satellite monopoly only deliver services to those with an established and favorable credit history? Leaving all others without television delivery (except off-air), and no access to satellite delivered broadband services? Will the qualifying credit score differ depending upon geographic location? The DBS retailer economics today create a situation where the DBS retailer looses money on a sale unless the purchasers maintain certain minimum programming. With that threat of loosing money I wont sell a DBS system to just anyone, so I understand the need to be selective, similarly DBS needs stable and reliable paying customers to be viable. But I believe that such a selectivity and screening of customers would go much further under an un fettered monopoly, than in a truly competitive environment.

Page 12 of the EchoStar/Hughes ”Joint Engineering Statement” filed with the FCC, says, “…expected cost savings amount to almost $3 billion per year. A significant portion of these savings will be achieved through reductions in subscriber acquisition costs…”

I believe that subscriber acquisition costs fall into a few main categories:

1) The commissions paid to selling DBS retailers.
    a) Currently, selling retailers enjoy some small level of competition for their services between the current DBS duopoly of EchoStar and Hughes. After the merger, there will no such competition in this area.
    b) The level of customer service offered by local retailers (these are the retailers, installers & servicers of the DBS industry) would have no economic choice except to adjust with a corresponding drop in customer service levels and/or increase their charges for service, installation and customer support.
2) Incentives and equipment subsidies to draw and maintain subscribers.
    a) A reduction in expense in this area translates directly and indisputably into higher retail prices for consumers.
3) Customer Service Levels
    a) You must assume that the already poor level of customer service would be further “economized” by the DBS monopoly.

With billions of dollars in new debt to service, millions of dollars needed to create and deploy a standard unified set-top box standard and with new shareholders and bondholders looking for returns, there should be no question that consumer prices would increase and that customer service levels would fall as a direct result of the merger.

DBS Customer Service

In my understated opinion, the current state of Customer Service in the DBS industry is not good.

I believe that in large part it is independent retailers who take the best care of their DBS customers, and thereby lift the DBS industry from an otherwise poor showing. Dealing with the public is not without peril as there are a minority of consumers who will lie and cheat, or have selective hearing or memory. Yes, there will always be problems that arise. That's life. But the poor handling that seemingly legitimate problems receive from the DBS operators are genuinely disappointing. The quantity of, and nature of customer complaints reported to various agencies ought to be of great concern, and a clear indication that improvements are needed in this area.

We need DBS competition to drive the DBS industry to higher customer service levels. DBS should be allowed to compete to its full potential, not just be better than 'Cable TV'. If left to a monopoly, you should expect significant "Cost Savings" to be made in the area of customer service.

Regulation

For a variety of reasons I believe that any attempts to replace competition with a regulated monopoly would fail on many fronts. I believe that in an industry with such rapid change in content, services and technology, that regulation would always be years behind the technology, the business and the marketplace. And that each new attempt at regulation would inadvertently create 2 or 3 new problems, and would otherwise stifle industry performance and developments with unintended side effects.

I fear that any attempts to regulate the New DBS Monopoly will bear a striking resemblance to teen-age boys trying to catch a greased pig. Complete with banjo music. Except that in this case it will be the public and the MVPD marketplace that will suffer thru the show as it goes on for years, if not decades. And the event would cost the taxpayers millions if not hundreds of millions of dollars for ineffective regulation, unworthy of the costs involved.

There is no substitute for healthy competition in the broad MVPD marketplace, or in the narrower DBS marketplace.

Conclusion

There is absolutely no question in my mind that the Echostar/Hughes merger would be a horrible error that the public and the Federal Government would come to regret almost immediately, and would later spend massive amounts of time and resources on remedial actions.

By any stretch of the imagination, it does not look like such a merger would provide *More Competition* in the DBS market or even in the broader Multichannel Video Programming Distribution (MVPD) market. I believe that such a merger would bring dramatically Less Competition and would be an indisputably complete monopolization of all of the Full-CONUS United States Direct Broadcast frequency spectrum assets, the US DBS business, and of the current US Broadband via Satellite business.

Both the DBS and the MVPD marketplace need competitors who will fight to offer the best services at the best prices to the most people. Not a stagnant monopoly that may sit and dictate prices and levels and qualities of service on a "take it or leave it" basis.

I hope that you will oppose the creation of a monopoly in the DBS, and the broadband via satellite marketplace.

Sincerely

Mark Sorensen
Advanced Communications Company
ACC Satellite TV
1144 W. East Avenue
Chico, CA 95926
530-893-3474
530-893-3491 Fax