

In order for the merger to pass the review, ECHOSTAR and GM must successfully argue that the efficiencies gained by the merger generate consumer/economic benefits that far outweigh the impact decreased competition brings. To minimize the perception the competition is decreased, ECHOSTAR and GM have argued that the true competitor in the marketplace is the cable companies.

I think their arguments are full of holes. The "new" products and services they say will result from the merger already exist in various forms. New efficiencies have been created by both DIRECTV and Echostar for years through the innovation necessary to compete with each other. Here are the key points:

1) Cable prices do not constrain DBS prices in rural markets. If the merger goes through, people living in rural areas will have zero choices for service. This transaction is a complete monopoly in those geographic areas and therefore is illegal. The proponents of the deal argue that DBS competes against cable. This is true only to a limited extent. DBS offers attractive prices to lure away cable customers, and to capture market share from each other. Cable companies however, have consistently raised prices over the years, so the "competition" between cable and DBS is not nearly as relevant as the proponents of the merger suggest. The competition between the 2 market segments is much less direct than it has been suggested.

There are other motivations to the pricing policies. Both ECHOSTAR and DIRECTV run special offers to acquire market share. DIRECTV has always offered premium options through major retail outlets that you could not get from ECHOSTAR, including the "NFL Ticket", and products from SONY, Thomson Consumer Electronics (RCA), Panasonic, and others. ECHOSTAR competed primarily on price, offering more basic systems and services for less money. Most of these competitive maneuvers had nothing to do with cable, the DBS offering has always offered features and functionality that differentiated it from cable and lured subscribers away. The primary competition has for years been between the 2 DBS companies because the offerings of the 2 companies directly compete against each other. The consumer, the technology, and the economy all benefit hugely from that competition. This merger eliminates competition in the DBS market segment.

2) The Echostar/DIRECTV merger creates a complete monopoly in rural areas for broadband services. Currently, both ECHOSTAR and DIRECTV/Hughes offer competing high speed internet services. The 2 companies compete against each other on price, features, and performance/functionality. This deal eliminates competition and consumer choices for these services in all rural areas. This deal will have no impact on the growth of these services because they already exist.

The proponents argue that rural areas will gain access to new services not economically available without the merger. This is a total misstatement of the facts. Both companies currently offer 2 way internet services via satellite. This offering is relatively new and represents an emerging market. Consumer adoption for an emerging market is slow, in part because initial prices are high. Since the services have only been available for a few months, it is much too early to determine that these services will never be affordable without the merger. A merger on this basis is unjustifiable.

Video on demand is another service often discussed as an element of broadband. This capability can be developed with the existing spectrum

using the new Personal Video Recorders (PVRs) that now offer up to 100 hours of recording capacity. New software technologies make this service possible, and a natural consequence of the competitive market forces currently at work.

3) Proponents of the deal argue that the consolidation will improve the efficient use of the available spectrum. These companies have solved spectrum problems for years with better compression technologies and innovations such as spot beam satellites. Both companies now offer 2-way satellite internet services. Spot beam satellites enable both companies to offer a great number of local channels with the existing spectrum allocation.

More local markets could be served by launching more satellites, and eliminating competition so that a company can avoid investment and innovation is a bad precedent. This merger is not justified by a local market argument. The existence of competition in the DBS market was the engine for these innovations. Eliminating competition in this field only hurts the long term prospects for maximizing spectrum for the benefit of consumers. DIRECTV recently announced 10 new local markets due to their new spot beam satellite. Expansion of local market coverage can be achieved without this merger.

4) Proponents of the merger have argued that the deal will expand the availability of HDTV. This is another false argument. HDTV has not expanded because consumers have not demanded it, and are not willing to pay extra for it. People select programs based on the content, not the resolution of the channel it's broadcast on. It is not a differentiator in the marketplace and offers no opportunity for expanded revenues or profits. This is why content providers have not offered extensive HD programming and why broadcasters do not transmit a great deal of HD content. The merger does nothing to alter this basic truth.

5) Elimination of competition in the DBS market would also embolden the new ECHOSTAR to follow the price increases imposed by the cable companies over the past several years. Currently, competition between DTV and Echostar constrain price increases as each strives to gain market share. This merger would eliminate that market dynamic.

6) As a result of these factors, the merger would not create any new services or benefits for consumers, while providing no competitive protection against price increases. Furthermore, any cost savings generated by consolidation of the two companies will most likely be consumed by the new Echostar to service the enormous debt the merger created. The savings will be created by layoffs, broadcast center closures, and reduced investment in new products and technologies in a less competitive marketplace.

This merger is not in the public interest and should be rejected by the FCC and the Department of Justice.