S. HRG. 107–873

DOMINANCE IN THE SKY: CABLE COMPETITION AND THE ECHOSTAR–DIRECTV MERGER

HEARING

BEFORE THE

SUBCOMMITTEE ON ANTITRUST,
BUSINESS RIGHTS, AND COMPETITION

OF THE

COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

ONE HUNDRED SEVENTH CONGRESS

SECOND SESSION

MARCH 6, 2002

Serial No. J–107–65

Printed for the use of the Committee on the Judiciary

U.S. GOVERNMENT PRINTING OFFICE
85–659 PDF WASHINGTON : 2003

For sale by the Superintendent of Documents, U.S. Government Printing Office
Internet: bookstore.gpo.gov Phone: toll free (866) 512–1800; DC area (202) 512–1800
Fax: (202) 512–2250 Mail: Stop SSOP, Washington, DC 20402–0001

COMMITTEE ON THE JUDICIARY

PATRICK J. LEAHY, Vermont, *Chairman*

EDWARD M. KENNEDY, Massachusetts
JOSEPH R. BIDEN, JR., Delaware
HERBERT KOHL, Wisconsin
DIANNE FEINSTEIN, California
RUSSELL D. FEINGOLD, Wisconsin
CHARLES E. SCHUMER, New York
RICHARD J. DURBIN, Illinois
MARIA CANTWELL, Washington
JOHN EDWARDS, North Carolina

ORRIN G. HATCH, Utah
STROM THURMOND, South Carolina
CHARLES E. GRASSLEY, Iowa
ARLEN SPECTER, Pennsylvania
JON KYL, Arizona
MIKE DEWINE, Ohio
JEFF SESSIONS, Alabama
SAM BROWNBACK, Kansas
MITCH MCCONNELL, Kentucky

BRUCE A. COHEN, *Majority Chief Counsel and Staff Director*
SHARON PROST, *Minority Chief Counsel*
MAKAN DELRAHIM, *Minority Staff Director*

SUBCOMMITTEE ON ANTITRUST, BUSINESS RIGHTS, AND COMPETITION

HERBERT KOHL, Wisconsin, *Chairman*

PATRICK J. LEAHY, Vermont
RUSSELL D. FEINGOLD, Wisconsin
CHARLES E. SCHUMER, New York
MARIA CANTWELL, Washington
JOHN EDWARDS, North Carolina

MIKE DEWINE, Ohio
ORRIN G. HATCH, Utah
ARLEN SPECTER, Pennsylvania
STROM THURMOND, South Carolina
SAM BROWNBACK, Kansas

VICTORIA BASSETTI, *Majority Chief Counsel*
PETER LEVITAS, *Minority Chief Counsel*

CONTENTS

STATEMENTS OF COMMITTEE MEMBERS

WITNESSES

QUESTIONS AND ANSWERS

Page

SUBMISSIONS FOR THE RECORD

DOMINANCE IN THE SKY: CABLE COMPETITION AND THE ECHOSTAR-DIRECTV MERGER

WEDNESDAY, MARCH 6, 2002

U.S. SENATE,
SUBCOMMITTEE ON ANTITRUST, COMPETITION,
AND BUSINESS AND CONSUMER RIGHTS,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The Subcommittee met, pursuant to notice, at 10:35 a.m., in room SD–226, Dirksen Senate Office Building, Hon. Herb Kohl, Chairman of the Subcommittee, presiding.

Present: Senators Kohl, Leahy, DeWine, Hatch, Specter, Brownback, and Allard [ex officio.].

OPENING STATEMENT OF HON. HERBERT KOHL, A U.S. SENATOR FROM THE STATE OF WISCONSIN

Chairman KOHL. Good morning. We are here today to examine the proposed merger between EchoStar Communications and DIRECTV, the two largest satellite television companies in the country. If they merge, they will be the Nation's largest pay TV service, though it may only be a matter of time before they are overtaken by AT&T/Comcast, if indeed that deal goes through.

In the last few years, one of the few bright spots in cable television has been the emergence of satellite TV. For decades, American consumers had to do business with a cable monopoly that offered poor service at ever-increasing prices. To the extent there has been any improvement, it is because of companies like EchoStar and DIRECTV.

Now, all that is about to change. These two fierce competitors want to merge. They say they will stop fighting one another in order to better fight the cable guy, and that only by joining forces will satellite be able to keep cable honest. In other words, they say they have to become an 800-pound gorilla in order to compete with the 800-pound cable gorilla.

Most consumers today have a choice of three companies for subscription television—these two satellite companies and their local cable company. Even with three competitors, prices continue to increase, and in many rural areas not reached by cable these two satellite companies are the only choice.

Faced with these facts, critics of the deal charge that it will create a duopoly in most of the country and a monopoly in suburban and rural areas. It doesn't take a rocket scientist to be highly skeptical of a merger that reduces competition in an industry and creates a monopoly in rural America.

The parties proposing this merger bear a high burden of proof to overcome this skepticism. We are not saying that they cannot meet that burden, but these are not companies that need to merge in order to survive. EchoStar and DIRECTV are growing businesses that compete against one another in cable. That said, their decision to merge requires them to prove that they can solve the rural and suburban monopoly problem.

EchoStar and DIRECTV need to be honest about how extensive this rural monopoly problem is. They need to demonstrate that duopolies and monopolies do not decrease competition.

To pitch their deal, EchoStar and DIRECTV have been making some pretty alluring promises: a single, uniform national price; local-into-local for all markets, no matter how small the market might be; broadband to everyone in America, and high-definition and interactive television to be rolled out via satellite. We are used to companies making promises, saying whatever they need to get the deal done. Unfortunately, experience teaches us how quickly these promises are often forgotten upon approval, and consumers are left holding the bag.

It is obvious that this merger is being pursued because it is good for the companies, good for shareholders, and good for the bottom line. We are afraid that if it happens to be good for the consumer, it may just be accidental. No one says that businessmen are required to behave any differently. In fact, it would be irresponsible for them not to put their shareholders first and the best interests of their companies first.

Call it a case of once bitten, twice shy, but if the antitrust authorities find it appropriate to permit this merger, then they need to tightly wrap all these promises into a consent decree. Promises made in a press release, of course, are not enough. They need to be legally binding, and maybe even overseen and enforced by a special master.

At a minimum, we need to be certain that, Number one, the companies will deliver local programming into all 210 television markets within a specified time. Number two, the companies will comply with a full, must-carry requirement as required by law.

Number three, the companies must price service in rural areas at the same levels and on the same terms as in competitive markets. Number four, the companies must unroll a competitive broadband service. Number five, the companies must offer high-definition TV and interactive television. Number six, the companies must not charge consumers for any costs associated with having to change equipment as a result of this merger or to receive local channels.

We also need to carefully assess the companies' claim that carrying local television stations makes satellite TV a much stronger competitor to cable. For this reason, Senator DeWine and I are today directing the General Accounting Office to study whether cable rates are restrained in those markets in which satellite companies offer local stations.

Far too often, consumers across the country have been told that these mergers are in their best interests, only to discover afterwards where the real interests lie once the deals, in fact, get done. To date, consumers of pay TV have continued to suffer ever-increasing prices and ever greater consolidation. We need to examine this merger carefully to ensure that, for a change, the promised benefits are truly realized.

I thank our distinguished panel of witnesses for their attendance here today, and now I turn it over to my friend and colleague, Senator Mike DeWine.

STATEMENT OF HON. MIKE DEWINE, A U.S. SENATOR FROM THE STATE OF OHIO

Senator DEWINE. Mr. Chairman, thank you very much for calling this hearing and for your very excellent statement.

Mr. Chairman, this Subcommittee has been very interested in competition in the cable and satellite industry and it has had a number of hearings on these issues over the years. Today's hearing, which examines the proposed merger between EchoStar and DIRECTV, is one of the most important of those hearings.

The parties argue that they need to merge in order to more successfully battle against the cable industry. In fact, EchoStar and DIRECTV are asking us to believe that the best way to increase competition is to decrease competition. Maybe this is true, maybe it is not.

I have a lot of concern about this proposed merger, especially about its impact on rural consumers. However, I am keeping an open mind about this deal because frankly it does offer some tangible benefits. So today we need to look at this carefully and work with all of our witnesses to try to figure out what is the best outcome for consumers and for competition.

To start, as a matter of law, this proposed merger faces some very serious hurdles, and I think we all need to understand that. Section 7 of the Clayton Act establishes the parameters for impermissible mergers. That law states that a merger is impermissible when the merger would "create a monopoly or substantially lessen competition." The courts have generally interpreted this to mean that even if a merger were to promote competition in a certain market or geographic area, it does not justify the lessening of competition in another market or geographic area.

While the deal would make EchoStar a larger competitor against cable, it also lessens competition by reducing the number of competitors from three to two in most markets and by creating a monopoly in a number of rural markets. Because of this, I am interested to hear from Mr. Ergen and Mr. Hartenstein today on how they plan to meet the legal challenges posed by the Clayton Act.

If the parties can satisfy the legal requirements of the Clayton Act, this deal clearly does offer some potential consumer benefits. Most important of those benefits is that the newly merged company plans to provide local channels to all 210 broadcast media markets in the Nation. This certainly is a major improvement over the current situation in which only the top 42 markets receive local satellite service.

The parties also claim that a combined satellite company would be able to offer a less expensive, more price-competitive high-speed Internet product. As the country continues to move toward greater use of broadband services, consumers certainly would be well served by an improved satellite option.

Since this merger will likely enhance local service and could improve high-speed satellite data offerings, it would help EchoStar compete with cable. Any enhanced competition could help improve customer service and lower prices for cable—two results that this Subcommittee always is interested in pursuing.

The big question, however, is whether this deal actually would increase competition in the long run. If these parties merge, most consumers would face a duopoly—the local cable company and a much larger and stronger EchoStar. But even more importantly, millions of rural customers would find themselves with only one option—EchoStar satellite service. EchoStar would dominate satellite service for video and broadband, which might also allow it to aggressively fight cable for market share. Or as so often happens in duopoly markets, maybe the two remaining competitors might find it easier to compete less vigorously.

I hope that with this hearing today we can get to the bottom of who really benefits from the proposed merger. We need to find out if consumers would gain the promised benefits. We need to find out how rural consumers would be protected, and we need to find out what we would be giving up in terms of competition if this deal goes forward.

Mr. Chairman, I am looking forward to the testimony, and I again appreciate your calling this hearing.

Chairman KOHL. Thank you, Senator DeWine.

We turn now to the Chairman of the Judiciary Committee, Senator Pat Leahy.

STATEMENT OF HON. PATRICK J. LEAHY, A U.S. SENATOR FROM THE STATE OF VERMONT

Chairman LEAHY. Thank you very much, Mr. Chairman. I want to thank you and Senator DeWine again for these kinds of hearings. You have over the years moved back and forth as Chairman and ranking member of this Subcommittee.

Senator DEWINE. We hope to move again, Mr. Chairman.

Senator BROWNBACK. Hear, hear.

[Laughter.]

Chairman LEAHY. Maybe someday.

Senator DEWINE. Someday.

Chairman LEAHY. I have been here many times in the majority and many times in the minority over 27 years. I do like the majority better, and I hope many of your wishes come true, but not all.

The one thing that has happened is, whichever role you played, you have both done enormous credit to the Senate and to this Committee. You have held some of the most difficult and important hearings and you have done it in a completely non-partisan way, and it has been a credit to the Judiciary Committee, to the Senate, to yourselves, but more importantly it has been beneficial to the Nation and I applaud you both for that.

If we can bring full satellite service to rural America and help to bridge the digital divide, that would fill a very high priority of mine for many years. Those goals of bringing that kind of service are foremost to me as I look at this issue before us.

I have also advocated the benefits for rural communities that local network broadcasting, offering local weather reports, local emergency news, and local public interest programming can provide throughout America. Senator Hatch and I addressed those goals in March 1998 when we introduced and later won the Committee's approval of a bill to allow local-into-local television via satellite.

I worked with Senator Burns and with the Republican Leader, Senator Lott, and many others to enact a program to provide a Federal loan guarantee of up to $1.25 billion in loans to finance the delivery of local-into-local television and high-speed Internet access to rural America. That was in 1999 and 2000.

I worked to help companies which offered promising approaches to providing local-into-local TV services, companies that included Capitol Broadcasting of North Carolina, and NorthPoint, which hopes to offer such service using terrestrial antennas. I worked on a provision, which is now law, directing the FCC to give NorthPoint an opportunity to demonstrate the viability of their technology.

As a conferee on the farm bill, I am now working to include mandatory funding to cover any Federal risk in implementing that Federal loan guarantee program. I strongly believe in both rural access to full satellite service and robust competition to improve rates and services in the cable and satellite areas.

Those of us who might be in an area where we receive cable service and feel it is not adequate, the picture quality is not good, wherever that might be, or it is too expensive, should have the ability to have competition.

In 1999, I congratulated Charlie Ergen for his role in the industry and I told the Senate—Mr. Ergen may recall this—"I want to point that the leaders of the satellite industry, such as Charlie Ergen of EchoStar who is known for his creative and innovative ideas, want to provide this local [TV] service."

Now, EchoStar and DIRECTV have a plan on the table and satellites in orbit to cover all 210 markets with local TV and broadband access. This crucial question is this: If not this proposal to bring full satellite service to rural areas and to help to bridge the digital divide, then what? I don't believe that rural America can accept "no service" or "maybe some possible service in 10 years" as an answer. At that time, with the changes in society and economics in this country, 10 years of being on the wrong side of the digital divide basically cripples rural America.

If you look at the market for rural local-into-local television or rural high-speed Internet access, in much of rural America there is no service, there is no access, cable, satellite, or anything else. In much of Vermont and in many other States, rural residents have no opportunity to receive local TV stations or high-speed broadband access. Mr. Ergen calls this a "no-opoly," and he is right. Just as with rural electric service or rural telephone service, somebody has to be first. Competition requires competitors.

I remember my grandparents telling me about their excitement when rural electrification came to their part of Vermont. I remember my grandfather saying how he would go around—and my mother reminded me of this story, too, as a young woman, and they would go and turn the light switch on and off just to see the lights go on. It is something we take for granted, but think of what it was like at that time.

A solution to local electric and telephone monopolies back then was to foster more competition. That is why I hope all Senators will join in supporting full funding for the loan guarantee program for local-into-local television service which could be offered by competitors of EchoStar and DIRECTV and anybody else. It is a provision in the farm bill and it is going to be back before the Senate soon.

Mr. Kimmelman will point out that we should support efforts, as I have done over the last 3 years, to permit other companies such as NorthPoint to compete with EchoStar and DIRECTV. If you look at urban markets, the merged company could effectively compete, as he points out, with local cable monopolies.

Now, I know that some argue that EchoStar has the capacity to offer local-into-local TV to all the market areas today without a merger. I have done everything possible to promote local-into-local television, including working on two major bills with Senator Hatch and one with Senator Burns, which are now law.

We shouldn't try to mandate what risks and investments companies should make. I look out here and I see people who have been extraordinarily innovative, but have also bet the farm on their innovation. They should be allowed to do that, but I want to make sure that we have something.

We can reward the willingness to take risks and be creative and be the first. If a company invents a new computer innovation, for example, and patents that, then they get the advantage of being first. When local-into-local TV service and Internet access come to all rural markets, they will be a boon to rural America, but they will also encourage competition because others will try to get into that market.

So I say this not with a magic wand, Mr. Chairman and Senator DeWine, but rather that every Senator has a rural area and has to be concerned about what happens. I applaud the innovative entrepreneurial spirit of the people who are here. I just want to make sure that my part of the world, rural America, whether it is rural America in Texas, Vermont, California, or anywhere else, gets the benefit of it because we cannot survive, our children cannot look forward to jobs, and our people cannot look forward to being full participants in this wonderful country if they suffer the digital divide.

Thank you, Mr. Chairman.

[The prepared statement of Senator Leahy follows:]

STATEMENT OF HON. PATRICK J. LEAHY, A U.S. SENATOR FROM THE STATE OF VERMONT

Chairman Kohl and Senator DeWine, once again you have been a great credit to this committee and the Senate and offered a superb service to the public in the way you have worked together to help organize this hearing.

Bringing full satellite service to Rural America and helping to bridge the digital divide have been high priorities of mine for many years, and those goals are foremost to me as I evaluate the benefits and shortcomings of this proposed merger. I have also advocated the benefits for rural communities that local network broadcasting, offering local weather reports, local emergency news and local public interest programming, can provide throughout America.

Senator Hatch and I addressed those goals in March 1998 when we introduced and later won the committee's approval of a bill to allow local-into-local television via satellite.

I worked with Senator Burns and with Republican Leader Lott and many others to enact a program to provide a federal loan guarantees on up to $1.25 billion in loans to finance the delivery of local-into-local television, and high-speed Internet access, to Rural America. That was in 1999 and 2000.

I have also worked with others to help companies which offered promising approaches to providing local-into-local TV service—companies that include EchoStar, Capitol Broadcasting of North Carolina, and Northpoint, which hopes to offer such service using terrestrial antennas. I worked on a provision, which is now law, directing the FCC to give Northpoint an opportunity to demonstrate the viability of that technology.

As a conferee on the Farm Bill I am now working to include mandatory funding to cover any federal risks in implementing that federal loan guarantee program. I strongly believe in and have worked for both rural access to full satellite service and for robust competition to improve rates and service in the cable and satellite industries.

I have congratulated Charlie Ergen for his role in the industry, telling the Senate: "I want to point out that the leaders of the satellite industry—such as Charlie Ergen of EchoStar who is known for his creative and innovative ideas—want to provide this local [TV] service."

Now EchoStar and DirecTV have a plan on the table, and satellites in orbit, to cover all 210 markets with local TV and broadband access.

The crucial question is this: If not this proposal to bring full satellite service to rural areas and to help bridge the digital divide, then what? Rural America cannot accept "no service," or "maybe some possible service in 10 years," as the answer. If you look at the market for rural local-into-local television, or rural high-speed Internet access, in much of rural America there is no service—neither cable, nor satellite, offers it.

In much of Vermont and in many other states, rural residents have no opportunity to receive local TV stations or high-speed broadband access. Charlie Ergen calls this a "no-opoly"—and he is right. Just as with rural electric service, or rural telephone service, someone has to be first. Competition requires competitors.

It is easy for me to make this point about being first, because I remember when Vermont families first received electric service, and first received telephone service. People would walk through their homes and turn the light switches on and off, just for the fun of it.

A solution to local electric and telephone monopolies back then was to foster more competition. That is why I hope all senators will join in supporting full funding for the loan guarantee program for local-into-local television service which could be offered by competitors of EchoStar and DirecTV—which is a provision in the Farm Bill that soon will be back before the Senate.

In addition, as Gene Kimmelman will point out, we should support efforts, as I have done over the last three years, to permit other companies such as NorthPoint to compete with EchoStar and DirecTV.

From another standpoint, if you look an urban markets, the merged company could effectively compete, as he points out, with local cable monopolies.

I know that some argue that EchoStar has the capacity to offer local-into-local TV to all the market areas today, without the merger with DirecTV. Indeed, I have done everything possible to promote local-into-local television since 1997—including work on two major bills with Senator Hatch and one with Senator Burns, which are now law.

But Congress normally does not try to mandate what risks and investments that companies should make. I admit that Congress has created an entire system that rewards a willingness to take risks and to be creative, and to be first. If a company invents a new computer innovation, and patents that invention, our society rewards the developer for being first.

When local-into-local service TV service and Internet access come to all rural markets, they will be a boon to Rural America and they likely will encourage competition. That is a crucial goal and a key test in evaluating this merger.

Chairman KOHL. Thank you, Senator Leahy.

We turn now to Senator Brownback, from Kansas.

STATEMENT OF HON. SAM BROWNBACK, A U.S. SENATOR FROM THE STATE OF KANSAS

Senator BROWNBACK. Thank you very much, Mr. Chairman. I have got a full statement I would like to put into the record and just put forward a couple of thoughts.

First, thank you to you and the ranking member for holding this hearing. I think it is an important subject for us to take a good look at, one of which I have a number of questions about. Particularly for me, being from Kansas, the benefits of this merger in my mind are murky. In many rural communities where there are no local cable systems, this merger will eliminate any choice in the multi-channel video market.

Mr. Ergen, whom I have met with, has committed EchoStar to a national pricing policy designed to reassure us that rural consumers will receive the same rates for service that exist for urban consumers who benefit from satellite and cable competition. I am appreciative of that, but without any specifics about what that national rate will be, I am concerned that this merger may lead to rate increases for rural consumers. So I look forward to having that fleshed out for us a little bit further in this hearing.

I am also concerned with the consolidation of spectrum under this one company. While I understand the logic to the argument in favor of the merger to create efficiencies by eliminating duplication, I must pose the question, do we really need all of that spectrum.

Currently, DIRECTV and EchoStar control 50 percent of all the orbital slot bands. These slots are expected to be used for both multi-channel video and broadband services, and I would like to hear today that the merged company has every intention of deploying satellites in these slots, or else enabling another entity to take advantage of them. That is something else that I look forward having discussed by this panel.

Finally, I am very well aware that this merger also makes possible the first truly national broadband service. This is especially important to Kansas, where fast connections to the Internet that can increase educational, business, entertainment, and health care resources in rural areas and could form the foundation of rural revitalization and help put an end to some rural flight are very important aspects of this bill. I look forward to that discussion as well.

On the whole, Mr. Chairman, this is something that I want to hear answers to these particular questions before really determining myself the impact of this on my State. I am appreciative to have a hearing like this so that we can get at some of these questions a little better.

Thank you, Mr. Chairman.

[The prepared statement of Senator Brownback follows:]

STATEMENT OF HON. SAM BROWNBACK, A U.S. SENATOR FROM THE STATE OF KANSAS

I thank the Chairman for holding this important hearing today. The proposed merger between Echostar and DirecTV holds out the prospect of many strong consumer benefits, especially in our nation's urban markets. However, the merger also raises the specter of anti-consumer consequences, especially in some of our rural markets.

In urban communities, both Echostar and DirecTV are competing with each other and cable television companies in the multichannel video market. Their merger will reduce the number of competitors available in urban markets by one, but it will also create strong efficiencies by eliminating duplication and substantially increasing the spectrum resources available for satellite television. Consumers will have access to increased programming, reduced costs for satellite equipment, and a powerful service. However, for consumers to realize these benefits satellite TV must remain price-competitive with local cable TV companies.

In our nation's rural communities—of special interest to a Senator from Kansas—the benefits of this merger are murky. In many rural communities where there are no local cable systems this merger will eliminate choice in the multichannel video market. Mr. Ergen has committed Echostar to a national pricing policy designed to reassure us that rural consumers will benefit from competition in urban markets as if they had a choice in service providers themselves. Without any specifics about what that national rate will be, I am concerned that this merger may lead to rate increases for rural consumers.

I am also concerned with the consolidation of spectrum under this one company. While I understand the logic of the argument in favor of the merger—to create efficiency by eliminating duplication—I must pose the question: does the merged company really need all of that spectrum?

Opponents of this merger suggest that either of these companies can offer the slate of services that Echostar and DirecTV say are only possible through a merger. In addition, DirecTV and Echostar control 50% of all Ka-band orbital slots, yet I am concerned that they have no immediate plans to actually use them. I would like to hear today that a merged company has plans to deploy satellites and offer services using these slots, or else will enable other entities to take advantage of them.

Finally, I am very aware of this merger's promise of a national broadband service. This is especially important to Kansas where fast connections to the Internet in rural areas can increase entertainment, education, health care, and business resources which could form the foundation of a rural revitalization. I look forward to hearing more about this aspect of the merger proposal.

Chairman KOHL. Thank you, Senator Brownback.

I would now like to introduce briefly the members of our panel and then call on Senator Wayne Allard to make some remarks before you all begin your testimony.

Our first witness today will be Jeremiah "Jay" Nixon, who is the Attorney General of the State of Missouri. Mr. Nixon is a native of Jefferson County, Missouri, and has been involved in State politics for more than 15 years.

From DIRECTV, we are joined by Mr. Eddy Hartenstein, Chairman and CEO of DIRECTV. Mr. Hartenstein is a technology guru, holding degrees in aerospace engineering, math, and applied physics.

Next to him is Mr. Charles Ergen, who is co-founder, Chairman and CEO of EchoStar Communications. Among other things, in his career over the past 5 years Mr. Ergen has admirably worked his way up Forbes' 400 List, currently ranking number 22 on the list.

Also joining us today is Mr. Robert Pitofsky, former Commissioner and Chairman of the Federal Trade Commission, and current professor at Georgetown University Law School. Mr. Pitofsky is a noted scholar and writer on both trade regulation and antitrust law.

Representing Consumers Union is Co-Director of the Washington, D.C. Office, Mr. Gene Kimmelman. Mr. Kimmelman is a valued regular at this Subcommittee's hearings, most recently as a witness and in the past as chief counsel to former Chairman Metzenbaum.

Our final witness today will be Mr. Edward Fritts, who is president and CEO of the National Association of Broadcasters. Mr. Fritts' broadcasting and production career began during his student days at Ole Miss. He was recently inducted into the Broadcasting and Cable Hall of Fame.

We welcome you all, and before we take your opening statements we would like to call on Senator Wayne Allard, from the great State of Colorado.

STATEMENT OF HON. WAYNE ALLARD, A U.S. SENATOR FROM THE STATE OF COLORADO

Senator ALLARD. Mr. Chairman, thank you, and Ranking Member DeWine. I would like to extend my appreciation for allowing me to introduce one of your primary witnesses here this morning, who is a Coloradan, and he is going to be talking about a Colorado company, EchoStar, which is located in Littleton, Colorado.

It started in 1980, selling satellite dishes in rural Colorado, and then launched the DISH Network in 1996. It is the Nation's fastest growing direct-to-home satellite TV company with over 7 million customers, and currently they have 6 satellites orbiting the Earth to provide the services to America.

Charles Ergen has a number of professional honors. The most significant includes he was the Rocky Mountain News Business Person of the Year in 1996 and 2000, Satellite CEO of the Year in the year 2001, and in 1991 was Master Entrepreneur for the Rocky Mountain Region according to Incorporated magazine.

Again, it is with a great deal of pleasure that I introduce to the Committee Charles Ergen, Chairman and CEO of EchoStar Communications Corporation.

Thank you, Mr. Chairman.

Chairman KOHL. Thank you, Senator Allard.

Now, we will take opening statements.

Mr. Nixon?

STATEMENT OF JEREMIAH W. NIXON, ATTORNEY GENERAL, STATE OF MISSOURI, JEFFERSON CITY, MISSOURI

Mr. NIXON. Good morning, Chairman Kohl, Senator DeWine, Chairman Leahy, and other members of the Subcommittee. I appreciate the opportunity to appear before you today to discuss this matter of great importance to consumers in Missouri and throughout this Nation.

I am Jay Nixon, serving my third term as Attorney General of the State of Missouri. As an official charged with protecting consumer rights in my State, and with authority to enforce antitrust laws in both State and Federal court, I have come today to voice my concerns about the proposed merger between Hughes and EchoStar.

In my view, the proposed merger between DISH and DIRECTV will create an illegal monopoly in rural areas of America and my State. Up to one-third of the residents of Missouri currently have no access to cable. Those residents have two options for multi-channel video programming—DISH Network or DIRECTV.

Let me show you a map, centered on Missouri, but also showing contiguous States. On this map—and you will see many other maps, but on this map census blocks that are not served by cable are in white. If this merger is not stopped, consumers represented by the white on this map will be faced with a perfect monopoly for multi-channel programming. In those areas, this is a two-to-one merger.

The proposed monopoly will therefore do away with a vibrant and competitive market for rural consumers which can provide competitive prices, innovation, and quality service. That competitive market has also substantially reduced the cost of consumer equipment and installation. Meaningful choice will disappear if the proposed merger is not stopped.

EchoStar has attempted to address our concerns by offering a national pricing policy and by offering to re-broadcast local stations into every local market. Their proposals are a tacit admission that the merger is detrimental to consumers, absent a monumental amount of governmental intervention.

Now, I want to make it clear that EchoStar's concessions attempt to address consumer harm and public policy concerns, but they are not legal arguments. The Clayton Act specifically prohibits mergers to monopoly, and regardless of the short-term benefit a merger to monopoly is illegal under Federal law.

Now, I acknowledge that EchoStar's attempts to try to combat the harm from this proposed monopoly are significant. The promise of local-into-local service is a very important step, but local-into-local service is simply a way to address only one of the aspects of a monopoly. It is a concern for today, but what are we to do about innovations and programming changes that consumers demand tomorrow? They will have no option but to accept EchoStar's offerings. In short, the admitted benefits of local-into-local do not justify a perfect monopoly.

The parties' offer of national pricing addresses the price increases that would inevitably occur if this transaction were to move forward. This, too, is an acknowledgement of the effects associated with monopoly. National pricing is extremely complicated and problematic.

How would the new EchoStar compete with cable in various areas across the country if it has no flexibility to change its prices to meet local special offers? Are we to believe that the new EchoStar will not compete with local cable companies that offer special promotions, or that local retailers will be prohibited from raising prices or lowering prices on equipment or installation? National pricing is fraught with difficulties because it is an artificial attempt to regulate price, when history proves that a vibrant, competitive marketplace is, in fact, the best way.

The bulk of my remarks have addressed the areas where there will be an illegal monopoly created by this merger. Even accepting the argument that there are areas where DBS competes with cable, the merger is still not acceptable. A merger to duopoly has never been allowed by any court where it is difficult for new competitors to enter the market. The parties have conceded that particular point.

In closing, let me say that this is a very important consumer protection issue. Competition is a great thing for consumers. It allows them to vote with their feet when prices get too high or service gets too bad. They need that option for DBS.

Consumers understand the value of competition. They know that only having one provider of a service is contrary to sound economic principles and contrary to consumer interests. We owe it to those consumers to point out the problems with this proposal.

Thank you very much.

[The prepared statement of Mr. Nixon follows:]

STATEMENT OF HON. JEREMIAH W. NIXON, ATTORNEY GENERAL , STATE OF MISSOURI, JEFFERSON CITY, MISSOURI

The only two competitors for consumers of multichannel video programming in certain markets not effectively served by cable seek to merge into a single entity, leaving those consumers at the complete mercy of a perfect monopolist. Even in the other parts of the country where consumers may avail themselves of a cable alternative, the result of the proposed merger would be a duopoly. Barriers to entry are extremely high. For a new DBS competitor to enter this market to discipline prices and encourage better service would require an extraordinary investment of many hundreds of millions to build, launch and insure a satellite and more to provide the ground systems, advertising and other expenses necessary to begin a DBS business from scratch. In addition, any new entrant would be required to obtain all appropriate licenses from the Commission. No court has ever approved a merger to duopoly under similar circumstances.[1]

In 1998, the U.S. Department of Justice sued to enjoin the transfer of the Full CONUS Orbital Slot located at 100° W.L. from ASkyB to PrimeStar, claiming that the transaction would reduce the number of competitors in rural MVPD markets from four to three, i.e., from EchoStar, Hughes-DIRECTV, PrimeStar and ASkyB to just EchoStar, Hughes-DIRECTV and PrimeStar. The Justice Department also claimed that the merger was illegal in urban MVPD markets, where Cable Television and satellite services were available, typically reducing the number of MVPD competitors from five to four. If a four to three and a five to four merger was wrong then, it stands to reason that in the same market just a few years later, a two to one and three to two merger is wrong.

THE PROPOSED MERGER CREATES A PERFECT MONOPOLY IN AREAS OF THE COUNTRY NOT EFFECTIVELY SERVED BY CABLE—MOSTLY RURAL AREAS.

Hughes, through its DIRECTV unit, owns 61.7% of the market for direct broadcast satellite (DBS) service, while EchoStar has 38.3% of that market.[2] Together, they would create a monopoly in DBS. That monopoly extends to MVPD for a significant number of consumers. According to EchoStar "millions" do not have access to cable and broadcast.[3] For all of these mostly rural households, the options will be reduced from two competitors to one. The merger will leave rural Americans with only one choice for multichannel video programming distribution (MVPD). Rural businesses that depend upon the services provided by satellite will also be subjected to a monopolist should the merger go through and the license transfers be approved. The perfect monopoly that will be created in many areas of the country and the unavoidable and foreseeable consequences of that monopoly cause me to oppose the merger.

Charles W. Ergen, Chairman and Chief Executive Officer of EchoStar, himself admitted that there is a problem with this deal especially in rural communities. He said, as reported in a recent article, "If the market is satellite only, then I wouldn't approve this deal. It's going to be a nonstarter."[4] In various rural MVPD markets where cable does not pass or effectively serve homes, the relevant MVPD market is satellite only and therefore it creates significant antitrust issues, even in the eyes of EchoStar's CEO.

Another problem associated with this acquisition is the reduction in competition in emerging technologies such as broadband Internet. There is a terrific disparity between urban and rural areas for this technology.[5] Allowing this acquisition would leave rural households even further behind urban areas for this increasingly important and popular service. The absence of competition for satellite delivered high-speed Internet service will stymie the development and availability of content for

[1] *FTC* v. *H.J. Heinz* 246 F.3d 708 (D.C.Cir. 2001).

[2] Sources: Carmel Group, Morgan Stanley

[3] *EchoStar* v. *DIRECTV, Civil Action NO. 00–K–212, Amended Complaint at* ¶ 28.

[4] Wall Street Journal, October 31, 2001.

[5] *Falling Through the Net: Toward Digital Inclusion; A Report on American's Access to Technology Tools*, October 2000, pg. xviii (rural areas are lagging behind cities and urban areas in broadband penetration, 7.3% penetration for rural areas, 12.2% for central cities and 11.85 for urban areas).

this emerging service. Increasingly, this technology is used to provide coverage of important local, state and federal governmental meetings and information. It also provides access to entertainment avenues such as sporting events, music, movies and movie trailers. Videoconferencing is an increasingly important way for business to be transacted; high-speed Internet access is important for this business tool to be available.

Other technologies cannot be counted on to gain acceptance or penetration in order to discipline prices and services through competition. In recent years, there has been talk of new technologies that would allow some of these services to be provided through telephone lines and other avenues. These options have yet to materialize with any significant degree of penetration.

THE PROPOSED MERGER CREATES A DUOPOLY IN THE REST OF THE COUNTRY

Even in areas where cable is an option for MVPD, the acquisition would result in only two options where there had once been three. Such a reduction in competition is unacceptable. Three-to-two mergers are nearly always anticompetitive and the efficiencies and advantages claimed thus far by the merging parties do little to assuage the concerns recognized by federal court precedent and reflected in the NAAG Horizontal Merger Guidelines and the FTC and DOJ Horizontal Merger Guidelines.

Moving beyond what may be the effect in rural communities, this merger presents difficult issues with regard to the rest of the country. Assuming that DBS competes with cable, the proposed merger would create a duopoly for MVPD in areas of the country served by cable. In most communities where cable is an option, there is a single cable operator and two DBS providers. Post-merger there would be only two options for consumers—a duopoly. Mergers to duopoly are rarely, if ever, approved. A problem with a duopoly is the presumption that increases in concentration will increase the likelihood of tacit collusion.[6] In a duopoly there is a real danger of supracompetitive pricing at monopolistic levels.[7] Where there is a duopoly and high barriers to entry, there is the opportunity and every incentive to collude to increase prices.[8] Therefore, not only is the proposed merger a problem in the markets where cable is available but the promise by EchoStar to price nationally based upon its price in the areas where it enjoys a duopoly only assures that the potential for supracompetitive pricing will extend to the rural areas where it holds a monopoly. Merger policy has at its core the goal to “obstruct the creation or reinforcement by merger of such oligopolistic market structure in which tacit coordination can occur.”[9]

ECHOSTAR'S EFFICIENCY ARGUMENTS ARE IRRELEVANT AND FACTUALLY INACCURATE

EchoStar argues that only through this proposed merger can it increase the capacity to the level necessary to provide the services consumers desire, high speed internet access, local-into-local in all markets, and additional programming. The technology exists for such increased capacity today.[10] Even so, vigorous competition is the most assured way to achieve creative and swift innovation. With only a single actor in the market, any technological advances are left to the self interest of the monopolist. There is no incentive for the monopolist and only slightly more for the oligopolist to invest in the research and development necessary to develop and deploy innovative technological advances. In any event, competition, not consolidation, is the best way to achieve the innovation necessary to expand capacity. With more than one or two competitors working diligently toward technological advances, they are more likely to occur and to occur more rapidly than if only a few are engaged in such activity. Consumers then get what they desire, the programming and access to technology through several different providers competing for consumers. Without such competition, the consumer will have no option when faced with a monopolist

[6] See, *FTC* v. *H.J. Heinz Co.*, at 725.

[7] *Id* at n23, citing Edward Hastings Chamberlin, The Theory of Monopolistic Competition: A Re-orientation of the Theory of Value 46–55 (8th ed. 1962).

[8] *Id*. at 725 (“The combination of a concentrated) market and barriers to entry is a receipe for price coordination”). The court further observed that “Significant market concentration makes it easier for firms in the market to collude, expressly or tacitly, and thereby force price above or farther above the competitive level” and “Where rivals are few, firms will be able to coordinate their behavior, either by overt collusion or implicit understanding, in order to restrict output and achieve profits above competitive levels.” Citations and internal quotations omitted.

[9] *Id.*

[10] Affidavit of Roger J. Rusch filed by the U.S. Department of Justice in *Satellite Broadcasting & Communications Association of America* v. *Federal Communications Commission,* Civ. Act. No. 00–1571–A.

or only two duopolists who don't have the same incentives as they would have in a competitive market to provide the lowest price, best service and ever increasing technology.

The parties argue that only through the proposed merger will they be able to provide the high-speed internet access consumers desire. They claim the technology does not exist to provide the spectrum needed for broadband services. Yet both companies currently provide such service through EchoStar's StarBand and DIRECTV's DIRECWay product. Both services are provided on the Ku-Band. In addition, both companies include deployment of Ka-Band services in their separate business plans. A very significant number of consumers in different sections of the country have only satellite providers as their source for broadband services. For these consumers, DSL and cable are not an available alternative. If the merger is consummated, one company will control the price, quality and technology for this important service.

EchoStar has advanced several reasons why it believes this proposed merger will garner certain efficiencies claimed to be beneficial to consumers that trump any competitive concerns. But there is no proof that these efficiencies are merger specific. Under the antitrust laws, when merging parties argue that a merger may result in certain efficiencies, the efficiencies must be merger specific.[11] In other words, it is not enough to show that there are efficiencies, the efficiencies must be available only because of the merger. For instance, when EchoStar announced the merger and filed the necessary FCC applications, it argued that only with a perfect monopoly in DBS will it be able to expand such service into as many as 100 markets. A similar claim was made in the unsuccessful challenge to the Carry One, Carry All requirement in the Satellite Home Viewer Improvement Act of 1999 ("SHVIA").[12] In that case, the United States relied upon technical analysis that showed that EchoStar and DIRECTV each individually could serve all local broadcast channels to subscribers in all DMAs using a small portion of their respective current transponder capacity.[13] It is interesting that with the motivation to get this deal approved, the executives and their engineers were able to find a way to provide local into local into 210 markets.

It should be noted that all of these claims regarding the ability of the two satellite companies to efficiently use their capacity to comply with the Carry One, Carry All requirement were fully presented before Congress within the context of hearings on the proposed legislation. Congress recognized that satellite technology is improving and heard from satellite company executives regarding plans to develop spot beam satellites so that spectrum frequencies can be reused in order to increase capacity to provide local-into-local in more and more markets.[14] With this evidence in hand, Congress elected to adopt its regulation knowing the present day limitations and the continuing advancements being made in technology. In fact, one reason Congress delayed implementation of § 338 was to allow for some additional time for satellite carriers to develop the new technology about which they had testified.[15] With full knowledge of the state of competition at the time and after giving full hearing to all market participants, Congress determined that despite any capacity constraints it would be in the public interest to preserve local stations by enacting SHVIA. Congress knew at the time that not all markets would be fully served at the outset and that local-into-local would expand gradually from larger markets to smaller over time. Congress enacted SHVIA to stimulate competition along with all its consumer benefits.[16] It cannot be the subject of rational debate then that Congress intended for its Carry One, Carry All to be used as an excuse to reduce the very competition it had hoped to advance.

ECHOSTAR'S PROPOSED FIXES WILL NOT WORK AND CALL FOR UNDESIREABLE REGULATION

EchoStar's promises, assurances and alleged commitments are poor substitutes for direct and vibrant competition. According to EchoStar's economist, "EchoStar is committed to providing more diverse programming, and more advanced services." and "New EchoStar has committed to maintaining its policy of uniform national

[11] See FTC and DOJ Horizontal Merger Guidelines § 4.
[12] *SBCA* v. *FCC*, 275 F.3d 337 (4th Cir. 2001).
[13] Rusch Affidavit, *supra*.
[14] H.R. Rep. No. 106–79, pt. 1, at 14 (1999); Satellite/Cable Competition: An Examination of the EchoStar/MCI Deal. Hearing Before the Subcommittee on Antitrust, Business Rights, and Competition of the Senate Committee on the Judiciary, 106th Cong. 40–41 (1999) (1999 Senate Hearing) (Statement of Charles Ergen, CEO of EchoStar), as cited in *SBCA*, 275 F.3d 337 at n5.
[15] Id.
[16] Id.

pricing for its programming."[17] EchoStar by presenting these arguments invites the government to regulate it indefinitely. In order that consumers can be assured that New EchoStar's commitments will be honored for all time, it will be necessary to establish which government agency will regulate, the appropriate measure of the competitive price and how terms such as quality, programming, service and equipment are monitored. It is no real assurance that, in the words of EchoStar's own economist, "rural customers would likely be no worse off following the merger" or that they "may benefit from more intense competition between New EchoStar and cable companies."[18] It is disheartening that EchoStar's argument is not that rural consumers interests will indeed be advanced but that they may benefit and will be no worse off than before.

EchoStar realizes that there is an especially significant antitrust problem with this proposed merger in rural areas not passed by cable or where cable is otherwise not a viable option. Attempting to address this concern, EchoStar offers to continue a policy of national pricing. Under their proposal, they would consent to offering DBS services at the same price to all consumers whether or not cable is a viable option. EchoStar argues that this should resolve all concerns about subjecting a significant portion of the population to a monopolist. Not only is this proposal an admission that the merger would create a monopoly in certain parts of the country, it fails to address all of the anticompetitive concerns and raises additional problems.

First, the underlying difficulty is not avoided by the national pricing proposal. Approving the merger and the license transfers would hand a significant portion of the country's consumers over to a monopolist. Second, the proposal assumes that a duopoly price is a competitive price and that there will be no collusion between the duopolists. Third, EchoStar's promise does not account for the fact that prices in areas where DBS competes with cable may be artificially increased on the backs of the captive rural consumers. Fourth, it further entrenches the way of business that focuses technology and programming efforts on urban areas over rural. Since the company's profit margin principally will be determined by the urban price and services provided there, including programming, there will be little incentive to provide the type of programming and services desired by consumers residing in the countryside. For example, if rural consumers who only have access to DBS for MVPD, desire program X and program X is not popular in the city, there is no incentive for the sole DBS carrier to carry program X at all. However, if there are more than one DBS provider trying to attract that rural population, one or both will feel compelled to provide program X. Fifth, EchoStar's proposal calls for government regulation—for all time. For these reasons, national pricing does not resolve the concern that the interests of citizens and businesses in rural communities not adequately served by cable will be undercut by this merger to monopoly.

Not only is a promise of uniform pricing insufficient to assuage legitimate concerns, it will not adequately be constrained by any means. EchoStar's argument that cable rates will constrain New EchoStar's national pricing[19] is directly contradicted by assertions it made in EchoStar Communications Corporation v. DIRECTV Enterprises, Inc., Civ. No. 96–4963. In that case, EchoStar averred that EchoStar is DIRECTV's closest competitor, that consumers do not view cable as an effective substitute for high-power DBS services, that EchoStar and DIRECTV react primarily to each other when setting equipment and service prices, and that millions of potential DBS and/or High Power DBS customers live in areas that do not have access to cable such that, if there is no competition between DIRECTV and EchoStar, there is no competition at all.[20] EchoStar's court-filed statements show that the two DBS companies establish prices based upon the competition between them and not so much with cable and that consumers in rural areas of the country not passed by cable or otherwise not sufficiently served by cable will be subjected to an unrestrained monopoly if one of the two are eliminated from the market. Accepting as true EchoStar's own arguments, there can be no faith that the assurances offered today will in any way protect those consumers. That faith is further shaken by Mr. Ergen's own statements about the nature of the national pricing promise. He indi-

[17] Willig ¶¶ 33, 28

[18] Willig ¶ 36 fn 35.

[19] Willig ¶¶ 9, 10, 29 and ¶ 10 fn 9 (information regarding pricing policies based on interviews with EchoStar and DIRECTV executives).

[20] EchoStar's Amended Complaint and EchoStar's Request for Rule 56(f) Continuance To Respond to DIRECTV Defendant's Motion for Summary Judgement and Memorandum of Law in support thereof at 12, filed in *EchoStar Communications Corporation* v. *DIRECTV Enterprises, Inc., Civ No. 96–4963.*

cated in response to questions on the subject that his promise would make allowances for New EchoStar to respond to local promotions or rebates by cable.[21]

It is anathema to the standards of our federal system and the principles of antitrust laws to benefit some fortunate enough to have a cable alternative on the backs of those who have been denied access to cable and are therefore captive to a potential perfect monopolist for DBS services. Where there are anticompetitive effects in one area of the country, the parties cannot justify the merger by claiming procompetitive effects in another.[22]

CONCLUSION

I oppose this merger because it would create a monopoly for MVPD for a significant number of Americans. There are now two firms competing for that business and after a merger there would be just one. In Missouri, all consumers in one-third of our households would have only one option for MVPD and high-speed internet access. My responsibility is to enforce the antitrust laws in order to protect all citizens in my state from mergers that would reduce competition.

The Clayton Act does not allow a merger when the effect "may be substantially to lessen competition, or tend to create a monopoly." We know from years of experience that a lessening of competition equals a lessening of innovation. Prices will be higher and there will be lower quality and service. If the merger is allowed, technology advances necessary to drive the same phenomenal increases in capacity we have seen in recent years will not be developed. EchoStar wants to get the capacity the quick and easy way, from eliminating a competitor, rather than to innovate for it. For short term gains in capacity, we would be sacrificing increases in technology that will take us beyond new frontiers if we ensure vibrant competition. In addition, we would be allowing these short term gains that benefit shareholders on the backs of consumers who would be subjected to a monopolist.

Mr. Ergen's promises to price nationally and to rebroadcast local-into-local channels across the nation are concessions, but they do not address the core concerns. They do not resolve the basic problem with a merger to monopoly or to duopoly which is that a significant reduction in competition will inevitably lead to higher prices, lower quality, reduced programming options and, perhaps most importantly in this industry, slow or no technological innovation. Furthermore, both of the proposals call for undesirable government regulation of a new type that would not be necessary if competition is preserved.

Chairman KOHL. Thank you, Attorney General Nixon.

We now turn to the Chairman and CEO of DIRECTV, Mr. Eddy Hartenstein.

STATEMENT OF EDDY W. HARTENSTEIN, CHAIRMAN AND CHIEF EXECUTIVE OFFICER, DIRECTV, INC., EL SEGUNDO, CALIFORNIA

Mr. HARTENSTEIN. Thank you, Chairman Kohl, Senator DeWine, members of the Subcommittee. I appreciate the opportunity to tell you why we believe that consumers will reap tremendous benefits from the merger of EchoStar and Hughes, the parent companies of DISH Network and DIRECTV.

I will talk about how, as a direct result of the completion of this merger, consumers across the United States will have access to satellite-delivered local broadcast channels with digital-quality tele-

[21] *Egen Makes His Case,* Satellite Business News, December 21, 2001 at 1.

Question: So you're saying you wouldn't offer a special deal in one part of the country and not offer it in another part of the country?

Ergen: I guess if you're saying if the cable company came in and offered a rebate in one city, would you respond to that?

Question: And you would be looking for that kind of flexibility in a consent decree on national pricing?

Ergen: Again, this is very premature We certainly haven't had discussions with any regulators about how to do it. But we know that there are past examples of formulas and ways that can make this work.

[22] *U.S.* v. *Philidelphia National Bank*, 374 U.S. 321 (1963).

vision picture and CD-quality sound in every one of the 210 television markets covering the country.

Charlie is going to talk about how the merged company also will establish itself as a source of meaningful satellite-based broadband competition to cable modem and DSL offerings and will bring affordable high-speed Internet access to all of America, including the most rural areas of the country.

Together, Mr. Chairman, I believe we can address your six points of concern about this merger and how to enforce them, and, Senator DeWine, your concerns for rural America and meeting the legal aspects of the Clayton Act with the Department of Justice.

Despite the rapid growth of DBS since 1994, cable clearly is the dominant provider of multi-channel pay TV services in the United States. As you can see on this map, of the 107 million television households, 104 million are located in a cable franchise area.

Competitive alternatives to the dominant cable operators didn't seriously take form until the launch of DIRECTV in 1994, joined by EchoStar's DISH Network in 1996. DBS offered more channels, superior picture and sound quality compared to cable, with one notable exception. Consumers were not able to receive their local broadcast channels via satellite.

In 1999, Congress changed the law, allowing satellite carriers to offer local channels. Only at this point did DBS become a viable competitive alternative to cable, at least in those markets in which DIRECTV and DISH Network began delivering local channels.

Today, as you can see on this map, only those who live in the 42 television markets in which DIRECTV and DISH Network offer local channels receive local channels. That is about 65 million households. They have a fully competitive multi-channel alternative to cable.

As you can see on the next map, that leaves 42 million households without a true competitive alternative to cable. Customers who live in markets in which DBS does not provide local channels are forced either to pay additional subscription fees for basic cable service to receive their local channels or install an off-air rooftop antenna and hope for good reception. Neither DIRECTV nor DISH Network alone has sufficient spectrum to provide all local channels, as well as the national pay cable networks to viewers in every one of the country's 210 local-channel markets.

When we first announced this merger in late October, we said the merged company could deliver local channels in about 100 television markets. A week ago, however, we announced that the merged company will deliver local channels in all 210 television markets, including full compliance with the Federal must-carry requirements.

So what happened between last October and last week? Starting in late December, the EchoStar and DIRECTV engineering teams began meeting as part of the pre-merger transition process. We challenged them to develop a technologically feasible and economically viable plan that will allow the merger company to deliver full local-into-local service in all 210 television markets.

As you can see on this chart, the Local Channels, All Americans Plan maximizes the use of combined spectrum in the existing and planned satellite fleet of the two companies. It does require the launch of a new $300 million satellite, and we applied last week at the FCC for authority to launch that satellite. This new satellite will be the fifth spot beam satellite in what will be a combined fleet of 16 satellites.

Implementation of the Local Channels, All Americans Plan could begin immediately following approval of the merger and the rollout can be completed as soon as 24 months thereafter. This plan can be achieved only because, in addition to combining the companies spectrum and satellites, the merger will eliminate the need for each company to transmit more than 500 channels of duplicative programming. We both carry C–SPAN and C–SPAN 2, for example.

In addition, the combination of the companies' subscriber bases makes the delivery of local broadcast channels to smaller markets commercially feasible. Without the merger, the most markets that each company would serve with local channels as a stand-alone provider would be about 50 to 70. Needless to say, the local broadcasters I have talked to in the last week are thrilled that they can gain satellite carriage as a result of the merger.

As you can see on this chart, the merged company will continue both companies' current practice of uniform nationwide pricing. Consumers across the country will pay the same price for their DBS subscription fees, regardless of where they reside. For example, a resident of Milwaukee will pay the same fee for his or her local channel package as a customer in Cedarville, Ohio. A resident of Burlington, Vermont, will pay the same price for HBO as a customer in Salt Lake City, and a resident of Mountlake Terrace, Washington, will pay the same price for the basic 125-channel programming as a customer in New York City.

We are confident that the merged company can make the Local Channels, All Americans Plan a reality. Without the merger, residents of communities such as Rhinelander, Wisconsin—that is DMA number 137—Zanesville, Ohio, DMA 202; Watertown, New York, DMA number 176; and Kirksville, Missouri, DMA 198, are unlikely to see satellite-delivered local channels in our lifetime.

I appreciate the opportunity to share my views.

[The prepared statement of Mr. Hartenstein follows:]

STATEMENT OF EDDY W. HARTENSTEIN, CHAIRMAN AND CHIEF EXECUTIVE OFFICER, DIRECTTV, INC., EL SEGUNDO, CALIFORNIA

Chairman Kohl, Senator DeWine, and Members of the Subcommittee, thank you for inviting me to appear before the Subcommittee. I appreciate the opportunity to tell you why we believe that consumers will reap tremendous benefits from the merger of EchoStar and Hughes, the parent companies of DISH Network and DIRECTV®. I am going to talk about how, as a direct result of the completion of this merger, consumers across the United States will have access to satellite-delivered local broadcast channels with digital-quality television picture and CD-quality sound in every one of the 210 television markets covering the country. Charlie is going to talk about how the merged company also will establish itself as a source of meaningful satellite-based broadband competition to cable modem and DSL offerings, and will bring affordable high-speed Internet access to all of America, including the most rural areas of the country.

When I last appeared before this Subcommittee 11 months ago, I told you that despite the rapid growth of direct broadcast satellite (DBS) since 1994, cable clearly is the dominant provider of multi-channel pay TV services in the United States.

That remains so today. Of the 107 million U.S. TV households, 104 million are located in a cable franchise area.[1] (See Attachment A)

Competitive alternatives to the dominant cable operators did not seriously take form until the launch of DIRECTV in 1994, later joined by EchoStar's DISH Network in 1996. DBS offered more channels and superior picture and sound quality compared to cable, with one notable exception: consumers were not able to receive their local broadcast channels via satellite.

In 1999, Congress changed the law, allowing satellite carriers to offer local channels.[2] Only at this point did DBS become a viable competitive alternative to cable, at least in those markets in which DIRECTV and DISH Network began delivering local channels.

Today, only those who live in the 42 television markets in which DIRECTV and DISH Network offer local channels—about 65 million households—have a fully competitive multi-channel alternative to cable.[3] (See Attachment B)

That leaves 42 million households without a true competitive alternative to cable. (See Attachment C) Customers who live in markets in which DBS does not provide local channels are forced either to pay additional subscription fees for a basic cable service to receive their local channels, or install an off-air rooftop antenna—and hope for good reception. Neither DIRECTV nor DISH Network, alone, has sufficient spectrum to provide all local channels as well as the national pay cable networks to viewers in every one of the country's 210 local channel markets.

When we first announced the merger in late October, we said the merged company could deliver local channels in about 100 television markets. A week ago, however, we announced that the merged company will deliver local channels in all 210 television markets, including full compliance with federal must carry requirements. (See Attachment D)

So what happened between late October and last week? Starting in late December, the EchoStar and DIRECTV engineering teams began meeting as part of the pre-merger transition process. We challenged them to develop a technologically feasible and economically viable plan that would allow the merged company to deliver full local-into-local service in all 210 television markets.

The "Local Channels, All Americans" plan maximizes the use of the combined spectrum and existing and planned satellite fleet of the two companies. It requires the launch of a new spot-beam satellite, and we applied last week to the Federal Communications Commission (FCC) for authority to launch that satellite.[4] This new spot-beam satellite will be the fifth spot-beam satellite in what will be a combined fleet of 16 satellites. The plan would require an additional investment by the merged company of over $300 million to launch the additional spot-beam satellite. Implementation of the "Local Channels, All Americans" plan could begin immediately following merger approval and the rollout can be completed as soon as 24 months later.

This plan can be achieved only because, in addition to combining the companies' spectrum and satellites, the merger will eliminate the need for each company to transmit more than 500 channels of duplicative programming—we both carry C–SPAN and C–SPAN 2, for example. In addition, the combination of the companies' subscriber bases makes the delivery of local broadcast channels to smaller markets commercially feasible.

Without the merger, the most markets that each company would serve with local channels as a standalone provider, both for technical and economic reasons, would be about 50 to 70. Needless to say, the local broadcasters I've talked to in the last week are thrilled that they will gain satellite carriage as a result of the merger.

The merged company will continue both companies' current practice of uniform nationwide pricing. Consumers across the country will pay the same price for their DBS subscription services, regardless of where they reside. We are one nation, and we will offer one rate card. (See Attachment E) For example: a resident of Milwaukee will pay the same fee for his or her local channel package as a customer in Cedarville, Ohio; a resident of Burlington, Vermont, will pay the same price for HBO as a customer in Salt Lake City; and a resident of Mountlake Terrace, Wash-

[1] Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming, *Eight Annual Report*, CS Docket No. 01–129, FCC 01–389 at ¶17 and App. B, Tbl. B–1 (released Jan. 14, 2002).

[2] Satellite Home Viewer Improvement Act of 1999, Pub. L. No. 106–113, 113 Stat. 1501, 1501A–526 to 1501A–545 (Nov. 29, 1999).

[3] Nielsen Media Research (Sept. 2001).

[4] Application for Authority to Lunch and Operate New ECHOSTAR 1 (USABBS–16) (filed Feb. 25, 2002

ington, will pay the same price for a basic 125-channel programming package as a customer in New York City.

We are confident that the merged company can make the "Local Channels, All Americans" plan a reality. Without the merger, residents of communities such as Rhinelander, Wisconsin (DMA #137), Zanesville, Ohio (DMA #202), Watertown, New York (DMA #176), and Kirksville, Missouri (DMA #198) are unlikely to see satellite-delivered local channels in our lifetime.

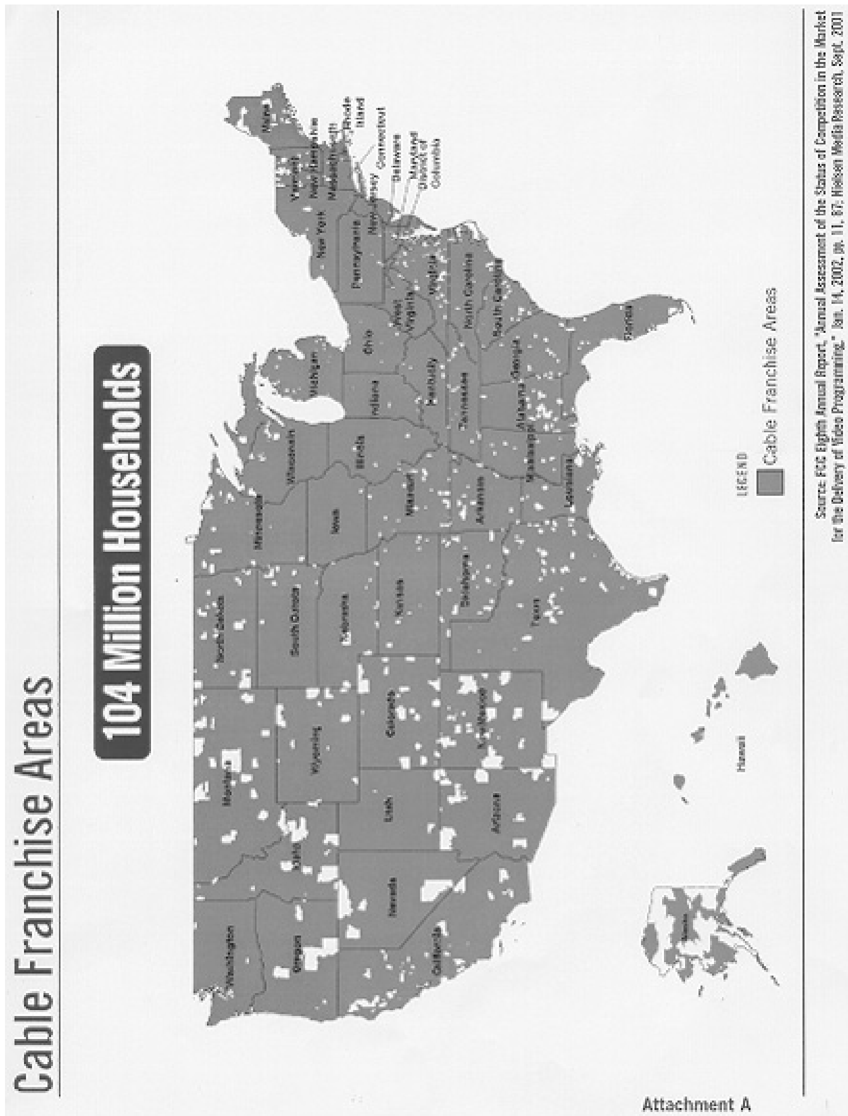
I appreciate the opportunity to share my views.

In connection with the proposed transactions, General Motors Corporation ("GM"), Hughes Electronics Corporation ("Hughes") and EchoStar Communications Corporation ("EchoStar") intend to file relevant materials with the Securities and Exchange Commission, including one or more Registration Statement(s) on Form S–4 that contain a prospectus and proxy/consent solicitation statement. Because those documents will contain important information, holders of GM $1–2⁄3 and GM Class H common stock are urged to read them, if and when they become available. When filed with the SEC, they will be available for free at the SEC's website, www.sec.gov, and GM stockholders will receive information at an appropriate time on how to obtain transaction-related documents for free from GM. Such documents are not currently available.

GM and its directors and executive officers, Hughes and certain of its officers, and EchoStar and certain of its executive officers may be deemed to be participants in GM's solicitation of proxies or consents from the holders of GM $1–2⁄3 common stock and GM Class H common stock in connection with the proposed transactions. Information regarding the participants and their interests in the solicitation was filed pursuant to Rule 425 with the SEC by EchoStar on November 1, 2001 and by each of GM and Hughes on November 16, 2001. Investors may obtain additional information regarding the interests of the participants by reading the prospectus and proxy/consent solicitation statement if and when it becomes available.

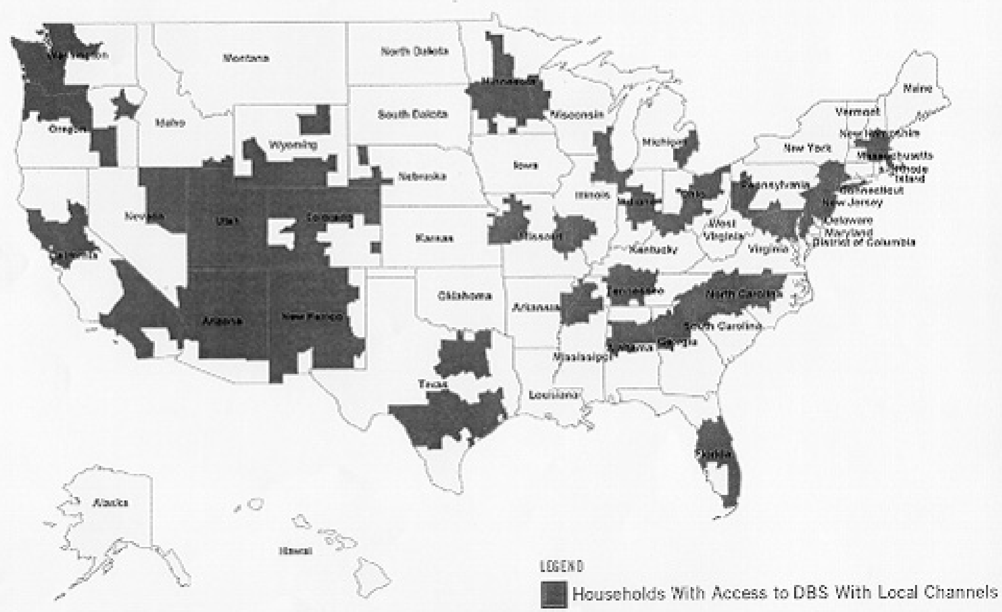
This communication shall not constitute an offer to sell or the solicitation of an offer to buy, nor shall there be any sale of securities in any jurisdiction in which such offer, solicitation or sale would be unlawful prior to registration or qualification under the securities laws of any such jurisdiction. No offering of securities shall be made except by means of a prospectus meeting the requirements of Section 10 of the Securities Act of 1933, as amended.

Materials included in this document contain "forward-looking statements" within the meaning of the Private Securities Litigation Reform Act of 1995. Such forward-looking statements involve known and unknown risks, uncertainties and other factors that could cause our actual results to be materially different from historical results or from any future results expressed or implied by such forward-looking statements. The factors that could cause actual results of GM, EchoStar, Hughes, or a combined EchoStar and Hughes to differ materially, many of which are beyond the control of EchoStar, Hughes or GM include, but are not limited to, the following: (1) the businesses of EchoStar and Hughes may not be integrated successfully or such integration may be more difficult, time-consuming or costly than expected; (2) expected benefits and synergies from the combination may not be realized within the expected time frame or at all; (3) revenues following the transaction may be lower than expected; (4) operating costs, customer loss and business disruption including, without limitation, difficulties in maintaining relationships with employees, customers, clients or suppliers, may be greater than expected following the transaction; (5) generating the incremental growth in the subscriber base of the combined company may be more costly or difficult than expected; (6) the regulatory approvals required for the transaction may not be obtained on the terms expected or on the anticipated schedule; (7) the effects of legislative and regulatory changes; (8) an inability to obtain certain retransmission consents; (9) an inability to retain necessary authorizations from the FCC; (10) an increase in competition from cable as a result of digital cable or otherwise, direct broadcast satellite, other satellite system operators, and other providers of subscription television services; (11) the introduction of new technologies and competitors into the subscription television business; (12) changes in labor, programming, equipment and capital costs; (13) future acquisitions, strategic partnership and divestitures; (14) general business and economic conditions; and (15) other risks described from time to time in periodic reports filed by EchoStar, Hughes or GM with the Securities and Exchange Commission. You are urged to consider statements that include the words "may," "will," "would," "could," "should," "believes," "estimates," "projects," "potential," "expects," "plans," "anticipates," "intends," "continues," "forecast," "designed," "goal," or the negative of those words or other comparable words to be uncertain and forward-looking. This cautionary statement applies to all forward-looking statements included in this document.


Cable Franchise Areas
104 Million Households
LEGEND
Cable Franchise Areas
Source: FCC Eighth Annual Report, "Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming," Jan. 14, 2002, pp. 11, 87; Nielsen Media Research, Sept. 2001
Attachment A

Households With Access to DBS With Local Channels

65 Million Households

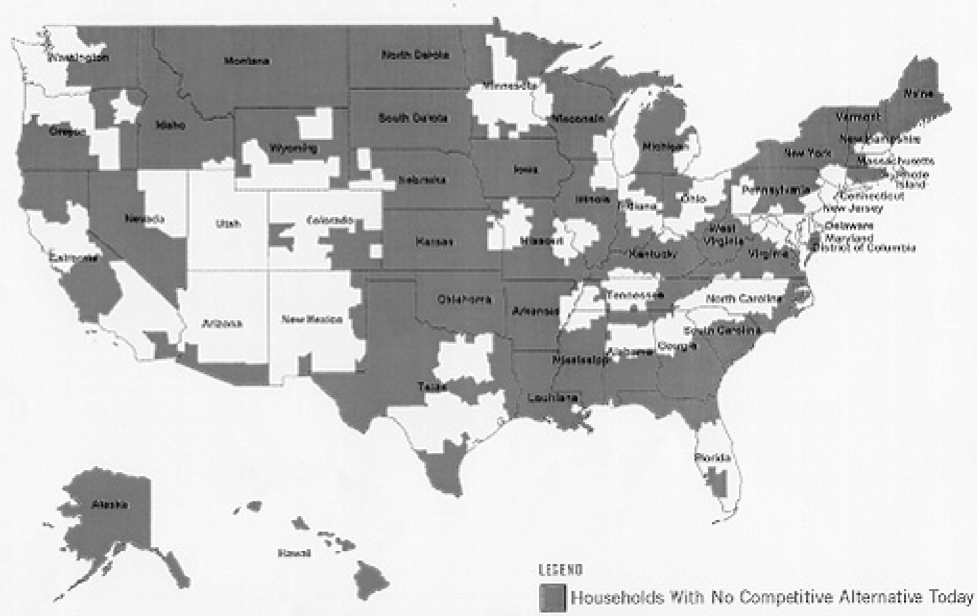


Source: SkyResearch, Feb. 2002; Nielsen Media Research, Sept. 2001; EchoStar and DIRECTV, Jan. 31, 2002

Attachment B

Households With No Competitive Alternative Today

42 Million TV Households Unserved



Source: SkyResearch, Feb. 2002; Nielsen Media Research, Sept. 2001; EchoStar and DIRECTV, Jan. 31, 2002

Attachment C

TV Households With Competitive Alternative After Merger

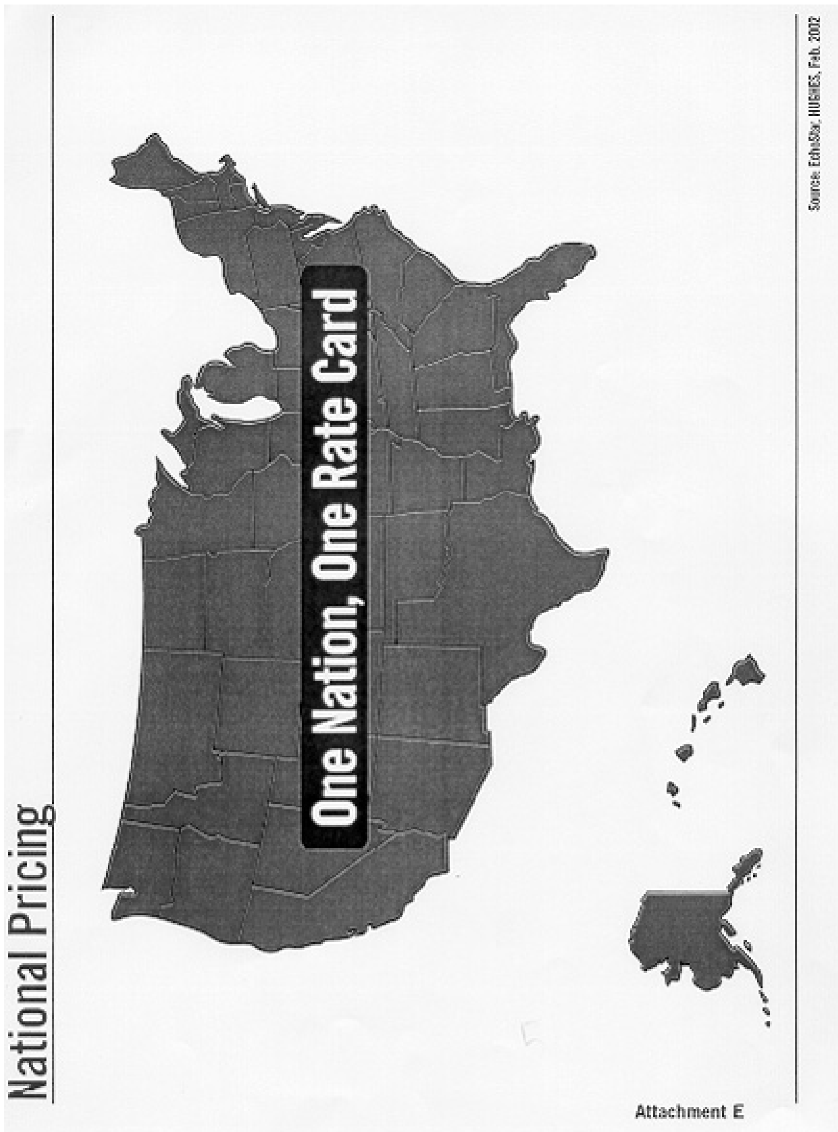
107 Million Households

LEGEND

TV Households With Competitive Alternative After Merger

Source: FCC Eighth Annual Report, "Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming," Jan. 14, 2002, pp. 11, 87; EchoStar, HUGHES, Feb. 2002

Attachment D


National Pricing
One Nation, One Rate Card
Source: EchoStar, HUGHES, Feb. 2002
Attachment E

Chairman KOHL. Thank you, Mr. Hartenstein.
Now, we turn to Mr. Charles Ergen.

STATEMENT OF CHARLES W. ERGEN, CHAIRMAN AND CHIEF EXECUTIVE OFFICER, ECHOSTAR COMMUNICATIONS, LITTLETON, COLORADO

Mr. ERGEN. Thank you, Chairman Kohl, Senator DeWine, and members of the Subcommittee. I am excited to be here today.

If I had to sum this merger up, I would say there are three major benefits to consumers. First, satellite-delivered broadband channels will be available for every home in the United States to compete against cable.

Second, truly competitive high-speed data via satellite will be offered everywhere, every square inch of the United States, including Alaska and Hawaii.

Third, we will offer one rate card for both video and broadband services so that no matter where you live, all Americans will reap the benefits of the competition between satellite and cable TV. That means the residents of Wisconsin's smallest town, Cedar Rapids, population 36, will have the same choices at the same price as the residents of the State's largest metropolitan area, Milwaukee, of 1.5 million people.

A very important benefit of the EchoStar-Hughes merger is that it will eliminate the so-called digital divide that exists in the wire world today by making satellite-delivered high-speed Internet access a viable alternative for all Americans.

Today, about 67 million households have access to high-speed access through DSL or cable. These are the digital "haves" who are located, of course, primarily in the metropolitan areas. But in rural American today, there is a "no-opoly." Nobody, not the cable companies, not the phone companies, is ever going to provide that broadband service.

The map that is over here clearly shows the number of digital "have nots," approximately 40 million households. It is simply too expensive to roll out wired technologies to those homes. I am convinced that in my lifetime we will never see telephone or cable companies offer broadband service to rural America. I am equally convinced that the digital "have nots" living in rural America would welcome the opportunity to choose affordable priced satellite-delivered high-speed access.

This merger will bridge the digital divide by providing customers in every community in America with a competitively priced broadband solution. Unlike wired technologies, a satellite broadband platform can serve every household in the country, no matter how rural.

Initially, the combined company will have a subscriber base and financial means to make current broadband offerings more affordable, but we are committed to building the next generation of satellites to make service a reality for all Americans utilizing a new generation of Ka band satellites. We will offer a high-speed Internet service that is not only price-competitive with existing providers in urban areas, but also a tremendous benefit for rural customers with no other options.

In sum, the merger will provide the technical and economic infrastructure to convert every household in the country to a digital "have." For both video and broadband services, we will offer uniform nationwide pricing. So a two of 5 or a town of 5 million receives the same price for the same service.

Mr. Chairman and members of the Subcommittee, bringing local channels and broadband services to all consumer households is not a simple endeavor. The EchoStar and DIRECTV engineering teams have developed a plan that enables consumers to receive their local channels, other entertainment services, and high-speed Internet on one consumer-friendly dish. New equipment will process signals from existing spacecraft as well as advanced satellite the companies will build and launch to deliver the remaining the local broadcast channels. This equipment will be provided at no charge to existing DIRECTV and EchoStar customers.

When we announced our merger on October 29, we said we needed to merge in order to compete now and in the future with cable. Cable companies continue to dominate the pay TV market, with over 78 percent of the pay television market. Only a business with dominant market power could continue to raise prices 37 percent since 1996. Cable already dominates the high-speed Internet market, with a majority of all high-speed lines, and that market share continues to increase every year.

With the ability to offer local channels in 210 television markets and to offer price-competitive high-speed Internet access, the merged company will be able to achieve a new level of vigorous competition to incumbent cable operators.

Of course, the merger will allow us to compete with cable in other ways. By eliminating 500 duplicative channels and combining out satellites and spectrum, the merged company will be able to offer 12 channels or more of high-definition television, more advanced services, pay-per-view, video on demand, and interactive services. Better DBS service means stronger competition to cable, and that can only mean good news for American consumers.

We will offer local channels to all Americans. We are one Nation; we will have one rate card. Consumers nationwide will need only a single satellite dish to get their video and broadband services and we will eliminate the digital divide.

We believe that once the Department of Justice and the Federal Communications Commission have looked at the facts, they will conclude that the merger of EchoStar and Hughes will provide competition, provide a greater choice of services, and provide much needed benefits for all American consumers.

Thank you for allowing me to discuss this today.

[The prepared statement of Mr. Ergen follows:]

STATEMENT OF CHARLES W. ERGEN, CHAIRMAN AND CHIEF EXECUTIVE OFFICER, ECHOSTAR COMMUNICATIONS CORPORATION, LITTLETON, COLORADO

Chairman Kohl, Senator DeWine, and Members of the Subcommittee, I appreciate the opportunity to tell you about how the merger of EchoStar and Hughes will benefit consumers in every corner of the United States. If I had to sum up what this merger means to the average American, I'd say three things. First, satellite-delivered local broadcast channels will be available for the first time in every one of the Nation's 210 television markets. Eddy already gave you the details on that one. Second, truly competitive high-speed data via satellite will be offered everywhere in the U.S. Third, we will offer one rate card for both video and broadband services, so that no matter where they live, all Americans will reap the benefits of competition between satellite and cable TV. That means the residents of Wisconsin's smallest town, Cedar Rapids, with a population of 36, will have the same choices at the same price as the residents of the state's largest metropolitan area, Milwaukee, with a population of over 1.5 million.

A very important benefit of the EchoStar and Hughes merger is that it will eliminate the so-called "digital divide" that exists in the "wired" world today by making satellite-delivered high-speed Internet access a viable alternative for all Americans. Today, about 67 million households have access to DSL or cable modem service.[1] (See Attachment A) These are the digital "haves" who are located primarily in the major metropolitan areas. But in rural America today, there's what I like to call a "no-opoly." Nobody—not the cable companies, not the phone companies—is providing broadband service.

This map clearly shows the number of digital "have nots" in the U.S.—the 40 million households with no access to DSL or cable modem service. (See Attachment B) It is simply too expensive to roll out "wired" technologies to homes beyond the boundaries of urban and suburban markets. I am convinced that in our lifetimes, we will never see the telephone or cable companies offer broadband service to rural America. I am equally convinced that the digital "have nots" living in rural America would welcome the opportunity to choose affordably priced, satellite-delivered high-speed data services.

The merger will bridge the digital divide by providing consumers in every community in America with a competitively priced high-speed "broadband solution." (See Attachment C) Unlike wired technologies, such as DSL and cable modems, a satellite broadband platform can serve every household in the country, no matter how rural.

Initially, the combined company will have the subscriber base and financial means to make our current satellite broadband offerings more affordable. Then, we will make next-generation satellite broadband service a reality for consumers everywhere in the United States by deploying a new generation of satellites utilizing Ka-band spectrum. We will offer a high-speed Internet service that is not only price-competitive with existing providers in urban and suburban settings, but also a tremendous benefit for rural consumers who have no broadband options. In sum, the merger will provide the technical and economic infrastructure to convert every household in the country to a digital "have."

For both video and broadband services, we will offer uniform, nationwide pricing. So if you live in that 36-person town of Cedar Rapids, Wisconsin, you will be able to get the same benefits of our head-to-head competition with cable and DSL as a person living in New York City. Your child will be able to do research for her term paper on the Internet as easily as a child living in the city. And both families will pay the same price for their video programming and Internet access service.

Mr. Chairman and Members of the Subcommittee, bringing local channels and broadband services to all consumers' homes is not a simple endeavor. The EchoStar and DIRECTV engineering teams have developed a plan that enables customers to receive their local channels, other entertainment services and high-speed Internet, all using one consumer-friendly mini-dish. (See Attachment D) The 18 x 22-inch dish you see in this photo will enable customers to receive signals from the merged company's three orbital slots. New equipment will process signals from existing spacecraft, as well as advanced satellites the merged company will build and launch, to deliver the remaining local broadcast channels and high-speed Internet services to consumers in all states. This equipment will be provided at no charge to existing DIRECTV and EchoStar customers who need it to receive their new local channels.

When we announced the merger on October 29, we said that we needed to merge in order to compete now and in the future with cable. Cable continues to dominate the pay TV market, despite the introduction of DBS eight years ago. Seventy-eight percent of multi-channel video subscribers still receive their programming from a franchised cable operator.[2] And only a business with dominant market power could continue to raise its rates so dramatically—37% on average since 1996.[3] Cable also

[1] Annual Assessment of the Status of Commpetition in the Market for the Delivery of Video Programming, *Eighth Annual Report* CS Docket No. 01–129, FCC 01–389 at ¶ 44 (released Jan. 14, 2002).

[2] *SkyResearch*, VOl. 9, No. 2, at 1, 5–7 (Feb. 2002)

[3] Report on Cable Industry Prices, MM Docket No. 92–266, FCC 01–49 at ¶ 25 (released Feb 14, 2001).

already dominates the high-speed Internet market with a majority of all high-speed lines, and that market share increases every year.[4]

With the ability to offer local channels in all 210 television markets, and to offer a price-competitive, high-speed Internet access service, the merged company will be able to achieve a new level of vigorous competition to incumbent cable operators.

Of course, the merger will allow us to compete with cable in other ways, too. By eliminating 500 duplicative channels and combining our satellites and spectrum (see Attachment E), the merged company will be able to offer 12 or more national channels of high-definition television programming; more of the very popular pay-per-view services; exciting, new interactive and video-on-demand services; expanded national program offerings; and additional educational, specialty and foreign-language programming. Better DBS service means stronger competition to cable, and that can only mean good news for American consumers. (See Attachment F)

We will offer local channels to all Americans. We are one nation, and we will have one rate card. Consumers nationwide will need only a single satellite dish to get their video programming and broadband services. And we will eliminate the "digital divide" that exists today, particularly in rural America.

We believe that once the Department of Justice and the Federal Communications Commission have looked at the facts, they will conclude, as Eddy and I did, that the merger of EchoStar and Hughes will promote competition, provide a greater choice of services and provide much needed benefits for all American consumers.

Thank you for allowing me to discuss our proposed merger.

In connection with the proposed transactions, General Motors Corporation ("GM"), Hughes Electronics Corporation ("Hughes") and EchoStar Communications Corporation ("EchoStar") intend to file relevant materials with the Securities and Exchange Commission, including one or more Registration Statement(s) on Form S–4 that contain a prospectus and proxy/consent solicitation statement. Because those documents will contain important information, holders of GM $1–⅔ and GM Class H common stock are urged to read them, if and when they become available. When filed with the SEC, they will be available for free at the SEC's website, www.sec.gov, and GM stockholders will receive information at an appropriate time on how to obtain transaction-related documents for free from GM. Such documents are not currently available.

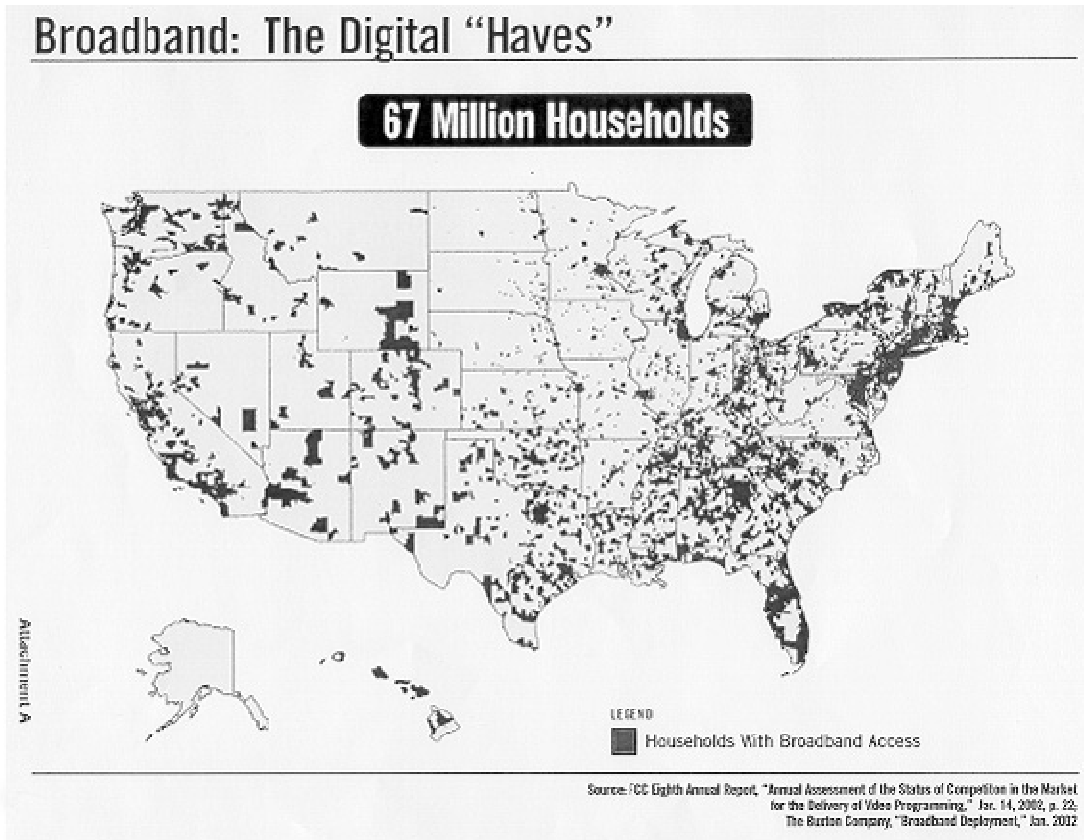
GM and its directors and executive officers, Hughes and certain of its officers, and EchoStar and certain of its executive officers may be deemed to be participants in GM's solicitation of proxies or consents from the holders of GM $1–⅔ common stock and GM Class H common stock in connection with the proposed transactions. Information regarding the participants and their interests in the solicitation was filed pursuant to Rule 425 with the SEC by EchoStar on November 1, 2001 and by each of GM and Hughes on November 16, 2001. Investors may obtain additional information regarding the interests of the participants by reading the prospectus and proxy/consent solicitation statement if and when it becomes available.

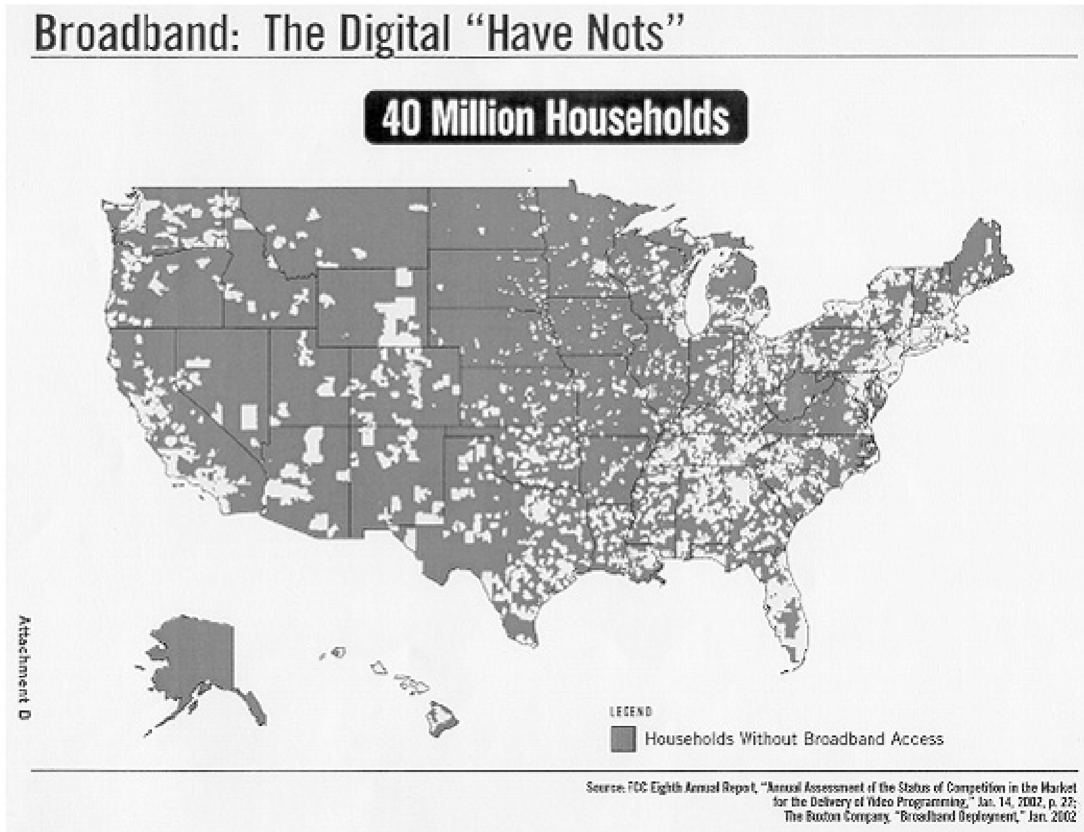
This communication shall not constitute an offer to sell or the solicitation of an offer to buy, nor shall there be any sale of securities in any jurisdiction in which such offer, solicitation or sale would be unlawful prior to registration or qualification under the securities laws of any such jurisdiction. No offering of securities shall be made except by means of a prospectus meeting the requirements of Section 10 of the Securities Act of 1933, as amended.

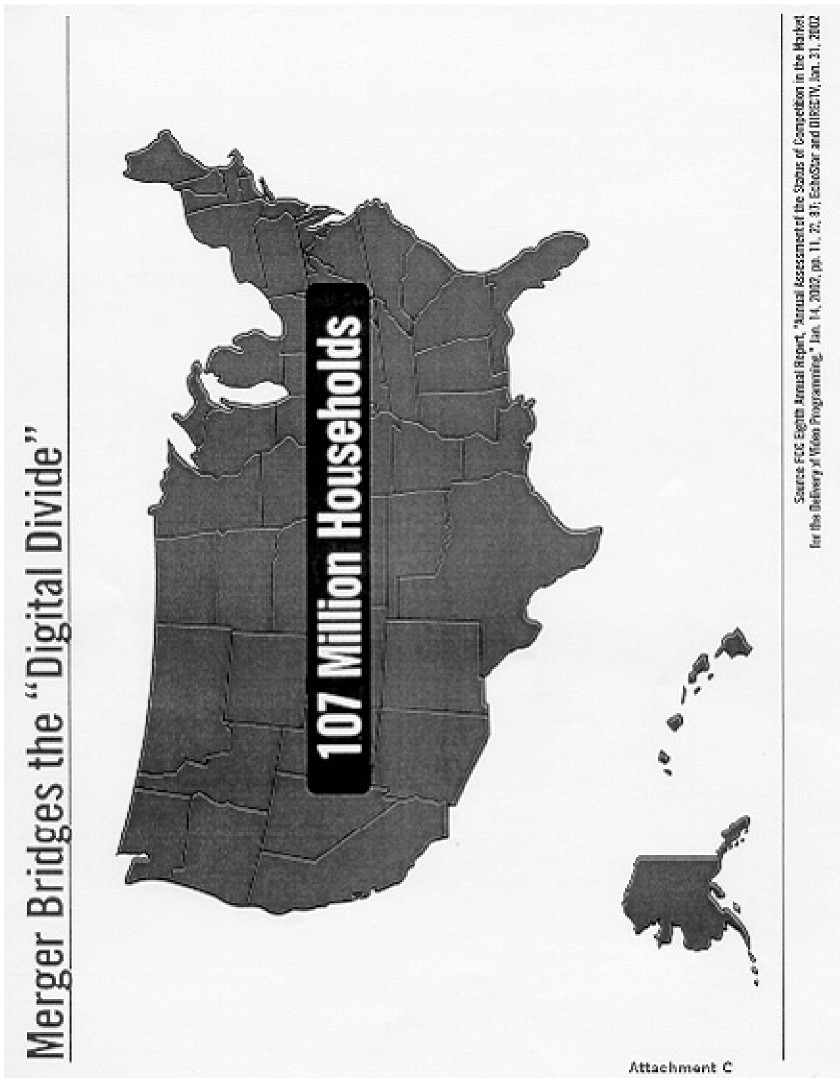
Materials included in this document contain "forward-looking statements" within the meaning of the Private Securities Litigation Reform Act of 1995. Such forward-looking statements involve known and unknown risks, uncertainties and other factors that could cause our actual results to be materially different from historical results or from any future results expressed or implied by such forward-looking statements. The factors that could cause actual results of GM, EchoStar, Hughes, or a combined EchoStar and Hughes to differ materially, many of which are beyond the control of EchoStar, Hughes or GM include, but are not limited to, the following: (1) the businesses of EchoStar and Hughes may not be integrated successfully or such integration may be more difficult, time-consuming or costly than expected; (2) expected benefits and synergies from the combination may not be realized within the expected time frame or at all; (3) revenues following the transaction may be lower than expected; (4) operating costs, customer loss and business disruption including, without limitation, difficulties in maintaining relationships with employees, customers, clients or suppliers, may be greater than expected following the transaction; (5) generating the incremental growth in the subscriber base of the combined

[4] Annual Assessment of Advanced Services Deployment, *Thired Annual Report*, CC Docket No. 98–146, FCC 02–33 at ¶44 and App. C, Table 1 (released Feb. 6, 2002) (as of June, 2001, cable represented 54% of all high-speed lines, compared to 51% the previous year).

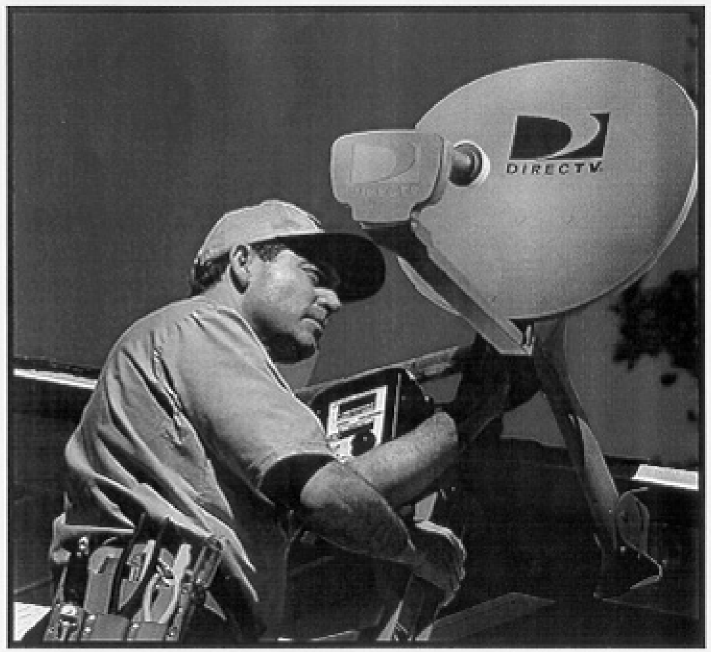
company may be more costly or difficult than expected; (6) the regulatory approvals required for the transaction may not be obtained on the terms expected or on the anticipated schedule; (7) the effects of legislative and regulatory changes; (8) an inability to obtain certain retransmission consents; (9) an inability to retain necessary authorizations from the FCC; (10) an increase in competition from cable as a result of digital cable or otherwise, direct broadcast satellite, other satellite system operators, and other providers of subscription television services; (11) the introduction of new technologies and competitors into the subscription television business; (12) changes in labor, programming, equipment and capital costs; (13) future acquisitions, strategic partnership and divestitures; (14) general business and economic conditions; and (15) other risks described from time to time in periodic reports filed by EchoStar, Hughes or GM with the Securities and Exchange Commission. You are urged to consider statements that include the words "may," "will," "would," "could," "should," "believes," "estimates," "projects," "potential," "expects," "plans," "anticipates," "intends," "continues," "forecast," "designed," "goal," or the negative of those words or other comparable words to be uncertain and forward-looking. This cautionary statement applies to all forward-looking statements included in this document.


Broadband: The Digital "Haves"
67 Million Households
LEGEND
Households With Broadband Access
Source: FCC Eighth Annual Report, "Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming," Jan. 14, 2002, p. 22; The Buxton Company, "Broadband Deployment," Jan. 2002
Attachment A


Broadband: The Digital "Have Nots"
40 Million Households
LEGEND
Households Without Broadband Access
Source: FCC Eighth Annual Report, "Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming," Jan. 14, 2002, p. 27; The Buxton Company, "Broadband Deployment," Jan. 2002
Attachment D

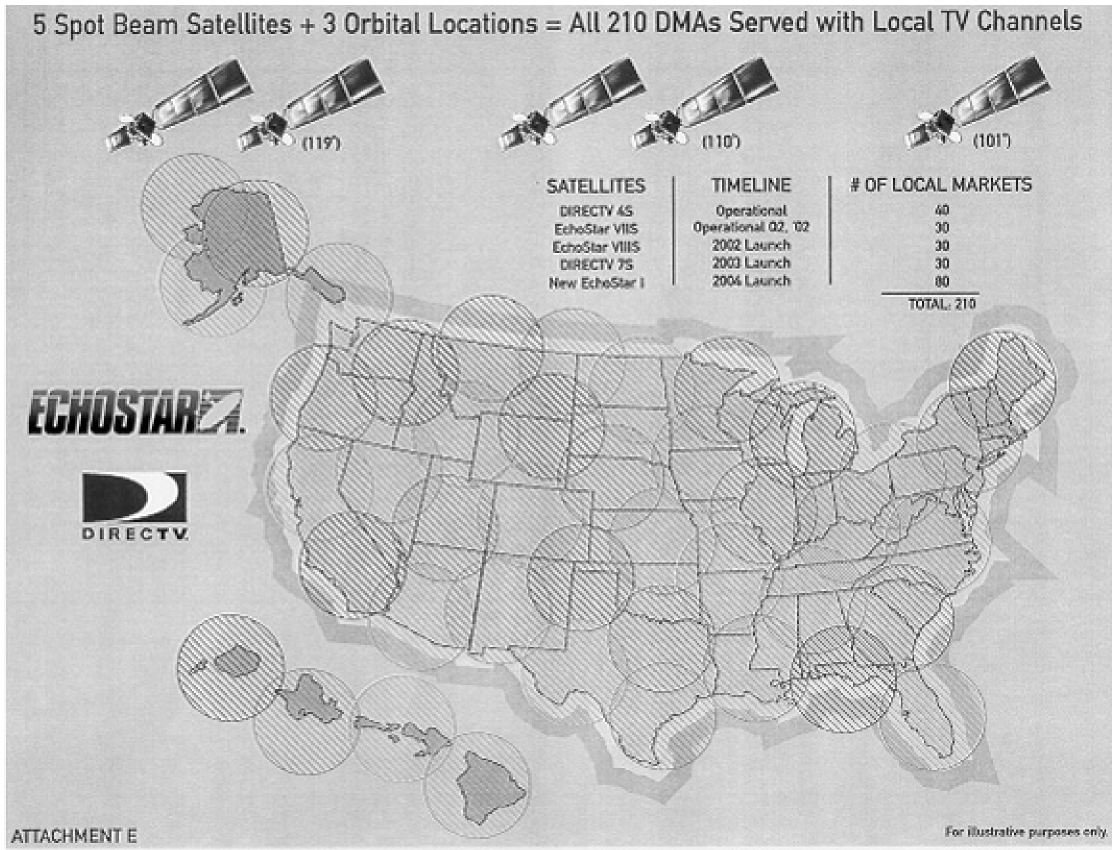

Merger Bridges the “Digital Divide”
107 Million Households
Source FCC Eighth Annual Report, "Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming," Jan. 14, 2002, pp. 11, 21, 31; EchoStar and DIRECTV, Jan. 31, 2002
Attachment C

One Nation, One Dish



Source: EchoStar, HUGHES, Feb. 2002

Attachment D


5 Spot Beam Satellites + 3 Orbital Locations = All 210 DMAs Served with Local TV Channels
(119°)
(110°)
(101°)
SATELLITES
DIRECTV 4S
EchoStar VIIS
EchoStar VIIIS
DIRECTV 7S
New EchoStar I
TIMELINE
Operational
Operational Q2, '02
2002 Launch
2003 Launch
2004 Launch
OF LOCAL MARKETS
40
30
30
30
80
TOTAL: 210
ECHOSTAR
DIRECTV
ATTACHMENT E
For illustrative purposes only.

The EchoStar/HUGHES Merger

- Local Channels, All Americans
- One Nation, One Rate Card, One Dish
- Eliminates the "Digital Divide"

True Competition for 107 Million Households

Attachment F

Chairman KOHL. Thank you, Mr. Ergen.

Before we turn to Mr. Pitofsky, I would like to call upon the ranking member of the Senate Judiciary Committee, Senator Orrin Hatch, from Utah.

STATEMENT OF HON. ORRIN G. HATCH, A U.S. SENATOR FROM THE STATE OF UTAH

Senator HATCH. Well, thank you, Mr. Chairman. I welcome all of you here. Chairman Pitofsky, we are glad to have you back.

Mr. PITOFSKY. Thank you.

Senator HATCH. We appreciate having all of your testimony.

I thank you, Mr. Chairman, for holding this important hearing. We have long shared an interest in the competitive future of the satellite television industry. We have worked together cooperatively and in a non-partisan manner with other colleagues on the Satellite Home Viewer Improvement Act, which was enacted at the end of 1999. That legislation granted a statutory copyright license to allow the direct broadcast satellite or DBS industry to carry local stations under certain conditions for the first time, allowing them to compete head to head with cable television.

Since then, the DBS industry has continued to grow at a phenomenal rate, finally giving pay television subscribers a real choice, and often in places like my own home State of Utah two competitive choices to their local cable company. Satellite competition has led to price cuts and service and technology upgrades, and according to many has had an effect on cable service and technology upgrades as well.

Some credit DBS competition with pushing cable to upgrade to digital services and to deploy broadband Internet service more quickly. DBS is now offering, as has been explained here, its own broadband services. So far, DBS has been an initial success story, where congressional policy has actually resulted in a positive, market-driven and competitive industry.

That brings us to this merger, which will combine the assets of the only two DBS providers in the United States into one entity. It will hold essentially all the satellite slots that can serve the entire continental United States with traditional DBS service. This sort of merger combining both remaining competitors in a market and leaving no avenue of entry into the market does raise a host of vexing competition policy questions.

In addition to the traditional antitrust inquiry, I have some concerns about the operation of gatekeeper power over broadband Internet services that might limit the options consumers have in accessing the information they want from the Internet. This Committee has looked into those policy issues over the past four or 5 years, and this hearing is important because it provides an opportunity for the proponents of the merger to make their case and to give us the facts necessary for the members of this Committee and Subcommittee to make up their minds about the merits of this merger.

So I look forward to the testimony today. I apologize for being a little bit late, but I will listen today with an open mind, holding real concern for the long-term competitive health of this industry and its competitors.

From what I have read and heard, the proponents of this merger say that such a combination is necessary to be a full competitor to cable, offering us a choice between trusting in uncertain competition to roll out services to markets in our respective States or to trust their promises of universal services if the merger is allowed.

This choice is not what we envisioned when we hoped to unleash DBS as a local television competitor just over a year ago with the Satellite Home Viewer Improvement Act. But this choice is not exactly what the merging parties envisioned when they first announced the merger either.

Initially, the parties said that the merger was necessary to compete head to head with cable television and broadband in 80 to 100 of the 210 television markets in the United States. Last week, the merging companies announced that if the merger is improved, the merged company will be able to serve all 210 local markets with television and broadband. I am pleased to learn of this apparent increase in capacity.

I have to admit, however, that their announcement of finding twice the capacity in this merger so suddenly would suggest that perhaps they could meet their originally proposed goals separately as competitors. I further wonder why, with competition, there would not be a market for continued growth in technology capacity.

In brief, Mr. Chairman, I am concerned for the success of the DBS business as a competitive force for the benefit of television viewers, broadband Internet subscribers, and creative content developers who need distribution choices to deliver their goods and services to consumers.

I should note the opposition to this merger of the Writers Guild of America, which represents the men and women who write virtually all of our national entertainment programming in this country and much of the national news that we see, among others. I received a letter from the Writers Guild late last night expressing their view that this merger "would extend media consolidation to an unacceptable degree." This letter outlines their concerns about the effect the merger could have on the diversity of programming available to American viewers.

I would ask that a copy of that letter be placed in the record at this point.

Chairman KOHL. Without objection.

Senator HATCH. Now, Mr. Chairman, I look forward to hearing more about this to help my constituents, as well as the constituents across the country, get the benefits of increased choice in television and broadband services. I look forward to this hearing and to hearing the rest of the witnesses as well to provide better illumination by which to see with increased clarity what is best for those we serve, those who are watching or surfing at home, and those who will live with the effects of this merger as they seek out information and entertainment for themselves and for their families.

So I am grateful to have all of you here. I am grateful to have the knowledge that you are bringing to us on the Committee here today and I hope that we can be constructive in resolving some of these conflicts and problems in ways that will be beneficial for all concerned.

Thank you, Mr. Chairman.

[The prepared statement of Senator Hatch follows.]

STATEMENT OF HON. ORRIN G. HATCH, A U.S. SENATOR FROM THE STATE OF UTAH

Mr. Chairman, thank you for holding this important hearing. We have long shared an interest in the competitive future of the satellite television industry. We have worked together cooperatively and in a non-partisan manner with other colleagues on the Satellite Home Viewer Improvement Act, which was enacted at the end of 1999. That legislation granted a statutory copyright license to allow the direct broadcast satellite or "DBS" industry to carry local stations under certain conditions for the first time, allowing them to compete head to head with cable television.

Since then, the DBS industry has continued to grow at a phenomenal rate, finally giving pay television subscribers a real choice, and often—in places like my own home state of Utah—two competitive choices, to their local cable company. Satellite competition has led to price cuts and service and technology upgrades, and according to many, has had an effect on cable service and technology upgrades as well. Some credit DBS competition with pushing cable to upgrade to digital services and to deploy broadband internet service more quickly. DBS is also now offering its own broadband services. So far DBS has been an initial success story, where congressional policy has actually resulted in a positive, market-driven and competitive industry.

That brings us to this merger, which will combine the assets of the only two DBS providers in the United States into one entity. It will hold essentially all the satellite slots that can serve the entire continental United States with traditional DBS service. This sort of merger, combining both remaining competitors in a market and leaving no avenue of entry into that market, raises a host of vexing competition policy questions. In addition to the traditional antitrust inquiry, I have some concerns about the operation of gatekeeper power over broadband internet services that might limit the options consumers have in accessing the information they want from the internet. This Committee has looked into those policy issues over the past four or five years.

This hearing is important because it provides an opportunity for the proponents of the merger to make their case and give us the facts necessary for the members of this committee and subcommittee to make up their minds about the merits of this merger. I look forward to the testimony today, and I listen today with an open mind, holding real concern for the long-term competitive health of this industry and its competitors.

From what I have read and heard, the proponents of this merger say that such a combination is necessary to be a full competitor to cable, offering us a choice between trusting in uncertain competition to roll out services to markets in our respective states or to trust their promises of universal service if the merger is allowed.

This choice is not what we envisioned when we hoped to unleash DBS as a local television competitor just over a year ago with the Satellite Home Viewer Improvement Act. But this choice is not exactly what the merging parties envisioned when they first announced the merger, either. Initially, the parties said that the merger was necessary to compete head to head with cable television and broadband in 80 to 100 of the 210 television markets in the United States. Last week the merging companies announced that if the merger is approved, the merged company will be able to serve all 210 local markets with television and broadband. I am pleased to learn of this apparent increase in capacity. I must admit, however, that their announcement of finding twice the capacity in this merger so suddenly would suggest that perhaps they could meet their originally proposed goals separately as competitors. I further wonder why, with competition, there would not be a market for continued growth in technological capacity.

In brief, Mr. Chairman, I am concerned for the success of the DBS business as a competitive force for the benefit of television viewers, broadband internet subscribers, and creative content developers who need distribution choices to deliver their goods and services to consumers. I should note the opposition to this merger of the Writers Guild of America, which represents the men and women who write virtually all the national entertainment programming and much of the national news we see, among others. I received a letter from the Writers Guild late last night, expressing their view that this merger "would extend media consolidation to an unacceptable degree" and outlines their concern that the effect the merger could have on the diversity of programming available to American viewers. I would ask that a copy of the letter be placed in the hearing record.

Mr. Chairman, I very much want to learn more about this transaction and its competitive context to help my constituents get the benefits of increased choice in television and broadband services. I look forward to this hearing to provide better illumination by which to see with increased clarity what is best for those we serve, those who are watching or surfing at home, those who will live with the effects of this merger as they seek out information and entertainment for themselves and for their families.

Chairman KOHL. Thank you, Senator Hatch.

Now, we turn to Mr. Pitofsky.

STATEMENT OF ROBERT PITOFSKY, FORMER CHAIRMAN, FEDERAL TRADE COMMISSION, WASHINGTON, D.C.

Mr. PITOFSKY. Thank you, Mr. Chairman and members of the Committee. As always, it is an unusual pleasure for me to appear before this particular Committee.

I would like to treat this discussion a little differently. I am going to be very brief on the question of whether this merger on the surface violates the antitrust laws because on the surface it is about as illegal as a merger gets to be and I would really like to spend my time talking about the fixes that have been proposed.

Just briefly, in something like 19 or 20 percent of the country it is a merger to monopoly, and the statute clearly says that that should be prevented. Nineteen States, something over 30 percent of subscribers, have no access to cable, so it is a two-to-one merger.

In areas served by cable, it is still a three-to-two merger, and we just had that case in the court of appeals last year when Beechnut and Heinz tried to merge, claiming they would be better competitors. Not only did the court turn down that merger, but they said in the long history of antitrust we can't find a single case in which that kind of merger was allowed where there are high barriers to entry.

So what is the fix? Well, first, the argument which I don't hear as much today but I have heard: we will lose competition in rural America, but that is a price you have to pay; it will prove competition in the rest of the country. Well, that flies in the face of the plain language of the statute, which says do not allow a lessening of competition in any section of the country. I think 20 States, 20 percent of the people here in the country, is a section of the country. And the Supreme Court has addressed that question and they just won't do tradeoffs like that; they don't think it is justifiable.

Second, here is the real claim: If we can merge, there will be efficiencies and those efficiencies will allow us—monopoly is more efficient than competition and will allow us to do things that competition won't allow us to do. But, you know, the main point is why can't these two companies do it on their own?

Senator Hatch just pointed out they suddenly came up with a way to serve 210 cities instead of 40 or 100. This merger will be permanent if it goes through. Technology is not permanent. These companies have gone from 1 million subscribers to 17 million subscribers in just 5 or 6 or 7 years. They have improved the technology of their product enormously. They deserve tremendous credit.

Why can't they do that separately? Why do they need the merger to monopoly or duopoly to achieve those things? Several witnesses before the FCC said, under present technology, they could serve all these local markets today. And even if they can't today, what will we see shortly after that, in a year, 2 years, something like that?

Finally, there is this very unusual argument that rural America will not be disadvantaged because there will be a national list price and people will pay the same price in Montana or Vermont as they will in New York and Los Angeles. Well, first of all, there is more to competition than list prices. What about service, subsidies, packages, improvements in technology? We are merging to monopoly. Usually, one expects that that kind of competition will disappear or be diminished. Also, if I lived in rural America and was told I will have the benefit of getting the kind of prices that people are paying for cable in urban America, I wouldn't be enthusiastic about that.

We want competition to decide prices and terms and service. We don't want monopolists to do so. I can't help suggesting the following analogy. After this deal goes through, suppose the airline companies come in here and they say all that duplication that comes from competition; let United Airlines, American and Delta all merge together and we will serve more cities if the three of us are together than we can today. I mean, it is almost ludicrous, but that is very similar to the argument that is being presented.

Finally, and briefly, I think there is more to this matter than the welfare of consumers in urban or rural America. We have seen incredible deregulation by Congress, by the courts, and by the FCC. Much of that is a good thing. Many of those old rules were obsolete and outdated. But every time we get rid of one of those rules, the argument is, yes, but antitrust is there to take care of preserving a diversity of markets, access to those markets, diversity of ideas, and so forth.

If antitrust is asleep at the switch on a merger to monopoly, what signal does that send to the other media companies about what is acceptable and what can be done as long as the parties say we won't abuse our market power and they claim that monopoly is more efficient than competition? That is not the philosophy this country has followed.

Thank you.

[The prepared statement of Mr. Pitofsky follows:]

STATEMENT OF ROBERT PITOFSKY, FORMER CHAIRMAN OF THE FEDERAL TRADE COMMISSION, WASHINGTON, D.C.

Mr. Chairman, Members of the Committee, as in the past I am pleased and privileged to have an opportunity to testify before this Committee. Today I will address the question of the application of the antitrust laws to the proposed merger of EchoStar Corporation and Hughes Electronics, the parent company of DIRECTV. Hearings on this subject before this Committee are most timely since I believe the proposed merger raises very important questions about the direction of antitrust enforcement in this country.

I want to disclose at the outset that I am both a Professor of Law at Georgetown University Law Center and Counsel to the Washington law firm of Arnold & Porter. That law firm represents Pegasus, a distributor of direct broadcast satellite ("DBS") services, and a company that has publicly indicated its deep interest in the competitive and economic consequences of the merger. Nevertheless, I appear today in my individual capacity and not as a representative of any corporate interest.

EchoStar and DIRECTV are today the only facilities-based providers of DBS services in the United States. Between them they control all three of the Ku band orbital slots licensed by the Federal Communications Commission that provide DBS service to the full continental United States. It seems to be commonly accepted that no additional Ku band orbital slots are likely to be available for DBS service in the foreseeable future.

DIRECTV and EchoStar are thriving companies that have expanded their base substantially in recent years. Between them they have a total of 16.7 million subscribers—up from less than a million subscribers in 1994.[1] The growth rate of each company has been phenomenal—for example, in just the last year, EchoStar's annual subscriber rate increased by 40% and DIRECTV's rate increased by 15%.[2] Much of that growth rate has been accomplished as a result of fierce competition between the two companies and, in parts of the country that have access to cable, also between each company and cable. Competition between the two DBS companies has occurred through discounts and dealer promotion programs, subsidized equipment, improved service and similar inducements. It is interesting that the key innovations in video programming delivery—such as on demand access to movies and comprehensive sports packages—have been driven by DBS competition between EchoStar and DIRECTV.

I find it helpful in thinking about the competitive and consumer effects of this proposed merger to consider its impact in different parts of the country. Today in many sections of the country cable television is not available. Although the merger parties claim that only a small percentage of homes are without access to cable, other sources indicate that the percentage of homes without cable access might be as high as 19%.[3] In Montana, South Dakota, Utah, Mississippi, Arkansas and Vermont, it has been reported that 40% to 50% of homes are without cable access; in Idaho, Wyoming, New Mexico, Oklahoma, Louisiana, Missouri, Idaho, Alabama, Tennessee, Kentucky, Virginia, North Carolina, Maine and Wisconsin, an estimated 30% to 40% of homes are reportedly without cable access.[4] Even in areas where cable is available, it is often unsophisticated analog rather than digital cable and some subscribers have demonstrated a preference for DBS service over sometimes antiquated cable facilities.

For subscribers located in these non-cable or limited-cable areas, this proposed deal is a merger to monopoly, with the predictable higher prices and indifferent quality that experience shows will follow in the wake of that level of market power. In many rural areas, this merger does not "lessen competition," it completely eliminates competition.[5]

I am aware of arguments that it is worthwhile to see a reduction in competition for consumers in rural America because it will improve competition in the remaining parts of the country. Specifically, it has been argued that the combined EchoStar-DIRECTV will be in a better position to compete with the large cable companies. That is an argument that contradicts the plain language of Section 7 of the Clayton Act which outlaws a lessening of competition "in any section of the country."[6] In one of the earliest cases reviewed by the Supreme Court after Section 7 was amended in 1950, two large banks in Philadelphia tried to justify a merger by arguing that consumers in the local market might be disadvantaged, but that would be more than outweighed by the fact that the larger bank, with higher lending limits because of size, could compete with the big New York banks in loans and other activities throughout the United States. The Court rejected what it called a concept of "counterveiling power," explaining as follows:

> "If anticompetitive effects in one market could be justified by procompetitive consequences in another, the logical upshot would be that every firm in an industry could without violating Section 7, embark on a series of mergers that would make it in the end as large as the industry leader."

[1] *See In re Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, Eighth Annual Report, ¶ 57 (Jan. 14, 2002).

[2] *Id.*

[3] *See* National Telecommunications and Information Administration (NTIA) & Rural Utilities Service (United States Department of Agriculture), *Advanced Telecommunications in Rural America: The Challenge of Bringing Broadband Service to All Americans*, at 19 & n.62 (April 2000).

[4] *See Look, Up in the Sky! Big Bets on a Big Deal,* New York Times, Oct. 30, 2001, at C1.

[5] Moreover, that competition has been extremely valuable to consumers. For example, when EchoStar entered the market in 1996, offering serious competition to DIRECTV for the first time, DBS systems fell in price from the $600 to $800 range to $200. *See* Mark Robichaus, *Who's News: EchoStar Chief Must Build Link to Murdoch* Wall St. J., Feb. 26, 1997. DBS service prices, largely as a result of direct competition between 1996 and 2000. *See In re Implementation of Section 3 of the Cable Television Consumer Protection and Competition Act of 1992*, Report on Cable Industry Prices, 16 FCC Rcd. 4,346 (2001).

[6] Section 7 reads as follows:

"No person engaged in commerce or in any activity affecting commerce, shall acquire, directly or indirectly, the whole or any part of the stock or other share capital . . . where in any line of commerce or in any activity affecting commerce *in any section of the country*, the effect of such acquisition may be substantially to lessen competition, or to tend to create a monopoly." 15 U.S.C. § 18 (emphasis added).

Let me turn now to a second major argument offered by the sponsors of the merger—that DBS competes in a broader market that includes cable television and the merger would strengthen DBS as a competitor of cable.[7]

That whole approach is an interesting change of strategy for EchoStar since it filed a complaint in 2000 against DIRECTV in federal court in Colorado alleging that DBS is a relevant market, distinct from cable, and that no firm other than EchoStar or DIRECTV was likely to enter the market because of high entry barriers.[8] Among the many points cited by EchoStar in arguing that DBS is a separate product market from cable was that a significant number of DBS subscribers view DIRECTV and EchoStar as closer substitutes than alternative sources of programming, including cable; if not constrained by EchoStar, DIRECTV could raise its prices above the competitive level without experiencing a significant constraint by cable; and DBS and/or high powered DBS is superior to most cable services in several respects.[9]

Contrary to EchoStar's views of just over a year and a half ago, EchoStar now asserts that DBS and cable do compete in the same market. If the merger goes through, however, that still means that the number of significant competitors will be reduced from three to two. Subscribers today who are dissatisfied with their cable service have two vigorous DBS competitors to turn to but would have only one as a result of the proposed merger.

The argument that two competitors is better than three if a strengthened number two can compete more effectively with the market leader was advanced just a year ago by Heinz and Beechnut when their merger, allegedly to put them in a position to compete more effectively with the dominant Gerber, was challenged by the Federal Trade Commission. A unanimous District of Columbia Court of Appeals enjoined the merger, noting in passing that it would be unprecedented to permit that level of concentration:

"[There have been] no significant entries in the baby food market in decades and . . . [new entry is] difficult and improbable. . . . As far as we can determine, no court has ever approved a merger to duopoly under similar circumstances."[10]

I suggest that the argument that it is acceptable to allow a merger to monopoly in some parts of the country, or even that it is acceptable to allow a merger from three firms to two where there are high barriers to entry, in order for the combined firm to compete more effectively with the market leader, would be a major departure from established law in this country. Moreover, there is no reason to believe that given their past success and present trajectory, each company, along with challenging each other, can not continue to take subscribers away from cable.

To summarize this point, if the proposed merger is permitted, it will be a merger to monopoly in areas of the country not presently served by cable—mostly rural America. As a result, existing competition on price and service, programming packages and, perhaps most important, in improving technology would disappear. In areas of the country served by cable, sources of programming would be reduced from three to two, price competition between EchoStar and DIRECTV which has kept prices low would disappear, and because of high entry barriers no new players are likely to appear. Under well established antitrust principles—recently emphasized by a unanimous DC Court of Appeals decision blocking the Beechnut/Heinz merger just last year—three to two mergers with high barriers to entry, and when neither company is failing, have never been allowed under the antitrust laws.

The parties recognize the difficulty of justifying this proposed merger and therefore have asserted several additional defenses—one common and the other most unusual—in an effort to justify the transaction. The common claim by sponsors of the merger is that it will allow the combined firm to offer efficiencies to consumers and with those efficiencies improve service. Most of the efficiencies that have been described, however, really come down to elimination of duplication and overlap. But that is just a roundabout way of justifying the elimination of competition. Another efficiency that I have heard mentioned is that a broader spectrum would allow satellite carriers to offer more local TV stations in more local markets. But a consultant to the Department of Justice (and now a Pegasus consultant), Roger J. Rusch, concluded that EchoStar and DIRECTV, using currently available technology, could

[7] *United States* v. *Philadelphia National Bank*, 374 U.S. 321 3790 (1963).

[8] Complaint, *EchoStar Communications Corp.* v. *DIRECTV Enters. Inc.,* Civ. Action No. 00–K–212 (D. Colo., filed February 1, 2000).

[9] *See* Memorandum of Law in Support of Request for Rule 56 Continuance to Respond to DIRECTV Defendants' Motion for Summary Judgment, at 11–12, *EchoStar Communications Corp.* v. *DIRECTV Enters. Inc.,* No. 00–K–212 (D. Colo., filed Nov. 6, 2000).

[10] *Federal Trade Commission* v. *H.J. Heinz Co.*, 246 F.3d 708, 717 (DC Cir. 2001).

each, on its own, achieve the same service.[11] Other parties submitting petitions to the FCC have reached the same conclusion.[12] Moreover, just last week the merger parties announced that they had developed a new proposal that would allow them to deliver local channels to all 210 markets.[13] The burden of persuasion that the two merging parties could not individually achieve the same services should be very great. Finally, even if there are cognizable efficiencies, the Department of Justice/FTC Revised Merger Guidelines, issued in 1997, explained that mergers that produce high concentration can only be justified by exceptional, substantial efficiencies, and that even such efficiencies "almost never justify a merger to monopoly or near-monopoly." [14]

There are persuasive reasons why mergers to monopoly should not be justified by claimed efficiencies. The law has eased on allowing efficiency justifications for mergers because it is now understood that such efficiencies could be passed on to consumers—not just pocketed by the officers and shareholders of the merging company. But if a merger leads to monopoly or near-monopoly, there is no reason for the firms to pass along these efficiencies since they no longer compete with each other.[15]

Finally, advocates of the proposed merger have advanced an unusual argument. They suggest that for most of the country the combined DBS company will have to compete with cable, and competition with cable will keep the DBS rates competitive. They also are willing to commit not to discriminate between rates and terms offered in cable and non-cable areas so that subscribers in rural areas, faced with a monopoly, would not have to pay monopoly rates. I suggest that national pricing is no substitute for present vigorous competition. First, it leaves the government in the position of monitoring rates and complicated terms in every community to guard against discrimination, a role that the government tries not to play in a free market economy. How would the government monitor different offers in each city in the United States that subsidize the purchase of equipment, offer free or discounted installation, and provide promotional pricing and introductory offers? Second, even if price terms are worked out, that says nothing about the loss of competition in non-price dimensions—competition for programming, offers of programming packages, better service and, in particular, technological competition. In a high-tech, dynamic, rapidly developing field like video programming delivery, competition in terms of quality and technology is particularly important. Third, if the merger reduces competition in urban markets, and reducing competitors from three to two certainly suggests such a threat, there is little comfort in pegging prices in rural areas to what may turn out to be less-than-competitive prices in urban areas. As noted previously, cable prices have increased in this country 7% a year since 1996,[16] and have not declined despite the presence of two aggressive DBS providers. Why would they come down in the future when there is only one competing provider? Should there be much satisfaction in rural markets to know that in the future they can have the benefit of price levels imposed on cable subscribers in urban markets in recent years? Most important, the suggestion that mergers to monopoly and duopoly should escape challenge if the merged companies promise not to abuse their market power is fundamentally inconsistent with U.S. antitrust enforcement. We depend on vigorous competition among rivals to produce reasonably priced and high quality products—not promises by merging parties or enforcement by government agencies.

The proposed merger also raises issues in the merging broadband market—that is the provision of upgraded high-speed access to the Internet. Wired broadband technologies, such as cable and telephone connections ("DSL"), have been slow to emerge in rural areas for many of the same reasons that these areas have limited cable penetration. There is not sufficient demand to ensure more rapid wire develop-

---

[11] Mr. Rusch filed an affidavit in support of Pegasus' opposition to the merger. *See* Affidavit and Report of Roger J. Rusch to Pegasus Communications Corporation's Petition to Deny, *In re Consolidated Application of Echostar Cummunications Corp., General Motores Corp., Hughes Electronics Corp., Transferors, and Echo Star Communications Corp., Transferee, For Authority to Transfer Control* (FCC, filed Feb. 4, 2002).

[12] *See, e.g.,* Petition to Deny of National Association of Broadcasters, at 74–81, *In re Consolidated Application of Echostar Cummunications Corp., General Motors Corp., Hughes Electronics Corp., Transferors, and EchoStar Communications Corp., Transferee, For AUthority to Transfer Control* (FCC, Filed Feb. 4, 2002); Petition to Deny By the National Rural Telecommunications Cooperative, at 56–60, *In re Consolidated Application of Echostar Communications Corp., General Motors Corp., Hughes Electronics Corp., Transferors, and EchoStar Communications Corp., Transferee, For Consent For a Proposed Transfer of Control* (FCC, Filed Feb. 4, 2002).

[13] EchoStar/Hughes Joint Press Release, *Merged EchoStar and Hughes will Deliver Local Broadcast Channels to All 210 U.S. Television Markets* (Feb. 26, 2002).

[14] United States Dep't of Justice and Federal Trade Commission, *Revised 1992 Horizontal Merger Guidelines*, § 4 (rev. 1997), reprinted in 4 Trade Reg. Rep. (CCH) ¶ 13, 104.

[15] *See Id.*

[16] *See, infra*, n.5.

ment. At least for the foreseeable future, satellite broadband service is the most likely technology to provide broadband in rural America. The merger of EchoStar and DIRECTV would be a merger to monopoly for millions of rural consumers who have no alternative to DBS for broadband Internet access as well as multi-channel video service.

I assume the parties will argue again that they need the merger to eliminate "duplication" and thereby will be able to roll out broadband service more quickly. The companies should certainly be pressed to explain why the merger is necessary to bring out services that both DIRECTV and EchoStar have promised consumers for some time that each would separately provide.

CONCLUSION

We see evidence on all sides of the amazing transformation of media in this country—partly a result of advances in technology but also a consequence of deregulation by Congress, the courts and the Federal Communications Commission. I agree that many regulatory rules are outdated and deserve to be vacated. With respect to the loosening of ownership restrictions, however, it is often said that antitrust is adequate to protect the market against undue concentration. Antitrust, it is argued, would prevent adverse effects on consumer welfare and preserve a marketplace open to a diversity of ideas.

If antitrust were to falter, media would indeed be a deregulated sector of the economy. This proposed merger of two satellite companies, resulting in monopoly in a substantial part of the United States and, at best, duopoly in the remainder, violates all of the established principles of merger review under the antitrust laws. If this merger as presently structured is allowed, antitrust will have faltered. An essential condition for continued deregulation will be absent. It would send a clear signal to other media companies that the net is down and almost anything goes—so long as the sponsors of the merger claim that their monopoly is more efficient than competition, and promise not to abuse their market power.

Chairman KOHL. We thank you, Mr. Pitofsky.

We turn now to Mr. Gene Kimmelman.

STATEMENT OF GENE KIMMELMAN, CO-DIRECTOR, WASHINGTON, D.C. OFFICE, CONSUMERS UNION, WASHINGTON, D.C.

Mr. KIMMELMAN. Thank you, Mr. Chairman, Senator DeWine, Senator Hatch. On behalf of Consumers Union, the online and print publisher of Consumer Reports, I appreciate the opportunity to testify once again.

As you know better than anyone, I believe no one has come before this Committee more often in the last 4 years to complain about consolidation and concentration of control in the media and telecommunications markets. And I could do this one exactly the same way, and both Mr. Nixon and Mr. Pitofsky make important antitrust points, and but I believe it would be more fruitful today to view this merger from a much broader perspective than just antitrust, but I will include antitrust.

For about 90 percent of consumers, the problem with television is cable monopoly. I appreciate that you have asked the GAO to study the impact of local broadcast channels added to satellite competing versus cable. We have looked at that and we will talk to the GAO, and the answer is quite clear and we have outlined it in great detail in our testimony. These are predominantly separate markets.

Even with local broadcasts, you have cable rates up 36 percent since 1996, when the Telecom Act was passed, and just since January of this year, from Seattle, to Los Angeles, to Reno, to Austin, to St. Louis, to Memphis, to Atlanta, to Syracuse, to Boston, double-digit cable rate increases. Most of those communities have satellite and have local broadcast channels. They do not compete. Mr. Pitofsky and Mr. Nixon, with all due respect, are wrong. These are separate markets in many respects for antitrust analysis.

Consumers need competition; they need new entry. As Chairman Leahy said, there is an application pending at the FCC we have been begging them to move on to allow new players in this market so we are not boxed in with three-to-two or two-to-one limitations through mergers and we have more players. That is the most important thing we need to see happen as this merger is reviewed.

Now, the companies argue that they will have efficiencies and they will better be able to provide service to local rural areas. I believe they mentioned launching a new satellite to expand their capacity to serve 210 markets as the basis for how they would do that.

What is clear here is that there is a greater potential that more consumers could receive local broadcast channels and new high-speed Internet service options if they merge. Is it absolutely clear that they wouldn't get it without it? No, but there are enormous incentives and opportunities through cost reductions and through the ability to purchase programming at a lower price with a broader customer base if this merger goes through. There are potential benefits for consumers.

The other 10 percent of consumers have a real problem. I don't diminish that. Those are rural consumers throughout the country who are not wired for cable. They lose one of the two players in the market. That is intolerable and that should not be accepted.

I believe the conditions that Chairman Kohl described in his opening statement are the types of conditions that can be imposed, I would suggest not by the antitrust officials but by the Federal Communications Commission, the agency with regulatory authority to look in detail and make sure that it is not just prices, it is installation, it is equipment available, it is discounts, and it is the same prices, terms and conditions available for rural consumers as in adjacent more competitive markets. Those are the kinds of conditions that are critical.

But new entry is the most critical thing for rural America, as well, and wireless terrestrial transmission using the satellite spectrum space is totally viable in rural America as well as urban America and we want the FCC to move on that.

Now, the agencies reviewing this obviously have unique roles and they are somewhat narrow—antitrust at the Department of Justice versus the FCC's public interest authority. We don't want them to step over each other's territory, and certainly we don't want you to interfere with their review.

However, I believe Congress can play a unique role in this situation, take a broader look, urge the agencies to work together and combine their oversight efforts. If the FCC moves first in reviewing this merger under its public interest standard, it can require provision of local broadcast signals in every community as a condition of merger subject to penalty and license revocation.

It can require opening markets from rural to urban areas to new entrants to ensure that we do not diminish the number of players in the market. It can require fair prices, terms and conditions, and then the Department of Justice can look at this and determine whether there is a further need for structural separation, a split of some satellite capacity, divesting some transponders or orbital satellites to ensure that rural America is protected.

In conclusion, Mr. Chairman, this is a unique opportunity not just to look at an antitrust issue but to provide both rural and urban consumers competition to cable and more choices for both Internet and video services.

Thank you.

[The prepared statement of Mr. Kimmelman follows:]

STATEMENT OF GENE KIMMELMAN, CO-DIRECTOR , CONSUMER'S UNION, WASHINGTON, D.C.

Consumers Union [1] is extremely concerned about the enormous concentration of control over multichannel video distribution systems—predominantly cable and satellite—which has prevented the growth of vibrant competition. Attached to our testimony is an Appendix entitled "Cable-Satellite Competition (And Other Myths That Are Distorting Mass Media Policy)," prepared by Dr. Mark Cooper, Research Director for the Consumer Federation of America, which describes in great detail the market structure and concentration levels for multi-channel video services.

Direct broadcast satellite (DBS) stands as the most likely competitor to today's cable monopolies. While further consolidation in the satellite industry could be dangerous to consumers, it also holds the potential to make satellite more competitive with cable monopolies. We believe that antitrust issues related to satellite mergers should be reviewed in the overall context of policies designed to foster more competition in the multichannel video market.

It is important to understand that, while antitrust is an excellent tool to prevent monopolization or substantial dilution of competition, it may do nothing to create new competition or explode existing monopolies. Consumers need both—strong antitrust enforcement and strong pro-competitive policies.

SATELLITE

Over the last three years, there has been a great deal of consolidation within the satellite TV industry. The number-one provider, DirecTV, bought two of its competitors, PrimeStar and United States Broadcasting. Meanwhile, the number-two company, EchoStar, acquired the assets of American Sky Broadcasting.[2]

Today, EchoStar and DirecTV serve nearly every home that has a satellite dish.[3] And now EchoStar is attempting to buy DirecTV.

If this merger is approved, it would combine the dominant players in the satellite TV market to become the second-largest pay-TV company in America, behind AT&T's combined cable holdings. See Appendix at 35 (describing AT&T's full and partial cable ownership interests, covering as many as 30-40 million households).

The potential antitrust problems presented by this merger are serious and substantial. Currently, most consumers have three choices for pay-TV services: EchoStar's Dish Network, DirecTV, or their local cable company. This merger would reduce their choices from three to two. For rural America, the prospects are even grimmer. Approximately 13 million homes in rural areas are not wired for cable

[1] Consumers Union is a nonprofit membership organization chartered in 1936 under the laws of the state of New York to provide consumers with information, education and counsel about goods, services, health and personal finance, and to initiate and cooperate with individual and group efforts to maintain and enhance the quality of life for consumers. Consumers Union's income is solely derived from the sale of *Consumer Reports*, its other publications and from noncommerical contributions, grants and fees. In addition to reports on Consumers Union's own product testing, *Consumer Reports* with more than 4 million paid circulation, regularly carries articles on health,product safety, marketplace economics and legislative, judicial and regulatory actions that affect consumer welfare. Consumers Union's publications carry no advertising and receive no commercial support.

[2] Haffmeister, Sallie. "GM Deal to Create New Pay TV Giant," *Los Angeles Times*, Oct. 29, 2001.

[3] FCC *Seventh Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming* (CD Docket No. 00–132), January 8, 2001.

TV.[4] These consumers can only choose between DirecTV and EchoStar. Thus, the merger would leave them with EchoStar as their only option.[5]

Therefore, Consumers Union believes that this proposed merger poses significant antitrust problems and must be rejected, unless the problems are adequately addressed before the merger is completed. Under certain circumstances, we also believe the merger could offer consumers some significant benefits, such as more local broadcast channels and better high-speed Internet options available via satellite. We believe that government approval should be contingent on specific market-opening preconditions and protections against anti-competitive practices. These would involve antitrust consent decree requirements to prevent monopolistic pricing and inferior service, plus Federal Communications Commission (FCC) action to encourage competition.

CABLE

To understand the full set of trade-offs related to this proposed merger, we believe that the issues surrounding satellite concentration should be viewed in the overall context of persistent cable monopoly dominating the multi-channel video programming market.

Sixteen percent of American households have satellite dishes, while about 68 percent have cable.[6] A substantial portion of satellite subscribers also purchase cable in order to receive local broadcast programming or to satisfy multiple TV viewing needs. Thus far, satellite has failed to provide price competition to cable. As one industry analyst writes:

> We believe that more than 95% of all cable churn is caused by factors other than DBS competition. Competition generated churn rates of just 1.3% per year during the past five years, suggesting that former cable customers make up less than one-third of DBS's current customer base. The implication of this finding is significant because it suggests that the vast preponderance of DBS's growth depended on first-time multi-channel video (MVC) subscribers. We believe that growth in the MVC market will drop off in the next several years as the potential population of first-time MVC subscribers dwindles.[7]

Every year, cable rates keep going through the roof. In the five years since the Telecommunications Act became law, cable subscribers have seen their rates go up 36 percent. That's nearly three times the rate of inflation.[8] Cablevision recently announced a 7 percent rate hike, two weeks after AT&T announced a 7.4 percent hike. In cities all around the country, cable companies are raising rates [9] with an alarming pace. The following are just a sampling of rate increases: Wichita, KS—14%,[10] St. Louis, MO—14-26%,[11] Reno, NV and Memphis, TN—15%,[12] Boston, MA—12%,[13] Vancouver, WA—9%,[14] Atlanta, GA and Austin, TX—10%.[15]

Unfortunately, the 1996 Telecommunications Act phased out cable rate regulation. It gave consumers the impression that cable competition would expand sooner rather than later, and cable prices would go down, not up.

The law assumed that the elimination of legal barriers to entering the cable business would unleash a torrent of competition from local telephone companies, electric utilities and others.

---

[4] *Advanced Telecommunications in America,* report by Rural Utilities Service and National Telecommunications and Information Administration.

[5] Beauprez, Jennifer "Tech Town," *Denver Post,* November 4, 2001.

[6] FCC *Seventh Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming* (CS Docket No. 00–132), January 8, 2001.

[7] Jason B. Bazinet, *The Cable Industry* (J.P. Morgan Securities, Inc., November 2, 2001), p. 4.

[8] Bureau of Labor Statistics, consumer price indexes, Dec. 2001.

[9] Berkowitz, Harry. "Cablevision Rates Rising Again," *Newsday*, November 21, 2001.

[10] Lillian Martell, "Cox to Increase Rates for Cable, Internet Service." *The Wichita Eagle*, (Feb. 22, 2002).

[11] Jerri Stroud, "Charter Plans to Raise Cable Rates by End of Year." *St. Louis Post-Dispatch*, (Sept. 26, 2001).

[12] Tom Walter, "Time Warner Raising Cable Rates for 6th Year in a Row." *The Commercial Appeal*, (Nov. 21, 2001).

[13] Monica Collins, "Boston Subscribers at the Mercy of Cable Rate Hikes." *The Boston Herald*, (Nov. 28, 2001).

[14] Mike Rogoway, "Cable TV Rate to Increase 9 Percent." *The Columbia, (Nov. 3, 2001).*

[15] Amy Schatz, "Time Warner is Upping Cable Rates." *Austin American Statesman*, (Nov. 28, 2001).

Unfortunately, it just hasn't happened. The local telephone companies have virtually abandoned their efforts to compete with cable,[16] and electric utilities have had difficulty breaking into the market. Without the benefit of regulations that prevent cable price gouging, only consumers in the few communities where two wireline companies engage in head-to-head competition for cable services are receiving the benefits promised in the 1996 Act. FCC data show that head-to-head competition saves consumers 14 percent compared to prices charged by cable monopolies (where satellite service is also available), and independent research indicates that competition can save consumers as much as 32 percent on their cable bills.[17]

Unfortunately, two-wire towns are the exception to the rule in today's marketplace. Large companies that are well-positioned to block competition increasingly dominate the cable industry. Currently two companies (AT&T and AOL Time Warner) together own cable systems serving more than 50% of the nation's cable subscribers and are partially co-owned through Time Warner Entertainment. In most places, the local cable company is the only cable company. As cable TV pioneer Ted Turner recently said: "I think it's sad we're losing so much diversity of thought and opinion. . . . We're getting to the point where there's going to be only two cable companies left." [18]

Cable companies often argue that programming costs and capital outlays account for the increase in rates. But these arguments simply do not hold up under scrutiny.

For one, cable industry data show that a substantial portion of the increase in programming costs are offset by corresponding increases in advertising revenue. As programming gets more expensive, cable companies get more revenue from advertisers who run commercials during the programming.[19]

Secondly, the largest cable system operators have financial interests in about one-third of all national and regional programming. So when cable companies complain about having to pay more for programming that they partly own, some are simply taking money of the right pocket and putting it in the left pocket.

Even at the local level, the cable industry's complaint about rising programming costs does not hold water. Since the passage of the 1996 Act, cable revenues have increased much faster than costs. Since 1996, total revenues have increased by 50 percent, while operating revenues are up 43 percent.[20] Average operating revenues (total revenues minus operating costs) have actually increased by 32 percent.[21] Most notably, the revenues that are associated with the expansion of systems—advertising, pay-per-view and shopping services, advanced services and equipment—are up 123 percent.[22] The dollar value of revenue increases for new and expanded services since 1997 alone swamps the increase in programming costs. Virtually all of the increases in basic and expanded basic service revenues have been carried to cable's bottom line in the form of increases in operating profits.

COMPETITION

So how does satellite TV stack up against cable? Cable companies may contend that satellite is a serious rival, but evidence shows that, thus far, satellite is not an effective competitor to cable. For most consumers, satellite is still more expensive and less attractive than cable. Installation and multiple TV hookups make satellite significantly more costly than cable. In addition, poor satellite reception is a problem for some consumers in urban areas, and most consumers still cannot get all of their local TV stations from satellite. The attached Appendix illustrates how satellite serves a rural, unwired-niche market (about 40% of satellite subscribers, or approximately 6 million households) and a mega-service market that cable has just entered with digital services, but satellite fails to compete with cable's 42 million basic and enhanced basic "lunch bucket" customers. See Appendix at 13.

---

[16] *FCC Seventh Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming* (CS Docket No. 00–132), January 8, 2001.

[17] *See* Declaration of Thomas Hazlett, Ph.D (Resident Scholar, American Enterprise Institute for Public Policy Research). *In the Matter of Applications of Northpoint USA, PDC Broadband Corporation and Satellite Receivers, Ltd. To Provide a Fixed Service in the 12.2–12.7 GHz Band.* (ET Docket No. 98–206). *See also* Margaret Talev, "Consumers Have Little Recourse on Cable Rates." *Los Angeles Times* (Feb. 4, 2001).

[18] Patrizio, Andy. "Ted Turner Laments Cable Mergers," *Wired News, November 28, 2001.*

[19] *FCC Fifth Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming* (CS Docket No. 98–102), December 17, 1998.

[20] *FCC Seventh Video Competition Report* at 1002, Table B–6.

[21] *Id.*

[22] *Id.*

If satellite can provide local channels in more areas and continue to bring down up-front equipment costs, it could be well-positioned to be the most likely competitor to cable in the future.

One of EchoStar's major arguments for a merger with DirecTV is that combining the dominant players of the satellite industry is the only way for them to compete head-to-head with the cable monopolies. We do not believe this combination alone would guarantee that satellite becomes an effective competitor to cable TV. However, the combined companies would have additional satellite capacity to beam local channels into more markets than they do now. They would also be able to reduce costs per subscriber and possibly speed up the availability of high-speed Internet service in rural areas. Once again, all of these would increase the likelihood that satellite could become a price and service competitor to cable.

Nonetheless, the only way that antitrust and other competitive concerns about this merger can be addressed is to require the conditioning of the merger with two significant safeguards.

First, EchoStar should be required to implement a broad array of protections for rural subscribers. The company should have to agree to offer the same prices, terms, and conditions to consumers in rural areas as it does to consumers in more competitive areas. The same installation options, program packages, promotions, and customer service that EchoStar provides in the closest, most competitive markets would then be available where consumers have cable and only one satellite choice. An alternative approach to achieve the same result would require a structural separation (divestiture) of enough satellite capacity to serve rural customers through a new satellite competitor that could challenge the combined Echostar/DirecTV.

The second safeguard we would suggest is aimed at improving competition. If consumers are going to lose one competitor in the multichannel video market, particularly when it means unwired markets will go from two choices to one, the FCC should move forward to open the door to another competitor.

For example, Northpoint/Broadwave is a promising potential competitor to both cable and satellite TV. It is trying to secure a license for its service, but it is caught in a regulatory morass at the FCC. Two of the companies that have pressed the FCC to reject the application are the companies that could see the stiffest competition—EchoStar and AT&T.[23]

The addition of Northpoint/Broadwave or a comparable firm to the marketplace could offset the loss of a satellite competitor as a result of this merger. Therefore, we are asking the FCC to approve licensing of Northpoint/Broadwave—if the service can be provided without interfering with satellite service—before the antitrust officials complete their review of this merger.[24]

In conclusion, I would like to recall the last telecommunications merger to receive this kind of attention from Congress—the merger of America Online and Time Warner. Some of you probably remember the antitrust concerns that were raised when AOL first unveiled its merger plans.

I know that former FTC Chairman Pitofsky remembers them well. And thanks to his insight and leadership at the FTC, that merger was transformed from a potential threat to consumers to a model for the protection of consumers. That merger was very different in many ways from the merger under discussion here today. But they do have at least two things in common.

Like the merger of AOL and Time Warner, the merger of EchoStar and DirecTV presents serious problems that could be dangerous to consumers. But as the government's approval of AOL Time Warner demonstrated, problems can be fixed if the companies and federal officials are willing to do so.

Rather than reject this proposal out of hand, we would urge the federal government to seize an opportunity to improve consumers' standing in the marketplace and bring some sorely-needed competition to the multi-channel video market.

Chairman KOHL. We thank you, Mr. Kimmelman.

Finally, we turn to Mr. Edward Fritts.

---

[23] "FCC and FTC," Warren's Cable Regulation Monitor, April 9, 2001.

[24] See *Comments of Consumers Union, et. al., In the Matter of EchoStar Communications Corp., General Motors Corp., and Hughes Electronics Corp. for Authority to Transfer Control*. FCC Docket No. 01–348 (Feb. 4, 2002).

STATEMENT OF EDWARD O. FRITTS, PRESIDENT AND CHIEF EXECUTIVE OFFICER, NATIONAL ASSOCIATION OF BROADCASTERS, WASHINGTON, D.C.

Mr. FRITTS. Thank you, Mr. Chairman, Ranking Member Dewine, Senator Hatch. We are delighted to be able to present our views as to why the National Association of Broadcasters opposes this merger.

As free, over-the-air local television stations, our members currently serve their communities with a unique blend of local and network programming. The areas served by local television stations are divided into 210 designated marketing areas, or DMAs, across the country, so we have members ranging from No. 1 in New York City all the way down to number 210 in Glendive, Montana, and all the markets in between.

The Satellite Home Viewer Improvement Act, which has been mentioned here today, says that if a satellite provider carries one local TV station in a market, it must carry all local TV stations in that market. This is known as the "carry one, carry all" statute.

In many ways, you and we serve the same constituency. Your voters are our viewers, and I am sure you know many of your local broadcasters back in your home States. These are the broadcasters whose stations will be impacted by this proposed merger.

EchoStar, in its attempt garner for the support for the merger, is making a number of promises, including one that addresses the fundamental objective of local television stations, and that is a promise to expand local-into-local service into all 210 markets across the Nation. Admittedly, this sounds great, but just a few months ago, as was pointed out, the company was singing a different song.

In December, it told the FCC that a combined company would be able to serve only 100 markets. Now, with the merger plan appearing endangered, it has suddenly discovered the capacity to carry stations in all 210 markets. We have always asserted that that was possible independently without a merger.

Regrettably, our local stations across the country have had less than a pleasant experience in dealing with EchoStar. In fact, EchoStar has done everything in their power to avoid complying with the "carry one, carry all" law. Naturally, we are concerned that a company that has systematically broken the law would be also willing to break promises.

Here are some examples of our concerns: First, the FCC rebuked EchoStar for using invalid reasons in rejecting scores of carriage requests by local stations. Second, EchoStar's solution to complying with Federal law on full carriage is to create a second-class tier of disfavored stations, primarily Hispanic, minority-owned, religious, and public stations that can be received only with the installation of a second receiving dish. The FCC has twice rejected such dish schemes.

Third, in a series of retransmission consent negotiations, EchoStar so abused the FCC process that they were cited by the FCC for lack of candor. And, fourth, even today as EchoStar promises to carry all 210 markets, they continue a court challenge today against the "carry one, carry all" law.

So, Mr. Chairman, with this track record, I think it is ironic that EchoStar is saying give us a monopoly forever and we promise to give you local-into-local someday, maybe. Please appreciate that local stations have many concerns with this so-called promise. EchoStar says they may cover all markets within 2 years, but there are no specific, definite deadlines. We are also concerned about the continuation of the "two dish" scheme. EchoStar's filing continues to reserve the right to discriminate against disfavored stations.

Another concern is the lack of assurance that all stations in all markets that are entitled to carriage will actually be carried. This may be an oversight, but we are understandably suspicious.

The most perplexing is EchoStar's promise versus performance with regard to court challenges. At the same time that EchoStar has promised to provide all 210 markets, it is challenging the underlying law on which that promise is tendered. So which is it going to be? Is it going to be that they will fulfill the promise of carriage in all 210 markets and dismiss the court cases, or will they continue to challenge the law in court and admit that the promise is hollow?

Now, we come to the most important part: How are we to ensure that EchoStar fulfills its commitments? What is the compliance mechanism? Do we rely on the FCC, where EchoStar has consistently ignored and abused the rules? I don't think so. Is the Department of Justice prepared and capable of regulating EchoStar's future behavior? Frankly, I don't have the answer, but I can assure you that broadcasters would need an iron-clad enforcement mechanism.

Broadcasters have built our businesses and served our communities in a competitive environment. Competition brings out the best in all companies, so our overriding objective is indeed the same as yours to bring our viewers and your constituents their local television stations should they subscribe to direct broadcast satellite.

Thank you for this opportunity to present our views and I look forward to answering questions.

[The prepared statement of Mr. Fritts follows:]

STATEMENT OF EDWARD O. FRITTS, PRESIDENT AND CEO , NATIONAL ASSOCIATION OF BROADCASTERS, WASHINGTON, D.C.

I. INTRODUCTION

As President and CEO of the National Association of Broadcasters, I am pleased to appear before the Senate Judiciary Subcommittee on Antitrust, Competition and Business and Consumer Rights to discuss NAB's opposition to the pending EchoStar/DIRECTV merger.

EchoStar Chairman, Charlie Ergen, has made several promises to gain favor for his anticompetitive merger proposal. As the Committee will recall, three months ago Mr. Ergen told the FCC that the merged firm would be able to serve only 100 markets with local-to-local. Now, to try to create a distraction from the fact that his merger will end all competition between U.S. DBS firms, EchoStar has announced that it has suddenly found the capacity to provide local-to-local in all 210 U.S. television TV markets after the merger. This promise—which is nothing more than that—in no way alleviates broadcaster concerns, nor does it diminish the regulatory hurdles yet to be cleared by the applicants.

My written testimony first provides a general overview of the issues concerning broadcasters, then goes into greater detail regarding the impact of this merger on broadcasters and consumers.

A. THE TRANSACTION

EchoStar Communications Corporation ("EchoStar") and Hughes Electronics Corporation, a subsidiary of General Motors, Inc., have announced an agreement by which General Motors will spin off Hughes, including its Direct Broadcast Satellite ("DBS") business, DIRECTV, which will then merge with EchoStar. The parties to this transaction have filed a Consolidated Application For Authority to Transfer Control with the FCC seeking authority to transfer control of satellite, earth station, and other authorizations, including licenses to use orbital satellite positions for DBS services, into the new company.[1] The merger also is under review by the Department of Justice.

B. NAB'S MEMBERS' ROLE AS BROADCASTERS AND INTEREST IN MERGER

The NAB is a non-profit trade association that promotes and protects the interests of radio and television broadcasters in Washington and around the world. The NAB is the broadcaster's voice before the Commission, Congress, and the courts. The NAB is committed to the goal of promoting localism and diversity in television programming throughout the United States.

The broadcasting industry provides free, over the air programming. As cable emerged, grew and thrived through the 70s, 80s and 90s as a Multichannel Video Programming Distributor ("MVPD"), it evolved as the "gatekeeper" of programming, particularly local programming, throughout the United States. With the 1999 passage of the Satellite Home Viewer Improvement Act ("SHVIA"), satellite carriers were also granted this gatekeeper role, enabling DBS companies to deliver TV stations within their own markets without paying copyright royalties to the owners of the programming carried on those stations.

As suppliers of programming to local markets, the NAB's members stand to be substantially harmed by the proposed merger of EchoStar and DIRECTV. By combining the only two DBS providers, the merger will create a DBS monopoly, reduce the number of MVPDs, eliminate beneficial rivalry between two DBS firms to offer local-to-local service in new markets, and enable EchoStar and DIRECTV to exercise significant market power in both the purchase and distribution of video programming throughout the country. This reduction in competition will be to the detriment of both program suppliers and viewers.

C. OVERVIEW

EchoStar and DIRECTV, the sole remaining DBS companies with full-CONUS spectrum in the United States, propose to merge. Their merger would create a monopoly in large areas of the United States and for many millions of MVPD and broadband Internet customers. In most other areas, at best the merger would reduce the number of competitors to two, creating a duopoly and ending EchoStar's frequent role as a "maverick" in the DBS and MVPD industries. The net present value of the total consumer welfare loss over the next five years is estimated to be approximately $3 billion or more.

The anticompetitive effects of this reduction of competition would be felt both by consumers and programming suppliers, including the local broadcast stations that are members of NAB. Broadcasters would be particularly harmed because they would lose the benefit of the DBS rivalry that has led to carriage of local broadcast stations in many markets on one or both DBS systems. The merger would also have a deleterious effect on broadcasters' ability to obtain fair compensation for retransmission consent.

The merger application is particularly audacious because both companies have been enormously successful on their own. Today DBS is a $10 billion industry; it has grown from zero subscribers in 1994 to over 17 million at the end of 2001. More than two out of every three new MVPD subscribers choose DBS over cable. This phenomenal growth has accelerated markedly since the passage of SHVIA in late 1999, which allowed DBS providers to offer local broadcast signals. Since SHVIA's passage, EchoStar's and DIRECTV's subscriber numbers have grown 87.6 percent and 60.2 percent respectively.

At the same time as the DBS industry has enjoyed such striking success, it has concentrated into a two-firm duopoly, down from five licensees with full-CONUS spectrum in 1998. Today, EchoStar and DIRECTV control all 96 available frequencies at the three orbital locations capable of transmitting to the entire lower

---

[1] *See Generally* EchoStar Communications Corporation, General Motors Corporation, Hughes Electronics Corporation and EchoStar Communications Corporation, Consolidated Application for Authority to Transfer Control (December 3, 2001) (hereinafter "Consolidated Application").

48 states, 101 degrees W.L., 110 degrees W.L., and 119 degrees W.L. Because these are the only three full-CONUS orbital slots available to the United States in the high-power Ku-band, the barriers to entry into the DBS industry are not merely high, they are insurmountable. And because DBS has been the only successful competitive entrant against cable, this means that barriers to entry to an overall MVPD market are also extremely high.

The astounding growth of the DBS industry has been spurred by the direct head-to-head market and innovation rivalry between EchoStar and DIRECTV. Because DIRECTV was first to market in 1994, EchoStar, since its entry in 1996, frequently has played the role of a maverick with lower prices and innovative marketing concepts. Among the areas in which the two have competed fiercely are equipment and installation pricing, where EchoStar led the market downward; programming, where each service has developed niches, such as DIRECTV's subscription sports packages and EchoStar's wide array of international programming; technology, where the two firms have sought to outdo each other in offering personal video recorders, high definition receivers, and other innovative technologies; and local-to-local, which EchoStar first pioneered but where DIRECTV now offers service in more cities and in a more consumer-friendly manner. All of this rivalry-spurring innovation would be lost if EchoStar and DIRECTV were allowed to merge.

In terms of competitive effects, the proposed merger will have ill effects whether EchoStar's position is correct that there is a separate DBS market, or whether EchoStar and DIRECTV are closest substitutes for one another in an overall MVPD market. In either case, this is a merger to monopoly for millions of households throughout the United States who are not passed by cable systems, and at best a merger to duopoly everywhere else. EchoStar claims that there are only three million households in the former category, but the data it relies on are clearly inaccurate. Perhaps most strikingly, DIRECTV's own internal survey data show that there are more than three million households not passed by cable just among DIRECTV's own 10.7 million subscribers.[2] As to the national figures, the NRTC has suggested that the percentage of homes passed by cable may actually be only around 81 percent, based on a joint report by agencies of the Departments of Commerce and Agriculture. Whatever the exact number, it is clear that in many areas large numbers of consumers have no access to cable. For instance, Pegasus reports that in 22 states over 30 percent of housing units have no cable access.[3] For all of these consumers, this merger eliminates their only realistic competitive choice.

The situation is much the same for consumers who live in rural areas passed by financially marginal cable systems. A detailed study by a leading investment banking firm found that 8,270 cable systems, serving roughly 8.2 million predominantly rural subscribers, might become extinct within the next five to eight years because they cannot justify the investment to upgrade to digital.[4] Consumers in these territories will also face a monopoly DBS supplier if the merger is approved.

In nearly all other areas of the country this will be, at best, a 3-to-2 merger. As such, and particularly because it will eliminate EchoStar's closest competitor, it is likely that EchoStar will have the incentive and ability to unilaterally raise its prices, without regard to what the cable company may do. Also, with an MVPD duopoly established, it will be much more likely that EchoStar and the cable incumbents will be able to coordinate their pricing behavior.

Broadcasters, as local program suppliers, will suffer from this elimination of competition. The competitive rivalry between these two companies has spurred technological innovation that has expanded the capacity to provide local-to-local service on a cost-efficient basis. A monopoly EchoStar will have much less incentive to innovate and add local stations. The EchoStar and DIRECTV unenforceable "promise" to add all 210 DMAs over some undetermined period of time if the merger is approved (while reserving the right to continue a vicious form of discrimination against many stations) in no way alters NAB's opposition to the merger. Given the track record of the competition between these companies, the advancements in satellite technology, and the considerable disparity between EchoStar's promises and its performance when left to its own devices, the NAB believes that more markets are likely to be carried as a result of competition than if they are at the mercy of

---

[2] In a filing with the Federal Communications Commission (FCC) just a few months ago, DIRECTV said that its own internal customer surveys showed that 29 percent of its subscribers are unable to subscribe to cable. *See* Comments of DIRECTV, Inc., *In the Matter of Annual Assessment of the Status of Competition in the Markets for the Delivery of Video Programming,* CS Docket No. 01–129, at 13 (filed Aug. 3, 2001) (only "71% of DIRECTV customers live in areas able to receive television service.").

[3] Pegasus Communications *ex parte* notice, CS Docket No. 01–348 (Jan. 23, 2002).

[4] Credit Suisse First Boston Equity Research, Natural Selection: DBS Should Thrive as the Fittest to Serve Rural America, at (Oct. 12, 2001).

an EchoStar monopoly. The Carmel Group subscription-TV analyst Jimmy Schaeffler agrees: “Consumers today probably have a greater chance of getting all 210 [markets], and getting them sooner, if the deal does not go through. This is one of the better examples of the real value of the existing competition between DIRECTV and EchoStar in today’s satellite industry.”[5] In addition, local broadcasters will be harmed by the reduction in the number of gatekeepers—cable and DBS—for local station programming.

Because of the strong likelihood that a 2-to-1 or 3-to-2 merger creating highly concentrated markets will result in higher consumer prices and reduced output, such mergers are universally condemned. Such mergers fail to win approval even when (unlike here) they may offer large efficiency gains, as the U.S. Court of Appeals recently ruled in *FTC* v. *H.J. Heinz Co.*, 246 F.3d 708 (D.C. Cir. 2001). Here, the parties claim efficiencies would result through the elimination of duplicate carriage, principally of local broadcast stations. However, the claimed efficiencies fall far short of the “extraordinary efficiencies” required for a merger in a concentrated industry.

To be cognizable, an efficiency must be merger-specific, i.e., achievable only through the merger. In this case, to the contrary, as the Declaration of Richard Gould shows, based on DIRECTV’s and EchoStar’s own Engineering Statement each party individually easily could offer all local stations in all 210 DMAs.[6] And in any event, the parties could eliminate duplication by entering into a joint venture agreement regarding as much programming as they find efficient—without the anticompetitive consequences of the merger.

Finally, recognizing that the merger would adversely impact consumers in noncabled areas (but ignoring the anticompetitive impact elsewhere), EchoStar has proposed to offer a uniform national price, presumably to be enforced by the Commission and/or Department of Justice. Such a national pricing plan would be a giant step backward from the goals of the Telecommunications Act of 1996 to promote competition and eliminate regulation. Further, it simply would not work because there are many more dimensions to competition than a simple national monthly fee: prices for equipment and installation, customer service levels, investments in new local-to-local markets, and the like. And even as to price, Mr. Ergen himself admits that EchoStar would respond to specialized local pricing by cable operators.[7]

For these reasons, a national programming price fix will not work. But if it did work, it would harm, not benefit, competition. The uniform national price would be a duopoly price, not a competitive price, and would exacerbate the oligopolistic nature of the market.

In addition to the merger’s adverse effects in video markets, it will have a similar anticompetitive effect in the satellite broadband market. Many millions of consumers who are not passed by an upgraded (or any) cable system, and who live too far from telephone company central offices to have Digital Subscriber Line (“DSL”) service available, are totally dependent on DBS for high-speed Internet access. Both EchoStar and DIRECTV offer such service today. The merger would eliminate this competition, and without any serious claim of an efficiency benefit: since each customer needs his or her own dedicated broadband transmissions, there is no serious “avoidance of duplication” argument in the first place.

For all these reasons, NAB strongly opposes the proposed merger between EchoStar and DIRECTV.

II. ECHOSTAR’S TRACK RECORD WITH LOCAL STATIONS: A CONSISTENT PATTERN OF ABUSE AND LAWLESSNESS

In every aspect of their dealings with local TV stations, EchoStar has shown a shameful disrespect for obedience to law. Since EchoStar has been perfectly willing to openly defy *actual statutory mandates* in their dealings with local TV stations, there is little doubt that they will readily walk away from vague assurances it may make today to obtain government blessing for a merger to DBS monopoly.

A. ECHOSTAR’S AND DIRECTV’S ABUSE OF THE DISTANT-SIGNAL COMPULSORY LICENSE: “CATCH ME IF YOU CAN”

In 1988, with an extension in 1994, Congress created a special compulsory license in the Copyright Act to allow satellite carriers to retransmit distant ABC, CBS, Fox, and NBC stations—*but only to the tiny fraction of households that are “unserved”*

[5] Multichannel News, DBS Politics is Local, Ted Hearn (Mar. 4, 2002).

[6] Declaration of Richard G. Gould ¶ 3(c) (“Gould Decl.”) (Filed as Appendix C to NAB’s Petition to Deny in CS Docket No. 01–348, February 4, 2002).

[7] *Ergen Makes His Case*, Satellite Bus. News, Dec. 31, 2001 at 11 (“Ergen”).

by local broadcast stations. 17 U.S.C. § 19. This statute is called the "Satellite Home Viewer Act," or "SHVA."

When DIRECTV went into business in 1994, and when EchoStar did so in 1996, they immediately began abusing this narrow compulsory license by using it to illegally deliver distant ABC, CBS, Fox, and NBC stations to ineligible subscribers. In essence, the DBS companies pretended that a narrow license that could legally be used only with remote rural viewers was in fact a blanket license to deliver distant network stations to viewers in cities and suburbs.[8]

As a result of EchoStar's and DirecTV's lawbreaking, viewers in markets such as Meridian, Mississippi, Lafayette, Louisiana, Traverse City, Michigan, Santa Barbara, California, Springfield, Massachusetts, Peoria, Illinois, and Lima, Ohio were watching their favorite network shows not from their local stations but from stations in distant cities such as New York. Since local viewers are the lifeblood of local stations, EchoStar's and DirecTV's copyright infringements were a direct assault on free, over-the-air local television.

When broadcasters complained about this flagrant lawbreaking, the satellite industry effectively said: if you want me to obey the law, you're going to have to sue me. Broadcasters were finally forced to do just that, starting in 1996, when they sued the vendor (PrimeTime 24) that both DirecTV and EchoStar used as their supplier of distant signals. But even a lawsuit for copyright infringement was not enough to get the DBS firms to obey the law: both EchoStar and DirecTV decided that they would continue delivering distant stations illegally until the moment a court ordered them to stop.

The courts immediately recognized—and condemned—the satellite industry's lawbreaking. *See, e.g.*, *CBS Broadcasting Inc.* v. *PrimeTime 24*, 9 F. Supp. 2d 1333 (S.D. Fla. 1998) (entering preliminary injunction against DirecTV's and EchoStar's distributor, PrimeTime 24); *CBS Broadcasting Inc.* v. *PrimeTime 24* Joint Venture, 48 F. Supp. 2d 1342 (S.D. Fla. 1998) (permanent injunction); *CBS Broadcasting Inc.* v. *DIRECTV, Inc.*, No. 99–0565–CIV–NESBITT (S.D. Fla. Sept. 17, 1999) (permanent injunction after entry of contested preliminary injunction); *ABC, Inc.* v. *PrimeTime 24*, 184 F.3d 348 (4th Cir. 1999) (affirming issuance of permanent injunction).

By the time the courts began putting a halt to this lawlessness, however, satellite carriers were delivering distant ABC, CBS, Fox, and NBC stations to millions and millions of subscribers, the vast majority of whom were ineligible city and suburban households. *See CBS Broadcasting*, 9 F. Supp. 2d 1333.

By getting so many subscribers accustomed to an illegal service, DirecTV and EchoStar put both the courts and Congress in a terrible box: putting a complete stop to the DBS firms' lawbreaking meant irritating millions of consumers. Any member of Congress who was around in 1999 will remember the storm of protest that DirecTV and EchoStar stirred up from the subscribers they had illegally signed up for distant network stations.

While Congress properly refused to grandfather all of the illegal subscribers signed up by DirecTV and EchoStar, the two firms ultimately profited from their own wrongdoing when Congress—having heard an earful of consumer complaints—enacted legislation in late 1999 providing for limited grandfathering.

* * * * * * *

Not only did EchoStar and DirecTV ignore the plain requirements of the Copyright Act for years, but also when courts finally ordered their vendor (and them) to stop breaking the law, they took further evasive action to enable them to continue their lawbreaking.[9] In particular, when their vendor (PrimeTime 24) was ordered to stop breaking the law, and to ensure that its partners (such as DirecTV and EchoStar) stopped doing so, both DBS firms fired their supplier in an effort to continue their lawbreaking.

When DirecTV tried this in February 1999, a United States District Judge held in open court that DirecTV's claims were "a little disingenuous" and promptly squelched its scheme. *CBS Broadcasting Inc. et al* v. *DirecTV*, No. 99–565–CIV–

[8] For the first few years of this exercise in lawbreaking, DIRECTV and EchoStar hid behind a small, foreign-owned company called PrimeTime 24. *See CBS Broadcasting Inc.* v. *PrimeTime 24*, 48 F. Supp. 2d 1342, 1348 (S.D.Fla. 1998) ("PrimeTime 24 sells its service through distributors, such as DIRECTV and EchoStar . . . [M]ost of PrimeTime's growth is through customer sales to owners of small dishes who purchase programming from packagers such as DIRECTV or EchoStar."). Starting in 1998 (for EchoStar) and 1999 (for DIRECTV), the two companies fired PrimeTime 24 in an effort to dodge court orders to obey the Copyright Act.

[9] A Federal Court has ruled that EchoStar unlawfully breached its contract with PrimeTime 24. *See PrimeTime 24 Joint Venture* v. *EchoStar Communications Corp*., 2002 WL 44133 (So. Dist. NY, Jan. 11, 2002).

Nesbitt (S.D. Fla. Feb. 25, 1999); *see id*. (S.D. Fla. Sept. 17, 1999) (stipulated permanent injunction).

EchoStar has played the game of "catch me if you can" with greater success. Thanks to a series of stalling tactics in court, EchoStar is continuing today to serve large numbers of illegal subscribers. Realizing that broadcasters were about to sue it in Florida, for example, in October 1998 EchoStar filed a declaratory judgment action in its home district—Colorado—against ABC, CBS, Fox, NBC, and their Affiliate Associations. The District Court in Colorado (Judge Nottingham) granted broadcasters' request to transfer EchoStar's lawsuit to Florida, finding that EchoStar had engaged in "flagrant forum-shopping." Hearing Transcript, *EchoStar Communications Corp.* v. *CBS Broadcasting Inc*. (D. Colo. Mar. 24, 1999).

Although EchoStar's stalling techniques have thus far kept it from being subject to any long-term court order to stop its infringements, there is no doubt that EchoStar is continuing to break the law. When EchoStar was (briefly) ordered to start turning off its illegal subscribers in late 2000, for example, it candidly told the Court that it had so many illegal subscribers that it would take a long, long time to turn them all off, even if it turned off 5,000 subscribers per day.[10]

B. THE SATELLITE CARRIERS' BREACH OF FAITH WITH CONGRESS ON THE LOCAL-TO-LOCAL COMPULSORY LICENSE

Starting in 1997, EchoStar began urging Congress to enact a new compulsory license that would allow satellite companies to carry local TV stations to local viewers without paying any copyright fees. DirecTV joined in the call for such a law in 1999.

In December 1999, Congress granted the DBS companies' wish in the Satellite Home Viewer Act of 1999 ("SHVIA"): it gave them carte blanche to deliver any TV station within its own market, without paying a penny in copyright fees to the owners of the programming carried on the station. Congress wanted to make sure, however, that the new compulsory license would not harm other stations in the market by putting a barrier—the DBS firm—between non-carried stations and many of their viewers.

Congress therefore told EchoStar and DirecTV in the SHVIA that if they wished to use this special new license, they would need—starting in 2002—to carry all of the stations in each market. This simple and equitable principle is called "carry one, carry all."

The DBS firms happily accepted the gift that Congress had given them—a local-to-local compulsory license. Thanks to that congressional largesse, the DBS firms have grown at a blistering pace since then: DirecTV has expanded from 7.86 million subscribers in November 1999 to 10.3 million today, while EchoStar has grown even more explosively, from 3.25 million in November 1999 to 6.43 million today.

The DBS industry made no secret of the fact that its phenomenal post-SHVIA growth has been largely the result of Congress' decision to make it easy for them to carry local TV stations. The Satellite Broadcasting & Communications Association, for example, said that the industry's "40% subscriber addition growth in 2000 is primarily the result of legislation passed in November 1999 allowing the DBS operators to offer local broadcast channels in markets of their choice.'"[11]

How did EchoStar and DirecTV show their gratitude for this extraordinary gift? By brazenly seeking to defeat the will of Congress.

Only a few months after the SHVIA went into effect, EchoStar, DirecTV, and SBCA filed a lawsuit demanding that the Court invalidate the "carry one, carry all" principle, on the theory that Congress' generous (and lucrative) gift to the DBS industry somehow had to be even more generous to satisfy the First Amendment.

In effect, the DBS firms demanded that the court rewrite the SHVIA to give them a sweet deal that Congress had emphatically refused them: the ability to use the programming of local TV stations with no copyright fees whatsoever, combined with a free hand to cherry pick a few stations while effectively cutting all other local stations off from DBS households. (Just two weeks ago, EchoStar and DirecTV filed an emergency motion asking the Court to stay the January 1, 2002 effective date of the SHVIA carry-one-carry-all provisions.)

---

[10] Declaration of Mark Jackson, Senior Vice President, EchoStar Technologies, ¶¶ 17, 19, 20, 21 (executed Oct. 11, 2000) ("Jackson Decl.") (claiming that EchoStar can only terminate 6,000 to 10, 000" per day); Declaration of James DeFranco, Executive Vice President and Director for EchoStar Communications Corp. (executed Oct. 11, 2000) ("DeFranco Decl.") at ¶¶ 18–21 (describing EchoStar's proposed time frame and alleged need for lengthy period for shut off process).

[1] SBCA Comments, *In Re Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, CS Docket No. 00–132 (filed July 2000) (quoting Industry analyst).

Luckily, the courts have thus far brushed aside the satellite industry's intense effort to thwart Congress' will. But the lesson is clear: Congress (and the administration) would be foolish to approve a merger to DBS monopoly based on vague promises about future benefits. EchoStar and DirecTV's track record shows that they are perfectly willing to take a government-granted benefit—here, permission to merge to DBS monopoly—and then use every available tactic to unravel the terms on which the government granted the benefit.

C. THE SATELLITE CARRIERS' RELENTLESS GUERRILLA WARFARE AGAINST "CARRY ONE, CARRY ALL."

EchoStar and DirecTV have not only attacked the principle of "carry one, carry all" on a wholesale basis in the courts, but have sought to sabotage it in their "retail" dealings with local stations requesting carriage. When local stations sent requests to EchoStar in the summer of 2001 asking for carriage, for example, EchoStar sent back crude form letters offering nonsense reasons for rejecting most stations, such as absurd claims that the stations didn't list the city in which they are licensed or that TV towers a few miles away did not provide a strong enough signal.

On its own initiative, the FCC sharply criticized EchoStar form-rejection-letter tactic for failing to "comply with the rule or the Report and Order." *In re Implementation of the Satellite Home Viewer Improvement Act of 1999: Broadcast Signal Carriage Issues, CS Docket No. 00–96, ¶ 59, 16 FCC Rcd 1918 (Sept. 5, 2001).*

EchoStar's recalcitrance has continued since then: many station owners have been forced to file complaints against EchoStar at the FCC to enforce the carriage rights that Congress granted them. *See EchoStar, DirecTV Turn Down Dozens Of Requests For Carriage*, Communications Daily (Oct. 19, 2001). Indeed, as press reports reflect, the FCC has been "inundated" by an "avalanche" of complaints that broadcasters were forced to file after being turned away by EchoStar, DirecTV, or both. *Id.*

D. ECHOSTAR'S BRAZEN DECISION TO DEFY CONGRESS AND THE FCC BY PLACING DISFAVORED STATIONS IN "SATELLITE SIBERIA"

EchoStar and DirecTV have twice asked the FCC to rule that satellite companies can "satisfy" the carry-one-carry-all rules by relegating disfavored stations to an out-of-the-way satellite that viewers could receive only if they purchased an additional dish. In response, the Commission has twice emphatically rejected that proposal. See In Re Implementation of the Satellite Home Viewer Improvement Act of 1999: Broadcast Signal Carriage Issues, ¶¶ 37–41, CS Dkt. No. 00–96 (released Sept. 5, 2001) (discussing initial rejection of DBS proposal and reaffirming prior rejection).

In an extraordinary slap in the face to Congress and to the FCC, EchoStar has decided to do exactly what the Commission had twice said would be unacceptable: purporting to "satisfy" its carry-one-carry-all obligations by putting disfavored stations on a completely different satellite that requires viewers to obtain new equipment. Specifically, in late December, EchoStar announced that many stations that it was required (starting on January 1, 2002) to offer on a local-to-local basis would be available only to the tiny fraction of subscribers who obtained a second satellite dish capable of receiving signals from EchoStar's "wing slot" satellites located far over the Atlantic or the Pacific. NAB has been forced to file an emergency petition with the FCC to halt this outrageous practice, and innumerable broadcasters have filed protests with the Commission about it. (Among other things, EchoStar has rendered virtually all local Spanish-language, minority-owned, and religious stations inaccessible to viewers by segregating them on its wing-slot satellites.)

EchoStar has extensive experience with consumer reactions to obtaining local stations from a second satellite dish—and it knows that consumers view a second dish as posing unacceptable costs, even if EchoStar supposedly offers to install the second dish "for free."[12] Indeed, EchoStar has previously told the Commission exactly that.

[12] EchoStar's pretense is that its discriminatory treatment of some local stations is justified because it supposedly offers to install a second dish "for free." Even if EchoStar in fact made that offer in good faith, it would not remotely solve the problem, because it would not address the inconvenience, hassles, and aesthetic undesirability of the two-dish approach. But in reality, EchoStar has shown utter bad faith with regard to this "free offer." Among other things, (1) EchoStar's web site contains no mention of the supposed free offer, (2) as EchoStar itself has boasted, the letter to consumers announcing the "offer" buried it in a footnote—which is likely to be read by few and understood by fewer, (3) EchoStar has decided to end its "free offer" on March 31, 2002, long before most subscribers will even be aware of it. All of this is set forth in detail in NAB's filings with the FCC in Docket No. 00–96.

The pertinent background is as follows: from early 1998 until some time in 1999, and before the enactment of the SHVIA, EchoStar offered local-to-local transmissions of certain local stations (typically the major network stations) to subscribers in several markets.[13] At that time, all of the local stations that EchoStar offered were offered as a package, but—because the package was offered from a "wing slot" satellite—it required use of a second dish. In at least some cities, EchoStar offered second dishes for free—just as it purports to be doing now—except that it actually announced its free offer, rather than trying to keep it a secret.[14]

EchoStar ultimately abandoned the two-dish method of offering local stations. Before it did so, however, EchoStar candidly admitted to the Commission that, even under ideal conditions—with a free dish, and with the entire local station package (as opposed to just a few stations) being offered on a second dish—the two-dish option encountered "substantial consumer resistance," was "unfortunate[]," and "not an attractive alternative":

> EchoStar has had to offer a two-dish solution to complement its full-CONUS offering with services from its satellites at 61.5° W.L. and 148° W.L. . . . EchoStar has encountered substantial consumer resistance to the perceived difficulties of installing and maintaining second dishes. . . . [citation omitted] ("As a 'second-best' solution to this problem of orbital scarcity, EchoStar has been offering limited local-into-local service through the use of half-CONUS satellite capacity. This requires the use of multiple dishes, and will thereby be more difficult to market as a convenient alternative to cable."); [citation omitted] ("EchoStar currently offers local programming through its satellites at 61.5° W.L. and 148° W.L. This arrangement unfortunately, requires customers to install a second dish in order to receive local programming. While some customers have embraced the two-dish system, others have found it to be cumbersome and difficult, despite EchoStar's offer to install the second dish free of charge. To date, the two dish solution has not proven to be a particularly attractive alternative to cable.") (citations omitted.)
>
> [EchoStar] Petition to Deny, In Re Tempo Satellite, Inc., File No. SAT-ASB–19990127–00014 at 3 n.4 (filed March 5, 1999) (copy attached as Appendix A) (emphasis added).

Despite all this, at the FCC right now, EchoStar is aggressively defending its "right" to discriminate against local stations that it does not like by placing them in second-dish Siberia. And as discussed below, EchoStar is reserving the right to fulfill its "210-market" promise in this same, grossly discriminatory manner—which makes a mockery of the carry-one-carry-all principle that Congress embodied in the SHVIA. Given this duplicity, it would be irresponsible to treat EchoStar's eleventh-hour "210-market" promise as though it had any real-world meaning.

E. ECHOSTAR'S "ABUSE OF THE COMMISSION'S PROCESSES" ABOUT RETRANSMISSION CONSENT

EchoStar has brought the same abusive approach to the arena of retransmission consent—the process by which DBS firms obtain permission from those local stations that the DBS firms do wish to carry. EchoStar's approach has been simple: if it is unable to make a retransmission consent deal with a station, it automatically—as punishment—files an FCC complaint alleging that the station had failed to bargain in good faith.

One broadcaster victimized by this practice was Young Broadcasting, Inc., which owns local TV stations in several markets. On August 2, 2001, the FCC's Cable Services Bureau rejected EchoStar's retransmission consent complaint against Young Broadcasting as unfounded. In re *EchoStar Satellite Corp.* v. *Young Broadcasting, Inc.*, File No. CSR–5655–C, ¶ 32, at 15 (Aug. 6, 2001). Not only did the Commission reject EchoStar's complaint, but the FCC Bureau found that EchoStar had engaged in misconduct that the Bureau could not "excuse." The FCC Bureau chastised EchoStar for "abuse of process" and cautioned EchoStar "to take greater care with regard to future filings" (id. at 16), finding further that "EchoStar failed in its duty of candor to the Commission" by publicly disclosing portions of the docu-

[13] EchoStar Press Release, *DISH Network is the Only One! EchoStar's DBS Service the First and Only to Guarantee Local Channels* (Jan. 8, 1998).

[14] EchoStar Press Release, *EchoStar DISH Network Launches DISH NETS Local Channels in Pittsburgh—EchoStar Offers Customers* Free Second Dish *For Local Channel Access* (Sept. 15, 1998) (emphasis added), www.web.archive.org/web/19991008075007 /www.dishnetwork.com/profil/press/press/press139.htm <visited Feb. 4, 2002>.

ments for which it sought strict confidentiality in Commission proceedings. (Emphasis added.)

The FCC's Bureau held that "EchoStar's conduct in filing material with the Commission requesting confidentiality, while concurrently engaging in a public debate over the issues raised in this proceeding and publicly disclosing selected portions of the alleged confidential material, constitutes an abuse of the Commission's processes." Id. (emphasis added).

Again, the lesson is clear: it would be foolish to expect a monopoly DBS firm to obey the law and comply with legal processes when the company that would own the monopoly firm (EchoStar) has never done so in the past.

III. BROADCASTER CONCERNS WITH THE PROPOSED MERGER

LOCAL-TO-LOCAL SERVICE

1. EchoStar's "promise" to provide local-to-local service in all 210 markets does not resolve NAB's concerns

Perhaps the most perceptive comment about EchoStar's 11th-hour promise to offer local-to-local in all 210 markets has been made by Bob Shearman, the editor of a leading trade publication about the satellite industry: EchoStar's announcement is "a very shrewd political Hail Mary with no downside because it's unenforceable."

In one sense, EchoStar's new "Hail Mary" promise is no surprise—as the NAB has always maintained, either company individually has the capacity to serve all 210 markets, and the combined company would obviously have the ability to do so. But what is notable is the lightning speed with which EchoStar has reversed field: as of December 2001, EchoStar told the FCC that the combined firm could serve only 100 markets, but now—facing the prospect that its merger to DBS monopoly will be rejected by the authorities—it has suddenly "found" sufficient capacity.[15]

So what, if anything, has changed with Mr. Ergen's latest move? We now have a paper "commitment" from Charlie Ergen that after EchoStar has gotten what it wants—the opportunity to swallow its competitor and become a DBS monopolist—and after it is much too late to undo the merger, New EchoStar will supposedly offer local-to-local in all 210 markets.

Does it make sense to place any faith in this "promise"? The carefully hedged manner in which EchoStar has made this "commitment"—and broadcasters' consistent bitter experience with EchoStar's bad faith maneuvering in the past—shows that it does not.

First, the "210 markets" promise is nothing more—only a promise. It is not a legally enforceable obligation—and even if it were, EchoStar has shown that it will exploit every conceivable mechanism to avoid complying with legal obligations that it considers inconvenient at the moment. Since EchoStar is perfectly willing to defy federal statutes and regulations, there is no reason to expect it to live up to a mere unilateral promise, particularly when EchoStar will have achieved the benefit (merger approval) that it sought to achieve by making that promise.

Second, EchoStar has carefully avoided making any commitment about when it will offer local-to-local service in all markets. All of its new FCC filings contain ambiguous phrases like "as soon as two years after approval"—words intended to give it all the wiggle room it needs to delay providing local-to-local in smaller markets for as long as the monopoly DBS firm likes, which may be a long, long time.

Third, and perhaps most significant of all, EchoStar is reserving the right to segregate some local stations on "wing-slot" satellites that can only be viewed if the subscriber obtains a second satellite dish. As discussed below, this tactic completely guts the carry-one-carry-all rule that Congress embodied in the SHVIA—and EchoStar is aggressively defending its right to use this statute-destroying technique as part of its "210-market" promise.

A careful reading of the DBS firms' latest FCC filing reveals classic EchoStar game playing. Early in the filing—in the part that EchoStar expects to be widely read—EchoStar tries to create the impression that it will make all local stations in all markets available to customers with "one consumer-friendly mini-dish."[16] Far back in EchoStar's filing, however, the truth comes out: EchoStar tells the Commission that it "should reject attempts . . . to impose a special condition on the com-

---

[15] Notably, the two companies have also admitted that before the merger announcement, DIRECTV had already planned to launch spot-beam satellites that would be able to serve 103 markets—in other words, that their December 2001 "promise" of 100 markets was actually offering nothing beyond what DIRECTV by itself was already planning to be able to do.

[16] *See* EchoStar's Opposition to Petitions to Deny and Reply Comments, CS Docket No. 01–348 (filed Feb. 25, 2002), at 4.

bined company that it carry all its 'must-carry' stations so that they are received on the same dish." [17] That is, EchoStar insists on being able to carry out its "210-market" promise in a manner that—as discussed in detail above—makes the promise meaningless.

To sum up: EchoStar has now made an unenforceable promise to carry the local television stations in all markets at some indefinite time in the future, and with the threat to render many local stations effectively unviewable by stranding them on satellites that require consumers to install a second satellite dish. Given the emptiness of this "promise"—and the many other fatal problems with the merger that this promise does not purport to address—NAB remains opposed to the merger.

2. Capacity for local-to-local without the merger is not an issue.

Each firm individually could easily do what the two firms say they would do as a DBS monopoly—namely, provide local-to-local service in all 210 TV markets. A merger is not necessary to produce such a result because currently each provider strives to "leapfrog" the other in offering new service to different markets. With a merger, this incentive disappears. If the merger does not occur, for example, EchoStar will be deeply concerned about the increasingly large number of markets that DIRECTV does—but EchoStar does not—serve with local-to-local, and will surely take prompt and aggressive countermeasures as it has in the past. It is precisely this competitive "fear" that has led to the current level of local-to-local service.[18]

(a) Local-To-Local Service In Remaining Markets Will Require Far Less Capacity

At the outset, we note that, for a reason not discussed by the applicants, future local-to-local deployments will be easier in one critical respect than past rollouts. The reason is simple: the markets the two firms are already serving are the largest markets in the country, which have the greatest number of local TV stations. For example, stations in the top 50 markets have an average of 12 stations per market (598 eligible stations in 50 markets), while stations in the next 50 markets have only an average of eight eligible stations per market (393 eligible stations in 50 markets).[19] With the same amount of channel capacity, therefore, the DBS firms will be able to serve significantly more small markets than large markets.

(b) The EchoStar/DIRECTV Joint Engineering Statement Shows That Each Firm Could Separately Provide Local-To-Local In All Markets

The Joint Engineering Statement of EchoStar Communications Corporation and Hughes Electronics Corporation, Attachment B to the parties' Consolidated Application for Authority to Transfer Control filed with the Federal Communications Commission on December 3, 2001 ("Joint Engineering Statement") confirms that DIRECTV and EchoStar today have more than enough high-power, Ku-band CONUS capacity to offer all local television stations in all markets via satellite.

As the Joint Engineering Statement explains (at 6), DIRECTV has already found a way to design a spot-beam satellite that reuses the same frequency an average of 7.33 times when retransmitting local TV stations. And both companies acknowledge that they expect to be able to compress 12 channels into each frequency while maintaining acceptable picture quality. Id. at 13. These two statistics, both of which come from the applicants themselves, mean that each company—using its 46 (for DIRECTV) or 50 (for EchoStar) CONUS Ku-band frequencies—could carry all of the eligible local television stations in all 210 U.S. markets, and also carry all of its existing national programming, with ample room to offer still more.[20] And by taking advantage of readily available technological advances, each company will be able in the future to greatly expand its ability to deliver even more television programming.[21]

(c) Satellite Capacity Is Constantly Increasing Through Technological Innovation

Although the analysis above shows that the two firms individually have ample capacity to deliver local-to-local in all 210 markets, that analysis is only the beginning

---

[17] *Id.* at 140.

[18] DIRECTV Press Release, DIRECTV to Launch Local Channels in 10 New Markets This Year—Local Channels will be available in 51 Markets Representing more than 67 percent of U.S.TV Households (Jan. 8, 2002).

[19] In the carriage lawsuit in the Eastern District of Virginia, the FCC's expert witness, Dr. Jeffrey Rohlfs, provided a detailed spreadsheet showing the number of eligible stations in each market as well as a running total of the cumulative number of eligible stations. *See* Declaratin of Jeffrey H. Rohlfs, *Satellite Broadcasting & Communications Ass'n of Am.* v. *FCC,* No. 00–1571–A (E.D. Va. 2001).

[20] *See* Gould Decl. at 9–11.

[21] *Id.* 11–15.

of the story, because "satellite capacity" is not fixed and finite but elastic and expanding, thanks to the relentless ingenuity of engineers and business people.

NAB's satellite engineering expert, Richard Gould, provides valuable perspective on this point. As Mr. Gould explains: "I have worked in the field of satellite engineering since the 1960s. At every point during that period, scientists and engineers have been finding ways to use satellites more efficiently and intelligently than in the past. In this respect, the satellite industry is like the computer industry: past performance records are constantly being shattered as engineers design better and better hardware and software." [22]

Indeed, the Commission should hear a familiar ring to the protestations of the satellite industry that present and future capacity constraints will forever limit their ability to expand carriage of local television stations. In its decade-long fight against carriage of local stations, the cable industry made the same factual claims. In 1992, Congress soundly and correctly rejected these self-serving predictions. In doing so, Congress made logical and reasonable predictions that cable's expanding capacity would virtually eliminate what were already minimal capacity issues with the carriage of local stations. In Turner, the Supreme Court found these predictions eminently reasonable, and as history as shown, they were correct.[23] The DBS industry's current effort to contend that technological progress has come to an end are no more credible. Consider the following points, which show that the alleged benefit—increased capacity—is not merger-specific, since it will be achieved through technical innovation in any event.

(1) Spot Beams

EchoStar and DIRECTV have each embarked on launching two satellites fitted with spot beams to enhance their ability to offer local-to-local service. These satellites will enable DIRECTV and EchoStar to deliver far more local stations than could be retransmitted with CONUS satellites—and illustrate how engineering ingenuity stimulated by competition creates new "capacity" where it did not exist before.

The Joint Engineering Statement filed by EchoStar and DIRECTV also shows that engineering techniques evolve over time, and how engineers—in the spirit of rivalry—do better when they compete with each other. As discussed above, one of the critical factors that determines how much capacity can be created by using spot beams is how many times a single frequency is reused in different parts of the country. On this score, the Joint Engineering Statement shows that DIRECTV (or its contractors) have, at least in the first round, been much more successful than EchoStar (or its contractors): DIRECTV achieved a reuse rate of 7.33 with its first spot-beam satellite [24]—which is almost 50 percent higher than the 5.0 reuse rate that EchoStar originally planned to achieve with its two spot-beam satellites.[25] If the two firms continue to compete with each other—as they should—their engineers will surely continue to play the game of "can you top this," to the benefit both of themselves and the public.

(2) Dishes Capable Of Receiving Signals From Two Or Three Orbital Locations

In addition to use of spot beams, many other techniques are available to enable DBS firms to expand their capacity to deliver local stations (or other programming). For example, although satellite dishes have traditionally been "pointed" at only a single orbital location, both DIRECTV and EchoStar today offer a single dish that can receive signals from two or even three different orbital locations (101° W.L, 110° W.L, and 119° W.L). Simply through use of a single dish that points to multiple satellites, consumers can receive far more programming than with the single-satellite dishes that were the only option until recently.

A few years ago, multi-satellite DBS dishes were unknown, and the prospect of "doubling or tripling satellite capacity" through their use was hard to imagine. Today, for one of the two DBS firms, multi-satellite dishes are ubiquitous: EchoStar states that "[a]pproximately 80 percent of [its] subscribers currently have antenna dishes capable of viewing programming from both the 110° W.L. and 119° W.L. orbital locations." [26]

(3) Compression Techniques With Existing Equipment

DIRECTV and EchoStar admit that their ability to squeeze more programming onto the same number of frequencies has essentially doubled over the past few

[22] *Id.* at 17.
[23] *Turner Broadcasting Sys.* v. *Fcc* 512 U.S. 622 (1994).
[24] *See* Joint Engineering Statement (attached to Consolidated Application) at 6. (hereinafter "Eng. Statement").
[25] *Id.*
[26] Eng. Statement at 5.

years.[27] Although the two firms say that they expect to achieve a 12:1 compression ratio with existing hardware,[28] their Engineering Statement, inexplicably, assumes a much too low compression ratio of only 10:1 when calculating how much capacity each firm has separately.[29] This strange pessimism is unwarranted, for at least three reasons. First, DIRECTV told a court more than a year ago that its compression ratio even then was about 11:1, not 10:1.[30] Second, both DIRECTV and EchoStar now state that they "expect" their own compression ratios to be at least 12:1.[31] It is hard to fathom why the two firms do not accept their own compression figure. Third, the company that manufactures compression equipment for DIRECTV—a company called Harmonic, Inc.[32]—has stated that using the type of digital compression equipment it has sold to DIRECTV, the compression ratio is actually between 12:1 and 14:1.[33] There is no reason to doubt that EchoStar could purchase the same equipment (if it has not already done so). And if the manufacturer of the compression equipment is right that a compression ratio of 14:1 is in fact achievable, that single change (as compared to the low 10:1 ratio that EchoStar and DIRECTV assume in their Engineering Statement) would give DIRECTV four extra channels for each of its 46 frequencies, or 184 total extra channels, and EchoStar four extra channels for each of its 50 frequencies, or 200 total extra channels.

When the Commission evaluates whether all progress in compression has come to an end—as the DBS firms imply in their Engineering Statement—it should consider this: even as DIRECTV has in fact doubled its compression ratio from around 6:1 just a few years ago to (by its own admission) 12:1 today, *it has again and again told the Commission, incorrectly, that it had essentially hit a brick wall as far as any further progress in compression technology*:

> July 31, 1998: "DIRECTV has substantially reached current limits on digital compression with respect to the capacity on its existing satellites. Therefore, the addition of more channels will necessitate expanding to additional satellites. . . ."
>
> Aug. 6, 1999: "DIRECTV has substantially reached current limits on digital compression with respect to the capacity on its existing satellites."
>
> Sept. 8, 2000: "DIRECTV has substantially reached current technological limits on digital compression with respect to capacity on its existing satellites. Although there are potentially very small gains still possible through the use of advanced algorithms, such technological developments can neither be predicted nor relied upon as a means of increasing system channel capacity."
>
> Aug. 3, 2001: "DIRECTV has offered digitally compressed signals from its inception, and has substantially reached current technological limits on digital compression with respect to capacity on its existing satellites. Although there are potentially very small gains still possible through the use of advanced algorithms, such technological developments can neither be predicted nor relied upon as a means of increasing system channel capacity."[34]

[27] Eng. Statement at 13 ("Four to five years ago, compression ratios of 6–08 were achievable and the future outlook using existing hardware is only expected to achieve ratios of about 12:1 with acceptable quality.").

[28] *Id.*

[29] *See id.* at 7, 8, 14.

[30] Declaration Under Penalty [of] Perjury of Stephanie Campbell, *SBCA* v. *FCC*, No. 00–1571–A (E.D. Va. Nov. 2, 2000) (DIRECTV carried approximately 500 channels using its 46 frequencies, which amounts to about 11 channels per frequency).

[31] Eng. Statement at 13.

[32] Harmonic, Inc. Press Release, DIRECTV Signs Contract for Harmonic's Digital Compression Systems—DIRECTV Signs Contract for Harmonic's Digital Compression Systems—DIRECTV to Deploy Hundreds of Harmonic MV50 Encoders by Year's End May 7, 2001) ("'Harmonic's technology has played an integral role in our ability to provide the widest offering of channels possible to more then 9.8 million DIRECTV customers across the U.S.,' said Dave Baylor, executive vice president, DIRECTV, Inc.").

[33] *See* Gould Decl. at 6–7.

[34] *See, e.g.*Comments of DIRECTV, Inc., [1998] Annual Assessment of the Status of Competition in the Markets for the Delivery of Video Programming, CS Docket No. 98–102, at 5 (filed July 31, 1998; Comments of DIRECTV, Inc. [1999] Annual Assessment of the Status of Competition in the Markets for the Delivery of Video Programming, CS Docket No. 99–230, at 9 filed Aug. 6, 1999); Comments of DIRECTV, Inc. [2000] Annual Assessment of the Status of Competition in the Markets for the Delivery of Video Programming, CS Docket No. 00–132, at 16 (filed Sept. 8,2000); Comments of DIRECTV, Inc. [2001] Annual Assessment of the Status of Competition in the Markets for the Delivery of Video Programming, CS Docket No. 01–129, at 16 (filed AUg. 3, 2001).

In other words, as DIRECTV was—no doubt in good faith—repeatedly telling the Commission that further progress was impossible, it (or its vendors) were in fact finding ways to double the number of channels that could be delivered with the same number of frequencies. The lesson here is plain: just as happened with cable, America's satellite engineers are constantly devising fresh ways to expand the capacity of satellites to deliver television programming, and it would be irresponsible to assume that decades of continuous improvements have suddenly, and inexplicably, come to an end.

(4) Expanded Channel Capacity Possible Through 8PSK With New Set-Top Boxes

Everything that DIRECTV and EchoStar say about channel capacity in their Engineering Statement is premised on what can be done "using existing hardware"[35]—but that limitation makes no sense. First, there is an enormous amount of natural turnover as consumers replace old set-top boxes (or buy new ones with new features, such as personal video recorders). Second, if the two companies wish to share frequencies, including through a joint venture, they will need to supply many if not all of their customers with new set-top boxes.

If consumers are provided with new set-top boxes, a powerful new capacity-expanding technique becomes available: so-called "higher-order modulation and coding" using a technique called "8PSK" (or potentially 16PSK TCM or 16QAM), which would permit DBS firms to transmit substantially more channels than they do today with QPSK (Quaternary Phase Shift Keying) modulation. As satellite engineer Richard G. Gould explains, simply moving from the current standard of QPSK to the next standard up (8PSK), would by itself result in at least a 30% increase in satellite capacity. For the 50 Ku-band CONUS frequencies controlled by EchoStar, for example, this technical improvement alone would result in an increase of at least 180 channels (50 frequencies x 12 channels/frequency x .3). Of course, because 8PSK requires a new set-top box, a satellite carrier might need to phase it in over a period of a few years, just as driver-side air bags have gradually become ubiquitous in American automobiles. For example, satellite carriers might initially use 8PSK to offer local-to-local service in new cities, expecting that (a) new customers will acquire the 8PSK boxes in the first instance and (b) existing customers will acquire the 8PSK boxes over time. Alternatively, the DBS firms might offer customers free new set-top boxes as part of a production joint venture in which they achieve the "anti-duplication" benefits of the merger while continuing to compete as separate firms. In any event, it would be absurd to ignore this powerful and readily-available technical tool, which DIRECTV and EchoStar do not even mention in their Engineering Statement, but that would undoubtedly be used by competent engineers seeking to maximize satellite capacity.

(5) MPEG–4

Finally, there is every reason to expect that the current signal compression technology, known as MPEG–2, will be replaced by more advanced technologies, such as MPEG–4 (and no doubt future generations thereafter). With higher compression ratios in the future, the number of TV channels that can be supported on a single frequency will increase beyond the assumptions set forth above.[36]

* * * * * * *

Just as anyone who bought a personal computer in 1998 has seen it become a virtual antique today, satellite engineers have a long and unbroken record of making last year's performance standards seem old hat. If the Commission leaves these two highly energetic and creative DBS rivals to continue their spirited competition with one another, there can be no doubt that satellite "capacity" will continue its long tradition of explosive growth for many years to come.

3. All Of The Benefits Of The Merger Can Be Obtained Today By A Production Joint Venture

EchoStar claims that it must merge with DIRECTV to gain the efficiencies of combining duplicative spectrum capacity in order to offer new services and local channels in more markets.[37] However, this is not the case. All of the claimed efficiencies (i.e., elimination of duplicative spectrum) can be obtained through a joint venture.

[35] Eng. Statement at 13.
[36] *See* Gould Decl. at 14.
[37] Of curious note is Mr. Ergen's claim that this is a merger of two "weak" competitiors. As was noted by an industry observer, "[u]ntil he had DIRECTV in his sight, did Charles Ergen ever say his company, and DBS as a whole, could not compete with cable?" Bob Scherman, A Satellite TV Monopoly: Death of Competition and Choics, 13 Satellite Business News, Nov. 7, 2001, 12.

Antitrust laws do not prohibit competitors from forming joint ventures or other limited arrangements to develop, produce, or market new products.[38] Production joint ventures are looked upon favorably by the courts because they can allow for the procompetitive effect of integrating functions while at the same time allowing competition between the parties to the joint venture to thrive.[39]

EchoStar can easily enter into a joint venture with DIRECTV to share channel uplinks and downlinks. In fact, EchoStar's merger filings demonstrate beyond doubt that such a joint production venture is plainly feasible: the two parties are already planning on taking all the technical steps necessary to such a venture, such as providing their customers with set-top boxes capable of receiving programming from either firm's satellites. (Strikingly, EchoStar recently announced that it expects to have such a box ready by this spring.)[40] If EchoStar and DIRECTV were correct about the gains to be achieved by avoiding duplicative backhauls, uplinks, and downlinks of television programming, those gains would plainly be sufficient to finance the steps necessary to achieve the same gains through a joint venture—while preserving the enormous benefits to the public of rivalry between two DBS firms rather than allowing creation of a DBS monolith.

In a recent interview, EchoStar Chairman Ergen explained why the two firms had not yet formed a joint venture: [we] couldn't. . . get these efficiencies without merging. . . because we had some obstacles to overcome. Whose technology are we going to use? That meant one of the companies had to replace all of their boxes, and the other company got away without having that cost. . . Second, how would you combine the spectrum? You can't flip a switch with two incompatible systems today and suddenly overnight light up and change out all of those boxes. . . . [Also, who] would get what frequencies and how many frequencies [would you] trade off?[41]

In other words, Mr. Ergen did not—and could not—dispute that a joint venture is technically feasible; the only obstacle is to agree on allocation of costs.[42] If the benefits of avoidance of duplication were as great as the applicants contend, however, they would have every incentive to go back to the bargaining table—after the merger is disapproved—to resolve the cost allocations.

B. RETRANSMISSION CONSENT

In addition to the concerns regarding local-to-local service, broadcasters would also be at a disadvantage with a merged EchoStar/DIRECTV when it comes to negotiating carriage.

Broadcasters will be harmed because in monopoly markets they will face a monopolist purchaser in retransmission consent negotiations for their local signals. Obviously, broadcasters will not fare as well as they might if they had two rival DBS companies with which to negotiate. There will also be an anticompetitive effect on retransmission rights negotiations in cabled duopoly markets because of the loss of EchoStar's closest competitor.

C. THE MERGER WILL HAVE ANTICOMPETITIVE EFFECTS ON CONSUMERS

Consumers in the many local markets where this will be a merger to monopoly will experience increased prices and a reduction in output. Post-merger, EchoStar, as a profit-maximizing monopolist MVPD, will have the incentive to raise its prices and lower the quality (i.e., the costs to EchoStar) of its service in non-cabled areas and areas with antiquated cable systems by offering reduced program choice and variety. With no competing MVPD, EchoStar will have the power to control price and output in many local markets to the detriment of consumers across the country. In

---

[38] *See* 2000 Antitrust Guidelines for Collaborations among Competitors, <http://www.ftc.gov/bc/guidelin/htm>. *See also* PPG, 798 F.2d at 1508 (D.C. Cir. 1986) ("cooperation with other market participants could yield similar results without causing the same market concentration.").

[39] *See* generally, ABA Section of Antitrust Law, Antitrust Law Developments, ch. IV(B)(2) (4th ed. 1997). *See also* In re General Motors Corp., 103 F.T.C. 374 (1984) (production joint venture between two largest automobile manufacturers in the world upheld because it was a limited enterprise rather than a merger of two parents).

[40] *EchoStar Gears Up For Takeover*, Communications Daily (Jan. 10, 2002) ("As EchoStar gears up for proposed acquisition of Hughes Electronics and DIRECTV, it expects to have settop box (STB) by spring capable of receiving rival's service. Pro 301 will ship as Echo Star receiver but will contain 4 MB of membory for DIRECTV's advanced program guide and it will be modified to handle its satellite switching, [EchoStar] Senior VP Mark Jackson said at CES here. Final detail, should $26 billion deal be approved, would be for DIRECTV to transfer source code to box via software download to receiver's flash memory, Jackson said. . . .") (emphasis added).

[41] Ergen at 11.

[42] Indeed, as discussed above, EchoStar has already developed (since the merger announcement) a new set-up box capable of decoding both firms' signals.

these predominantly rural monopoly markets the price of DBS is estimated to increase from an average of $46.76 today to $62.35.[43] The total consumer welfare loss is estimated to be nearly $2.3 billion in rural markets over the next five years on a net present value basis.[44]

Even if a uniform national price were instituted and could be enforced (which it could not be), consumers in monopolized MVPD markets will pay somewhere between a monopoly price and a duopoly price. EchoStar will logically sacrifice some subscription revenue in markets where it competes with a cable substitute in order to raise prices, and reap monopoly profits, in markets with no competition.

In the rest of the country, where the merger will result in an EchoStar-DBS duopoly, there will be both unilateral and coordinated anticompetitive effects. The unilateral effects will result from the elimination of consumers' ability to choose EchoStar's closest substitute for MVPD services. As EchoStar recently stated in its litigation, "EchoStar is DIRECTV's closest competitor."[45] This position is supported by a recent DBS industry study that found that DBS households were more likely to switch to a different DBS provider than to any other MVPD provider.[46] In such circumstances, EchoStar will be able profitably to raise its prices to consumers above the premerger level and/or reduce the quality and quantity of its product offerings and customer service to below the premerger level even in markets where there is a viable cable competitor. Combining the effects in monopoly and duopoly markets, Dr. Sidak—an Economist retained by NAB—has estimated that the acquisition will result in a consumer welfare loss of from approximately $3 billion to $7.6 billion (assuming perfect collusion with cable providers) over the next five years on a net present value basis.[47]

In addition, the merger will augment the potential harm to consumers that EchoStar has constantly sought to inflict on subscribers by limiting their access to some stations in local-to-local markets it serves. Virtually since SHVIA was enacted, EchoStar has sought through constitutional challenges, bogus claims of inadequate signal strength and duplicative programming and, most recently, its two-dish ploy to deny consumers access to smaller and niche television station programming in their markets.[48] Such actions are harmful to consumers who will be denied access to this local programming.

D. THE MERGER PROPONENTS FAIL TO ADDRESS ANTICOMPETITIVE EFFECTS

The merger proponents claim, with no real support, that there will be no anticompetitive effects because of the competition with cable. Neither the parties nor their economic expert—Professor Robert D. Willig—provide any empirical data to support any of their claims of market definition, the ability of cable to constrain the merged firm, or reduced costs. At best, Professor Willig repeats anecdotes he has been told by business people at EchoStar and DIRECTV.[49]

The only "evidence" Professor Willig cites for the proposition that EchoStar and DIRECTV do not compete with one another as vigorously as they do with cable is an executive's assertion that DIRECTV failed to respond to an EchoStar promotion. According to Professor Willig, DIRECTV's supposedly failed to respond to EchoStar's "I Like 9" pricing strategy under which customers who purchased EchoStar DBS equipment (rather than accepting an equipment subsidy) could also purchase its "America's Top 100" programming package for $9.99, on a month-to-month basis.[50]

[43] Sidak Declaration ¶¶ 36–37 and Table 3 (filed as part of NAB's Petition to Deny is CS Docket No. 01–348, February 4, 2002).

[44] "Consumer welfare loss" represent (i) 'deadweight loss', *u,e,*, the loss of value by consumers who forego DBS service as a result of the post-merger price increase plus (ii) the incremental wealth transfer from consumers who will pay higher prices post-merger. Sidak Decl. ¶¶ 49–50 Table 3. (Attached as Appendix A).

[45] Rule 56(f) Motion, at 7.

[46] *See Competitive Market Study* at 30.

[47] *See* Appendix A. Sidak Declaration ¶¶ 49–51 and Table 3.

[48] *See* Emergency Petition of National Associationof Broadcasters and Association of Local Televisio Stations to Modify or Clarify Rule, *In the Matter of Implementation of the Satellite Home Viewer Improvement Act of 1999 Broadcast Signal Carriage Issues*, CS Docket No. 00–96 (filed Jan. 4, 2002).

[49] *See* Declaration of Robert D. Willig on Behalf of EchoStar Communications Corporations, General Motores Corporation, and Hughes Electronics Corporation (Nov. 30, 2001) at ¶ 10. (hereinafter "Willig Decl.") ("Executives at both EchoStar and DIRECTV confirm that the objective of each firm is to gain market share by luring consumers away from the leading cable providers, and the firms accordingly price their DBS programming services at levels based primarily on the prices charged by cable providers."); *Id.* at ¶ 11 ("it appears based on statements by executives of both EchoStar and DIRECTV that a majority of new DBS consumers had previously been cable subscribers.").

[50] Willig Decl. at ¶ 10.

Professor Willig was apparently not advised that (1) EchoStar itself was responding to a DIRECTV promotion announced the previous day,[51] and (2) at the time (July/August 2001) when the two companies were announcing their dueling promotions, DIRECTV's CEO told the press the real reason that DIRECTV would not match the specific EchoStar offer: because DIRECTV had a "huge differentiator" with EchoStar, the exclusive and extremely popular NFL Sunday Ticket package of all Sunday NFL games.[52]

What is significant about the two firm's competing August 2001 promotions is that cable providers—which did not have the NFL Sunday ticket as a "differentiator"—did not respond to either offer. In Comments filed by EchoStar concerning the Eighth MVPD Competition Report, EchoStar cited cable's failure to respond to "I Like 9" as evidence that "[o]n the whole, cable operators are still not aggressively competing [with DBS] on price."[53] In fact, EchoStar's comments question cable's positions regarding the causes of its high prices—investment in infrastructure and capacity, as well as programming costs—as hollow and an inadequate justification for the rate of its price increases exceeding inflation.[54] The only conclusion then can be that falling DBS prices are the result of intense DBS competition.

Ironically, the parties themselves confirm the anticompetitive effect on consumers of the merger in their application where they highlight that their costs will be lower because the new company will suffer less "customer turnover, or 'churn'" as the EchoStar and DIRECTV customer bases would be consolidated.[55] That is simply another way of saying that customer choice will be reduced and that, because consumers will have only one differentiated alternative or no alternative at all, they will be effectively captive.

CONCLUSION

EchoStar's proposal to acquire its only DBS competitor would create a monopoly MVPD giant for many millions of Americans, would (at best) reduce consumer choices from three to two for all other Americans, and would snuff out the head-to-head competition between EchoStar and DirecTV that has led to the rapid rollout of local-to-local in many markets and would lead to further expansion of local-to-local in the future. In place of competition, EchoStar, one of the least trustworthy companies with which broadcasters have ever dealt, offers only its own unilateral promises—which, when read carefully, promises virtually nothing. For all of these reasons, NAB remains opposed to the proposed merger of DirecTV and EchoStar.

Chairman KOHL. Thank you very much, Mr. Fritts.

We will turn now to some questions. I would first like to address Mr. Ergen and Mr. Hartenstein, and I will ask five or six different questions and ask you to reply one and then the other.

The first question for you, Mr. Ergen. You have made five or six promises. Let's take them one by one and see if you are willing to commit to them in a legally binding and enforceable way.

Mr. Ergen, first, you have promised to implement a single, uniform national pricing plan so that rural consumers who can't get cable and will face a pay TV monopoly with this merger will indeed realize the price benefits of urban competition. Are you willing to

---

[51] DIRECTV Press Release, *DIRECTV Univeils Fall National Promotion and Advertising Campaign (July 30, 2001).*

[52] Multichannel News, *DISH Kicks Off $9 Monthly Plan* (Aug. 6, 2001) ("DIRECTV, Inc. has no immediate plans to respond in kind to EchoStar's aggressive programming pricing strategy. "We have a huge differentiator with the NFL in the third quarter,' DIRECTV CEO Eddy Hartenstein said.").

[53] *See Reply Comments of EchoStar Satellite Corporation In the Matter of Annual Assessment of the Status of Competition in Markets for the Delivery of Video Programming*, CS Docket No. 01–129 (Sept. 5, 2001) at 2. (The only cable response was that AT&T Broadband offered to reduce the price of basic cable to $19.95 per month through the end of the year. *Id*. at 3.)

[54] *See id.* at 2–3 ("EchoStar's aggressive pricing also exposes as dubious the cable industry's continued incantation of programming costs as justification for high prices") and n.5 ("The cable industry's lengthy commentary on its investment in programming and infrastructure also sounds like an alternative argument offered to justify or excuse its price hikes") (citing Comments of the NCTA (dated Aug. 2, 2001) at 2–3).

[55] Consolidated Application, at 36; *See also* Salomon Smith Barney, *DBS Industry Update: Valuing the Possiblity of a DISH/GMH Merger* (Jan. 17, 2002) at 16 (predicting a decrease of 20 basis points in the amount of churn faced by the merged company by 2005).

commit here today to be subject to an enforceable and legally binding decree that you will implement this pricing plan if your merger is approved?

Mr. ERGEN. Yes, we are, Senator, and I might point out that we already do that at EchoStar; we have for 6 years that we have been in business. I would point out that in Alaska, for example, today where we are the sole provider outside of Anchorage in the Eskimo villages, the sole provider of TV today, they pay exactly the same price as they do anywhere else in the United States.

Chairman KOHL. Well, what would you do, Mr. Ergen, if one of those 210 markets, or 2 or 3 or 4 or 5, or 8 or 10 begin offering on cable TV enormous price reductions and you feel a need to respond or, in effect, go out of business in a market? What would you do?

Mr. ERGEN. Well, I think that I am not the attorney here, but I think that those kinds of conditions can leave some flexibility to meet those kinds of challenges. And I think if we work toward solving the problem there, with the tremendous benefits that we get we will be able to do that.

Chairman KOHL. Well, you are getting off of the pledge and the promise. Very clearly, you are saying where certain situations arise in certain markets, then we need to have the flexibility to respond. I understand that is business, but now that is no longer the same thing that you have said about offering a uniform national pricing policy that would allow all of your customers all across the country to get the benefits of competition.

I mean, that is what you are saying. You are willing to make that promise and then when I ask you a simple question which is obvious—what do you do when 1 or 2 or 3 or 5 or 10 markets require you to offer lower rates to compete—what do you do with all the other markets that you have promised a single, uniform pricing policy?

Mr. ERGEN. Let me try to answer that for you. We are certainly willing to live with one single, uniform nationwide pricing. I believe that it may be in the consumer's best interest that there is some flexibility that regulators of the Justice Department or the FCC can agree to and I have seen many different formulas. We have offered a suggestion of one single nationwide price and we are willing to live with that.

Having said that, there have been other pricing mechanisms that I have seen talked about among the people that may offer some flexibility that may be better for consumers than our plan. We are certainly willing to have those discussions so that when all is said and done, customers are protected on their pricing where we may be the sole provider.

Chairman KOHL. I am listening and wanting to understand, and what I think I hear you saying is that you need to have that thing discussed more fully before you can agree to a single, uniform national pricing policy.

Mr. ERGEN. I would put it this way: We are willing to agree to a single nationwide pricing policy. That is what we have suggested. When we suggested that, many people said what about if a cable company does this or that?

Chairman KOHL. Yes.

Mr. ERGEN. We then said, look, if there is flexibility that can be built into that consent decree or that condition and that is good for consumers, we are certainly willing to discuss that, and we have seen lots of different mechanisms discussed among some of the officials. But absent that, absent some better plan than we have suggested, we are willing to live with a single nationwide price, no matter what.

Chairman KOHL. But explain as time unfolds how you will respond when cable companies across the country attempt to cut you up and take advantage of your national pricing policy. In New York, if the cable company offers a rate which is unbelievably low and you either have to respond, in effect, in a few years or get out of the market, what will you do?

Mr. ERGEN. I think that proves our point. New York would be such a big market for us we couldn't afford to leave that market, so we would have to meet that competition and the people in rural America would get the advantage of that competition in New York.

Chairman KOHL. But then it is only in New York where your competition would suffer that problem. You would suffer that problem all across the country, so they could force you out of business.

Mr. ERGEN. Well, we believe that to meet competition we not only have to be better than cable, we are going to have to be less expensive. And satellite, with this merger, is uniquely positioned to be a better economic animal, so we would have that decision of forgoing New York, with its some 12 million homes or whatever it is, or not being able to compete there.

Chairman KOHL. But then your competitor in Chicago does the same thing and forces you out of Chicago. A competitor in L.A. forces you out of L.A. In order to maintain your national uniform pricing policy, I would submit to you that there would need to be an awful lot of discussion prior to an approval of this merger on that particular point.

Mr. ERGEN. And we have suggested a solution. It is a very simplistic solution, I will admit. People have brought up the same point that you have brought up. When they have brought that up, other people have come up with mechanisms that solve that problem as well. And, of course, it gets more complicated when you do that, but we are certainly willing to discuss those things. I do think effort has to be put on that particular issue to make sure that this merger does protect those places where we might be a sole provider.

Chairman KOHL. Mr. Hartenstein, your second promise is you promise to offer local broadcast television stations to your subscribers in all 210 television markets in America, compared to the 40-plus markets that receive this service today. Will you tell us today that you will commit to this in the form of a legally binding, enforceable obligation, and can you tell us how soon you will be able to deliver local broadcast stations into every market in America?

Mr. HARTENSTEIN. Mr. Chairman, the simple answer to that is, yes, we would be willing to be bound by whatever mechanisms that the regulators, the Department of Justice and/or the FCC, would impose on us.

On the second part of your question as to how quickly we could implement it, we believe that beginning immediately, on the day of approval of the merger, we could begin expanding beyond the 42 markets that we together serve today, begin expanding that over the first year, growing to about 100-plus markets. And then with that final satellite, the 16th satellite of the fleet, the 5th spot-beam satellite between our two fleets, we would fill in the holes in those roughly 100-plus markets, markets 100 to 210, approximately, and that could begin about 24 months after the approval of the merger.

Chairman KOHL. The third question, Mr. Ergen: You have also promised to comply with the full "must carry" provision that went into effect for satellite at the beginning of the year. "Must carry" means, of course, that you have to pick up all local signals in a market, not just the two or three that might be most desired. We are pleased to hear this, given the fact that you have sued to have this requirement declared illegal. Does this mean that you are going to drop your lawsuit?

Mr. ERGEN. First of all, we will comply with "must carry" on a single dish and carry all stations in all markets. Having said that, we believe the principle of "must carry" may have some constitutional questions in terms of freedom of speech, and we believe that that principle should at least be pursued in the courts. That is why we obviously have courts. I might point out that the NAB has on 14 different occasions over the years pursued legal remedies where they haven't agreed maybe with the Congress or the FCC.

We have lost that court of appeals case so far, but we do have the option to go to the Supreme Court, just as the cable industry has done. Notwithstanding that, we are willing to commit to carrying all the channels, but we believe it is a principle that our customers would like us to pursue because they don't necessarily want us to carry 200 home shopping channels that are all identical, with no local content, no local news, weather or sports.

Chairman KOHL. Number 4: Mr. Hartenstein, you have promised to offer competitive broadband Internet service to compete with cable modem service across the country. Are you willing to commit to be subject to an enforceable and legally binding decree that you will implement this plan if your merger is approved?

Mr. HARTENSTEIN. Yes, sir, Mr. Chairman.

Chairman KOHL. Number 5: Mr. Ergen, you have both said how this merger will permit the rollout of HDTV and interactive television via satellite. How soon can we expect to see this service and is this something you would agree to as a condition of the merger?

Mr. ERGEN. We will see expansion of that service immediately upon closure of the merger and we are willing to agree to it in a consent form.

Chairman KOHL. Number 6: We understand this merger will require some change-over of consumer hardware, be it an antenna or a set-top box. As you promise that there will be no charge to consumers for any equipment change necessary to receive local channels or simply continue service, and you have also promised both a free installation and a free service call for this equipment switchover, I assume you can live with putting that promise into a consent decree as well.

Mr. HARTENSTEIN. Yes, sir, we do. We announced that on the day that we announced the merger, and we are in the business of customer service and we absolutely would agree to that in whatever form the regulatory agencies would ask us to.

Chairman KOHL. Before I turn to my colleagues, I would like to ask you, Mr. Pitofsky, why doesn't the companies' willingness to agree to be legally bound, as you have heard them say here today, solve many of the problems posed by this merger?

Mr. PITOFSKY. Can I ask just one question of my colleagues here?

Chairman KOHL. Go ahead.

Mr. PITOFSKY. Aside from list price, are you prepared to commit that there will be a single price throughout the country and that there will be no difference in any part of the country with respect to equipment subsidies and introductory offers, which it seems to me is the way competition is waged in this industry?

Mr. ERGEN. I think Mr. Pitofsky is a bit misinformed on how the industry works today. We sell at a price to retailers and by law they set their own price and their own installation price, so that with vigorous competition, whether it be your ability to buy a system at Radio Shack or from an independent retailer, maybe in Wal-Mart, maybe in a Circuit City or Best Buys store, there is tremendous competition today once the product leaves for that installation.

You will notice free installation services across the country, for example, promotions, rebates, and so forth. That is done after the product leaves us and we don't think that the merger in any way negatively impacts that, and customer and consumer choice and competition from a retailer's perspective. So I think that the market works a little bit differently than that, and that competition will always be there, regardless.

Mr. PITOFSKY. And you don't support the dealers in their subsidies and discounts and you don't give any subsidies and discounts yourself. Is that right?

Mr. ERGEN. We support the dealers. Today, we support through subsidies, and that subsidy is consistent across all of our retail distribution.

Mr. PITOFSKY. And you would agree that in every single city, county and State in the United States, the subsidies that you give to the dealers will be exactly the same?

Mr. ERGEN. That is what we do today, but we can't guarantee what price to the consumer we will charge because we expect the retailers to vigorously compete and we expect that depending on which store you might go to, whether you buy it in the Internet, whether you buy it in a particular store from a retailer, you will probably see some better prices than others, some better installation offers than others. But that competition is external to our company

Mr. PITOFSKY. Mr. Chairman, to answer your question, this is a very, very regulatory order; it is about as regulatory as you get. I thought the trend in this country was toward deregulation, toward not having the Government sitting in judgment as to every discount, every quality change, every introductory offer, and so forth. We leave that to the free market.

The idea of a regulatory order like this, where it is a horizontal merger, it is a monopoly or, at best, a duopoly, it just seems to me would be a major departure from everything that we have done in antitrust for 100 years.

Chairman KOHL. Thank you.

Senator DeWine?

Senator DEWINE. Thank you, Mr. Chairman.

Mr. ERGEN AND MR. Hartenstein, as I noted in my opening comments, this merger faces some serious legal challenges. The basis premise of this merger seems to be more competition by less competition, but the long history of antitrust law would seem to lead to a different conclusion.

Mr. Pitofsky has been, I think, pretty blunt and straightforward about what he thinks about the legality of this, but let also quote from *United States* v. *Philadelphia Bank* a leading Supreme Court case in this area, and I quote, "If anti-competitive effects in one market could be justified by pro-competitive consequences in another, the logical upshot would be that every firm in an industry could, without violating Section 7, embark on a series of mergers that would make it in the end as large as the industry leader."

Then the court goes on to say, and again I quote, "We are clear, however, that a merger, the effect of which may be substantially to lessen competition, is not saved because on some ultimate reckoning of social or economic debits and credits it may be deemed beneficial."

This seems like a pretty tough case from your perspective. It rejects the idea of decreasing competition in one market to increase it in another, and it also refuses to consider the benefits of a merger if that merger lessens competition.

Bluntly, it seems to me you have a legal problem. How are you going to deal with it? I know you have got good lawyers, but are they that good?

Mr. ERGEN. First of all, I don't necessarily agree with the assumption that there is less competition, and I will come back to that. But in 1997, even when Chairman Pitofsky was at the FTC, the FTC and DOJ said that antitrust agencies in some cases will consider efficiencies not strictly in the relevant market; i.e., in a different market. This was in 1997, so it is an update from the case that you———

Senator DEWINE. Excuse me. You are quoting from what?

Mr. ERGEN. I am quoting from a 1997———

Senator DEWINE. That is not a court case, though?

Mr. ERGEN. It is not a court case, and again I am going to get in real trouble trying to be a lawyer here and I am not going to try to do that and we will certainly give some more information on that. But there are some cases, but let me tell you why———

Senator DEWINE. I appreciate it. I was quoting from a U.S. Supreme Court case.

Mr. ERGEN. Let me tell you why I don't agree with the competition issue. We really have a fundamental issue here, which is today our two companies offer these 500 channels, and that is what we both do. And you do have two choices from our companies of that, but the marketplace where yo don't have local means neither one of us are a choice; only your cable company is a choice.

When we bring local channels, you now will have two choices. You are going from one to two choices. In those markets where we only broadcast video, with the merger we are still going to be able to broadcast video, but now we can do your local channels. We can do high-definition television and interactivity; we can do broadband Internet. This is what cable does today.

So, today, where you only have one choice of cable for three-dimensional-type services, you now will have two choices. Even in a city, we can't offer these channels, all these different services. Now, we will be able to do that, so we have actually increased choice for services to consumers, and that is all on a single dish. So consumers are asking for that and this will enhance competition and enhance our ability to compete. This will not lessen competition because we go three-dimensional.

Senator DEWINE. All right, I appreciate your comments.

Mr. Kimmelman, thank you for coming back here. You are in a little different role today, though, and I want you to help me out and explain why you are in this different role and how you came to these conclusions. As a non-expert, I have looked through some of your charts. I am not sure I understand them, but that is not unusual. That is my fault, not yours.

Walk me through this, though. I am not sure I really understand what you are saying. You are telling us that really there are two separate markets. Does that mean that DIRECTV is really not competing against cable?

Mr. KIMMELMAN. Yes.

Senator DEWINE. And are you saying that if these changes are made, they will compete? I mean, is that the bottom line?

Mr. KIMMELMAN. That is a little too strong. When I mentioned before the issue of whether local channels offered on satellite had changed the whole picture and made them competitive, I suggest that it has not if you just look at rate increases.

The FCC has looked at this carefully. In the few communities where there are two wires into the home offering cable television and two satellite providers, they found through econometric analysis prices on average are 14 percent lower. Other studies have shown that they are as much as 30 percent lower. Everywhere else in the country, if you look at where one cable wire is there and two satellite providers, those prices are higher. There is no price substitution.

Senator DEWINE. Why do you think that is?

Mr. KIMMELMAN. I believe it is because of the up-front costs of satellite, the purchase of the dish, multiple hook-ups, in some cases the inability to get reception.

Senator DEWINE. Even with all the deals that are offered? It is almost like they will give you one.

Mr. KIMMELMAN. It is a tremendous story, $1,000 down to $200, giveaways if you are willing to pay for the whole year's programming and what not. The problem is cable is cheaper. Cable installation they can give away for free any time, any day, and when they charge you the full price it averages $30. They can do multiple-set hook-ups. Most American families have more than one TV hooked up to a multi-channel service. They want to watch different programs on different TVs—much cheaper than satellite.

Satellite has made tremendous inroads and yet it still isn't there, and that is what is different from the Beechnut example and that is what is different from *Philadelphia National Bank*. I believe in *Philadelphia National Bank*.

Senator DEWINE. And you don't think time will cure this problem the way it is today? In other words, some people might look at this market and say, well, when people really get used to buying the dish and it reaches a certain saturation point and everyone says, yes, you know, that is sort of the way to go—you don't think at that point it tips and becomes really competitive?

Mr. KIMMELMAN. You and I have been talking about this for 4 years as those cable rates keep shooting up and up and up, now almost 40 percent. How much time? In response to Mr. Pitofsky, he is absolutely right. This is totally unorthodox and unusual for antitrust. I am suggesting the FCC should do it, but the problem here is Congress deregulated cable monopolies before there was competition. That is our problem.

Senator DEWINE. Mr. Pitofsky, I want to give you 30 seconds because my time has run out. I want to give you 30 seconds to respond to that because I think this really gets down to the nuts and bolts of this argument with what Mr. Kimmelman said.

Mr. PITOFSKY. My response is very brief. Mr. Kimmelman is absolutely right. Cable rates have gone up an average of 7 percent a year every year since 1996, or thereabouts. DBS rates have only gone up about 1 percent. What is the difference between cable and DBS?

The difference is the two DBS companies compete with each other and keep the prices down. The difference is cable is a monopoly in every city in which it operates. Why would we change and allow DBS to become a monopoly so they, like cable, can raise prices 7 percent a year? It doesn't make any sense to me.

Mr. KIMMELMAN. I am worried about the 68 million cable subscribers at the same time as I am worried about the 15 million satellite subscribers. That is why I am saying I urge you to step back a little bit from antitrust. These gentlemen are absolutely right on straightforward, narrow antitrust principles. I would agree with them, but we are talking about the need for competition both to cable and to satellite. We know we are not going to re-regulate cable, from everything I have seen.

Senator DEWINE. Mr. Pitofsky, do you have an opinion about why, as Mr. Kimmelman says, the effect is that people are not switching over, so they are seeing their cable rates go up? They continue to go up. Yet, they really have the option in many, many markets to go over and buy Mr. Ergen's dish.

Mr. PITOFSKY. Let's give these folks credit. They are switching over. They have gone from 1 million subscribers to 17 million subscribers in, what, 5 or 6 or 7 years? If they continue that trajectory—I am not sure they can, but if they did, each of them would be as large as the combined company which they propose to produce as a result of the merger. They are doing very well. They deserve all the credit in the world.

Senator DEWINE. What about that, gentlemen, in about 20 seconds? If you guys are doing so great, what is the problem?

Mr. HARTENSTEIN. The problem simply is this: Neither one of us is profitable yet. When you ask a consumer, which is what this is all about, why don't you have satellite versus cable, ask them what they watch at six o'clock and at ten or eleven o'clock. It is their local news, their local weather, their local sports. We are not able to do that in some 42 million homes, and that is what this merger is all about, getting the spectrum to do that.

Senator DEWINE. Let me move to that small number of people that are very significant in this country, but it is actually not that small, who are going to end up in rural areas with no choice other than your merged company. Let's talk a minute about them.

In Mr. Kimmelman's testimony he says, "A second safeguard we would suggest is aimed at improving competition. If consumers are going to lose one competitor in the multi-channel video market, particularly when it means unwired markets will go from two to one, the FCC should move forward to open the door to another competitor. For example, NorthPoint/Broadwave is a promising potential competitor to both cable and satellite TV. It is trying to secure a license for its service, but it is caught in a regulatory morass at the FCC. Two of the companies that have pressed the FCC to reject the application are the companies that could see the stiffest competition—EchoStar and AT&T."

Do you want to talk a little bit about that and do you want to maybe reconsider your position on NorthPoint/Broadwave?

Mr. HARTENSTEIN. Let me clarify our position, and Charlie can do the same for him, Senator.

Senator DEWINE. All right.

Mr. HARTENSTEIN. Our issue with NorthPoint has never been about competition. Bring it on. I mean, for God's sake, we are competing with cable in all those areas today. It has been about interference. It is about someone else using the exact same frequency spectrum and interfering with the 17 million customers we have today. We have suggested alternate frequencies. It is all about interference. It has nothing to do with competition. That is where we stand and that is what our position has consistently been about.

Senator DEWINE. Mr. Ergen?

Mr. ERGEN. I would just only add to that that we went so far at EchoStar as to suggest an alternative band, which we will support at the FCC, same amount of spectrum which is right next to the DBS band that would not interfere with our customers and would allow NorthPoint or someone like NorthPoint to compete. We are supportive of that competition without interference.

Senator DEWINE. Mr. Kimmelman, do you have anything to add to that?

Mr. KIMMELMAN. My understanding is the FCC engineers have looked at this. They believe it can be done without interference and they believe that the burden ought to be on the new entrant. I say let's go forward and get the new entrant in the market before this merger is approved.

Senator DEWINE. Thank you, Mr. Chairman.

Chairman KOHL. Thank you very much, Senator DeWine.

Senator Specter?

Senator SPECTER. Thank you, Mr. Chairman.

In taking a look at this proposed merger, it is a little hard to understand, notwithstanding the explanations, how competition will not be substantially lessened. You have two companies and you are going to create one company, and I have heard your theories as to how competition would be promoted.

Mr. Pitofsky, you have been a regulator for a long time. How do you evaluate the theories proposed that there would, in fact, not be a lessening of competition if these two companies merge?

Mr. PITOFSKY. Well, I respect the theories. They are innovative, they are different, but I can say very simply they have been advanced before in *Philadelphia National Bank* and elsewhere and they have been rejected time and time again by the courts. We don't allow mergers to monopoly and then say monopoly is so efficient that in the long run consumers will be better off. We rely on competition and competitive markets.

Senator SPECTER. Mr. Ergen, what is your response?

Mr. ERGEN. Well, first, I think each merger is different and has to stand or fall on its own merits, and I think that to compare us to a baby food case or a bank case or something may be———

Senator SPECTER. We will agree with that. What is your response to the basic proposition that if you have two companies, they are competitors, and you have one and there isn't on its face a conclusive lessening of competition?

Mr. ERGEN. Because this merger will not reduce our incentive to compete, but will rather enhance our ability to compete. By that I mean if all you believe the market was was cable channels, like CNN and HBO, then you have got some points. But the marketplace is much broader than that. It is going to be new services like high-speed broadband, which cable does today and is increasing their market share and has over 50 percent of that market share today.

It is high-definition television, which the broadcasters are now filing for extensions and waivers for and breaking their promise to this Congress that they would get it up by this year. That is not going to happen unless we can do it. It is video on demand where we have to compete with cable that we don't have today without the spectrum. And, of course, it is those local channels that we don't have in 42 million homes.

So we are going to increase the choices for Americans. When we can increase the choice, we can more effectively compete against the incumbent cable operators who have almost 80 percent of the market today in the pay television market.

Senator SPECTER. A constituent of mine, Pegasus Communications, has raised a concern that their effort to compete with satellites will be severely impacted adversely because there won't be enough slots available.

Mr. Hartenstein, you are a proponent of this merger. Does Pegasus have a real concern here, a real point?

Mr. HARTENSTEIN. I am not certain. You would have to ask counsel or any firms representing them. I am not sure where they are going. What we have said is with the existing spectrum up there, the most efficient use of it—and this is after a lot of study—would be to provide local channels to all markets. That is almost 1,500 local television stations—and Pegasus comes from a broadcasting heritage, I do believe—and that is exactly what consumers are looking for.

Pegasus itself does have applications and indeed has been granted Ka band slots to expand that. They are a publicly held company capable of, with a viable business plan, fulfilling that. So we have made a plan with our merger to fulfill those promises and I think address the six concerns, and a willingness to be bound to those six points that, Mr. Chairman, you have brought up.

Senator SPECTER. The principal argument which EchoStar and DIRECTV have made here is that their combination would still a lot of competition out there with cable. But how about the homes which are not serviced by cable? There is a representation that the new company would not take advantage of this monopoly position, but how can we really rely on that?

You have changes in corporate management, you have acquisitions, you have mergers again, you have all sorts of corporate shifts. How can this Committee rely on such a representation, Mr. Ergen?

Mr. ERGEN. Well, first, fundamentally, the way we run our business is we charge one nation, one price. Both of our companies have since our inception, because as the billing systems———

Senator SPECTER. You would have one price.

Mr. ERGEN. We charge the same price.

Senator SPECTER. But there is nothing to prevent you from changing that.

Mr. ERGEN. There is nothing to prevent us from changing it. It is a structural part of the business that it is just the most efficient way for us to do it, to advertise with our billing systems. Our cost systems, with 6,000 agents, can't remember different pricing schemes.

Senator SPECTER. Can't remember different prices?

Mr. ERGEN. It would be very difficult for———

Senator SPECTER. You could write them down.

Mr. ERGEN. No. You would have 6,000 agents who, depending on where you are calling from, would have to charge you a different price depending on what zip code you are in. So that is the fundamental. But having said that, we are willing to make as a condition of merger that we will continue that practice, and the length of time is certainly up to the Government to say.

Senator SPECTER. How many homes would be involved where there is no access to cable, where there would be only satellite from just the one company.

Mr. ERGEN. Per the FCC's most recent study which just came out in January of this year, it was about 3 million homes. I think I noticed, in fairness, that Mr. Kimmelman may have a different—I think he had about 13 million homes in his testimony, but somewhere in that number.

Senator SPECTER. Mr. Kimmelman, what is the real number?

Mr. KIMMELMAN. What we have found from the Federal Government statistics is there may be as many as 13 percent of households that are not wired for cable.

Senator SPECTER. Which would be how many?

Mr. KIMMELMAN. There are 100-plus-million households, so 13 percent of the population.

Now, we have found that of satellite subscribers———

Senator SPECTER. How many, again?

Mr. KIMMELMAN. Thirteen million.

Senator SPECTER. Thirteen million?

Mr. KIMMELMAN. Yes, and we have found in response to questionnaires of subscribers that 40 percent of current satellite subscribers claim that they do not have cable service available.

Senator SPECTER. Well, what would the enforcement mechanism be? Attorney General Nixon, you can answer this question. What would the Government do if there were a condition that prices wouldn't be raised, which they could be in a market with a monopoly situation?

Mr. NIXON. Senator, I wish we were as good as they thought we were. If I could hold this up for just a second———

Senator SPECTER. I used to be in your business. I understand the limitations.

Mr. NIXON. Senator, to answer to your question, for the central part of the country, the white is the two-to-one area. That is the place that is not served by cable, anything that is white on that map. That is Missouri in the middle. I found that to be the most interesting State to analyze, but clearly the same trend would be true in Pennsylvania and others, and I could provide that data to you, if necessary.

I wish we could write the perfect document, but when CEOs come in front of Committees like this and say we will be bound by whatever restrictions and regulations that you all can draft and let the attorneys worry about enforcing them later on, Katie bar the door.

I mean, these are fine men who have done a great job and are in an emerging industry. So you are going from 1 million to 17 million households over the last 9 years. All at once, they have figured out that if they both work together they can make even a faster move. Consequently, the responsibility we all have here is huge. I wish I could write that document, Senator.

Senator SPECTER. Are you saying that competition is a better guarantee for the consumers than governmental enforcement?

Mr. NIXON. Senator, I have practiced law long enough to know a leading question when I hear one.

[Laughter.]

Mr. NIXON. Yes, sir.

Senator SPECTER. Mr. Ergen and Mr. Hartenstein, we don't want to pre-judge this matter and we are prepared to listen to you, but you have got a high mountain to climb over when you have such a basic proposition of combining two into one and some people not having the advantage of cable.

Let me get parochial again for a minute or two about one of my constituents, Digital Broadband Applications Corporation, which has an application now in to the FCC. Do you have any expectation of opposing that, Mr. Ergen or Mr. Hartenstein, or both?

Mr. HARTENSTEIN. We put in a response to the FCC which was one merely for lack of better information to make sure that there wasn't going to be any interference. There was not sufficient information for us to evaluate that. Per se, from a competitive point of view, we have no problem with it. We just wanted to make sure there wasn't going to be any interference.

Senator SPECTER. It is OK, per se?

Mr. HARTENSTEIN. From a purely competitive position, yes. Again, the issue, as it was with NorthPoint—and Mr. Kimmelman indicated the same thing—was interference.

Senator SPECTER. So you are saying if there is no interference, it is all right with you?

Mr. HARTENSTEIN. We didn't see any problems with that, no, sir.

Senator SPECTER. Would you concur with that, Mr. Ergen?

Mr. ERGEN. Yes. We did not file against that application and are happy to see them come in. Just for record, I believe it is for a Canadian orbital slot, I believe, of which there are at least two, and maybe more, to bring high-power DBS service to the United States; in other words, a new entrant. We did not have a problem with that. We do not believe they will interfere based on our analysis.

Senator SPECTER. Mr. Fritts, I haven't had a chance to ask you a question. If I may, Mr. Chairman, just to wrap it up, what is your view as to the adequacy of protection for those 3 million or 13 million people who rely upon satellite and don't have cable competition if this merger were to go through?

Mr. FRITTS. Senator Specter, I happen to be a satellite subscriber and I happen to have———

Senator SPECTER. Do you have access to cable?

Mr. FRITTS. I do where I live. Indeed, I do, but my wife's parents are also subscribers to satellite and they do not have cable. As we discussed their acquisition of a satellite dish, price was important because they live on Social Security and that was an important element for them, as the live in a rural area.

We have taken officially positions on the broadcast portions of this, as you know, and that is what we have confined our oral testimony to today on this. And I would just like to respond to Mr. Ergen saying that we are reneging on our promises on digital television. To the contrary, only about 600 stations have asked for, completely within the guidelines set up by the FCC—if you need an extension because of environmental problems, because of tower problems, because of equipment problems, because of engineering problems or financial problems, you could go before the FCC and ask for a 6-month extension.

The good news is there will be a huge number of stations that will be on the air in digital. The question that I guess I can't ask back to my friends on the satellite side is I hope they are going to carry us in digital and in high-definition television.

I have heard them talk about carrying high-definition. I don't know if they are going to carry local stations in high-definition. I haven't heard that discussed here today, but I hope that sort of answers your question and responds to it.

Senator SPECTER. If the merger goes through, Mr. Ergen, will there be enough channels liberated so that C–SPAN can put on number 4 and carry hearings like this live?

[Laughter.]

Mr. ERGEN. Yes, there will.

Senator SPECTER. That will be very persuasive on my vote.

Mr. ERGEN. Yes, there will, because we eliminate 500 channels and that frees up an awful lot of spectrum for C–SPAN 1 through 400, if we need to, to carry hearings ad infinitum.

Senator SPECTER. Mr. Chairman, thank you for scheduling this hearing. This is a very complicated subject and I think there has been substantial additional light shed on it this morning and this afternoon.

Thank you.

Chairman KOHL. I thank you, Senator Specter.

We are going to begin to wrap it up. I am going to give each of you a chance to say in a minute or two whatever you wish on the basis of what you have heard today, but I will express myself, too, for a minute or two.

If this merger went through, as Mr. Pitofsky indicated, the only way it could be implemented is with Government oversight. Nobody here is disputing the fact that those promises you are making are crucial to any consideration of the merger. So, in effect, we would have to be inserting the Government in perpetuity to be sure that those promises that you are making can be, in fact, implemented. It is an argument almost on its face to be very, very apprehensive about allowing a merger like this.

I think all of us are fearful that, given 5 or 10 years, there will be you and cable and you won't compete on price. You will wink at each other and they will stop competing with you on price and you will stop competing with them on price. You will compete for service and in all the other ways except price, and you won't have other competitors to worry about and you will make a fortune and the consumer will pay.

The danger of that happening is so huge that it seems to me that there are enormous barriers that you will have to surmount in order to get this thing through the Antitrust Division and the Attorney General's office. So I am very, very concerned about it. I don't want to be mealy mouthed and say on the one hand, on the other hand. You know, you all are very strong and determined people. You make decisions and you don't take half-assed positions. You know, you put your money and your future on your idea of where things are going, and if it works, it works, and if it doesn't, it doesn't. But you don't make your success by being on the one hand or on the other hand. You take very strong positions, so sometimes you have to hear very strong positions.

I think this would be great for you and great for your shareholders, which is what you are all about, but I do not believe at this point it would be great for the people of America.

In a minute or two, Mr. Nixon, do you want to recapitulate how you feel right now?

Mr. NIXON. Thank you very much, Senator. I appreciate your interest and the Senate's interest in this issue.

There has not been a great deal of discussion about the various State and State attorneys general, although I have worked on this matter with dozens of my fellow attorneys general and been on the phone and in person as early as very early this morning with some of them. I myself have been very personally active in antitrust issues in my decade as attorney general, although I was not involved in the Microsoft case.

I thought there was an argument to be made that they were improving things in that particular case. And while I stood quietly on the sidelines in that regard, I am not in this regard. I think that the vast majority of the States and State attorneys general are also exceptionally concerned about significant portions of their jurisdictions having competition for a valuable, valid, important used service wiped out. We will be active.

Thank you, Mr. Chairman.

Chairman KOHL. Thank you.

Mr. Hartenstein?

Mr. HARTENSTEIN. Mr. Chairman, thank you. We are not competitive, simply put, with cable in those 42 million homes where we cannot today provide a consumer the television that they want to watch most, and that is their local channels. Neither one of us alone can serve all those markets. The best either one of us can do is some 50 to 70 markets, which would leave all of those millions of homes unserved with a truly competitive alternative.

I think the underlying economics of both the cable industry and the DBS industry are very capital-, very infrastructure-intensive. I think competition will be going vigorously as we go forward. The consumers obviously here from our perspective are going to benefit, those consumers in those 42 million homes.

In the good State of Missouri, there are some 13 DMAs that cover the State of Missouri. Some of them are from outside, other States. We are only batting 3 for 13 today. We want to be able to deliver to the local broadcasters in Missouri and many of your other States 13 for 13, 9 for 9, or whatever the number is. That is what we can do with this. We can only do it together.

Thank you for your time.

Chairman KOHL. Thank you, Mr. Hartenstein.

Mr. Ergen?

Mr. ERGEN. I am disappointed that Attorney General Nixon has pre-determined this merger because I think the right process is that you get all the facts and we are still providing documents, economic analysis, technical analysis, to the regulatory agencies. So there is a lot of information that still has to come out. Certainly, there will be interviews with people, and so forth, and I think the proper procedure is the State attorneys general should be included, and to work with the Justice Department to make sure they see all the information before they make a determination.

I feel bad for the white areas in Missouri that Attorney General Nixon has shown because those customers in my lifetime, if this merger were not to happen, are not going to get high-speed Internet access. Those kids are not going to have the same educational capabilities as kids in the cities. They are not going to get local-into-local, they are not going to get competition. Their rates, as Mr. Kimmelman has said, will go up higher because they won't have local-into-local.

My third and final point is that I think there is a misunderstanding here that going from three to two would be a duopoly and that we could suddenly collude with the cable operators. Understand that cable operators are different in every city and we would have to collude with dozens of cable operators who have 80 percent of the business.

Now, I can tell you as a businessman—and I know you are a businessman—you are not going to put a $5 billion asset in outer space and not go and try to get the customers—where you have a low marginal cost, go get the customers from the cable company who has 80 percent of the business. We are certainly not going to collude with AT&T, Time Warner, Cox, Comcast, Charter, and the other thousands of cable companies across the country.

This is not a case where you can collude with the guy next door, as in some other cases. That is why each individual merger has to be looked at on its merits and in its own set of circumstances, and ours are materially different. And nobody on any side of the argument has denied the fact that there are huge efficiencies and huge benefits to consumers from this merger. And when you can show that—and it is a high burden of proof, I will agree with you, but when you can show that, mergers like this can be allowed.

Chairman KOHL. Thank you, Mr. Ergen.

Mr. Pitofsky?

Mr. PITOFSKY. Mr. Chairman, three very brief points. One is I want to make sure the record is clear. The number of people who may be hurt by this merger is not 13 million. They don't have any cable at all. There are many other people in this country who have inadequate cable, analog cable, obsolete cable. They could switch to satellite. Now, they have two choices. They will also have only one.

Second, it is not a matter of colluding with all the cable companies. EchoStar itself in a formal court filing a year-and-a-half ago said that the reason that satellite prices are so low is because of competition between the two satellite providers, and that cable competition doesn't influence those prices. Now, when the competition between the satellite providers is eliminated, I expect that prices would drift up. Maybe it will be nationally and they will drift up all over the country, but that is not good news either.

Finally, I don't want to say that the Government never should exercise oversight of the kind that you have described and tried to extract from the CEOs here. We have done it, but usually that kind of oversight is in vertical mergers, conglomerate mergers. I presided over some of those conduct remedies myself, but I will say this: I cannot think of a case in 100 years in which a conduct remedy was relied upon to permit a merger to monopoly or duopoly.

Thank you.

Chairman KOHL. Thank you.

Mr. Kimmelman?

Mr. KIMMELMAN. I think we should start by looking at what happens if this merger does not go through. These two companies have been out there, done wonderful things, but cable rates keep going through the roof and I see no signs that they are in a position in the foreseeable future to offer what consumers really want—their local broadcast stations in every community in the country, packaged with a broad variety of programming, installation costs and multi-set hook-ups at a price that is competitive or lower than cable.

Second, for 4 years this property, DIRECTV, has been dangling out there, people looking to buy it. The one other potential purchaser is a national television network that owns stations serving more than 40 percent of all consumers, owns global properties with satellite capacity throughout the world, and owns more than 20 regional sports stations, studios and newspapers around the world.

Its economic incentives are quite clear. It makes its money mostly by programming. It has no incentive to compete head-on with cable to drop prices. It has an incentive to push cable to raise what it spends on programming so that it, News Corp., can make more money. That is a lose-lose for consumers—higher prices for programming, no competition from satellite, higher prices on cable.

I suggest that in this environment we take the unusual step of looking beyond antitrust, attempting to remedy what the Federal Communications Commission can remedy first and do the regulatory oversight, and leave finally for the Justice Department to look at the remaining antitrust issues.

I suggest at that point, if we have new entry, if we have a pricing promise, that antitrust issue is a question of whether you need to divest some satellite capacity to serve rural America. I think that would be a better result for consumers everywhere.

Thank you.

Chairman KOHL. Thank you, Mr. Kimmelman.

Mr. Fritts?

Mr. FRITTS. Mr. Chairman, with all due respect to my good friend, I thought the merger was about DIRECTV and EchoStar that was on the table.

Just a couple of comments from the trade press that follows satellite television. The satellite TV investment analyst Jimmy Schaeffler, when asked about this merger, said that consumers today probably have a greater chance of getting all 210 markets and getting them sooner if the deal does not go through.

Let me underscore that all 210 markets' carriage of local-into-local is very important for our broadcasters. Bob Sherman, who is the editor of Satellite Business News, the industry's leading trade publication, said, and I quote, "EchoStar's announcement is a very shrewd political Hail Mary with no downside because it is unenforceable."

I will let those statements stand on their own and thank you, Mr. Chairman, for convening this hearing and for your introspective look at this issue.

Chairman KOHL. Thank you, Mr. Fritts, and thank you all very much for coming. It has been a very enlightening hearing.

The hearing is closed.

[Whereupon, at 12:27 p.m., the Subcommittee was adjourned.]

[Questions and answers and submissions for the record follow.]

QUESTIONS AND ANSWERS

Responses of Charles W. Ergen to questions submitted by Senator Brownback

Question 1: Broadband

As you know, I have been deeply involved in legislative efforts to spur increased access to broadband services for rural consumers. I am interested to hear more about the broadband plans for this proposed merger.

You are saying that, should this merger be approved, EchoStar will offer broadband services sometime around 2003 or 2004, and that your broadband service will effectively be available to virtually anyone who buys a dish. But EchoStar and DirecTV are competing with 2-way broadband services today, are they not, and aren't these services available nationwide? What would be the difference in these services pre and post merger?

Answer: Please see the response to Senator Kohl's fifth question.

Question 2: Spectrum

Mr. Ergen, when we met last year you told me a merged EchoStar/DirecTV, even with its combined spectrum resources, could not carry local broadcast signals in all 210 TV markets. In addition, you were very clear that a merger approval that requires these companies to give up more than a trivial amount spectrum would be unworkable. Today, with the same amount of spectrum at issue, you are now promising to carry local broadcast signals in all 210 markets.

Opponents of your merger continue to insist that you can, using the existing spectrum resources of EchoStar or DirecTV individually, offer all local broadcast signals, non-broadcast video programming including pay-per-view, and a competitive national broadband service.

Given your change of views, do you still believe it is necessary for the proposed merger to include all of the spectrum resources of DirecTV and EchoStar?

Answer: When EchoStar and Hughes announced the merger, we both stated that the merger would enable the new firm to provide local channels in over 100 DMAs, including one in every state. At that time, the companies lacked the engineering proof necessary to make the promise to deliver local channels for all 210 DMAs, and we did not wish to promise more than we knew we could deliver.

Following the merger announcement, engineers from EchoStar and Hughes - working together for the first time - studied the feasibility of delivering local channels in all 210 local markets. The combined efforts of the two companies led to our exciting announcement on February 26th that the new firm could and would commit to deliver local channels to all Americans.

Our commitment to carry local channels to all 210 DMAs, however, is entirely premised on the spectrum made available by the merger. Without all of the spectrum resources of the two firms it would not be possible for New EchoStar to offer the full array of programming and services consumers want, including local channels for all 210 DMAs, a broader selection of HDTV programming, video-on-demand, more specialty, educational, foreign language, and general interest programming, and more. Our decision to carry all 210 DMAs requires the devotion of more spectrum to local programming than previously anticipated, and heightens, not reduces, the need for the full compliment of DBS spectrum of the combined companies.

For a more detailed explanation of our analysis of the 210 issue, and some of the technical issues involved, please see my responses to Senator Hatch's first, eighth, and fifteenth questions.

Question 3: Your announced business plan for the proposed merger seems to be based on existing DBS orbital slots and satellites already in use, as well as satellites expected to be placed in orbit in the near future. However, DirecTV and EchoStar also control outright, or have an interest in, 50% of all Ka-band orbital slots. What assurances does the Congress have that you will take full advantage of these slots to provide service? I would remind you that these slots must be in use in a relatively short period of time, or else the ITU will revoke them. Such an outcome would be unacceptable.

Answer: The best way to ensure that the full capacity and benefits of Ka-band are put to use, and put to use quickly, is to create an affordable satellite broadband internet service. The merger will give the new firm the spectrum capacity, subscriber base and economies of scale necessary to ensure that next-generation satellite residential broadband service becomes a reality everywhere in the United States, rapidly and inexpensively, in a reasonable time frame. A lower-cost satellite broadband service will drive demand, which will create the capacity demand and economic incentives necessary for full and timely deployment of additional satellites.

In contrast, it is not likely that either company standing alone could deploy on a timely basis an advanced residential service of mass scale and appeal at an affordable price. Indeed, without the cost savings and efficiencies created by the merger, consumer satellite broadband will continue to suffer from the high infrastructure and subscriber acquisition costs that relegate it to niche status today. Again, the merger offers the best chance for full utilization of the two firms' Ka-band licenses.

EchoStar, Hughes, and the companies in which they have investments control considerably fewer than 50% of the orbital slots capable of providing broadband Internet service to the United States. Moreover, the fact that EchoStar has minority investments in two Ka-band license holders does not enable it to control what those firms do with their orbital slots. In any event, there are at least ten other firms, with no affiliation whatsoever with EchoStar or Hughes, that hold licenses to operate Ka-band satellites in slots capable of providing broadband service in the United

States. There is ample Kaband capacity for each of those firms to deploy a satellite broadband service and to compete, if they are willing to make the commitment to do so.

Responses of Charles W. Ergen to questions submitted by Senator Maria Cantwell

Question 1: You have publicly indicated that the combined DirecTV-DirecTV would serve the 210 designated market areas with "local-into-local" service. You have also stated that you would accept a requirement to meet this commitment as a condition of the merger. Could you please describe your plan to accomplish this? In what timeframe do you plan to complete this service? What impact on the cost to consumers do you expect this to have?

Answer: EchoStar will be able to offer local programming to all 210 DMAs only with the merger's end to the wasteful duplication of programming. In order to create space for all of these new local channels, the combined company will have to end the transmission of some redundant programming. However, EchoStar and DirecTV have formulated plans, described below, to enable the new local programming as soon as possible. Of course, these plans are subject to change and revision, as EchoStar and DirecTV are working to find ways to improve the process.

Prior to the merger, EchoStar and DirecTV will jointly develop a "dual speak" receiver capable of receiving programming in both the EchoStar and DirecTV formats, and a "triple head" dish capable of receiving signals from all three CONUS orbital locations (collectively, "New Equipment").

As soon as possible after the merger, existing DirecTV Para Todos subscribers will receive New Equipment, free of charge, in order to receive New EchoStar Spanish language programming, thereby allowing new uses of capacity on three transponders at the 119° W.L. orbital location.

Also as soon as possible after the merger, DISH subscribers in the top 40 DMAs who subscribe to local channels also will be switched to New Equipment, free of charge, and will receive their local channels from the 101° W.L. orbital location, thereby allowing the EchoStar VII and VIII satellites to serve different DMAs than they currently are scheduled to serve. With this change, EchoStar anticipates that EchoStar VII and VIII could serve about 60 additional DMAs. It is expected that these first two steps would be completed within 8 months after the merger is completed.

After completing the above steps, subscribers in the 60 markets served by EchoStar VII and VIII and who commit to subscribe to local channels would receive New Equipment, to the extent required, free of charge. After DirecTV 7S becomes operational, a total of about 150 DMAs will receive local channels, and subscribers in the additional markets who commit to local service would receive New Equipment, to the extent required, free of charge. DirecTV 7S currently has an anticipated launch date in late 2003, although the merged firm's progress in its plans to offer local programming at that date depends on when the merger is consummated. The combined firm also plans to launch a new spotbeam satellite, tentatively named New EchoStar 1. After this satellite is operational, about two years after the merger, the remaining DMAs (210 total) would receive local channels. Remaining subscribers in the additional local markets who commit to subscribe to local channels would receive New Equipment, to the extent required, free of charge.

New EchoStar will offer these local programming channels at the same price nationwide, in line with our one nation, one rate card commitment. Local programming will make New EchoStar more competitive in DMAs where we are unable to provide local channels currently, and other efficiencies created by the merger—including HDTV programming, interactive services, more national programming, and important cost savings—will make New EchoStar more competitive nationwide. Accordingly, we anticipate that cable providers and other MVPD competitors will respond with better pricing and/or expanded services.

Question 2: In some markets in which "local-into-local" service is available, I understand that consumers must use two dishes to receive signals from two satellites, one delivering the more popular services and a second delivering certain local signals. Please explain the current circumstances that underlie this situation and explain how the combined companies would manage satellite capacity and resources in this regard? Will any consumers continue to be required to have a second satellite dish to receive certain local television stations? If not, in what timeframe do you expect to have the system reconfigured to accommodate single-dish reception of all channels received by a subscriber?

Answer: EchoStar transmits DBS signals from four different orbital locations or slots. Two of the slots, 110° W.L. and 119° W.L., because of their placement over the middle of the country, serve the entire United States. These are called "CONUS" slots (CONtinental United States). The other two slots, 61.5° W.L. and 148° W.L., only serve eastern and western portions of the United States, respectively, and are called the "wing slots." A single small satellite dish cannot receive signals from both a wing and CONUS slot, because they are too far apart.

Because of the wasteful duplication of programming between EchoStar and DirecTV, EchoStar lacks the satellite and spectrum capacity to carry at the CONUS locations all of the local channels required by must-carry provisions of the SHVIA, as well as the full complement of national programming that consumers demand. Left with the alternative of ending local channel service to some DMAs, EchoStar now carries some local-intolocal programming from the 61.5° W.L. and 148° W.L. orbital locations, and offers consumers, free of charge, the second satellite dish required to receive them. In total, almost one million of EchoStar's current subscribers use two dishes to receive their programming.

The FCC ruled today that we need to modify this "Two-Dish" plan. We are currently reviewing the FCC decision. We will inform the Committee of our plans as soon as our review is completed.

The merger will free up hundreds of channels of satellite and spectrum capacity at the CONUS orbital locations, which will allow carriage of all local-into-local through a single dish. Under current plans, EchoStar customers in the approximately 40 largest DMAs will receive one-dish local-into-local programming within 8 months of the consummation of the merger. Approximately 60 DMAs will receive new local programming service, on one dish after that, and all consumers will receive one-dish local-into-local programming approximately two years after the merger closes.

However, there may be a very small number of consumers for whom a single dish may not be able to receive programming from multiple orbital locations. For example, a consumer might have a tree or building partially obstructing the view of the southern sky, making it impossible to view all the necessary orbital locations from any single point on his or her property. For these customers, a second dish may be required to receive all the programming from the three CONUS orbital locations.

Question 3: Currently, direct broadcast satellite delivered broadband is not widely available. Could you please describe with all possible specificity your plans to expand and improve broadband availability, in general and with particularity as to rural communities. Please also indicate when you expect to have bi-directional satellite broadband. Please too describe the data rates you expect to achieve, and in what time frame. Please also indicate if and when you expect DBS delivered broadband to be competitive with cable and DSL pricing and availability. Finally, describe the impact that the merger would have on your company's ability to expand and improve broadband service.

Answer: Satellite broadband Internet is available throughout the United States, to any subscriber who has a view of the southwestern sky. However, satellite broadband is still priced too high for most consumers, and too high to compete with terrestrial providers like cable modem and DSL, because of high fixed costs and expensive consumer premises equipment, among other factors. EchoStar, through StarBand Communications, Inc., and Hughes, through Direcway, have relied on leased Ku-band transponders to provide satellite broadband service, an expensive and inefficient method of providing service, as well as one that can serve only a limited number of subscribers.

Consequently, both EchoStar and Hughes have turned to the Ka-band in hopes of developing an affordable, competitive satellite broadband service. While use of next generation Ka-band satellites would be superior to the current Ku-band offerings, EchoStar and Hughes believe that a Ka-band satellite broadband provider would still need at least 5 million subscribers to achieve the scale economies in consumer premises equipment, to spread fixed costs, and to justify the substantial investment necessary to develop a competitive consumer broadband service. Neither company standing alone could deploy on a timely basis an advanced residential service of mass scale and appeal at an affordable price.

Although a Ka-band strategy avoids some of the capacity constraints that afflict Ku-band service, it requires the upfront investment of hundreds of millions, if not billions, of dollars in complex new satellites and technology. The deployment of these Ka-band satellites has taken longer, and will require more capital, than many Ka-band licensees have been able to sustain. Even Ka-band licensees with experienced and well-financed backers have been forced to scale back or even abandon their efforts to deploy satellite broadband. Moreover, the use of Ka-band satellites does not have any ameliorative effect on the high cost of receiving equipment and satellite modems, and indeed will increase that cost at least in the short term. Unless these equipment and subscriber acquisition costs can be reduced significantly, satellite Internet will not likely grow out of a smallscale, high-priced niche in the consumer market. It is these daunting economic barriers—very large initial investment in expensive satellites coupled with high up front costs to acquire new subscribers—that have stifled continued investment in satellite Internet technology.

As a result of these substantial obstacles to deployment of a consumer-oriented satellite broadband service, along with other factors, HNS has developed Spaceway with a focus on the larger commercial, or "enterprise," customers while EchoStar's Ka-band program has remained modest in scope. Refocusing and integrating these Ka-band programs will provide the opportunity to achieve the required economic scale for ubiquitous residential true broadband service. Combining the broadband services of Hughes and EchoStar will provide efficiencies that will enable New EchoStar to deploy a competitive true broadband satellite offering for the benefit of all U.S. consumers, rural, suburban and urban alike.

Because of the high price of satellite broadband, and the failure of DSL and cable companies to roll out their networks to serve customers in rural areas, rural communities today do not have any affordable broadband option. The merger will create a bridge over the digital divide: competitive, affordable broadband option for rural communities. That affordable broadband option promises additional benefits uniquely well suited to rural communities, such as telemedicine programs, connectivity for rural doctors, and distance learning.

Both StarBand and Direcway currently offer two-way satellite broadband service. However, because of the capacity constraints associated with the leased Ku-band transponders both companies now use, neither service is able to provide uplink speeds in excess of 200 kbps, the bi-directional standard that the Federal Communications Commission has set for "advanced telecommunications services." With the introduction of Spaceway sometime in late 2003, Hughes expects that it will be able to provide to consumers a two-way satellite broadband service that satisfies the FCC's standard. However, as noted above, the high costs of the infrastructure, consumer equipment, and subscriber acquisition will prevent this two-way broadband service from being affordable to most consumers. With the merger, the combined firm expects that it will be able to achieve economies of scale that will permit it to provide a truly affordable, true broadband service.

Simply reducing costs will greatly expand both the number and categories of satellite broadband subscribers. A more affordable satellite broadband alternative will drive broadband deployment and acceptance in rural areas that cable-modem and DSL do not serve. At the same time, it will give consumers who are already served by cable-modem or DSL yet another broadband option, forcing those incumbent service providers to compete in price, quality of service, and new, innovative products. At the same time, the satellite broadband firm itself will be better able to expand and improve its service. The increased scale and rate of growth for New EchoStar not only will allow it to reduce costs, but also will reduce the risk profile for what has proven to be a highly uncertain industry. A lower risk profile will permit the merged company to make greater investments in subscriber acquisition (such as increased subsidies of consumer equipment), while making it easier for the firm to obtain financing for investments in capacity, technology, and new services. In addition, the new firm will have available to it sufficient orbital slots, close enough together, to provide a one-dish television and broadband service to all subscribers.

Question 4: You have made the commitment to provide nationwide pricing, to avoid the potential for discriminatory pricing in rural communities. Although I understand that some competitive features of the direct broadcast satellite are outside the control of either EchoStar and DirecTV, and within the control of retailers. But as I understand it, your company provides incentives and subsidies to facilitate retail promotions and special packages. In his testimony, Gene Kimmelman of Consumer's Union recommended that as a precondition for approval, the government should require the combined EchoStar and DirecTV to commit to provide the same pricing, options, program packages, promotions and customer service that EchoStar provides in urban, competitive markets. Would you agree that there are some business practices that can influence the ability of a retailer to offer consumers promotions or special packages, and that in executing this merger, you would agree to engage in those practices in a manner that would not treat rural consumers disparately from consumers living in communities with higher population densities. Would you commit to assuring practices that do not have disparate impact on rural consumers as a condition of the merger?

Answer: EchoStar is committed to carrying forward its existing practice of offering nondiscriminatory pricing so that all consumers, whether they have good competitive alternatives or not, receive the benefits of the increased competition that this merger will bring. In my response to Senator Kohl's first question, I elaborate on the factors involved in our historical pricing practices and how a consent decree could be crafted to ensure that all consumers receive the benefits of the transaction, and rather than repeating myself, I respectfully refer you to that answer.

With regard to retailers specifically, we offer retailers a variety of incentives to encourage them to participate in our national promotions, and to offer good deals to consumers. Because we need to offer consumers a low up-front cost both to compete against the cable companies, and to induce new users to try our service, we subsidize our retailers' sales of DBS equipment. This need to keep up-front costs low will be just as strong after the merger, so this practice will continue after the merger, and we intend to continue to do everything to ensure that consumers can acquire our products at competitive prices. This will include ensuring that our retailers receive fair and equitable treatment so that they can continue to compete with each other on price and customer service. At EchoStar we believe that our strong network of small and independent retailers in rural America has been a significant factor in our success in among rural consumers, and coupled with the support of national chains, such as RadioShack, that are also strong in rural America, should continue to serve those rural consumers well.

As I said in response to Senator Kohl's first question, we are willing to commit to a broad non-discrimination decree that would prohibit discrimination in terms of pricing or terms and conditions of sale against rural consumers, on the basis of the potential subscriber's access or use of competitive alternatives like cable, or on the basis of a potential subscriber's address. We believe that this can be accomplished in a way that would allow New EchoStar the flexibility to deal with particular local competitive situations, while maintaining the benefits of a competitive national price for all consumers, and we would be pleased to discuss with the Department of Justice, the state attorneys general, and the Federal Communications Commission how this might be accomplished.

Question 5: Do either EchoStar or DirecTV currently offer DBS broadband Internet access through competitive Internet service providers (Internet service providers other than Echo5tar or DirecTV, such as Earthlink or America Online)? If so, could you please describe the services offered and the consumer pricing associated with each service provider? Will the combined companies offer consumers a choice in Internet service providers? Could you please describe the services you plan to offer and the pricing you will offer consumers? Will the combined company offer nationwide pricing, options, promotions and customer service for all broadband services?

Answer: As I noted in my response to Senator Kohl's sixth question, EchoStar is committed to allowing its Internet subscribers to access the entire Internet, freely and openly. In fact, Spaceway's business plan now is to establish interconnections with as many Internet portal partners as possible as gateways for its service. Satellite-based broadband service currently accounts for a very small fraction of the broadband market. To capture market share, New EchoStar will have to compete vigorously with cable modem and DSL service providers. To be sure, the combined entity will take the appropriate business decisions to increase its satellite-based broadband subscriber base, which may include offering consumers a choice of ISPs. But, at this point, it would be inappropriate, in our opinion, to commit to integrate other ISPs into our satellite operations due to questions about the technological and the business issues involved in such a commitment.

Until recently, EchoStar offered satellite broadband service through StarBand, which acts as its own ISP. EchoStar believes that it would be inappropriate to subject StarBand—or any satellite broadband provider -to "open access" requirements. First, the FCC in a recent declaratory ruling found that cable modem service is an "information service" and therefore is not regulated as a common carrier under federal telecommunications law. *See In the Matter of Inquiry Concerning High-Speed Access to the Internet Over Cable and Other Facilities (GN Docket No. 00–185), Internet Over Cable Declaratory Ruling, Appropriate Regulatory Treatment for Broadband Access to the Internet Over Cable Facilities (CS Docket No. 02–52) (Mar. 14, 2002).* The FCC's rationale with respect to cable modem broadband Internet applies with even greater force to satellite broadband. It would be counterintuitive at best for the federal government to conclude that the cable industry, which currently serves almost 70 percent of residential broadband subscribers today, see id. at ¶ 9, should not be subject to "open access" or any other type of regulation as a common carrier, while the nascent satellite broadband industry, which serves less than 1 percent of those subscribers, should be subject to such regulation.

Second, satellite broadband today is not fully competitive with cable modem service due in part to satellite's slower download speeds and significantly slower upload speeds. An open access requirement imposed on satellite broadband would exacerbate this quality discrepancy between cable and satellite by potentially diminishing upload and download speeds even further.

Finally, given the precarious financial position of certain satellite broadband concerns, imposing regulation on the infant industry, particularly regulation that would have an adverse material effect on the product's quality, almost surely would hobble and perhaps kill the potential of satellite broadband to compete. Such a result would clearly be at odds with Congress's directive that the FCC "encourage the deployment on a reasonable and timely basis of advanced telecommunications capability to all Americans" by "regulatory forbearance, measures that promote competition. . . . or other regulating methods that remove barriers to infrastructure investment." Pub. L. No. 104–104, Title VII, § 706, Feb. 8, 1996, 110 Stat. 153, reproduced in the notes under 47 U.S.C. § 157.

The New EchoStar anticipates that the merger will allow it to provide a two-way satellite broadband Internet service that competes with cable and DSL in both price and quality. Given the dynamic nature of the Internet, as well as the nascence of satellite broadband, it is too early to make predictions about the specific services that the merged company will offer. However, EchoStar is fully committed to providing nationwide pricing, options, promotions and customer service for basic broadband services.

Responses of Charles W. Ergen, Edward O. Fritts, Eddy W. Hartenstein, Jeremiah W. Nixon, and Robert Pitofsky to questions submitted by Senator Orrin Hatch

Question 1: The following questions are directed to specific witnesses, but any witness should feel free to respond to any of the questions or amplify the record where needed.

Mr. Ergen and Mr. Hartenstein, when this merger was proposed you announced that upon approval of the merger, the New EchoStar would serve approximately 100 markets with local channels. Now you have announced that you can and will serve all 210 markets. What changed with respect to technology and to the marginal economics of offering local channels in the smaller markets that has suddenly allowed you to go from 100 markets to 210 markets in less than six months?

Answer: On October 28, 2001, when EchoStar and Hughes announced the merger, both stated that the merger would enable the new firm to provide local channels in over 100 DMAs, including one in every state, as well as affordable nationwide high-speed Internet access. At that time, the companies had not had an opportunity analyze the merger sufficiently to determine whether we could deliver local channels for all 210 DMAs, and we did not wish to promise more than we knew we could deliver.

Following the merger announcement, engineers from EchoStar and Hughes—working together for the first time—studied the feasibility of delivering local channels in all 210 local markets. The combined efforts of the two companies led to our exciting announcement on February 25th that the new firm could and would commit to deliver local channels to all Americans. The new firm will be able to do what the predecessor firms separately cannot do for two important reasons. First, because of wasted spectrum, neither firm has sufficient capacity to serve anywhere close to all 210 DMAs on its own. Each firm now separately beams down approximately 500 channels of identical programming. With the merger, the new firm will be able to consolidate that wasted spectrum, freeing up those 500 channels for more productive uses without reducing output to consumers at all. The additional spectrum will be put to use serving all 210 designated market areas (DMAs), and offering a great deal of additional programming, such as more HDTV, specialty and educational programming and more interactive television services. Second, because the satellite and ground costs of collecting and backhauling local programming are substantial for each DMA regardless of its size, it would be economically challenging to launch additional satellites (each costing $250–$300 million) to serve smaller DMAs given the smaller subscriber bases of EchoStar and DirecTV separately. The merger effectively doubles the size of the subscriber audience for local programming and therefore makes possible the investment necessary to serve local channels to smaller communities.

To accomplish the goal of serving all 210 markets, the new firm will use spot-beam satellites. Currently, EchoStar and DirecTV each have one spot-beam satellite in orbit and each plans on launching another in the future. Because the merger will end duplicative programming by rationalizing the use of available spectrum, the merger will allow these satellites to provide local programming to far more communities than otherwise possible. For example, instead of using two spot-beams to provide duplicate service to a single large city, the merger will allow one spot-beam to serve that city and the other spot-beam to serve a smaller nearby community.

In addition, EchoStar and Hughes have also filed with the Federal Communications Commission for permission to launch a fifth spot beam satellite, which the companies expect to cost about $300 million. Utilizing this fifth satellite to take advantage of the spectrum efficiencies and economies of scale created by the merger, we will achieve our goal of offering local television channels to every American, no matter where they live.

Question 2: Attorney General Nixon, Mr. Fritts, and Mr. Pitofsky, would each of you please explain your respective interpretations of the recent announcement by DirecTV and EchoStar that they have suddenly found sufficient spectrum to carry all stations in all 210 television markets?

Question 3: Mr. Ergen, I have been concerned about gatekeeper controls limiting consumers' access to the information or entertainment they want to access, especially in the internet context. I expressed serious concerns about this problem in the context of the America Online merger with Time Warner. Vivendi Universal has made a major investment in your company, and some suggest that this gives rise to the possibility of the sort of vertical integration issues you initially suggested you would avoid. Moreover, you have had some history of dropping channels during carriage disputes. Given that you could control the sole or dominant television and internet access provider in many rural areas if this merger is approved, what binding assurances could you give us that consumers will have access to programming they have come to expect as well as full and open access to the internet over your broadband services?

Answer: In my response to Senator Cantwell's fifth question, I elaborate on EchoStar's position with respect to "open access" requirements for satellite broadband, and rather than repeat myself, I respectfully refer you to that answer.

EchoStar and DirecTV have played an important role in providing a launch platform for independent programmers. As the National Cable & Telecommunications Association recently commented to the FCC, "The allure of DBS coverage for new networks, vertically or non-vertically integrated, is also strong. Unlike the variety of channel positions and system configurations involved in cable system launching, a deal with a DBS provider means immediate nation-wide reach to millions of homes in the same channel."[1] EchoStar programming executives add that programmers use DBS carriage to improve their bargaining position with cable systems. The programmers assume that DBS carriage will improve their chances, and price, for carriage on cable systems, not that DBS carriage alone will necessarily make the new programming profitable. The agreement with Vivendi illustrates how a DBS firm can facilitate the entry of new programming. As part of the agreement, Vivendi Universal will develop five new programming channels and EchoStar has agreed to carry them. While EchoStar and Vivendi could legally enter into an exclusive contract, it is important to note that the new programming under the agreement will be distributed on a non-exclusive basis: that is, the programming will be available to all other MVPD providers. Indeed, far from encouraging exclusivity, EchoStar's agreement provides Vivendi with incentives to distribute the new programming to other MVPD providers and in fact gives EchoStar the express right to cease carrying Vivendi's channels if it does not obtain carriage for those channels on other platforms.

The Vivendi transaction will benefit not only EchoStar, but all independent MVPD providers and consumers, by assuring Vivendi a foothold in attempting to establish new networks, provide new and innovative options for consumers, and increase competition with the entrenched incumbents. A few major programmers, such as Disney, General Electric/NBC, Viacom, and AOL TimeWamer, now control the vast majority of the programming offered by most MVPD providers. These programmers have used this power to steadily raise that price that they charge us and other MVPD providers for this programming. It is very difficult for a new provider to

[1] Comments of National Cable & Telecommunications Association, In the Matter of Implementation of the Cable Television Consumer Protection and Competition Act of 1992, Development of Competition and Diversity in Video Programming Distribution: Section 628(c)(5) of the Communications Act: Sunset of Exclusive Contract Prohibition, CS Docket No. 01–290, (dated December 3, 2001), at 15.

break into the MVPD market with a new network, both because of limited capacity and the disincentives of the integrated cable MSOs to permit competition with their programming interests. That entrenched structure insulates the incumbents from competition and preserves their power by limiting the options of independent MVPD providers and consumers.

More specifically, Vivendi will neither have any power nor any incentive to exercise any control or influence over the merged EchoStar-Hughes entity. The economic interest that Vivendi has in EchoStar amounts to about 10%, and the voting stake is even smaller at about 2%, before the merger with Hughes is consummated. Post-merger, these percentages will decrease to less than 5% equity interest and about 1% voting interest in New EchoStar. At the same time, a programmer like Vivendi could not survive based on New EchoStar's 17% market share; it needs carriage on the major cable MSOs and could not discriminate against them.

Even with the Vivendi deal, EchoStar will need to supply its customers with the "crown jewel" programming, like HBO, CNN, and ESPN that is supplied by the major incumbent programmers and demanded by its customers. Those entrenched incumbents possess an enormous amount of power. In addition to the "crown jewel" programming, EchoStar will also need to be able to offer the wide variety of other programming that its subscribers expect. The idea that a small investment in some of the channels Vivendi develops for EchoStar will either change EchoStar's incentives or enable it to discriminate against programming providers is not credible. The Vivendi deal increases options and competition, consistent with the overall goal of the EchoStarHughes/DirecTV merger.

Finally, you have mentioned disputes that we have had with programmers. In fact, in our view these disputes further illustrate the benefits to consumers of expanding programming options and competition through the Vivendi deal. Programming costs are the largest segment of our variable costs and they have been continually rising, putting pressure on us to raise prices to consumers. These disputes have generally arisen when we have resisted price increases that we did not believe were warranted. We believe that our actions in resisting price increases have benefited consumers.

Question 4: Attorney General Nixon and Mr. Fritts, in your respective opinions, are Mr. Ergen's assurances regarding television carriage and internet open access sufficient to safeguard the legitimate interests of consumers and competing ISPs?

Answer: We are willing to embody our commitments in legally binding consent decrees or other enforceable agreements. As I noted in my response to Senator Kohl's fourth question, I have committed that the merged company would still provide all local broadcast channels that offer meaningful programming, and I have offered to sign agreements with local broadcasters to confirm this commitment.

Question 5: Attorney General Nixon and Mr. Pitofsky, let me ask you both a question that touches on a couple of different antitrust principles. There has been some debate about what the relevant market is and whether choosing one market over another really makes a substantive difference in this case. I would note, for example, that EchoStar has taken the position in litigation against DirecTV that DBS is the relevant market and that DirecTV is a monopoly in that market, but has more recently adopted a different and broader market definition. Also, one argument offered in support of the merger is that better competition to cable in the more urban areas, as well as more local television and pay per view offerings by the merged company, justify elimination of satellite television and broadband competition nationwide. Moreover, Mr. Kimmelman admitted that your analyses of the antitrust issues were correct, but that a broader view of some sort was required in this case, while attempting to argue that while DBS and cable were separate markets now, they would somehow become one market if the merger were approved. Could you comment in detail on these issues, including the relevant market definition and the nature of competition between cable and DBS, and, finally, give us your views of whether the antitrust laws allow benefits in one geographical or product market to be traded off against harm in another such market?

Answer: We would like to address the various issues you raise in this question.

Question 1: The Relevant MVPD Market

Answer: The relevant market for this merger, as the Department of Justice has determined in similar cases, is the nationwide Multi-Channel Video Program Distribution ("MVPD") market.[2] DirectTV and EchoStar provide pay television service in this market, offering traditional cable networks like ESPN and CNN, premium movie channels like HBO, and in 36 to 41 communities, local broadcast stations.

[2] *See, e.g.*, Complaint ¶¶ 59–63, *United States* v. *Primestar, Inc.*, Civil No. 1:98CV01193 (JLG) (D.D.C.) (May 12, 1998).

They compete with cable television providers, who also offer similar mixes of cable networks and premium channels, and who offer local broadcast stations in virtually every area they serve.

Other competitors that offer a similar mix of MVPD programming include nextgeneration overbuilders like RCN, Satellite Master Antenna Television ("SMATV," which offers "private cable" to apartment buildings and single-family residential developments), Multipoint Multichannel Distribution Service ("MMDS"), Local Multipoint Distribution Service ("LMDS")), and C–Band satellite service, which also offers digital service nationwide. Through affiliates, WSNet offers a service including multiple channels, basic and premium programming, for a monthly fee, using mediumpower Ku band satellites. National Rural Telecommunications Cooperative ("NRTC") affiliates, such as Pegasus Communications, who have rights to independently market certain DirecTV programming in defined geographic areas, also compete in the MVPD market. A number of nascent providers have also developed plans to compete in the pay TV market, such as Northpoint, which hopes to use terrestrial broadcasts on DBS frequencies. Cablevision plans to launch a competing DBS service. BellSouth, Qwest and other Incumbent Local Exchange Carriers are deploying fiber to the curb and VDSL technology and have achieved critical mass in several cities. Electric and gas utilities are also moving forward with ventures involving video distribution.

Thus, because of the number and variety of competitors in the MVPD market, the EchoStar-Hughes merger will not "eliminat[e] satellite television and broadband competition nationwide," as your question suggests.[3] For example, in your home state of Utah, C–Band remains a viable option for rural consumers with at least 27 retailers or dealers selling and installing C–Band equipment and service.

Other competitors notwithstanding, however, cable companies continue to dominate the MVPD market, and have raised rates an average of over 6 percent in each of the last 10 years. By contrast, DBS equipment prices have steadily dropped and service prices have remained flat. DirectTV and EchoStar face competitive barriers that prevent them from providing consumers with the programming and services they desire, and that limit DBS's effectiveness in provoking a competitive response from cable (as demonstrated by cable's ability to raise prices in the face of low DBS prices). These barriers include limited and wasted bandwidth, particularly DBS's inability due to spectrum constraints to offer local broadcast stations beyond the largest urban areas, the lack of an affordable satellite Internet option, and other costraising inefficiencies of the current market structure. The merger will help break down these competitive barriers, and allow New EchoStar to fulfill DBS's potential as a more vigorous competitor to cable, with great consumer benefits. Moreover, the merger would be consistent with Congress's goals in enacting the Satellite Home Viewer Improvement Act (SHVIA), because it will promote head-to-head competition between satellite and cable and bring that competition into more local markets.

We would also like to address your reference to issues in previous litigation with DirectTV. Although there have been legitimate arguments about the precise contours of the historic market(s) in which DirectTV and EchoStar have operated, it is not necessary to resolve these disputes to evaluate the competitive benefits of the proposed merger. New technological developments, especially in the rollout of digital cable, and the profound effect that the merger will have in promoting competition with cable make clear that the appropriate relevant market is MVPD.

While competition with cable has always been intense, the advent of digital cable has increased this competition dramatically. Digital cable reduces the capacity and quality advantages that DBS has traditionally enjoyed in distinguishing itself from analog cable. It also allows cable to offer products, like high-speed Internet access, video-on-demand, and local interactive programming, that DBS cannot match under the current market structure. Furthermore, cable companies are targeting the DBS firms in ways that they have not done in the past, for example, with national advertising targeted at DBS and "dish bounties." Under the circumstances, any suggestion that the New EchoStar could reduce its competitive efforts without losing subscribers and revenues to the cable firms simply ignores economic reality.

It is also true the merger will change the nature of competition in the MVPD market by increasing the output that the newly merged company will produce. By eliminating duplicate programming, the merger will free up scare spectrum and enable delivery of more channels, many of local interest, and more advanced services. By

[3] As discussed in more detail in our response to your question regarding broadband offerings, both DirecTV' and EchoStar's current broadband offerings are expensive "niche" products that have attracted a minimal number of subscribers, and neither is a competitive product with any significant influence in any market. The merger will enable New EchoStar to integrate these products and achieve a more competitive price point.

removing competitively significant barriers that now prevent DBS from competing effectively with cable, the merger will force cable to respond in kind with improved product offerings.

Question 2: The Nature of Competition Between Cable and DBS

EchoStar has always believed that the only way to compete with the cable companies was to offer consumers a better product at a lower price, and that is what EchoStar has always done. Nothing about this merger changes that fundamental dynamic. New EchoStar will use the spectrum saving and other benefits of the merger to compete more effectively with cable. If we have the spectrum to offer a better product, we will be able to beat cable with lower prices. If we do not have the spectrum to keep up with cable on a technological basis, our ability to exert competitive influence on cable will fade.

New EchoStar will continue to compete aggressively because it needs to grow. The cost structure of DBS's offering and nature of the MVPD marketplace make continued expansion an economic imperative for New EchoStar.

- *DBS's High Fixed Costs and Low Marginal Costs.* DBS's satellite and uplink infrastructure requires enormous investment. By contrast, the marginal costs of providing additional customers with service are relatively low. This structure gives New EchoStar strong incentives to grow in order to spread its fixed costs, thus assuring that efficiencies realized by the merger will be passed on to consumers. This incentive will increase with its investment in the new spot beam satellite to bring local channels to all 210 DMAs. To cover the cost of that satellite, it will be imperative for EchoStar to compete to acquire subscribers in the less populous, more rural DMAs to be served by the new satellite.
- *Expansion's Upside Potential.* The opportunities to grow among customers without cable are very small in relation to the opportunities to grow by capturing some of the nearly 70 million cable subscribers. Persuading even a small percentage of current cable subscribers to switch to DBS would have tremendous upside value. Any strategy that attempted to exploit the small number of customers without access to cable at the expense of growth into cable's huge installed base would be grossly counterproductive.
- *Cable s Lock-In.* As cable improves its products, DBS will be frozen out of potential customers, due to customer inertia and high switching costs from cable to DBS. New EchoStar's incentives will lead it to push expansion before cable entrenches further, especially since consumers who commit to a digital cable/cable-modem bundle will be even harder to win.
- *Capital Markets'Expectations.* The DBS industry's—and particularly EchoStar's—ability to raise funds in the capital markets, has been premised in large part on the potential for continued growth in MVPD market share. Any slow-growth strategy would undermine New EchoStar's relationship with a key constituency.

These market realities provide the motive, and the merger efficiencies provide the means, for vigorous competition with cable that will create better prices, more programming choices, and excellent service.

Question 3: The Merger Will Not Trade Off Harms To Any Market

Answer: Although your question correctly recognizes the benefits of the merger, it erroneously assumes that these benefits will be "traded off' against harms in other markets.

The merger will not cause antitrust harm in any relevant market. While there are consumers in the United States who do not have access to cable television, and therefore have fewer alternatives (though by no means no alternatives) than those that do, this does not imply that there is monopoly power over those customers in the absence of any evidence that the hypothetical monopolist could identify those customers and charge them supracompetitive prices.[4] For monopoly power to exist, the seller must have the power to control prices or exclude competition.[5] The New EchoStar would be able to do neither.

As we have explained, both DirecTV and EchoStar, by the nature of their services, operate in a national market, and both companies have offered national pricing since their inception. Quite simply, it is impossible to for us identify and profitably price discriminate against subscribers without good alternatives without risking losing subscribers who do have good alternatives. The reasons for national pricing include the fact that the administrative costs of separately pricing, billing, and marketing to the few rural customers who lack access to good alternatives far outweigh

[4] *See United States* v. *E.I. du Pont de Nemours and Co.*, 351 U.S. 377, 392 (1956).
[5] *See id*. at 391; *United States* v. *Syufy Enters.*, 903 F.2d 659, 664 (9th Cir. 1990).

any speculative returns that might be gained. Further, the reputational injury and destruction of consumer goodwill created by a discriminatory pricing policy make such a scheme untenable. And, as noted above, there are other competitors besides cable currently operating in rural areas, and new entrants into the market are on the horizon as well. Under these circumstances, it is clear that rural subscribers and other subscribers without access to cable will enjoy the benefits of the increased output and increased competition resulting from the merger, and that the New EchoStar will not have the power to raise prices or to exclude competitors. (For a more detailed description of the benefits of national pricing and its importance to EchoStar's business, please see my response to Senator Kohl's first question.)

The merger will not change the competitive dynamics that force DBS to react to literally hundreds of competitors, and as you know, in order to ensure fair treatment of all, both companies have committed to continue national pricing after the merger. New EchoStar's continuing need to compete with cable in the national market will restrain New EchoStar's ability to charge supercompetitive prices in rural areas. The same is true of New EchoStar's continuing need to grow, a need that will in fact be enhanced for New EchoStar given (for example) the commitment to serve all 210 DMAs. The price charged for its offerings therefore will be determined by the areas in which New EchoStar encounters the fiercest competition, not where competition is lacking. Under these circumstances, the traditional concerns that consolidation in a marketplace may reduce competition do not apply.

Furthermore, as noted above, the merger itself will encourage increased competition with cable companies. As you know, courts consider the effect on price and output when evaluating the market power of a firm,[6] and define market power by the producer's ability to raise prices substantially above the competitive level through a reduction of output.[7] Rather than reduce output, however, the merger will have precisely the opposite effect, by enabling the delivery of more channels and more advanced services. Improved DBS offerings inevitably will force cable companies to improve their offerings to the market as well.

The ultimate purpose of antitrust law is consumer protection.[8] Our merger—which ' makes all consumers, whatever MVPD product they use and wherever they are located, better off than they would be without the merger—serves that purpose.

Question 6: Attorney General Nixon, it is clear you have serious concerns about this merger. Could you give us some sense of what steps you plan to take with regard to the merger?

Question 7: It was reported in the Wall Street Journal on February 4th at—right up to the time at which the merger agreement was signed—EchoStar and DirecTV had been exploring ways to achieve these same spectrum efficiencies through a joint venture, but that effort failed due to control and economic factors. I would be interested in Mr. Ergen and Mr. Hartenstein's elaboration on why such a joint venture is not a feasible alternative to this merger, and in Mr. Pitofsky's and General Nixon's analysis of that alternative. Could you both please provide a detailed explanation of the reasons that a joint venture is not a feasible alternative?

Answer: EchoStar considered, and discussed with DirecTV, the possibility of a joint operating agreement ("JOA") whereby the firms would share spectrum to eliminate or reduce redundant programming. After careful consideration, during the summer of 2001, the parties rejected this option as unworkable and impractical.

Ultimately, neither EchoStar nor DirecTV could agree to cede control of its crown jewel assets, either to the other or to a third entity. The potential risk to the preexisting businesses and the risk that the agreement would fall apart, particularly given the magnitude of investment required to bring benefits to joint operation, make joint operation too much of a gamble.

There are only three options for control of a spectrum-sharing arrangement—control by DirecTV, control by EchoStar, or shared control with the potential for deadlock. Without its satellite and spectrum assets, neither EchoStar nor DirecTV has a business. Control of core assets by a competitor would be ruinous, as a dispute could lead to the controlling party severely prejudicing the other's business. The controlling party would make critical decisions affecting both participants, particularly with respect to which programming was carried at which orbital location, and

---

[6] *See Ball Memorial Hospital, Inc.* v. *Mutual Hosp. Ins., Inc.*, 784 F.2d 1325 (7th Cir. 1986).

[7] Id. at 1331; see also Indiana Grocery, Inc. v. Super Valu Stores, Inc., 864 F.2d 1409, 1414 (7'" Cir. 1989) ("Monopoly power has long been defined in the courts as the power to exclude competitors or to control price, a definition we have alternately stated in this circuit as 'power over price' or 'the ability to cut back the market's total output and so raise price.'") (citations omitted).

[8] *See American Academic Suppliers, Inc.* v. *Beckley-Cardy, Inc.*, 922 F.2d 1317, 1319 (7th Cir. 1991).

thus to which consumers programming would be available. This would leave the non-controlling firm vulnerable to a number of risks, including: manipulation of the joint programming to favor the controlling party's customers; manipulation of the joint programming to favor content for which the controlling party has more favorable contract terms, thus effectively raising the non-controlling party's costs; and less responsiveness to technical problems that affect the controlling party's customers less than the non-controlling party's customers. These problems would come to the fore every time a transponder malfunctioned or any other event occurred that required realigning programming among satellites.

"Shared" control would create the problems posed by committees made up of representatives of two entities with adverse interests, which would be unable to effectively resolve disputes, vulnerable to brinksmanship by either side, and thus inherently unstable and at constant risk of stalemate or disintegration. (For these reasons, joint ventures with two competitors sharing their crown jewel assets are rare in any industry.) Because of the importance of the competitive decisions related to the crown jewels, only the stability and certainty of the merger provide an adequate foundation for the success of a move to eliminate redundancy. Take, for example, the need to adjust the jointly carried programming to meet competition from cable and others. Both EchoStar and DirecTV might agree that changes were needed, but each might have a starkly different agenda concerning the nature of the changes to be made, because of different consumer preferences, differences in contracts with programmers, or merely differences in strategy. If they could not agree, then changes could not be made and both would suffer serious competitive harm. Alternatively, disagreements or brinksmanship could cause the joint venture to fall apart.

Also, for spectrum sharing involving national channels, the firms would lose a valuable promotional opportunity. As part of their arrangements with some programmers, EchoStar and DirecTV receive blocks of programming time, e.g., a minute on CNN, for use in promoting their services. These are a valuable means to communicate with consumers about their business, including promotions and brand-building.

The control and stability issues would be compounded by the need to avoid sharing competitively sensitive information between EchoStar and DirecTV. The complicated firewallUindependent decision-making system necessary to keep separate data on costs, subscribers, and programmer relationships, as well as other key information, would further impede any possibility that the joint operation could be effectively managed. The companies would likely have to coordinate pricing, promotion and manufacturing, in ways that may be significantly limited by the antitrust laws.

On the other side of the equation, the investment required to accomplish such a volatile spectrum sharing arrangement would be very high, and would require extensive, costly and time-consuming consumer equipment changes that would be impossible to make absent the certainty of the merger. EchoStar's and DirecTV's settop boxes are largely incompatible, and customers of each company generally point their satellite dishes to different orbital locations. Thus, the companies would have to select the surviving settop box technology, and bear the significant consumer switch-out costs associated with the merger. Even if the costs were shared, the decision to replace one firm's equipment would be harmful to that firm's brand. The firm with legacy equipment also would be required to share highly sensitive conditional access codes. Moreover, both firms might need to offer consumers new satellite dishes, in order to receive signals from the shared orbital location. Also, a variety of circumstances could lead one firm to have very different incentives and abilities to invest in the switch-out process than the other. Given the risks that the arrangement could fall apart, the investment necessary to undertake the transition is too much of a gamble without the stability provided by the merger and without the assurance that the investor would have long-term unitary control of the fruits of the investment. The resources needed to move to a new, third standard would be much greater still, making that course impracticable as well absent the assurance provided by a merger.

Similarly, the decision on how to use each firm's satellite assets could significantly and adversely affect one firm or another in the event the agreement was terminated. Issues such as potential satellite failures and back-up plans would also be extremely difficult to address with separately owned satellite fleets. Finally, the general instability of such an arrangement would discourage investment in research and development needed to move the platform forward. Only the merger can provide the stability and decision-making process necessary to overcome these obstacles.

Question 8: Mr. Ergen and Mr. Hartenstein, in recent FCC filings, you stated that the Satellite Home Viewer Improvement Act of 1999 has provided you with an important "opportunity" to carry local broadcast stations. Nevertheless, soon after this

Congress passed that Act, you filed a lawsuit to overturn it, or portions of it. In that lawsuit, incidentally, you argued that you did not have the capacity to comply with the Act's must carry requirements for the 40 to 45 markets you now serve, let alone to fully serve all 210 local television markets. The government countered with expert testimony that showed how, using existing technology, either company could comply with must carry requirements in all 210 markets. Now you have announced that the merged company can carry all stations in all 210 markets. Do you now concede that your capacity objections to the Satellite Home Viewer Improvement Act are flawed, and do you intend to continue or drop your challenge to that statute?

Answer 8. For an explanation of how we reached the conclusion that the merger would enable us to serve 210 markets after the merger, please see my response to your first question above. However, as I have explained, this is only possible if the merger is consummated. First, the capacity to carry so many new local channels will come from the end to wasteful duplication of approximately 500 channels of programming between EchoStar and DirecTV. The merger will enable the new company to consolidate use of that wasted spectrum and free up those 500 channels for more productive uses, such as local channels in all 210 DMAs, as other new programming and services. Second, the merger, by combining the current and potential subscriber base of the two DBS firms, raises the returns on the investment in providing local service to smaller DMAs by spreading the fixed cost of providing local service over the larger expected revenue that would come from a larger subscriber base.[9]

The technical issues regarding the theoretical capacity of launching "super satellites" that could enable us to serve 210 DMAs without a merger are complex. The experts referred to in your question have now submitted declarations to the FCC on behalf of private parties, to which EchoStar and Hughes have fully responded. The numerous technical flaws in the conclusion that service to 210 DMAs is possible without the merger need not be repeated here. (For more detail on some of the specific technical issues, please see my response to your fifteenth question below). More importantly, however, these declarations have never attempted to demonstrate that taking the steps required to achieve his theoretical plan—scrapping our investments in existing satellites, replacing all our consumer premises equipment, and launching expensive new satellites using a number of technologies that had never been used in a commercial satellite before—made any kind of business or economic sense at all. The steps proposed by the government's expert would have required the expenditure of several billion dollars of shareholders' money, would have been uncertain of success in any event, and could not have been justified under any business rationale. For example, the "8PSK" modulation technology suggested by the government's expert would be completely incompatible with, and would therefore require the replacement of, satellite receivers for each and every existing EchoStar customer. The massive transitional effort necessary would be proportionally greater than the merger—which requires replacing some but not all consumer equipment—yet would achieve only a small fraction of the benefits of the merger because wasteful duplication of programming would continue. In addition, this 8PSK transition would result in none of the other efficiencies of the merger, including the economies of scale that reduce the per-subscriber cost of offering local programming, as well as the other important merger benefits like affordable satellite broadband Internet service. While 8PSK technology might be viable for a new entrant in the future as the risks of new technology are conquered, its system-wide use is not a practical method for EchoStar to increase capacity.

Thus, we do not concede that our objections to the Satellite Home Viewer Improvement Act are flawed. We believe that programmers should be able to make programming decisions based on consumer demand. We also are concerned that, even with the merger, the demand for satellite television capacity will be strong enough that it will be important not to waste it on programming for which there is no consumer demand, for example, the numerous local home shopping channels that we would be required to carry, that are identical to nationwide channels we already carry. As the cable companies continue to upgrade their systems to offer more services, in response to the enhanced competition the merger will create, we will also need to keep up. That being said, after the merger and launch of New EchoStar One, we fully intend and have committed to provide all local broadcast channels that offer meaningful local programming, as I explain more fully in my response to Senator Kohl's fourth question, above.

[9] Besides the revenue from potential new subscribers, the larger-than-expected revenues are generated by two factors: first, the ability to sell the local service to a larger existing subscriber base, and second, the ability to protect a larger subscriber base from switching to cable—that is, carrying local channels is an important service to maintain extant subscribers.

In addition, our recent challenge to limited portions of the SHVIA is necessary as matter of principle to protect the fundamental free speech right of all Americans to choose the television programming they want to watch. Current law provides that consumers can only have access to their local network channels, and prohibits Americans from watching local news and information originating from other areas of the country. EchoStar believes that Americans have the right, under the First Amendment, to watch satellite television programming of their own choosing in the same way that Americans have the right to choose the books or newspapers they read or the movies they watch.

Today, consumers living outside of New York are permitted to subscribe to their local newspaper as well as the N.Y. Times, Washington Post or other newspapers across the country, yet those same consumers are denied access to New York television news. The technology necessary to make those channels available outside of the New York television market exists today, but EchoStar is prohibited by law from making that news and information available outside of New York. Even Congressional members are today prevented by this antiquated law from monitoring TV news coverage from their home states while working in their offices in Washington, D.C.

Satellite TV technology can provide local TV channels to consumers across the entire United States, rather than the limited reach broadcast channels have today. EchoStar has committed, following approval of its pending merger with Hughes Electronics Corp., to offer local TV channels in all 210 television markets in the United States, including Alaska and Hawaii. By combining this plan with the ability to offer distant network TV stations, consumers would have greater choice in what news and information they receive.

Question 9: Mr. Ergen and Mr. Hartenstein, is it true that, notwithstanding the commitment you made to this Committee at the hearing, that even if the merger is approved you do not intend to carry all local channels in all 210 DMAs in the event that your challenge to the constitutionality of SHVIA is successful in the Supreme Court? Would you both please state specifically which DMAs and which channels you do not commit to carrying in the event your legal challenge is successful?

Answer: Please see the response to Senator Kohl's fourth question, above.

Question 10: Mr. Ergen and Mr. Hartenstein, please provide your estimate of how much it would cost each firm for satellites to provide local into local service to all 210 DMAs without the merger, and then in a separate analysis, with the merger.

Answer: In order for DirecTV and EchoStar to provide local-into-local programming to all 210 DMAs after the merger, we will use two DirecTV satellites (4S and 7S) and two EchoStar satellites (VII and VIII). EchoStar VII and DirecTV–4S are already in orbit. EchoStar VIII has an anticipated launch date in June, and DirecTV–7S is scheduled for launch in late 2003. These satellites are designed to devote a total of 20 frequencies to spot beams for local-into-local programming. Without the merger, these satellites largely would serve the same DMAs with duplicative service, but with the merger, they will be able to provide complementary service to different DMAs.

EchoStar does not have access to the detailed cost information for DirecTV's satellites. In addition, the precise costs of EchoStar's satellites is confidential and proprietary, not only to EchoStar but also to our vendors. However, industry experience is that advanced DBS satellites generally cost approximately $250 million each to design, construct, insure, and launch.

In addition, if the merger is consummated, EchoStar and DirecTV plan to construct and launch a fifth satellite, tentatively named New EchoStar 1. Based on preliminary analysis, this satellite is expected to cost approximately $300 million total, and will use 8 frequencies for spot beams.

Without the merger, it would not be feasible for EchoStar to serve all 210 DMAs. It would require the construction of at least three satellites, to duplicate the coverage of the DirecTV 4S and 7S satellites, as well as the New EchoStar 1 satellite, and to provide appropriate back-up capability. Based on EchoStar's experience with EchoStar VII and VIII, it estimates that these satellites would cost a total of approximately $750–$800 million dollars, and will need to use approximately 18 DBS frequencies.

Without the merger, in order to free up the 18 additional frequencies needed to provide local programming service to all 210 DMAs, EchoStar would have to cut the equivalent of approximately 180–200 nationwide standard definition programming channels for its service, well over half of what it currently offers. Obviously, EchoStar does not consider this a realistic option. Not only would such significant cuts in EchoStar's national programming immediately cause numerous subscribers to leave DISH Network service for cable and other MVPD subscribers, but it would prevent EchoStar from attracting new subscribers. This would be true nationwide, including in those DMAs where EchoStar added local programming. EchoStar would also have to consider the significant on-the-ground costs of providing local programming, including backhaul, which is much more expensive on a per-subscriber basis without the combined subscriber base created by the merger. While local programming would, all other things being equal, make EchoStar more competitive in the MVPD marketplace, losing such substantial portions of EchoStar's channel line-up in order to provide local programming for more communities would be strong, net loss for EchoStar's competitiveness, and thus would leave consumers more at the mercy of the large cable MSOs.

Question 11: Please provide specific bases for the estimates, and any assumptions made in those estimates, and supply any supporting documentation. Please list every satellite you use in creating each of those estimates, and state the cost of each.

Answer: Please see above.

Question 12: Mr. Ergen and Mr. Hartenstein, please state, for each of you separately, how many DMAs you will and how many you could serve using your current and planned satellites not counting the newest satellite you now propose, and when each of those satellites will or could begin that service. Please be specific, answering for each current and planned satellite and explaining if any of them would be used in conjunction with other satellites to achieve that result.

Answer: EchoStar's fleet of satellites currently in use, EchoStar I though VI, currently serves 36 DMAs with local-into-local programming. None of these satellites has spot-beaming capability. The number of DMAs that could be served by these satellites depends on a number of factors, including the number of local channels per DMA, and the number of other types of channels carried. Based on these factors, EchoStar has struggled to carry local programming to the 36 DMAs it currently serves, requiring, among other things, increases in compression that have reduced audio and video quality below optimal levels.

EchoStar VII has already been launched, and is expected to go into service in mid-April. EchoStar VII is capable of carrying approximately 250 local channels with its spot beams. EchoStar VIII has an anticipated launch date in June 2002, going into service in August. EchoStar VIII is also capable of carrying approximately 250 local channels with its spot beams. Because of limited spectrum available to EchoStar, use of these satellites will require that EchoStar reduce the amount of programming that EchoStar's other satellites carry. However, with these two new satellites in conjunction with existing satellites, EchoStar plans to offer service to the 36 DMAs currently served, plus approximately 14 new DMAs, for a total of about 50.

The precise number of DMAs served, and how these DMAs will be allocated between EchoStar's satellites, has not been decided, and will depend on a number of factors, including EchoStar's ability to negotiate retransmission agreements, the number of channels in the DMAs served, consumer demand in different DMAs, EchoStar's ability to offer complimentary sports programming, and the outcome of regulatory proceedings before the FCC concerning the must-carry rules.

Question 13: Mr. Ergen and Mr. Hartenstein, if you desired, could you change the design and construction of certain of your current satellites to carry even more local into local stations than stated in the previous response? If so, please explain how, the number of additional stations that could be carried, the current cost of each of those satellites, and the cost as changed to carry the additional stations that could be achieved.

Answer: It would be impossible to change the design or construction of EchoStar's seven DBS satellites orbiting over 20,000 miles above the earth.

EchoStar has one DBS satellite, EchoStar VIII, that we hope to launch in June. The construction of the satellite is essentially complete, and all that remains is testing, finishing touches, and moving the satellite to its launching facility in Kazakhstan. At this stage, it would be impossible to change the design or construction of EchoStar VIII.

Question 14: Mr. Ergen, in press conferences held shortly before the hearing, I understand you and Mr. Hartenstein indicated that you would dedicate 28 of the merged company's frequencies to your Local Channels, All Americans plan, but your satellite application for New EchoStar 1 states that those frequencies will also be used for "development and expansion of new services." You also state that "New EchoStar may sell and/or lease a portion of its capacity on a non-common carrier basis for complementary business purposes." How many of those 28 frequencies are necessary for local channels, and what are these "complementary business purposes?" [In the Matter of EchoStar Satellite Corporation and Hughes Electronics

Corporation for Authority to Launch and Operate New EchoStar 1 (USABBS 16), Application for Authority to Launch and Operate New EchoStar 1 at 10,13].

Answer: It is not possible to predict precisely how many stations will be carried on the new platform, because there are a variety of factors outside of our control. New stations may begin service, and old ones may go out of business. We also cannot anticipate precisely how many stations will elect for must-carry status, nor the progress of negotiations for retransmission agreements. In addition, we cannot determine how many stations will provide a sufficiently strong signal to our local collection facility.

However, if the merger is approved, we anticipate the broadest possible local programming service to all 210 DMAs. Up to 28 frequencies will be required to provide local-into-local programming service to all 210 DMAs in the United States, including appropriate backup capability. We have no specific plans for any other uses of New EchoStar 1 other than local programming, but we hope to eventually offer other localized programming and services, such as interactive applications or advertising. Depending on the number of channels ultimately carried and technological progress on compression and other technologies, it may be possible to use a fraction of the capacity on New EchoStar for these purposes.

Question 15: Mr. Ergen and Mr. Hartenstein, if you did not merge, would you (and answer for each of you separately) employ any technological innovations or improvements in your service over the next 7 years?

Answer: Since its inception, EchoStar has devoted enormous resources to improving the efficiency of its DBS systems in order to become more competitive, and to offer consumers more services and more value. However, EchoStar is aware of no technology that would increase substantially the amount of national and local programming (including new services) that EchoStar can offer consumers in a manner that makes any business sense.

8PSK Modulation & Turbo-Coding

EchoStar has examined the possibility of using 8PSK modulation and turbo-coding to improve spectrum utilization, and has concluded that it would be impractical to incorporate these features on a system-wide basis. EchoStar continues to evaluate the use of 8PSK modulation and/or turbo-coding on a more limited basis in providing HDTV service.

System-wide conversion to 8PSK modulation and/or turbo coding is not feasible. First, the older satellites in the EchoStar fleet lack the power to transmit 8PSK signals effectively. Second, even for satellites that are powerful enough to broadcast 8PSK effectively, the capacity gain from converting to 8PSK and/or turbo coding would be relatively small. In contrast to these small benefits, transmitting with 8PSK or turbo-coding would entail enormous transition costs, in that the conversion would require that customers' existing set-top boxes be replaced with new, more costly models in order to receive the signals. In light of the limited benefits of 8PSK modulation and turbo coding, the cost of a system-wide swap-out of set-top boxes and a launch of new, higher-power satellites simply is not practical from a business perspective.

In contrast, EchoStar continues to consider using 8PSK or turbo coding to deliver bandwidth-intensive HDTV and possibly Video-on-Demand ("VOD"). This focused application of the technology is more likely to prove practical than a system-wide conversion. First, the transition costs would be less than those incurred in a system-wide conversion, as there is today a relatively small number of HDTV subscribers with specialized HDTV receivers, which limits the number of customers who would need new set-top equipment (HDTV requires a specialized receiver in any event; VOD will also require a specialized receiver). In addition, HDTV and VOD could be carried on newer, higher-power satellites, and thus the introduction of the new technology solely for HDTV and VOD would not require replacement of the existing lower power satellites. At the same time, because of the large amount of bandwidth consumed by each HDTV channel, a small percentage gain in capacity might still be sufficient to justify these more modest transition costs. If EchoStar decided to adopt this measure, it would provide new, 8PSK and turbo-code compatible set-top boxes to current HDTV and future VOD subscribers, thereby reducing the amount of spectrum that would be used in order to offer HDTV or VOD, and/or it may be possible for EchoStar to provide more HDTV or VOD service in the same amount of spectrum.

Compression

EchoStar has improved its compression system over time to allow for more television channels in its authorized DBS spectrum while maintaining the highest quality audio and video. However, in order to meet regulatory must-carry requirements pending launch and operation of its new spot-beam satellites, EchoStar was required to carry as many as 12 television channels on some transponders. This has reduced quality levels below optimum. EchoStar is continuously evaluating new technologies and working with its vendors, but it anticipates that near-term improvements will only help to make up for the lost quality; they will not help to increase capacity.

In addition to EchoStar, a number of independent firms compete to deliver better digital video and audio compression technologies for a wide range of applications, including DBS service. EchoStar is continually exploring new means of squeezing more programming out of its limited bandwidth. Unfortunately, it appears that the rate of compression improvements is slowing due to the physics of the problem. EchoStar continues to pursue developments in this area but believes that only small incremental improvements are likely in the foreseeable future.

MPEG–4

EchoStar and DirecTV both use the MPEG–2 video encoding standard. Some merger opponents have suggested that a newer standard, MPEG–4, could increase the capacity of each company's DBS system. MPEG–4 is not practical for EchoStar from a business perspective for several reasons. First, while MPEG–4 may offer significant capacity advantages over MPEG–2 at lower quality levels suitable for streaming over the Internet, it does not offer significant capacity advantages over MPEG–2 at the higher quality levels necessary for EchoStar and DirecTV to compete with cable. Second, use of MPEG–4 would require new set-top boxes for each consumer. A system-wide swap-out of set-top boxes is not practical from a business perspective given the limited—if any—consumer benefits. Third, the swap-out would be particularly expensive because MPEG–4 compatible hardware is immature.

Question 16: Specifically address whether you would employ turbo coding, 8PSK Modulation, MPEG–4 or other compression techniques, personal video recorders, spot beams, or any other techniques to use spectrum more efficiently. If your answer for any of these technologies is that you do not expect to employ it over the next 7 years, please explain in detail the reasons for that decision.

Answer: Please see the response to the question immediately above.

Question 17: Attorney General Nixon and Mr. Pitofsky, I have heard that sensitive competitive information, such as specific programming contract terms, may have been disclosed by DirecTV to EchoStar in a manner that is not traditionally part of the normal due diligence process of a merger. I have also heard that some DirecTV customers have been contacted about needing to switch to EchoStar now, in advance of merger approval, to keep uninterrupted television service, reportedly by postcard, phone, and advertisement. Mr. Nixon and Mr. Pitofsky, would either of these activities, if true, raise concerns in the minds of antitrust enforcers as they review this merger?

Answer: Sensitive terms of programming contracts have not been shared between the companies. On the advice of counsel, those economists, consultants, and outside lawyers retained in connection with the merger have had access to some competitively sensitive information, as necessary to prepare filings to the FCC and materials for the Department of Justice. For example, it would be impossible to analyze cost savings made possible by the merger without access to cost information from both companies. Sharing such information with outside lawyers, economists and consultants, with appropriate safeguards to prevent inappropriate disclosure of such information to the other company, is both common and entirely proper.

We have investigated the allegations of sales techniques described in your question, and are unaware of any such conduct. EchoStar and DirecTV continue to compete independently as is proper prior to merger consummation, and have established safeguards to ensure that we will continue to do so.

Question 18: Mr. Ergen, I am a bit confused about your claim that this merger is necessary for you to provide broadband Internet service. In EchoStar's FCC application, it is asserted that one of the most significant benefits of the merger is that it will "free up" the spectrum necessary for broadband Internet provision. In fact, Dow Jones News Service reported on March 5th—the day before our hearing—that you have stated that you "won't keep pumping funds into developing satellite broadband unless the merger closes." ["EchoStar Says Has Talked To Potential Broadband Partners," Dow Jones News Service, March 5, 2002]. Confusingly, however, the Wall Street Journal reported—also on March 5th that you are currently in negotiations with SES Global to create a joint venture that would be able to serve the entire "anticipated U.S. residential broadband market." [Andy Pasztor, "EchoStar, SES Discuss Venture For Internet in U.S.," The Wall Street Journal Europe, March 5, 2002]. Notably, SES already controls the orbital slot proposed to be used by the joint venture. Could you please harmonize for me these seemingly contradictory actions and statements? In particular, if a single satellite in the orbital slot controlled by SES will be capable of providing nationwide broadband service, doesn't this completely undercut your arguments that this merger is necessary to the deployment of satellite provided broadband?

Answer: Although spectrum—and more particularly, capacity—constraints do affect the availability of satellite broadband service, the primary obstacle to successful deployment of consumer satellite broadband today is cost. To use the available spectrum efficiently, a satellite broadband provider must make enormous upfront investments in complex satellite systems and other technology. After investing the hundreds of millions, even billions of dollars necessary to build such a system, the high cost of consumer equipment forces a consumer-oriented satellite broadband provider to incur equally substantial subscriber acquisition costs. After making these investments, the consumer business can become economical only if it is able to reach a scale of at least five million subscribers. As a result, satellite broadband Internet is an expensive, high-risk undertaking. Even well financed satellite broadband ventures with experienced backers have been forced to scale back their plans, or even abandon them altogether. For example, Astrolink recently announced that, after having built 90% of its first Ka-band spacecraft, and after having spent about $710 million on its Ka-band system, it was terminating its spacecraft contract with Lockheed Martin, as it found itself unable to finance the remaining cost of implementing the Astrolink broadband system. Faced with these same market uncertainties and financial pressures, EchoStar thus far has taken a cautious approach to satellite broadband. Indeed, EchoStar does not provide the service itself, but rather has invested in StarBand, from which EchoStar purchases the satellite broadband service that it then sells to its DBS customers.

Similarly, EchoStar's plans in the Ka-band are also modest—EchoStar will deploy a hybrid Ka/Ku band satellite later this year, and has not yet determined whether it will use that satellite's limited Ka-band payload for broadband at all. Even these cautious steps have been costly. The StarBand business model has proven to be unprofitable for

EchoStar and for StarBand, and simply is not economically viable today. Without the cost savings and efficiencies created by the merger, it is questionable whether the enormous investment in satellite infrastructure, research and development, and subscriber acquisition necessary for a consumer-oriented satellite broadband service can be justified from a business perspective.

Nonetheless, EchoStar recognizes the importance of a satellite broadband alternative. Cable companies already offer an MVPD/broadband bundle that is attractive to consumers, and in particular to EchoStar's best customers. EchoStar must have a similarly attractive service offering to compete. To that end, EchoStar has continued to explore various means of providing broadband service to its DBS subscribers. Those efforts have included discussions not only with satellite companies like SES Americom, but also with various terrestrial broadband providers.

All of those negotiations, including any talks with SES Americom, remain very tentative. To the extent that it is possible to comment on them at all, it is important to note that a joint venture with SES Americom, involving a single orbital slot, would not have enough capacity to achieve the economies of scale necessary to provide an affordable consumer broadband service. Only the merger would provide EchoStar with the necessary slots to reach that scale. However, a venture with SES Americom likely would be an improvement over the current platform, in which StarBand leases individual Ku-band transponders on two satellites owned by third parties. Consistent with EchoStar's cautious approach to satellite broadband to date, a joint venture with a satellite firm that controls the orbital slot to be used would permit EchoStar to continue exploring the viability of satellite broadband, without bearing an excessive degree of risk. In the meantime, these smaller scale broadband efforts would allow EchoStar to get keep its foot in the door in competing against cable, while increasing its own experience with, and consumer acceptance of, satellite broadband Internet. At the same time, however, satellite broadband would remain a high-priced, niche service, beyond the means of most consumers, and still not competitive with cable modem or DSL. Only with the merger will it be possible to deploy on a timely basis an advanced residential service of mass scale and appeal at an affordable price.

Question 19: Mr. Kimmelman, as I understand your position, you claim that EchoStar and DirecTV are not in the same antitrust market as cable because even where they are all available in a television market DBS competition has not constrained cable prices sufficiently. However, you also appear to argue that one of the most substantial benefits of the merger would be increased competition between cable and DBS, and the concomitant restraints that would be placed on cable pricing by the DBS service provided by the merged entity. I find this reasoning confusing from both a legal and practical perspective. Could you please explain in more detail how decreased competition in one market will in increase competition in an allegedly separate market? Additionally, could you please cite any past instances where the courts, the Department of Justice, or the FTC has found that such relationships between markets do in fact exist or what relevance they have for purposes of antitrust review?

Responses of Charles W. Ergen to a question submitted by Senator Ted Kennedy

Question 1: What impact, if any, would approval of the proposed merger on efforts to bridge the digital divide by providing greater high speed internet access to underserved urban and rural communities.

Answer: The approval of the EchoStar-Hughes merger will have a truly profound effect on the availability of broadband service in underserved and rural communities.

As I mentioned in my testimony before the Committee, approximately 40 million households, primarily in rural America, are "digital have-nots." Because of the enormous expense of rolling out terrestrial technology to wire rural homes, neither cable broadband nor DSL is likely to serve those consumers in our lifetime. Satellite broadband, in contrast, can be delivered anywhere and everywhere in the country, the moment the satellite is deployed. It costs no more to deliver satellite broadband to the most rural parts of America than it does to deliver it to Boston. Satellite broadband is the best hope to bridge the digital divide in America.

For that hope to be realized, however, the cost of satellite broadband must be brought down considerably. Today, the enormous fixed costs and expensive consumer equipment required for satellite broadband service prevent Hughes's and EchoStar's offerings from being anything more than high-priced niche services. Neither is competitive, in terms of price or service, with current cable broadband products. The only way for this market to change, and satellite broadband to become a meaningful, affordable option for rural and for urban consumers, is by increasing satellite broadband to a scale many times the current number of current customers.

It is not likely that either company standing alone could deploy on a timely basis an advanced residential service of mass scale and appeal at an affordable price. Thus, Hughes's planned SPACEWAY Ka band system has been developed with a focus on larger commercial, or so-called "enterprise," customers, while EchoStar's Ka band program has remained modest in scope.

By contrast, approval of the merger will have a true "zero to one" effect in many rural and underserved areas. It will give the merged company the spectrum capacity, subscriber base and economies of scale needed to ensure that next-generation satellite residential broadband service becomes a reality everywhere in the United States, rapidly and inexpensively, in a reasonable time frame. Given that there are large portions of the country that will not be able to receive cable modem or DSL service any time soon, deployment of a competitively-priced satellite broadband service will result in enormous consumer benefits. In addition to the obvious benefit of simply having the same high speed Internet access that urban consumers currently enjoy, the merger promises additional benefits uniquely well suited to rural communities, including local television channels for consumers in remote areas, containing local weather, news, and community information, as well as telemedicine programs, connectivity for rural doctors, and distance learning.

Responses of Charles W. Ergen to questions submitted by Senator Herbert Kohl

Question 1: At the hearing we discussed your intention to implement uniform national pricing so that rural customers are not disadvantaged by the rural pay TV monopoly created by this merger, which you promised to implement in an enforceable decree with the government. I asked you if this would prevent EchoStar from responding to lowered cable pricing in a few specific urban markets, and you said you would try to draft a decree that would permit EchoStar to do so. But if the decree permits you to lower prices (or offer rebates) in a few urban markets because of competitive conditions in those markets, then you will no longer offer uniform national pricing, and rural consumers will not fully realize the benefits of competition in those urban markets. Alternatively, if you are strictly bound to a national price, the fact that you would have to lower prices nationwide might serve as a deterrent to competing by lowering prices in one, small super-competitive market. In other words, you might choose to lose a small number of customers in one market, rather than lower your profits across the board. Please clarify what exactly EchoStar can agree to with regards to a national pricing plan. Would you agree to a mandate to maintain level pricing in all markets? And if you were to lower prices in one market to respond to local competition, would you agree to be required to lower prices in all markets you serve? You also mentioned at the hearing alternative pricing systems that you had seen. Could you elaborate on them and explain why and how they might address the dilemma I outlined above?

Answer: In answering this question I need to emphasize three points at the outset. First, EchoStar's product and our pricing is (and always has been) national in nature. As you know, EchoStar's DBS service is sent from the same satellites to consumers all over the United States, and EchoStar has always charged the same national prices for the same services.[1]

Second, EchoStar believes that the national price is an important economic feature of the MVPD market, one that EchoStar needs and intends to preserve, and one that is valuable and worth preserving. EchoStar believes that the benefits of enhanced competition that the merger would generate make the national pricing scheme even more valuable as a source of benefit to consumers nationwide.

Third, EchoStar's national price itself generates substantial benefits for rural consumers by affording them the benefits of the competitive dynamics in other areas of the country. Nevertheless, we believe that the concerns of rural consumers are important ones. We have thought through those concerns and are sure that there are many solutions that are workable to address them. We will be working on such solutions with the Department of Justice, the FCC, and the States and will be pleased to present them to Congress following that process.

There are a number of reasons that EchoStar has always used national pricing for this national service. First, it provides for efficient marketing, advertising, and retailer relationships, and allows us to emphasize the price/quality advantages we have traditionally maintained over cable systems throughout the country. Second, there would be significant costs involved in implementing regionally variable pricing, including massive changes to our customer service and billing systems. It would be extremely difficult profitably to identify and discriminate against those without good alternatives, while not driving away potential subscribers (as well as EchoStar's own customer base) with good alternatives. Because customers in non-cable areas make up such a small portion of our subscribers, and an even smaller portion of potential subscribers, it would not make economic sense to invest the significant sums needed to implement regional service pricing in order to raise rates for those consumers. Third, national retailers prefer to be compensated uniformly on a national basis, and therefore, efforts to compensate them differently based on whether, for example, a customer is passed by cable are resisted by the national retailers. Local and regional retailers are also very resistant to price discrimination schemes that require them to treat certain customers differently, both because it makes their advertising, promotion and sales efforts more difficult, and because it endangers their goodwill with customers. Fourth, efforts to discriminate against rural subscribers would undermine the hard work and dedication we have put into earning our reputation for providing value and customer responsiveness. This reputation for fair dealing is extremely important in our efforts to compete for cable subscribers, who are repeatedly subjected to price increases and poor service. Finally, such discrimination would also undermine the integrity of the mechanism that EchoStar has found is optimal for competing on a nationwide basis: a highly competitive national price.

Because the cable companies control approximately 80% of the pay television subscribers in this country, we naturally have focused on acquiring cable subscribers as our biggest growth opportunity. In running special promotions to attract new subscribers, we have focused our efforts on nationwide promotions that are available to all consumers in the United States. A good example is our "I Like 9" promotion that we ran last fall and winter. This program, which we offered both directly and

[1] Our offering in Alaska and Hawaii has historically been somewhat different from our other offerings because some signals are sent via satellites that subscribers there could not access. Recently, however, America's Top 100 at its standard national price has been made available to new Hawaiian subscribers. This issue will be resolved with the increased capacity resulting from the merger.

through our retail network, allowed new subscribers to receive EchoStar's AT 50 program for only $9 a month for a year with the purchase of a new system. Equivalent discounts were available for purchasers of other packages. This was an effective promotion both because it was clearly a better economic deal than any major cable system was offering, and because it could be advertised efficiently and supported nationally. The vast majority of our promotional efforts have been devoted to these national programs. EchoStar competes with literally hundreds of different cable systems across the country, each with its own widely varying packages and pricing. EchoStar's philosophy has always been that we need to offer a substantially better price/performance offers than every one of these companies in order to overcome their advantages of incumbency and to expand our own subscriber base.

We sometimes target competitors, like particular cable companies, as part of our marketing strategy. For example, when a cable company raises its prices, we sometimes respond with a targeted marketing campaign to attract new subscribers that uses dissatisfaction with the price increase to focus consumer attention on our product. Almost all of these programs offer the same basic economic terms as our national program, but occasionally we have offered more favorable short term incentives, for example, lower equipment prices or free programming for a limited period of time, that were not offered as part of the national package. A narrowly limited local program, of course, does not discriminate against rural customers anymore than it discriminates against all the urban customers in other areas who cannot take advantage of it. The subscribers we gain from these locals promotions amount to a very small part of our business. In fact, these promotions are often done simply to test a consumer offer on a local basis before rolling out nationally.

We think that these programs are good for consumers and that they do not discriminate against rural or any other class of consumers. Moreover, while we do not believe that a decree is necessary under the competitive circumstances of the MVPD industry, we are more than willing to work with the appropriate authorities to create a consent decree that would ensure that all Americans receive the competitive benefits of our existing nondiscriminatory pricing practices (along with the increased output and other benefits of the merger) while retaining our existing flexibility to engage in these kinds of narrowly limited local activities. To be effective a decree would not need to do more than confirm our existing procompetitive practices, including the flexibility reflected in them. Such decree would not allow discrimination and would not be considered unduly "regulatory."

With regard to the specifics of your questions, the initial issue raised is whether allowing EchoStar any flexibility to meet competition in local areas would subject rural customers to discrimination in a way that would undermine the benefits of the national pricing commitment. EchoStar is confident that it would not. If EchoStar engages in particular competitive activity in a particular locality, in order to meet competition, take advantage of a cable price increase, or simply test a marketing concept, this activity clearly would not discriminate against rural subscribers without access to cable because those subscribers would continue to receive the same competitive benefits as all other subscribers outside that particular locality, most of whom would not be rural and most of whom would have the option of switching to cable.

As explained above, this is demonstrated by present practice. Over the past several years, EchoStar has been free to engage in such competition in particular local areas. While EchoStar has used that freedom to engage in such competition, it has only done so on rare occasions - because its business is based on the offering of a national price. Whenever EchoStar has engaged in such competition, every EchoStar customer outside the narrowly targeted local areas has been treated precisely the same. If, for example, EchoStar offered a better-than-national promotion focused on the Washington area, rural customers might not be able to take advantage of that promotion, but neither would customers in New York or Los Angeles or other major DMAs. Because EchoStar must remain competitive in all major DMAs, and needs to offer competitive national prices and promotions to do so, rural customers will be treated the same as customers in the competitive DMAs, just as they are today. Under these circumstances, it is clear that rural consumers would suffer no prejudice for "discriminatory" treatment, and would be much better off due to the additional programming and services that they will have available.

Nor, importantly, has EchoStar's present freedom to engage in such competition been reflected in other forms of discrimination. Indeed, EchoStar's principal present competition in rural areas, Pegasus, as well as other NRTC affiliates, has long charged significantly higher prices than EchoStar - both on a programming/service and net effective price to the consumer basis. That is, Pegasus has charged rural consumers, some of whom lack the alternative of switching to cable, much higher prices than EchoStar does. For example, Pegasus charges $34.99 per month for its

"Total Choice" package of 105 channels - the same package for which DirecTV charges $31.99 - yet EchoStar charges one national price of $31.99 for its equivalent 100 channel package, regardless of whether it competes against Pegasus or DirecTV. EchoStar has never departed from its national pricing principles to exploit that large differential and raise its price to consumers in rural areas who lack access to cable. There is nothing preventing EchoStar from doing so except the fact that, as EchoStar has articulated, it is critically important to EchoStar's business to maintain a national pricing regime.

The danger raised by opponents of the merger, that EchoStar could somehow raise the national price above competitive levels, while responding to more vigorous competition on a local level, is therefore not a realistic concern given the facts about this industry and EchoStar's historical actions. Every major cable company and many if not most of the smaller ones have upgraded and are continuing to upgrade their infrastructure to digital, and are increasing their competitive pressure on DBS through improved products and services and cable modem bundling. The argument that EchoStar could manipulate its national price to exploit the relatively small number of consumers without good cable alternatives, while maintaining its competitiveness against these competitors with access to the great majority of its potential audience (as well as EchoStar's existing customer base) is simply wrong. As described above, due to NRTC's high pricing in rural areas, EchoStar has the opportunity to engage in that kind of pricing today, and has had the opportunity for some time, but has consistently declined to use that opportunity because it would damage the core of its business.

Thus, EchoStar believes that the facts demonstrate that no decree of any form is needed to protect the current national pricing regime from being evaded to discriminate against rural customers. Nevertheless, EchoStar is prepared to work with the appropriate authorities to fashion an administrable decree if such a decree were viewed as helpful reinforcement to continued competitive national pricing. EchoStar is agreeable to such a step because it does not seek through the merger to depart from its current national pricing practices and, indeed, because it believes that those national pricing practices are extremely valuable to competition and consumers.

The next question posed is whether such a decree, by limiting EchoStar's flexibility to engage in local promotions, would inhibit EchoStar from engaging in socially and economically valuable competition. EchoStar does not believe that an appropriate decree would need to eliminate all such flexibility; today EchoStar enjoys just such flexibility and does not use it to discriminate or otherwise undermine the national price even when it is has the clear opportunity to do so, as described above. However, the principal point is that EchoStar in the vast majority of instances deals with competitive pressures from various providers by factoring them into its overall national price. Our analyses suggest that the largest markets are the most competitive, which are also where the cable companies have improved their offerings the fastest. EchoStar cannot ignore these important markets in setting its national price. Indeed, these highly competitive markets are the ones in which we foresee the greatest opportunity for growth; they are also the ones where competition for EchoStar's own customer base is the sharpest. Thus, the economic realities that drive EchoStar to competitive national pricing are not a detriment to consumers or competition. To the precise contrary, this dynamic ensures that consumers across the country will receive through the national price the benefits of some of the most competitive dynamics in the more competitive regions in the country. In effect, the national price "exports" competition, including to customers in rural areas that lack access to cable. By so "exporting" competition, the competitive national price also amplifies competition in all areas of the country, for the benefit of cable consumers as well as DBS consumers. To the extent that a decree addressed limits on flexibility, it would not detract from competition but instead would simply reinforce this overall positive impact on competition nationwide. At the same time, it would be unnecessary to eliminate all flexibility to compete locally, for the reasons stated above.

Question 2: Please provide any data which demonstrates that satellite television disciplines cable rates in those markets where local-into-local service is offered.

Answer: Local-into-local service makes DBS more competitive with cable, and therefore allows DBS to exert more price pressure on cable. The Declaration of Dr. Robert D. Willig ("Willig Declaration "), submitted by Hughes and EchoStar to the Federal Communications Commission in support of the proposed merger on February 25, 2002 makes this clear:

Lack of local channels had placed DBS at a competitive disadvantage to cable.[2] For example, according to a January 2000 survey by Forrester Research, 47 percent of cable subscribers would not subscribe to satellite television because they do not "want to lose reception from the major networks (e.g., ABC, NBC, CBS)."[3] The fact that consumers value carriage of local channels as part of a DBS offering has been clearly demonstrated in the DMAs in which EchoStar and DirecTV have already offered local channels. For example, after launching local service, EchoStar's DMA-level subscriber growth rate increased by an average of 30 percent in the 36 local markets it introduced local service. Similarly, when DirecTV rolled out its local service in 41 markets, its subscriber growth rate in those markets rose by an average of 17 percent.[4] It is important to note that the increase in DBS subscriber growth is evidence that the introduction of local channels in particular areas has provided direct benefits to consumers and has additionally placed more competitive pressure on cable in those areas. New EchoStar's commitment to expand the provision of local channels to every market will therefore introduce additional competitive pressure throughout the country to the incumbent cable providers.

Willig Declaration at ¶ 17.

Similarly, the FCC has highlighted the role that local-into-local service has played in promoting competition between DBS and cable services. In its 2000 Report on Cable Industry Prices, for the first time, the FCC concluded that DBS puts statistically significant downward pressure on demand for cable services. The report states that this "result is different from our earlier finding reported in the 1999 Price Survey Report, which showed DBS exerting only a modest influence on the demand for cable service. One explanation for the increased importance of DBS as a competitor of cable is the passage of the Satellite Home Viewer Improvement Act (SHVIA) in November 1999, which eliminated the prohibition on DBS delivery of local network signals into their local television markets. The two DBS operators have begun offering local signals in many major television markets thus more closely matching services provided by cable operators." *See Statistical Report on Average Rates for Basic Service, Cable Programming Services, and Equipment*, Report on Cable Industry Prices, FCC (2001), at ¶ 53.

Notably, the growth and increased competition described by Professor Willig and the FCC occurred at a time when EchoStar still did not offer WB, UPN, PBS, and other popular local channels that we now do offer. Moreover, by allowing New EchoStar to serve all 210 DMAs with local programming, the merger will enable, for the first time, national marketing that touts local channels. National marketing can more efficiently and effectively reach the smaller DMAs, even those that may experience less significant subscriber increases from local programming. Moreover, the national coverage of local programming will accelerate the process through which DBS technology becomes more broadly accepted and ubiquitous. As more and more consumers come to understand the benefits of this once unfamiliar product, the costs incurred in educating them about the product are reduced.

In addition, in the absence of the merger, the pressure that DBS firms exert on cable providers to constrain prices, to innovate, and to invest and increase capacity will diminish. The proposed merger will allow New EchoStar to expand its product offerings and will likely force cable systems to continue to upgrade their network infrastructure. Relative to today's cable infrastructure, an upgraded cable system will exert even more competitive pressure on DBS pricing. In other words, the proposed merger will help to perpetuate the virtuous cycle of competitive innovation.

Question 3: What is EchoStar's current channel capacity based on the satellites currently in deployment? Specifically, how many satellites - and what type of satellite (CONUS or spot-beam)—does EchoStar currently have deployed and at which orbital slots? Please indicate how many satellites EchoStar plans to launch in the

[2] The Department of Justice concluded that, "to the extent that DBS cannot offer subscribers local broadcast channels, it has a competitive disadvantage relative to cable because many viewers demand local news and weather and popular network programming." See Comments of the U.S. Department of Justice, *In the Matter of the Application of MCI Telecommunications Corporation and EchoStar Communications Corporation*, File No. SAT–ASG–19981202–00093, January 14, 1999, available at http://www.usdoj.gov/atr/public/ comments/2173.htm.

[3] Author's calculation based on Forrester Research, Technographics® Survey, January 2000.

[4] The impact of local service on subscriber growth was estimated after controlling for DMA-level economic conditions (proxied for by the unemployment rate in those states where the DMA is located), the previous month's penetration rate of each DBS provider, national business cycle and other factors that affect all DMAs each month, and persistent differences in DMA-level subscriber growth rates.

future and to what degree these additional satellites will increase EchoStar's channel capacity. Finally, please explain and detail—based upon EchoStar's current licenses and technological capabilities and not upon capital needs—the full, potential channel capacity of EchoStar without a merger. Please explain how capital needs and economics alter EchoStar's technical ability to fully utilize its total channel capacity.

Answer: EchoStar presently uses six satellites in four orbital locations to provide DBS service. Presently, with an array of national channels and 36 DMAs of local channels, EchoStar's capacity is effectively full, and will only be modestly increased with the use of two new spot-beam satellites.

EchoStar's core services are provided from the CONUS orbital locations at 110° W.L. and 119° W.L. Currently, EchoStar uses three satellites to fully utilize its 50 authorized DBS frequencies there. EchoStar's current transmissions, occupying its full capacity, are as follows:

Orbital Location	Authorized DBS Frequencies	Satellite Name	Frequencies Used	Television Channels	Audio-only Music Channels
110° W.L.	29	EchoStar V	29	285	0
119° W.L.	21	EchoStar IV	7	79	39
		EchoStar VI	14	142	18

In addition to the CONUS capacity discussed above, EchoStar also currently uses three other satellites to provide service to parts of the United States. As the "wing slots" at 61.5° W.L. and 148° W.L. are over the Atlantic and Pacific Oceans, each wing slot satellite can send signals to only part of the United States. EchoStar uses 61.5° W.L. to serve the eastern states, and 148° W.L. to serve the western states. In order to offer consumers nationwide the same programming, EchoStar carries much of the same programming—about 50 international channels, 3 HDTV channels, 1 HDTV pay-perview channel—from each location.

At the 61.5° W.L. orbital location, EchoStar operates one satellite. EchoStar III currently uses more than the 11 DBS frequencies EchoStar is licensed at this location, by use of a Special Temporary Authority ("STA ") from the FCC and a transponder lease arrangement with license-holder Dominion. In addition to Dominion's Sky Angel programming, and the duplicated programming discussed above, EchoStar III carries about 74 local channels for eastern cities. At the 148° W.L. orbital location, EchoStar uses two satellites, taking advantage of both a license and an STA. EchoStar I and II carry about 65 local channels for western cities, as well as the duplicate programming discussed above. In addition, EchoStar also uses its wing satellites for business television service, and occasionally necessary test signals.

All together, these uses represent the full capacity of EchoStar's satellites and FCC authorizations. Indeed, in some respects, EchoStar is beyond its capacity. For example, EchoStar's use of spectrum available through STAB is necessarily temporary. In addition, in order to meet must-carry requirements, EchoStar was forced to increase compression beyond historical levels, causing reductions in video and audio quality below optimum levels.

However, in addition to the satellites currently in use, EchoStar plans to use two DBS spot-beam satellites at the CONUS orbital locations. Currently, EchoStar's satellites send the channels carried in each frequency down to Earth in one large beam. For example, consumers in Salt Lake City and Birmingham receive transmissions containing local channels both areas, even though subscribers in Birmingham cannot view local programming from Salt Lake City, and vice versa. EchoStar's new spot-beam satellites will carry local channels on smaller beams, targeted to smaller geographic areas. Thus, for example, spot-beams will allow one frequency to be used in beams aimed toward Salt Lake City and Birmingham (as well as Alaska and Hawaii). However, the spot-beams must be narrow enough and far enough apart to avoid interference, and spot-beams are only suitable for carrying different channels to different parts of the country (i.e., for local-into-local programming). Moreover, interference prevents the same frequency from being used in both a national beam and a spot beam.

EchoStar's spot-beam satellites are scheduled to begin service this year. EchoStar VII was launched recently into the 119° W.L. location and should begin service in mid-April. EchoStar hopes to launch EchoStar VIII into the 110° W.L. location in June, and should start service about two months afterwards. Each of these satellites is designed to use five frequencies in spot beams, and to reuse each frequency an average of five times. After both new satellites are operational, EchoStar will have the capacity to offer, and plans to offer, local programming to approximately 10–15 new DMAs.

EchoStar has no plans for additional spot-beam DBS satellites, other than EchoStar VIII, and the New EchoStar I, which, if the merger is consummated, will be designed to serve all 210 DMAs. As explained more fully in response to your tenth question, unless EchoStar can take advantage of the spectrum efficiencies created by the merger, further spot-beam satellites would require significant reductions in national programming capacity, which would reduce EchoStar's competitiveness with cable nationally, including in the DMAs where local channels were added.

Question 4: A day after our hearing, EchoStar filed an appeal with the United States Supreme Court to review the must-carry law for satellite that was enacted in 1999. This comes as no surprise, for you alluded to the fact that EchoStar would indeed pursue its litigation to the very end. Let's assume the Supreme Court strikes down the must-carry law. Would a combined-DirecTV still serve all 210 local television markets? And if so, which channels would you serve in those markets?

Answer: If the merger is consummated, the merged company will serve all 210 DMAs with local programming regardless of the outcome of litigation concerning the must-carry provisions of the SHVIA.

If the must-carry provisions of the SHVIA are struck down, then DBS providers would be free to make programming decisions based on consumer demand. However, I have committed, and stand by my commitment, that the merged company would still provide all local broadcast channels that offer meaningful programming. I have offered to sign agreements with local broadcasters to confirm this commitment, and a copy of my recent letter to broadcasters, making that offer, is attached. I expect to have this agreement in final form early next week. Meaningful programming generally means local news, programming, or community information. For example, it is possible that we might not carry some local home shopping channels, especially those that are redundant to channels carried nationally.

Question 5: Today, there is head-to-head competition in two-way broadband satellite service, DirecTV's DIRECWAY and EchoStar' s StarBand. However, you have stated that this merger is needed to launch a competitive broadband service in the Ka-band; yet, both DirecTV and EchoStar have already obtained Ka-band slots from the FCC and devised plans to deploy broadband service separately before this merger was ever announced. Please explain why this merger is necessary to launch a broadband service using Ka-band when both EchoStar and DirecTV already offer two-way broadband services and made plans to further expand this service separately. Specifically with regards to current and future satellite broadband service, please answer the following:

Answer: Satellite broadband today is unable to compete, in terms of price or quality, with cable modem and DSL service, which have nearly ten million broadband subscribers between them. EchoStar, through StarBand Communications, Inc., and Hughes, through Direcway, rely on leased Ku-band transponders to provide an inefficient, high-priced satellite broadband service to no more than 100,000 residential subscribers combined. The current satellite broadband offerings provide lower transmission speeds than cable or DSL, cost more per month, are not appropriate for certain popular applications, such as online gaming and video-conferencing, and require that the subscriber invest almost one thousand dollars in receiving and other equipment that must be professionally installed. Moreover, because of capacity limits of the Ku-band transponders that StarBand and Direcway lease from third-party satellite operators, as well as the practical limits on the number of such transponders that are available, it is not possible for StarBand or Direcway to achieve sufficient scale to spread fixed costs or realize economies of scale in the manufacture of receiving equipment, such that current service offerings could be offered at prices that are acceptable to consumers, or competitive with cable or DSL. Put simply, neither firm has a competitive satellite broadband service, and neither is able to exercise power in any market. Thus, to describe the current offerings as "head-to-head" competitors is a misnomer, and overstates each firm's position.

It is clear that the current services are subject to substantial weaknesses that limit their long-term viability. Consequently, both EchoStar and Hughes have turned to the Kaband in hopes of developing an affordable, competitive satellite broadband service. While use of next generation Ka-band satellites would be superior to the current Ku-band offerings, EchoStar and Hughes believe that a Ka-band satellite broadband provider would still need at least 5 million subscribers to achieve the scale economies in consumer premises equipment, to spread fixed costs, and to justify the substantial investment necessary to develop a competitive consumer broadband service. Neither company standing alone could deploy on a timely basis an advanced residential service of mass scale and appeal at an affordable price.

Although a Ka-band strategy avoids some of the capacity constraints that afflict Ku-band service, it requires the upfront investment of hundreds of millions, if not several billions, of dollars in complex new satellites and technology. The deployment of these Ka-band satellites has taken longer, and will require more capital, than many Ka-band licensees have been able to sustain. Even well-financed Ka-band licensees with experienced backers have been forced to scale back or even abandon their efforts to deploy satellite broadband. For example, Astrolink recently announced that, after having built 90% of its first Ka-band spacecraft, and after having spent about $710 million on its Ka-band system, it was terminating its spacecraft contract with Lockheed Martin, as it found itself unable to finance the remaining cost of implementing the Astrolink broadband system. Moreover, the use of Ka-band satellites does not have any ameliorative effect on the high cost of receiving equipment and satellite modems, and indeed will increase that cost at least in the short term. Unless these equipment and subscriber acquisition costs can be reduced significantly, satellite Internet will not likely grow out of a small-scale, highpriced niche in the consumer market. It is these daunting economic barriers—very large initial investment in expensive satellites coupled with high up front costs to acquire new subscribers—that have stifled continued investment in satellite Internet technology.

As a result of these substantial obstacles to deployment of a consumer-oriented satellite broadband service, along with other factors, HNS has developed Spaceway with a focus on the larger commercial, or "enterprise," customers while EchoStar's Ka-band program has remained modest in scope. Refocusing and integrating these Ka-band programs will provide the opportunity to achieve the required economic scale for ubiquitous residential true broadband service. Combining the broadband services of Hughes and EchoStar will provide efficiencies that will enable New EchoStar to deploy a competitive true broadband satellite offering for the benefit of all U.S. consumers, rural, suburban and urban alike.

Question a: What economies of scale are gained by combining EchoStar and DirecTV's satellite and Ka-band resources?

Answer: The post-merger firm would have a number of advantages that would make it more likely that the necessary investment would be made and the necessary scale realized to offer competitively priced consumer broadband services.

> *Mitigation of capacity constraints*. As noted above, EchoStar and Hughes estimate that at least 5 million subscribers would be necessary in the next five years to justify the significant up front investment and subscriber acquisition costs associated with actually marketing and deploying a ubiquitous two-way broadband service to residential subscribers. Standing alone, neither EchoStar nor Hughes has licenses to operate Kaband satellites in orbital slots close enough together to serve this number of subscribers. HNS holds only two Ka-band licenses that would allow it to serve residential broadband and DBS subscribers with a single dish. Including the license held by VisionStar, EchoStar also has two such licenses; however, as noted above, the VisionStar license is subject to certain conditions that may not be met, and EchoStar consequently cannot be assured that the license will be available to it.[5] Even a state-of-the-art Ka-band spot beam satellite like that contemplated by Spaceway would be unable to serve more than 1 million to 1.3 million subscribers. Moreover, as increasing numbers of broadband applications become available, and existing applications become more popular, residential subscribers will make ever-increasing demands on available capacity, reducing the number of subscribers who can be served by a single satellite.
>
> Only the merger will provide the new firm with the orbital slots necessary to achieve a scale at which satellite broadband can be priced competitively. In addition, an increased number of satellites would allow more efficient allocation of spot beam capacity, and consequently more efficient use of the

[5] In addition to its holdings through VisionStar, EchoStar holds licenses to construct, launch, and operate Ka-band satellites at 83° W.L. and 121° W.L. The slot at 83° W.L, half of which is assigned is assigned to another licensee, Celsat America, Inc., is outside the one-dish arc and therefore is not suitable for residential broadband service. The slot at 121° W.L., half of which also is assigned to Celsat America, Inc., is intended for EchoStar IX, a hybrid Ku/Ka-band satellite, EchoStar IX. As noted above, EchoStar IX has a modest Ka-band payload that could be used for DBS backhaul or a very limited broadband service. EchoStar IX would not permit EchoStar to achieve efficiencies of scale in the cost of service or equipment.

capacity that exists. As a practical matter, the merger will increase the amount of usable capacity.

Larger pool of DBS subscribers. The New EchoStar will have the benefit of consolidating the DBS subscriber bases of both firms. Current subscribers of DBS services are more likely to subscribe to satellite broadband services because they know their households have a clear line of sight to the southern skies and because they have a demonstrated willingness to place the necessary equipment and antenna dishes on their homes. This larger subscriber pool can in turn be leveraged into significant efficiencies: it reduces costs in the manufacture of consumer premises equipment (CPE) by encouraging investment in research and development and manufacturing economies; it spreads fixed costs over a larger base; it allows for more efficient use of satellites and spectrum; and it reduces the cost of capital by lowering the risk profile of a residential satellite broadband venture. Scale is also important because each of the factors described above allows the firm to grow more quickly, and thereby achieve an efficiency feedback loop.

Lower costs. The new firm will have lower overall costs of providing service than two separate firms. It will also make economically justifiable future investment in research and development that would likely be needed to bring down CPE costs. Consumer equipment costs, a substantial factor that differentiates satellite broadband from competing services, remain too high (even with the substantial subsidies already offered by the satellite broadband firms). Substantially increasing the subscriber base will result in manufacturing efficiencies and volume discounts that will reduce these consumer equipment costs. EchoStar and Hughes estimate that it will be necessary to have volumes in excess of a million terminals sold per year to achieve meaningful savings in that area.

Experience with cable modems illustrates the benefits that real economies of scale could bring to satellite broadband CPE. As recently as 1998, cable modems cost $300 a piece, shipping approximately 500,000 units that year. This year cable modems cost about $75, with anticipated shipments of between 10 and 15 million units. Experience with Ku-band LNBFs shows similar economies of scale, with the price of that component falling from approximately $33 in 1993, when only 76,000 units were produced, to approximately $6 in 2001, after cumulative production of between six and seven million units.

Similarly, Ka-band equipment is not yet available in the mass market, and is actually more expensive than Ku-band equipment because of its shorter production history and lower production volumes. The more quickly Kaband service can be introduced, the lower the costs will be. Such higher volumes could also lead to decreases in installation costs and dealer/retailer commissions per subscriber as installers, dealers and retailers become more amenable to lower per-subscriber fees. The installation of one dish during a single visit for DBS and broadband services further significantly decreases total costs.

In addition, the merged firm also would need fewer total backup satellites for its service; with consolidation, only a single backup satellite might be necessary. The merger would also permit rationalization of certain facilities such as billing, gateways, call centers, and network operations centers, all resulting in lower costs, and therefore lower prices to consumers.

Acceptable risk profile. The impediments faced by each company standing alone are so high that their investors today would not likely accept the risk of deploying a full-scale residential broadband satellite service. Simply stated, today Wall Street will not finance a satellite broadband service catering primarily to consumers on a large scale. Illustrating the high-risk profile of such projects today is the fact that none has been funded to completion and deployment. Meanwhile, even wellfinanced ventures with experienced backers have been forced to scale back or even abandon their satellite broadband plans. The perceived risk of a Ka-band project can be brought down to an acceptable level by virtue of the spectrum and satellite capacity efficiencies to be secured by the merger, combined with the cost efficiencies that will flow from the larger pool of DBS subscribers to whom a broadband service can be marketed.

Higher rate of growth. The increased scale of the single integrated firm will provide an immediate increase in the broadband subscriber base, and an increased rate of growth going forward. Rapid growth is critical to effective competition with cable-modem and DSL, both of which are expanding rapidly and are "sticky products" relative to satellite broadband due to the high up-front cost of satellite broadband CPE, as well as the difficulty of changing Internet addresses and reconfiguring one's system. Thus, satellite broadband not only has to achieve the necessary scale, it has to do so in direct competition with cable-modem and DSL providers who have the advantage of incumbency and are building market share far more quickly than satellite providers are able to do. Rapid growth also means a more rapid return on investment, which further reduces costs and mitigates the investment risk associated with the development and deployment of satellites well before they will be called into use.

Enhanced marketing capabilities. New EchoStar would have an enhanced ability to introduce DBS users to a truly competitive satellite broadband service. Because customers are resistant to having two dishes, a service provider would have to supply a single dish that obtains broadband and DBS service from spacecraft in an arc that is no greater than 22 degrees and includes a slot capable of providing DBS service to the entire United States. A single consolidated firm could make more efficient use of the available orbital slots within this arc. The ability to effectively offer both DBS and broadband service is critical to providing effective competition with cable for several reasons. Most significantly, digital cable offers both MVPD and broadband services, and DBS will need to match this offering and provide cross-product discounts and unified billing. In addition, combining broadband service with MVPD service should result in lower churn, which decreases subscriber acquisition costs and allows the firm to take more business risk in investing in the customer.

Elimination of duplicative spectrum use. There is and will be a multicasting market on the data side of the business, and consolidation would eliminate the wasteful duplication that would occur if both firms were multicasting simultaneously the same information.

Question b: When ordered through DIRECWAY or StarBand, how much does the service cost per month, for just broadband and then for broadband and DBS as a bundle? How much does the equipment cost? Please state your suggested retail price, if any, and the actual consumer cost.

Answer: Until this week, when EchoStar ceased selling the StarBand service directly to retailers, EchoStar sold the StarBand service unbundled for $69.99 per month, plus a $5 access fee with a 12-month commitment; installation costs start at $199; the receiving equipment, which includes a modem, transceiver, antenna, DBS LNBF kit, and mounting hardware, had an MSRP of $549. For a subscriber who also signed up for DISH Network Television Programming, installation of the television receiving equipment was free; the combined receiving equipment, which includes a modem, transceiver, antenna, 2 DBS LNBFs and mounting hardware, had an MSRP of $549; and there was no access fee. A subscriber who signed up for America's Top 150 television programming paid $10 less per month for the combined Dish Network and StarBand service. A DISH subscriber also had the option to purchase a Dish 301 standalone receiver for $99 (instead of the usual $199).

Question c: How much would such a service cost if your merger is approved?

Answer: As noted above, EchoStar and Hughes expect that the merger will result in significant efficiencies that will allow the new firm to reduce substantially costs of service and consumer equipment. With these efficiencies, EchoStar and Hughes believe that the merger will allow the New EchoStar to offer a satellite broadband service that competes with cable modem and DSL in price and in quality. Because the new firm will need to grow its broadband subscriber base as rapidly as possible in order to achieve economies of scale, and because the incumbent cable modem and DSL broadband providers will continue to have substantial competitive advantages, New EchoStar will have to price its service aggressively, passing these merger-created efficiencies and cost reductions on to its subscribers. Moreover, because New EchoStar will offer its broadband service at a single national rate, broadband subscribers all across America—rural, suburban and urban—will receive the benefits of enhanced broadband competition.

The lower costs of satellite broadband service promise substantial benefits to consumers. Aside from the obvious benefit of lower prices, an affordable satellite broadband alternative will expand the categories of broadband users, much as narrowband Internet use has expanded dramatically over the last decade. The increased number and variety of broadband subscribers resulting from ubiquitous, affordable satellite broadband will in turn drive demand for additional broadband content and applications, yielding still greater benefits to consumers.

Question d: Describe the satellites that each of the services currently uses to provide broadband access. For each of these satellites please state specifically how many broadband monthly subscribers that satellite can serve.

Answer: In order to provide satellite broadband service, EchoStar, through StarBand Communications, Inc., and Hughes, through Direcway, lease Ku-band transponders on satellite owned by third parties.

Satellite broadband capacity is subject to a number of factors, including the characteristics of the transponders used, the number of transponders available, whether the transponders use spot beams or CONUS beams, the size of any spot beams that may be used, the desired data transmission rate, subscriber behavior (e.g., amount of time online, the size and frequency of data downloads and uploads, demand peaks, etc.), the access scheme and efficiency, and the design of the satellite modem, among others. Assuming current service conditions and reliability, the total subscriber capacity of the Ku-band transponders currently leased by both parties combined is well under half a million subscribers. Although it is possible to add capacity by leasing additional transponders, there is a limited number of Ku-band transponders available for lease that are suitable for satellite broadband service, and a still smaller number that can be used to provide satellite broadband service and DBS service without the necessity of a second dish. Moreover, leased capacity on Ku-band transponders is both an inefficient and an expensive means of providing satellite broadband service, and, moreover, requires that a subscriber invest almost one thousand dollars in consumer premises equipment and installation, as I explain in greater detail in my response to your question five, above.

Question e: How many Ka-band slots did you ask the FCC for? How many satellites do you plan to deploy into these slots?

Answer: In the first Ka-band processing round, EchoStar sought and was granted licenses to construct, launch, and operate Ka-band satellites in two orbital slots, at 83° W.L. and at 121° W.L. In each of these slots, EchoStar has the right to only half of the available spectrum; the remaining half is licensed to a separate company, Celsat America, Inc. EchoStar did not seek any additional slots in the second Ka-band processing round. However, the Federal Communications Commission recently approved EchoStar's application to assume control of VisionStar, Inc., a Ka-band licensee in which EchoStar previously held a minority interest. VisionStar holds a license to construct, launch, and operate a Ka-band satellite system at the 113° W.L. orbital slot. However, VisionStar's plans regarding use of that satellite and that orbital slot have changed recently based on a number of factors. In addition, this license is conditioned on completion of construction of the satellite by April 2002, and launching the satellite by May 2002. EchoStar expects that VisionStar will not complete construction or launch of the satellite by those dates and will soon ask the FCC for an extension of these milestone dates. Consequently, EchoStar is not assured of the availability of the VisionStar satellite.

EchoStar expects that it would deploy one satellite in each available slot. Later this year, EchoStar will launch EchoStar IX, a hybrid Ku/Ka satellite that will be the first satellite using Ka-band spectrum in the United States. EchoStar could use the two Ka-band transponders on EchoStar IX for a number of purposes, including DBS backhaul and/or very limited, broadband Internet service. However, EchoStar IX will have only modest Ka-band capacity, and if it were used for Internet service, its spot beam configuration would allow for only a noncontiguous regional service covering Seattle, San FranciscoSan Jose, Denver-Cheyenne, and Phoenix.

Question 6: If this merger where allowed by the DOJ and the FCC, and if completed, would the merged firm allow unaffiliated Internet Service Providers (ISP) to be carried on the resulting broadband service? Would consumers have a choice of choose AOL, Earthlink, or any of the thousands of other ISPs? Would you permit a broadband content provider to stream full-motion video, or music (consistent with any copyright restrictions) to consumers? Would you charge them for that right? Would you agree not to discriminate in favor of your own content, the content of Vivendi or any other content provider? Please answer all questions in full, and provide all documents in your possession substantiating your answer.

Answer: EchoStar is committed to allowing its Internet subscribers to access the entire Internet, freely and openly. In fact, Spaceway's business plan now is to establish interconnections with as many Internet portal partners as possible as gateways for its service. At this point, however, it is impossible to commit to integrate other ISPs into our satellite operations due to questions about the technological and the business issues involved in such a commitment. Moreover, as I explain in greater detail in response to Senator Cantwell's fifth question, below, EchoStar does not believe that, under the federal telecommunications laws as recently interpreted by the FCC, it or any other satellite broadband provider should be required to provide "open access" to unaffiliated ISPs. Indeed, such a regulatory burden, imposed on the fledgling and capacity-constrained satellite broadband industry, could hobble its progress, a result that would clearly be contrary to Congress's express goal to "encourage the deployment on a reasonable and timely basis of advanced telecommunications capability to all Americans."

The issue of unlimited streaming is also a difficult one, because even with the multibillion dollar investments in satellites that we intend to make, capacity will not be unlimited, and will be shared among our users. Unfortunately, extremely high bandwidth-intensive uses, such as downloading a full-length motion picture, may have adverse effects on all users of the service (just as they do with cable modem users today). Thus, like most high-speed terrestrial services, we will likely need to maintain some limits on high-bandwidth uses in order to preserve the quality of service for all users.

We will not discriminate against any content provider on the Internet and will provide our users with access to any provider that they wish to access (consistent with any legal restrictions on our ability to do so). We are willing to enter into a binding consent decree to confirm our commitment. Of course, we anticipate that like all Internet service providers, we will enter into arrangements with other companies to advertise and promote their products, and will advertise and promote our own products.

Question 7: You have stated that this merger will allow-DirecTV to offer more HDTV channels and interactive television services. Please detail what HDTV and interactive television services are currently being offered. What plans did EchoStar have to launch these services separate from the merger? What would be the offering of HDTV and interactive television services if the merger is approved and would these products be an additional cost to the consumer? Finally, how much bandwidth does an HDTV channel consume compared to a regular channel? (I realize the answer to this question will probably be a range depending on the nature of programming on the HDTV channel.)

Answer: EchoStar currently offers a total of four High Definition channels: one each from HBO and Showtime, as well as East and West channels of High Definition versions of CBS network programming. EchoStar also offers a High Definition Pay-Per-View channel. High-Definition television consumes approximately eight times the bandwidth of an ordinary digital channel. EchoStar is always looking for new and advanced programming options to offer its customers, but is at the limits of its capacity now, and so has no firm plans to offer additional HDTV channels without the merger. If the merger is approved, New EchoStar will increase the number of HDTV channels it offers to at least 12.

Our cable competitors and the DBS firms currently charge consumers separately for High Definition television service. We anticipate that new EchoStar will continue to charge consumers for this service. EchoStar's interactive offerings now are limited to pay-perview movies and other events.

With the merger, EchoStar will have additional capacity to provide more and better interactive services. For example, EchoStar could use some of the freed capacity to continuously download pay-per-view movies to be cached by a specially designed receiver with a large hard drive. This would allow EchoStar to offer true videoondemand (i.e., the user can start the movie at the user's convenience, rather than waiting for a scheduled start time). Another example is interactive news, educational, sports, or weather programming, that would allow a subscriber watching, for example, the news, to obtain more information about a particular topic in the program by clicking an icon on the screen. Again, this kind of service would be made possible by opening enough spectrum capacity that EchoStar could continually download information to a specially designed receiver with a hard drive, so that the user could access the up-to-date interactive information it requested. Games, jukeboxes, shopping channels, telemedicine and other interactive uses will also be possible with the new capacity.

Question 8: The Department of Justice issued a second request for documents pursuant to the Hart-Scott-Rodino law within the last month. When do you anticipate you will fully satisfy that request?

Answer: EchoStar has devoted significant company resources to responding to the Department's wide range of document requests and interrogatories, as well as to the Federal Communications Commission's separate requests. We have already produced over 270,000 pages of documents to date to both the Department and the state attorneys general, and we anticipate that we will have substantially complied with the Second Request within the month of April. We further anticipate that, due to the importance of the issues raised by the merger, that we will agree to provide the Department and the states with additional time beyond the 30 days provided for by the Hart-Scott-Rodino Act in order to enable them to complete their review of the transaction.

Responses of Charles W. Ergen to questions submitted by Senator Strom Thurmond

Question 1: Mr. Ergen, assuming that a merger between EchoStar and Hughes DirecTV would result in enhanced competition between satellite and cable services in the short-run, what will be the long-term effects on competition in the multi channel video programming market? Are the short-term benefits worth the long-term risks? If the merger takes place, how can we be assured that a competitive market will exist ten years from now?

Answer: The merger between EchoStar and Hughes will improve competition in the MVPD marketplace in both the short and long term.

The short-term benefits include local-into-local programming into all 210 DMAs. The inability to receive local programming is significant impediment to consumers choosing DBS over cable, and New EchoStar's nationwide offering of local programming will help put more competitive pressure on cable, both on price and improved service. New EchoStar will also be able to offer more nationwide programming, including speciality, educational, general interest, and foreign language programming. These will allow consumers broader choice and put more pressure on cable.

The proposed merger will have an additional benefit: it will perpetuate the virtuous cycle of competitive innovation. The MVPD market is dynamic, with new products and services being introduced regularly. The greater geographic coverage of local channels, the increased ability to broadcast specialty, ethnic, and foreign language programming, the improved interactive television services, and the capacity to offer expanded video-ondemand should help New EchoStar to compete more vigorously against the cable industry. Such an improvement of DBS' product offerings will likely force cable systems to continue to upgrade their network infrastructure. Relative to today's cable infrastructure, an upgraded cable system will exert even more competitive pressure on DBS pricing. This process of competitive responses benefits DBS and cable subscribers.

The danger is that, in the absence of the merger, the competitive cycle will be impeded by the constraints facing the DBS firms. If that were to occur, competition in the MVPD would be at risk and both DBS and cable subscribers could suffer. For example, digital cable is undercutting DBS's traditional advantages over cable, such as digital video and audio quality and a broader channel selection, compounding cable's incumbency advantage. In addition, digital cable is allowing cable to develop new advantages, such as video-on-demand, true interactive services, and a bundle of cable service with affordable, high-speed cable-modem internet access. EchoStar is unable, without the merger, to match these offerings, and its ability to competitively threaten cable will be diminished. As a Wall Street report predicted, "cable will become a far more significant foe, and will likely relegate satellite television to a deep second-class status in most urban markets. Today, satellite is still doing well in the less penetrated urban markets because cable's broadband bundling and true video-on-demand services are still in their infancy.

The benefits of a strengthened DBS video product are the only way to ensure that urban America has a choice five years from now." [1]

Whether a long or short term view is taken, the merger between EchoStar and Hughes will benefit competition and consumers nationwide.

Question 2: Mr. Ergen, has EchoStar taken the position in the past that the Direct Broadcast Satellite Market is different from the cable market? If so, please explain your reversal on this issue.T3Answer: EchoStar's belief in a single MVPD market is not of recent origin. EchoStar has always held the same view: that there is one MVPD market, in which cable is the incumbent and dominating player, and that DBS competes, although presently with distinct disadvantages, against cable and others within the MVPD market. It has also consistently recognized that certain factors have historically inhibited DBS from robustly competing with cable. EchoStar has expressed that view on dozens of occasions, starting as early as 1995. In 1996, for example, EchoStar asserted that "the relevant market includes all multichannel video programming distributors, not just DBS service providers." [2] In 1997 EchoStar wrote in comments to the Commission: "Ever since it commenced DBS service in the

[1] The Lehman Brothers, Satellite Communications Industry Update, 2/8/02.

[2] *In re Application of Direct Broadcasting Satellite Corp.*, 11 FCC Rcd. 10494 (1996) at ¶ 18.

spring of 1996, EchoStar has viewed cable subscribers as its primary target market. Accordingly, EchoStar has priced and structured its offering with the primary purpose of attracting cable subscribers." [3]

In December 1998, EchoStar expressed a similar view with respect to the potential impact of its transaction with MCI: "EchoStar emphasizes that the MVPD market—not any subset of that market—is the relevant market for analyzing the public interest impact.[4] It also noted that "DBS service has emerged as the most likely alternative with the potential for introducing full-fledged competition against dominant cable operators in the MVPD market, but is still a long way from realizing that potential because of various spectrum-related and regulatory constraints." [5] Appearing before a congressional committee in 1999 regarding EchoStar's efforts to compete with cable systems, EchoStar's Chief Executive Officer Mr. Ergen testified: "The relevant market for our service is the MVPD market. DOJ has found extensive evidence of customers switching from cable to DBS, contrasted with the early days of DBS, when subscribers most often came from uncabled areas." [6]

While this view of the relevant market was certainly the prevalent one in 2000, this does not mean that it was free from any doubt. As zealous advocates, EchoStar's lawyers in litigation had the duty to explore fully the extent to which any such doubt could be used to bolster EchoStar's case. Opponents of the merger have seized on statements in EchoStar's request for more discovery to shed additional light on the factual issues. In its Request for Rule 56(f) Continuance to Respond to Defendants' Motion for Summary Judgment, EchoStar argued that the summary judgment requested by DirecTV was inappropriate pending ongoing discovery and in light of the need for additional discovery on highly complex issues such as market definition. The statements cited by opponents described only beliefs about what the evidence could establish, and they did not purport to be statements of proven fact. Indeed, EchoStar explicitly noted that its assertions were based on a preliminary understanding of the case, stating that "expert witnesses will play an important role on several issues, including the definition of the relevant market." [7]

Finally, even if there were any potential counter-argument about the relevant market in 2000, it has been dispelled by developments that were then in their early stages and that have since matured decisively. As explained above; these developments include: on the one hand, the fuller extent to which DBS providers have since been able to capitalize on the local-into-local opportunity afforded by SHVIA since the end of 1999; and, on the other hand, the aggressive roll-out of digital cable.

Also, within the last year, for the first time, we have seen national television advertising by digital cable companies against DBS, "dish" bounties (e.g., cable companies offering 200 hours of free programming to subscribers who turn in their dishes), and cable selling its products through retail stores. Another recent example is digital cable's big push on pay-per-view, lowering prices and instituting more frequent DBS-like schedules. In short, these examples show that the advent of digital cable has reduced or eliminated the capacity/quality differential between cable and DBS. The ability of digital cable to offer video/Internet bundles is also profoundly threatening to DBS. None of this was true a year ago. Thus, to the extent that there ever was a submarket for DBS service within the MVPD market, that submarket has been eliminated by cable's aggressive digital rollout and focused competition with DBS providers.

Furthermore, the merger itself will change the nature of competition by making DBS substantially more competitive with cable. By increasing channel capacity and allowing DBS to offer substantially more channels and other new and enhanced programming and services, the merger will eliminate whatever competitively significant barriers remained preventing DBS from competing with cable in an unrestricted way. This will force cable to respond in kind. History shows many instances where cable accelerated its infrastructure upgrades in markets when DBS began offering local stations from those markets.

Question 3: Mr. Ergen, it has been suggested that the "one nation, one rate card" will protect rural markets where cable services are not available, thereby preventing the new corporation from abusing its monopoly in multi-channel video programming

[3] Comments of Echostar Communications Corp., In re Annual Assessment of the Status of Competition in Market for the Delivery of Video Programming, CS Docket No. 97–141 (July 23, 1997) at 2.

[4] *In re Application of MCI Telecommunications Corp. and Echostar 110 Corp*. (Dec. 2, 1998) at 7.

[5] *Id. at ii.*

[6] Charles W. Ergen, Testimony Before the Subcommittee on Antitrust, Business Rights, and Competition, Committee on the Judiciary, U.S. Senate (Jan. 27, 1999) at 3.

[7] Request for Continuance, at 3.

in those areas. However, if a cable provider in a metropolitan area cuts prices drastically, the new corporation would be unable to lower the rates in that metropolitan area without lowering rates everywhere in the nation. Therefore, while rural areas would be protected, the new company would be at a competitive disadvantage in the metropolitan areas where cable cuts its rates. If this merger is approved, won't the concept of "one nation, one rate card" be a hindrance to vibrant competition in some markets.

Answer: Please see the response to Senator Kohl's first question. In addition, if a cable company decides to cut its prices significantly in an effort to undersell the merged firm, this would be a great example of "vibrant competition," not the end of it.

Question 4: Mr. Ergen, if the proposed merger were to occur, would the "one nation, one rate card" apply to high-speed Internet services?

Answer: Yes, the "one nation, one rate card" policy will apply to New EchoStar's basic highspeed Internet services.

Question 5: Mr. Ergen, at some time in the future, long after these hearings are forgotten, will consumers face the possibility of installing more than one dish in order to receive local channels? If this were to occur, would the two-dish system relegate some local channels to second-class status?

Currently, because so much of our capacity is consumed by wasteful duplication of programming, EchoStar must transmit some local programming from the "wing" orbital locations at 61.5° W.L. and 148° W.L. To receive programming from the primary CONUS orbital locations (101° W.L., 110° W.L. and 119° W.L.) as well as a wing slot requires two satellite dishes. EchoStar is providing the second dish for free to any local programming subscriber who wants to local channels offered from the wing slots.

If the merger is approved, the combined company will rationalize spectrum usage and create significant new capacity at CONUS orbital locations. We will be able to provide all local programming channels from the three CONUS orbital locations, so that consumers can receive them on one dish. EchoStar and DirecTV are working on a new satellite dish that is capable of receiving programming from all three CONUS orbital locations.

However, as explained in response to Senator Cantwell's second question, there may be a very small number of consumers for whom a single dish may not be able to receive programming from multiple orbital locations because, for example, of physical obstructions on their property.

Question 6: Mr. Ergen, how will the concentration of all the satellite spectrum in one company be a benefit to consumers?

Answer: Currently, DirecTV and EchoStar waste their limited spectrum by duplicating the vast majority, approximately 500 channels, of the programming carried by the other DBS system. By ending this duplication, and thereby freeing up spectrum, the combined entity will have roughly twice the capacity for programming as each company standing alone.

With the spectrum efficiencies gained by eliminating duplicative programming between EchoStar and DirecTV, New EchoStar will significantly enhance its video programming offerings. First, by utilizing spectrum efficiencies in conjunction with existing and planned satellites, as well as the launch of a new spot beam satellite, New EchoStar will serve all 210 DMAs with local broadcast service, as detailed in the New EchoStar 1 satellite application filed with the FCC. Second, New EchoStar will be able to expand its offerings of national networks, particularly niche services such as foreign language programming and other content that traditionally has not gained carriage on cable systems. Third, spectrum efficiencies will allow for expanding the number of HDTV programming channels from the 2–3 channels offered today to 12 or more channels (HDTV channels require approximately 8 times the bandwidth of an ordinary digital channel).

Spectrum efficiencies will also translate into new interactive services. These likely will include near Video-On-Demand, games, educational interactive programs, television commerce, and other services which create a two-way interactive television experience. Such services become more feasible with the advent of additional spectrum capacity, and' by virtue of its roughly doubled spectrum capacity, New EchoStar will be able to implement interactive services while simultaneously carrying more traditional video services. In addition, New EchoStar will be able to offer bandwidth-intensive applications such as telemedicine, particularly relevant to the rural subscriber base.

Of course, it would be incorrect to suggest that New EchoStar would control "all satellite spectrum." Numerous other businesses control all of the allocated C-Band spectrum, and numerous other firms control Ka-band and medium-power (FSS) Ku-band licenses. With respect to high-power (DBS) Ku-band, R/L DBS and Dominion control DBS licenses. In addition, there is unallocated DBS spectrum, and Northpoint recently applied for a portion. Furthermore, two firms have applied to use orbital locations allocated to Mexico and Canada to provide service to the United States.

Question 7: Mr. Ergen, are satellite services currently competitive with digital cable services? If so, does this undercut your argument that the merger is necessary for satellite to be competitive with cable? As a result of the proposed merger, will satellite services be more compatible with standard cable (non-digital) services?

Answer: EchoStar faces difficult obstacles to effective competition with cable firms, including its inability to carry local programming beyond the largest DMAs, the need to install satellite dishes on consumers' homes, more expensive installation and consumer equipment, cable's incumbency, and difficulty obtaining important programming at reasonable rates from the vertically integrated cable MSOs.

Historically, EchoStar had certain advantages over cable. EchoStar was able to offer superior, digital quality video and sound. Moreover, EchoStar was able to offer a broader channel selection, including multiplexed premium movie channels, digital music channels, and out-of-area sports programming. These advantages, plus significant investment by EchoStar in subsidies for consumer equipment, allowed EchoStar to lure some customers from incumbent cable providers, and also exerted some competitive pressure against cable, moderating cable's price increases and encouraging cable's investment in digital infrastructure.

Cable's roll-out of digital service, however, has largely erased EchoStar's historical advantages in many areas. Digital cable offers video and sound quality and broad channel selections similar to those offered by EchoStar. At the same time, EchoStar's historical disadvantages remain. Moreover, digital cable is also creating new advantages, such as video-on-demand, true interactive services, and a bundle of video programming and affordable high-speed Internet access, all of which EchoStar cannot currently match.

The merger will enable EchoStar to become more competitive with both traditional (analog) and digital cable. By enabling the merged DBS firm to offer local programming in all 210 DMAs, DBS will become a much closer competitor to cable in the areas that are currently unserved by local programming. In addition, the other merger efficiencies—including the expanded selection of HDTV, national, specialty, and educational programming, pay-per-view, interactive services, and video-on-demand; significant cost savings; and a bundle of affordable, high-speed, satellite Internet access—the merged firm will be better able to compensate for DBS's inherent disadvantages vis-a-vis cable, as well as meet digital cable's new competitive challenges. In the face of such competitive pressure, cable should respond through such measures as more competitive prices and expanded service offerings.

Question 8: Mr. Ergen, irrespective of the potential merits of the proposed merger, what are your arguments as to the legality of the merger in view of Section 7 of the Clayton Act, which prohibits acquisitions the effect of which "may be substantially to lessen competition, or to tend to create a monopoly" in "any line of commerce or in any activity affecting commerce in any section of the country. . . ."? 15 U.S.C. § 18. Specifically, how do you deal with the fact that a monopoly in multichannel video programming will exist in many rural areas if the merger goes through? Because these rural areas should qualify as "any section of the country," won't the creation of a monopoly directly violate the statute?

Answer: The Clayton Act's reference to "any line of commerce or in any activity affecting commerce in any section of the country" means a relevant antitrust market.[8] As explained more thoroughly in response to Senator Hatch's fifth question, above, the merger will not create monopoly power or cause any antitrust harm in any relevant antitrust market. With the merger, consumers in every section of the country, including rural areas, can expect more video programming and lower prices than possible without the merger.

Question 9: Mr. Ergen, what are your arguments as to the legality of the merger in light of the Supreme Court's decision in *U.S.* v. *Philadelphia National Bank*, 370 U.S. 321 (1963), wherein the Court refused to justify anticompetitive effects in one market because of the procompetitive consequences in another? If there are anticompetitive effects in some rural areas, doesn't Supreme Court precedent defeat your argument that procompetitive effects will occur in those markets where cable and satellite services are in direct competition?*Answer:* Consumers in rural areas will benefit from the merger in numerous ways, particularly with local programming for the smaller DMAs, affordable high-speed satellite Internet access, and more com-

[8] *See, e.g.,. United States* v. *Philadelphia National Bank,* 370 U.S.321, 356 (1963).

petitive pricing. As explained in detail in response to Senator Hatch's fifth question, above, the merger will have procompetitive effects in every relevant market, and will have anticompetitive effects in no relevant market. Accordingly, there is no anticompetitive effect to "justify."

Responses of Edward O. Fritts to questions submitted by Senator Herbert Kohl

Question 1: Please provide the most current list of all 210 United States television markets and all of the stations that would qualify for must-carry rights in those markets.

Answer: Attached is a list of all 210 television markets and all of the full-power commercial and non-commercial stations in those markets. Under SHVIA, stations are eligible for carriage if they can provide a good quality signal to the satellite company, if they properly filed their request for carriage with the satellite company, and if they satisfy certain non-duplication requirements. Thus, the attached list contains all TV stations in the markets; however, because of the additional conditions required for eligibility for carriage, it is not possible for NAB to state precisely which of these stations are eligible at this time.

Question 2: You suggested at the hearing that Mr. Ergen has frivolously filed complaints against broadcasters at the Federal Communications Commission regarding retransmission consent negotiations. Specifically, these challenges were brought under provisions included in the Satellite Home Viewer Improvements Act of 1999 that govern good faith negotiations between satellite providers and broadcasters during such retransmission consent bargaining sessions. Please detail the various complaints filed by EchoStar pursuant to this law and explain why the National Association of Broadcasters believes they were frivolous.

Answer: There are four instances where EchoStar filed a complaint against a broadcast station owner regarding retransmission consent negotiations. *See EchoStar Satellite Corp.* v. *Landmark Communications (WTVF–TV)*, File No. CRS–5554–C (May 30, 2000); *EchoStar Satellite Corp.* v. *Clear Channel (WFTC–TV)*, File No. CRS–5553–C (May 30, 2000); *EchoStar Satellite Corp.* v. *Chris-Craft (KTVX and WWOR–TV)*, File No. CRS–5555–C (May 30, 2000); and *EchoStar Satellite Corp*. v. *Young Broadcasting (KRON–TV, WKRN and KCAL–TV)*, File No. CSR–5655–C (Feb. 2001).

Each complaint alleged that the broadcast owner failed to negotiate in good faith in violation of the SHVIA. NAB believes the complaints were merely used to "punish" broadcasters and as leverage to force retransmission consent agreements.

The background regarding the complaints against Landmark, Chris Craft, and Clear Channel, as NAB believes, is as follows:

- After enactment of the SHVIA, satellite companies were given a 6-month "free ride" to carry stations that elected to be carried by the satellite companies through a retransmission consent agreement without paying any retransmission fees to stations. This 6-month period was intended to give the parties time to complete agreements.
- This period ended on May 29, 2000. At that time, Landmark, Chris Craft and Clear Channel told EchoStar to take their signals off of the satellite because an agreement hadn't been reached.
- EchoStar responded by filing complaints with the FCC, claiming the companies were negotiating in bad faith.
- Each complaint was subsequently dismissed (all within 3 months) when the parties reached an agreement.

In the case of Young Broadcasting, the complaint was followed through to the end:

- EchoStar filed a complaint in February 2001, after receiving interim permission to carry Young Broadcasting's signals past the May 29, 2000 cut off date.
- After months of filings—and a request by EchoStar for confidentiality—the FCC denied EchoStar's complaint, chastised EchoStar for "abuse of process" and found it failed in its duty of candor to the Commission by publicly disclosing the very material it claimed should be kept confidential. *See EchoStar Satellite Corp.* v. *Young Broadcasting, Memorandum Opinion and Order*, File No. CSR–5655–C (Aug. 6, 2001).

• The FCC found that Young Broadcasting's actions in negotiation were consistent with competitive marketplace considerations and in line with the requirements of the SHVIA.

Responses of Edward O. Fritts to questions submitted by Senator Orrin G. Hatch

Question: Attorney General Nixon, Mr. Fritts, and Mr. Pitofsky, would each of you please explain your respective interpretations of the recent announcement by DirecTV and EchoStar that they have suddenly found sufficient spectrum to carry all stations in all 210 television markets?

Answer: The announcement that a merged EchoStarADirecTV could offer local-to-local service in all 210 TV markets was no surprise to NAB. We have always maintained that either company—individually—has the capacity to serve all 210 markets, so plainly the two companies combined could easily do so.

A closer look at what they've said they can do—and when they've said it makes it clear this is a political "Hail Mary." When the merger was announced, EchoStar and DirecTV were already carrying 36 and 41 markets, respectively. At the end of 2001, DirecTV somehow found capacity on its own—without a merger—to carry a total of 51 markets by the end of 2002, proving that the two companies could expand (and had the incentive to expand) their local-to-local service without merging to a monopoly.

In their FCC application in December 2001, the two companies said that with the merger, the two companies would only be able to serve 100 markets. In February 2002, however, DirecTV finally was forced to admit that before the merger, it had already launched or planned to launch spot beam satellites that would enable it to serve more than 100 markets. With political pressure against the merger mounting, and having been forced to admit that they were already planning to serve more than 100 markets without the merger, the two firms decided to announce their 210market plan. Even then, however, their Hail Mary promise was hedged in with qualifications, contained no time deadline—and, for the ultimate stinger, did not actually promise to all local stations, but only a cherry-picked selection of local stations, if their continuing legal attack on the SHVIA were to prove successful.

Question: Attorney General Nixon and Mr. Fritts, in your respective opinions, are Mr. Ergen's assurances regarding television carriage and internet open access sufficient to safe guard the legitimate interests of consumers and competing ISPs?

Answer: At first blush, the announcement to carry all stations in all 210 TV markets might appear to meet NAB's goal of universal carriage of all stations in all markets. However, broadcasters have numerous concerns with the announcement: (1) there is no definite deadline—EchoStar says they may cover all markets "as soon as" two years from approval; (2) EchoStar has specifically reserved the right in its application to the FCC to continue to force consumers to acquire a second dish to get some local stations—a completely unworkable, consumer-unfriendly approach; (3) EchoStar has appealed the "carry one, carry all" law to the Supreme Court—it is attempting to overturn the underlying law that requires them to carry any station in any market in which they offer local-to-local using the SHVIA license; (4) there is no enforcement mechanism. In short, the promise made by Charlie Ergen does not provide assurance that all consumer's will be served with all their local TV channels.

Responses of Edward O. Fritts to questions submitted by Senator Edward M. Kennedy

Question: What impact, if any, would approval of the proposed merger have on efforts to bridge the digital divide by providing greater high speed internet access to underserved urban and rural communities?

Answer: NAB generally focuses on the issue of local TV carriage; however, the issue of broadband was addressed in our Petition to Deny filed at the FCC. In there, NAB notes that currently, both EchoStar and DirecTV offer nationwide satellite-based broadband. Additionally, EchoStar recently announced a joint venture with SES Global to provide additional broadband services using SES's orbital slot. The merger would ultimately harm consumers by taking away any competition for satellite broadband services, and no spectrum efficiency with regards to broadband is gained through the merger. Finally, it is the antitrust laws that govern whether this merger is approved—not the alleged benefits resulting from promises.

List of Stations in 210 Television Markets

Rank	DMA Name	Calls	Band	Channe	NetAffil	Commercial
1	New York	WCBS	TV	2	CBS	Y
1	New York	WNBC	TV	4	NBC	Y
1	New York	WNYW	TV	5	FOX	Y
1	New York	WABC	TV	7	ABC	Y
1	New York	WWOR	TV	9	UPN	Y
1	New York	WPIX	TV	11	WBN	Y
1	New York	WNET	TV	13	PPB	N
1	New York	WLIW	TV	21	PPB	N
1	New York	WNYE	TV	25	PPB	N
1	New York	WPXN	TV	31	PAX	Y
1	New York	WXTV	TV	41	IUN	Y
1	New York	WSAH	TV	43	PAX	Y
1	New York	WNJU	TV	47	ITE	Y
1	New York	WTBY	TV	54	IIN	Y
1	New York	WLNY	TV	55	IIN	Y
1	New York	WRNN	TV	62	IIN	Y
1	New York	WMBC	TV	63	IIN	Y
1	New York	WFME	TV	66	PED	N
1	New York	WFUT	TV	68	IHS	Y
2	Los Angeles	KCBS	TV	2	CBS	Y
2	Los Angeles	KNBC	TV	4	NBC	Y
2	Los Angeles	KTLA	TV	5	WBN	Y
2	Los Angeles	KABC	TV	7	ABC	Y
2	Los Angeles	KCAL	TV	9	IIN	Y
2	Los Angeles	KTTV	TV	11	FOX	Y
2	Los Angeles	KCOP	TV	13	UPN	Y
2	Los Angeles	KSCI	TV	18	IIN	Y
2	Los Angeles	KWHY	TV	22	IIN	Y
2	Los Angeles	KVCR	TV	24	PPB	N
2	Los Angeles	KCET	TV	28	PPB	N
2	Los Angeles	KPXN	TV	30	PAX	Y
2	Los Angeles	KVMD	TV	31	IIN	Y
2	Los Angeles	KMEX	TV	34	IUN	Y
2	Los Angeles	KTBN	TV	40	IRE	Y
2	Los Angeles	KXLA	TV	44	IIN	Y
2	Los Angeles	KFTR	TV	46	IIN	Y
2	Los Angeles	KOCE	TV	50	PPB	N
2	Los Angeles	KVEA	TV	52	ITE	Y
2	Los Angeles	KDOC	TV	56	IIN	Y
2	Los Angeles	KJLA	TV	57	IIN	Y
2	Los Angeles	KLCS	TV	58	PPB	N
2	Los Angeles	KRCA	TV	62	IIN	Y
2	Los Angeles	KHIZ	TV	64	IIN	Y
3	Chicago	WBBM	TV	2	CBS	Y
3	Chicago	WMAQ	TV	5	NBC	Y
3	Chicago	WLS	TV	7	ABC	Y
3	Chicago	WGN	TV	9	WBN	Y
3	Chicago	WTTW	TV	11	PPB	N

List of Stations in 210 Television Markets

3	Chicago	WYCC	TV	20	PPB	N
3	Chicago	WCIU	TV	26	WBN	Y
3	Chicago	WFLD	TV	32	FOX	Y
3	Chicago	WWTO	TV	35	IIN	Y
3	Chicago	WCPX	TV	38	PAX	Y
3	Chicago	WSNS	TV	44	ITE	Y
3	Chicago	WPWR	TV	50	UPN	Y
3	Chicago	WYIN	TV	56	PPB	N
3	Chicago	WXFT	TV	60	IHS	Y
3	Chicago	WJYS	TV	62	IIN	Y
3	Chicago	WGBO	TV	66	IUN	Y
4	Philadelphia	KYW	TV	3	CBS	Y
4	Philadelphia	WPVI	TV	6	ABC	Y
4	Philadelphia	WCAU	TV	10	NBC	Y
4	Philadelphia	WHYY	TV	12	PPB	N
4	Philadelphia	WPHL	TV	17	WBN	Y
4	Philadelphia	WTXF	TV	29	FOX	Y
4	Philadelphia	WYBE	TV	35	IIN	N
4	Philadelphia	WLVT	TV	39	PPB	N
4	Philadelphia	WMGM	TV	40	NBC	Y
4	Philadelphia	WGTW	TV	48	IIN	Y
4	Philadelphia	WNJT	TV	52	PPB	N
4	Philadelphia	WWAC	TV	53	IIN	Y
4	Philadelphia	WPSG	TV	57	UPN	Y
4	Philadelphia	WBPH	TV	60	IIN	Y
4	Philadelphia	WPPX	TV	61	PAX	Y
4	Philadelphia	WWSI	TV	62	IIN	Y
4	Philadelphia	WUVP	TV	65	IHS	Y
4	Philadelphia	WFMZ	TV	69	IIN	Y
5	Oak-San Jose	KTVU	TV	2	FOX	Y
5	Oak-San Jose	KRON	TV	4	IIN	Y
5	Oak-San Jose	KPIX	TV	5	CBS	Y
5	Oak-San Jose	KGO	TV	7	ABC	Y
5	Oak-San Jose	KFWU	TV	8	IIN	Y
5	Oak-San Jose	KQED	TV	9	PPB	N
5	Oak-San Jose	KNTV	TV	11	NBC	Y
5	Oak-San Jose	KDTV	TV	14	IUN	Y
5	Oak-San Jose	KBWB	TV	20	WBN	Y
5	Oak-San Jose	KRCB	TV	22	PPB	N
5	Oak-San Jose	KTSF	TV	26	IIN	Y
5	Oak-San Jose	KMTP	TV	32	PPB	N
5	Oak-San Jose	KICU	TV	36	IIN	Y
5	Oak-San Jose	KCNS	TV	38	IHS	Y
5	Oak-San Jose	KBHK	TV	44	UPN	Y
5	Oak-San Jose	KSTS	TV	48	ITE	Y
5	Oak-San Jose	KFTY	TV	50	IIN	Y
5	Oak-San Jose	KTEH	TV	54	PPB	N
5	Oak-San Jose	KCSM	TV	60	PPB	N
5	Oak-San Jose	KKPX	TV	65	PAX	Y

List of Stations in 210 Television Markets

5	Oak-San Jose	KFSF	TV	66	IIN	Y
5	Oak-San Jose	KTLN	TV	68	IIN	Y
6	(Manchester)	WGBH	TV	2	PPB	N
6	(Manchester)	WBZ	TV	4	CBS	Y
6	(Manchester)	WCVB	TV	5	ABC	Y
6	(Manchester)	WHDH	TV	7	NBC	Y
6	(Manchester)	WMUR	TV	9	ABC	Y
6	(Manchester)	WENH	TV	11	PPB	N
6	(Manchester)	WFXT	TV	25	FOX	Y
6	(Manchester)	WUNI	TV	27	IUN	Y
6	(Manchester)	WSBK	TV	38	UPN	Y
6	(Manchester)	WWDP	TV	46	ITE	Y
6	(Manchester)	WYDN	TV	48	PPB	N
6	(Manchester)	WNDS	TV	50	IIN	Y
6	(Manchester)	WLVI	TV	56	WBN	Y
6	(Manchester)	WPXB	TV	60	PAX	Y
6	(Manchester)	WMFP	TV	62	IHS	Y
6	(Manchester)	WUTF	TV	66	IIN	Y
6	(Manchester)	WBPX	TV	68	IIN	Y
7	Dallas-Ft. Worth	KDTN	TV	2	PPB	N
7	Dallas-Ft. Worth	KDFW	TV	4	FOX	Y
7	Dallas-Ft. Worth	KXAS	TV	5	NBC	Y
7	Dallas-Ft. Worth	WFAA	TV	8	ABC	Y
7	Dallas-Ft. Worth	KTVT	TV	11	CBS	Y
7	Dallas-Ft. Worth	KERA	TV	13	PPB	N
7	Dallas-Ft. Worth	KTXA	TV	21	UPN	Y
7	Dallas-Ft. Worth	KUVN	TV	23	IUN	Y
7	Dallas-Ft. Worth	KDFI	TV	27	IIN	Y
7	Dallas-Ft. Worth	KMPX	TV	29	IIN	Y
7	Dallas-Ft. Worth	KDAF	TV	33	WBN	Y
7	Dallas-Ft. Worth	KXTX	TV	39	IIN	Y
7	Dallas-Ft. Worth	KTAQ	TV	47	IIN	Y
7	Dallas-Ft. Worth	KSTR	TV	49	IHS	Y
7	Dallas-Ft. Worth	KFWD	TV	52	ITE	Y
7	Dallas-Ft. Worth	KLDT	TV	55	IIN	Y
7	Dallas-Ft. Worth	KDTX	TV	58	IIN	Y
7	Dallas-Ft. Worth	KPXD	TV	68	PAX	Y
8	(Hagrstwn)	WRC	TV	4	NBC	Y
8	(Hagrstwn)	WTTG	TV	5	FOX	Y
8	(Hagrstwn)	WJLA	TV	7	ABC	Y
8	(Hagrstwn)	WUSA	TV	9	CBS	Y
8	(Hagrstwn)	WFDC	TV	14	IIN	Y
8	(Hagrstwn)	WDCA	TV	20	UPN	Y
8	(Hagrstwn)	WHAG	TV	25	NBC	Y
8	(Hagrstwn)	WETA	TV	26	PPB	N
8	(Hagrstwn)	WMDO	TV	30	IUN	N
8	(Hagrstwn)	WHUT	TV	32	PPB	N
8	(Hagrstwn)	WVPY	TV	42	PPB	N
8	(Hagrstwn)	WBDC	TV	50	WBN	Y

List of Stations in 210 Television Markets

8	(Hagrstwn)	WNVT	TV	53	PPB	N
8	(Hagrstwn)	WNVC	TV	56	PED	N
8	(Hagrstwn)	WWPX	TV	60	PAX	Y
8	(Hagrstwn)	WPXW	TV	66	PAX	Y
8	(Hagrstwn)	WJAL	TV	68	IIN	Y
9	Atlanta	WSB	TV	2	ABC	Y
9	Atlanta	WAGA	TV	5	FOX	Y
9	Atlanta	WGTV	TV	8	PPB	N
9	Atlanta	WXIA	TV	11	NBC	Y
9	Atlanta	WPXA	TV	14	PAX	Y
9	Atlanta	WTBS	TV	17	IIN	Y
9	Atlanta	WPBA	TV	30	PPB	N
9	Atlanta	WUVG	TV	34	IIN	Y
9	Atlanta	WATL	TV	36	WBN	Y
9	Atlanta	WGCL	TV	46	CBS	Y
9	Atlanta	WATC	TV	57	IIN	N
9	Atlanta	WHSG	TV	63	IIN	Y
9	Atlanta	WUPA	TV	69	UPN	Y
10	Detroit	WJBK	TV	2	FOX	Y
10	Detroit	WDIV	TV	4	NBC	Y
10	Detroit	WXYZ	TV	7	ABC	Y
10	Detroit	WDWB	TV	20	WBN	Y
10	Detroit	WPXD	TV	31	PAX	Y
10	Detroit	WADL	TV	38	FOX	Y
10	Detroit	WKBD	TV	50	UPN	Y
10	Detroit	WTVS	TV	56	PPB	N
10	Detroit	WWJ	TV	62	CBS	Y
11	Houston	KPRC	TV	2	NBC	Y
11	Houston	KUHT	TV	8	PPB	N
11	Houston	KHOU	TV	11	CBS	Y
11	Houston	KTRK	TV	13	ABC	Y
11	Houston	KETH	TV	14	PPB	N
11	Houston	KTXH	TV	20	UPN	Y
11	Houston	KLTJ	TV	22	IIN	N
11	Houston	KRIV	TV	26	FOX	Y
11	Houston	KHWB	TV	39	WBN	Y
11	Houston	KXLN	TV	45	IUN	Y
11	Houston	KTMD	TV	48	ITE	Y
11	Houston	KPXB	TV	49	PAX	Y
11	Houston	KNWS	TV	51	IIN	Y
11	Houston	KTBU	TV	55	IIN	Y
11	Houston	KAZH	TV	57	IIN	Y
11	Houston	KZJL	TV	61	IHS	Y
11	Houston	KFTH	TV	67	IHS	Y
12	Seattle-Tacoma	KOMO	TV	4	ABC	Y
12	Seattle-Tacoma	KING	TV	5	NBC	Y
12	Seattle-Tacoma	KIRO	TV	7	CBS	Y
12	Seattle-Tacoma	KCTS	TV	9	PPB	N
12	Seattle-Tacoma	KSTW	TV	11	UPN	Y

List of Stations in 210 Television Markets

12	Seattle-Tacoma	KVOS	TV	12	IIN	Y
12	Seattle-Tacoma	KCPQ	TV	13	FOX	Y
12	Seattle-Tacoma	KONG	TV	16	IIN	Y
12	Seattle-Tacoma	KTBW	TV	20	IIN	Y
12	Seattle-Tacoma	KTWB	TV	22	WBN	Y
12	Seattle-Tacoma	KBCB	TV	24	IIN	Y
12	Seattle-Tacoma	KBTC	TV	28	PPB	N
12	Seattle-Tacoma	KWPX	TV	33	PAX	Y
12	Seattle-Tacoma	KHCV	TV	45	IIN	N
12	Seattle-Tacoma	KWOG	TV	51	IIN	Y
12	Seattle-Tacoma	KWDK	TV	56	IIN	N
13	Paul	KTCA	TV	2	PPB	N
13	Paul	WCCO	TV	4	CBS	Y
13	Paul	KSTP	TV	5	ABC	Y
13	Paul	KAWE	TV	9	PPB	N
13	Paul	KMSP	TV	9	UPN	Y
13	Paul	KWCM	TV	10	PPB	N
13	Paul	KARE	TV	11	NBC	Y
13	Paul	KMWB	TV	23	WBN	Y
13	Paul	WFTC	TV	29	FOX	Y
13	Paul	KPXM	TV	41	PAX	Y
13	Paul	KSTC	TV	45	IIN	Y
14	(Sarasota)	WEDU	TV	3	PPB	N
14	(Sarasota)	WFLA	TV	8	NBC	Y
14	(Sarasota)	WTSP	TV	10	CBS	Y
14	(Sarasota)	WTVT	TV	13	FOX	Y
14	(Sarasota)	WUSF	TV	16	PPB	N
14	(Sarasota)	WCLF	TV	22	IIN	Y
14	(Sarasota)	WFTS	TV	28	ABC	Y
14	(Sarasota)	WMOR	TV	32	IIN	Y
14	(Sarasota)	WTTA	TV	38	WBN	Y
14	(Sarasota)	WWSB	TV	40	ABC	Y
14	(Sarasota)	WTOG	TV	44	UPN	Y
14	(Sarasota)	WFTT	TV	50	IHS	Y
14	(Sarasota)	WVEA	TV	62	IUN	Y
14	(Sarasota)	WXPX	TV	66	PAX	Y
15	Lauderdale	WPBT	TV	2	PPB	N
15	Lauderdale	WFOR	TV	4	CBS	Y
15	Lauderdale	WTVJ	TV	6	NBC	Y
15	Lauderdale	WSVN	TV	7	FOX	Y
15	Lauderdale	WWTU	TV	8	IIN	Y
15	Lauderdale	WPLG	TV	10	ABC	Y
15	Lauderdale	WLRN	TV	17	PPB	N
15	Lauderdale	WEYS	TV	22	IIN	Y
15	Lauderdale	WLTV	TV	23	IUN	Y
15	Lauderdale	WBFS	TV	33	UPN	Y
15	Lauderdale	WPXM	TV	35	PAX	Y
15	Lauderdale	WBZL	TV	39	WBN	Y
15	Lauderdale	WHFT	TV	45	IIN	Y

List of Stations in 210 Television Markets

15	Lauderdale	WSCV	TV	51	ITE	Y
15	Lauderdale	WAMI	TV	69	IHS	Y
16	Phoenix	KTVK	TV	3	IIN	Y
16	Phoenix	KPHO	TV	5	CBS	Y
16	Phoenix	KUSK	TV	7	IIN	Y
16	Phoenix	KAET	TV	8	PPB	N
16	Phoenix	KCFG	TV	9	IIN	Y
16	Phoenix	KSAZ	TV	10	FOX	Y
16	Phoenix	KPNX	TV	12	NBC	Y
16	Phoenix	KFPH	TV	13	IIN	Y
16	Phoenix	KNXV	TV	15	ABC	Y
16	Phoenix	KPAZ	TV	21	IIN	Y
16	Phoenix	KTVW	TV	33	IUN	Y
16	Phoenix	KDTP	TV	39	PED	N
16	Phoenix	KUTP	TV	45	UPN	Y
16	Phoenix	KPPX	TV	51	PAX	Y
16	Phoenix	KASW	TV	61	WBN	Y
17	Cleveland	WKYC	TV	3	NBC	Y
17	Cleveland	WEWS	TV	5	ABC	Y
17	Cleveland	WJW	TV	8	FOX	Y
17	Cleveland	WDLI	TV	17	IIN	Y
17	Cleveland	WOIO	TV	19	CBS	Y
17	Cleveland	WVPX	TV	23	PAX	Y
17	Cleveland	WVIZ	TV	25	PPB	N
17	Cleveland	WUAB	TV	43	UPN	Y
17	Cleveland	WGGN	TV	52	IIN	Y
17	Cleveland	WBNX	TV	55	WBN	Y
17	Cleveland	WQHS	TV	61	IHS	Y
17	Cleveland	WOAC	TV	67	IHS	Y
17	Cleveland	WMFD	TV	68	IIN	Y
18	Denver	KWGN	TV	2	WBN	Y
18	Denver	KCNC	TV	4	CBS	Y
18	Denver	KRMA	TV	6	PPB	N
18	Denver	KMGH	TV	7	ABC	Y
18	Denver	KUSA	TV	9	NBC	Y
18	Denver	KBDI	TV	12	PPB	N
18	Denver	KTVJ	TV	14	IHS	Y
18	Denver	KTVD	TV	20	UPN	Y
18	Denver	KMAS	TV	24	ITE	Y
18	Denver	KDVR	TV	31	FOX	Y
18	Denver	KRMT	TV	41	IIN	N
18	Denver	KCEC	TV	50	IUN	Y
18	Denver	KWHD	TV	53	IIN	Y
18	Denver	KPXC	TV	59	PAX	Y
19	Modesto	KCRA	TV	3	NBC	Y
19	Modesto	KVIE	TV	6	PPB	N
19	Modesto	KXTV	TV	10	ABC	Y
19	Modesto	KOVR	TV	13	CBS	Y
19	Modesto	KUVS	TV	19	IUN	Y

List of Stations in 210 Television Markets

19	Modesto	KSPX	TV	29	PAX	Y
19	Modesto	KMAX	TV	31	UPN	Y
19	Modesto	KTXL	TV	40	FOX	Y
19	Modesto	KQCA	TV	58	WBN	Y
19	Modesto	KFTL	TV	64	IIN	Y
20	Bch-Melbrn	WESH	TV	2	NBC	Y
20	Bch-Melbrn	WKMG	TV	6	CBS	Y
20	Bch-Melbrn	WFTV	TV	9	ABC	Y
20	Bch-Melbrn	WCEU	TV	15	PPB	N
20	Bch-Melbrn	WKCF	TV	18	WBN	Y
20	Bch-Melbrn	WMFE	TV	24	PPB	N
20	Bch-Melbrn	WVEN	TV	26	IIN	Y
20	Bch-Melbrn	WRDQ	TV	27	IIN	Y
20	Bch-Melbrn	WOFL	TV	35	FOX	Y
20	Bch-Melbrn	WOTF	TV	43	IHS	Y
20	Bch-Melbrn	WTGL	TV	52	IIN	Y
20	Bch-Melbrn	WACX	TV	55	IIN	Y
20	Bch-Melbrn	WOPX	TV	56	PAX	Y
20	Bch-Melbrn	WRBW	TV	65	UPN	Y
20	Bch-Melbrn	WBCC	TV	68	IIN	N
21	Pittsburgh	KDKA	TV	2	CBS	Y
21	Pittsburgh	WTAE	TV	4	ABC	Y
21	Pittsburgh	WPXI	TV	11	NBC	Y
21	Pittsburgh	WQED	TV	13	PPB	N
21	Pittsburgh	WCWB	TV	22	WBN	Y
21	Pittsburgh	WPCB	TV	40	IIN	Y
21	Pittsburgh	WPGH	TV	53	FOX	Y
22	St. Louis	KTVI	TV	2	FOX	Y
22	St. Louis	KMOV	TV	4	CBS	Y
22	St. Louis	KSDK	TV	5	NBC	Y
22	St. Louis	KETC	TV	9	PPB	N
22	St. Louis	KPLR	TV	11	WBN	Y
22	St. Louis	WPXS	TV	13	PAX	Y
22	St. Louis	KNLC	TV	24	IIN	Y
22	St. Louis	KDNL	TV	30	ABC	Y
22	St. Louis	WHSL	TV	46	IHS	Y
23	Portland, OR	KATU	TV	2	ABC	Y
23	Portland, OR	KOIN	TV	6	CBS	Y
23	Portland, OR	KGW	TV	8	NBC	Y
23	Portland, OR	KOPB	TV	10	PPB	N
23	Portland, OR	KPTV	TV	12	UPN	Y
23	Portland, OR	KPXG	TV	22	PAX	Y
23	Portland, OR	KNMT	TV	24	IIN	Y
23	Portland, OR	KWBP	TV	32	WBN	Y
23	Portland, OR	KPDX	TV	49	FOX	Y
24	Baltimore	WMAR	TV	2	ABC	Y
24	Baltimore	WBAL	TV	11	NBC	Y
24	Baltimore	WJZ	TV	13	CBS	Y
24	Baltimore	WUTB	TV	24	UPN	Y

List of Stations in 210 Television Markets

24	Baltimore	WBFF	TV	45	FOX	Y
24	Baltimore	WNUV	TV	54	WBN	Y
24	Baltimore	WMPB	TV	67	PPB	N
25	Indianapolis	WTTV	TV	4	WBN	Y
25	Indianapolis	WRTV	TV	6	ABC	Y
25	Indianapolis	WISH	TV	8	CBS	Y
25	Indianapolis	WTHR	TV	13	NBC	Y
25	Indianapolis	WFYI	TV	20	PPB	N
25	Indianapolis	WNDY	TV	23	UPN	Y
25	Indianapolis	WTIU	TV	30	PPB	N
25	Indianapolis	WHMB	TV	40	IIN	Y
25	Indianapolis	WCLJ	TV	42	IIN	Y
25	Indianapolis	WIPB	TV	49	PPB	N
25	Indianapolis	WXIN	TV	59	FOX	Y
25	Indianapolis	WIPX	TV	63	PAX	Y
25	Indianapolis	WTBU	TV	69	PPB	N
26	San Diego	KFMB	TV	8	CBS	Y
26	San Diego	KGTV	TV	10	ABC	Y
26	San Diego	KPBS	TV	15	PPB	N
26	San Diego	KNSD	TV	39	NBC	Y
26	San Diego	KUSI	TV	51	UPN	Y
26	San Diego	KSWB	TV	69	WBN	Y
27	Charlotte	WBTV	TV	3	CBS	Y
27	Charlotte	WSOC	TV	9	ABC	Y
27	Charlotte	WHKY	TV	14	IIN	Y
27	Charlotte	WCCB	TV	18	FOX	Y
27	Charlotte	WCNC	TV	36	NBC	Y
27	Charlotte	WTVI	TV	42	PPB	N
27	Charlotte	WJZY	TV	46	UPN	Y
27	Charlotte	WWWB	TV	55	WBN	Y
27	Charlotte	WAXN	TV	64	IIN	Y
28	Haven	WFSB	TV	3	CBS	Y
28	Haven	WTNH	TV	8	ABC	Y
28	Haven	WUVN	TV	18	IUN	Y
28	Haven	WTXX	TV	20	UPN	Y
28	Haven	WEDH	TV	24	PPB	N
28	Haven	WHPX	TV	26	PAX	Y
28	Haven	WVIT	TV	30	NBC	Y
28	Haven	WCTX	TV	59	WBN	Y
28	Haven	WTIC	TV	61	FOX	Y
29	(Fayetvlle)	WUNC	TV	4	PPB	N
29	(Fayetvlle)	WRAL	TV	5	CBS	Y
29	(Fayetvlle)	WTVD	TV	11	ABC	Y
29	(Fayetvlle)	WNCN	TV	17	NBC	Y
29	(Fayetvlle)	WLFL	TV	22	WBN	Y
29	(Fayetvlle)	WRDC	TV	28	UPN	Y
29	(Fayetvlle)	WRAY	TV	30	IHS	Y
29	(Fayetvlle)	WKFT	TV	40	IIN	Y
29	(Fayetvlle)	WRPX	TV	47	PAX	Y

List of Stations in 210 Television Markets

29	(Fayetvlle)	WRAZ	TV	50	FOX	Y
29	(Fayetvlle)	WFPX	TV	62	PAX	Y
30	Nashville	WKRN	TV	2	ABC	Y
30	Nashville	WSMV	TV	4	NBC	Y
30	Nashville	WTVF	TV	5	CBS	Y
30	Nashville	WNPT	TV	8	PPB	N
30	Nashville	WZTV	TV	17	FOX	Y
30	Nashville	WCTE	TV	22	PPB	N
30	Nashville	WNPX	TV	28	PAX	Y
30	Nashville	WUXP	TV	30	UPN	Y
30	Nashville	WHTN	TV	39	IIN	Y
30	Nashville	WPGD	TV	50	IIN	Y
30	Nashville	WNAB	TV	58	WBN	Y
30	Nashville	WJFB	TV	66	IIN	Y
31	Kansas City	WDAF	TV	4	FOX	Y
31	Kansas City	KCTV	TV	5	CBS	Y
31	Kansas City	KMBC	TV	9	ABC	Y
31	Kansas City	KCPT	TV	19	PPB	N
31	Kansas City	KCWE	TV	29	UPN	Y
31	Kansas City	KMCI	TV	38	IIN	Y
31	Kansas City	KSHB	TV	41	NBC	Y
31	Kansas City	KPXE	TV	50	PAX	Y
31	Kansas City	KSMO	TV	62	WBN	Y
32	Cincinnati	WLWT	TV	5	NBC	Y
32	Cincinnati	WCPO	TV	9	ABC	Y
32	Cincinnati	WKRC	TV	12	CBS	Y
32	Cincinnati	WXIX	TV	19	FOX	Y
32	Cincinnati	WCET	TV	48	PPB	N
32	Cincinnati	WSTR	TV	64	WBN	Y
33	Milwaukee	WTMJ	TV	4	NBC	Y
33	Milwaukee	WITI	TV	6	FOX	Y
33	Milwaukee	WMVS	TV	10	PPB	N
33	Milwaukee	WISN	TV	12	ABC	Y
33	Milwaukee	WVTV	TV	18	WBN	Y
33	Milwaukee	WCGV	TV	24	UPN	Y
33	Milwaukee	WVCY	TV	30	IRE	Y
33	Milwaukee	WJJA	TV	49	IIN	Y
33	Milwaukee	WWRS	TV	52	IIN	Y
33	Milwaukee	WPXE	TV	55	PAX	Y
33	Milwaukee	WDJT	TV	58	CBS	Y
34	Columbus, OH	WCMH	TV	4	NBC	Y
34	Columbus, OH	WSYX	TV	6	ABC	Y
34	Columbus, OH	WBNS	TV	10	CBS	Y
34	Columbus, OH	WTTE	TV	28	FOX	Y
34	Columbus, OH	WOSU	TV	34	PPB	N
34	Columbus, OH	WSFJ	TV	51	IRE	Y
34	Columbus, OH	WWHO	TV	53	WBN	Y
35	Salt Lake City	KUTV	TV	2	CBS	Y
35	Salt Lake City	KBJN	TV	3	PED	N

List of Stations in 210 Television Markets

35	Salt Lake City	KTVX	TV	4	ABC	Y
35	Salt Lake City	KSL	TV	5	NBC	Y
35	Salt Lake City	KUED	TV	7	PPB	N
35	Salt Lake City	KULC	TV	9	PED	N
35	Salt Lake City	KBYU	TV	11	PPB	N
35	Salt Lake City	KSTU	TV	13	FOX	Y
35	Salt Lake City	KJZZ	TV	14	IIN	Y
35	Salt Lake City	KUWB	TV	16	WBN	Y
35	Salt Lake City	KPNZ	TV	24	UPN	Y
35	Salt Lake City	KUPX	TV	30	PAX	Y
36	Ashevll-And	WYFF	TV	4	NBC	Y
36	Ashevll-And	WSPA	TV	7	CBS	Y
36	Ashevll-And	WLOS	TV	13	ABC	Y
36	Ashevll-And	WGGS	TV	16	IIN	Y
36	Ashevll-And	WHNS	TV	21	FOX	Y
36	Ashevll-And	WBSC	TV	40	WBN	Y
36	Ashevll-And	WASV	TV	62	IIN	Y
37	San Antonio	KMOL	TV	4	NBC	Y
37	San Antonio	KENS	TV	5	CBS	Y
37	San Antonio	KLRN	TV	9	PPB	N
37	San Antonio	KTRG	TV	10	UPN	Y
37	San Antonio	KSAT	TV	12	ABC	Y
37	San Antonio	KVAW	TV	16	IIN	Y
37	San Antonio	KHCE	TV	23	IIN	N
37	San Antonio	KPXL	TV	26	PAX	Y
37	San Antonio	KABB	TV	29	FOX	Y
37	San Antonio	KRRT	TV	35	WBN	Y
37	San Antonio	KWEX	TV	41	IUN	Y
37	San Antonio	KVDA	TV	60	ITE	Y
38	Kalmzoo-B.Crk	WWMT	TV	3	CBS	Y
38	Kalmzoo-B.Crk	WOOD	TV	8	NBC	Y
38	Kalmzoo-B.Crk	WZZM	TV	13	ABC	Y
38	Kalmzoo-B.Crk	WXMI	TV	17	FOX	Y
38	Kalmzoo-B.Crk	WGVU	TV	35	PPB	N
38	Kalmzoo-B.Crk	WOTV	TV	41	ABC	Y
38	Kalmzoo-B.Crk	WZPX	TV	43	PAX	Y
38	Kalmzoo-B.Crk	WTLJ	TV	54	IIN	Y
38	Kalmzoo-B.Crk	WLLA	TV	64	IIN	Y
39	Birmingham	WBRC	TV	6	FOX	Y
39	Birmingham	WBIQ	TV	10	PPB	N
39	Birmingham	WVTM	TV	13	NBC	Y
39	Birmingham	WTTO	TV	21	WBN	Y
39	Birmingham	WCFT	TV	33	ABC	Y
39	Birmingham	WJSU	TV	40	ABC	Y
39	Birmingham	WIAT	TV	42	CBS	Y
39	Birmingham	WPXH	TV	44	PAX	Y
39	Birmingham	WTJP	TV	60	IIN	Y
39	Birmingham	WABM	TV	68	UPN	Y
40	Ft. Pierce	WPTV	TV	5	NBC	Y

List of Stations in 210 Television Markets

40	Ft. Pierce	WPEC	TV	12	CBS	Y
40	Ft. Pierce	WTCE	TV	21	IIN	N
40	Ft. Pierce	WPBF	TV	25	ABC	Y
40	Ft. Pierce	WFLX	TV	29	FOX	Y
40	Ft. Pierce	WTVX	TV	34	UPN	Y
40	Ft. Pierce	WXEL	TV	42	PPB	N
40	Ft. Pierce	WFGC	TV	61	IIN	Y
40	Ft. Pierce	WPXP	TV	67	PAX	Y
41	Memphis	WREG	TV	3	CBS	Y
41	Memphis	WMC	TV	5	NBC	Y
41	Memphis	WKNO	TV	10	PPB	N
41	Memphis	WHBQ	TV	13	FOX	Y
41	Memphis	WPTY	TV	24	ABC	Y
41	Memphis	WLMT	TV	30	UPN	Y
41	Memphis	WBUY	TV	40	IIN	Y
41	Memphis	WPXX	TV	50	PAX	Y
42	Newpt Nws	WTKR	TV	3	CBS	Y
42	Newpt Nws	WAVY	TV	10	NBC	Y
42	Newpt Nws	WVEC	TV	13	ABC	Y
42	Newpt Nws	WHRO	TV	15	PPB	N
42	Newpt Nws	WGNT	TV	27	UPN	Y
42	Newpt Nws	WTVZ	TV	33	WBN	Y
42	Newpt Nws	WVBT	TV	43	FOX	Y
42	Newpt Nws	WPXV	TV	49	PAX	Y
43	New Orleans	WWL	TV	4	CBS	Y
43	New Orleans	WDSU	TV	6	NBC	Y
43	New Orleans	WVUE	TV	8	FOX	Y
43	New Orleans	WYES	TV	12	PPB	N
43	New Orleans	WHNO	TV	20	IIN	Y
43	New Orleans	WGNO	TV	26	ABC	Y
43	New Orleans	WLAE	TV	32	PPB	N
43	New Orleans	WNOL	TV	38	WBN	Y
43	New Orleans	WPXL	TV	49	PAX	Y
43	New Orleans	WUPL	TV	54	UPN	Y
44	H.Point-W.Salem	WFMY	TV	2	CBS	Y
44	H.Point-W.Salem	WGHP	TV	8	FOX	Y
44	H.Point-W.Salem	WXII	TV	12	NBC	Y
44	H.Point-W.Salem	WGPX	TV	16	PAX	Y
44	H.Point-W.Salem	WTWB	TV	20	WBN	Y
44	H.Point-W.Salem	WXLV	TV	45	ABC	Y
44	H.Point-W.Salem	WUPN	TV	48	UPN	Y
44	H.Point-W.Salem	WLXI	TV	61	IIN	Y
45	Oklahoma City	KFOR	TV	4	NBC	Y
45	Oklahoma City	KOCO	TV	5	ABC	Y
45	Oklahoma City	KWTV	TV	9	CBS	Y
45	Oklahoma City	KETA	TV	13	PPB	N
45	Oklahoma City	KTBO	TV	14	IIN	Y
45	Oklahoma City	KOKH	TV	25	FOX	Y
45	Oklahoma City	KOCB	TV	34	WBN	Y

List of Stations in 210 Television Markets

45	Oklahoma City	KAUT	TV	43	UPN	Y
45	Oklahoma City	KSBI	TV	52	IIN	Y
45	Oklahoma City	KOPX	TV	62	PAX	Y
46	Leb-York	WGAL	TV	8	NBC	Y
46	Leb-York	WLYH	TV	15	UPN	Y
46	Leb-York	WHP	TV	21	CBS	Y
46	Leb-York	WHTM	TV	27	ABC	Y
46	Leb-York	WITF	TV	33	PPB	N
46	Leb-York	WPMT	TV	43	FOX	Y
46	Leb-York	WGCB	TV	49	IIN	Y
46	Leb-York	WTVE	TV	51	IIN	Y
47	Buffalo	WGRZ	TV	2	NBC	Y
47	Buffalo	WIVB	TV	4	CBS	Y
47	Buffalo	WKBW	TV	7	ABC	Y
47	Buffalo	WNED	TV	17	PPB	N
47	Buffalo	WNLO	TV	23	IIN	N
47	Buffalo	WNYB	TV	26	IIN	Y
47	Buffalo	WUTV	TV	29	FOX	Y
47	Buffalo	WNYO	TV	49	WBN	Y
47	Buffalo	WPXJ	TV	51	PAX	Y
47	Buffalo	WNGS	TV	67	UPN	Y
48	Santa Fe	KASA	TV	2	FOX	Y
48	Santa Fe	KENW	TV	3	PPB	N
48	Santa Fe	KOB	TV	4	NBC	Y
48	Santa Fe	KNME	TV	5	PPB	N
48	Santa Fe	KOAT	TV	7	ABC	Y
48	Santa Fe	KCHF	TV	11	IIN	Y
48	Santa Fe	KRQE	TV	13	CBS	Y
48	Santa Fe	KAPX	TV	14	PAX	Y
48	Santa Fe	KWBQ	TV	19	WBN	Y
48	Santa Fe	KNAT	TV	23	IIN	Y
48	Santa Fe	KAZQ	TV	32	IIN	N
48	Santa Fe	KLUZ	TV	41	IUN	Y
48	Santa Fe	KASY	TV	50	UPN	Y
49	Bedford	WLNE	TV	6	ABC	Y
49	Bedford	WJAR	TV	10	NBC	Y
49	Bedford	WPRI	TV	12	CBS	Y
49	Bedford	WLWC	TV	28	WBN	Y
49	Bedford	WSBE	TV	36	PPB	N
49	Bedford	WNAC	TV	64	FOX	Y
49	Bedford	WPXQ	TV	69	PAX	Y
50	Louisville	WAVE	TV	3	NBC	Y
50	Louisville	WHAS	TV	11	ABC	Y
50	Louisville	WKPC	TV	15	PPB	N
50	Louisville	WBNA	TV	21	PAX	Y
50	Louisville	WLKY	TV	32	CBS	Y
50	Louisville	WBKI	TV	34	WBN	Y
50	Louisville	WDRB	TV	41	FOX	Y
50	Louisville	WFTE	TV	58	UPN	Y

List of Stations in 210 Television Markets

51	Las Vegas	KVBC	TV	3	NBC	Y
51	Las Vegas	KVVU	TV	5	FOX	Y
51	Las Vegas	KLAS	TV	8	CBS	Y
51	Las Vegas	KLVX	TV	10	PPB	N
51	Las Vegas	KTNV	TV	13	ABC	Y
51	Las Vegas	KINC	TV	15	IUN	Y
51	Las Vegas	KVWB	TV	21	WBN	Y
51	Las Vegas	KFBT	TV	33	IIN	Y
51	Las Vegas	KBLR	TV	39	ITE	Y
52	Scranton	WNEP	TV	16	ABC	Y
52	Scranton	WYOU	TV	22	CBS	Y
52	Scranton	WBRE	TV	28	NBC	Y
52	Scranton	WOLF	TV	38	FOX	Y
52	Scranton	WVIA	TV	44	PPB	N
52	Scranton	WSWB	TV	56	WBN	Y
52	Scranton	WQPX	TV	64	PAX	Y
53	Brunswick	WJXT	TV	4	CBS	Y
53	Brunswick	WJCT	TV	7	PPB	N
53	Brunswick	WTLV	TV	12	NBC	Y
53	Brunswick	WJWB	TV	17	WBN	Y
53	Brunswick	WPXC	TV	21	PAX	Y
53	Brunswick	WJXX	TV	25	ABC	Y
53	Brunswick	WAWS	TV	30	FOX	Y
53	Brunswick	WTEV	TV	47	UPN	Y
53	Brunswick	WJEB	TV	59	IIN	N
54	Austin	KBEJ	TV	2	UPN	Y
54	Austin	KTBC	TV	7	FOX	Y
54	Austin	KLRU	TV	18	PPB	N
54	Austin	KVUE	TV	24	ABC	Y
54	Austin	KXAN	TV	36	NBC	Y
54	Austin	KEYE	TV	42	CBS	Y
54	Austin	KNVA	TV	54	WBN	Y
55	Fresno-Visalia	KVPT	TV	18	PPB	N
55	Fresno-Visalia	KFTV	TV	21	IUN	Y
55	Fresno-Visalia	KSEE	TV	24	NBC	Y
55	Fresno-Visalia	KMPH	TV	26	FOX	Y
55	Fresno-Visalia	KFSN	TV	30	ABC	Y
55	Fresno-Visalia	KGMC	TV	43	PAX	Y
55	Fresno-Visalia	KGPE	TV	47	CBS	Y
55	Fresno-Visalia	KNXT	TV	49	PPB	N
55	Fresno-Visalia	KNSO	TV	51	WBN	Y
55	Fresno-Visalia	KAIL	TV	53	UPN	Y
55	Fresno-Visalia	KFRE	TV	59	ITE	Y
55	Fresno-Visalia	KPXF	TV	61	PAX	Y
56	Bluff	KETS	TV	2	PPB	N
56	Bluff	KARK	TV	4	NBC	Y
56	Bluff	KATV	TV	7	ABC	Y
56	Bluff	KTHV	TV	11	CBS	Y
56	Bluff	KLRT	TV	16	FOX	Y

List of Stations in 210 Television Markets

56	Bluff	KLEP	TV	17	PPB	N
56	Bluff	KVTN	TV	25	IIN	Y
56	Bluff	KASN	TV	38	UPN	Y
56	Bluff	KYPX	TV	42	PAX	Y
56	Bluff	KWBF	TV	49	WBN	Y
57	Schenectady-Troy	WRGB	TV	6	CBS	Y
57	Schenectady-Troy	WTEN	TV	10	ABC	Y
57	Schenectady-Troy	WNYT	TV	13	NBC	Y
57	Schenectady-Troy	WMHT	TV	17	PPB	N
57	Schenectady-Troy	WXXA	TV	23	FOX	Y
57	Schenectady-Troy	WEWB	TV	45	WBN	Y
57	Schenectady-Troy	WYPX	TV	55	PAX	Y
58	Petersburg	WTVR	TV	6	CBS	Y
58	Petersburg	WRIC	TV	8	ABC	Y
58	Petersburg	WWBT	TV	12	NBC	Y
58	Petersburg	WCVE	TV	23	PPB	N
58	Petersburg	WRLH	TV	35	FOX	Y
58	Petersburg	WUPV	TV	65	UPN	Y
59	Tulsa	KJRH	TV	2	NBC	Y
59	Tulsa	KOTV	TV	6	CBS	Y
59	Tulsa	KTUL	TV	8	ABC	Y
59	Tulsa	KDOR	TV	17	IIN	Y
59	Tulsa	KWBT	TV	19	WBN	Y
59	Tulsa	KOKI	TV	23	FOX	Y
59	Tulsa	KRSC	TV	35	IIN	N
59	Tulsa	KTFO	TV	41	UPN	Y
59	Tulsa	KTPX	TV	44	PAX	Y
59	Tulsa	KWHB	TV	47	IIN	Y
59	Tulsa	KGEB	TV	53	IIN	Y
60	Dayton	WDTN	TV	2	ABC	Y
60	Dayton	WHIO	TV	7	CBS	Y
60	Dayton	WPTD	TV	16	PPB	N
60	Dayton	WKEF	TV	22	NBC	Y
60	Dayton	WBDT	TV	26	WBN	Y
60	Dayton	WHCP	TV	30	WBN	Y
60	Dayton	WKOI	TV	43	IIN	Y
60	Dayton	WRGT	TV	45	FOX	Y
61	Huntington	WSAZ	TV	3	NBC	Y
61	Huntington	WCHS	TV	8	ABC	Y
61	Huntington	WVAH	TV	11	FOX	Y
61	Huntington	WOWK	TV	13	CBS	Y
61	Huntington	WOUB	TV	20	PPB	N
61	Huntington	WLPX	TV	29	PAX	Y
61	Huntington	WPBY	TV	33	PPB	N
61	Huntington	WTSF	TV	61	IIN	Y
62	Knoxville	WSJK	TV	2	PPB	N
62	Knoxville	WATE	TV	6	ABC	Y
62	Knoxville	WVLT	TV	8	CBS	Y
62	Knoxville	WBIR	TV	10	NBC	Y

List of Stations in 210 Television Markets

62	Knoxville	WKOP	TV	15	PPB	N
62	Knoxville	WBXX	TV	20	WBN	Y
62	Knoxville	WTNZ	TV	43	FOX	Y
62	Knoxville	WPXK	TV	54	PAX	Y
63	(Ft Walt)	WEAR	TV	3	ABC	Y
63	(Ft Walt)	WKRG	TV	5	CBS	Y
63	(Ft Walt)	WALA	TV	10	FOX	Y
63	(Ft Walt)	WPMI	TV	15	NBC	Y
63	(Ft Walt)	WSRE	TV	23	PPB	N
63	(Ft Walt)	WHBR	TV	33	IIN	Y
63	(Ft Walt)	WFGX	TV	35	WBN	Y
63	(Ft Walt)	WJTC	TV	44	UPN	Y
63	(Ft Walt)	WPAN	TV	53	IIN	Y
63	(Ft Walt)	WBPG	TV	55	WBN	Y
64	City	WNEM	TV	5	CBS	Y
64	City	WJRT	TV	12	ABC	Y
64	City	WCMU	TV	14	PPB	N
64	City	WDCQ	TV	19	PPB	N
64	City	WEYI	TV	25	NBC	Y
64	City	WFUM	TV	28	PPB	N
64	City	WAQP	TV	49	IIN	Y
64	City	WSMH	TV	66	FOX	Y
65	Hutchinson Plus	KSNW	TV	3	NBC	Y
65	Hutchinson Plus	KPTS	TV	8	PPB	N
65	Hutchinson Plus	KOOD	TV	9	PPB	N
65	Hutchinson Plus	KAKE	TV	10	ABC	Y
65	Hutchinson Plus	KWCH	TV	12	CBS	Y
65	Hutchinson Plus	KSAS	TV	24	FOX	Y
65	Hutchinson Plus	KWCV	TV	33	WBN	Y
65	Hutchinson Plus	KSCC	TV	36	UPN	Y
66	Lexington	WLEX	TV	18	NBC	Y
66	Lexington	WKYT	TV	27	CBS	Y
66	Lexington	WTVQ	TV	36	ABC	Y
66	Lexington	WKLE	TV	46	PPB	N
66	Lexington	WDKY	TV	56	FOX	Y
66	Lexington	WLJC	TV	65	IIN	Y
66	Lexington	WUPX	TV	67	IIN	Y
67	Lynchburg	WDBJ	TV	7	CBS	Y
67	Lynchburg	WSLS	TV	10	NBC	Y
67	Lynchburg	WSET	TV	13	ABC	Y
67	Lynchburg	WBRA	TV	15	PPB	N
67	Lynchburg	WDRL	TV	24	UPN	Y
67	Lynchburg	WFXR	TV	27	FOX	Y
67	Lynchburg	WPXR	TV	38	PAX	Y
68	Toledo	WTOL	TV	11	CBS	Y
68	Toledo	WTVG	TV	13	ABC	Y
68	Toledo	WNWO	TV	24	NBC	Y
68	Toledo	WGTE	TV	30	PPB	N
68	Toledo	WUPW	TV	36	FOX	Y

List of Stations in 210 Television Markets

68	Toledo	WLMB	TV	40	IIN	Y
69	Appleton	WBAY	TV	2	ABC	Y
69	Appleton	WFRV	TV	5	CBS	Y
69	Appleton	WLUK	TV	11	FOX	Y
69	Appleton	WIWB	TV	14	WBN	Y
69	Appleton	WGBA	TV	26	NBC	Y
69	Appleton	WACY	TV	32	UPN	Y
69	Appleton	WPNE	TV	38	PPB	N
69	Appleton	WFXS	TV	55	FOX	Y
70	Des Moines-Ames	WOI	TV	5	ABC	Y
70	Des Moines-Ames	KCCI	TV	8	CBS	Y
70	Des Moines-Ames	KDIN	TV	11	PPB	N
70	Des Moines-Ames	WHO	TV	13	NBC	Y
70	Des Moines-Ames	KDSM	TV	17	FOX	Y
70	Des Moines-Ames	KPWB	TV	23	WBN	Y
70	Des Moines-Ames	KFPX	TV	39	PAX	Y
71	Rochester, NY	WROC	TV	8	CBS	Y
71	Rochester, NY	WHEC	TV	10	NBC	Y
71	Rochester, NY	WOKR	TV	13	ABC	Y
71	Rochester, NY	WXXI	TV	21	PPB	N
71	Rochester, NY	WUHF	TV	31	FOX	Y
72	Honolulu	KHON	TV	2	FOX	Y
72	Honolulu	KITV	TV	4	ABC	Y
72	Honolulu	KFVE	TV	5	UPN	Y
72	Honolulu	KGMB	TV	9	CBS	Y
72	Honolulu	KHET	TV	11	PPB	N
72	Honolulu	KHNL	TV	13	NBC	Y
72	Honolulu	KWHE	TV	14	IIN	Y
72	Honolulu	KIKU	TV	20	IIN	Y
72	Honolulu	KAAH	TV	26	IIN	Y
72	Honolulu	KBFD	TV	32	IIN	Y
72	Honolulu	KALO	TV	38	PED	N
72	Honolulu	KPXO	TV	66	PAX	Y
73	Vista)	KVOA	TV	4	NBC	Y
73	Vista)	KUAT	TV	6	PPB	N
73	Vista)	KGUN	TV	9	ABC	Y
73	Vista)	KMSB	TV	11	FOX	Y
73	Vista)	KOLD	TV	13	CBS	Y
73	Vista)	KTTU	TV	18	UPN	Y
73	Vista)	KUAS	TV	27	PPB	N
73	Vista)	KHRR	TV	40	ITE	Y
73	Vista)	KWBA	TV	58	WBN	Y
74	Springfield, MO	KYTV	TV	3	NBC	Y
74	Springfield, MO	KOLR	TV	10	CBS	Y
74	Springfield, MO	KOZK	TV	21	PPB	N
74	Springfield, MO	KDEB	TV	27	FOX	Y
74	Springfield, MO	KWBM	TV	31	WBN	Y
74	Springfield, MO	KSPR	TV	33	ABC	Y
74	Springfield, MO	KWBS	TV	34	PAX	Y

List of Stations in 210 Television Markets

75	Omaha	KMTV	TV	3	CBS	Y
75	Omaha	WOWT	TV	6	NBC	Y
75	Omaha	KETV	TV	7	ABC	Y
75	Omaha	KXVO	TV	15	WBN	Y
75	Omaha	KPTM	TV	42	FOX	Y
76	Ft. Myers-Naples	WINK	TV	11	CBS	Y
76	Ft. Myers-Naples	WBBH	TV	20	NBC	Y
76	Ft. Myers-Naples	WZVN	TV	26	ABC	Y
76	Ft. Myers-Naples	WGCU	TV	30	PPB	N
76	Ft. Myers-Naples	WFTX	TV	36	FOX	Y
76	Ft. Myers-Naples	WTVK	TV	46	WBN	Y
76	Ft. Myers-Naples	WRXY	TV	49	IIN	Y
77	Harbg-Mt VN	WSIL	TV	3	ABC	Y
77	Harbg-Mt VN	WPSD	TV	6	NBC	Y
77	Harbg-Mt VN	WSIU	TV	8	PPB	N
77	Harbg-Mt VN	KFVS	TV	12	CBS	Y
77	Harbg-Mt VN	KBSI	TV	23	FOX	Y
77	Harbg-Mt VN	WTCT	TV	27	IIN	Y
77	Harbg-Mt VN	WDKA	TV	49	UPN	Y
78	Spokane	KREM	TV	2	CBS	Y
78	Spokane	KXLY	TV	4	ABC	Y
78	Spokane	KHQ	TV	6	NBC	Y
78	Spokane	KSPS	TV	7	PPB	N
78	Spokane	KWSU	TV	10	PPB	N
78	Spokane	KUID	TV	12	PPB	N
78	Spokane	KSKN	TV	22	UPN	Y
78	Spokane	KAYU	TV	28	FOX	Y
78	Spokane	KGPX	TV	34	PAX	Y
79	Shreveport	KTBS	TV	3	ABC	Y
79	Shreveport	KTAL	TV	6	NBC	Y
79	Shreveport	KSLA	TV	12	CBS	Y
79	Shreveport	KPXJ	TV	21	PAX	Y
79	Shreveport	KMSS	TV	33	FOX	Y
79	Shreveport	KSHV	TV	45	UPN	Y
80	Portland-Auburn	WCSH	TV	6	NBC	Y
80	Portland-Auburn	WMTW	TV	8	ABC	Y
80	Portland-Auburn	WCBB	TV	10	PPB	N
80	Portland-Auburn	WGME	TV	13	CBS	Y
80	Portland-Auburn	WMPX	TV	23	PAX	Y
80	Portland-Auburn	WPME	TV	35	UPN	Y
80	Portland-Auburn	WPXT	TV	51	WBN	Y
81	Syracuse	WSTM	TV	3	NBC	Y
81	Syracuse	WTVH	TV	5	CBS	Y
81	Syracuse	WIXT	TV	9	ABC	Y
81	Syracuse	WSPX	TV	14	PAX	Y
81	Syracuse	WCNY	TV	24	PPB	N
81	Syracuse	WNYS	TV	43	UPN	Y
81	Syracuse	WSYT	TV	68	FOX	Y
82	fld-Decatur	WCIA	TV	3	CBS	Y

List of Stations in 210 Television Markets

82	fld-Decatur	WILL	TV	12	PPB	N
82	fld-Decatur	WSEC	TV	14	PPB	N
82	fld-Decatur	WAND	TV	17	ABC	Y
82	fld-Decatur	WICS	TV	20	NBC	Y
82	fld-Decatur	WBUI	TV	23	WBN	Y
82	fld-Decatur	WEIU	TV	51	IIN	N
82	fld-Decatur	WRSP	TV	55	FOX	Y
83	(Flor)	WHDF	TV	15	UPN	Y
83	(Flor)	WHNT	TV	19	CBS	Y
83	(Flor)	WYLE	TV	26	IIN	Y
83	(Flor)	WAAY	TV	31	ABC	Y
83	(Flor)	WAFF	TV	48	NBC	Y
83	(Flor)	WZDX	TV	54	FOX	Y
84	Columbia, SC	WIS	TV	10	NBC	Y
84	Columbia, SC	WLTX	TV	19	CBS	Y
84	Columbia, SC	WOLO	TV	25	ABC	Y
84	Columbia, SC	WRLK	TV	35	PPB	N
84	Columbia, SC	WACH	TV	57	FOX	Y
84	Columbia, SC	WQHB	TV	63	UPN	Y
85	Madison	WISC	TV	3	CBS	Y
85	Madison	WMTV	TV	15	NBC	Y
85	Madison	WHA	TV	21	PPB	N
85	Madison	WKOW	TV	27	ABC	Y
85	Madison	WMSN	TV	47	FOX	Y
85	Madison	WHPN	TV	57	UPN	Y
86	Chattanooga	WRCB	TV	3	NBC	Y
86	Chattanooga	WTVC	TV	9	ABC	Y
86	Chattanooga	WDEF	TV	12	CBS	Y
86	Chattanooga	WELF	TV	23	IIN	Y
86	Chattanooga	WTCI	TV	45	PPB	N
86	Chattanooga	WFLI	TV	53	WBN	Y
86	Chattanooga	WDSI	TV	61	FOX	Y
87	Elkhart	WNDU	TV	16	NBC	Y
87	Elkhart	WSBT	TV	22	CBS	Y
87	Elkhart	WSJV	TV	28	FOX	Y
87	Elkhart	WNIT	TV	34	PPB	N
87	Elkhart	WHME	TV	46	IIN	Y
87	Elkhart	WBND	TV	58	ABC	Y
88	Jackson, MS	WLBT	TV	3	NBC	Y
88	Jackson, MS	WJTV	TV	12	CBS	Y
88	Jackson, MS	WAPT	TV	16	ABC	Y
88	Jackson, MS	WMPN	TV	29	PPB	N
88	Jackson, MS	WDBD	TV	40	WBN	Y
89	Waterloo&Dubq	KGAN	TV	2	CBS	Y
89	Waterloo&Dubq	KWWL	TV	7	NBC	Y
89	Waterloo&Dubq	KCRG	TV	9	ABC	Y
89	Waterloo&Dubq	KWKB	TV	20	WBN	Y
89	Waterloo&Dubq	KFXA	TV	28	FOX	Y
89	Waterloo&Dubq	KFXB	TV	40	FOX	Y

List of Stations in 210 Television Markets

89	Waterloo&Dubq	KPXR	TV	48	PAX	Y
90	Plattsburgh	WCAX	TV	3	CBS	Y
90	Plattsburgh	WPTZ	TV	5	NBC	Y
90	Plattsburgh	WVNY	TV	22	ABC	Y
90	Plattsburgh	WETK	TV	33	PPB	N
90	Plattsburgh	WFFF	TV	44	FOX	Y
90	Plattsburgh	WCFE	TV	57	PPB	N
91	Pueblo	KOAA	TV	5	NBC	Y
91	Pueblo	KTSC	TV	8	PPB	N
91	Pueblo	KKTV	TV	11	CBS	Y
91	Pueblo	KRDO	TV	13	ABC	Y
91	Pueblo	KXRM	TV	21	FOX	Y
92	R.Island-Moline	WHBF	TV	4	CBS	Y
92	R.Island-Moline	KWQC	TV	6	NBC	Y
92	R.Island-Moline	WQAD	TV	8	ABC	Y
92	R.Island-Moline	KLJB	TV	18	FOX	Y
92	R.Island-Moline	WQPT	TV	24	PPB	N
93	Tri-Cities, TN-VA	WCYB	TV	5	NBC	Y
93	Tri-Cities, TN-VA	WJHL	TV	11	CBS	Y
93	Tri-Cities, TN-VA	WKPT	TV	19	ABC	Y
93	Tri-Cities, TN-VA	WEMT	TV	39	FOX	Y
93	Tri-Cities, TN-VA	WAGV	TV	44	IIN	Y
93	Tri-Cities, TN-VA	WLFG	TV	60	IRE	Y
94	Bryan	KCEN	TV	6	NBC	Y
94	Bryan	KWTX	TV	10	CBS	Y
94	Bryan	KAMU	TV	15	PPB	N
94	Bryan	KXXV	TV	25	ABC	Y
94	Bryan	KWBU	TV	34	PPB	N
94	Bryan	KWKT	TV	44	FOX	Y
94	Bryan	KNCT	TV	46	PPB	N
94	Bryan	KAKW	TV	62	UPN	Y
95	Baton Rouge	WBRZ	TV	2	ABC	Y
95	Baton Rouge	WAFB	TV	9	CBS	Y
95	Baton Rouge	WBTR	TV	19	IIN	Y
95	Baton Rouge	WLPB	TV	27	PPB	N
95	Baton Rouge	WVLA	TV	33	NBC	Y
95	Baton Rouge	WGMB	TV	44	FOX	Y
96	Johnstown-Altoona	WPSX	TV	3	PPB	N
96	Johnstown-Altoona	WJAC	TV	6	NBC	Y
96	Johnstown-Altoona	WWCP	TV	8	FOX	Y
96	Johnstown-Altoona	WTAJ	TV	10	CBS	Y
96	Johnstown-Altoona	WNPA	TV	19	UPN	Y
96	Johnstown-Altoona	WATM	TV	23	ABC	Y
97	Evansville	WTVW	TV	7	FOX	Y
97	Evansville	WNIN	TV	9	PPB	N
97	Evansville	WFIE	TV	14	NBC	Y
97	Evansville	WEHT	TV	25	ABC	Y
97	Evansville	WEVV	TV	44	CBS	Y
98	Youngstown	WFMJ	TV	21	NBC	Y

List of Stations in 210 Television Markets

98	Youngstown	WKBN	TV	27	CBS	Y
98	Youngstown	WYTV	TV	33	ABC	Y
98	Youngstown	WNEO	TV	45	PPB	N
99	Savannah	WSAV	TV	3	NBC	Y
99	Savannah	WTOC	TV	11	CBS	Y
99	Savannah	WJCL	TV	22	ABC	Y
99	Savannah	WTGS	TV	28	FOX	Y
99	Savannah	WGSA	TV	34	UPN	Y
100	Brnsvl-McA	KGBT	TV	4	CBS	Y
100	Brnsvl-McA	KRGV	TV	5	ABC	Y
100	Brnsvl-McA	KVEO	TV	23	NBC	Y
100	Brnsvl-McA	KTLM	TV	40	ITE	Y
100	Brnsvl-McA	KLUJ	TV	44	IIN	Y
100	Brnsvl-McA	KNVO	TV	48	IUN	Y
100	Brnsvl-McA	KMBH	TV	60	PPB	N
101	El Paso	KDBC	TV	4	CBS	Y
101	El Paso	KVIA	TV	7	ABC	Y
101	El Paso	KTSM	TV	9	NBC	Y
101	El Paso	KCOS	TV	13	PPB	N
101	El Paso	KFOX	TV	14	FOX	Y
101	El Paso	KRWG	TV	22	PPB	N
101	El Paso	KINT	TV	26	IUN	Y
101	El Paso	KSCE	TV	38	PPB	N
101	El Paso	KTYO	TV	48	ITE	Y
101	El Paso	KTFN	TV	65	WBN	Y
102	Krny Plus	KHAS	TV	5	NBC	Y
102	Krny Plus	KLKN	TV	8	ABC	Y
102	Krny Plus	KOLN	TV	10	CBS	Y
102	Krny Plus	KUON	TV	12	PPB	N
102	Krny Plus	KHGI	TV	13	ABC	Y
102	Krny Plus	KTVG	TV	17	FOX	Y
103	Longview(Lfkn&Nc	KLTV	TV	7	ABC	Y
103	Longview(Lfkn&Nc	KFXK	TV	51	FOX	Y
103	Longview(Lfkn&Nc	KETK	TV	56	NBC	Y
104	Ft. Wayne	WANE	TV	15	CBS	Y
104	Ft. Wayne	WPTA	TV	21	ABC	Y
104	Ft. Wayne	WKJG	TV	33	NBC	Y
104	Ft. Wayne	WFWA	TV	39	PPB	N
104	Ft. Wayne	WFFT	TV	55	FOX	Y
104	Ft. Wayne	WINM	TV	63	IIN	Y
105	Holyoke	WWLP	TV	22	NBC	Y
105	Holyoke	WGGB	TV	40	ABC	Y
106	Washngtn	WITN	TV	7	NBC	Y
106	Washngtn	WFXI	TV	8	FOX	Y
106	Washngtn	WNCT	TV	9	CBS	Y
106	Washngtn	WCTI	TV	12	ABC	Y
106	Washngtn	WEPX	TV	38	PAX	Y
107	Sprngdl-Rgrs	KFSM	TV	5	CBS	Y
107	Sprngdl-Rgrs	KPOM	TV	24	NBC	Y

List of Stations in 210 Television Markets

107	Sprngdl-Rgrs	KHBS	TV	40	ABC	Y
107	Sprngdl-Rgrs	KPBI	TV	46	FOX	Y
107	Sprngdl-Rgrs	KSBN	TV	57	IIN	Y
108	Charleston, SC	WCBD	TV	2	NBC	Y
108	Charleston, SC	WCIV	TV	4	ABC	Y
108	Charleston, SC	WCSC	TV	5	CBS	Y
108	Charleston, SC	WTAT	TV	24	FOX	Y
108	Charleston, SC	WMMP	TV	36	UPN	Y
109	Beach	WBTW	TV	13	CBS	Y
109	Beach	WPDE	TV	15	ABC	Y
109	Beach	WWMB	TV	21	UPN	Y
109	Beach	WFXB	TV	43	FOX	Y
110	Reno	KTVN	TV	2	CBS	Y
110	Reno	KRNV	TV	4	NBC	Y
110	Reno	KNPB	TV	5	PPB	N
110	Reno	KOLO	TV	8	ABC	Y
110	Reno	KRXI	TV	11	FOX	Y
110	Reno	KAME	TV	21	UPN	Y
110	Reno	KREN	TV	27	WBN	Y
111	Lansing	WLNS	TV	6	CBS	Y
111	Lansing	WILX	TV	10	NBC	Y
111	Lansing	WHTV	TV	18	IIN	Y
111	Lansing	WKAR	TV	23	PPB	N
111	Lansing	WSYM	TV	47	FOX	Y
111	Lansing	WLAJ	TV	53	ABC	Y
112	Falls(Mitchell)	KUSD	TV	2	PPB	N
112	Falls(Mitchell)	KELO	TV	11	CBS	Y
112	Falls(Mitchell)	KSFY	TV	13	ABC	Y
112	Falls(Mitchell)	KTTW	TV	17	FOX	Y
112	Falls(Mitchell)	KAUN	TV	36	PAX	Y
112	Falls(Mitchell)	KDLT	TV	46	NBC	Y
113	Thomasville	WCTV	TV	6	CBS	Y
113	Thomasville	WFSU	TV	11	PPB	N
113	Thomasville	WTXL	TV	27	ABC	Y
113	Thomasville	WTWC	TV	40	NBC	Y
113	Thomasville	WTLH	TV	49	FOX	Y
114	(Selma)	WAKA	TV	8	CBS	Y
114	(Selma)	WSFA	TV	12	NBC	Y
114	(Selma)	WCOV	TV	20	FOX	Y
114	(Selma)	WNCF	TV	32	ABC	Y
114	(Selma)	WMCF	TV	45	IIN	Y
114	(Selma)	WTSU	TV	63	PED	N
115	Augusta	WJBF	TV	6	ABC	Y
115	Augusta	WRDW	TV	12	CBS	Y
115	Augusta	WAGT	TV	26	NBC	Y
115	Augusta	WFXG	TV	54	FOX	Y
116	Bloomington	WHOI	TV	19	ABC	Y
116	Bloomington	WEEK	TV	25	NBC	Y
116	Bloomington	WMBD	TV	31	CBS	Y

List of Stations in 210 Television Markets

116	Bloomington	WYZZ	TV	43	FOX	Y
116	Bloomington	WTVP	TV	47	PPB	N
116	Bloomington	WAOE	TV	59	UPN	Y
117	Cadillac	WPBN	TV	7	NBC	Y
117	Cadillac	WWTV	TV	9	CBS	Y
117	Cadillac	WGTU	TV	29	ABC	Y
117	Cadillac	WFQX	TV	33	FOX	Y
118	Monterey-Salinas	KSBW	TV	8	NBC	Y
118	Monterey-Salinas	KCAH	TV	25	PPB	N
118	Monterey-Salinas	KCBA	TV	35	FOX	Y
118	Monterey-Salinas	KION	TV	46	CBS	Y
118	Monterey-Salinas	KSMS	TV	67	IUN	Y
119	Fargo-Valley City	KXJB	TV	4	CBS	Y
119	Fargo-Valley City	WDAY	TV	6	ABC	Y
119	Fargo-Valley City	KVLY	TV	11	NBC	Y
119	Fargo-Valley City	KFME	TV	13	PPB	N
119	Fargo-Valley City	KVRR	TV	15	FOX	Y
120	SanMar-SanLuOb	KEYT	TV	3	ABC	Y
120	SanMar-SanLuOb	KSBY	TV	6	NBC	Y
120	SanMar-SanLuOb	KCOY	TV	12	CBS	Y
120	SanMar-SanLuOb	KTAS	TV	33	IUN	Y
120	SanMar-SanLuOb	KPMR	TV	38	IUN	Y
120	SanMar-SanLuOb	KVER	TV	38	IUN	Y
120	SanMar-SanLuOb	KADY	TV	63	UPN	Y
121	Boise	KBCI	TV	2	CBS	Y
121	Boise	KAID	TV	4	PPB	N
121	Boise	KIVI	TV	6	ABC	Y
121	Boise	KTVB	TV	7	NBC	Y
121	Boise	KNIN	TV	9	UPN	Y
121	Boise	KTRV	TV	12	FOX	Y
122	Macon	WMAZ	TV	13	CBS	Y
122	Macon	WGXA	TV	24	FOX	Y
122	Macon	WMGT	TV	41	NBC	Y
122	Macon	WPGA	TV	58	ABC	Y
122	Macon	WGNM	TV	64	UPN	Y
123	Eugene	KEZI	TV	9	ABC	Y
123	Eugene	KVAL	TV	13	CBS	Y
123	Eugene	KMTR	TV	16	NBC	Y
123	Eugene	KLSR	TV	34	FOX	Y
124	Lafayette, LA	KATC	TV	3	ABC	Y
124	Lafayette, LA	KLFY	TV	10	CBS	Y
124	Lafayette, LA	KADN	TV	15	FOX	Y
125	Rchlnd-Knnwck	KNDO	TV	23	NBC	Y
125	Rchlnd-Knnwck	KIMA	TV	29	CBS	Y
125	Rchlnd-Knnwck	KAPP	TV	35	ABC	Y
125	Rchlnd-Knnwck	KCYU	TV	66	FOX	Y
126	Columbus, GA	WRBL	TV	3	CBS	Y
126	Columbus, GA	WTVM	TV	9	ABC	Y
126	Columbus, GA	WLTZ	TV	38	NBC	Y

List of Stations in 210 Television Markets

126	Columbus, GA	WXTX	TV	54	FOX	Y
126	Columbus, GA	WSWS	TV	66	IIN	Y
127	Claire	WKBT	TV	8	CBS	Y
127	Claire	WEAU	TV	13	NBC	Y
127	Claire	WXOW	TV	19	ABC	Y
127	Claire	WLAX	TV	25	FOX	Y
128	Amarillo	KACV	TV	2	PPB	N
128	Amarillo	KAMR	TV	4	NBC	Y
128	Amarillo	KVII	TV	7	ABC	Y
128	Amarillo	KFDA	TV	10	CBS	Y
128	Amarillo	KCIT	TV	14	FOX	Y
129	Corpus Christi	KIII	TV	3	ABC	Y
129	Corpus Christi	KRIS	TV	6	NBC	Y
129	Corpus Christi	KZTV	TV	10	CBS	Y
129	Corpus Christi	KEDT	TV	16	PPB	N
129	Corpus Christi	KORO	TV	28	IUN	Y
130	Bakersfield	KGET	TV	17	NBC	Y
130	Bakersfield	KERO	TV	23	ABC	Y
130	Bakersfield	KBAK	TV	29	CBS	Y
130	Bakersfield	KUVI	TV	45	IIN	Y
131	West Point	WCBI	TV	4	CBS	Y
131	West Point	WTVA	TV	9	NBC	Y
131	West Point	WLOV	TV	27	FOX	Y
132	Rockford	WREX	TV	13	NBC	Y
132	Rockford	WTVO	TV	17	ABC	Y
132	Rockford	WIFR	TV	23	CBS	Y
132	Rockford	WQRF	TV	39	FOX	Y
133	Chico-Redding	KRCR	TV	7	ABC	Y
133	Chico-Redding	KIXE	TV	9	PPB	N
133	Chico-Redding	KHSL	TV	12	CBS	Y
133	Chico-Redding	KNVN	TV	24	NBC	Y
133	Chico-Redding	KCVU	TV	30	FOX	Y
134	Monroe-El Dorado	KNOE	TV	8	CBS	Y
134	Monroe-El Dorado	KTVE	TV	10	NBC	Y
134	Monroe-El Dorado	KAQY	TV	11	ABC	Y
134	Monroe-El Dorado	KARD	TV	14	FOX	Y
134	Monroe-El Dorado	KMCT	TV	39	IIN	Y
135	Duluth-Superior	KDLH	TV	3	CBS	Y
135	Duluth-Superior	KBJR	TV	6	NBC	Y
135	Duluth-Superior	WDSE	TV	8	PPB	N
135	Duluth-Superior	WDIO	TV	10	ABC	Y
135	Duluth-Superior	KQDS	TV	21	FOX	Y
136	Arthur	KBTV	TV	4	NBC	Y
136	Arthur	KFDM	TV	6	CBS	Y
136	Arthur	KBMT	TV	12	ABC	Y
136	Arthur	KITU	TV	34	IIN	Y
137	Rhinelander	WSAW	TV	7	CBS	Y
137	Rhinelander	WAOW	TV	9	ABC	Y
137	Rhinelander	WJFW	TV	12	NBC	Y

List of Stations in 210 Television Markets

138	Topeka	KTWU	TV	11	PPB	N
138	Topeka	WIBW	TV	13	CBS	Y
138	Topeka	KSNT	TV	27	NBC	Y
138	Topeka	KTKA	TV	49	ABC	Y
139	Jefferson City	KMOS	TV	6	PPB	N
139	Jefferson City	KOMU	TV	8	NBC	Y
139	Jefferson City	KRCG	TV	13	CBS	Y
139	Jefferson City	KMIZ	TV	17	ABC	Y
139	Jefferson City	KNLJ	TV	25	UPN	Y
140	Falls	KOBI	TV	5	NBC	Y
140	Falls	KSYS	TV	8	PPB	N
140	Falls	KTVL	TV	10	CBS	Y
140	Falls	KDRV	TV	12	ABC	Y
140	Falls	KMVU	TV	26	FOX	Y
141	Lawton	KFDX	TV	3	NBC	Y
141	Lawton	KAUZ	TV	6	CBS	Y
141	Lawton	KSWO	TV	7	ABC	Y
141	Lawton	KJTL	TV	18	FOX	Y
142	Joplin-Pittsburg	KOAM	TV	7	CBS	Y
142	Joplin-Pittsburg	KODE	TV	12	ABC	Y
142	Joplin-Pittsburg	KSNF	TV	16	NBC	Y
143	Erie	WICU	TV	12	NBC	Y
143	Erie	WJET	TV	24	ABC	Y
143	Erie	WSEE	TV	35	CBS	Y
143	Erie	WQLN	TV	54	PPB	N
143	Erie	WFXP	TV	66	FOX	Y
144	Sioux City	KTIV	TV	4	NBC	Y
144	Sioux City	KCAU	TV	9	ABC	Y
144	Sioux City	KMEG	TV	14	CBS	Y
144	Sioux City	KPTH	TV	44	FOX	Y
145	Terre Haute	WTWO	TV	2	NBC	Y
145	Terre Haute	WTHI	TV	10	CBS	Y
145	Terre Haute	WVUT	TV	22	PPB	N
145	Terre Haute	WBAK	TV	38	FOX	Y
146	Wilmington	WWAY	TV	3	ABC	Y
146	Wilmington	WECT	TV	6	NBC	Y
146	Wilmington	WSFX	TV	26	FOX	Y
147	Albany, GA	WALB	TV	10	NBC	Y
147	Albany, GA	WFXL	TV	31	FOX	Y
147	Albany, GA	WVAG	TV	44	UPN	Y
147	Albany, GA	WSST	TV	55	IIN	Y
148	Lubbock	KTXT	TV	5	PPB	N
148	Lubbock	KCBD	TV	11	NBC	Y
148	Lubbock	KLBK	TV	13	CBS	Y
148	Lubbock	KAMC	TV	28	ABC	Y
148	Lubbock	KJTV	TV	34	FOX	Y
149	Oak Hill	WOAY	TV	4	ABC	Y
149	Oak Hill	WVVA	TV	6	NBC	Y
149	Oak Hill	WSWP	TV	9	PPB	N

List of Stations in 210 Television Markets

149	Oak Hill	WLFB	TV	40	IIN	Y
149	Oak Hill	WVSX	TV	59	CBS	Y
150	Steubenville	WTRF	TV	7	CBS	Y
150	Steubenville	WTOV	TV	9	NBC	Y
151	City-Austin	KIMT	TV	3	CBS	Y
151	City-Austin	KAAL	TV	6	ABC	Y
151	City-Austin	KTTC	TV	10	NBC	Y
151	City-Austin	KSMQ	TV	15	PPB	N
151	City-Austin	KXLT	TV	47	FOX	Y
152	Dickinson	KFYR	TV	5	NBC	Y
152	Dickinson	KXMC	TV	13	CBS	Y
152	Dickinson	KNDX	TV	26	IIN	Y
153	Salisbury	WBOC	TV	16	CBS	Y
153	Salisbury	WMDT	TV	47	ABC	Y
154	Odessa-Midland	KMID	TV	2	ABC	Y
154	Odessa-Midland	KOSA	TV	7	CBS	Y
154	Odessa-Midland	KWES	TV	9	NBC	Y
154	Odessa-Midland	KUPB	TV	18	IUN	Y
154	Odessa-Midland	KPEJ	TV	24	FOX	Y
154	Odessa-Midland	KOCV	TV	36	PPB	N
154	Odessa-Midland	KMLM	TV	42	IIN	Y
155	Anchorage	KTUU	TV	2	NBC	Y
155	Anchorage	KTBY	TV	4	FOX	Y
155	Anchorage	KYUK	TV	4	PPB	N
155	Anchorage	KYES	TV	5	UPN	Y
155	Anchorage	KAKM	TV	7	PPB	N
155	Anchorage	KTVA	TV	11	CBS	Y
155	Anchorage	KIMO	TV	13	ABC	Y
155	Anchorage	KDMD	TV	33	PAX	Y
156	Binghamton	WBNG	TV	12	CBS	Y
156	Binghamton	WIVT	TV	34	ABC	Y
156	Binghamton	WICZ	TV	40	FOX	Y
156	Binghamton	WSKG	TV	46	PPB	N
157	Biloxi-Gulfport	WLOX	TV	13	ABC	Y
157	Biloxi-Gulfport	WXXV	TV	25	FOX	Y
158	Bangor	WLBZ	TV	2	NBC	Y
158	Bangor	WABI	TV	5	CBS	Y
158	Bangor	WVII	TV	7	ABC	Y
158	Bangor	WMEB	TV	12	PPB	N
159	Panama City	WJHG	TV	7	NBC	Y
159	Panama City	WMBB	TV	13	ABC	Y
159	Panama City	WPGX	TV	28	FOX	Y
159	Panama City	WPCT	TV	46	IIN	Y
160	OK	KTEN	TV	10	NBC	Y
160	OK	KXII	TV	12	CBS	Y
161	Palm Springs	KMIR	TV	36	NBC	Y
161	Palm Springs	KESQ	TV	42	ABC	Y
162	Sweetwater	KRBC	TV	9	NBC	Y
162	Sweetwater	KTXS	TV	12	ABC	Y

List of Stations in 210 Television Markets

162	Sweetwater	KTAB	TV	32	CBS	Y
163	Keokuk	KHQA	TV	7	CBS	Y
163	Keokuk	WGEM	TV	10	NBC	Y
163	Keokuk	WTJR	TV	16	IIN	Y
163	Keokuk	WMEC	TV	22	PPB	N
163	Keokuk	WQEC	TV	27	PPB	N
164	Gainesville	WUFT	TV	5	PPB	N
164	Gainesville	WCJB	TV	20	ABC	Y
164	Gainesville	WOGX	TV	51	FOX	Y
164	Gainesville	WGFL	TV	53	WBN	Y
165	Weston	WDTV	TV	5	CBS	Y
165	Weston	WBOY	TV	12	NBC	Y
165	Weston	WNPB	TV	24	PPB	N
165	Weston	WVFX	TV	46	FOX	Y
166	Pocatello	KIDK	TV	3	CBS	Y
166	Pocatello	KPVI	TV	6	NBC	Y
166	Pocatello	KIFI	TV	8	ABC	Y
166	Pocatello	KISU	TV	10	PPB	N
166	Pocatello	KFXP	TV	31	FOX	Y
167	Hattiesburg-Laurel	WDAM	TV	7	NBC	Y
168	Utica	WKTV	TV	2	NBC	Y
168	Utica	WUTR	TV	20	ABC	Y
168	Utica	WFXV	TV	33	FOX	Y
169	Missoula	KPAX	TV	8	CBS	Y
169	Missoula	KUFM	TV	11	PPB	N
169	Missoula	KECI	TV	13	NBC	Y
169	Missoula	KTMF	TV	23	ABC	Y
170	Billings	KTVQ	TV	2	CBS	Y
170	Billings	KHMT	TV	4	FOX	Y
170	Billings	KSVI	TV	6	ABC	Y
170	Billings	KULR	TV	8	NBC	Y
171	Yuma-El Centro	KECY	TV	9	FOX	Y
171	Yuma-El Centro	KYMA	TV	11	NBC	Y
171	Yuma-El Centro	KSWT	TV	13	CBS	Y
171	Yuma-El Centro	KVYE	TV	47	IUN	N
172	Dothan	WTVY	TV	4	CBS	Y
172	Dothan	WDHN	TV	18	ABC	Y
172	Dothan	WDFX	TV	34	FOX	Y
173	Elmira	WETM	TV	18	NBC	Y
173	Elmira	WENY	TV	36	ABC	Y
173	Elmira	WYDC	TV	48	FOX	Y
174	Lake Charles	KPLC	TV	7	NBC	Y
174	Lake Charles	KVHP	TV	29	FOX	Y
175	Rapid City	KOTA	TV	3	ABC	Y
175	Rapid City	KEVN	TV	7	FOX	Y
176	Watertown	WWNY	TV	7	CBS	Y
176	Watertown	WPBS	TV	16	PPB	N
176	Watertown	WWTI	TV	50	ABC	Y
177	Marquette	WLUC	TV	6	NBC	Y

List of Stations in 210 Television Markets

177	Marquette	WBUP	TV	10	ABC	Y
177	Marquette	WNMU	TV	13	PPB	N
178	Harrisonburg	WHSV	TV	3	ABC	Y
178	Harrisonburg	WVPT	TV	51	PPB	N
179	Alexandria, LA	KALB	TV	5	NBC	Y
179	Alexandria, LA	KLAX	TV	31	ABC	Y
180	Jonesboro	KAIT	TV	8	ABC	Y
180	Jonesboro	KVTJ	TV	48	IIN	Y
181	Bowling Green	WBKO	TV	13	ABC	Y
181	Bowling Green	WKYU	TV	24	PPB	N
181	Bowling Green	WNKY	TV	40	NBC	Y
182	Greenville	WABG	TV	6	ABC	Y
182	Greenville	WXVT	TV	15	CBS	Y
183	Jackson, TN	WBBJ	TV	7	ABC	Y
183	Jackson, TN	WLJT	TV	11	PPB	N
184	Montrose	KREX	TV	5	CBS	Y
184	Montrose	KJCT	TV	8	ABC	Y
184	Montrose	KKCO	TV	11	NBC	Y
184	Montrose	KRMJ	TV	18	PPB	N
185	Meridian	WTOK	TV	11	ABC	Y
185	Meridian	WMDN	TV	24	CBS	Y
185	Meridian	WGBC	TV	30	NBC	Y
186	Parkersburg	WTAP	TV	15	NBC	Y
187	Great Falls	KRTV	TV	3	CBS	Y
187	Great Falls	KFBB	TV	5	ABC	Y
187	Great Falls	KBBJ	TV	9	NBC	Y
187	Great Falls	KTGF	TV	16	NBC	Y
188	Twin Falls	KMVT	TV	11	CBS	Y
188	Twin Falls	KIPT	TV	13	PPB	N
188	Twin Falls	KBGH	TV	19	IIN	N
188	Twin Falls	KXTF	TV	35	FOX	Y
189	St. Joseph	KQTV	TV	2	ABC	Y
189	St. Joseph	KTAJ	TV	16	IIN	Y
190	Lafayette, IN	WLFI	TV	18	CBS	Y
191	Lima	WBGU	TV	27	PPB	N
191	Lima	WLIO	TV	35	NBC	Y
191	Lima	WTLW	TV	44	PAX	Y
192	Charlottesville	WVIR	TV	29	NBC	Y
192	Charlottesville	WHTJ	TV	41	PPB	N
193	MT	KXLF	TV	4	CBS	Y
193	MT	KUSM	TV	9	PPB	N
194	Laredo	KGNS	TV	8	NBC	Y
194	Laredo	KLDO	TV	27	IUN	Y
195	Eureka	KIEM	TV	3	NBC	Y
195	Eureka	KVIQ	TV	6	CBS	Y
195	Eureka	KEET	TV	13	PPB	N
195	Eureka	KBVU	TV	29	FOX	Y
196	Mankato	KEYC	TV	12	CBS	Y
197	Scottsbluff,	KGWN	TV	5	CBS	Y

List of Stations in 210 Television Markets

197	Scottsbluff,	KLWY	TV	27	FOX	Y
198	Ottumwa-Kirksville	KTVO	TV	3	ABC	Y
198	Ottumwa-Kirksville	KYOU	TV	15	FOX	Y
199	San Angelo	KIDY	TV	6	FOX	Y
199	San Angelo	KLST	TV	8	CBS	Y
200	Casper-Riverton	KTWO	TV	2	NBC	Y
200	Casper-Riverton	KCWC	TV	4	PPB	N
200	Casper-Riverton	KCWY	TV	13	PAX	Y
200	Casper-Riverton	KGWC	TV	14	CBS	Y
200	Casper-Riverton	KFNB	TV	20	ABC	Y
201	Bend, OR	KTVZ	TV	21	NBC	Y
202	Zanesville	WHIZ	TV	18	NBC	Y
203	Fairbanks	KJNP	TV	4	IIN	Y
203	Fairbanks	KFXF	TV	7	FOX	Y
203	Fairbanks	KUAC	TV	9	PPB	N
203	Fairbanks	KTVF	TV	11	NBC	Y
204	Victoria	KVCT	TV	19	FOX	Y
204	Victoria	KAVU	TV	25	ABC	Y
205	Presque Isle	WAGM	TV	8	CBS	Y
206	Juneau, AK	KTOO	TV	3	PPB	N
206	Juneau, AK	KUBD	TV	4	PAX	Y
206	Juneau, AK	KTNL	TV	13	CBS	Y
207	Helena	KMTF	TV	10	FOX	Y
207	Helena	KTVH	TV	12	NBC	Y
208	Alpena	WBKB	TV	11	CBS	Y
209	North Platte	KNOP	TV	2	NBC	Y
210	Glendive	KXGN	TV	5	CBS	Y

Response of Robert Pitofsky to a question submitted by Senator Edward Kennedy

Question: What impact, if any, would approval of the proposed merger have on efforts to bridge the digital divide by providing greater high speed internet access to underserved urban and rural communities?

Answer: For many communities in the United States without access to cable or DSL, satellite broadband is the most likely option for the foreseeable future for their obtaining high-speed Internet access. I have seen no indication, however, that this merger is necessary to increase the availability of such satellite broadband services. Subsidiaries of both EchoStar and DirecTV are currently providing those services and have announced plans to expand those services. Consumers would be better off with two providers of satellite broadband services rather than one.

Responses of Robert Pitofsky to questions submitted by Senator Strom Thurmond

Question 1: Mr. Pitofsky, assuming that a merger between EchoStar and Hughes DIRECTV would result in enhanced competition between satellite and cable services in the shortrun, what will be the long-term effects on competition in the multi-channel video programming market? Are any short-term benefits worth the long-term risks? If the merger takes place, how can we be assured that a competitive market will exist ten years from now?

Answer: EchoStar and DirecTV have been doing very well on their own in competing against cable services. They claim they cannot be effective in their competition with digital cable without a merger, but it is hard to see why that would be true. Their record of success over the last six years undermines that argument. As a result, even in the short term, there is every reason to believe that existing competition between the two satellite providers will continue to serve consumers well.

With respect to the long term, if the merger is permitted, it is permanent. We could see a single satellite company dominating consumer services in this area for a long time—with the indifferent service and higher prices that high levels of market power usually produce.

Question 2: Mr. Pitofsky, it has been suggested that the "one nation, one rate card" will protect rural markets where cable services are not available, thereby preventing the new corporation from abusing its monopoly in multi-channel video programming in those areas. However, if a cable provider in a metropolitan area cuts prices drastically, the new corporation would be unable to lower the rates in that metropolitan area without lowering rates everywhere in the nation. Therefore, while rural areas would be protected, the new company would be unable to compete in the metropolitan areas where cable cuts its rates. If this merger is approved, won't the concept of "one nation, one rate card" be a hindrance to vibrant competition in some markets?

Answer: I believe the premise of your question is exactly right. The concept of a national rate card seems appealing only so long as one does not carefully examine the consequences. If there is a single rate card and a cable company were to cut prices in a particular area, the merged firm will only be able to meet those prices if it lowered its national rate card across the entire country. That is unlikely to happen. Also, the concept that competition comes in a single form—a single national rate card—is not consistent with experience. The satellite companies have aggressively competed with each other through new subscriber promotions, equipment discounts, and other incentives. Thus, even if the rates in rural areas where the combined company would have a monopoly were the same as elsewhere in the United States, the rural areas could be denied all of these inducements and concessions that have been so important in the DBS industry. Nor will a national rate card substitute for the loss in competition to offer new services and technological innovation.

There is also the question of who will monitor this unusual commitment by the merged firms. One possibility is just to take their word for it, but antitrust enforcement doesn't usually work that way. The alternative is for a government agency to monitor each and every term of sale in each and every community in the United States to ensure that the "one nation, one rate card" concept is being respected. That is a form of direct and intrusive government regulation in the media area that Congress, the FCC, and the courts have been trying to avoid.

Question 3: Mr. Pitofsky, if the Department of Justice were to approve the merger, what kind of safeguards should be implemented to ensure that prices are kept constant in those rural areas without access to cable? Can these safeguards be effective?

Answer: As I said in my previous answer, the kind of monitoring that would be required may be impractical and ineffective, and certainly is inconsistent with the general thrust of antitrust law in relying on the free market to ensure fair and nondiscriminatory prices.

Question 4: Mr. Pitofsky, what safeguards are necessary to prevent the new corporation from requiring consumers to erect two dishes so that they may receive local channels? Would these safeguards be effective? If two dishes were eventually required, would many local channels be relegated to second-class status?

Answer: The question raises the very legitimate concern that the merger may produce inefficiencies in the way DBS service is provided. I don't have the technical expertise to know whether it will be necessary for consumers to purchase and own two satellite dishes rather than one, but the main point is that either of these companies separately could provide local TV channels. They are doing it now, and they are expanding. I see no reason why a merger is necessary to achieve that service—assuming willing consumers are available to purchase the service.

Question 5: Mr. Pitofsky, will the concentration of all the satellite spectrum in one company be a benefit or a detriment to consumers?

Answer: The theory of antitrust in this country for over 100 years is that monopoly market power in the long run is bad for consumers. That is particularly true where the market is barricaded by high entry barriers so that, if the monopolist raises prices or reduces service, others cannot enter. That is the situation that consumers would face if the proposed merger goes through.

Question 6: Mr. Pitofsky, are satellite services currently competitive with digital cable services? If so, does this undercut the argument that the merger is necessary for satellite to be competitive with cable?

Answer: I believe that satellite services are currently competitive with digital cable services in terms of the number of channels, quality of reception, advanced services that can be available to consumers and other features. Even if that were not true, this is an exceptionally dynamic sector of the economy, and services are modified and improved constantly. The real threat to continued competition would occur if EchoStar and DirecTV were permitted to merge so that they would amount to a satellite monopoly. Then the rivalry between the two, which has led to such obvious success in dramatic subscriber growth and expansion and enhancement of service in recent years, would disappear.

Question 7: Mr. Pitofsky, a guiding principle in American antitrust policy is the effect of a proposed merger on the consumer. How will the consumer of multi-channel video programming be affected by a merger between EchoStar and Hughes DirecTV?

Answer: It is the most fundamental tenet of American antitrust enforcement that mergers to monopoly (or even duopoly) will lead to higher prices, poorer service, and less innovation than would occur if there were competition. Congress and the courts have never wavered from their commitment to a free market protected by competition. I understand that the shareholders of the two companies proposing to merge might be enriched, but I simply can't see how consumers would be any better off.

Responses of Robert Pitofsky to questions submitted by Senator Herbert Kohl

l. Mr. Pitofsky, in most markets, the EchoStar/DIRECTV merger will reduce the number of competitors for subscription TV from three—the local cable TV company and the two satellite companies—to two. In rural areas not served by cable, the reduction to competition will be even worse—from two to one. Can you identify any merger in which a reduction in the number of competitors from three to two benefited consumers?

Answer: I cannot. Indeed, the Court of Appeals for the District of Columbia could not in the proposed merger of Beech Nut and Heinz, where it said it could not find a single case in which a merger of three to two under similar circumstances was permitted by a court. The result might be different if one of the two companies were failing or if barriers to entry into the market in which they operated were extremely low. Neither of those factors is present in connection with the proposed EchoStar/DirecTV merger.

Question 2: Mr. Pitofsky, there is no doubt that consumers are upset—and rightfully so—by the seeming unending increases in the price of cable TV. EchoStar and DIRECTV claim that, by permitting them to bring local-into-local service into many more markets, this merger will greatly strengthen [satellite] as a competitor to cable and, in turn, restrain cable rates. What's your view of this issue? Won't this merger make satellite TV a much stronger competitor to cable, and therefore much better able restrain cable rate increases?

Answer: It is hard to see why any of the alleged advantages of the merger could not be achieved by each of these companies separately—continuing to compete vigorously with each other. Experience suggests that where there is a three-to-two merger, the result will be to raise the price of the two smaller companies rather than lower the price of the dominant market leader.

Responses of Robert Pitofsky to questions submitted by Senator Orrin G. Hatch

Question 1: Attorney General Nixon, Mr. Fritts, and Mr. Pitofsky, would each of you please explain your respective interpretations of the recent announcement by DirecTV and EchoStar that they have suddenly found sufficient spectrum to carry all stations in all 210 television markets?

Answer: Of course it would be a welcome development if the DBS providers would provide local-into-local service to all consumers throughout the country. But the burden is on the merging parties to make a showing that the merger will result in efficiencies that are not achievable by each company independently, and that any efficiencies outweigh the concerns about extreme increased concentration. I have yet to see any persuasive evidence that these companies will not get to full local-into-local service on their own. Their essential argument appears to be that they would make more money if they didn't have to compete with each other, and that is a reason to allow the merger. That certainly is not a theory that results in consumer benefits.

Question 2: Attorney General Nixon and Mr. Pitofsky, let me ask you both a question that touches on a couple of different antitrust principles. There has been some debate about what the relevant market is and whether choosing one market over another really makes a substantive difference in this case. I would note, for example, that EchoStar has taken the position in litigation against DirecTV that DBS is the relevant market and that DirecTV is a monopoly in that market, but has more recently adopted a different and broader market definition. Also, one argument offered in support of the merger is that better competition to cable in the more urban areas, as well as more local television and pay-per-view offerings by the merged company, justify elimination of satellite television and broadband competition nationwide. Moreover, Mr. Kimmelman admitted that your analyses of the antitrust issues were correct, but that a broader view of some sort was required in this case, while attempting to argue that while DBS and cable were separate markets now, they would somehow become one market if the merger were approved. Could you comment in detail on these issues, including the relevant market definition and the nature of competition between cable and DBS, and, finally, give us your views of whether the antitrust laws allow benefits in one geographical or product market to be traded off against harm in another such market?

Answer: Let's examine the relevant market question from two points of view. As to the relevant geographic market, it is clear that the market is local. As a result of the merger, many subscribers and potential subscribers in rural America who do not have access to cable will see their choices reduced from two to one—two satellite companies merged to one. That surely is an ominous development for consumers.

As to relevant product market, I have not done the extensive study necessary to reach a firm conclusion. I tend to agree with the position advanced by EchoStar in the brief it filed about a year and a half ago that the two DBS companies compete most directly and substantially with each other and their prices respond to each other rather than to cable. That would make DBS a separate market or a submarket and again the merger would result in monopoly. Another possibility is that DBS to some extent competes with cable so that the three are in the same relevant product market. Even in that situation, the merger reduces the relevant players from three to two, a level of concentration that has invariably been rejected in the courts.

Finally, you raised the question of whether anticompetitive effects in one section of the country can be justified by purported improvements in competition in another section. The answer is absolutely not. The relevant statute—Section 7 of the Clayton Act—is clear on the point. It says that a merger that lessens competition in "any section of the country" is illegal, and the courts have followed that plain meaning of the statute ever since it was amended in 1950.

Question 3: It was reported in the Wall Street Journal on February e [th]at—right up to the time at which the merger agreement was signed—EchoStar and DirecTV had been exploring ways to achieve these same spectrum efficiencies through a joint venture, but that effort failed due to control and economic factors. I would be interested in Mr. Ergen's and Mr. Hartenstein's elaboration on why such a joint venture is not a feasible alternative to this merger, and in Mr. Pitofsky's and [Attorney] General Nixon's analysis of that alternative. Could you both please provide a detailed explanation of the reasons that a joint venture is not a feasible alternative?

Answer: I am not familiar with the details of possible arrangements to serve consumers of satellite services through a joint venture. Often, a joint venture is a less restrictive alternative to a merger and can be equally efficient; I don't know if that is a possibility here.

Question 4: Attorney General Nixon and Mr. Pitofsky, I have heard that sensitive competitive information, such as specific programming contract terms, may have been disclosed by DirecTV to EchoStar in a manner that is not traditionally part of the normal due diligence process of a merger. I have also heard that some DirecTV customers have been contacted about needing to switch to EchoStar now, in advance of merger approval, to keep uninterrupted television service, reportedly by postcard, phone, and advertisement. Mr. Nixon and Mr. Pitofsky, would either of these activities, if true, raise concerns in the minds of antitrust enforcers as they review this merger?

Answer: It is important that parties, in the period leading up to merger approval, not "jump the gun" and exchange competitively sensitive information not reasonably necessary to negotiations. They should, of course, continue to compete until the proposed merger is approved. I have no independent information as to whether inappropriate actions occurred between EchoStar and DirecTV in negotiations leading up to the announcement of their proposed merger.

SUBMISSIONS FOR THE RECORD

Statement of Kirk Kirkpatrick, President and Chief Executive Officer, MDS America, Incorporated, Stuart, Florida

Mr. Chairman, Senator DeWine, and members of the Subcommittee:

Thank you for giving me this opportunity to submit written testimony as part of the official record of this important hearing examining the proposed merger between EchoStar and DirecTV.

My name is Kirk Kirkpatrick and I am the president and chief executive officer of MDS America, Incorporated ("MDS America"), a company headquartered in Stuart, Florida. MDS America is the North American licensee of MDS International, a company based in Lyon, France, that is the leading designer and manufacturer of terrestrial broadband transmission equipment in the 12.2 to 12.7 GHz band (the "DBS band"). MDS terrestrial systems utilize a wireless technology capable of transmitting video and high-speed Internet data in the DBS band, without causing harmful interference to satellite services operating at the same frequencies.

MDS International has been developing wireless terrestrial broadcast systems since 1986 and sold its first commercial system to the U.S. Government in 1997 to provide AFRTS for American military personnel in Oman. In the intervening time, it has deployed many of these systems worldwide in locations such as France, Kazakhstan, Cameroon, Gabon, New Zealand, and Greenland. Some of these systems share frequencies with DBS services in their areas. Most recently, the PTT of the United Arab Emirates awarded MDS International a pilot system toward a multi-million dollar contract to deploy a 300-hundred channel terrestrial system that will broadcast video programming throughout the seven emirates of the U.A.E.

Having achieved a track record of success overseas, MDS International, through its North American licensee MDS America, would now like to participate in the emerging U.S. market for fixed terrestrial wireless services. The prospect that DBS terrestrial spectrum-sharing will become a reality here in the United States is an exciting development: Spectrum sharing should increase competition in the multi-channel video and broadband Internet access markets, lower consumer costs, and provide new services to consumers in rural and other underserved areas.

1. MULTICHANNEL VIDEO DISTRIBUTION AND DATA SERVICE WILL ENHANCE CONSUMER CHOICE.

The importance of allowing this new terrestrial service-also known as Multichannel Video Distribution and Data Service ("MVDDS")—is only heightened by the proposed merger between EchoStar and DirecTV. As you well know, many rural areas of the United States have no cable infrastructure. Today, consumers in these areas have only two choices for pay—TV services—EchoStar's Dish Network and DirecTV. If the merger between EchoStar and DirecTV is in fact consummated, there will be only one provider of pay—TV services in these rural communities.

In such a post-merger world, MVDDS providers like MDS America can step into the market, offer choice, and generate the competitive pressures necessary to keep consumer costs low and service adequate. While the two DBS operators have voluntarily agreed to maintain a "uniform nationwide pricing" system and to provide local programming in all markets once the merger is complete, it is likely to be the competition offered by MDS America and other MVDDS providers that will be the guarantor of these commitments for rural America.

Furthermore, without the creation of a new MVDDS market, it is unlikely that the single merged DBS operator will address in any significant way the so-called rain fade problem that has plagued the DBS industry since its inception. Rain fade, the loss of hundreds of minutes of DBS signal each year as a result of atmospheric conditions, remains a problem today even though EchoStar and DirecTV aggressively compete for market share. I can assure this Subcommittee that rain fade will continue to be a serious problem if much of rural America is left with one DBS choice and nothing else. However, if the rural consumer is at least given the option of migrating to an MVDDS provider that offers a comparable package, in terms of both price and service, there will be a competitive incentive to address service issues like rain fade.

In fact, MDS America's MVDDS system is particularly well suited for deployment in rural areas untouched by cable and served exclusively by the DBS operators. MDS cells can reach from the tower to the curve of the earth, allowing us to deliver signal over thousands of square miles. With their extensive coverage capabilities, MDS cells are likely to reach enough of the population in rural areas of the United States to actually pay for the deployment of an MVDDS system. This is not an insignificant issue. There is a huge difference between an experimental system that works theoretically and a system that can actually be deployed in a way that makes it an economically viable venture.

The potential introduction of MVDDS technology into the United States took a big step forward in December 2000 when the Federal Communications Commission ("FCC") preliminarily concluded that terrestrial wireless broadband services could be delivered in the DBS band without causing interference to satellites operating in the same range. The FCC has since initiated a rulemaking proceeding to establish technical rules governing such service. Unfortunately, this proceeding has been noteworthy for the acrimony it has generated. We are hopeful that the FCC will conclude the proceeding in short order and finally give a green light to the deployment of MVDDS systems throughout the United States.

I might add that, in May 2001, the FCC granted MDS America an experimental license to demonstrate that its MVDDS technology, already successful in other parts of the world, would not cause harmful interference with DBS transmissions in the United States. Pursuant to this license, LCCI International ("LCC"), an internationally recognized engineering and consulting firm working independently of MDS America, conducted a series of tests of the MDS system in 12 separate locations around Florida. Testing was conducted under more extreme conditions than would be normal during actual deployment of the MDS system in order to ensure that the technology will be able to handle the rigors of real-world implementation.

We are pleased that the LCC tests emphatically prove what we have known all along-that MVDDS technology can be successfully deployed without causing harmful interference with DBS systems operating at the same frequencies. In its written report, which has been submitted to the FCC, LCC concluded that "[b]ased on the analysis of the collected data, the MDS transmitter can very well co-exist with DBS signal in this type of environment with a limited mitigation zone . . . as small as 100 m around the transmitter." The LCC report has been submitted to the FCC and is available in its entirety on our company website at *www.mdsamerica.com*. Although the LCC report has been publicly available for several months now, it is noteworthy that neither EchoStar nor DirecTV has publicly challenged its methodology and conclusions.

2. THE POTENTIAL MVDDS MARKET SHOULD BE OPEN TO COMPETITION.

Unfortunately, another company claiming to have a commercially viable MVDDS system—Northpoint Technology—is attempting to smother competition in the cradle of the new MVDDS industry by asking the FCC to waive its rules and grant it and its affiliated companies uncontested, monopoly licenses throughout the United States for the terrestrial use of the DBS band. If the FCC were to embrace this position, it would constitute one of the largest uncompensated grants of spectral real estate to a single company in American history. The cost to the American taxpayers would be significant, amounting to hundreds of millions of dollars.

To justify its monopoly ambitions, Northpoint has claimed that it is the only company in the world with a terrestrial system capable of sharing spectrum with DBS services. This claim is simply untrue. Unlike MDS International, Northpoint has never, not once, deployed a terrestrial system anywhere in the world. Yet it is Northpoint and its affiliated companies, not MDS America, that have asked the FCC to grant them licenses for 500 MHz of valuable spectrum for free.

In addition, Northpoint argues that section 1012 of the "Launching Our Communities' Access to Local Television Act of 2000" (the "Local TV Act") somehow limits the potential award of a license for terrestrial service only to those entities that have already filed an application in the "direct broadcast frequency band" and whose technology has been tested by the MITRE Corporation, the company selected by the FCC to fulfill the technical demonstration requirement outlined in section 1012(b). This Subcommittee should understand, however, that the FCC has never established an application filing window for terrestrial systems in the DBS band. The window in which Northpoint filed was established by the FCC to accept applications for non-geostationary satellite systems, not terrestrial systems like those of Northpoint and MDS America. The fact that Northpoint filed an application in a window for non-geostationary satellite systems does not, and should not, have any bearing whatsoever on the proper disposition of the DBS spectrum for terrestrial use.

A simple reading of section 1012 of the Local TV Act also demonstrates that Congress did not intend to limit the potential universe of MVDDS applicants nor did it prohibit—explicitly or implicitly—the auctioning of the DBS band for terrestrial use in the event there are mutually exclusive license applications, including applications filed by entities whose MVDDS technology has not been tested by the MITRE Corporation. It is also significant that MDS America offered its equipment to the FCC for testing by the MITRE Corporation prior to the MITRE testing and was instructed by the FCC that this was not necessary.

With respect to the provision of MVDDS, MDS America is prepared to compete on a level playing field with Northpoint and any other company that may want to enter this market. We would hope that this Subcommittee, charged with overseeing the administration of our nation's antitrust laws, would not condone a government-created monopoly in the MVDDS market when there is no legal or policy justification for such a decision. With respect to the terrestrial use of the DBS band, MDS America has consistently argued that the FCC should follow its standard procedures by a) promptly completing the rulemaking process, establishing rules for MVDDS that are flexible and technology-agnostic, b) accepting applications for licenses, and c) if there is mutual exclusivity, promptly holding an auction.

As the members of this Subcommittee may know, Northpoint has attempted to circumvent the FCC decisionmaking process by supporting a legislative proposal that would prohibit the FCC from auctioning the DBS band for terrestrial use. There was speculation last year that this proposal would be attached as an amendment to one of the appropriations bills then pending in Congress. We are very pleased that the Bush Administration expressed its "strong opposition" to the Northpoint anti-auction approach, stating that it "would interfere with the efficient allocation of Federal spectrum licenses, provide a windfall to certain users, and reduce Federal revenues." See Statement of Administration Policy, Department of Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Bill, FY 2002 (October 25, 2001).

3. CARS SPECTRUM IS NOT A VIABLE SUBSTITUTE FOR DBS BAND.

Finally, in an apparent last-minute attempt to delay the deployment of MVDDS, the two DBS operators have recently petitioned the FCC to move MVDDS from the 12.2 to 12.7 GHz band to the Cable Television Relay Service ("CARS") band at 12.7 to 13.2 GHz.

Though the CARS band may be a valuable supplement to existing DBS spectrum, the CARS band already has too many incumbents to be considered a viable substitute for the 12.2 to 12.7 GHz band. Given that thousands of cable companies currently use the CARS band to transmit internal communications, it is unrealistic to expect that it would be conducive for rapid commercial distribution of high-speed video programming and Internet access services in the short run. If the CARS band were the easy answer to facilitating these services, they would have been deployed in this band long ago. MDS America hopes and expects that the FCC will reject this obvious effort to delay the deployment of MVDDS.

4. CONCLUSION.

As this Subcommittee continues its examination of the proposed merger of EchoStar and DirecTV, we urge you to take a broadly focused approach: The issue is not merely whether the country needs two DBS operators as opposed to one. Nor is it simply a question of whether the creation of a single satellite television company is a necessary condition for DBS to be able to compete effectively with cable. Our concern is expanding the list of entrants in both the multichannel video and Internet access markets and thereby improving competition and consumer choice.

We believe that the new Multipoint Video Distribution and Data Service, if permitted by the FCC under appropriate service rules, can become a robust competitor to both satellite TV and cable. We also believe that the MDS terrestrial system is uniquely situated to become an important player in the multichannel video and Internet access markets, particularly in rural America.

Thank you for giving me this opportunity to share my thoughts with you.

WRITERS GUILD OF AMERICA, WEST, INC.
LOS ANGELES, CA 90048
March 5, 2002

Hon. Orrin G. Hatch
Ranking Republican
Senate Committee on Judiciary
Dirksen Office Building Room 152
Washington, DC 20510

Dear Senator Hatch:

The Writer Guild of American (West and East, together the "WGA"), which represents the 11,500 men and women who write virtually all the national entertainment programming and much of the national news Americans see, believes that the television industry has consolidated to a degree harmful to DANA the public interest in a competitive market for television program's.

The merger of DirecTV and EchoStar would extend media consolidation to an unacceptable degree. The combined entity would wield unacceptable power over program suppliers, restricting the diversity of voices on American television. The force of a sole direct broadcast satellite operator could be exerted directly by threatening to remove a program service from distribution. Or, the force could be exerted indirectly, by using market power to pay a below-market license fee, starving the program service of original programming. In either case, the content of the program service is diluted and stunted. Original programming gives way to repeats. Original points of view give way to common ones.

It is in the public interest that EchoStar and DirecTV operate separately.

Sincerely,

CHARLES B. SLOCUM
Strategic Planning Director