

**SATELLITE/CABLE COMPETITION: AN
EXAMINATION OF THE ECHOSTAR/MCI DEAL**

HEARING

BEFORE THE

SUBCOMMITTEE ON ANTITRUST,
BUSINESS RIGHTS, AND COMPETITION

OF THE

COMMITTEE ON THE JUDICIARY

UNITED STATES SENATE

ONE HUNDRED SIXTH CONGRESS

FIRST SESSION

ON

EXAMINING THE COMPETITIVE IMPLICATIONS OF ECHOSTAR'S
PROPOSED PURCHASE OF THE MCI ORBITAL SATELLITE SLOT

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**SATELLITE/CABLE COMPETITION: AN
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WEDNESDAY, JANUARY 27, 1999

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

The committee met, pursuant to notice, at 8:33 a.m., in room SD-226, Dirksen Senate Office Building, Hon. Mike DeWine (chairman of the subcommittee) presiding.

Also present: Senator Kohl.

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

Senator DEWINE. Good morning. Let me welcome all of you to the Antitrust Subcommittee hearing, which we have entitled "Satellite and Cable Competition: An Examination of the EchoStar/MCI Deal."

I would like to apologize in advance for the unusual hour. At least, this is early by Washington standards. I am not sure it is early by the time when most people go to work, but by Washington standards, an 8:30 a.m. hearing is pretty unusual. As you know, the Senate has been occupied with a few other matters, and we will continue that today, so we felt when we scheduled this hearing the safest thing to do would be to schedule it for 8:30 a.m. We do not anticipate it will last much more than an hour, so that will give us plenty of time to get back to the other business of the Senate. Even as the trial moves forward, we do continue to work on important policy issues before this subcommittee.

As you can tell from the title of the hearing, we are going to discuss today the competitive implications of EchoStar's proposed purchase of the MCI orbital slot. The satellite industry is on its way towards being an important competitor to cable television. Technological changes, falling prices for satellite dishes, and market consolidation are changing the face of this industry and making it a stronger player in the video services market.

Many people, including myself, believe that this proposed purchase will enhance EchoStar's ability to compete with cable in markets all over our country. We will take the opportunity today to explore the details of this transaction and see just what opportunities it will provide for EchoStar.

The backdrop for all of this, of course, is the Satellite Home Viewer Act, which will allow the satellite industry to provide the

so-called local-into-local service which is so very important to consumers. As you know, the Satellite Home Viewer Act is a joint product of the Judiciary Committee and the Commerce Committee, and Senator Kohl and I are pleased to be among the original co-sponsors of this legislation. We both look forward to continuing to work with Senator Hatch, Senator Leahy, Senator McCain, and Majority Leader Lott to move this legislation forward.

We will also continue to work with the various industries and consumer groups involved in the provision of television and video services, and on that point, I would like to thank our witnesses who are here today, Charlie Ergen of EchoStar, Decker Anstrom of the National Cable Television Association, and Gene Kimmelman of Consumers Union. Mr. Ergen has been an industry leader for years now, and Mr. Kimmelman has been an important voice for consumers, and we know that both will continue their hard work in this industry. We are also very grateful for all the hard work put in by Decker Anstrom and the National Cable Television Association, which has represented the position of the cable industry very effectively.

All legislation is arrived at through a process of discussion, negotiation, and give and take. The Satellite Home Viewer Act, of course, will be no exception. As we move to mark up the bill, I note this same spirit of cooperation will continue to prevail. We will work with the broadcasters, with the cable and satellite industries to pass legislation that will lead to fair and reasonable competitive terms for the satellite industry.

We had hoped to have a representative from the National Association of Broadcasters here today, but unfortunately, they ran into some scheduling difficulties and decided not to attend. They have submitted a statement for the record, which I will, in a moment, make a permanent part of the record, and we will continue to work with them as this process moves forward.

Before I turn to the ranking minority member on the committee, Senator Kohl, let me just reiterate something which I think this subcommittee has made clear many times before. Competition is the best way to provide efficient delivery of video to consumers. The more video choices that American consumers have, the better. We have seen this in my own home State of Ohio, where Ameritech has provided competition to local cable companies by overbuilding in certain markets. Wherever Ameritech has entered the cable market, choice has expanded and service has improved for all consumers.

It is the goal of this subcommittee to ensure that consumers all through the country benefit from that sort of tough, fair competition, whether it is from satellite providers, phone companies, or any other source. The Satellite Home Viewer Act will help promote the competition we all want to see, and we look forward to hearing from our witnesses today whether they think the EchoStar deal is also a step in that direction.

Let me now turn to Senator Kohl, and let me just say that I am delighted that Senator Kohl and I will be able to team up again for this session of Congress. We have worked very closely together in a very bipartisan way. I think we have made some great

progress, Herb, in the last Congress, and I look forward to working with you in this Congress.

Senator Kohl.

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

Senator KOHL. Thank you, Mr. Chairman. As I begin, let me say how delighted I am to begin the 106th Congress just as we concluded the 105th, working again with my colleague, Senator DeWine, on antitrust issues. It is a tribute to his leadership that we have done so much on telecommunications, airlines, computers, and other matters. It just goes to show how much more we can do when Democrats and Republicans work together.

That said, as we try to balance our legislative agenda with our impeachment obligation, it is good to kick off with a significant consumer issue, namely promoting real competition to cable. Today, we are looking at EchoStar's proposed purchase of MCI's satellite slot. The benefit of this deal is simple and straightforward. By gaining MCI's satellite space, EchoStar can serve more folks with more programming in more places and do this with just one dish, a so-called one-dish solution.

But in order to make satellite a truly viable competitor to cable, we need to pass the Hatch-McCain-Leahy-DeWine-Kohl Satellite Home Viewer bills that allow local-to-local broadcasting. It is simply unconscionable and anticompetitive for Congress to continue the prohibition that bans satellite companies from broadcasting local stations to local consumers.

Ultimately, that is what this hearing and this deal and these measures are all about—creating more choice for consumers—because if this acquisition is combined with a balanced local-to-local bill, one that phases in “must carry,” we will all have lower prices, improved service, and better quality for consumers of both cable and satellite, and that is across the Nation, not just in Los Angeles and New York but also in places like Milwaukee and Columbus. Finally, we will be doing all of this in the best and most politically viable way: by promoting competition and not regulating rates.

Of course, do not take my word for the promise of this purchase or the benefits of these bills. Ask Decker Anstrom of the National Cable Television Association and Gene Kimmelman of the Consumers Union. When these two people agree on something—and that does not happen very often—it has to be a good idea. So we look forward to hearing what they, as well as Charlie Ergen, have to say, and it is nice to have you with us today, gentlemen.

Senator DEWINE. Senator Kohl, thank you very much.

Let me invite our panel to come up, and let me ask at this point unanimous consent that the opening statement by Senator Leahy be admitted into the record, and it will be admitted without objection.

[The prepared statement of Senator Leahy follows:]

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

I deeply regret that the impeachment trial is continuing. In light of my responsibilities in connection with that pending proceeding, I am unable to attend today's

hearing in person. Accordingly, I ask that my prepared written statement be included in the record.

Over three years ago I started raising serious concerns about the need to increase competition between cable and satellite TV providers. I felt then, and I feel now, that the best way to reduce the recent cable and satellite rate increases is to have satellite television be able to compete on a level playing field with cable.

That does not happen in most of the country under current circumstances. The Satellite Television Improvements Act, S. 247 which I introduced with Senators Hatch, McCain, Kohl and Lott, leads the way to promote head-to-head competition between cable and satellite providers—and lower rates and more services for consumers.

In November of 1997, we held a full Committee hearing on satellite issues and Senator Hatch and I agreed to work together on a bill to try to avoid needless cut-offs of satellite TV service while, at the same time, working to protect the local affiliate broadcast system and increase competition.

In March of last year we introduced a bill, S. 1720, which was reported out of the Judiciary Committee unanimously on October 1, 1998, and which was designed to permit local TV signals, as opposed to distant out-of-state network signals, to be offered to viewers via satellite; to increase competition between cable and satellite TV providers; to provide more PBS programming by also offering a national feed as well as local programming; and to reduce rates charged to consumers. Unfortunately, the Senate did not act on our bill before adjourning.

In the meantime, a Federal District Court Judge in Florida (*CBS v. PrimeTime 24*, S.D. Florida) found that PrimeTime 24 was offering distant CBS and Fox television signals to over a million households in the U.S. in a manner inconsistent with its compulsory license that permits such satellite service only to households who do not get at least “grade B intensity” service.

Under a preliminary injunction, satellite service to thousands of households in Vermont and other states was to be terminated on October 8, 1998, for CBS and Fox distant network signals for households signed up after March 11, 1997, the date the action was filed.

Mr. Chairman I was pleased that we worked together, along with Senators DeWine, Kohl and Lott, to avoid immediate cutoffs of satellite TV service in Vermont and other states. The parties agreed to request an extension which was granted until February 28, 1999. This extension was also designed to give the FCC time to address this problems faced by satellite home dish owners.

In December of last year, I sent a comment to the FCC and criticized their proposals on how to define the “white area”—the area not included in either the Grade A or Grade B signal intensity areas. My view was that the FCC proposal would cut off households from receiving distant signals based on “unwarranted assumptions” in a manner inconsistent with the law and the clear intent of the Congress. I complained about entire towns in Vermont which were to be inappropriately cut off when no one could receive signals over the air. I am anxiously awaiting for the FCC final rule in this matter.

The Florida District Court filed a final order which will also require that households signed up for satellite service before March 11, 1997, be subject to termination of CBS and Fox distant signals on April 30, 1999, if they live in areas where they are likely to receive a grade B intensity signal and are unable to get the local CBS or Fox affiliate to consent to receipt of the distant signal.

Our bill S. 247, sets the stage to avoid all of these complicated signal intensity issues, all of this finger pointing and the “white area” mess. Our bill can avoid all these problems because local network affiliate signals will be offered over satellite—along with a full range of programming. Home dish owners in Vermont will be able to choose what is best for them. If cable is offered in their community they would be able to decide which—satellite or cable programming is best, and cheapest—for them.

Thousands of Vermonters, for the very first time, will be offered satellite television which will include all the Vermont full power stations.

I look forward to the testimony of Charles Ergen of EchoStar regarding how EchoStar can help provide competition. My concern has been that EchoStar is unable to offer such “local-into-local” service to most of the rural United States including Vermont. I am worried that much of rural America might be left behind as the more concentrated markets are served. I know that many Vermonters would prefer to receive local stations rather than imported, distant, signals from other states so I am fighting to get them this service.

I want to note briefly that the Justice Department has been generally supportive of EchoStar’s acquisition of the MCI/NewsCorp’s DBS license but I certainly want to see how helpful this proposal will be for rural America. I am also interested in

the views of Mr. Decker Anstrom of the National Cable Television Association on this issue.

My goal, as I have said many times in the past, is to offer Vermonters more choices, more TV selections, but at lower rates. In areas of the country where there is this full competition with cable providers, rates to customers are considerably lower.

Thus, over time this initiative will permit satellite TV providers to offer a full selection of all local TV channels to viewers throughout most of Vermont, as well as the typical complement of superstations, weather and sports channels, PBS, movies and a variety of other channels. This means that local Vermont TV stations will be available over satellite dishes to many areas of Vermont currently not served by satellite or by cable.

To take advantage of the bill, satellite carriers over time will have to follow the rules that cable providers have to follow. This will mean that they must carry all local Vermont TV stations and not carry distant network stations that compete with local stations.

I want to make clear, as I did in my recent comment to the FCC, that I strongly believe in the local affiliate television system. Local broadcast stations provide the public with local news, local weather, local informational programming, local emergency advisories, candidate forums, local public affairs programming, and high quality programs. Local broadcast stations contribute to our sense of community.

I strongly believe that when the full local-into-local satellite system is in place, this system will enhance the local affiliate television system and provide consumers with more services.

Senator DEWINE. Let me also ask that the statement that was submitted to our committee by the National Association of Broadcasters be submitted as a part of the record, and it will be so without objection.

[The prepared statement of the National Association of Broadcasters follows:]

PREPARED STATEMENT OF THE NATIONAL ASSOCIATION OF BROADCASTERS

Broadcasters have, and continue to, support measures to bring competition to local cable monopolies. Broadcasters were among the strongest proponents of the 1992 Cable Act, which included the must carry law designed to prevent misuse of cable's gatekeeper facilities, and the program access provisions that have made the satellite industry and other new multi-channel video distributors viable.

We believe that satellites can also be an effective competitor to cable and help to keep cable's ever-spiraling rate increases in check. We have supported, therefore, the adoption of provisions authorizing local-to-local satellite service by which satellite operators will be able to offer program line-ups that are fully competitive with cable.

The desire to promote competition for cable, however, should not lead Congress or the FCC to abandon the fundamental commitment to local broadcasting. Thus, satellite operators offering local signals should be subject to must carry and retransmission consent, although broadcasters have agreed that—because of short-term capacity limitations—full must carry obligations can be delayed.

Just as significantly, making satellite a viable competitor to cable should be done at the expense of enforcing the law. Congress must not reward satellite operators who have callously disregarded current law governing satellite distribution of distant market broadcast network signals. Doing so would harm local broadcasters whose audiences have been wrongfully diverted, and would create a disincentive for satellite operators and others to work for competition to cable that strengthens and maintains—rather than weakens—our system of local broadcasting.

Senator DEWINE. Charles Ergen is the founder, CEO, and chairman of EchoStar Communications Corporation, one of the leading satellite television companies in the United States. He also co-founded the Satellite Broadcasting Communications Association and served on its first board of directors.

Decker Anstrom is the president and chief executive officer of the National Cable Television Association. He joined NCTA in 1987 and served as executive vice president until becoming president

and CEO in January 1994. We welcome him back to our subcommittee.

Gene Kimmelman is, of course, the co-director of the Washington, DC, Office of Consumers Union, publisher of Consumer Reports magazine. He is a recognized expert on deregulation and consumer protection issues, particularly in the area of telecommunications. He has testified before this subcommittee on dozens of occasions, and we welcome him back.

Let us start from my left to right. We will start with Mr. Ergen. Good morning.

STATEMENT OF CHARLES W. ERGEN, CHIEF EXECUTIVE OFFICER, ECHOSTAR COMMUNICATIONS CORPORATION, LITTLETON, CO

Mr. ERGEN. Thank you, Mr. Chairman, and thank you for allowing me to be here. My name is Charlie Ergen and I was fortunate enough in 1980 to help start EchoStar Corporation. We only had one goal in mind, which was to offer consumers a choice in video and compete against cable. Now, back in those days, the dishes were 10 feet in diameter and cost over \$10,000 and we were able to sell over a million systems over the next 16 years. But in 1996, we started a high-powered business with very inexpensive dishes. In the last little less than 3 years, we now have over two million subscribers. So we have a start in competing with cable.

This is the fifth time I have actually testified in the last year in the Senate and on the House side to answer questions on how we can create video competition. We have now launched four satellites in the last 2 years and invested over \$2 billion to compete with cable. In late November, we announced a deal to invest another \$1 billion to acquire the assets of MCI/News Corporation, their satellite assets in the last remaining full CONUS orbital slot at 110 degrees. That spectrum, along with two satellites which we plan to launch this year, will allow us to continue to compete and get stronger against cable.

We still need FCC approval and we would encourage this committee to encourage the FCC to act very promptly because we are ready to go when the FCC approves us.

We have a history of competing with cable. I think we certainly have a reputation of being a very aggressive competitor both in the DBS industry and against cable. For example, when we entered the market in 1996, we dropped the price of a satellite system, to own a system, to below \$200 at a time when systems were selling for in excess of \$700. We instituted a low monthly fee option for consumers of less than \$20 a month, far less than cable companies were charging and still are charging.

We also allowed customers to do something very unique, pick any 10 channels, basic channels, they wanted for a low monthly fee of \$10 to \$15 so they did not have to buy channels that they did not want. And finally, last year, we guaranteed that our prices would not increase until the next millennium, until March 2000, something the cable industry has never done in terms of a price guarantee.

The acquisition of the MCI/News Corp. assets, of course, will allow us to be more competitive. If approved, it will allow us to

keep pace with many of the changes that are taking place in the telecommunications industry and many of the things that cable are now doing to be competitive in the future.

With the new spectrum, we will be able to solve the biggest problem in DBS, which is to offer customers their local network channels, which they watch about 65 percent of the time. We also plan to offer data services and high-definition television. These new services are going to be very critical when you see the potential acquisitions of AT&T and TCI in terms of merging. We know that video alone is not going to be competitive in the future. We are excited about the ability to do HDTV because we know on a national basis, we can roll that out tomorrow and get that new technology started.

But all this has not been enough for our industry and our company to be truly competitive with cable, as evidenced by the fact that cable has raised prices consistently over 300 percent to 400 percent the rate of inflation, and that is really because current law has not kept up with our technology.

Current law today, for example, says we cannot provide local channels to people who can receive network signals with an off-air antenna, our so-called Grade B areas. That eliminates about 95 percent of the country. Current law says we cannot deliver network signals to people who have subscribed to cable in the last 90 days, thus eliminating, from a practical point, 65 million people from having the choice of DBS. Current law says we cannot broadcast local channels right here in this chamber because we are not allowed to broadcast network signals through satellite to public places, as cable can do.

So we cannot compete under these conditions, so we need a change to the Satellite Home Viewer Act, and we are very pleased that this committee, along with Senator Hatch and Senator McCain, have introduced legislation in the last several weeks that we think is very encouraging and look forward to working with you to pass that legislation.

We also hope that in your capacity to oversee antitrust that you will be sensitive to the overwhelming power that cable has on programming. They own most of the programming and program access rules and pricing are very, very important to us. We also know that we need help in getting retransmission consent from the broadcasters on fair and equitable terms.

But as I said, we are off to a good start and we appreciate the hard work that you and your colleagues and committees and staff have done to give your constituents a choice over cable and make DBS competitive. So we look forward to continuing to work with you and answer any questions you might have here today.

Senator DEWINE. Mr. Ergen, thank you very much. Your timing is within about 10 seconds. You are very concise. Thank you very much.

[The prepared statement of Mr. Ergen follows:]

PREPARED STATEMENT OF CHARLES W. ERGEN

Mr. Chairman and distinguished members of this Committee, thank you for inviting me to testify before you today on competition in the subscription video marketplace and the effect our company's pending acquisition of the MCI/News Corp. as-

sets will have on competition in that market. EchoStar is a Direct Broadcast Satellite (DBS) Company that began service in March of 1996. Currently we have 2 million subscribers nationwide. Our company led the way to bring down the price of a DBS dish to under \$200, making it relatively more affordable for consumers nationwide. We have taken numerous other measures to make our product competitive with cable.

EchoStar's acquisition of the MCI/News Corp. assets, if approved by the Federal Communications Commission (FCC), will make DBS more competitive with cable. EchoStar seeks authorization to use the 100° W.L. orbital location full-CONUS (Continental United States) slot, two satellites to be launched in 1999, and an uplink center located in Gilbert, Arizona which will act as backup to our existing uplink facility in Cheyenne, Wyoming. For the MCI/News Corp. assets, EchoStar will give the two companies non-controlling equity stakes.

The Department of Justice has already provided "early termination" of the EchoStar/News Corp. deal and has urged the FCC to give prompt approval of the deal in order to promote competition in the video marketplace. The FCC in its 5th Annual Report on video competition, found that there is still not enough competition to cable and that cable prices have soared by 7.3 percent compared with an inflation rate of only 1.7 percent.

The additional spectrum, combined with EchoStar's existing full-CONUS and half-CONUS spectrum, will alleviate the capacity handicap that currently hampers DBS and will enable us to compete vigorously against cable on a more equal footing. Among other things, consumers cite the lack of local signals on DBS packages as the number one reason why they choose to stick with cable or not pick DBS. The additional spectrum will allow us to offer more local programming in more areas of the country.

While essentially moving forward, we believe that transaction alone is not enough to promote competition to cable. Congressional action is key to true competition. We must have reform of the Satellite Home Viewer Act, giving us an unequivocal and full-fledged copyright license to retransmit local signals back into the station's local market. We will also need provisions in the law that directs local television stations to give us their entrance consent, to the extent needed, on fair and equitable terms. And finally, we must have more rigorous enforcement by the FCC of the Program Access laws designed to prevent vertically integrated cable companies from discriminating against DBS and other MVPD providers.

We look forward to working with you, your staff, the members of the full Committee and with the Senate Commerce Committee on the legislation introduced by Senator Hatch (S. 247) that would reform the Satellite Home Viewer Act. Both proposed bills relieve some of the unfair restrictions on DBS.

Mr Chairman, and distinguished members of this Committee, thank you for providing me the opportunity to testify before you today on competition in the subscription video marketplace and the effect we hope our company's pending acquisition of the MCI/News Corp. assets will have on competition in that market. We would also like to take the opportunity to talk briefly about S. 247, co-sponsored by some of the members of this Committee and introduced last week by Senator Hatch. Passage of that legislation, combined with Commerce Committee legislation, is critical to the success of DBS as a competitor to cable.

My name is Charlie Ergen and I am the founder and Chief Executive Officer of EchoStar Communications Corporation, a Direct Broadcast Satellite ("DBS") company based in Littleton, Colorado. I started EchoStar in 1980 as a manufacturer and distributor of C-Band satellite dishes and grew the company, by the mid-1980's into the largest supplier of C-Band dishes worldwide. I realized, however, that my vision of a dish in every home, school and business in the United States, and true, effective competition to cable, could not be realized with large dishes. Consequently, in 1987, EchoStar filed an application for a DBS permit with the Federal Communications Commission (the "FCC"). EchoStar has launched four DBS satellites since December 1995 and has invested approximately \$2 billion into this technology, working to give consumers a choice to cable.

EchoStar was the first company to drop the price of a dish to below \$200 when the competition was charging \$800 for its product. EchoStar was the first to allow subscribers to pay a low monthly fee as they do with cable. EchoStar was the first to allow consumers to choose the 10 channels they watch the most, then pay for those "a la carte" without having to "buy through" programming they did not want, to get programming they did want. EchoStar was the first company, this past Fall, to say that it guarantees it will not raise prices until the next millennium. These

are just some of the measures we have taken to compete vigorously in the marketplace.

ECHOSTAR'S PLANNED ACQUISITION WILL MAKE THE DBS MORE COMPETITIVE WITH CABLE NOW AND IN THE FUTURE

This past December, EchoStar announced its intentions to acquire from MCI/Worldcom and News Corp. an FCC authorization to use the 100° W.L. orbital location (from which a satellite system can serve the entire continental United States, or "full-CONUS"), two satellites to be launched in 1999, and an uplink center located in Gilbert, Arizona which will act as backup to our existing uplink facility in Cheyenne, Wyoming. For the MCI/News Corp. assets, EchoStar will give the two companies non-controlling equity stakes.

The spectrum at the 110 W.L. slot, combined with EchoStar's existing full-CONUS spectrum (21 channels at 119 W.L.), and the frequencies at our half-CONUS locations (11 transponders at 61.5 W.L. and 24 transponders at 148 W.L.) will alleviate the capacity handicap that currently hampers DBS companies and will enable us to compete vigorously against cable on a more equal footing. As I will testify, however, while the transaction is necessary to introduce more competition in the subscription video marketplace, it is not enough. Action by Congress is also necessary in the areas of network signal retransmission and program access.

More specifically, with the new spectrum, we hope our company can finally break down what, in the consumer's mind, has been the single greatest obstacle to choosing DBS over cable or switching from cable to DBS. We plan to offer local-into-local service, on a single dish, to between 40 to 50 percent of the U.S. population. Currently, EchoStar offers limited local-into-local service in thirteen markets. The local service we offer, even if we could make it available to all subscribers, is not perfect. It is a tough sell because it requires customers to put a second dish on their roof. With the new orbital location, consumers in the 20 major or metropolitan centers would receive local programming on one dish while consumers in many smaller markets (now unserved with local signals) will be offered a two-dish solution.

Of course, our ability to provide full-fledged local-into-local service is now inhibited not only by our spectrum limitations, but also by regulatory factors—the Satellite Home Viewer Act as it is interpreted by some parties. The need for reform of that legislation is still acute.

With the new spectrum, we will also offer access to the Internet and other data services. The rollout of cable modems and the cable companies' success with this service demonstrates to us that convergence is here. If a company is to be a full service provider, it is no longer enough to offer only video service. The subscriber expects more. The AT&T/TCI merger is a perfect example. AT&T's aim is to be a one stop solution for the customer—providing television, telephony and data services to the home. While the new spectrum does not allow interactivity, and thus we would still be disadvantaged compared to the mammoth cable companies, the additional capacity will greatly enhance our ability to provide Internet access and data broadband services.

With the additional spectrum, we will also offer High Definition Television ("HDTV") and believe the broader availability of HDTV from satellite will mean a speedier rollout of HDTV service nationwide. The spectrum given to broadcasters for HDTV is a valuable resource and the quick return of the analog spectrum is a worthy public policy goal Congress has set for the nation. DBS is the perfect medium for HDTV. Our boxes are already digital thus eliminating the need for the consumer to buy or lease a costly digital converter box.

ANTITRUST AUTHORITIES RECOGNIZE THAT THIS DEAL WOULD CREATE COMPETITION

On December 17th, just over two weeks after filing the Hart-Scott-Rodino pre-merger notification, the Department of Justice ("DOJ") provided "early termination" of its review of the EchoStar/MCI/News Corp. deal, and the license transfer application is now under review only by the FCC. Just two weeks ago, in comments filed by the Department of Justice Antitrust Division, the DOJ urged prompt approval of the deal, saying that approval of our request "promises to facilitate new and potentially significant competition between DBS and cable providers, thereby benefiting consumers of MVPD services."

The DOJ comments also stated:

- The relevant market for our service is the MVPD market. DOJ has found extensive evidence of customers switching from cable to DBS, contrasted to the early days of DBS, when subscribers most often came from uncabled areas.

- Approval of the EchoStar/News Corp. deal would eliminate capacity restraints that limit EchoStar's ability to compete with cable because our company would be able to offer more programming in the form of local news, weather and popular network programming.
- DOJ emphatically pointed out that EchoStar should not be required to divest of its holdings at 119° W.L. because market conditions have changed since the FCC enacted a one time only rule at the time MCI and News Corp. bought the 110° W.L. spectrum at auction four years ago.
- DOJ found that EchoStar, which serves 2 million customers, representing a miniscule 2.5 percent of the MVPD market, lacks market power in the market.

We have requested that the approval process be put on a fast track and we are optimistic that the FCC will approve our license transfer deal quickly, consistent with DOJ's recommendations. With quick approval we can secure an early launch window and put our plan into action by the middle of the year. With quick approval we can begin to provide the kind of competition the consumer is hungry for. It is important to remember, however, that this transaction will not be a panacea for all the competitive problems of the subscription video market.

CURRENTLY THERE IS NO EFFECTIVE COMPETITION TO CABLE

In its Fifth Annual Report to Congress, the Federal Communications Commission reconfirmed that, despite the efforts of competitors such as DBS, cable operators continue to possess bottleneck monopoly power in the distribution of multichannel video programming.¹ Among the Commission's findings were the following:

- Cable prices soared by 7.3 percent between June 1997 and June 1998. This compares with an inflation rate of only 1.7 percent.
- 85 percent of Multichannel video subscribers continued to grow, reaching 65.4 million.
- The number of cable subscribers receive service from their local franchised cable operator.
- 97.1 percent of homes are passed by cable.
- Cable penetration in passed homes grew to 68.2 percent.
- A trend towards regional clustering of cable television operations continued during the course of last year.
- Cable industry ownership remains concentrated at the national level.
- Despite marginal decline in vertical integration in terms of a percentage of cable-affiliated national satellite delivered services, cable MSO's in 1998 owned 50 percent or more of 78 networks and had minority stakes in many others.

ECHOSTAR'S LOCAL INTO LOCAL PLAN

I will now give a more detailed account of our local-into-local plans. Independent studies and our experience as a company match the conclusions of the FCC: 8 of 10 people who walk into a satellite dealer's showroom don't buy anything because they cannot get a product they really want.² They can't get their local stations. Surveys show seventy percent of the time watching television is spent watching local TV.

In 1998, EchoStar began offering satellite-delivered local network stations to qualified consumers in the Washington, D.C., New York, Atlanta, Dallas, Boston and Chicago, Los Angeles, San Francisco, Phoenix, Salt Lake City, Denver, Miami, and Pittsburgh markets. With the additional spectrum and the two new satellites to be launched in 1999, we will expand to Sacramento, Portland, Seattle, Las Vegas, St. Louis, Minneapolis, and San Diego, as well as offer service to Alaska and Hawaii. In each of these markets we offer the four network stations, and in some cities a couple of independents as well. While we would love to offer even more local signals, we strongly believe our plan will serve the public interest by offering for the first time to many consumers in those markets a true choice between our service and cable. At the same time, while the additional spectrum we propose to acquire will allow us to serve many more markets, this would not be possible if DBS dis-

¹In the Matter of Assessment of the Status of Competition in Markets for the Delivery of Video Programming, in CS Docket No. 98-102 (rel. Dec. 17, 1998) ("Annual Report").

²See *In the Matter of Assessment of the Status of Competition in the Markets for the Delivery of Video Programming*, in CS Docket No. 97-141 (rel. Jan. 13, 1998) ("Annual Report") at ¶58 n. 201.

tributors were to become subject to unreasonable, and probably unconstitutional, must-carry obligations.

How many markets we are able to serve will ultimately depend on how and when must-carry rules are implemented. We believe must-carry if imposed at all should be pegged to penetration test in each market. Must-carry should not apply to a satellite provider until it gains a larger share of the MVPD market.

Of course, we wish we had the capacity to serve all markets and carry all local stations in each market. As a business, we would never want to exclude a programming channel that would gain us yet another subscriber. But even with the additional spectrum, we will not have the space. On the other hand, we believe that the service we offer will give the customer enough of a choice to allow consumers to consider us an adequate substitute to cable. The marketplace will determine whether we are right but it cannot determine so until the law makes it fully possible.

SHVA REFORM IS ANOTHER CRITICAL COMPONENT TO CREATING COMPETITION TO CABLE

Assuming we are successful in winning approval at the FCC, there is another key component to DBS's ability to become competitive with cable. We need you and your colleagues to take legislative action. A single dish solution is no good if only a small fraction of viewers are qualified to receive the local channels, as would be the case under some parties' interpretation of the law. Indeed, EchoStar's ability to retransmit local signals to customers is currently subject to several limitations. We wholeheartedly endorse the legislation Senator Hatch introduced last week that would give DBS a permanent compulsory license to retransmit local signals. That legislation would also eliminate a blatantly unfair provision of the current law: that consumers must wait until 90 days after they have disconnected cable to subscribe to network signals.

I'd like to take this opportunity to thank you, the members of this Committee, and the dedicated staff that serves you for all of the hard work you have done to move legislation forward last year. The Senate Judiciary Committee, working closely with the Senate Commerce Committee, made a valiant effort at the end of last session in the face of the intense competing interests of a number of different industries and factions within those industries. Early passage of legislation is more critical than ever for our industry our company.

We respectfully urge you to work with Senator McCain and others on the Commerce committee on the necessary companion legislation that would set out the rules for the local into local license.

FAIR RETRANSMISSION CONSENT AGREEMENTS ARE ESSENTIAL

Our hope is that when we unequivocally win the full-fledged right to provide local stations to the local market, the stations we seek to carry in each of these markets will give us retransmission consent agreements to the extent required. We have been seeking those agreements with broadcasters nationwide. We believe the broadcaster has, to the extent required, the right to control over its signal, but our lack of market power as an industry and a company means broadcasters have no incentive to give us fair terms. Conversely, the cable industry's market power translates into great leverage over whether the broadcasters deal with us enthusiastically or not. In seeking agreements with the broadcasters, we have had numerous executives tell us that they would like to give us agreements, but they have declined because they fear angering the cable companies they deal with. We urge you in your capacity as antitrust overseers to make sure there are provisions, in any legislation and all legislation passed, that will make sure that DBS is able to get retransmission agreements on terms that are comparable to those enjoyed by cable operators, terms that are fair and equitable.

DISTANT NETWORK SIGNALS

While EchoStar hopes to serve close to half the population with its local-into-local service, consumers who cannot get a signal over the air from their local broadcast station will continue to rely on distant network signals. The FCC is scheduled to release guidelines on who can and cannot receive a signal over the air and we look forward to having a more clear delineation of who is eligible for distant network signals and who is not. We believe it is very important for these guidelines to ensure distant service for every consumer that cannot be confidently predicted to receive an adequate signal over the air most of the time, and for every consumer who cannot receive such a signal at the television set with his/her actual equipment as opposed to an extravagant antenna system.

PROGRAM ACCESS

Access to programming is the third leg of the stool critical to the support of our business. Without access—on fair and consistent terms—to the popular channels that are controlled, produced or otherwise heavily influenced by cable EchoStar will not have a chance to be price-competitive with cable. Unfortunately, problems with the conduct of cable-affiliated vendors show no sign of abating, and the Commission's enforcement of the program access rules may in fact have become even weaker than it was.

In the six months since I last testified before Congress, and shortly after EchoStar and MCI/News Corp. announced this deal, Speedvision, a cable-affiliated programmer, withdrew its two programming channels from the DISH network and caused the screens of 23,000 EchoStar subscribers to go dark. Speedvision based its withdrawal on the pretext that EchoStar breached its contract with Speedvision. EchoStar has sued Speedvision before the Commission, requesting access to programming.

In October, the FCC's Cable Services Bureau ruled, in a proceeding brought by another DBS company, that the cable operator, Comcast was not subject to the Congressional prohibition on refusal to deal, following its decision to switch to Congressional prohibition on refusals to deal, following its decision to switch to terrestrial transmission of Comcast's valuable Philadelphia sports programming. The Commission made a perfunctory determination, without much of the necessary evidence, that Comcast's decision to withhold its programming, which had been described by Comcast itself as a "purposeful decision related to competition," was a legitimate business decision, not subject to the program access law. Furthermore, more than one year after EchoStar had filed a discrimination complaint against Fox Sports, the Commission dismissed the complaint on the ground that it was "time-barred." The Bureau's decision chose to narrow the Commission's rule on the one year statute of limitations and made it more difficult for competitors to sue on discrimination, particularly when they cannot know the terms enjoyed by cable operators.

We hope the Antitrust Subcommittee and staff will continue to keep a watchful eye on program access violations as DBS continues to grow.

SUMMARY

DBS as an industry has to be able to say to potential subscribers "pull out the cable because we can give you what they can give you."

We urge you and your colleagues in the house to tell the FCC it must act quickly on the EchoStar/MCI license transfer so competition to cable be enhanced this year. We think you should let the consumer decide whether our local into local service—limited though it is—is a product that makes DBS an adequate substitute to cable. Where local signals are not available, customers who cannot get their local channels off air must continue to receive distant network signals. And finally, please encourage the FCC to enforce the program access laws so that the lifeblood of competition, programming, can be offered to consumers at a price that is comparable to cable.

Thank you again for all of your hard work, and that of your staff, and for affording me the opportunity to testify before you today.

Senator DEWINE. Mr. Anstrom, good morning.

**STATEMENT OF DECKER ANSTROM, PRESIDENT, NATIONAL
CABLE TELEVISION ASSOCIATION, WASHINGTON, DC**

Mr. ANSTROM. Thank you, Mr. Chairman and Senator Kohl. This morning, I would like to emphasize three points. First, the video marketplace is increasingly competitive. Second, we do not object to EchoStar's acquisition of MCI's DBS assets. And third, as we have said consistently, we do not oppose so-called local-to-local legislation that would allow DBS companies to retransmit local broadcast signals and we can agree to a phased-in "must carry" rule in such legislation if there is a date certain when full "must carry" obligations would take effect. These points are discussed in our formal written testimony.

At this point, I would like to focus for a minute on the increasingly competitive nature of the video marketplace. Today, more than 12.5 million consumers purchase multichannel video program-

ming from one of cable's competitors. The FCC reported just a few weeks ago these competitors added nearly two million customers between June 1997 and June 1998.

DBS, in particular, has rapidly become a competitive substitute for cable. Last year, DBS companies captured two out of every three—that is two out of every three—new multichannel video customers, and earlier this month, DirecTV and EchoStar predicted they will gain another two million or more new customers this year, 1999.

This growth, of course, is easily explained. DBS companies offer many channels. Dish prices have plummeted in 5 years, from around \$700 to as low as zero today in terms of some of EchoStar's offerings. DBS offers all the most popular cable networks as well as sports programming, like the NFL game package, that is not available to cable operators. DBS is widely marketed. In many areas, it is now marketed and installed by local phone companies, and DBS prices for programming are generally comparable with local cable operators.

All of this led the Department of Justice last year to reach this conclusion about cable and DBS's relative multichannel video programming offerings.

While the programming services are delivered via different technologies, consumers view the services as similar, and to a large degree, substitutable.

Now, EchoStar's agreement to purchase MCI's assets, along with DirecTV's acquisition of USSB and PrimeStar, will only strengthen DBS companies' competitive position.

As I indicated, we do not object to EchoStar's plans, and, of course, EchoStar already has more than two million customers and recently struck a major new alliance with Microsoft. EchoStar's MCI deal will increase its channel capacity dramatically and make EchoStar even more competitive with cable companies, as the Department of Justice just recently concluded. Interestingly, Justice was quite clear that this enhanced local competition will occur even if EchoStar does not begin to retransmit local broadcast signals right away.

But I want to emphasize again, Mr. Chairman and Senator Kohl, we agree with the kind of procompetitive local-to-local satellite legislation the Judiciary and Commerce Committees are beginning to consider that would stimulate even more competition in the video marketplace. That is the right approach that will best serve consumers.

Cable companies are already responding to this increased competition by increasing channel capacity, by upgrading technology, and by improving customer service. As the Department of Justice again observed just last month,

In short, the views and actions of consumers, statements and strategic actions by cable firms, and the views of other industry participants convincingly demonstrated that DBS and cable compete against each other in local markets throughout the country.

Now, in addition to DBS, as you all know, telephone companies, utilities, and others are also entering the video marketplace with no legislative or regulatory barriers to slow their development. And, of course, fully 25 percent or more of American homes rely on

free over-the-air television and do not subscribe to any multi-channel service.

My fundamental point is this morning, there is no monopoly. This is a vibrant, increasingly competitive marketplace. We are prepared to compete in this marketplace. We ask for no special advantages. We will, however, strongly oppose new intrusive government regulatory micromanagement that will surely stifle investment and slow innovation.

So in conclusion, I want to reaffirm what I believe we have demonstrated for the past several years, that we in cable are prepared to work constructively with you and other Members in Congress on procompetitive measures that will encourage companies to compete in the marketplace for consumers' loyalty. Thank you very much.

Senator DEWINE. Mr. Anstrom, thank you very much.

[The prepared statement of Mr. Anstrom follows:]

PREPARED STATEMENT OF DECKER ANSTROM

1. INTRODUCTION

Mr. Chairman, Senator Kohl, and members of the subcommittee, my name is Decker Anstrom and I am President of the National Cable Television Association. Thank you for inviting me to testify before you today on behalf of NCTA, which represents cable companies serving more than 90 percent of the nation's 67 million cable customers and more than 100 cable program networks.

I welcome this opportunity to comment on the status of competition in the video market. Today, I will make three basic points:

- Competition to cable is here **now**, as demonstrated by the fact that 12.5 million consumers currently subscribe to cable's competitors.
- NCTA has no objection to EchoStar's acquisition of MCI's DBS assets, which will significantly increase its ability to compete head-on with cable.
- NCTA has no objection to so-called "local to local" legislation, which benefits DBS companies. But EchoStar and other DBS providers should be required to meet full must carry obligations by a date certain.

2. COMPETITION IN THE VIDEO MARKETPLACE HAS ARRIVED**A. Competition to cable is established, growing steadily, and irreversible**

Today, consumers can choose from a variety of multichannel video providers, including Direct Broadcast Satellite (DBS), telephone companies, and utilities. **As a result of this competition, more than 12.5 million consumers now obtain multichannel video programming from some company other than their local cable operator** (see next chart).

**Market Share of Multichannel Video Program Distributors (MVPDs)
October 1998**

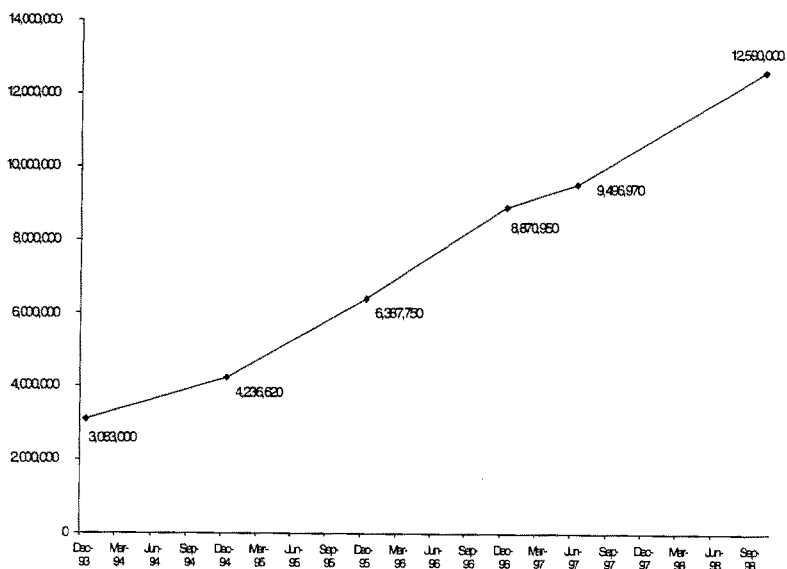
MVPD	Subscribers (in Millions)	Percent of MVPD Market
DBS	7.83	9.98%
C-Band	1.98	2.52%
MMDS	1.64	2.09%
SMATV	0.84	1.07%
Local Telephone Companies	0.30	0.38%
Total Non-Cable	12.59	16.05%
Cable	65.86	83.95%
Total Multichannel Subscribers	78.45	100.00%

Sources: A.C. Nielsen; Paul Kagan Associates, *Marketing New Media*, September 21, 1998 at 4; *SkyREPORT* October 8, 1998; *CableWorld*.

The growth by cable's competitors is steady, irreversible, and shows no sign of abating. For example, in its 1998 annual report on the status of competition in the video marketplace, the Federal Communications Commission noted that the number of people subscribing to non-cable video providers grew 18 percent between June 1997 and June 1998, while cable grew at an annual rate of 2 percent.¹

¹ FCC Report No. 98-335, paragraph 8.

**Growth in Non-Cable MVPD Households
December 1993 – October 1998**



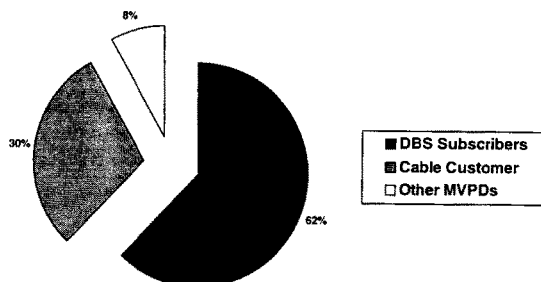
Sources: Dec 93-June 97: FCC Fourth Annual Report at Appendix E; Sept 98: NCTA estimate based on Kagan and *SkyREPORT* data.

Indeed, the FCC noted that two out of every three new multichannel video customers in 1998 chose DBS over the incumbent cable operators,² as the pie chart below illustrates:³

² Ibid., paragraph 12.

³ Source of data: Paul Kagan Associates, *Marketing New Media*, October 19, 1998, p. 1.

Distribution of New Multichannel Households in 1998



This competitive trend is expected to continue. For example, a recent study by The Strategis Group projects that DBS alone “will continue strong growth and secure 22% of the multichannel video market by 2003.” Similarly, *SkyREPORT* predicts that the number of digital satellite homes will rise to at least 15.2 million by 2002. And in January 1999, the CEOs of EchoStar and DirecTV told the Consumer Electronics Show that they expected to add 2 million new DBS customers this year.⁴

B. DBS has become a particularly competitive substitute for cable

DBS is a formidable competitor in the multichannel video market. It is **not** merely a “high-end,” “rich niche” alternative, nor is it only attractive in rural areas unserved by cable. DBS offers a large number of channels that include all the most popular and widely carried national cable networks, as well as some programming (such as DirecTV’s exclusive sports packages) that is not available to local cable systems.

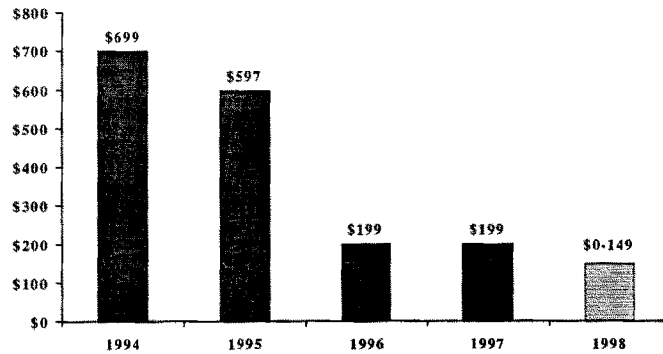
⁴ *DBS Leaders Look Digital Cable in Eye*, Multichannel News, January 18, 1999: p. 25.

Since DBS and cable provide similar programming packages at similar prices, consumers increasingly view DBS as a substitute for cable. As the Department of Justice has observed:

Cable and DBS are both MVPD products. While the programming services are delivered via different technologies, consumers view the services as similar and to a large degree substitutable. Indeed, most new DBS subscribers in recent years are former cable subscribers who either stopped buying cable or downgraded their cable service once they purchased a DBS system.⁵

In addition, the up-front equipment costs for DBS have plummeted from \$700 five years ago to little or nothing today (see next two charts). Consequently, the number of high power DBS subscribers grew from 3.28 million to 5.14 million between July 1997 and July 1998. This amounts to a 56.6 percent annual growth rate. DirecTV and United States Satellite Broadcasting (USSB) alone added 1.1 million subscribers during this period while EchoStar more than doubled its subscribers in 1998.

DBS Satellite Dish Prices



Source: 1994-97 FCC Annual Reports; 1998 EchoStar advertising.

⁵ *United States v. Primestar, Inc.*, No.1: 98CV01193, Complaint, ¶ 63, D.D.C. May 12, 1998; emphasis added.

Full Page Ad by EchoStar, *The New York Times*, Tuesday, October 26, 1998, p. D-10.


 DIGITAL DISH TELEVISION

It's digital.
 It's satellite TV.
 It's yours.

IT'S FREE!
 With DISH Network One-Rate Plan.



GET RID OF CABLE FOREVER!

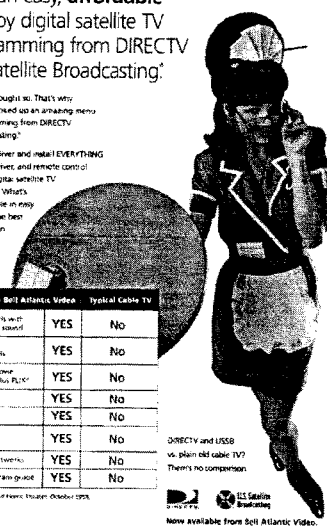
Given its ability to offer packages of video services at prices comparable to cable, DBS is aggressively marketing its product and is targeting cable customers in its ads. Moreover, telephone companies like Bell Atlantic are marketing DBS to their local telephone subscribers and are providing equipment as part of their service, just like cable operators (see below). Dick Beville, President of Video Services at Bell Atlantic, said his company's DBS offering "will basically be a cable replacement product."⁶

⁶ *DBS Finally Rings Up the Bells*, Multichannel News, March 9, 1998: p. 1.

Now **Bell Atlantic Video** offers you an easy, **affordable** way to enjoy digital satellite TV with programming from DIRECTV and U.S. Satellite Broadcasting.⁷

Hungry for better TV? Thought so. That's why Bell Atlantic Video has opened up an amazing menu of extraordinary programming from DIRECTV and U.S. Satellite Broadcasting.

Bell Atlantic Video will deliver and install **EVERYTHING** you need — the dish, receiver, and remote control — so you can enjoy great digital satellite TV entertainment in no time. What's more, installation is payable in easy installments. And here's the best part: It costs much less than you think!



DIRECTV® & USBS [®] from Bell Atlantic Video	Typical Cable TV
Over 200 available channels with digital quality picture and sound	YES No
5 HBO [®] & HBO Family [®] with 8 MOVIEMAX [™] multichannels	YES No
5 Showtime [®] and 2 Tru Movie Channel [™] multichannels, plus PLUS [™]	YES No
4 STARZ [™] multichannels	YES No
8 ENCORE [™] multichannels	YES No
Up to 35 pay per view shows, including pay per view	YES No
Over 25 specialty sports channels	YES No
Interactive on-screen program guide	YES No

Source: DirectTV Satellite Service Report, August-October 1998.

DIRECTV and USBS vs. plain old cable TV? There's no comparison.

Now available from Bell Atlantic Video.

C. EchoStar's proposed acquisition of MCI/NewsCorp's DBS capacity will strengthen EchoStar's market position

NCTA does not oppose EchoStar's acquisition of MCI's DBS assets. The additional capacity provided by these channels will allow EchoStar to offer local television signals and compete even more effectively with cable operators around the country. Already, the U.S. Department of Justice has observed that "consumers view DBS and cable as similar and to a large degree substitutable" since both offer – for a fee – 35-to-175 channels of video and a mix of video services not available "over-the-air."⁷ With the addition of extra channel capacity and the

⁷ *Comments of the United States Department of Justice*, January 14, 1999, In the matter of the Application of MCI Telecommunications Corporation and Echostar 110 Corporation, FCC File No. SAT-ASG-19981202-00093, p. 4.

ability to offer local broadcast signals, the Department of Justice concluded just two weeks ago that EchoStar's acquisition of MCI/NewsCorp's DBS license would benefit competition:

[A]pproval of EchoStar's request promises to facilitate new and potentially significant competition between DBS and cable providers, thereby benefitting consumers of MVPD services.

Allowing EchoStar to use 28 channels at 110° along with its 21 channels at 119° would, for the first time, give a DBS operator sufficient capacity to deliver local signals on a widespread basis.⁸

Significantly, the Department of Justice concluded that the acquisition would make the video marketplace more competitive – even if EchoStar does not begin to retransmit local signals right away but uses its additional capacity for other purposes:

Regardless of whether DBS carriage of local signals becomes a reality in the immediate future, DOJ is convinced that providing additional full-CONUS capacity to the smallest home satellite firm will enhance competition in local MVPD markets.⁹

D. Total dish subscribership (DBS and C-Band) exceeds 10 percent in 38 states

According to *SkyREPORT*, Direct-to-Home (DTH) subscribers (all dish customers, including DBS and C-Band) grew from about 7.23 million to 9.28 million from July 1997 to July 1998, an increase of 28 percent (versus 2 percent for cable). But aggregate numbers tell only part of the story about the growth of competition to cable. For example, in 38 states, DTH satellite subscribership now exceeds 10 percent of all television homes. In 19 states, DTH satellite penetration exceeds 15 percent (see following chart).

⁸ Ibid., pp. 3 and 7.

⁹ Ibid., p. 7.

States With Direct-To-Home (DTH) Dish Penetration of Ten Percent or More

State	DTH Penetration
Montana	31.87%
Vermont	29.22%
Wyoming	23.05%
Mississippi	19.44%
Maine	18.85%
North Dakota	18.80%
North Carolina	18.57%
Idaho	18.41%
Arkansas	18.28%
South Dakota	17.45%
Kentucky	17.39%
West Virginia	17.06%
South Carolina	16.77%
Alabama	16.13%
Utah	15.97%
Missouri	15.59%
Tennessee	15.53%
Indiana	15.20%
Iowa	15.05%
New Mexico	14.60%
Oregon	13.79%
Nebraska	13.74%
Oklahoma	13.54%
Kansas	13.44%
Georgia	13.35%
Colorado	13.04%
Wisconsin	12.80%
Texas	12.56%
Virginia	12.45%
Washington	11.90%
Michigan	11.82%
Minnesota	11.78%
Arizona	11.54%
Nevada	11.40%
Louisiana	11.09%
Alaska	10.51%
New Hampshire	10.10%
Florida	10.00%

Source: Media Business Corp., *SkyTrends*, October 1998

E. DBS is not the only competitor to cable

Telephone companies are providing both wireline (overbuilds) and wireless (MMDS) video services in competition to local cable operators. For example:

- **Ameritech** has acquired cable franchises in 93 communities with more than 1 million television households. It is operating cable systems in 74 communities, serving approximately 200,000 subscribers.
- **SNET** has acquired the first state-wide cable franchise in Connecticut. It is offering cable service in over a dozen communities and is competing directly with incumbent cable operators.
- **BellSouth** sells wireline video services in several markets. It also offers 160-channel digital MMDS service in Orlando, New Orleans, and Atlanta. It plans to launch wireless cable service in Miami, Jacksonville, and Daytona in 1999.
- **GTE** is aggressively marketing wireline video service in Tampa, Florida, and attracted more than 73,000 subscribers to its americast™ service by the end of 1997.

Moreover, electric utilities, competitive local exchange carriers (CLECs), and more cities are getting into the cable business. For example,

- **RCN Corporation** now “provides bundled phone, video and Internet-access services in New York, Boston, New Jersey and Pennsylvania.” It already “has at least 63,000 video customers in Manhattan and Boston and recently expanded cable service to

Queens.” It is currently “building a \$300-million, 350-mile fiber network in the Washington region with a local utility, Potomac Electric Power Company” to provide similar bundled services under the brand name “StarPower” in the nation’s capital.¹⁰

- **Knology Holdings** is building broadband networks to offer bundled services in Southeastern states. Knology’s Augusta, Georgia, cable TV service will offer approximately 65-70 analog channels of basic programming and another 70-80 digital channels. It claims that “[p]ricing of the analog services will be similar to existing cable companies; however, KNOLOGY customers will receive more channels delivered through the fiber/coax network than is presently available from existing cable providers.”¹¹
- **Municipally-owned facilities:** Once limited to rural areas, municipal cable systems are experiencing a resurgence and now serve almost 70 communities. For example, the city of Tacoma in the state of Washington has decided to overbuild the local cable operator in order to provide integrated broadband services of its own.

Finally, several multichannel video providers are also competing with cable operators for access to Multiple Dwelling Units (MDUs) – including satellite master antenna television systems (SMATV), which do not face the regulations or franchising requirements imposed on cable operators.

¹⁰ “RCN Tries To Elbow Its Way Into Cable’s Turf,” *CableWorld*, June 8, 1998, p. 20.

¹¹ “Knology to Build New Broadband Network – Competition brings choice in local service providers,” Knology Press Release, Jan. 21, 1998.

F. Conclusion: the video market is competitive

Over the last five years, there has been rapid and unabated growth of competition in the video market. The convergence of video, voice, and data services in the emerging digital broadband marketplace will only reinforce this trend.

Cable operators have no choice but to respond to marketplace competition – and their conduct reflects just such a competitive response. Operators continue to increase their investments in new and upgraded facilities, so they can provide the increasing quantity and quality of service that customers demand. They continue to increase their investments in programming and customer service. And they package their services in a way that provides the greatest value to their customers.

The cable industry's customer service initiatives and on-time guarantees, along with its investment in programming and facilities, are what one expects in a competitive marketplace. Cable's efforts represent a desire to offer consumers a package of services which, dollar for dollar, satisfies customer needs and demands better than its competitors. As the Department of Justice concluded in its FCC filing on January 14, 1999:

In short, the views and actions of consumers, statements and strategic behavior by cable firms, and the views of other industry participants convincingly demonstrated that DBS and cable compete against each other in local MVPD markets throughout the country.¹²

3. "LOCAL-TO-LOCAL" FOR DBS SHOULD BE COUPLED WITH FULL MUST CARRY BY A DATE CERTAIN

NCTA agrees with Congress's emphasis on promoting competition rather than regulation. For example, during consideration of the Telecommunications Act of 1996, NCTA did not

¹² Op cit, p. 6.

oppose provisions granting telephone companies or utilities full and immediate entry into the video market. Similarly, in 1998, NCTA did not oppose efforts to give DBS companies the right to retransmit local broadcast stations (“local-to-local”), even though this would cede one of the cable industry’s competitive advantages – the fact that cable systems carry local television signals as part of their channel line-ups.

As the 106th Congress convenes, NCTA’s position remains the same: **NCTA does not oppose “local-to-local” legislation.**

A. Local-to-Local and Must Carry

For the sake of fair competition, NCTA prefers immediate full analog must carry obligations for DBS companies that retransmit local broadcast television stations. However, NCTA could accept phased-in analog must carry, with full must carry obligations to apply by a date certain.

While endorsing the concept of “competitive parity,” some have argued that EchoStar, which plans to retransmit local broadcast signals, should not have to meet the analog must carry and retransmission consent requirements that currently apply to cable operators. However, an analysis of these arguments demonstrates that there is no fair rationale for giving EchoStar special treatment or a permanent exemption from these rules.

B. EchoStar has the capacity to meet full must carry obligations

Some people have suggested that any must carry obligation imposed on EchoStar should await expansion of its channel capacity. But EchoStar has sufficient capacity to carry the broadcast stations in the markets it says it intends to serve.

- EchoStar already provides its customers with over 300 channels on its first four satellites¹³ – approximately five times the 61 channels that an average cable system provides, and far more than the 215 TV stations located in the 13 markets where EchoStar currently offers local to local service. Moreover, EchoStar's capacity will soon nearly double, as a result of its agreement to acquire 28 DBS frequencies and two additional satellites at the 110 degrees west latitude orbital location from MCI/Worldcom and News Corporation. If EchoStar employs 10:1 compression for its DBS service – as it has said it can do in its filings at the Copyright Office – then EchoStar could televise an additional 280 channels on its newly acquired satellites. EchoStar will thus have more than enough capacity to carry all 290 local television stations in the 20 markets where it plans to offer local-to-local service without dropping any of its existing channels.
- Indeed, EchoStar claims that it will “provide over 500 channels of programming, Internet/data delivery, and HDTV, along with the capability of broadcasting to the entire United States, including Alaska and Hawaii and the U.S. territories in the Caribbean and is positioned to become a one-dish solution for local-to-local channels” (EchoStar Press Release, November 30, 1998).

¹³ According to EchoStar's own website (www.dishnetwork.com), a Dish Network subscriber is capable of receiving over 340 channels.

C. **Basic fairness requires similar must carry rules for cable and DBS**

Some also say that EchoStar should be treated as a small start-up company and should not have to bear the same must carry obligations as cable companies. However, EchoStar is by no means a small, needy new entrant in the multichannel video market.

- EchoStar is a publicly-traded company worth \$2.3 billion that has over 2 million subscribers – as large as the 7th largest cable MSO.
- With average monthly revenues of \$40 per subscriber, EchoStar's revenues for the first nine months of 1998 totaled \$696 million – an increase of 133 percent over the corresponding three quarters in 1997.
- EchoStar is establishing strategic partnerships that further strengthen its competitive position. For example, on January 7, 1999, EchoStar struck an alliance with Microsoft to deliver WebTV through new set-top boxes to consumers.¹⁴

Finally, some argue that EchoStar should be protected from must carry obligations, just as cable was supposedly protected during its infancy and just as small cable systems are supposedly protected today. But there was never special treatment for the cable industry in its early years, nor is there protection for small systems today:

- All cable systems were subject to analog must carry rules beginning in 1966. At that time, the entire cable industry had only 1.58 million customers – a penetration rate of 2.8 percent of all TV households in September 1966. The DBS industry currently

¹⁴ EchoStar Press Release, *WebTV Networks Introduce First Internet TV Satellite Product and Service*, January 7, 1999.

serves 6.085 million subscribers, with a penetration rate of 6.1 percent of television households (according to Nielsen, there will be 99,391,780 TV households in January 1999). When must carry rules were extended to all cable systems in 1966, state of the art technology allowed 12 channels.

- No cable system is exempt from the current analog must carry rules. Rather, all cable systems must devote up to one-third of their capacity to the carriage of commercial stations (and one or more non-commercial must carry stations on top of that) except in the rarest of cases: a cable system with 12 or fewer channels must carry 3 local commercial stations (and a system with 12 channels or less that serves 300 or fewer customers does not have a defined signal carriage complement but instead is prohibited from deleting any television signal that was carried at the time the 1992 Cable Act was adopted).

Even if must carry obligations are extended to DBS companies that retransmit local broadcast stations, it is noteworthy that cable companies will still be subject to many federal requirements that are not imposed on DBS providers (see following table).

CABLE VERSUS DBS – REGULATORY REQUIREMENTS COMPARED

LIMITS OR REQUIREMENTS	<u>CABLE</u>	<u>DBS</u>
MUST CARRY: Requires cable to carry most, if not all, local commercial and public broadcast signals.	YES	NO
PROGRAM ACCESS: Requires vertically-integrated satellite cable networks to make their programming available to all distributors on similar terms.	YES	NO
LOCAL FRANCHISE: Local franchise required as a condition of operation.	YES	NO
RENEWAL REQUIREMENTS: Requires periodic renewal of operating franchise or license.	YES	NO
FRANCHISE FEES: Payment to localities, up to five percent of gross revenues (<u>paid in addition to other general taxes and fees</u>).	YES	NO
PEG / PUBLIC INTEREST ACCESS: Requires operators to provide channel capacity for use by local governments, educational authorities, and/or the public.	YES	YES
LEASED ACCESS: Requires cable operators to provide commercial channel capacity to competing programmers.	YES	NO
LOCAL TAXATION, IN ADDITION TO FRANCHISE FEES, PERMITTED: Localities may impose taxes of general applicability in addition to franchise fees.	YES	NO
RATE REGULATION: For cable systems not subject to effective competition, limits rates for basic and cable programming service tiers, as well as equipment and service calls.	YES	NO
POLITICAL BROADCASTING: Imposes "equal time" and "lowest unit rate" obligations.	YES	YES
LOCKBOXES: Facilitates parental control of programming by requiring cable operators to sell or lease devices that can be used to restrict the availability of particular program networks in the home during particular times.	YES	NO
SPORTS BLACKOUT: Requires operators to black out the retransmission of certain televised sporting events at the request of the home team.	YES	NO
SYNDEX/NETWORK NON-DUPLICATION: Requires cable operators to delete certain television programming upon demand by local broadcasters.	YES	NO
PRIVACY: Protects consumers against the misuse of customer-specific information; includes annual notification requirements.	YES	NO
CUSTOMER SERVICE: Requires cable operators to, among other things, maintain specified hours of operations and respond to customer calls within a certain number of hours.	YES	NO
EQUIPMENT COMPATIBILITY: Requires compatibility between cable facilities and consumer electronics equipment.	YES	NO
EMERGENCY ALERT: Requires installation of extra equipment to alert viewers about local and national emergencies.	YES	NO
EEO: Procedures for non-discriminatory hiring of new employees in 15 job categories.	YES	YES

Senator DEWINE. Mr. Kimmelman, welcome back.

**STATEMENT OF GENE KIMMELMAN, CO-DIRECTOR,
WASHINGTON OFFICE, CONSUMERS UNION, WASHINGTON, DC**

Mr. KIMMELMAN. Thank you. Thank you, Mr. Chairman. I want to thank you and Senator Kohl, Chairman Hatch, and Senators Leahy and McCain for moving forward on legislation to reform the Satellite Home Viewer Act to begin to put satellite on equal footing with the cable industry in the law, and I appreciate your efforts to work together with the Commerce Committee. This is a very important piece of legislation and it needs speedy consideration.

Just listening to Decker, I think we have run out of things to agree on real fast here with your introduction, Senator Kohl. [Laughter.]

As you well know, I do not have my tricks here today on consolidation, but from my many appearances here, it is very unlikely for you to see the consumer movement come before you and say it is a good idea to concentrate a market. It may surprise you to see our points of view on concentrating ownership in the satellite industry involving the EchoStar transaction with MCI and News Corp's assets and the DirecTV transaction pending with PrimeStar, but there is a very simple reason for that. We have no choice.

This is a result of numerous policy making mistakes, I believe, by the Congress and regulators in how the cable industry has been dealt with over the years, starting with the mistake of not making cable the equivalent of a telephone common carrier, subject to the same rules of separating content from transmission, which will soon come back to haunt us again in the online services area, so stay tuned, and the failed effort to deregulate cables rates in a monopolistic situation, first in 1984 when rates shot up, and again through the 1996 Act when we have seen rates shoot up again. Rates are up 21 percent since passage of that Act.

I guess, based on Decker's comments, we do not need to be here today, but given that where there is another wire competing with a cable company, on average, the FCC finds that consumers are paying about 10 percent less, it is sort of hard to understand these 21 percent rate increases as reflecting a truly competitive market. I would suggest they do not.

So with these policy mistakes, we are left with little choice other than to say that the potential dangers of concentrating through consolidation ownership of satellite assets is substantially less than the potential benefit of bringing competition to an adjacent market, the cable market, if the satellite companies will truly compete on price and if Congress will move swiftly to pass your legislation and companion legislation that begins to create common rules, or more similar rules under copyright law and similar communications laws for cable companies and satellite and other potential challengers.

But I do not believe that is enough, Mr. Chairman. I think we have a problem here that will not go away overnight. Mr. Ergen has made tremendous efforts to try to reduce the price gap between the cost of buying a dish, installing a dish, having a second antenna for local signals. Now, hopefully, at least in some communities, through this transaction, it could be integrated through one dish. But it does not compare in price to the average cable installa-

tion for the first set and the second set that most consumers want and need.

It is attractive to consumers at the higher end of the market who want a lot of channels, who want specialized programming like sports and movies. That is where it has been most successful. It has not been successful at constraining cable on price for the most popular programming services. It is not a direct substitute—I just turn you to marketplace statistics—and we want it to be.

Therefore, I urge you to move quickly with your legislation to speedily combine efforts with the Commerce Committee to make sure satellite has every opportunity to move forward, and in conjunction with these transactions, I think we need more. We need to exert pressure on the satellite industry to offer consumers a price competitive package with cable, to look at the installation costs, the dish costs, combine it together, take a little more risk—they do a lot already—and provide an upfront price that is price competitive with cable and a package of programming that is price competitive, and I think if they do that and you see them offering what other wire line carriers have offered, consumers could get the 10 percent price cut that they have seen from other forms of competition. Thank you.

[The prepared statement of Mr. Kimmelman follows:]

PREPARED STATEMENT OF GENE KIMMELMAN

Consumers Union¹ believes that the need to promote more competition in the cable industry could not be more obvious. Cable rates have risen about 21 percent since passage of the 1996 Telecommunications Act² and continue to climb three to four times faster than the rate of inflation (see Attachment A). Even the chairman of the Federal Communications Commission (FCC) admits that rates are going up excessively under his agency's "liberal"—in other words, meaningless—regulatory structure (see Attachment B). As a Congressionally mandated prohibition on regulating the most popular cable channels approaches (March 31, 1999),³ now is the time to act. As the following message we received from a cable consumer indicates, people are ticked off:

What I find truly amazing about the cable industry," says Joseph Verduci of Oakland, California, "is that there is no real competition. Satellite TV is still priced out of the reach of most consumers, and the choice of cable providers is limited to the town's decision board that they should be the sole cable providers for that town."

So far, despite rapid growth at the high end of the market, satellite television has failed to offer true price competition to cable. With up-front costs (for the satellite dish and related installation charges) running three to five times the cost of installing cable, and lacking carriage of local broadcast channels, satellite TV has been unable to discipline pricing for the most popular cable services.

¹Consumers Union is a nonprofit membership organization chartered in 1936 under laws of the State of New York to provide consumers with information, education and counsel about good, 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 non-commercial contributions, grants and fees. In addition to reports on consumers Union's own product testing, *Consumer Reports* with approximately 4.5 million paid circulation, regularly, carries articles on health, product safety, marketplace economics and legislative, judicial and regulatory actions which affect consumer welfare. Consumers Union's publications carry no advertising and receive no commercial support.

²Public Law 104-104, 110 Stat. 56 (1996).

³47 U.S.C. Sec. 543 (c)(4), Public Law 104-104 Section 301.

In contrast, FCC data show that where cable faces head-to-head competition from another transmission “wire,” cable rates are about 10 percent lower than where cable faces only satellite TV challenges.⁴

The failure of federal policy to ensure reasonable cable rates makes it necessary for policymakers to devote greater attention to promoting increased competition to the cable industry. Legislation that puts cable’s potential competitors on the same legal footing as cable companies, and appropriate antitrust/regulatory conditioning of satellite mergers, could open the door to more choice and lower prices in cable TV market.

Recent deals that combine EchoStar Communications Corporation’s Direct Broadcast Satellite (DBS) business with DBS facilities owned by News Corporation and MCI/WorldCom, and DIRECTV’s combination with United States Satellite Broadcasting and PRIMESTAR, dramatically consolidate the satellite industry. However, these deals also could offer consumers more choice and lower prices if the consolidated satellite companies more aggressively compete against cable.

We believe it is critical to both enable and require these satellite companies to become head-to-head competitors with cable for the core TV services that consumers watch the most. This requires:

- Passage of legislation, like Senator Hatch’s S. 247, the “Copyright Compulsory License Improvement Act” and companion proposals, which begin to give satellite and other potential competitors comparable treatment under our nation’s copyright laws;
- Expansion of previous laws designed to hold down cable rates and make popular TV channels available to cable’s potential competitors;
- Aggressive regulatory oversight of potential competitor’s access to cable-owned programming or programming that cable companies exert monopolistic influence over; and
- Strong antitrust/regulatory review of satellite mergers to ensure that satellite companies continue to reduce up-front costs and eliminate other market impediments to direct price competition with the cable industry.

Because of the highly concentrated nature of the cable marketplace, policies designed to foster increased competition throughout the market require giving potential competitors breathing room as they seek to enter the market and expand their businesses. The two largest cable companies, Telecommunications Inc. (TCI) and Time Warner, own a substantial stake in cable systems serving about one-half of all cable customers, and TCI has an ownership stake in 67 national programming channels while Time Warner has a stake in 30 national channels.⁵ In addition TCI owns about 9 percent of Time Warner. Most importantly, 29 of the 50 most subscribed-to channels, and nine of the top 15 prime-time watched channels are substantially owned by the largest cable companies.⁶

Beginning with S. 247 and other pro-competitive measures, Congress can ensure that satellite and other potential cable competitors have an opportunity to challenge cable’s dominance and gain a large enough market presence to offer a mass-market alternative to cable.

Unfortunately, experience under the 1996 Telecom Act and its predecessor, the 1992 Cable Act⁷ demonstrates that market entry does not always translate into mass-market competition. The satellite TV industry has been enormously successful by focusing on high-end consumers who are willing (and able) to pay hundreds of dollars for a dish, want hundreds of channels, desire specialized programming (e.g., sports, movies) and are interested in higher quality (digital) signals. While recent satellite industry efforts to reduce up-front cost to consumers are promising, they are not likely to promote rapid price competition with cable.

Consumers Union therefore believes that, as policymakers open the cable market to more competition from satellite TV providers, the satellite companies must be responsive to the public’s demand for competition to the most popular cable offerings. Efforts to promote price competition by reducing up-front costs and adding local broadcast signals to popular cable programming packages must be encouraged, to jump-start mass market rivalry with cable. Only when satellite TV offers the vast

⁴ In the Matter of Annual Assessment of the Status of Competition in Markets for the delivery of Video Programming, FIFTH ANNUAL REPORT, CS Dkt. No. 98–102, Dec. 23, 1998, at F–4, footnote 18.

⁵ FIFTH ANNUAL REPORT, op cit, at Appendixes C and D.

⁶ Id.

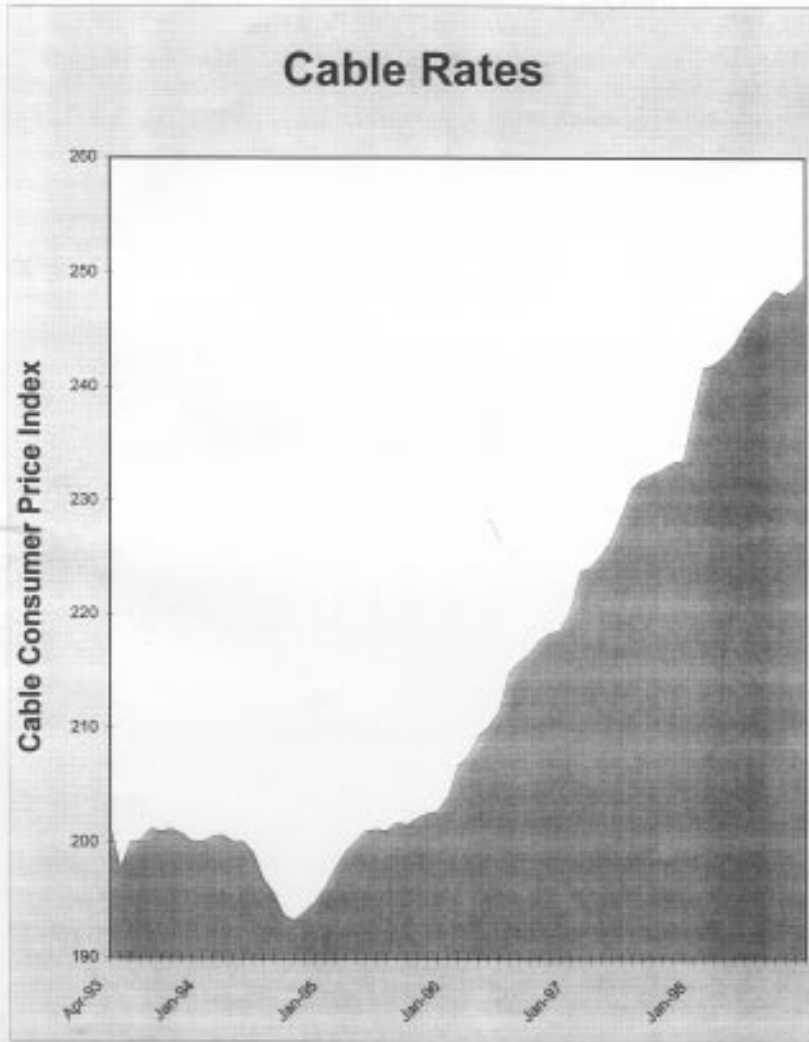
⁷ Public Law 102–385, 106 Stat. 1460 (1992).

majority of cable subscribers an alternative that meets their needs will cable companies be forced to bring down prices.

Immediate, forceful public policy measures designed to promote mass-market competition to the cable industry and block cable's monopolistic practices can offer consumers relief from spiraling cable rates. It is time for Congress, antitrust and regulatory bodies to ensure that potential competitors like satellite TV companies have a fair chance to compete on price with the cable television industry.

ATTACHMENT A

Cable Rates



December 1993 = 100

Source: Bureau of Labor Statistics

www.usatoday.com



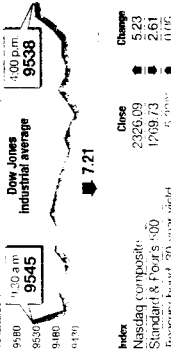
Money

FRIDAY, JANUARY 8, 1999

MONEYLINE

A CHECKER IN ACTION FOR THE INVESTMENT LEADER OF THE DAY

Thursday markets



THE NATION'S NEWSPAPER

SECTION B

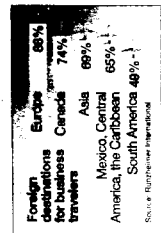
Business Travel Today

By David Field

OK: AmeriSuites opened a second Oklahoma City area hotel, in the Quail Springs district.

Go figure: Hertz added to our busy computer tool lets Web sites let companies calculate costs in dollars, local foreign currency and in the new euro, www.hertz.com.

Drive, fly: Earn Delta SkyMiles by buying or leasing new cars, trucks or getting repairs



from 450 Automotive Dealers' Marketing members. Call 1-888-310-3145 for locations.

Move: Thrifty moved into the

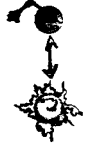
1.3 million-square-foot shared rental-car facility at San Francisco International.

Sale (1): Horizon Air has full service by Jan. 13, 1999. Northwest will cover the Pacific Northwest Buy tickets by Jan. 13.

Sale (2): Air New Zealand has cut fares for travel April 13-June 30. Buy tickets by Jan. 31, get 25% off, buy Feb. 1-28, get 20% off.

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FCC chief admits cable oversight 'too liberal'

By David Lieberman

NEW YORK — Federal Communications Commission Chairman William Kennard said Thursday that the FCC "was probably too liberal" in allowing cable operators to raise subscriber rates the past few years.

The unusual admission comes less than three months before federal oversight over cable prices is due to expire. And it enmeshes critics that consumer advocates have lev-

eled at the FCC since 1984 after cutting rates about 15% in the past two years.

Since then, rates have increased about 6% a year — far faster than inflation. In 1988, cable prices rose 7.3%, while consumer prices generally appreciated 1.7%, the FCC reported last month.

"Appropriate regulation would have saved consumers billions on their cable bills," says Consumer Union's Chris Kline. Rate increases for 1989 have



By David Lieberman

been about 5%, FCC Chairman Reed Hundt gently look issue with Kennard's remark.

"What was necessary was not more rate regulation, but more aggressive moves to promote competition," he Hundt, who resigned in 1997, says.

Although competition is increasing, the level of competition that consumers are seek-

ing has not yet arrived," Kennard said.

But cable's chief trade group says that subscribers get a good value. "The industry is investing in new and better programming, and people are watching more cable than ever before," says National Cable Television Association's Daniel Brenner.

Separately, the FCC is reviewing AT&T's plan to buy Time Warner. Kennard said that the deal scheduled for a shareholder vote Feb. 17, "has the prospect of being a very exciting transaction."

Senator DEWINE. Let me start with Mr. Anstrom. Mr. Anstrom, do you want to respond to Mr. Kimmelman's comments, particularly in the area of competition? We see continued increase. Mr. Ergen is getting a bigger percent of the market, or at least his subscribers are significantly going up, and yet cable rates are not going down. Do you want to respond to that?

Mr. ANSTROM. Yes, Mr. Chairman. I mean, I think that what we see going on in the cable marketplace is what we see in other markets from time to time, which is that we are steadily increasing the quality of our product, frankly, to compete with what Mr. Ergen and DirecTV offer.

Currently, if one looks at the offerings of the direct broadcast satellite companies offering 100 or more channels, the average cable system has 61 channels. They have digital technology, good pictures. It is a very competitive product.

And what we have been doing since the 1996 Act is investing more than \$20 billion in our infrastructure to upgrade, offer more channels, more reliability, better picture quality. We have been making substantial investments in programming. We have been making substantial investments in better people and better customer service. All that costs money, and those costs are reflected in our prices.

The important thing, I think, as the FCC observed in its competition report just a few weeks ago, is that those investments are reflecting higher value for our customers. How do we know that? First of all, there has been a major transition going on in terms of how people vote with their eyeballs every day. People are now voting for cable networks and cable programming over broadcast programming. That is a direct reflection of the substantial investments that we are making in that program. And people, notwithstanding the competition we have from Mr. Ergen and others, are also continuing to subscribe to cable companies. So we think they are voting with their dollars and their eyeballs for the investments we are making.

One other point, if I might, Mr. Chairman. If one looks at the range of competitive offerings that are out there, whether from an Ameritech or a GTE or an EchoStar or a DirecTV, you will find that our prices are very much in the midrange of those offerings, and as much as Mr. Kimmelman maybe does not want to acknowledge it, the fact is that it may just be that the price that we are charging is a very competitive price. We really have not known until these competitors have emerged, but the facts are that our prices are very competitive and comparable to all of our competitors out there in the marketplace and we think offering higher value over the last several years.

Senator DEWINE. Mr. Ergen, do you want to respond to Mr. Kimmelman's comments that, at least so far, you have not been able to compete at the lower end of the spectrum or at the lower end of the cost, in other words, basically so that you all are providing a service at the higher end, if I have higher income and I want many, many choices. What about at the other end?

Maybe you could take me through an example and tell me, if I want some of your services but I want them on the lower end, I do not want to spend a lot of money, what is out there? What can

you give me today? Let us start with today, what you can give me, and then you can project that into the future if this bill passes and other things happen.

Mr. ERGEN. Well, Mr. Kimmelman is partly right. I think that DBS subscribers tend to be a little higher-income, tend to average a little older, but the reason that we have not gotten more on the low end, on the middle-income and lower-income individuals, again, in my opinion, has been our inability to offer local network broadcast signals. It has not been that we do not have a compelling offering.

For example, we do offer a system, the top 40 channels, the top 40 cable channels for \$19 a month. That would compare very favorably with the average cable bill. Maybe this is wrong, but it is probably \$28, \$29, \$30, so it is considerably lower.

Senator DEWINE. How does that work? I get my choice of 40, or how does that work? Would you give me a package?

Mr. ERGEN. No, we would give you—in that particular package, it is the top 40 rated cable channels. The problem is, we do not have ABC, NBC, CBS, and FOX and you typically would watch that two-thirds of the time or 60 percent of the time. So if we do not give you what you are watching two-thirds of the time, no matter what our price is on the low end, we are not competitive. It does not make sense to charge you \$20 for channels that you watch 30 percent of the time and not offer you—and cable is able to offer the network signal.

So with this legislation that we are all talking about from the committees, from Senator McCain and Senator Hatch's committee that you guys have supported, we will be able to offer those local broadcast stations in the majority of the country on a single dish. That will allow us, then, to compete, and then we do not have a problem with the cable industry from a regulation point of view as far as we are concerned, because if we can compete on a level playing field, the marketplace will determine the winners and losers. We may be a winner or we may be a loser, but at least the marketplace will decide it and not some antiquated laws, legislation that never anticipated that a satellite could actually deliver broadcast signals.

Senator DEWINE. Explain to me how the "must carry" requirement is going to work. I know this legislation is a work in progress, but you know what has been introduced. We have a phase-in. How is that going to impact, let us say, the consumer in Cedarville Township, Greene County, OH, where I live? Basically most of the township is a rural area where we cannot get cable. You are the option, and today, of course, many people are not, as you point out, getting your services, or comparable service, because we cannot get the Dayton TV market. We are in the Dayton TV market. Where I live, I am 20 miles from Dayton, and I am probably 50 miles from Columbus and probably 60 miles from Cincinnati. How is that going to impact me, people who live in that township?

Mr. ERGEN. Well, the "must carry" is where I think the Congress has to balance the very problem that you just mentioned for a rural constituent versus the rights of a local broadcaster. If we had "must carry" today for satellite, for example, we would be able to carry about five cities on satellite from an economic point of view.

Senator DEWINE. Five cities nationwide?

Mr. ERGEN. Nationwide. Today, without “must carry”, we can do about 20 cities with the current capacity that we have. So we can—

Senator DEWINE. Wait a minute. Say that again.

Mr. ERGEN. Without “must carry”, under the current law, we could do about 20 cities with the current capacity that EchoStar has for satellite. If we had “must carry”, we would only be able to do five or six cities. So you have to balance our ability to go to more of the population. It makes no sense to us today to carry multiple home shopping channels, multiple religious stations that we carry on a national basis but do not have local content, do not have local sports, do not have local news and weather just to satisfy the needs of the local broadcasters.

Having said that, obviously, a local broadcaster has an investment in the community. They certainly have long, hard-fought battles with cable, where cable opposed the “must carry” and certainly opposes digital “must carry”. So you balance it out, and I think the compromise that we can live with is a phased-in approach that would be 3 years from the date of enactment so that we can build a new technology, so-called spot beam satellite, where we can actually reuse frequencies and we can then put spot beams down on every city, and in doing so, then with technology, and it takes about 3 years to build this technology, we can actually go out and cover the vast majority of the country with “must carry” and satisfy most people and give them true competition.

Senator DEWINE. So again, as a practical matter, if I am in Toledo, OH, let us say, and I am in a rural area and I want to get your service, or if I am not in a rural area and I want to get your service, wherever I am, are you telling me that in 3 years, you are going to be able to deliver to me in Toledo, OH, my local Toledo stations?

Mr. ERGEN. We think that technology exists. We might be able to start as soon as this legislation is enacted with Cleveland, obviously a major city, one of the top 20 cities. We could start with Cleveland.

Senator DEWINE. Right.

Mr. ERGEN. But we could not get to Toledo. Toledo might be the 50th or 60th or 70th biggest city. We will not have the capacity to do it until we can build a spot beam satellite.

Senator DEWINE. OK; but what is your best guess about the time to do that? I mean, you are the expert. How long do you think that that is going to take, assuming the bill passes, assuming that you progress on your technology, just 3 years? I mean, in 3 years, you will be able to do it?

Mr. ERGEN. In my opinion, in my best guess, it will take 3 years to build and launch a so-called spot beam satellite, and our company is looking into that. There is another company called Capital Broadcasting, which you may be aware also has a business plan with the support of many of the broadcasters to do a very similar thing—

Senator DEWINE. This is a separate satellite?

Mr. ERGEN. A separate satellite, and Capital Broadcasting would launch a satellite not only for EchoStar but for also DirecTV, so the

entire satellite industry could use their satellite for the so-called spot beam. So that is a technology cure. It is one of those things where it is not a linear progression, where you can just add more channels. It happens overnight, where you can perhaps do 20 cities without a "must carry" with the capacity we have today and then when the spot beam satellite is launched, you suddenly can leapfrog to maybe 60 or 70 cities.

Senator DEWINE. So in Ohio, for example, you are saying the first phase of this, without the satellite, you might not have any city. You might have Cleveland.

Mr. ERGEN. In Ohio, in my opinion, Cleveland would qualify as one of the top 20 cities, but Columbus or Cincinnati would not make it.

Senator DEWINE. The rest of them would not, so we are looking at 3 years, probably, until we have that option.

Mr. ERGEN. That is correct. I think that our numbers are that with the top 20 cities, we can do about 50 percent of the country, so about 50 percent of the homes—

Senator DEWINE. Population.

Mr. ERGEN [continuing]. The population homes, we could get immediate competition to cable on a fair and equitable basis. It would take another 3 years to go out and do the rest of the country.

Senator DEWINE. What are your marketing studies, if you are willing to share them with us, or your best estimate as far as what will happen once you can actually go in and offer that local station to me as a consumer? I mean, it seems to me, just as a consumer, that it would make a phenomenal difference. I just know a lot of people who say, yes, if I could—they do not go into all the technology, and they do not know what the laws are, but they say, I do not want to purchase this technology because I cannot get my local station, and I have got to switch back and forth. I have got to have an aerial, or I have got to have something. I do not want to fool with it, so I just won't buy it. It seems to me it is going to make a phenomenal difference once you are able to compete on that basis with that local as part of your total package.

Mr. ERGEN. I have not personally done a marketing study, but we have certainly seen the marketing studies which show 8 out of 10 people who look at a satellite dish do not buy it because it cannot get local. In my 18 years of experience in this industry where I have talked to consumers day in and day out, whether it be in a taxicab, an airplane, in a restaurant, the conversation always, when I say, why do you not own a dish, it inevitably starts out with, because you do not give me my local signals. There may be other reasons, but that is always the number one reason.

If we can eliminate that as an obstacle, then we have a fair shot at providing competition to cable, and I think cable, obviously, as Mr. Anstrom has said, is getting better. They have cable modems. They will offer new services and true competition will take place and I think the prices will come down.

Senator DEWINE. Before I turn to Senator Kohl, let me ask one last question and it goes back to something that Mr. Kimmelman said in his testimony. What is my startup cost today? What does it cost if I want your services and I say, look, I want to get by as cheaply as I can. Put me in business. What is my cost?

Mr. ERGEN. The absolute least expensive system from us today is the whole entire system is free. That would assume that you would subscribe to our America's top 100 channels and two of our premium services, so you would agree to subscribe for \$48 a month for 1 year. That would be the least up-front cost.

If you decided to subscribe to our lowest package, which is \$15 a month, you pick any ten channels for \$15—

Senator DEWINE. Fifteen?

Mr. ERGEN [continuing]. That system starts at \$149.

Senator DEWINE. So I can walk in, give you \$149, buy it for \$15 a month.

Mr. ERGEN. That is right.

Senator DEWINE. That is your cheap end today.

Mr. ERGEN. That is correct. In fact, I take that back. You could actually buy—in the 13 cities where we do local today, you could actually buy the local service for \$4.99 and \$149 for the complete system. That is only in 13 cities today that that is offered.

Senator DEWINE. Now, on your low option, do I choose my 10 or do you choose the 10?

Mr. ERGEN. No, you choose your 10.

Senator DEWINE. I choose my 10.

Senator Kohl.

Senator KOHL. Thank you. A question for all of you. Let us say Congress passed the Satellite Home Viewer legislation that permits local-to-local broadcasting by satellite companies and includes, let us say, a 3-year phase-in of "must carry." Mr. Ergen, overall, would that be good for consumers?

Mr. ERGEN. I think absolutely. Again, I do not know what consumers will choose, but we are making our bet with \$3 billion of our own money that at least a fair number of those consumers will choose the satellite. The picture quality, the audio quality, the on-screen interactive guide, and the number of channels and choice of those channels and price that we charge, they will choose that over their cable company.

Senator KOHL. Mr. Anstrom, did you say before you support it?

Mr. ANSTROM. Senator Kohl, to respond to both of your questions, I think there is no doubt that legislation would strengthen both EchoStar and DirecTV's competitive position. I think that creates the right kind of incentive in the marketplace. We can agree with that legislation, yes, sir.

Senator KOHL. But why would you agree with it? If it strengthens your competition and makes your life more difficult, why would you agree with it?

Mr. ANSTROM. Senator, we have taken, beginning in 1994, and maybe this comes with having learned the lessons of the 1992 Cable Act in terms of this industry's behavior and posture with the Congress, we have taken this lesson to heart, which is that we believe that having the Government managing every detail of our business has very predictable results that have been demonstrated in the marketplace. It will affect investment, innovation, our ability to serve our customers. We very much would hope that the Government will reduce its role in the video marketplace.

If we are going to come and ask you to keep the government out of managing our business, we cannot come to you and say, but keep

our competitors shackled. We took that position in the 1996 Act in which we agreed to allow the phone companies on day one, no 14-point checklist, no FCC rules, no barriers when competing with us. We supported that legislation. We will support this legislation. We believe in the marketplace, Senator Kohl.

Senator KOHL. OK; Mr. Kimmelman, do you agree that this will help create competition for cable and that robust satellite competition would help to discipline cable rates?

Mr. KIMMELMAN. Given that cable rates are going up almost four times faster than inflation, there is no question about the fact this legislation will help. But I want to reflect on how much it would help based on what you just heard from my colleagues.

Even if I leave the price issue aside, which I do not think is insignificant, and take Mr. Ergen's comments, I think he has done tremendous things to push his industry to bring cost down. But we are talking about from date of enactment beginning with 20 cities to see some competition with local broadcast signals coming in, and then we are talking about 3 years to launch, 4 years, maybe 5 years to be not too optimistic, possibly, before everyone else in Dayton and surrounding areas get this option. That is a generation-plus in technology in this area. That is a long time of cable rate increases in the interim that people face.

So it is definitely movement in the right direction, but it is not all there. When 80 percent of people in the surveys that Charlie mentioned talk about—these are not people who are sitting on the couch responding to a survey. These are people who went into Radio Shack, Circuit City, whatever, looking for a dish and then did not buy it. It may be mostly because of local broadcast signals. I suggest it is partly price, and the best deal you can get is still \$149 compared to a cable installation of, I think, on average around \$40 now, and then a small channel lineup.

It is tremendous improvement over where satellite was and it should be commended for the entrepreneurial zeal to bring these prices down, but we have got a ways to go. It is still quite a bit more. And when you get to the second hook-up and think about how many people have two TV sets now—they do not want multi-channel video on just one, they want it on two—the price differential is even more enormous. We have a way to go.

One final comment. Mr. Anstrom reminded me that I should maybe go back to the syllogism of your former colleague, Senator Bumpers, quoting Mencken. If they say it is not money, it is money. If they really want competition, that means they do not have competition. I mean, the lack of opposition from the cable industry to telephone company entry was pretty much signed and sealed with court decisions prior to the 1996 Act.

I think the desire to have regulation out of the way is understandable, but the best of all worlds for the cable industry is a regulatory environment in which no one is controlling their prices and a competitive environment which is not price competing against them.

I suggest that is about where we are today, and so I do not think they are very unhappy with it. But I do not think they are really expressing a true zeal for head-to-head price competition because whatever Decker says about where he thinks his prices lie, the

FCC data shows that where there are two wires there, the prices of his company go down and the challenger's are lower, and that is the deal we want for consumers.

Mr. ERGEN. By the way, I think that—I mean, I agree with Mr. Kimmelman except that we do not need two wires. It is obviously OK, and certainly we do not care if people overbuild, but the fact of the matter is that if we have two DBS providers, that essentially, from a practical point, have a wire to every home in the United States today. So we actually have three wires to every home in the United States for video, one cable wire and we have two DBS providers that have wires to those homes, even though we do it in a wireless manner.

The problem is, our wires do not carry your network signals and theirs do and that is the problem. It has been the problem. I have 18 years' experience. I would love to find out what happens when we can actually do this on the same competitive field that cable can. It is my personal opinion and my personal money that says we can be competitive and that cable can be deregulated under those circumstances.

Mr. ANSTROM. Senator Kohl, I do not want to belabor this discussion, but if I could just add a point here, I think, again, to underscore the point you made, there is no doubt that if you all passed the Satellite Home Viewer Act and authorized DBS companies to retransmit local broadcast signals, that DBS companies will become more competitive.

But I think it is very important to step back and recognize what is already happening in this marketplace. There have been 12.5 million customers who have already subscribed to one of our competitors. In the last year, more than two million people picked DBS. Two of every three new multichannel homes last year picked DBS, not cable. Mr. Ergen and Mr. Hartenstein from DirecTV predict they will add another two million new customers in 1999, presumably whether you pass the local-to-local bill or not. The Department of Justice, with all due respect to Mr. Kimmelman, has said quite plainly that DBS is a substitutable product for cable.

So this is already a very competitive marketplace. There is no monopoly here, and I think that it is very important to recognize that this marketplace will become more competitive, but it already has all the manifestations of a marketplace in which consumers have lots of choices today that they did not have 5 years ago.

Senator KOHL. As you all know, a main reason for enacting the Satellite Home Viewer bill is for the local satellite companies to do local-to-local broadcasting. Mr. Ergen, assuming a version of Satellite Home Viewer passes, in how many markets will you be able to provide local-to-local service and how soon?

Mr. ERGEN. Well, as soon as the FCC approves our transaction of the acquisition of News Corp./MCI assets, then we can launch, and we are ready to launch as soon as they approve that transaction, and so it takes about 2 months after you launch for your satellite to be ready, so about 2 months after we launch, and we launch probably a month after the FCC approves it, then we are able to offer local-to-local service on a single dish in up to 20 markets, assuming we have a phased-in "must carry". So about half the country, if we could get FCC approval in the next 2 months, we

could be up and operational by the end of this summer. It will take about 3 more years to, in my opinion, to provide competition to the other part from our company's perspective.

Now, realize DirecTV, another DBS provider out there, is also acquiring additional spectrum with their USSB acquisition and potentially a PrimeStar acquisition. I cannot speak for them. They may also be able to pick up part of the country.

Senator KOHL. At the very least, should Congress get rid of "must carry" for home shopping networks?

Mr. ERGEN. I will jump on that one. Yes. I think it is ridiculous that you would have "must carry" to broadcast the same signals, 20 home shopping channels, and then take away a channel from a very deserving local broadcaster in another city. That, to me, seems ridiculous.

The Home Shopping Channel—I used to own a TV station in Denver. I carried the Home Shopping Channel. I carried no local commercials. I had no local news. I had no local presence. I just carried advertisements, the Home Shopping Channel 24 hours a day and they paid me an hourly rate to do that and it was very profitable for me. But I already carried the Home Shopping Channel on the dish network nationwide. I carried that exact same signal to all 20 cities that I would be doing local, so it makes no sense.

Senator KOHL. Just before I turn it back to Senator DeWine, did you make a comment or suggest that sometimes these dishes are at no cost? Did you say that, Mr. Anstrom?

Mr. ANSTROM. That is correct. We have a plan where you can actually, if you sign up for 1 year to our top 100 channels, along with two premium channels, we actually provide the satellite system for free, and I know that PrimeStar in the past has leased the satellite system to you so there was no cost up front.

Mr. KIMMELMAN. And that means you pay \$600.

Mr. ANSTROM. Well, it makes you competitive with cable in terms of the \$40 installation fee, on average. That is about what it costs up front if you are a credit-worthy customer and if you are willing to subscribe to a certain amount of programming.

Mr. KIMMELMAN. Senator Kohl, I am not critical here of this. This is an important step forward. But, I mean, look at what is happening here. If we really want to get a straight choice for people, you are saying you have to dig in—50 percent of consumers do not have \$1,000 in their bank account, 50 percent, an astounding number. To dig in and find \$600 up front, even to get a dish for free, is hard.

Now, we are talking about multibillion dollar transactions here, and I am not saying it is Mr. Ergen's responsibility. I am just suggesting that as we go through a policy trade-off process here of saying we are going to consolidate power in the satellite industry, a lot of public policy concerns get traded off, "must carry" gets phased in, a lot of values get compromised.

Would it not be nice if we could find some set of entrepreneurs who would take that risk up front and say, for about the price that you pay up front for cable installation, we will offer you the dish, the installation, of course incumbent upon Congress to make sure local broadcast signals are available, spread it out over time so that the price you are looking at, this \$15 a month or this \$20 for 40

channels really is head-on the same alternative you can look at for cable, that you do not have to go deep into your bank account before you ever get to that price. That is what I am looking for, and I think that is what would really spur competition for quality, choice, and price.

Senator DEWINE. Mr. Ergen, your written testimony mentions that program access is one of your concerns. Although this hearing is not meant to focus specifically on that particular issue, it is interesting that you raise it because some people in the cable industry have expressed concern about the possibility that FOX will provide certain programming, such as sports programming, to EchoStar and not provide it to certain cable systems. I know that you have a nonexclusive agreement with FOX News Channel now. Do you have any plans to make any exclusive arrangements with FOX?

Mr. ERGEN. No, we do not. In fact, we only have one exclusive channel on all of our channels, 250 channels. We have something called Charlie Chat, where I actually take questions from my customers once a week, and that is exclusive, but—

Senator DEWINE. Charlie Chat?

Mr. ERGEN. It is called Charlie Chat. We let our customers call in and ask any questions.

Senator DEWINE. Is that a lot of fun?

Mr. ERGEN. That is a lot of fun. [Laughter.]

That is one reason we know local legislation, and I am sure you have heard from some of our customers from time to time in terms of phone calls or letters because they let—we are not real sophisticated as a company. We do not have a lot of time and money to spend on very sophisticated market studies, but we do talk to our customers, listen to our customers, read our mail, and they tell us what they want, and they love satellite television, they love the quality, and they just want their local channels.

Senator DEWINE. Mr. Anstrom, Mr. Ergen and others are concerned that cable companies may use their market position to negotiate exclusive deals with networks so that companies such as EchoStar are prevented from retransmitting broadcast signals. First, let me just ask you, do you think that is a reasonable concern, and second, does the cable industry as a whole have any position on exclusive contracts with broadcast stations?

Mr. ANSTROM. Let me say that I read Mr. Ergen's testimony and I was a little puzzled by his statement. First of all, I cannot look into the future that clear, but we have FCC rules currently in place that specifically prohibit a broadcaster from having an exclusive retransmission consent agreement.

Second, I think, as this subcommittee knows, the experience certainly that other competitors with the cable industry have had, for example, Ameritech or other companies, certainly they have had no trouble in getting arrangements with broadcasters to retransmit their carriage. So I would assume that once the DBS industry is lawfully allowed to retransmit local broadcast signals, that broadcasters would want their signals to be available to as many homes as possible. That, after all, is how the broadcaster maximizes their advertising revenue. But as a specific policy question, the FCC rules prohibit exclusive retransmission consent agreements.

Senator DEWINE. Mr. Kimmelman?

Mr. KIMMELMAN. I think Decker is right, but I think Mr. Ergen has a very valid concern here for the very reason that Decker just stated. Because local broadcasting is this valuable to a potential competitor, to cable, with the retransmission arrangements that already exist between broadcast and cable and arrangements related to carrying broadcast network channels, MSNBC, CNBC, and the like, I think it is a valid concern that there could be a financial basis for an exclusive arrangement, in the top 20 cities, for example, that are obviously crucial to EchoStar's business.

So I would suggest in your legislative deliberations that you would look to basically codify this FCC rule. I will tell you that I think the FCC rule is fine except I cannot figure where it comes from legally. Maybe the Commission has a valid base for it, but I have not found it statutorily. So I think if it is fine with the cable industry, if they have no problem with it, let us make sure the FCC does have the full legal basis. We certainly have seen plenty of litigation around telecommunications in terms of what is and is not legal and I would hate to see this one end up in court.

Mr. ERGEN. Our concern there—

Senator DEWINE. Mr. Ergen.

Mr. ERGEN [continuing]. Just to follow up, is that while the FCC does prevent nonexclusive, they do not specifically say they have to sell it to a DBS provider. So what the cable industry has done in the past is they may find a wireless provider and sell it to them and say, see, we are not exclusive.

They do this in Philadelphia, as a matter of fact, with the sports channel in Philadelphia. A company called Comcast decided to buy the sports teams in Philadelphia, then decided that they would take the signal off of a satellite where the law required them to sell it to DBS operators like DirecTV and EchoStar and then they said, we are not exclusive. We sell to a couple of wireless people. Of course, I think they have since gone out of business in Philadelphia. They now are exclusive, from a practical point of view, and do not sell to DBS operators, and, in fact, in FCC comments have said they did it for competitive reasons now.

So pardon me if I do not have a little skepticism of Mr. Anstrom's good naturedness here today. We know that cable will, in fact—this is America. They are smart people. They are very smart. They have built their businesses. They are not going to do things they do not have to do to help their competitors.

Senator DEWINE. Mr. Anstrom.

Mr. ANSTROM. Two things just for the record. First of all, the FCC had a very different view of the facts in Philadelphia. In fact, just yesterday, they ruled in favor of Comcast and against EchoStar.

And second, just again to come back to the question about the broadcasters and the retransmission consent rights, those are decisions broadcasters make, not us, in terms of their programming, and again, there is a rule on the books, and beyond that, I certainly hope that Mr. Ergen and Mr. Kimmelman are not suggesting that this Congress should extend the regulatory authority of the Congress and, for example, begin regulating the contracts of CBS affiliates. Maybe that is where they want to go, but I suspect the absent

witness at the table today would have some things to say about that.

Mr. KIMMELMAN. I am just curious if Mr. Anstrom would state for the record that the cable industry believes that those FCC rules are fully statutorily supported.

Mr. ANSTROM. I am not a lawyer, but we have not challenged those rules in court. They have been on the books since 1993, as you know.

Mr. KIMMELMAN. I think the ruling yesterday vis-a-vis Comcast is a legitimate ruling under the telecommunications law, because also the FCC has stated an interest in wanting to make sure programming is broadly available, the law is quite explicit that it is for satellite transmitted programming. So this is, in effect, a loophole that has arisen in a new transmission mechanism for the programming. I do not think that is a statement about the Commission's policy views about whether programming should be made more available.

Senator DEWINE. Senator Kohl.

Senator KOHL. The white area issue, as you know, is currently the subject of an FCC proceeding. If you all could advise the Commission on the proper course of action, what would you recommend?

Mr. ERGEN. Well, we have filed comments, but it has been my experience that the current rules as written are not valid in reality, that about half the people out there cannot really take a traditional off-air antenna, put it on the roof, and get a good signal. Rules that were written in the 1950's did not take into account multipath and the number of transmitters. There are probably 10 times more transmitters than there were back then, and all the interference and trees and so forth. So it became a technical problem.

I would advise the FCC that, one, that physical obstacles such as trees, mountains, hills, electrical obstacles, and multipath obstacles should be taken into consideration to determine whether somebody gets a Grade B intensity signal, No. 1.

No. 2, that a valid test for those people who then are predicted to get a Grade B signal, a test, a standard test could be done at the home by qualified engineers, qualified installers, and determine whether the person really, in fact, does get the Grade B signal, because RF, radio frequencies, one side of the street can get a good signal and you could literally walk across the street and get no signal at all. So it is a very tough problem.

Mr. ANSTROM. Mercifully, Senator Kohl, the cable industry does not have a direct interest in that white area dispute. That is really a dispute between the broadcasters and the satellite companies and consumers, so I will take a pass on that one, mercifully. Thank you.

Mr. KIMMELMAN. I certainly hope that whatever the Commission does and Congress does in overseeing it, that at this point in time we do not strip away channels from people who are currently getting them on whatever basis it occurred. It is a small population. I think the broadcasters have vastly overstated the financial impact at this point in time. We are moving to a world of digital signals where this should not be the same kind of a problem.

I think we need a commonsense solution here, which if Mr. Ergen is anywhere near right, that people want their local broad-

cast signals, it is just illogical to assume that they are going out and purchasing satellite transmission to get somebody else's local broadcast channel. It just does not make sense that people are doing that when they are getting a great picture of their local broadcast network. So the whole Grade B contour thing has been wrapped around into a big pretzel here and I do not think it accurately reflects the reality of what pictures people are seeing on their television sets. So I hope there is just a commonsense solution to hold harmless current subscribers and move forward, given the technological changes, with a logical set of rules that ought to be fair to both broadcast and satellite providers.

Senator KOHL. Mr. Ergen, what is the cost of your dish now to the consumer?

Mr. ERGEN. It can be as low as free if you subscribe to a year of programming at \$48 a month, or it can be as low as \$149 and you can subscribe to a package of programming that can be as low as \$4.99 for your local channels.

Senator KOHL. You buy these dishes?

Mr. ERGEN. And we buy them, yes.

Senator KOHL. You buy them? And what do they cost you?

Mr. ERGEN. We subsidize each of our systems approximately \$300. So the day we put it in your home, we have lost \$300, so we have to take care of you as a customer and it takes us about 2 years to break even on you as a customer. So we hope that our customers stay with us for the rest of their life. That is the only way we can make a profit.

It is very similar to cable. I do not know exactly, but cable builds a lot of plant and equipment and when they hook you up for \$40, they have subsidized you, as well. Decker, you would probably know better than I would.

Senator KOHL. OK; you founded your company?

Mr. ERGEN. Yes, I did.

Senator KOHL. Is it a public company or a private company?

Mr. ERGEN. No, we are a public company.

Senator KOHL. A public company? What were your sales and profits last year?

Mr. ERGEN. Well, we have not announced our fourth quarter, so through the third quarter, I think we were about a \$700 million company through three quarters and we lost about \$200 million, we lost, and again, that is because we have a \$2 billion investment and all our startup costs to launch satellites. So we have to get probably three to four million subscribers to break even as a company, and again—

Senator KOHL. Do you have a cash flow?

Mr. ERGEN. We have a negative cash flow. We have a cash flow. It is just negative.

Senator KOHL. Negative?

Mr. ERGEN. Negative, yes. We spend more each year than we take in, and we need about 3 million subscribers to have a positive cash flow, and that is the reason that—and again, we are very confident of that with local-to-local legislation, and while we have been fighting for local-to-local legislation now for 3 years, I have never lost hope that, ultimately, ultimately, people would look at it from

a consumer's point of view, and when they do that, they will ultimately be successful—

Senator KOHL. Have you ever made money?

Mr. ERGEN. What is that?

Senator KOHL. Have you ever made money?

Mr. ERGEN. We did make money when we were selling big dishes, before we invested, because in the big dish business, we had a very small investment because we only had to buy a system for \$10,000 and sell it for \$12,000. We made probably in our first 15 years of existence about \$100 million in profit over those 15 years, and we took that \$100 million and invested \$2 billion to try to put a dish in every home. So we have two million homes now that have our satellite dishes. We have 98 million homes left to go. [Laughter.]

Senator KOHL. Thank you.

Senator DEWINE. I want to thank our panel very much. I think the testimony has, again, brought home how unfortunate it is that the National Association of Broadcasters was not here. I think if they would have been at the table, they would have been able to engage in this discussion, so I think that is unfortunate.

Let me again thank our witnesses for making this appearance to testify on this very important issue. We are seeing significant changes in the satellite marketplace and it is important to understand those changes as we continue to work for video competition.

Based on the testimony that we have heard today, it appears that the EchoStar purchase of MCI's orbital slot will help us move towards that goal. We look forward to seeing real progress by EchoStar in the near future.

As we move forward toward passage of the Satellite Home Viewer Act, Senator Kohl and I are going to continue to work with Senator Hatch and Senator Leahy, Senator McCain, and Majority Leader Lott to craft legislation that will give satellite providers a fair, competitive opportunity to provide video service. This sort of competition will provide better prices, better service, and more choices for consumers, which, of course, is our ultimate goal.

Senator Kohl and I both thank you all again very much.

[Whereupon, at 9:36 a.m., the subcommittee was adjourned.]

A P P E N D I X

ADDITIONAL SUBMISSION FOR THE RECORD

ASSOCIATION OF LOCAL TELEVISION STATIONS,
Washington, DC, February 2, 1999.

The Hon. MIKE DEWINE, Chairman,
Subcommittee on Antitrust, Business Rights, and Competition,
Committee on the Judiciary, U.S. Senate, Washington, DC.

Re: EchoStar—Acquisition of MCI/NewsCorp assets S. 247; S. 303

DEAR MR. CHAIRMAN: We appreciate the opportunity to express our concerns regarding EchoStar's "local-into-local" plans and pending legislation which would allow satellite carriers to retransmit the signals of local television stations to subscribers in the stations' home markets. The Association of Local Television Stations, Inc. ("ALTV"), represents the interests of the competitive edge of the broadcast television industry—full service local television stations affiliated of the now established Fox Network, the emerging UPN and WB networks, and the new family-oriented PaxTV network. Our membership also includes independent stations, which often provide innovative and unique program services like foreign language and religious programming to their communities. More than any of the popular cable networks, these stations have stimulated competition and enhanced program diversity for all viewers in local markets throughout our country.

As much as we appreciate the need for more competition in a video marketplace still dominated by cable television, we must resist efforts which attempt to promote competition in one market via means which distort competition and impede new competitors in a critical segment of that market. From the perspective of most of our member stations, the approach embodied in this legislation offers only a vain hope of satellite carriage in their local markets. At this point, only one DBS carrier, EchoStar's Dish Network, has begun providing local signals to viewers in a small, but growing number of markets. So far, EchoStar generally has offered only the signals of local television stations affiliated with the ABC, CBS, NBC, and Fox networks.¹ Stations in those markets affiliated with the UPN, WB, and PaxTV networks have been excluded, as have the independent stations in those markets. Under S. 303, which on its face defers any must carry rules for as much as three years, these local television stations will continue to suffer from lack of access to an increasing number of DBS subscribers in their home markets. Meanwhile, their direct competitors, affiliates of the three entrenched networks and Fox, will gain a competitive advantage in satellite homes.

This would come at a particularly bad time for emerging networks like UPN, WB, and PaxTV. Their struggle to compete with more established networks, the affiliates of which benefit from local satellite carriage, would be hampered. Excluded stations would enjoy none of the benefits of digital picture quality, none of the benefits of inclusion in the on-screen program guides, and none of the benefits of seamless surfing. Furthermore, they likely also would be subject to competition from distant affiliates of their networks, which will enjoy all the benefits of picture quality and tuning ease on the satellite system.² This would undermine the ability of new net-

¹We understand that EchoStar also is providing the signals of local PBS affiliates in some markets.

²A passage from the CARP decision, which EchoStar has cited in its recent comments to the Copyright Office, states that:

Continued

works, their affiliates, and innovative independent stations to compete toe-to-toe with the ever expanding array of nonbroadcast program networks and services, as well as with their entrenched big three network competitors in their local markets. Thus, any delay in the imposition of must carry requirements on satellite carriers (once the compulsory license is amended to permit retransmission of local signals) is likely to injure competition and compound the difficulties inherent in establishing new competitive broadcast networks.

Moreover, we are far from confident that must carry rules ever will come to their competitive rescue. Under S. 303, the mandatory carriage provisions would apply no later than January 1, 2002. Such deadlines can slip and often do. For example, when Congress enacted the original satellite Home Viewer Act in 1988, it contemplated termination of the satellite compulsory license in 1995. However, once the public began to receive broadcast television station signals on their satellite systems, Congress essentially forfeited the ability to eliminate the compulsory license. It was extended in 1994, and no one seriously expects Congress to let it expire at the end of this year. The public simply would not stand for being deprived of signals they have received for years under the compulsory license.³ The same result is predictable under S. 303. If (we dare say “when”) satellite carriers protest that compliance with must carry requirements would be impossible and threaten to withdraw all broadcast signals from their services to sidestep the must carry requirements, Congress will find itself in the same untenable position.⁴ Indeed, the testimony of EchoStar CEO Charles W. Ergen at the hearing last week confirms that EchoStar “will not have the space” to carry all local stations in each market. In the face of readily predictable public outrage at the threatened reduction in their satellite program options, Congress, rather than adhere to the deadline, would have no choice, but to extend it. Meanwhile, the selective and discriminatory exclusion of many ALTV member stations would continue unabated. Such a result mocks competition by placing the latest entrants into broadcast network television at a distinct disadvantage *vis-a-vis* their established network competitors.

We do look forward to supporting legislation which permits satellite carriage of local signals, but only if it also requires satellite carriers to carry all local signals without delay. ALTV does not propose that satellite carriers be forced to carry local signals in every market (as is required of cable systems). However, if a satellite carrier retransmits the signal of one local television station in a market to subscribers in that market, then it should be required to carry all local stations in that market or at least provides a satellite subscriber with the same local signals a comparably situated cable subscriber would have available from its cable system. This would maintain parity between competing media by assuring that the satellite carrier were subject to no more rigorous obligations than a directly competitive cable system. At the same time, independent stations and stations affiliated with new and emerging networks would suffer no competitive disadvantage in their home markets.

Satellite carriers may complain that requiring nondiscriminatory carriage of local signals might overtax their capacity and impose additional unwanted costs on their operations. ALTV respectfully suggests that these concerns are overblown and myopic. The practical effect of imposing such a requirement on satellite providers would be marginal. Again, like cable systems, satellite carriers would be likely to carry some local stations voluntarily. Therefore, such a requirement typically might require a satellite carrier to add only a few additional local signals, such as those of newer stations or stations affiliated with newer networks like UPN, WB, and PaxTV. Thus, the practical effect often would be not a “carry one, so carry seven,” but a “carry four, so carry six or seven” rule. At worst, under current technological limits on capacity, compliance might require a satellite carrier to forego local signal carriage in a few markets in order to accommodate all local signals in other markets. ALTV submits that this result is preferable to a regime which invited and tolerated discrimination among local stations in the same market.

Local retransmission of broadcast stations benefits the broadcast station. * * * If a local broadcast station is not available on a satellite carrier service, subscribers to that station are less likely to view that station. The viewer may not wish to install an A-B switch/antenna or additionally subscribe to a cable service or may find the system too inconvenient for regular use.

³We distinguish here between the equities in favor of satellite subscribers who have long enjoyed superstation and network signals on their satellite systems in a manner consistent with the law and those that have taken advantage of satellite distributors’ willingness to blink the restrictions on providing network signals in other than unserved areas.

⁴Section 337(b) of the bill (page 7, lines 9–10) subjects only “satellite carriers retransmitting television broadcast signals” to the must carry requirement. Thus, a satellite carrier could escape the must carry rule by carrying no broadcast signals.

Therefore, we respectfully urge you to reconsider S. 303 and S. 247 with respect to the delayed must carry provision. Historically—and rightly—the cable and satellite compulsory licenses have carried with them the complementary obligation to use broadcast signals in a manner consistent with preserving the many benefits of free broadcast television service. We ask no more than that. Therefore, ALTV must oppose the S. 247/S. 303 package in its present form, but does look forward to making a positive contribution to efforts to draft and enact sound legislation to permit satellite carriers to carry the signals of local television stations in their home markets.

Very truly yours,

JAMES B. HEDLUND,
President.

