

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

In the Matter of )  
 )  
DirecTV Enterprises, LLC )  
 ) SAT-STA 20030903-00300  
Request for Special Temporary Authority to ) MB Docket No. 03-124  
Relocate Direct Broadcast Satellite from )  
Storage Orbit to Canadian Broadcast Satellite )  
Service Orbital Location )

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**To: Chief, International Bureau**

**COMMENTS OF DIGITAL BROADBAND APPLICATIONS CORP.**

Digital Broadband Applications Corp. ("DBAC"), respectfully submits these comments to the Federal Communications Commission ("FCC" or "Commission") in the above-referenced proceeding in response to the Request by DirecTV Enterprises, LLC ("DirecTV") for special temporary authority ("STA") to relocate DIRECTV 3, a high power direct broadcast satellite ("DBS") currently in storage orbit at 101° W.L., to the 82° W.L. orbital location allocated to Canadian Broadcast Satellite Service ("BSS"), for use by Telesat Canada ("Telesat") as a backup satellite to the high power Canadian licensed BSS satellites Nimiq and Nimiq 2, which are owned and operated by Telesat ("STA Request").

On May 7, 2003, DBAC received an authorization to operate earth stations in the U.S. for communication with a U.S. licensed Ku-Band FSS satellite and with Nimiq and Nimiq 2, the Canadian BSS satellites at issue in this proceeding, for the provision of advanced two-way

broadband video and data services in the United States.<sup>1</sup> Nimiq and Nimiq 2 are currently in orbit at the 91° W.L., and 82° W.L. orbital locations, respectively, currently allocated to Canada. In the DBAC Order, the Commission concluded that grant of DBAC's application to use Nimiq and Nimiq 2 for provision of services into the United States "should stimulate competition in the U.S. DBS and FSS markets, providing consumers more alternatives in choosing communications and subscription video providers and services."<sup>2</sup> The Commission continued, "Increased competition may also lead to reduced prices for those services and further technological innovation."<sup>3</sup>

**I. The Commission Should Carefully Consider the Competitive Affects of Relocation of DIRECTV 3.**

In order to act in accordance with its pro-competitive policy regarding the direct-to-home ("DTH") satellite market in U.S., the Commission should carefully consider both the potential short-term and long-term implications that the relocation of a U.S. DBS satellite, owned and operated by the largest DBS provider in the U.S., DirecTV, into a Canadian DBS orbital slot, may have on competition in the U.S. DBS market. DirecTV is currently the largest provider of satellite based multi-channel video programming services in the United States.<sup>4</sup> Upon grant of the proposed merger between the News Corporation Limited ("News Corp.") and Hughes

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<sup>1</sup> See *Digital Broadband Application Corp. Consolidated Application for Authority to Operate U.S. Earth Stations with a U.S.-Licensed Ku-Band FSS Satellite and Canadian-Licensed Nimiq and Nimiq 2 Satellites to Offer Integrated Two-Way Broadband Video and Data Service Throughout the United States (Call Sign E020010)*, Order, 18 FCC Rcd 9455, DA 03-1526 (May 7, 2003) ("DBAC Order" or "DBAC Proceeding").

<sup>2</sup> *Id.* at §1.

<sup>3</sup> *Id.*

<sup>4</sup> *In the Matter of Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, MB Docket No. 02-145, released December 31, 2002, at §59. DirecTV is nearly 40% larger than its largest competitor, EchoStar Satellite Corporation ("EchoStar"). Other than DirecTV and EchoStar, there is virtually no other competition in the DTH market in the United States.

Electronics, DirecTV's current parent, DirecTV would become part of a powerful international media conglomerate spanning the globe with satellite operations on several continents.<sup>5</sup>

The Commission's decision to permit DBAC to utilize Nimiq and Nimiq 2 in the Canadian BSS orbital slots demonstrated the Commission's goal to further competition in the U.S. direct-to-home market and create a third U.S. DTH competitor, especially in light of the consolidation in the present DTH market.<sup>6</sup> There also exists broad Congressional support for this policy to create further competition in the U.S. direct-to-home market, as was clearly demonstrated in the DBAC Proceeding. Attached as Exhibit 1 hereto are copies of such supporting correspondence from U.S. lawmakers filed in the DBAC proceeding.<sup>7</sup> Moreover, recent Senate hearings have amply demonstrated Congress' opposition to increased concentration in the MVDP marketplace.<sup>8</sup>

This STA Request for relocation of a U.S. DBS satellite to a Canadian BSS slot is different than the PanAmSat request cited by DirecTV in the STA Request as justification for grant of the STA.<sup>9</sup> With respect to that request, the Commission was not considering grant of an STA to relocate a satellite in the DBS service, but rather the FSS service, where greater

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<sup>5</sup> See *General Motors Corporation and Hughes Electronics Corporation, Transferors, and The News Corporation Limited, Transferee, Consolidated Application For Authority to Transfer Control*, filed May 2, 2003, at page 7.

<sup>6</sup> See DBAC Order at 1.

<sup>7</sup> Senator Ernest Hollings, Senator Ted Stevens, Senator Olympia Snowe, and the Congressional Rural Caucus (consisting of 88 Congressional signatories), have also previously acknowledged their concerns regarding the lack of competition in the U.S. DTH market and have suggested to the Commission its responsibility to carefully examine any proceeding in which the Commission's decisions may impact competition in the U.S. DTH market. This correspondence is also attached at Exhibit A.

<sup>8</sup> See <http://commerce.senate.gov/hearings/witnesslist.cfm?id=770>: See also <http://commerce.senate.gov/hearings/witnesslist.cfm?id=796>

<sup>9</sup> STA Request at page 2, fn.2.

competition exists today in the U.S. market – and thus the Commission should put greater scrutiny on the DirecTV STA Request in this instance.

If the STA Request is granted, DirecTV, and especially a post-News Corp. merger DirecTV, may be in a position to wield significant influence over access by any potential competitor to the Canadian BSS slots allocated to Telesat – and the Commission should carefully consider all potential ramifications of this in determining whether the STA Request should be granted.

## **II. The Commission Should Ensure Grant of the STA Will Not Inhibit Access to Nimiq and Nimiq 2.**

The STA Request summarizes DirecTV's arrangement with Telesat for the proposed relocation of DIRECTV 3 to the Canadian BSS slot. In the STA Request, DirecTV indicates that it will lease all of the transponder capacity of DIRECTV 3 to Telesat for use by Telesat in the provision of BSS services to Canadian customers.<sup>10</sup> No other details are provided. In order to evaluate the STA Request with the appropriate level of scrutiny established by the Commission's own policies regarding the U.S. DTH market, as well as is demanded by U.S. lawmakers, DBAC recommends that the Commission require DirecTV to file its agreement with Telesat for the lease of the capacity on DIRECTV 3 for review by the Commission and interested parties in this proceeding. The Commission should ensure that DirecTV has not tied Telesat's hands with respect to future lease terms for the capacity of DIRECTV 3 or of Nimiq and Nimiq 2, to any party, including those licensed by this Commission to access such capacity.

Further, any grant of the STA Request should be specifically made on the condition that DirecTV will not enter into any agreement with Telesat for use of any of the capacity of the DirecTV satellite being moved to Canadian slot for provision of services into the U.S., and that

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<sup>10</sup> Id. at pp. 1-2.

DirecTV has not entered into any arrangement with Telesat for use of any capacity on Nimiq or Nimiq 2, or any agreement that would prohibit or interfere with Telesat leasing any of that capacity to any other entity.

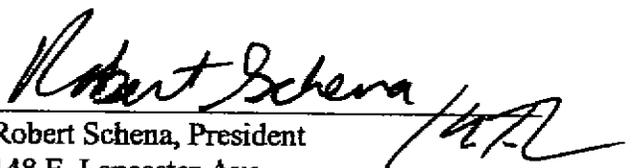
As a final condition to approval of the STA Request, the Commission should require that DirecTV make capacity available on DIRECTV3 to any U.S. company that is authorized by the Commission to utilize that capacity in the Canadian BSS slot from a U.S. earth station. This will ensure that scarce U.S. DBS satellite capacity authorized by the Commission will be made available to any U.S. company that is authorized by the Commission to utilize that capacity in the Canadian BSS slot from a U.S. earth station.

**Conclusion**

In determining whether to grant the instant STA Request, DBAC hereby respectfully requests the Commission take into consideration the issues raised in the foregoing comments.

Respectfully submitted,

DIGITAL BROADBAND APPLICATIONS  
CORP.

By: 

Robert Schena, President  
148 E. Lancaster Ave.  
Wayne, PA 19087  
TEL: 484.582.2200  
FAX: 484.582.2201

October 27, 2003

# **ATTACHMENT 1**

ARLEN SPECTER  
SENATOR

COMMITTEES  
JUDICIARY  
APPROPRIATIONS  
VETERANS' AFFAIRS  
ENVIRONMENT AND PUBLIC WORKS

United States Senate

WASHINGTON, DC 20510-3802

April 23, 2002

The Honorable Michael Powell  
Chairman  
Federal Communications Commission  
Washington, D.C. 20554

Dear Mr. Powell,

I am writing on behalf of Digital Broadband Applications Corporation ("DBAC"), a constituent company headquartered in Conshohocken, Pennsylvania. On January 8, 2002, DBAC submitted an application for an earth station license to provide DBS/Internet services in the U.S. using two satellites of the Canadian operator, ExpressVu. DBAC asserts that if its application is approved, it would result in increased deployment of broadband services and would increase competition in the Direct Broadcast Services market.

You have before you a merger proposal from EchoStar Communications Corporation to acquire Hughes, which owns DirecTV. In this light, I would like to direct your attention to a *Wall Street Journal* article of March 5, 2002 regarding EchoStar's negotiations with SES Global SA, a foreign-owned company headquartered in Luxembourg, to form a joint venture to provide high-speed Internet connections to U.S. consumers. SES Americom, the U.S. subsidiary of SES Global, has petitioned to deny DBAC's application to provide competitive integrated broadband video and data services to U.S. consumers.

I urge in your review of the EchoStar proposal, and in your interagency deliberations with the FCC, that you consider moving on pending applications for new entrants into the market prior to approving a merger between the only two DBS providers in the U.S. market. An entity such as DBAC is one of those potential new entrants that has applied to offer a competitive satellite broadband video and data service in the U.S. In this consolidating market, it is critical for U.S. consumers, both in rural and urban areas, that our government facilitate competition in the satellite video and data market.

Thank you for your consideration of this request.

My best.

Sincerely,



Arlen Specter

AS/ss

ARLEN SPECTER  
PENNSYLVANIA

COMMITTEES  
JUDICIARY  
APPROPRIATIONS  
VETERANS' AFFAIRS  
ENVIRONMENT AND PUBLIC WORKS

United States Senate

WASHINGTON, DC 20510-3802

April 23, 2002

Mr. Charlie Ergen  
Chairman and Chief Executive Officer  
EchoStar Communications Corporation  
Littleton, Colorado

Dear Mr. Ergen,

I read with interest the *Wall Street Journal* article of March 5, 2002, regarding your negotiations with SES Global SA, a foreign-owned company headquartered in Luxembourg, to form a joint venture to provide high-speed Internet connections to U.S. consumers. Further, I am aware that SES Americom, the U.S. subsidiary of SES Global, has petitioned to deny the application of Digital Broadband Applications Corporation ("DBAC"), a U.S. owned company, to provide a competitive integrated broadband video and data services to U.S. consumers.

In both in face-to-face meetings with me and at the March 6<sup>th</sup> Judiciary Antitrust Subcommittee hearing, you stated your support for additional competition in the market that your proposed merger would consolidate down to one provider. However, your negotiating partners, both SES Americom and DirecTV, appear to take a contrary position with the FCC.

I would appreciate your letting me know if you could get their support for DBAC's application.

Sincerely,



Arlen Specter

AS/ss

JON S. CORZINE  
SENATOR

OFFICE  
BANKING, HOUSING, AND  
URBAN AFFAIRS  
ECONOMY AND  
PUBLIC AFFAIRS  
JOHN CORZINE  
SENATOR

# United States Senate

WASHINGTON, DC 20510-3004

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205 WHITE HOUSE FLY  
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WASHINGTON, DC 20507  
(202) 757-4222

August 9, 2002

The Honorable Michael Powell  
Chairman, Federal Communications Commission  
445 12<sup>th</sup> Street, N.W.  
Washington, D.C. 20554

Dear Chairman Powell:

I am writing to encourage the Federal Communications Commission to act expeditiously on the petition of Digital Broadband Applications Corporation (DBAC) to provide satellite broadband video and data services through a combination of U.S. and Canadian satellites and, where available, terrestrial LMDS spectrum.

DBAC has filed a petition to operate an advanced hybrid satellite network to provide high-speed two-way digital data and video services to consumers across the United States. Using a unique system architecture, DBAC could offer innovative services such as video-on-demand and help speed the deployment of high-speed Internet access, especially in rural and underserved markets.

I share your interest in stimulating competition in the broadband and multi-channel video marketplace. Amidst increasing consolidation among service providers in these markets, it is imperative that consumers reap the benefits of competition, such as improved services and lower prices. At the same time, I recognize the need to give full consideration to all issues related to the petition and trust the FCC will give all matters appropriate consideration.

Given the potential public benefits involved, I encourage the FCC to thoroughly and promptly examine DBAC's petition. I appreciate your attention to this matter.

Sincerely,

  
JON S. CORZINE  
United States Senator

JSC:aph

06 10:02 08:43 FAX

RICK SANTORUM  
PENNSYLVANIA

COMMITTEE  
REPUBLICAN CONFERENCE  
CHAIRMAN  
ARMED SERVICES  
ORIGINAL SUBCOMMITTEE ON  
AIRLAND FORCES  
VALUES  
OPINION  
MANAGEMENT

# United States Senate

WASHINGTON, DC 20510-3804

202-224-6324

June 4, 2002

The Honorable Michael Powell  
Chairman, Federal Communications Commission  
445 12<sup>th</sup> Street, NW  
Washington, D.C. 20554

Dear Chairman Powell:

I support industry developments that will help spur economic growth and maintain U.S. technological leadership, including in the communications marketplace. American technological leadership to date has been aided by a system that rewards entrepreneurial risk and a policy regime that permits competitive entry.

I therefore request that the Federal Communications Commission ("FCC") consider in a timely manner Digital Broadband Applications Corporation's ("DBAC") application to provide an interactive video and high-speed Internet service over satellites to consumers across the United States. Such a grant would support additional competition in the multichannel video and broadband marketplaces, as well as technical innovation.

DBAC's use of satellites - as well as terrestrial Local Multipoint Distribution Service ("LMDS") spectrum where available - will provide an important alternative for Americans for broadband video and data services, such as interactive multichannel programming and two-way high-speed Internet access, for many people in rural Pennsylvania and across America in particular.

In addition, DBAC's application represents innovation in interactive video service. DBAC's subsidiary was the first provider of digital, interactive cable, and holds a patent for interactive television set-top box technology. Moreover, DBAC's work with its technology partner to develop new applications for LMDS spectrum, namely meshed-network non-line of sight Internet access, should be considered, particularly when this application promises to raise the value of such spectrum. For all the above reasons, I urge you to consider the merits of the DBAC's application and encourage its approval. Thank you for your assistance and commitment to American consumers.

Sincerely,  


Rick Santorum  
United States Senator

MICHAEL DEBIBAS, FLORIDA  
 JOE BARTON, TEXAS  
 FRED UPTON, MICHIGAN  
 CLIFF STEARNS, FLORIDA  
 PAUL E. GILMORE, OHIO  
 JAMES C. GREENWOOD, PENNSYLVANIA  
 CHRISTOPHER COX, CALIFORNIA  
 NATHAN DEBEL, GEORGIA  
 RICHARD BURR, NORTH CAROLINA  
 ED WHITFIELD, NEWYORK  
 GREG DANFAS, IOWA  
 CHARLIE NORWOOD, GEORGIA  
 BARBARA LUBIN, WYOMING  
 JOHN SHIMKUS, ILLINOIS  
 HEATHER NEASE, NEW MEXICO  
 JOHN R. SHADIGO, ARIZONA  
 CHARLES "CHIP" PICKERING, MISSISSIPPI  
 VITO FOZZELLA, NEW YORK  
 JUDY BLUNT, MISSOURI  
 TOM DAVIS, WISCONSIN  
 LO GRYPAN, TENNESSEE  
 ROBERT L. EMBICH, JR., MARYLAND  
 STEVE DUTTA, INDIANA  
 GEDDING ANDERSON, CALIFORNIA  
 CHARLES F. BASS, NEW HAMPSHIRE  
 JOSEPH R. PITTS, PENNSYLVANIA  
 MARY BONO, CALIFORNIA  
 ROBERT WALKER, OREGON  
 LEE TERRY, ALABAMA  
 BRUCE RICHMOND, KENTUCKY

ONE HUNDRED SEVENTH CONGRESS

**U.S. House of Representatives**  
**Committee on Energy and Commerce**  
 Washington, DC 20515-6115

W J "BILLY" TAUZIN, LOUISIANA,  
 CHAIRMAN

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 JAMES C. BUSH, OHIO  
 JAMES C. BUSH, COLORADO  
 JAMES C. BUSH, WISCONSIN  
 B. JAMES C. BUSH, MINNESOTA  
 JAMES C. BUSH, CALIFORNIA  
 JAMES C. BUSH, PENNSYLVANIA  
 JAMES C. BUSH, LOUISIANA  
 JAMES C. BUSH, CALIFORNIA

DAVID V. MARVERTANO, STAFF DIRECTOR

October 11, 2002

The Honorable Michael Powell  
 Chairman, Federal Communications Commission  
 445 12<sup>th</sup> Street, N.W.  
 Washington, D.C. 20554

Dear Chairman Powell:

As Chairmen with oversight over the telecommunications industry, we are particularly interested in ensuring that the Federal Communications Commission ("FCC"), in implementing the authority over interstate communications delegated it by Congress, does all in its power to encourage the deployment of new services. Such encouragement is important at any time, but given the current market environment, today it is crucial. It goes without saying that the FCC should not prevent the licensing of new entrants, or otherwise slow the delivery of new services to the American public.

You have had pending before your Commission since early this year several applications to use Canadian satellites to provide video and Internet services to the U.S. market. It is time to act on those applications. You told one of us in February with respect to one of the applications that your agency would be able to act in approximately four months, once the record was closed. Another quarter has passed since that point, and the American consumer is still waiting for additional competition.

The lack of available full CONUS DBS orbital locations is a high entry barrier for new competitors seeking to enter this nation's satellite video and data market. The FCC has an opportunity to ameliorate this situation by allowing the use of Canadian satellites located in Canadian orbital locations by U.S. service providers. Taking such action will enable these aspiring competitors to the incumbent DBS operators to offer new, additional services to American consumers. Hence, we urge against the strict application by the FCC of the ECO-Sat test, which would have the perverse result of limiting competition in the U.S. market and denying innovative services to U.S. consumers.

For the above reasons, we urge you to act on the pending license applications to use the Canadian Nimiq satellites to provide satellite video and data services in the U.S. for American consumers.

Sincerely,

*Billy Tauzin*  
W.J. Billy Tauzin

Chairman, Committee on Energy and Commerce

*James Greenwood*  
James Greenwood  
Chairman,  
Subcommittee on Oversight and Investigations

*Fred Upton*

Fred Upton  
Chairman  
Subcommittee on Telecom

**CHRIS CANNON**  
3RD DISTRICT, UTAH

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**Congress of the United States**  
**House of Representatives**  
**Washington, DC 20515**

January 28, 2002

COMMITTEE ON THE JUDICIARY  
SUBCOMMITTEE:  
CRIMINAL JUSTICE, AND INTELLECTUAL PROPERTY,  
INNOVATION AND CLAIMS

COMMITTEE ON RESOURCES  
SUBCOMMITTEE:  
ENERGY AND MINERAL RESOURCES  
NATURAL PARKS, RECREATION, AND PUBLIC LANDS

COMMITTEE ON GOVERNMENT REFORM  
SUBCOMMITTEE:  
CRIMINAL  
ENERGY POLICY, NATURAL RESOURCES,  
AND REGULATORY AFFAIRS

COMMITTEE ON SCIENCE  
SUBCOMMITTEE:  
SPACE AND AERONAUTICS  
ENVIRONMENT, TECHNOLOGY, AND STANDARDS

**The Honorable Michael Powell**  
**Chairman**  
**Federal Communications Commission**  
**445 12<sup>th</sup> Street, N.W.**  
**Washington, D.C. 20554**

Re: *Digital Broadband Applications Corporation's ("DBAC") January 8, 2002 Application*

Dear Chairman Powell:

As you may know, I have been closely following the proposed acquisition by EchoStar of Hughes and its DirecTV subsidiary. The House Judiciary Committee has taken an active interest in preserving competition in the multichannel video programming and broadband markets. I have written to you previously on this matter together with other Members to express concerns about of the proposed merger.

I am now writing on a related topic to urge the Federal Communications Commission to give serious consideration to Digital Broadband Applications Corporation's ("DBAC") January 8, 2002 application for authority to operate earth stations with Fixed Satellite Service ("FSS") and Direct Broadcast Service ("DBS") satellites to provide a combined satellite video and high-speed data service throughout the United States.

DBAC's use of FSS and DBS satellites - as well as terrestrial Local Multipoint Distribution Service ("LMDS") spectrum where available - will provide an important alternative for all Americans for broadband video and data services, such as multichannel programming and two-way high-speed Internet access. For many people in rural America, satellite-delivered video and data service is the only option, since cable television and digital subscriber line ("DSL") service is either unavailable or prohibitively expensive. The DBAC application takes on added urgency if the Commission is even considering the proposed merger of the only two major DBS market participants, a merger that would prohibit new entrants and greatly reduce the quality of customer service for many Americans.

This Congress has sought sustainable, nationwide competition in the multichannel video programming and broadband service markets to spur lower prices, and improve service quality and innovation. It is critical that the FCC fulfill these important Congressional objectives. Granting approval to DBAC's application would be a helpful step toward preserving and enhancing competition for these services.

Thank you for your attention to this issue. I look forward to your response and favorable action from the Commission.

Sincerely,

A handwritten signature in black ink, appearing to read "Chris Cannon", written over a horizontal line.

Chris Cannon  
Member of Congress

CURT WELDON

7TH DISTRICT, PENNSYLVANIA

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LEGISLATIVE BIRD  
CONSERVATION COMMISSION  
REPUBLICAN POLICY COMMITTEE



**Congress of the United States**  
**House of Representatives**  
**Washington, DC 20515-3807**

COMMITTEE ON ARMED SERVICES  
MILITARY PROCUREMENT, CHAIRMAN  
MILITARY READINESS  
SPECIAL OVERSIGHT PANEL ON HERSCHELT MARINE  
SPECIAL OVERSIGHT PANEL ON TERRORISM

COMMITTEE ON SCIENCE  
RESEARCH  
ENVIRONMENT, TECHNOLOGY AND STANDARDS

CO-CHAIRMAN:  
CONGRESSIONAL FIRE SERVICES CAUCUS  
CRIMA—CONGRESS STUDY GROUP  
GLOBE OCEAN PROTECTION TASK FORCE  
CONGRESSIONAL QUARTETS CAUCUS

November 15, 2002

The Honorable Michael Powell  
Chairman, Federal Communications Commission  
445 12<sup>th</sup> Street, N.W.  
Washington, D.C. 20554

Dear Chairman Powell:

As founder of the Congressional Fire Services Caucus, a bipartisan Caucus interested in supporting programs that enhance the ability of firefighters and other first responders to protect their communities, I am particularly interested in ensuring that the Federal Communications Commission ("FCC") does all in its power to facilitate homeland security development efforts. President Bush, in his Fiscal Year 2003 budget, highlighted the importance of robust communications systems in emergency situations:

In the hours and days that followed the terrorist attacks on September 11<sup>th</sup>, communications between local police, fire, and rescue units and federal agencies providing assistance was extremely unpredictable, and in some cases, virtually impossible. The collapse of the two World Trade Center buildings knocked out antennas used for cellular telephone, threatened emergency communications systems, and damaged landline switches to nearby buildings. The limited interoperability of emergency responders' communications systems, and the inherent complications for line-of-sight communications in densely built-up Manhattan, caused further problems. If rescue workers cannot talk to one another, they cannot do their jobs.

It goes without saying that the FCC should not prevent the licensing of new entrants that could assist in providing emergency communications.

To this end, you have had pending before your Commission since early this year an application of the Digital Broadband Application Corp. ("DBAC") to use Canadian satellites to provide video and Internet services to the U.S. market. DBAC has committed to making a portion of its satellite capacity on the Canadian satellites available to first responders, such as firefighters. DBAC's subsidiary Rajant Corporation is developing the Mobile Emergency Broadband System (MEBS), a self-contained, wireless

broadband communications system that can be rapidly activated at a disaster site to provide video, charts, maps, other data, and voice services to a variety of first responders and law enforcement. Those services would be made more viable if DBAC were able to offer its first responder customers capacity via a secure satellite link. Access to such capacity by DBAC is only economically viable if its FCC application is granted. A strict application of the ECO-Sat test would prevent using foreign-owned, but domestic-operated satellite capacity for such innovative homeland security solutions.

For the above reasons, we urge you to grant the pending DBAC license application to use the Canadian Nimiq satellites to provide satellite video and data services in the U.S.

Sincerely,

A handwritten signature in black ink, appearing to read "Curt Waldon". The signature is written in a cursive style with a large initial "C".

Curt Waldon  
Member of Congress

**ROBERT E. ANDREWS**  
FIRST DISTRICT, NEW JERSEY

**OFFICE**  
**OFFICE FROM AND THE WORKSPACE**

Office of the Clerk of the House  
U.S. House of Representatives  
Washington, DC 20515

**ADDITIONAL SERVICES**

OFFICE: SUBCOMMITTEE ON MILITARY READINESS  
AND DEFENSE

OFFICE: SENATOR CHRISTOPHER COONS, D-OR  
OFFICE: SENATOR ROBERT I. CANTO, R-NJ

OFFICE: SENATOR CHRISTOPHER COONS, D-OR  
OFFICE: SENATOR ROBERT I. CANTO, R-NJ

**Congress of the United States**  
**House of Representatives**  
**Washington, DC 20515-3001**

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(856) 948-2600
- E-MAIL:  
robert.andrews@mail.house.gov

June 20, 2002

Chairman Michael Powell  
Federal Communications Commission  
445 12th Street, N.W.  
Washington, DC 20554

Dear Chairman Powell

I write to urge the Federal Communications Commission (FCC) to give strong consideration to the earth station application filed by Digital Broadband Applications Corp (DBAC) to provide satellite broadband video and data services through a combination of U.S. and Canadian satellites and terrestrial LMDS spectrum

The landscape for satellite-delivered services - and broadband services generally - has changed considerably over the past five years. While Congress and the FCC have adopted policies designed to preserve competition in these marketplaces, the reality is that industry consolidation - such as the proposed merger between EchoStar and Hughes - as well as the economic downturn means that U.S. consumers will be left with too few choices for broadband video and data services.

DBAC's application provides an opportunity to maximize use of alternative satellite and terrestrial frequencies in order to bring a new competitor to the U.S. marketplace, including to rural areas. I understand that U.S. satellite providers such as EchoStar and Hughes have little or no capacity remaining to offer new entrants like DBAC, much less to Canadian providers

Thus, the American public would be greatly served by the introduction of an additional satellite provider offering dynamic video and data services, for which U.S. consumers have long waited, rather than by the application of policies that would benefit incumbent DBS providers, to the detriment of U.S. consumers. Thank you for your consideration

Sincerely,



Robert Andrews  
Member of Congress

REA cf



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United States Senate

WASHINGTON, DC 20510-1903

November 1, 2001

*OSB*  
*M. Powell*  
01-348

Michael Powell  
Chairman  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W. - Room 8B201  
Washington, DC 20554

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JAN 17 2002

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

Chairman Powell:

I am writing in response to the proposed merger between the DirecTV and EchoStar (Dish Network) direct broadcast satellite (DBS) services.

I understand that this merger proposal will be reviewed by both the Federal Communications Commission and the Department of Justice's Antitrust Division. While I defer to your jurisdiction in reviewing the approval of this merger, I believe it is imperative that the Commission keep in mind the unique concerns of rural satellite subscribers when arriving at any final conclusion in the matter.

As you are well aware, in many rural areas, satellite television is the only method by which persons can receive quality television services. Many of these areas do not have access to the traditional cable infrastructure. While the EchoStar and DirecTV merger may very well provide a strong competition to the cable industry in areas where consumers have the choice between satellite and cable service, it is imperative that whatever agreement reached provides protections for those satellite subscribers who do not have access to cable and/or receive inadequate over-the-air network broadcast signals.

As the FCC reviews this merger, I would appreciate your careful consideration of this matter.

Sincerely,

*Olympia J. Snowe*  
OLYMPIA J. SNOWE  
United States Senator

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Congress of the United States  
Washington, DC 20515

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Honorable John Ashcroft  
Attorney General  
Department of Justice  
950 Pennsylvania Avenue, N.W.  
Washington, D.C. 20530

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JAN 17 2002

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY



Honorable Michael Powell  
Chairman  
Federal Communications Commission  
445 12th Street S.W.  
Washington, D.C. 20554

Dear Attorney General Ashcroft and Chairman Powell:

As Members of Congress who represent rural areas, we are writing today regarding the impact of the proposed merger of EchoStar (the DISH Network) and Hughes Electronics (DirecTV) on rural consumers.

Currently, EchoStar and Hughes are the only two providers of Direct Broadcast Satellite services (both video and high-speed Internet) in the U.S. market. As you are well aware, many consumers in rural America have no access to cable and rely on satellite television for their multi-channel video programming. The rural consumers that presently have a choice between two fiercely competitive satellite providers will be subjected to an unchecked monopoly provider if the merger is approved without appropriate consumer protections.

Accordingly, we believe that strictly enforced consumer safeguards regarding price, quality and access to vital telecommunication services must be part of any merger approval between EchoStar and Hughes. Rural consumers have been left behind in the wake of the communications revolution with respect to access and pricing of telecommunications services for too long. We urge the Department of Justice and Federal Communications Commission to rigorously scrutinize this proposed merger to ensure that rural consumers do not suffer the consequences of higher prices, fewer choices and reduced services. Meaningful and enforceable concessions, are needed, not empty pledges that provide no protection or value.

Thank you for your consideration of our views.

Sincerely,

JO ANN EMERSON  
Member of Congress

EVA CLAYTON  
Member of Congress

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## CERTIFICATE OF SERVICE

I, Douglas A. Hosack, hereby certify that copies of the foregoing Comments of Digital Broadband Applications Corp. were served this 27<sup>th</sup> day of October, 2003 on the following parties by sending them via first class mail of the United States Postal Service, postage prepaid, to the following addresses:

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