

Testimony of

# **The Honorable Orrin Hatch**

March 6, 2002

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

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

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

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

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

This choice is not what we envisioned when we hoped to unleash DBS as a local television competitor just over a year ago with the Satellite Home Viewer Improvement Act. But this

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

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

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

###