



PUBLIC NOTICE

Federal Communications Commission
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December 4, 2002

MEDIA BUREAU ACTION

ECHOSTAR COMMUNICATIONS CORPORATION, GENERAL MOTORS CORPORATION, AND HUGHES ELECTRONICS CORPORATION FILE AMENDMENT TO TRANSFER OF CONTROL APPLICATION

CS DOCKET NO. 01-348

Comments due: January 3, 2003

Reply Comments due: January 21, 2003

On December 3, 2001, the Commission received an application requesting consent to the transfer of control of licenses and authorizations, including direct broadcast satellite (“DBS”), fixed satellite space station authorizations, and earth station authorizations, held by Hughes Electronics Corporation (“Hughes”) and its subsidiaries and affiliates and by EchoStar Communications Corporation (“EchoStar”) and its subsidiaries and affiliates (collectively, the “Applicants”) to EchoStar Communications Corporation (“New EchoStar”).¹ The proposed transaction involved the split-off of Hughes from General Motors, followed by the merger of the Hughes and EchoStar companies. If approved, the proposed merger would have combined operations of the two major DBS providers in the United States – EchoStar and DirecTV – into one single entity. In addition to acquiring the significant DBS operations of EchoStar and DirecTV, New EchoStar would acquire other significant operations of Hughes, including Hughes Network Services, Inc., (“HNS”), a leading facilities-based provider of very small aperture terminal (“VSAT”) network systems, and PanAmSat Corporation (“PanAmSat”), a leading global facilities-based provider of geostationary-satellite orbit (“GSO”) fixed satellite services (“FSS”). The Commission placed the Transfer of Control Application on public notice on December 21, 2001, and requested that comments and petitions be filed by February 4, 2002, and reply comments and oppositions be filed by February 25, 2002.

¹ See *Consolidated Application of EchoStar Communications Corporation, General Motors Corporation, Hughes Electronics Corporation, Transferors, and EchoStar Communications Corporation, Transferee, for Authority to Transfer Control*, December 3, 2001 (“December 2001 Filing”); *Letters to William F. Caton, Acting Secretary, Federal Communications Commission from Pantelis Michalopoulos, Counsel for EchoStar and Gary Epstein, Counsel for Hughes providing information pursuant to Section 1.65 of Commission Rules*, filed December 18, 2001 and February 21, 2002 (“December 2001 Amendment Letter” and “February 2002 Amendment Letter”). The term, “Transfer of Control Application,” includes the *December 2001 Filing*, *December 2001 Amendment Letter*, and *February 2002 Amendment Letter*.

The Commission also requested comment on a joint application (“Satellite Application”) submitted on February 25, 2002 by EchoStar and Hughes requesting authority to launch and operate NEW ECHOSTAR 1, a direct broadcast satellite that would be located at the 110° W.L. orbital location.² Contingent upon a grant of the Transfer of Control Application, the Applicants proposed to launch and operate a spot beam satellite with other existing and planned satellites to offer local broadcast service in all 210 U.S. Designated Market Areas (“DMAs”). The Commission placed the Satellite Application on public notice April 19, 2002, and requested that comments be filed by May 20, 2002; reply comments by May 30, 2002; and responses by June 4, 2002.

On October 9, 2002, the Commission adopted a Hearing Designation Order (“HDO”) designating both the Transfer of Control Application and Satellite Application for hearing upon a finding that the Applicants had not met their burden of demonstrating that approval of the Transfer of Control Application is in the public interest.³ The Commission analyzed the potential competitive and other harms of the proposed merger and found that the merger would result in a significant reduction in competition in relevant markets, which in turn was likely to result in substantial anticompetitive harms. The Commission also found that the claimed benefits would likely be unable to mitigate anticompetitive effects of the merger. The Commission granted the Applicants 30 days from the date of the certified mailing, until November 27, 2002, to amend the Transfer of Control Application to ameliorate the competition concerns identified in the HDO.⁴ On November 27, 2002, the Applicants filed an Amendment To Consolidated Application for Authority to Transfer Control. (“Application Amendment”).

PROPOSED AMENDMENT

In the Application Amendment, the Applicants request that the Commission approve their merger contingent on the execution of a divestiture agreement that will include the the divestiture of licenses and assignment of the rights to certain frequencies to R/L DBS Company, LLC (“Rainbow”), an indirect wholly-owned subsidiary of Cablevision Systems Corporation.

As stated in the Application Amendment, and subject to definitive agreement with Rainbow, the Applicants would agree, as a condition to approval of the merger, to, among other things:

- Divest to Rainbow EchoStar’s license for 11 licensed frequencies at the 61.5° W.L. slot;
- Assign to Rainbow the right to operate over 6 frequencies at the 61.5° W.L. slot that EchoStar uses under a lease with Dominion (assuming, as EchoStar has preliminarily concluded, that the lease permits assignment by EchoStar);
- Divest to Rainbow EchoStar’s license for 24 frequencies at the 148° W.L. slot;
- Divest to Rainbow EchoStar’s Special Temporary Authority for 2 unassigned frequencies at the 61.5° W.L. slot and 8 frequencies at the 148° W.L. slot;

² *EchoStar Satellite Corporation and Hughes Electronic Corporation, Application for Authority to Launch and Operate NEW ECHOSTAR 1 (USABBS-16)*, S2435, File No. SAT-LOA-20020225-00023 (Feb. 25, 2002); *Letter to William F. Caton, Acting Secretary, Federal Communications Commission from Applicants’ Counsel, providing supplemental Technical Annex* (Mar. 28, 2002); and *Letter to Marlene H. Dortch, Secretary, Federal Communications Commission from Applicants’ Counsel, providing complete copy of supplemental Technical Annex* (May 30, 2002).

³ *Application of EchoStar Communications Corporation, General Motors Corpoartion, and Hughes Electronics Corporation*, Hearing Designation Order, FCC 02-284, CS Docket No. 01-348 (rel. Oct. 18, 2002) at ¶ 3.

⁴ *Id.* at ¶ 295.

- Divest to Rainbow the EchoStar III satellite by sale and the EchoStar I and II satellites by lease, providing sufficient capacity to carry Rainbow's transmissions on the divested spectrum;
- Share with Rainbow facilities for local signal collection and backhaul of local broadcast transmissions, thereby reducing Rainbow's costs of offering local broadcast channels on its DBS service;
- Grant to Rainbow resale rights. New EchoStar will license to Rainbow the right to resell New EchoStar's full line of DBS services, including all new and enhanced DBS services enabled by the merger. In return, under the proposal set forth in the Application Amendment, Rainbow would license its full product line to New EchoStar for New EchoStar to resell to its subscribers. According to the Applicants, this means that services provided from the entire DBS orbital spectrum of 61.5°, 101°, 110°, 119°, 148°, and 148° W.L. locations will be available to all customers of New EchoStar and to all customers of Rainbow. As stated in the Application Amendment, each company will market, package and price as it sees fit;
- Give Rainbow enhanced ability to market to existing DBS subscribers. During the equipment transition process (*i.e.*, the set-top box and dish swap), New EchoStar will give subscribers in need of an upgrade the option of switching their DBS service to Rainbow or of taking Rainbow service in addition to New EchoStar service; and
- Ensure open access to retail distribution. The companies are also willing to discuss methods to ensure that Rainbow is able to attain open access to retail distribution.

The Application Amendment also states that the Applicants plan to soon file an additional, separate application seeking the Commission's approval for the license transfers to Rainbow encompassed by the proposed amended merger transaction. The Applicants allege that their proffered remedy is significantly broader than the proposal presented by the Applicants to the Department of Justice on October 28, 2002. The Application Amendment avers that the proffered remedy will preserve other alleged merger benefits and, by creating an additional DBS provider, will cure all of the countervailing competition concerns identified by the Commission in the HDO.

This Public Notice summarizes generally the Applicants' proposal. The Application Amendment in its entirety may be obtained from Qualex International, Portals II, 445 12th Street, SW, Room CY-B402, Washington, DC 20554, and will also be available through ECFS. Copies of the Amended Application are also available for public inspection and copying during normal reference room hours at the Commission's Reference Information Center, 445 12th Street, S.W., CY-A257, Washington, D.C. 20554. Comments may be filed regarding the Application Amendment no later than January 3, 2003.⁵ Reply comments may be filed no later than January 21, 2003. All filings regarding the Application Amendment should reference CS Docket No. 01-348.

***EX PARTE* STATUS OF THIS PROCEEDING**

This proceeding is a restricted proceeding pursuant to 47 C.F.R. § 1.1208. *Ex parte* presentations are prohibited to or from Commission decision-making personnel until the proceeding is no longer subject to administrative reconsideration or review or judicial review.

⁵ See General Information *infra* regarding filing procedures and service list.

GENERAL INFORMATION

Interested parties may file comments as indicated above, and are encouraged to file comments using ECFS. See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 Fed. Reg. 24,121 (1998). Comments filed through the ECFS can be sent as an electronic file via the Internet to <<http://www.fcc.gov/e-file/ecfs.html>>. Generally, only one copy of an electronic submission must be filed. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the applicable docket or rulemaking number. Designated Parties may also submit an electronic comment by Internet e-mail. To receive filing instructions for e-mail comments, commenters should send an e-mail to ecfs@fcc.gov, and should include the following words in the body of the message, "get form <your e-mail address>." A sample form and directions will be sent in reply.

Parties submitting paper filings must file an original and four (4) copies of all pleadings, in accordance with Section 1.51(c) of the Commission's Rules, 47 C.F.R. § 1.51(c), with the Commission's Secretary, Marlene H. Dortch, 445 12th Street, S.W., TW-B204, Washington, D.C. 20554. All filings sent to the Commission by overnight delivery, e.g. Federal Express, must be sent to the Commission's Secretary, Marlene H. Dortch, Office of the Secretary, Federal Communications Commission, 445 12th Street, S.W., TW-A325, Washington, D.C. **20024**. All hand-delivered or messenger-delivered filings must be delivered to the Commission's filing location in downtown Washington D.C.: 236 Massachusetts Avenue, N.E., Suite 110, Washington, D.C. 20002-4913.⁶ The filing hours at this facility are 8:00 a.m. to 7:00 p.m. Designated Parties also must send five (5) paper copies of their filing to Linda Senecal, Industry Analysis Division, Media Bureau, Federal Communications Commission, 445 12th Street, S.W., Room 2-C438, Washington, D.C. 20554, and one electronic copy via e-mail to lsenecal@fcc.gov.

In addition, parties must serve the following with either one electronic copy via e-mail or two paper copies of each pleading: (1) Qualex International, Portals II, 445 12th Street, S.W., Room CY-B402, Washington, DC 20554, telephone (202) 863-2893, facsimile (202) 863-2898, or email at qualexint@aol.com; (2) Marcia Glauber, Media Bureau, 445 12th Street, S.W., Room 2-C264, Washington, D.C. 20554, mglauber@fcc.gov; (3) Kenneth Ferree, Media Bureau, 445 12th Street, S.W., Room 3-C740, Washington, D.C. 20554, kferree@fcc.gov; (4) Barbara Esbin, Media Bureau, 445 12th Street, S.W., Room 3-C458, Washington, D.C. 20554, besbin@fcc.gov; (5) Simon Wilkie, Office of Plans and Policy, 445 12th Street, S.W., Room 7-C452, Washington, D.C. 20554, swilkie@fcc.gov; (6) JoAnn Lucanik, International Bureau, 445 12th Street, S.W., Room 6-A660, Washington, D.C. 20554, jlucanik@fcc.gov; (7) James Bird, Office of General Counsel, 445 12th Street, S.W., Room 8-C824, Washington, D.C. 20554, jbird@fcc.gov; (8) Julius Knapp, Office of Engineering and Technology, 445 12th Street, S.W., Room 7-C250, Washington, D.C. 20554, jknapp@fcc.gov; (9) Royce Sherlock, Media Bureau, 445 12th Street, S.W., Room 2-C360, Washington, D.C. 20554, rsherloc@fcc.gov; (10) Donald Stockdale, Office of Plans and Policy, 445 12th Street, S.W., Room 7-C324, Washington, D.C. 20554, dstockda@fcc.gov; (11) Douglas Webbink, International Bureau, 445 12th Street, S.W., Room 6-C730, Washington, D.C. 20554, dwebbink@fcc.gov.

⁶ See *FCC Announces a New Filing Location for Paper Documents and a New Fax Number for General Correspondence*, Public Notice, DA 01-2919 (rel. Dec. 14, 2001).

In addition, the following Parties must be served with a copy of all filings:

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Alternate formats of this public notice (computer diskette, large print, audio recording, and Braille) are available to persons with disabilities by contacting Brian Millin at (202) 418-7426 voice, (202) 418-7365 TTY, or send an e-mail to access@fcc.gov.

For further information, contact Marcia Glauber (202) 418-7046 or Linda Senecal (202) 418-7044, of the Media Bureau. Press inquiries should be directed to Michelle Russo (202) 418-2358 of the Media Bureau. TTY: (202) 418-7172 or (888) 835-5322.

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