

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of
Application of
EchoStar Communications Corporation (a Nevada Corporation), General Motors Corporation, and Hughes Electronics Corporation (Delaware Corporations)
(Transferors)
and
EchoStar Communications Corporation (a Delaware Corporation)
(Transferee)

CS Docket No. 01-348

ORDER

Adopted: January 8, 2003

Released: January 10, 2003

By the Commission:

1. On December 3, 2001, the Commission received an application from EchoStar Communications Corporation ("EchoStar"), General Motors Corporation ("GM"), and Hughes Electronics Corporation ("Hughes") (collectively, the "Applicants") 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 and its subsidiaries and affiliates and by EchoStar and its subsidiaries and affiliates to EchoStar Communications Corporation ("New EchoStar") ("Transfer of Control Application").

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").

2. On February 25, 2002, the Applicants submitted a joint application requesting authority to launch and operate NEW ECHOSTAR 1, a direct broadcast satellite that would be located at the 110° W.L. orbital location (“Satellite Application”).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”).

3. On October 9, 2002, the Commission adopted a Hearing Designation Order 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 and Satellite Applications is in the public interest.³ The Commission analyzed the potential competitive and other harms of the proposed merger and, based on the record before it, 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.

4. 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”).⁵ The Commission placed the Application Amendment on public notice December 4, 2002, and requested that comments be filed by January 3, 2003, and reply comments by January 21, 2003.⁶

5. On December 10, 2002, the Applicants filed a letter with the Commission seeking to withdraw their Transfer of Control and Satellite Applications and Application Amendment, and request, as a matter of right, the dismissal of these Applications pursuant to Section 25.152(a), 47 C.F.R. § 25.152(a).⁷ The Applicants indicate that they have entered into an agreement to terminate their Agreement and Plan of Merger, and thus, no longer wish to pursue approval of Applications pending

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 (a Nevada Corporation), General Motors Corporation, and Hughes Electronics Corporation (Delaware Corporations) (Transferors) and EchoStar Communications Corporations (a Delaware Corporation) (Transferee)*, Hearing Designation Order (“HDO”), CS Docket No. 01-348, FCC 02-284, (rel. Oct. 18, 2002) at ¶ 3.

⁴ *Id.* at ¶ 295.

⁵ *Application of EchoStar Communications Corporation, General Motors Corporation, and Hughes Electronics Corporation, Transferors, and EchoStar Communications Corporations, Transferee, For Authority to Transfer Control; Application of EchoStar Satellite Corporation and Hughes Electronics Corporation for Authority to Launch and Operate NEW ECHOSTAR 1 (USABBS-16)*, Amendment to Consolidated Application for Authority to Transfer Control (Nov. 27, 2002).

⁶ *See EchoStar Communications Corporation, General Motors Corporation, and Hughes Electronics Corporation File Amendment to Transfer of Control Application*, CS Docket No. 01-348, DA 02-3358 (MB Dec. 4, 2002).

⁷ Letter from Gary M. Epstein, Counsel for Hughes Electronics Corporation and General Motors Corporation and Pantelis Michalopoulos, Counsel for EchoStar Communications Corporation, to Marlene H. Dortch, Secretary, FCC (Dec. 10, 2002) (“December 10 Letter”). *See* Transfer of Control Application, *supra* n. 1, Satellite Application, *supra* n. 2, and Application Amendment, *supra* n. 5.

before the Commission related to this merger.⁸ The Applicants also seek to terminate the pending hearing, which was established to examine whether grant of the Transfer of Control and Satellite Applications would be in the public interest, and additionally request the termination of any further proceedings addressing these Applications.⁹

6. Section 25.152(a) provides that “[a]ny application may be dismissed without prejudice as a matter of right if the applicant requests its dismissal prior to final Commission action.”¹⁰ The Commission has yet to take its final action in this matter. The Application Amendment is on public notice and the comment period remains open at this time.¹¹ In the HDO, the Commission designated the Transfer of Control and Satellite Applications for a hearing, which is currently pending before the Chief Administrative Law Judge.¹² Thus, the applications remain pending and the Applicants are entitled to seek dismissal under the provisions of Section 25.152(a). Accordingly, the Commission will dismiss the Application Amendment before us. We also direct the Chief Administrative Law Judge to terminate the hearing, which incorporates the Transfer of Control and Satellite Applications, and any further proceedings in this matter.

7. Accordingly, IT IS ORDERED, That pursuant to Section 25.152(a) of the Commission’s rules, 47 C.F.R § 25.152(a), that the Application Amendment filed on November 27, 2002, IS DISMISSED without prejudice.

8. IT IS FURTHER ORDERED, That the Chief Administrative Law Judge SHALL TERMINATE the hearing set for examining the Transfer of Control and Satellite Applications and any other proceedings addressing these Applications.

⁸ *Id.* Specifically, the Applicants indicate that the parties have agreed to terminate the Agreement and Plan of Merger by and between EchoStar and Hughes dated December 14, 2001; the Implementation Agreement by and among GM, Hughes, and EchoStar dated December 14, 2001; the Separation Agreement by and between GM and Hughes dated as of October 28, 2001; the Stock Purchase Agreement among EchoStar, Hughes, Hughes Communications Galaxy, Inc., Hughes Communications Satellite Services, Inc. and Hughes Communications, Inc. dated as of October 28, 2001 (the “PanAmSat Stock Purchase Agreement”); and other related agreements. Because of the termination of the PanAmSat Stock Purchase Agreement, EchoStar and Hughes state that they will not pursue approval of the transfer of control of PanAmSat to EchoStar. *Id.* at Attachment.

⁹ See HDO *supra* n.3.

¹⁰ 47 C.F.R § 25.152(a).

¹¹ See para. 4 *supra*.

¹² See *Application of EchoStar Communications Corporation (a Nevada Corporation), General Motors Corporation, and Hughes Electronics Corporation (Delaware Corporations) (Transferors) and EchoStar Communications Corporations (a Delaware Corporation) (Transferee)*, Order, CS Docket No. 01-348, FCC 02M-102 (ALJ Nov. 14, 2002).

9. IT IS FURTHER ORDERED, That the Chief Administrative Law Judge SHALL TERMINATE the proceeding in CS Docket No. 01-348.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary