

May 28, 2002

Filed Electronically

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: Ex Parte – Consolidated Application of EchoStar Communications Corporation, General Motors Corporation, and Hughes Electronics Corporation for Authority to Transfer Control, CS Docket No. 01-348

Dear Ms. Dortch:

Pursuant to Section 1.1206 of the Commission's Rules, 47 C.F.R. § 1.1206, and Public Notice DA 01-3005 (released December 21, 2001), World Satellite Network, Inc. ("WSNet") submits this ex parte written presentation.

As discussed in detail in its comments submitted on February 4, 2002, WSNet supports the proposed transaction because it will provide for heightened competition against the dominant cable companies in the larger markets. At the same time, however, by combining the resources of EchoStar Communications Corporation ("EchoStar") and Hughes Electronics Corporation ("Hughes"), the newly merged company ("New EchoStar") will, in addition to consolidating a vast array of C-Band, Ku-Band, and Ka-Band satellite assets, have a virtual monopoly in the provision of Direct Broadcast Satellite ("DBS") services. In terms of competition and serving the public interest, this will be detrimental to consumers in the smaller markets and rural areas. Therefore, if the transfer of control is approved, it should be modified to include conditions that would ensure competition and comprehensive programming, particularly in the smaller markets and rural areas.

One of the primary concerns raised by those submitting comments, as well as by independent analysts, is that consumers will lack a choice of multichannel video programmers because New EchoStar will have a monopoly over DBS services, especially in the smaller markets and rural areas. In fact, there will be many parts of the country where there will be no alternative to New EchoStar for the provision of multichannel video programming. By adopting the conditions being proposed by WSNet, the Commission would be providing capacity to not just one competitor of New EchoStar, but potentially to thousands of competitors—retail companies obtaining satellite capacity and programming on a wholesale basis. By making satellite capacity available to many retail companies, the Commission would ensure that there will be a choice for consumers, especially in the smaller markets and rural areas.

On May 3, 2002, WSNet filed an ex parte written presentation with the FCC including proposed language by which the Commission could condition an order granting an acquisition of

Hughes by EchoStar. Subsequently, during a May 9, 2002, meeting between the Commission's staff and WSNet's representatives, the Commission's staff indicated that the originally proposed language was too narrow and that WSNet should submit revised language that is broader in scope. In response to that request, WSNet recommends that, in substance, the following language be included in an order approving the transfer of control:

The Commission will approve the proposed acquisition with conditions, which is consistent with the Commission's use of conditions in approving mergers and acquisitions.¹ So as to address concerns with respect to New EchoStar gaining a monopoly over DBS services and to ensure vigorous competition in the provision of multichannel video programming, especially in the smaller markets and rural areas, we approve the transfer of control with the following conditions. New EchoStar will provide control and use of a minimum of 24 channels of high-powered capacity on one of its existing DBS satellites located at either 101.0 degrees W.L., 110.0 degrees W.L., or 119.0 degrees W.L. to a company that is a wholesale provider of DTH and digital programming services nationwide, and this company will have no affiliation or other business relationship with New EchoStar. The company will then provide this capacity at wholesale to rural cable television companies, competitive retail DBS service providers, and other competitive MVPDs. The company will acquire the channels at cost from New EchoStar and the channels will be on a satellite that is currently operational to ensure that alternative multichannel video programming services are offered in smaller markets and rural areas at the time we approve the acquisition of Hughes by EchoStar. By making at least 24 channels of capacity available to a wholesaler, which, in turn, will provide it to numerous companies providing service directly to the public, the Commission will make way for market forces to stimulate innovation, competitive pricing, and the highest levels of customer service.²

¹ *In the Matter of Applications for Consent to the Transfer of Control of Licenses and Section 214 Authorizations by Time Warner, Inc. and America Online, Inc., Transferors, to AOL Time Warner Inc., Transferee*, CS Docket No. 00-30, 16 FCC Rcd, 6547, 6556 (released January 22, 2001) (conditioning the transfers of control so as to ensure competition and to promote the public interest, stating, "[w]here necessary, the Commission can attach conditions to a transfer of licenses and authorizations in order to ensure that the public interest is served by the transaction."); *In the Matter of Application of WorldCom, Inc. and MCI Communications Corporation for Transfer of Control of MCI Communications Corporation to WorldCom, Inc.*, CC Docket No. 97-211, 13 FCC Rcd 18025, footnote at 18030 (released September 14, 1998) (granting the applications with the condition that MCI Communications Corporation divest its Internet assets to Cable & Wireless so as to ensure competition in the Internet backbone market); and, *In the Matter of Intermedia Communications, Inc., Transferor, and Worldcom, Inc., Transferee, for Consent to Transfer Control of Corporations Holding Commission Licenses and Authorizations Pursuant to Section 214 and 310(d) of the Communications Act and Parts 21, 63, 90, 101*, CC Docket No. 00-206, 16 FCC Rcd 1017 (released January 17, 2001) (conditioning approval of the transaction on dominant regulation of Intermedia and its subsidiaries on the U.S. Brazil route and the merged entity divesting Intermedia's assets, except Digex, Inc., in compliance with the Department of Justice's Proposed Final Judgement so as to ensure competition in the Internet backbone market).

² In the unlikely event that the Commission chooses to view medium-powered Ku-Band as an adequate competitive alternative to DBS services (a view that WSNet strongly opposes), then the Commission should, at a minimum, adopt a condition that ensures that at least one company that is a wholesale provider of DTH and digital programming services nationwide has access to 32 channels of capacity on an existing Ku-band satellite at a full-CONUS orbital location that comes under the control of New EchoStar. Such capacity could, for example, be provided through the Galaxy XI satellite located at 91.0 degrees W.L. The Galaxy XI satellite is part of one of the world's largest satellite systems and is operated by PanAmSat Corporation, which is currently 81% owned by Hughes.

Modification of the proposed transfer of control so as to provide at least one wholesale provider of DTH and digital programming services with satellite capacity will serve the public interest. While New EchoStar is able to improve its ability to compete against the dominant cable companies in the larger markets, this additional satellite capacity provided to a wholesale provider of DTH and digital programming services will enable that company to counter New EchoStar's monopoly in the smaller and rural markets. The modification to the transfer of control described herein will ensure that a large number of retail companies will receive the wholesale services necessary to compete directly against New EchoStar.

Should you have any questions with respect to this filing, please do not hesitate to contact the undersigned.

Respectfully submitted,

/s/

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