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Washington, D.C. 20554

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Federal Communications Commission
Office of Secretary

Application of	
GENERAL MOTORS CORPORATION AND HUGHES ELECTRONICS CORPORATION,	
Transferors,	MB Docket No 03-___
and	
THE NEWS CORPORATION LIMITED,	
Transferee,	
For Authority to Transfer Control	

CONSOLIDATED APPLICATION FOR AUTHORITY TO TRANSFER CONTROL

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SUMMARY

For over two decades, Hughes Electronics Corporation ("Hughes") and its subsidiaries have been at the forefront in developing, introducing and deploying innovative satellite services for both businesses and consumers in the United States. For example, Hughes was the first to launch a high-power Direct Broadcast Satellite ("DBS") service, the first to launch a high-speed satellite Internet access service, and the first to launch a DBS spot beam satellite. Such innovations have spurred other satellite and terrestrial service providers to upgrade their systems and improve their services, all to the benefit of American consumers.

But now, as the satellite services industry moves into a more mature stage, Hughes and its parent, General Motors Corporation ("GM"), find themselves at a crossroads. DIRECTV faces intense competition from other multichannel video programming distribution ("MVPD") systems. In fact, its DBS rival, EchoStar, is growing faster than DIRECTV, while the number of digital cable subscribers recently has been forecast to surpass the total number of DBS subscribers for the first time. Hughes is also planning to roll out an advanced broadband satellite system targeted to enterprise customers – a bold initiative that presents enormous challenges. Thus, this is a critical juncture for Hughes if it is to realize its full potential as a robust competitor that will offer Americans a true alternative to established and well-financed incumbents.

For GM, the economic imperatives are very different. GM is world renowned as a leader in the automotive industry, and seeks to focus its management and capital resources on this core area of its operations, and the need to provide funding for GM's U.S. pension plans and retiree health care benefits for the employees who have supported

GM's core automotive operations. Separation of Hughes from GM will end the era of Hughes competing for capital against the core automotive operations of GM. GM has no special expertise in the businesses in which Hughes operates and GM's continued ownership will not enhance Hughes' position as a dynamic force. Thus, for several years, GM has been searching for an investor with a core competency more aligned with Hughes' businesses and a willingness to permit Hughes to undertake strategic initiatives that may require additional capital and other resources.

The News Corporation Limited ("News Corp.") has a strategic vision, expertise and resources that will enable Hughes to reach its full potential as a leader in MVPD services. Accordingly, through a series of related transactions described in more detail below, GM will split off Hughes as an independent, publicly traded company, and News Corp. will acquire a 34% interest in Hughes which News Corp. will hold through Fox Entertainment Group, Inc. ("FEG"), in which News Corp. currently holds an 80.6% equity interest and exercises 97% of the vote.

News Corp. brings an impressive array of capabilities to the transaction. It holds interests in a number of satellite direct-to-home ("DTH") television platforms outside the United States, which will allow it both to share with Hughes the benefits of its experience with diverse service offerings and business practices and to achieve economies of scope and scale in research and development and equipment production. News Corp. also has a proven track record of innovation, a demonstrated ability to challenge established incumbents successfully, and a tradition of changing the dynamic in markets it chooses to enter. For example, in launching the FOX network, Fox News Channel, Fox Sports Net, and National Geographic Channel, and investing heavily in establishing local news services in its owned television stations where none previously existed, News Corp. not only aggressively entered areas dominated by formidable incumbents, but also demonstrated a long-term commitment to compete in those areas – and ultimately its ability to do so successfully. In addition, News Corp. has demonstrated its willingness to invest in breakthrough technologies to offer subscribers better services, as it did in converting the British Sky Broadcasting ("BSkyB") platform from analog to digital technology and in bringing a wide range of interactive television services to BSkyB subscribers. News Corp. will bring this same level of strategic vision, energy, expertise and innovation to Hughes. And because Hughes' satellite platforms serve the entire country, the benefits of these enhanced services will flow to all Americans, including those in rural and other areas currently underserved or unserved by terrestrial alternatives.

News Corp. is committed to dramatically increasing DIRECTV's local-into-local commitment by providing local-into-local service in as many of the 210 Designated Market Areas nationwide as possible, and to doing so as soon as economically and technologically feasible. Among the possibilities being studied are the use of capacity on HNS' recently expanded North American Ka-band SPACEWAY system, further incorporating digital terrestrial tuners into set-top boxes so that subscribers can seamlessly integrate digital over-the-air signals, and other emerging technologies. News Corp. also intends to investigate new technologies that promise to improve spectrum efficiency, some of which are already being used by News Corp. subsidiaries. Such initiatives not only will improve DIRECTV's competitive position in a number of markets, but also will help DIRECTV carry a greater array of high definition television

("HDTV") programming, thereby helping to drive the digital television transition process.

By bringing together News Corp.'s DTH experience, spirit of innovation and programming expertise, with DIRECTV's video distribution capabilities and Hughes Network Systems' technological capabilities, News Corp. currently expects that, within three years, the transaction will create synergies and efficiencies of between $610 million and $765 million annually. These savings will, in turn, enhance Hughes' ability to undertake the significant risks and costs of developing and deploying new services and technologies to provide its customers with consistently more compelling products and services.

Moreover, because the assets and operations of News Corp. and Hughes are almost entirely complementary, the transaction will not decrease competition in any relevant market affecting the United States. Indeed, competition will be intensified and consumers will have more choice.

While the Commission has in the past recognized the pro-competitive benefits of vertical integration of programming and distribution assets, it has also assessed the potential for abuse. There is no opportunity for abuse as a result of the proposed transaction. News Corp. has no market power in the programming market and DIRECTV has no market power in the MVPD market that either could leverage for anti-competitive purposes. Moreover, as a programmer, News Corp. is dedicated to achieving the widest possible distribution for its programming in order to maximize revenue from advertising and subscriber fees, and it has no interest in denying access to or discriminating against any MVPD platform. As a provider of subscription programming services to the public, DIRECTV is dedicated to securing the most compelling programming available, regardless of the source.

Nonetheless, in order to allay any program-related concerns whatsoever, News Corp. and Hughes have agreed as a provision of their transactional documents that they will consent to the imposition of a series of program access undertakings as a condition of approval of this Application.

- First, News Corp. and Hughes will agree to operate under the same program access rules that Congress and the Commission have placed on programmers that are affiliated with cable operators, even though in this case there is neither a history of anti-competitive conduct nor the dominant market share that engendered the program access requirements in the first place. This commitment will remain in place whether or not News Corp. is otherwise legally subject to the Commission's program access rules. Accordingly, News Corp. will continue to make its programming available to all MVPDs on non-discriminatory prices, terms and conditions.

- Second, News Corp. and Hughes will agree to a number of other restrictions that go beyond those applicable to cable-affiliated programmers and DBS operators. These restrictions would, for example, (1) preclude News Corp. from offering *any* of its existing or future national or regional programming services on an exclusive basis to any MVPD, (2) preclude News Corp. and DIRECTV from discriminating against unaffiliated programming services in the selection, price, terms, or conditions of carriage, and (3) preclude News Corp. and DIRECTV from entering into exclusive arrangements with or unduly or improperly influencing affiliated programming entities, including Liberty Media Corporation. (A complete list of these undertakings is attached to this Application as Attachment G.)

These undertakings would remain in place for so long as the Commission's program access rules remain in effect and News Corp. holds an attributable interest in DIRECTV. The parties encourage the Commission to adopt these undertakings as a condition of the approval of this Application. With these prophylactic measures in place (and indeed even without them), the proposed transaction does not present even the potential for public interest harms that could offset the inherent and undeniable public interest benefits.

Accordingly, the Commission should grant this Application expeditiously so that the parties can begin as quickly as possible the process that will enhance Hughes' capabilities and bring the benefits of more robust competition to consumers throughout the United States.

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Before the
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Application of	
GENERAL MOTORS CORPORATION AND HUGHES ELECTRONICS CORPORATION,	
Transferors,	MB Docket No. 03-____
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THE NEWS CORPORATION LIMITED,	
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CONSOLIDATED APPLICATION FOR
AUTHORITY TO TRANSFER CONTROL

General Motors Corporation ("GM"), Hughes Electronics Corporation ("Hughes"), and The News Corporation Limited ("News Corp.") respectfully submit this joint application for Commission approval of the transfer of control over various space station, earth station, and terrestrial wireless authorizations held through GM's Hughes subsidiary.[1] Through a series of related transactions that will occur essentially simultaneously, General Motors will split off Hughes and divest its interest in Hughes, and News Corp. will acquire an indirect 34% interest in the newly-independent Hughes.[2]

1 Attachment A hereto provides a consolidated list of authorizations over which control is to be transferred and the entities that currently hold them. Attachment H similarly provides a consolidated list of pending applications filed by these entities.

2 News Corp. has designated News Publishing Australia Limited, a Delaware corporation and a wholly owned subsidiary of News Corp., as the initial purchaser of all shares of Hughes being

I. INTRODUCTION

Once the proposed transaction has been consummated, Hughes will become an independent public company that, through its affiliation with News Corp., will have the strategic vision, scope, scale, expertise and access to capital necessary to compete more effectively against established and well-funded incumbents. DIRECTV will be able to provide American consumers with a broader selection of innovative programming and more cutting-edge technology. DIRECTV will be able to accelerate the penetration of next-generation systems and services such as interactive television ("ITV") and digital video recorders ("DVRs"), and to better compete with the offerings of the incumbent cable operators, which the Commission has concluded are dominant in virtually all local and regional multichannel video programming distribution ("MVPD") markets.

As the Commission has recognized, "the strong overbuild competition from local exchange carriers and others that Congress anticipated as a result of the 1996 amendments to the Communications Act has, as yet, failed to develop."[3] Thus, the ability of Direct Broadcast Satellite ("DBS") operators to compete successfully in the MVPD market is more important than ever. News Corp.'s acquisition of a 34% interest in Hughes will promote competition in the MVPD market, to the benefit of all American consumers.

The proposed transaction combines U.S. assets that are almost entirely complementary rather than duplicative. News Corp. holds interests in a number of

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acquired in the transaction. As hereinafter described, the shares of Hughes will be transferred to a subsidiary of Fox Entertainment Group, Inc. For purposes of this Application, we shall refer to the purchaser as News Corp. for the sake of simplicity.

3 *See Implementation of the Cable Television Consumer Protection and Competition Act of 1992 – Sunset of Exclusive Contract Prohibition*, 17 FCC Rcd. 12124, 12144-45 (2002) ("*Exclusivity Sunset Order*").

satellite programming distribution platforms and many related technology businesses worldwide. However, it has no multichannel distribution or broadband capabilities in the United States. Hughes' DIRECTV satellite television service would complement the MVPD services operating in other countries in which News Corp. holds an interest (such as British Sky Broadcasting Group plc ("BSkyB")). Conversely, Hughes has virtually no interest in programming services,[4] while News Corp. holds interests in a broadcast network and a number of cable programming channels. Thus, while News Corp. and Hughes each provide a broad array of services, they are almost entirely in non-overlapping lines of business. This strategic relationship will enable the parties to improve Hughes' competitive capabilities by drawing on resources available from and experience gained in markets around the world, without eliminating any existing competitor serving the United States in the MVPD, programming or broadband markets.

Not only is the proposed transaction consistent with all Commission rules and policies, but it also will result in many affirmative public interest benefits – benefits that cannot be realized until the transaction is consummated. Accordingly, the parties respectfully request that this Application be granted as expeditiously as possible. Because this proceeding involves broad public policy issues implicating competition in the programming and distribution markets in the United States, the parties also request that the Commission designate this application as a permit-but-disclose proceeding covered by Section 1.1206 of the Commission's rules.

This consolidated Application consists of a narrative description of the parties and the proposed transaction, including the attendant public interest benefits, along with

[4] Hughes' sole programming interest is a 5% passive equity interest in the Hallmark Channel.

several attachments containing the transaction documents, completed FCC transfer application forms, and other materials. Each FCC form application and its associated exhibits and filing fee have been filed separately in accordance with the Commission's rules. Following the closing of the transaction, the relevant Applicants will supplement all pending applications as required under the Commission's rules, 47 C.F.R. § 1.65, to reflect the new ownership structure of Hughes. To the extent that any pending applications, or any other applications for new facilities or for renewal or modification of existing facilities, are granted prior to the closing of the proposed transaction, the parties request a determination by the Commission that the grant of this Application includes consent to transfer control with respect to all such subsequently granted authorizations.

A. *Description of the Parties*

1. The GM/Hughes Parties

Hughes, a Delaware corporation, is a wholly owned subsidiary of GM, which is also a Delaware corporation.[5] Hughes is the corporate parent of several other companies that provide specialized communications services to a wide range of end users. Hughes indirectly owns all of the issued and outstanding interests of DIRECTV Enterprises, LLC ("DIRECTV"), a Commission licensee. In addition, Hughes controls various Commission licenses and authorizations through various other subsidiaries that are directly or indirectly wholly owned.[6] Hughes also indirectly holds an approximately 81%

5 As discussed below, GM has issued a publicly traded tracking common stock (GM Class H common stock) designed to provide shareholders with financial returns based on the economic performance of the businesses and assets of GM's wholly owned Hughes subsidiary.

6 A list of the Commission licensees in which Hughes holds a controlling interest is included in Attachment A. Hughes also holds a non-controlling 15.5% equity/7.4% voting interest in XM Satellite Radio Holdings, Inc., the corporate parent of a Commission licensee in the satellite Digital Audio Radio Service, which is not part of this Application.

economic and voting interest in PanAmSat Corporation ("PanAmSat"), a publicly traded Delaware corporation and the corporate parent of PanAmSat Licensee Corp., a Commission licensee.[7] Attachment B includes a chart summarizing the relevant GM/Hughes ownership structure prior to the proposed transaction.

DIRECTV is one of the world's leading digital DBS operators. DIRECTV launched the United States' first DBS satellite in December 1993 and a second DBS satellite in August 1994.[8] In June 1995, DIRECTV launched a third high-power DBS satellite. In April and May 1999, the Commission authorized the transfer to DIRECTV of DBS assets and related authorizations held by United States Satellite Broadcasting Company, Inc. ("USSB")[9] and Tempo Satellite, Inc.,[10] respectively. Over the last two years, DIRECTV has launched two more satellites, including the first DBS satellite with spot beam technology that enables it to re-use its spectrum a number of times across the United States to provide more efficiently the signals of local broadcast stations into their local market areas. Thus, DIRECTV currently provides service to U.S. consumers from seven DBS satellites using 32 channels at 101° W.L., 3 channels at 110° W.L., and 11

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[7] *See Hughes Communications, Inc.*, 12 FCC Rcd. 7534 (1997). With the exception of six satellite earth stations licenses held by PanAmSat, none of the licenses controlled by Hughes is a common carrier or broadcast radio license. PanAmSat has filed applications to remove the common carrier designation from these earth station licenses, and has also recently notified the Commission of discontinuance of service under its inactive Section 214 authorizations.

[8] *United States Satellite Broadcasting Co.*, 7 FCC Rcd. 7247 (1992). At the time, the license was held by DIRECTV's predecessor-in-interest, Hughes Communications Galaxy, Inc. ("HCG"). In June 1995, the Commission consented to the pro forma assignment of all licenses and facilities necessary to operate DIRECTV's DBS system from HCG to DIRECTV. *See* Public Notice, Rep. No. SPB-10 (rel. June 7, 1995) (pro forma assignment granted on June 5, 1995). On April 7, 1995, the Commission also approved the assignment of the earth station authorization for DIRECTV's uplink facilities at Castle Rock, Colorado, from Hughes Communication Satellite Services, Inc. to DIRECTV.

[9] *United States Satellite Broadcasting Co.*, 14 FCC Rcd. 4585 (Int'l Bur. 1999).

[10] *Tempo Satellite, Inc.*, 14 FCC Rcd. 7946 (Int'l Bur. 1999).

channels at 119° W.L.[11] DIRECTV, together with certain independent distributors, now have approximately 11.4 million subscribers in the United States.[12]

Hughes Network Systems, Inc. ("HNS"), another Hughes subsidiary, provides broadband satellite network solutions for businesses and consumers around the world. HNS' high-speed, satellite-based broadband services are marketed globally under the DIRECWAY® brand. These existing satellite broadband services are provided using leased Ku-band transponders. HNS is also deploying the SPACEWAY system, a next generation, Ka-band satellite platform that will provide many new broadband services at faster speeds than ever before. SPACEWAY is currently scheduled to begin North American service in 2004, assuming successful launch of its first satellite later this year. HNS also manufactures telecommunications equipment and DIRECTV set-top boxes.

Directly and through its subsidiaries, PanAmSat owns and operates a fleet of 22 satellites around the world that operate in the fixed-satellite service bands, as well as a comprehensive system of teleports and complementary terrestrial resources. PanAmSat carries programming for broadcasters and other programmers worldwide, provides Internet backbone support to Internet service providers, supports private business communications networks to corporations, and provides pipelines worldwide for

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[11] DIRECTV voluntarily surrendered the DBS channels previously assigned to it at the 157° W.L. orbital location in May 1998. *See* Public Notice, Rep. No. SPB-127 (rel. June 10, 1998).

[12] Of these subscribers, approximately 9.9 million subscribe directly to DIRECTV, while the remaining approximately 1.5 million subscribe through the National Rural Telecommunications Cooperative. Hughes also has interests in direct-to-home ("DTH") and other satellite services in several foreign countries. For example, it indirectly holds a 74.7% interest in DIRECTV Latin America LLC, which provides subscription DTH television services throughout Latin America. DIRECTV Latin America has one Commission-licensed earth station that is included on Attachment A. However, licenses for the services provided in foreign countries are not part of this Application.

telecommunications providers. PanAmSat and its subsidiaries also hold various FCC satellite earth station licenses.[13]

2. The News Corporation Limited

News Corp. is a corporation formed under the laws of South Australia with securities that are publicly traded on both the New York Stock Exchange and the Australian Stock Exchange. It is a diversified international media and entertainment company with operations in a number of industry segments, including: filmed entertainment; television; cable network programming; magazines and inserts; newspapers; and book publishing. The activities of News Corp. are conducted principally in the United States, the United Kingdom, Australia, Asia, and the Pacific Basin. News Corp. provides DTH television services in Italy and has joint venture interests in DTH television services in Latin America. News Corp. is well known to the Commission, as its subsidiaries hold a number of broadcast and other licenses. K. Rupert Murdoch, a U.S. citizen and Chief Executive, directly and indirectly controls an approximately 16% equity/30% voting interest in News Corp.[14]

Liberty Media Corporation ("Liberty"), a Delaware corporation that holds preferred limited voting ordinary shares of News Corp. representing approximately 17.6% of the total issued and outstanding stock of News Corp., is the only other

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13 PanAmSat also holds various space and earth station licenses issued by other countries, which are not part of this Application.

14 This approximate percentage is calculated based on 2,095,999,003 ordinary shares outstanding on December 31, 2002, and includes ordinary shares owned by (1) Mr. K. Rupert Murdoch, (2) Cruden Investments Pty. Limited, a private Australian investment company owned by Mr. K. Rupert Murdoch, members of his family and various corporations and trusts, the beneficiaries of which include Mr. K. Rupert Murdoch, members of his family and certain charities, and (3) corporations which are controlled by trustees of settlements and trusts set up for the benefit of the Murdoch family, certain charities and other persons. In addition, Mr. K. Rupert Murdoch, Cruden Investments Pty. Limited and such other entities beneficially own 220,076,801 preferred limited voting ordinary shares.

shareholder with a greater than 10% interest in the company.[15] Liberty holds interests in domestic and international video programming, interactive technology services, and communications businesses in the United States, Europe, Latin America, and Asia. Among its holdings are majority ownership interests in Starz Encore Group LLC (100%) and Liberty Satellite and Technology, Inc. (86%), and minority interests in a number of other companies.[16] The News Corp. shares that Liberty holds have no voting rights except in a limited number of instances.[17] Thus, Liberty's interest in News Corp. is purely passive and it exercises no control over News Corp. In addition, News Corp. does not have any interest in Liberty and does not exercise any control over Liberty.

News Corp. holds its U.S. programming interests through its Fox Entertainment Group, Inc. ("FEG") subsidiary, a Delaware corporation in which News Corp. currently

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15 Liberty has an option, which must be exercised by September 30, 2003, through which it may acquire $500 million of additional preferred limited voting ordinary shares of News Corp. If Liberty does not exercise that option, News Corp. has the right to put those shares to Liberty upon the consummation of the transaction proposed herein. Assuming exercise of the Liberty option prior to consummation of the proposed transaction, Liberty's ownership interest in News Corp. would increase to approximately 19%. However, upon consummation of the proposed transaction, Liberty's ownership interest could be diluted to as little as 17.1%. If Liberty does not exercise its option and News Corp. does not exercise its put rights, Liberty's interest in News Corp. could fall below 17.1% after consummation of the proposed transaction.

16 Companies in which Liberty holds a minority interest include Discovery Communications (49.8%), OpenTV Corp. (46%), QVC (42%), Sprint PCS Group (21%), and USA Interactive (20%). Liberty also holds a less than 1% interest in the GMH tracking stock issued by GM. A Liberty affiliate also holds interests in two entities other than Hughes that hold Commission licenses for Ka-band space stations: a controlling interest in Astrolink International LLC (with an application pending to acquire substantially all of Astrolink's assets), and the largest plurality interest in Wildblue Communications, Inc. ("Wildblue").

17 A holder of News Corp. preferred limited voting ordinary shares is entitled to vote: on a proposal to reduce the share capital of the company; on a proposal to wind up or during the winding up of the company; on a proposal for the disposal of the whole of the property, business and undertaking of the company; on a proposal that affects rights attached to such preferred shares; on a resolution to approve the terms of a buy-back agreement; and during a period during which a dividend (or part of a dividend) in respect of the preferred shares is in arrears.

holds an approximately 80.6% ownership and 97% voting interest. FEG is principally engaged in the development, production and worldwide distribution of feature films and television programs, television broadcasting and cable network programming. Its programming interests include FOX Broadcasting Company, Fox Television Stations, Twentieth Century Fox Film, Twentieth Century Fox Television, Fox News Channel, and Fox Cable Networks.[18]

News Corp. indirectly holds interests in a number of subscription DTH services, all of which operate entirely outside the United States. Among these is the 36.2% indirect interest that News Corp. holds in BSkyB, the leading pay television platform in the United Kingdom and Ireland, providing a broad array of programming directly to over 6.1 million of its own DTH satellite subscribers and indirectly to over 4.1 million additional subscribers of cable and other delivery platforms.[19] However, News Corp. has no interest in satellite operators serving the United States.[20]

In addition, News Corp. holds an approximately 42.9% interest in Gemstar-TV Guide International, Inc. ("Gemstar"), a global technology and media company that develops proprietary technologies and systems that simplify and enhance the viewing and recording of video and television programming and provides print, electronic, and interactive program listings. Among other things, Gemstar produces an electronic

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[18] Attachment F contains a list of News Corp.'s national and regional cable programming interests in the United States, including those owned indirectly through Gemstar-TV Guide International, Inc.

[19] In addition to BSkyB, News Corp. holds interests in Sky Italia (80.1%), Sky Brasil Servicos Ltda. (49.7%), Innova S. d R.L. de C.V. (30%), Sky New Zealand (29.5%), FOXTEL (25%), and Sky PerfecTV (8.1%), which provide DTH services in Italy, Brazil, Mexico, New Zealand, Australia, and Japan, respectively.

[20] News Corp. indirectly through Gemstar holds an interest of less than 0.3% in the Wildblue Ka-band satellite system.

program guide ("EPG") that is used by MVPDs as an on-screen guide that enables subscribers to navigate program offerings.

News Corp. also holds an approximately 79% equity interest in NDS Group plc ("NDS"), a supplier of open end-to-end digital pay television solutions for the secure delivery of entertainment and information to television set-top boxes and personal computers. NDS' conditional access systems also enable its customers to provide enhanced television and interactive services, such as electronic program guides, games, interactive advertising and television commerce. NDS has also developed DVR technology.

Attachment C includes a chart that summarizes the relevant News Corp. ownership structure prior to the proposed transaction.

B. *Description of the Proposed Transaction*

GM proposes to split off Hughes and divest its interest in Hughes such that Hughes will become a separate and independent company. As a result of these and several related transactions, News Corp. will control a 34% interest in Hughes, three GM employee benefit trusts managed by an independent trustee will have a combined approximately 20% interest in Hughes, and the remaining 46% interest in Hughes will be held by the general public.[21] The transaction – which is subject to several conditions, including regulatory approvals, a tax ruling, and GM and Hughes stockholder approval – will be accomplished in a series of interrelated steps that transpire essentially simultaneously, as follows.

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21 *See* the Separation Agreement, Merger Agreement, and Stock Purchase Agreement, included in Volume II of this Application.

The Split-Off of Hughes. At present, a "tracking stock" GM security related to the financial performance of Hughes is held by the public and is traded on the New York Stock Exchange as GM Class H common stock ("GMH shares"). This tracking stock is designed to provide holders with financial returns based on the financial performance of Hughes. The total number of GMH shares issued to date and currently outstanding represents an approximately 80.1% indirect economic interest in the financial performance of Hughes, the largest block of which is held by three GM employee benefit trusts. GM itself owns all of the common stock of Hughes, holds all of Hughes' voting power and retains the remaining approximately 19.9% economic interest in the financial performance of Hughes.

As one of the first steps in the transaction, after the payment by Hughes to GM of a $275 million dividend, GM will distribute to the GMH shareholders new shares of Hughes common stock in exchange for all of the outstanding GMH shares (on a share-for-share basis). As a result, the GMH shares will be redeemed and cancelled. Prior to the stock purchase described below, GM will hold all the outstanding shares of another class of Hughes securities – Class B common stock – representing GM's approximately 19.9% economic interest in the company.

The Stock Purchase. Simultaneously with the split-off described above, News Corp. will purchase GM's approximately 19.9% interest in Hughes, represented by Hughes Class B common stock, for $14 per share (approximately $3.8 billion, subject to adjustments as described in the Stock Purchase Agreement) payable in cash, or at News Corp.'s election, up to 20% of this amount may be paid to GM in News Corp. preferred limited voting ordinary American Depository Receipts ("ADRs").

The Merger. News Corp. will form a new subsidiary specially created to merge with Hughes (the "Merger Subsidiary"). Immediately following the split-off and stock purchase described above, the Merger Subsidiary will merge with and into Hughes, with Hughes, a U.S. corporation, being the surviving corporation. In connection with the merger, News Corp. will acquire from the former GMH shareholders an additional 14.1% of Hughes for $14 per share (subject to adjustment as described in the Merger Agreement) payable at News Corp.'s election (to be determined at least three business days before closing) in the form of News Corp. preferred ADRs, cash, or a combination of preferred ADRs and cash. As a result of the merger, each former GMH shareholder will receive for its shares of Hughes stock owned before the merger consideration of which approximately 82.4% will consist of equity in Hughes and 17.6% will consist of News Corp. preferred ADRs and/or cash. In addition, automatically upon consummation of the merger, the Hughes Class B common stock acquired by News Corp. from GM will be converted (on a share-for-share basis) into "regular" Hughes common stock. Thus, after the merger, News Corp. will hold 34% of the Hughes common stock and the former GMH shareholders will hold 66% of the Hughes common stock.

Immediately after the merger, the shares of Hughes acquired by News Corp. will be transferred to FEG or a wholly owned subsidiary of FEG for a combination of a promissory note and stock in FEG. The acquisition of this stock will increase News Corp.'s ownership interest in FEG to approximately 82%.

The Resulting Ownership and Management Structure. As a result of these transactions, Hughes will become an independent company incorporated in the United States with a single class of common stock that is publicly traded on the New York Stock

Exchange. News Corp., through its FEG subsidiary, will control the single largest block of shares in Hughes with a 34% interest. The remaining 66% interest in Hughes will be held by the former owners of GMH shares. Of this public shareholding, trusts established under various GM employee benefit plans will hold, in the aggregate, an approximately 20% interest. The United States Trust Company of New York serves as the independent trustee of each of those trusts with respect to such shares, and therefore is expected initially to hold, in the aggregate, approximately 20% of the voting power of Hughes common stock. Subject to its fiduciary duties as trustee, US Trust will have sole discretion in exercising those voting rights. The remaining shares will be widely held by the public at large. Hughes will continue to own indirectly approximately 81% of the shares of and control PanAmSat. After the transaction, GM will no longer hold any shares of Hughes common stock. Attachment D includes a simplified presentation of the relevant Hughes ownership structure post-transaction.

Hughes' board of directors will consist of 11 members, including six independent directors.[22] The parties have agreed upon an initial slate of directors, all of whom are U.S. citizens, which includes Rupert Murdoch as Chairman of the Board; Chase Carey, News Corp.'s former Co-Chief Operating Officer, as Chief Executive Officer and full-time Hughes executive; and Eddy Hartenstein, Hughes' Corporate Senior Executive Vice President, as Vice Chairman.[23] The board will have an Audit Committee comprised entirely of independent directors. Among its other functions under Hughes' By-Laws, the Audit Committee will review and approve all related-party transactions in such

[22] A list of the directors is included in Attachment D.

[23] There is no corporate governance mechanism that ensures that News Corp. will continue to have four representatives on the board of directors, or that Messrs. Murdoch and Carey will continue to hold the positions of Chairman and Chief Executive Officer, respectively.

amounts and related to such matters as the Audit Committee determines. Accordingly, because News Corp. and its programming vendor subsidiaries would be considered related parties, any transaction they might enter into with Hughes or DIRECTV may be subject to review and approval by the independent Audit Committee.

No single shareholder will have a *de jure* controlling interest in the company either through a majority interest in voting stock or majority representation on the board. Thus, voting control will rest with the public shareholders. However, by virtue of the fact that News Corp. will indirectly control a 34% interest in Hughes and, at least initially, its former employee will be Chief Executive Officer, the Commission may deem News Corp. to exercise *de facto* control over Hughes under its totality of the circumstances test for purposes of the Communications Act. Accordingly, the parties presume such control for purposes of this Application.[24] GM will no longer control Hughes in any respect.

II. STANDARDS FOR REVIEW

As with any such transaction, the Commission will approve the proposed transfer of control if, after weighing "the potential public interest harms of the [transaction] against the public interest benefits," it concludes that, "on balance," doing so would serve

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[24] Because the concept of "control" for purposes of the Commission's analysis may vary from the way that term is defined in other statutory and regulatory contexts, the parties' presumption for purposes of this application should not be read as applicable to any other purpose, such as for securities law, accounting or tax purposes. *See, e.g., Committee for Full Value of Storer Communications v. FCC*, 101 FCC 2d 434, 442 (1985)("The meaning of a statutory reference to 'control' will also vary from statute to statute depending upon the purpose of the statute, the context, and the legislative intent. We do not believe we are bound, therefore, by statutory and common law definitions of 'control' in securities law [when interpreting Section 310(d)] . . . ."), *aff'd sub nom. Storer Communications, Inc. v. FCC*, 763 F.2d 436 (D.C. Cir. 1985); *Helvering v. Edison Bros. Stores, Inc.*, 133 F.2d 575, 579 (8th Cir. 1943) (a ruling by one administrative department of government concerning income accounting does not control that of another department made for an entirely different purpose under another act of Congress).

the public interest, convenience, and necessity.[25] Accordingly, where the potential harms are great, the potential benefits must be great; conversely, where the potential harms (if any) are small or limited, the potential benefits need only be of a similar scale.[26] In making this determination, the Commission first must determine whether the proposed transaction complies with the specific provisions of the Communications Act, other applicable statutes, and the Commission's rules.[27] The public interest analysis also involves an examination of potential effects of the transaction on competition in relevant markets.[28] The Commission has repeatedly admonished that a transfer of control proceeding must focus on benefits and harms that are specific to the proposed transaction, and is not an open forum for raising pre-existing or industry-wide disputes.[29]

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[25] *See, e.g., Comcast Corporation, AT&T Corp., and AT&T Comcast Corporation,* 17 FCC Rcd. 23246, 23255 (2002) ("*AT&T/Comcast*"); *Time Warner Inc. and America Online, Inc.*, 16 FCC Rcd. 6547 at ¶ 1 (2001)("*AOL/Time Warner*"); *MediaOne Group, Inc. and AT&T Corp.,* 15 FCC Rcd. 9816, 9821 (2000)("*AT&T/MediaOne*"); *see also* 47 U.S.C. § 310(d).

[26] *See, e.g., AT&T/Comcast,* 17 FCC Rcd. at 23329 (observing that "in balancing the public interest harms and benefits, we employ a sliding scale approach" that "examine[s] the likelihood and the magnitude of the potential public interest harms").

[27] *See, e.g., id.* at 23255.

[28] *See, e.g., EchoStar Communications Corporation, Hughes Electronics Corporation, and General Motors Corporation*, Hearing Designation Order, 17 FCC Rcd. 20559, 20576 (2002) ("*EchoStar/Hughes*"); *AT&T/MediaOne*, 15 FCC Rcd. at 9821.

[29] *See, e.g., AOL/Time Warner,* 16 FCC Rcd. at 6550 ("The Commission recognizes and discourages the temptation and tendency for parties to use the license transfer review proceeding as a forum to address or influence various disputes with one or other of the applicants that have little if any relationship to the transaction or to the policies and objectives of the Communications Act").