

As discussed below, bringing together the expertise and assets of News Corp. and Hughes will create substantial public interest benefits, and there are virtually no offsetting public interest concerns – especially given the parties’ willingness to agree to a list of prophylactic program access undertakings. Accordingly, the Commission not only should grant this Application – it should do so expeditiously.

**III. THE PROPOSED TRANSACTION COMPLIES WITH THE REQUIREMENTS OF THE COMMUNICATIONS ACT, ALL OTHER APPLICABLE STATUTES, AND THE COMMISSION’S RULES.**

Unlike many recent mergers with which the Commission has struggled, the proposed Hughes/News Corp. transaction does not implicate any aggregation, cross-ownership, or other similar restrictions imposed by the Communications Act, any other applicable statute or the Commission’s rules.<sup>30</sup> News Corp. currently holds controlling interests in a number of companies that are Commission licensees. The qualifications of all relevant parties are therefore a matter of record before the Commission, and have been reviewed and endorsed in prior proceedings.

**IV. THE PROPOSED TRANSACTION WILL YIELD SIGNIFICANT PUBLIC INTEREST BENEFITS.**

For more than two decades, 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. Hughes was the first to launch an all-digital, high-power DBS service, the first to launch a high-speed satellite Internet access service, and the first to launch a DBS spot beam satellite capable of re-using its spectrum efficiently

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<sup>30</sup> As discussed above, all but six of the licenses controlled by Hughes are non-broadcast and non-common carrier authorizations and therefore not subject to the foreign ownership limitations of Section 310(b)(4) of the Communications Act of 1934. PanAmSat has applied to convert those six earth station licenses to non-common carrier status, and upon grant foreign ownership limitations will become totally inapposite. PanAmSat has also notified the Commission of discontinuance of service under its inactive Section 214 authorizations.

to provide the signals of more local broadcast stations in their own local markets. Later this year, HNS expects to launch the first SPACEWAY satellite, part of a Ka-band network utilizing the first processor-based commercial spacecraft to serve the U.S., which will provide classes of service and levels of spectrum efficiency never before realized over a satellite network.

Such innovations have spurred other satellite and terrestrial service providers to upgrade their systems and improve their services. For example, cable operators have invested more than \$65 billion since 1996 to upgrade their infrastructure so that they can deliver digital television and two-way broadband Internet access services.<sup>31</sup> The number of digital cable subscribers is estimated to be over 20 million and has been forecast for the first time to exceed the total number of DBS subscribers served by DIRECTV and EchoStar.<sup>32</sup> Responding to DIRECTV's initiatives, EchoStar has launched two DBS spot beam satellites within the last year for use in providing local-into-local offerings and has used DBS spectrum at "wing" slots to provide local-into-local and niche services as well. EchoStar has entered into transactions that will increase its spectrum advantages over DIRECTV,<sup>33</sup> and EchoStar's net growth in 2002 exceeded DIRECTV's by 300,000

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<sup>31</sup> See *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, Ninth Annual Report, 17 FCC Rcd. 26901, 26917 (2002) ("*Ninth Cable Competition Report*").

<sup>32</sup> See, e.g., Press Release, Leichtman Research Group, "Digital Cable Poised to Overtake DBS" (rel. Feb. 25, 2003) (*available at* [www.leichtmanresearch.com/press/022503release.pdf](http://www.leichtmanresearch.com/press/022503release.pdf)). In a recent study, the Yankee Group projected that DBS will grow only 6% over the next four years, from 20.6 million households in 2003 to 27.1 million households by year-end 2007. This figure is 9% lower than the Yankee Group's previous forecast, a reduction based on the lower net growth rate for DBS in 2002 and the anticipated impact of digital cable. The Yankee Group forecast that digital cable will maintain its lead over DBS, growing from 22.6 million households in 2003 to 39 million households by year-end 2007. A discussion of this study can be found at [www.yankeegroup.com/public/home/daily\\_viewpoint.jsp?ID=9587](http://www.yankeegroup.com/public/home/daily_viewpoint.jsp?ID=9587).

<sup>33</sup> See "SES Americom to Provide Satellite Capacity to EchoStar," Press Release (Mar. 26, 2003) (*available at* [www.ses-amicom.com/media/26\\_mar\\_03.html](http://www.ses-amicom.com/media/26_mar_03.html)) (describing a "multi-

subscribers. Thus, as predicted by basic economic theory, DIRECTV's introduction of competition in the MVPD market has resulted in an increase in innovation and service quality, all to the benefit of American consumers.

Nonetheless, as the satellite services industry moves into a more mature stage, GM and Hughes find themselves at a crossroads. GM needs to focus its energy and capital resources on its core automotive business. At the same time, the video, broadband and fixed-satellite services businesses have become ever more competitive, requiring companies in those areas to redouble their efforts to present more compelling products and services, and to capture increased efficiencies in their operations. As the Commission has observed,

[M]arkets for video services have broadened and grown, reflecting shifts in market demand and supply in recent years. Competitive rivalry between and among suppliers of video services has intensified as consumers find increased choice of video programming and new vendors that supply video programming and video delivery services. Increased competitive rivalry intensifies the pressure on management to (1) improve internal operating efficiency by using inputs of production more effectively and organizing the firm to reduce redundancy in staffing or business functions; and (2) reorganize the firm through horizontal and vertical mergers to achieve economies of scale and scope.<sup>34</sup>

Reflecting these competitive pressures, a number of companies with diversified holdings have decided to divest operational units in an effort to refocus their efforts on their core businesses. Recent cases include GE's decision to sell its satellite services subsidiary to

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year service agreement to provide satellite capacity to EchoStar Communications Corporation" that EchoStar plans to utilize "to seek ways to offer a combination of satellite TV programming bundled with satellite-delivered, high-speed Internet services").

<sup>34</sup> *Amendment of Section 73.658(g) of the Commission's Rules – the Dual Network Rule*, 16 FCC Rcd. 11114, 11120 (2001) (footnote omitted).

SES Global and AT&T's decision to sell its cable systems to Comcast.<sup>35</sup>

GM is world renowned as a leader in the automotive industry, but it has no special expertise in the provision and marketing of satellite services or programming. Moreover, GM has decided to withdraw from the communications business in order to focus its resources on its core automotive business and to help satisfy retiree pension and health benefit legacy costs. GM's continued ownership of Hughes therefore presents an obstacle to the development of both companies because (1) GM cannot focus as fully on its core automotive operations and address its legacy costs, and (2) Hughes does not have the support of a company with a core competency aligned with its satellite operations and the capability to enhance the company's competitive position.

In order to address this situation, GM embarked on a search for an investor that offered a good strategic fit with Hughes. This process has resulted in the proposed transaction with News Corp., a company with experience in operating satellite DTH systems outside of the United States as well as in developing, packaging and marketing popular and groundbreaking video news, sports, entertainment and other services. As importantly, News Corp. has the proven ability to inject real competition into markets that – like the MVPD market – have traditionally been dominated by well-established and well-funded incumbents. DIRECTV will be able to draw upon experience gained by News Corp. in competing with great success in other multichannel video and interactive services markets outside the United States. Based on News Corp.'s history of changing the dynamic of markets it chooses to enter, the proposed transaction can be expected to further invigorate Hughes and enable it to reach its full potential as a competitor.

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<sup>35</sup> See *AT&T/Comcast*, 17 FCC Rcd. at 23246; *General Electric Capital Corp. and SES Global, S.A.*, 16 FCC Rcd. 17575 (2001) (“*GE/SES*”).

As discussed below, the transaction will generate direct and tangible public interest benefits from a number of sources. First, News Corp. has a proven track record of innovation in programming and DTH services, and will apply these same attributes to Hughes. Second, News Corp. is dedicated to increasing the amount of local-into-local, high definition television (“HDTV”), and broadband services Hughes provides to American consumers. Third, by drawing upon its DTH experience and rationalizing the use of facilities across the two companies, News Corp. will increase operating efficiencies at Hughes. Fourth, the affiliation of News Corp. and Hughes will create economies of scope and scale that will help drive down costs and reduce the risks of innovation. Fifth, by introducing new or enhanced capabilities to the DIRECTV platform, News Corp. will increase customer satisfaction and as a result achieve greater subscriber growth and lower churn. Sixth, the proposed transaction will improve Hughes’ capital structure and enable it to access the equity markets. Lastly, News Corp. will bring to Hughes its significant commitment to diversity and equal opportunity.

***A. News Corp.’s Proven Track Record***

News Corp. comes to this transaction with an established history in media services generally, and in the satellite DTH service in particular. News Corp. has been involved with operating satellite DTH systems since 1989 and holds interests in DTH platforms outside the United States serving over 12 million subscribers worldwide. It is the world’s leading distributor of television services via satellite and has amassed an invaluable reservoir of expertise in this area. In addition, News Corp. has an impressive record of programming and technical innovation in the United States. In launching the FOX network, Fox News Channel, Fox Sports Net, and National Geographic Channel,

and investing heavily in establishing local news services in 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. News Corp.’s proven track record illustrates and substantiates the kinds of compelling public interest benefits that will result from the proposed transaction and the boost it will give to competition in the marketplace. And because Hughes’ satellite signals are available nationwide, the benefits of this competition – more innovative services at better prices – will be available to consumers throughout the United States, including in rural and other areas that are underserved, or totally unserved, by terrestrial MVPDs.

*1. A Tradition of Innovation In DTH Technology*

Outside the United States, innovation has been the rule for the DTH platforms in which News Corp. holds an interest. The example with the longest history is BSkyB, which News Corp. launched in 1989 – five years before DIRECTV launched. At that time, BSkyB transmitted only four channels of programming. By 1995, that number had grown to 25 channels, but the platform’s analog technology constrained further increases. Rather than accept this limitation, BSkyB decided to convert to digital technology, and in 1998 it launched a digital service that offered 140 channels. More than 100,000 digital decoders were sold in the first 30 days. In 1999, BSkyB offered free set-top boxes and dishes to help speed the conversion and drive penetration, resulting in 1.2 million gross subscriber additions in just 10 months. In 2001, BSkyB had reached a total of five million subscribers and completed its transition to digital technology – after three years and at a cost of nearly one billion dollars. As a result, the viewing public in the U.K. had

access to a much larger array of video programming options, and BSkyB has grown to over six million DTH subscribers. Today, BSkyB offers more than 375 channels delivering programming 24 hours a day.

BSkyB's transition to digital technology also fed other innovations. For example, in 2000, BSkyB launched the world's first interactive TV news service, Sky News Active, which, among other things, allows viewers to choose from multiple segments being broadcast simultaneously on a news channel. Over the last three years, BSkyB has continued to introduce additional ITV services and capabilities to its subscribers, and today its SkyActive service delivers online shopping, banking, games, e-mail, travel, tourism, and information services with all the look, feel, and immediacy that customers expect from television. With this technology, viewers can, for example, view multiple screens of programming within a certain genre and click on the one that interests them, and can choose from among multiple camera angles during the broadcast of sporting events. In addition, in 2001 BSkyB launched Europe's first fully integrated DVR, Sky+, giving viewers still more interactive capabilities. These sorts of innovations provide subscribers with a greatly enhanced viewing experience and lead to greater customer satisfaction.

Upon consummation of the proposed transaction, News Corp. will bring this same spirit of innovation to Hughes. DIRECTV currently offers limited ITV capabilities to its subscribers, but few subscribers appear to be making use of those capabilities. Drawing on the experience and expertise gained in launching, marketing, and operating the SkyActive service, News Corp. intends to enhance the ITV capabilities available to DIRECTV subscribers and to create a greater level of awareness among consumers.

News Corp. believes that this exciting new capability will increase DIRECTV's operating earnings by approximately \$29 million to \$43 million after a two to three year ramp-up period.<sup>36</sup> Similarly, while DIRECTV's manufacturing partners offer set-top boxes ("STBs") with integrated DVRs, consumer adoption of this technology to date has been limited to a small audience.<sup>37</sup> News Corp. will make a concerted effort to increase the penetration of DVRs by drawing on the marketing expertise within FEG, BSKyB and other affiliated companies to create consumer awareness of and demand for the product. News Corp. firmly believes that increasing the use of ITV and DVR technology will help to attract and retain subscribers and make DIRECTV a better competitor in the MVPD market.

## ***2. A Tradition of Innovation In Programming***

News Corp. has consistently been an innovator in the field of video news, sports and entertainment, and in the process has demonstrated its willingness to adopt unorthodox strategies, enter new fields, and challenge incumbents – and to do so successfully. In the United States, this drive for innovation has taken many forms familiar to the Commission.

News Corp. launched the FOX network in 1986, at a time when three networks had dominated television broadcasting for three decades. Many were skeptical that a fourth network could survive, let alone compete.<sup>38</sup> Not only has FOX survived, it has

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<sup>36</sup> See Declaration of Peter Giacalone at ¶ 20 ("Giacalone Dec."). The Giacalone Declaration can be found at Attachment E to this Application.

<sup>37</sup> See, e.g., "Digital Video Recorder Growth on Pause," Leichtman Research Group (rel. April 8, 2003) (study finding that 1% of cable and DBS subscribers report having a DVR, and only 5% view themselves as very familiar with the product).

<sup>38</sup> At the time, the conventional wisdom was that a fourth network could not survive. See, e.g., Gene Jankowski, President of CBS Inc.'s Broadcast Group, May 1985 ("To say that one



flourished, redefining television in characteristic FOX fashion. During its seventeen year tenure, FOX has launched successful, groundbreaking shows like *The Simpsons* (the longest running entertainment series on television), *In Living Color* (which revitalized sketch comedy and launched the careers of Jim Carrey, Keenan Ivory Wayans and several others), *America's Most Wanted* (which has been responsible for the apprehension of 750 criminals), and *The X-Files* (which redefined the boundaries of science fiction television), and more recently shows like *24*, *Boston Public*, *Malcolm in the Middle*, and *The Bernie Mac Show*. FOX's programming wins not only ratings, but also critical acclaim, boasting countless Emmy, Golden Globe, Peabody, and Television Critic's Association Awards over the years.<sup>39</sup>

In 1996, ten years after the launch of the FOX network, News Corp. launched the Fox News Channel and – despite initial resistance from a number of cable companies and a chorus of doubters<sup>40</sup> – has developed that programming to the point where it has

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organization could come into existence, create programming and attract enough advertising so that revenues cover expenses is a real stretch of the imagination"); Barbara Bradley, *Christian Science Monitor*, May 1985 ("Whatever its editorial stance, the new Fox broadcast group has little chance of becoming a fourth network.").

<sup>39</sup> *The Simpsons* alone has garnered 18 Emmy Awards, the George Foster Peabody Award, the Television Critics Association Award for Outstanding Achievement in Comedy, a People's Choice Award, Parent's Choice Awards, and Nickelodeon Kids Choice Awards, among many others. In addition, 20<sup>th</sup> Century Fox Television, which produces shows for FOX and many other networks, has earned more than 100 Emmy awards for such critically acclaimed series as *M\*A\*S\*H*, *L.A. Law*, *Picket Fences*, *The X-Files*, *The Practice*, *Ally McBeal*, *The Simpsons*, *King of the Hill*, *24*, and *The Bernie Mac Show*.

<sup>40</sup> See, e.g., Bill Carter, "Murdoch Joins a Cable-TV Rush Into the Crowded All-News Field," *New York Times* (Jan. 31, 1996)(Fox News announcement "generated more skepticism than the earlier announcements because unlike NBC or ABC, [News Corp.] is starting up a news channel without an existing network news division"); Frazier Moore, "Fox News Pledges Balance As It Faces Rivals," *Associated Press* (Oct. 7, 1996)("FNC will be battling one other thing: skepticism from onlookers that, despite Murdoch's might and Ailes' scrappiness, FNC joins the all-news free-for-all too small, too late, too green – and, in practice, too much like the others").

overtaken CNN as the nation's most watched cable news network, growing from 17 million subscribers at launch to almost 82 million subscribers this month.

Paralleling its efforts in national news, News Corp. through its subsidiary, Fox Television Stations, Inc. ("FTS"), has been an innovator in the area of local news and informational programming. Today, the 35 full-power television stations that FTS owns and operates (the "O&Os") air more than 800 hours of regularly-scheduled local news per week (an average of over 23 hours per week per station). Prior to acquisition by FTS, many of those stations provided little or no local news programming; in fact, FTS has increased the local news programming hours across its O&Os on average by 57% per week as compared to the period prior to FTS's ownership. In nearly all of their markets, FTS O&Os air a three-hour (or longer) weekday morning news program. While the O&Os and affiliates of other broadcast networks are limited to a few five-minute cut-ins during their network's national morning news show, the FTS O&Os were often the first (and in many markets are still the only) stations to offer hours of innovative and unique local news and information programming each weekday morning. FOX has also pushed to extend these practices beyond the O&Os to the non-owned affiliates. For the past several years, *FOX's standard affiliation agreement has required affiliates to commit to launch or increase local news programming, and FOX has provided affiliates support and resources to accomplish these goals. Since 1994, FOX has assisted more than 100 affiliates in launching local newscasts.*

As with entertainment and news, FOX has been an innovator in sports. FOX burst onto the sports scene in 1993 with a contract to broadcast NFL games, an area that had been dominated by CBS, NBC and ABC. Since then, FOX has become the

recognized leader in developing innovative technology that marries information and entertainment in a way that makes nationally televised sporting events more viewer friendly.<sup>41</sup> These technological innovations, together with FOX's innovative packaging of sports programming, have resulted in 18 Sports Emmys in the seven major categories in the last 4 years, more than three times the number of Sports Emmys won by NBC (4), ABC (1), and CBS (0) combined.<sup>42</sup>

Taking this sports innovation to the MVPD world, News Corp. in 1997 co-founded Fox Sports Net, a national sports programming venture consisting of regional sports networks that competes with ESPN, the dominant cable sports franchise. Its 19 regional sports channels (10 wholly or majority owned and 9 minority owned or affiliated) now reach over 79 million homes. Fox Sports Net is the only network that delivers what sports fans most passionately desire: live home team games coupled with outstanding national sports events and programming.

And finally, in its most recent entry in the cable programming business, News Corp. launched the National Geographic Channel in January 2001 with 9 million subscribers. It is now at 43.1 million subscribers and is the fastest-growing network in

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<sup>41</sup> These innovations include the "FOX Box" that presents scores and other related information on sporting events in graphical overlays on the TV screen. That enhancement has now been widely imitated by virtually every broadcaster worldwide and is considered standard fare by viewers. FOX Sports was also the first to broadcast NFL games with a yellow line superimposed at the first down marker. In baseball, FOX introduced the "catcher cam" and enhanced audio coverage (including microphones in bases, in the outfield wall, and in foul line markers), and in hockey the "glowing puck." For NASCAR broadcasts, it pioneered the use of rich, real-time graphic overlays that track the status and standing of individual cars. FOX Sports was also first in routinely producing its broadcasts in Dolby Digital Surround Sound.

<sup>42</sup> The seven major categories of Sports Emmys include Best Play by Play, Best Game Analyst, Best Studio Host, Best Studio Analyst, Best Studio Show, Best Live Sports Special, and Best Live Sports Series.

the MVPD business in terms of distribution. National Geographic Channel is gradually increasing in ratings against the industry leader, The Discovery Channel.<sup>43</sup>

As it did in the areas of entertainment, news and sports, News Corp. will bring its demonstrated spirit of innovation, creativity, energy and expertise to Hughes, with the goal of shaking up established incumbents and bringing customers innovations that revolutionize the MVPD market.

***B. Local-Into-Local, HDTV and Broadband***

Among the most important areas in which News Corp. will enhance DIRECTV's competitive position are: (1) dramatically increasing the number of designated market areas ("DMAs") in which local broadcast signals are available to subscribers, (2) increasing the amount of HDTV programming available nationwide, and (3) developing a number of options for consumer broadband services.

News Corp. was the *first* proponent of local-into-local service,<sup>44</sup> and in fact conceived and designed a technological vehicle – a DBS spot beam satellite – to accomplish the previously unheard of concept as part of its American Sky Broadcasting ("ASkyB") venture.<sup>45</sup> News Corp., with its grounding as a U.S. broadcaster, has always been convinced that DBS will be the strongest possible competitor to cable only if it can provide consumers with the broadcast channels they have come to rely on for local news,

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<sup>43</sup> Discovery Channel is 49.8% owned by Liberty and 24.6% by Cox Communications, Inc. See *Ninth Cable Competition Report*, 17 FCC Rcd. at 26980, Table C-1.

<sup>44</sup> See, e.g., Testimony of Rupert Murdoch, *Hearing on Multi-Channel Video Competition* before the Committee on Commerce, Science and Transportation, U.S. Senate, at p. 22 (April 10, 1997).

<sup>45</sup> ASkyB was originally formed as a joint venture between News Corp. and MCI in 1996 to provide DBS service using channels MCI had won at the first DBS auction.

weather, traffic and sports. Consequently, local-into-local was a key component of the ASkyB business plan from the venture's inception.

This view has been borne out over the last few years, as DIRECTV and EchoStar have increased year-over-year gains in subscribers dramatically in DMAs where they provide local-into-local services<sup>46</sup> – while at the same time driving cable operators in those markets to increase their level of service in response.<sup>47</sup> Thus, expansion into additional DMAs not only would have the direct effect of offering local channels to more subscribers, but it also would indirectly benefit cable subscribers in those markets by offering true alternatives to cable and spurring cable operators to improve their service in some respect.

Prior to entering into the proposed transaction with News Corp., DIRECTV had announced plans to extend its local-into-local coverage to approximately 100 DMAs by the end of 2003, subject to the successful launch and positioning of DIRECTV's newest spot beam satellite, DIRECTV 7S.<sup>48</sup> However, under GM's ownership and capital constraints, Hughes has been unwilling to consider investing the capital necessary to do more. 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 DMAs as possible, and to doing so as soon as economically and technologically feasible. To that

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<sup>46</sup> See General Accounting Office, *Telecommunications: Issues in Providing Cable and Satellite Television Services*, Report to the Senate Judiciary Committee, Subcommittee on Antitrust, Competition, and Business and Consumer Rights, at 9 (Oct. 2002) (“GAO Report”) (“We found that in areas where both DBS companies introduced local broadcast channels, DBS subscribership grew by approximately 210 percent over this time period, while in areas where local channels were not available, it grew by 174 percent in the same time frame”).

<sup>47</sup> See *id.* at 10 (“In areas where both DBS companies provide local channels, our model results indicate that cable companies offer subscribers approximately 6 percent more channels”).

<sup>48</sup> See Press Release, “DIRECTV Names 39 New Local Channel Markets,” (Mar. 19, 2003) (available at [www.directv.com/DTVAPP/aboutus/headline.jsp?id=03\\_19\\_2003A](http://www.directv.com/DTVAPP/aboutus/headline.jsp?id=03_19_2003A)).

end, News Corp. has already begun to consider a number of alternative strategies for using new satellites, new technologies, new ventures, or a combination of these approaches.<sup>49</sup>

For example, News Corp. is looking into the feasibility of using some of the Ka-band satellite capacity on HNS' SPACEWAY system to provide DTH service. HNS has recently expanded the North American portion of the SPACEWAY system to include a third orbital location with full-CONUS coverage, and it has three spacecraft well under construction that are designated for its three licensed full-CONUS locations. When Hughes filed its SPACEWAY application in 1995, Hughes envisioned that the system could be used for a variety of services, including DTH programming services and broadband services. The focus of the SPACEWAY program, however, is the provision of broadband services, and primarily service to enterprise customers. The additional full-CONUS capacity afforded by having a third North American orbital location provides the opportunity to use some of the SPACEWAY capacity for DIRECTV to extend local-into-local service into more DMAs.

News Corp. is also considering other strategies that could prove effective in extending local-into-local to more DMAs. For example, it is exploring the potential of incorporating digital terrestrial television tuners into DIRECTV set-top boxes. By mounting a small antenna for receiving broadcast signals at the same point where the satellite dish is located, most subscribers would be able to receive digital television broadcast signals from their local stations over-the-air. And unlike analog signals, which

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<sup>49</sup> As the General Accounting Office found last year, spectrum limitations make penetration into additional DMAs using DBS spectrum impractical at this point. See GAO Report at 11 (providing local channels in all 210 DMAs using current technology would put such a strain on capacity that it "would compromise the competitiveness of a DBS company with cable").

require the use of inconvenient “A/B” switching, these digital signals can be seamlessly processed by the STB with the DIRECTV satellite signal in a manner that will be transparent to the viewer. News Corp. will also explore other emerging technologies that could be used to deliver local signals, either alone or in combination with one or more of the above alternatives.

News Corp. continues to believe, as it did six years ago with ASkyB, that DIRECTV will achieve its full potential as an MVPD only if it can offer all subscribers their local channels. Accordingly News Corp. intends to continue the process it began at ASkyB, balancing its long-held belief in the importance of providing consumers with the local broadcast channels they depend on with the need to find creative and cost-effective ways to achieve this goal so as not to compromise its ability to compete with incumbent cable operators.

Similarly, News Corp. intends to investigate new technologies that promise to improve spectrum efficiency or otherwise increase available capacity so that it can expand the amount of HDTV content available on DIRECTV. For example, if capacity on the SPACEWAY system is made available to DIRECTV, such capacity could be used to carry many more than the four HDTV channels DIRECTV currently carries and the five channels that some cable operators have committed to carry as part of the voluntary plan proposed by Chairman Michael Powell.<sup>50</sup> Higher order modulation schemes, such as the 8PSK technology FOX uses for its broadcast distribution to affiliates, could also provide additional capacity, as could further improvements in compression technology.

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<sup>50</sup> See *Second Periodic Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television*, FCC 03-8 at ¶ 15 (rel. Jan. 27, 2003).

News Corp. will explore these and other technological and business solutions in an effort to help drive the transition to digital television.

Hughes today provides satellite broadband services, and News Corp. will work aggressively to ensure that broadband services are available to as many American consumers as possible. Among the possibilities for offering broadband solutions to all Americans that News Corp. will explore are partnering with other satellite broadband providers, DSL, new potential broadband providers using Wi-Fi, power line broadband systems, or other emerging technologies. News Corp. believes it is critical that consumers have a vibrant set of broadband choices that compete with cable's video and broadband services on capability, quality and price.

***C. Increased Operating Efficiencies***

News Corp. also has a long-standing commitment to running cost-efficient operations that it will bring to Hughes. DIRECTV subscribers in particular stand to benefit from improvements in DIRECTV's cost structure. While Hughes is making efforts to reduce its costs, the ability to draw upon proven expertise and business development teams from some of the most experienced DTH and pay television managers in the world will be an invaluable resource in this effort. As set forth in the Giacalone Declaration, based on News Corp.'s experience with other DTH operations and an evaluation of the publicly available information regarding the cost structure of competing MVPDs, News Corp. expects that it will be able to reduce DIRECTV's annual overhead and other expenses significantly – in the range of \$65 million to \$135 million



annually – which will free up funds for investment in research, development, and marketing, and ultimately will make DIRECTV a better MVPD competitor.<sup>51</sup>

In addition, News Corp. and Hughes are only beginning to discuss the ways in which the facilities used by their various subsidiaries provide overlapping capabilities that could be streamlined to achieve even greater levels of efficiency. For example, FEG has two major national distribution centers where programming is consolidated, processed, and uplinked by satellite for distribution to MVPDs and FOX affiliated broadcast stations. DIRECTV also has two major national distribution centers where programming is consolidated, processed, and uplinked by satellite for distribution to subscribers. Each of these facilities costs approximately \$100 million to construct, and in the aggregate, it costs upwards of \$200 million per year to operate all of these facilities. By co-locating one of the FEG facilities with one of the DIRECTV facilities, both FEG and DIRECTV could realize substantial cost savings through the sharing of expenses for common facilities.

Moreover, sharing a national distribution facility will also enable the companies to streamline their use of fiber optic transport facilities. DIRECTV operates a large fiber video transport network, primarily in connection with its local-into-local services. FOX also operates a large fiber video transport network, as virtually every sporting event carried by FOX Sports is backhauled to one of FEG's national distribution centers. If the distribution facilities are co-located, the companies can share the costs of maintaining such extensive networks, which would be especially advantageous in backhauling common feeds. For example, during the fall, both FOX Sports and DIRECTV backhaul

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<sup>51</sup> See Giacalone Dec. at ¶¶ 9-14.

the feeds from multiple cities each week during the football season for the very same NFL broadcasts. Once the proposed transaction has been consummated, they will be able to dovetail these and other backhaul operations, eliminate duplication, and realize significant cost savings. In addition, FOX and DIRECTV will be able to provide each other with back-up capacity in the event of network outages – including those caused by national emergencies – which will give each company more robust capabilities. An improved cost structure and enhanced back-up capabilities will position DIRECTV to be a stronger competitor in the MVPD market, and allow it to devote more of its financial resources to programming and innovation.

***D. Economies of Scope and Scale***

Hughes' operations in the United States will complement the DTH operations in other countries in which News Corp. holds an interest, creating for the first time a global MVPD presence.<sup>52</sup> The resulting economies of scope and scale will enable News Corp. and Hughes to develop and introduce innovations more economically and capture the benefits of vertical integration. Thus, the proposed transaction will create not only the drive and desire to introduce innovative programming and technology, but also an increased capability for doing so more efficiently and economically. Greater efficiency in developing and producing STBs alone will reduce costs by approximately \$60 million annually within two years.<sup>53</sup> These cost savings and revenue enhancements will enable DIRECTV to finance research and development of still more innovations in

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<sup>52</sup> The Commission has recognized the advantages and “likely pro-competitive benefits of global expansion, such as economies of scale, seamless service through standardization, reduction of risk through geographic diversification, and speed in disseminating innovations.” *VoiceStream Wireless Corp.*, 16 FCC Rcd. 9779, 9841 (2001).

<sup>53</sup> See Giacalone Dec. at ¶ 22.

programming and technology to ensure that its DBS service achieves and maintains the highest value for subscribers at competitive prices.

Once the proposed transaction is consummated, News Corp. will be able to draw upon the technological talents of its subsidiaries and affiliates to complement those of DIRECTV and HNS. Moreover, because Hughes will be part of News Corp.'s global family of DTH affiliates, Hughes will benefit from a number of scale economies. For example, with a subscriber base over double the size (over 23 million subscribers for News Corp./DIRECTV worldwide versus 11.4 million subscribers for DIRECTV alone in the United States), News Corp. will be able to more efficiently defray the enormous research and development costs associated with bringing new services and features to market. Moreover, to the extent possible, News Corp. intends to pursue common technology standards for both hardware and software development throughout its platforms. This not only will drive down per-unit costs once a new product or service has been developed, but also will provide additional incentives for accelerated investment and research by unaffiliated equipment manufacturers and software developers seeking global opportunities.

With these structural advantages, News Corp. and Hughes will be able to more efficiently and economically explore next-generation technologies such as improved video compression in Advanced Video Codec, improved audio compression in Advanced Audio Codec, and improved spectrum efficiency using 8PSK and other advanced modulation techniques and Turbo coding. The companies also will be able to develop and produce state-of-the-art STBs with upgraded ITV and DVR capabilities. Moreover, they will be able to produce and market STB configurations – including the use of

wireless connections – that will create personal digital networks and make multi-set operations in the home more convenient and more economical for consumers, thereby eliminating what is often perceived as a competitive disadvantage for DBS *vis-a-vis* cable service. In the near term, News Corp.’s ability to spread development costs and gain volume discounts should decrease the incremental cost of each STB by at least \$10. Using the number of gross STB sales in 2002 as a baseline going forward – a conservative assumption given News Corp.’s expectation for increased subscriber growth – DIRECTV would save approximately \$60 million per year in subscriber acquisition costs, which will lead to a more competitive offering to consumers.<sup>54</sup> Additional savings can be expected as the economies of scale continue to drive down the cost of innovation.

As the Commission has also recognized, vertical relationships have beneficial effects, such as efficiencies in the production, distribution, and marketing of video programming, and incentives to expand channel capacity and create new programming by lowering the risks associated with program production ventures.<sup>55</sup> All of these beneficial effects should be realized through the proposed transaction. For example, with access to a base of over 11 million DIRECTV subscribers, News Corp. will face fewer risks in developing and launching new programming in the United States and thus will have greater incentive to expand supply. And as discussed in greater detail below, the parties have agreed to abide by a series of program access undertakings that should lay to rest any concern that this vertical relationship could have anti-competitive effects.

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<sup>54</sup> See Giacalone Dec. at ¶ 23.

<sup>55</sup> *Ninth Cable Competition Report*, 17 FCC Rcd. at 26959 and n.440.

***E. Improved Customer Satisfaction***

For News Corp. and Hughes, customer satisfaction is not just a laudable goal, it is a strategic imperative. In News Corp.'s experience, customer satisfaction increases proportionately with increases in the number and quality of innovative DTH products and services. For the reasons discussed above, News Corp. and Hughes have every expectation and intention that the proposed transaction will increase Hughes' ability to achieve significant improvements in these areas. The result will be an enhanced viewing experience for DIRECTV subscribers, and a competitive challenge that will drive improvements by other MVPD operators as well – all to the benefit of the American viewing public. Moreover, a compelling video product and the resulting increase in customer satisfaction translate into a stronger, more competitive DIRECTV in two ways. First, they increase the number of new subscribers attracted to the service. Second, they reduce the number of existing subscribers who choose to discontinue the service (so-called “churn”). As a result of these factors, DIRECTV will have more financial resources to develop further product and service innovations that will continue to raise customer satisfaction.

After the proposed transaction is consummated, News Corp. and Hughes intend to develop new products and services for DIRECTV subscribers and also to implement “best practices” developed by News Corp.'s DTH interests outside the United States to improve the overall attractiveness of the service. By doing so, they estimate that DIRECTV will realize incremental growth (*i.e.*, growth beyond that currently anticipated) of approximately 750,000 to 1,000,000 additional subscribers by 2006. In addition to attracting new subscribers, the customer satisfaction that comes from a

compelling and innovative service will also help dissuade existing subscribers from switching to another service. Recently, DIRECTV has experienced an annual churn rate of approximately 18%.<sup>56</sup> By comparison, BSkyB's annual churn rate has historically been between 9.5% and 10%, and currently is approximately 9.4%.<sup>57</sup> By using the expertise News Corp. has gained through BSkyB, accelerating the pace of innovation, and improving the overall subscriber experience, DIRECTV should be able to reduce its annual churn rate by 2% to 3% over the next few years. For every 1% reduction in churn, DIRECTV will increase its earnings by \$33 million per year.<sup>58</sup>

As a leading supplier of conditional access technology, NDS has, together with many of its other customers, engaged in extensive and aggressive efforts to combat signal piracy. DIRECTV has also been working on its own conditional access technology. By bringing together these parties to seek a unified set of technological and "best practices" strategies over the worldwide News Corp. subscriber base, the proposed transaction should result in a significant reduction in signal piracy.

Adding the incremental new subscribers to the existing subscribers who decide not to churn, News Corp. estimates that customer satisfaction will result in an overall incremental increase of approximately \$450 million to \$525 million in earnings per year in 2006.<sup>59</sup> These revenues can be used to finance additional initiatives in research,

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<sup>56</sup> See Hughes Electronics Corporation First Quarter 2003 Earnings Release (Apr. 14, 2003) (*available at* [www.hughes.com/ir/releases/2003\\_results/q1\\_2003/default.asp](http://www.hughes.com/ir/releases/2003_results/q1_2003/default.asp)).

<sup>57</sup> See British Sky Broadcasting Group plc Results for the Six Months Ended 31 December 2002 (Feb. 14, 2003) (*available at* [media.corporate-ir.net/media\\_files/lse/bsy.uk/interim.pdf](http://media.corporate-ir.net/media_files/lse/bsy.uk/interim.pdf)).

<sup>58</sup> See Giacalone Dec. at ¶ 17.

<sup>59</sup> See *id.*

development, and marketing that will ensure that DIRECTV continues to offer products and services with the greatest appeal to consumers.

***F. Improved Capital Structure***

At present, Hughes is a wholly owned and controlled subsidiary of GM, one of the nation's premier automobile manufacturers. GM Class H common stock is a publicly traded GM tracking stock that is designed to provide holders with financial returns based on the financial performance of Hughes. The GM Class H common stock is not an asset-based Hughes stock. As a consequence of its ownership by GM, Hughes today remains largely constrained by the broader economic obligations, objectives and financial management goals of GM – which may not always be consistent with the focused maximization of the various Hughes businesses. Moreover, Hughes does not have direct access to the equity markets.

The continued development of the DIRECTV DBS business will require substantial additional capital investment in the coming years. However, because of its other obligations, objectives and goals, GM has made clear that this funding will have to come from another source. Yet, as a wholly-owned GM subsidiary whose economic performance is reflected in a “tracking stock” issued by GM, Hughes is severely limited in its ability to pursue alternative funding sources, including sources in the public equity markets.<sup>60</sup> In the past, because of the absence of capital, Hughes has delayed or foregone certain projects it deemed to be strategically important, such as the deployment of a next generation of STBs, the aggressive marketing of satellite and terrestrial consumer

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<sup>60</sup> DIRECTV has been able to raise financing in the public debt markets. However, access to the public debt markets alone is not adequate. The ability to raise financing through the issuance of equity securities provides many more opportunities to raise needed funds. It also provides much greater flexibility to structure the terms on which the funds are raised.

broadband offerings, the allocation of additional resources to provide local-into-local services in more DMAs, and other strategic transactions.

The proposed transaction will solve this problem and provide significant benefits to GM, Hughes and the American public. By divesting Hughes, GM will be able to refocus on its core automotive businesses. Moreover, the proceeds from the sale of GM's retained economic interest in Hughes will be applied to help offset certain "legacy" financial obligations – *i.e.*, pension and benefit plans for GM workers – that have become a significant consideration in GM's financial planning. For its part, by separating from GM, Hughes will finally be able to control its own destiny and to access the equity markets directly on a standalone basis – on its own schedule, for its own purposes, and on its own account.

This greater flexibility and independence will result in tangible benefits to the consumer. It will provide Hughes, for example, with an enhanced ability to obtain the financing necessary to underwrite investment in and deployment of new services and technologies. By facilitating Hughes' separation from GM, News Corp. will assist in creating an improved capital structure under management focused solely on DIRECTV's MVPD business and other satellite services provided by Hughes subsidiaries, and thereby make a significant contribution toward unlocking Hughes' competitive potential.

***G. Commitment to Diversity***

News Corp. has a deep commitment to equal opportunity and diversity that is among the best in the entertainment industry, and it will bring this commitment to Hughes. As discussed below, this will translate into specific initiatives to carry more programming targeted at culturally, ethnically, and linguistically diverse audiences, to



provide guidance to minority programming entrepreneurs, to expand the diversity of its workforce, and to ensure that Hughes' corporate communications and procurement policies are exemplars of equal opportunity and diversity. These efforts will further the Commission's goals and the broad aims of the Communications Act.<sup>61</sup>

News Corp. and its operating subsidiaries have been leaders in the diversity area. In 2000, News Corp. established a Diversity Development Department as part of a broader initiative to increase opportunities for minorities and women throughout the company. This initiative focused first on the FOX broadcast operation and progressed into filmed entertainment and cable network programming, including the sports and news divisions. The Diversity Development Department is headed by Senior Vice President Mitsy Wilson, who reports directly to Peter Chernin, President and Chief Operating Officer of FEG, Sandy Grushow, Chairman of Fox Television, and Gail Berman, President of Entertainment for FOX. In these reporting relationships, the department is uniquely positioned to identify opportunities and implement new programs that will impact day-to-day operations and create strategic alliances that will ensure the expansion of diverse representation for years to come. In the three years since it embarked on this initiative, News Corp. has put in place an impressive array of recruitment, outreach, development and procurement policies to further diversity. All such policies share one aim: to identify traditionally untapped talent and bring it in to strengthen News Corp.'s franchise.

Results of the initiative have been particularly significant within the broadcast and television studio divisions, leading to increased opportunities for writers, directors,

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<sup>61</sup> See *EchoStar/Hughes*, 17 FCC Rcd. at 20575.