

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

In re )  
 )  
General Motors Corporation and ) MB Docket No. 03-124  
Hughes Electronics Corporation, )  
Transferors )  
 )  
and )  
 )  
The News Corporation Limited, )  
Transferee )

To: Chief, Media Bureau

**COMMENTS OF MARANATHA BROADCASTING COMPANY, INC.**

Maranatha Broadcasting Company, Inc. ("MBC"), licensee of television broadcast station WFMZ-TV, Allentown, Pennsylvania, through counsel and pursuant to the FCC's *Public Notice*, DA 03-1725, released May 16, 2003, hereby offers these brief comments concerning the application by The News Corporation Limited ("News Corp.") for acquisition of control over DIRECTV Holdings, LLC ("DIRECTV"), the largest provider of direct broadcast satellite (DBS) service in the United States. WFMZ-TV's signal is provided to DIRECTV's subscribers in the Philadelphia Designated Market Area (DMA) pursuant to the local-into-local signal carriage provisions of the Satellite Home Viewer Improvements Act of 1999 (SHVIA). MBC, therefore, has an interest in the outcome of the FCC's review of News Corp.'s application.

MBC does not oppose the News Corp. application. However, any approval of the News Corp. application should be conditioned so as to protect WFMZ-TV and other

independent television stations from discrimination in the implementation of the must-carry provisions of the SHVIA. Specifically, the FCC should rule that any configuration of signals requiring DIRECTV's subscribers to install more than one satellite dish to receive the signals of all of the local television broadcast stations in a given market would violate the nondiscrimination requirements of the SHVIA.

This is *not*, currently, an issue as to DIRECTV, so far as WFMZ-TV is concerned. MBC's relations with DIRECTV have been cordial and cooperative. It *is* an issue, however, with DIRECTV's competitor, EchoStar Satellite Corporation ("EchoStar"), which has configured its satellite capacity so that EchoStar subscribers in most major markets, including Philadelphia, must install a second satellite dish in order to view the signals of local independent television stations, i.e., stations not affiliated with one of the national television networks, and certain noncommercial television stations.<sup>1</sup> The legality of EchoStar's "two dish" policy is now under review by the FCC.<sup>2</sup>

DIRECTV currently provides subscribers with the signals of all local television stations through a single dish. Moreover, DIRECTV is now on the record as among those who believe that EchoStar's "two-dish" policy is unlawful.<sup>3</sup> MBC is concerned, however,

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<sup>1</sup> In the Philadelphia market, EchoStar subscribers receive the ABC, CBS, Fox, NBC, UPN and WB network affiliated stations, and one PBS station, on the same satellite dish used for reception of EchoStar's lineup of regular non-broadcast program channels. WFMZ-TV and other independent and noncommercial educational television stations in the Philadelphia market are consigned to a separate satellite, requiring installation of a separate satellite dish at the subscriber's residence.

<sup>2</sup> See Declaratory Ruling and Order, DA 02-765 CSR-5865-Z, released April 4, 2002 (reconsideration and review pending).

<sup>3</sup> Ex Parte Petition for Expedited Action in CSR-5865-Z, filed March 28, 2003 (the "*Ex Parte Petition*").

as the FCC should be concerned, about the implications for DIRECTV's future operations should the FCC rule that EchoStar's two-dish policy does not violate the SHVIA. This concern is predicated on two factors: (1) DIRECTV's expression of interest in implementing a two-dish policy in both future and existing local markets, in the event EchoStar's policies are found to comply with the SHVIA, *Ex Parte Petition*, p. 16);<sup>4</sup> (2) the potential for anti-competitive conduct inherent in the common ownership of a DBS provider and a major television network.

News Corp.'s programming interests include the Fox television network, various cable networks (also distributed by DIRECTV), and, through Fox Television Stations, television stations (including WTXF-TV, Philadelphia, with which WFMZ-TV must compete for audiences, programming and advertising revenue) that reach more than 40 percent of the television households in the United States.

A two-dish policy is inherently discriminatory. It imposes transactional and opportunity costs on subscribers seeking to view the stations less favored by the DBS operator, therefore violating SHVIA's prohibition on price discrimination. It constitutes discrimination with regard to signal quality and navigational devices. These discriminatory consequences are by themselves sufficient grounds for the FCC to declare the practice unlawful.

EchoStar has utilized its two-dish policy to favor retransmission consent stations over must-carry stations, and to cherry-pick the most-watched local stations in order to sell

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<sup>4</sup> The News Corp. application promises a dramatic increase in the number of markets receiving local-into-local service but does not eschew a two-dish policy as a means for achieving that result. Application, pp. 27-31.

local-into-local service in more markets. If DIRECTV were to adopt its own two-dish policy in response to an FCC decision validating EchoStar's policy, DIRECTV's incentive to discriminate against independent stations would be compounded. News Corp., acting through DIRECTV, would be in a position to inflict direct injury on independent television stations that compete with Fox owned-and-operated stations (and Fox affiliated stations and Fox cable programming channels).

Accordingly, in acting on News Corp.'s proposed acquisition of DIRECTV, the FCC should affirm DIRECTV's announced position – that a two-dish system for delivering local television station signals is inherently unlawful – and require, as a condition of any approval of the transaction, that DIRECTV be permanently barred from ever implementing such a system.

Respectfully submitted,

MARANATHA BROADCASTING  
COMPANY, INC.

By \_\_\_\_\_  
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