

July 14, 2003

BY ELECTRONIC FILING

W. Kenneth Ferree
Chief, Media Bureau
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, DC 20554

Re: *Consolidated Application of General Motors Corporation, Hughes Electronics Corporation, and The News Corporation Limited for Authority to Transfer Control (MB Docket No. 03-124)*

Dear Mr. Ferree:

In accordance with Section 1.1206 of the Commission's rules, 47 C.F.R. § 1.1206, The News Corporation Limited ("News Corp."), General Motors Corporation and Hughes Electronics Corporation ("Hughes"), Applicants in the above-referenced proceeding, submit this letter to address the need for enhanced confidential treatment for certain materials called for by the Commission's request for information dated July 8, 2003, such that only outside counsel and their consultants/employees may have access to such materials. Specifically, (1) News Corp. seeks enhanced protection for certain materials related to its programming contracts and retransmission consent agreements with multichannel video programming distributors ("MVPDs"), as well as its business and marketing plans; and (2) Hughes seeks enhanced protection for granular customer data (e.g. subscriber information by DMA or ZIP code), including churn data, as well as certain materials related to its programming contracts, and business and marketing plans. These materials constitute some of the most sensitive data requested by the Commission, and contain the type of information that has been afforded heightened protection in prior proceedings.¹ For the reasons set forth below, inadvertent or intentional disclosure of these materials to the Applicants' competitors and customers – some of whom are parties in this proceeding² – would have a devastating effect on their businesses and place the

¹ See, e.g., *EchoStar Communications Corp., General Motors Corp., and Hughes Electronics Corp. – Order Adopting Second Protective Order*, 17 FCC Rcd. 7415 (2002) ("*EchoStar/Hughes Second Protective Order*"); *TCI Satellite Entertainment, Inc. and PRIMESTAR, Inc.*, 13 FCC Rcd. 10927 (1998) ("*TCI/PRIMESTAR Protective Order*").

² For example, parties to this proceeding include both MVPDs that compete with DIRECTV (EchoStar, Cablevision Systems Corp., Cable One, Cox Communications, Advance/Newhouse Communications, Insight Communications, and a small cable trade association) and programmers that compete with News Corp. (Cablevision, Cox).

companies at a significant competitive disadvantage. Accordingly, Applicants request that the Commission create an enhanced level of confidentiality as it did in the *EchoStar/Hughes Second Protective Order*.

As a producer of cable programming, News Corp. is continually negotiating with MVPDs to achieve the broadest distribution of its programming possible on the most favorable financial terms possible. The Commission has requested information on each of the News Corp. programming networks, including data by individual MVPD on the expiration date of the current contract, total revenues earned per year and other financial information, and the cost to develop or launch the network. This information is highly proprietary and maintained in the strictest confidence by News Corp. Any competing cable programmer that is able to obtain access to such proprietary data would be able to divine News Corp.'s cost and pricing structure and negotiation strategy, and would be in a position to search for perceived vulnerabilities and to act strategically as contracts near expiration. In addition, MVPDs with access to this information would have a significant advantage over News Corp. in future programming contract negotiations – placing News Corp. at a competitive disadvantage that no other cable programmer (including AOL/Time Warner, Cablevision, Cox, and AT&T/Comcast) would share. Such access would result in long-term damage for News Corp., as the information will continue to be strategically relevant for some time.

News Corp. also bargains with many of the MVPDs operating in the areas served by its owned and operated broadcast stations (“O&Os”) over the terms of and compensation for authority to retransmit O&O signals. The Commission has requested information on these O&Os, including information concerning the terms of retransmission consent agreements, as well as copies of such agreements. It has also requested information on total revenues for the O&Os. The financial data is highly proprietary and maintained in the strictest confidence by News Corp. With respect to retransmission consent, as News Corp. has informed the Commission, the O&Os have granted consent to a majority of the MVPDs serving their markets without seeking any consideration.³ Confidentiality provided by the existing protective order in this proceeding should be sufficient with respect to those agreements. However, the remaining agreements implicate broader issues on the terms and conditions of carriage and reflect the results of confidential negotiations with hundreds of MVPDs. This contractual information is highly proprietary and maintained in the strictest confidence by News Corp. (and, presumably, by MVPDs as well, in accordance with confidentiality provisions in retransmission consent agreements). If this information were inadvertently or intentionally disclosed, News Corp. would be placed at a significant competitive disadvantage in future negotiations.

³ See Letter from William M. Wiltshire to Marlene H. Dortch, MB Docket No. 03-124, at p. 2 (dated May 30, 2003).

Lastly, News Corp. seeks enhanced protection for future business and marketing plans. Disclosure of such highly sensitive materials could place News Corp. at a severe competitive disadvantage *vis-à-vis* both other cable programmers and DIRECTV's MVPD competitors, which would be able to react to this information in their own business and marketing strategies. This is the same category of materials that the Commission previously found worthy of enhanced protection in the *EchoStar/Hughes Second Protective Order*.⁴

Information on DIRECTV's subscribers on a zip code and DMA basis constitutes some of the most sensitive data requested by the Commission. For the reasons set forth below, inadvertent or intentional disclosure of this data to DIRECTV's competitors would have a devastating effect on its business and place DIRECTV at a significant competitive disadvantage.

DIRECTV uses granular subscriber data to gauge customer demand for its services, as well as to analyze the strengths and weaknesses of its program offerings and promotional offers. This information is an important part of the analysis that the company makes in adjusting its offerings from time to time to provide better service to its customers, and constitutes the confidential portion of a number of competitive evaluations that are central to DIRECTV's business strategy. Any competitor who is able to obtain access to the proprietary subscriber data that has been collected and sorted by DIRECTV would be able to exploit any perceived weaknesses on a local or regional basis at the same time or even before DIRECTV was able to react and address those issues. The result would be similar to the result that would occur if a competitor received a copy of the strategic marketing plan for DIRECTV. A company must have the ability to evaluate and improve its own operations without exposing its internal analyses to its competitors. This is the same category of materials that the Commission previously found worthy of enhanced protection in the *EchoStar/Hughes Second Protective Order*.⁵

Hughes seeks enhanced protection for future business and marketing plans of Hughes and its subsidiaries. Disclosure of such highly sensitive materials could place Hughes at a severe competitive disadvantage *vis-à-vis* MVPD and broadband competitors, which would be able to react to this information in their own business and marketing strategies. This is the same category of materials that the Commission previously found worthy of enhanced protection in the *EchoStar/Hughes Second Protective Order*.⁶

⁴ See *EchoStar/Hughes Second Protective Order*, 17 FCC Rcd. at 7416. See also *TCI/PRIMESTAR Protective Order*, 13 FCC Rcd. at 10932 (allowing only outside counsel of record and their employees/consultants to review studies, analyses, and reports prepared to aid in evaluating the proposed transaction).

⁵ See *id.*

⁶ See *id.*

As a distributor of MVPD programming, DIRECTV is continually negotiating with video programming providers to achieve the most diverse and attractive programming possible on the most favorable financial terms possible. The Commission has requested information regarding the details of certain DIRECTV video programming agreements. This information is highly proprietary and maintained in the strictest confidence by DIRECTV. Any competing MVPD provider that is able to obtain access to such proprietary data would be able to determine the terms, conditions and pricing structure by which DIRECTV was able to obtain these agreements, and would be in a position to search for perceived vulnerabilities and to act strategically as contracts near expiration. In addition, programmers with access to this information would have a significant advantage over DIRECTV in future programming contract negotiations – placing DIRECTV at a competitive disadvantage that no other MVPD provider would share. Such access would result in long-term damage to DIRECTV, as the information will continue to be strategically relevant for some time.

If you have any questions concerning the foregoing, please do not hesitate to contact the undersigned.

Sincerely yours,

\s\
William M. Wiltshire
Counsel for The News Corporation Limited

\s\
Gary M. Epstein

\s\
Richard E. Wiley
*Counsel for General Motors Corporation
and Hughes Electronics Corporation*

W. Kenneth Ferree

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