



Federal Communications Commission
Washington, D.C. 20554

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Via Facsimile

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**Re: Consolidated Application for Authority to Transfer Control
MB Docket No. 03-124**

Dear Mr. Epstein and Mr. Wiltshire:

On May 2, 2003, the Commission received a consolidated application from General Motors Corporation, Hughes Electronics Corporation and The News Corporation to transfer control of various Commission licenses and authorizations held by Hughes and its wholly- or majority-owned subsidiaries.¹ In order for the Commission to review the application and make the necessary public interest findings under section 310(d) of the Communications Act,² we require additional information and clarification of certain matters discussed in the application.

Accordingly, pursuant to section 308(b) of the Act,³ we request that you provide written responses and supporting documentation for the questions set forth in the attached Initial Information and Document Request and, where appropriate, amend the application to reflect such responses. We would appreciate receiving your response to each inquiry no later than August 6, 2003.

¹ The application was submitted pursuant to Sections 214 and 310 of the Communications Act of 1934. 47 U.S.C. §§ 214, 310.

² *Id.* § 310(d).

³ *Id.* § 308(b); *see also* 47 C.F.R. § 1.65.

Your responses should be filed with Marlene H. Dortch, Secretary, FCC, under reference number MB Docket No. 03-124. In addition, the Public Notice⁴ and the Protective Order⁵ require the submission of multiple copies of all *Ex Parte* and other filings submitted in this proceeding. The Media Bureau also should receive, at a minimum, two copies of all paper filings, including both documents marked "Confidential" and documents marked "For Public Inspection."⁶ These copies are intended for, respectively, Marcia Glauber and Linda Senecal. For any electronic filings made using the Commission's Electronic Comment Filing System ("ECFS"), parties also should serve the documents via e-mail to Marcia Glauber, Marcia.Glauber@fcc.gov and to Linda Senecal, Linda.Senecal@fcc.gov.

If you have any questions regarding this matter, please contact Marcia Glauber, Media Bureau, at 202-418-7046.

Sincerely,



W. Kenneth Ferree
Chief, Media Bureau

Attachment

⁴ See *General Motors Corporation, Hughes Electronics Corporation, and The News Corporation Limited Seek Approval To Transfer Control of FCC Authorizations and Licenses Held by Hughes Electronics Corporation to The News Corporation Limited*, MB Docket 03-124, Public Notice DA 03-1725 (rel. May 16, 2003) ("Public Notice").

⁵ See *News Corporation, General Motors Corporation, and Hughes Electronics Corporation, Order Adopting Protective Order*, MB Docket No 03-124, DA 03-1761 (rel. May 22, 2003) ("Protective Order").

⁶ See Public Notice, pp. 4-5; Protective Order ¶ 3.

INITIAL INFORMATION AND DOCUMENT REQUEST
JULY 8, 2003

I. Corporate and Other Documents

1. Please file any and all amendments to any Transaction Document.
2. With reference to the draft Certificate of Incorporation and By-Laws of Hughes filed with the SEC on June 5, 2003, please state the objective criteria that the Audit Committee would be expected to use in determining whether a transaction is to be considered a "related party transaction."
3. What criteria will be used in selecting independent directors for appointment to ensure that they have sufficient expertise to pass on "related party contracts?"
4. Will the members of the Audit Committee serve for fixed terms and be removable during such term only for gross misconduct?
5. What provisions are included in the Hughes' corporate governance documents to ensure that the Audit Committee is required to review all related party transactions?
6. Please state precisely how the Sarbanes-Oxley Act will protect consumers from alleged controlling shareholder self-dealing.
7. What are the rules for the functioning of the Audit Committee?
8. How will the Applicants ensure that independent directors are neither controlled nor influenced by NewsCorp, its subsidiaries and their respective officers, managers, directors, employees, and agents?
9. Please explain how the by-laws operate to make it "somewhat cumbersome" for NewsCorp to directly nominate candidates for election as directors. Please explain any differences between the tendered explanation and the procedure used by stockholders generally to nominate candidates for election to a board of directors of a Delaware corporation. See *General Motors Corporation, Hughes Electronics Corporation, and The News Corporation Limited, Opposition to Petitions to Deny and Reply Comments, Affidavit of Lawrence A. Hamermesh, July 1, 2003 ("Hamermesh Affidavit")* ¶ 8(c).
10. Please explain the phrase "dramatically diminished ability," referenced in the Hamermesh Affidavit at paragraph 9.
11. Please explain, with the corporate governance arrangements applicable to Hughes, the steps a shareholder would be required to take in order to remove a director. See Hamermesh Affidavit ¶ 9.

II. Discovery Requests for News Corporation

1. Identify each video programming network distributed in the U.S. that your company owns, controls, or in which it has an interest and for each such network state, separately for each year from 2000 through the present:

- a. the MVPD systems that distribute the network, and as to each identify:
 - 1) the geographic areas in which it distributes the network,
 - 2) the date when the network was first carried,
 - 3) all periods of time in which the MVPD's right to carry the network lapsed,
 - 4) the date of expiration of the contract under which the network is currently distributed,
 - 5) the number of subscribers to that MVPD who received the network,
 - 6) total revenues received by the company from the MVPD provider in exchange for distribution of the network and total revenue categorized by subscription fees, launch fees, and other sources of revenue (with a brief description).
 - 7) the number of advertising minutes made available for use by the MVPD.
- b. total revenues categorized by:
 - 1) subscription fees,
 - 2) advertising revenues,
 - 3) other sources of revenues (with a description),
- c. for each DMA, the viewer rating and share by:
 - 1) all persons,
 - 2) persons aged 18-34,
 - 3) persons aged 35-49,
 - 4) persons aged 50 or higher.

2. For each video programming network identified in response to question II.1, state:

- a. the launch date,
- b. the company's cost to develop or launch the network, including a description and quantification of each major category of costs,
- c. the total number of MVPD subscribers who received the network during each year from launch to present,
- d. if the network provides sports programming, the identity of the teams, leagues, or organizations whose distribution rights are held by the network and for each state:
 - 1) the official name of the team, league, or organization and the sport played,
 - 2) the term of the contract that grants the right to distribute the sports programming,
 - 3) the number of game events entitled to be distributed by News Corporation under the agreement,
 - 4) the number of game events licensed to News Corporation in which News Corporation has an exclusive license,
 - 5) the total number of game events that the team, league, or organization could make available to networks and the actual number of game events it makes available to all networks,

3. For each US-based broadcast TV station in which your company owns an interest identify:
 - a. the MVPD systems that currently retransmit the broadcast station, and for each:
 - 1) state whether the station is carried under a retransmission agreement or a must-carry election,
 - 2) if the station is carried under a retransmission agreement, state the term and expiration date of the retransmission agreement,
 - 3) if the station is carried under a retransmission agreement, indicate whether the contract was combined, bundled, or negotiated concurrently with the contract for rights to other video programming in which News Corporation has a financial interest (if so, identify the video programming with which the retransmission rights were combined, bundled or negotiated concurrently),
 - 4) identify the periods of time since January 2000, if any, that the broadcast station was not retransmitted by the MVPD,
 - 5) provide a copy of the retransmission consent contract.
 - b. the MVPD systems serving the DMA that do not currently retransmit the broadcast station, and for each state the periods of time since January 2000 that the broadcast signal was retransmitted,
 - c. total revenue received by the station broken down into the following categories:
 - 1) retransmission fees,
 - 2) advertising revenue,
 - 3) other sources of revenue (with a description).

4. Describe any ownership interest News Corporation currently has in Liberty Media and any agreement News Corporation has to acquire an interest in Liberty Media.

5. Identify all sports teams, leagues, and organizations with which News Corporation has a contract granting distribution rights in the US but is currently not distributing, and for each state:
- a. the official name of the team, league, or organization, the sport played, and its home venue,
 - b. the term of the contract that grants the right to distribute the sports programming in the US,
 - c. the percentage of total game events entitled to be distributed under the agreement and the percentage for which the distribution rights are exclusive to video programming channels in which News Corporation has an interest,
 - d. plans to begin distributing game events in the US.

6. Describe in detail any plans or proposals the company has considered for changing the programming packages and prices of any DirecTV MVPD service following the acquisition. Produce all documents relating to such plans or proposals.

7. Provide all plans, analyses, assessments or considerations of plans to modify, terminate or enter into new exclusive or non-exclusive programming distribution arrangements.

8. Produce all documents describing the profit margins, average total costs, variable costs, and prices of video programming and MVPD services used in section III.A.2 of *General Motors Corporation, Hughes Electronics Corporation, and The News Corporation Limited, Opposition*

to Petitions to Deny and Reply Comments, News Corporation's Partial Acquisition of DIRECTV: Economic Analysis of Vertical Foreclosure Claims, July 1, 2003 ("Charles River Analysis").

9. Identify separately for each electronic program guide and interactive program guide product offered or sold by News Corporation for each quarter from June 30, 2000, to the present:
 - a. the number of subscribers to MVPD providers carrying the competing product,
 - b. the number of MVPD subscribers with access to the competing product,
 - c. the name of all competing electronic and interactive programming guide product and for each, provide:
 - 1) the number of subscribers to MVPD providers carrying the product,
 - 2) the number of MVPD subscribers with access to the product,
 - 3) identify any ownership interests such competing provider has in any MVPD or video programming provider.

10. Identify separately for each electronic program guide and interactive program guide product offered or sold by News Corporation:
 - a. the MVPD systems that currently distribute the products, and as to each identify:
 - 1) the geographic areas in which the product is provided to subscribers,
 - 2) the date when the product was first carried,
 - 3) all periods of time in which the right to carry the product lapsed,
 - 4) the date of expiration of the contract under which the product is distributed,
 - 5) the number of MVPD subscribers,
 6. the number of MVPD subscribers who have access to the product,
 - 7) total revenues received by the News Corporation in exchange for distribution of the product and total revenue should be further categorized by subscription fees, launch fees, advertising revenue, and other sources of revenue (with a brief description),
 - 8) the quantity and percentage of advertising made available for sale by the MVPD provider.

11. Identify separately for each granted, pending, or licensed patent used in an electronic program guide or interactive program guide product sold, or under development, by News Corporation:
 - a. the owner,
 - b. all known licensees,
 - c. the status and expiration date of the patent,
 - d. the products that use the patent,
 - e. a description of any litigation, past or present, involving the patent, including a description of the outcome or current status of the litigation.

12. Provide all surveys, studies, analyses, and other documents regarding consumer usage and attitudes toward electronic and interactive program guides and substitution between these products and alternatives, including but not limited to, newspaper, magazine, and internet-based program schedules and information.

13. Provide all marketing surveys and studies conducted by or contracted for by News Corporation, including:

- a. Analyses, assessments, or considerations of marketing strategies, including pricing, promotions, programming, advertising, and customer targeting strategies (including targeting of the customers of a competing DBS supplier, customers of cable operators, customers of other MVPDs, and customers who have never subscribed to either DBS or cable services).
- b. All analyses, assessments, or considerations of the most desirable customers, and sales and marketing strategies to acquire and retain them.
- c. Assessments of the extent to which consumers explore both the available cable and DBS options when choosing an MVPD service.
- d. Analyses, assessments, or considerations of MVPD competitors, including an assessment of their strengths and weaknesses.

14. Provide all econometric analyses conducted by or contracted for by News Corporation, including, but not limited to:

- a. Estimates of the demand function for MVPD services.
- b. Estimates of the own price elasticity of demand for DirecTV's DBS service.
- c. Estimates of the cross-price elasticity of demand between DirecTV's DBS service and competing MVPD providers.

15. Provide a detailed explanation of how News Corporation's track record in programming and DTH services will generate benefits for consumers and estimate the size of the consumer benefits.

- a. Provide all plans, studies, analyses and other documents that address this claimed benefit.
- b. To the extent that analyses and/or studies have been prepared, provide the data used in the analysis or study and an explanation of the methodology used to derive the estimated benefit.

16. Provide a detailed explanation of how the transaction will increase "the amount of local-into-local, high definition television ("HDTV"), and broadband services Hughes provides to American consumers" and estimate the size of the consumer benefits.

- a. Provide an explanation as to why these benefits could only be achieved as a result of the proposed transaction.
- b. Provide all plans, studies, analyses and other documents that address this claimed benefit.
- c. To the extent that analyses and/or studies have been prepared, provide the data used in the analysis or study and an explanation of the methodology used to derive the estimated benefit.

17. Provide a detailed description and estimate of the cost savings and other operating efficiencies expected to be realized as a result of the transaction and a separate estimate of the consumer benefits that will result from such efficiencies. Provide an explanation of what portion of these savings could not possibly be achieved absent the transaction and what portion of those savings will flow through to consumers.

- a. Provide all plans, studies, analyses and other documents that address to this claimed benefit.
- b. To the extent that analyses and/or studies have been prepared, provide the data used in the analysis or study and an explanation of the methodology used to derive the estimated benefit.

18. Provide a detailed description and explanation of the economies of scope and scale that will be created by the transaction and an explanation of why the transaction will reduce the risks of innovation and provide an estimate of the benefits consumers will enjoy as a result of these claimed benefits.

- a. Explain why these benefits could not possibly be achieved absent the proposed transaction.
- b. Provide all plans, studies, analyses and other documents that address to this claimed benefit.
- c. To the extent that analyses and/or studies have been prepared, provide the data used in the analysis or study and an explanation of the methodology used to derive the estimated benefit.

19. Provide a detailed explanation of why the transaction will result in the introduction of new or enhanced capabilities to the DIRECTV platform, and why this will increase subscriber growth and reduce churn. Provide an estimate of the consumer benefits that will result from these claimed improvements to the DIRECTV platform.

- a. Explain why these benefits could not possibly be achieved absent the proposed transaction.
- b. Provide all plans, studies, analyses and other documents that address to this claimed benefit.
- c. To the extent that analyses and/or studies have been prepared, provide the data used in the analysis or study and an explanation of the methodology used to derive the estimated benefit.

20. Provide a detailed explanation of why the transaction will improve Hughes' capital structure and access to capital markets and provide an estimate of the benefits consumers will derive from such improved capital structure and access to capital markets.

- a. Explain why these benefits could not possibly be achieved absent the proposed transaction.
- b. Provide all plans, studies, analyses and other documents that address to this claimed benefit.
- c. To the extent that analyses and/or studies have been prepared, provide the data used in the analysis or study and an explanation of the methodology used to derive the estimated benefit.

21. Provide a detailed description and explanation of any other benefits the parties claim will result from the transaction and an explanation of why those benefits could not possibly be achieved absent the transaction and provide an estimate of the benefits consumers are likely to enjoy as a result of each of these claimed benefits.

Note: To the extent available, responses to questions II.1, II.2, II.3, II.9, II.10, and II.11 should be provided in electronic form as well as hard copy.

III. Discovery Requests for Hughes Electronics Corporation

1. Identify for each DMA in which Hughes provides MVPD service for each *quarter* from January 1, 2000, to the present:

- a. the number of households for which the service is available,
- b. total subscribers for Hughes and each MVPD competitor,
- c. the packages of video programming carried, the number of channels in each package, and video programming carried on an a la carte basis,
- d. the networks carried on each programming package and on an a la carte basis, and the date on which the network began being carried,
- e. networks that, at some time, were carried, but are no longer carried, the date the network ceased to be carried, and the reason for elimination,
- f. call sign, affiliation, and date of introduction of each local channel carried,
- g. number of subscribers for each programming package and a la carte channel offering, including the number of subscribers for local channels,
- h. the monthly recurring price for each programming package and a la carte channel offering assuming the consumer does not take advantage of any promotional offerings,
- i. non-recurring charges, assuming the consumer does not take advantage of any promotional offerings, categorized by:
 - 1) service initiation or termination, including (but not limited to) equipment installation or removal,
 - 2) equipment purchase,
 - 3) equipment rental,
 - 4) service contracts,
 - 5) other non-recurring charges (include a brief description).
- j. provide information on all promotional prices, coupons, and all other forms of discounts. The time period for which promotional prices, coupons, and discounts are in effect should be specified, as should any specific eligibility requirements (including minimum subscription periods, minimum purchases, geographic restrictions, and "new customer only" restrictions).
- k. total overall revenues and total revenue attributed to each programming package and a la carte channel offering categorized by 1) subscriber fees, 2) advertising fees, 3) other (include a brief description),
- l. actual subscriber churn rate and number of subscribers lost, broken down by the competitor to whom the customer was lost,
- m. average variable cost and average total cost to the company of acquiring each new subscriber categorized by:
 - 1) equipment and installation,
 - 2) marketing,
 - 3) activation,
 - 4) other (include a brief description).

2. Identify for each ZIP code in which Hughes provides MVPD service for each *month* from January 2000 to the present:
 - a. overall subscribers,
 - b. number of subscribers in each programming package and a la carte channel offering, including all sports programming packages,
 - b. gross additions to subscribers during the month,
 - c. gross losses of subscribers during the month,
 - d. DMA which contains the ZIP code,
 - e. whether out-of-market broadcast stations are available,
 - f. whether customers are served by NRTC or DirecTV.

3. Provide the following details on all contracts for video programming that make Hughes the exclusive satellite or MVPD provider of that programming:
 - a. name of programming,
 - b. name of programming owner,
 - c. programming packages in which programming is sold and whether the programming is available on an a la carte basis,
 - d. date contract began,
 - e. date contract terminates,
 - f. date at which exclusivity expires.

4. Describe any ownership interest Hughes currently has in Liberty Media and any agreement Hughes has to acquire an interest in Liberty Media.

5. Produce all documents describing the profit margins, average total costs, variable costs, and prices of video programming and MVPD services used in section III.A.2 of the Charles River Analysis.

6. Describe the considerations that go into deciding whether to carry a new programming channel, the placement of new channels within programming packages, and changes to pricing plans following the introduction of new channels.

7. Provide all plans, analyses, assessments or considerations of plans to modify, terminate or enter into new exclusive or non-exclusive programming distribution arrangements.

8. Provide all marketing surveys and studies conducted by or contracted for by Hughes, including:
 - a. Analyses, assessments, or considerations of marketing strategies, including pricing, promotions, programming, advertising, and customer targeting strategies (including targeting of the customers of a competing DBS supplier, customers of cable operators, customers of other MVPDs, and customers who have never subscribed to either DBS or cable services).
 - b. All analyses, assessments, or considerations of the most desirable customers, and sales and marketing strategies to acquire and retain them.
 - c. Assessments of the extent to which consumers explore both the available cable and DBS options when choosing an MVPD service.

d. Analyses, assessments, or considerations of competitors, including an assessment of their strengths and weaknesses.

9. Provide any studies, analyses, assessments, or considerations that analyze any plans for additional capacity or capacity expansion with regard to DBS, broadband, or other services.

10. Provide all econometric analyses conducted by or contracted for by Hughes, including, but not limited to:

- a. Estimates of the demand function for MVPD services.
- b. Estimates of the own price elasticity of demand for DirecTV's DBS service.
- c. Estimates of the cross-price elasticity of demand between DirecTV's DBS service and competing MVPD providers.

11. Provide a detailed description and explanation of Hughes' plans, prior to the announcement of the proposed transaction, for introducing additional local-into-local, HDTV, and broadband services over the next three years.

- a. Provide all plans, studies, analyses, and other documents relating to these plans.
- b. To the extent that analyses and/or studies have been prepared, provide the data used in the analysis or study and an explanation of the methodology used to derive the estimated benefit.

Note: To the extent available, all responses to question III.1 should be provided in electronic form as well as hard copy. Responses to question III.2 should be provided in electronic form.

Definitions

For purposes of responding to these requests,

1. the phrase "News Corporation" means, The News Corporation Limited, its subsidiaries and any affiliate in which it or a subsidiary owns a 10% or greater interest, together with any entity in which Mr. K. Rupert Murdoch or members of his immediate family own a *de jure* or *de facto* controlling interest.

2. The term "Hughes" means Hughes Electronics Corporation, its subsidiaries and any affiliate in which it or a subsidiary owns a 10% or greater interest.

3. The term "MVPD" means, and information shall be provided separately for:

- a. the local distribution of video programming through terrestrial-based cable transmission facilities by a cable operator or broadband service provider,
- b. direct broadcast satellite and direct-to-home services that transmit video programming directly from one or more satellites to subscribers,
- c. The local distribution or provision of video programming through any other means including, but not limited to MMDS, SMATV, OVS, and facilities of common carrier telephone companies or their affiliates.

4. The phrase “video programming” means all content delivered downstream, and where applicable, upstream, via satellite, coaxial cable, fiber optic transmission, terrestrial microwave, or other distribution technology to and from end-user customers and subscribers whether in analog or digital format and information shall be provided separately for:
 - a. the delivery or sale of video programming to MVPD providers,
 - b. the acquisition or purchase of video programming by MVPD providers,
 - c. the distribution of broadcast TV signals to MVPD providers for retransmission to their subscribers pursuant to a retransmission consent or must-carry election by the broadcaster.

5. The phrase “programming package” means a group of channels that are sold to consumers for a single price.

6. The phrase “MVPD system” means the area served by a single headend belonging to a wireline MVPD provider such as, but not limited to, a cable system, open video system, or broadband service provider.

7. The phrase “interactive program guide” means an on-screen listing of television program information with interactive functions that enable viewers to navigate through television programming schedules and/or select programming services. An example of this product would be the TV Guide Interactive product.

8. The phrase “electronic program guide” means an on-screen listing of television program information that lacks interactive functionality. An example of this product would be the scrolling program guide of the TV Guide Channel network.