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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20551

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Application of

GENERAL MOTORS CORPORATION AND HUGHES ELECTRONICS CORPORATION,

and

THE NEWS CORPORATION LIMITED,

Transferee,

For Authority to Transfer Control.

MB Docket No. 03-124

WYSER-PRATTE MANAGEMENT CO., INC.'S PETITION TO CONDITION THE TRANSFER OF CONTROL ON THE EQUITABLE TREATMENT OF GENERAL MOTOR'S GM-H SHAREHOLDERS

Petitioner Wyser-Pratte Management Co , Inc. ("Wyser-Pratte") by its attorneys, Grant & Eisenhofer, P A , hereby petitions the Federal Communications Commission (the "Commission") to deny the above-captioned Application for Authority to Transfer Control filed by General Motors Corporation ("GM"), Hughes Electronics Corporation ("Hughes") and The News Corporation Limited ("News"), unless the transaction provides that holders of GM Class H Common Stock ("GMH stock") are treated as favorably in the proposed transaction as GM itself. As described below, the proposed transactions, if approved by the Commission, will prejudice GMH shareholders. Applicable case law establishes that the Commission may not take action that arbitrarily and capriciously disregards the interests of shareholders Wyser-Pratte alleges, upon knowledge with respect to itself, and as to all other matters which generally concern facts

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not in its possession, upon information and belief based upon, *inter alia*, the investigation made by and through its attorneys, which investigation included, *inter alia*, the review by its attorneys of documents created by GM and Hughes, as well as documents created by News, and media coverage concerning GM and Hughes, as follows

SUMMARY OF THE ACTION

1 Petitioner Wyser-Pratte files the instant Petition in connection with a proposed transaction between GM and News Corporation, announced on April 9, 2003, regarding a spin-off of GM's wholly-owned subsidiary Hughes into a public company (the "Spin-Off") and the sale by GM and the forced sale by holders of GMH stock of a 34 percent interest in Hughes to News for $6 6 billion (the "Sale") (together, the "Hughes Transaction"). The Spin-Off and the Sale are self-interested transactions designed to extricate GM from the satellite and DirecTV businesses of Hughes by selling 34 percent of Hughes to News pursuant to a transaction in which GM will receive compensation different from and much superior to that which will be received by the GMH shareholders

2 Under the terms of the transaction, News will acquire GM's entire economic interest in Hughes (20 percent of total) for approximately $3 8 billion, with $3.1 billion to be paid in cash and the remainder ostensibly to be paid in the form of News preferred American Depository Receipts ("News ADRs"). Moreover, the Hughes transaction contemplates a $275 million distribution from Hughes to GM as part of the transaction (the "Special Dividend"), ostensibly for "value enhancements" provided to Hughes by GM. The net result of this is that GM's entire interest in Hughes will be purchased by News for approximately $15 per share, mostly in the form of cash On the other hand, GMH shareholders will receive, in exchange for

their GMH stock, shares of Hughes on a one-for-one basis, followed immediately by a mandatory exchange of only 17.5 percent of the former GMH shareholders' new Hughes stock for News ADRs at approximately $14 per ADR subject to a collar. The net result of this is that GMH shareholders' interest in Hughes will be purchased by News for approximately $14 per share, largely or totally in the form of stock This violates the GM Certificate of Incorporation, which prohibits discrimination between GM and GMH shareholders in a transfer like this one

3 In order to assure ratification of this patently unfair transaction, Applicants have taken a number of actions to eliminate a fair vote by GMH shareholders on the Spin-Off and Sale First, just weeks prior to the public announcement of the Spin-Off and Sale, GM issued 150 million shares of GMH to its pension funds, all of which are controlled by GM directors As a result of the share issuance to the GM pension funds, the funds now control 30 percent of the total shares of GMH Further, certain other employee benefit plans control an additional 50.5 million GMH shares, representing 4 6 percent of total GMH shares, and various Hughes officers own an additional 8 million shares Thus, in order to reject the Spin-Off and Sale, more than 77 percent of the non-GM affiliated shareholders will have to oppose the transaction.

4 Second, in order to improperly influence the vote of GMH shareholders by making the Sale appear as favorable as possible to the non-GM controlled shareholders, the deal was announced on April 9, 2003, just two days before PanAmSat Corporation ("PanAmSat"), an 81 percent owned Hughes subsidiary, announced much higher than expected earnings, and only five days before Hughes itself announced much better than expected results. Those events would have favorably impacted the price at which GMH was trading. As announced, the deal allegedly would provide GMH shareholders with a 22 percent premium, although only for a fraction of

their total holdings Had the deal price of $14 per share been announced after those favorable earnings announcements, the deal unquestionably would have appeared less favorable and with a lower premium The favorable appearance of the deal is critical since, under the GM Certificate of Incorporation, GMH shareholders are entitled to exchange their GMH stock for GM $1-2/3 common stock at a 20 percent premium in the event GM no longer controls Hughes ('Exchange Provision") GM will seek to have the certificate amended to remove this provision, but only if GMH shareholders approve In order to obtain such approval, GMH shareholders must be led to believe that their premium will exceed 20 percent. Thus, GM had to announce the transaction at a time when it could create the impression that the sale would create a premium in excess of 20 percent

5. Consequently, Wyser-Pratte seeks an order denying the Application for Authority to Transfer Control or requiring equitable treatment of GMH shareholders. Unless the Application for Authority to Transfer Control is denied or conditioned upon equitable treatment of GMH shareholders, GMH shareholders will be forced to vote on, and accept, a merger that is patently unfair to the GMH shareholders and which will prevent them from realizing the fair value of their shares

THE PARTIES

6 Petitioner, Wyser-Pratte Management Co , Inc , is an investment management firm with its principal place of business in New York, New York. Wyser-Pratte's accounts own 300,000 shares of GMH, representing a multi-million dollar investment. Wyser-Pratte is a well-known activist investor, whose investment philosophy is to earn returns for its clients by improving the corporate governance of companies in which it invests.

7 Applicant, General Motors Corporation, is a Delaware corporation headquartered at 300 Renaissance Center, Detroit, Michigan. GM currently retains approximately 19.9 percent of the economic interest in Hughes

8 Co-Applicant, Hughes Electronics Corporation, is a Delaware corporation headquartered in El Segundo, California. Hughes is a wholly-owned subsidiary of GM. Hughes is a leading provider of digital entertainment, information and communication services and satellite-based private business networks Hughes' businesses include: (1) DirecTV – the world's leading provider of satellite-to-subscriber entertainment services with more than 11 million customers, (2) Hughes Network Systems – the world's leading provider of broadband satellite networks and services to both consumers and enterprises, and (3) PanAmSat – an 81 percent owned Hughes subsidiary that provides global video and data broadcasting services via satellite

9. Co-Applicant, The News Corporation Limited, is an Australian corporation with principal executive offices located at 2 Holt Street, Surry Hills, New South Wales, Australia 2010 News is a diversified international media and entertainment company with operation in filmed entertainment, television, cable network programing, magazines and inserts, news papers and book publishing These activities are conducted principally in the United States, the United Kingdom, Italy, Asia, Australia and the Pacific Basin.

10 Echostar Satellite Corporation ("Echostar") has petitioned the Commission to participate in the above-captioned proceeding, thereby becoming a party, pursuant to Commission Rule 1.1202(d)(1); 47 C F R. §1 1202(d)(1)

PETITION ALLEGATIONS

11. Wyser-Pratte brings this petition seeking to participate in the above-captioned proceeding, thereby becoming a party, pursuant Commission Rule 1.1202(d)(1); 47 C.F R §1 1202(d)(1)

12 Petitioner requests that the Commission deny the instant Application based upon the following

> a The applications as to which Commission approval is sought are an essential element in completing a transaction in which the interests of GM and its non-GMH shareholders will be favored over the interests of GMH shareholders.
>
> b Under its powers under Sections4(i) and 309(a) of the Communications Act of 1934, 47 U S.C §§ 154(i) & 309, the Commission has the duty to determine "whether the public interest, convenience, and necessity will be served" by the granting of a license application and the power to make such rules and impose such requirements as it deems appropriate *See Mobile Communications Corp of America v F C C* , 77 F.3d 1399, 1406 (D.C.Cir 1996). In determining the public interest, the Commission has an obligation to protect shareholders' rights *See Storer Communications, Inc v F C C* , 763 F.2d 436, (D.C. Cir.1985) ("[t]he Commission has a duty to implement the Communications Act but also must attempt to do so in a manner as consistent as possible with corporate and federal security laws' protection of shareholders' rights").

FACTUAL BACKGROUND

A. GM's Equity Securities

13 As provided in GM's Restated Certificate of Incorporation (amended June 6, 2000), the common stock of GM consists of 5,600,000,000 authorized shares of common stock, of which 2,000,000,000 shares are common stock, \$1-2/3 par value ("GM \$1-2/3") and 3,600,000,000 shares are Class H common stock, \$0 10 par value ("GMH") As of February 28, 2003, 560,560,818 shares of GM \$1-2/3 and 958,299,595 shares of GMH were outstanding

Both GM $1-2/3 and GMH shares trade actively on the New York Stock Exchange (NYSE symbols GM and GMH, respectively)

14 GMH is a "tracking stock" of GM designed to provide its holders with financial returns based on the financial performance of Hughes, a wholly owned subsidiary of GM. Pursuant to Article IV of GM's Certificate of Incorporation, GMH shareholders have the ability to obtain dividends, at the discretion of the GM Board of Directors, based upon the consolidated net income of Hughes. Holders of GMH have no direct rights in the equity or assets of Hughes, however, but rather rights in the equity and assets of GM.

15 GMH shareholders also have the right "[i]n the event of the sale, transfer, assignment or other disposition by the Corporation of Substantially All of the Business of Hughes to a person, entity or group of which the Corporation [GM] is not a majority owner all outstanding shares of Class H Common Stock shall be exchanged for fully paid and nonassessable shares of Common Stock at the Exchange Rate." GM Certificate of Incorporation, Article IV, Division 1, Section (c)(2) The Exchange Rate is the average price of GMH stock, multiplied by 1.2 (a 20 percent premium) and divided by the price of GM $1-2/3 stock (GM common). *Id* at Section (c)(4)

16. With the exception of certain matters concerning dividend rights, voting rights, exchangeability, liquidation and subdivision and combination, GM's articles of incorporation clearly state that "[t]he Common Stock and the Class H Common Stock shall be identical in all respects and shall have equal rights and privileges, except as otherwise provided in this Article FOURTH " There is nothing in Article IV of GM's articles of incorporation that allows GM to discriminate against GMH shareholders in any Transaction involving the sale of Hughes. In

fact, under Article IV, Division I, Section (a)(3) of GM's Certificate of Incorporation, the sole type of discrimination that is permitted is in the payment of dividends

17 GM purchased Hughes Electronics in 1985. As of 1997, Hughes Electronics consisted of: Hughes Defense, a defense and aerospace company; Hughes Telecom, a space and telecommunications business, and Delco Electronics Co. ("Delco"), a manufacturer of electronic systems and parts In 1995, GM had issued a tracking stock, also known as GMH stock, that tracked 26 6 percent of the economic results of Hughes Electronics. In 1997, GM spun-off Hughes Defense and merged it with Raytheon, moved Delco to GM and recapitalized the GMH stock into a new GMH common stock linked to the performance of Hughes Telecom (referred to herein as "Hughes")

18. After the 1997 restructuring, GM continually expressed an interest in reducing or eliminating its financial interest in Hughes Beginning in 2000, GM extensively negotiated with News to purchase Hughes. In or about March/April 2001, GM also entered into negotiations with EchoStar and an agreement between GM and EchoStar was announced on October 28, 2001

19 The agreement with EchoStar promised to compensate GMH shareholders with shares of EchoStar common stock valued at $18.44 per GMH share. The deal fell through when it failed to receive regulatory approval from the Commission, which rejected the EchoStar deal in a decision issued on October 10, 2002 Later that month, the deal was the subject of an antitrust challenge brought by the U.S. Department of Justice. By December of 2002, the EchoStar deal was terminated and GM re-opened negotiations with News Throughout the course of the

regulatory and court proceedings regarding the proposed EchoStar deal, News sharply criticized and lobbied against it.

B. GM "CONTRIBUTES" GMH SHARES TO ITS PENSION FUNDS

20. On February 28, 2003, just prior to the announcement of the Hughes transaction, GM announced that it would contribute approximately 150 million GMH shares to certain of its U S employee benefits plans (the "GM Plans") in March of 2003 The net effect of this contribution was a decline in GM's interest in Hughes from 30.7 percent to 19.9 percent.

21 The outstanding shares of GMH prior to GM's contribution to the GM Plans represented approximately a 69 3 percent interest in the company. Following this new contribution, the GMH shareholders now collectively hold an approximately 80 percent interest in Hughes. Also, with this new contribution, the GM Plans now hold 331.5 million shares of GMH, representing 30 percent of all GMH shares. Further, as of February 28, 2002, State Street Bank and Trust Company held approximately 50.5 million GMH shares on behalf of various employee benefit plans, representing approximately 4 6 percent of total GMH shares, and as of April 10, 2003, Hughes officers held approximately 8 million shares of GMH stock, equal to 0.7 percent of all GMH stock

22. The trustees of the GM Plans are members of GM's Board of Directors who belong to the GM Board's Investment Funds Committee The Investment Funds Committee is comprised of Percy N Barnevik (Chair), Armando M Codina, George M C Fisher, Nobuyuki Idei, E Stanley O'Neal, and John F Smith, Jr

23 GM's website describes the Investment Funds Committee of its Board of Directors as follows

Investment Funds Committee met three times in 2001 The Committee serves as the named fiduciary of GM's and a number of its subsidiaries' benefit plans governed by the Employee Retirement Income Security Act (ERISA).

24. As a result of the share issuance to the GM Plans, the Plans now control 30 percent of the total shares of GMH Further, various GM employee benefit plans control an additional 4 6 percent of GMH shares and Hughes officers an additional 0.7 percent Thus, in order to reject the Spin-Off and Sale, more than 77 percent of the non-GM affiliated shareholders will have to oppose the Transaction, effectively pre-ordaining any shareholder vote on the transaction.

C. THE HUGHES TRANSACTION

25 On April 9, 2003, News and GM announced that News had agreed to purchase 34 percent of Hughes for $6.6 billion in cash and stock. Pursuant to the Hughes transaction, News would acquire GM's entire stake in Hughes, plus an additional 14.1 percent of Hughes from GM's pension and other benefit plans, as well as GMH shareholders.

26 As part of the transaction, GM intends to split off Hughes, providing each GMH holder with one Hughes share for each GMH share. At the same time, GM will sell its entire 19 9 percent economic interest in Hughes to News for $3.8 billion. Although GM does not own any GMH shares, its 19 9 percent economic interest in Hughes is the equivalent of 275 million GMH shares. Thus, on an equivalent basis, the payment by News to GM equals approximately $14 per share Pursuant to the deal, GM would receive $3.1 billion in cash, and the remainder would be paid in News ADRs

27 The News ADR shares payable to GM are based on the fixed price of $14 per Hughes share and will adjust within a collar range of 20 percent above or below the current News ADR share price of $22.40 (the 20 percent range is $17 92 to $26.88). Thus, each Hughes share will be worth 614 News ADRs at a share price of $22.40 and that exchange ratio will decrease as the price of News ADRs increases, and increase as the price of News ADRs decreases. At a News ADR price of between $14 08 and $17 92, the exchange ratio is fixed at 0.78 News ADRs to one share of Hughes and at an ADR price of below $14.08, GM has the right to terminate the transaction.

28 Significantly, GM could have chosen to accept an all stock transaction, or could have apportioned the $3 1 billion cash payment between itself and GMH shareholders, but chose to take all or virtually all of the cash because of its "liquidity preference." In addition, GM could have allowed all owners of Hughes, itself and the GMH shareholders to convert 34 percent of their holdings into cash and News ADRs, but instead chose to totally divest itself of any interest in Hughes, while GMH shareholders were required to retain 83 percent of their Hughes holdings

29 Under the proposed deal, GM also will receive an additional distribution of $275 million (the equivalent of approximately $1 per GMH share) in consideration of the alleged "value enhancement" for GMH shareholders arising from the conversion of GMH from a tracking stock to an asset-based stock In actuality, that money was compensation required by GM in addition to the payments by News. As stated by Hughes' CEO, Jack A. Shaw, at a press conference regarding the deal

> Concerning the dividend, $275 million, I think the best way to talk to you about it is to say that in this kind of Transaction, there are three companies – General Motors, News, and of course, Hughes. And it's not really as complicated as people might think it could be; in order to make a Transaction like this, it takes everybody to have give and take and to want to do the deal. And in the case of Rupert and News Corp , they had a number in mind, and they felt what was an appropriate price to pay for Hughes. General Motors, of course, needed to have certain benefits from the Transaction. And from the Hughes side, we wanted to make it happen So the $275 million from Hughes upstreaming to General Motors is what it took to make it happen.

In sum, GM would receive the equivalent of $15 per share ($14 from News and $1 from Hughes), almost entirely in cash, for its interest in Hughes.

30. Current holders of GMH stock would first exchange their shares for Hughes common stock on a one-for-one basis, followed immediately by a mandatory exchange of 17.5 percent of the Hughes stock they receive for approximately $14 per share in News ADRs (and/or possibly some cash). At the time of announcement, $14 per share allegedly represented a 22 percent premium over GMH stock's trading price As a result of the mandatory exchange, News also would acquire an additional 14 1 percent stake in Hughes.

31 Finally, according to published reports, the Hughes transaction, which will terminate if not completed in one year, provides for a termination fee of up to $300 million payable to News if the transaction does not close under certain circumstances.

D. PUBLIC REPETITION TO THE PROPOSED TRANSACTION

32. The repetition of GMH shareholder to the proposed deal was entirely negative Hughes shares plummeted on the news, dropping 10 percent on Thursday, April 10, 2003. According to published reports, much of the anger directed at Hughes' executives centered on the

$275 million fee payable to GM by Hughes. As *Dow Jones Business News* reported on April 10, 2003

> Hughes executives got an earful from angry shareholders during a conference call earlier Thursday, and the company's shares fell 10% on heavy volume.
>
> One gripe is the $275 million fee that Hughes will have to pay GM. The car maker said it is getting the fee for the "value enhancement" it is giving Hughes shareholders by making the stock a regular stock, rather than a tracking stock as it is now.
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> * * *
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> As a result of the extra fee paid to GM on top of the $3.1 billion in cash from News Corp , the parent company will effectively receive $15 a share, whereas Hughes shareholders will get about $14 a share, and most of it in stock

E. THE ANNOUNCEMENT OF THE TRANSACTION WAS IMMEDIATELY PRIOR TO FAVORABLE FINANCIAL REPORTS BY HUGHES AND A HUGHES SUBSIDIARY

33 The announcement of a definitive agreement for the sale of the interest in Hughes to News was strategically timed a few days before two public announcements that would have positively impacted Hughes share price. On April 11, 2003, PanAmSat, an 81 percent owned subsidiary of Hughes, announced that its first quarter 2003 earnings had increased 47 percent from a year earlier as a result of successful cost-cutting initiatives. As a result, PanAmSat shares closed up 53 cents at $15.61 on NASDAQ.

34. On April 14, 2003, Hughes announced its 2003 first quarter financial results, including a remarkable 10 percent increase in revenues from $2.02 billion (first quarter 2002) to $2 23 billion (first quarter 2003). Further, Hughes earnings before interest, taxes, depreciation and amortization (EBITDA) soared to $305 million from $164 5 million.

35. This information would have positively impacted Hughes stock price had it been announced prior to the public disclosure of the Spin-Off and Sale. Such a share price increase, however, would have made the $14 per share being offered by News appear to be less desirable Given that GM must have been aware of the impending favorable financial information before it announced the Spin-Off and the Sale, the timing of the various announcements was done to make the deal appear more favorable to GMH shareholders so as to seek to preserve GM's favorable consideration in the Hughes transaction

F. APPLICANTS' BREACHES AND PETITIONER'S HARM

36 Because of the nature of News' offer, particularly the fact that GM and its non-GMH shareholders would receive more and less risky consideration than GMH shareholders, the GM Board of Directors was obligated to:

(a) Undertake a comprehensive evaluation of Hughes' net worth as a going concern that is for sale,

(b) Carefully scrutinize the Hughes transaction and engage in a meaningful auction with third parties in an attempt to obtain the best value for GMH shareholders that is equal to the value obtained by GM;

(c) Act independently so that the interests of GMH shareholders would be properly safeguarded, and

(d) Address conflicts of interest that exist between the individual GM Directors' own interests, the interests of GM's non-GMH shareholders, and the individual GM Directors' fiduciary obligations to obtain the highest value possible for GMH shareholders.

37. Petitioner and other shareholders will be irreparably damaged in that they have not and will not participate in a fair proportion of the 34 percent of Hughes being sold to News and have been and will be prevented from obtaining a fair and adequate price for their shares of

GMH stock In essence, they will sell less, obtain less per share and receive riskier consideration than GM since they will receive consideration primarily in the form of News ADRs while GM will realize consideration primarily in the form of cash.

G. THE COMMISSION MUST PROTECT INTERESTS OF GMH SHAREHOLDERS

38 In reviewing the instant Application for Authority to Transfer Control, the Commission must conduct an inquiry to determine that the proposed merger protects not only the interests of the relevant market, but also GMH shareholders *See Illinois Public Telecommunications Assoc v Federal Communications Commission*, 117 F 3d 555, 569 (D.C. Cir 1997) (the Commission must consider not only whether its asset valuation method protected ratepayers, but was also whether it protected shareholders' interests) (citing *Democratic Cent Comm of Dist of Columbia v Washington Metropolitan Area Transit Comm'n* , 485 F.2d 786, 806, 833 (D C Cir. 1973)), *see also Storer Communications, Inc v F C C* , 763 F.2d 436, (D.C. Cir 1985) ("[t]he Commission has a duty to implement the Communications Act but also must attempt to do so in a manner as consistent as possible with corporate and federal security laws' protection of shareholders' rights")

39 Based upon all of the foregoing, it is evident that the proposed transaction is patently unfair to GMH shareholders, and therefore, Petitioner requests that the Commission deny the Application, or require the parties to treat GMH shareholders equitably, i.e, provide them with the same treatment that GM is according to its economic ownership in Hughes.

WHEREFORE, Wyser-Pratte prays that the Commission fulfill its obligation to protect shareholder interests and deny the instant Application for Authority to Transfer Control, or condition any such transfer upon the equitable treatment of GMH shareholders.

Dated July 15, 2003

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served on July 15, 2003 via Federal Express, overnight delivery to the following

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