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Marlene H. Dortch
Office of the Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 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 Ms. Dortch:

As set forth in the Application and elaborated in other filings in this proceeding, the public interest benefits of The News Corporation Limited's ("News Corp.") proposed investment in Hughes Electronics Corporation ("Hughes") (collectively with News Corp., the "Parties") are many and certain – including most significantly increased competition to incumbent cable operators in the multichannel video programming distribution ("MVPD") marketplace. The Parties' commitment to increase MVPD competition is not mere speculation. It is instead based on (1) News Corp's proven track record of delivering innovative new services on DTH platforms around the world, (2) News Corp's record of providing innovative programming to consumers and challenging established incumbents, (3) the Parties' commitment to local-into-local and high definition television ("HDTV") programming and interactive television ("ITV") services, (4) the improved access to capital that will result from this transaction, (5) the reduction of "double marginalization" made possible through partial vertical integration, (6) the demonstrated economies of scope and scale, increased operating efficiencies, and improved customer service resulting from this transaction, and (7) News Corp.'s commitment to diversity and equal opportunity.

Moreover in the five months since the Application was filed, the Parties have worked intensively toward developing new business plans that could be implemented post-consummation by Hughes as a result of its affiliation with News Corp. – plans that can only be realized with the prompt approval of the Application. Those efforts have

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now progressed to the point where the Parties commit to definitive timelines for the implementation. Specifically:

- By the end of 2004, DIRECTV will provide local channels in 30 more designated market areas (“DMAs”) or offer 30 more channels of HDTV programming, or some combination of the two, above and beyond what had been previously funded, projected or planned by Hughes/DIRECTV.
- By the end of 2004, utilizing new “middleware” provided by a subsidiary of News Corp., DIRECTV will first release a new user interface for its set-top boxes (“STBs”) and then introduce an attractive suite of ITV services enabled by this middleware, including interactive news, interactive sports, and interactive weather, traffic, and games.
- By the end of 2005, DIRECTV will offer STBs with very competitively priced, fully integrated digital video recorders (“DVRs”), which will result in the deployment of at least one million such STBs each year thereafter.

In the longer term, the Parties will design and launch a new generation of satellites as early as 2006 and no later than 2008 that will provide much greater capacity for DIRECTV’s services. This effort – which involves a commitment of approximately \$1 billion that has not been authorized by Hughes’ current owner, General Motors Corporation (“GM”) – will enable DIRECTV to provide local channels in all 210 DMAs and to transmit more HDTV programming to subscribers, including local channels in HDTV format in select markets.

In addition to discussing the substance of and timelines for these initiatives in greater detail, this letter will also summarize for the Commission in one place the extensive showing of quantifiable and transaction-specific public interest benefits that will result from News Corp.’s proposed investment in Hughes, and augment that showing with additional recent developments that further demonstrate the Parties’ commitment to increasing competition and consumer welfare by providing advanced capabilities and compelling services to subscribers. Given the constraints imposed by GM’s ownership of Hughes, those benefits will not be realized unless and until the Application is granted and the proposed transaction is consummated.

I. TIMELINES FOR LOCAL-INTO-LOCAL, HDTV, AND ITV SERVICES

In their Application, the Parties discussed the specific public interest benefits that will result from combining News Corp.’s energy and expertise with the assets already available to Hughes.¹ The discussion below lays out additional details of and the projected timelines for achieving those benefits relating to (1) offering local channels in

¹ See, e.g., Consolidated Application for Authority to Transfer Control, MB Docket No. 03-124, at pp. 16-44 (filed May 2, 2003) (“Application”).

more DMAs and/or more HDTV programming, and (2) offering more robust ITV services. For purposes of this discussion, all timelines are based on the assumption that the proposed transaction will receive all necessary approvals and be completed during the fourth quarter of 2003. As is evident from the following discussion, News Corp. and Hughes intend to move swiftly to enhance the products and services offered by DIRECTV to the American public. This process cannot begin, however, until the Commission approves the transaction.

1. Local-Into-Local and High Definition Television

DIRECTV has announced that it will provide local-into-local service to approximately 100 DMAs, assuming the successful launch and operation of the DIRECTV 7S spot-beam satellite.² However, under GM's ownership and imposed capital constraints, Hughes has been unable to commit to reaching additional markets. At the time they filed the Application, the Parties were examining all available options for delivering local signals in a seamless, integrated offering, with the ultimate goal of providing such service in all 210 DMAs in the United States.³ At this point News Corp. and Hughes can and hereby do commit that, by the end of 2004, DIRECTV will provide consumers:

- local channels in 30 more DMAs *in addition to* the DMAs DIRECTV has announced it already intends to serve, which will increase total local channel coverage to approximately 98.5 million TV households, or approximately 92% of TV households in the U.S.; or
- 30 more national HDTV channels, which would *increase by a factor of five* the number of HDTV channels carried by DIRECTV and continue its leadership in HDTV services; or
- a combination (in proportions determined by consumer demand) of additional local-into-local DMAs and HDTV channels reflecting the equivalent amount of bandwidth for either of the options above.

As set forth in the Application and subsequent filings, the Parties will utilize additional bandwidth for DTH transmission, which may include Ku-band capacity on FSS satellites, some of Hughes' Ka-band capacity on its SPACEWAY system, capacity on foreign satellites authorized to serve the U.S., and more. Plans have progressed to the point where the Parties can now make the firm commitment set forth above.

² See "DIRECTV Names 39 New Local Channel Markets," Press Release (Mar 19, 2003) (available at www.directv.com/DTVAPP/aboutus/headline.jsp?id=03_19_2003A)

³ See Application at pp 27-30.

In addition, based on their review of various strategies and technologies, News Corp. and Hughes are working on post-consummation plans that will enable DIRECTV to offer even more local and HDTV services as early as 2006 and no later than 2008. Within that time frame, the Parties' intend for DIRECTV to launch a series of advanced satellites – a commitment of approximately \$1 billion that has not been authorized by its current owner, GM – that will create additional capacity for the DIRECTV system. DIRECTV will then have the ability to transmit additional local-into-local and HDTV programming – and even local channels in HDTV format in selected markets, a prospect that is not possible with the currently deployed technology.

Accordingly, as early as 2006 and no later than 2008, (1) DIRECTV will offer a seamless, integrated local channel package in all 210 DMAs, and (2) DIRECTV will offer at least 200 to 300 channels of local and national HDTV programming. News Corp. and Hughes continue to believe that DIRECTV will be the strongest possible competitor to incumbent cable operators only if it can provide consumers with their local broadcast channels and with HDTV programming – and as evidenced above, they intend to extend that capability as quickly and efficiently as possible.

Thus, the Parties' investment in these new technologies and assets will not only make more productive use of valuable spectrum resources, but will also create opportunities for new services that will help DIRECTV maintain its position as an industry leader in innovation and customer satisfaction. Because Hughes under GM's ownership and imposed capital constraints has made no commitment to expand local-into-local and HDTV services beyond the levels already announced, these public interest benefits will be realized only as a direct result of the proposed transaction.

2. *Interactive Television*

News Corp. and Hughes have also made significant progress in developing post-consummation plans for the introduction of ITV services. As a necessary first step toward introducing robust interactive services, the Parties will release a new DIRECTV user interface in 2004 that will be incorporated into all new STBs and downloaded to up to 10 million legacy STBs already operating in subscribers' households. In addition to paving the way for ITV services, this new interface will improve the consumer experience by offering more simplified operation that will be consistent across the range of available STBs and fully integrated with the remote control.

By the end of 2004, the Parties will incorporate new middleware (the software layer that lies between the operating system and the applications) into the STB that will enable DIRECTV to introduce an attractive suite of ITV services. Shortly after this middleware has been deployed in new and legacy STBs, DIRECTV subscribers will be able to enjoy an enhanced viewing experience that will include interactive news (allowing the subscriber to choose which story to view), interactive sports (with a choice of multiple camera angles), and interactive weather, traffic, and games.

The Parties have developed a plan to deploy DVRs integrated with DIRECTV STBs at even more competitive prices by 2005, which will result in deployment of at least one million STBs with DVR capabilities per year beginning in that year.⁴

Many MVPDs have talked about introducing ITV services, but only one – BSkyB – has actually followed through with an aggressive roll-out to the public. ITV is more than just a technological challenge, as it also requires an MVPD to attract providers of interactive services to the platform, to package those services in a way that is understandable to and usable by subscribers, and to market those services to create awareness and interest among consumers.⁵ As discussed below in Section II of this letter, the BSkyB experience not only provides News Corp. valuable expertise in these areas upon which to draw, but also provides the Commission solid evidence that the Parties will deliver innovative ITV services to U.S. consumers consistent with the commitments and on the schedule outlined above.

Further confirming its intentions in this regard, News Corp. has taken several steps that will ultimately facilitate implementation of the ITV plans discussed above. For example, in anticipation of rolling out ITV services at DIRECTV, News Corp. announced two agreements with Thomson, a worldwide leader in video technologies, on September 13, 2003. First, News Corp.'s NDS subsidiary announced its purchase of the *MEDIAHIGHWAY* middleware business from Thomson for approximately \$66.5 million.⁶ The *MEDIAHIGHWAY* product line will enable STBs to better interpret and execute interactive applications. Its integrated application development environment and tools will also help to more quickly develop interactive applications. With the addition of this capability, and an existing 300-person research and development center for middleware and ITV applications, NDS will support the development and implementation of such applications across all News Corp.-related satellite video platforms – including DIRECTV.⁷ This acquisition proves yet again News Corp.'s

⁴ In addition to the many features enjoyed by viewers, DVRs may also play a key role in preventing piracy of the DIRECTV signal. See "Euro TV Group Aims to Prevent TV Piracy," TV International Newsletter at 12 (Sept 12, 2003)

⁵ See Declaration of Peter Giacalone at ¶¶ 19-20 (attached as Exhibit E to the Application) ("Giacalone Declaration")

⁶ See "NDS Acquires Thomson's *MEDIAHIGHWAY* and Enters Into Strategic Alliance With Thomson on Provision of Middleware," Press Release (Sept. 13, 2003) (available at www.thomson.net/gb/06/c03/030913a.pdf)

⁷ DIRECTV recently entered into an agreement under which it would be able to incorporate *MEDIAHIGHWAY* technology into its STBs. See "DIRECTV Chooses Thomson's *MEDIAHIGHWAY* Middleware," Press Release (June 13, 2003) (available at www.thomson.net/gb/06/c03/030613b.htm) Only News Corp., however, is in a position to bring both (1) its unique experience in creating, packaging, and promoting ITV products and services gained through BSkyB, and (2) the technological expertise of NDS to customize and integrate the new offerings made possible by this middleware for DIRECTV

commitment to developing innovative ITV offerings for consumers and implementing them as expeditiously and efficiently as possible.

In a related development, News Corp. and Thomson announced that they will enter into a non-exclusive preferred supplier relationship.⁸ Because Thomson already provides STB technology for the BSkyB and Sky Italia platforms in which News Corp. holds ownership interests, and also builds STBs for DIRECTV, this enhanced relationship lays the groundwork that will enable News Corp. to capture economies of scope and scale across platforms more expeditiously and efficiently. This is precisely the sort of synergy the Parties forecast in the Application – one that can be expected to save DIRECTV approximately \$60 million dollars annually within two years while expediting development and deployment of new technology once the proposed transaction has been consummated.⁹

II. SUMMARY AND UPDATE OF PUBLIC INTEREST BENEFITS

Throughout this proceeding, the Parties have set forth and elaborated upon the many public interest benefits that will flow from the proposed transaction.¹⁰ This public interest showing clearly meets and exceeds the standard adopted by the Commission in connection with previous analogous transactions.¹¹ And, while a few commenters initially sought more specificity with respect to some of these benefits, none has seriously challenged their existence.¹²

For the Commission's convenience, this section summarizes in one place and provides an overview of the Parties' public interest submissions. It also provides a further update on recent News Corp. activities that provide additional evidence of this transaction's public interest *bona fides*. As the overview presented below demonstrates,

⁸ See "Thomson and News Corporation to Develop Global Strategic Supplier Relationship," Press Release (Sept 13, 2003) (available at www.thomson.net/gb/06/c03/030913b.pdf).

⁹ See Application at 33 and Giacalone Declaration at ¶¶ 11, 22

¹⁰ See, e.g., Application at 16-44 and Giacalone Declaration; Opposition to Petitions to Deny and Reply Comments at 77-86 ("Reply Comments"); Letter from William M. Wiltshire to Marlene H. Dortch (Sept. 10, 2003) ("Sept 10 *ex parte*"), Letter from William M. Wiltshire to Marlene H. Dortch (Sept 11, 2003) ("Sept. 11 *ex parte*").

¹¹ See, e.g., *Comcast Corporation, AT&T Corp., and AT&T Comcast Corporation*, 17 FCC Rcd. 23246, 23314 (2002) (noting that the Commission looks to the evidence, and its own predictive judgment, to evaluate whether a transaction will create public interest benefits); *id.* at 23314-15 (finding that the parties' evidence showed that Comcast had expertise in broadband deployment and that the merger would provide economies of scope and scale (including, among other things, enhanced access to capital)), compare Giacalone Declaration with Declaration of Robert Pick, MB Docket No. 02-70 (Feb 27, 2002) (attached to the Application of Comcast Corp. and AT&T Corp.)

¹² See Sept. 10 *ex parte* at 1

by virtue of its track record as an innovator and its experience with other satellite DTH platforms around the world, News Corp. is uniquely positioned to inject the energy, vision, and expertise needed to revitalize Hughes so that it can reach its full potential as a vibrant competitor in the MVPD market.

1. Innovative Services

One immediate public interest benefit of this transaction is that News Corp. – to an extent unmatched by any other potential investor in Hughes¹³ -- has the ability to help develop, package, market, and provide innovative new DTH services to DIRECTV subscribers. This, of course, will in turn enhance DIRECTV's ability to compete with incumbent cable operators, many of which are beginning to offer next-generation services of their own.¹⁴

News Corp.'s track record in this regard – particularly BSkyB's \$2 billion conversion to a digital platform¹⁵ – is unparalleled. Converting to digital technology enabled BSkyB to dramatically increase its programming, leaping from 40 analog channels to 140 digital channels immediately upon conversion, and steadily rising over time to the current level of over 395 channels.¹⁶ The digital conversion also enabled BSkyB to offer ITV services such as Sky Sports Extra and Sky News Active, along with shopping, banking, e-mail, information, and gaming options available to all subscribers.¹⁷ BSkyB has continued to introduce ITV applications, and nearly half of all subscribers use ITV services each week.¹⁸

¹³ While noting News Corp.'s unique qualifications *vis-à-vis* other potential investors, the Parties also note that the Communications Act of 1934 does not allow the Commission to “consider whether the public interest, convenience, and necessity might be served by the transfer [of a license] to a person other than the proposed transferee ” 47 U.S.C. § 310(d).

¹⁴ *See, e.g.*, Comments of the National Cable & Telecommunications Association in MB Docket No. 03-172 at 45-54 (responding to Commission's *Video Competition* inquiry and citing cable's HDTV and ITV offerings)

¹⁵ *See, e.g.*, Dan Sabbagh, “BSkyB Lifts Target After Return to the Black,” *The Times* (London), p. 21 (Aug. 13, 2002) (citing size of BSkyB's investment in the digital conversion).

¹⁶ *See* Application at 21, Sept. 10 *ex parte* at Att. 2

¹⁷ *See* Application at 22; Sept. 10 *ex parte* at Att. 2, “Sky News Active – A world first in television news,” Press Release (June 23, 2000); “Sky Sports recognized by Royal Television Society,” Press Release (May 25, 2000). Such innovations drove digital take-up to such a degree that BSkyB was able to put the finishing touch on its conversion to digital by switching off its analog signal in September 2001 – 15 months ahead of schedule. *See* “BSkyB completes analogue switch-off ahead of target,” Press Release (Sept. 21, 2001)

¹⁸ *See, e.g.*, “Sky Digital Delivers Another World First – Text Messaging to Mobiles Through the TV!,” Press Release (June 13, 2001) (announcing a new service through which viewers can send text messages to any U.K. mobile network using the Sky remote control or cordless keypad); “Interactive TV – Learning From the First Three Years,” (Nov. 26, 2002)(available at

Each of these innovations resulted in a measurable increase in BSkyB's subscribership.¹⁹ In the five years before the October 1998 conversion from analog to digital technology, the number of BSkyB subscribers increased by approximately 1.7 million.²⁰ In the five years since that conversion, the number of BSkyB subscribers has increased by approximately 3.3 million – or almost double the rate for the analog service.²¹ These figures are made even more impressive by the fact that there are approximately 24.7 million television households in the U.K. – or less than one quarter the 105.4 million such U.S. households that can be targeted.²² They vividly demonstrate that, as BSkyB has offered new services, consumers in the U.K. have “voted with their feet” and chosen BSkyB over its competitors.

The Parties know that the same formula can work here in the United States, and – as the only company that has actually offered consumers robust ITV services – News Corp. is in a unique position to help Hughes replicate BSkyB's success here. This past record is the best evidence of the validity and likelihood of success of the Parties' commitments. It provides an extra layer of assurance for the Commission in addition to the specific promises and commitments made by the Parties.

If the Commission seeks additional evidence of News Corp.'s intention and ability in this regard, it need look no further than the recently launched Sky Italia – an Italian DTH video satellite service born from the combination of two existing providers (Stream and Telepiu). In less than two months since launching Sky Italia, News Corp. has already entered into the first phase of execution of its plan to substantially upgrade the DTH service available to the Italian public. More specifically, after only two months: Sky Italia now offers over 100 channels, with a basic package with almost twice as many channels as the basic packages offered by Stream and Telepiu.²³

media.corporate-ir.net/media_files/lse/bsy.uk/reports/JFIEA2611021.pdf). Most recently, BSkyB announced a new pricing structure for its Sky+ DVR designed to drive penetration of this exciting technology. See “BSkyB Unveils Sky+ Marketing Drive,” Press Release (Sept. 8, 2003)

¹⁹ See Sept. 10 *ex parte* at Att 2

²⁰ According to information provided to News Corp. by BSkyB, there were approximately 1,861,000 subscribers in 1993 and approximately 3,547,000 subscribers in June 1998

²¹ See “British Sky Broadcasting Group PLC Results for the year ended 30 June 2003,” Press Release at p. 3 (Aug. 12, 2003) (6,845,000 subscribers in June 2003) (“June 2003 Preliminary Results”) All BSkyB press releases cited in this letter are available by date at the BSkyB corporate web site, which can be located through www.sky.com/skycom/home).

²² See Independent Television Commission, “The UK Television Market: An Overview” at 11 (June 2003) (“ITC Report”) (available at http://www.itc.org.uk/uploads/Market_Report.ppt); *Ninth Cable Competition Report*, 17 FCC Rcd 26901, 26911 at Table 1 (2002).

²³ See Declaration of Alessandra Gagliardi at ¶ 2 (attached hereto as Exhibit 1) (“Gagliardi Declaration”).

News Corp. and Hughes are convinced that offering innovative services will increase DIRECTV's subscribership, make it a more effective competitor to cable operators, and benefit the American public.²⁷ They know this for a simple reason: News Corp. has executed this strategy before. The Commission should recognize that News Corp. is uniquely qualified to do so with Hughes as well.

2. *Innovative Programming*

News Corp. has committed to bring the best, most innovative programming to DIRECTV. Here, as with innovative DTH services, News Corp.'s track record is without peer.²⁸ News Corp. launched the FOX network in 1986 – when just about every observer thought that launching a fourth broadcast network would be impossible.²⁹ It launched a series of award-winning and critically acclaimed shows (such as *The Simpsons*, *The X-Files*, and *24*) that continue to rank among America's most popular programs.³⁰ It launched networks (such as Fox News Channel and the Fox Sports nets) that have competed successfully against incumbents – again, contrary to the predictions of industry “experts.”³¹ It has led the way in providing local news and information.³² And its sports programming has won three times the number of Sports Emmys as the other broadcast networks combined.³³

²⁴ *Id* at ¶ 4

²⁵ *Id*

²⁶ *Id* at ¶ 3

²⁷ *See* Application at 16

²⁸ *See id* at 23-27.

²⁹ *Id* at 24.

³⁰ *Id*

³¹ *Id* at 25.

³² *Id*

³³ *Id* at 26.

News Corp. has also demonstrated a commitment to improving the programming of its overseas DTH platforms. For example, Sky Italia will offer its customers a host of new programming options, including a movie package, a sports package, and even a soccer-specific package.³⁴ Sky Italia also recently launched Italy's first all-news channel, "SkyTG24."³⁵ News Corp. has demonstrated the same commitment to improving programming on DTH platforms overseas as it has to improving its programming here in the United States. Surely, if any potential investor will drive DIRECTV to provide the most innovative television programming available, it is News Corp.

3. *Local-Into-Local and HDTV*

It should perhaps go without saying that News Corp. – a television broadcaster – takes its commitment to local-into-local and HDTV seriously. As the Parties have previously described, News Corp. was the *first* proponent of local-into-local service, and, indeed, designed the first satellite specifically dedicated to providing such service.³⁶ News Corp. will bring to Hughes not just the willingness to invest in expanded local-into-local and HDTV service – an attribute that Hughes' current owner does not possess – but actually the affirmative desire to do so.³⁷

As noted above, the Parties have previously discussed a series of potential strategies for increasing local-into-local and HDTV service, including use of Ku- and Ka-band capacity on FSS satellites, use of capacity on foreign satellites authorized to serve the U.S., incorporating digital terrestrial tuners in DIRECTV STBs, and improving spectrum efficiency through higher-order modulation schemes and improved compression algorithms.³⁸ In just the few months since the Application was filed, they have already refined their plans and developed the timetables set forth in the first part of this letter. To the extent anyone needed further reason to conclude that the Parties intend to achieve their goals of providing more HDTV and local services to more American viewers, those timelines should lay that issue to rest.

³⁴ See Gagliardi Declaration at ¶ 2.

³⁵ See *id*

³⁶ Application at 27

³⁷ See Reply Comments at 83.

³⁸ See Application at 30.

4. *Improved Access to Capital*

Hughes is currently owned by an automobile manufacturer. As the Parties have described on several occasions, this means that, when Hughes seeks funding from GM, it must compete against GM's automotive priorities (including legacy costs and pension plan related costs).³⁹ And when it seeks funding from equity markets, it does so at a substantial disadvantage, in part because of the complications associated with investing in a tracking stock.⁴⁰

Hughes' comparative inability to obtain funding has real world consequences. Increasing local-into-local and HDTV service, for example, requires an enormous financial commitment – a commitment that Hughes has been unable to obtain from GM and has been unable to meet on its own.⁴¹ Hughes has thus not been as aggressive in these areas as otherwise possible. News Corp.'s willingness to invest approximately \$6.6 billion is the key to unlocking Hughes' potential. First, it will fund the split-off of Hughes from GM, creating a separate public company with an asset-based stock capable of accessing the equity markets for its own initiatives and on its own timetable. Second, Hughes will have the backing of a company for which media is the priority and in which innovation, risk-taking, and customer service are central to the corporate culture. Thus, News Corp.'s investment will give Hughes not only an improved ability to raise the capital necessary for further innovation, but also the support of a major investor with the energy and experience to help Hughes implement its plans. This improved access to capital is an important component allowing the Parties to make the specific commitments set forth in this letter.

5. *Increased Operating Efficiencies*

The Parties have repeatedly described how News Corp. could use its overseas DTH experience – experience shared by no other potential purchaser of Hughes – to achieve operating efficiencies at DIRECTV.⁴² They have already identified ways to do so in the areas of customer service (by moving certain operations in-house, as News Corp. has done overseas);⁴³ personnel (by sharing personnel with News Corp. subsidiaries);⁴⁴ and facilities (by consolidating certain DIRECTV and News Corp.

³⁹ See *id.* at 38; Sept. 10 *ex parte* at 2

⁴⁰ See Application at 38; Sept. 10 *ex parte* at 2

⁴¹ See Reply Comments at 83

⁴² See *id.* at 31-33; Giacalone Declaration at ¶¶ 9-23.

⁴³ See Giacalone Declaration at ¶¶ 9-14; Reply Comments at 84.

⁴⁴ See Giacalone Declaration at ¶ 11; Reply Comments at 84.

distribution facilities and interconnecting others with fiber).⁴⁵ Through these actions alone, the Parties anticipate saving between \$65 million and \$135 million annually.⁴⁶

These are some of the cost savings that News Corp., as an “outsider” to DIRECTV, has already been able to identify. But these are not the only possible cost savings. Once this proposed transaction is consummated, News Corp. intends to work with Hughes to implement “best practices” such as those it has developed at BSkyB – which has a significantly lower cost structure compared to DIRECTV – *throughout* DIRECTV’s operations. In the months after consummation, the Parties will almost certainly identify additional opportunities for efficiencies, meaning that the current estimates almost certainly understate the true magnitude of potential savings.

6. *Reduction of Double Marginalization*

Standard economic theory predicts that vertical transactions, such as this one, result in the reduction of the “double markup that occurs when both . . . parties [to a proposed transaction] sell at prices that include a markup over marginal cost.”⁴⁷ As the Parties have indicated on several occasions, reduction of what economists refer to as “double marginalization” will create a downward incentive for News Corp.’s programming prices (although this pressure can manifest itself as smaller future price increases and in non-price forms, such as greater promotional efforts, improved quality of service, etc.).⁴⁸

One way to think about the reduction of double marginalization is as follows: currently, News Corp. would reduce its profits by lowering programming prices, because it presumably already sets prices at a profit-maximizing level.⁴⁹ News Corp. would, however, reduce *DIRECTV’s* costs (and thus increase DIRECTV’s profits) if it were to lower programming prices.⁵⁰ More specifically, to the extent that DIRECTV does not pass along this cost savings to consumers, News Corp.’s lower prices increase DIRECTV’s profits directly. To the extent DIRECTV *does* pass any of the savings along

⁴⁵ *See id*

⁴⁶ *See* Reply Comments at 85.

⁴⁷ Lexecon, Inc., “Economic Analysis of the News Corporation/DIRECTV Transaction,” (attached to Reply Comments) at 6 (“Lexecon First Report”); *See also* Charles River Associates, “News Corporation’s Partial Acquisition of DIRECTV: Economic Analysis of Vertical Foreclosure Claims,” (attached to Reply Comments) at 10-12 (“CRA First Report”).

⁴⁸ *See* CRA First Report at 11-12; Charles River Associates, “News Corporation’s Partial Acquisition of DIRECTV: A Further Economic Analysis,” (attached to Letter from William M. Wiltshire to Marlene H. Dortch, dated Sept 8, 2003) at 22 (“CRA Second Report”).

⁴⁹ *See* CRA First Report at 58.

⁵⁰ *Id*

to consumers -- or responds with non-price benefits -- it will likely attract new subscribers, which will indirectly increase its profits.⁵¹

Before the transaction, News Corp. is not concerned about increasing DIRECTV's profits. After the transaction, however, some of DIRECTV's increased profits would flow back to News Corp. through its ownership interest in Hughes. This transaction thus creates incentives for News Corp. to charge lower prices to DIRECTV, all other things being equal. And, as News Corp. is bound by the program access rules and its voluntary commitments to set pricing in a non-discriminatory fashion, this translates into pressure to lower prices (or increase service, etc.) across the board.

The exact magnitude of this pressure has proven difficult to calculate. However, even ignoring the "indirect" benefit to DIRECTV of attracting new subscribers, the Parties' economic experts estimate that, all else being equal, the reduction of double marginalization gives News Corp. an incentive to uniformly reduce its programming prices by (or respond with non-price benefits on the order of) one to three percent.⁵² As they point out, while this might seem modest, "these potential price reductions would be offered on a non-discriminatory basis to *all MVPDs*, not just to DIRECTV."⁵³ This downward pressure on News Corp.'s programming prices, of course, would not exist absent this transaction.

7. *Economies of Scope and Scale*

By affiliating DIRECTV with the other DTH operations in which News Corp. holds an interest, the proposed transaction will allow DIRECTV to share the enormous costs of research, development, and deployment of new products and services and spread those costs over the much larger combined subscriber base.⁵⁴ The result: a lower marginal cost on these products and services, and the corresponding ability to bring them to market more quickly, more efficiently, and at less expense to the consumer.⁵⁵

This is perhaps most quantifiable with respect to STBs. DIRECTV currently bears the entire cost and risk of developing new capabilities for its STBs. News Corp., by contrast, is able to spread these costs and risks among a number of DTH platforms, which allows those DTH operators to pay a lower per-STB price than otherwise possible.⁵⁶ Because News Corp. intends to pursue common technology standards for

⁵¹ See CRA Second Report at 22

⁵² *Id.* at 24.

⁵³ *Id.* (emphasis in original)

⁵⁴ See Application at 33.

⁵⁵ See Reply Comments at 85

⁵⁶ See Reply Comments at 85; Giacalone Declaration at ¶ 11.

both hardware and software development throughout its platforms, the Parties will benefit from the ability to (1) draw upon the technological talents of numerous companies, such as BSKyB and NDS, and (2) more efficiently defray the enormous research and development costs by spreading them over a subscriber base more than double the size of that available to DIRECTV alone. News Corp. estimates that this will result in savings for DIRECTV of approximately \$60 million per year in subscriber acquisition costs, which will lead to a more competitive offering to consumers.⁵⁷

With these advantages, DIRECTV will be able to more efficiently and economically explore a range of emerging technologies, such as improved compression and more spectrum-efficient modulation schemes (such as 8PSK).⁵⁸ It will also be able to accelerate development of new STB configurations, including wireless connections, that will make multi-set operations in the home more convenient and economical for consumers. All of this will result in a DIRECTV service that gives consumers a better experience, for less money, than would be possible without this transaction.

8. *Improved Customer Satisfaction*

Each of the innovations and efficiencies described above will create a more attractive and enjoyable experience for the subscriber.⁵⁹ In addition, News Corp. will bring its experience with BSKyB's world-class customer service to DIRECTV subscribers. In the U.K., BSKyB has established its own state-of-the-art call centers and staffed them with thousands of thoroughly trained company employees to ensure that interaction between the company and consumers is handled as courteously, efficiently and effectively as possible.⁶⁰ The Parties will draw upon this experience as they replicate BSKyB's "best practices" in the United States – beginning by moving more customer service functions in-house.⁶¹

Taken together, all of these initiatives will increase DIRECTV's subscriber growth, as more new subscribers are drawn to its compelling array of programming and services and fewer existing subscribers "churn" away. Again, BSKyB's experience is instructive: based on the proven success of its programming and ITV services and in anticipation of future success with its DVR and other initiatives, BSKyB has recently

⁵⁷ See Application at 35.

⁵⁸ See *id.* at 34

⁵⁹ See *id.* at 36.

⁶⁰ BSKyB's call centers were recognized in September 2002 with an award for Best Design at the European Call Center of the Year Awards. See "Sky Wins 2002 Award for Best European Call Centre Design," Press Release (Sept 27, 2002).

⁶¹ See Reply Comments at 84

announced its goal of reaching eight million subscribers by the end of 2005 – an increase of over 1.15 million subscribers in only 18 months.⁶² Similarly, while the annualized churn rate for the analog BSKyB service was 15% or greater, churn for the digital service with its enhanced offerings has decreased fairly steadily and now resides at an industry-leading 9.4% annualized rate.⁶³ The Parties project that, with the improvements they foresee at DIRECTV leading to greater customer satisfaction, DIRECTV will realize incremental growth of approximately 750,000 to 1,000,000 additional subscribers (over what DIRECTV would otherwise achieve) by 2006.⁶⁴

9. Diversity

News Corp. has a deep corporate commitment to diversity and equal opportunity.⁶⁵ Just two weeks ago, the Parties described News Corp.'s diversity track record, which is second to none, and the types of initiatives that the Parties intend to introduce at Hughes.⁶⁶ Such initiatives include: (1) increasing the amount of programming on DIRECTV targeted at culturally, ethnically, and linguistically diverse audiences; (2) implementing a program for mentoring women and minority entrepreneurs who have the financial backing, but not the "know how," to launch niche cable channels; (3) developing an executive leadership initiative based on similar programs currently in place at News Corp.'s business units; (4) developing internship and mentoring programs at DIRECTV for high school, college, and graduate students from underrepresented groups; (5) evaluating Hughes' procurement programs to ensure that they provide sufficient opportunities for minority-owned suppliers and contractors; (6) upgrading Hughes' internal and external communications, including its website, to help it more efficiently institute the diversity initiatives listed above; and (7) establishing a diversity development office within DIRECTV modeled after that at Fox Entertainment Group.⁶⁷ News Corp. has an unparalleled record on diversity issues, and will bring the same commitment to extending Hughes' diversity practices.

* * *

From this discussion, the Commission can and should reach several important conclusions. First, the Parties have made significant commitments to increase the local-

⁶² See "BSkyB Targets 8M Subscribers by End of 2005," Dow Jones Business News (Aug. 12, 2003) (available at [biz yahoo.com/djus/030812/0841000797_2.html](http://biz.yahoo.com/djus/030812/0841000797_2.html)).

⁶³ Compare June 2003 Preliminary Results at p.3 with "Results for the Half Year Ended 31/12/98," Press Release at p. 3 (Feb 10, 1999).

⁶⁴ See Application at 36

⁶⁵ See Application at 39; Sept 11 *ex parte* at 1.

⁶⁶ See Sept. 11 *ex parte* at 1

⁶⁷ *Id* at 1-9.

into-local, HDTV, and ITV services that DIRECTV will provide to U.S. consumers over the next two years. The realization of these quantifiable and transaction-specific benefits depends upon prompt grant of the Application.

Second, the record evidence demonstrates that News Corp. has consistently invested in and successfully introduced new programming and services using innovative technologies – to the demonstrable satisfaction of consumers. Third, News Corp. is ready, willing, and able to use its energy and expertise to revitalize Hughes – and to invest \$6.6 billion to unlock Hughes’ potential. Fourth, because many of the innovations that News Corp. and Hughes will introduce to DIRECTV subscribers once the transaction is consummated echo initiatives that have been successfully implemented at B SkyB and are being implemented at Sky Italia, the Commission can safely predict based on this track record that the Parties will deliver on their plans for DIRECTV.

In sum, the numerous demonstrated, quantifiable, and transaction-specific public interest benefits of News Corp.’s proposed investment far outweigh any potential concerns associated with this transaction. The Commission should therefore expeditiously grant the Application.

Sincerely,

 /s\

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Attachment

EXHIBIT 1

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

_____))
Application of))
))
GENERAL MOTORS CORPORATION AND))
HUGHES ELECTRONICS CORPORATION,))
))
Transferors,))
))
and)) MB Docket No. 03-124
))
THE NEWS CORPORATION LIMITED,))
))
Transferee,))
))
For Authority to Transfer Control))
_____)

DECLARATION OF ALESSANDRA GAGLIARDI

1. My name is Alessandra Gagliardi. I am the head of regulatory affairs of Sky Italia S.r.l. ("Sky Italia"). I have been in this position since July 2003 and am responsible for all regulatory issues concerning the company.

2. Sky Italia was created through the merger of two Italian satellite direct-to-home ("DTH") operators, Stream and Telepiu. It launched service on July 31, 2003, offering subscribers over 100 channels of programming. Among these channels are a basic tier, a movie package, a sports package, and a soccer-specific package. Sky Italia's various tiers offer greater variety than was previously available through either Stream or Telepiu. For example, while Stream offered 20 video channels in its Basic Package and Telepiu offered 25 video channels, Sky's basic package includes 45 video channels. Sky

Italia also launched SkyTG24, a new Italian live 24-hour news channel, on August 31, 2003.

3. Stream and Telepiu subscribers are entitled to continue receiving the programming for which they had subscribed with those DTH operators pursuant to their existing subscription contracts until those contracts expire. Those subscribers also have the option of terminating their current contracts with Stream and Telepiu and entering into a new subscription agreement with Sky Italia.

4.

I, Alessandra Gagliardi, declare under penalty of perjury that the foregoing declaration is true and correct.

Executed on September 22, 2003

/s/ Alessandra Gagliardi
Alessandra Gagliardi