

SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP

1440 NEW YORK AVENUE, N.W.
WASHINGTON, D.C. 20005-2111

TEL: (202) 371-7000
FAX: (202) 393-5760
www.skadden.com

DIRECT DIAL
(202) 371-7200
DIRECT FAX
(202) 661-8233
EMAIL ADDRESS
JQUALE@SKADDEN.COM

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August 16, 2007

Marlene Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

RE: MB Docket No. 07-18 – Ex Parte Presentation

Dear Ms. Dortch:

News Corporation (“News Corp.”), by and through its undersigned counsel, hereby responds to the letter submitted to the Commission on July 26, 2007 by EchoStar Satellite, L.L.C. (“Echostar”) with respect to the above-captioned transfer of control proceeding. In its letter, Echostar attempts to drag into this proceeding its negotiations with News Corp. for carriage of Big Ten Network. News Corp. respectfully submits that resolution of Echostar’s carriage of Big Ten Network can and should be resolved independently of the Commission’s review of the transfer proceeding. Like its recently-filed petition for special relief, Echostar’s letter is nothing more than a bald attempt to gain leverage in its carriage negotiations with Big Ten Network.

Echostar’s petition for special relief pursuant to Section 76.7 of the Commission’s rules asks that Big Ten Network be declared a regional sports network (“RSN”).¹ Echostar asks the Commission to find that Big Ten Network is an RSN so that Echostar can avail itself of the arbitration condition adopted in connection with

¹ See *In re Petition of Echostar Satellite, L.L.C. for Declaratory Ruling*, MB Docket No. ____, filed by Echostar July 20, 2007 (the “Petition”).

News Corp.'s acquisition in 2004 of an interest in DIRECTV.² News Corp. will more fully respond to the *Petition* at the appropriate time once the Commission places Echostar's request on public notice. It suffices to say, however, that Echostar's request has no basis in fact, as Big Ten Network is a national network, not an RSN, with programming that will be available and appeal to viewers across the country.

In any event, the *Petition* remains pending, and the Commission should consider Echostar's arguments, if at all, only in connection with ruling on the *Petition*. Echostar's contentions relating to Big Ten Network have no relevance to this transfer of control proceeding. When the proposed transaction is consummated, New Corp. – as a stand-alone video provider unaffiliated with any multichannel video distribution platform – will have neither the incentive nor the ability to engage in anticompetitive practices with respect to its RSNs, which in any event do not include Big Ten Network.

Apparently recognizing that the proposed transaction itself renders Echostar's arguments entirely irrelevant to this proceeding even if Big Ten Network were assumed to constitute an RSN, Echostar claims that the carriage dispute should nonetheless be addressed in connection with the review of this transaction because News Corp. allegedly has "pledged to maintain the *News/Hughes* RSN . . . conditions for their full six-year term (until January 2010) if [this transaction] is approved."³ Echostar's allegations are entirely inaccurate and without basis in the record. News Corp. has made quite clear that the *News/Hughes Conditions*, by their terms, remain in place "unless News Corp. files a petition for modification 'demonstrating that there has been a material change in circumstance or the condition[s] ha[ve] proven unduly burdensome, rendering the condition[s] no longer necessary in the public interest.'"⁴ News Corp. has neither made a request that the Commission modify or eliminate the conditions nor pledged to maintain the conditions until 2010. And even if it had, Echostar has not shown why any dispute

² See *General Motors Corp. & Hughes Electronics Corp., Transferors, & The News Corporation Ltd., Transferee, for Authority to Transfer Control*, Memorandum Opinion & Order, 19 FCC Rcd 473 (2004), at Appendix F (the "*News/Hughes Conditions*").

³ Echostar letter, at 2.

⁴ See *In re Application of News Corporation and The DIRECTV Group, Inc., Transferors, and Liberty Media Corporation, Transferee, For Authority to Transfer Control*, Opposition and Reply Comments of News Corporation, MB Docket No. 07-18, filed April 9, 2007, at 14 (citing *News/Hughes Conditions*, at Appendix F); see also *id.* at 15 ("because News Corp. has not filed a petition for modification of the conditions, they are scheduled to remain effective . . . until 2010 . . ." unless "News Corp. at some time in the future files a petition seeking to modify or eliminate the conditions").

as to the meaning of the *News/Hughes Conditions* has any relevance to the Commission's review of this transaction.

Echostar also asserts that, since there is a dispute pending as to whether Big Ten Network is an RSN covered by the *News/Hughes Conditions*, the Commission should simply extend the arbitration remedy to *all* News Corp.-owned programming networks.⁵ Echostar first raised its claim that Big Ten network should be deemed an RSN in its *Petition*, and then a scant week later in its *ex parte* letter seeks this overreaching "remedy" – without any valid basis for addressing it in this proceeding.

Furthermore, the *News/Hughes Conditions* apply only to RSNs (and not all video programming networks) precisely because the Commission has twice found that only RSNs, which provide programming within a limited geographic region, and not national programming networks, constitute "must have" programming for which there is no readily available alternative.⁶

Accordingly, there is no basis for the Commission to extend an arbitration remedy to all News Corp.-owned programming networks in any context, much less as part of the transfer of control review. The Commission has never suggested that an arbitration remedy would be appropriate for national networks, nor has it ever applied such a remedy to non-vertically integrated program suppliers. Echostar has offered no justification for a change in course here. The Commission should evaluate the merits of Echostar's specific claims relating to Big Ten Network in the pending separate proceeding.

⁵ See Echostar letter, at 2.

⁶ See *General Motors Corp. & Hughes Electronics Corp., et. al.*, 19 FCC Rcd at para. 129; see also *In re Applications for Consent to the Assignment and/or Transfer of Control of Licenses, Adelphia Communications Corp., et. al.*, 21 FCC Rcd 8203 (2006), at para. 169.

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Pursuant to Section 1.1206(b) of the Commission's Rules, an original and copy of this letter are being submitted to the Secretary's office, along with copies to those at the FCC specified in the Commission's Public Notice in this proceeding.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "J.C. Quale". The signature is fluid and cursive, with a large initial "J" and "C".

John C. Quale
Jared S. Sher

Counsel to News Corporation

cc: Monica Desai
Rosemary Harold
Royce Sherlock
Patrick Webre
Sarah Whitesell
Tracy Waldon
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JoAnn Lucanik
Mania Baghdadi
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