Before the
Federal Communications Commission
Washington, D.C. 20554

DOCKET FILE COPY ORIGINAL

MAILED
JUN 15 2011
FCC Mail Room

In the Matter of	)	
	)	
BRH Holdings GP, Ltd., Transferor	)	IB Docket No. 11-55
	)	
and	)	
	)	
EchoStar Corporation, Transferee	)	
	)	
Applications for Consent to Transfer Control of Hughes Communications, Inc., Hughes Network Systems, LLC and HNS License Sub, LLC	)	

ORDER

Adopted: June 8, 2011 **Released: June 8, 2011**

By the Chief, International Bureau:

I. INTRODUCTION

1. In this Order, we consider a series of applications (collectively, "Application") filed by BRH Holdings GP, Ltd. ("BRH" or "Transferor") and EchoStar Corporation ("EchoStar" or "Transferee," and together with BRH, the "Applicants") pursuant to Section 310 of the Communications Act of 1934, as amended, and the Commission's rules,[1] for authority to transfer control of Hughes Communications, Inc. ("Hughes Communications") and its Commission licensee subsidiaries, Hughes Network Systems, LLC ("HNS") and HNS License Sub, LLC ("HNS Sub"), which is wholly owned by HNS, to EchoStar.[2] Based on the record established in this proceeding, we find that grant of the Application will serve the public interest, convenience, and necessity. We also conclude, based on EchoStar's surrender of five licensed-but-unbuilt 17/24 GHz Broadcasting-Satellite Service (BSS) space station authorizations, that Section 25.159(d) of the Commission's rules does not constrain EchoStar's ability to acquire Hughes assets, including certain pending applications.

II. BACKGROUND

A. Description of the Applicants

1. The Transferor – BRH Holdings GP, Ltd.

2. Leon Black, Marc Rowan, and Joshua Harris are the sole stockholders and directors of BRH

[1] 47 U.S.C. § 310(d); 47 C.F.R. §§ 25.119(d), 25.137(g).

[2] *See* Hughes Communications, Inc., Transferor, and EchoStar Corporation, Transferee, Consolidated Application for Authority to Transfer Control, Narrative, IBFS File Nos. SAT-T/C-20110228-00041 and -00042, SES-T/C-20110228-00221, -00222, -00223 and -00224, and Experimental License File Nos. 0001-EX-TC-2011, 0002-EX-TC-2011 and 0003-EX-TC-2011 (filed Feb. 28, 2011), as corrected by Erratum (filed Mar. 2, 2011) ("Narrative"). Action on the experimental licenses will be taken by separate but concurrent action of the Office of Engineering and Technology.

Holdings GP, Ltd.[3] BRH Holdings GP, Ltd, a U.K. company, indirectly controls Hughes Communications.[4] Hughes Communications is a company organized under the laws of Delaware. Hughes Communications operates primarily through its wholly owned subsidiary, HNS, a Delaware limited liability company. HNS operates several businesses including high-speed broadband Internet access service, satellite equipment manufacturing, and VSAT and other enterprise services. HNS is the direct parent of HNS License Sub, LLC, a Delaware limited liability company that holds earth station licenses. HNS also owns and operates the U.S.-licensed SPACEWAY 3 space station. HNS has a pending application to transfer operations of SPACEWAY 3 to its indirect subsidiary, Hughes Network Systems, Ltd. (HNS, Ltd.), that would operate the satellite under the regulatory supervision of the United Kingdom.[5] HNS, Ltd. is also building the Jupiter 1 satellite, which will operate under U.K. regulatory supervision. The Commission has granted Jupiter 1 U.S. market access.[6]

2. The Transferee – EchoStar

3. EchoStar, a publicly traded company organized under the laws of Nevada, operates both a satellite service business and a digital set-top box business. Currently, EchoStar owns and operates six satellites and leases capacity on five additional satellites.[7] EchoStar has also been granted licenses for five 17/24 GHz BSS satellites and for a Direct Broadcast Satellite (DBS) service satellite to operate at 86.5° W.L. EchoStar also holds numerous authorizations for earth stations. EchoStar licenses are held through wholly owned subsidiaries. EchoStar recently restructured its license-holding companies through *pro forma* license assignments.[8]

4. EchoStar provides digital broadcast services, primarily through an affiliated company, DISH Network Corporation (DISH). EchoStar provides satellite capacity and engineering services to DISH for the DISH DBS service. It is also DISH's sole supplier of digital set-top boxes, which it designs and develops. Charles Ergen, the Chairman of EchoStar, controls EchoStar through stockholdings which gives him a 92.7% voting interest and a 56.4 % equity interest.[9]

B. Description of the Transaction

5. EchoStar proposes to acquire control of Hughes Communications and its subsidiaries and

---

[3] *Id.*

[4] Narrative, Attachment 1, Ownership of Hughes Communications, Inc. Prior to Transfer of Control Exhibit at un-paginated attachment.

[5] Narrative at 7. *See also* Hughes Network Systems, LLC, Application to Transfer Spaceway 3 to U.K. Authority, IBFS File No. SAT-T/C-20100527-00113 (filed May 27, 2010).

[6] Narrative at 7. *See also* Hughes Network Systems, LLC, Letter of Intent, IBFS File No. SAT-LOI-20091110-00119 (granted May 5, 2010). Jupiter 1 is the current name for a satellite previously referred to as SPACEWAY 4.

[7] *Id.* at 5-6. EchoStar operates five satellites in the Direct Broadcast Satellite (DBS) service: EchoStar 3 at 61.45° W.L., EchoStar 4 at 77° W.L., EchoStar 6 at 61.65° W.L., EchoStar 8 at 77° W.L. and EchoStar 12 at 61.35 ° W.L. EchoStar also operates EchoStar 9, a hybrid Ku-/Ka-band FSS satellite, at 121.0° W.L. *Id.* EchoStar 4 and EchoStar 8 operate under Mexican authority while the remaining four space stations operate under U.S. authority. On March 14, 2011, EchoStar filed a request to transfer EchoStar 6 operations to Mexican supervision under a license issued to QuetzSat, S. de R.L. de C.V. *See* IBFS File No. SAT-T/C-20110314-00054.

[8] *See* EchoStar Corporation, Application for Pro Forma Assignment, IBFS File Nos. SAT-ASG-20110224-00033, -00034, -00035 (filed Feb. 24, 2011) and EchoStar Corporation, Application for Pro Forma Assignment, IBFS File Nos. SES-ASG-20110228-0554, -00560, -00561, and -00562 (filed Feb. 28, 2011). *See also* Application for Assignments of Authorization and Transfers of Control: Wireless Telecommunications Bureau, File No. 0004629885 (filed Feb. 24, 2011).

[9] Narrative, Attachment 1. DISH Network is also majority owned and controlled by Charles Ergen. *Id.* at 4.

assume Hughes Communications' outstanding debt. The transaction is valued at approximately $2 billion.[10] The Broadband Acquisition Corporation, an indirect, wholly owned subsidiary of EchoStar organized under the laws of Delaware, will merge with and into Hughes Communications.[11] Hughes Communications will emerge as the surviving corporation and will be an indirect wholly owned subsidiary of EchoStar.[12] HNS will continue to be a wholly owned subsidiary of Hughes Communications and the direct parent of HNS Sub. In addition to the licenses and grants identified in Appendix A, EchoStar will also acquire two pending applications for U.S. market access for the SPACEWAY 5 and 6 satellites, which have not yet been built.[13]

C. Application and Review Process

6. The Application was placed on Public Notice on March 18, 2011.[14] The Commission did not receive any comments or oppositions to the Application. ViaSat filed a letter in the International Bureau Filing System (IBFS) requesting to be added to the proceeding as a party for purposes of the Commission's *ex parte* rules.[15] EchoStar filed a letter reporting *ex parte* discussions with Commission staff on May 18, 2011.[16] On May 19, 2011, Hughes filed with the Commission a demonstration concerning construction of the Jupiter 1 space station.[17] EchoStar filed additional information concerning its plans with respect to Jupiter 1 and other future fleet deployments on May 19, 2011 and May 27, 2011.[18]

D. Public Interest Analysis

7. Pursuant to Section 310(d) of the Communications Act,[19] we must determine whether the Applicants have demonstrated that the proposed transfer of control will serve the public interest, convenience, and necessity. In making this determination, we first assess whether the proposed

---

[10] *Id.* at 10.

[11] *Id.* at 10, Actions Contemplated by the Merger Attachment.

[12] *See* Letter from Pantelis Michalopoulos, Counsel for EchoStar, to Marlene H. Dortch, Secretary, Federal Communications Commission (filed April 26, 2011) (reporting that a newly incorporated Colorado corporation, EH Holding Corporation, a wholly owned subsidiary of EchoStar, would hold the stock of Hughes Communications).

[13] *See* Hughes Network Systems, LLC, Letter of Intent, IBFS File No. SAT-LOI-20091110-00120 (filed Nov. 10, 2009) and Hughes Network Systems, LLC, Letter of Intent, IBFS File No. SAT-LOI-20091110-00121 (filed Nov. 10, 2009) respectively.

[14] *BRH Holdings GP, Ltd., Transferor, and EchoStar Corporation, Transferee, Seek FCC Consent to Transfer Control of Hughes Communications, Inc., Hughes Network Systems, LLC, and HNS License Sub*, IB Docket No. 11-55, Public Notice, DA 11-518 (Mar. 18, 2011) ("*EchoStar/Hughes Public Notice*").

[15] Prior to the release of the *EchoStar/Hughes Public Notice*, ViaSat filed a letter in the International Bureau Filing System (IBFS) requesting to be considered a party to the Application. Letter from John A. Janka, Counsel for ViaSat, Inc. to Marlene H. Dortch, Secretary, FCC, March 2, 2011. In the *EchoStar/Hughes Public Notice*, the Commission stated that the proceeding would be "permit-but-disclose." *EchoStar/Hughes Public Notice* at 4.

[16] Letter from Alison Minea, Counsel for EchoStar, to Marlene H. Dortch, Secretary, Federal Communications Commission (filed May 18, 2011). *See also* Memorandum from Fern Jarmulnek, Deputy Chief, Satellite Division (May 19, 2011) (providing additional information concerning *ex parte* meetings).

[17] Hughes Network Systems, LLC's Response to Commission Request for Update on Implementation Progress for Its Jupiter Ka-Band FSS Satellite at 107.1° W.L., IBFS File No. SAT-LOI-20091110-00119 (filed May 19, 2011) ("Hughes Supplement").

[18] EchoStar Corporation, Supplement, IB Docket No. 11-55 (filed May 19, 2011) ("EchoStar Supplement"); EchoStar Corporation, Second Supplement, IB Docket No. 11-55 (filed May 27, 2011) ("EchoStar Second Supplement").

[19] 47 U.S.C. § 310(d).

transaction complies with the specific provisions of the Act, other applicable statutes, and the Commission's rules. If the proposed transaction would not violate a statute or rule, we next consider whether it could result in public interest harms by substantially frustrating or impairing the objectives or implementation of the Communications Act or related statutes.[20] We then employ a balancing test weighing any potential public interest harms of the proposed transaction against any potential public interest benefits.[21] The Applicants bear the burden of proving, by a preponderance of the evidence, that the proposed transaction, on balance, will serve the public interest.[22] Our public interest evaluation necessarily encompasses the "broad aims of the Communications Act,"[23] which include, among other things, a deeply rooted preference for preserving and enhancing competition in relevant markets, accelerating private sector deployment of advanced services, ensuring a diversity of license holdings, and generally managing spectrum in the public interest.[24] Our public interest analysis may also entail assessing whether the merger will affect the quality of communications services or will result in the provision of new or additional services to consumers.[25] Our competitive analysis, which forms an important part of the public interest evaluation, is informed by, but not limited to, traditional antitrust principles.[26] The Commission considers whether a transaction will enhance, rather than merely preserve, existing competition, and examines potential and future competition and its impact on the relevant market.[27]

8. No opposition to this transaction has been raised, nonetheless we discuss the potential harms and benefits of the proposed transaction, including potential competitive effects. We also discuss the impact of the proposed transaction on EchoStar's compliance with the Commission's safeguards against speculation in Section 25.159(d) of the rules.

---

[20] *See, e.g., Applications of XM Satellite Radio Holdings Inc., Transferor, to Sirius Satellite Radio Inc., Transferee, for Consent to the Transfer Control of Licenses*, Memorandum Opinion and Order and Report and Order, 23 FCC Rcd 12348, 12364, ¶ 30 (2008) (*"XM-Sirius Order"*); *News Corp. and DIRECTV Group, Inc. and Liberty Media Corp. for Authority to Transfer Control*, 23 FCC Rcd 3265, 3276-77 ¶ 22 (2008) (*"Liberty Media-DIRECTV Order"*); *SBC Comm. Inc. and AT&T Corp. Applications for Approval of Transfer of Control*, 20 FCC Rcd 18290, 18300, ¶ 16 (2005) (*"SBC-AT&T Order"*); *Verizon Comm., Inc. and MCI, Inc. Applications for Approval of Transfer of Control*, 20 FCC Rcd 18433, 18443, ¶ 16 (2005) (*"Verizon-MCI Order"*).

[21] *See, e.g., XM-Sirius Order*, 23 FCC Rcd at 12364, ¶ 30; *Liberty Media-DIRECTV Order*, 23 FCC Rcd at 3277,¶ 22; SBC-AT&T Order, 20 FCC Rcd at 18300, ¶ 16; *Verizon-MCI Order*, 20 FCC Rcd at 18443, ¶ 16; *General Motors Corporation and Hughes Electronics Corporation, Transferors, and The News Corporation Limited, Transferee*, Memorandum Opinion and Order, 19 FCC Rcd 473, 483, ¶ 15 (2004) ("*News Corp.-Hughes Order*").

[22] *See, e.g., XM-Sirius Order*, 23 FCC Rcd at 12364, ¶ 30; *Liberty Media-DIRECTV Order*, 23 FCC Rcd at 3277, ¶ 22; *SBC-AT&T Order*, 20 FCC Rcd at 18300, ¶ 16; *Verizon-MCI Order*, 20 FCC Rcd at 18443, ¶ 16; *Application of EchoStar Communications Corporation (a Nevada Corporation), General Motors Corporation, and Hughes Electronics Corporation (Delaware Corporations) (Transferors) and EchoStar Communications Corporation (a Delaware Corporation) (Transferee)*, Hearing Designation Order, 17 FCC Rcd 20559, 20574, ¶ 25 (2002) (*EchoStar-DIRECTV Order*).

[23] *See, e.g., XM-Sirius Order*, 23 FCC Rcd at 12364, ¶ 31; *Liberty Media-DIRECTV Order*, 23 FCC Rcd at 3277, ¶ 23; *News Corp.-Hughes Order*, 19 FCC Rcd at 483, ¶ 16; *EchoStar-DIRECTV Order*, 17 FCC Rcd at 20575, ¶ 26.

[24] *See* Telecommunications Act of 1996, Pub. L. No. 104-104, § 706, 110 Stat. 56, 153 (1996 Act), *codified at* 47 U.S.C. § 157; 47 U.S.C. §§ 254, 332(c)(7); 1996 Act, Preamble; *XM-Sirius Order*, 23 FCC Rcd at 12365, ¶ 31; *Liberty Media-DIRECTV Order,* 23 FCC Rcd at 3277-78, ¶ 23.

[25] *See, e.g., XM-Sirius Order*, 23 FCC Rcd at 12365, ¶ 31; *Liberty Media-DIRECTV Order,* 23 FCC Rcd at 3277-78, ¶ 23.

[26] *See, e.g., XM-Sirius Order*, 23 FCC Rcd at 12365, ¶ 32; *Liberty Media-DIRECTV Order,* 23 FCC Rcd at 3278, ¶ 24; *News Corp.-Hughes Order*, 19 FCC Rcd at 484, ¶ 17; *EchoStar-DIRECTV Order*, 17 FCC Rcd at 20575, ¶ 27.

[27] *See, e.g., XM-Sirius Order*, 23 FCC Rcd at 12366, ¶ 32; *Liberty Media-DIRECTV Order,* 23 FCC Rcd at 3278, ¶ 25.

9. *Competitive Effects.* We find that DISH and EchoStar currently do not offer products and services in competition with the products and services offered by Hughes. As explained above, Hughes provides residential satellite broadband services through HughesNet®.[28] DISH provides digital broadcast and programming services and EchoStar provides fixed satellite services, satellite equipment and digital set-top boxes.

10. HNS also offers commercial satellite communications services over its network of Very Small Aperture Terminals (VSATs).[29] HNS's North American services are provided using SPACEWAY 3 capacity as well as transponder capacity leased from their Fixed-Satellite Service (FSS) providers.[30] Their international services are provided using leased transponder capacity. EchoStar offers for leasing some Ka-band capacity to resellers who might lease that capacity to provide wholesale VSAT services.[31] In leasing transponder capacity from North American orbital locations, EchoStar views its competition as large satellite service companies such as Intelsat and SES World Skies.[32] We have not received comments expressing concerns about any possible vertical integration issues, and given EchoStar's very limited leasing of transponder capacity in the Ka-Band, the proposed transaction does not raise any vertical integration concerns.

11. The equipment businesses of Hughes and EchoStar are largely unrelated. HNS manufactures and sells VSATs, as well as gateways and terminals for mobile system operators, and Internet access and equipment for consumer broadband customers.[33] EchoStar sells digital set-top boxes and related products such as satellite dishes, remote controls and broadband Internet connectivity devices.[34] Given the very limited overlap, the proposed transaction raises no competitive concerns with respect to equipment.

12. While these products and services do not directly compete against one another, satellite broadband service increasingly is becoming an important component for DISH to offer, given that the cable and ILEC providers against whom DISH competes are vertically integrated cable and ILEC broadband providers.

13. As a result, EchoStar and DISH are considered to be vertically positioned potential entrants and thus more likely to have considered alternative means of securing a source of broadband as an alternative to this transaction. Accordingly, the Commission's competitive effects analysis must consider whether the transaction will have any impact on potential or future competition in developing technologies, given the rapid developments in broadband technology and consumer demand for applications and devices including the equipment currently made by DISH and EchoStar that rely on satellite broadband. We must consider whether absent this transaction EchoStar independently would

[28] SPACEWAY 3, which was placed into service in April 2008, provides a substantial amount of the capacity for this service. It is anticipated that the capacity will be expanded with the launch of the Jupiter 1 satellite in the first half of 2012, increasing the download speeds and the number of customers that can be served. Narrative at 8. Hughes views its primary competitor in residential satellite broadband services to be WildBlue Communications, Inc, which is owned by ViaSat, Inc., and to a lesser extent, satellite operators such as Spacenet, Inc., a subsidiary of Gilat Satellite Networks Ltd. *See* Hughes Communications, Inc., Annual Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934, for the Fiscal Year Ended December 31, 2010, at 14 ("Hughes 10-K").

[29] HNS uses DSL and wireless transport platforms in addition to its VSAT satellite transport platforms. Its North American Enterprise Group serves more than 200 companies. *See* Hughes 10-K at 9.

[30] Hughes views its primary competitors for the supply of VSAT satellite networks to be Gilat, ViaSat, and iDirect Technologies. *See* Hughes 10-K at 14.

[31] Narrative at 22, n.34.

[32] *See* EchoStar Corporation, Annual Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934, for the Fiscal Year Ended December 31, 2010, at 4 ("EchoStar 10-K"). EchoStar primarily provides transponder capacity to DISH Network, with DISH Network accounting for 78.7% of its total 2008 satellite services revenue.

[33] Narrative at 7-10, and Hughes 10-K at 7-12.

[34] *See* EchoStar 10-K at 2.

have considered alternative means for securing its access to satellite broadband services. There is no indication that they had plans to develop a facilities-based satellite broadband service absent the proposed transaction. Thus, the proposed transaction raises no competitive concerns with respect to residential satellite broadband services.

14. *Public Interest Benefits.* We next consider evidence of efficiencies and other public interest benefits. The Applicants claim that synergies from the proposed transaction will produce several public interest benefits. In reviewing the Applicants' claims, we find that the proposed transaction could facilitate an arrangement whereby EchoStar and DISH would be in a position to offer subscribers a "double-play" bundle of satellite video and broadband, or perhaps a "triple-play" bundle of satellite video, broadband, and voice.[35] With the increased capacity of the Jupiter 1 satellite, and with the ability to provide the subscriber with a seamless technical experience, the proposed transaction could result in increased competition to terrestrial multichannel video programming distribution providers, such as Comcast and Verizon, which offer bundled services.

15. The Commission applies a "sliding scale approach" to evaluating public interest benefit claims.[36] Under this approach, where potential harms appear "both substantial and likely, the Applicants' demonstration of claimed benefits also must reveal a higher degree of magnitude and likelihood than we would otherwise demand."[37] On the other hand, where potential harms appear to be less likely or less substantial, as in this case, we will accept a lesser showing to approve the transaction.[38] As we do not find substantial public interest harms with this proposed transaction, we find the benefits that are likely to result from the transfer of control are sufficient for us to find that the transaction will serve the public interest.[39]

16. *Section 25.159(d) of the Commission's Rules.* In 2003, the Commission adopted a first-come,

---

[35] Narrative at 19 (EchoStar states that "the ability to provide video and broadband services, coupled with the cable-comparable data rates portended by the Jupiter 1 satellite, has the potential to increase competition for the existing bundled pay-TV and Internet packages offered by large, vertically integrated firms such as Comcast and Verizon. The transaction is thus likely to help bring more broadband service to rural consumers and more competitive service everywhere").

[36] *XM-Sirius Order*, 23 FCC Rcd 12348, 12384, ¶ 76; *Applications of Cellco Partnership d/b/a Verizon Wireless and Rural Cellular Corporation for Consent to Transfer Control of Licenses and Authorizations*, Memorandum Opinion and Order and Declaratory Ruling, 23 FCC Rcd 12463, 12506, ¶ 95 (2008); *Applications of AT&T Inc. and Dobson Communications Corporation for Consent to Transfer Control of Licenses and Authorizations*, Memorandum Opinion and Order, 22 FCC Rcd 20295, 20332, ¶ 77 (2007); *Applications of AT&T Inc. and BellSouth Corporation for Consent to the Transfer of Control of Licenses*, Memorandum Opinion and Order, 22 FCC Rcd 5662, 5761-2, ¶ 203 (2007); *Applications of Midwest Wireless Holdings, L.L.C. and ALLTEL Communications, Inc.*, Memorandum Opinion and Order, 21 FCC Rcd 11526, 11565, ¶ 109 (2006); *Applications of Western Wireless Corporation and ALLTEL Corporation for Consent to Transfer Control of Licenses*, Memorandum Opinion and Order, 20 FCC Rcd 13053, 13102, ¶ 137 (2005); *Applications of AT&T Wireless Services, Inc. and Cingular Wireless Corporation for Consent to Transfer Control of Licenses and Authorizations*, Memorandum Opinion and Order, 19 FCC Rcd 21522, 21600, ¶ 206 (2004).

[37] *EchoStar-DirecTV Order*, 17 FCC Rcd at 20631, ¶ 192 (quoting *Applications of Ameritech Corp., Transferor, and SBC Communications Inc., Transferee, for Consent to Transfer Control of Licenses*, Memorandum Opinion and Order, 14 FCC Rcd 14712, 14825, ¶ 256 (1999)); *cf. DOJ/FTC Guidelines* § 4 ("The greater the potential adverse competitive effect of a merger . . . the greater must be cognizable efficiencies in order for the Agency to conclude that the merger will not have an anticompetitive effect in the relevant market. When the potential adverse competitive effect of a merger is likely to be particularly large, extraordinarily great cognizable efficiencies would be necessary to prevent the merger from being anticompetitive.").

[38] *Verizon-MCI Order*, 20 FCC Rcd at 18531, ¶ 196; *SBC-AT&T Order*, 20 FCC Rcd at 18385, ¶ 185.

[39] *Application of PacifiCorp Holdings, Inc. and Century Telephone Enterprises, Inc. for Consent to Transfer Control of Pacific Telecom, Inc., a Subsidiary of PacifiCorp Holdings, Inc.*, Report No. LB-97-49, Memorandum Opinion and Order, 13 FCC Rcd 8891, 8893-84, ¶ 3 (WTB 1997).

first-served licensing procedure for most geostationary orbit (GSO) satellites.[40] To ensure that the new procedure did not encourage speculative applications, the Commission also adopted a package of safeguards to ensure that licensees are committed and able to proceed with system implementation in a timely manner. The safeguards include a limit on the number of applications and authorized but unbuilt satellites that an entity may have at any one time.[41] Section 25.159(d) reduces this limit for entities that have established a pattern of missing milestones.[42] Under Section 25.159(d) of the Commission's rules, if a space station licensee misses three implementation milestones within a three-year period, there is a limit on the number of pending applications and licensed, but unlaunched satellites, that it or affiliated entities may have. Specifically, the rule states that the licensee will not be permitted to file another application in any frequency band, if it has two or more satellite applications pending, or two licensed-but-unbuilt satellite systems of any kind.[43] This limit remains in effect until the licensee provides adequate information to demonstrate that it is very likely to construct its licensed facilities.[44]

17. In 2010, prior to the transfer of control applications being filed, the Commission found that EchoStar triggered Section 25.159(d) because it had missed three space station milestones within a three-year period.[45] Because, at that time, EchoStar had licenses to construct and launch five 17/24 GHz BSS satellites, the Commission found that Section 25.159(d) prohibited EchoStar from filing additional applications until it rebutted the presumption or brought the number of licensed-but-unbuilt satellites below Section 25.159(d)'s limits.[46] Recently, EchoStar surrendered the licenses for its five 17/24 GHz BSS satellites.[47] Consequently, EchoStar itself no longer has any licensed-but-unbuilt satellites and does not have any pending applications.

18. EchoStar's acquisition of Hughes's two pending applications and the licensed-but-unbuilt satellite, however, constitutes "new" applications under Section 25.159(d).[48] Nevertheless, the acquisition of Hughes's pending market access requests for SPACEWAY 5 and 6 will comply with

---

[40] *Amendment of the Commission's Space Station Licensing Rules and Policies*, First Report and Order and Further Notice of Proposed Rulemaking in IB Docket No. 02-34, and First Report and Order in IB Docket No. 02-54, FCC 03-102, 18 FCC Rcd 10760, 10792 (2003) ("*Space Station Reform Order*").

[41] 47 C.F.R. § 25.159(c).

[42] 47 C.F.R. § 25.159(d).

[43] *Id.*

[44] *Id.* Alternatively, the applicant can provide evidence to rebut the presumption that it obtained licenses for speculative purposes.

[45] *EchoStar Corporation Application to Operate a C-Band Geostationary Orbit Satellite in the Fixed-Satellite Service at the 84.9° W.L. Orbital Location*, Memorandum Opinion and Order, IBFS File No. SAT-LOA-20090528-00060, DA 10-1401, 25 FCC Rcd 10193 (Int'l Bur. 2010).

[46] *Id.* EchoStar sought reconsideration of this decision. EchoStar Corporation, Petition for Reconsideration, IBFS File No. SAT-LOA-20090528-00060 (filed August 3, 2010). EchoStar has since withdrawn this Petition. *See* Letter from Pantelis Michalopoulos, Counsel for EchoStar, to Marlene H. Dortch, Secretary, Federal Communications Commission (filed May 24, 2011) ("EchoStar License Surrender Letter").

[47] EchoStar License Surrender Letter at 1-2.

[48] EchoStar stated in its Application that Section 25.159(d) does not apply to transfer of control applications. Narrative at n.16 (citing the Commission's statement in the *Space Station Reform Order* that the limit on the number of pending applications does not apply to transfer of control applications. *Space Station Reform Order*, 18 FCC Rcd at 10848, ¶ 233). This statement was intended to ensure that the limit did not prevent an entity from filing an application for approval of a legitimate business transaction. Thus, we accepted for filing the Application for the Hughes/EchoStar transaction even though EchoStar exceeded the limit on the number of licensed-but-unbuilt satellites at the time of filing. The statement was not intended to convey that applications acquired in the transfer would not be counted towards the limit. Otherwise, an entity could evade the rule simply by acquiring the assets of other companies.

Section 25.159(d)'s limit of two pending applications.[49] Likewise, the acquisition of the grant of market access for the Jupiter 1 satellite will comply with the limit on licensed-but-unbuilt satellites.[50] Thus, we could approve the transaction on the basis that it falls below Section 25.159(d)'s limits.

19. EchoStar, however, also submitted documentation that it claims shows it is very likely to construct Jupiter 1 and asked us to find that it should therefore no longer be subject to Section 25.159(d)'s limits on filing new applications.[51] In this regard, EchoStar submitted documentation from Hughes providing information concerning the progress towards construction and launch of Jupiter 1.[52] Specifically, the documentation contains a photograph of Jupiter 1 taken at the manufacturing facility. The photograph shows that the panels are complete and have been integrated with the satellite, and that integration of the main body of the spacecraft is underway.[53] In addition, the documentation includes copies of invoices from the spacecraft manufacturer with notations that Hughes has authorized payment of these invoices.[54] Hughes also provided a summary of capital expenditures to both its manufacturer and its launch provider that indicates that Hughes has paid over 80% of the contract price to its manufacturer and almost 50% of the launch costs.[55] Applicants represent that Jupiter 1 is scheduled to be launched in 2012, well before the launch milestone date of 2015.[56] In addition to the documentation supplied by Hughes, EchoStar submitted declarations from senior officers stating that EchoStar has adequate financial resources to complete the construction and launch of Jupiter 1 in the 2012 timeframe.[57] The declarations also state that upon consummation of the merger, the re-formed, post-merger Hughes entity will continue to be bound by the terms of the Jupiter 1 satellite and launch contracts.[58]

20. Based on this documentation, we find that EchoStar has adequately demonstrated that it is

---

[49] In the Application, EchoStar argued that foreign-licensed satellites, such as the unbuilt Jupiter 1 and SPACEWAY 5 and 6 satellites, should not count towards the limits in Section 25.159(d). Narrative at nn.16-17. Contrary to EchoStar's assertion, the Commission has stated that the limits on the number of pending applications and unbuilt satellites apply equally to U.S.-licensed satellites and non-U.S. satellite operators granted market access. *See Space Station Reform Order*, 18 FCC Rcd at 10876, ¶ 313.

[50] Hughes Network Systems, LLC, Letter Of Intent, IBFS File No. SAT-LOI-20091110-00119 (granted May 5, 2010).

[51] EchoStar Second Supplement at 2-4; Declaration of Kenneth Carroll, EchoStar Second Supplement at Attachment A ("Carroll Declaration"); Declaration of Timothy A. Messner, EchoStar Second Supplement at Attachment B ("Messner Declaration"). *See also* EchoStar Supplement at 7; Declaration of Dean A. Manson, EchoStar Supplement at Attachment A, Declaration of Kenneth Carroll, EchoStar Supplement at Attachment B.

[52] Hughes Network Systems, LLC's Response to Commission Request for Update on Implementation Progress for Its Jupiter Ka-Band FSS Satellite at 107.1 W.L. (filed May 29, 2011) ("Hughes Supplement"). Hughes filed both a public (redacted) and an unredacted version of this response, subject to a request for confidential treatment pursuant to 47 C.F.R. §§ 0.457 and 0.459. As an attachment to its Supplement, EchoStar included a Declaration by the Senior Vice President, General Counsel and Secretary of Hughes Network Systems, LLC confirming the current construction status of Jupiter 1 and anticipated launch during the first half of 2012. EchoStar Supplement, Attachment A.

[53] Hughes Supplement at 1, Attachment 1 (confidentiality requested).

[54] Hughes Supplement, Attachment 2 (confidentiality requested).

[55] *Id. See also* Construction Contract between Hughes Network Systems, LLC and Space Systems Loral, Inc., Exhibit E (July 13, 2010) (confidentiality requested) and Peter B. de Selding, Hughes Wins Coface Backing for Ariane 5 Launch of New Satellite, Space News, May 5, 2010, http://www.spacenews.com/launch/100505-ariane-launch-hughes-sat.html.

[56] Second Supplement at 3, Carroll Declaration.

[57] Carroll Declaration; EchoStar Corporation, Current Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934, Form 8-K (May 17, 2011), EchoStar Second Supplement at Exhibit 1 at Attachment A.

[58] Messner Declaration.

very likely to continue with the construction and launch of Jupiter 1. The documentation demonstrates that the Jupiter 1 satellite is well under construction, that expenditures for construction and launch have been substantial, and that EchoStar is committed to completing construction of and launching Jupiter 1 pursuant to Hughes's contractual obligations. Consequently, we find that EchoStar is no longer subject to Section 25.159(d)'s limitations arising from license surrenders predating this Order. Accordingly, additional satellite applications may be filed without addressing the rule.

III. CONCLUSION

21. Upon review of the Application and the record in the proceeding, we conclude that approval of this transaction is in the public interest.

IV. ORDERING CLAUSES

22. Accordingly, IT IS ORDERED that, pursuant to Section 310(d) of the Communications Act of 1934, as amended, 47 U.S.C. § 310(d), and Sections 25.119(d) and 25.137(g) of the Commission's rules, 47 C.F.R. § 25.119(d), 25.137(g), the applications listed in Appendix A are GRANTED.

23. IT IS FURTHER ORDERED that, pursuant to Section 1.65 of the Commission's rules, 47 C.F.R. § 1.65, the Applicants are afforded 60 days from the date of release of this Order to make any necessary amendments to pending applications to reflect the transfer of control approved in this Order.

24. IT IS FURTHER ORDERED that this Order is effective upon release. Petitions for reconsideration under Section 1.106 of the Commission's rules, 47 C.F.R. § 1.106, may be filed within 30 days of the date of the release of this Order. *See* 47 C.F.R. § 1.4(b)(2).

Federal Communications Commission

Mindel De La Torre

Mindel De La Torre
Chief, International Bureau

APPENDIX A
Licenses and Grants

I. SECTION 310(D) APPLICATIONS

A. Space Stations:

File No.	Licensee:	Call Signs
SAT-T/C-20110228-00041	Hughes Network Systems, LLC	S2753
SAT-T/C-20110228-00042	Hughes Network Systems, LLC	S2663

B. VSAT Ku-band Systems Authorizations:

File No.	Licensee:	Call Signs
SES-T/C-20110228-00223	HNS License Sub, LLC	E940460 E990170 E000166

C. Earth Station on Vessels Authorization:

File No.	Licensee:	Call Signs
SES-T/C-20110228-00224	HNS License Sub, LLC	E020205

D. VSAT 20/30 GHz Authorization:

File No.	Licensee:	Call Signs
SES-T/C-20110228-00222	HNS License Sub, LLC	E060445

E. Earth Station Authorizations:

File No.	Licensee:	Call Signs
SES-T/C-20110228-00221	HNS License Sub, LLC	E090178 E040436 E020208 E020207 E020206 E020195 E8454 E010187 E950010 E050236 E940441 E980296 E060383 E060382 E040382