



Circuit City found the following factors determinative in deciding to urge the Commission to approve these license transfers:

1. The market for MVPD services and customer premises equipment is dominated by cable industry providers.

While DirecTV and EchoStar are at present, respectively, the third and seventh-largest individual multichannel video distributor companies, their combined market share is approximately 18%.<sup>1</sup> The balance is controlled by cable operators that purportedly enjoy substantially lower customer acquisition costs. As a major commercial vendor and advertiser in this market, Circuit City pays close attention to its competitive dynamics. It is striking that, though in competition for customers throughout the United States, DirecTV and EchoStar have seldom aimed advertisements at each other's services. This is because they are well aware that their real competition is with cable operators who enjoy massive market share advantage in all markets in which they compete.

When DBS service was digital and cable service was still analog, it was generally perceived that DBS providers, though bearing higher costs, offered a superior product with significant competitive advantages for many consumers. In the era of digital cable boxes and upgraded digital distribution networks, however, cable operators now enjoy a suite of competitive advantages that require a

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<sup>1</sup> Eighth Annual Report, In the Matter of Annual Assessment of Competition in the Market for the Delivery of Video Programming, CS Docket No. 01-129, Section II.B and Table C-3 (Released Jan. 14, 2002). The DBS share is generally lower in urban and suburban areas and higher in rural areas. It is, however, precisely in rural areas that consumers are likely to be un-served or ill-served by cable operators. As is discussed below, the proposed merger seems vital to providing the spectrum tools necessary to allow these DBS providers to offer rural customers a level of service comparable to that presently available from cable operators to urban and suburban consumers. The applicants have pledged that the surviving entity will not discriminate against rural customers based on the lesser level of competition presently provided by cable operators.

response by DBS providers that is well beyond their ability to implement through further increases in the efficiency of operations as they are presently structured. These advantages include customer acquisition cost, number of local broadcast channels in all markets served, and synergistic offerings of other broadband services such as Internet access, telephony, games, and other new products.

2. To counter cable industry advantages, DBS providers must achieve further efficiencies available only through the proposed merger.

Cable providers generally do not duplicate each others' signal distribution infrastructure. Most homes have only one cable service available to them and are limited in selection of customer premises equipment to that provided by the cable provider. By contrast, MVPD distribution by DBS results in wasteful repetition of about 90% of the available spectrum. This waste of valuable spectrum limits the offering of a full suite of services by DBS providers to only the largest markets.<sup>2</sup>

The burden of wasteful duplication is felt, in particular, with respect to conveyance of local broadcast channels. Television antennas are not a major product category for Circuit City, in part because most consumers who invest in an MVPD service are not interested in switching antennas in and out of the line, no matter how convenient this may be. Consumers, instead, expect to receive at least some local channels as a basic part of any MVPD service. However, in order to be able to offer local television channels at all, DBS MVPD providers were put under full must carry obligations. At present, these limit the local television markets that EchoStar or DirecTV can serve to a total of 42. Efficiencies from the license transfer

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<sup>2</sup> Even in these, as we discuss below, the license transfer is necessary in order for these DBS providers to offer potentially effective competition in interactive broadband data services.

are expected to allow service to more than 100, in all states, covering about 85 percent of U.S. households.<sup>3</sup> DBS providers can no longer afford to labor under a competitive disadvantage with respect to local broadcaster carriage, and it is unfair to customers outside of the largest markets that they currently have no choice in MVPD providers when considering local station options.

The present inefficient use of spectrum is equally damaging with respect to offering broadband services to consumers, and in particular to rural consumers. In the 1996 Telecommunications Act the Commission was directed specifically, in section 706, to encourage the deployment of such services on a reasonable and timely basis. While deploying such interactive services is both technically challenging and capital intensive for a DBS provider, the benefit to rural areas can be significant and immediate. The transfer of licenses, in addition to building a more viable customer base, will also combine available spectrum so as to make more manageable the technological challenge in providing interactive satellite services. This step seems essential to accomplishing the goal set by the Congress, and in providing a full suite of services to rural, as well as urban and suburban, consumers. Circuit City, which in its "Broadband Stations" strives to promote broadband opportunities to fit the needs of all customers, considers it an important goal.

3. The national interest in the transition to HDTV cannot afford to forego the bandwidth efficiencies offered by the transfer of licenses.

One thing that Circuit City and others involved in the DTV transition have learned is that, even in a broadband era, bandwidth is far from free. Its scarcity has caused hard choices in "must carry" debates for all MVPDs, and has forced

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<sup>3</sup> See Consolidated Application for Authority to Transfer Control at Section II.B.

distributors to choose between the number of channels carried and the quality of service made available to consumers.

Circuit City's experience has been that when consumers are exposed to the advantages offered by HDTV, they will choose it if there is any prospect that compelling content will be offered by programmers and carried by distributors. Cable compatibility issues as to customer premises equipment are now being addressed, so as to offer at least some hope that obstacles will be eliminated in the cable MVPD context. In the satellite context, it is a simple necessity that, if HDTV is to be offered more broadly, bandwidth must be used with absolute maximum efficiency. This is possible only through the transfer of the licenses in question. This transfer, through more efficient use, is expected to make available up to a dozen HDTV channels.

While the MVPD device market is a major sector for Circuit City, of course we sell large screen displays, an increasing percentage of which are HDTV-capable. The additional HDTV content distribution afforded by this transaction would represent a very significant increase in the modest amount presently available, and should greatly increase consumer confidence in the future of this format. The broader offer of HDTV content by a satellite MVPD provider will most certainly spur competition in this area from cable operators and necessarily help speed the rollout of this technology nationally. It should further drive the sales of these displays, leading to additional reductions in their cost. In turn, the widespread presence of HDTV displays in homes should lead to competitive offerings of other leading edge digital products and services.

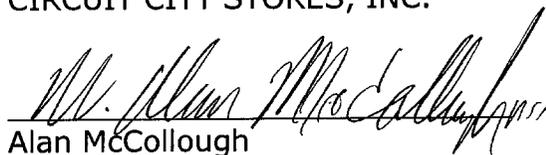
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As a retailer that hopes to offer consumers a range of customer premises devices for both cable and satellite MVPD services, Circuit City is well aware that this transfer of licenses would eliminate one potential competitive choice. In the larger scheme, however, we view it as making possible vital head-to-head competition between cable and DBS providers, with each taking maximum advantage of its service's inherent efficiencies. Consumers are unable to enjoy such a market today. The transfer in question would bring it a major step closer to fruition.

For the reasons set forth above, Circuit City respectfully urges the Commission to approve the transfer of control of the Hughes and General Motors licenses and authorizations to EchoStar.

Respectfully submitted,

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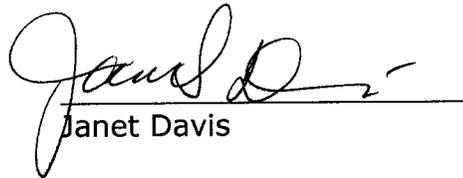
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### **Certificate of Service**

I, Janet Davis, a secretary with the law firm of McDermott, Will & Emery, hereby certify that true copies of the foregoing Comments of Circuit City Stores, Inc. In the Matter of EchoStar Communications Corporation, General Motors Corporation, and Hughes Electronics Corporation, CS Docket No. 01-348, were filed via ECFS and in accordance with the filing instructions set forth in the Public Notice issued on January 11, 2002 (DA 01-3005).

  
Janet Davis