

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In re)
)
Transfer of Control Applications of) **CS Docket No. 01-348**
EchoStar Communications Corporation)
and Hughes Electronics Corporation)

To: Chief, Cable Services Bureau

PETITION TO DENY

1. Family Stations, Inc., licensee of full-power commercial station KFTL(TV), Stockton, California, Family Stations of New Jersey, Inc., licensee of noncommercial, educational station WFME-TV, West Milford, New Jersey (together "Family Stations"), and North Pacific International Television, Inc. ("North Pacific"), licensee of full-power, commercial station KHCV(TV), Seattle, Washington, hereby request that the Commission deny the transfer of control applications of EchoStar Communications Corporation ("EchoStar") and Hughes Electronics Corporation ("Hughes"), the parent of DirecTV, Inc. ("DirecTV"). Alternatively, if the applications are granted, the grants should be conditioned on the surviving entity carrying **all** non-duplicative local stations in each market where it provides local-into-local service. EchoStar has to date waged a vigorous campaign to avoid carrying any broadcast station it can possibly avoid carrying, thwarting the clear intent of Congress. While EchoStar has lobbied hard for the merger on the ground that it needs additional satellite transponders to deliver more local broadcast stations, it has not made any commitment to carry any of the stations where it has fought its carriage obligation, and there is no evidence that EchoStar will abandon its continuing efforts to

avoid broadcast carriage at every opportunity. Thus its claim regarding what it can or will do with additional transponders is an empty one.

2. When it enacted Section 338 of the Communications Act, Congress intended satellite television carriers, including EchoStar and DirecTV, to carry all local television stations in any market where local-into-local service is provided, in return for the significant privilege of having a blanket copyright license. Congress wisely and accurately predicted that "without must carry obligations, satellite carriers would simply choose to carry only certain stations, which would effectively prevent many other local broadcasters from reaching potential viewers in their service areas."¹

3. EchoStar, as well as DirecTV to a substantial extent, have made no effort to fulfill the intent of Section 338. Rather, they first waged fierce, but unsuccessful, battles at both the Commission and in the courts to avoid carrying *any* station.² The two companies also have vigorously fought to avoid carrying hundreds of individual stations, including KFTL, WFME-TV, and KHCV.³ EchoStar and DirecTV together denied the carriage requests of as many as 200

¹ 145 Cong. Rec. H11769, at H11795 (Daily Ed. Nov. 9, 1999).

² See, e.g., *Implementation of the Satellite Home Viewer Improvement Act of 1999*, 16 FCC Rcd 1918, ¶¶ 10-13 (2000), *recon. denied*, 16 FCC Rcd 16544 (2001) (discussing satellite industry arguments that Section 338 violates satellite carriers' First and Fifth Amendment rights); and *Satellite Broadcasting and Communications Ass'n et al. v. FCC*, 2001 U.S. App. LEXIS 26120, 61 U.S.P.Q.2D (BNA) 1129 (4th Cir., Dec. 7, 2001) (affirming lower court ruling that Section 338 and the Commission's related rules are constitutional).

³ See *Family Stations, Inc. v. EchoStar Satellite Corp.*, CSR-5761-M, DA 02-152, rel. Jan. 18, 2002; *Family Stations, Inc. v. EchoStar Satellite Corp.*, CSR-5762-M, DA 02-153, rel. Jan. 18, 2002; *North Pacific International Television, Inc. v. EchoStar Satellite Corp.*, CSR-5738-M, DA 02-129, rel. Jan. 17, 2002; *North Pacific International Television, Inc. v. DirecTV, Inc.*, CSR-5735-M, DA 02-113, rel. Jan. 17, 2002; CSR-5773-M; and CSR-5772-M.

independent stations, and EchoStar *denied all but two* of 122 carriage requests by public television stations.⁴

4. If EchoStar, the country's second largest satellite television company, were to acquire DirecTV, the largest satellite television company, the resulting entity would be a behemoth monopolizing 90% of the satellite television market.⁵ Given the fact that EchoStar is attempting to corner the satellite television market, it is unconscionable that it be permitted to peel off and injure those independent and niche audience television broadcast stations that have the least market power, like KFTL, WFME-TV, and KHCV -- the very segment of the over-the-air television industry that Congress intended to benefit from the local-into-local satellite carriage requirements. It must not be left to EchoStar to stifle the growth of competitive broadcast services, as EchoStar has consistently sought to do.

5. EchoStar's chairman and CEO, Charlie Ergen, has claimed that EchoStar currently is "severely hampered by [its] limited satellite bandwidth and [its] obligation to comply with [the Commission's] must carry provisions."⁶ However, Mr. Ergen promised that "[i]f the pending merger of EchoStar and Hughes Electronics and its DirecTV is approved, EchoStar will be able to provide local channels by satellite in over 100 markets *with full must carry compliance*. And

2002; CSR-5773-M; and CSR-5772-M.

⁴ See Brigitte Greenberg and Bruce Branch, *EchoStar, DIRECTV Turn Down Dozens of Requests for Carriage*, Communications Daily, October 19, 2001, pages 3, 4.

⁵ Andrew Ross Sorkin and Seth Schiesel, *G.M. Agrees to Sell Its Satellite TV Unit in \$26 Billion Deal*, N.Y. Times, October 29, 2001.

⁶ *EchoStar's DISH Network to Offer Additional Local TV Channels in 36 Markets*, Press Release, dated December 27, 2001, attached hereto as Exhibit I.

we will be able to do it all from a single dish, as the NAB has also demanded"⁷ [emphasis added]. The problem is that EchoStar's actual behavior belies its promise. EchoStar has not promised to change its attitude toward broadcast carriage requests. Instead, its application trumpets that a merger will allow it to provide more *non-local services*, such as national network feeds, pay-per-view channels, satellite-based interactive services, and Internet/data services.

6. Even if EchoStar promises to mend its ways, the Commission must not be misled into believing that this aggressive company will ever behave other than in its own private interest. EchoStar can be trusted, but only to take care of EchoStar. EchoStar's consistent behavior over time has proved that point without any question, and the Commission has had to continue to remind EchoStar of its must-carry obligations.⁸ Thus any public interest requirements going forward must be imposed by direct governmental order, or else they will be an illusion. Congress has spoken to the broadcast carriage issue, and the Commission is bound to carry out the Congressional intent. It must do so with direct, forceful action, or it will have wasted its time.⁹

⁷ EchoStar Statement on NAB Petition, Press Release, dated January 7, 2002, attached hereto as Exhibit II.

⁸ See, e.g., *KM Television of Flagstaff, L.L.C. v. Echostar Communications Corporation*, DA 02-221; *The Long Family Partnership v. EchoStar Communications Corporation*, DA-02-231; and *Christian Television Corporation v. EchoStar Satellite Corporation*, DA 02-229, all released January 31, 2002. EchoStar did not resolve any of these cases privately but rather continued to litigate them until directly ordered by the Commission to comply with its obligations.

⁹ It is important to note that the July 1, 2001, deadline for must-carry requests that EchoStar and DirecTV have used as a tool to avoid carrying stations was a Commission-imposed regulation, was not mandated by Congress, and does not further the Congressional intent now. It will thwart the Congressional intent even more after a merger.

7. Approval of the merger would be a dangerous economic risk at best. But if the Commission is inclined to approve, then it must make EchoStar live up to its promises. Specifically, the Commission should condition any grant of the pending transfer-of-control applications on the pledge by the surviving entity to carry every non-duplicative local station where the carrier provides local-into-local service, subject only to the signal strength requirement of Section 73.66(g) of the rules, thereby ending EchoStar's and DirecTV's relentless campaigns to avoid carriage of independent and noncommercial educational television stations, based upon technicalities. Whatever benefit the July 1, 2001, deadline may have had in allowing EchoStar to make deployment plans for its resources -- a benefit that Family Stations and North Pacific in no way concede is real -- the planning process will completely change if the merger takes place and EchoStar's transponder resources are dramatically increased. There will no longer be any rational basis for excusing EchoStar from carriage of any local station in a market where it provides local-into-local service -- both existing stations and new stations that come on the air in the future.

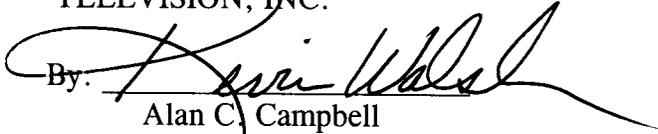
8. If EchoStar refuses to accept and to comply with a universal broadcast carriage condition, then the Commission must deny the transfer applications, to thwart EchoStar's and DirecTV's demonstrated intent to act as the gatekeepers as to which local stations its subscribers may and may not see and to control the future growth and development of the over-the-air television broadcast industry.

10. Accordingly, Family Stations and North Pacific respectfully request that the Commission deny the transfer applications, or at least condition any grant as detailed above.

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Respectfully submitted,

FAMILY STATIONS, INC.
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By: 

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Their Attorneys

February 4, 2002



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EchoStar Communications Corp. (ticker: DISH, exchange: NASDAQ) News Release - 27-Dec-2001

EchoStar's DISH Network To Offer Additional Local TV Channels in 36 Markets

LITTLETON, Colo., Dec 27, 2001 (BUSINESS WIRE) -- EchoStar Communications Corporation (Nasdaq:DISH) announced that its DISH Network satellite TV service will substantially expand the number of local TV channels it provides in each of the 36 markets where it provides local channels by satellite today.

Commencing in January 2002, EchoStar will offer a single package of UPN, WB, PBS and popular independent channels, together with community interest and other local channels, for the same low \$5.99 monthly price for which only the ABC, CBS, NBC, FOX and PBS stations were previously available.

"We're pleased that on average we are more than doubling the number of local network channels available via satellite to millions of DISH Network customers in 36 markets, and, most importantly, without any increase in price for the local channel package," said Charlie Ergen, chairman and CEO of EchoStar. "While we've made great strides in fully complying with federal must carry rules, our ability to expand the number of markets we serve with local channels by satellite is still severely hampered by our limited satellite bandwidth and our obligation to comply with these must carry provisions. The best solution is the proposed merger of EchoStar and Hughes Electronics, which will allow EchoStar to provide local channels by satellite to over 100 markets."

The vigorous competition that will be created by the proposed merger of EchoStar and Hughes is particularly important in light of the recent merger announcement between Comcast and AT&T, which would create a cable giant with over 40 million customers.

For more information and a complete list of local TV stations offered by DISH Network in each city, visit www.dishnetwork.com.

EchoStar's DISH Network currently serves local channels in the following 36 locations: Albuquerque; Atlanta; Austin; Birmingham; Boston; Charlotte; Chicago; Cincinnati; Cleveland; Dallas; Denver; Detroit; Greenville; Houston; Indianapolis; Kansas City; Los Angeles; Miami; Minneapolis; Nashville; New York; Orlando; Philadelphia; Phoenix; Pittsburgh; Portland; Raleigh; Salt Lake City; Sacramento/Stockton/Modesto; San Antonio; San Diego; San Francisco; Seattle; St. Louis; Tampa/St. Petersburg; and Washington, D.C.

DISH Network is a trademark of EchoStar Communications Corporation. DISH Network is EchoStar's state-of-the-art direct broadcast satellite TV system that is capable of offering over 500 channels of digital video and CD-quality audio programming, as well

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as fully MPEG-2/DVB compliant hardware and installation. EchoStar is included in the Nasdaq-100 Index (NDX) which contains the largest non-financial companies on the Nasdaq Stock Market. DISH Network currently serves over 6.43 million customers.

In connection with the proposed transactions, General Motors Corporation ("GM"), Hughes Electronics Corporation ("Hughes") and EchoStar Communications Corporation ("EchoStar") intend to file relevant materials with the Securities and Exchange Commission, including one or more Registration Statement(s) on Form S-4 that contain a prospectus and proxy/consent solicitation statement. Because those documents will contain important information, holders of GM \$1-2/3 and GM Class H common stock are urged to read them, if and when they become available. When filed with the SEC, they will be available for free at the SEC's website, www.sec.gov, and GM stockholders will receive information at an appropriate time on how to obtain transaction-related documents for free from General Motors. Such documents are not currently available.

General Motors and its directors and executive officers, Hughes and certain of its officers, and EchoStar and certain of its executive officers may be deemed to be participants in GM's solicitation of proxies or consents from the holders of GM \$1-2/3 common stock and GM Class H common stock in connection with the proposed transactions. Information regarding the participants and their interests in the solicitation was filed pursuant to Rule 425 with the SEC by EchoStar on November 1, 2001, and by each of GM and Hughes on November 16, 2001. Investors may obtain additional information regarding the interests of the participants by reading the prospectus and proxy/consent solicitation statement if and when it becomes available.

This communication shall not constitute an offer to sell or the solicitation of an offer to buy, nor shall there be any sale of securities in any jurisdiction in which such offer, solicitation or sale would be unlawful prior to registration or qualification under the securities laws of any such jurisdiction. No offering of securities shall be made except by means of a prospectus meeting the requirements of Section 10 of the Securities Act of 1933, as amended.

Materials included in this document contain "forward-looking statements" within the meaning of the Private Securities Litigation Reform Act of 1995. Such forward-looking statements involve known and unknown risks, uncertainties and other factors that could cause our actual results to be materially different from historical results or from any future results expressed or implied by such forward-looking statements. The factors that could cause actual results of GM, Hughes, EchoStar, or a combined EchoStar and Hughes, to differ materially, many of which are beyond the control of EchoStar, Hughes or GM include, but are not limited to, the following: (1) the businesses of EchoStar and Hughes may not be integrated successfully or such integration may be more difficult, time-consuming or costly than expected; (2) expected benefits and synergies from the combination may not be realized within the expected time frame or at all; (3) revenues following the transaction may be lower than expected; (4) operating costs, customer loss and business disruption including, without limitation, difficulties in maintaining relationships with employees, customers, clients or

suppliers, may be greater than expected following the transaction; (5) generating the incremental growth in the subscriber base of the combined company may be more costly or difficult than expected; (6) the regulatory approvals required for the transaction may not be obtained on the terms expected or on the anticipated schedule; (7) the effects of legislative and regulatory changes; (8) an inability to obtain certain retransmission consents; (9) an inability to retain necessary authorizations from the FCC; (10) an increase in competition from cable as a result of digital cable or otherwise, direct broadcast satellite, other satellite system operators, and other providers of subscription television services; (11) the introduction of new technologies and competitors into the subscription television business; (12) changes in labor, programming, equipment and capital costs; (13) future acquisitions, strategic partnership and divestitures; (14) general business and economic conditions; and (15) other risks described from time to time in periodic reports filed by EchoStar, Hughes or GM with the Securities and Exchange Commission. You are urged to consider statements that include the words "may," "will," "would," "could," "should," "believes," "estimates," "projects," "potential," "expects," "plans," "anticipates," "intends," "continues," "forecast," "designed," "goal," or the negative of those words or other comparable words to be uncertain and forward-looking. This cautionary statement applies to all forward-looking statements included in this document.

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Monday January 7, 1:32 pm Eastern Time

Press Release

SOURCE: *EchoStar Communications Corp.*

EchoStar Statement on NAB Petition

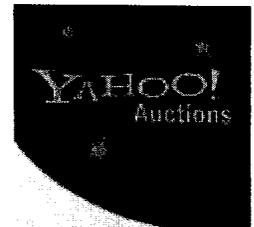
LITTLETON, Colo.--(BUSINESS WIRE)--Jan. 7, 2002--EchoStar Communications Corporation (Nasdaq:DISH - news) issued the following statement today in response to a petition filed by the National Association of Broadcasters (NAB) on Friday, Jan. 4, 2002, asking the FCC to modify or clarify the must carry rules:

With the recent addition of over 250 local channels to the DISH Network Direct Broadcast Satellite television service, EchoStar is in compliance with the Satellite Home Viewer Improvement Act's must carry requirements. EchoStar originally planned to meet those requirements through the construction and launch of two new satellites at a cost of approximately \$500 million. When Lockheed Martin and Space Systems Loral failed to timely deliver those satellites, EchoStar implemented the only alternative capable of meeting its must carry obligations while assuring consumers in all markets uninterrupted access to a complete lineup of local TV broadcast channels.

Over 100 must carry channels are now available to EchoStar customers without any additional equipment. Consequently, customers previously receiving only NBC, CBS, ABC, FOX, together with a national PBS channel, now also receive for no additional charge their local WB, UPN, PBS, and other must carry channels. Unfortunately, as a result of the delayed launch of the new EchoStar 7 and EchoStar 8 satellites, limited bandwidth renders it impossible from a practical perspective for all must carry channels to be included on the same satellite. Consequently, in order to avoid disruption of service or delays in the introduction of must carry channels, EchoStar is offering a free satellite antenna to any customer who would like to receive the remaining must carry channels from a second EchoStar satellite.

By filing a petition for modification or clarification instead of a complaint for failure to comply with the must carry rules, the NAB in its most recent FCC filing effectively concedes that EchoStar has met its must carry obligation. Nevertheless, the NAB now asks that the rules be modified to impose additional obligations on EchoStar. The must carry statute, and the FCC must carry rules, were the result of a thoroughly considered process, including a long notice and comment period and a re-evaluation of those rules after they were issued. The NAB was an active and vocal participant in the entire process. In fact, the FCC modified and clarified certain of its rules in specific response to NAB demands. However, the FCC declined to modify its

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rules in other respects and left intact the right of EchoStar to implement its must carry compliance plan. EchoStar then relied upon those rules in shaping its must carry compliance program. Those efforts provide significant benefits to the NAB and its members in addition to the benefits enjoyed by consumers. No additional obligation should be read into the statute.

EchoStar has acted in good faith to shape its compliance program. EchoStar went to the extraordinary step of discussing its implementation plans in advance with not only the FCC, but also members of Congress and the NAB. Unfortunately, the NAB's continuing aggressive actions show that it cares more about scoring political points than serving its own members or consumers. If the FCC were to accede to the NAB's latest tactics to modify existing rules, limited bandwidth would force EchoStar to entirely terminate local channels in a number of markets it currently serves.

"It is ironic because our must carry compliance program should please the NAB and its members," said Charlie Ergen, chairman and CEO of EchoStar. "The NAB said it wants satellite TV providers to offer local channels to consumers in a greater number of markets. They have also said they don't want consumers to lose local channels in any markets we currently serve. If the pending merger of EchoStar and Hughes Electronics and its DIRECTV is approved, EchoStar will be able to provide local channels by satellite in over 100 markets with full must carry compliance. And we will be able to do it all from a single dish as the NAB has also demanded. Yet, absurdly, the NAB is against a merger that will provide the only way to achieve all of their objectives."

NAB members have the right to use the free digital TV spectrum they receive from the government to compete in the pay TV market. EchoStar welcomes that competition notwithstanding the failure of many NAB members to timely comply with the obligations on which Congress conditioned the grant and continued use of that spectrum. However, the NAB goes too far when it pursues its agenda at the expense of American consumers.

About EchoStar

EchoStar Communications Corporation and its DISH Network operates a state-of-the-art direct broadcast satellite TV system that is capable of offering over 500 channels of digital video and CD-quality audio programming, as well as advanced satellite TV receiver hardware and installation. EchoStar is included in the Nasdaq-100 Index (NDX). DISH Network currently serves over 6.43 million customers. For more information, visit www.dishnetwork.com.

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[Questions or Comments?](#)

I, Stephani Anderson, do hereby certify that I have on this 4th day of February, 2002, caused to be sent by first class United States mail, postage prepaid, or by email, copies of the foregoing "Petition to Deny" to the following:

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