

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

EX PARTE COMMENTS

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, by their attorneys, hereby respectfully request that these *ex parte* comments be included in the record in the above-referenced docket.¹

¹ Family Stations and North Pacific asked the Commission to either deny the above-referenced transfer of control applications of EchoStar Communications Corporation ("EchoStar") and Hughes Electronics Corporation ("Hughes"), the parent of DirecTV, Inc. ("DirecTV") or, if the applications are granted, condition the grants on the surviving entity ("New EchoStar") carrying all non-duplicative local stations in each market where it provides local-into-local service. *See* Petition to Deny, CS Docket No. 01-348, filed February 4, 2002, by Family Stations and North Pacific.

2. On February 25, 2002, EchoStar announced its "All Channels, All Americans" plan, pursuant to which New EchoStar would provide local-into-local service to all 210 Designated Market Areas in the United States.² Although the cited press reports indicated that EchoStar and Hughes stated at the February 25 press release that New EchoStar would carry *all local television stations* in all 210 markets, recent *ex parte* filings by EchoStar and Hughes seem to waffle on the promise to carry *all* local stations if the merger is approved.³ Rather, EchoStar and Hughes have

² See Paige Albinak, '*One Nation, Under Scrutiny*', *Broadcasting & Cable*, March 4, 2002, at 10 (noting that the carrier would carry "all 1,650 local TV stations" if merger is approved); and Jeremy Pelofsky and Derek Caney, *EchoStar, Hughes Aim for All U.S. Local Markets*, Reuters/Yahoo! Daily News, February 26, 2002 (stating that EchoStar and Hughes "said on Tuesday they would offer all local broadcast channels in all 210 U.S. markets, in an effort to quash criticism of their proposed deal.").

³ See Letter from Pantelis Michalopoulos, Esquire, and Gary M. Epstein, Esquire, to William F. Caton, [Acting] Secretary, Federal Communications Commission, dated March 5, 2002 (stating that under the "All Channels, All Americans" plan, New EchoStar would "provide local-into-local service to all 210 Designated Market Areas" – but failing to reiterate statement that New EchoStar would carry *all* local television stations in the 210 markets). If the aforementioned letter is intended only to confirm that broadcast stations still must provide a good quality signal to the

backed down from their earlier promise to carry all stations and instead now promise only to provide service in all *markets*. It appears that New EchoStar will continue to contest any obligation to carry stations whenever and wherever it can, thereby attempting to minimize the number of broadcast stations it carries notwithstanding the elimination of any claim of scarcity of transponder capacity.

3. Moreover, EchoStar has stated in its brief before the U.S. Supreme Court, challenging the must-carry statute, that “the merged entity does not intend to carry all channels in every market” should the court invalidate the Satellite Home Viewer Improvement Act.”⁴

4. If the merger is to be approved, the Commission must ensure, by explicit and enforced conditions, that New EchoStar adhere to its original clear pledge to carry *all local television stations* in all 210 markets. Moreover, the Commission should waive or modify Section 76.66(c)(1) of its Rules, to stop EchoStar and DirecTV from denying carriage based on technicalities relating to the timing or content of carriage requests. Indeed, if the merger is approved, a new carriage request window should be opened, so that New EchoStar is not given the power to peel off and damage a layer of the television broadcast industry of its own arbitrary choosing. If New EchoStar cannot make and keep a true commitment to carry *all* non-duplicative stations that desire to be carried and

carrier's local receive facility, then Family Stations and North Pacific agree with that qualification. Under the Satellite Home Viewers Improvement Act of 1999, the burden of providing a good quality signal is the station's, as is the case with cable carriage, and this proceeding is not the proper forum to reassess the assignment of that burden.

⁴ See TV Today, published by the National Association of Broadcasters, March 18, 2002.

are willing to deliver an adequate signal to the appropriate local receive facility, then Family Stations and North Pacific reiterate their request that the Commission not create a titan of the skies that has proved its continuing intention to make or break local broadcast service at its discretion and that the EchoStar/DirecTV merger be denied.

Respectfully submitted,

FAMILY STATIONS, INC.
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