FACT SHEET:
FCC's Conditioned Approval of News Corp - DirecTV Merger
December 19, 2003

Hughes Electronics Corporation

Hughes Electronics Corporation ("Hughes"), through its DirecTV satellite television service, provides video programming to more than 11 million homes, making it the second largest pay TV service in the United States. Hughes also has an 81% equity holding in satellite operator PanAmSat. Through its subsidiaries, Hughes holds licenses including direct broadcast satellite ("DBS") and fixed satellite space station, earth station, and terrestrial wireless authorizations.

News Corporation Limited

News Corporation Limited ("News Corp.") owns the Fox Television Network and 35 broadcast television stations. News Corp. also owns or has interests in a number of cable networks, including the Fox News Channel, FX, and a group of regional sports networks ("RSNs").

Summary of FCC Decision: Ensure Benefits and Remedy Potential Harms

The Federal Communications Commission today granted a conditioned approval of the transfer of licenses held by Hughes to News Corp. In approving this transaction, the FCC imposed several conditions that are designed to ensure the public interest benefits and remedy any potential public interest harms.

The FCC said this transaction represents a vertical combination of video programming and distribution assets. By acquiring DirecTV, News Corp. will no longer be solely a supplier of video programming to multichannel video programming distributors ("MVPDs"), such as cable and satellite TV, but also will be a major MVPD competitor to its programming customers in every area of the country.

The FCC concluded that the transaction is likely to give News Corp. a greater incentive and ability to increase programming prices paid by MVPDs by temporarily withholding or threatening to withhold owned and operated broadcast TV stations ("O&Os") and its RSN programming, both of which are critical to the offerings of MVPDs that compete directly with DirecTV. The FCC said News Corp.'s ability to act anti-competitively to raise its competitors' programming costs would likely lead to higher prices for consumers and thereby harm the public interest.

Summary of Public Interest Benefits

- ☑ The FCC determined that the transaction is likely to generate several public interest benefits, including the introduction of new services such as interactive television from DirecTV.
- ☑ The FCC said that consumers should benefit from stronger competition in the MVPD market.
- ☑ The FCC also determined that consumers will benefit, and the FCC's goals of promoting localism and competition will be furthered, by the company increasing the number of markets that can receive local broadcast channels from their satellite TV provider.

FCC Analysis of a Vertical Merger versus a Horizontal Merger

The FCC said the vertical nature of this transaction distinguishes it from the proposed horizontal merger of EchoStar Communications Corporation and DirecTV, which the FCC rejected on October 10, 2002. That deal represented a "merger to monopoly" in some areas and a merger to duopoly in others. The FCC concluded there were no adequate remedies to mitigate the harms to consumers that would result from (1) losing an existing MVPD competitor in every market; (2) creating the potential for higher prices and lower service quality; and (3) negatively impacting future innovation.

<u>SUMMARY OF CONDITIONS:</u>

"Local into Local":

- ➔ By the end of 2004, DirecTV must offer local service packages in an additional 30 designated market areas ("DMAs") beyond what had been previously funded, projected or planned. DirecTV plans to launch its DirecTV-7S satellite in the first quarter of 2004, which it anticipates will allow it to expand from 64 to 100 local markets.

Satellite Delivered Cable Programming Networks:

- ➔ As offered by the company, News Corp. is required to offer its existing and future cable programming services on a non-exclusive basis and non-discriminatory terms and conditions, for as long as the FCC's program access rules are in effect.
- ➔ An aggrieved MVPD may file a program access complaint as specified in the FCC rules for any alleged violation of the program access conditions.

Broadcast Stations:

- ➔ The commitments News Corp. has made regarding nondiscriminatory MVPD access to cable programming is extended to any broadcast television station that News Corp. owns and operates, or on whose behalf it negotiates retransmission consent.
- ➔ In addition, the good faith and exclusivity requirements of the 1999 Satellite Home Viewer Improvement Act, due to sunset at the end of 2005, are extended for as long as the FCC's program access rules are in effect.

Commercial Arbitration ("Baseball-style")

- ➔ News Corp/DirecTV must enter commercial arbitration for disputes over retransmission consent of its broadcast stations and carriage of its Regional Sports Networks (RSNs).
- ➔ This condition applies to (1) any RSN that News Corp. manages or in which it owns or holds a controlling interest; and (2) retransmission consent agreements for any broadcast station in which News Corp. owns or holds an attributable interest, or independently-owned Fox network affiliates for which it negotiates retransmission consent.
- ➔ The aggrieved MVPD will be allowed to continue carriage of the broadcast signals or RSN pending resolution.
- ➔ For disputes regarding "first time" requests for carriage, i.e. the MVPD has never carried the programming before, the MVPD can elect arbitration. However, News Corp. is not required to allow carriage of the programming during the negotiations or arbitration period.
- ➔ This condition expires six years after the release of the final Order.

<u>RULES FOR SMALL CABLE COMPANIES</u>

- ➔ An MVPD meeting the FCC's definition of "small cable company" may appoint an agent to bargain collectively on its behalf and that of other small MVPDs in negotiating for carriage of regional sports networks and retransmission consent for broadcast stations with News Corp. News Corp. may not refuse to negotiate with such an entity.
- ➔ The designated collective bargaining entity will have all the rights and responsibilities granted by all of today's conditions.
- ➔ When dealing with small MVPDs with fewer than 5,000 total subscribers, News Corp. must either elect "must-carry" status or negotiate retransmission consent for its owned and

operated stations without any requirements for cash compensation or carriage of programming other than the broadcast signal.

HOW COMMERCIAL ARBITRATION WORKS

1. The MVPD's retransmission consent (RTC) to carry a broadcast station or regional sports network contract expires (and there is no new agreement).

2. Normally, the programming would be removed from the MVPD at this point because there is no agreement for carriage, however, if the MVPD notifies News Corp. that it wants to go to arbitration, the programming remains on.

3. The MVPD and News Corp. will then continue to negotiate and try and reach an agreement for the next 15 - 20 days following expiration of the contract. The FCC refers to this as the "cooling-off" period, in which they can step back from the brink of arbitration and try and reach a mutually beneficial agreement.

4. If they cannot reach an agreement after the "cooling-off" period, the MVPD has the option of filing a demand for arbitration with the American Arbitration Association ("AAA"). If it does so, both parties submit "final offers" to the AAA.

5. The "final offers" may or may not be related to the offers made during the cooling-off period; they are simply final in that they are what are sent to the arbitrator. They are the proposed contracts and include all the terms and conditions for carriage. The final offers cannot include any terms for carrying any programming other that under dispute (i.e. the broadcast station or the RSN). In addition, they can not require the purchase of other unrelated products such as electronic program guides.

6. The arbitrator will choose the "final offer" of the party that most closely approximates the fair market value of the programming. The arbitrator cannot choose anything other than one of the two "final offers." This is referred to as final-offer arbitration. It is the process used in salary disputes in Major League Baseball and public employee labor disputes in some states. The goal of the procedure is to induce the parties to make reasonable offers out of fear that if they don't, their opponent's offer will be accepted.

7. The parties are free to continue negotiating during the entire arbitration process and could reach an agreement and stop the process at any time.

8. Parties may seek FCC review of the arbitrator's decision. The Commission will review the evidence and choose the final offer that most closely approximates the fair market value.

Action by the Commission, December 19, 2003, by Public Notice (FCC 03-328). Chairman Powell, Commissioners Abernathy and Martin with Commissioners Copps and Adelstein dissenting. Chairman Powell, Commissioners Copps, Martin and Adelstein issued separate statements.

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