

April 22, 2002

**ELECTRONICALLY FILED**

Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12th Street, SW – Room TW-A325  
Washington, D.C. 20554

**Re: Ex Parte Notice – Consolidated Application of EchoStar  
Communications Corporation, General Motors Corporation and  
Hughes Electronics Corporation for Authority to Transfer Control,  
CS Docket No. 01-348**

Dear Ms. Dortch:

In accordance with Section 1.1206 of the Commission's Rules, 47 C.F.R. § 1.1206, EchoStar Communications Corporation ("EchoStar"), General Motors Corporation and Hughes Electronics Corporation ("Hughes"), Applicants in the above-referenced merger proceeding, submit this letter to address the need for enhanced confidential treatment for certain subscriber data. Specifically, information on EchoStar's, DIRECTV, Inc.'s ("DIRECTV") and Hughes Network Systems, Inc.'s ("HNS") subscribers on a zip code and DMA basis constitutes some of the most sensitive data called for by the FCC's request for information. For the reasons set forth below, inadvertent or intentional disclosure of these data to the Applicants' competitors would have a devastating effect on their businesses and place the companies at a significant competitive disadvantage.

EchoStar, DIRECTV and HNS use subscriber data to gauge customer demand for their services, as well as to analyze the strengths and weaknesses of their basic and promotional offerings. This information is an important part of the analysis that the companies make in adjusting their offerings nationwide from time to time to provide better service to their customers, and constitutes the confidential foundation of a number of competitive evaluations that are central to EchoStar, DIRECTV and HNS business strategies. Any competitor who is able to obtain access to the proprietary subscriber data that has been collected and sorted by EchoStar, DIRECTV or HNS would be able to exploit any perceived weaknesses on a regional basis at the same time or even before EchoStar, DIRECTV or HNS was able to react and address those issues, as well as anticipate and preempt actions that EchoStar, DIRECTV and HNS are planning to take based on this information. Such access would result in long-term damage for the Applicants, as the analyses that can be drawn from these subscriber data will continue to

be strategically relevant for some time. A company must have the ability to evaluate and improve its own operations without exposing its internal analyses to its competitors. Thus, while the Applicants will, of course, supply the data to the Commission, they respectfully request a heightened level of confidentiality.

The granular customer information in question is precisely the information that competitors of EchoStar, DIRECTV and HNS would want to obtain in order to most efficiently target their efforts for acquisition and retention of customers. Certainly, there is nothing wrong with a competitor targeting EchoStar, DIRECTV or HNS customers and trying to win them away. But it is harmful to the Applicants, as well as to customers, if competitors gain an unwarranted artificial advantage in such efforts through the inadvertent or other disclosure of this fine-grained data. If competitors were able to obtain this granular data for the past several years, they would have a roadmap to how to effectively target and steal the Applicants' customers. Subscriber information by zip code and DMA enables competitors, such as the cable companies and Regional Bell Operating Companies ("RBOCs"), to track exactly how well EchoStar, DIRECTV and/or HNS is doing in a particular region and thus to determine, among other things, where such competitors must focus their efforts both to retain the most desirable of their current customers and to obtain new customers. In addition, competitors would be able to combine zip code and DMA data with other public and private data to analyze EchoStar's, DIRECTV's and HNS's customer base and competitive strengths and weaknesses. As a result, competitors could scale back the benefits they provide to certain groups of current and potential customers, while focusing their efforts on those groups where they perceive the greatest likelihood of return on investment. The following are a few examples of the analyses that could be done:

- **Targeting a Demographic Audience.** Competitors could combine subscriber information with census data in order to gain a detailed demographic picture of the Applicants' subscribers. Cable companies could then target marketing strategies and promotions at specific demographic groups in order to undermine EchoStar's, DIRECTV's and HNS's customer bases.
- **Evaluating the Effectiveness of Promotions.** Subscriber information combined with promotional information will enable competitors to determine which promotions have been successful against different cable franchises. As importantly, cable operators will be able to determine which of *their* promotions have been successful in luring customers away from EchoStar, DIRECTV or HNS. Competitors may cease offers, promotions and packages that are not perceived as assisting them in competing.

- **Evaluating the Local-into-Local Effect.** Competitors will also be able to analyze the change in the number of EchoStar and DIRECTV subscribers in areas where local-into-local service has been offered and determine whether their advertising has been successful in counteracting any increase in subscribers.

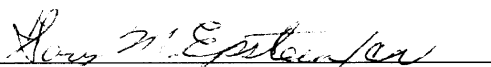
Ultimately, competitors would be able to target areas of perceived weakness with special offers, while making fewer offers to areas that are seen as likely to turn to (or remain with) satellite service. Already cable companies are promoting “satellite bounties.” These “bounties” offer free digital cable installation, promotional rates and/or monetary bonuses if a customer switches service to the cable company and provides them with a copy of their EchoStar or DIRECTV bill or their satellite dish. If competitors were able to focus their efforts on areas that are particularly susceptible, competitors would be able to spend less money while gaining more customers at EchoStar’s, DIRECTV’s and/or HNS’s expense. EchoStar, DIRECTV and HNS do not have any such similar detailed information about their competitors. If their competitors obtained access to granular subscriber data, the Applicants anticipate that they would suffer significant harm for an extended period of time.

In addition, for HNS the release of granular subscriber data would significantly undermine the rollout of its satellite broadband services. To a large extent, HNS relies on “Powered By” relationships to market and disseminate its DIRECWAY service. “Powered By” partners agree to subsidize the marketing and promotion of the DIRECWAY service. Part of the “Powered By” partners’ calculation of whether and how much to subsidize a promotion, however, is based on the anticipated gain in customers and ability to retain those customers. For example, if a customer is likely to use the service for the next five years a partner will be more likely to subsidize the cost of equipment than if the customer is likely to leave after two years. Were a “Powered By” partner to decide that in a particular region subscribers were not interested in DIRECWAY, they may refuse to subsidize additional marketing or promotions. This would seriously undermine HNS’s rollout strategy and tax HNS’s financial resources.


NRTC and Pegasus are both “Powered By” partners and their outside counsel have already signed the Protective Order in this proceeding. Inadvertent or intentional disclosure of either the subscriber data or this argument to any of HNS’s partners, including the NRTC and Pegasus, could significantly undermine HNS’s relationship with that partner.

One copy of this *ex parte* notice is being filed electronically with the Commission. If you have any questions concerning this notice, please do not hesitate to contact the undersigned.

Respectfully submitted,

  
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