

Before the
FEDERAL COMMUNICATIONS COMMISSION
 Washington, D.C. 20554

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MAR 16 2005

Federal Communications Commission
 Office of Secretary

Application of)	
)	
)	Call Signs: E000166; E030007; E030008;
)	E940460; E990170; E000362;
HUGHES NETWORK SYSTEMS, INC.,)	E010187; E020195; E020205;
)	E020206; E020207; E020208;
Assignor)	E040382; E040436
)	
and)	IB File No. SES-ASG-20041223-01892
)	
HNS LICENSE SUB, LLC)	IB File No. SES-ASG-20041223-01893
)	
Assignee,)	IB File No. SES-ASG-20041223-1882
)	
Consolidated Application for Consent to)	
Assignment of Earth Station Licenses and)	
Associated Special Temporary)	
Authorizations)	

MAR 18 2005

Satellite and
 Radiocommunications Division
 International Bureau

COMMENTS OF VIASAT, INC.

ViaSat, Inc. ("ViaSat") hereby files its comments on the proposed transaction whereby SkyTerra Communications, Inc. ("SkyTerra"), an entity controlled by the Apollo investment fund, will acquire a 50% interest and day-to-day management control of Hughes Network Systems, Inc. ("HNS").¹ The DIRECTV Group ("DIRECTV") will retain the

¹ The Commission must determine whether SkyTerra and HNS have demonstrated that approval of the Applications for Assignment of Authorization, IB File Nos. SES-ASG-20041223-01882, 01892, and 01893, will serve the public interest, convenience, and necessity. 47 U.S.C. § 310(d). The public interest standard requires review of the potential anticompetitive effects of the proposed transfer of authorization. *In the Matter of General Motors Corporation and Hughes Electronics Corp. (Transferors) and The News Corporation Ltd. (Transferee) for Authority to Transfer Control ("News Corp. Order")*, FCC 03-330, MB Docket No. 03-124, ¶ 16 (January 14, 2004). In addition, under the public interest standard, the Commission may consider whether the proposed transfer of control will accelerate or deter the provision of new or

remaining 50% interest through HNS. In short, ViaSat believes that the cross-ownership relationships among HNS, Intelsat and WildBlue Communications created by this transaction raise certain competitive concerns. The Commission should address appropriate inquiries to the parties to ensure that this transaction does not cause competitive harm.

ViaSat is a competitor of HNS in the markets for very small aperture terminal (“VSAT”) services to businesses (such as retail stores) and VSAT equipment. ViaSat and HNS are also likely competitors in the newly emerging market for the sale of terrestrial equipment to providers of consumer broadband or Internet access by satellite services.

In the unusual circumstances of this case, SkyTerra’s acquisition of a controlling interest raises concerns regarding the vertical foreclosure of competition in the markets for VSAT service and terrestrial equipment for consumer broadband access by satellite. This transaction will create a web of cross-ownerships that may create incentives for foreclosure strategies or similar anticompetitive behavior. Specifically, Apollo, the entity that would control HNS through its 73 percent interest in SkyTerra,² has previously acquired a significant 25 percent interest in Intelsat, Ltd.³ Intelsat is one of three principal fixed-satellite service (“FSS”)

additional services to consumers. *News Corp. Order*, ¶ 16; 47 U.S.C. § 157 nt (requiring FCC to promote deployment of advanced services).

² According to the Application, after the consummation of the transaction, the holder of the licenses, HNS License Sub, LLC, will be a wholly-owned subsidiary of Hughes Network Systems, LLC (“HNS, LLC”). Two firms, SkyTerra Communications, Inc. (“SkyTerra”) and Hughes Network Systems, Inc. (“HNS, Inc.”), will each hold a 50% membership interest in HNS, LLC. However, according to the Application, SkyTerra will be the managing member of HNS, LLC and will control HNS, LLC, subject to “certain major decisions that require the approval of the Board of Managers.” Application Exhibit E, p. 1. SkyTerra is controlled by Leon Black through his control of various Apollo investment funds, according to the Application. Application Exhibit E. Accordingly, Leon Black will control HNS, LLC, and the licenses, if the transaction is approved.

³ Leon Black’s interest in Intelsat is held through certain Apollo investment funds that he controls. On December 22, 2004, the Commission approved the transfer of authorizations from

operators in the United States, along with SES Global and PanAmSat. HNS is the dominant company in the VSAT services market.⁴ Accordingly, the cross-ownership between Intelsat and HNS (through Apollo) gives both companies an incentive to (1) restrict access to satellite capacity (particularly with respect to scarce strategic capacity as well as future next generation satellite capacity) and (2) increase the price of satellite capacity sought by ViaSat and other competitors of HNS, thereby entrenching HNS's dominant position. While such cross-ownership may not ordinarily be sufficient to raise competitive concerns regarding the potential for anticompetitive conduct, it does so in these unusual circumstances, where the same entity

Intelsat, Ltd. to Zeus Holdings Limited, in connection with the purchase of Intelsat by Zeus. *In the Matter of Intelsat, Ltd. (Transferor) and Zeus Holdings Limited (Transferee) ("Intelsat/Zeus Order")*, IB Docket No. 04-366 (December 22, 2004). Zeus is controlled by four private equity funds, each of which holds a 25% interest in Zeus: (1) Apollo V ("Apollo"); (2) Apax Excelsior VI and Apax Europe V (together, "Apax"); (3) Madison Dearborn ("MDP"); and (4) Permira Europe III ("Permira"). *Id.* ¶ 6. Each of the four private equity funds has the right to appoint one board member. All approvals or actions of Zeus require approval of three of the four directors, with the exception that any act that would treat any one of the funds differently from the other funds requires the approval of the fund differently treated. *See Intelsat, Ltd. and Zeus Holdings Limited Consolidated Application for Consent to Transfers of Control of the Holders of Title II and Title III Authorizations and Petition for Declaratory Ruling Under Section 310 of the Communications Act of 1934, As Amended (filed September 3, 2004) ("Consolidated Application")*, Attachment 3, p.2.

According to the Intelsat/Zeus application, the Apollo fund is the entity that participated "as a bidder in the auction of Hughes Network System's VSAT business unit." Letter from Tom W. Davidson, Counsel for Zeus Holdings Limited, and Bert W. Rein, Counsel for Intelsat, Ltd., to Ms. Marlene H. Dortch, Secretary, FCC, IB Docket No. 04-366, p. 4 (dated November 6, 2004). Furthermore, while the structure through which Apollo owns its interest in Zeus is complex, the application states that Leon Black, and John Hannan, control Apollo and, indirectly, the shares of Zeus. *Id.* at 10.

⁴ The market for VSAT business services is highly concentrated. HNS has an approximately 60 percent market share, the Spacenet service of Gilat has an approximately 25 percent share, and no other provider has more than a 5 percent market share. In 2003, HNS had almost 350,000 terminals under contract for its VSAT services, compared to only 100,000 for Gilat.

(Apollo) has a controlling interest and a large equity stake, respectively, in two companies, each of which enjoys power in its link of the vertical chain.⁵

There is a similar vertical foreclosure concern in the emerging equipment market for consumer broadband access by satellite. WildBlue Communications, Inc. is poised to become one of the leading providers of consumer broadband services by satellite by use of the Ka-band. Together, Intelsat and an affiliate of Liberty Media Corporation have a controlling interest in WildBlue. ViaSat has a contract to provide WildBlue with the ground segment equipment needed to provide its service. HNS, which is the largest manufacturer of VSAT equipment for business services and which has announced plans to provide Ka-band consumer service using equipment produced by it, is the principal likely competitor of ViaSat in the consumer equipment market. Liberty is one of the largest shareholders in News Corp., which controls the 50 percent of HNS (through DIRECTV) not controlled by Apollo (through SkyTerra). Together, therefore, Intelsat, News Corp. and Liberty have an incentive to cause WildBlue to purchase equipment from HNS, rather than ViaSat, and thus to leverage HNS's

⁵ In its competition analysis, the Commission frequently has had occasion to determine whether an acquisition might result in vertical foreclosure of competition. The Commission has described so-called "input foreclosure" as follows:

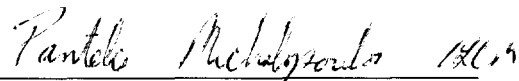
[A] vertically integrated firm, as the result of a transaction, may have the incentive and ability (or an increased incentive and ability) to foreclose downstream competitors from important inputs. That is, where a firm that has market power in an input market acquires a firm in the downstream output market, the acquisition may increase the incentive and ability of the integrated firm to raise rivals' costs either by foreclosing supply of the input it sells downstream competitors or by raising the price at which it sells the input to competitors. By doing so, the integrated firm may be able to increase its profits by raising prices in the downstream market, or increasing its market share in that market, or both.

News Corp. Order, ¶ 78.

position in the VSAT equipment market into the consumer broadband equipment market. Indeed, Intelsat's recent conduct—its apparent abandonment of its original agreement to provide temporary satellite capacity to WildBlue—raises a distinct possibility that Apollo may have already influenced Intelsat's role in WildBlue. *See* SAT-STA-20040914-00176; *Satellite Space Applications Actions Taken*, Public Notice, DA 04-3579, Report No. 00257 (rel. Nov. 12, 2004) (dismissing application at applicant's request).

Because of these concerns, the Commission should, at a minimum, ask the applicants certain questions (including questions about Apollo's control and influence over Intelsat and dealings related to WildBlue) to assure itself that the transaction will not have anti-competitive effects. Such inquiries are all the more warranted because the applicants have not included a competitive analysis in their application.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that on this 16 day of March 2005, a copy of the foregoing was served upon the following by hand delivery (indicated by *) or via U.S. mail, postage-prepaid:

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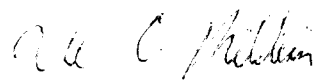
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