



PUBLIC NOTICE

Federal Communications Commission
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DA 11-518
March 18, 2011

BRH Holdings GP, Ltd, Transferor, and EchoStar Corporation, Transferee, Seek FCC Consent to Transfer Control of Hughes Communications, Inc., Hughes Network Systems, LLC and HNS License Sub, LLC

IB Docket No. 11-55

PLEADING CYCLE ESTABLISHED

Petitions to Deny Due: April 18, 2011
Oppositions Due: April 28, 2011
Replies Due: May 5, 2011

I. INTRODUCTION

BRH Holdings GP, Ltd. (“BRH” or “Transferor”) and EchoStar Corporation (“EchoStar” or “Transferee,” and together with BRH, the “Applicants”) have filed a series of applications (collectively, the “Application”) pursuant to section 310 of the Communications Act of 1934, as amended (“Communications Act”) and the Commission’s rules,¹ seeking approval to transfer control of Hughes Communications, Inc. (“Hughes Communications”) and its subsidiaries, Hughes Network Systems, LLC (“HNS”) and HNS License Sub, LLC (“HNS Sub”), Commission licensees, to EchoStar.²

II. THE PARTIES

A. The Transferor – BRH Holdings GP, Ltd.

Leon Black, Marc Rowan, and Joshua Harris are the sole stockholders and directors of BRH Holdings GP, Ltd.³ BRH Holdings Group, Ltd, a U.K. company, indirectly controls

¹ 47 U.S.C. § 310(d); 47 C.F.R. §§ 25.119(d), 25.137(g).

² See Hughes Communications, Inc., Transferor, and EchoStar Corporation, Transferee, Consolidated Application for Authority to Transfer Control, Narrative, IBFS File Nos. SAT-T/C-20110228-00041 and -00042, SES-T/C-20110228-00221, -00222, -00223 and -00224, and Experimental License File Nos. 0001-EX-TC-2011, 0002-EX-TC-2011 and 0003-EX-TC-2011 (filed Feb. 28, 2011), as corrected by Erratum (filed Mar. 2, 2011) (“Hughes Narrative”).

³ *Id.*

Hughes Communications.⁴ Hughes Communications is a company organized under the laws of Delaware. Hughes Communications operates primarily through its wholly owned subsidiary, Hughes Network Systems, LLC (“HNS”), a Delaware limited liability company. HNS operates several businesses including high-speed broadband Internet access, satellite equipment manufacturing and VSAT and other enterprise services. HNS is the direct parent of HNS License Sub, LLC, a Delaware limited liability company which holds earth stations licenses. HNS also owns and operates the SPACEWAY 3 space station, currently a U.S. licensed satellite with a pending application to transfer to operations through its indirect subsidiary Hughes Network Systems, Ltd. (HNS, Ltd.), a U.K. company which would operate the satellite under supervision of the United Kingdom.⁵ HNS, Ltd. is also currently building Jupiter 1, which will operate under U.K. supervision and for which the FCC has granted a request for U.S. market access.⁶

B. The Transferee – EchoStar

EchoStar, a publicly traded company organized under the laws of Nevada, operates both a satellite service business and a digital set-top box business. Currently, EchoStar owns and operates six satellites and leases capacity on five additional satellites.⁷ EchoStar has also been granted licenses for five 17/24 GHz Broadcasting Satellite Service satellites and for a Direct Broadcast Satellite (DBS) service satellite to operate at 86.5° W.L. EchoStar licenses are held through wholly owned subsidiaries. EchoStar recently filed applications proposing *pro forma* ownership changes in its subsidiary licensing companies.⁸

EchoStar designs, develops and distributes digital set-top boxes. EchoStar provides digital broadcast operations, primarily to an affiliated company, DISH Network Corporation (DISH). EchoStar provides satellite capacity and engineering services to DISH for the DISH DBS service and is DISH’s sole supplier of digital set-top boxes. Charles Ergen, the Chairman of EchoStar, controls EchoStar through stockholdings which give him a 92.7% voting interest and a 56.4 % of equity interest.⁹

⁴ Hughes Narrative, Attachment 1, Ownership of Hughes Communications, Inc. Prior to Transfer of Control Exhibit at unpaginated attachment.

⁵ Hughes Narrative at 7. *See also* IBFS File No. File No. SAT-T/C-20100112-00008.

⁶ Hughes Narrative at 7.

⁷ *Id.* at 5-6. EchoStar operates five satellites in the Direct Broadcast Satellite (DBS) service: EchoStar 3 at 61.45° W.L., EchoStar 4 at 77° W.L., EchoStar 6 at 61.65° W.L., EchoStar 8 at 77° W.L. and EchoStar 12 at 61.35 ° W.L.) EchoStar also operates EchoStar 9, a hybrid Ku-/Ka-band FSS satellite, at 121.0° W.L. *Id.* EchoStar 4 and EchoStar 8 operate under Mexican authority while the remaining four space stations operate under U.S. authority. On March 14, 2011, EchoStar filed a request to transfer EchoStar 6 operations to Mexican supervision under a license issued to QuetzSat, S. de R.L. de C.V. *See* IBFS File No. SAT-T/C-20110314-00054.

⁸ *See IBFS File Nos.* SAT-ASG-20110224-00033, -00034, -00035 and SES-ASG-INTR2011-00564, -00565, -00566 and -00567. *See also* Application for Assignments of Authorization and Transfers of Control: Wireless Telecommunications Bureau, File No. 0004629885 (filed Feb. 24, 2011).

⁹ Hughes Narrative, Attachment 1. DISH Network is also majority owned and controlled by Charles Ergen. *Id.*

III. THE TRANSACTION

EchoStar proposes to acquire control of Hughes Communications and its subsidiaries through purchasing all outstanding shares in Hughes Communications and assuming Hughes Communications' outstanding debt. The transaction is valued at approximately \$2 billion.¹⁰ The Broadband Acquisition Corporation, an indirect, wholly owned subsidiary of EchoStar organized under the laws of Delaware, will merge with and into Hughes Communications.¹¹ Hughes Communications will emerge as the surviving corporation and will be an indirect wholly owned subsidiary of EchoStar.¹² HNS will continue to be a wholly owned subsidiary of Hughes Communications and the direct parent of HNS Sub. EchoStar will acquire indirect control over Hughes's FCC licenses and other FCC grants.¹³ These include a license to operate SPACEWAY 3 at 94.95° W.L. and a Letter of Intent grant for FSS using the Jupiter 1 space station at the 107.1° W.L. orbital location, 20 earth station licenses and three experimental licenses.

IV. SECTION 310(D) APPLICATIONS: PART 25- SATELLITE EARTH STATION AND SPACE STATION AUTHORIZATION APPLICATIONS

The Application consists of six FCC Form 312 applications seeking consent for the transfer of the following:

Space Stations:¹⁴

| <u>File No.</u> | <u>Licensee:</u> | <u>Call Signs:</u> |
|------------------------|-----------------------------|--------------------|
| SAT-T/C-20110228-00041 | Hughes Network Systems, LLC | S2753 |
| SAT-T/C-20110228-00042 | Hughes Network Systems, LLC | S2663 |

VSAT Ku-band Systems Authorizations:

| <u>File No.</u> | <u>Licensee:</u> | <u>Call Signs:</u> |
|------------------------|----------------------|-------------------------------|
| SES-T/C-20110228-00223 | HNS License Sub, LLC | E940460 E990170 E000166 |

Earth Station on Vessels Authorization:

| <u>File No.</u> | <u>Licensee:</u> | <u>Call Signs:</u> |
|------------------------|----------------------|--------------------|
| SES-T/C-20110228-00224 | HNS License Sub, LLC | E020205 |

¹⁰ *Id.* at 10.

¹¹ *Id.* at 10, Actions Contemplated by the Merger Attachment.

¹² *Id.*, Simple Organization Structure of EchoStar and Hughes Post Merger Attachment.

¹³ *See infra*, Section IV.

¹⁴ Hughes currently has two pending Letter of Intent Applications seeking market access for the U.K. supervised SPACEWAY 5 and SPACEWAY 6 satellites, for operations at the 90.9° W.L. and 109.1° W.L. orbital locations respectively. *See* IBFS File Nos. SAT-LOI-20091110-00120 and SAT-LOI-20091110-00121.

VSAT 20/30 GHz Authorization:

| <u>File No.</u> | <u>Licensee:</u> | <u>Call Signs:</u> |
|------------------------|----------------------|--------------------|
| SES-T/C-20110228-00222 | HNS License Sub, LLC | E060445 |

Earth Station Authorizations:

| <u>File No.</u> | <u>Licensee:</u> | <u>Call Signs:</u> |
|------------------------|----------------------|---|
| SES-T/C-20110228-00221 | HNS License Sub, LLC | E090178 E040436 E020208 E020207 E020206 E020195 E8454 E010187 E950010 E050236 E940441 E980296 E060383 E060382 E040382 |

Experimental Licenses:

| <u>File No.</u> | <u>Licensee:</u> | <u>Call Signs:</u> |
|-----------------|----------------------|--------------------|
| 0001-EX-TC-2011 | HNS License Sub, LLC | WE2XEW |
| 0002-EX-TC-2011 | HNS License Sub, LLC | WD2XFP |
| 0003-EX-TC-2011 | HNS License Sub, LLC | WD2XRV |

V. WAIVER REQUEST FOR PENDING APPLICATIONS

The Applicants request that the Commission exempt all currently pending applications filed by Hughes and EchoStar from any Commission rule that would require those applications to be re-filed, including Section 25.158(c) of the Commission's rules, which prohibits the transfer of a GSO-like satellite applicant's place in a processing queue.¹⁵ The Applicants argue that the currently pending applications were announced well before the present transaction and that the present transaction serves an independent business purpose and was not entered into for the purpose of merely acquiring the pending applications.¹⁶

¹⁵ 47 C.F.R. § 25.158(c).

¹⁶ Hughes Narrative at 24.

VI. EX PARTE STATUS OF THIS PROCEEDING

The Applicants request that the Commission designate the *ex parte* status of this application proceeding as “permit-but-disclose” under the Commission’s rules.¹⁷ The Applicants contend that by so designating this application proceeding, the Commission will facilitate the development of a complete record and that such *ex parte* treatment is consistent with Commission action in similar transactions.¹⁸

Pursuant to section 1.1200(a) of the Commission’s rules,¹⁹ the Commission may adopt modified or more stringent *ex parte* procedures in particular proceedings if it finds that the public interest so requires. We announce that this proceeding will be governed by permit-but-disclose *ex parte* procedures that are applicable to non-restricted proceedings under section 1.1206 of the Commission’s rules.²⁰

We direct parties making oral *ex parte* presentations to the Commission’s statement reemphasizing the public’s responsibility in permit-but-disclose proceedings and are reminded that memoranda summarizing the presentation must contain the presentation’s substance and not merely list the subjects discussed.²¹ More than a one- or two-sentence description of the views and arguments presented is generally required.²² Other rules pertaining to oral and written presentations are set forth in section 1.1206(b) as well.²³ We urge parties to use the Electronic Comment Filing System (ECFS) to file *ex parte* submissions.²⁴

VII. GENERAL INFORMATION

This Application has been found, upon initial review, to be acceptable for filing. The Commission reserves the right to return any application if, upon further examination, it is determined to be defective or not in conformance with the Commission’s rules or policies. Final action on this Application will not be taken earlier than thirty-one (31) days following the date of this Public Notice.²⁵

¹⁷ *Id.* at 25 (citing 47 C.F.R. § 1.1206).

¹⁸ Hughes Narrative at 25 (citing Public Notice, IB Docket No. 08-143, Pleading Cycle Established, DA 08-1659, at 9-10 (rel. July 14, 2008)).

¹⁹ 47 C.F.R. § 1.1200(a).

²⁰ *Id.* § 1.1206.

²¹ *See Commission Emphasizes the Public’s Responsibilities in Permit-But-Disclose Proceedings*, Public Notice, FCC 00-358, 15 FCC Rcd 19945 (2000).

²² *See* 47 C.F.R. § 1.1206(b)(2).

²³ *Id.* § 1.1206(b).

²⁴ *See* discussion *infra* Section VII.

²⁵ *See* 47 U.S.C. § 309(b).

Interested parties must file petitions to deny or comments no later than **April 18, 2011**. Responses or oppositions to comments and petitions must be filed no later than **April 28, 2011**. Replies to such pleadings must be filed no later than **May 5, 2011**. All filings concerning matters referenced in this Public Notice should refer to **DA 11-518, IB Docket No. 11-55**, as well as the specific file numbers of the individual applications or other matters to which the filings pertain.

Under the Commission's procedures for the submission of filings and other documents,²⁶ submissions in this matter may be filed electronically (*i.e.*, though ECFS) or by hand delivery to the Commission's Massachusetts Avenue location.

- **Electronic Filers:**²⁷ Comments may be filed electronically using the Internet by accessing the ECFS: <http://www.fcc.gov/cgb/ecfs/>. In completing the transmittal screen, filers should include their full name, U.S. Postal Service mailing address, and the applicable docket number. Parties also may submit an electronic comment by Internet e-mail. To get filing instructions, filers should send an e-mail to ecfs@fcc.gov, and include the following words in the body of the message, "get form." A sample form and directions will be sent in response.
- **Paper Filers:** Parties who choose to file by paper must file an original and four copies of each filing.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

The Commission's contractor will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, N.E., Suite 110, Washington, D.C. 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building.

Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.

U.S. Postal Service first-class, Express, and Priority mail should be addressed to 445 12th Street, S.W., Washington, D.C. 20554.

²⁶ See *Implementation of Interim Electronic Filing Procedures for Certain Commission Filings*, Order, 16 FCC Rcd 21483 (2001); see also *FCC Announces a New Filing Location for Paper Documents and a New Fax Number for General Correspondence*, Public Notice, DA 01-2919, 16 FCC Rcd 22165 (2001); *Reminder: Filing Locations for Paper Documents and Instructions for Mailing Electronic Media*, Public Notice, DA 03-2730, 18 FCC Rcd 16705 (2003).

²⁷ See *Electronic Filing of Documents in Rulemaking Proceedings*, GC Docket No. 97-113, Report and Order, 13 FCC Rcd 11322 (1998).

One copy of each pleading must be delivered electronically, by e-mail or facsimile, or if delivered as paper copy, by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (according to the procedures set forth above for paper filings), to the Commission's duplicating contractor, Best Copy and Printing, Inc., at fcc@bcpiweb.com or (202) 488-5563 (facsimile).

Additionally, filers may deliver courtesy copies by email or facsimile to the following Commission staff:

- (1) Lynne Montgomery, Satellite Division, International Bureau, at Lynne.Montgomery@fcc.gov or (202) 418-2824 (facsimile);
- (2) Marilyn Simon, Satellite Division, International Bureau, at Marilyn.Simon@fcc.gov or (202) 418-0748 (facsimile);
- (3) Jim Bird, Office of General Counsel, at Jim.Bird@fcc.gov or (202) 418-1234 (facsimile);
- (4) Virginia Metallo, Transaction Team, Office of General Counsel, at Virginia.Metallo@fcc.gov or (202) 418-1234 (facsimile).

Copies of the Applications and any subsequently-filed documents in this matter may be obtained from Best Copy and Printing, Inc., in person at 445 12th Street, S.W., Room CY-B402, Washington, D.C. 20554, via telephone at (202) 488-5300, via facsimile at (202) 488-5563, or via e-mail at fcc@bcpiweb.com. The Applications and any associated documents are also available for public inspection and copying during normal reference room hours at the following Commission office: FCC Reference Information Center, 445 12th Street, S.W., Room CY-A257, Washington, D.C. 20554. The Applications also are available electronically through the Commission's ECFS, which may be accessed on the Commission's Internet website at <http://www.fcc.gov>.

People with Disabilities: To request this Public Notice in accessible formats (computer diskette, large print, audio recording, and Braille) send an email to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (tty).

For further information, contact Lynne Montgomery, Satellite Division, International Bureau, at 202-418-2229.