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

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FEDERAL COMMUNICATIONS COMMISSION
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Application of	)	
ECHOSTAR COMMUNICATIONS CORPORATION, **GENERAL MOTORS CORPORATION,** **HUGHES ELECTRONICS CORPORATION,**	)	
Transferors,	)	File Nos. 01-348
and	)	
ECHOSTAR COMMUNICATIONS CORPORATION,	)	
Transferee,	)	
For Authority to Transfer Control.	)	

CONSOLIDATED APPLICATION FOR AUTHORITY TO TRANSFER CONTROL

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SUMMARY

The merger of EchoStar and Hughes to create New EchoStar presents consumers with numerous benefits: more services; more choices; competitive pricing; and a viable alternative to entrenched cable companies. The merger implicates no Commission rule, is consistent with the Communications Act, and will serve the public interest.

The merger will "free up" spectrum currently used by the two companies because duplicative programming will be eliminated. As a result:

- New EchoStar will offer significantly more local-into-local programming, up from a total of 42 major metropolitan areas now served by one or the other company (36 served by ECC and 41 served by DIRECTV, with 35 areas overlapping) to 100 or more, accounting for at least 85 percent of American households. This will significantly increase competition with cable companies in those areas.

- The reclaimed spectrum will enable New EchoStar to offer greatly expanded high-definition television programming, pay-per-view and video-on-demand services, educational, specialty, and foreign language programming and other new and improved product offerings, including interactive services. DBS will have the ability to go head-to-head in competition with cable companies.

- The merger will allow New EchoStar to provide meaningful broadband competition with cable and telephone companies as a virtual third line into the home for a bundle of video/data/Internet services. Competitively priced, high-speed Internet access via satellite will particularly benefit those in rural areas without access to cable modem service or DSL.

Consumers will have a real, fully competitive alternative to cable. Although DBS has historically offered a price/quality package that was superior to cable's packages, it has not been able to restrain cable's regular price increases because of its inability to offer many local broadcast stations and other desirable programming resulting from limited capacity. The current duplicative use of the DBS spectrum has become a debilitating handicap due to recent

developments, including the advent of digital cable and satellite must-carry. By eliminating these disadvantages, the merger will force cable firms to react competitively to DBS in ways that they have not had to in the past. Competition will translate into further benefits to consumers:

- **Benefits for rural Americans.** In addition to enhanced broadband options, rural consumers will benefit from the vigorous competition between New EchoStar and cable systems in urban areas because DBS prices will be the same throughout the U.S., whether the market is urban or rural. This will transmit urban competitive dynamics into rural areas.

- **Benefits for cable customers.** With the increase in competition from DBS, cable will be forced to improve its own products, pricing service and overall quality. Thus, even cable customers will benefit from the enhanced competition among multi-channel television and Internet access providers.

The merger will also contribute to the diversity of independent programming voices, as it will create a significant multi-channel distributor that has no strategy of vertical integration with programmers. With the spectrum that will be freed up by the combination, New EchoStar can serve as an attractive potential outlet for independent programmers.

TABLE OF CONTENTS

PAGE

ATTACHMENT INDEX

VOLUME I

VOLUME II

VOLUME III

VOLUME IV

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

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CONSOLIDATED APPLICATION FOR AUTHORITY TO TRANSFER CONTROL

EchoStar Communications Corporation ("ECC"), General Motors Corporation ("GM") and Hughes Electronics Corporation ("Hughes"), a subsidiary of GM (collectively, the "Merger Parties" or "Applicants"), have agreed to a merger and series of related transactions that will create an integrated, full-service satellite company better able to compete effectively with dominant cable operators in the multichannel video programming distribution ("MVPD") market. The Merger Parties hereby request the Commission's consent, in accordance with Sections 214 and 310 of the Communications Act of 1934, as amended,[1] to transfer control of the satellite, earth station, and other related authorizations held by their wholly- or majority-owned

[1] 47 U.S.C. §§ 214, 310 (1994 & Supp. V 1999).

subsidiaries to Hughes (or a newly formed holding company above Hughes that will hold all of the capital stock of Hughes, also referred to as "Hughes").[2] The merged entity will have a new ownership structure and will be renamed EchoStar Communications Corporation ("New EchoStar").[3] The proposed license transfers will result from the split-off of Hughes from GM, the merger of ECC into Hughes, and the transfer of Hughes' indirect majority equity stake in PanAmSat Corporation ("PanAmSat"), either to New EchoStar through the merger, or to ECC through a separate purchase of Hughes' indirect stake in PanAmSat in the event the merger agreement is terminated under certain circumstances (the "PanAmSat Purchase").[4] The Merger Parties request that approval of these transfers be granted expeditiously.

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[2] Although the Implementation Agreement and Merger Agreement (as defined below) call for ECC to merge with and into Hughes Electronics Corporation and for Hughes Electronics Corporation (renamed EchoStar Communications Corporation) to be the top level entity in the post-merger ownership structure, GM has the ability under those agreements to (and the Merger Parties currently expect that GM will) form a new subsidiary (which is expected to be a Delaware Corporation named HEC Holdings, Inc.) and contribute all of the capital stock of Hughes Electronics Corporation to HEC Holdings, Inc. prior to the split-off and the merger. The effect of this transaction would be to insert an additional corporation above Hughes Electronics Corporation in the post-split-off and post-merger ownership structure, to substitute HEC Holdings, Inc. for Hughes Electronics Corporation as the merger partner with ECC and to substitute HEC Holdings, Inc. (renamed EchoStar Communications Corporation) for Hughes Electronics Corporation as the top level entity in the post-merger ownership structure. However, this transaction would have no practical impact on the rights of the parties or the Commission's review of the transaction because HEC Holdings, Inc. would have a governance structure identical to that described herein for the merged entity and the post-merger, and because relative percentage holdings of the capital stock of HEC Holdings, Inc. by the current ECC shareholders, the GM Class H shareholders and GM would remain the same.

[3] Attachment C hereto provides a consolidated list of authorizations to be transferred and the entities that currently hold them.

[4] These transactions are the subject of a definitive Agreement and Plan of Merger dated October 28, 2001 between ECC and Hughes ("Merger Agreement"), a Stock Purchase Agreement between ECC, Hughes, and several Hughes entities regarding

I. INTRODUCTION

When measured against various components of the Commission's public interest standard, the proposed merger of ECC and Hughes is consistent with all relevant Commission rules and policies, and will result in extraordinary, affirmative public interest benefits. It will advance the Commission's core policies in favor of a more competitive video marketplace, efficient use of scarce spectrum and satellite resources, and the provision of advanced broadband services to all Americans.

Unfortunately for consumers, today's MVPD market remains dominated by cable operators, which hold a share of about 80%. As described in the attached Declaration of Dr. Robert D. Willig,[5] New EchoStar will become an integrated, full-service satellite company that can contend with cable systems and create the kind of vigorous competition that will benefit all Americans. In the process, the merger will allow the combined company to provide many other public benefits that Congress and the Commission have been striving for years to achieve.

One of the most compelling efficiencies of the ECC-Hughes merger will be the elimination of a major restraint on the ability of Direct Broadcast Satellite ("DBS") operators to compete with cable systems in the MVPD market – duplicative use of the

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Hughes' stake in PanAmSat ("PanAmSat Stock Purchase Agreement"), and several related agreements executed on the same date. The Merger Agreement and the PanAmSat Stock Purchase Agreement are conditioned, among other things, on approval of the transfers proposed herein. *See* Volume II of the Application for copies of each of these merger-related agreements and the PanAmSat Stock Purchase Agreement.

[5] Declaration of Dr. Robert D. Willig on Behalf of EchoStar Communications Corporation, General Motors Corporation, and Hughes Electronics Corporation ("Willig Decl.") (appended hereto as Attachment A). The Willig Declaration, among other matters, sets forth an analysis of the relevant market for this transaction, *see id.* at ¶¶ 7-18.

radio spectrum that the Commission has allocated for DBS service. Currently, ECC and Hughes' subsidiary DIRECTV, Inc. ("DIRECTV") use different portions of the DBS spectrum, each with its own expensive satellite fleet, each to provide overlapping programming services – the same HBO channels, the same CNN channels, in most cases the same local network channels to the same local metropolitan areas and, starting in January 2002, even many of the same home shopping local channels in the same local areas.[6]

Today, like never before, this spectrum inefficiency has become a potentially debilitating competitive impediment for DBS providers due to a combination of factors, including the imposition of satellite mandatory carriage obligations, the advent of digital cable services and the new bandwidth that "going-digital" gives to cable operators. The merger will eliminate the inefficient duplicative use of the DBS spectrum and liberate DBS capacity that will be used to facilitate the offering of new and expanded programming choices to consumers, ultimately introducing more meaningful competition to cable systems.

One dramatic example of this effect will be the addition of more satellite-delivered local broadcast channels to more local metropolitan areas. New EchoStar will provide local broadcast programming to far more metropolitan areas – 100 or more – compared to the 36 and 41 metropolitan areas (with an overlap of 35) served respectively by ECC and DIRECTV now.[7] This dramatic expansion of the number of local channels

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[6] *See* Joint Engineering Statement in Support of Transfer of Control Application, at 8-9 (Attachment B hereto) ("Joint Engineering Statement").

[7] *Id.* at 9.

that can be carried on a DBS system will allow New EchoStar to compete more vigorously against the cable industry's carriage of local broadcast television channels in more U.S. metropolitan areas and also help achieve Congress's goal of broad-based local television service by satellite, as reflected in the Satellite Home Viewer Improvement Act of 1999 ("SHVIA").[8]

There will be other significant consumer benefits resulting from the expanded programming choices delivered by New EchoStar, as well. The merged entity will provide consumers with many more programming choices than each company is able to offer standing alone, including the bandwidth-intensive high definition programming that will encourage consumer adoption of digital television equipment. The merger also will bring significantly more programming and a better quality DBS service to Americans living in rural areas, as well as in the states of Alaska and Hawaii, than would be achievable by each company operating independently.[9]

Moreover, there will be no anticompetitive MVPD market effects associated with the proposed transaction. As Dr. Willig observes, the characteristics of the MVPD market in general and of DBS firms in particular "make it very unlikely that . . . [this merger] will result in higher prices and lower output through either coordinated behavior among participants in the MVPD market or unilateral behavior by the merged firm."[10] And in response to concerns regarding the merger's possible effects on rural consumers, Dr. Willig notes that the expansion of programming and new services that

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[8] Act of Nov. 29, 1999, Pub. L. No. 106-113, § 1008, 113 Stat. 1501, Appendix I (1999) (codified in scattered sections of 47 U.S.C. and 17 U.S.C.).

[9] Joint Engineering Statement at 10.

[10] Willig Decl. at ¶ 6.

will be made available to these consumers, combined with New EchoStar's commitment to maintain uniform national pricing for DBS services, renders it "more likely that the merger would be of distinct benefit to rural TV households than that it would diminish competition available to them."[11]

The proposed merger also will have positive effects in the programming market. Unlike most large cable operators, ECC has no ownership stake in any programming producer, and the Merger Parties do not intend to pursue a strategy of vertical integration with programmers post-merger. With the spectrum that would be freed up by this transaction, New EchoStar will have both the ability and the incentive to serve as an important outlet for promoting the development of new independent programming services. Furthermore, as Dr. Willig observes, the approximately 15 million subscribers of the combined entity "should provide an attractive platform for launching new programs, providing an interested programmer with a large percentage of the subscribers it would need to create a viable network."[12]

The merger will also dramatically aid New EchoStar in its efforts to introduce nationwide competition to broadband products and bring true broadband services to rural and underserved areas – another respect in which the effect of this transaction is aligned with Congress's and the Commission's objectives and the public interest. The bandwidth advantage of digital cable systems has allowed cable operators to bundle their traditional video offerings with high-speed Internet access, a package that

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[11] *Id.* at ¶ 40.

[12] *Id.* at ¶ 42. This estimate of the combined subscriber base of New EchoStar excludes the subscribers of the National Rural Telecommunications Cooperative and its affiliate entities who receive DIRECTV programming.

consumers increasingly demand. The current transitional broadband products of ECC and Hughes are struggling to achieve a critical mass of subscribers using Ku-band satellite platforms that are not optimized for broadband services. The next-generation Ka-band broadband satellite systems will be optimized for very high speed Internet services, but are also highly capital-intensive, being the first generation of commercial spacecraft to operate in these frequencies.

The proposed combination will allow New EchoStar to proceed with prompt and robust broadband deployment in the Ka-band by spreading the high fixed costs of deployment over a critical mass of broadband subscribers and achieving an offering that combines a competitive price and a reasonably short time to market. Each company standing alone would face significantly greater challenges in accomplishing those objectives within the time frame that is necessary to effectively compete with cable's bundled broadband offering of high speed Internet access products. The creation of New EchoStar will resolve the inefficiencies and uncertainties that would arise if both companies were faced with replicating investments in satellite platforms and will eliminate the spectrum inefficiencies that would exist if each company, in its own right, conducts duplicative multicasting and broadcast-type IP services. New EchoStar, by contrast, will have the significantly greater wherewithal to construct the type of advanced, high-capacity, cost-effective space platform to offer competitive, next generation high-speed Internet access nationwide – including to areas served neither by cable nor other broadband offerings – that are essential if the satellite technology is to have any chance of competing with the bundled video/IP services offered by cable companies.[13]

The potential consumer benefits of maximizing New EchoStar's prospects in the Ka-band are extremely significant for rural areas as well. In those areas, the New EchoStar Ka-band system will be an important element in bridging the "digital divide" because it can provide the same high-quality advanced Internet and IP services to rural subscribers and to subscribers in urban and suburban areas.

The acquisition of PanAmSat either by New EchoStar or ECC[14] is in the public interest as well. Significant benefits to consumers will result from combining the Fixed-Satellite Service ("FSS") resources of ECC and Hughes to bring broadband satellite services to market faster. The transaction will not create any significant overlap in the provision of FSS services in the same product and geographic markets that should raise any concern, as ECC does not currently provide any telecommunications services of the same type as PanAmSat in the United States or elsewhere.

The proposed merger marks the conclusion of a long and careful search on the part of GM and Hughes for the optimal merger partner for Hughes. GM and Hughes have chosen ECC as that partner, in large part due to the extraordinary spectrum efficiencies and cost and revenue synergies promised by the proposed merger. These benefits cannot be realized unless and until this proposed transaction is consummated.

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[13] Joint Engineering Statement at 14-16.

[14] As noted above, Hughes' interest in PanAmSat will either be transferred to New EchoStar through the merger or transferred through a separate purchase by ECC of Hughes' interest in the event the merger agreement is terminated under certain circumstances.

Accordingly, the Applicants respectfully request that this consolidated Application be granted as expeditiously as possible.

This consolidated Application consists of a narrative description of the parties and the transaction, including a discussion of the public interest benefits of the transaction, along with several attachments containing the completed FCC forms and other materials. Each FCC form and its associated exhibits and filing fee have been filed separately in accordance with the Commission's Rules. Following the closing of the transactions, the Applicants will supplement all pending applications under the Commission's Rules, 47 C.F.R. § 1.65 (2000), to reflect the new party in interest. To the extent that any pending applications, or any other applications for new facilities or for renewal or modification of existing facilities, are granted prior to the closing of this transaction, the Merger Parties request a determination by the Commission that the grant of this Application includes authority for New EchoStar to acquire control of any subsequently granted authorizations.

A. Description of the Parties

1. ECC and its Present Affiliates

ECC was started more than twenty years ago when its Chairman and CEO, Charles W. Ergen, entered the satellite television business as a distributor of C-band television satellite systems under the name Echosphere. Since its founding, ECC has earned a reputation as an innovator in the satellite television business by achieving a number of significant firsts, including: development of the first UHF remote control; the first nationwide installation network dedicated solely to satellite television systems; and the first company to offer an Integrated Receiver Descrambler for C-band satellite television.

ECC was granted authorization to use the 119° W.L. orbital location in 1992.[15] ECC launched its first satellite to that location in December 1995,[16] and has provided continuous DBS service to customers throughout the continental United States since early 1996. Also in 1995, the Commission approved ECC's acquisition of control over Directsat Corporation, which launched its first satellite to the 119° W.L. orbital location in September 1996. The combination allowed ECC, upon acquiring Directsat, to integrate the two satellites into an offering of about 125 video channels.[17] Since that time, ECC has deployed four additional satellites, including one to the 110° W.L. orbital slot after the Commission's 1999 approval of ECC's acquisition of the authorization held jointly by MCI Telecommunications Corp. and The News Corporation Limited ("News Corp.").[18] ECC's subsidiaries hold several DBS authorizations and own and operate six operational DBS satellites located at the 61.5° W.L., 110° W.L., 119° W.L., and 148° W.L. orbital positions.[19] Through its DISH Network brand, ECC is now a provider of DBS television services in the United States to more than 6 million subscribers. ECC is

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15 *See EchoStar Satellite Corporation,* 7 FCC Rcd. 1765 (1992).

16 *See EchoStar Satellite Corporation*, 11 FCC Rcd. 3015, 3015 (Int'l Bur. 1996).

17 *See Directsat Corporation*, 11 FCC Rcd. 10575, 10577 (1996); *see also Directsat Corporation and EchoStar Communications Corp., Application for Commission Consent to Transfer of Control*, 10 FCC Rcd. 88 (1995).

18 *In re Application of MCI Telecommunications Corp. and EchoStar 110 Corp., For Consent to Assignment of Authorization to Construct, Launch and Operate a Direct Broadcast Satellite System Using 28 Frequency Channels at the 110° W.L. Orbital Location*, FCC 99-109, 15 Communications Reg. (P&F) 1038 (1999) ("*MCIT*").

19 *See* Attachment C for a list of ECC authorizations.

also an international supplier of digital satellite receiver systems and a provider of other satellite services.

ECC continues to upgrade its fleet of satellites. EchoStar 7, its seventh DBS satellite, equipped with state-of-the-art spot-beam technology, is scheduled to launch soon. ECC plans to launch an additional spot beam satellite, EchoStar 8, in the year 2002. ECC also has Commission authorizations for Ku-band and Ka-band FSS systems. ECC's first FSS satellite, a hybrid Ku-band/Ka-band satellite, is expected to be launched in 2002.

In addition, ECC currently holds an approximate 32% percent interest in StarBand Communications, which began offering consumers a two-way, "always-on," high-speed Internet access service along with DISH Network programming in November 2000. ECC also holds less than 20 percent interests in Wildblue Communications, Inc. and Celsat America, Inc., both of which hope to offer a similar high-speed Internet service from Ka-band satellites in the future. The Commission recently approved the acquisition by an ECC subsidiary of a controlling interest in VisionStar, Inc., another Ka-band licensee.[20] This transaction is expected to close shortly.

Attachment D contains a chart summarizing the relevant ECC ownership structure prior to the proposed transaction.

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[20] *In the Matter of Application of VisionStar, Inc. and EchoStar VisionStar Corp. for Consent to Transfer of Control Over Authorization to Construct, Launch and Operate a Ka-band Satellite System in the Fixed-Satellite Service at the 113° W.L. Orbital Location*, File No. SAT-T/C-20001215-00163, DA 01-2481 (Int'l Bur. rel. Oct. 30, 2001).

2. The GM and Hughes Parties

Hughes, a Delaware corporation, is a wholly-owned subsidiary of GM, which is also a Delaware corporation.[21] Hughes is the corporate parent of several other companies that provide specialized communications services to a wide range of end users. Hughes directly owns all of the issued and outstanding stock of DIRECTV Enterprises, Inc., a Commission DBS licensee.[22] In addition, Hughes controls various Commission licenses and authorizations through various other subsidiaries that are directly or indirectly wholly owned, including Hughes Communications, Inc.; Hughes Communications Galaxy, Inc.; Hughes Communications Satellite Services, Inc.; Hughes Global Services, Inc.; HOT Telecommunications, Ltd.; and USSB II, Inc.[23] Hughes

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[21] As discussed herein, GM has created a publicly-traded tracking stock of GM (GM Class H common stock) designed to provide holders with financial returns based on the financial performance of GM's wholly-owned Hughes subsidiary.

[22] DIRECTV Enterprises, Inc. ("DTVE, Inc.") is filing contemporaneously with this Application several applications for consent, *inter alia*, to the *pro forma* assignment of certain Commission licenses held by DTVE, Inc. and certain of its subsidiaries to a new Delaware limited liability company, DIRECTV Enterprises, LLC. Those applications are intended to obtain Commission consent to the conversion of DTVE, Inc. from the corporate form of organization to the limited liability company form of organization under Delaware law. It is anticipated that this *pro forma* assignment to DIRECTV Enterprises LLC will occur, upon Commission consent, well in advance of, and without regard to, the transactions contemplated by this Application. Thus, the attached organizational chart and the attached Form 312s reflect the consummation of that *pro forma* assignment.

[23] Hughes Network Systems, Inc. ("New HNS"), a new Delaware corporation wholly owned by Hughes, is filing contemporaneously with this Application several applications for consent, *inter alia*, to the *pro forma* assignment of certain Commission licenses held by Hughes and certain Hughes subsidiaries to New HNS. It is anticipated that this *pro forma* assignment to New HNS will occur, upon Commission consent, well in advance of, and without regard to, the transactions contemplated by this Application. Thus, the attached organizational chart and the attached Form 312s reflect the consummation of that *pro forma* assignment.

indirectly holds an approximately 81% economic and voting interest in PanAmSat,[24] a publicly-traded Delaware corporation and Commission licensee.[25] Attachment E includes a chart summarizing the relevant GM/Hughes ownership structure prior to the proposed transaction.

DIRECTV launched the United States' first DBS satellite in December 1993 and a second DBS satellite in August 1994.[26] In June 1995, DIRECTV launched a third high-power DBS satellite and in April and May 1999, the Commission authorized the transfer to DIRECTV of DBS assets and related authorizations held by United States Satellite Broadcasting Company, Inc. ("USSB")[27] and Tempo Satellite, Inc., respectively.[28] As a result of these transactions, DIRECTV currently provides service to U.S. consumers from five DBS satellites using 32 channels at 101° W.L., 3 channels at 110° W.L., and 11 channels at 119° W.L.[29] DIRECTV, together with certain independent distributors, now have approximately 10.3 million subscribers in the United States.[30]

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[24] PanAmSat has recently filed, an application for consent to the *pro forma* assignment of certain Commission licenses held by PanAmSat Corporation to its indirect wholly owned subsidiary, PanAmSat Licensee Corp. It is anticipated that this *pro forma* assignment to PanAmSat Licensee Corp. will occur, upon Commission consent, well in advance of, and without regard to, the transactions contemplated by this Application. Thus, the attached Form 312s reflect the consummation of that *pro forma* assignment.

[25] *Hughes Communications, Inc.*, 12 FCC Rcd. 7534 (1997).

[26] *United States Satellite Broadcasting Co.*, 7 FCC Rcd. 7247 (1992).

[27] *United States Satellite Broadcasting Co.*, 14 FCC Rcd. 4585 (Int'l Bur. 1999).

[28] *Tempo Satellite, Inc.*, 14 FCC Rcd. 7946 (Int'l Bur. 1999).

[29] DIRECTV voluntarily surrendered the DBS channels previously allocated to it at the 157° W.L. orbital location in May 1998. *See* Public Notice, Rep. No. SPB-127 (rel. June 10, 1998).

[30] Hughes also has interests in direct-to-home ("DTH") satellite services in several other countries. For example, it holds a 74.7% interest in DIRECTV Latin America LLC,

Hughes Network Systems ("HNS"), a division of Hughes, provides broadband satellite network solutions for businesses and consumers around the world. HNS's high-speed, satellite-based Internet access service is marketed globally under the DirecPC® and DIRECWAY® brands. The current satellite broadband services are provided using leased Ku-band transponders. HNS supplies mobile satellite networks and user terminals and manufactures DIRECTV™ satellite television receivers and set-top boxes. HNS is also responsible for designing and managing the development, deployment and operation of the Hughes SPACEWAY system, a next generation, Ka-band satellite platform that will provide new and advanced services for DIRECWAY customers, consumer and business alike. SPACEWAY is currently scheduled to begin North American service in 2003. DIRECTV Broadband, Inc. (formerly known as Telocity, Inc.) offers terrestrial high-speed DSL service across the country where DSL is available.

Directly and through its subsidiaries, PanAmSat owns and operates a fleet of 21 satellites around the world that operate in the FSS bands and a comprehensive system of teleports and terrestrial resources. PanAmSat carries programming for broadcasters and programmers to millions of households worldwide, provides Internet backbone support to Internet service providers, supports private business communications networks to corporations, and provides essential pipelines worldwide for telecommunications providers. PanAmSat and its subsidiaries hold various FCC satellite

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which provides DTH pay television services throughout Latin America. The licenses for the services provided in foreign countries are not part of this Application.

earth station licenses as well as Section 214 authorizations for the provision of international services.

3. New EchoStar

As described in more detail in Section B below, the transferee, New EchoStar, is Hughes Electronics Corporation (or a newly formed holding company above Hughes Electronics Corporation)[31] with a new ownership structure that will result from the merger of ECC with and into Hughes after Hughes is split off from GM. New EchoStar will control indirectly the interests in all of the FCC licensees that are the subject of this Application, including Hughes' indirect interest in PanAmSat that is proposed to be transferred pursuant to the Merger Agreement. The new company will be renamed EchoStar Communications Corporation (for clarity, referred to herein as "New EchoStar"). After closing, New EchoStar will use the DIRECTV™ brand for all of its Direct-to-Home ("DTH") consumer offerings. New EchoStar will have three classes of common stock. As of the closing of this transaction, Mr. Charles W. Ergen, ECC's controlling shareholder and a U.S. citizen, will be the Chairman and Chief Executive Officer of New EchoStar, and through a family trust, will be New EchoStar's largest individual shareholder, holding all of the outstanding shares of Class B common stock of New EchoStar, which would represent approximately 16.7% of the total shares of outstanding common stock (and an approximate 39% voting interest) in New EchoStar.[32] The other ECC public shareholders at the time of the closing will receive shares of Class

[31] *See* n. 2 above.

[32] Certain matters will also require a separate class vote of the holders of the shares of Class B common stock of New EchoStar.

A common stock representing approximately 24.3% of the economic interest (and approximately 5.7% of the voting interest) in New EchoStar (including newly issued shares and convertibles). GM potentially would retain (after giving effect to the Debt/Equity Exchange, (as defined below)) shares of Class C common stock representing an approximate 4.9% economic interest (and an approximate 4.6% voting interest) in New EchoStar while the GM Class H shareholders would own shares of Class C common stock representing an approximate 54.1% economic interest (and an approximate 50.7 % voting interest) in New EchoStar.[33] Attachment F summarizes the relevant New EchoStar ownership structure post-merger.

B. Description of the Transactions

ECC and Hughes plan to merge their businesses in accordance with the Merger Agreement. This agreement, as well as an Implementation Agreement and a Separation Agreement (and various ancillary agreements contemplated thereby), set forth the transactions contemplated by the parties to effect the business combination. The PanAmSat Stock Purchase Agreement sets forth the terms under which ECC would purchase Hughes' approximately 81% indirect interest in PanAmSat in the event the Merger Agreement is terminated under certain circumstances. The transactions will be accomplished in a series of interrelated steps, as follows.

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[33] All of the economic and voting interest percentages above are estimated, as of the consummation of the merger, based on the recent trading prices of ECC common stock, and certain assumptions regarding the pre-merger issuance of new ECC equity securities, conversion of currently outstanding preference shares and other convertible securities, as well as the treatment of certain shares for federal income tax purposes.

The Recapitalization and Split-off of Hughes. At present a "tracking stock" GM security related to Hughes' operations is available to the public and is traded on the New York Stock Exchange and on other exchanges as GM Class H common stock. While this tracking stock is designed to provide holders with financial returns based on the financial performance of Hughes, actual ownership of all Hughes' capital stock remains with GM. Accordingly, to accomplish the proposed business combination with ECC, prior to the merger, Hughes must be recapitalized and its stock distributed to GM's stockholders in order to separate Hughes from GM.

To accomplish the recapitalization and split-off, the Separation Agreement calls for Hughes to pay a dividend of up to $4.2 billion to GM (or to a wholly-owned limited liability subsidiary company of GM)[34] and for GM's deemed retained economic interest in Hughes to be reduced by an amount commensurate with the dividend. In addition to the dividend to GM, Hughes will issue to GM shares of new Hughes Class C common stock pursuant to the Separation Agreement. Next, GM will split off Hughes by distributing to GM Class H common stockholders one share of new Hughes Class C common stock in redemption of and in exchange for each share of GM Class H common stock that they hold. GM will either retain or distribute to holders of its $1-2/3 common stock all or a portion of the remaining shares of Hughes Class C common stock representing its deemed retained economic interest in Hughes. In connection with the

[34] GM has the ability under the Merger and Implementation Agreements to create a new wholly-owned limited liability company and insert that company into the ownership structure between GM and Hughes (or HEC Holdings, Inc., as the case may be) prior to the split-off and merger.

split-off, the GM Class H common stock will be cancelled. Upon completion of these transactions, Hughes will be an independent, publicly-owned company.

The Merger. Immediately following the re-capitalization and split-off, ECC will merge with and into Hughes or a newly-formed holding company above Hughes. Hughes will be the surviving corporation, and the merged entity will be renamed EchoStar Communications Corporation ("New EchoStar"). As a result of the merger: (i) the holders of ECC Class A common stock before the merger will receive shares of the Class A Common Stock of New EchoStar, (ii) the holders of ECC Class B common stock before the merger will receive shares of the Class B Common Stock of New EchoStar, and (iii) the holders of Class C Common Stock of Hughes before the merger (the former GM Class H shareholders and GM and/or the holders of GM's $1-2/3 common stock who obtained their Class C shares in connection with the split-off) will retain their Class C Common Stock, now in New EchoStar. The Class A, Class B and Class C classes of stock will exercise the voting percentages described above with respect to New EchoStar immediately after the merger.

Debt for Equity Exchange. GM has the option, at any time up until the date that is six months after the closing of the merger, to satisfy certain of its outstanding debt obligations by issuing or distributing GM Class H common stock or New EchoStar Class C common stock, respectively, to creditors in exchange for such debt obligations pursuant to one or more transactions (each a "Debt/Equity Exchange"). Prior to the merger, GM would effect the Debt/Equity Exchanges using newly issued shares of GM Class H common stock. After the merger, the Debt/Equity Exchanges would be effected using shares of New EchoStar Class C common stock retained by GM after the split-off.

The transaction documents allow GM to distribute up to 100 million shares of GM Class H common stock or New EchoStar Class C common stock pursuant to Debt/Equity Exchanges.

The PanAmSat Purchase. GM and Hughes currently own indirectly through various Hughes subsidiaries an approximate 81% controlling interest in PanAmSat. These subsidiaries would become subsidiaries of New EchoStar pursuant to the merger. However, in the event the merger transaction is not consummated under certain circumstances, the GM and Hughes interest in PanAmSat (currently held through subsidiaries of Hughes) will be transferred, upon Commission consent and upon satisfaction of other conditions, in its entirety to ECC pursuant to the PanAmSat Stock Purchase Agreement.

II. PUBLIC INTEREST STATEMENT

To approve the transfer of the Hughes and ECC licenses to New EchoStar, the Commission must find that the proposed transfer serves the public interest, convenience, and necessity.[35] To make this finding, the Commission has traditionally weighed the public interest benefits of the proposed transaction against any potential public interest harms to determine whether, on balance, the benefits outweigh any harms.

The Commission's public interest analysis generally has included an examination of the following fundamental questions: (i) whether the transaction would result in a violation of the Communications Act or the Commission's rules; (ii) whether the transaction would substantially frustrate or impair the Commission's implementation or enforcement of the Communications Act or other related statutes or interfere with the

[35] 47 U.S.C. §§ 214(a), 310(d).