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Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
EchoStar Communications Corporation,	)	
General Motors Corporation, and	)	CS Docket No. 01-348
Hughes Electronics Corporation	)	
	)	
Order Adopting Second Protective Order	)	

ORDER

Adopted: April 24, 2002 **Released: April 25, 2002**

By the Chief, Media Bureau:

1. On January 9, 2002, the Cable Services Bureau, now known as the Media Bureau (the "Bureau") entered a Protective Order (the "Initial Protective Order") regarding confidential or proprietary documents submitted by EchoStar Communications Corporation ("EchoStar"), General Motors Corporation ("General Motors") and its wholly-owned subsidiary, Hughes Electronics Corporation ("Hughes" and, together with EchoStar and General Motors, each an "Applicant", and together, the "Applicants") and others that have or may become parties to this proceeding.[1] For the reasons set forth below, we hereby adopt a further Protective Order (the "Second Protective Order") attached hereto as Appendix A to ensure that certain highly confidential and competitively sensitive documents and information that may be submitted by the Applicants are afforded adequate protection.

2. On February 4, 2002, the Bureau issued an initial request for information to the Applicants.[2] Over time, the Applicants have responded to the Bureau's request by filing certain documents for which no confidentiality is claimed and others for which the Applicants claimed the protection of the Initial Protective Order. The Applicants have advised the Bureau that there remain a further set of documents, limited in scope, for which a very high degree of confidentiality is claimed. In their letter to the Commission, dated April 22, 2002, the Applicants set forth their reasons why an even greater level of protection needs to be afforded to this limited class of documents.[3]

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[1] *Applications of EchoStar Communications Corporation, General Motors Corporation, and Hughes Electronics Corporation, Order Adopting Protective Order*, CS Docket No. 01-348, Order, DA 02-27 (rel. Jan. 9, 2002).

[2] Letter to Pantelis Michalopoulos, Steptoe & Johnson LLP, Counsel to EchoStar Communications Corporation, and Gary M. Epstein, Latham & Watkins, Counsel for General Motors Corporation and Hughes Electronics Corporation, from W. Kenneth Ferree, Chief, Cable Services Bureau, Feb. 4, 2002.

[3] 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, to Marlene H. Dortch, Secretary, FCC, filed by Gary M. Epstein, Latham & Watkins, Counsel for Hughes Electronics

(continued....)

3. As provided in the Second Protective Order, we will limit access to documents and information designated as Highly Confidential to outside counsel of record, their employees, and outside consultants and experts who they retain to assist them in this proceeding. The documents covered by the Second Protective Order include documents and data detailing subscriber count and subscriber churn-rate data broken down by ZIP code and Designated Market Area. We also include documents in the Second Protective Order that are of a similarly competitively sensitive nature such as future business and marketing plans. We find that without this additional level of protection the Applicants (and other parties) might be unwilling to submit such sensitive materials to the Bureau. Such materials are necessary to develop a more complete record on which to base the Commission's decision in this proceeding. We must also, however, protect the right of the public to participate in this proceeding in a meaningful way. We believe that the protections adopted in the Second Protective Order will give appropriate access to the public while protecting the Applicants' competitively sensitive information, and will thereby serve the public interest.

4. Under the Second Protective Order, one copy of each document that an Applicant claims is confidential or proprietary must be delivered in person to each of Marcia Glauberman and Linda Senecal, Policy and Rules Division, Media Bureau, Federal Communications Commission, 445 12th Street, S.W., Washington, D.C. 20554 (the "Confidential Filing"). The documents should be accompanied by a cover letter stating "HIGHLY CONFIDENTIAL INFORMATION – SUBJECT TO SECOND PROTECTIVE ORDER IN CS DOCKET NO. 01-348." Each page of the confidential or proprietary document should be stamped "HIGHLY CONFIDENTIAL INFORMATION – SUBJECT TO SECOND PROTECTIVE ORDER IN CS DOCKET NO. 01-348 before the Federal Communications Commission." In addition an Applicant must file with the Secretary's Office one copy of the Confidential Filing and two copies of the Confidential Filing in redacted form (the "Redacted Confidential Filing"). The two copies of the Redacted Confidential Filing and their accompanying cover letters should be stamped "REDACTED – FOR PUBLIC INSPECTION." The cover letter accompanying the Redacted Confidential Filing should state that the Applicant is filing redacted version of such documents.

5. The Applicant shall make the confidential or proprietary documents available for review at the offices of the Applicants' outside counsel. Parties reviewing these documents will be provided the following alternatives: (1) parties will be provided adequate opportunity to inspect the documents on site and, if permitted by the terms of the Second Protective Order, make copies of such documents; (2) parties may inspect the documents on site with the ability to request one copy, at cost, of (a) the Subscriber Data (as such term is defined in the Second Protective Order attached hereto as Appendix A), and (b) any other data or documents contained, recorded or electronically stored on floppy disk, CD-ROM or similar electronic storage device that the Applicants may make available. All copies of documents that are removed from the Applicants' counsel's office will be stamped or marked as described above in paragraph 4 and must be returned in accordance with the terms of the Second Protective Order.

6. Any party seeking access to confidential documents subject to the Second Protective Order shall request access pursuant to the terms of the Second Protective Order.

7. *Authority.* This Order is issued pursuant to Sections 4(i) and 310(d) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i) and 310(d), Section 4 of the Freedom of Information Act,

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(...continued from previous page)
Corporation and General Motors Corporation, and Pantelis Michalopoulos and Carlos M. Nalda, Steptoe & Johnson LLP, Counsel for EchoStar Communications Corporation, April 22, 2002.

5 U.S.C. § 552(b)(4), and authority delegated under Section 0.331 of the Commission's rules, 47 C.F.R. § 0.331, and is effective upon its adoption.

FEDERAL COMMUNICATIONS COMMISSION

W. Kenneth Ferree
Chief, Media Bureau

APPENDIX A

Second Protective Order

CS Docket No. 01-348

1. *Introduction.* On January 9, 2002, the Cable Services Bureau, now known as the Media Bureau (the "Bureau") entered a Protective Order (the "Initial Protective Order") regarding confidential or proprietary documents submitted by EchoStar Communications Corporation ("EchoStar"), General Motors Corporation ("General Motors") and its wholly-owned subsidiary, Hughes Electronics Corporation ("Hughes" and, together with EchoStar and General Motors, each an "Applicant", and together, the "Applicants") and others that have or may become parties to this proceeding. For the reasons set forth in the Order to which this Appendix A forms part, the Bureau has adopted this Second Protective Order to ensure that certain highly confidential and competitively sensitive documents that may be submitted by the Applicants are afforded adequate protection. This Second Protective Order does not constitute a resolution of the merits concerning whether any confidential information would be released publicly by the Commission upon a proper request under the Freedom of Information Act ("FOIA") or otherwise.

2. *Definitions.* As used herein, capitalized terms, not otherwise defined herein, shall have the following meanings:

"Highly Confidential Information" means the Subscriber Data and information contained in Stamped Highly Confidential Documents or derived therefrom that is not otherwise available from publicly available sources;

"Outside Counsel of Record" means the firm(s) of attorneys, or sole practitioner(s), as the case may be, representing a party in these proceedings; and

"Subscriber Data" means information concerning the Applicants' subscribers on a zip code and designated market area basis, stored or recorded in electronic format.

3. *Use of Highly Confidential Information.* Persons obtaining access to Highly Confidential Information (including Stamped Highly Confidential Documents (as hereinafter defined)) under this Second Protective Order shall use the information solely for preparation and the conduct of this proceeding as delimited in this paragraph and paragraphs 5, 10, and 11, and any subsequent judicial proceeding arising directly from this proceeding and, except as provided herein, shall not use such documents or information for any other purpose, including without limitation business, governmental, or commercial purposes, or in other administrative, regulatory or judicial proceedings. Should the Commission rely upon or otherwise make reference to the contents of any of the Stamped Highly Confidential Documents or Highly Confidential Information in its decision in this proceeding, it will do so in the same manner in which it maintained the confidentiality of similar protected information in the *Bell Atlantic/NYNEX Order*, 12 FCC Rcd 19985 (1997).

4. *Non-Disclosure of Stamped Highly Confidential Documents.* Except with the prior written consent of the relevant Applicant, or as hereinafter provided under this Second Protective Order, neither a Stamped Highly Confidential Document nor any Highly Confidential Information may be disclosed by a reviewing party to any person other than the Commission and its staff. A "Stamped Highly Confidential Document" shall mean any document, or part thereof, that bears the legend (or which

otherwise shall have had the legend recorded upon it in a way that brings its attention to a reasonable examiner) "HIGHLY CONFIDENTIAL INFORMATION – SUBJECT TO SECOND PROTECTIVE ORDER IN CS DOCKET NO. 01-348 before the Federal Communications Commission" to signify that it contains information that the Applicants believes should be subject to protection under FOIA and the Commission's implementing rules, unless the Commission determines, *sua sponte* or by request pursuant to Sections 0.459 or 0.461 of its rules, that any such document is not entitled to confidential treatment. For purposes of this Second Protective Order, the term "document" means all written, recorded, electronically stored, or graphic material, whether produced or created by the Applicants or another person.

5. *Permissible Disclosure.* Subject to the requirements of paragraph 8, Stamped Highly Confidential Documents may be reviewed by Outside Counsel of Record. Subject to the requirements of paragraph 8, Outside Counsel of Record may disclose Stamped Highly Confidential Documents and other Highly Confidential Information to: (1) outside consultants or experts retained for the purpose of assisting Outside Counsel of Record in this proceeding, *provided, that,* the outside consultants or experts are not involved in the analysis underlying the business decisions of any competitor of the Applicants nor do they participate directly in those business decisions; (2) paralegals or other employees of such Outside Counsel of Record not described in clause 3 of this paragraph 5 assisting Outside Counsel of Record in this proceeding; and (3) employees of such Outside Counsel of Record involved solely in one or more aspects of organizing, filing, coding, converting, storing, or retrieving documents or data or designing programs for handling data connected with this proceeding, or performing other clerical or ministerial functions with regard to documents connected with this proceeding. Individuals who have obtained access to Stamped Highly Confidential Documents and Highly Confidential Information in accordance with the provisions of this paragraph 5 and paragraph 8 may discuss and share the contents of the Stamped Highly Confidential Documents and Highly Confidential Information with any other person who has also obtained access in accordance with the provisions of this paragraph 5 and paragraph 8, and with the Commission and its staff.

6. *Protection of Stamped Highly Confidential Documents and Highly Confidential Information.* Persons described in paragraph 5 shall have the obligation to ensure that access to Stamped Highly Confidential Documents and Highly Confidential Information is strictly limited as prescribed in this Second Protective Order. Such persons shall further have the obligation to ensure that: (1) Stamped Highly Confidential Documents and Highly Confidential Information are used only as provided in this Second Protective Order; and (2) Stamped Highly Confidential Documents are not duplicated except as necessary for filing at the Commission under seal as provided in paragraph 10 below and, with respect solely to the Subscriber Data, as provided for in Appendix C hereto.

7. *Prohibited Copying.* If, in the judgment of an Applicant, a document (but not including the Subscriber Data) contains information so sensitive that it should not be copied by anyone, it shall bear the additional legend "Copying Prohibited," and no copies of such document, in any form, shall be made. Application for relief from this restriction against copying may be made to the Commission, with notice to Outside Counsel of Record for the Applicants. The Subscriber Data shall be subject to the restrictions set forth in Appendix C hereto.

8. *Procedures for Obtaining Access to Highly Confidential Documents.* In all cases where access to Stamped Highly Confidential Documents and Highly Confidential Information is permitted pursuant to paragraph 5, before reviewing or having access to any Stamped Highly Confidential Documents or Highly Confidential Information, each person seeking such access shall execute the Acknowledgment of Confidentiality ("Acknowledgment") (*see* Appendix B) and file it with the Bureau, on behalf of the Commission, and serve it upon each of the Applicants through their Outside Counsel of

Record so that the Acknowledgment is received by the Applicants at least five business days prior to such person's reviewing or having access to such Applicants' Stamped Highly Confidential Documents or Highly Confidential Information. Where the person seeking access is one described in clause 3 of paragraph 5, the Acknowledgment shall be delivered promptly prior to the person's obtaining access. Each Applicant shall have an opportunity to object to the disclosure of Stamped Highly Confidential Documents to any such persons. Any objection must be filed at the Commission and served on Outside Counsel of Record representing, retaining or employing such person within three business days after receiving a copy of that person's Acknowledgment (or where the person seeking access is one described in clause 3 of paragraph 5, such objection shall be filed and served as promptly as practicable after receipt of the relevant Acknowledgment). Until any such objection is resolved by the Commission and, if appropriate, any court of competent jurisdiction prior to any disclosure, and unless such objection is resolved in favor of the person seeking access, persons subject to an objection from an Applicant shall not have access to Stamped Highly Confidential Documents or Highly Confidential Information. An Applicant shall make available for review the Stamped Highly Confidential Documents of such party at the offices of such party's Outside Counsel of Record and, if so requested, shall provide to each party's Outside Counsel of Record, at cost, with a copy of the Subscriber Data in electronic format.

9. *Requests for Additional Disclosure.* If any person requests disclosure of Highly Confidential Information outside the terms of this Second Protective Order, requests will be treated in accordance with Sections 0.442 and 0.461 of the Commission's rules.

10. *Filings with the Commission.* Persons described in paragraph 5 may, in any documents that they file in this proceeding, reference Highly Confidential Information, but only if they comply with the following procedure:

a. Any portions of the pleadings that contain or disclose Highly Confidential Information must be physically segregated from the remainder of the pleadings;

b. The portions of pleadings containing or disclosing Highly Confidential Information must be covered by a separate letter to the Secretary of the Commission referencing this Second Protective Order;

c. Each page of any party's filing that contains or discloses Highly Confidential Information subject to this order must be clearly marked: "Highly Confidential Information included pursuant to Second Protective Order, CS Docket No. 01-348;" and

d. The confidential portion(s) of the pleading shall be served on the Secretary of the Commission, the Bureau, and the Applicants. Such confidential portions shall be served under seal, and shall not be placed in the Commission's public file. A party filing a pleading containing Highly Confidential Information shall also file redacted copies of the pleading containing no Highly Confidential Information, which copies shall be placed in the Commission's public files. Parties should not provide courtesy copies of pleadings containing Highly Confidential Information to Commission staff unless the Bureau so requests. Any courtesy copies shall be submitted under seal.

11. *Client Consultation.* Nothing in this order shall prevent or otherwise restrict Outside Counsel of Record from rendering advice to their clients relating to the conduct of this proceeding and any subsequent judicial proceeding arising therefrom and, in the course thereof, relying generally on examination of Stamped Highly Confidential Documents or Highly Confidential Information; *provided, however*, that in rendering such advice and otherwise communicating with such client, Outside Counsel of Record shall not disclose Stamped Highly Confidential Documents or Highly Confidential Information.

12. *No Waiver of Confidentiality.* Disclosure of Highly Confidential Information as provided herein by any person shall not be deemed a waiver by an Applicant of any privilege or entitlement to confidential treatment of such Highly Confidential Information. Reviewing parties, by viewing this material agree: (1) not to assert any such waiver; (2) not to use Highly Confidential Information to seek disclosure in any other proceeding; and (3) that accidental disclosure of Highly Confidential Information by an Applicant shall not be deemed a waiver of any privilege or entitlement as long as the Applicant takes prompt remedial action.

13. *Subpoena by Courts, Departments or Agencies.* If a court, or a federal or state department or agency issues a subpoena or orders production of Stamped Highly Confidential Documents or Highly Confidential Information that a party has obtained under terms of this Second Protective Order, such party shall promptly notify each Applicant of the pendency of such subpoena or order. Consistent with the independent authority of any court, department or agency, such notification must be accomplished such that the Applicant has a full opportunity to oppose such production prior to the production or disclosure of any Stamped Highly Confidential Document or Highly Confidential Information.

14. *Violations of Second Protective Order.* Should a person that has properly obtained access to Highly Confidential Information under this Second Protective Order violate any of its terms, that person shall immediately convey that fact to the Commission and to the relevant Applicant. Further, should such violation consist of improper disclosure of Highly Confidential Information, the violating person shall take all necessary steps to remedy the improper disclosure. The Commission retains its full authority to fashion appropriate sanctions for violations of this Second Protective Order, including but not limited to suspension or disbarment of Outside Counsel of Record from practice before the Commission, forfeitures, cease and desist orders, and denial of further access to Highly Confidential Information in this or any other Commission proceeding. Nothing in this Second Protective Order shall limit any other rights and remedies available to an Applicant at law or in equity against any person using Highly Confidential Information in a manner not authorized by this Second Protective Order.

15. *Termination of Proceeding.* The provisions of this Second Protective Order shall not terminate at the conclusion of this proceeding. Within two weeks after conclusion of this proceeding and any administrative or judicial review, persons described by paragraph 5 shall destroy or return to the Applicants Stamped Highly Confidential Documents and all copies of the same. No material whatsoever derived from Stamped Highly Confidential Documents may be retained by any person having access thereto, except Outside Counsel of Record (as described in paragraph 5) may retain, under the continuing strictures of this Second Protective Order, two copies of pleadings (one of which may be in electronic format) containing Highly Confidential Information prepared on behalf of that party. All Outside Counsel of Record shall make certification of compliance herewith and shall deliver the same to Outside Counsel of Record for the Applicants not more than three weeks after conclusion of this proceeding. The provisions of this paragraph 15 regarding retention of Stamped Highly Confidential Documents and copies of same shall not be construed to apply to the Commission or its staff.

FEDERAL COMMUNICATIONS COMMISSION

W. Kenneth Ferree
Chief, Media Bureau

APPENDIX B

Acknowledgment of Confidentiality

I hereby acknowledge that I have received and read a copy of the foregoing Second Protective Order in the above-captioned proceeding, and I understand it. I agree that I am bound by the Second Protective Order and that I shall not disclose or use Stamped Highly Confidential Documents or Highly Confidential Information except as allowed by the Second Protective Order. I acknowledge that a violation of the Second Protective Order is a violation of an order of the Federal Communications Commission.

Without limiting the foregoing, to the extent that I have any employment, affiliation or role with any person or entity other than a conventional private law firm (such as, but not limited to, a lobbying or public interest organization), I acknowledge specifically that my access to any information obtained as a result of the order is due solely to my capacity as Outside Counsel of Record or consultant to a party or other person described in paragraph 5 of the foregoing Second Protective Order and that I will not use such information in any other capacity nor will I disclose such information except as specifically provided in the Second Protective Order.

I acknowledge that it is my obligation to ensure that: (1) Stamped Highly Confidential Documents and Highly Confidential Information are used only as provided in the Second Protective Order; and (2) Stamped Highly Confidential Documents are not duplicated except as specifically permitted by the terms of the Second Protective Order, and I certify that I have verified that there are in place procedures, at my firm or office, to prevent unauthorized disclosure of Stamped Highly Confidential Documents or Highly Confidential Information.

Capitalized terms used herein and not otherwise defined shall have the meanings ascribed to them in the Second Protective Order.

Executed at _____ this ___ day of _____, ____.

_____
[Name]
[Position]

[Address]
[Telephone]

APPENDIX C

Restrictions for Review of the Subscriber Data and any other Highly Confidential Information Submitted Electronically

1. A party in receipt of a disk containing the Subscriber Data may load the Subscriber Data onto a computer solely for the purpose of analysis in connection with this proceeding and for no other purpose. The original disk containing the Subscriber Data shall be stored in a secure location and a record kept of any persons given access to the disk. No person, other than one who has signed the Acknowledgement to the Second Protective Order, shall be given access to the Subscriber Data.

2. Once loaded onto a computer, the files containing the Subscriber Data shall be password protected immediately. Such password shall only be given to persons who have signed the Acknowledgement to the Second Protective Order. A record shall be kept of persons given access to the password.

3. The Subscriber Data may not be stored on a computer after being analyzed. Once analysis is complete, the results of such analysis may be stored by saving the results (but not the Subscriber Data) to a removable data medium (CD, computer diskette, Zip or Jaz disc, etc.). All files containing the Subscriber Data shall be deleted forthwith from the computer.

4. The disk containing the Subscriber Data may be physically sent to Outside Counsel of Record or experts retained by them only if such Outside Counsel of Record or experts retained by them have signed the Acknowledgement to the Second Protective Order. The Subscriber Data may not be transmitted electronically.