PUBLIC NOTICE

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April 19, 2001

ECHOSTAR COMMUNICATIONS CORPORATION AND HUGHES ELECTRONICS CORPORATION SEEK FCC AUTHORITY TO LAUNCH AND OPERATE NEW ECHOSTAR 1 DBS SATELLITE

CS DOCKET NO. 01-348

SAT-LOA-20020225-00023 S2435 EchoStar Satellite Corporation

Comments Due: **May 20, 2002**
Replies Due: **May 30, 2002**
Responses Due: **June 4, 2002**

On February 25, 2002 and March 28, 2002, the Commission received an application and technical information from EchoStar Satellite Corporation (EchoStar) and Hughes Electronics Corporation (Hughes) (collectively, Applicants) requesting authority to launch and operate NEW ECHOSTAR 1, a direct broadcast satellite (DBS) that would be located at the 110° W.L. orbital location.[1] The *NEW ECHOSTAR 1 Application* proposes the launch and operation of NEW ECHOSTAR 1, subject to, and contingent upon, the grant of the Applicants' Transfer of Control Application (*Transfer of Control Application*) currently under review in this proceeding (*Transfer of Control Proceeding*).[2]

In the *NEW ECHOSTAR 1 Application*, the Applicants propose, conditioned upon approval of the *Transfer of Control Application*, to launch and operate a spot beam satellite (NEW ECHOSTAR 1) at the 110° W.L. orbital location[3] with other existing and planned satellites in that orbital location currently

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[1] *EchoStar Satellite Corporation* and *Hughes Electronic Corporation, Application for Authority to Launch and Operate NEW ECHOSTAR 1 (USABBS-16)*, S2435, File No. SAT-LOA-20020225-00023, received February 25, 2002; and *Letter to William F. Caton, Acting Secretary, Federal Communications Commission from Pantelis Michalopoulos, Counsel for EchoStar Satellite Corporation and Gary Epstein, Counsel for Hughes Electronics Corporation, providing supplemental Technical Annex*, dated March 28, 2002 (together, the February 25, 2002 Application and March 28, 2002 Technical Annex are referred to as the *NEW ECHOSTAR 1 Application*).

[2] The parties who filed the *NEW ECHOSTAR 1 Application* are the same parties seeking Commission approval to transfer control of various satellite, earth station, and other related authorizations held by their wholly- or majority-owned subsidiaries to Hughes Electronics Corporation (or a newly formed holding company), which upon approval and consummation of the proposed merger, would have a new ownership structure and would be renamed EchoStar Communications Corporation ("New EchoStar"). *See Application of EchoStar Communications Corporation, General Motors Corporation, Hughes Electronics Corporation, Transferors, and EchoStar Communications Corporation, Transferee, for Authority to Transfer Control*, filed December 3, 2001, placed on public notice December 21, 2001, DA 01-3005, initiating this *Transfer of Control Proceeding*, CS Docket No. 01-348.

[3] The 110° W.L. orbital location is one of three DBS orbital locations allocated to the United States capable of

authorized to EchoStar and DirecTV (a direct subsidiary of Hughes).[4] The Applicants state that NEW ECHOSTAR 1 will be a spot-beam satellite specifically intended to provide additional local broadcast channel programming capacity, and through the reuse of eight of the thirty-two DBS frequencies at 110° W.L. (five DBS frequencies that currently are licensed to EchoStar and three DBS frequencies that are currently licensed to DirecTV), NEW ECHOSTAR 1 will form 38 distinct spot beams to provide delivery of local broadcast channels to U.S. Designated Market Areas (DMAs) not previously served by either EchoStar or DirecTV. The Applicants further state that NEW ECHOSTAR 1, when combined and integrated with the other satellite and spectrum assets of a combined EchoStar/Hughes entity at all three DBS full-CONUS orbital locations,[5] will serve all 210 DMAs in the United States, including Alaska and Hawaii.

We have reviewed the *NEW ECHOSTAR 1 Application* and find that, upon initial review, it is acceptable for filing. We also find that, cumulatively, the *NEW ECHOSTAR 1 Application* substantially amends the Applicants' *Transfer of Control Application*.[6] In the *NEW ECHOSTAR 1 Application*, EchoStar and Hughes requests that any grant of authority be made subject to and contingent upon grant of the *Transfer of Control Application* and state that construction of the NewEchoStar satellite will begin promptly *after* consummation of the EchoStar/Hughes merger. The public interest statements that the Applicants make in support of a grant of the *NEW ECHOSTAR 1 Application* relate to merger-specific effects – efficiencies and consumer benefits that can result *only* from grant of the merger. We find that the issues raised and the claims made by the Applicants in the *NEW ECHOSTAR 1 Application* are directly relevant to the issues under consideration in our review and evaluation of the Applicants' *Transfer of Control Application*. As such, we view the *NEW ECHOSTAR 1 Application*, together with the changes in the Applicants position with respect to their ability and intention to broadcast local-into-local in all 210 DMA's set forth in the Applicants' Opposition to Petitions to Deny and Reply Comments,[7] as a major amendment to the Applicants' proposed transaction, and will therefore seek and consider public comment from interested parties on the *NEW ECHOSTAR 1 Application* in this *Transfer of Control Proceeding*.

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serving customers across the contiguous 48 states (*i.e.*, the continental United States or "CONUS"). The other two DBS full-CONUS orbital locations allocated to the United States are the 101° W.L. and 119° W.L. orbital locations. The Commission has found that it is also technically feasible to serve subscribers in Hawaii and Alaska from the 110° W.L. and 119° W.L. full-CONUS orbital locations. *See Revision of Rules and Policies for the Direct Broadcast Satellite Service*, IB Docket No. 95-168, Report and Order, 11 FCC Rcd 9712, 9762 (1995). The spectrum allotted for DBS at each of these orbital locations is divided into 32 frequencies, for a total of 96 frequencies that are capable of full coverage of the continental United States.

[4] At the 110° W.L. orbital location, EchoStar, through its affiliates, currently holds Commission authorization to provide DBS service from 29 frequencies, and DirecTV currently holds Commission authorization to provide DBS service from 3 frequencies.

[5] Currently, EchoStar and DirecTV are the two companies that hold Commission authorizations to provide service from the three DBS full-CONUS orbital locations using all 96 frequencies allocated to these locations. In addition to authorizations these companies hold at the 110° W.L. orbital location, EchoStar holds authorization to provide DBS service from 21 frequencies at the 119° W.L. orbital location, and DirecTV has authorization to provide DBS service from 11 frequencies at the 119° W.L. orbital location and 32 frequencies at the 101° W.L. orbital location.

[6] *See* 47 U.S.C. § 309 and 47 C.F.R. § 25.116.

[7] *See* Applicants' Opposition to Petition to Deny and Reply Comments, CS Docket No. 01-348, filed February 25, 2002.

Accordingly, we will establish, in the context of this proceeding, a 45-day pleading cycle to receive comments, oppositions, replies, and responses from interested parties on the proposed *NEW ECHOSTAR 1 Application*. We encourage parties to provide specific comment on the technical merits of the *NEW ECHOSTAR 1 Application* as well as broad comment evaluating the proposed *Transfer of Control Application* in light of this major amendment. Commenters may also use this period to comment on any other materials filed by the Applicants since the close of the previous pleading cycle.

To accommodate this 45-day pleading cycle, we will continue to stop the clock on the 180-day review period that governs this proceeding.[8] The clock will remain stopped until the latter of the closing of the pleading cycle on the *NEW ECHOSTAR 1 Application* or upon receipt of sufficient information from the Applicants in response to our outstanding data requests.[9] At that time, we will re-start the clock on the *Transfer of Control Application*, taking into consideration the information received in response to our data requests, and the comments, oppositions, replies, and responses received during the 45-day pleading cycle.

Pursuant to Sections 1.415 and 1.419 of the Commission's rules, 47 C.F.R. §§ 1.415, 1.419, interested parties may file comments or oppositions on or before **May 20, 2002**, replies on or before **May 30, 2002**, and responses on or before **June 4, 2002**. All filings may be made using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. *See Electronic Filing of Documents in Rulemaking Proceedings*, 63 Fed. Reg. 24121 (1998). All filings regarding any aspect of the *NEW ECHOSTAR 1 Application* should reference the docket number assigned to this proceeding, **CS Docket No. 01-348** and **SAT-LOA-20020225-00023**.

Given recent changes in the mail delivery process, we strongly urge commenters to use the Commission's Electronic Comment Filing System (ECFS). Procedures for filing through ECFS are described below in the "General Information" section. The *ex parte* status of this proceeding will remain the same as established earlier in this proceeding and as described below in the "*Ex Parte* Status of this Proceeding" section.

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[8] The Commission has committed to expeditiously review proposed transactions by establishing an aggressive 180-day review period.

[9] On March 7, 2002, (Day 77), the Commission stopped the 180-day review period of the *Transfer of Control Application* because of the Applicants' failure to provide full and complete responses to our requests for information related to the Applicants' proposed merger. Until such time as we are provided with sufficient information responsive to our request, we cannot give the proposed transaction full and fair consideration in an expeditious fashion. *See* Letter to Pantelis Michalopoulos, Counsel to EchoStar Communications Corporation and Gary M. Epstein, Counsel for General Motors Corporation and Hughes Electronics Corporation from W. Kenneth Ferree, Chief, Cable Services Bureau, dated March 7, 2001.

EX PARTE STATUS OF THIS PROCEEDING

Because this proceeding involves broad public policy issues, the proceeding will be treated as "permit but disclose" for purposes of the Commission's *ex parte* rules. *See generally* 47 C.F.R. §§ 1.1200-1.1216. Should circumstances warrant, this proceeding or any related proceeding may be designated as restricted. As a "permit but disclose" proceeding, *ex parte* presentations will be governed by the procedures set forth in Section 1.1206 of the Commission's rules applicable to non-restricted proceedings.[10]

Parties making oral *ex parte* presentations are directed to the Commission's statement re-emphasizing 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.[11] More than a one or two sentence description of the views and arguments presented is generally required. *See* 47 C.F.R. § 1.1206(b)(2), as revised. Other rules pertaining to oral and written presentations are set forth in Section 1.1206 (b) as well. We urge parties to use ECFS to file *ex parte* submissions. *See* "General Information" section below.

GENERAL INFORMATION

Comments filed through the ECFS can be sent as an electronic file via the Internet to <http://www.fcc.gov/e-file/ecfs.html>. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to ecfs@fcc.gov, and should include the following words in the body of the message, "get form <your e-mail address> ." A sample form and directions will be sent in reply. Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appear in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number. 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). The Commission's contractor, Vistronix, Inc., 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 mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW, Washington, D.C. 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

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[10] An *ex parte* presentation is any communication (spoken or written) directed to the merits or outcome of a proceeding made to a Commissioner, a Commissioner's assistant, or other decision-making staff member, that, if written, is not served on other parties to the proceeding or, if oral, is made without an opportunity for all parties to be present. 47 C.F.R. § 1.1201.

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

In addition, we request that parties serve the following with either one electronic copy via e-mail or two paper copies of each pleading or *ex parte* submission: (1) Marcia Glauberman, Media Bureau, 445 12th Street, S.W., 3-A738, Washington, D.C. 20554, mglauber@fcc.gov; (2) Barbara Esbin, Media Bureau, 445 12th Street, S.W., Room 3-C458, Washington, D.C. 20554, besbin@fcc.gov; (3) James Bird, Office of General Counsel, 445 12th Street, S.W., Room 8-C824, Washington, D.C. 20554, jbird@fcc.gov; (4) David Sappington, Office of Plans and Policy, 445 12th Street, S.W., Room 7-C452, Washington, D.C. 20554, dsapping@fcc.gov; (5) JoAnn Lucanik, International Bureau, 445 12th Street, S.W., Room 6-C416, Washington, D.C. 20554, jlucanik@fcc.gov; (6) Douglas Webbink, International Bureau, 445 12th Street, S.W., Room 6-C730, Washington, D.C. 20554, dwebbink@fcc.gov; and (7) Julius Knapp, Office of Engineering and Technology, 445 12th Street, S.W., Room 7-B133, Washington, D.C. 20554, jknapp@fcc.gov; (8) Rockie Patterson, International Bureau, 445 12th Street, S.W. Room 6-B524, Washington, D.C. 20554, rpatters@fcc.gov; and (9) Kathleen Campbell, International Bureau, 445 12th Street, S.W. Room 6-B418, Washington, D.C. 20554, kcampbel@fcc.gov.

For further information, contact Marcia Glauberman, Media Bureau, at (202) 418-7046 or Kathleen Campbell, International Bureau, at (202) 418-0753.