June 13, 2002

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW – Room TW-A325
Washington, D.C. 20554

Re: <u>Ex Parte Notice</u> – Consolidated Application of EchoStar Communications Corporation, General Motors Corporation and Hughes Electronics Corporation for Authority to Transfer Control, CS Docket No. 01-348

Dear Ms. Dortch:

In accordance with Section 1.1206 of the Commission's Rules, 47 C.F.R. §1.1206, EchoStar Communications Corporation ("EchoStar"), Hughes Electronics Corporation ("Hughes") and General Motors Corporation ("GM"), Applicants in the above-referenced merger proceeding, submit this letter to report that representatives of the Applicants met with members of the Commission staff on June 12, 2002. Representatives of the Applicants present at the meeting included Mark Jackson, David Moskowitz, David Goodfriend, and Jim Stratigos of EchoStar; Scott McClatchey and Merrill Spiegel of DIRECTV, Inc. ("DIRECTV"); Pradman Kaul, Paul Gaske, Mike Cook and George Montague of Hughes Network Systems, Inc.; William Slowey of GM; and outside counsel for the Applicants. FCC staff members who attended the meeting included Marcia Glauberman, William Cox, and Rosalee Chiara of the Media Bureau; Jim Bird, Neil Dellar, Harry Wingo, and C. Anthony Bush of the Office of the General Counsel; David Sappington and Donald Stockdale of the Office of Plans and Policy; Julius Knapp and Rodney Small of the Office of Engineering and Technology; and JoAnn Lucanik, Marilyn Simon, and Mark Uretsky of the International Bureau.

The representatives of the Applicants made a presentation to the Commission staff addressing issues set forth in the attached written materials.[1] The meeting was focused on the broadband benefits to flow from the proposed merger of EchoStar and Hughes. The merger will allow New EchoStar to introduce a truly competitive full-scale consumer broadband service. Without the merger, neither company is likely to continue to offer such a service. Equally important, EchoStar and

[1] A copy of the presentation made by the Applicants is attached.

Hughes expect that New EchoStar will be able to offer that service at a competitive price point -- a target price of $35 or lower for basic monthly broadband service, uniformly applied throughout the nation. This means that the merger will make broadband service available to the tens of millions of Americans who today do not have access to any attractive broadband alternative, will introduce competition in the Internet access market now dominated by cable operators, and will allow New EchoStar to counter effectively the video/broadband bundle that cable systems can offer today.

There is no truly competitive broadband satellite service today, notwithstanding the efforts made by both Hughes and EchoStar. The Hughes DIRECWAY service has a small number of subscribers. Hughes is unlikely to continue to fund its residential satellite broadband service without the merger. EchoStar, for its part, no longer markets satellite Internet access services -- Starband has filed for bankruptcy after spending approximately $400 million and securing only 40,000 current subscribers.

One of the reasons why neither EchoStar nor Hughes can fulfill the broadband promise has to do with the intractable economics of residential broadband service by satellite. Without the merger, neither firm will likely have a large pool of subscribers to attain the scale -- about 5 million broadband subscribers -- required to reduce the price to the consumer and thereby effectively compete with cable and DSL broadband offerings. The lack of scale perpetuates a vicious circle of high equipment costs, high subscriber acquisition cost ("SAC"), high monthly service charges to recoup those costs, and a reluctance to finance such residential broadband offerings on the part of the investment community. Simply put, without scale, a residential satellite broadband service would likely continue to accumulate large losses for each subscriber gained, and would not effectively compete with cable or DSL service, whose costs are significantly lower and which can now offer higher data speeds.

In light of the economics of residential service and cash constraints, Hughes's SPACEWAY system is targeted at the enterprise market, which has traditionally been Hughes Network Systems' primary focus, is characterized by stable, long-term contracts, and has been a consistently profitable business on an EBITDA basis. The number of residential subscribers that the SPACEWAY system could accommodate (beyond the enterprise users) would not be enough to attain the required scale. Moreover, Hughes would still be constrained by DIRECTV's DBS subscriber base and low take rates. As a result, Hughes is unlikely to continue to offer residential broadband service without the merger.

While EchoStar has reached bundling agreements with certain incumbent Local Exchange Carriers, DSL bundling is a very unsatisfactory long-term option for

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[2] One should also note that EchoStar is not in the enterprise market.
[3] The economics assume a leased transporter is used. For a more detailed explanation, please see page 14 of the attached copy of the presentation.

several reasons. First of all, DSL is not available to all DBS subscribers, particularly those in rural areas. In such arrangements, the DBS provider is frequently unable to exercise control over price and customer service. Also, a number of factors such as the greater cost of DSL relative to cable modems, the problem of integrating in a bundle two products that are controlled by different entities and the difficulty that a DBS provider would face in attempting to roll out advanced services combine to make this option unattractive. DIRECTV's DSL experience -- the actual purchase of a competitive DSL provider -- similarly shows that the DSL bundle is not a long-term satisfactory solution. The DIRECTV DSL service has mustered only a limited number of subscribers.

The requirements for the Applicants to achieve a competitive residential broadband offering can therefore be satisfied only with the merger. The huge upfront investment may be justified only by an expectation of rapidly achieving scale -- five million residential broadband subscribers within five years from the start of operations. New EchoStar will have both the spectrum and the combined DBS subscriber base necessary to support such a ramp-up and to allow a residential broadband service at a competitive price. Specifically, the scale of 5 million subscribers will introduce a virtuous circle of more efficient utilization of satellite capacity, lower CPE costs, lower SAC, lower upfront costs for the consumer and a lower monthly charge, with a target price of $35 or lower per month. These forecasts are consistent with historical data showing, for example, that the price of the calls DOCSIS modem underwent a dramatic reduction as scale was achieved, and the price of Ku-band equipment has similarly dropped decisively with volume.

One copy of this *ex parte* notice is being filed electronically with the Commission. If you have questions concerning this notice, please do not hesitate to contact the undersigned.

Respectfully submitted,

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[4] Underlying this discussion is the premise that in order for a satellite broadband service to compete with cable and DSL, it must be Ka.

Counsel for Hughes Electronics Corporation and General Motors Corporation

Counsel for EchoStar Communications Corporation

Attachment
cc (w/att.): Marcia Glauberman
William Cox
Rosalee Chiara
Jim Bird
Neil Dellar
Harry Wingo
C. Anthony Bush
David Sappington
Donald Stockdale
Julius Knapp
Rodney Small
JoAnn Lucanik
Marilyn Simon
Mark Uretsky
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