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August 15, 2002

Jack Richards
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Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW -- Room TW-A325
Washington, DC 20554

**Re: *EchoStar Communications Corporation, General Motors Corporation and
Hughes Electronics Corporation
CS Docket No. 01-348
Request for Additional Disclosure***

EXPEDITED ACTION REQUESTED

Dear Ms. Dortch:

On behalf of our client, the National Rural Telecommunications Cooperative (NRTC), this is to request the Commission's assistance in making available for review by the Department of Justice (DOJ) certain documents that have been submitted to the Commission under cloak of confidentiality by EchoStar Communications Corporation, General Motors Corporation and Hughes Electronics Corporation (the Applicants). NRTC has attempted to resolve this matter with the Applicants, but has been unsuccessful. Accordingly, the Commission's assistance is requested.¹

Review of the Merger by the FCC and DOJ constitutes the same "proceeding."

The Protective Orders issued in connection with the Commission's review of the Applicants' proposed merger (Merger) state that persons obtaining access to "Confidential Information" and "Highly Confidential Information" shall use such information:

solely for preparation and the conduct of *this proceeding* . . . 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

¹ Since the Merger Review Clock recently has been "re-started," expedited action is requested. See, Letter from W. Kenneth Ferree, Chief, Media Bureau, to Pantelis Michalopoulos, Counsel for EchoStar Communications, and Gary M. Epstein, Counsel for General Motors Corporation and Hughes Electronics Corporation (July 23, 2002).

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without limitation business, governmental, or commercial purposes, or in other administrative, regulatory or judicial proceedings.²

NRTC believes that the Commission's use of the phrase "this proceeding" in the above quoted language does not encompass only the FCC proceeding but includes the Merger proceeding itself, which is currently being reviewed both by the Commission and DOJ. In fact, as part of their respective analyses of the proposed Merger, the DOJ is reviewing the same subject matter, the same facts and the same parties as the Commission.

If review of the proposed Merger by DOJ and the Commission is deemed to be the same proceeding, then materials that have been submitted confidentially to the Commission should be available to DOJ under the terms and conditions contained in the Protective Orders. As all of the materials submitted to DOJ in connection with the proposed Merger remain exempt from public review pursuant to the Hart Scott Rodino Act,³ the Applicants will not be prejudiced in any way by their "disclosure" to DOJ. Information submitted confidentially to the FCC will remain confidential at DOJ.

Indeed, the Applicants appear to object to NRTC's disclosure to DOJ of confidential information submitted to the Commission simply because it will prove damaging to their case. Otherwise, since the confidential material submitted to the FCC will remain confidential at DOJ, the Applicants should have no problem with NRTC presenting DOJ with information important and relevant to its review.

If not the same "proceeding," the Commission should authorize NRTC's additional disclosure of confidential material to DOJ.

If DOJ's review of the proposed Merger is considered to be a separate proceeding from the Commission's Merger review and disclosure to DOJ of confidential information submitted to the Commission is prohibited, the Protective Orders allow persons to request consent for additional disclosure.⁴ Under these circumstances, the Commission should grant consent for NRTC to disclose to DOJ on a confidential basis any material submitted confidentially to the Commission as part of the Merger review.

² In the Matter of Echostar Communications Corporation, General Motors Corporation, and Hughes Electronics Corporation, CS Docket No. 01-348 (DA 02-27, released January 9, 2002; DA 02-964, released April 25, 2002) (*Protective Orders*), Appendix A, Paragraph 3, emphasis added.

³ 15 U.S.C. § 18A(h).

⁴ *Protective Orders*, Appendix A, Paragraph 9.

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The material submitted confidentially to the Commission covers a broad range of issues, including the Applicants' claimed efficiencies, revenue synergies, pricing promises, competitive alternatives, subscriber information, penetration data, churn rates, and methodology for calculating the number of homes passed by cable. This type of basic information is fundamental to any competitive analysis of the proposed Merger and is presumably being reviewed by both the FCC and DOJ. NRTC should be free to comment on and rebut this information and to provide additional information and legal reasoning to DOJ specifically addressing DOJ's evaluation of the Merger in the context of the Applicants' FCC filings.

NRTC's provision of this material to DOJ will in no way prejudice the Applicants (since the material will remain confidential) but will assist DOJ in compiling a complete record in this important proceeding. In submitting any such materials to DOJ, NRTC will request confidentiality commensurate with DOJ requirements.⁵

NRTC appreciates the Commission's efforts to ensure a complete record in this proceeding while at the same time protecting the Applicants' legitimate need for confidentiality. By allowing NRTC to provide to DOJ on a confidential basis material that has been submitted confidentially to the Commission, both objectives will be preserved.

Should you have any questions, please feel free to contact the undersigned.

Sincerely,


Jack Richards

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Attached: Certificate of Service

⁵ See, e.g., 28 C.F.R. §16.8

CERTIFICATE OF SERVICE

I, HEREBY CERTIFY that on this 15th day of August, 2002, a true and correct copy of the foregoing correspondence in the Matter of EchoStar Communications Corporation, General Motors Corporation and Hughes Electronics Corporation CS Docket No. 01-348 was submitted via electronic delivery to the Federal Communications Commission and served via first-class mail and/or electronic mail upon the following:

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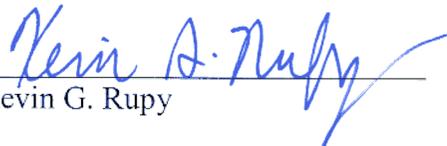
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