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August 29, 2002

**VIA ELECTRONIC FILING**

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 responds briefly to the August 22, 2002 letter (*August 22 Letter*) from EchoStar Communications Corporation, General Motors Corporation and Hughes Electronics Corporation (the Applicants) in the above captioned matter.<sup>1</sup> In their *August 22 Letter*, the Applicants oppose NRTC's request for permission to provide to the Department of Justice (DOJ) copies of certain documents that the Applicants have submitted to the Commission under cloak of confidentiality.<sup>2</sup>

In the *August 22 Letter*, the Applicants state for the first time that they already have provided to DOJ *all* of the documents they have provided to the Commission on a Confidential or Highly Confidential basis.<sup>3</sup> The fact that *all* of these documents already are in the possession of DOJ certainly undercuts the Applicants' claim that NRTC's request somehow breaches their

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<sup>1</sup> See, Letter from Pantelis Michalopoulos, Counsel for EchoStar Communications, and Gary M. Epstein, Counsel for General Motors Corporation and Hughes Electronics Corporation to Marlene H. Dortch, (August 22, 2002).

<sup>2</sup> See, Letter from Jack Richards, Counsel for the National Rural Telecommunications Cooperative, to Marlene H. Dortch, (August 15, 2002) (*NRTC Letter*).

<sup>3</sup> *August 22 Letter*, p.1.

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legitimate concerns of confidentiality. Clearly, materials cannot be “disclosed” to a party that is already in possession of them

The *August 22 Letter* makes clear that the Applicants’ real concern with NRTC’s request does not involve the disclosure of confidential documents. Rather, the Applicants seek to prevent NRTC from providing DOJ with NRTC’s *analysis* of these documents. They argue that this would somehow create a “lopsided ‘semi-APA’” process whereby they would have no opportunity to rebut NRTC’s arguments since DOJ’s Hart-Scott-Rodino review is not public.

No party is entitled to receive copies of any other party’s DOJ submissions or to “rebut” those submissions. None of the documents in the possession of DOJ is subject to public review or comment. This does not create a “lopsided semi-APA process.” Instead, it allows the DOJ to obtain the best available information for review under the HSR Act. Nevertheless, to resolve the Applicants’ concerns, NRTC is prepared to serve on the Applicants exact copies of its submission to the DOJ if authorized by the Commission. This removes that basis of objection, and permits the Applicants to file a document with DOJ responding to NRTC’s *analysis* without the corresponding right of NRTC to the see Applicants’ papers.

To prohibit NRTC from analyzing these documents and commenting on them to DOJ would create the bizarre situation whereby NRTC would be prohibited from providing relevant information to the government agency charged with the responsibility of determining whether the proposed Merger is lawful under the HSR. NRTC properly obtained access to these documents pursuant to the terms and conditions of the Commission’s Protective Orders and should be free to discuss them on a confidential basis with DOJ (which is already in possession of them). It is silly to require NRTC’s attorneys, attempting to scrupulously abide by the FCC Protective Orders, to forget what they have learned in review of the Applicants’ documents in their written communications with DOJ.

We urge the Commission to quickly reject the Applicants’ self-serving attempt to suppress serious debate of their proposed merger. Since the Applicants already have provided all of these materials to DOJ, NRTC certainly should be free to comment to DOJ about their accuracy and veracity.

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

Sincerely,



Jack Richards

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Attached: Certificate of Service

## CERTIFICATE OF SERVICE

I, HEREBY CERTIFY that on this 29<sup>th</sup> 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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