

October 7, 2002

Michael K. Powell  
Chairman  
Federal Communications Commission  
The Portals  
445 12th Street, S.W.  
Washington, DC 20554

W. Kenneth Ferree  
Bureau Chief  
Media Bureau  
Federal Communications Commission  
The Portals  
445 12<sup>th</sup> Street, S.W.  
Washington, DC 20554

**Re: 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**

Dear Chairman Powell and Mr. Ferree:

As you know, in this proceeding the Commission has before it the proposed merger of EchoStar Communications Corporation (“EchoStar”) and Hughes Electronics Corporation (“Hughes” and collectively, the “Applicants”). As the Commission approaches the completion of its consideration of the merits and processing of the applications that would effectuate the merger, the Applicants respectfully request the Commission expeditiously to consider two additional matters of process – take into account the unfolding Department of Justice (“DOJ”) antitrust review process and hold an en banc hearing or public forum, consistent with its practice for complex and important mergers such as this.

First, the Applicants request that, in ruling on the merger, the Commission consider any actions taken on the merger by the DOJ, which is concurrently reviewing the transaction from an antitrust perspective. This past Thursday and Friday, DOJ took the deposition of EchoStar’s Chairman and Chief Executive Officer, Charles Ergen. DOJ has requested additional time of deposition for Mr. Ergen and EchoStar has agreed to that request even though a date has not yet been scheduled. The Applicants have agreed with DOJ on a schedule for discussing, among other things, the possibility of “major revisions” to the transaction that will go beyond remedies heretofore presented by the Applicants such as national pricing. This schedule includes a meeting with the Assistant Attorney General and his senior staff set for October 28, 2002. As part of that schedule, the parties are in the process of preparing structural remedy proposals that will be submitted to DOJ prior to the October 28, 2002 meeting to address areas of concern expressed by DOJ.

The Commission has found in many merger proceedings that its broader public interest standard is best served by considering the antitrust agency's formal determinations regarding the proposed merger and proposed remedies before acting. Indeed, this has been for many years the Commission's normal practice with high profile mergers of this type, "since the factual basis for the FCC's review of whether a license transfer is in the public interest may be affected by the antitrust agency's determinations."<sup>1</sup> Moreover, the Commission's timeline for considering complex mergers of this kind contemplates precisely what the Applicants are requesting here – the receipt by the Commission of information about "major revisions" to the transaction "as a result of action by other agencies" prior to Commission action.<sup>2</sup> Therefore, the Applicants request that, consistent with past practice, the Commission await completion of DOJ's fact-gathering and negotiations with the parties, and similar discussions between the parties and the Commission, prior to acting in this proceeding.

Second, in order to aid in the Commission's final deliberations, the Applicants request a final, expedited en banc hearing or public forum on the merits of the merger, given the current state of the record in this proceeding. Such a process is consistent with the Commission's timeline for consideration of such mergers.<sup>3</sup> An en banc hearing is also consistent with past Commission practice in other major merger cases involving complex or difficult issues (*e.g.*, AOL/Time Warner, SBC/Ameritech, Bell Atlantic/GTE, AT&T/TCI, WorldCom/Sprint, AT&T/Media One).<sup>4</sup> As the Commission has observed:

A public forum has proven a useful process in complex cases to allow a fuller public discussion of the issues. It provides an opportunity for give and take among the

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<sup>1</sup> See Letter from Christopher J. Wright, General Counsel, FCC to Arthur H. Harding, counsel for Time Warner, *et al.*, CS Docket No. 00-30 (dated Oct. 11, 2000).

<sup>2</sup> See FCC web site at <http://www.fcc.gov/transaction/timeline.html> ("Proposed Timeline for Consideration of Applications for Transfers or Assignments of Licenses or Requests for Authorizations Relating to Complex Mergers").

<sup>3</sup> That timeline contemplates an en banc hearing at Day 130, after the Applicants have advised the Commission at Day 110 of "action by other agencies." See FCC web site at <http://www.fcc.gov/transaction/timeline.html>. As explained above, the DOJ review process has not matured to the stage where the Applicants could so advise the Commission at Day 110.

<sup>4</sup> See Letter from Christopher J. Wright, General Counsel, FCC to Arthur H. Harding, counsel for Time Warner, *et al.*, CS Docket No. 00-30 (dated Oct. 11, 2000).

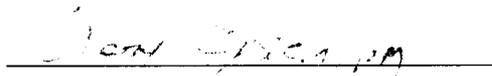
Commission, the applicants, and other interested parties that in some cases cannot be efficiently duplicated in the written pleadings or ex parte processes.<sup>5</sup>

The above observation is particularly apt in this case where discussions with the DOJ are ongoing. Moreover, to the extent that the Commission has concerns with the merits of the merger, the Applicants feel that a public forum process, featuring further direct testimony by and interaction with Applicants' economic experts, Dr. Andrew Joskow and Professor Robert Willig, could be a very valuable decisional tool for the Commission to employ at this penultimate stage of the process. To the extent that such action might necessitate a brief stoppage of the Commission's merger processing "clock," the Applicants would support such a suspension.

Thank you for your consideration of this request. We will continue to work with your staff on such matters and trust that an appropriate schedule can be developed.

In accordance with Section 1.1206 of the Commission's Rules, 47 C.F.R. §1.1206, one copy of this *ex parte* notice is being filed electronically with the Commission. If you have questions concerning this meeting or this notice, please contact the undersigned.

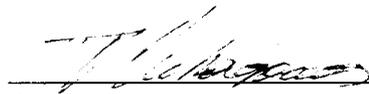
Respectfully submitted,



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<sup>5</sup> See FCC web site at <http://www.fcc.gov/transaction/issuesmemo.html> ("Issues Memorandum for March 1, 2000 Transactions Team Public Forum on Streamlining FCC Review of Applications Relating to Mergers.")