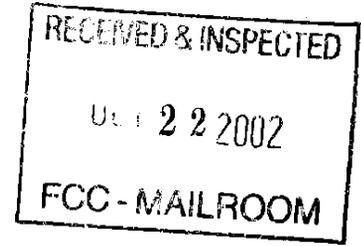


Federal Communications Commission

FCC 02-284

Before the
Federal Communications Commission
Washington, D.C. 20554



In the Matter of
Application of
EchoStar Communications Corporation, (a Nevada Corporation), General Motors Corporation, and Hughes Electronics Corporation (Delaware Corporations)
(Transferor,)
and
EchoStar Communications Corporation (a Delaware Corporation)
(Transferee)

CS Docket No. 01-348

HEARING DESIGNATION ORDER

Adopted: October 9,2002

Released: October 18,2002

By the Commission: Chairman Powell. Commissioners Abernathy and Copps issuing separate statements; Commissioner Martin approving in pan, concurring in pan, dissenting in part, and issuing a statement.

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1. INTRODUCTION

1. In this Order, we consider the application (the “Application”)’ of EchoStar Communications Corporation (“EchoStar”), General Motors Corporation (“GM”), and Hughes Electronics Corporation (“Hughes”) (collectively, the “Applicants”) for consent to transfer control of various Commission authorizations, including direct broadcast satellite (“DBS”)² and fixed satellite space station authorizations, earth station authorizations, and other related authorizations held by their wholly- or majority-owned subsidiaries to EchoStar Communications Corporation (“New EchoStar”). The proposed transaction involves the split-off of Hughes from GM, followed by the merger of the Hughes and EchoStar companies. The proposed merged entity, New EchoStar, would have a new ownership structure and would continue to provide DBS subscription television service under the DirecTV brand name. If approved, the proposed merger would combine operations of the two major DBS providers in the United States – EchoStar and DirecTV Holdings, LLC (“DirecTV”), a wholly-owned subsidiary of Hughes,’ into one single entity. In addition to acquiring the significant DBS operations of EchoStar and DirecTV, New EchoStar would acquire other significant satellite operations of Hughes, including Hughes Network Services, Inc. (“HNS”), a leading facilities-based provider of very small aperture terminal (“VSAT”)

¹ See *Consolidated Application of EchoStar Communications Corporation, General Motors Corporation, Hughes Electronics Corporation, Transferors, and EchoStar Communications Corporation, Transferee, for Authority to Transfer Control*, December 3, 2001 (“December 2001 Filing”); *Letters to William F. Caton, Acting Secretary, Federal Communications Commission from Panrelis Michulopoulos, Counsel for EchoStar and Gary Epsrein, Counsel for Hughes providing information pursuant to Section 1.65 of Commission Rules*, filed December 18, 2001 and February 21, 2002 (“December 2001 Amendment Letter” and “February 2002 Amendment Letter”). The term “Application,” includes the *December 2001 Filing*, *December 2001 Amendment Letter*, and *February 2002 Amendment Letter*. The Commission placed the Applicants’ filing on public notice December 21, 2001, DA 01-3005, CS Docket No. 01-348, establishing a comment cycle for this proceeding. See Appendix A for a list of parties filing in this proceeding and the abbreviations by which they are identified herein.

² DBS is the acronym used in the United States to describe the domestic implementation of the satellite service known internationally as the broadcasting satellite service (“BSS”).

³ The Commission granted *pro forma* transfer of control applications to Hughes’ DBS licensees, DirecTV Enterprises, LLC and USSB II, Inc., authorizing the transfer of control to DirecTV Holdings, LLC, a wholly-owned subsidiary of Hughes. The *pro forma* transfers of control were part of an internal corporate reorganization by Hughes for tax and other business considerations and did not affect the ultimate ownership of the licensees, which remain indirect, wholly-owned subsidiaries of Hughes. See Letters from Jennifer Gilseman, Chief, Policy Branch, Satellite Division to James H. Barker, counsel for Hughes Electronics Corporation, dated August 19, 2002, File No. SAT-T/C-20020618-00091 and File No. SAT-T/C-20020618-00092.

network systems, and PanAmSat Corporation (“PanAmSat”), a leading global facilities-based provider of geostationary-satellite orbit (“GSO”) fixed satellite services (“FSS”).⁴

2. We also consider the joint application submitted by EchoStar and Hughes requesting authority to launch and operate NEW ECHOSTAR I, a direct broadcast satellite that would be located at the 110° W.L. orbital location (the “Satellite Application”).⁵ In the Satellite Application, EchoStar and Hughes propose, subject to and contingent upon grant of the Application, to launch and operate a **spot** beam satellite with other existing and planned satellites at the 110° W.L. orbital location on frequencies currently authorized to EchoStar and DirecTV.⁶ The Applicants claim that grant of the proposed Satellite Application would ultimately allow New EchoStar to offer local broadcast channels in all 210 U.S. Designated Market Areas (“DMAs”).⁷

3. Based on the record before us, we find that Applicants have not met their burden of demonstrating that approval of the Application is in the public interest. As discussed more fully below, we are concerned that ownership of all satellites in the full-CONUS orbital locations by one entity, New EchoStar, could likely **undermine** our goals of increased and fair competition in the provision of **DBS** service. We are also concerned that the claimed benefits of efficient and **expeditious** use of spectrum are outweighed by the potential harms associated with the concentration of ownership of key **DBS** spectrum licenses in a single licensee. Further, we are not convinced that such concentration of ownership of the **DBS** spectrum licenses would result in more effective competition in the multichannel video programming distribution (“MVPD”) market or that the combined spectrum resources of the Applicants are necessary for deployment of viable satellite-delivered broadband services. Accordingly, pursuant to Section 309(e) of the Communications Act of 1934, as amended (the “Communications Act” or the

⁴ The Applicants also state that EchoStar has agreed to purchase Hughes’ interest in PanAmSat in the event the proposed transfer of Hughes and EchoStar to New EchoStar is terminated under certain circumstances. See Application at 2, and Application Vol. II, Tab 4 (*PanAmSat Stock Purchase Agreement*). Although the Application includes a description of the *PanAmSat Stock Purchase Agreement* and although it was referred to in the public notice relating to the entire transaction, the Applicants did not request, nor did the Commission specifically notice or seek comment on, a separate, stand alone transaction to transfer control of Hughes’ interest in PanAmSat to EchoStar. See 47 U.S.C. §§ 308, 309 and 310. Thus, we do not consider as *pari* of this proceeding, the separate transfer of control of Hughes’ interest in PanAmSat to EchoStar.

⁵ *EchoStar Satellite Corporation and Hughes Electronic Corporation, Application for Authority to Launch and Operate NEW ECHOSTAR I (USABBS-16)*, S2435, File No. SAT-LOA-20020225-00023 (Feb. 25, 2002) (“*February 2002 Application*”); *Letter to William F. Caton, Acting Secretary, Federal Communications Commission from Panrelis Michalopoulos, Counsel for EchoStar, and Gary Epstein, Counsel for Hughes, providing supplemental Technical Annex* (Mar. 28, 2002) (“*March 2002 Technical Annex*”); and *Letter to Marlene H. Dorrch, Secretary, Federal Communications Commission from Panrelis Michalopoulos, Counsel for EchoStar, and Gary Epstein, Counsel for Hughes, providing complete copy of supplemental Technical Annex* (May 30, 2002) (“*May 2002 Technical Annex*”). The term, the “Satellite Application,” includes the *February 2002 Application*, *March 2002 Technical Annex*, and *May 2002 Technical Annex*. The Commission placed the Applicants’ joint filing on public notice April 19, 2002, CS Docket No. 01-348, DA 01-922 (“*Satellite Application Public Notice*”), and established an additional comment cycle in this proceeding. Parties filing in response to this public notice are listed in Appendix A.

⁶ In the *Satellite Application Public Notice*, we noted that the Satellite Application, *inferred*, related to merger-specific effects, and thus, expanded our review of the Application to include consideration of the Applicants’ Satellite Application. See *Satellite Application Public Notice* at 3.

⁷ DMAs are used by Nielsen Media Research to identify TV stations whose broadcast signals reach a specific area. A DMA consists of all counties whose largest viewing share is given to stations of that same market area. Non-overlapping DMAs cover the entire contiguous 48 states, and also, Hawaii and parts of Alaska. There are currently 210 DMAs throughout the United States. See <http://www.nielsenmedia.com/FAQ/index.html>.

"Act"), we hereby designate the Application for hearing. In addition to the specific issues we designate for hearing, we also direct that the review of Applicants' proposed Satellite Application be undertaken within the context of the hearing proceeding.

II. DESCRIPTION OF THE PARTIES

A. EchoStar Communications Corporation

4. EchoStar is a publicly traded company incorporated in Nevada and headquartered in Littleton, Colorado.⁸ EchoStar currently has three classes of issued and outstanding shares: Class A common, Class B common, and Series D convertible preferred stock.⁹ All of the outstanding shares of Class B common stock are held of record by a trust controlled by Charles W. Ergen, EchoStar's Chairman and Chief Executive Officer, and all the Series D convertible preferred shares are held by a wholly-owned subsidiary of Vivendi Universal, S.A., ("Vivendi"),¹⁰ a French media, communications, and environmental services company with its principal office in Paris, France.¹¹ The Class A common stock is held by approximately 6,000 shareholders including institutional and private investors. There are two shareholders that currently own or control ten percent or more of EchoStar shares – Charles Ergen, who holds a 44.8% equity and an 89.0% voting interest, and Vivendi, which holds a 10.7% equity and a 2.270 voting interest.¹²

5. EchoStar's core business, the delivery of DBS service, is offered to consumers through two interrelated business units: the Digital Sky Highway (DISH) Network, which provides service in the United States, and EchoStar Technologies Corporation, which is engaged in the design, development, distribution and sale of EchoStar receiver systems.¹³ EchoStar, with more than seven million customers

⁸ See EchoStar Communications Corp., Securities and Exchange Commission ("SEC") Form IO-K, Annual Report for the fiscal year ended December 31, 2001 ("EchoStar 10-K 2001 Annual Report").

⁹ EchoStar 10-K 2001 Annual Report at 5, 36.

¹⁰ *Id.* On January 22, 2002, EchoStar issued 5,760,479 shares of Series D convertible preferred stock valued at approximately \$260.40 per share, in exchange for a \$1.5 billion equity investment by Vivendi. See EchoStar 10-K Annual Report at 5, and EchoStar Communications Company, SEC 8-K Filing, January 23, 2002 ("EchoStar 8-K January 2002 Filing"). The Series D convertible preferred stock is convertible, at any time, into 10 shares of EchoStar Class A common stock, at the option of the holder, and will automatically convert under certain conditions. See EchoStar Communications Corporation, Amendment No. 1 to Schedule 14C, filed May 29, 2002 ("EchoStar May 29, 2002 Preliminary Information Statement") at 291.

¹¹ In December 2001, EchoStar and Vivendi announced an eight-year strategic alliance in which Vivendi will develop and provide EchoStar DISH Network with a variety of programming and interactive television services. EchoStar and Vivendi also announced their intention to work on a programming initiative to develop new non-exclusive satellite-delivered broadband channels featuring interactive games, movies, sports, education, and music. Further, as part of the alliance, EchoStar will integrate Vivendi's advanced, interactive middleware technology, MediaHighway, a Canal+ Technology, as a non-exclusive middleware solution that will provide DISH Network customers using personal video recorders unique interactive television services, such as movies from Vivendi, and music from Universal Music Group. See SEC Form IO-Q, Quarterly Report for the period ending March 31, 2002 (EchoStar 10-Q March 2002 Report) at 34.

¹² See February 2002 Amendment Letter at Attachment D.

¹³ EchoStar 10-K 2001 Annual Report at 2.

nationwide," offers its DISH Network customers multichannel video and audio programming, and also provides limited interactive and two-way high-speed Internet access services.¹⁵

6. EchoStar, through its wholly-owned direct and indirect subsidiaries, holds several Commission DBS authorizations to operate in orbital locations that are capable of serving customers in all contiguous 48 states (*i.e.*, the continental United States or "CONUS").¹⁶ At the 119° W.L. location, EchoStar is authorized to operate 21 frequencies" and at the 110° W.L. location, 29 frequencies.¹⁸ In the

¹⁴ According to recent SEC filings, as of June 30, 2002, EchoStar has 7.46 million subscribers. See EchoStar Communications Company, SEC Form 10-Q, Quarterly Report for the period ending June 30, 2002 ("EchoStar 10-Q June 2002 Report") at 18.

¹⁵ See *e.g.*, Application at 10. According to EchoStar, its DBS satellites enable it to offer over 500 video and audio channels, together with limited data services and high definition and interactive TV services. EchoStar 10-K 2001 Annual Report at 5. EchoStar offers limited interactive digital receivers with programming storage capacity that permits customers to pause and record live programs. In addition, EchoStar offers set-top boxes capable of providing interactive television services and applications. *Id.* at 9. EchoStar also offers customers two-way, high-speed satellite Internet access along with its DISH Network satellite television programming – initially through an alliance with StarBand Communications, Inc. ("StarBand"); see n.27. *infra.* More recently, in connection with alliances with SBC Communications Corp and EarthLink Communications, Inc. See EchoStar, Earthlink Announce Strategic Marketing Alliance: EchoStar to Offer DISH Network Customers Bundled DSL Internet Service, Digital Satellite Television (press release), April 19, 2002 at http://www.corporate-ir.net/ireye/ir_site.zhtml?ticker=dish&script=410&layout=-6&item_id=281421. See also SBC, EchoStar Announce Strategic Marketing Alliance (press release), April 17, 2002 at http://www.corporate-ir.net/ireye/ir_site.zhtml?ticker=dish&script=410&layout=-6&item_id=286371

¹⁶ The United States has been allocated eight DBS orbital locations by the International Telecommunication Union ("ITU"). The eight U.S. orbital positions, proceeding from west to east (all West Longitude), are 175°, 166°, 157°, 148°, 119°, 110°, 101°, and 61.5°. See Appendix 30 to the ITU Radio Regulations. Three of these eight locations, 101° W.L., 110° W.L., and 119° W.L., are full-CONUS orbital locations, capable of serving customers across the contiguous 48 states, and also Hawaii and Alaska. See Revision of Rules and Policies for the Direct Broadcast Satellite Service, 11 FCC Rcd 9712, 9762 (1995) ("1995 DBS Report and Order"); Policies and Rules for the Direct Broadcast Satellite Service 17 FCC Rcd 11311, 11340 (2002) ("2002 DBS Report and Order"). The spectrum allotted for DBS service at each of the eight CONUS orbital locations can support 32 analog channels (or transponders) with 24 MHz of usable bandwidth per transponder. Thus, a total of 96 analog channels, each with a 24 MHz bandwidth, are capable of providing service from the three U.S. allocated full-CONUS locations. Recent advances in digital compression have enabled expansion of analog channels to multiple digital channels, with compression ratios of at least 10 to 1, based on technology predominately used today, and higher. See *infra*, ¶ 66. For instance, certain DirecTV satellites are capable of providing a total of 328 digital channels (9 clear and 319 encoded) per 32 analog channels. See 2002 DBS Order, *supra*. To better reflect the expanded capacity now available from each DBS orbital location, throughout this Order, we use the term "frequencies" instead of "channels" or "transponders."

¹⁷ See EchoStar Satellite Corporation For Assignment of Direct Broadcast Satellite Orbital Positions and Channels, 7 FCC Rcd 1765 (Int'l Bur. 1992); Letter from Donald H. Gipps, Chief, International Bureau, Federal Communications Commission to EchoStar Satellite Corporation, 11 FCC Rcd 16468 (Int'l Bur. 1996); Letter from Donald H. Gipps, Chief, International Bureau, Federal Communications Commission to DirectSat Corporation, 11 FCC Rcd 16465 (Int'l Bur. 1996); EchoStar Satellite Corporation, et. al, Application for Authority to Make Minor Modifications to Direct Broadcast Satellite Authorizations, Launch, and Operational Authority, 13 FCC Rcd 8595 (Int'l Bur. 1998) ("1998 EchoStar Minor Mod."); EchoStar Satellite Corporation Application for Authority to Make Minor Modifications to Direct Broadcast Satellite Authorizations, Launch, and Operation Authority, 15 FCC Rcd 23636 (Int'l Bur. 2000) ("2000 EchoStar Minor Mod.").

¹⁸ See Application of MCI Telecommunications Corporation and EchoStar 110 Corporation for Consent to Assignment and Authorization to Construct, Launch, and Operate a Direct Broadcast Satellite System Using 28 Channels of the 110° W.L. Orbital Location, 16 FCC Rcd 11608 (Int'l Bur. 1999) ("MCI-EchoStar Order");

(continued....)

western CONUS DBS orbital locations, which are capable of providing service to the Western United States. EchoStar holds authorization to operate 24 frequencies at the 148° W.L.¹⁹ and in the eastern DBS orbital location, which is capable of providing service to the Eastern and Central United States, EchoStar holds authorization to operate 11 frequencies at 61.5° W.L.²⁰ In addition, at the 61.5° W.L. location, EchoStar holds a Special Temporary Authority to operate 13 frequencies, and also subleases six frequencies from Dominion Video Satellite, Inc.²¹

7. EchoStar also holds Commission authority to launch and operate a Ku-band FSS system at the 83° W.L. and 121° W.L. orbital locations,²² and has controlling interest in VisionStar Corporation, which holds authorization to launch and operate a Ka-band satellite at the 113° W.L. orbital location.²³ In addition, EchoStar has submitted an application to the Commission for authority to launch and operate a global satellite system to operate in the extended Ku-band.²⁴

8. In conjunction with its satellite operations, EchoStar holds authorizations for numerous transmit/receive and receive-only earth stations which are licensed to transmit and receive frequencies in

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EchoStar Satellite Corporation Application for Modification to Direct Broadcast Satellite Authorization and for Operation Authority, 15 FCC Rcd 6727 (Int'l Bur. 1999) ("1999 EchoStar Mod").

¹⁹ See *Application of EchoStar DBS Corporation For Authority to Construct, Launch and Operate a Direct Broadcast Satellite System at 148° W.L.*, 12 FCC Rcd 11946 (Int'l Bur. 1996); *1998 EchoStar Minor Mod.; 2000 EchoStar Minor Mod.*

²⁰ See *Application of Direct Broadcasting Satellite Corporation for Assignment of Direct Broadcast Satellite Orbital Positions and Channels*, 8 FCC Rcd 7959 (Int'l Bur. 1993).

²¹ At this orbital location, EchoStar holds authorizations for 11 frequencies. R/L DBS Company, LLC ("R/L DBS") holds authorizations for 11 frequencies, and Dominion Video Satellite, Inc. ("Dominion") holds authorizations for 8 frequencies; the remaining 2 frequencies are unassigned. The International Bureau granted Special Temporary Authority to EchoStar to operate over all frequencies at this location. see *Direct Broadcasting Satellite Corporation Application for Special Temporary Authority to Operate a Direct Broadcast Satellite over Channels 1-21 (odd) and 23-32 (odd and even) or 61.5 W.L.*, 13 FCC 6392 (Int'l Bur. 1998); *Direct Broadcasting Satellite Corporation Application Authority of a Direct Broadcast Satellite, Application for Modification and Request for Special Temporary Authority to Test*, 13 FCC Rcd 10080 (Int'l Bur. 1998). See also *Dominion Video Satellite, Inc.*, 14 FCC Rcd 8182 (Int'l Bur. 1999); *Petition of R/L DBS Company, L.L.C. For Extension of its Direct Broadcast Satellite Construction Permit*, 16 FCC Rcd 9 (Int'l Bur. 2000) ("R/L DBS Petition"). R/L DBS is not yet using its assigned frequencies to provide service and Dominion uses two of its frequencies for its religious programming and subleases six of its frequencies to EchoStar.

²² See *Application of EchoStar Satellite Corporation for Authority to Construct, Launch and Operate Space Stations in the Domestic Fixed-Satellite Service*, 11 FCC Rcd 20446 (Int'l Bur. 1996). EchoStar failed to meet the milestone requirement for this authorization, and its request for extension of milestone dates is pending.

²³ See *Application of VisionStar, Inc., Licensee, Shonr Hovnanian, Transferor and EchoStar VisionStar Corporation, Transferee*, 16 FCC Rcd 19187 (Int'l Bur. 2001). On April 30, 2002, VisionStar filed a Request for Extension of Time to Complete Construction and to Launch Fixed Satellite Service, which is currently pending. EchoStar also received Ka-band authorizations at the 83° W.L. and 121° W.L. orbital locations, see *EchoStar Satellite Corporation Application for Authority to Construct, Launch and Operate a Ka-Band Satellite System in the Fixed-Satellite Service*, 13 FCC Rcd 5664 (Int'l Bur. 1997), however, the International Bureau canceled these authorizations for failure to satisfy the initial mandatory implementation milestone, see *EchoStar Satellite Corporation, Application for Authority to Construct, Launch and Operate a Ka-band Satellite System in the Fixed-Satellite Service*, 17 FCC Rcd 12780 (Int'l Bur. 2002). EchoStar's petition for reconsideration is pending before the Commission,

²⁴ EchoStar KuX Corporation, a direct wholly-owned subsidiary of EchoStar, has submitted an application for use of extended Ku-band frequencies. See *Application For Authorization to Launch and Operate Satellites in the Extended Ku-Band*, Public Notice, File Nos. 82/83-SAT-P/LA-96 and 84-SAT-P-96, (Mar 20, 1996).

the C, Ku and DBS bands.²⁵ EchoStar also wholly-owns Kelly Broadcasting Systems, Inc., which holds authorizations for seven transmit/receive earth stations that operate in the C and Ku-bands, and four transmit-only earth stations that operate in the C-band.²⁶

9. EchoStar has ownership interests in other satellite service providers as well. EchoStar holds an approximately 32% interest in StarBand Communications, Inc., ("StarBand") which offers two-way, high-speed Internet access service." It also holds an approximately 20% interest in WildBlue Communications, Inc., which has plans to offer high-speed Internet service from Ka-band satellites,²⁸ and Celsat America, Inc., which has plans to provide service in the 2 GHz Mobile-Satellite Service ("MSS") band.²⁹

B. General Motors and Hughes Electronics Corporation

10. GM is a publicly traded company incorporated in Delaware and headquartered in Detroit, Michigan." GM is engaged in the automotive and, through its wholly-owned Hughes subsidiary, the telecommunications industries." Hughes' telecommunications operations are comprised of three business segments: Direct-To-Home Broadcast, Network Systems, and Satellite Systems." GM currently has

"See Application, Attachment C; see also Appendix B.

²⁶ See Public Notices, Satellite Communications Services Information, Actions Taken, Report No. SES-00383, April 8, 2002 and Report No. SES-00387, April 24, 2002.

²⁷ See Application at 11. In April 2002, EchoStar terminated its wholesale distribution agreement with StarBand, and in June 2002, surrendered its voting interest in StarBand, but continues to retain its equity holdings in StarBand. See <http://dc.internet.com/news/article.php/1369411> (visited June 27, 2002). See *EchoStar SEC 10-Q March 2002 Report* at 7.

²⁸ See Application at 11. WildBlue Communications is the parent company of WB Holdings I LLC, which holds Commission authorizations for 500 MHz of Ka-band spectrum at the 73" W.L. and 109.2" W.L. orbital locations, and KaStarCom, World Satellite, LLC., which holds Commission authorizations for 500 MHz of Ka-band spectrum at the 73" W.L. and 109.2" W.L. orbital locations and 1000MHz at the 111" W.L. orbital location. See *Assignment of Orbital Locations to Space Stations in the Ka-Band*, Order, 13 FCC Rcd 1030 (Int'l Bur. 1997) ("*First Round Assignment Order*"). revised, *Assignment of Orbital Locations to Space Stations in the Ka-Band*, Order, 12 FCC Rcd 22004 (Int'l Bur. 1997) ("*First Round Reassignment Order*"); *Second Round Assignment of Geostationary Satellite Orbital Locations to Fixed-Satellite Service Space Stations in the Ka-Band*, 16 FCC 14389 (Int'l Bur. 2001) ("*Second Round Assignment Order*"), revised, *Second Round Assignment of Geostationary Satellite Orbital Locations to Fixed Satellite Service Space Stations in the Ka-Band*, 17 FCC Rcd 14400 (Int'l Bur. 2002) ("*Second Round Reassignment Order*") ("*Ka-Band Assignment Orders*").

²⁹ EchoStar holds 17.6% interest in Celsat America, Inc., which holds Commission authorization to construct and launch a two-satellite GSO mobile-satellite system to serve the United States using service links in the 2 GHz MSS band. *Celsat America, Inc.*, Order and Authorization, 16 FCC Rcd. 13712 (2001). The Commission authorized Celsat to operate its MSS system's feeder link, using 500MHz of uplink spectrum in the Ka-band at the 121° W.L. and 83° W.L. orbital locations. *Celsat America, Inc.*, Order and Authorization, 16 FCC Rcd. 14278 (2001).

³⁰ See General Motors, Inc. SEC Form 10-K, Annual Report for the fiscal year ended December 31, 2001 (*GM 10-K 2001 Annual Report*).

³¹ *GM 10-K 2001 Annual Report* at I-1. GM also has financial and insurance operations and, to a lesser extent, is engaged in other industries. See also Hughes Electronics Corporation, SEC Form 10-K, Annual Report for the fiscal year ended December 31, 2001 (*Hughes 10-K 2001 Annual Report*).

~~32 The three business segments are differentiated by their products and services: the Direct-To-Home Broadcast segment is engaged in acquiring, promoting, selling and/or distributing digital entertainment programming via satellite to residential and commercial customers and providing land-based DSL services; the Satellite Services segment is engaged in the selling, leasing and operating of satellite transponders and providing services for cable television systems, news companies, Internet service providers and private business networks; and the Network~~

(continued....j

issued and outstanding shares of GM \$1 2/3 par value common stock and Class H common stock or "Hughes Tracking Stock."³³ The Hughes Tracking Stock is a publicly-traded tracking stock designed to provide holders with financial returns based only on the financial performance of GM's wholly-owned Hughes subsidiary, and not on the financial performance of the whole of GM.³⁴ Currently, two shareholders own ten percent or more of GM stock - State Street Bank and Trust Company, a Massachusetts corporation, acting as trustee for various trusts and employee benefit plans, which beneficially owns 14% of GM's \$1 2/3 par value common stock, and U.S. Trust Corporation, a New York corporation, which beneficially owns approximately 20% of the Hughes Tracking Stock.³⁵

11. Hughes' Direct-To-Home Broadcast business segment consists of the operations of DirecTV Holdings, LLC ("DirecTV") in the United States," DtreceTV Latin America, LLC in Latin America and the Caribbean Basin," and DirecTV Broadband, Inc. (formerly Telocity Delaware, Inc.).³⁸ Through its wholly-owned subsidiaries, DirecTV holds DBS authorizations to operate 32 frequencies at the 101° W.L. orbital location, three frequencies at the 110° W.L. orbital location,³⁹ and, 11 frequencies at the 119° W.L. orbital location.⁴⁰ Through its wholly-owned subsidiaries, DirecTV also holds authorizations for numerous transmit/receive, receive-only, and transmit-only earth stations which are licensed to transmit and/or receive frequencies in the C, Ku, and DBS-bands." In the United States, DirecTV provides DBS service consisting of multichannel video and audio digital entertainment channels

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Systems segment is a provider of satellite-based private business networks and broadband Internet access, and a supplier of DirecTV receiving equipment (set-top boxes and dishes). See Hughes Electronics Corporation, SEC Form IO-Q, Quarterly Report for the period ending June 30, 2002 (*Hughes 10-Q March 2002 Report*) at 21

³³ GM also had issued and outstanding 2.7 million shares of GM Series H 6.25% automatically convertible preference stock. Application at Vol.1, Tab E. On June 24, 2002, the 2.7 million shares of GM Series H 6.25% automatically convertible preference stock held by America Online, Inc., a wholly owned subsidiary of AOL Time Warner Inc., converted into 80 million shares of GM Class H common stock (i.e., Hughes Tracking Stock) as provided for in the terms of the Series H stock. GM originally issued the GM Series H preference shares to AOL in connection with a strategic alliance between AOL and Hughes Electronics Corp. in 1999. As a result of the conversion, GM no longer has any shares of preference stock outstanding (see Hughes Electronics Corporation, SEC Form 8-K, filed June 24, 2002) and AOL Time Warner Inc. now holds 8.4% of the Hughes Tracking Stock. See GM SEC Form 13-G, filed June 24, 2002 at 3.

³⁴ Holders of Hughes Tracking Stock have no direct rights in the equity of assets of Hughes, but rather have rights in the equity and assets of GM. See GM 10-K 2001 Annual Report, cover page.

³⁵ Application at Vol.1, Tab E.

³⁶ The Commission recently approved *pro forma* transfer of control applications that resulted in the transfer of numerous holdings of various Hughes companies into DirecTV Holdings, LLC. see n.3, *supra*.

³⁷ The Applicants state that DtreceTV Latin America LLC, which is licensed by a foreign country, is not part of this Application. See Application at n.30.

³⁸ See Hughes 10-K 2001 Annual Report at 3. On April 3, 2001, Hughes acquired Telocity Delaware, Inc. ("Telocity"), a company that provides land-based digital subscriber line ("DSL") services. Telocity is now operating as DirecTV Broadband. *Id.* at 41. See also Hughes 10-Q June 2002 Report at 20.

³⁹ See United States Satellite Broadcasting Co., Inc. and DirecTV Enterprises, Inc., 14 FCC Rcd 4585 (Int'l Bur. 1999) ("*USSB-DirecTV Order*"); Hughes Communications Galaxy, Inc., 99 FCC 2d 1369, 1371, 1387, 1388 (1984).

⁴⁰ See Tempo Satellite Inc. and DirecTV Enterprises, Inc., 14 FCC Rcd 7946 (Int'l Bur. 1999) ("*Tempo-DirecTV Order*"); see also DirecTV Enterprises, Inc., 7 FCC Rcd 2728 (Int'l Bur. 1992) and 7 FCC Rcd 6597 (Int'l Bur. 1992).

⁴¹ See Application, Attachment C.

to more than 10 million subscribers." including subscribers who receive DirecTV services from members of the National Rural Telecommunications Cooperative ("NRTC") pursuant to a contract between DirecTV and the NRTC.⁴³ DirecTV Broadband, Inc. offers terrestrial high-speed DSL service, which it purchases from wholesale providers, to customers across the country where digital subscriber line technology ("DSL") is available.⁴⁴

12. Hughes' Network Systems business segment includes the operations of HNS.⁴⁵ HNS holds a number of authorizations for transmit/receive earth stations and VSAT networks for use of frequencies in the C and Ku-bands.⁴⁶ Through leased Ku-band satellite transponders, HNS offers broadband satellite services to private business networks, and offers two-way high-speed, satellite-based Internet access service to consumers under the DirecPC and DirecWay brands.⁴⁷ HNS also manufactures subscriber equipment for DirecTV satellite television receivers and set-top boxes.⁴⁸ HNS holds Commission authorization for the construction, launch and operation of a Ka-band satellite system, the SPACEWAY Satellite System, which consists of satellites assigned to eight orbital locations at 101° W.L., 99° W.L., 49° W.L., 54° E.L., 101° E.L., 111° E.L., 164° E.L. and 25° E.L.⁴⁹ In addition, HNS holds Ka-band authorizations at the 131° W.L., 30° E.L., 7.5° W.L., and 103° E.L. orbital locations.⁵⁰

13. Hughes' Satellite Services business segment consists primarily of the operations of PanAmSat, a publicly traded Corporation of which Hughes owns approximately 81%.⁵¹ PanAmSat holds Commission authorizations to operate FSS systems using the C and Ku-bands and currently owns and operates a satellite fleet of 21 satellites.⁵² PanAmSat leases transponder capacity on its satellites and delivers entertainment and information to cable television systems, television broadcast affiliates, direct-

⁴² According to recent SEC filings, DirecTV has 10.7 million subscribers, 1.7 million of whom are customers of NRTC. See Hughes Electronics Corporation, SEC Form 10-Q, Quarterly Report for the period ending June 30, 2002 ("Hughes 10-Q June 2002 Report") at 38.

⁴³ In 1994, NRTC and Hughes Communications Galaxy, Inc. (DirecTV's predecessor-in-interest) entered into a Distribution Agreement wherein NRTC received exclusive program distribution rights to market DirecTV's DBS service in rural areas of the United States. NRTC, its members and affiliates currently distribute DirecTV to approximately 1.9 million rural households. NRTC's largest affiliate, Pegasus Communications Corporation, distributes DirecTV programming to approximately 1.5 million of NRTC's customers. See NRTC Comments at 3.

⁴⁴ See Application at 14; Hughes 10-K 2001 Annual Report at 26. See also "Hughes Successfully Completes Acquisition of Telocity; Offers First Nationwide Portfolio of Digital Entertainment and Internet Access Via DSL and Satellite" (press release), April 3, 2001 at http://www.directvbroadband.net/press/releases/2001_04_03.asp. See also "Telocity Adopts 'DIRECTV DSL' as New Service Name: DSL Division of HUGHES (NYSE: CMH) Incorporates Well Known DIRECTV Brand into Service and Company Name (press release), June 12, 2001 http://www.directvbroadband.net/press/releases/2001_06_12.asp.

⁴⁵ See Application at 14; Hughes 10-K 2001 Annual Report at 3.

⁴⁶ See Application, Attachment C.

⁴⁷ See Hughes 10-K 2001 Annual Report at 3. See also Application, Attachment C.

⁴⁸ See Hughes 10-K 2001 Annual Report at 3.

⁴⁹ See Hughes Communications Galaxy, Inc. Application for Authority to Construct, Launch, and Operate a Ka-Band Satellite System in the Fixed-Satellite Service, 16 FCC Rcd 2470 (Int'l Bur. 2001).

⁵⁰ See *Ka-Band Assignment Orders*, n.28, *supra*.

⁵¹ The remaining stock in PanAmSat is held approximately 10% by the original founders and approximately 9% is publicly traded. See <http://www.panamsat.com/company/investor.asp> (visited Sept. 23, 2002).

⁵² See PanAmSat 10-K 2001 Annual Report at 12.

to-home television operators, Internet service providers, telecommunications companies and other corporations.⁵³ PanAmSat's largest customers are its affiliates, HNS, DirecTV Latin America, and DirecTV.⁵⁴ PanAmSat holds Commission authority to launch and operate Ka-band satellites at 13 orbital locations: 103° W.L., 36° E.L., 40° E.L., 48° E.L., 124.5° E.L., 149° E.L., 173° E.L., 133° W.L., 58° W.L., 45° W.L., 68.5° E.L., 72.7° E.L., 166° E.L.⁵⁵ In addition, PanAmSat holds authorizations for numerous earth stations which are licensed to transmit and receive frequencies in the C and Ku-bands, and also holds Section 214 authorizations for telecommunications services.⁵⁶

C. THE PROPOSED TRANSACTION

14. The transaction proposed by EchoStar and Hughes, and set forth in various interrelated agreements,⁵⁷ involves two principal components: the GM/Hughes separation transactions⁵⁸ and the Hughes/EchoStar merger.⁵⁹ These transactions, some of which require GM stockholder approval in order for the proposed merger to take place, are described in more detail below.⁶⁰

1. GM/Hughes Separation Transactions

15. The proposed GM/Hughes separation transactions are designed to prepare Hughes to complete the proposed merger with EchoStar by separating the Hughes business from GM by means of a split-off. The GM/Hughes separation transactions consist of two parts – the Hughes recapitalization, which will result in the creation of HEC Holdings,⁶¹ and the HEC Holdings split-off.

⁵³ PanAmSat's customers for video services include AOL Time Warner (e.g., HBO, CNN); the BBC, News Corp (Fox family of channels), Sony, Viacom, Walt Disney Company (e.g., ABC, ESPN); its customers for direct-to-home services include DirecTV-Latin America, MultiChoice (Africa), Sky Mexico, Sky Latin America, Sky Brazil, Television and Radio Broadcasting Services (Asia and Australia); and its customers for network services include HNS, Telstra and WorldCom. See *PanAmSat 10-K 2001 Annual Report* at 8.

⁵⁴ See *PanAmSat 10-K 2001 Annual Report* at 3.

⁵⁵ See *PanAmSat Corporation, Application for Authority to Construct, Launch, and Operate a Ku-band Satellite System in the Fixed-Satellite Service*, Order and Authorization, 16 FCC Rcd 2490 (Int'l Bur. 2001). Hughes assigned a portion of its Ka-band authorization, comprising seven orbital locations to PanAmSat. See *Assignment of Orbital Locations to Space Stations in the Ka-Band*, 13 FCC Rcd 1030 (Int'l Bur. 1997) and 12 FCC Rcd 22004 (Int'l Bur. 1997)(reassigning PanAmSat's satellite at 67° W.L. to the 103° W.L. orbit location). See also *Ka-Band Assignment Orders*, n.28, *supra*.

⁵⁶ See Application, Volume IV.

⁵⁷ See *Id.* Volume II, Tabs 1-4. The principal transaction agreements include the *Merger Agreement* (Tab 1); the *Implementation Agreement* (Tab 2); the *Separation Agreement* (Tab 3); the *PanAmSat Stock Purchase Agreement* (Tab 4); and certain other ancillary agreements contemplated by the agreements listed above.

⁵⁸ See *Id.* Volume II, Tab 3, *Separation Agreement*.

⁵⁹ See *Id.* Volume II, Tab 1, *Merger Agreement*.

⁶⁰ The proposed merger has already been approved by the stockholders of EchoStar, however, approval by GM common stockholders for certain aspects of the proposed transactions are still required. If the GM \$1 2/3 par value common stockholders and GM Class H (Hughes Tracking Stock) common stockholders, each voting separately as a class and voting together as a single class based on their respective per share voting power, do not approve the GM/Hughes separation transactions (recapitalization and split-off), Hughes will remain a wholly owned subsidiary

of GM and neither the GM/Hughes separation transactions nor the Hughes/EchoStar merger will occur. See *Amendment No. 2 to Schedule 14-A (GM Preliminary Proxy Statement)*(July 11, 2002).

⁶¹ See Application, Tab 2, *Implementation Agreement*. Pursuant to the terms of the *Implementation Agreement*, GM and Hughes may elect to internally reorganize by inserting a holding company above Hughes and below GM. See

(continued...)

16. Under the proposed Hughes recapitalization, Hughes will distribute a dividend of up to \$4.2 billion to GM and GM's retained economic interest in Hughes will be reduced by an amount that reflects the dividend.⁶² Upon receipt of the \$4.2 billion dividend, GM will contribute all of the outstanding stock of Hughes to HEC Holdings, Inc., a newly formed subsidiary created for purposes of the proposed merger transaction. As a result, HEC Holdings will become the parent company of Hughes. In exchange for the contribution of Hughes' stock to HEC Holdings, which at that point will consist of all the outstanding Hughes Tracking Stock, GM will receive HEC Holdings Class C common stock and thus will hold all of the issued shares of HEC Holdings.⁶³

17. To accomplish the split-off of the Hughes business from GM, GM will distribute to each stockholder of Hughes Tracking Stock one share of HEC Holdings Class C common stock in redemption of and in exchange for each share of Hughes Tracking Stock.⁶⁴ Thus, holders of Hughes Tracking Stock will become holders of HEC Holdings Class C common stock.⁶⁵ As a result of this exchange, all outstanding shares of Hughes Tracking Stock will be redeemed and cancelled.⁶⁶ In this way, HEC Holdings would be split-off from GM and would become an independent, publicly owned company, which would own the entire Hughes business.⁶⁷

2. Hughes/EchoStar Merger

18. Following the recapitalization and split-off, Hughes and EchoStar propose to combine their businesses pursuant to a merger of HEC Holdings and EchoStar.⁶⁸ While HEC Holdings would be the surviving corporation, the merged entity would be renamed EchoStar Communications Corporation

(...continued from previous page)

Id. at § 5.1(1). GM and Hughes have implemented such a reorganization so that a new company, HEC Holdings, Inc., incorporated in Delaware ("HEC Holdings"), is now the immediate parent of Hughes and a wholly owned subsidiary of GM. See *GM Preliminary Proxy Statement*.

⁶² Separation Agreement at 5; Application at 17.

⁶³ The amount of the dividend from Hughes and the number of shares of HEC Holdings Class C common stock that GM will receive in the transactions cannot be definitively determined until the time of the completion of the separation transactions because each will depend upon certain factors that will not be known until that time. See EchoStar Communications Corporation, Amendment No. 3 to Schedule 14-C, (August 12, 2002) at 2, 19, 83, 220-222. See *GM Preliminary Proxy Statement* at 2.

⁶⁴ See Application at 17.

⁶⁵ GM may achieve additional liquidity with respect to a portion of its retained economic interest in Hughes and thus, may receive shares of HEC Holdings Class C common stock as part of the GM distribution of HEC Holdings Class C common stock. See General Motors Corp., SEC Form 10-Q, for period ending June 30, 2002 (*GM June 2002 10-Q*) at 25.

⁶⁶ Following the redemption of the Hughes Tracking Stock, GM intends to amend and restate its Certificate of Incorporation to eliminate such class of stock. See *Implementation Agreement* §§ 1.4(b)(iv), 1.5(d), 1.8, 1.13. As a result of these transactions, GM will have only one class of common stock, GM \$1 2/3 par value common stock.

⁶⁷ A majority of holders of the outstanding shares of GM \$1-2/3 Common Stock and Hughes Tracking Stock must approve the recapitalization and split-off. See *Implementation Agreement* § 1.2. In addition, the parties would not agree to complete the proposed merger unless the Hughes split-off would be tax-free to GM and its stockholders for federal income tax purposes. See *May 29, 2002 Preliminary Information Statement* at 85. On July 11, 2002, GM received a favorable ruling from the Internal Revenue Service confirming that the merger of its Hughes subsidiary with EchoStar would be tax free to GM and its shareholders for U.S. federal income tax purposes. See General Motors Corporation, SEC Form 10-Q, Quarterly Report for the period ending June 30, 2002, ("*GM 10-Q June 2002 Report*") at 25.

⁶⁸ See Application at 18.

and incorporated in Delaware (“New EchoStar”).⁶⁹ New EchoStar proposes to issue three classes of common stock, New EchoStar Class A, Class B, and Class C common stock.” Holders of EchoStar Class A common stock would receive 1.3699 shares of New EchoStar Class A common stock in exchange for each share of EchoStar Class A common stock; holders of EchoStar Class B common stock would receive 1.3699 shares of New EchoStar Class B common stock in exchange for each share of EchoStar Class B common stock;” and the holders of HEC Holdings Class C common stock distributed in the GM/Hughes separation transactions would have their shares reclassified as New EchoStar Class C common stock.⁷² Except as to voting rights, the New EchoStar Class A and C common stock would be identical.”

19. It is anticipated that the New EchoStar board of directors would initially consist of 11 members, eight of whom are current directors and/or officers of EchoStar⁷⁴ and three of whom are currently directors and/or officers of Hughes.⁷⁵ For the three years following the merger, at least six of the members of the New EchoStar board of directors would be “independent” directors as determined under the New EchoStar certificate of incorporation and bylaws.⁷⁶ Charles W. Ergen, the current Chairman and Chief Executive Officer of EchoStar, would be the Chairman and Chief Executive Officer of New EchoStar⁷⁷ and David K. Moskowitz, the current Senior Vice President, General Counsel and Secretary of EchoStar would continue as the Senior Vice President, General Counsel and Secretary of New EchoStar.⁷⁸ The other officers of New EchoStar would be determined by a management transition committee prior to the completion of the merger.¹⁹

⁶⁹ See *Id.* at 2.

⁷⁰ *Merger Agreement* § 2.1(d)-(e)

⁷¹ See *EchoStar May 29, 2002 Preliminary Information Statement* at 85

⁷² The EchoStar Series D convertible preferred stock held by Vivendi is automatically convertible into 10 shares of EchoStar Class A common stock immediately prior to the effectiveness of the merger. Post-merger, Vivendi will hold less than 5% of the equity and about 1% of the voting interests in New EchoStar. See *December 2001 Amendment* at 2. Vivendi also has contingent value rights as downside protection for the price of the Class A common stock to be issued upon conversion of the Series D Preferred Stock. The maximum payment under the rights is \$225 million if the merger with Hughes is completed, or 5525 million if the merger is not completed. See Contingent Value Rights Agreement between EchoStar Communications Corporation and Vivendi Universal, S.A. (Dec. 14, 2001). See also *EchoStar May 29, 2002 Preliminary Information Statement* at 291.

⁷³ See *EchoStar May 29, 2002 Preliminary Information Statement* at 85. The New EchoStar B common stock would have special voting rights, would be convertible into New EchoStar Class A or C common stock, and would be subject to certain transfer restrictions. However, in all respects other than voting rights, convertibility, and transfer restrictions, the New EchoStar Class B common stock would be substantially the same as the New EchoStar Class A and B common stock.

⁷⁴ The eight directors and/or officers of EchoStar who would serve as directors of New EchoStar are O. Nolan Daines, Peter A. Dea, James DeFranco, Michael T. Dupan, Charles E. Ergen, Jean-Marie Messier, David K. Moskowitz, and Steven B. Schaver. See Amendment No. 3 to Schedule 14C, August 12, 2002, filed by EchoStar, at 292-293.

⁷⁵ The three directors and/or officers of Hughes who would serve as directors of New EchoStar are Peter A. Lund, Harry J. Pearce, and Jack A. Shaw. See Amendment No. 3 to Schedule 14C, August 12, 2002, filed by EchoStar, at 292-293.

⁷⁶ *Id.*

⁷⁷ See Application at 15.

⁷⁸ See Amendment No. 3 to Schedule 14C, August 12, 2002, filed by EchoStar, at 294

⁷⁹ *Id.*

3. Scope of the Proposed Transaction

20. The proposed transaction would bring the various Commission authorizations and licenses held by EchoStar and Hughes, including the full-CONUS DBS authorizations now held separately by EchoStar and DirecTV, under control of one new entity, New EchoStar. Approval of the proposed transaction would combine the two largest providers of DBS service into a single provider of DBS service in the United States, which would serve over 18 million subscribers.⁸⁰ Moreover, the merged entity would hold authorizations for all of the current U.S. DBS frequencies at the full-CONUS orbital locations.⁸¹ The proposed merger would also include the transfer of Ka-band authorizations held by EchoStar, Hughes, and its subsidiary PanAmSat, to New EchoStar,⁸² as well as PanAmSat's GSO FSS C and Ku-band operations, and the authorizations held by HNS, one of PanAmSat's largest customers.⁸³ A list of FCC authorizations and licenses held by each of the Applicants that are subject to transfer under the proposed transaction are provided in Appendices B, C, and D of this Order.⁸⁴

21. In addition, the Applicants have proposed, subject to and contingent upon approval of the proposed merger, to launch and operate a DBS spot beam satellite in order to provide additional local broadcast channel programming capacity.⁸⁵ Specifically, EchoStar and Hughes filed their conditional joint Satellite Application seeking approval to launch and operate NEW ECHOSTAR 1 at the 110° W.L. orbital location with other existing and planned satellites in that orbital location currently authorized to EchoStar and DirecTV.⁸⁶ Through the reuse of eight of the thirty-two DBS frequencies at 110° W.L., the Applicants propose to form 28 distinct spot beams to provide delivery of local broadcast channels to DMAs not previously served by either EchoStar or DirecTV.⁸⁷ The Applicants claim that the NEW ECHOSTAR 1 satellite, when combined and integrated with the other satellite and spectrum assets of

⁸⁰ According to recent SEC filings, as of June 30, 2002, EchoStar has 7.46 million subscribers (see *EchoStar 10-Q June 2002 Report* at 18) and DirecTV has 10.7 million subscribers (see *Hughes 10-Q June 2002 Report* at 38. See n. 14, 43, *supra*).

⁸¹ As a result of consolidation in the DBS industry since the Commission first began authorizing use of the DBS spectrum, EchoStar and Hughes, through its DirecTV subsidiary, have emerged as the two dominant providers of DBS service in the United States. Combined, EchoStar and DirecTV hold Commission authorizations to operate from all three full-CONUS orbital locations using all 96 frequencies allotted to these locations for full-CONUS DBS service.

See *PanAmSat 10-K 2001 Annual Report* at 1-2. PanAmSat, which is 81% owned by Hughes, provides video and data network service to major broadcasting companies, DTH providers, and telecommunications companies. PanAmSat also provides satellite services directly to network suppliers for development and operation of private business networks in the United States.

⁸³ See *PanAmSat 10-K 2001 Annual Report* at 8.

⁸⁴ Appendix B lists the FCC authorizations and licenses held by EchoStar. Appendix C and D lists the FCC authorizations and holdings of Hughes, with Appendix D listing separately the authorizations and licenses held by PanAmSat.

⁸⁵ We found that the issues raised and the claims made by the Applicants in the Satellite Application were directly relevant to the issues under consideration in our review and evaluation of the proposed merger Application. Thus, we treated the Satellite Application as a major amendment to the Applicants' proposed transaction and sought comment from interested parties on the proposed Satellite Application in this proceeding. See n.5, *supra*.

⁸⁶ See *Satellite Application* at 3-4. The Applicants state that the proposed Satellite Application is conditioned upon approval of the proposed merger transaction. *Id.* at 5.

⁸⁷ *Id.* at 21. The Applicants propose to use five DBS frequencies that currently are licensed to EchoStar and three DBS frequencies that are currently licensed to DirecTV. *Id.* at 8.

New EchoStar, would enable New EchoStar to provide access to local broadcast programming in all **210** DMAs in the United States, including Alaska and Hawaii.⁸⁸

4. Claimed Benefits of the Proposed Transaction and Joint Satellite Application

22. The Applicants claim that numerous public interest benefits would result from approval of the proposed merger transaction and the Satellite Application. They contend that one of the most important benefits of the proposed merger will be the elimination of what they characterize as “a major restraint” on the ability of DBS operators to compete with cable systems in the MVPD market. That restraint, according to the Applicants, is their duplicative use of DBS spectrum to provide “overlapping programming services.”⁸⁹ The Applicants claim that EchoStar and DirecTV currently deliver over 500 identical channels of programming and that elimination of this duplication would promote the Commission’s long-standing policy in favor of efficient and non-duplicative use of the spectrum.⁹⁰ This in turn, they contend, would provide concrete benefits to consumers as New EchoStar would be able to use the increase in available DBS capacity to offer significantly more local-into-local programming and to expand its offerings of high-definition television (“HDTV”) programming, pay-per-view (“PPV”), video-on-demand (“VOD”) and other niche programming, as well as interactive services, such as interactive television (“ITV”) and broadband satellite Internet services.” The Applicants also claim that approval of the Satellite Application would enable New EchoStar to provide consumers with access to local broadcast channels in all 210 DMAs in the United States (“local-into-local programming”), thus implementing Congress’s goal of broad-based local television service by satellite, as reflected in SHVIA.⁹²

23. The Applicants claim that the merger would have no anti-competitive effects in the relevant market, which they claim is the multichannel video programming distributor (“MVPD”) market.” but rather would have significant pro-competitive effects as New EchoStar would be better able to compete with other MVPD providers, particularly cable operators, by offering new and expanded programming choices to consumers. This in turn would ultimately result in improved products, prices and overall quality to consumers.⁹⁴ The Applicants also claim that their commitment to price DBS service on a uniform nationwide basis will provide benefits to customers in both urban and rural areas since competition in the most densely populated and heavily contested areas will require that New

⁸⁸ The Applicants claim that approval of the Satellite Application will allow the merged entity to vigorously compete with incumbent cable operators as New EchoStar would be in a position to offer a complete substitute to incumbent cable system video offerings, and thus, in this regard, truly implement Congress’ vision under Satellite Home Viewers Improvement Act of 1999, 47 U.S.C. § 338 (“SHVIA”).

⁸⁹ See Application at 3-4, 27; Satellite Application at 3, 7-8. Applicants claim that this spectrum inefficiency “has become a potentially debilitating competitive impediment for DBS providers due to a combination of factors, including the imposition of satellite mandatory carriage obligations, the advent of digital cable services, and the new bandwidth that “going digital” gives to cable operators.” *Id.* at 4.

⁹⁰ See Application at 25; Satellite Application at 1, 7

⁹¹ See Application at 27-35.

⁹² See Satellite Application at 4

⁹³ 47 U.S.C. § 602(13)

⁹⁴ In addition, the Applicants claim that the increase of available spectrum would provide more diversity in the provision of independent programming voices. See Application at 34-35.

EchoStar set the national price low enough to compete for new subscribers in these urban areas, consequently providing competitive prices to customers in rural areas.”

24. The Applicants additionally claim that the proposed merger would allow New EchoStar to provide “true” broadband Internet access service to all regions of the country.⁹⁶ The Applicants claim that the combined Ka-band authorizations held by EchoStar, Hughes, and PanAmSat, along with the FSS resources of PanAmSat, would enable New EchoStar to proceed timely with efforts to deploy satellite broadband Internet services nationwide, and thus, more effectively compete with cable’s bundled offering of high-speed Internet access and MVPD products and telephone companies’ DSL offerings.⁹⁷ The Applicants contend that the creation of New EchoStar would resolve the inefficiencies and uncertainties that would exist if each company separately were to offer broadband services, and would dramatically maximize the timely introduction of nationwide competition in the broadband markets, including rural and underserved areas.⁹⁸ In addition, the Applicants claim that all consumers would benefit from vigorous competition between New EchoStar and cable systems in urban areas as lower prices resulting from “intermodal” broadband competition in these areas would also benefit rural and underserved users with lower prices.⁹⁹ Thus, the Applicants conclude that due to spectrum efficiencies, cost savings and revenue synergies,¹⁰⁰ the proposed merger would produce tangible benefits for all Americans, and request that the Commission grant approval of the Application.

111. STANDARD OF REVIEW AND PUBLIC INTEREST FRAMEWORK

25. Pursuant to sections 214(a) and 310(d) of the Act, the Commission must determine whether the Applicants have demonstrated that the proposed transfer of control of Hughes’ and EchoStar’s licenses and authorizations will serve the public interest, convenience and necessity.” In making this determination, we first assess whether the proposed transaction complies with the specific provisions of the Act,” other applicable statutes, and the Commission’s rules. The public interest standards of sections 214(a) and 310(d) involve a balancing process that weighs the potential public interest harms of the proposed transactions against the potential public interest benefits.¹⁰³ The

⁹⁵ See Applicants’ Reply Comments at vi

⁹⁶ See Application at 25

⁹⁷ See *Id.* 6-8, 47-49

⁹⁸ See *Id.* at 6-8, 47. According to the Applicants, the deployment of broadband satellite systems by each company alone would face significant obstacles as such systems are highly capital-intensive requiring a critical mass of broadband subscribers to achieve an offering that combines a competitive price and a reasonably short time to market. See *Id.* 7, 47.

⁹⁹ See *Id.* at 47.

¹⁰⁰ See *Id.* at 36. The Applicants contend that New EchoStar would achieve cost savings that include reduced subscriber acquisition costs, reduced customer turnover, or churn, improved signal security as a result of moving to a standardized 9BS platform, reduced programming costs as a result of a larger subscriber base, and elimination of duplicative overhead.

¹⁰¹ 47 U.S.C. §§ 214(a), 310(d)

¹⁰² Section 310(d) requires that we consider the applications as if the proposed transferee were applying for the licenses directly under section 308 of the Act, 47 U.S.C. § 310(d). Thus, we must examine New EchoStar’s qualifications to hold licenses. See 47 U.S.C. § 308.

¹⁰³ See, e.g., *Applications of VoiceStream Wireless Corp., Powertel, Inc. and Deutsche Telekom AG*, 16 FCC Rcd 9779, 9789 (2001); *AT&T Corp., British Telecommunications, plc, VLT Co. L.L.C., Violer License Co. LLC, and TNV [Bahamas] Limited Applications For Grant of Section 214 Authority, Modification of Authorizations and*

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