

Finally, the Commission reasoned that, “to the extent Comcast and AT&T each have particular expertise in electronic commerce and customer care that they can bring to the merged entity, that also should contribute positively to consumer experience.” *Id.* That is a completely speculative proposition that could be used to “prove” almost any benefit asserted by almost any two merger partners. Reliance on such a truism by the Commission strikes a particularly dissonant chord with the Commission’s disregard for the econometric evidence of scope and scale economies submitted by EchoStar and Hughes<sup>85</sup> – evidence absent from the filings of AT&T and Comcast.

In short, the FCC approved the merger of the two cable giants based primarily on the asserted *acceleration* of the pace of broadband deployment that is happening already without the merger, and failed to credit the EchoStar/Hughes merger’s much more concrete promise – the *creation* of an effective broadband provider. Application of the broadband policy evident in the AT&T/Comcast merger would compel the recognition of much more substantial benefits in this proceeding and likely tilt the balance of benefits and harms towards grant of the application without need for a hearing.

*Synergies.* In refusing to credit the efficiency benefits quantified exhaustively by the Applicants, the Commission has disregarded submissions that exceeded in detail and documentation anything that, to the Applicants’ knowledge, has ever been submitted to the Commission in any merger proceeding.

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<sup>85</sup> *See generally* Broadband Economic Models.

The Applicants specifically submitted a model tying the efficiency estimates to the merger, and followed up with detailed backup for each estimate.<sup>86</sup> The Applicants' synergies analysis examined in detail the positive revenue benefits of expanded local-into-local service; new services such as educational, foreign language and independent programming; HDTV programming; pay-per-view and near-video on demand; advertising interactive services; and the introduction of competitive satellite broadband service; as well as the reduction of subscriber acquisition costs, programming costs, operational and general and administrative ("G&A") costs and reduced churn.<sup>87</sup> Importantly, the synergies analysis used various Wall Street consensus figures (not the Applicants' own estimates) as the starting point for nearly all projections, including subscriber count, churn, subscriber acquisition costs, average revenue per user, programming costs and G&A costs. Use of consensus figures as a baseline, and other conservative assumptions, may substantially *understate* the value of synergies resulting from the merger. In addition, while certain petitioners objected to the Applicants' claim of synergies in general, no one objected specifically to the Applicants' quantification of the synergies (the July 5, 2002 presentation) or the detailed backup submitted by the Applicants on September 20, 2002.

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<sup>86</sup> *See e.g., Ex Parte* Letter from Pantelis Michalopoulos, Counsel to EchoStar Communications Corporation, and Gary M. Epstein, Counsel to General Motors Corporation and Hughes Electronics Corporation, to Marlene H. Dortch (July 5, 2002) (containing presentation detailing the benefits projected to flow from the applicants' proposed merger including cost savings and revenue synergies); *Ex Parte* Letter from Pantelis Michalopoulos, Counsel to EchoStar Communications Corporation, and Gary M. Epstein, Counsel to General Motors Corporation and Hughes Electronics Corporation, to Marlene H. Dortch (Sept. 20, 2002) (documenting significant merger-specific efficiencies).

<sup>87</sup> *See generally id.*

Yet the Commission, for various unsupported reasons, apparently discounted the Applicants' well-documented synergies in their entirety.”

In the *AT&T/Comcast* proceeding, by comparison, the efficiencies estimates that the parties produced fall far short of these submissions. The parties stated generally that their merger “will create efficiencies and synergies that will allow AT&T/Comcast to accelerate the availability of local telephony, digital video, high-speed Internet service, and other broadband services to millions of residential consumers in areas of 41 states” and “provide a competitive spur to other entities, including incumbent telephone companies, nationwide [DBS] providers, and others.”<sup>89</sup> While Robert Pick, Senior Vice President of Corporate Development at Comcast Corporation, attempted to quantify the extent of these efficiencies and synergies by stating that the merger “should result in synergies and efficiencies worth approximately \$1.25 to \$1.95 billion a year in increased earnings before interest, tax, depreciation and amortization

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<sup>88</sup> For example, with respect to revenue synergies the Commission incorrectly suggests that the Applicants did not properly estimate the incremental profit that would result from new services. *See HDO* at ¶ 204. However, because such services would not be offered absent the merger, that is precisely what the Applicants demonstrated. The Commission goes on to say, however, that even if the Applicants had properly estimated these synergies, “this would not necessarily provide a clear picture of the net gain in social welfare” because some of the gain may come from customers switching from cable. In so doing, the Commission established a standard that is as impossible to meet as it is to apply: Applicants may become better competitors as a result of a merger, but the synergies of the transaction must be reduced precisely because they are better competitors. Similarly, on the cost reduction side of the synergies analysis, the Commission ignored the fundamental economies of scale associated with combining the EchoStar and DIRECTV customer bases on programming, equipment and other costs. *See id.* at ¶ 208. Furthermore, in disregarding the Applicants' estimate of the net present value of future synergies that will accrue in the “out years” after the merger, it ignored billions of dollars in synergies that will be realized in the near term. *See id.* at ¶ 209.

<sup>89</sup> *See In the Matter of Applications for Consent to the Transfer of Control of Licenses, Comcast Corporation and AT&T Corp., Transferors, to AT&T Comcast Corporation, Transferee*, Applications and Public Interest Statement, Description of Transactions, Public Interest Showing and Related Demonstrations at 28-29 (Feb. 28, 2002) (“AT&T/Comcast Application”).

(“EBITDA”),”<sup>90</sup> he seems to have provided little evidence, and no model, to substantiate the estimates provided. Later in the proceeding, Steve Burke, President of Comcast Cable, reaffirmed the initial \$1.25-1.95 billion synergy estimate provided by Mr. Pick, but similarly failed to provide any concrete evidence to substantiate the estimates.”

Moreover, Mr. Pick stated that the projections and estimates provided are “necessarily based upon incomplete data and [are] inherently inexact.” Mr. Pick also acknowledged that “in the course of calculating potential synergies and efficiencies, it was necessary to rely upon the accuracy of data supplied to us and to make certain simplifying assumptions and estimates, which inevitably injected a level of uncertainty into the analysis.”<sup>92</sup> In addition, he noted that while some of these synergies and efficiencies “should be realized immediately or very soon after closing,” more than half of them may not be realized for **3** or more years following the closing and his cautionary language indicates that others may not be obtained at **all**.<sup>93</sup> Other submissions of synergies estimates in other proceedings are no different.

Of course, even the best synergies estimates are just that – estimates of things expected to happen in the future. Yet the Commission, while seeing no serious problem with the “inexact[ness]” and the three years or more time frame for most of the benefits claimed in the

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<sup>90</sup> AT&T/Comcast Application, Declaration of Robert Pick, at **3** (“Pick Declaration”). Mr. Pick also states that the aforementioned cost savings estimates do not include an estimated \$200 to \$300 million a year in savings on capital expenditures. *Id.*

<sup>91</sup> See Letter from A. Renee Callahan, Counsel to Comcast Corp., to Marlene H. Dortch, Secretary, FCC, at 28 (“Value Creations Through Synergies” presented by Steve Burke, President, Comcast Cable) (Redacted Version) (July 2, 2002). In his presentation, Mr. Burke lists the following five sources for the estimated synergies: (1) “programming cost savings”; (2) “continued operating efficiencies”; (3) “national advertising platform”; **(4)** “new products”; and **(5)** “Comcast telephony.” *See id.*

<sup>92</sup> Pick Declaration at **3-4**.

<sup>93</sup> *Id.* at 3.

AT&T/Comcast case, found these factors to be debilitating obstacles in this proceeding, stating with respect to the time frame: “[M]any of the Applicants’ efficiency claims are inherently speculative because they are not projected to occur until three or more years after consummation of the merger.”<sup>94</sup> And the Commission found faults in the itemized backup submitted by the Applicants, while AT&T and Comcast do not appear to have submitted any detailed itemization or backup whatsoever. In short, the Commission subjected the Applicants to disparate treatment by holding them to a more exacting standard of proof than in other complex merger proceedings. In fact, it appears that the only possible way to overcome the evidentiary hurdles erected by the Commission here would be if the Applicants had already consummated the transaction and had been able to observe empirically its benefits.

The unreasonably short time frame imposed by the Commission on recognition of benefits can be contrasted not only with *AT&T/Comcast* and other merger proceedings, but also with the Commission policies evident in every single satellite licensing proceeding. By their nature, satellites take a relatively long time to build, and New EchoStar I is no exception. For that reason, the benefits claimed by satellite applicants are typically expected to accrue over protracted periods of time – as much as 6 years from grant. This time frame, however, has not until this proceeding prevented the Commission from basing its public interest findings on

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<sup>94</sup> See HDO at ¶ 202. See also *id.* (“Another problem with the Applicants’ efficiency showing is that many of the claimed benefits appear highly speculative.”); *id.* at ¶209 (“[M]any of their other claimed cost savings appear to be either speculative or lacking in credibility.”); *id.* at ¶ 213; *id.* at ¶ 227 (“Clearly, the nascent state of this potential future service raises questions and uncertainties both as to the timing and scope of its implementation and as to the quality and price that will be achieved that cannot reasonably be answered at this time. Thus, it is highly speculative whether this alleged merger benefit will come into fruition within a reasonable timeframe.”); *id.* at ¶ 229 (“Based on the record evidence, we find that the Applicants have failed to demonstrate that the Merger will result in cognizable public interest benefits related to satellite broadband service. More specifically, . . . we find that Applicants’ benefits claims are speculative and not credible and do not appear to be merger specific.”).

precisely such claimed benefits?’ To refuse to recognize a benefit because it would accrue more than three years after the Commission action is literally shortsighted, especially in the context of the satellite industry, and does not serve the public interest.

The Commission’s criticism that the synergies model does not distinguish between public and private benefits is another example of discriminatory treatment at the Applicants’ expense. In fact, synergies models submitted in other merger proceedings have not distinguished between public and private benefits, and the synergies presentation made by AT&T and Comcast does not appear to have done so either.<sup>96</sup> Thus, the public record suggests that AT&T and Comcast did not submit a breakdown showing what portion of their \$1.25-1.95 billion synergies estimate would inure to the public. In fact, that distinction is the task of the economic experts, who consider the efficiencies expected from the merger in conjunction with the expected intensity of post-merger competition and estimate how many of these efficiencies will redound to the benefit of the consumer. The Applicants’ experts did so and were deliberately conservative, since they considered only a small portion of the efficiency benefits shown by the Applicants. The Commission ignored that work, however. At the same time, the Commission was not troubled by the absence of the distinction between public and private benefits from the AT&T/Comcast presentation, even though in that case each merger partner, even standing alone, is a dominant provider of both MVPD and broadband service.

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<sup>95</sup> See, e.g., *Application of Iridium LLC*, 16 FCC Rcd 13778 (2001) (2 GHz Mobile Satellite Service space station authorization with operational milestone six years from date of authorization); *Loral Space & Communications Ltd.*, 13 FCC Rcd 1379 (1997) (first-round Ka-band Fixed-Satellite Service authorization without any specific implementation milestones because inter-satellite link frequency assignments could not be made at time of licensing).

<sup>96</sup> See, e.g., AT&T/Comcast Application at 31 and Pick Declaration at 3 (“within five years, the Merger should result in synergies and efficiencies worth approximately \$1.25 to \$1.95 billion a year in increased Earnings Before Interest, Tax, Depreciation and Amortization.”)

**B. The Competition Concerns Associated With The Merger Are Not As Grave As The HDO Estimated.**

The Commission dismissed the simulation of the welfare benefits conducted by the Applicants' economic experts by stating that the elasticities estimates of the analysis were "fatally flawed" and explaining very little beyond that? More specifically, the Commission all but ignored the cornerstone of the Applicants' elasticity estimates – the diversion rates.<sup>98</sup> With respect to those rates, the Commission said only that, depending on the criteria for using the chum survey data evaluated by the Applicants' experts, the diversion rate between the two companies could be higher.<sup>99</sup>

This reasoning does not comply with the requirement of reasoned decision-making for two reasons: *first*, the Commission did not even cite the painstaking comparison of the two companies' subscriber databases done by the Applicants' experts, which shows the actual diversion rate between the two companies to be *lower* than suggested by the survey data under any set of standards.<sup>100</sup> These findings were disregarded even though they were *completely undisputed* in the record below. *Second*, the *Hearing Designation Order* substitutes higher chum numbers for those used by the Applicants without offering any explanation as to why these higher numbers are more correct.<sup>101</sup>

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<sup>97</sup> See *Hearing Designation Order* at ¶ 160, Appendix E at 123.

<sup>98</sup> See generally *id.* at ¶¶ 26-29.

<sup>99</sup> See *id.* at ¶ 26.

<sup>100</sup> See Economists Report on Further Analysis of the Diversion Ratio Between EchoStar and DIRECTV (September 13, 2002).

<sup>101</sup> See *Hearing Designation Order*, Appendix E at ¶ 30.

Even so, many of the Commission’s own calculations based on these higher rates resulted in significant net consumer benefits.<sup>102</sup> The Commission, however, disregarded these calculations and focused instead on its worst-case estimate. That estimate uses an astronomically high diversion rate between the companies, which even according to the Commission analysis cannot be the correct nationwide rate, and nevertheless applies it throughout the nation. That is, in producing its worst-case scenario, the Commission appears to assume contrary to reality that cable does not exist anywhere in the country,<sup>103</sup> disregarding its repeated recognition of cable operators as the dominant providers in the MVPD market. The Commission’s worst-case estimate also assumes that the merger will produce no marginal cost benefits whatsoever, and therefore does not balance the perceived harms against any benefits, contrary to the Commission’s own recognition that the merger will in fact result in some significant benefits.

In addition to substituting its own numbers in the Applicants’ merger simulation, the Commission conducted its own “analysis,” which the Commission itself recognized as “tentative” and only relevant until a “more reliable” and “verifiable” estimate is developed.<sup>104</sup> It appears from that description that the Commission’s analysis did not recognize *any* merger benefits and took account only of the reduction in the number of competitors. This is wrong for two reasons. *First*, it is inconsistent with the Commission’s own recognition that the merger stands to produce at least some benefits. *Second*, such an analysis proves nothing. *Any* merger of competitors in the same market leads to a reduction in the number of competitors and any analysis that does not take into account the efficiencies associated with that merger would

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<sup>102</sup> *See id.*

<sup>103</sup> *See HDO*, Appendix E, at ¶¶26, 30 (it appears from review of these passages that the Commission’s worst case “sensitivity analysis” assumes the entire nation is unserved by cable).

<sup>104</sup> *See id.* at ¶¶ 30-35.



therefore project a welfare loss for consumers – a tautological exercise that begs the real question and would lead, if it were relevant, to denial of every single merger proposal other than conglomerate mergers. Finally, the *Hearing Designation Order* does not even reveal the results of the staff’s analysis – an obvious lapse of the Commission’s responsibilities under the APA.

**C. The *Hearing Designation Order* Was Wrong about the Commission’s Spectrum Policy Precedent.**

The Commission’s “spectrum policy” concern with allowing one company to control all DBS locations that have nationwide coverage is based on a gerrymandered subset of the spectrum – not even the *Hearing Designation Order* maintains that there is a relevant full-CONUS DBS market. The locations in question are not the only ones allocated to the DBS service. In any event, the *Hearing Designation Order* is flatly wrong that the Commission has never “permitted a single commercial spectrum licensee to hold the entire available spectrum allocated to a particular service,”<sup>105</sup> or that the Applicants “have cited no example” where the Commission has done so.<sup>106</sup>

As the Applicants pointed out in their Opposition to Petitions to Deny the Application, the Commission has, in fact, sanctioned the use of the spectrum allocated to a particular service by one licensee. *See* Applicants’ Opp’n to Petitions to Deny and Reply Comments at 33. When the Commission first established the Mobile Satellite Service (“MSS”) in the L-band, it received competing Applications from 12 companies, invited all the Applicants to form one consortium, American Mobile Satellite Corporation, and gave one license to that entity. The Commission purposefully elected to license one large consortium as opposed to multiple smaller entities because, among other things: a larger amount of bandwidth would

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<sup>105</sup> *Id.* at ¶ 277.

<sup>106</sup> *Id.*

permit a greater variety of services to be provided by an **MSS** system, and a larger customer base to be served; the high cost of an **MSS** system and the amount of spectrum available for **MSS** warranted the licensing of one initial **MSS** system using the entire allocated spectrum; and joint ownership of an **MSS** system would best permit a variety of competitive mobile satellite services to be made expeditiously available to the public.<sup>107</sup>

These same considerations would justify to a much greater extent here the creation of New EchoStar even if there were not ample other spectrum in the same band available for other competing providers.

## **V. SECTION 304 WAIVER**

In accordance with Section 304 of the Communications Act of 1934, 47 U.S.C. § 304, Applicants hereby waive any claim to the use of any particular frequency or of the electromagnetic spectrum because of previous use of the same, whether by license or otherwise.

## **VI. CONCLUSION**

The proposed merger between EchoStar and Hughes presents extraordinary efficiencies that will benefit consumers across the country. The merger will enable New

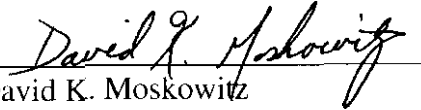
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<sup>107</sup> See *Amendment of Parts 2, 22 and 25 of the Commission's Rules to Allocate Spectrum for, and to Establish Other Rules and Policies Pertaining to the Use of Radio Frequencies in a Land Mobile Satellite Service for the Provision of Various Common Carrier Services*, 2 FCC Rcd. 485 (1987), *recon. denied*, 4 FCC Rcd. 6016 (1989); *Amendment of Parts 2, 22 and 25 of the Commission's Rules to Allocate Spectrum for, and to Establish Other Rules and Policies Pertaining to the Use of Radio Frequencies in a Land Mobile Satellite Service for the Provision of Various Common Carrier Services*, 4 FCC Rcd. 6041 (1989), *rev'd in part and remanded*, *Aeronautical Radio, Inc. v. FCC*, 928 F.2d 428 (D.C. Cir. 1991), *on remand*, *Amendment of Parts 2, 22 and 25 of the Commission's Rules to Allocate Spectrum for and to Establish Other Rules and Policies Pertaining to the Mobile Satellite Service for the Provision of Various Common Carrier Services*, 6 FCC Rcd. 4900 (Aug. 2, 1991); *Amendment of Parts 2, 22 and 25 of the Commission's Rules to Allocate Spectrum for and to Establish Other Rules and Policies Pertaining to the Use of Radio Frequencies in a Land Mobile Satellite Service for the Provision of Various Common Carrier Services*, 7 FCC Rcd. 266 (1992), *petitions for review dismissed*, *Aeronautical Radio, Inc. v. FCC*, 983 F.2d 275 (D.C. Cir. 1993).

EchoStar to offer a variety of new, enhanced and expanded services, including broadly deployed, affordable satellite Internet access service, that simply will not be available in the absence of the merger. Although the divestiture reduces the value of the merger synergies to some extent due to the reduction in spectrum available to New EchoStar, the current proposal is a realistic and practical means to ensure that the number of **MVPD** and **DBS** competitors is not reduced, while competition is enhanced with the efficiencies of the merger. Under the proposal, Rainbow will enter with the support of an experienced, successful **MSO** with a proven track record and an established infrastructure, Motorola and its distributors, and a programming affiliate with valuable content, as well as state-of-the *art* technology, reselling New EchoStar services and having an enhanced opportunity to attract New EchoStar subscribers in need of an upgrade. By enabling Rainbow to compete with a full-featured offering across the entire country, the proposal substantially increases its chance of commercial success. The combination of a substantially strengthened entrant and the substantially strengthened merged firm, both with greater capacity and lower costs than without the merger, will greatly increase competition throughout the country, and give all **MVPD** consumers more options and more choices than they would have if the merger is blocked.

**Respectfully submitted,**

**EchoStar Communications Corporation**

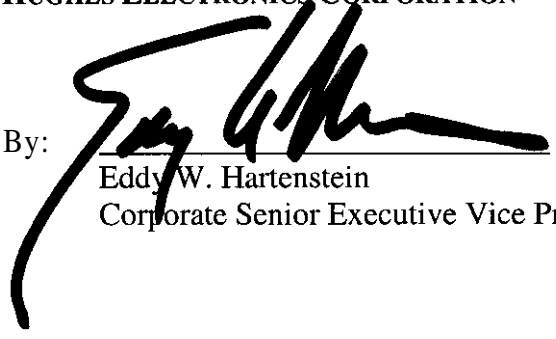
A handwritten signature in black ink, reading "David K. Moskowitz", is written over a horizontal line.

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Dated: 11/27/02

**HUGHES ELECTRONICS CORPORATION**

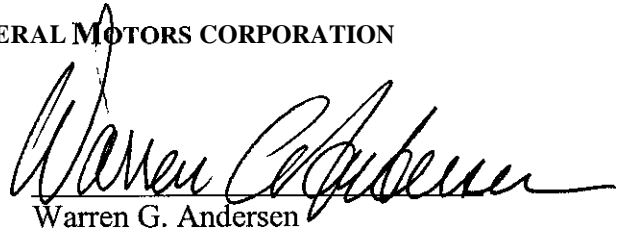
By:

A large, stylized handwritten signature in black ink, written over a horizontal line. The signature is cursive and appears to read 'Eddy W. Hartenstein'. The ink is thick and the strokes are fluid.

Eddy W. Hartenstein  
Corporate Senior Executive Vice President

**GENERAL MOTORS CORPORATION**

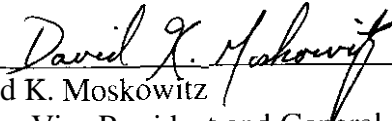
By:

A handwritten signature in black ink, appearing to read "Warren G. Andersen", written over a horizontal line.

Warren G. Andersen  
Assistant General Counsel and  
Assistant Secretary

**Respectfully submitted,**

**EchoStar Communications Corporation**

A handwritten signature in black ink, reading "David K. Moskowitz", written over a horizontal line.

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Dated: 11/27/02

## CERTIFICATE OF SERVICE

I hereby certify that on this 27<sup>th</sup> day of November 2002, a copy of the foregoing

was sent by first-class mail (or by hand delivery as indicated by asterisk) to the following:

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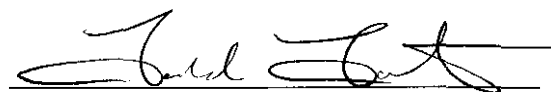
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Todd B. Lantor

**FCC 312**  
Main Form

**FEDERAL COMMUNICATIONS COMMISSION**

**APPLICATION FOR SATELLITE SPACE AND EARTH STATION AUTHORIZATIONS**

Approved by OMB  
3060-0678  
Est. Avg Burden Hours  
Per Response 11 Hrs

FCC Use Only

File Number

Call Sign

Fee Number

**APPLICANT INFORMATION**

1. Legal Name of Applicant <u>EchoStar Communications Corporation (a Delaware corporation)</u>		2. Voice Telephone Number - - 0	
3. Other Name Used for Doing Business (if any)		4. Fax Telephone Number 303	
5. Mailing Street Address or P.O. Box 5701 South Santa Fe  ATTENTION: David K. Moskowitz		6. City Littleton	7. State / Country (if not U.S.A.) CO
		8. Zip Code 80120	
Pantelis Michalopoulos		202-429-6494	
11. Firm or Company Name Steptoe & Johnson LLP		12. Fax Telephone Number 202-429-3902	
13. Mailing Street Address or P.O. Box 1330 Connecticut Avenue, N.W.  ATTENTION		14. City Washington	15. State / Country (if not U.S.A.)
		16. Zip Code	

<input type="checkbox"/> a1. Earth Station	<input type="checkbox"/> b1. Application for License of New Station	<input type="checkbox"/> b6. Transfer of Control of License or Registration
<input checked="" type="checkbox"/> a2. Space Station	<input type="checkbox"/> b2. Application for Registration of New Domestic Receive-Only Station	<input type="checkbox"/> b7. Notification of Minor Modification
	<input checked="" type="checkbox"/> b3. Amendment to a Pending Application	<input type="checkbox"/> b8. Application for License of New Receive-Only Station Using Non-U.S. Licensed Satellite
	<input type="checkbox"/> b4. Modification of License or Registration	<input type="checkbox"/> b9. Letter of Intent to Use Non-U.S. Licensed Satellite to Provide Service in the United States
	<input type="checkbox"/> b5. Assignment of License or Registration	<input type="checkbox"/> b10. Other (Please Specify): _____
18. If this filing is in reference to an existing station, enter: Call sign of station:		19. If this filing is an amendment to a pending application enter: (a) Date pending application was filed Dec. 3, 2001
		(b) File number of pending application: SAT-T/C-20011204-00114

### TYPE OF SERVICE

20. NATURE OF SERVICE: This filing is for an authorization to provide or use the following type(s) of service(s): Place an "X" in the box(es) next to all that apply.

a. Fixed Satellite      c. Radiodetermination Satellite       e. Direct to Home Fixed Satellite  
 b. Mobile Satellite      d. Earth Exploration Satellite       f. Digital Audio Radio Service       g. Other (please specify) Broadcasting Satellite Service

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21. STATUS: Place an "X" in the box next to the applicable status. Mark only one box.

a. Common Carrier       b. Non-Common Carrier

22. If earth station applicant, place an "X" in the box(es) next to all that apply.

a. Using U.S. licensed satellites       b. Using Non-U.S. licensed satellites      N/A

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23. If applicant is providing INTERNATIONAL COMMON CARRIER service, see instructions regarding Sec. 2.14 filings. Mark only one box. Are these facilities:

a. Connected to the Public Switched Network       b. Not connected to the Public Switched Network      N/A

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24. FREQUENCY BAND(S): Place an "X" in the box(es) next to all applicable frequency band(s).

a. C-Band (4-6 GHz)  
 b. Ku-Band (12-14 GHz)      X . Other (Please specify) 12000-12700 MHz; 17300-17800 MHz

### TYPE OF STATION

25. CLASS OF STATION: Place an "X" in the box next to the class of station that applies. Mark only one box.

a. Fixed Earth Station       b. Temporary-Fixed Earth Station       c. 12/14GHz VSAT Network       d. Mobile Earth Station       e. Space Station       f. Other (Specify) \_\_\_\_\_

If space station applicant, go to Question 27.

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26. TYPE OF EARTH STATION FACILITY: Mark only one box.

a. Transmit/Receive       b. Transmit-Only       c. Receive-Only      N/A

### PURPOSE OF MODIFICATION OR AMENDMENT

7. The purpose of this proposed modification or amendment is to: Place an "X" in the box(es) next to all that apply.

a -- authorization to add new emission designator and related service  
 b -- authorization to change emission designator and related service  
 c -- authorization to increase EIRP and EIRP density  
 d -- authorization to replace antenna  
 e -- authorization to add antenna  
 f -- authorization to relocate fixed station  
 g -- authorization to change assigned frequency(ies)  
 h -- authorization to add Points of Communication (satellites & countries)  
 i -- authorization to change Points of Communication (satellites & countries)  
 j -- authorization for facilities for which environmental assessment and radiation hazard reporting is required  
 k -- Other (Please Specify) Amendment to pending transfer of control application

### ENVIRONMENTAL POLICY

28. Would a Commission grant of any proposal in this application or amendment have a significant environmental impact as defined by 47 CFR 1.13071?  YES       NO

If YES, submit the statement as required by Sections 1.1308 and 1.1311 of the Commission's rules, 47 C.F.R. §§ 1.1308 and 1.1311, as an exhibit to this application.

A Radiation Hazard Study must accompany all applications as an exhibit for new transmitting facilities, major modifications, or major amendments. Refer to OET Bulletin 65.

### ALIEN OWNERSHIP

29. Is the applicant a foreign government or the representative of any foreign government?	<input type="checkbox"/> YES	<input checked="" type="checkbox"/> NO
30. Is the applicant an alien or the representative of an alien?	<input type="checkbox"/> YES	<input checked="" type="checkbox"/> NO
31. Is the applicant a corporation organized under the laws of any foreign government?	<input type="checkbox"/> YES	<input checked="" type="checkbox"/> NO
32. Is the applicant a corporation of which more than one-fifth of the capital stock is owned of record or voted by aliens or their representatives or by a foreign government or representative thereof or by any corporation organized under the laws of a foreign country?	<input type="checkbox"/> YES	<input checked="" type="checkbox"/> NO
33. Is the applicant a corporation directly or indirectly controlled by any other corporation of which more than one-fourth of the capital stock is owned of record or voted by aliens, their representatives, or by a foreign government or representative thereof or by any Corporation organized under the laws of a foreign country?	<input type="checkbox"/> YES	<input checked="" type="checkbox"/> NO
34. If any answer to questions 29, 30, 31, 32 and/or 33 is Yes, attach as an exhibit, the identification of the aliens or foreign entities, their nationality, their relationship to the applicant, and the percentage of stock they own or vote.		

### BASIC QUALIFICATIONS

35. Does the applicant request any waivers <i>or</i> exemptions from any of the Commission's Rules? If Yes, attach as an exhibit, copies of the requests for waivers or exceptions with supporting documents.	<input type="checkbox"/> YES	<input checked="" type="checkbox"/> NO
16. Has the applicant or any party to this application had any FCC station authorization or license revoked or had any application for an initial, modification or renewal of FCC station authorization, license, or construction permit denied by the Commission? If Yes, attach as an exhibit, an explanation of the circumstances.	<input checked="" type="checkbox"/> YES	<input type="checkbox"/> NO
17. Has the applicant, or any party to this application, or any party directly or indirectly controlling the applicant ever been convicted of a felony by any state or federal court? If Yes, attach as an exhibit, an explanation of the circumstances.	<input type="checkbox"/> YES	<input checked="" type="checkbox"/> NO
38. Has any court finally adjudged the applicant, or any person directly or indirectly controlling the applicant, guilty of unlawfully monopolizing or attempting unlawfully to monopolize radio communication, directly or indirectly, through control of manufacture or sale of radio apparatus, exclusive traffic arrangement or any other means or unfair methods of competition? If Yes, attach as an exhibit, an explanation of the circumstances.	<input type="checkbox"/> YES	<input type="checkbox"/> NO
19. Is the applicant, or any person directly or indirectly controlling the applicant, currently a party in any pending matter referred to in the preceding two items? If Yes, attach as an exhibit, an explanation of the circumstances.	<input checked="" type="checkbox"/> YES	<input type="checkbox"/> NO
10. If the applicant is a corporation and is applying for a space station license, attach as an exhibit the names, addresses, and citizenship of those stockholders owning of record and/or voting 10 percent or more of the Filer's voting stock and the percentages so held. In the case of fiduciary control, indicate the beneficiary(ies) or class of beneficiaries. Also list the names and addresses of the officers and directors of the Filer.		
41. By checking Yes, the undersigned certifies, that neither the applicant nor any other party to the application is subject to a denial of Federal benefits that includes FCC benefits pursuant to Section 5301 of the Anti-Dmg Act of 1988, 21 U.S.C. Section 862, because of a conviction for possession or distribution of a controlled substance. See 47 CFR 1.2002(b) for the meaning of "parrty to the application" for these purposes.	<input checked="" type="checkbox"/> YES	<input type="checkbox"/> NO
12a. Does the applicant intend to use a non-US. licensed satellite to provide service in the United States? If yes, answer 42b and attach an exhibit providing the information specified in 47 C.F.R. §25.137, as appropriate. If no, proceed to question 43.	<input type="checkbox"/> YES	<input checked="" type="checkbox"/> NO
42b. What administration has licensed or is in the process of licensing the space station? If no license will be issued, what administration has coordinated or is in the process of coordinating the space station? <u>          N/A          </u>		

43. Description. (Summarize the nature of the application and the services to be provided)

See Exhibit D.

Exhibit No. Identify all exhibits that are attached to this application.

A Response to Question 36

B Response to Question 39

C Response to Question 40

D Response to Question 43

E Response to Question 48

F Response to Question A21

**CERTIFICATION**

The Applicant waives any claim to the use of any particular frequency or of the electromagnetic spectrum as against the regulatory power of the United States because of the previous use of the same, whether by license or otherwise, and requests an authorization in accordance with this application. The applicant certifies that grant of this application would not cause the applicant to be in violation of the spectrum aggregation limit in 47 CFR Part 20. All statements made in exhibits are a material part hereof and are incorporated herein as if set out in full in this application. The undersigned, individually and for the applicant, hereby certifies that all statements made in this application and in all attached exhibits are true, complete and correct to the best of his or her knowledge and belief, and are made in good faith.

14. Applicant is a (an): (Place an "X" in the box next to applicable response.)

- a. Individual
- b. Unincorporated Association
- c. Partnership
- d. Corporation
- e. Governmental Entity
- f. Other (Please specify)

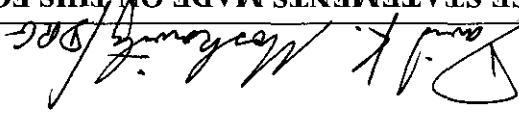
15. Typed Name of Person Signing

David K. Moskowitz

16. Title of Person Signing

Senior Vice President and General Counsel

17. Signature



18. Date

11/27/2002

**WILLFUL FALSE STATEMENTS MADE ON THIS FORM ARE PUNISHABLE BY FINE AND/OR IMPRISONMENT (U.S. Code, Title 18, Section 1001), AND/OR REVOCATION OF ANY STATION AUTHORIZATION (U.S. Code, Title 47, Section 312(a)(1)), AND/OR FORFEITURE (U.S. Code, Title 47, Section 503).**

FEDERAL COMMUNICATIONS COMMISSION

FCC 312 - Schedule A

(Place an "X" in one of the blocks below)

FCC Use Only

CONSENT TO TRANSFER OF CONTROL       CONSENT TO ASSIGNMENT OF LICENSE  
 NOTIFICATION OF TRANSFER OF CONTROL OF RECEIVE ONLY REGISTRATION       NOTIFICATION OF ASSIGNMENT OF RECEIVE ONLY REGISTRATION

A1. Name of Licensee or Registrant EchoStar Satellite Corporation				A2. Voice Telephone Number 303-723-1000	
A3. Mailing Street Address or P.O.Box 5701 South Santa Fe ATTENTION: David K. Moskowitz				A4. Fax Telephone Number 303-723-1699	
A5. City Littleton		A6. State / Country (if not U.S.A.) CO		A7. Zip Code 80120	
A8. List Call Sign(s) of station(s) being assigned or transferred DBS 88-01; DBS 88-02 (See Exhibit E)					A9. No. of station(s) listed
A10. Name of Transferor/Assignor (if different than licensee or registrant) EchoStar Communications Corporation (a Nevada corporation)			A15. Name of Transferee/Assignee EchoStar Communications Corporation (a Delaware corp.)		
A11. Mailing Street Address or P.O. Box 5701 South Santa Fe			A16. Mailing Street Address or P.O. Box 5701 South Santa Fe		
A12. City Littleton	A13. State/Country CO	A14. Zip Code 80120	A17. City Littleton	A18. State/Country CO	A19. Zip Code 80120
within 30 days of consummation.					
A22. Printed Name of Licensee (Must agree with A1) EchoStar Satellite Corporation		A23. Signature <i>David K. Moskowitz / DRG</i>		A24. Title (Office Held by Person Signing) SVP & General Counsel	
A26. Printed Name of License Transferor/Assignor (If different than licensee. Must agree with A10) EchoStar Communications Corp.		A27. Signature <i>David K. Moskowitz / DRG</i>		A28. Title (Office Held by Person Signing) SVP & General Counsel	
A30. Printed Name of License Transferee/Assignee (Must agree with A15) EchoStar Communications Corp.		A31. Signature <i>David K. Moskowitz / DRG</i>		A32. Title (Office Held by Person Signing) SVP & General Counsel	
				A25. Date 11/27/02	
				A29. Date 11/27/02	
				A33. Date 11/27/02	

**Response to Question 36**

In a Memorandum Opinion and Order released May 16,2002, the Satellite Division of the International Bureau cancelled EchoStar's conditional construction permit for 22 channels at the 175° W.L. orbital location. *See In the Matter of EchoStar Satellite Corporation, Directsat Corporation, Direct Broadcasting Satellite Corporation, Consolidated Request for Additional Time to Commence Operation*, Memorandum Opinion and Order, **DA 02-1164** (rel. May 16,2002).

By Order released July 1,2002, the International Bureau cancelled EchoStar's license for a Ka-band satellite system and dismissed a related modification application filed by EchoStar. *See In the Matter of EchoStar Satellite Corporation; Application for Authority to Construct, Launch, and Operate a Ka-band Satellite System in the Fixed-Satellite Service*, Memorandum Opinion and Order, **DA 02-1534** (rel. July 1,2002). On November 8,2002, the International Bureau reinstated license for a Ka-band system and reinstated the related modification application. *See In the Matter of EchoStar Satellite Corporation; Application for Authority to Construct, Launch, and Operate a Ka-band Satellite System in the Fixed-Satellite Service*, Memorandum Opinion and Order, **DA 02-3085** (rel. Nov. 8,2002).

## Response to Question 39

1. State Department Review  
In 1996, two Hughes employees participated in a committee formed to review the findings of Chinese engineers regarding the failure of a Long March rocket in China. A grand jury investigation of potential export control law violations arising from the actions of the two employees was closed without issuing charges. However, Hughes is subject to the authority of the United States State Department to impose sanctions for non-criminal violations of the Arms Export Control Act. To date, the State Department has not imposed sanctions.
2. Bischoff, et al. v. DIRECTV, et al.  
In September 2000, a putative class action was commenced against DIRECTV, Thomson Consumer Electronics, Best Buy Co., Circuit City Stores and Tandy Corporation. The named plaintiffs purport to represent a class of all consumers who purchased DIRECTV equipment and services any time from March 1996 to September 1, 2000, and allege that defendants have violated federal and California antitrust statutes by entering into agreements to exclude competition and force retailers to boycott competitors' products and services. Motion to compel arbitration with named plaintiffs was granted. The parties subsequently agreed to dismiss class allegations and settle and dismiss the named plaintiffs' claims for a small non-material sum.
3. Kingray, et al. v. NBA, et al.,  
Kingray, et al. v. NHL, et al.  
Putative class actions against NBA and NHL, its member teams and DIRECTV. Plaintiffs allege that the distribution agreements between the leagues and DIRECTV violate the antitrust laws. DIRECTV's motion to dismiss the complaint was granted with leave to amend. The second motion to dismiss was granted with prejudice with respect to federal antitrust claims, and without prejudice with respect to state law claims. The parties have settled the cases by the plaintiffs' agreeing not to re-file their state-law claims in state court and DIRECTV agreeing not to pursue its claim for attorneys' fees.
4. Cable Connections, Inc., et al. v. DIRECTV, Inc., et al.  
In May 2001, plaintiffs filed a class action complaint in Oklahoma State Court alleging claims including breach of contract and fiduciary duty, fraud, promissory estoppel, antitrust and unfair competition. The four plaintiffs are independent DIRECTV retailers who claim to be bringing the complaint on behalf of all independent retailers, including former PRIMESTAR and USSB retailers. In August 2001, the case was stayed and the court ordered the individual plaintiffs to pursue their claims in arbitration. After seven months of inactivity, plaintiffs filed a motion for class certification of their claims in arbitration. DIRECTV opposed this late request filed in contravention of the court's stay order, but the court entered an order indicating that it would retain jurisdiction in order to determine whether the prerequisites for class treatment exist. DIRECTV is appealing the order.



**Response to Question 40**

See narrative description in Applicants' Consolidated Application for Authority to Transfer Control.'

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<sup>1</sup> *See* Consolidated Application of EchoStar Communications Corporation, General Motors Corporation, Hughes Electronics Corporation, Transferors, and EchoStar Communications Corporation, Transferee, for Authority to Transfer Control, CS Docket No. 01-348, Exhibits D and E (filed Dec. 3,2001).

**Response to Question 43**

This amendment to the pending transfer of control application filed by EchoStar Communications Corporation (“Echostar”), General Motors Corporation and Hughes Electronics Corporation (“Hughes”) (collectively, the “Applicants”),’ is being filed to ameliorate the concerns identified by the Commission regarding the proposed merger transaction between EchoStar and Hughes. As described in the narrative portion of this amendment, the Applicants request approval of the merger conditioned on the consummation of a divestiture agreement that will include assignment of EchoStar’s FCC authorizations to provide DBS service from the 61.5° W.L. and 148°W.L orbital locations and associated satellite resources to R/L DBS Company, LLC (“Rainbow”), as well as other measures, which will ensure the creation and competitive viability of an additional facilities-based DBS competitor -- Rainbow, an indirect wholly-owned subsidiary of Cablevision Systems Corporation.

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<sup>1</sup> *See* Consolidated Application of EchoStar Communications Corporation, General Motors Corporation, Hughes Electronics Corporation, Transferors, and EchoStar Communications Corporation, Transferee, for Authority to Transfer Control, CS Docket No. 01-348 (filed Dec. 3, 2001); *see also* File No. SAT-T/C-20011204-00114.

## Response to Question AS

Amended List of EchoStar Satellite Corporation's DBS Authorizations  
to be Transferred to New EchoStar

DBS Location	Call Sign/File Number
61.5° W.L. 11 channels)	DBS 88-08; File No. 15-SAT-ML-98; Letter from Regina M. Keeney, Bureau Chief, FCC, to Direct Broadcasting Satellite Corp., 13 FCC Rcd 10395, DA 98-161 (1998)
10° W.L. 1 channel)	File No. SAT-MOD-19990419-00043; <i>EchoStar Satellite Corp.</i> , 15 FCC Rcd. 6727, DA 99-1758 (1999)
19° W.L. 21 channels)	DBS 88-01; File No. 68-SAT-ML-96; Letter from Donald H. Gips, Bureau Chief, FCC, to EchoStar Satellite Corp., 11 FCC Rcd. 16468, DA 96-1983 (Nov. 26, 1996)  DBS 88-02; File No. 6-SAT-ML-97; Letter from Donald H. Gips, Bureau Chief, FCC, to EchoStar Satellite Corp., 11 FCC Rcd. 16465, DA 96-1983 (Nov. 26, 1996)  File Nos. 70-SAT-MP/ML-98, 71-SAT-MP/ML-98, 72-SAT-MP/ML-98; <i>EchoStar Satellite Corp., Directsat Corp., and EchoStar DBS Corp.</i> , 13 FCC Rcd. 8595, DA 98-794 (1998)  File Nos. SAT-MOD-19971230-00231, SAT-MOD-19971230-00235; <i>EchoStar Satellite Corp.</i> , 15 FCC Rcd. 23636, DA 00-2383 (2000)
148° W.L. 24 channels)	S2231; File No. 74-SAT-Pa-96; <i>EchoStar DBS Corp.</i> , 12 FCC Rcd. 11946, DA 96-2164 (1996)  File Nos. 70-SAT-MP/ML-98, 71-SAT-MP/ML-98, 72-SAT-MP/ML-98; <i>EchoStar Satellite Corp., Directsat Corp., and EchoStar DBS Corp.</i> , 13 FCC Rcd. 8595, DA 98-794 (1998)  File Nos. SAT-MOD-19971230-00231, SAT-MOD-19971230-00235; <i>EchoStar Satellite Corp.</i> , 15 FCC Rcd. 23636, DA 00-2383 (2000)

\* Indicates that the authorizations for the 61.5° W.L. and 148° W.L. orbital slots initially transferred to New EchoStar will be subsequently assigned to R/L DBS Company, LLC, pursuant to a divestiture requirement proposed in the amended transfer of control application, as a condition to grant. The narrative section of the amended application, including the public interest statement, is incorporated by reference herein.

**Response to Question A.21**

For a complete statement of public interest, see the narrative portions of the Applicants' Amendment to Consolidated Application for Authority to Transfer Control (Section III) (attached hereto) and the Applicants' Consolidated Application for Authority to Transfer Control (Section II).<sup>1</sup>

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<sup>1</sup> *See* Consolidated Application of EchoStar Communications Corporation, General Motors Corporation, Hughes Electronics Corporation, Transferors, and EchoStar Communications Corporation, Transferee, for Authority to Transfer Control, CS Docket No. 01-348 (filed Dec. 3, 2001).