Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Application of EchoStar Communications	)	
Corporation, General Motors Corporation,	)	CS Docket No. 01-348
Hughes Electronics Corporation	)	
Transferors and EchoStar Communications	)	
Corporation, Transferee	)	
For Authority to Transfer Control	)	

Petition to Deny of Communications Workers of America

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Dated: February 4, 2002

The Communications Workers of America (CWA) urges the Commission to deny the joint application of Hughes Electronics Corporation ("Hughes"), General Motors Corporation, and EchoStar Communications Corporation ("EchoStar") to transfer control of licenses and authorizations held by Hughes and its subsidiaries and affiliates and by EchoStar and its subsidiaries and affiliates to EchoStar.

CWA is a labor organization, with more than 700,000 members employed in telecommunications, broadcasting, cable, publishing, airlines, higher education, manufacturing, health care, state and local government, and other public and private sector organizations. CWA members have an interest in these proceedings as workers and as consumers. Many CWA members live in rural areas where direct broadcast satellite is the only option for multi-channel video programming.

The proposed transfer is not in the public interest. The merger would combine the only two national and competing Direct Broadcast Satellite (DBS) service providers--EchoStar's DISH Network and Hughes' DirecTV—into one provider serving 90 percent of the satellite programming market.[1] There are an estimated 20 – 25 million U.S. households that do not have access to cable television and rely solely on satellite for multi-channel video programming.[2] In

1 Seth Schiesel, "Look, Up in the Sky!" *The New York Times*, Oct. 30, 2001, C-1.
2 The estimate of 20 million homes with no cable television access is from Robert Litan, *Chicago Tribune,*Dec. 16, 2001. The Rural Utilities Service and National Telecommunications and Information Administration note that as many as 19 percent of U.S. households—25 million households--do not have cable TV access. *See* Rural Utilities Service and National Telecommunications and Information Administration, *Advanced Telecommunications in Rural America: The Challenge of Bringing Broadband Service to All Americans,* April 2000, 19.

these primarily rural areas, the proposed merger would reduce from two to one the number of multi-channel video programming distributors. For all other U.S. households, the proposed merger would reduce the number of multi-channel video programming distributors in a market from three to two (the cable monopoly and the new EchoStar monopoly).

The reduced competition will allow the new EchoStar to exercise market power either unilaterally or in concert with the cable monopoly to raise consumer and programmers' prices and to reduce the quality and diversity of service. Consumers will have no alternative but to pay the price or lose access to multi-channel video programming. Program providers will have no choice either, particularly since the new EchoStar will be the largest national distributor of multi-channel video programming, with more than 17 million customers. Program distributors will have no alternative but to pay the price to reach this audience. EchoStar will become a powerful gatekeeper, controlling the price of programmer's access to 17 million U.S. homes.

More than 80 members of Congress from primarily rural districts have expressed their concerns about the anti-competitive impact of the proposed merger to this Commission, noting "the rural consumers that presently have a choice between two fiercely competitive satellite providers will be subjected to an unchecked monopoly provider if the merger is approved without appropriate consumer protections."[3] Senator Max Baucus estimates that in his home state of Montana, there

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3 Letter to FCC Chairman Michael Powell and Attorney General John Ashcroft signed by more than 80 members of the Rural Caucus of the House of Representatives dated xx.

are roughly 130,000 households with no cable access who will have no choice should the Commission approve the proposed merger.[4]

By any measure, the proposed merger would result in serious anti-competitive harm and is in clear violation of U.S. anti-trust laws. In a proceeding with many parallels to this one, the U.S. Department of Justice (DOJ) sued to block the proposed merger between MCI WorldCom and Sprint, then the second and third largest long-distance providers and the two largest Internet backbone carriers. The DOJ noted that the proposed merger would cause serious anti-competitive harm because it would "reduce competition…and raise prices for millions of consumers and businesses."[5] The DOJ also stated in its complaint that the proposed merger would "undermine the competitive gains" achieved in challenging AT&T's monopoly, the preservation of which was "critical to the economy."[6] Similarly, the proposed merger in this instant proceeding would undermine the competitive gains in providing consumers and content providers alternatives in multi-channel video program distribution.

EchoStar and Hughes argue that the proposed merger will provide the scale necessary to compete more effectively against the large cable companies. This argument ignores the fact that Hughes' DirecTV with more than 10.3 million subscribers and EchoStar's DISH Network with

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4 Sen. Max Baucus letter to FCC Chairman Michael Powell, Nov. 19, 2001.
5 U.S. Department of Justice, "Justice Department Sues to BlockWorldCom's Acquisition of Sprint," June 27, 2000. Subsequently, MCI WorldCom and Sprint cancelled their merger plans and withdrew their merger application before the FCC on July 13, 2000.
6 *Id.*

more than 6 million subscribers compare in size to the nation's top cable companies, including AT&T (14.4 million subscribers), AOL Time Warner (12.7 million subscribers), Comcast (8.4 million subscribers), and Charter (6.9 million subscribers), Cox (6.9 million subscribers), and Adelphia (5.7 million subscribers).[7] DirecTV and EchoStar already compete successfully against the cable companies, with growth rates far surpassing those of the cable companies.

The Commission must evaluate the proposed merger in light of current market conditions, while at the same time considering the impact on future developments in the market. The Commission is currently in the midst of a proceeding to determine the horizontal and vertical limits for cable television ownership.[8] The Commission and other regulatory agencies will soon initiate a review of the proposed AT&T/Comcast merger. In each of these proceedings, the Commission must consider the impact on consumers if one or two companies are allowed through merger to dominate the national market for multi-channel video program distribution. The issue is fundamental to our democracy.

In their joint application, EchoStar and Hughes claim that the proposed merger will have many public interest benefits. CWA believes that the Commission should review EchoStar's past behavior to evaluate whether such promises should be trusted. Certainly, EchoStar has been less

7 Schiesel, Oct. 30, 2001.
8 FCC, *Further Notice of Proposed Rulemaking*, CS Docket Nos. 98-92, 96-85, MM Docket No. 92-264, Sept. 13, 2001.

than trustworthy in meeting its legal obligations to provide broadcasters and public, educational, and governmental programmers signal access.

CWA submits for the record its own experience dealing with EchoStar. In May 2001, CWA Local 1108 won an election to represent a unit of installation and service technicians employed by EchoStar's DISH Network in Farmingdale, NY. The unit installs and services DISH network throughout Long Island. Since May 2001, DISH Network has refused to engage in serious collective bargaining with this new unit and has taken actions designed to undermine employees' right to free association under the National Labor Relations Act, including discharge of a union activist without just cause and rescission of an announced pay increases.[9] DISH Network continues to stall progress toward a first contract.

Pursuant to section 214(a) of the Communications Act, the Commission must determine that a proposed merger is in the public interest. The Applicants bear the burden of proving, by a preponderance of the evidence, that the proposed transaction serves the public interest. The joint applicants have failed to meet this standard. The anti-competitive harm of merging the only two national Direct Broadcast Satellite providers into a single monopoly provider is so substantial that the Commission should deny the joint applicants' merger request.

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9 CWA Local 1108 filed a complaint with the National Labor Relations Board. CWA Local 1108 and DISH Network settled the complaint on December 10, 2001. DISH Network agreed to provide back pay to the fired employee and to provide employees with the previously announced pay increase. National Labor Relations Board Settlement Agreement, In the Matter of DISH Network Sevice Corp. and Local 1108, Communications Workers of America, AFL-CIO, Case Nos. 29-CA-24241, 29-CA-24261, 29-CA-24272, 29-CA-24440 and 29-CA-24461, Dec.

Respectfully submitted,

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Dated: February 4, 2002

10, 2001.