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July 23, 2002

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W. Kenneth Ferree
Chief, Media Bureau
Federal Communications Commission
455 12th Street, S.W.
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JUL 24 2002

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Re: Consolidated Application of EchoStar Communications Corporation,
General Motors Corporation and Hughes
Electronics Corporation for Authority to Transfer of Control,
CS Docket No. 01-348

Dear Mr. Ferree:

On July 11, 2002, an ex-parte filing was made in the above referenced proceeding by Cablevision Systems Corporation and R/L DBS Company ("hereinafter, together "Rainbow DBS") regarding a meeting by representatives of Rainbow DBS and its counsel with members of the Commission's staff considering the above referenced application. This letter responds to Rainbow DBS's Divestiture plan set forth in its ex-parte filing in so far as it provides for "EchoStar to assign to Rainbow DBS all of its rights to 6 Dominion channels" and Dominion sets forth below why such an assignment would be contrary to the Commission's requirements and the public interest without the prior consent of Dominion.

Dominion is the licensee of eight channels at 61.5 degrees W. L. and it has leased capacity on the EchoStar 3 satellite at that location for its eight licensed channels. Dominion has sub-leased six of its licensed channels to EchoStar for the life of the EchoStar 3 satellite. Rainbow DBS seeks to have EchoStar's leased rights

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W. Kenneth Ferree

July 23, 2002

Page 2

assigned to it. However, the request of Rainbow DBS overlooks other significant contractual obligations between Dominion and EchoStar.

Dominion has already informed members of the Commission's staff of the Direct Broadcast Service Transponder Lease, Channel Use and Programming Agreement ("Agreement") entered into by Dominion and EchoStar in 1996 of which the sublease of Dominion's six channels to EchoStar is only one part. The Agreement also provides for Dominion subscribers to utilize the same receiver equipment as EchoStar Dish subscribers and for Dominion and EchoStar to use a common conditional access system, although subscribers are separately authorized by each service. Further, the Agreement recognizes the inter-relationship of Dominion's primary religious programming and EchoStar's Dish regular fare of satellite television programming so that Dominion viewers can choose to subscribe to both programming services and approximately 50% of Dominion subscribers do subscribe to both services. EchoStar's sublease of Dominion's six channels is contingent on EchoStar continuing to honor its obligations to Dominion under the Agreement.


In the Commission's Order and Authorization, FCC DA-99-915, released May 17, 1999 authorizing Dominion eight channels at 61.5 degrees W. L., the Commission included within the ordering provisions "that DVSI [Dominion] is responsible for maintaining control over use of and programming on its assigned channels." If the Commission were to require or permit EchoStar to assign its leased Dominion channels without Dominion's consent to Rainbow as a condition for the grant of the above referenced application, such action by the Commission would substantially impair Dominion's ability to maintain control of the programming on its assigned channels. By comparison, the Commission has stated on more than one occasion that a provision in a contract that permits a local marketing agreement to be assigned without the consent of the licensee could undermine a licensee's right to control programming. Solar Broadcasting Company, Inc., Memorandum Opinion and Order, FCC 02-62, released March 19, 2002, p.p.16-17. Dominion cannot maintain control over the use of and programming on its assigned channels when it does not have any detailed knowledge of Rainbow DBS's business plans. Even if Dominion chose to enter into further discussions with Rainbow DBS, such discussions by Dominion are precluded under its Agreement with EchoStar. Although Dominion wrote to EchoStar many months ago requesting consent for Dominion to meet with Cablevision, EchoStar has yet to respond.

Given the other material contractual relationships between Dominion and EchoStar, requiring the assignment of EchoStar's rights to the Dominion leased channels would be contrary to the public interest. A finding in the above Order and Authorization was that Dominion's programming would provide another alternative for EchoStar's subscribers as the receiving equipment is the same and a separate

W. Kenneth Ferree
July 23, 2002
Page 3

stand alone service to Dominion's subscribers. Obviously, the same is true for Dominion subscribers with regard to EchoStar Dish programming. The increased choice of programming was found to be in the public interest. An assignment of the Agreement without provision for the EchoStar Dish receiver equipment and the present conditional access system which both Dominion and EchoStar utilize would disenfranchise Dominion's several hundred thousand viewers from receiving their programming choices. Thus, Dominion has already requested that a grant of authority to complete the EchoStar/DirecTv proposed merger be conditioned to require Dominion's subscribers to be treated, with regard to their satellite receiver equipment, the same as the EchoStar Dish subscribers and to require the conditional access system to be used by the merged entity be made available for common use by Dominion.

Very truly yours,


Marvin Rosenberg
Counsel for Dominion Video
Satellite, Inc.

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