March 22, 2002

William F. Caton
Acting Secretary
Federal Communications Commission
Office of the Secretary
444 12th Street S.W.
Washington, D.C. 20554

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

Dear Mr. Caton:

EchoStar Communications Corporation, General Motors Corporation and Hughes Electronics Corporation (collectively, "Applicants") respond herein to the letters submitted on March 13, 2002 by the National Rural Telecommunications Cooperative ("NRTC") and on March 14, 2002 by the National Association of Broadcasters ("NAB"). In those letters, NRTC and NAB sought to raise objections to certain letters filed by the Applicants on March 5 and March 12, 2002. The March 5 letter described the procedures that the Applicants are following in responding to the Commission's February 4, 2002 Initial Information and Document Request, and the March 12 letter documented a March 11, 2002 meeting with the Commission staff on that subject.

The Applicants have addressed the substantive points raised in NRTC's and NAB's Petitions to Deny in their 149-page Opposition and Reply Comments, filed February 25, 2002, and accompanying declarations.[1] In their most recent correspondence, NRTC and NAB raise no substantive issues, nor do they present any valid basis for objection to the Applicants' prior communications with the Commission's staff. To the contrary, it is evident from their objections that NRTC and NAB seek only to delay the Commission's public interest inquiry in this matter. Under the guise of baseless procedural arguments, NRTC and NAB are effectively seeking boundless litigation-type discovery to which they are indisputably not entitled, and which would inject unwarranted delay into the Commission's review process. Simply put, NRTC and NAB should not be permitted to disrupt the Applicants' efforts to provide the Commission with additional information on as straightforward and expeditious a basis as possible.

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[1] Applicants have produced and are continuing to produce documents responsive to the Commission's February 4 request and yesterday submitted voluminous interrogatory responses.

The Commission's Information and Document Request is a request for additional information under 47 U.S.C. § 308(b). In a laudable attempt to obtain information at an early stage of the proceeding in order to expedite the process, the Commission issued its requests while petitions to deny and comments opposing the merger were still being received, and fully three weeks before the Applicants' response to those petitions and comments was due to be filed. But while asking broader questions earlier may help speed the Commission's review, it also necessarily means that the instant requests came at a relatively early point in the Commission's examination of this proposed merger.

It therefore was and remains imperative that the Applicants and the Commission staff meet on occasion to discuss how responses to the Commission's requests can be streamlined and expedited. The goal of those discussions is to identify procedures under which the staff can be provided with the key portions of the data and information it has sought as quickly as possible, recognizing that Applicants are simultaneously engaged in the process of responding to requests for additional information from the Department of Justice ("DOJ") under the Hart-Scott-Rodino ("HSR") Act. Thus, the Applicants' ability to respond quickly to the Commission's requests necessarily requires coordination with the process of reviewing materials for DOJ that has been underway since late last year. In fact, as is standard in proceedings such as this, on January 7, 2002 the Applicants waived certain confidentiality protections of the HSR Act to allow the Commission to review HSR protected material at the DOJ. Maintaining this coordinated approach between the Commission and the DOJ, and avoiding unnecessary duplication of efforts by two government agencies, requires the type of ongoing discussions between the Applicants and the Commission at issue here.

Now, in an effort to impose unnecessary burden and delay, NRTC and NAB seek to turn the Commission's data-gathering process into something it decidedly is not: a litigation discovery process in which third parties are entitled to participate. The Commission's requests for additional information under Section 308(b) are not intended to launch discovery fishing expeditions. Reaching a common understanding about the procedures that will be followed to locate and provide responsive documents and information benefits the decision-making process.

NRTC and NAB take issue with virtually all of the procedures the Applicants have employed to streamline the production of responses to the Commission's requests. Even though it is the Commission's staff that issued the Information Requests, NRTC's and NAB's apparent goal in doing so is to assert control over the data collection process. They have no right to do so. Private parties such as NRTC and NAB have no right to discovery in the context of a Title III licensing proceeding. The courts have upheld the Commission's use of streamlined procedures and efforts to expedite such proceedings. *See, e.g., Cellular Mobile Systems of Pennsylvania, Inc. v. FCC*, 782 F.2d 182, 197 (D.C. Cir. 1985). Lacking any right to their own discovery, NRTC and NAB plainly cannot dictate whether the Commission can discuss its own requests with Applicants to identify ways in which it can obtain more focused and expeditious answers.

Finally, the Applicants vigorously object to NRTC's accusation that they have "fail[ed] to comply" with the Commission's *ex parte* rules. NRTC Letter at 1. The oral communications by the Applicants in the meetings referenced in NRTC's letter, as discussed above, were focused on clarifying and refining procedures for the efficient and timely production by the Applicants of information requested by the Commission. Such procedural discussions simply are not "directed to the merits or outcome" of this proceeding – whether the merger is in the public interest. As such, these were not "presentations" to the staff within the meaning of the *ex parte* rules that required any type of filing with the Commission. *See* 47 C.F.R. § 1.1202(a). Indeed, the information request response procedures were not, at least at that time, even "an area of controversy" in the proceeding. *See id.*

Nevertheless, in order to proceed in as transparent a manner as possible, and in an abundance of caution, the Applicants took the extra step of memorializing their meetings with Commission staff for the public record, and will continue to do so.[2] The Applicants' March 12, 2002 letter provided a summary of the points discussed at the March 11 meeting. In addition, the Applicants' March 5, 2002 letter had already stated for the record the limitations they planned to employ in responding to the Information Requests. Applicants note that those disclosures were sufficient to permit NRTC to raise a litany of objections to the procedures that Applicants discussed with the staff.

Even if the *ex parte* rules applied, they would require nothing more: the obligation with respect to oral presentations in permit-but-disclose proceedings is to "summarize," 47 C.F.R. § 1.1206(b)(2), not transcribe, and to summarize only "new data or arguments," not points that have already been made in the record. *Id.* Short of a transcript, it is unclear what additional information about these meetings NRTC believes was lacking. Subject to the terms of the Protective Order in this proceeding (and other legal and FCC requirements), NRTC is entitled to review documents that are ultimately submitted on the record in this proceeding. But neither NRTC nor NAB, nor any other third party, has the right to participate in, let alone dictate, the process that determines how information is submitted to the Commission by the Applicants.

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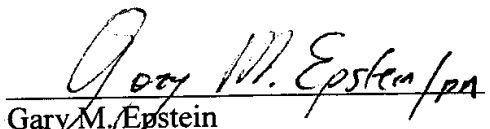
[2] For example, the Applicants promptly submitted a notice memorializing their February 21, 2002 meeting with Commission's staff on February 23, 2002, and elaborated further on that meeting in a notice filed on March 5, 2002 (the Commission's letter of March 7 did not mention the February 23 letter). As noted above, however, the filing of the notice was not required in the first place because there were no "presentations" at the meeting within the meaning of the Commission's rules. Applicants will in any event continue their practice of promptly memorializing meetings with Commission staff.

Finally, NRTC and NAB fail to point out the crushing impact their demands would have on the Commission's workload. Far from promoting an efficient and effective merger review process, their suggested changes would bog down the staff in endless tributary disputes over procedural matters, rather than allowing the staff to focus on the important substantive matters raised in this proceeding.

For all of these reasons, there is nothing inadequate or improper about either the Applicants' previous letters or their underlying discussions with the Commission staff regarding the process for their response to the Commission's February 4 requests. The claims made by NRTC and NAB, and their requests for investigation or other relief, should accordingly be rejected.

Respectfully submitted,



Gary M. Epstein
James H. Barker
John P. Janka
Alexander D. Hoehn-Saric
Latham & Watkins
555 11th Street, N.W.
Suite 1000
Washington, D.C. 20004

Counsel for Hughes Electronics Corporation, and General Motors Corporation

Pantelis Michalopoulos
Philip L. Malet
Timothy M. Walsh
Steptoe & Johnson LLP
1330 Connecticut Avenue, N.W.
Washington, D.C. 20036
(202) 429-6494

Counsel for EchoStar Communications Corporation

cc: Chairman Michael K. Powell
Commissioner Kathleen Abernathy
Commissioner Michael J. Copps
Commissioner Kevin J. Martin
Donald Abelson
James Bird
Catherine Crutcher Bohigian
Rosalee Chiara
Susan M. Eid
W. Kenneth Ferree

Claudia Fox
Jennifer Gilsenan
Eloise Gore
Thomas Horan
Fern Jamulnek
Julius Knapp
JoAnn Lucanik
Paul Margie
Jackie Ponti
Ellen Rafferty
David Sappington
Royce Dickens Sherlock
Donald Stockdale
Bryan Tramont
Thomas S. Tycz
Marcia Glauberman
Douglas W. Webbink
Qualex, Inc.
Edward P. Henneberry
Counsel to the National Association of Broadcasters
Jack Richards
Counsel for the National Rural Telecommunications Cooperative