

and an itemization of the expenses for which it is seeking reimbursement. Each remaining party to any written or oral agreement must submit an affidavit within 5 days of the petitioner's request for approval stating that it has paid no consideration to the petitioner in excess of the petitioner's legitimate and prudent expenses.

*OMB Control Number:* 3060-0214.

*Title:* Section 73.3526, Local Public Inspection File of Commercial Stations.

*Form Number:* N/A.

*Type of Review:* Extension of a currently approved collection.

*Respondents:* Business or other for-profit entities.

*Number of Respondents:* 12,289.

*Estimated Time per Response:* 1 to 2.5 hours.

*Frequency of Response:*

Recordkeeping; third party disclosure.

*Total Annual Burden:* 1,379,212 hours.

*Total Annual Costs:* None.

*Needs and Uses:* 47 CFR Section 73.3526 requires each licensee/permittee of a commercial AM, FM, or TV broadcast station to maintain a file for public inspection. The contents of the file vary according to type of service and status. The data are used by the public and the FCC staff in field investigations to evaluate information about the station's performance.

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary.*

[FR Doc. 02-28709 Filed 11-8-02; 8:45 am]

**BILLING CODE 6712-01-P**

## FEDERAL COMMUNICATIONS COMMISSION

[CS Docket No. 01-348; FCC 02-284]

### Application of EchoStar Communications Corp. (a Nevada Corp.), General Motors Corp., and Hughes Electronics Corp. (Delaware Corps.)

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice.

**SUMMARY:** In this document, the FCC designates for hearing the application of EchoStar, General Motors and Hughes (collectively, the "Applicants") to transfer control of Commission authorizations, including direct broadcast satellite and fixed satellite space station authorizations, earth station authorizations, and other related authorizations to EchoStar Communications Corp. ("New EchoStar"). The Commission concludes

that the Applicants have failed to demonstrate that the proposed transaction would not cause anticompetitive and other harms, and have failed to demonstrate that the potential public interest benefits resulting from the transaction would outweigh those harms. Accordingly, pursuant to 47 U.S.C. 309(e) and 409(a), the Commission designates the application for hearing to determine whether the public interest, convenience, and necessity will be served by its grant.

**DATES:** See **SUPPLEMENTARY INFORMATION** section for document filing dates.

**ADDRESSES:** Please file documents with the Investigations and Hearing Division, Enforcement Bureau, Federal Communications Commission, Room 3-B431, 445 12th Street, SW., Washington, DC 20554.

**FOR FURTHER INFORMATION CONTACT:** Charles W. Kelley, Chief, Investigations and Hearing Division, Enforcement Bureau, at (202) 418-1420.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Federal Communications Commission's Hearing Designation Order, CS Docket No. 01-348, adopted on October 9, 2002, and released on October 18, 2002. The full text is available for inspection and copying during normal business hours in the FCC Reference Information Center, Room CY-A257, 445 12th Street, SW., Washington, DC 20554. It may also be purchased from the Commission's copy contractor, Qualex International, Room CY-B402, 445 12th Street, SW., Washington, DC 20554, telephone (202) 863-2983, facsimile (202) 863-2898, or via e-mail at [qualexint@aol.com](mailto:qualexint@aol.com), or may be viewed via the internet at: [http://www.fcc.gov/DocumentIndexes/Media/2002\\_index\\_MB\\_Order.html](http://www.fcc.gov/DocumentIndexes/Media/2002_index_MB_Order.html). Alternative formats are available to persons with disabilities by contacting Martha Contee at (202) 418-0260 or TTY (202) 418-2555.

### Synopsis of the Order

1. In the Hearing Designation Order ("Order"), the Commission considers the application (the "Application") of EchoStar Communications Corporation ("EchoStar"), General Motors Corporation ("GM"), and Hughes Electronics Corporation ("Hughes") for consent to transfer control of various Commission authorizations, including direct broadcast satellite ("DBS") 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.

2. The merger proposes to combine the two major DBS providers in the United States-EchoStar (marketed as the Dish Network) and DirecTV Holdings, LLC ("DirecTV"), a wholly-owned subsidiary of Hughes, into one single entity. 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. New EchoStar would also acquire Hughes Network Services, Inc. ("HNS") and PanAmSat Corp. EchoStar and Hughes also filed a joint application requesting authority to launch and operate NEW ECHOSTAR 1, a direct broadcast satellite that would be located at the 110° W.L. orbital location (the "Satellite Application"). The Applicants claim that grant of the Satellite Application would allow New EchoStar to offer local broadcast channels in all 210 U.S. Designated Market Areas ("DMAs"). Based on the record, the Commission is unable to find that the public interest, convenience and necessity would be served by the grant of the Merger Application and Satellite Application.

3. The Applicants claim that one of the most important benefits of the proposed merger is the increased ability of DBS operators to compete with cable systems in the multichannel video programming distribution ("MVPD") market by eliminating current duplicative programming. They contend the merger would benefit consumers by increasing 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"), interactive television ("ITV"), and broadband satellite Internet services. They claim the merger would ultimately result in improved products, prices and overall quality to consumers. 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 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.

4. The Applicants claim that the proposed merger would allow New EchoStar to provide broadband Internet access service to the country and, thus, more effectively compete with cable's bundled offering of high-speed Internet access and MVPD products and telephone companies' DSL offerings. The Applicants contend that the merger would allow for the timely introduction of nationwide competition in the broadband markets, including rural and underserved areas.

5. Sections 214(a) and 310(d) of the Communications Act of 1934, as amended (the "Communications Act"), 47 U.S.C. 214(a) and 310(d), require the Commission to find that the public interest, convenience and necessity would be served by grant of the Merger Application. 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 47 U.S.C. 214(a) and 310(d) involve a balancing process that weighs the potential public interest harms against the potential public interest benefits. Our public interest evaluation encompasses the "broad aims of the Communications Act," which includes, among other things, preserving and enhancing competition in relevant markets, ensuring that a diversity of voices is made available to the public, and accelerating private sector deployment of advanced services. In determining the competitive effects of the merger, our analysis is not limited by traditional antitrust principles. The Commission also focuses on whether the merger will accelerate the decline of market power by dominant firms in the relevant communications markets.

6. We find that elimination of one nationwide DBS competitor, without any cognizable evidence of offsetting enhancement of viewpoint diversity, would disserve the Commission's policy goal of viewpoint diversity. In reviewing spectrum policy concerns, we find that allowing one satellite company to control all current U.S. allotted full-CONUS DBS orbital locations is inconsistent with the public interest. The record demonstrates that significant nationwide benefits in the MVPD market have been brought about by the competition between EchoStar and DirecTV. The record shows that consolidating all full-CONUS DBS spectrum with one provider would likely eliminate these benefits to the detriment of consumers, without providing adequate off-setting public interest benefits.

7. The Commission analyzed the potential harms of the proposed merger on competition in the relevant product markets. We first performed a structural analysis considering the relevant product and geographic markets, identifying the market participants, and then examining structural factors that affect the likelihood of competitive harms. The structural analysis suggests that the merger, which reduces the number of competitors from three to two in some markets, and two to one in other markets, would likely result in substantial anticompetitive harms. Under traditional structural antitrust analysis, there appears to be a substantial likelihood that the proposed merger will significantly increase concentration in an already concentrated MVPD market.

8. We find that the merger is likely to lessen competition through unilateral actions by New EchoStar and/or through coordinated interaction among market participants which could result in substantial consumer welfare losses, even assuming realization of all of the cost savings alleged by the Applicants. The record suggests that the services provided by DirecTV and EchoStar are close substitutes, and that in the absence of significant savings in marginal cost, such a loss of facilities-based intramodal competition is likely to harm consumers by eliminating a viable service provider in every market, creating the potential for higher prices and lower service quality, and negatively impacting future innovation.

9. Our analysis indicates that the Applicants' proposed national pricing plan will unlikely remedy the likely competitive harms. National pricing does not mean low pricing and the proposed plan would leave the Applicants free to price discriminate on a targeted basis, particularly with respect to promotions, installation and equipment offers and to discriminate with respect to service quality. In addition, the plan proposes that we approve the replacement of viable facilities-based competition with regulation inconsistent with the Communications Act and our policies and goals. The Act and our policies and goals aim to replace, wherever possible, the regulatory safeguards needed to ensure consumer welfare in communications markets served by a single provider, with free market competition, and particularly with facilities-based competition.

10. We considered the evidence of efficiencies and other public interest benefits that the Applicants claim will result from the merger. We cannot find that the benefits are merger specific,

verifiable, or will be able to mitigate anticompetitive effects of the merger. We find that the bulk of the Applicants' promised benefits with respect to MVPD services appear to be either inadequately supported by the data supplied; not merger-specific; achievable through means other than monopoly control over all available full-CONUS DBS spectrum; or are otherwise not cognizable under our public interest standard. Moreover, the Applicants have failed to show that the proposed merger is necessary to achieve many, if not all, of their claimed public interest benefits—they merely allege that it will provide them the means with which to provide these benefits. Our central concern is that with the resulting high degree of concentration in all MVPD markets, the Applicants' incentives to carry through on their promises of enhanced competition will be decreased, rather than increased. Thus, although the Commission fully recognizes the value of having free over-the-air broadcasting service in all 210 DMAs, we do not believe that the merger is more likely to bring satellite delivery of such service than the status quo. Therefore, we cannot give very much weight to the Applicants' proposed benefits.

11. The Applicants' promises of a future Ka-Band broadband satellite product that is competitive on both service quality and price with cable and DSL products would be a significant advance, if these promises were to be realized. However, the proposed merger of the two companies with the strongest incentive and ability to compete for satellite broadband services contradicts the Communications Act's preference for competition. The Applicants' reliance on an economies of scale argument fails to support its claimed benefits arguments.

12. On balance, we cannot find in the record that the Applicants have made a sufficient showing either that the harms from the proposed transaction will be insubstantial or the alleged benefits will outweigh them. Serious questions remain as to whether the proposed transaction would do significant and irreversible damage to competition in several markets without sufficient offsetting and cognizable public interest benefits.

13. We direct the Administrative Law Judge ("ALJ") to prepare an Initial Decision on the following issues:

- *Issue 1:* Whether the proposed transaction is likely to cause anticompetitive harm. In reaching a determination on this issue, the following should be considered: (a) The product market (e.g., whether the relevant product market is MVPD service,

DBS service, or some other subset of MVPD service); (b) the geographic market (e.g., whether the proper geographic market is local, and whether, for purposes of analysis, the relevant geographic markets should be aggregated into three categories—markets not served by any cable system; markets served by low-capacity cable systems; markets served by high-capacity cable systems; and the relative number of households in each of these categories) and the number of subscribers per market; (c) the market participants, market shares and concentration; (d) the timeliness, likelihood, and sufficiency of entry to offset any potential adverse competitive effects that may result from the proposed transaction; (e) the effects of the proposed transaction on price, quality and innovation (considering the likelihood of coordinated behavior among competing firms and the ability of the Applicants to unilaterally take anticompetitive actions); (f) the efficacy, potential harms, and potential benefits of Applicants' proposed national pricing plan; (g) the proposed transaction's effect on the ability of multichannel video programmers to reach certain niche audiences; and (h) any conditions proposed by the Applicants.

• *Issue 2:* Whether the proposed transaction is likely to cause other public interest harms. In reaching a determination on this issue, the following should be considered: (a) the proposed transaction's effect on viewpoint diversity; and (b) the proposed transaction's effect on the Commission's spectrum policies.

• *Issue 3:* Whether the proposed transaction is likely to yield any public interest benefits. In reaching a determination on this issue, the following should be considered: (a) whether the cost savings and other benefits claimed by Applicants are non-speculative, credible and transaction-specific and are likely to flow through to the public; and (b) whether the proposed transaction's impact on the provision of Internet access service via satellite is likely to be beneficial or harmful.

• *Issue 4:* On balance, whether the public interest, convenience and necessity would be served by the grant of the Merger Application and the Satellite Application.

14. Pursuant to 47 U.S.C. 309(e), the application for consent to transfer control of various Commission authorizations, including DBS and fixed satellite space station authorizations, earth station authorizations, and other related authorizations held by wholly-or majority-owned subsidiaries of EchoStar Communications Corporation (a Nevada corporation), General Motors Corporation, and Hughes Electronics Corporation to EchoStar Communications Corporation (a Delaware corporation); and the joint application submitted by EchoStar and Hughes requesting authority to launch and operate New Echostar 1, a direct broadcast satellite that would be located at the 110° W.L. orbital location (FCC File No. SAT-LOA-20020225-00023) are designated for hearing. The Hearing

shall be at a time and place and in front of an ALJ to be specified in a subsequent Order.

15. Pursuant to 47 U.S.C. 309(e), the burden of proof with respect to the introduction of evidence and the burden of proof with respect to the issues specified in this Order shall be upon GM, Hughes, and EchoStar, the applicant parties in this proceeding.

16. The Commission's Consumer and Government Affairs Bureau, Reference Information Center, shall send copies of this Order to all parties by certified mail, return receipt requested.

17. The Chief, Enforcement Bureau, shall be a party to the designated hearing.

18. A copy of each document filed in this proceeding subsequent to the date of adoption of this Order shall be served on the counsel of record appearing on behalf of the Chief, Enforcement Bureau. Parties may inquire as to the identity of such counsel by calling the Investigations and Hearings Division of the Enforcement Bureau at (202) 418-1420. Such service shall be addressed to the named counsel of record, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street, S.W., Room 3-B431, Washington, D.C. 20554.

19. Within 30 days of the mailing of this Order pursuant to paragraph 16 above, the parties may file an amended application with the Commission to ameliorate the competition concerns identified in this Order and may also file a petition to suspend the hearing pending review of the amended application.

20. To avail themselves of the opportunity to be heard, GM, Hughes, and EchoStar, pursuant to 47 CFR 1.221(c) and 1.221(e), in person or by their respective attorneys, shall file in triplicate, a written appearance, stating an intention to appear on the date fixed for the hearing and present evidence on the issues specified in this Order. Such written appearance shall be filed within 20 days of the mailing of this Order pursuant to paragraph 16 above. Pursuant to 47 CFR 1.221(c), if the parties fail to file an appearance within the specified time period, the applications will be dismissed with prejudice for failure to prosecute.

21. The National Rural Telecommunications Cooperative; American Cable Association; Northpoint Technology, Ltd.; National Association of Broadcasters; Pegasus Communications Corp.; The Word Network; Johnson Broadcasting, Inc. and Johnson Broadcasting of Dallas, Inc.; Family Stations, Inc. and North

Pacific International Television, Inc.; Communication Workers of America; Paxson Communications Corp.; Carolina Christian Television, Inc. and LeSea Broadcasting Corporation; Univision Communications, Inc.; Eagle III Broadcasting, LLC; and Brunson Communications, Inc., are made parties to the proceeding pursuant to 47 CFR 1.221(d). To avail themselves of the opportunity to be heard, pursuant to 47 CFR 1.221(e), each of these parties, in person or by its attorneys, shall file in triplicate, a written appearance, stating its intention to appear on the date fixed for the hearing and present evidence on the issues specified in this Order. Such written appearance shall be filed within 20 days of this Order becoming effective pursuant to paragraph 16 above. Such written appearance must also be accompanied by the fee specified in 47 CFR 1.1107 or be accompanied by a deferral request pursuant to 47 CFR 1.1117. If any of these parties fails to file an appearance within the time specified, it shall, unless good cause for such failure is shown, forfeit its hearing rights.

22. Pursuant to 47 CFR 1.223, any person seeking to participate as a party in the hearing may file a petition to intervene. Such petition shall be filed within 30 days of the full text or a summary of this Order being published in the **Federal Register**. Such petition to intervene must either establish, under oath, that a person is a party in interest, in which case the petition shall be granted; or such petition must set forth the interest of petitioner in the proceedings, show how such petitioner's participation will assist the Commission in the determination of the issues in question, set forth any proposed issues in addition to those already designated for hearing, and be accompanied by the affidavit of a person with knowledge as to the facts set forth in the petition, in which case the ALJ may grant or deny the petition to intervene, and may limit intervention to a particular stage or stages of the proceeding, in his or her discretion. Pursuant to 47 CFR 1.225, no person shall be precluded from providing any relevant, material and competent testimony at the hearing because he or she lacks sufficient interest to justify intervention as a party.

23. The application for transfer of control of the licenses and authorizations at issue in this proceeding will be held in abeyance pending the outcome of this proceeding.

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary.*

[FR Doc. 02-28581 Filed 11-8-02; 8:45 am]

BILLING CODE 6712-01-P

## FEDERAL COMMUNICATIONS COMMISSION

[Report No. AUC-02-32-H (Auction No. 32);  
DA 02-2757]

### Additional Information Required for Completion of FCC Form 175 and Exhibits for Auction No. 32; Auction of Construction Permits for New AM Broadcast Stations Scheduled for December 10, 2002

**AGENCY:** Federal Communications  
Commission.

**ACTION:** Notice.

**SUMMARY:** This document supplements a public notice released November 19, 1999, which announced a five-day period for the filing of applications for new AM stations and major modifications to authorized AM stations. The document informs applicants of additional information for incorporation as part of their short-form application (FCC form 175) for Auction No. 32.

**DATES:** Auction No. 32 applicants must file the additional information identified in this document by 6 p.m. e.t. on Monday, October 28, 2002. Auction No. 32 is scheduled to begin on December 10, 2002.

**FOR FURTHER INFORMATION CONTACT:** Kenneth Burnley at the Auctions and Industry Analysis Division, Wireless Telecommunications Bureau at (202) 418-0660.

**SUPPLEMENTARY INFORMATION:** This is a summary of a public notice released by the Wireless Telecommunications Bureau on October 21, 2002. The complete text of the public notice, including the attachment, is available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY-B402, Washington, DC 20554. The October 21, 2002, public notice may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY-B402, Washington, DC 20554, telephone (202) 863-2893, facsimile (202) 863-2898, or via e-mail [qualexint@aol.com](mailto:qualexint@aol.com).

1. The Media Bureau ("MB") and the Wireless Telecommunications Bureau ("WTB") (collectively, "Bureaus") supplement the "Auction No. 32 Filing Window Public Notice" released November 19, 1999, which announced a five-day period for the filing of applications for new AM stations and major modifications to authorized AM stations. This document informs applicants that they must submit additional information for incorporation as part of their short-form application (FCC form 175) for Auction No. 32. The applicants, listed in attachment A of the October 21, 2002, public notice, must file the additional information identified below by 6 p.m. eastern time on Monday, October 28, 2002. The following instructions are provided for filing this additional information.

#### I. Provisions Regarding Defaulters and Former Defaulters (Form 175 Exhibit F)

2. Part 1 of the Commission's rules requires each applicant to certify on its FCC form 175 application that neither it nor its controlling interest holders or affiliates is in default on any Commission license and that they are not delinquent on any non-tax debt owed to any Federal agency. In addition, the Commission's rules, as amended by the "Part 1 Fifth Report and Order," 65 FR 52323 (August 29, 2000), require each applicant to attach to its FCC form 175 application a statement made under penalty of perjury indicating whether or not the applicant, or any of the applicant's controlling interests or their affiliates, as defined by § 1.2110 of the Commission's rules, have ever been in default on any Commission license or have ever been delinquent on any non-tax debt owed to any federal agency. See 47 CFR 1.2105(a)(2)(xi).

3. The applicants identified in attachment A of the October 21, 2002, public notice must include this statement as exhibit F of their FCC form 175 for Auction No. 32 and MUST submit this exhibit by electronic mail no later than 6 p.m. eastern time on Monday, October 28, 2002, at the following address: [auction32@fcc.gov](mailto:auction32@fcc.gov). The exhibit F must be in the form of an attachment to the electronic mail and formatted as an Adobe® Acrobat® (pdf) or Microsoft® Word document.

4. If any of an applicant's controlling interest holders or affiliates, as defined by § 1.2110 of the Commission's rules, have ever been in default on any Commission license or have ever been delinquent on any non-tax debt owed to

any Federal agency, the applicant must include such information as part of the same attached statement. Applicants are reminded that the statement must be made under penalty of perjury and, further, submission of a false certification to the Commission is a serious matter that may result in severe penalties, including monetary forfeitures, license revocations, exclusion from participation in future auctions, and/or criminal prosecution.

5. "Former defaulters"—i.e., applicants, including their attributable interest holders, that in the past have defaulted on any Commission licenses or been delinquent on any non-tax debt owed to any Federal agency, but that have since remedied all such defaults and cured all of their outstanding non-tax delinquencies—will be eligible to bid in Auction No. 32, provided that they are otherwise qualified. However, former defaulters are required to pay upfront payments that are fifty percent more than the normal upfront payment amounts. See 47 CFR 1.2106(a).

#### II. FCC Registration Number Required To Log On to the FCC Auction 175 Application & Search System

6. Bidders are reminded that they are required to send their FCC Registration Number (FRN) to the FCC Operations Group by 5 p.m. eastern time on Friday, October 25, 2002. To do this, applicants must include the entity name, Taxpayer Identification Number (TIN), and FRN in an e-mail to [auction32@fcc.gov](mailto:auction32@fcc.gov) or fax to Kathryn Garland at (717) 338-2850. This information must be received by 5 p.m. eastern time on Friday, October 25, 2002.

7. Use of an FRN is mandatory for all filers logging on to the FCC Auctions 175 Application & Search system. To obtain an FRN, an applicant must register its TIN using the Commission Registration System (CORES). To access CORES, point a web browser to the FCC Auctions page at <http://wireless.fcc.gov/auctions/> and click the CORES link under Related Sites. Next, follow the directions provided to register and receive your FRN. Applicants need to be sure to retain this number and password and keep such information strictly confidential.

Federal Communications Commission.

**Margaret Wiener,**

*Chief, Auctions and Industry Analysis  
Division, WTB.*

[FR Doc. 02-28706 Filed 11-8-02; 8:45 am]

BILLING CODE 6712-01-U