ECHOSTAR

ECHOSTAR COMMUNICATIONS CORPORATION

September 12, 2002

Via ELECTRONIC FILING

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 Twelfth Street, SW
Washington, DC 20554

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

Dear Ms. Dortch:

In an *ex parte* submission dated August 27, 2002, Pegasus Communications Corporation ("Pegasus") forwarded to the Commission correspondence between Pegasus and EchoStar Communications Corporation ("EchoStar") concerning reports that certain individuals have used inappropriate sales tactics to market EchoStar's DISH Network service. Specifically, Pegasus stated that sales pitches had been made based on misleading or inaccurate statements concerning the status of EchoStar's pending merger with Hughes Electronics, and the merger's effect on DBS service to subscribers.

Echostar takes every such allegation very seriously, and investigates each one. Unfortunately, that investigative effort has been hampered by the fact that in many cases the allegations made by Pegasus lack documentation. EchoStar's conclusions to date have differed materially from the conclusions reached by Pegasus. In many cases, EchoStar has not been able to corroborate many of Pegasus's allegations. Sometimes, for example, it is difficult to identify the source of the statements cited by Pegasus, including whether the source is even a retailer who sells EchoStar products, and the incidents described otherwise lack specific substantiation. *See, e.g.*, Pegasus's August 27, 2002 Letter to Chris Melton of Echostar, at 2 (describing instances in which a Pegasus subscriber in Climax, Michigan and a subscriber in Athens, Michigan, were contacted by "an unidentified DISH Network representative" – while EchoStar is not certain what is intended by the term "DISH Network representative," its investigation has confirmed no EchoStar employee was involved, and based on the sketchy information provided EchoStar has been unable to identify any local retailer involved in the alleged activity); *see* also Letter from Chris Melton, EchoStar, to Mark Meyer, Pegasus (dated Jan. 21, 2002) (explaining that one alleged instance of misleading statements concerning the effect of the merger on DBS

subscribers had nothing to do with the merger at all – the marketing campaign was part of a program to convert MMDS subscribers to EchoStar).

EchoStar has requested additional information from Pegasus concerning each of the issues Pegasus has raised. EchoStar has also responded to each of the issues raised by Pegasus as best as possible given the limited information provided and the failure of Pegasus, in most cases, to supplement the original sketchy information. It is noteworthy that whenever Pegasus contacts EchoStar on this matter, EchoStar responds quickly, never failing to reply to each of Pegasus' letters.[1]

In order to share investigative results with Pegasus, which often include sensitive and confidential information with respect to specific retailers and consumers, it is necessary that EchoStar obtain assurance from Pegasus that the information will remain confidential. Unfortunately, the ability of EchoStar to investigate and share the results of its investigations with Pegasus was severely hampered by Pegasus's refusal to respect the confidentiality of that material, as expressed by Pegasus in a recent letter stating that they refuse to sign a standard confidentiality agreement between our companies. Consequently, while EchoStar will continue to investigate each and every allegation forwarded by Pegasus, EchoStar will in the future be severely limited in its ability to investigate and share investigative results with Pegasus.

Notably, EchoStar does not know of any attempts made by Pegasus to take action against any retailer, leading EchoStar to further question Pegasus' motives with respect to these matters. If Pegasus' allegations are accurate, then a number of avenues would be available for Pegasus to take direct action against offending parties, including but not limited to cease and desist letters, phone calls and the institution of litigation or other regulatory proceedings against the offending parties. In one recent telling example, EchoStar's investigation found that a retailer about whom Pegasus complained was actually a large Pegasus retailer. Pegasus certainly could have contacted the retailer directly, and could have taken action based on its direct relationship with the retailer. Instead, our investigation has revealed that Pegasus did not contact this retailer, apparently opting instead to complain to EchoStar and immediately disclosing its one-sided perspective on the incident to the FCC.

In EchoStar's opinion, Pegasus has chosen to attempt to score political points and to encourage the FCC to step into a private commercial dispute. With all of the rhetoric, it cannot be denied or ignored that Pegasus charges consumers materially more for identical programming

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[1] EchoStar received multiple letters from Pegasus in this matter, to which EchoStar responded as follows: Pegasus letters dated October 16 and 30, 2001—EchoStar response dated October 26; Pegasus letters dated January 8 and 17, 2002—EchoStar response dated January 21, 2002; Pegasus letter dated February 13, 2002—EchoStar response dated March 4, 2002; Pegasus letter dated April 22, 2002—EchoStar response dated May 10, 2002; Pegasus letter dated August 27, 2002—EchoStar response dated September 6, 2002; Pegasus letters dated September 6 and 11, 2002; EchoStar response currently being prepared.

than does EchoStar. Contrary to the best interests of consumers, Pegasus has chosen to attempt to protect and expand its business through attempts to block a merger, rather than to compete aggressively on price and service.

Even so, EchoStar has taken efforts to ensure that its retailers and target marketing employees understand that the company does not condone this type of behavior and has taken steps to make sure that they are properly educated on this issue.

While EchoStar cannot control the conduct of independent retailers, Echostar has communicated its position to independent retailers in the most unequivocal terms, most recently via a televised, "Charlie Chat" program featuring EchoStar Chief Executive Officer, Charles Ergen, and by an August 2002 letter to all retailers. The letter reiterates Echostar's prior communications with retailers explaining that the merger has not yet been approved, and that no decision has been made concerning the receiving equipment that will be used by the combined company. Accordingly, EchoStar has made its position clear to independent retailers that *any claim that existing hardware will become obsolete post-merger, or any claim that there is an advantage to changing equipment now, is absolutely false and unacceptable.* Consistent with the commitment of EchoStar and Hughes that no satellite subscriber will be disenfranchised by the merger, EchoStar also makes clear to independent retailers that *any claim that current customers of EchoStar and DirecTV will be disadvantaged by the merger is likewise, absolutely false and unacceptable.* Where EchoStar is able to identify any retailer who may have allegedly violated its policies, EchoStar takes the following steps:

1) EchoStar contacts the retailer and requires a response to all allegations made.
2) EchoStar demands that the retailer provide to EchoStar its policies and practices for review.

To the extent that EchoStar finds that any such retailer may currently be in violation of EchoStar policies, EchoStar takes immediate disciplinary action, up to and including where applicable, termination of the retailer agreement.

This *ex parte* letter is being filed electronically with the Commission. If you have questions concerning this notice, please do not hesitate to contact me.

Respectfully submitted,

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