



Federal Communications Commission
Washington, D.C. 20554

November 5, 2002

*Let it be held
cont
11/5/02*

VIA FACSIMILE

Nancy Goodman
Chief
Telecommunications & Media Section
U.S. Department of Justice
Antitrust Division
City Center Building
1401 H Street, N.W.
Washington, DC 20530

ECF

02-2138 (ESH)

Dear Ms. Goodman:

Pursuant to your request, this letter discusses the Federal Communications Commission's projected schedule in the EchoStar Communications Corporation - Hughes Electronics Corporation proceeding (CS Docket No. 01-348). As is more fully discussed below, the exact schedule is uncertain at this point and depends, in part, on the actions taken by EchoStar and Hughes (the "Applicants").

The Echostar/Hughes application for transfer of control of their licenses was designated for hearing in an Order released October 18, 2002, and mailed to the parties on October 28, 2002. The Applicants and the other parties to the proceeding have until November 18, 2002, to file their appearances. The Order also provides the Applicants with an opportunity to file an amended application with the Commission to ameliorate the competition concerns identified in the Order and to file a petition to suspend the hearing pending review of the amended application. Any such amendment and petition must be submitted by November 27, 2002.

If the Applicants do not amend their application, or if the Applicants do amend their application but the Commission decides to proceed with the hearing, the Presiding Officer will hold a pre-hearing conference. (The Presiding Officer, usually an Administrative Law Judge, has not yet been named for this proceeding.) At the first pre-hearing conference, all of the parties, including the "trial team" for the Commission, will likely discuss and attempt to agree upon a schedule, including a timeline for paper discovery, the submission of evidence, and depositions. That schedule ultimately will be set by the Presiding Officer. The hearing would then proceed. Following the hearing, the parties would be afforded sufficient time to submit proposed findings of fact, briefs and reply briefs and possibly to prepare for and participate in oral argument. Commission procedures next require the Presiding Officer to issue an Initial Decision. Within thirty days after the Initial decision is issued all parties may submit exceptions to the Initial Decision along with arguments to the full Commission. The Commission must then

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decide whether to order further briefing and argument before issuing a Final Decision in the matter. In exceptional circumstances the Commission, at its discretion, may bypass the Initial Decision step described above and order the hearing record certified to it for decision. Even in that event, the full Commission would still need to allow sufficient time for the parties to submit proposed findings of fact, opening briefs, reply briefs, and possibly conduct oral argument before considering and adopting a Final Decision.

If the Applicants amend their application, the Commission may decide to continue with the hearing or to seek public comment on the amended application. If the Commission seeks public comment, it would likely give the public at least thirty (30) days to file their comments, and is required to do so if the amended application represents a substantial amendment to the Applicants' initial proposal. Opponents of the transaction might seek further time in order to present evidence on the Applicants' new proposal, to conduct new economic studies, or to update the studies they previously furnished to the Commission. The Commission would generally also give the Applicants time to respond to any evidence and comments that are filed. After reviewing all of the comments and any additional evidence that might be filed, the Commission could find either that the amended application presents no substantial and material issues of fact and that granting the amended application is in the public interest, or it could decide to continue with the hearing and direct the Presiding Officer to take evidence with respect to the amended application. The Commission would continue with a hearing if substantial and material issues of fact remain or if it is unable to find that granting the amended application is in the public interest.

Please let us know if you need any additional information.

Sincerely,


Jane E. Mago
General Counsel