pending applications for the proposed SPACEWAY 5 and SPACEWAY 6 satellites, which would provide additional satellite capacity from the nominal 91° W.L. and 109° W.L. orbital locations. HNS operates in the following businesses: high-speed broadband Internet access, VSAT and other enterprise services, and equipment manufacturing.

Residential Satellite Broadband Services. In 2001, HNS launched its residential satellite Internet broadband access service, now called HughesNet®. HNS focused its efforts on underserved areas, including rural and suburban consumers. The quality and growth potential of HNS' residential satellite Internet broadband access service was enhanced in April 2008 when the SPACEWAY 3 satellite was brought into service. The satellite is designed to provide 10 Gbps of capacity and subscriber speeds comparable to Digital Subscriber Line ("DSL"). In order to provide its satellite delivered broadband Internet services, HNS provides its subscribers with user terminals consisting of a small antenna and radio transceiver located on the roof or side of a home and a satellite modem located indoors near the user's computer or router. Hughes then utilizes gateways throughout the United States and SPACEWAY 3 to communicate with the consumer terminals.

Additional capacity will become available when HNS launches its Jupiter 1 satellite in the first half of 2012. The Jupiter 1 satellite will employ a multi-spot beam, bent-pipe architecture. This next-generation, Ka-band, high-throughput satellite will provide enhanced download speeds between 2 and 25 Mbps and significant additional capacity of approximately 100 Gbps, enabling service to 1.5 to 2 million customers.

The HughesNet® service currently reaches all 50 states, Puerto Rico, and parts of Canada and provided service to over 578,000 subscribers as of December 31, 2010. HughesNet® packages range in price from $59.99 for 1 Mbps download/200 Kbps upload speeds, including

five email accounts, to $109.99 for 2 Mbps download/300 Kbps upload speeds, including ten email accounts.[4] HNS also offers customers the option to purchase equipment up front or to rent the equipment for a monthly service fee.

VSAT Enterprise Services. HNS also offers commercial satellite communications services over its network of VSAT terminals, including business-grade, broadband Internet access service. That network operates by connecting multiple, geographically dispersed communication sites through HNS' or another FSS provider's satellite system to a network hub, and from there to a data center or the Internet. HNS also provides wholesale VSAT service to resellers, which provide service to end users using their own network of VSAT terminals. Furthermore, HNS provides augmented VSAT services to large enterprises through various owned and operated service businesses throughout the United States, Europe, India, and Brazil, delivering continent-wide broadband satellite connectivity along with a range of managed solutions and applications to major enterprise customers in virtually every vertical sector. This allows HNS to combine the use of satellite and terrestrial alternatives, offering solutions that are tailored and cost optimized to specific customer requirements as well as to provide networking systems solutions to customers for mobile satellite and wireless backhaul systems. HNS leases transponder capacity on satellites from multiple providers for its enterprise customers. It also maintains hub facilities, located in Germany, India, and Brazil that provide ground support to HNS' international enterprise customers. The satellite capacity used to support these international hubs is procured from FSS providers such as Eutelsat and Intelsat.

Satellite Equipment. HNS also is a pioneering designer and manufacturer of satellite-based network equipment. HNS supplies a growing family of authorized service providers,

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[4] *See* HughesNet, Plans and Pricing, http://consumer.hughesnet.com/plans.cfm (last visited Feb.

government organizations, and businesses with advanced broadband systems and terminals. HNS has designed and manufactured products, including satellite Network Operations Centers ("NOCs") and gateways; two-way broadband satellite routers; mobile satellite handhelds and high-speed IP data terminals; and broadband wireless systems. To date, HNS has manufactured and shipped more than 2.5 million VSAT terminals to customers in over 100 countries.

B. Description of the Transaction

On February 13, 2011, the boards of directors of Hughes and EchoStar approved an agreement pursuant to which EchoStar will acquire all outstanding shares in Hughes and will assume Hughes' outstanding debt in a deal valued at approximately $2 billion.[5] Pursuant to the agreement, Broadband Acquisition Corporation, a wholly owned subsidiary of EchoStar, will merge with and into Hughes, with Hughes emerging as the surviving corporation and a wholly owned subsidiary of EchoStar. The existing and resulting corporate structures are illustrated pictorially in the charts provided in Attachment 1.

C. Authorizations to Be Transferred

As a result of the transaction, EchoStar will acquire indirect control over Hughes' FCC licenses and authorizations, which are set forth in the tables below and also are detailed, along with currently pending Hughes applications, in Attachment 2 of this Application. The authorizations include a license to operate SPACEWAY 3 at 94.95° W.L. and an authorization under a Letter of Intent ("LOI") to provide FSS service into the United States from 107.1° W.L. using the soon-to-be-launched Jupiter 1 satellite, which is licensed to Hughes Network Systems

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28, 2011). Prices are discounted further in the first 3 months.

[5] *See* Press Release, EchoStar Corporation and Hughes Communications, Inc., EchoStar Corporation to Acquire Hughes Communications, Inc. – Combination Creates a Worldwide Leader in Satellite Delivered Video and Broadband Services (Feb. 14, 2011) ("Transaction Announcement").

Ltd. by the United Kingdom,[6] as well as 20 associated earth station licenses and three experimental licenses.[7]

Satellite Authorizations Held and to Be Transferred by Hughes

Licensee	Satellite Name and Call Sign	Location	Service/ Band	Grant Date	Launch Date
Hughes Network Systems, LLC	SPACEWAY 3 (S2663)	94.95° W.L.	FSS/Ka	4/19/05	8/14/07
Hughes Network Systems, LLC	Jupiter 1 (formerly SPACEWAY 4) (S2753) – Letter of Intent authorization for UK-licensed satellite to access the U.S. market	107.1° W.L.	FSS/Ka	5/5/10	Early 2012

Earth Station Licenses Held and to Be Transferred by Hughes

Licensee	Call Sign	Service	Grant Date	Expiration
HNS License Sub, LLC	E000166[8]	FSS VSAT	7/2/10	9/13/25
HNS License Sub, LLC	E010187	International FSS	8/28/01	8/28/11
HNS License Sub, LLC	E020195	Domestic/International FSS	10/12/04	10/24/17
HNS License Sub, LLC	E020205	ESV	6/30/09	9/27/17
HNS License Sub, LLC	E020206	Domestic/International FSS	2/17/09	9/27/17
HNS License Sub, LLC	E020207	Domestic FSS	2/17/09	9/30/17
HNS License Sub, LLC	E020208	Domestic FSS	2/17/09	9/27/17
HNS License Sub, LLC	E040382	FSS	10/14/09	11/30/19

[6] The transfer of control of the LOI resulting from the instant merger is not subject to prior Commission approval. *See New DBSD Satellite Services G.P.*, DA 10-1881 ¶ 7 (rel. Sept. 29, 2010). Nonetheless, the Applicants have completed a Form 312 with respect to that transfer, too, for informational purposes and to assist the Commission in making the appropriate administrative updates to its records.

[7] The licensees have previously submitted information, incorporated here by reference, responsive to 47 C.F.R. § 25.137 – and there will be no changes in the operation of Hughes' earth stations as a result of the instant transfer of control. *See* Hughes Network Systems, LLC, FCC File No. SAT-LOI-20091110-00119 (granted Jan. 13, 2009).

[8] The VSAT earth station operating under call sign E000166 is currently operating under special temporary authority ("STA") to permit interim changes to frequencies on the hub antenna Hughes used to access the Galaxy 25 satellite due to reassignment of frequencies by the Galaxy 25 satellite operator. *See* File No. SES-STA-20110111-00036. The STA is set to expire on March 16, 2011. The Applicants request the Commission's authority for EchoStar to acquire control of this STA and any STAs subsequently granted to Hughes prior to the approval of this transaction.

HNS License Sub, LLC	E040436	FSS	10/14/09	12/22/19
HNS License Sub, LLC	E050236	FSS	10/20/08	9/27/20
HNS License Sub, LLC	E060382	FSS	3/6/07	3/6/22
HNS License Sub, LLC	E060383	FSS	3/6/07	3/6/22
HNS License Sub, LLC	E060445	VSAT	1/12/10	2/27/22
HNS License Sub, LLC	E090178	FSS	11/23/09	11/23/24
HNS License Sub, LLC	E8454	FSS	10/20/08	3/20/22
HNS License Sub, LLC	E940441	FSS	10/20/08	9/9/19
HNS License Sub, LLC	E940460	VSAT	8/26/08	12/23/19
HNS License Sub, LLC	E950010	FSS	10/20/08	12/16/19
HNS License Sub, LLC	E980296	FSS	10/20/08	9/4/23
HNS License Sub, LLC	E990170	VSAT	5/18/09	7/27/24

Experimental Licenses Held and to Be Transferred by Hughes

Licensee	File No.	Call Sign	Description	Expiration
HNS License Sub, LLC	0149-EX-ML-2010	WE2XEW	Mobile (Ku/Ka-band)	6/1/2011
HNS License Sub, LLC	0066-EX-RR-2008	WD2XFP	"Satellite-on-a-Pole" (Ka-band)	5/1/13
HNS License Sub, LLC	0109-EX-RR-2009	WD2XRV	Test Range (Ka-band)	7/1/14

III. THE TRANSACTION SERVES THE PUBLIC INTEREST

The proposed acquisition of Hughes by EchoStar meets the test set forth in Section 310(d) of the Communications Act, as this is a merger between firms with complementary services and capabilities. Among many other benefits, it will create a greatly strengthened provider of broadband Internet access service, especially in rural areas. It will bring a provider of high-speed access service under the control of Mr. Ergen, who led the astronomical increase in DISH's subscribership from zero to over 14 million. Subject to negotiation of a commercial agreement between DISH and EchoStar, the transaction has the potential to lead to access to DISH's subscribers and create opportunities for a seamless "triple play" bundled offering (video, Internet access, voice). The provision of such combined services would greatly increase the ability of satellite-delivered broadband and video to compete against incumbent cable and telecommunications operators.

The merger will also provide EchoStar with access to additional satellite capacity necessary for its various operations, as well as provide EchoStar with access to Hughes' substantial technical and design expertise, which will facilitate EchoStar's continued innovation in the satellite equipment market. At the same time, the lack of any significant overlap in the services provided by each company and the structure of the markets in which the combined entity will compete eliminates the possibility of any risk of harm to the public interest.

A. The Transaction Meets All Applicable Statutory and Regulatory Requirements

Under Section 310(d) of the Communications Act, the Commission may approve the proposed acquisition of Hughes by EchoStar upon a finding that "the public interest, convenience, and necessity will be served."[9] The Commission's public interest evaluation necessarily encompasses the "broad aims of the Communications Act,"[10] which include, among other things, accelerating private sector deployment of advanced services, avoiding anticompetitive effects, and generally managing the spectrum in the public interest.[11] The merger directly serves these public interest objectives by bringing EchoStar and Hughes together in a synergistic combination that will facilitate private sector deployment of advanced services

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[9] 47 U.S.C. § 310(d).

[10] *See* Comcast Corporation, General Electric Company, and NBC Universal, MB Docket No. 10-56, *Memorandum Opinion and Order*, FCC 11-4 ¶ 23 (rel. Jan. 20, 2011) ("*Comcast-NBCU Order*"); Applications for Consent to the Transfer of Control of Licenses, XM Satellite Radio Holdings Inc., Transferor, to Sirius Satellite Radio Inc., Transferee, *Memorandum Opinion and Order and Report and Order*, 23 FCC Rcd. 12348, 12364-65 ¶ 31 (2008); Liberty News Corp. and DIRECTV Group, Inc. and Liberty Media Corp. for Authority to Transfer Control, *Memorandum Opinion and Order*, 23 FCC Rcd. 3265, 3277-78 ¶ 23 (2008); Intelsat Holdings, Ltd., *Memorandum Opinion and Order*, 22 FCC Rcd. 22151, 22156-57 ¶¶ 16-17 (2007); BCE Inc. and Lorel Skynet Corp., *Memorandum Opinion and Order*, 22 FCC Rcd. 18049, 18052-53 ¶¶ 11-12 (2007) ("*BCE-Loral Order*").

[11] 47 U.S.C. § 521(4); *see also Comcast-NBCU Order* ¶ 23; Iridium Holdings LLC, *Memorandum Opinion and Order*, 24 FCC Rcd. 10725, 10732 ¶ 16 (2009) (citing 47 U.S.C. §

and build on the independent strengths of the two companies. Furthermore, the merger will enable Hughes to better serve the President's objectives set forth in the National Space Policy.[12] Specifically, the merger will promote competitive domestic industries to participate in global markets and advance the development of: satellite manufacturing; satellite-based services; space launch; terrestrial applications; and increased entrepreneurship.[13] Furthermore, a robust and competitive commercial space sector will foster the continued progress of the United States in space.

The Commission's public interest analysis generally has included an examination of the following fundamental questions: (i) whether the transaction would result in a violation of the Communications Act or the Commission's rules; (ii) whether the transaction promises to yield affirmative public interest benefits; and (iii) whether the transaction would substantially frustrate or impair the Commission's implementation or enforcement of the Communications Act or other related statutes or interfere with the Act's objectives.[14] The analysis also includes an evaluation of the likely competitive effects of the transaction and whether the proposed transfer creates a significant likelihood of competitive harm.[15] Here, the transaction will yield substantial public interest benefits, especially with respect to competition; it will violate no statutory or Commission rule; and it will not frustrate any Commission objective.

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157); Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56, Preamble (1996); *BCE-Loral Order*, 22 FCC Rcd. at 18052-54 ¶¶ 11-13.

[12] *See* Office of the President of the United States of America, National Space Policy of the United States of America, 3-4 (Jun. 28, 2010), *available at* http://www.whitehouse.gov/sites/default/files/national_space_policy_6-28-10.pdf.

[13] *Id.*

[14] *See, e.g.*, *Comcast-NBCU Order* ¶ 26; Time Warner Inc. and America Online, Inc., *Memorandum Opinion and Order*, 16 FCC Rcd. 6547, 6548-49 ¶ 1 (2001) ("*AOL-Time Warner Order*").

[15] *AOL-Time Warner Order*, 16 FCC Rcd. at 6549 ¶ 1.

To begin with, the proposed transaction does not implicate any foreign ownership, aggregation, cross-ownership, or any other restrictions imposed by the Communications Act, Commission regulation, or applicable statute. Both EchoStar and Hughes are currently Commission licensees, and the combined company's Chairman will be Mr. Ergen, the Chairman of EchoStar. The qualifications of all relevant parties are therefore a matter of record before the Commission. The combined entity will not have foreign ownership that even approaches the benchmark of any applicable foreign ownership rule. The proposed merger also does not implicate any Commission rule or policy governing cross-ownership between services. The transaction is also consistent with all applicable satellite service rules, including limitations stemming from past surrenders of licenses.[16] Likewise, the transaction does not implicate the rule that no one person is permitted to have an attributable interest in more than five authorizations for GSO-like satellites that are unbuilt.[17]

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[16] The International Bureau has held that certain past surrenders of satellite authorizations give rise to a presumption of "speculation" by EchoStar, which in turn limits the number of pending applications and unbuilt satellites a licensee may hold. *See* EchoStar Corporation, Application to Operate a C-Band Geostationary Satellite Orbit Satellite in the Fixed-Satellite Service at the 84.9° W.L. Orbital Location, *Memorandum Opinion and Order*, 25 FCC Rcd. 10193 (2010). EchoStar is contesting that decision. *See* EchoStar Corporation, Petition for Reconsideration, FCC File No. SAT-LOA-20090528-0006 (filed Aug. 30, 2010). But the decision is inapposite here as the Commission has explicitly noted that the limitation on pending applications does not apply to the acquisition of control over licenses for existing satellites. *See* Amendment of the Commission's Space Station Licensing Rules and Policies, *First Report and Order*, 18 FCC Rcd. 10760, 10850 ¶ 233 (2003) ("*First Come, First Served Order*") ("These limits do not apply to applications for replacement satellites, renewals of NGSO-like constellation licenses, modifications, transfers of control, or any other satellite-related application. Nor will we include a U.S. applicant's foreign-licensed satellites in these limits.").

[17] 47 C.F.R. § 25.159(a). While EchoStar currently has authorizations for five 17/24 GHz BSS satellites that have yet to be launched, that restriction, too, does not apply to transfers of control. *See id.* ("These limits do not apply to applications for replacement satellites, renewals . . . , modifications, transfers of control, or any other satellite-related application."). In addition, none of these restrictions applies to the foreign-licensed satellites of U.S. operators, such as the Jupiter 1 LOI authorization or the pending LOI applications for SPACEWAY 5 and 6, all three of which

B. The Transaction Will Produce Powerful Public Interest Synergies by Combining the Expertise of Both Companies

This is a transaction that is, first and foremost, about synergies. The CEOs of the two companies explained it well in announcing the transaction. Pradman Kaul, President and Chief Executive Officer of Hughes, stated:

> [T]his transaction brings together the two premier providers of satellite communications services and delivers substantial value to our shareholders. By combining Hughes' operational strength and proven record of customer satisfaction with EchoStar's expertise in cutting edge satellite video technology, customers will benefit significantly from our shared institutional excellence.[18]

Michael Dugan, President and Chief Executive Officer of EchoStar, explained:

> There is a unique and compelling fit between Hughes and EchoStar. With a rich engineering culture, an extensive fleet of owned and leased satellites, and experienced personnel in communications centers around the world, the combination of EchoStar and Hughes will create a powerful leader in video and data transport.[19]

These synergies will translate into a more vigorously competitive and efficient high speed broadband Internet access service, more competition with FSS operators and terrestrial networks, and lower cost and more innovative customer equipment. Moreover, both companies possess a rich engineering culture, vast knowledge in complementary satellite disciplines, and experienced personnel in communications centers around the world.

1. The Transaction's Synergies Will Promote Broadband Deployment by Strengthening Satellite Broadband.

The combined company will be a powerful and innovative competitor in broadband deployment consistent with the goals of the Communications Act. As the Commission has explained, broadband access has the capability of "unleashing new opportunities for American

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are authorized by the United Kingdom's Office of Communications. *See id.* ("Nor will we include a U.S. applicant's foreign-licensed satellites in these limits.").

[18] Transaction Announcement at 1.

innovators to create products and industries, new ways for citizens to engage their elected officials and a new foundation for job growth and international competitiveness."[20] As a result, the Commission has made it a priority that "every American . . . have affordable access to robust broadband service."[21]

But broadband adoption "lags considerably" for rural users, who are "less likely to have access to more than one [broadband] provider" than their urban counterparts.[22] As a result, costs for rural subscribers are higher and available speeds lower compared to their urban counterparts.

Fortunately, satellite systems are well-suited for the provision of broadband services in rural America. Satellites have broad coverage and are able to offer high-quality, ubiquitous service as soon as the satellite system is launched and operational. They can thus offer instantaneous deployment to low-population density and low-income areas.[23] As noted in the *National Broadband Plan*, "[s]atellite has the advantage of being both ubiquitous and having a geographically independent cost structure, making it particularly well suited to serve high-cost, low-density areas."[24]

Satellite also has proven to be a key communications source in times of emergency – a capacity shown to be of critical importance by recent events. During Hurricane Katrina, for example, the American Red Cross relied on VSAT networks to communicate with its field

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[19] *Id.*

[20] Federal Communications Commission, *Connecting America: The National Broadband Plan* 3 (2010) ("*National Broadband Plan*").

[21] *Id.* at 10.

[22] *Id.* at 37.

[23] *See* Extending Wireless Telecommunications Services to Tribal Lands, WT Docket No. 99-266, *Notice of Proposed Rulemaking*, 14 FCC Rcd. 13679, 13690 ¶ 24 (1999).

[24] *National Broadband Plan* at 137.

operations.[25] More recently, when the Egyptian government shut down the country's link to the outside world, Internet service providers ("ISPs") with the ability to link internationally through satellite broadband were still able to provide vital service.[26]

Today, only WildBlue and Hughes provide satellite-based fixed broadband service to retail consumers in the United States, with penetration rates for each company at around half a million subscribers. Satellite broadband consumer deployment has been somewhat limited, however, in part because it historically has been perceived as too slow, with download speeds often under 1 Mbps,[27] and companies have had difficulties dealing with the high fixed costs of designing, building, and launching a satellite.[28]

This transaction will greatly enhance the combined company's ability to address these challenges. It will bring to Hughes' existing broadband service EchoStar's additional engineering expertise as well as its relationship with DISH and its DBS service. It will also endow the combined company with additional satellite capacity and increased financial resources that will add strength to the service for the long term. As an example, Hughes engineers are experienced with the complicated loading factors and logistics associated with the provision of satellite broadband service, where the data traffic received by each user has an impact on the amount of data that can be accessed and sent by another customer. EchoStar's engineers, for their part, are well-steeped in the logistics of serving millions of customers – far more than now served by Hughes' high speed access service. Efficient deployment of the high-capacity Jupiter

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[25] American Red Cross, Technology Response to Hurricanes Katrina and Rita, http://www.sia.org/Civil-Presentations/Armond%20Mascelli%20-%20Red%20Cross.pdf.

[26] James Glanz, *Egypt Leaders Found 'Off' Switch for Internet*, *NY Times*, Jan. 28, 2011, http://www.nytimes.com/2011/02/16/technology/16internet.html?pagewanted=all (depicting efforts of small Egyptian ISP to use satellite broadband to reconnect its customers).

[27] *National Broadband Plan* at 21.

1 satellite, which will have download speeds comparable to those of cable high-speed access – ranging between 2-25 Mbps[29] – calls for precisely this mix of expertise. In addition, the merged company will profit from being able to deploy its combined fleet of satellites more efficiently. Excess capacity on a satellite that is now on the EchoStar side of the ledger could be used in certain cases to satisfy peak demand for a service now provided by Hughes.

Furthermore, for the significantly enhanced capacity of the Jupiter 1 satellite to be used most efficiently and effectively, such capacity could be "married" to access a significant subscriber base. EchoStar is in a position to potentially offer such access through its relationship with DISH. Significantly, the smooth working of a partnership offering subscribers the potential of a "triple play" bundle of video, high-speed access, and voice depends on a number of factors. These include engineering collaboration that will result in a seamless technical experience for the subscriber. It could be more difficult for an independent Hughes to enter into an effective arrangement of this kind with DISH. The combined entity, by contrast, will potentially be on much better footing in this respect: EchoStar and DISH currently engage in such information exchange and collaboration on a daily basis as a result of EchoStar's provision of significant satellite capacity, uplink services, set-top boxes, and other engineering services to DISH.

In short, the ability to provide video and broadband services, coupled with the cable-comparable data rates portended by the Jupiter 1 satellite, has the potential to increase competition for the existing bundled pay-TV and Internet packages offered by large, vertically integrated firms such as Comcast and Verizon. The transaction is thus likely to help bring more broadband service to rural consumers and more competitive service everywhere.

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[28] *Id.* at 62.

[29] Hughes, Jupiter, http://www.hughes.com/ProductsAndTechnology/Jupiter/Pages /default.aspx (last visited Feb. 28, 2011); *see also National Broadband Plan* at 38.

2. The Merger Will Strengthen the Combined Company's Market Position and Expertise in the Enterprise Market and in the Manufacture of Low Cost Satellite Equipment.

The merger will also produce many synergies beyond those already discussed. The transaction will improve the efficient distribution of wholesale satellite service because EchoStar can combine its years of delivering wholesale capacity and providing FSS backhaul services with Hughes' experience and expertise in the wholesale VSAT markets. This experience is not limited to satellite operations, but also extends to the development of increasingly advanced end-user equipment and distribution of that equipment to millions of consumers.

The merger combines two firms with a proven track record of providing low-cost satellite equipment to consumers. Both Hughes and EchoStar are on the cutting edge in different satellite services, with each developing innovative advances in satellite technology and manufacturing advanced satellite equipment. EchoStar's set-top boxes, by way of example, have consistently earned awards and accolades.[30] Hughes, in turn, is one of the leading producers of VSAT terminals.[31] By combining their engineering innovation and manufacturing prowess, the transaction will only enhance their ability to innovate in both areas.

3. The Transaction Will Spur Competition to FSS Providers and Terrestrial Networks.

In addition to promoting broadband and improving the ability of the combined entity to provide services and manufacturing products, the transaction will increase competition for FSS enterprise services, which includes Hughes's VSAT enterprise service. At present, the FSS

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[30] P.J. Jacobowitz, *Dish Network ViP922 SlingLoaded DVR, PC Magazine*, Aug. 16, 2010, http://www.pcmag.com/article2/0,2817,2367800,00.asp?tab=FullReview ("If you're lucky enough to be on the Dish Network, the ViP922 is the best DVR you can get, especially if you want to watch TV anytime or anywhere."); John P. Falcone, *EchoStar SlingLoaded HD DVR 922 Combines Slingbox and DVR into One Super Set-Top Box, CNET*, Jan. 8, 2009, http://ces.cnet.com/8301-19167_1-10137052-100.html.

industry is dominated by two major players – Intelsat and SES – as a result of significant acquisitions by these companies within the last five years.[32] The domestic and global footprint of these two entities far outstrips the combined FSS footprint of EchoStar and Hughes. According to the Commission's 2008 *Satellite Competition Report*, Intelsat and SES collectively comprise some 83% of the domestic wholesale FSS networking business (without taking into account terrestrial fiber and microwave networks, with which Intelsat and SES compete).[33] Hughes' share of that business, by contrast, was too small to justify separate discussion by the Commission and was therefore lumped in with the providers in the "other" category. EchoStar, for its part, does not offer VSAT services – it only leases some very limited capacity for provision of some VSAT-type services by other companies. But in combining the resources of EchoStar and Hughes – including the merged satellite and orbital capacity, the combined brain trust and technical know-how of more than 2,000 engineers, and the years of experience – this transaction will allow the combined entity to compete more forcefully against these major players. Among other things, the transaction will allow the combined entity to better compete against terrestrial fiber networks by lowering the cost of consumer equipment, increasing the bandwidth available for satellite broadband services, increasing the broadband speed for consumers, and lowering the per-Mbps cost. As a result of the transaction, the combined entity

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[31] *Comsys VSAT Report, Hughes Market Summary & Company Profile* 54 (2010) (11th ed.).

[32] Second Annual Report and Analysis of Competitive Market Conditions with Respect to Domestic and International Satellite Communications Services, IB Docket No. 07-252, *Second Report*, FCC 08-247 ¶ 26 (rel. Oct. 16, 2008) ("*Satellite Competition Report*"). As the Commission said, participants in the network services business "include FSS satellite operators; some teleport operators; all foreign-licensed satellite operators listed on the Permitted list; resellers of satellite capacity; terrestrial wireline and wireless carriers where they have network facilities; some self-supplying carriers and government users; and 'network integrators,' which are companies that supply their retail customers with network services." *Id.* ¶ 18.

[33] *Id.* ¶¶ 85-86, Table 4.

will be able to take advantage of economies of scale, lower its overhead, expand its footprint both globally and domestically, and better use its combined satellite capacity.

C. The Merger Will Not Result in Public Interest Harms

While the transaction provides many public interest benefits, including enhanced competition in a number of markets, it poses no risk of competitive harm. This is true for two simple reasons: there is only limited overlap between the two stand-alone companies' services; and there are much larger FSS providers, as well as terrestrial competitors. In short, this merger will complement and expand the services consumers receive.

1. No Significant Overlap in Services.

A significant portion of Hughes' business is its provision of residential satellite broadband services to subscribers through its HughesNet® offering. Neither EchoStar nor DISH is a supplier of broadband Internet access services today. Another large portion of Hughes' business is in the provision of VSAT enterprise services, primarily to enterprise customers both in the United States and around the world. EchoStar does not directly participate in this market either.[34] Hughes, for its part, does not compete with EchoStar's business of providing DBS and FSS satellite capacity and technical assistance, or with EchoStar's set-top box business.

2. Competition Will Remain Robust.

Even if overlaps were determined to exist, they would not be a concern because the two companies' services are subject to competitive pressure from the larger FSS and terrestrial

[34] EchoStar does lease some bulk capacity on certain of its Ka-band satellites to resellers, who in turn may use that leased capacity primarily to provide wholesale VSAT service to government customers. Even assuming this creates an indirect and limited overlap between the two companies, it presents no competitive issues. Such VSAT offerings are only a small part of a much larger market for domestic FSS and terrestrial network services featuring participants that will dwarf the combined entity, such as SES and Intelsat for FSS service, and AT&T and Verizon for terrestrial services. In addition, at least two other companies provide VSAT service to enterprise customers – Spacenet and ViaSat.

incumbents, which provide ample competitive choices. The proposed transaction would not materially alter this competitive environment. Backhaul video services, which EchoStar provides for DISH and, to a limited extent, DIRECTV, for example, can be offered, and are in fact offered, by a number of large FSS providers such as SES and Intelsat – which control 38% and 31% respectively of the satellite portion of the video contribution and distribution business as of the Commission's *2008 Satellite Competition Report*.[35] Equally important, the provision of backhaul video service to these customers is subject to considerable competition from fiber and microwave networks. As a result, consummation of this transaction will not result in any negative effects, but rather will create a small but vibrant competitor.

Furthermore, the satellite broadband market will not be adversely affected by this transaction. EchoStar does not compete against Hughes in the satellite broadband market. While EchoStar leases some limited wholesale capacity on the AMC-15 satellite to WildBlue, a provider of satellite broadband services,[36] the proposed transaction will not interfere with EchoStar's existing lease agreement with WildBlue. WildBlue will remain a strong competitor in this space, not least because it will have ample other partnership options and sources of capacity, including its current distribution agreement with DIRECTV and the Viasat-1 satellite.

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[35] *Satellite Competition Report* ¶¶ 85-86, Table 4.

[36] Contractually, under the terms of the lease agreement, WildBlue has a right to access this capacity for the life of the satellite. The cost of that access is fixed for the term of the agreement. As a result of these contractual protections, the combined entity would not be able to deny WildBlue access to the bare capacity on AMC-15, nor can it increase the price as a means of forcing WildBlue to cancel the agreement. Additionally, because the agreement is for bare capacity, the combined entity cannot manipulate the service quality provided over AMC-15. WildBlue has also entered into a capacity reservation agreement with EchoStar pursuant to which EchoStar reserves additional capacity on AMC-15 and AMC-16 for WildBlue's use. That reservation of capacity is related to a distribution agreement between WildBlue and DISH, which was entered into prior to the spinoff and is currently set to expire in August of this year. With the launch of ViaSat-1 set for this summer, WildBlue will have ample capacity for its operations.

IV. WAIVER REQUEST FOR PENDING APPLICATIONS

The Commission should exempt all currently pending applications filed by Hughes and its subsidiaries and by EchoStar from any applicable rules that would require such applications to be re-filed.[37] The Commission has traditionally granted such exemptions where the proposed transaction will serve a legitimate business purpose and will serve the public interest.[38]

As described throughout this Application, the proposed transaction serves a legitimate business purpose and serves the public interest. By combining their satellite assets and operational resources, the transaction will enhance the combined enterprise's U.S. and global service capabilities, allowing it to compete more effectively. The transaction involves – indeed, it is primarily focused upon – an operational satellite and the already-licensed Jupiter 1, which is under physical construction in anticipation of an early 2012 launch. Moreover, the applications currently pending are an integral part of Hughes' and EchoStar's expansion plans that were announced well before this proposed transaction and are essential to the continued competitiveness of their respective businesses. Under these circumstances, there can be no question that the transaction serves an independent business purpose and was not entered into for the purpose of merely acquiring the pending applications.[39]

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[37] *See* 47 C.F.R. § 25.158(c). The exemption requested in this section corresponds to the waivers requested on FCC Form 312, Question 35 for the space station applications.

[38] *See, e.g.*, DirectCom Networks, Inc., *Order and Authorization*, 16 FCC Rcd. 14287, 14292 ¶ 16 (2001); Loral Space & Comm. & Orion Network Syst., *Order and Authorization*, 13 FCC Rcd. 4592, 4599 ¶ 17 (1998) ("*Loral-Orion Order*"); AT&T Corp. & Loral SpaceCom Corp., *Order and Authorization*, 12 FCC Rcd. 925, 926-27 ¶ 96 & n.6 (1997) (waiving the rule "to allow acquisition of interests in applications as part of a larger corporate transaction involving acquisition of substantial and ongoing lines of business apart from the applications.").

[39] *See Loral-Orion Order*, 13 FCC Rcd. at 4599-4600 ¶ 17; General Electric Capital Corp. and SES Global S.A., *Order and Authorization*, 16 FCC Rcd. 17575, 17598 ¶ 56 (2001).

V. REQUEST FOR PERMIT-BUT-DISCLOSE STATUS

The Applicants request that the Commission designate the *ex parte* status of this proceeding as "permit-but-disclose" under the Commission's rules.[40] Doing so will facilitate the development of a complete record and is consistent with Commission decisions in other transactions.[41]

VI. CONCLUSION

The transaction complies with all Commission rules and regulations and will serve the public interest. It creates significant and powerful synergies for both companies and will enhance competition in the provision of broadband, satellite services, and consumer equipment. These public interest benefits are not undermined by any threat, either to any Commission objective or to competition in any relevant market, especially as EchoStar and Hughes offer services without significant overlap today. Consequently, the Applicants respectfully request that the Commission grant the application promptly and provide for any other authority that the Commission finds necessary or appropriate to enable the Applicants to consummate the proposed transaction.

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[40] 47 C.F.R. § 1.1206.

[41] *See, e.g.*, Public Notice, IB Docket No 08-143, Pleading Cycle Established, DA 08-1659, at 9-10 (rel. July 14, 2008).

Respectfully submitted,

/s/

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Dated: February 28, 2011

DECLARATION OF KENNETH CARROLL

I, Kenneth Carroll, being over 18 years of age, swear and affirm as follows:

1. I make this declaration in support of the application for the transfer of control over the Federal Communications Commission ("FCC") authorizations held by Hughes Communications, Inc. ("Hughes") and its subsidiaries to EchoStar Corporation ("EchoStar").

2. I am EchoStar Satellite Services' Chief Operating Officer.

3. I make this declaration based upon personal knowledge, information and belief. I will provide a brief description of EchoStar's current business and then describe some of the benefits I expect to come from Hughes' merger with EchoStar.

ECHOSTAR'S CURRENT BUSINESS

4. EchoStar is a pioneer and innovator in the satellite industry. EchoStar's roots reach back more than 30 years when its Chairman, Charles Ergen, first entered the satellite television business as a distributor of C-Band television satellite systems. Since then, EchoStar and its predecessor companies have earned a reputation as innovators in consumer satellite technology: the first to develop a UHF remote control; the first to offer a satellite receiver for less than $200; the first to offer an integrated receiver descrambler for C-band satellite TV; the first to offer satellite television receivers with built-in digital video recorders; and more.

5. EchoStar launched its first Direct Broadcast Satellite ("DBS") service satellite in December 1995 and began offering DBS service in 1996. At the time, some analysts questioned whether EchoStar would be able to reach the one million subscriber mark. In any event, EchoStar had one million subscribers as of 1997, and subscriber growth has continued at a rapid pace since. Today, DISH Network Corporation ("DISH"), EchoStar's affiliate, serves more than

14 million households and is the industry leader in multichannel video distribution technology and high definition programming.

6. EchoStar was spun off from DISH on January 1, 2008. Prior to that time, EchoStar's operations were combined with those of DISH. Today, both companies continue to be majority-owned by Mr. Ergen. Since the spinoff separating EchoStar and DISH, EchoStar has continued to build a significant satellite operation.

7. As a company, EchoStar is focused on the engineering and technical operations component of satellite services with over 1,100 engineers in its employ.

8. EchoStar operates two primary business units: satellite services; and products and services for delivering video.

9. **Satellite Services**. EchoStar's satellite services business leases capacity on a full-time and occasional-use basis using its owned and leased in-orbit satellites. EchoStar currently leases capacity primarily to DISH for the purpose of providing DBS service to subscribers in the United States. EchoStar also leases satellite capacity to service providers for government entities, as well as to Internet service providers, broadcast news organizations, and private enterprise customers.

10. To support its satellite services business, EchoStar owns and operates six satellites: five DBS satellites (EchoStar 3 at 61.5° W.L., EchoStar 4 at 77° W.L., EchoStar 6 at 77° W.L., EchoStar 8 at 77° W.L., and EchoStar 12 at 61.5° W.L.) and one hybrid Ku-/Ka-band satellite (EchoStar 9 at 121° W.L.). EchoStar also leases capacity on five additional satellites, of which three are DBS (EchoStar 1 at 77° W.L., EchoStar 15 at 61.5° W.L., and Nimiq 5 at 72.7° W.L.) and two are Ka/Ku band FSS (AMC-15 at 105° W.L., and AMC-16 at 85° W.L.). EchoStar also has an authorization to operate a DBS satellite at 86.5° W.L., and has requested a

modification of that license to permit the operation of its EchoStar 8 satellite at that orbital location. Furthermore, EchoStar has licenses for five 17/24 GHz Reverse Band Working ("RBW") DBS satellites at 62.15° W.L., 75° W.L., 79° W.L., 107° W.L., and 110.4° W.L.

11. **Products and Services for Video Entertainment**. EchoStar is also in the "digital set-top box" business – designing, developing and distributing digital set-top boxes and related products, including its Slingbox "placeshifting" technology, primarily for satellite TV service providers, telecommunications and cable companies. EchoStar also provides digital broadcast operations, including satellite uplinking/downlinking, transmission services, signal processing, conditional access management, and other services, primarily to DISH.

12. To my knowledge, Hughes does not provide most of the services discussed above.

BENEFITS FROM THE MERGER

13. A combined Hughes-EchoStar entity will create unique synergies from the combination of the complementary satellite business of the two companies. Neither company could achieve these benefits standing alone.

14. EchoStar excels at complex engineering and other logistics of DTH services offered to many millions of subscribers. Mr. Ergen is a recognized expert at spurring and managing rapid subscriber growth. Hughes, for its part, has immense expertise in an equally complex but complementary discipline – the technology and logistics of offering satellite broadband Internet access service. Expanding the service quality and subscriber base of satellite broadband Internet access requires many of the same skillsets that are used to develop and grow the DTH market.

15. I also believe the merger will facilitate possible commercial relationships to offer a "double" or "triple play" bundle (video, Internet access, and voice) to many of DISH's 14

million plus subscriber base. Among other things, this could accelerate the growth of satellite broadband Internet access offered by Jupiter 1 (Hughes' newest satellite) once it is launched, and could lower the per-subscriber costs of the service.

I declare under penalty of perjury that the foregoing is true and correct to the best of my information, knowledge and belief. Executed on February 28, 2011.

Kenneth Carroll
Chief Operating Officer
EchoStar Satellite Services

DECLARATION OF DEAN A. MANSON

I, Dean A. Manson, being over 18 years of age, swear and affirm as follows:

1. I make this declaration in support of the application for the transfer of control over the Federal Communications Commission ("FCC") authorizations held by Hughes Communications, Inc. ("Hughes") and its subsidiaries to EchoStar Corporation ("EchoStar").

2. I am the Senior Vice President, General Counsel and Secretary of Hughes.

3. I make this declaration based upon personal knowledge, information, and belief. I will provide a brief description of Hughes' current business and then describe some of the benefits I expect to flow from Hughes' merger with EchoStar.

4. In short, the merger will produce significant benefits that neither company could likely achieve standing alone. These benefits include: the combined brain trust of a veritable army of engineers versed in different but complementary satellite disciplines; the pooling of two companies' satellite resources; and the synergies of potentially leveraging EchoStar's relationship with the DISH Network to gain access to DISH's subscriber base.

HUGHES' CURRENT BUSINESS

5. Since 1971, Hughes (together with its predecessors) has been a pioneer in commercial digital satellite communications and has achieved extensive depth and experience in the development, manufacturing, and operation of satellite-based data, voice, and video networks. In 1983, Hughes deployed its first very small aperture terminal ("VSAT") network. Using this expertise, Hughes provides highly reliable, end-to-end communications with guaranteed quality of service to its enterprise customers, regardless of the number of fixed or mobile sites or their geographic location. Hughes started its business as an equipment and system supplier. In 1988, Hughes began providing communications services, initially to medium

and large enterprises. About 10 years later, Hughes leveraged its experience with its enterprise customers to expand its business into other growing market areas, such as providing broadband Internet service to consumers and small- and medium-sized businesses. In addition, Hughes has strategically used its technological base and expertise in satellite communications to provide turnkey satellite ground systems and user terminal equipment to mobile system operators.

6. Today, Hughes employs approximately 900 engineers worldwide, most of whom are located in Hughes' Germantown, Maryland facility.

7. Hughes provides broadband satellite network services and systems to both enterprise and residential customers. It owns and operates the SPACEWAY 3 satellite at the 94.95° W.L. orbital location. It is also building another satellite, Jupiter 1 (formerly known as SPACEWAY 4), that is set to use the 107.1° W.L. orbital location, and has pending applications for the proposed SPACEWAY 5 and SPACEWAY 6 satellites, which would provide additional satellite capacity from the nominal 91° W.L. and 109° W.L. orbital locations. Hughes operates in the following businesses: high-speed broadband Internet access, VSAT and other enterprise services, and equipment manufacturing.

8. **Residential Services.** Hughes launched its residential satellite Internet broadband access service, now called HughesNet®, in 2001. Hughes focused its efforts on underserved areas, including rural and suburban areas. The quality and growth potential of Hughes' residential satellite Internet broadband access service was enhanced in April 2008 when the SPACEWAY 3 satellite was brought into service. The satellite is designed to provide 10 Gbps of capacity and subscriber speeds comparable to Digital Subscriber Line ("DSL"). In order to provide its satellite delivered broadband Internet services, Hughes provides its subscribers with user terminals consisting of a small antenna and radio transceiver located on the roof or side of a