

ECHOSTAR COMMUNICATIONS CORP
Form 10-K/A
September 20, 2002

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UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

FORM 10-K/A
(AMENDMENT NO. 1)

(Mark One)

ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES
EXCHANGE ACT OF 1934 FOR THE FISCAL YEAR ENDED DECEMBER 31, 2001

OR

TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES
EXCHANGE ACT OF 1934

For the transition period from _____ to _____.

Commission file number: 0-26176

ECHOSTAR COMMUNICATIONS CORPORATION
(Exact name of registrant as specified in its charter)

NEVADA
(State or other jurisdiction of incorporation or organization)

88-0336997
(I.R.S. Employer Identifi

5701 S. SANTA FE DRIVE
LITTLETON, COLORADO
(Address of principal executive offices)

80120
(Zip Code)

Registrant's telephone number, including area code: (303) 723-1000

Securities registered pursuant to Section 12(b) of the Act: None

Securities registered pursuant to Section 12(g) of the Class A Common
Stock, \$0.01 par value Act:

Indicate by check mark whether the Registrant (1) has filed all reports required
to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during
the preceding 12 months (or for such shorter period that the Registrant was
required to file such reports), and (2) has been subject to such filing
requirements for the past 90 days. Yes No

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405
of Regulation S-K is not contained herein, and will not be contained, to the
best of Registrant's knowledge, in definitive proxy or information statements
incorporated by reference in Part III of this Form 10-K or any amendment to this
Form 10-K.

As of February 25, 2002, the aggregate market value of Class A Common

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Stock held by non-affiliates* of the Registrant approximated \$5.2 billion based upon the closing price of the Class A Common Stock as reported on the Nasdaq National Market as of the close of business on that date.

As of February 25, 2002, the Registrant's outstanding Common stock consisted of 241,282,817 shares of Class A Common Stock and 238,435,208 shares of Class B Common Stock, each \$0.01 par value.

DOCUMENTS INCORPORATED BY REFERENCE

The following documents are incorporated into this Form 10-K by reference:

Portions of the Registrant's definitive Proxy Statement to be filed in connection with the Annual Meeting of Shareholders of Registrant to be held May 6, 2002 are incorporated by reference in Part III herein.

* Without acknowledging that any individual director or executive officer of the Company is an affiliate, the shares over which they have voting control have been included as owned by affiliates solely for purposes of this computation.

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EXPLANATORY NOTE

We are filing this Amendment No.1 to our Form 10-K to clearly identify previously filed exhibits which include redacted material. No new redactions have been made, and no new exhibits are being filed. We are also refileing certain of the exhibits to more clearly indicate those portions which have been redacted. No other changes whatsoever are being made to the 10-K; these are the only amendments made to the original filing of this report on February 28, 2002 (the "Original Filing").

This report continues to speak as of the date of the Original Filing, and we have not updated the disclosure in this report to speak as of a later date. All information contained in this report and the Original Filing is subject to updating and supplementing as provided in our periodic reports filed with the Securities and Exchange Commission.

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Signatures.....

PART IV

ITEM 14. EXHIBITS, FINANCIAL STATEMENT SCHEDULES AND REPORTS ON FORM 8-K

- (a) (3) Exhibits

- 3.1(a)+ Amended and Restated Articles of Incorporation of EchoStar.
- 3.1(b)* Amended and Restated Bylaws of EchoStar (incorporated by reference to Exhibit 3(ii) to the Current Report on Form 8-K, dated January 23, 2002, of EchoStar, Commission File No. 0-26176).
- 3.2(a)* Articles of Incorporation of EchoStar Broadband Corporation ("EBC") (incorporated by reference to Exhibit 3.1(a) to the Registration Statement on Form S-4 of EBC, Registration No. 333-52756).
- 3.2(b)* Bylaws of EBC (incorporated by reference to Exhibit 3.1(b) to the Registration Statement on Form S-4 of EBC, Registration No. 333-52756).
- 3.3(a)* Articles of Incorporation of EchoStar DBS Corporation ("DBS Corp.") (incorporated by reference to Exhibit 3.4(a) to the Registration Statement on Form S-4 of DBS Corp., Registration No. 333-31929).
- 3.3(b)* Bylaws of DBS Corp. (incorporated by reference to Exhibit 3.4(b) to the Registration Statement on Form S-4 of DBS Corp., Registration No. 333-31929).
- 4.1* Warrant Agreement between EchoStar and First Trust, as Warrant Agent (incorporated by reference to Exhibit 4.2 to the Registration Statement on Form S-1 of Dish Ltd., Registration No. 33-76450).
- 4.2* Security Agreement in favor of First Trust, as trustee under the Indenture filed as Exhibit 4.1 hereto (incorporated by reference to Exhibit 4.3 to the Registration Statement on Form S-1 of Dish Ltd., Registration No. 33-76450).
- 4.3* Escrow and Disbursement Agreement between Dish Ltd. and First Trust (incorporated by reference to Exhibit 4.4 to the Registration Statement on Form S-1 of Dish, Registration No. 33-76450).
- 4.4* Pledge Agreement in favor of First Trust, as trustee under the Indenture filed as Exhibit 4.1 hereto (incorporated by reference to Exhibit 4.5 to the Registration Statement on Form S-1 of Dish Ltd., Registration No. 33-76450).

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- 4.5* Intercreditor Agreement among First Trust, Continental Bank, N.A. and Martin Marietta Corporation ("Martin Marietta") (incorporated by reference to Exhibit 4.6 to the Registration Statement on Form S-1 of Dish, Registration No. 33-76450).
- 4.6* Registration Rights Agreement by and between EchoStar and Charles W. Ergen (incorporated by reference to Exhibit 4.8 to the Registration Statement on Form S-1 of EchoStar, Registration No. 33-91276).
- 4.7* Indenture of Trust, relating to DBS Corp.'s 9 1/4% Senior Notes due 2006 ("Seven Year Notes"), dated as of January 25, 1999, among DBS Corp., the Guarantors (as defined therein) and U.S. Bank Trust National Association ("U.S. Bank"), as trustee (incorporated by reference to Exhibit 4.1 to the Registration Statement on Form S-4 of DBS Corp., Registration No. 333-71345).
- 4.8* Indenture of Trust, relating to DBS Corp.'s 9 3/8% Senior Notes due 2009 ("Ten Year Notes"), dated as of January 25, 1999, among DBS Corp., the Guarantors (as defined therein) and U.S. Bank, as trustee (incorporated by reference to Exhibit 4.3 to the Registration Statement on Form S-4 of DBS Corp., Registration No. 333-71345).
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- 4.9* Registration Rights Agreement, relating to the Seven Year Notes, dated as of January 25, 1999, by and among DBS Corp., the Guarantors and the Initial Purchasers (as defined therein) (incorporated by reference to Exhibit 4.5 to the Registration Statement on Form S-4 of DBS Corp., Registration No. 333-71345).
- 4.10* Registration Rights Agreement, relating to the Ten Year Notes, dated as of January 25, 1999, by and among DBS Corp., the Guarantors and the Initial Purchasers (as defined therein) (incorporated by reference to Exhibit 4.6 to the Registration Statement on Form S-4 of DBS Corp., Registration No. 333-71345).
- 4.11* Indenture relating to 4 7/8% Convertible Subordinated Notes due 2007, dated as of December 8, 1999, between EchoStar Communications Corporation and U.S. Bank Trust National Association, as trustee, (incorporated by reference to Exhibit 4.1 to the Registration Statement on Form S-3 of EchoStar Communications Corporation, Registration No. 333-31894).
- 4.12* Registration Rights Agreement, relating to the 4 7/8% Convertible Subordinated Notes Due 2007, dated as of December 8, 1999, by and among EchoStar Communications Corporation and the initial purchasers (incorporated by reference to Exhibit 4.2 to the Registration Statement on Form S-3 of EchoStar Communications Corporation, Registration No. 333-31894).
- 4.13* Indenture relating to 10 3/8% Senior Notes due 2007, dated as of September 25, 2000, between EchoStar Broadband Corporation and U.S. Bank Trust National Association, as trustee (incorporated by reference to Exhibit 4.1 to the Quarterly

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Report on Form 10-Q of EchoStar for the quarter ended September 30, 2000, Commission File No.0-26176).

- 4.14* Registration Rights Agreement dated as of September 25, 2000, by and among EchoStar Broadband Corporation, Donaldson, Lufkin & Jenrette Securities Corporation, Banc of America Securities LLC, Credit Suisse First Boston Corporation and ING Barings LLC (incorporated by reference to Exhibit 4.2 to the Quarterly Report on Form 10-Q of EchoStar for the quarter ended September 30, 2000, Commission File No.0-26176).
 - 4.15* Indenture, relating to the 5 3/4% Convertible Subordinated Notes Due 2008, dated as of May 31, 2001 between EchoStar Communications Corporation and U.S. Bank Trust National Association, as Trustee (incorporated by reference to Exhibit 4.1 to the Quarterly Report on Form 10-Q of EchoStar for the quarter ended June 30, 2001, Commission File No.0-26176).
 - 4.16* Registration Rights Agreement, relating to the 5 3/4% Convertible Subordinated Notes Due 2008, dated as of May 31, 2001, by and between EchoStar Communications Corporation and UBS Warburg LLC (incorporated by reference to Exhibit 4.2 to the Quarterly Report on Form 10-Q of EchoStar for the quarter ended June 30, 2001, Commission File No.0-26176).
 - 4.17+ Indenture, relating to the 9 1/8% Senior Notes Due 2009, dated as of December 28, 2001 between EchoStar DBS Corporation and U.S. Bank Trust National Association, as Trustee.
 - 4.18+ Registration Rights Agreement, relating to the 9 1/8% Senior Notes Due 2009, dated as of December 28, 2001, by and among EchoStar DBS Corporation and Deutsche Banc Alex. Brown, Inc., Credit Suisse First Boston Corporation, Lehman Brothers Inc. and UBS Warburg LLC.
 - 4.19+ Certificate of Withdrawal Withdrawing the Series A, Series B and Series C Preferred Stock Designations of EchoStar.
 - 4.20+ Series D Mandatorily Convertible Participating Preferred Stock Certificate of Designation of EchoStar.
 - 10.1* Key Employee Bonus Plan, dated as of January 1, 1994 (incorporated by reference to Exhibit 10.7 to the Registration Statement on Form S-1 of Dish, Registration No. 33-76450).**
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- 10.2* Consulting Agreement, dated as of February 17, 1994, between ESC and Telesat Canada (incorporated by reference to Exhibit 10.8 to the Registration Statement on Form S-1 of Dish, Registration No. 33-76450).
 - 10.3* Form of Satellite Launch Insurance Declarations (incorporated by reference to Exhibit 10.10 to the Registration Statement on Form S-1 of Dish, Registration No. 33-81234).
 - 10.4* Dish 1994 Stock Incentive Plan (incorporated by reference to Exhibit 10.11 to the Registration Statement on Form S-1 of Dish, Registration No. 33-76450).**

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- 10.5* Form of Tracking, Telemetry and Control Contract between AT&T Corp. and ESC (incorporated by reference to Exhibit 10.12 to the Registration Statement on Form S-1 of Dish, Registration No. 33-81234).
- 10.6* Manufacturing Agreement, dated as of March 22, 1995, between HTS and SCI Technology, Inc. (incorporated by reference to Exhibit 10.12 to the Registration Statement on Form S-1 of Dish, Commission File No. 33-81234).
- 10.7* Statement of Work, dated January 31, 1995 from ESC to DiviCom, Inc. (incorporated by reference to Exhibit 10.14 to the Registration Statement on Form S-1 of EchoStar, Registration No. 33-91276).
- 10.8* EchoStar 1995 Stock Incentive Plan (incorporated by reference to Exhibit 10.16 to the Registration Statement on Form S-1 of EchoStar, Registration No. 33-91276).**
- 10.9* Satellite Construction Contract, dated as of July 18, 1996, between EDBS and Lockheed Martin Corporation (incorporated by reference to Exhibit 10.18 to the Quarterly Report on Form 10-Q of EchoStar for the quarter ended June 30, 1996, Commission File No. 0-26176).
- 10.10* Confidential Amendment to Satellite Construction Contract between DBSC and Martin Marietta, dated as of May 31, 1995 (incorporated by reference to Exhibit 10.14 to the Registration Statement of Form S-4 of EchoStar, Registration No. 333-03584).
- 10.11* Agreement between HTS, ESC and ExpressVu Inc., dated January 8, 1997, as amended (incorporated by reference to Exhibit 10.18 to the Annual Report on Form 10-K of EchoStar for the year ended December 31, 1996, as amended, Commission File No. 0-26176).
- 10.12* Amendment No. 9 to Satellite Construction Contract, effective as of July 18, 1996, between Direct Satellite Broadcasting Corporation, a Delaware corporation ("DBSC") and Martin Marietta Corporation (incorporated by reference to Exhibit 10.1 to the Quarterly Report on Form 10-Q of EchoStar for the quarterly period ended June 30, 1997, Commission File No. 0-26176).
- 10.13* Amendment No. 10 to Satellite Construction Contract, effective as of May 31, 1996, between DBSC and Lockheed Martin Corporation (incorporated by reference to Exhibit 10.2 to the Quarterly Report on Form 10-Q of EchoStar for the quarterly period ended June 30, 1997, Commission File No. 0-26176).
- 10.14* Purchase Agreement, dated November 30, 1998, by and among American Sky Broadcasting, LLC ("ASkyB"), The News Corporation Limited ("News Corporation"), MCI Telecommunications Corporation and EchoStar (incorporated by reference to Exhibit 10.1 to the Current Report on Form 8-K filed by EchoStar on December 1, 1998, Commission File No. 0-26176).
- 10.15* Voting Agreement, dated November 30, 1998, among EchoStar, ASkyB, News Corporation and MCI Telecommunications Corporation (incorporated by reference to Exhibit 10.3 to the Current

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Report on Form 8-K of EchoStar, filed as of December 1, 1998, Commission File No. 0-26176).

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- 10.16* Agreement to Form NagraStar LLC, dated as of June 23, 1998, by and between Kudelski S.A., EchoStar and ESC (incorporated by reference to Exhibit 10.28 to the Annual Report on Form 10-K of EchoStar for the year ended December 31, 1998, Commission File No. 0-26176).
- 10.17* First Amendment, dated June 23, 1999, to the Purchase Agreement dated November 30, 1998, by and among American Sky Broadcasting, LLC, The News Corporation Limited, MCI Telecommunications Corporation, and EchoStar Communications Corporation (incorporated by reference to Exhibit 10.3 to the Current Report on Form 8-K of EchoStar, filed as of July 2, 1999, Commission File No. 0-26176).
- 10.18* Registration Rights Agreement, dated June 24, 1999, by and among EchoStar Communications Corporation, MCI Telecommunications Corporation, American Sky Broadcasting, LLC, and News America Incorporated (incorporated by reference to Exhibit 10.4 to the Current Report on Form 8-K of EchoStar, filed as of July 2, 1999, Commission File No. 0-26176).
- 10.19* Satellite Construction Contract dated as of January 27, 2000, between EchoStar Orbital Corporation and Lockheed Martin Corporation (incorporated by reference to Exhibit 10.1 to the Quarterly Report on Form 10-Q of EchoStar for the quarter ended March 31, 2000, Commission File No.0-26176).
- 10.20* Satellite Construction Contract dated as of February 4, 2000, between EchoStar Orbital Corporation and Space Systems/Loral Inc. (incorporated by reference to Exhibit 10.2 to the Quarterly Report on Form 10-Q of EchoStar for the quarter ended March 31, 2000, Commission File No.0-26176).
- 10.21* Satellite Construction Contract dated as of February 22, 2000, between EchoStar Orbital Corporation and Space Systems/Loral Inc. (incorporated by reference to Exhibit 10.3 to the Quarterly Report on Form 10-Q of EchoStar for the quarter ended March 31, 2000, Commission File No.0-26176).
- 10.22* Agreement dated as of February 22, 2000, between EchoStar Orbital Corporation and Loral Skynet, a division of Loral SpaceCom Corporation (incorporated by reference to Exhibit 10.4 to the Quarterly Report on Form 10-Q of EchoStar for the quarter ended March 31, 2000, Commission File No.0-26176).
- 10.23* Contract for Launch Services, dated January 31, 2001, between Lockheed Martin's International Launch Services and EchoStar Orbital Corporation (incorporated by reference to Exhibit 10.1 to the Quarterly Report on Form 10-Q of EchoStar for the quarter ended March 31, 2001, Commission File No.0-26176).
- 10.24* Modification Nos. 1-7 to the Satellite Contract (EchoStar VII - 119 degree West Longitude) dated January 27, 2000, between

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Lockheed Martin Corporation and EchoStar Orbital Corporation (incorporated by reference to Exhibit 10.1 to the Quarterly Report on Form 10-Q of EchoStar for the quarter ended June 30, 2001, Commission File No.0-26176).

- 10.25* Amended and Restated Contract dated February 1, 2001, between EchoStar Orbital Corporation and Space Systems/Loral, Inc., EchoStar VIII Satellite Program (110 degree West Longitude) (incorporated by reference to Exhibit 10.2 to the Quarterly Report on Form 10-Q of EchoStar for the quarter ended June 30, 2001, Commission File No.0-26176).
- 10.26* Amendment No. 1 to the Contract dated February 22, 2000, between EchoStar Orbital Corporation and Space Systems/Loral Inc., EchoStar IX Satellite Program (121 degree West Longitude) (incorporated by reference to Exhibit 10.3 to the Quarterly Report on Form 10-Q of EchoStar for the quarter ended June 30, 2001, Commission File No.0-26176).
- 10.27* Agreement and Plan of Merger, dated October 28, 2001, by and between EchoStar and Hughes Electronics Corporation (incorporated by reference to Exhibit 99.1 to the Current Report on Form 8-K of EchoStar, filed as of October 31, 2001, Commission File No. 0-26176).
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- 10.28* Implementation Agreement, dated October 28, 2001, by and among General Motors Corporation, Hughes Electronics Corporation and EchoStar (incorporated by reference to Exhibit 99.2 to the Current Report on Form 8-K of EchoStar, filed as of October 31, 2001, Commission File No. 0-26176).
- 10.29* Stock Purchase Agreement, dated October 28, 2001, among EchoStar, Hughes Electronics Corporation, Hughes Communications Galaxy, Inc., Hughes Communications Satellite Services, Inc. and Hughes Communications Inc. (incorporated by reference to Exhibit 99.3 to the Current Report on Form 8-K of EchoStar, filed as of October 31, 2001, Commission File No. 0-26176).
- 10.30* Separation Agreement, dated October 28, 2001, by and between General Motors Corporation and Hughes Electronics Corporation (incorporated by reference to Exhibit 99.4 to the Current Report on Form 8-K of EchoStar, filed as of October 31, 2001, Commission File No. 0-26176).
- 10.31* Investment Agreement, dated December 14, 2001, between EchoStar and Vivendi Universal, S.A., and exhibits (incorporated by reference to Exhibit 99.1 to the Current Report on Form 8-K of EchoStar, filed as of December 20, 2001, Commission File No. 0-26176).
- 10.32* Stockholder Voting Agreement, dated December 14, 2001, by and among Charles W. Ergen, The Samburu Warrior Revocable Trust and Vivendi Universal, S.A. (incorporated by reference to Exhibit 99.2 to the Current Report on Form 8-K of EchoStar, filed as of December 20, 2001, Commission File No. 0-26176).
- 10.33+ Modification No. 8 to the Satellite Contract (EchoStar VII - 119 degree West Longitude) dated October 12, 2001, between

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- Lockheed Martin Corporation and EchoStar Orbital Corporation.
- 10.34+ Modification No. 9 to the Satellite Contract (EchoStar VII - 119 degree West Longitude) dated October 16, 2001, between Lockheed Martin Corporation and EchoStar Orbital Corporation.
- 10.35+ Contract amendment No.1 to the EchoStar VIII contract between EchoStar Orbital Corporation and Space Systems/Loral, Inc., dated October 19, 2001. ***
- 10.36+ Modification No. 10 to the Satellite Contract (EchoStar VII - 119 degree West Longitude) dated December 12, 2001, between Lockheed Martin Corporation and EchoStar Orbital Corporation.
- 21+ Subsidiaries of EchoStar Communications Corporation.
- 23.1+ Consent of Arthur Andersen LLP, Independent Public Accountants
- 23.2+ Consent of Ernst & Young LLP, Independent Public Accountants
- 24.1+ Powers of Attorney authorizing signature of Cantey Ergen, Raymond L. Friedlob, O. Nolan Daines, Peter A. Dea and Jean-Marie Messier.

- * Incorporated by reference.
- ** Constitutes a management contract or compensatory plan or arrangement.
- *** Filed in redacted form since confidential treatment has been requested pursuant to Rule 24.b-2 for certain portions thereof. A conforming electronic copy is being filed herewith.
- + Filed herewith.

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SIGNATURES

Pursuant to the requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, EchoStar has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized.

ECHOSTAR COMMUNICATIONS CORPORATION

By: /s/ Michael R. McDonnell

Michael R. McDonnell
Senior Vice President and Chief Financial Officer

Date: September 20, 2002

Pursuant to the requirements of the Securities Exchange Act of 1934, this report has been signed below by the following persons on behalf of EchoStar and in the capacities and on the dates indicated:

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| Signature ----- | Title ----- | Date ---- |
|---|--|--------------|
| /s/ Charles W. Ergen ----- Charles W. Ergen | Chief Executive Officer and Chairman (Principal Executive Officer) | Septemb |
| /s/ Michael R. McDonnell ----- Michael R. McDonnell | Senior Vice President and Chief Financial Officer (Principal Financial Officer) | Septemb |
| /s/ James DeFranco ----- James DeFranco | Director | Septemb |
| /s/ David K. Moskowitz ----- David K. Moskowitz | Director | Septemb |
| * ----- Cantey Ergen | Director | Septemb |
| * ----- Raymond L. Friedlob | Director | Septemb |
| * ----- O. Nolan Daines | Director | Septemb |
| * ----- Peter A. Dea | Director | Septemb |
| * ----- Jean-Marie Messier | Director | Septemb |

* By: /s/ David K. Moskowitz

David K. Moskowitz
Attorney-in-Fact

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EXHIBIT
NUMBER

DESCRIPTION

| | |
|-------|---|
| 10.35 | Contract amendment No.1 to the EchoStar VIII contract between EchoStar Orbital Corporation and Space Systems/Loral, Inc., dated October 19, 2001. |
|-------|---|

* Only exhibits actually filed on this Form 10-K/A are listed. Exhibits previously filed on the Form 10-K or incorporated by reference are set forth in the exhibit listing included in Item 14 of this Form 10-K/A. These exhibits were previously filed with the Commission as an Exhibit to the Company's report on Form 10-K for the year ended December 31, 2001, filed on February 28, 2002. Pursuant to a confidential treatment request filed with the Commission, certain portions of these exhibits were omitted from our prior filing. The current filing reflects comments of the Commission regarding our confidential treatment request.