

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

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*In re Consolidated Application of* )

**EchoStar Communications Corporation,** )  
**General Motors Corporation,** )  
**Hughes Electronics Corporation,** )

Transferors, )

and )

**EchoStar Communications Corporation,** )

Transferee, )

For Authority to Transfer Control. )  
\_\_\_\_\_

CS Docket No. 01-348

TO: Cable Services Bureau

**PEGASUS COMMUNICATIONS CORPORATION'S  
PETITION TO SUSPEND THE PLEADING CYCLE**

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Dated: January 14, 2002

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## SUMMARY

Pegasus Communications Corporation (“Pegasus”) respectfully requests the Cable Services Bureau to suspend temporarily the pleading cycle in this proceeding. Pegasus has a direct interest in the outcome of this transfer proceeding and, accordingly, will be participating in it.

In their consolidated transfer application the transfer applicants vigorously contended that one of the principal public interest benefits of the pending merger was that EchoStar and DIRECTV – the only facilities-based DBS providers with full CONUS coverage – had no strategy of vertical integration. Only days after the application was filed, however, that alleged justification disappeared when EchoStar announced its so-called “strategic alliance” with Vivendi Universal S.A. (“Vivendi”). Shortly thereafter, Vivendi announced its plan to acquire USA Networks. Thus, it is now apparent that EchoStar aggressively is pursuing a vertical integration strategy, and that the statements to the contrary in the consolidated transfer application were not forthcoming.

Even more troubling, EchoStar has refused to provide the Commission and, apparently, the SEC with the key documents describing the substantive terms of the EchoStar/Vivendi “alliance.” This places both the Commission and interested parties in the untenable position of having to evaluate the public interest implications of the proposed merger based on a materially incomplete record. Accordingly, the Cable Services Bureau should order the transfer applicants to provide all relevant documents and information relating to the EchoStar/Vivendi alliance and suspend the comment cycle in this proceeding until such time as that information is made available.

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TO: Cable Services Bureau

**PEGASUS COMMUNICATIONS CORPORATION'S  
PETITION TO SUSPEND THE PLEADING CYCLE**

Pegasus Communications Corporation ("Pegasus"), pursuant to Section 1.41 of the Federal Communications Commission's (the "Commission" or "FCC") Rules, 47 C.F.R. § 1.41, respectfully requests the Cable Services Bureau to suspend temporarily the pleading cycle in this proceeding, for the reasons set forth below.

Pegasus holds the exclusive rights to provide DIRECTV service in portions of rural America. Over the last seven years, it has built a business that serves approximately 1.5 million DIRECTV subscribers in 41 states. Pegasus has a direct interest in the outcome of this transfer proceeding and, accordingly, will be participating in it.

## INTRODUCTION

This proceeding is off to a troubling start. As described more fully below, the transfer applicants have failed to provide the Commission with critical documents and information reflecting EchoStar's so-called "strategic alliance" with Vivendi Universal S.A. ("Vivendi") that was announced shortly after the consolidated transfer application was filed with the Commission. Without this information, neither interested parties nor the Commission can adequately and fully evaluate the public interest implications of the proposed transfer of control. Accordingly, the pleading cycle should be suspended until such time as the transfer applicants supplement their consolidated application with all documents and information relevant to the EchoStar/Vivendi "strategic alliance."

On December 3, 2001, the transfer applicants filed their consolidated transfer of control application in connection with a proposed merger that would create the only facilities-based DBS provider with full CONUS coverage in the United States. In an effort to convince the Commission that this merger has affirmative public interest benefits, the transfer applicants placed great emphasis on their claim that they had *no strategy of vertical integration with programmers*. As we learned on December 14, 2001, however, that claim was not accurate.

On that day, less than two weeks after the transfer applicants disavowed any vertical integration plans to the Commission, EchoStar and Vivendi – a Paris-based, international media conglomerate and major supplier of video programming – announced their "strategic alliance." Among other things, that alliance involves: programming agreements; technology agreements; a \$1.5 billion investment by Vivendi in EchoStar; a pre- and post-merger EchoStar board seat for Vivendi's chairman; and a potential investment by New EchoStar in

this programming supplier. Further, on December 17, 2001, Vivendi announced its planned acquisition of USA Networks.

It is highly unlikely that EchoStar officials were unaware of these impending, multi-faceted arrangements when the consolidated transfer application was filed on December 3. Thus, the statements about vertical integration in the FCC application were not forthcoming. Moreover, the inception of the EchoStar/Vivendi relationship means that the pending transfer proceeding is a moving target. As such, the comment period should be postponed until such time as a full picture is presented.

The course of this proceeding since the Vivendi announcement also is disconcerting. The transfer applicants did not amend their consolidated application or provide relevant documents to the Commission to reflect the Vivendi deal. Instead, on December 18, 2001, the transfer applicants' counsel submitted a letter to the Commission that tended to downplay the importance of the EchoStar/Vivendi deal. Then, on December 21, 2001, the Commission released a Public Notice establishing a pleading cycle for this proceeding.<sup>1</sup> The Public Notice deemed "minor" certain changes to EchoStar's ownership structure and the composition of its board of directors, but we respectfully submit that it is impossible for the FCC or interested parties to know how significant the impact is at this point. Indeed, the Public Notice indicates that the Commission is considering what additional information it may want with respect to Vivendi, but, in the meantime, interested parties must prepare comments and/or petitions to deny based on a materially incomplete record. Further, inasmuch as EchoStar apparently has not filed the key Vivendi deal documents – *i.e.*, the annexes to the Investment Agreement that

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<sup>1</sup> *EchoStar Communications Corporation, General Motors Corporation, and Hughes Electronics Corporation Seek FCC Consent for a Proposed Transfer of Control*, Public Notice, CS Dkt. No. 01-348, DA 01-3005 (rel. Dec. 21, 2001) ("Public Notice").

contain the terms of the so-called “Commercial Agreements” – with the Securities and Exchange Commission (“SEC”), interested parties have no way to assess the public interest impact of the Vivendi “alliance” on the transfer applicants’ pending application.

Accordingly, in order to ensure that the Commission and interested parties are able to evaluate the pending transfer application based on a complete record, and to ensure the integrity of this process, Pegasus respectfully requests that the Bureau: (i) require EchoStar immediately to provide a full and accurate description of its “alliance” with Vivendi and to produce all relevant documents for public review and comment (pursuant to a protective order if necessary), and (ii) issue a revised Public Notice providing that petitions/comments on the transfer applicants’ pending transfer of control application will not be due until forty-five (45) days after such information is provided, and oppositions/responses will not be due until twenty-one (21) days thereafter.<sup>2</sup>

## DISCUSSION

### **I. The Transfer Applicants Have Not Been Forthcoming About EchoStar’s Vertical Integration Strategy And Its Relationship With Vivendi**

A recurrent theme throughout the transfer applicants’ consolidated application is that they do not have any intention to vertically integrate with content providers and, therefore, the merger is pro-competitive and will foster more independent programming. Indeed, the consolidated application is replete with such statements.

- **“The merger will also contribute to the diversity of independent programming voices, as it will create a significant multi-channel distributor that has *no strategy of vertical integration with programmers.*”** Consolidated Application For Authority to Transfer Control (“Application”) at ii (emphasis added).

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<sup>2</sup> These are the same time periods provided for in the December 21st Public Notice.

- “The proposed merger also will have positive effects in the programming market. Unlike most large cable operators, [EchoStar] has no ownership stake in any programming producer, and *the Merger Parties do not intend to pursue a strategy of vertical integration with programmers post-merger.*” Application at 6 (emphasis added).
- “The programming market also will benefit from the proposed merger as a result of the more efficient use of spectrum and the creation of a much stronger alternative distribution outlet for programmers not affiliated with cable MSOs. In this regard, the proposed merger will not create the types of vertical relationships that raised concern in other transactions. . . . *[T]he Merger Parties do not intend to pursue a strategy of vertical integration with programmers post-merger. . . . [T]his absence of vertical integration will help create a significant outlet for existing and new non-affiliated cable programmers, which now find it difficult to obtain carriage on the platforms of vertically integrated cable operators.*” Application at 42-43 (emphasis added).
- “This merger, however, clearly does not create or exacerbate any concerns the FCC might have about vertical integration because *EchoStar and DIRECTV do not have any significant vertical relationships with programmers. . . . New EchoStar would be unaffiliated with any programming interests*, and therefore, would not face any disincentives to carry new programming that its subscribers would value. Therefore, this merger could result in an increase in the programming offerings available to consumers.” Application; Declaration of Dr. Robert D. Willig at ¶¶ 41-42 (emphasis added).

EchoStar’s deal with Vivendi – announced only 11 days after the Application was filed – belies any suggestion that New EchoStar is not pursuing a vertical strategy. Further, it would be remarkable if EchoStar officials were not aware of Vivendi’s plan to invest \$1.5 billion in EchoStar and the companies’ other arrangements when the application was filed. Were the transfer applicants merely silent on the issue of vertical integration, that would have been cause for concern. But, their decision affirmatively to disavow any vertical integration intentions on the brink of the Vivendi deal suggests that EchoStar was not forthcoming.

Unfortunately, the transfer applicants’ conduct since the announcement of the Vivendi deal has not ameliorated the situation. On December 14, 2001, EchoStar filed a Form 8-K with the SEC with respect to the Vivendi deal. That 8-K included a press release from the



parties describing their “strategic alliance.” (See Exhibit 1.) The EchoStar/Vivendi agreement, according to this press release, includes the following terms:

- EchoStar will carry 5 new Vivendi channels of basic and niche programming;
- EchoStar will carry expanded pay-per-view and video-on-demand movies featuring Vivendi Universal films;
- EchoStar and Vivendi will work collaboratively to develop new satellite-delivered broadband channels featuring interactive games, movies, sports, education, and music (this will be the equivalent of about 8 video channels)<sup>3</sup>; and
- EchoStar will integrate Vivendi’s advanced, interactive middleware technology, MediaHighway, on new set-top boxes.

Further, as noted, Vivendi will invest \$1.5 billion in EchoStar. This investment will give Vivendi an approximately 10% ownership interest in the pre-merger EchoStar and a less than 5% interest in New EchoStar. Also, Vivendi’s CEO, Jean-Marie Messier, will become a member of EchoStar’s Board of Directors when the investment occurs, and will continue in that role with respect to New EchoStar. In addition, EchoStar will have the option of acquiring a 10% interest in the 5 new Vivendi channels.<sup>4</sup>

There can be no doubt that EchoStar’s and Vivendi’s arrangements amount to vertical integration. The extent of that relationship, though, is impossible to understand because EchoStar has not made public – either in this proceeding or with the SEC – the documents describing the terms of the key “Commercial Agreements.”

On December 18, 2001, EchoStar’s counsel filed a letter with the Commission that purported to describe the Vivendi transaction. That letter summarily described the deal with

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<sup>3</sup> See Letter from Transfer Applicants’ Counsel to the Commission, dated December 18, 2001 (discussed *infra*).

<sup>4</sup> See *id.*

less detail than the press release, and conclusively stated that the foreign ownership change associated with the Vivendi investment is “not a matter of decisional significance.” It further stated that the transfer applicants would amend the application *after* the Vivendi transaction closes. The letter made no credible effort to address the inconsistency between the arguments prominently featured in the application, on the one hand, and the EchoStar/Vivendi “alliance” and press reports regarding vertical integration, on the other hand. For example, in the December 14, 2001 press release, Vivendi Chairman Messier stated: “With today’s announcement, Vivendi Universal is securing key access to consumers, as this ‘multi-dimensional’ transaction provides us with an important distribution system for our broad array of assets – from content to technology. This agreement is a foundation upon which we all intend to build even more value-creation opportunities for the benefit of our customers.” (*See Exhibit 1.*)<sup>5</sup>

On December 20, 2001, EchoStar filed another 8-K with the SEC. The EchoStar/Vivendi Investment Agreement and certain attachments thereto, as well as a Stockholder Voting Agreement related to that transaction, were appended to the 8-K. The fifth recital to the Investment Agreement provides:

WHEREAS, concurrently with the purchase and sale of the Preferred Stock pursuant to this Agreement and the issuance of the CVRs [Contingent Value Rights] pursuant to the CVR Agreement and as a condition to the willingness of the Investor [Vivendi] to enter into this Agreement, the Company [EchoStar]

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<sup>5</sup> *See also* Andy Pasztor, “EchoStar Chief Looks to Vivendi to Spark Growth in His Satellite-Broadcast Business,” THE WALL STREET JOURNAL, Dec. 17, 2001 (“Vivendi’s move ‘serves as an endorsement’ of the ‘fundamental value’ of EchoStar’s growth plans and assures Mr. Ergen’s company [EchoStar] some ‘of the benefits of vertical integration’ through more favorable access to programming, according to Merrill Lynch analyst Marc Nabi. . . . In joining forces with Vivendi, *EchoStar is following the lead of other large media players determined to meld distribution and content.*”) (emphasis added).

and the Investor will enter into commercial agreements relating to (i) new interactive services, (ii) linear channel broadcast rights; (iii) set-top box technology commitments and (iv) film broadcast and exhibition agreements, on the terms set forth in Annexes I through IV, respectively (the “Commercial Agreements”).

It appears that the SEC filing did not include the annexes describing the “Commercial Agreements.”

The missing documents – which evidently set forth the substantive, non-investment terms of the “strategic alliance”<sup>6</sup> – tell the real story of the planned EchoStar/Vivendi relationship. Yet, EchoStar did not provide these documents to the SEC, and has told the Commission that further information about the Vivendi deal will not be forthcoming until *after* the transaction closes. Though it is not clear when that will be, it is doubtful that it will be before the conclusion of the pleading cycle currently established in this proceeding.<sup>7</sup>

The failure to make public these documents raises an obvious question – what is EchoStar trying to hide? Why won’t EchoStar provide this information to the SEC and the FCC so that the public will have a meaningful opportunity to evaluate the transaction? Clearly, the EchoStar/Vivendi “alliance,” coupled with Vivendi’s new relationship with USA

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<sup>6</sup> Section 4.08(a) of the Investment Agreement requires that the Annexes be converted into definitive agreements prior to the closing of the EchoStar/Vivendi transaction. However, that section goes on to provide that: “With respect to any of such Commercial Agreements the definitive agreement for which has not been completed prior to the Closing Date, *the parties agree that the terms of such arrangement set forth in the relevant Annex hereto represent all essential terms between the parties and shall be binding on the parties effective as of the Closing Date.*” (emphasis added.) In light of this agreement, it is reasonable to assume that these undisclosed Annexes consist of detailed term sheets, and the fact that they were not yet embodied in definitive agreements by the time the Investment Agreement was executed (“as of December 14, 2001”) is no excuse for the failure to disclose them, or to disclose any of the definitive agreements that subsequently have been completed.

<sup>7</sup> The EchoStar/Vivendi press release indicates that the equity investment is expected to be completed in the first quarter of 2002. (See Exhibit 1.)

Networks,<sup>8</sup> substantially undercuts the claims made in the application and Dr. Willig's supporting declaration about vertical integration. It is incumbent upon the transfer applicants – having highlighted the lack of vertical integration as a key public interest benefit of the merger – fully to disclose all relevant information so that the public and the Commission can fairly assess the impact of the Vivendi transaction.

There are a number of reasons why the issue of vertical integration is important. In addition to vitiating one of the public interest benefits claimed by the transfer applicants, this new vertical integration could independently present new concerns about the transaction. The Commission has long been concerned about the power of a programming distributor to disadvantage rivals through its control over content.<sup>9</sup> The new relationship between EchoStar and Vivendi/USA Networks may have similar potential, allowing New EchoStar, which would be the sole facilities-based DBS provider in the United States with full CONUS coverage, to discriminate against programming that competes with Vivendi/USA Networks-supplied programming and also creating incentives for Vivendi/USA Networks to discriminate against other programming distributors. The Commission (and interested

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<sup>8</sup> Shortly after the EchoStar/Vivendi deal was announced, Vivendi announced that it would purchase USA Networks for \$10.3 billion in stock and cash. *See* “Vivendi Signs 2nd Big Deal to Create Vertical Integration,” *COMMUNICATIONS DAILY*, Dec. 18, 2001. It is clear that the two Vivendi transactions are part and parcel of an overall vertical strategy: “‘Our strategy is clearly coming together,’ Vivendi Universal CEO Jean-Marie Messier said. ‘Combining with the same operational entity, VUE [Vivendi Universal Entertainment], USG [Universal Studios Group] and the other entertainment assets of USA creates a new U.S. major which will benefit from the full integration of TV and movies . . . with production and distribution.’” *Id.* (alteration in the original).

<sup>9</sup> *See, e.g.*, 47 C.F.R. § 76.1301 (prohibited practices with respect to carriage agreements).

parties) cannot fully consider these issues without knowing the details of the agreements creating these vertical relationships.<sup>10</sup>

## **II. The Commission Should Not Facilitate The Applicants' Obfuscation**

The Commission not only has failed to compel the transfer applicants to disclose the missing annexes describing the Commercial Agreements and any other material pertinent to the Vivendi deal, but rather, the pleading cycle established in the Public Notice actually facilitates the transfer applicants' efforts to withhold information from the public until the comment period ends.

Currently, interested parties must file petitions/comments on or before February 4, 2002, with oppositions/responses due on February 25, 2002. However, based on EchoStar's statement in its December 18 letter to the Commission, there is no reason to believe that any further information regarding Vivendi will be forthcoming during that period. This is confirmed by the Public Notice, which indicates that "[t]he Commission is reviewing the letter and will inform the Applicants when it determines what additional information and/or amendments to the applications may be appropriate in light of the arrangements it describes." Here too, there is no assurance that the information the Commission requests, if any, will include the documents containing the key terms of the Commercial Agreements and, even if it does, that such information will be provided before the comment period expires.

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<sup>10</sup> For example: "One intriguing aspect of the deal would give EchoStar early access to new film releases. Though movies generally appear on pay-per-view channels a few months after they show up in video stores, Vivendi has agreed to release some Universal Studio films just weeks after the titles are available at Blockbuster and other chains – earlier than any other studio. . . . Neither Vivendi nor EchoStar would elaborate on how many new films would be available to Dish [EchoStar] customers." Sallie Hofmeister, "Vivendi to Take Stake in EchoStar Media: The French Conglomerate Plans to Invest \$1.5 Billion in the Satellite TV Company to Strengthen Its Entertainment Distribution in the U.S.," THE LOS ANGELES TIMES, Dec. 15, 2001.

This situation is untenable. First, it runs the risk that interested parties will not have a timely and meaningful opportunity to comment on all relevant aspects of this transfer proceeding, such that the Commission ultimately could render a decision on the transfer application without the benefit of a fully developed record. This stands in stark contrast, for example, to the Commission's efforts to ensure that America Online, Inc. and Time Warner Inc. provided detailed and comprehensive information for public review *before* the AOL/Time Warner transfer of control application was placed on public notice. In a letter to AOL's and Time Warner's counsel sent after their application was filed but before a public notice was released, the FCC's then-General Counsel stated:

*"Neither commenters in this proceeding nor Commission staff can provide an informed evaluation of the application without relevant information and arguments from the applicants.*

*Failure to produce the materials until the reply comment stage would necessitate an additional comment cycle, with a concomitant waste of resources and time by the Commission and all the parties. In order to assist the Commission in reviewing the transfer of control applications in an efficient and expeditious manner, therefore, please amend the application by providing the relevant information and arguments as described below. Once an adequate application is filed, we will issue a public notice seeking comment on your application."*<sup>11</sup>

The same standard should apply here. Moreover, failing to evaluate this transaction on a complete record could subject the Commission's ultimate decision to challenge in court.

Second, moving forward without a complete record is inconsistent with public statements by Chairman Powell and Bureau Chief Ferree, both of whom have indicated the need for rigorous scrutiny of the proposed transfer of control in this proceeding in light of the

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<sup>11</sup> See Letter from Christopher J. Wright, General Counsel, FCC, to Messrs. Arthur H. Harding, Esq. and Peter D. Ross, Esq., dated March 6, 2000 (emphasis added) (available at <<<http://www.fcc.gov/csb/aoltw/aoltwextlet.txt>>>).

significant concentration that would occur if the transaction is consummated.<sup>12</sup> Now, in addition to the horizontal concerns to which Chairman Powell and Bureau Chief Ferree were referring, there is an important vertical component that must be analyzed.

Third, moving forward in this posture will set a terrible precedent for future transfer proceedings, inasmuch as it will invite putative applicants to selectively disclose material that is favorable to their case, while withholding material which might invite critical public comment. In order to address these concerns in a timely manner, and to preserve the integrity of the Commission's transfer review process, the Commission should not permit this proceeding to move forward until the transfer applicants disclose all information and documents relevant to the Vivendi transaction, and the comment period is adjusted accordingly.<sup>13</sup>

### CONCLUSION

For the foregoing reasons, Pegasus respectfully requests that the Bureau: (i) require EchoStar immediately to provide a full and accurate description of its "alliance" with Vivendi and to produce all relevant documents for public review and comment (pursuant to a protective order if necessary), and (ii) issue a revised Public Notice providing that petitions/comments on the transfer applicants' pending transfer of control application will not

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<sup>12</sup> See, e.g., *FCC Chairman Michael Powell Names Intra-Agency Team Leaders to Review Proposed EchoStar-DIRECTV Combination*, FCC News Release, Nov. 1, 2001; Alicia Mundy, *EchoStar-DIRECTV Deal Concerns FCC's Ferree*, MEDIAWEEK, Nov. 12, 2001.

<sup>13</sup> Since, as noted, EchoStar and Vivendi anticipate that their deal will close in the first quarter of 2002, even waiting until then to require the production of relevant documents and the commencement of a pleading cycle would not cause a significant delay, although as we have emphasized, there is no reason not to require EchoStar to provide a complete description and the relevant documents *immediately*.

be due until forty-five (45) days after such information is provided, and oppositions/responses will not be due until twenty-one (21) days thereafter.

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**CERTIFICATE OF SERVICE**

I, Robert M. Cooper, hereby certify that a true and correct copy of PEGASUS COMMUNICATIONS CORPORATION'S PETITION TO SUSPEND THE PLEADING CYCLE was served on the following individuals by hand delivery on this 14th day of January, 2002.

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# EXHIBIT 1

ECHOSTAR, VIVENDI UNIVERSAL FORM STRATEGIC  
ALLIANCE TO OFFER NEW PROGRAMMING, INTERACTIVE  
TELEVISION SERVICES FOR CONSUMERS

- o Strategic Alliance Covers All Vivendi Universal Content and Technology Assets
- o Vivendi Universal to Launch Five New Channels, Including One in DISH Network's "America's Top 100" Programming Package
- o "MediaHighway" Technology, Developed by Canal+, to Be Deployed On New Generation PVR Set-Top Boxes
- o Satellite-Delivered Creative New Programming Initiatives For Channels and Interactive Services
- o Agreement Includes Pay-Per-View and Video-On-Demand Services
- o EchoStar to Issue Shares for \$1.5 Billion Investment from Vivendi Universal with Downside Protection

LITTLETON, COLO., AND PARIS, FRANCE - DEC. 14, 2001 - EchoStar Communications Corporation (Nasdaq: DISH) and Vivendi Universal (NYSE: V; Paris Bourse: EX FP) announced today an 8-year strategic alliance in which Vivendi Universal will develop and provide EchoStar's DISH Network satellite TV customers in the United States a variety of programming and interactive television services. Vivendi Universal will also make a \$1.5 billion equity investment in EchoStar to provide a portion of the funding for the pending merger with Hughes Electronics Corporation (NYSE: GMH), the parent company of DirecTV. This agreement will provide a major distribution opportunity for Vivendi Universal's content and technology assets in the United States.

Investors and financial analysts are invited to participate in a conference call with Vivendi Universal and EchoStar officials on Friday, Dec. 14, 2001, at 8 a.m. New York EST by calling 1-888-881-4892 in the U.S. International investors can call 33(0) 1 56 38 35 35; 33 (0) 1 55 69 57 51 in France; or 0800 279 2280 in U.K. Replays: In U.S., dial 1-877-289-8525, passcode 160089#; in France, dial 33(0) 1 40 50 20 20, passcode 7474; in U.K. 44(0) 208 797 24 99, code 118310#. An audio webcast and replay of the investor call will be available through the website at [www.echostar.com](http://www.echostar.com).

Members of the media are invited to participate in a separate conference call at 9:30 a.m. New York EST by calling 1-800-257-7063 in the U.S. International press can call 33 (0) 1 56 38 35 35 or 33 (0) 1 55 69 57 51. Replays: In U.S., dial 1-303-590-3000, passcode 426257; in France, dial 33 (0) 1 40 50 20 20, passcode 6840; in U.K. dial 44 208 797 2499, passcode 118306.

As part of the agreement, Vivendi Universal, a world leading provider of media content, plans to offer EchoStar's DISH Network customers five new channels of basic and niche programming content including action, suspense, music, youth-oriented channels and interactive game channels, with one channel in DISH Network's "Americas Top 100" programming package and two in "America's Top 150" programming package. Vivendi Universal will also offer expanded pay-per-view and

video-on-demand movies from current Vivendi Universal films, as well as certain library films and events. These services are expected to begin in the fall of 2002, and will complement EchoStar's current lineup of entertainment, family, news and sports channels. Customary fees per subscriber will be paid by EchoStar to Vivendi Universal once the channels become available.

Vivendi Universal and EchoStar will also work together on a new programming initiative to develop new satellite-delivered broadband channels featuring interactive games, movies, sports, education, and music to be launched within a 3-year period following the consummation of the agreement.

Also as part of the agreement, EchoStar will integrate Vivendi Universal's advanced, interactive middleware technology, MediaHighway, a Canal+ Technology, as a non-exclusive middleware solution that will provide DISH Network customers using personal video recorders unique interactive TV services, such as movies from Vivendi Universal and music from Universal Music Group. Such movies and music can be downloaded, stored on a hard drive and viewed or listened to at any time. The parties will look at the broadest possible use of MediaHighway.

Assuming the pending merger of EchoStar and Hughes Electronics is completed, DirecTV customers will also receive the expected benefits of this strategic alliance with Vivendi Universal.

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"This alliance is very exciting news for our DISH Network customers as they will have access to more smash-hit box office movies, niche sporting events and the ability to order more movies or their favorite music at the touch of the remote," said Charlie Ergen, chairman and CEO of EchoStar. "This agreement will provide EchoStar with more options and will better enable EchoStar to compete in the multichannel video programming distribution (MVPD) market. This alliance is also part of our vision to compete against the cable companies while providing consumers, no matter where they live in the U.S., more channel choices and the latest technologies, all at nationwide, competitive pricing. Also, this equity investment would give us a stronger financial footing and provide the combined company additional financial flexibility."

"Entertainment content is a fiercely competitive market," said Jean-Marie Messier, chairman and CEO of Vivendi Universal. "With today's announcement, Vivendi Universal is securing key access to consumers, as this 'multi-dimensional' transaction provides us with an important distribution system for our broad array of assets - from content to technology. This agreement is a foundation upon which we all intend to build even more value-creation opportunities for the benefit of our customers."

"Vivendi Universal's content includes movies, music, games, education and sports, each of which has leadership positions," Messier continued. "Vivendi Universal is committed to providing high-quality entertainment content over each form of distribution worldwide. The EchoStar agreement provides Vivendi Universal distribution of up to 15 channels, including interactive services, over the entire EchoStar footprint, which covers 100% of U.S. households. When EchoStar's pending merger with Hughes Electronics is approved, EchoStar subscribers will reach nearly 15 million households. In line with our alliance strategy, this deal does not put us in a position of directly buying or controlling cable or satellite distribution. Rather, it offers us critical distribution access through a leading distributor, with tremendous opportunities to build upon our partnership."

"On a personal note, I am enthusiastic about entering into this partnership with Charlie Ergen, a very dedicated, creative and successful entrepreneur, whom I greatly admire and respect,"

Messier concluded. "We are also looking forward to working with the combined EchoStar when the pending merger with Hughes Electronics is completed."

"We are pleased that EchoStar is moving quickly to put together the financing for our pending merger," said Jack Shaw, president and CEO of Hughes Electronics. "We also fully support this strategic alliance with Vivendi Universal, which demonstrates the commitment to introduce innovative, new service offerings on a non-exclusive basis to benefit consumers and enhance competition."

Under the agreement, EchoStar will issue Series D Preferred Stock, at an issue price of approximately \$26.04 per share, in exchange for a \$1.5 billion equity investment by Vivendi Universal. The stock will have the same economic and voting rights as the shares of Class A common stock into which it is convertible and will have a liquidation preference equal to its issue price. On consummation of the merger with Hughes, the Series D Preferred Stock would convert into shares of EchoStar Class A Common Stock immediately prior to the merger of EchoStar and will then be exchanged for shares of the Class A Common Stock of the combined EchoStar/Hughes in the merger. As a result of the transaction, Vivendi Universal will own approximately 10 percent of EchoStar, or less than 5 percent of the combined EchoStar - Hughes following the proposed merger.

Vivendi Universal will also receive contingent value rights, intended to provide downside protection for the price of the Class A Common Stock to be issued upon conversion of the Series D Preferred Stock. The maximum payment under the rights is \$225 million if the pending merger with Hughes Electronics is completed, or \$525 million if the pending merger is not completed. Any amount owing under these rights would be settled 3 years after completion of the merger, or 30 months after the merger agreement terminates, as applicable except in certain limited circumstances. The equity investment by Vivendi Universal is expected to be completed in the first quarter of 2002.

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As part of this alliance, Jean-Marie Messier will become a member of EchoStar's Board of Directors when the investment occurs, and he will continue as a director following the pending merger of EchoStar and Hughes Electronics.

Completion of these transactions is subject to regulatory clearance under the Hart-Scott-Rodino Act and other customary conditions. These transactions have received requisite corporate approvals of Vivendi Universal, EchoStar, Hughes Electronics and its parent company General Motors. However, the transactions are not conditioned on the closing of the EchoStar-Hughes merger and will remain in effect whether or not the EchoStar-Hughes merger is approved.

#### ABOUT ECHOSTAR

EchoStar Communications Corp. and its DISH Network provide state-of-the-art direct-broadcast satellite TV service that is capable of offering over 500 channels of digital video and CD-quality audio programming, as well as advanced satellite TV receiver hardware and installation. EchoStar is included in the Nasdaq-100 Index (NDX). DISH Network currently serves over 6.43 million customers. For more information, visit [www.echostar.com](http://www.echostar.com).

#### ABOUT VIVENDI UNIVERSAL:

Media and Communications and Environmental Services: The media and communications business is divided into five business segments: Music, Publishing, TV and Film, Telecoms and Internet. The Music business is conducted through Universal Music Group, the world's leading music company, which develops, acquires, manufactures, markets and distributes recorded music through wholly owned operations or licensees in 63 countries around the world. Universal Music Group's other businesses also include one of the world's largest music



Music Group's other businesses also include one of the world's largest music publishing companies, which involves the acquisition of rights to, and licensing of, musical compositions. The Publishing business is a worldwide content leader in its core markets: education/literature, games, and healthcare information. It provides content across multiple platforms. The TV and Film business produces and distributes motion picture, television and home video/DVD products worldwide, operates and has ownership interests in a number of cable and pay-TV channels, engages in the licensing of merchandising and film property rights and operates theme parks and retail stores around the world. The Telecoms business provides a broad range of telecommunications services, including mobile and fixed telephony, Internet access and data services and transmission, principally in Europe. The Internet business manages the strategic Internet initiatives and new online ventures for Vivendi Universal. Utilizing advanced digital distribution technology, the Internet business develops e-commerce, e-services and thematic portals that offer access to the Internet via a variety of devices, including mobile phones, PDAs, interactive TV and computers. Vivendi Environment is a 63-percent owned subsidiary of Vivendi Universal, which operates the environmental services business, with operations around the globe.

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**IMPORTANT DISCLAIMER:**

This press release contains "forward-looking statements" as that term is defined in the Private Securities Litigation Reform Act of 1995. Such forward-looking statements are not guarantees of future performance. Actual results may differ materially from the forward-looking statements as a result of a number of risks and uncertainties, many of which are outside Vivendi Universal's control, including but not limited to: the risk that recently acquired operations of Vivendi Universal will not be integrated successfully; that the synergies expected to be created as a result of recent acquisitions by Vivendi Universal will not materialize; that Vivendi Universal will be unable to further identify, develop and achieve success for new products, services and technologies; that Vivendi Universal will face increased competition and that the effect on pricing, spending, third-party relationships and revenues of such competition will limit or reduce Vivendi Universal's revenue and/or income; that Vivendi Universal will be unable to establish and maintain relationships with commerce, advertising, marketing, technology, and content providers; and that Vivendi Universal will be unable to obtain or retain, upon acceptable terms, the licenses and permits necessary to operate and expand its businesses; as well as the risks described in the documents Vivendi Universal has filed with the U.S. Securities and Exchange Commission. Investors and security holders are urged to read those documents at the Commission's web site at [www.sec.gov](http://www.sec.gov). Those documents may also be obtained free of charge from Vivendi Universal.

This press release also contains "forward-looking statements" with respect to EchoStar and a combined EchoStar/Hughes. Such forward-looking statements involve known and unknown risks, uncertainties and other factors that could cause our actual results to be materially different from historical results or from any future results expressed or implied by such forward-looking statements. The factors that could cause actual results of GM, Hughes, EchoStar, or a combined EchoStar and Hughes, to differ materially, many of which are beyond the control of EchoStar, Hughes or GM include, but are not limited to, the following: (1) the businesses of EchoStar and Hughes may not be integrated successfully or such integration may be more difficult, time-consuming or costly than expected; (2) expected benefits and synergies from the combination with Hughes or the strategic alliance with Vivendi Universal may not be realized within the expected time frame or at all; (3) revenues following the transactions may be lower than expected; (4) operating costs, customer loss and business disruption including, without limitation, difficulties in maintaining relationships with employees, customers, clients or suppliers, may be greater than expected following the transactions; (5) generating the incremental growth in the

subscriber base of the combined company may be more costly or difficult than expected; (6) the regulatory approvals required for the transactions may not be obtained on the terms expected or on the anticipated schedule; (7) the effects of legislative and regulatory changes; (8) an inability to obtain certain retransmission consents; (9) an inability to retain necessary authorizations from the FCC; (10) an increase in competition from cable as a result of digital cable or otherwise, direct broadcast satellite, other satellite system operators, and other providers of subscription television services; (11) the introduction of new technologies and competitors into the subscription television business; (12) changes in labor, programming, equipment and capital costs; (13) future acquisitions, strategic partnership and divestitures; (14) general business and economic conditions; and (15) other risks described from time to time in periodic reports filed by EchoStar, Hughes or GM with the Securities and Exchange

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Commission. You are urged to consider statements that include the words "may," "will," "would," "could," "should," "believes," "estimates," "projects," "potential," "expects," "plans," "anticipates," "intends," "continues," "forecast," "designed," "goal," or the negative of those words or other comparable words to be uncertain and forward-looking. This cautionary statement applies to all forward-looking statements included in this document.

In connection with the proposed merger of EchoStar and Hughes Electronics Corporation, General Motors Corporation ("GM"), Hughes Electronics Corporation ("Hughes") and EchoStar Communications Corporation ("EchoStar") intend to file relevant materials with the Securities and Exchange Commission, including one or more Registration Statement(s) on Form S-4 that contain a prospectus and proxy/consent solicitation statement. Because those documents will contain important information, holders of GM \$1-2/3 and GM Class H common stock are urged to read them, if and when they become available. When filed with the SEC, they will be available for free at the SEC's website, [www.sec.gov](http://www.sec.gov), and GM stockholders will receive information at an appropriate time on how to obtain transaction-related documents for free from General Motors. Such documents are not currently available.

General Motors and its directors and executive officers, Hughes and certain of its officers, and EchoStar and certain of its executive officers may be deemed to be participants in GM's solicitation of proxies or consents from the holders of GM \$1-2/3 common stock and GM Class H common stock in connection with the proposed transactions. Information regarding the participants and their interests in the solicitation was filed pursuant to Rule 425 with the SEC by EchoStar on November 1, 2001 and by each of GM and Hughes on November 16, 2001. Investors may obtain additional information regarding the interests of the participants by reading the prospectus and proxy/consent solicitation statement if and when it becomes available.

This communication shall not constitute an offer to sell or the solicitation of an offer to buy, nor shall there be any sale of securities in any jurisdiction in which such offer, solicitation or sale would be unlawful prior to registration or qualification under the securities laws of any such jurisdiction. No offering of securities shall be made except by means of a prospectus meeting the requirements of Section 10 of the Securities Act of 1933, as amended.

Materials included in this document contain "forward-looking statements" within the meaning of the Private Securities Litigation Reform Act of 1995. Such forward-looking statements involve known and unknown risks, uncertainties and other factors that could cause our actual results to be materially different from historical results or from any future results expressed or implied by such forward-looking statements. The factors that could cause actual results of GM, Hughes, EchoStar, or a combined EchoStar and Hughes, to differ materially, many

Hughes, EchoStar, or a combined EchoStar and Hughes, to differ materially, many of which are beyond the control of EchoStar, Hughes or GM include, but are not limited to, the following: (1) the businesses of EchoStar and Hughes may not be integrated successfully or such integration may be more difficult, time-consuming or costly than expected; (2) expected benefits and synergies from the combination may not be realized within the expected time frame or at all; (3) revenues following the transaction may be lower than expected; (4) operating costs, customer loss and business disruption including, without limitation, difficulties in maintaining relationships with employees, customers, clients or suppliers, may be greater than expected following the transaction; (5) generating the incremental growth in the subscriber base of the combined

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company may be more costly or difficult than expected; (6) the regulatory approvals required for the transaction may not be obtained on the terms expected or on the anticipated schedule; (7) the effects of legislative and regulatory changes; (8) an inability to obtain certain retransmission consents; (9) an inability to retain necessary authorizations from the FCC; (10) an increase in competition from cable as a result of digital cable or otherwise, direct broadcast satellite, other satellite system operators, and other providers of subscription television services; (11) the introduction of new technologies and competitors into the subscription television business; (12) changes in labor, programming, equipment and capital costs; (13) future acquisitions, strategic partnership and divestitures; (14) general business and economic conditions; and (15) other risks described from time to time in periodic reports filed by EchoStar, Hughes or GM with the Securities and Exchange Commission. You are urged to consider statements that include the words "may," "will," "would," "could," "should," "believes," "estimates," "projects," "potential," "expects," "plans," "anticipates," "intends," "continues," "forecast," "designed," "goal," or the negative of those words or other comparable words to be uncertain and forward-looking. This cautionary statement applies to all forward-looking statements included in this document.

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