



Federal Communications Commission
Washington, D.C. 20554

via telefax and e-mail

February 4, 2002

Pantelis Michalopoulos, Esq.
Counsel to EchoStar Communications Corporation
Steptoe & Johnson LLP
1330 Connecticut Avenue, N.W.
Washington, D.C. 20036-1795

Gary M. Epstein
Counsel for General Motors Corporation and Hughes Electronics Corporation
Latham & Watkins
555 11th Street, N.W.
Washington, D.C. 20004

Re: Consolidated Application for Authority to Transfer Control, CS Docket
No. 01-348

Dear Applicants:

On December 3, 2001, the Commission received a consolidated application from EchoStar Communications Corporation, Hughes Electronics Corporation, and General Motors Corporation to transfer control of numerous satellite, earth station, and other related licenses and authorizations held by their wholly- or majority-owned subsidiaries.¹ In order for the Commission to review the application and make the necessary public interest findings under section 310(d) of the Communications Act,² we require additional information and clarification of certain matters discussed in the application.

Accordingly, pursuant to section 308(b) of the Act,³ we request that you provide written responses and supporting documentation for the questions set forth in the attached Initial Information and Document Request and, where appropriate, amend the application to reflect such responses.

¹ The application was submitted pursuant to Sections 214 and 310 of the Communications Act of 1934, 47 U.S.C. §§ 214, 310.

² *Id.* § 310(d).

³ *Id.* § 308(b); *see also* 47 C.F.R. § 1.65.

Your responses should be filed with William F. Caton, Acting Secretary, Federal Communications Commission under reference number CS Docket No. 01-348. We would appreciate receiving your response to each inquiry no later than March 6, 2002.

Please contact Marcia Glauberman, Policy and Rules Division, Cable Services Bureau, 202-418-7046, with any questions regarding this information request.

Sincerely,

W. Kenneth Ferree
Chief, Cable Services Bureau

Attachment

**INITIAL INFORMATION AND DOCUMENT REQUEST
FEBRUARY 4, 2002**

I. Corporate and Other Documents

- A. Ergen Pledge Agreement.
- B. Credit Agreement for Merger Financing.
- C. Registration Rights Agreement (Hughes, GM, EchoStar & Ergen).
- D. Stockholders' Agreement.
- E. GM Registration Statement.
- F. GM Proxy Statement.
- G. GM Debt/Equity Exchange Registration Statement.
- H. Hughes revised Charter.
- I. EchoStar Controlling Shareholder Registration Rights Agreement.
- J. By Laws of New EchoStar.
- K. Certificate of Incorporation of New EchoStar.
- L. Documents Regarding the EchoStar-Vivendi Investment:
 - 1. Investment Agreement together with all appendices, exhibits and all relevant companion documents.
 - 2. Shareholder Voting Agreement
 - 3. The "Commercial Agreements" as defined in the Investment Agreement to the extent that they exist in whatever form they exist now and final versions as soon as possible.
 - 4. Any other documents relating to the Vivendi investment.
- M. Any documents filed by the parties in any legal or administrative proceeding which contain evidence or opinion regarding the extent to which EchoStar and DirecTV compete with each other, with cable operators, with other MVPDs, and/or with other providers of broadband services. Any such documents related to any other issues raised below.

II. Vivendi Investment in EchoStar

- A. Description of Vivendi's investment in EchoStar, including details of the transaction; percentage stock ownership if EchoStar/DirecTV merger is consummated (in terms of both equity and voting rights, if different), and disposition of stock ownership if it isn't; any non-equity investment by Vivendi; any other agreements with Vivendi regarding voting power, major decisions, etc. other than the Investment Agreement and Shareholders Agreement.
- B. Description of programming agreements between EchoStar and Vivendi, including whether the agreements are exclusive or nonexclusive (i.e., may new EchoStar enter into similar deals with others; may Vivendi enter into similar deals with cable companies?); description of Vivendi's programming interests.

- C. Description of any other agreements between Vivendi and EchoStar, including those relating to new interactive services, linear channel broadcast rights, set-top box technology commitments, and film broadcast and exhibition arrangements.
- D. Description of Vivendi, including description of the company, place of incorporation, business activities, subsidiaries and assets. Information should include an organizational chart, ownership, composition of the Board, foreign government interests, affiliates, joint ventures, partnerships, co-marketing arrangements, etc., and its relationship with Canal+.

III. Exclusive Distribution Relationships/Distribution Channels

- A. Describe all wholesale and retail distribution channels for EchoStar and DirecTV. Include a list of each company's five largest wholesalers and 20 largest retailers, by units sold in 2001.
- B. For all exclusive distribution (resale) relationships or agreements that DirecTV or EchoStar currently have (i.e., those with Pegasus, NRTC and any others), provide:
 - 1. Copies of business contracts relating to the geographic area covered by the agreement, details of the agreement relating to services offered, prices charged for programming and other services, and equipment prices.
 - 2. Number of potential and actual subscribers by zip code and counties covered by each of these arrangements.

IV. Services Offered

- A. Separately, for EchoStar and DirecTV, provide a detailed description of each of the video programming and other services that are currently offered and that will likely be offered within the next two years, including:
 - 1. Each program package or tier of video service (provide the name used for marketing each package, the number of channels, and programming content).
 - 2. Local-into-local broadcast service (by market, the number and affiliation of stations offered).
 - 3. Premium programming (including the premium options offered on a per channel or packaged basis).
 - 4. Other video service offerings (e.g., a la carte programming, pay-per-view).
 - 5. Audio services (number of channels and programming content).
 - 6. Broadband services.
 - 7. Any other relevant services.
- B. Provide information on major changes in each of these service offerings in the last four years.
- C. Provide a summary in table format of the key similarities/differences between EchoStar's and DirecTV's program offerings and a corresponding summary of the

key similarities/differences between the service offerings of EchoStar and DirecTV and the offerings of cable and C-band providers.

V. Subscriber Information

- A. Provide separately for EchoStar and DirecTV, for each of the past four years, total subscribers by zip code, county, state, and DMA.
- B. Provide separately for EchoStar and DirecTV, for each of the past four years, total number of subscribers to each service offering by zip code, county, state, and DMA, including:
 - 1. Each program package or tier of video service.
 - 2. Local-into-local broadcast service.
 - 3. Premium programming.
 - 4. Other video service offerings (e.g., a la carte programming).
 - 5. Audio services.
 - 6. Broadband services.
- C. Provide separately for EchoStar and DirecTV, for each of the past four years, the annual churn rate for each service offering.
- D. To the extent that it is available, provide projected subscriber data for the next two years, disaggregated by geographic region as finely as possible.

VI. Prices

- A. Service Prices
 - 1. Separately, for EchoStar and DirecTV, for each of the past four years, for each distinct service offering, provide the regular monthly charge for the service. To the extent that regular charges vary by geographic region, the regular charges should be reported separately for each relevant geographic region.
 - 2. Separately, for EchoStar and DirecTV, provide information on all promotional prices, coupons, and all other forms of discounts during the past four years. The time period for which promotional prices, coupons, and discounts are in effect should be specified, as should any specific eligibility requirements (including minimum subscription periods, minimum purchases, geographic restrictions, and “new customer only” restrictions). Include information on rates charged for subscriptions to combinations of services.

B. Other Prices

Separately, for EchoStar and DirecTV, provide the price charged for each of the following, currently and for each of the past four years:

- a) Service initiation or termination, including (but not limited to) equipment installation or removal.
- b) Equipment purchase.
- c) Equipment rental.
- d) Service contracts.
- e) Any other relevant products or services.

VII. Revenues

Separately for EchoStar and DirecTV, for each of the categories listed under Prices section VI above, provide revenues for each of the past four years.

VIII. Costs

Separately, for EchoStar and DirecTV, for each of the past four years and the next two years, provide for each state, DMA, and for the United States as a whole:

- a) actual or expected costs (total, variable, average total, and average variable cost) of providing MVPD service, excluding (plant, equipment, and other relevant) maintenance costs and programming acquisition costs;
- b) actual or expected costs (total, variable, average total, and average variable cost) to the company of acquiring each new subscriber;
- c) actual or expected maintenance costs (total and average);
- d) actual or expected cost of acquiring local-into-local programming, if offered, disaggregated to reflect fixed and variable costs separately;
- e) actual or expected costs of acquiring other programming, disaggregated to reflect fixed and variable costs separately;
- f) actual or expected advertising costs.

IX. Broadband Services

A. Separately for EchoStar and DirecTV, describe in detail the following information relating to broadband service offerings currently, for each of the past four years, and projected for the next two years.

1. Peak, average and worst case download speeds.
2. Peak, average and worst case upload speeds.
3. Other services, including multicasting, proprietary content, mailboxes and storage.
4. All relevant prices, including those for usage, installation, and equipment, and any bundles of broadband and other products, including MVPD and ISP services.
5. Equipment required by a DBS and broadband customer.
6. Equipment required by a broadband-only customer.
7. Satellites used, satellite band and location, and geographic coverage.

¹ Broadband services are facilities-based, two-way services, including high-speed Internet access. Such services may resemble those offered by DSL and cable modem services.

8. Elements of service quality, such as time with reduced download or upload speeds and outages, impact of latency in the uplink and downlink from the satellite, possible loss of signal in heavy rain, average time for a new customer to initiate service, and average time for resolution of customer complaints.
- B. For each satellite currently used by EchoStar or DirecTV to provide broadband services, provide:
 1. The capacity available on that satellite for provision of broadband services to the home and to small, medium and large businesses in total Gbps.
 2. The geographic coverage of that satellite for the provision of broadband services.
 3. The number of subscribers that can be served simultaneously by that satellite with current service reliability levels.
 4. Any plans that will affect the capacity, geographic coverage or number of subscribers that can be served by the satellite.
 - C. Describe in detail any plans for additional capacity for satellite broadband services, including any services that might be offered in the Ka-band. Include in your description the upload and download speeds that you are considering offering, pricing plans and the number of customers that can be served in each geographic region.
 - D. Describe any advantages that a customer might realize by receiving satellite broadband and DBS services from the same provider, and any possible disadvantages to a customer from obtaining satellite broadband and DBS services from the same provider.
 - E. Describe any advantages that an integrated satellite broadband/DBS provider might realize relative to two integrated suppliers of satellite broadband and DBS services.

X. DBS Equipment

- A. Provide a complete statement and interpretation of any provisions in contracts between DirecTV or EchoStar and their equipment manufacturers/suppliers that limit the ability of the manufacturer to include particular components (e.g., high speed modems), features (e.g., electronic program guides or software programs), and functions, including the ability to access other services (e.g., terrestrial television broadcasting, cable television).
- B. Describe the circumstances (e.g., certain programming combinations or programming and broadband services) under which a subscriber would need to access satellites in different orbital slots; the number of subscribers who currently do so; technical characteristics of the dishes required to fulfill this function; circumstances under which a subscriber would need multiple dishes to fulfill this function, or would be required to purchase a new dish; and an estimate of the

number of subscribers that need multiple antennas, along with a forecast of how the number of subscribers needing multiple dishes will change over the next five years.

- C. Explain EchoStar's plans, if the companies merge, to either move to a single reception standard for all DBS customers or to continue to use two different and incompatible reception systems for DBS customers. Describe the technical differences between the EchoStar and DirecTV systems. Also, explain why the benefits of such a single reception standard cannot be achieved by means other than merger.
- D. Provide all analyses, assessments, or considerations regarding the costs of converting the two incompatible DBS systems to a single compatible system. Address costs as they relate to the cost of replacing existing set top receivers with a new receiver; replacing existing satellite receive dishes; re-pointing those dishes; and adding additional dishes at existing home locations. Address any other costs both to the consumer and to EchoStar of converting to a single compatible system.
- E. Estimate the number of set top receivers and/or satellite dishes that would be replaced if the two companies were to merge, the total dollar cost (in \$millions) of the replacement of the set top receivers and/or satellite dishes.
- F. Provide information on the time period that will be required to replace and/or supplement set-top boxes and satellite dishes
- G. Provide all analyses, assessments or considerations of the costs and benefits and the technical and economic issues associated with providing local-into-local television broadcast retransmission services: (a) through use of the Ka band; (b) through use of terrestrial technologies, such as MVDDS; and (c) via contract with a separate vendor using these or other technologies.

XI. Fixed Satellite Service Market

- A. Provide separately for PanAmSat, for DirecTV, and for EchoStar, the total amount of current FSS capacity and information on plans to expand FSS capacity in the next two years. Also, provide your best estimate of the total industry FSS capacity, both currently and in each of the next two years.
- B. Explain in detail all changes in the control/independence of PanAmSat as a consequence of its proposed sale to EchoStar.

XII. Technical Questions

- A. Is there an intent to aggregate control and uplink facilities?

- B. What is the actual compression ration in each system today? What are the maximum and minimum ratios used?
- C. Based on LYNGSAT it would appear that 12:1 compression is currently used on some transponders. If 12:1 is the current level, what is the future predicted level of compression?
- D. If the orbital slots of 32 channels become available, is it the intent of the operators to have a higher number of spot beams to increase capabilities? Is it your intent to build spot beam satellites in the future that will utilize the assigned 32 channels at a position?
- E. How many channel/transponders/spot beams/ reuses do you estimate would be required, and with what compression ratio, for one satellite to serve all local-into-local from one location?
- F. Can the present spot beam satellites be collocated?
- G. Without the merger what can you do with current technologies to improve efficiencies?
- H. The application states that set-top boxes will be changed. Is it the intent to improve efficiencies such as higher modulation techniques without change-out?
- I. Is it your intent to serve nation-wide from one location? If so, is it your intent to move the spot beam satellites to the orbital position where local-into-local would be? Would CONUS satellites be moved to the national location?
- J. What is the intended use for the orbital positions of 61.6 W, 148 W and 175W, since it appears that the entire country is served from central locations?
- K. What do “o/e,” “o” and “e” mean in the satellite deployment charts?
- L. How do plans for the integration of Spaceway/Wildblue/EchoStar systems affect the scale of manufacturing when current designs utilize different access/modulation/switching methods?
- M. Provide information on the time frame needed to implement these technical changes.

XIII. Information About Actual and Potential Competitors (To the Extent This Information is Available)

- A. For MVPD competitors, particularly cable systems, provide data by zip code or similar disaggregation detailing services offered (programming services, cable modem, and other services), number of subscribers for each service offering, and the prices charged for each type of service.
- B. For broadband services, provide data by zip code or similar geographic disaggregation regarding the types, number of, and capabilities of competing suppliers of broadband services.
 - 1. For each geographic region, list all providers of broadband services that compete with your offerings, including one-way and two-way cable modem service, DSL service and terrestrial fixed wireless service.
 - 2. For each of these providers, fully describe their offerings, including: download speeds, upload speeds, other services, pricing plans including installation charges and monthly fees, and equipment costs.
 - 3. For DSL providers that compete with your service, indicate the share of television households in the geographic region that have access to DSL service.
 - 4. For cable modem providers that compete with your service, indicate the share of households in the geographic region that have access to cable modem service.
- C. Describe current and anticipated service offerings and rate plans for competitors that currently offer or are expected to begin offering satellite broadband services within the next two years.
- D. Provide any studies, analyses, assessments, or considerations in your possession that involve comparisons of current and future satellite broadband services provided by competitors.
- E. Identify the central requirements for entry into the provision of DBS and satellite broadband services, including, but not limited to, research and development, planning and design, equipment, distribution systems, patents, licenses, sales and marketing activities, and any necessary governmental approval. Also estimate the costs associated with these entry requirements and the amount of these costs that would be recoverable if the entrant were unsuccessful or elected to terminate its provision or sale of the service in question.

XIV. Post-Merger Plans

- A. Provide detailed explanations of post-merger plans for video programming and other services, sales and marketing, pricing, retail distribution and customer service.
- B. Provide detailed description of cost savings expected to be realized as a result of the merger, and an explanation of what portion of these savings could not possibly be achieved absent the merger.
- C. Describe other efficiencies that are expected to occur as a result of the merger, and that could not be achieved without the merger.
- D. Provide all analyses, assessments or consideration of plans to modify (post-merger) contracts with equipment manufacturers.
- E. Provide all analyses, assessments or considerations of plans to modify, terminate or enter into new exclusive or non-exclusive distribution relationships.

XV. Marketing & Econometric Studies and Analyses

- A. Provide all marketing surveys and studies conducted by or contracted for by the parties, including:
 - 1. Analyses, assessments, or considerations of marketing strategies, including pricing, promotions, programming, advertising, and customer targeting strategies (including targeting of the customers of a competing DBS supplier, customers of cable operators, customers of other MVPDs, and customers who have never subscribed to either DBS or cable services).
 - 2. All analyses, assessments, or considerations of the most desirable customers, and sales and marketing strategies to acquire and retain them.
 - 3. Assessments of the extent to which consumers explore both the available cable and DBS (and C-Band) options when choosing an MVPD service.
 - 4. Analyses, assessments, or considerations of competitors, including an assessment of their strengths and weaknesses.
- B. Provide any studies, analyses, assessments, or considerations that analyze any plans for additional capacity or capacity expansion with regard to DBS, broadband, or other services.

- C. Provide all econometric analyses conducted by or contracted for by the parties, including, but not limited to:
1. DBS Services
 - a) Estimates of the demand function for DBS services.
 - b) Estimates of the own price elasticity of demand for DBS services.
 - c) Estimates of the cross-price elasticity of demand between EchoStar and DirecTV's DBS services.
 - d) Estimates of the cross-price elasticity of demand between DBS and cable services.
 2. MVPD Market in General
Estimates of the effect of the merger on the MVPD market, including on the ability of smaller overbuilders to enter local markets and the ability of the merged entity to compete with large cable operators.