
**Before the
Federal Communications Commission
Washington, DC 20554**

Application of)

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

Transferors,)

and)

EchoStar Communications Corporation,)

Transferee)

CS Docket No. 01-348

To: The Cable Services Bureau

**COMMENTS OF
VIVENDI UNIVERSAL, S.A.**

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VIVENDI UNIVERSAL, S.A.

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COMMENTS OF VIVENDI UNIVERSAL S.A.

EXECUTIVE SUMMARY

The Federal Communications Commission expeditiously should approve the merger of Hughes Electronics Corporation subsidiary, DIRECTV, Inc. (“DIRECTV”), with EchoStar Communications Corporation (“EchoStar”). The merger will serve the public interest by increasing the diversity of programming available to the American public. Following the merger, EchoStar and DIRECTV will eliminate redundant programming carriage which will result in more efficient use of direct broadcast satellite (“DBS”) spectrum and will make hundreds of channels of new DBS capacity available to programmers.

EchoStar’s recent carriage agreement with Vivendi Universal, S.A. (“Vivendi Universal”) provides an excellent example of the public interest benefits that will be derived from the merger. Pursuant to the agreement, EchoStar will carry five newly developed video programming channels featuring content from Vivendi Universal’s expansive libraries. These channels will provide competition, and an alternative, to established national programming providers. Further, Vivendi Universal will use the merged entity’s nationwide satellite footprint to aggregate viewers from across the country to support innovative new niche programming. EchoStar also will carry eight interactive television (“iTV”) channels, which Vivendi Universal will develop utilizing its experience providing iTV in Europe. Importantly, EchoStar’s agreement with Vivendi Universal is entirely non-exclusive with respect to both parties and Vivendi Universal is committed to obtaining the widest possible distribution of these newly developed channels. In fact, to retain its carriage rights under the agreement, Vivendi Universal must obtain a specified level of carriage of the channels on cable systems.

Moreover, Vivendi Universal and DBS subscribers will not be the only parties that benefit from the increased programming diversity that will result from the new DBS channel capacity made available by the Merger. Vivendi Universal fully expects to compete vigorously

with many new programmers that also benefit from this additional DBS channel capacity. In addition, in response to the increased diversity of programming offered by DBS, the cable industry is likely similarly to improve its service offerings and facilities to meet heightened consumer expectations. Thus, cable subscribers also are likely to receive more diverse programming as a result of the Merger.

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**COMMENTS OF
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I. INTRODUCTION

Vivendi Universal, S.A. (“Vivendi Universal”), by its attorneys, hereby submits these Comments on the application (“Application”) filed by EchoStar Communications Corporation (“EchoStar”), General Motors Corporation, and Hughes Electronics Corporation (“Hughes”) seeking Federal Communications Commission (“Commission”) consent to transfer control of licenses and authorizations held by Hughes and its subsidiaries and affiliates and by EchoStar and its subsidiaries and affiliates to a newly reorganized EchoStar.¹ Vivendi Universal requests the Commission to approve expeditiously the proposed merger (“Merger”) of EchoStar’s and Hughes’s direct broadcast satellite (“DBS”) subsidiary, DIRECTV, Inc. (“DIRECTV”). The

¹ See Cable Services Bureau Action: EchoStar Communications Corporation, General Motors Corporation, and Hughes Electronic Corporation Seek FCC Consent For a Proposed Transfer of Control, Public Notice, CS Docket No. 01-348 (rel. Dec. 21, 2001); Application of EchoStar Communications Corporation, General Motors Corporation, and Hughes Electronic Corporation, Transferors, and EchoStar Communications Corporation, Transferee, For Authority to Transfer Control (filed Dec. 3, 2001) (“Application”).

Merger will serve the public interest by dramatically increasing the diversity of programming available to the American public.²

II. BACKGROUND

Vivendi Universal is a publicly traded global media and communications company with operating revenues in 2000 of over \$45 billion. Vivendi Universal produces and distributes content in many major business sectors that are key to the digital communications of tomorrow, including music, television, publishing, film, and the Internet, and is committed to disseminating this content to as many distribution outlets as possible. With its diverse content library, international production facilities, and emphasis on advanced distribution technologies, including interactive television (“iTV”) services, Vivendi Universal is one of the many programmers likely to benefit from the increased diversity of programming alternatives that will be available to consumers as a result of the Merger of EchoStar and DIRECTV.

Vivendi Universal has developed one of the world’s largest and most comprehensive content libraries, which is produced and distributed through the following multi-faceted divisions:

- Vivendi Universal’s Universal Music Group (“UMG”) is the world’s leading music company. UMG operates in 63 countries and is responsible for approximately 22% of worldwide sales of recorded music.
- Vivendi Universal Publishing (“VUP”), which operates in four language areas, English, French, Spanish, and Portuguese, is the second largest publisher of computer games and educational materials. VUP publishes across multiple media platforms, including paper, CD-ROM, Internet, and personal digital assistants.

² The Commission is required under the Communications Act of 1934, as amended, to grant transfer of control applications that serve the “public interest, convenience, and necessity.” 47 U.S.C. § 309(a) (requiring grant of applications “to which section 308 applies” if doing so serves the public interest); see also 47 U.S.C. § 310(d) (requiring transfer of control applications to be treated as applications filed under section 308).

- Vivendi Universal's television and film unit is comprised of Universal Studios, one of the United States' leading film production and distribution operations, and Europe's leading pay television company, Canal+. In addition, on December 17, 2001, Vivendi Universal agreed to combine its film entertainment businesses with those of USA Networks, Inc.³ Vivendi Universal is a major global producer and distributor of films and television programming, pay television channels and services, digital and iTV technology, Internet content, and theme park entertainment.
- Vivendi Universal operates a variety of sector leading commercial websites, including MP3.com, Vizzavi, Flipside, i(france), and Education.com. VU has a deep commitment to exploring the potential synergies between its Internet operations and its various media holdings.

In an effort to obtain additional traditional and advanced distribution channels for its expanding content library, on December 14, 2001, Vivendi Universal entered into an eight-year multifaceted transaction with EchoStar.⁴ The agreement, which is entirely non-exclusive to both parties, revolves around carriage by EchoStar of up to 13 newly developed Vivendi Universal channels. Pursuant to the terms of the EchoStar-Vivendi Universal arrangement, Vivendi Universal will:

- launch five new channels on EchoStar's Dish Network DBS service for distribution of programming on a non-exclusive basis and obtain specified carriage levels of these channels by cable systems within three years;
- license MediaHighway set-top box software technology to EchoStar to use on a non-exclusive basis in EchoStar's next generation of set-top boxes;
- develop over the next three years in conjunction with EchoStar eight additional channels of iTV programming on a non-exclusive basis, such as music, interactive games, educational materials, and videos on demand; and
- invest \$1.5 billion dollars in EchoStar.

³ See Press Release, Through Acquisition of Entertainment Assets of USA Networks, and, after Strategic Alliance with EchoStar, Vivendi Universal Strategy Is Coming Together (Dec. 17, 2001), at <http://www.vivendi.com/vu2/en/news/00000850.cfm>.

⁴ See Press Release, EchoStar, Vivendi Universal Form Strategic Alliance to Offer New Programming, Interactive Television Services for Consumers (Dec. 14, 2001), at http://www.corporate-ir.net/ireye/ir_site.zhtml?ticker=dish&script=410&layout=-6&item_id=244543.

EchoStar, in turn, agreed to: (i) provide carriage of Vivendi Universal programming on a non-exclusive basis; (ii) market Vivendi Universal programming; and (iii) share subscriber revenue with Vivendi Universal on commercially reasonable terms.

III. THE MERGER WILL SERVE THE PUBLIC INTEREST BY ENABLING PROGRAMMERS SUCH AS VIVENDI UNIVERSAL TO INCREASE THE DIVERSITY OF PROGRAMMING AVAILABLE TO THE AMERICAN PUBLIC

A. Increasing Programming Diversity is a Long Standing Commission Public Interest Objective

Encouraging programming diversity has been an important objective of both the Commission and Congress for several decades. Implementing congressional mandates, the Commission has emphasized through a long line of precedents the importance of programming diversity to the public interest. For example, the Commission premised its promulgation of the cable exclusive contract prohibition on the benefits to the public derived from programming diversity.⁵ In addition, one of Congress's primary objectives in passing the Cable Television Consumer Protection and Competition Act of 1992 was to increase the diversity of programming carried by multichannel video programming distributors ("MVPDs").⁶ The absence of adequate national program channel distribution capacity in the past has hampered the development of new and innovative programming. Moreover, it often has been difficult for independent programming producers and providers to obtain adequate distribution for their content.

⁵ Implementation of the Cable Television Consumer Protection and Competition Act of 1992, Notice of Proposed Rulemaking, CS Docket No. 01-290, ¶ 2 (rel. Oct. 18, 2001) ("The purpose of [the prohibition] is to promote the public interest, convenience, and necessity by increasing competition and diversity in the multichannel video market . . .").

⁶ Pub. L. No. 102-385, 106 Stat. 1460; see also S. Rep. 92, 102d Cong., 1st Sess. 34 (1991) (stating that the law is intended to prevent a diminution of MVPD programming diversity).

B. The Merger Will Increase DBS's Channel Capacity Available to Carry New Programming and Thereby Enable EchoStar-DIRECTV to Enhance the Diversity of Programming Available to the American Public

1. The Merger will relieve anticipated DBS capacity constraints and enable EchoStar-DIRECTV to facilitate programmers to develop new and innovative programming

As explained by EchoStar in its Application, the implementation in January 2002 of the local-into-local must carry provisions of the Satellite Home Viewer Improvement Act of 1999 ("SHVIA") has dramatically increased the strain on the transmission capacity of both EchoStar and DIRECTV.⁷ Also, as the broadcast industry migrates to their digital channel assignments, consumers will increasingly demand high-definition television ("HDTV") signals. HDTV requires a great deal more spectrum per channel than is required for the resolution currently offered by DBS providers. In combination, these factors could reduce the diversity of programming currently offered by DIRECTV and EchoStar, and are certain to prevent DBS from realizing its potential to significantly expand the programming diversity available to the American public.⁸ In the future, both DBS providers will be constrained in their ability to enter into carriage agreements, like the Vivendi Universal-EchoStar agreement, aimed at developing new national networks to compete with the established programming services.

⁷ Application, at 22; 47 U.S.C. § 338. Under SHVIA, to obtain the right to carry a local broadcast station a DBS provider must carry all other local broadcast stations in that market that request carriage. As a result, to provide local broadcast stations to the top 35 to 45 U.S. markets, EchoStar and DIRECTV both are required to carry 300 to 400 local stations. Each of these stations only will be available to a single community of DBS subscribers and most will be comprised primarily of duplicative network programming. Further, EchoStar and DIRECTV will carry several hundred of the exact same local stations.

⁸ There are physical limitations on the degree to which DBS providers can expand channel capacity. There is a finite amount of spectrum allocated to DBS and a limited number of geosynchronous orbital slots appropriate for use by DBS satellites.

Approval of the Merger will prevent this result. EchoStar and DIRECTV currently transmit over 500 channels of largely the same local and national programming.⁹ A merged EchoStar and DIRECTV will rationalize its use of DBS orbital slots and cease the existing inefficient use of DBS spectrum by eliminating carriage of duplicative programming. This will enable the merged entity to accommodate the increasing demands on DBS channel capacity while still freeing hundreds of channels for new, original and distinctive programming services for the American public. As foreshadowed by Vivendi Universal's recent carriage agreement with EchoStar, EchoStar will use this additional channel capacity to facilitate the development, and enable the distribution, of new programming alternatives for DBS subscribers.

Further, the benefits that will be derived by consumers from this newly available channel capacity will be compounded by the lack of vertical integration between programmers and EchoStar and DIRECTV. EchoStar has stated its intent not to pursue a vertical integration strategy following the Merger. The additional channel capacity made available by the Merger will carry new and diverse programming developed by nascent and alternative programmers, with which Vivendi Universal will compete in the future. Moreover, because EchoStar will carry newly developed programming on a non-exclusive basis, the programming also will benefit the subscribers of cable systems and other MVPDs that choose to license the new programming.

2. Vivendi Universal will launch new networks that provide an alternative to established programmers and that offer Americans entirely new formats

The EchoStar-Vivendi Universal agreement demonstrates EchoStar's commitment to increase the diversity of programming available to the American public by carrying new and innovative programming. The merged entity will be even better positioned to expand upon this

⁹ Application, at 25.

trend. The agreement will give consumers the choice to purchase new and different programming from that which is currently available. EchoStar has agreed to provide Vivendi Universal with the initial distribution necessary to launch five new programming networks featuring Vivendi Universal content that will reach, upon the merger of EchoStar and DIRECTV, over 16 million subscribers nationwide. Because of the national footprint of DBS, these networks will be available to viewers in every region of the nation. Further, the terms of the EchoStar-Vivendi Universal carriage agreement enable—in fact, require—Vivendi Universal to expand this initial viewership to other MVPD platforms. Not only is the carriage agreement non-exclusive, but Vivendi Universal is required by the agreement to obtain carriage of these networks from cable operators such that within three years Vivendi Universal is able to reach at least as many viewers via cable as Vivendi Universal reaches over EchoStar's DBS platform.

As a result of the carriage agreement, Vivendi Universal will be able to launch new national networks to provide competition, and an alternative, to established music channels such as MTV and VH1, and movie channels such as HBO, Starz, Encore, Cinemax, and Showtime. In addition, Vivendi Universal will launch networks with new and innovative formats not currently available to American viewers, such as a channel devoted to interactive games. The nationwide footprint of DBS will enable Vivendi Universal and other programmers to aggregate viewers from across the country to successfully launch niche programming that otherwise initially may not be able to generate sufficient viewers to warrant carriage by regional MVPD providers. With its expansive international content library and global production capabilities, Vivendi Universal is well situated to create new programming formats revolving around a multitude of different themes and specialties.

3. Vivendi Universal will launch America's first national iTV networks

Perhaps the most exciting opportunity for the Vivendi Universal-EchoStar agreement to enhance programming diversity is through the introduction to American viewers of advanced iTV programming and services. With its all-digital platform and advanced set-top box technology, DBS is uniquely suited to carry iTV programming and services.¹⁰ Under its carriage agreement with EchoStar, Vivendi Universal will develop eight iTV channels. Vivendi Universal's iTV channels will enable viewers to interact with programming to customize their viewing experience, and to order goods and services over their televisions using their remote controls.

Vivendi Universal has extensive experience offering iTV services in non-U.S. markets through its Canal+ pay television subsidiary.¹¹ The proposed Merger portends the ability to bring such services to a significant number of American households, both via Vivendi Universal's iTV channels and through iTV channels launched by other entities that learn from

¹⁰ EchoStar has led the MVPD industry in the introduction of set-top boxes capable of providing a full range of iTV programming and services. In addition to a return channel, many iTV services require personal video recorder ("PVR") capabilities. EchoStar's newest set-top box offers an industry leading 80 hours of storage and recording capabilities. Press Release, DISH Network to Introduce New, Improved Personal Video Recorder: DishPVR 508 Satellite TV Receiver (January 9, 2002). Further, upon merging, EchoStar and DIRECTV will replace millions of their subscribers' set-top boxes to achieve full compatibility between the two DBS platforms. This process will enable the combined EchoStar-DIRECTV to further modernize its receiver technology.

¹¹ Canal+, Europe's first digital television platform, currently offers pay television service to over 15 million subscribers in 11 countries and is an industry leader with respect to iTV services. For example, Canal+ recently launched SMS TV in France, which permits subscribers to send short messages from their television screens to a cellular phone. In addition, Canal+ Technologies is an international provider of iTV middleware, which is used to drive iTV functions in television set-top boxes. Canal+ Technologies's MediaHighway middleware is used by more than 20 operators in 13 million set-top boxes worldwide. Under the EchoStar-Vivendi Universal agreement, EchoStar agreed to use MediaHighway on a non-exclusive basis in future set-top boxes.

Vivendi's initial iTV offerings. Although the exact nature of the Vivendi Universal iTV channels in the United States has not yet been determined, they are certain to draw from Vivendi Universal's experience in Europe to provide innovative new functionality that currently is not widely available in the United States.¹² For example, the following features are possible using iTV technology:

- educational channels that enable viewers to customize the information that they receive (for example, to obtain assistance with homework) and to purchase related educational publications, such as textbooks and popular nonfiction literature;
- video-on-demand channels that enable viewers to view movies, concerts, and sports events at any time they choose (rather than pursuant to a programming schedule as with conventional pay-per-view movies), or to select and view current-release movie trailers;
- music video channels that enable viewers to: (i) obtain music news or additional information about an artist, previous recordings, and upcoming local concert dates; (ii) hear snippets of other songs from an artist's most recent album; (iii) order CDs, concert tickets, or music-related merchandise; or (iv) download individual songs or albums to attached audio equipment or recording devices;
- interactive game channels offering: (i) single-player and multi-player electronic video and trivia games in which viewers can compete with other viewers nationwide; (ii) regional and nationwide tournament games; (iii) downloadable computer games; and (iv) the ability to order game-related merchandise.

With the ubiquitous iTV distribution capability of a combined DBS provider, the only limitation on the public interest benefits that can be derived from new iTV features and services is the ingenuity of iTV programmers, such as Vivendi Universal and the numerous other iTV providers that are sure to follow in Vivendi Universal's footsteps. The merger will bring such innovations to a critical mass of American consumers.

¹² The U.S. currently trails Europe with respect to the availability of iTV services. Over 35% of all households in the United Kingdom currently receive iTV services and the scope of those services tends to be much more broad than in the United States. Press Release, GartnerG2 Says Retailers Fail to Capitalise on Increasing Interactive Adoption—Consumers Simply Not Using It (Jan. 2002) (stating that more than 12% of all households in France, Sweden, and Spain receive iTV services).

C. Cable Operators Are Likely to Imitate DBS's Channel Capacity Increases and ITV Offerings And Thereby Extend the Programming Diversity Benefits of the Merger to Cable Subscribers

The public interest benefits that will be derived from the increased programming diversity resulting from the Merger will not be limited to DBS subscribers. The new competitive programming services spawned from the Merger are likely to impel the much larger cable industry to introduce reciprocal service and facility improvements.

Cable operators are likely to quickly expand their channel capacity to carry new channels initially introduced by EchoStar-DIRECTV, such as the new Vivendi Universal networks. For example, launch of the new Vivendi Universal networks on EchoStar-DIRECTV will create national awareness of the networks, both through marketing and viewership, and will cause cable subscribers to demand carriage of the networks from their cable operators. Vivendi Universal is committed to licensing its new programming to as many different MVPDs as possible, including cable operators, and does not intend to limit consumer access to this programming. In addition, cable operators also are likely to develop new channels to compete in successful market niches discovered and developed by EchoStar-DIRECTV. Both the viewing public and programmers will benefit from this increase in MVPD channel capacity. Cable operators also are unlikely to allow DBS to gain a significant competitive advantage from offering iTV services. Instead, cable operators will expedite the development and delivery of innovative cable iTV offerings, which will provide programmers with new means of providing diverse content and services to viewers. In this way, the public interest benefits derived from the Merger by the 16 million DBS subscribers rapidly will spread to the nation's 69 million cable subscribers.

V. CONCLUSION

For the reasons set forth herein, the Commission should approve the Merger. By dramatically increasing DBS available channel capacity, the Merger will enable the combined EchoStar-DIRECTV to stimulate an increase in the diversity of programming available to the American public by providing a significant number of new nationwide program distribution outlets for the content of programmers, like Vivendi Universal.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

This will certify that a copy of the Comments of Vivendi Universal, S.A. has been forwarded by U.S. Mail, First Class postage prepaid, on this 4th day of February, 2002 to the following parties:

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