

**STEPTOE & JOHNSON LLP**

ATTORNEYS AT LAW

Telephone 202.429.3000  
Facsimile 202.429.3002  
www.steptoel.com

Pantelis Michalopoulos  
202.429.6494  
pmichal@steptoel.com

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December 18, 2001

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

Ms. Magalie Roman Salas  
Secretary  
Federal Communications Commission  
445 Twelfth Street, SW  
Washington, DC 20554

**Re: Consolidated Application of EchoStar Communications Corporation, General Motors Corporation, Hughes Electronics Corporation, Transferors, and EchoStar Communications Corporation, Transferee, for Authority to Transfer Control, File No. \_\_\_\_\_**

Dear Ms. Salas:

EchoStar Communications Corporation ("ECC"), General Motors Corporation ("GM") and Hughes Electronics Corporation ("Hughes") (collectively "Applicants") have filed the above-captioned consolidated Application, seeking FCC approval for transfer of control of licenses in connection with the merger of ECC and Hughes and related transactions. In accordance with Rule 1.65 of the Commission's Rules, 47 C.F.R. § 1.65, the Applicants hereby advise the Commission that on December 14, 2001, ECC signed definitive agreements relating to a transaction with Vivendi Universal S.A. ("Vivendi") that will, among other things, strengthen ECC (and New EchoStar). The transaction will result in certain minor changes to ECC's ownership structure and Board of Directors composition, and will necessitate a corresponding update to certain information submitted to the Commission in the Application.

Under the agreement, Vivendi will make a \$1.5 billion investment in ECC, and will receive a minority equity stake in ECC and one seat on ECC's board of directors.<sup>1</sup> Vivendi's economic interest in ECC is expected to amount to less than 10% on a fully diluted basis, based on the number of shares outstanding on December 14, 2001, and the voting stake

<sup>1</sup> Vivendi will receive shares of newly-issued ECC Class D mandatorily convertible preferred stock convertible into shares of ECC class A common stock. Vivendi will also receive certain "contingent value rights," which will require ECC (or New EchoStar) to pay Vivendi a maximum of \$225 million if the merger of EchoStar with Hughes is completed, and a maximum of \$525 million if the merger is not completed.

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will be smaller still at about 2%, before the merger with Hughes is consummated. Post merger, these percentages will further decrease to less than 5% equity interest and about 1% voting interest in the new EchoStar Communications Corporation ("New EchoStar"). As part of the transaction, ECC has also agreed to carry 5 new Vivendi channels and to make available the equivalent of about 8 video channels on its system for new interactive services, such as interactive games, movies, sports, education and music services; to deploy non-exclusively certain "middleware" technology on some set-top boxes, to facilitate interactive services; and to carry Vivendi films and music on a pay-per-view basis. All of the programming carriage agreements are non-exclusive for both parties. Specifically, ECC remains totally free to carry competing programs, and Vivendi remains totally free to have its content distributed by cable systems and third-party platforms, and indeed has an incentive to do so under the agreement: Vivendi must ensure that within 3 years of launch on ECC's systems, the channels placed in ECC's America's Top 100 and America's Top 150 packages are delivered to at least as many subscribers of third-party platforms, including cable, as they are to ECC subscribers. ECC will also have the option of acquiring a 10% interest in the 5 new channels at a price equal to 10% of costs to develop each channel after 3 years from launch.

This investment will not implicate any foreign ownership, aggregation, cross-ownership, or other restriction imposed by the Communications Act, Commission regulations or other applicable statutes. The stake in ECC to be received by Vivendi does not remotely approach a transfer of control over ECC. In addition, Vivendi's less-than-10% stake in ECC, together with ECC's other foreign ownership, will be well below the 25% foreign ownership "trigger" established for certain services by the Communications Act and the Commission's Rules, to the extent applicable here. The anticipated foreign ownership of New EchoStar, based on current ownership of ECC and GMH, will likewise be well below that trigger. Thus, while the change is not a matter of decisional significance, the Applicants nonetheless bring this development to the Commission's attention in accordance with their obligation to ensure the continuing accuracy of the Application under Rule 1.65. The Applicants will amend their Application to reflect the changes to the ownership structure and composition of ECC's Board of Directors following the closing of ECC's transaction with Vivendi, at such time as the ownership change takes effect.

The new content available to consumers through ECC's deal with Vivendi, a content provider that does not own any cable systems in the United States, foreshadows some of the consumer benefits that will be created by the merger, including new, interactive services, programming diversity and more competition among programmers. To provide the additional benefits set forth in the application, including more of the kind of diverse programming and enhanced services the Vivendi deal promises, however, the Applicants will need the spectrum that will be available because of the ECC-Hughes combination.

Indeed, the new Vivendi services specifically illustrate one of the important consumer benefits associated with the ECC-Hughes merger – the creation of an attractive outlet for new independent programming and additional voice diversity. The merger will eliminate the duplicative use of different Direct Broadcast Satellite spectrum for the same programming, and

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free up that spectrum for many more new exciting services from independent distributors of the kind envisioned in the alliance with Vivendi. In the current multichannel video programming distribution ("MVPD") market, it is far from easy for a new independent programmer to bring such services, including spectrum-intensive interactive services, to the public. Such difficulty breaking into the MVPD market stems from both limited capacity and the disincentives of the integrated cable multiple system operators to permit competition with their programming interests. The agreement helps give Vivendi a jumpstart in its effort to reach an audience of critical mass for this new content and achieve broad penetration on both satellite and cable,<sup>2</sup> to the benefit of American consumers. The Applicants believe that the merger will create an enhanced conduit for many other sources and types of new content to reach the U.S. public.

We would appreciate your associating this letter with the above-captioned application.

Respectfully submitted,



Gary M. Epstein  
James H. Barker  
Arthur N. Landerholm  
LATHAM & WATKINS  
555 11<sup>th</sup> Street, N.W.  
Suite 1000  
Washington, DC 20004  
202-637-2200

Pantelis Michalopoulos  
Philip L. Malet  
Rhonda M. Bolton  
STEPTOE & JOHNSON LLP  
1330 Connecticut Avenue, N.W.  
Washington, D.C. 20036-1795  
202-429-3000

*Counsel for General Motors Corporation  
and Hughes Electronics Corporation*

*Counsel for EchoStar  
Communications Corporation*

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<sup>2</sup> The transaction is in substance an arrangement for the carriage of new and innovative programming, and is not based on any strategy to acquire control of programming assets.

cc: **Chairman Michael K. Powell**  
**Commissioner Kathleen Q. Abernathy**  
**Commissioner Michael J. Copps**  
**Commissioner Kevin J. Martin**  
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