

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of
EchoStar Communications Corporation,
General Motors Corporation, and
Hughes Electronics Corporation
Order Denying Petition of Pegasus
Communications Corporation
CS Docket No. 01-348

ORDER DENYING PEGASUS COMMUNICATIONS CORPORATION'S PETITION TO
SUSPEND THE PLEADING CYCLE

Adopted: January 23, 2002

Released: January 24, 2002

By the Chief, Cable Services Bureau:

1. On January 14, 2002, Pegasus Communications Corporation ("Pegasus") petitioned the Commission to suspend the comment period for the consolidated application ("Application") for transfer of control of licenses and authorizations submitted pursuant to the merger between EchoStar Communications Corporation ("EchoStar") and Hughes Electronics Corporation. Pegasus urges that a new pleading cycle be established to commence once EchoStar provides "a full and accurate description" of its proposed strategic alliance with Vivendi Universal S.A. (the "Vivendi Investment").

2. EchoStar, in its Opposition, argues as a procedural matter that because the Vivendi Investment only involves a minority investment, it does not constitute a "substantial change" to the

1 Pegasus Communications Corporation, CS Doc. No. 01-348, Petition to Suspend the Pleading Cycle (Jan. 14, 2002) (Pegasus Application).

2 Pegasus Application at 2, 4. The National Association of Broadcasters supports Pegasus, arguing that because the Vivendi Investment presents a new vertical arrangement, EchoStar must submit supplemental documents and a new comment period should be established. National Association of Broadcasters, Statement in Support of Pegasus Communications Corporation's Petition to Suspend Proceedings, CS Doc. No. 01-348 (Jan. 19, 2002).

3 Letter from Pantelis Michalopoulos, Counsel for EchoStar, et al., to Magalie Roman Salas, Secretary, FCC, CS Doc. No. 01-348 (Dec. 18, 2001) (EchoStar December 18 Letter).

4 EchoStar Communications Corporation et al., CS Doc. No. 01-348, Opposition of EchoStar Communications Corporation, General Motors Corporation and Hughes Electronics Corporation (Jan. 17, 2002) (EchoStar Opposition).

Application warranting submission of additional information under section 1.65 of our rules.<sup>5</sup> Further, even if the Vivendi Investment does constitute a substantial change, EchoStar argues that it does not yet have a duty to disclose it. Such duty, EchoStar submits, only accrues 30 days after the investment's consummation.<sup>6</sup> Nonetheless, EchoStar states that “[i]n the spirit of full and timely disclosure . . . [it] filed . . . [the December 18, 2001 letter] describing the transaction.”<sup>7</sup>

3. In addition, EchoStar, contradicts Pegasus's claim that the Vivendi Investment fits into a vertical integration strategy. EchoStar maintains that it “did not, nor does it currently have, a strategy of acquiring interests in programmers with the purpose of influencing the management decisions for any programming service.”<sup>8</sup> EchoStar responds that it did not release the documents Pegasus seeks because they contain “commercially sensitive information.”<sup>9</sup> Finally, EchoStar claims that Pegasus' concern about programming discrimination is “unfounded” because its agreement with Vivendi is non-exclusive.<sup>10</sup>

4. We deny Pegasus' petition. At this time, we cannot determine the degree to which, if any, the Vivendi Investment raises vertical integration or programming discrimination concerns, and we express no view as to whether the investment constitutes a “substantial change” to the Application. We find no reason to delay the administrative process merely on the suspicion that an application has failed to discuss or disclose issues that changed circumstances have made potentially relevant. Should we determine that the Vivendi Investment presents issues not raised in the Application or supplementary documents, we will request additional information from the Applicants as we stated in the Public Notice.<sup>11</sup> At such time, if appropriate, we will initiate a new comment period to allow parties to submit additional or supplemental information.

5. We remind parties that the Commission continues to experience delays in receiving mail and hand delivered documents. Thus, we again urge all parties to file electronic copies of all submissions to the following parties: (1) Qualex International, Portals II, 445 12<sup>th</sup> Street, S.W., Room CY-B402, Washington, DC 20554, telephone (202) 863-2893, facsimile (202) 863-2898, or email at qualexint@aol.com; (2) Royce Sherlock, Cable Services Bureau, 445 12<sup>th</sup> Street, S.W., 3-A729, Washington, D.C. 20554, rsherloc@fcc.gov; (3) Marcia Glauber, Cable Services Bureau, 445 12<sup>th</sup> Street, S.W., 3-A738, Washington, D.C. 20554, mglauber@fcc.gov; (4) Barbara Esbin, Cable Service Bureau, 445 12<sup>th</sup> Street, S.W., Room 3-C458, Washington, D.C. 20554, besbin@fcc.gov; (5) James Bird, Office of General Counsel, 445 12<sup>th</sup> Street, S.W., Room 8-C824, Washington, D.C. 20554, jbird@fcc.gov; (6) David Sappington, Office of Plans and Policy, 445 12<sup>th</sup> Street, S.W., Room 7-C452, Washington, D.C. 20554, dsapping@fcc.gov; (7) JoAnn Lucanik, International Bureau, 445 12<sup>th</sup> Street, S.W., Room 6-C416, Washington, D.C. 20554, jlucanik@fcc.gov; and (8) Julius Knapp, Office of Engineering and Technology, 445 12<sup>th</sup> Street, S.W., Room 7-B133, Washington, D.C. 20554, jknapp@fcc.gov.

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<sup>5</sup> *EchoStar Opposition* at 3-4, citing 47 C.F.R. § 1.65 (procedures for amending information furnished to the Commission “[w]hen there has been a substantial change as to any other matter which may be of decisional significance”). We observe, however, that EchoStar stated that its December 18, 2001, letter was submitted “[i]n accordance with Rule 1.65.” *EchoStar December 18 Letter* at 1.

<sup>6</sup> *EchoStar Opposition* at 4, citing 47 C.F.R. § 1.65.

<sup>7</sup> *Id.* at 3.

<sup>8</sup> *Id.* at 6.

<sup>9</sup> *Id.* at 5. EchoStar, nonetheless, indicates that it will release this “sensitive information,” *i.e.*, Annexes I through IV to the Investment Agreement, pursuant to the Protective Order in this proceeding. *Id.*

<sup>10</sup> *Id.* at 7-8.

<sup>11</sup> See *EchoStar Communications Corporation, General Motors Corporation, and Hughes Electronics Corporation Seek FCC Consent for a Proposed Transfer of Control*, CS Doc. No. 01-348, Public Notice, DA 01-3005 at 2 (Dec. 21, 2001).

6. It is ORDERED that the PETITION TO SUSPEND THE PLEADING CYCLE of PEGASUS is hereby DENIED.

7. For further information, contact Marcia Glauberman or Adam Candeub, Policy and Rules Division, Cable Services Bureau, 202-418-7200; TTY, 202-418-7172.

FEDERAL COMMUNICATIONS COMMISSION

W. Kenneth Ferree  
Chief, Cable Services Bureau