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SUMMARY

STARSYS requests an expedited declaratory ruling that the purchase by Hughes STX of the controlling interest in STARSYS would not affect the pendency of STARSYS's application to provide LEO mobile satellite services in the frequency bands below 1 GHz. Under certain circumstances, STARSYS's filing of a post-cut-off "major" amendment (e.g., transfer of control) could result in its ineligibility for comparative consideration with other "cut-off" applicants. Here, however, STARSYS and the other applicants for authority to provide LEO service below 1 GHz have proposed a plan to eliminate mutual exclusivity amongst them. Thus, the rule -- 47 C.F.R. § 25.116(c) -- should not adversely affect the STARSYS application.

Even if the STARSYS application were to remain mutually exclusive with others, the Commission recognizes an exemption from disqualification where a post cut-off ownership change is initiated for a legitimate business purpose, and is otherwise in the public interest. Such is the case here, where Hughes STX acquired certain assets of ST Systems Corporation in order to expand its expertise in information systems technology, not to acquire the STARSYS application.

Moreover, Hughes STX's acquisition of STARSYS's stock has affirmative public interest benefits. Hughes STX's parent company is a leader and innovator in the satellite field, and can provide valuable research, technical and financial expertise, benefitting all potential users of position location services.

wholly-owned subsidiary of Hughes Aircraft Company ("Hughes"). Among the assets retained by STSC was its controlling interest in STARSYS, consisting of all of the Class A common stock in that company. STSC, thus retained the same ownership as before the sale of assets to Hughes STX. However, Hughes STX was granted an option to purchase the Class A STARSYS stock at a later date. The transfer of stock was expressly conditioned upon request for and receipt of Commission consent to the contemplated transaction.

On October 30, 1991, STARSYS notified the Commission of this transaction, including the existence of the option. See Statement Pursuant To Section 1.65 Of The Commission's Rules, filed October 30, 1991 (File No. 33-DSS-P-90(24)). Copies of this notification were served on all parties that had filed comments concerning the STARSYS application. Thus, all those expressing prior interest in this application have had the opportunity to comment upon this transaction, and no comments were received.

STARSYS recognizes that, under other circumstances, the transfer of STARSYS' Class A common stock to an unrelated third party could be deemed a post-cut-off "major amendment" under the Commission's rules. If such a determination were made, and the application were found to be mutually exclusive with other timely-filed applications, under operation of the applicable rules the application could be considered newly filed, and thus ineligible for comparative consideration with other applicants seeking

authorization to build low-Earth orbit ("LEO") mobile satellite systems below 1 GHz. See 47 C.F.R. § 25.116(c).

However, it now appears that STARSYS' application may not be mutually exclusive with any other application for authority to construct a LEO system below 1 GHz. On August 7, 1992, STARSYS and the other two applicants in that proceeding, Orbital Communications, Inc. ("ORBCOMM") and Volunteers in Technical Assistance ("VITA"), filed Joint Supplemental Comments detailing their proposal to resolve the potential mutual exclusivity among the applicants. The applicants now believe that all three systems can be accommodated within the allocated bands, enabling the Commission to license all three applicants without a formal comparative hearing. See Jointly Filed Supplemental Comments of ORBCOMM, STARSYS and VITA, CC Docket No. 92-76 (filed August 7, 1992).

It should also be emphasized that STSC has remained in full control of the STARSYS application. When STSC and Hughes STX agreed to the option relating to STARSYS's Class A common stock, their arrangement was premised on their observation that, in other contexts, the grant of an option to purchase does not convey a current ownership interest under the Commission's rules. For example, under the Commission's broadcast multiple ownership rules, "holders of . . . instruments such as warrants, convertible debentures, options or other non-voting interests with rights of

conversion to voting interests shall not be attributed" [i.e., not treated as a present ownership interest] "unless and until conversion is effected." 47 C.F.R. § 73.3555, Note 2(f) (emphasis added). Moreover, in the satellite context, the Common Carrier Bureau has concluded that consideration of ownership interests based on as-yet unexercised options is "premature." American Mobile Satellite Corporation, 2 FCC Rcd 5647, 5650 n.24 (Com. Car. Bur. 1987).^{1/}

This arrangement was acceptable to Hughes STX because the STARSYS application was not a significant factor in the decision to acquire other assets of STSC. As Hughes indicated in announcing the Hughes STX/STSC agreement, its purpose in purchasing STSC's non-STARSYS assets was to expand its information technology subsidiary, which it established in 1990. See Attachment A, Hughes Press Release, dated August 28, 1991. In particular, the acquisition allowed Hughes STX to augment substantially its capabilities in the development and integration of complex commercial, technical, and scientific information systems, as well as support in long term system building and servicing. In addition, Hughes STX supports Hughes' effort to increase its market position in the Washington metropolitan area, as well as providing

^{1/} The Commission itself later affirmed the Bureau's determination. See Report and Order in GEN. Docket No. 84-1234, 4 FCC Rcd 6041, 6045 n.59 (1989).

it with immediate entrance into the expanding non-defense government services market.

II. REQUEST FOR RELIEF

Hughes STX now wishes to acquire STSC's Class A stock in STARSYS pursuant to the terms of the Asset Purchase Agreement between Hughes STX and STSC. Under the terms of the option, STARSYS now seeks a Commission ruling that an amendment to its application to reflect a transfer of control from STSC to Hughes STX, if filed, would not be considered a "major change" under Section 25.116 of the Commission's rules.

An exemption from the "major change" provision is expressly provided for in Section 25.116(c)(2) of the Commission's rules, and applies in circumstances where a waiver is requested and the Commission finds that the transfer is in the public interest. See 47 C.F.R. § 25.116(c)(2). Such is the case here.

Although Section 25.116 has only recently been codified by the Commission (see First Report and Order in CC Docket No. 86-496, 6 FCC Rcd 2806 (1991)), exemptions have been routinely granted under similar Commission rules where the Commission has determined that (1) the change in ownership or control is calculated "to further a legitimate business purpose" (rather than merely to acquire the pending application itself) and (2) the acquisition is in the public interest. The leading case applying

this test is Airsignal International, Inc., 81 F.C.C.2d 472 (1980). Airsignal International, Inc. ("Airsignal") was an applicant for a large number of cellular radio licenses at the time that its parent company, WUI, Inc., was acquired by Xerox Corporation. The Commission approved the WUI-Xerox merger. Then, upon the completion of the transfer, Airsignal filed post-cut-off amendments to its pending applications to reflect the change in its ownership, and sought an exemption from the cut-off rules pursuant to Section 22.23(g)(3) of the Commission's rules. Airsignal, 81 F.C.C.2d at 472.^{2/} These amendments were opposed by competing applicants.

In considering Airsignal's request for waiver, the Commission explained that the intent of the rule was "to allow 'ownership or control changes which tend to reflect changes in business or financial factors . . . since an applicant's reaction to these [economic] changes may substantially enhance his ability to render public utility service.'" Airsignal, 81 F.C.C.2d at 475 (quoting Report and Order in Docket No. 19905, 60 F.C.C.2d at 557-58 (1976)). Accordingly, its focus was on (1) "whether [the transfer] was made to effect a legitimate business purpose" and (2) "whether the change in ownership was in the public interest." Id.

Applying these considerations to Airsignal's situation, the Commission concluded that the WUI-Xerox merger was entered into

^{2/} The Part 22 rule is identical in substance to 47 C.F.R. § 25.116(c)(2). See 47 C.F.R. § 22.23(g)(3).

for legitimate business purposes because WUI would be provided with improved research and technical capabilities, and there was no indication that "a major purpose of the merger was to obtain Airsignal's pending applications." Airsignal, 81 F.C.C.2d at 476. Thus, over the objections of the competing applicants, the Commission granted Airsignal's request for exemption from the terminal effect of its post-cutoff transfer of control. Id.

In a more recent case, coincidentally involving Hughes, the Common Carrier Bureau granted an exemption from the cut-off rules to permit General Motors Corporation ("GM") to acquire Hughes without dismissal of the then pending mobile satellite service ("MSS") application of a Hughes subsidiary. See Hughes Communications, Inc., 59 R.R.2d 502, 503-04 (Com. Car. Bur. 1985). In that case, the shares of the Hughes subsidiary were transferred to a voting trust, separately from Hughes itself, pending approval of the ultimate transfer to GM. In permitting the transfer, the Bureau concluded that a waiver of the cut-off rules was appropriate because the ownership change was not the result of an effort to acquire Hughes' MSS application, but instead was part of an underlying transaction involving the purchase for of a diverse, well-established company whose MSS application represented only a

small segment of its business activity.^{3/} See also ISA Communications Services, Inc., 90 F.C.C.2d 938, 947 (1982) ("ISACOMM") (Post cut-off acquisition permitted as in the public interest where original applicant had evidenced a strong intent to provide service and acquiring company brought financial strength and technical expertise to the venture).

The same considerations that were present in these cases apply here with equal force. As in the cited cases, Hughes STX purchased the non-STARSYS assets of STSC for business reasons wholly unrelated to STSC's filing of, and controlling ownership interest in, the STARSYS application, or to the proposed service itself. Moreover, Hughes STX's proposed acquisition of the STARSYS stock held by STC is affirmatively in the public interest because Hughes STX can provide the LEO venture with important financial backing and technological expertise.

As described above Hughes STX's motivation for acquiring the substantial non-STARSYS assets of STSC arose from STSC's extensive expertise in information systems technology, which dates back to the mid-1970s. Since that time, STSC has developed a widely recognized and well-respected reputation as a system

^{3/} The Commission implicitly approved the Bureau's decision in rejecting, several years later, a petition to deny the Hughes application, which was premised on the allegation that the cut-off rules had been violated. See Report and Order in GEN. Docket No. 84-1234, 4 FCC Rcd at 6043 n.31.

integrator, and as the developer of complex remote-sensing and turn-key systems for a wide variety of applications and customers. STSC has been a contractor for NASA, the Federal Aviation Administration, and the Department of Commerce. It was these characteristics that made STSC an attractive property for Hughes STX, not the existence of the STARSYS application.

Because of the Commission's cut-off rules, however, the STARSYS application was an asset that required special attention and treatment during negotiations between STSC and Hughes STX. The principals of STSC, developers of the STARSYS application, believed strongly that they had crafted an important proposal that could not be permitted to die as a consequence of the Hughes STX acquisition. For this reason, steps were taken to preserve the viability of the proposal by excluding it from the initial transfer. STSC's officers and directors decided that they would continue to pursue the application through the Commission's regulatory processes, whether or not Hughes STX sought to complete the transaction through exercise of the purchase option. In this regard, STARSYS' principals re-emphasize their strong commitment to pursue FCC authorization, and ultimately to provide LEO satellite service, regardless of the Commission's action on the instant request.

Nevertheless, there are legitimate and substantial benefits to the public that will accrue from the synergy possible through the integration of STARSYS into the new Hughes STX. Hughes

STX's parent corporation is recognized world-wide as a leader and innovator in the satellite field. Like the acquiring entities in ISACOMM and Airsignal, the Hughes STX organization will be able to provide STARSYS with valuable expertise, long-term stability and financial strength, as well as improved research and technical capabilities. See ISACOMM, 90 F.C.C.2d at 944-45; Airsignal 81 F.C.C.2d at 475-76. Most significantly, Hughes STX and its corporate parents have a long and distinguished track record before the Commission and within the satellite industry, including an unsurpassed reputation for technological excellence and commitment to superior customer service.

These contributions should only enhance the likelihood that STARSYS will become a successful and competitive provider of LEO satellite services. Such a result is clearly to the advantage of potential users of position location services, who will reap not only the benefits of greater competition but also the advantage of being served by a company that consistently has exceeded customer expectations.

Moreover, in light of the recent understandings that have been reached among STARSYS and the other applicants seeking to provide LEO satellite services below 1 GHz, there is no potential at all for damage to any private interest. As noted above, STARSYS, ORBCOMM and VITA have jointly proposed a plan to eliminate mutual exclusivity between the system proposals of STARSYS and

ORBCOMM, and now believe that they will be able to co-exist in the spectrum allocated for these services. Indeed, the rules proposed for this service contemplate additional service entrants. See Jointly Filed Supplemental Comments of ORBCOMM, STARSYS and VITA, CC Docket No. 92-76 (filed August 7, 1992) at 2. Thus, upon approval of the parties joint proposal, there will be no pending applications with which the STARSYS application would be considered mutually exclusive, and no parties that could even arguably suffer prejudice as the result of an amendment to the STARSYS application at this stage.

III. CONCLUSION

For the foregoing reasons, the exercise of the Hughes STX option demonstrably serves the public interest, convenience, and necessity. STARSYS respectfully requests that the Commission, by declaratory ruling, determine that the transfer of control of STARSYS from STSC to Hughes STX will not be treated as a major amendment pursuant to Section 25.116(c) of the Commission's rules. Thus, STARSYS would be permitted to amend its application to reflect such transfer of control without losing the right to have

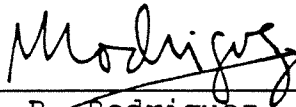
its application considered as part of the current little LEO processing group.

In order to minimize any disruption to STARSYS's ongoing activities in connection with its prosecution of its LEO system proposal, and to allow the completion of a potential transaction that was reported to the Commission nearly one year ago (with no comment from other interested parties), STARSYS urges the Commission expeditiously to consider and grant this request, thereby permitting the parties to complete a transaction that serves both legitimate private business objectives and the public interest.

Respectfully submitted,

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Attachment A

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HUGHES AGREES TO ACQUIRE STX
ASSETS; GROWTH MOVE FOR HUGHES
INFORMATION TECHNOLOGY COMPANY

WASHINGTON, D.C., Aug. 28, 1991 -- Hughes Aircraft Company announced today that it has agreed to acquire the assets of ST Systems Corporation, a scientific and engineering services and computer systems company better known as STX. Terms were not announced.

Headquartered in Lanham, Maryland, STX will report to Hughes Information Technology Company (HITC), based in Reston, Virginia. Hughes Aircraft is a subsidiary of GM Hughes Electronics <GMH:NYSE>.

"Hughes created HITC in 1990 to coalesce and grow the company's activities in the area of developing large-scale integrated computers and supporting them through their lifetime," said Wayne Shelton, president of HITC. "The corporate commitment to this overall strategy is reflected in the acquisition of STX."

STX is organized into three operating groups: Technology Applications Group, which provides scientific and engineering support for space and earth science programs; Systems Integration Group, which markets the custom integration of hardware, software, communications and display products to defense and civilian agencies; and

Systems Development Group, which designs and develops complex turnkey systems for satellite data processing and air traffic control applications.

STX also provides remote sensing services, utilizing its proprietary Landsat and SPOT Processing Software.

Annual revenues for STX are about 570 million and the company employs more than 1100 people, of whom nearly 20 percent hold doctorate degrees.

The company became known as STX in 1986 and traces its corporate history to a predecessor company, Systems and Applied Sciences Corporation, founded in 1973. The company has operations in Vienna and Hampton, Virginia; Lexington, Massachusetts; Atlantic City, New Jersey; and New York, New York.

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CERTIFICATE OF SERVICE

I, Kaigh K. Johnson, do hereby certify that a copy of the foregoing "Petition For Expedited Declaratory Ruling" was mailed by United States first-class postage prepaid this 30th day of September 1992, to the following:

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