

McGuireWoods LLP
Washington Square
1050 Connecticut Avenue N.W.
Suite 1200
Washington, DC 20036-5317
Phone: 202.857.1700
Fax: 202.857.1737
www.mcguirewoods.com

Received
McGUIREWOODS 3 2002

ORIGINAL

June 26, 2002

Satellite Policy Branch
International Bureau

RECEIVED

By Hand Delivery

JUN 26 2002

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Re: **CAI Data Systems, Inc.'s Petition for Waiver or Extension of Milestone, File Nos. 88-SAT-P/LA-97; 32-SAT-AMEND-98; IBFS Nos. SAT-LOA-19970702-00057; SAT-AMD-19971219-00199; SAT-AMD-19990930-00093**

Dear Ms. Dortch:

CAI Data Systems, Inc. ("CAI"), by its attorneys, hereby submits an original and four copies of its petition for a waiver or an extension of the milestone requirements associated with its license to operate a Ka-band satellite at the 125 degrees W.L. orbital location, file numbers 88-SAT-P/LA-97; 32-SAT-AMEND-98; IBFS numbers SAT-LOA-19970702-00057; SAT-AMD-19971219-00199; SAT-AMD-19990930-00093.

Please date-stamp and return the enclosed extra copy of this filing. Should you have any questions concerning this filing, do not hesitate to contact the undersigned.

Respectfully submitted,



James U. Troup
Adrian B. Copiz

Counsel for CAI Data Systems, Inc.

Enclosures

Cc: attached service list

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

RECEIVED

JUN 26 2002

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)	
)	
CAI Data Systems, Inc.)	File Nos. 88-SAT-P/LA-97; 32-SAT-
)	AMEND-98; IBFS Nos. SAT-LOA-
Application for Authority to Construct,)	19970702-00057; SAT-AMD-
Launch, and Operate a Ka-Band Satellite)	19971219-00199; SAT-AMD-
System in the Fixed-Satellite Service)	19990930-00093

PETITION FOR WAIVER OR EXTENSION OF MILESTONE

I. Introduction

Pursuant to Section 1.3 of the Federal Communications Commission's ("FCC" or the "Commission") rules, 47 C.F.R. § 1.3, CAI Data Systems, Inc. ("CAI Data") hereby respectfully requests that the Commission grant CAI Data a waiver or an extension of its first construction milestone. The basis for the requested extension or waiver is that there is uncertainty for which orbital location CAI Data will be constructing and deploying a satellite. Additionally, Ka-band satellite systems are a nascent technology and, therefore, CAI Data requires more certainty as to the orbital location for which it will develop a satellite system so as to efficiently use its resources and effectively develop a sophisticated and competitive service. CAI Data's situation comprises special circumstances and grant of a waiver or an extension will serve the public interest.

II. Background

CAI Data filed its application to launch and operate a satellite system in geostationary-satellite orbit to provide fixed-satellite services in the Ka-band on July 2, 1997.¹ As described in

¹ CAI Data Application, File Nos. 88-SAT-P./LA-97 and 32-SAT-AMEND-98; IBFS Nos. SAT-LOA-19970702-00057, SAT-AMD-19971219-00199, and SAT-AMD-19990930-00093 (July 2, 1997) ("CAI Data Application").

its application, CAI Data plans to provide high-quality two-way video, voice, and data services to business and residential customers throughout the United States on a non-common carrier basis.

In its application, CAI Data originally requested an orbital assignment to deploy a single satellite at either 93 degrees W.L., 95 degrees W.L., or 103 degrees W.L.² These orbital locations were selected because they would ensure that satellite service could be effectively provided to the entire country using a single satellite. Orbital locations that would require CAI Data to build more than one satellite would make it significantly more costly for CAI to enter the market.

Subsequent to filing its application and during the process of negotiating with other second-round applicants, CAI signed both a majority plan and an alternative plan, each providing CAI with different orbital locations. In the majority plan, as updated on November 1, 2000, it was proposed that CAI Data be assigned the 107 degrees orbital location.³ In the alternative plan, it was proposed that CAI be assigned the 79 degrees orbital location.⁴

During the first round Ka-band assignments, the Commission assigned Motorola, Inc. (“Motorola”) the 87 degrees orbital location.⁵ On January 9, 2001, Motorola filed an application (“Motorola’s Application”) for consent to assignment to Teledesic, LLC (“Teledesic”), of its first round licenses, which includes the 87 degrees W.L. orbital location.⁶ On May 7, 2001, Pegasus Development Corporation (“Pegasus”), one of the second round applicants, filed a petition to dismiss or deny Motorola’s application on the basis that Motorola has abandoned its license, is barred from assigning it, and making Motorola’s orbital locations available to second round

² CAI Data Application at p. 1.

³ Letter from the majority plan signatories to Magalie Roman Salas, Secretary, FCC (November 1, 2000).

⁴ Letter from the alternative plan signatories to Magalie Roman Salas, Secretary, FCC (August 11, 2000).

⁵ *See In the Matter of Comm, Inc. Application for Authority to Construct, Launch, and Operate a Ka-band Satellite System in the Fixed-Satellite Service*, 12 FCC Rcd 23001 (May 9, 1997) (authorizing GSO satellites at 91 degrees W.L., 87 degrees W.L., 77 degrees W.L., and 75 degrees W.L.).

⁶ *See* Public Notice, Report No. SAT-00068 (April 6, 2001).

licensing applicants would better serve the public interest.⁷ On June 4, 2001, CAI Data filed comments supporting Pegasus' petition to dismiss or deny.

The record clearly supports denying the assignment of Motorola's orbital locations to Teledesic. Granting the assignment would be contrary to the Commission's precedent of not allowing the assignment of an abandoned license.⁸ Such an assignment would also violate the Commission's prohibitions against trafficking in licenses, warehousing orbit-spectrum resources, and trading in bare applications.⁹

Expecting Motorola's orbital locations to become available for second-round applicants, CAI Data requested that the FCC assign the 87 degrees W.L. orbital location to CAI Data.¹⁰ From the beginning CAI has sought a more centrally located Ka-band orbital location between 82 to 99 degrees W.L. A related company, World Satellite Network, Inc. ("WSNet"), currently provides wholesale capacity for multichannel video programming from a Ku-band satellite at 93 degrees W.L.¹¹ By locating CAI Data's Ka-band satellite near the Ku-band satellite currently being used by WSNet, CAI Data and WSNet will be able to cooperatively provide a single dish solution to companies providing multichannel video programming to consumers in rural America.

The Commission, however, has not rendered a decision on Motorola's Application or on Pegasus' Petition. Rather, in the second round assignments, the Commission assigned CAI Data the 125 degrees W.L. orbital location.¹² CAI has never contemplated using an orbital location as

⁷ See Pegasus' Petition to Dismiss, File Nos. 94 through 98-SAT-P/LA-97, 163 through 166-SAT-P/LA-95 (March 26).

⁸ See *Application of American Telephone and Telegraph Company and Ford Aerospace Satellite Services Corporation*, 2 FCC Rcd 4431 (1987).

⁹ See 47 C.F.R. § 25.145(d)(2) and 47 C.F.R. § 25.145(d)(3).

¹⁰ Letter from James U. Troup, Counsel for CAI Data, to Magalie Roman Salas, Secretary, FCC (June 8, 2001).

¹¹ WSNet has also filed earth station applications to use Canadian DBS satellites at 82 and 91 degrees W.L. to provide services in the United States. WSNet Fixed Earth Station Application, SES-LIC-20011121-02186 and WSNet Blanket Earth Station Application, SES-LIC-20020111-00075, Public Notice, Report No. SES-00364, February 6, 2002.

¹² See *In the Matter of CAI Data Systems, Inc.; Application for Authority to Construct, Launch, and Operate a Ka-band Satellite System in the Fixed-Satellite Service*, 16 FCC Rcd 14269 (August 2, 2001) ("CAI Assignment Order").

far west as 125 degrees W.L. because its business plan, which depends on the construction of a single satellite, can not be economically implemented without a more central continental U.S. orbital location.

III. THE COMMISSION SHOULD GRANT A WAIVER OR AN EXTENSION

Pursuant to Section 1.3 of the Commission's rules, 47 C.F.R. § 1.3, the Commission may, on its own motion or upon a showing of good cause, suspend or waive its rules.¹³ For a waiver to be appropriate there must be 1) special circumstances that warrant a deviation from a general rule, and 2) the deviation would better serve the public interest than would strict adherence to the general rule.¹⁴ CAI Data hereby requests a waiver of Section 25.145(f) of the Commission's rules, 47 C.F.R. § 25.145(f) and the condition placed on CAI Data's authority that CAI Data begin construction on a satellite one year after the grant of authority. CAI Data respectfully requests that its first milestone be extended to the earlier of one additional year or 90 days after the FCC releases a decision with respect to CAI Data's request to operate a single satellite at the 87 degrees W.L. orbital location.

CAI Data's ability to meet its first milestone (entering into a non-contingent contract for constructing a Ka-band satellite to be deployed in geostationary orbit) is highly dependent on the Commission's rendering of a decision on Motorola's application. Should the 87 degrees W.L. orbital location become available through an FCC decision and then be assigned to CAI Data after CAI Data has already begun construction on a satellite for the 125 degrees W.L. orbital location, significant loss of time and financial resources would be experienced by CAI Data in converting its resources to constructing a satellite for the 87 degrees W.L. orbital location. Furthermore, because Ka-band satellite technology is still in its early stages of development, it is

¹³ See also *WAIT Radio v. Federal Communications Commission*, 418 F.2d 1153 (D.C. Cir. 1969); *Northeast Cellular Radio Telephone Co. v. Federal Communications Commission*, 897 F.2d 1166 (D.C. Cir. 1990) ("*Northeast Cellular*").

¹⁴ See *In the Matter of NetSat 28 Company, L.L.C.; for Authority to Construct, Launch, and Operate a Ka-Band Communications Satellite in the Fixed-Satellite Service in Orbital Location 95 Degrees W.L.*, 16 FCC Rcd 11025 (released May 25, 2001); *Northeast Cellular*, 897 F.2d at 1166.

particularly important that CAI Data be able to develop its satellite within a framework of certainty as to which orbital location will be used for the satellite system. CAI Data, through no choice of its own and under circumstances beyond its control, is in a unique situation that comprises special circumstances. If the Commission assigns CAI Data the use of the 87 degrees W.L. orbital location in the next few days, CAI Data believes that it will be able to satisfy the first construction milestone and this extension request will be rendered moot. CAI Data is submitting this extension request in an abundance of caution in the event the Commission's decision on the 87 degrees W.L. orbital location assignment is not issued until after the deadline for the first construction milestone.

The Commission has previously granted an extension due to the necessity of reconfiguring and redesigning a proposed system.¹⁵ By granting an extension at this time, the Commission can avoid any extension of the second milestone that might be required for redesigning the satellite system should the 87 degrees W.L. orbital location become available to CAI Data. The Commission must reach a decision soon on the assignment of the 87 degrees W.L. orbital location to protect the date priority of the U.S. to that orbital location. The Commission has far less flexibility in granting an extension for the second milestone. As discussed by the Commission in its order assigning the 125 degrees W.L. orbital location to CAI Data, the second milestone is slightly over one year shorter than is normally provided to Ka-band assignees so as to protect the date priority of the U.S. ITU filing for 125 degrees W.L.¹⁶ If CAI Data is granted an extension of the first milestone, it will not seek any kind of extension of the launch and operate milestone of June 25, 2005. Under these special circumstances it is reasonable, appropriate, and in the public interest for the Commission to take advantage of the flexibility it now has to extend CAI Data's first construction milestone.

¹⁵ See *Re Application and Request of Dominion Video Satellite, Inc., for an Extension of its Direct Broadcast Satellite Permit and for Assignment of Orbital Positions and Channels*, 8 FCC Rcd 6680 (released September 13, 1993).

¹⁶ CAI Assignment Order at ¶ 21.

Deviation from the one-year construction milestone would better serve the public interest than would strict adherence to the general rule. By tolling the first construction milestone, the anti-warehousing purpose of the milestone rules would not be frustrated.¹⁷ CAI Data will not be seeking any kind of extension of the launch and operate milestone and plans on meeting that deadline so that a satellite is providing service as scheduled, whether it be at 125 degrees W.L. or the preferred orbital location of 87 degrees W.L. Furthermore, the public interest will be better served by ensuring that a new market entrant, CAI Data, is able to efficiently develop, construct, and implement its satellite system in the emerging Ka-band and provide American customers with a choice of innovative satellite services that are competitive with the incumbent satellite providers. On the other hand, it would go against the public interest to not waive or extend CAI Data's first milestone, as this would exclude from the market the new and innovative high-speed, advanced services that CAI Data is seeking to offer at affordable prices and that the public wants.

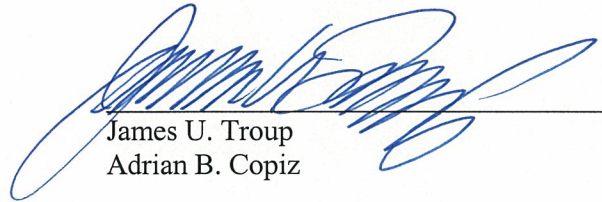
Rather than cancel CAI Data's Ka-band license, the public interest would be far better served by giving CAI Data the opportunity to construct a satellite that would operate at the 87 degrees W.L. orbital location. This orbital location would allow for the implementation of CAI Data's original business plan, which in turn would result in a new market entrant and ensure that the U.S. date priority for that orbital location is preserved. By contrast, assigning that orbital location to Teledesic would provide no public benefit as Teledesic has already been assigned numerous Ka-band orbital locations.

¹⁷ Assigning the 87 degrees W.L. orbital location to Teledesic LLC, by contrast, would put numerous Ka-band orbital locations under the control of a single entity.

IV. Conclusion

For the foregoing reasons, as there are special circumstances beyond the control of CAI Data and as the public interest will be served, CAI Data respectfully requests that the Commission waive or extend the first construction commencement milestone associated with the CAI Data license to operate a Ka-band satellite at the 125 degrees W.L. orbital location.

Respectfully submitted,



James U. Troup
Adrian B. Copiz

McGuireWoods LLP
Washington Square
1050 Connecticut Avenue, N.W.
Suite 1200
Washington, D.C. 20036-5317
Tel: 202-857-1700
Fax: 202-857-1737

Counsel for CAI Data Systems, Inc.

Date: June 26, 2002

CERTIFICATE OF SERVICE

I, Linda Neilson, hereby certify that on this 26th day of June, 2002, a true and correct copy of the foregoing Petition for Waiver or Extension of Milestone was hereby either delivered by hand (*) or sent by first-class mail, postage prepaid, to the following:

Don Abelson*
Chief, International Bureau
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554

Jennifer Gilsenan*
Satellite Policy Branch
International Bureau
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554

Alyssa Roberts*
Satellite Policy Branch
International Bureau
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554

Mark A. Grannis
Kelly S. McGinn
Harris, Wiltshire & Grannis LLP
1200 Eighteenth Street, N.W.
Washington, D.C. 20036
Counsel for Teledesic LLC

Bruce D. Jacobs
Kathryn R. Schmeltzer
Tony Lin
Shaw Pittman LLP
2300 N Street, N.W.
Washington, D.C. 20037-1128
Counsel for Pegasus Development Corporation

Leo Mondale
President
@Contact LLC
1233 20th Street, N.W.
Washington, D.C. 20036

Philip L. Malet
Steptoe & Johnson LLP
1330 Connecticut Avenue, N.W.
Washington, D.C. 20036
Counsel for Motorola, Inc.

Brian D. Weimer
Skadden Arps Slate Meagher & Flom LLP
1440 New York Avenue
Washington, D.C. 20005
Counsel for Celsat America, Inc.

Todd M. Stansbury
Wiley, Rein & Fielding
1776 K Street, N.W.
Washington, D.C. 20006
Counsel for DirectCom Networks, Inc.

Tara K. Giunta
Coudert Brothers
1627 I Street, N.W., Suite 1200
Washington, D.C. 20006
Counsel for Pacific Century Group, Inc.

Norman P. Leventhal
Stephen D. Baruch
David S. Kier
Philip A. Bonomo
Leventhal, Senter & Lerman P.L.L.C.
2000 K Street, N.W., Suite 600
Washington, D.C. 20006
Counsel for TRW Inc.

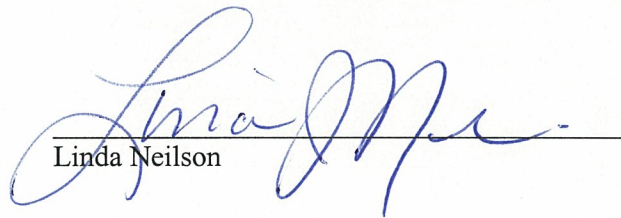
Gary M. Epstein
John P. Janka
Latham & Watkins
555 Eleventh Street, N.W.
Washington, D.C. 20004
Counsel for Hughes Communications, Inc.

Raymond Bender
Dow, Lohnes & Albertson, PLLC
1200 New Hampshire Avenue, N.W.
Washington, D.C. 20036-6802
Counsel for Lockheed Martin Corporation

Joseph A. Godles
W. Kenneth Ferree
Goldberg, Godles, Wiener & Wright
1229 19th Street, N.W.
Washington, D.C. 20036
Counsel for PanAmSat Corporation

Stephen E. Coran
Rini, Coran & Lancellotta
1350 Connecticut Ave., N.W., Suite 900
Washington, D.C. 20036
Counsel for KaStarcom World Satellite LLC

Stephen R. Bell
Jennifer D. McCarthy
Willkie Farr & Gallagher
Three Lafayette Centre
1155 21st Street, N.W.
Washington, D.C. 20036-3384
Counsel for Loral Cyberstar, Inc.


Linda Neilson