

**BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554**

In the Matter of	)	
	)	
95 LICENSE SUBSIDIARY, LLC	)	File No. SAT-LOA-20090807-00084
	)	SAT-AMD-20100528-00114
Authority to Construct, Launch, and Operate a	)	SAT-AMD-20100729-00170
Broadcasting-Satellite Service System	)	
	)	
	)	

**AMENDMENT APPLICATION**

95 License Subsidiary, LLC (hereafter, “Pegasus”) hereby amends the above-captioned satellite license application to reflect a minor offset in the orbital location of the proposed satellite from 95.0°W to 95.15°W.<sup>1</sup> Because this amendment enhances orbital management, decreases the likelihood of an in-orbit collision with other satellite systems, complies with the FCC’s applicable 4-degree spacing environment, and does not cause harmful interference to any other satellite operator, the public interest will be served by the grant of the amendment.<sup>2</sup> For the same reasons, Pegasus also seeks, to the extent necessary, waiver of the FCC’s rule applicable to amendment applications, 47 C.F.R. § 25.116, which in theory, if strictly interpreted, could cause

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<sup>1</sup> On July 29, 2010, the license application was amended to reflect a *pro forma* change in the applicant from Pegasus Development DBS Corporation (“Pegasus DBS”) to 95 License Subsidiary, LLC, a wholly owned and controlled subsidiary of Pegasus DBS. *See* Application, File No. SAT-AMD-20100729-00170 (filed July 29, 2010). Because the underlying license application (File No. SAT-LOA-20090807-00084) is associated in IBFS with the FRN of Pegasus DBS, this amendment application is being filed by Pegasus DBS, rather than 95 License Subsidiary, LLC. To be clear, Pegasus requests upon grant of this license application, as amended, that the license properly indicate that 95 License Subsidiary, LLC is the licensee and not Pegasus DBS.

<sup>2</sup> By this amendment application, Pegasus also updates its ownership information. *See* attached Exhibit B. Pegasus certifies that all other information related to the proposed operations of the satellite, not specifically discussed in this application, remains the same.

Pegasus' license application to be considered newly filed, resulting in a loss of its status relative to later-filed applications in the FCC's processing queue.

### **Background**

On August 7, 2009, Pegasus submitted the above-captioned license application to launch and operate a 17/24 GHz Broadcasting-Satellite Service ("BSS") satellite at the 95.0°W orbital location with a station-keeping volume of +/- 0.05 degrees longitude. Pegasus proposed to operate the satellite at full power with full-interference protection (i.e. a full-power Appendix F space station), consistent with the FCC's 4-degree spacing environment for 17/24 GHz BSS satellites.<sup>3</sup> Pegasus submitted with its license application an orbital debris mitigation compliance showing, which properly identified the satellites at or near the nominal 95°W orbital location and the need for physical coordination with the satellites with overlapping station-keeping volumes, including the SPACEWAY 3 satellite, which is operated by Hughes Network System, LLC ("Hughes"). Pegasus identified specific coordination solutions, namely maintaining tighter station-keeping volumes for the satellites, flying the satellites in formation, or operating one or more of the satellites at offset orbital locations.<sup>4</sup>

Hughes filed comments on the Pegasus license application, requesting that the Bureau impose a license condition placing the onus of physical coordination of the satellite systems at the nominal 95°W orbital location on Pegasus and requiring the Pegasus satellite to operate

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<sup>3</sup> See 47 C.F.R. §§25.114(d)(17), 25.262(b). At the time of the filing of the license application, Pegasus could not have proposed such operations at the 95.15°W orbital location, as a result of the authorized 17/24 GHz BSS satellite at the 99.1°W orbital location. See Stamp Grant, File No., SAT-AMD-20080114-00012 (granted July 27, 2009); see also *infra* note 13.

<sup>4</sup> See Orbital Debris Mitigation Plan Exhibit, File No. SAT-LOA-20090807-00084, at 2.

outside of the station-keeping volume of SPACEWAY 3.<sup>5</sup> Pegasus filed a response to the comments, explaining that Hughes' proposed condition is contrary to established FCC policy requiring all satellite operators at the same nominal orbital location to coordinate physical operation of their systems in good faith without any one licensee having a greater burden than another.<sup>6</sup>

In a letter dated April 15, 2010, the Bureau requested that Pegasus supplement its orbital debris mitigation compliance showing by providing an assessment of feasibility for the proposed measures for resolving physical coordination issues with the other satellites at the nominal 95°W orbital location.<sup>7</sup> Pegasus provided detailed discussion on the feasibility of the coordination solutions including computations on their impact to Pegasus' system.<sup>8</sup> Pegasus also stated that in the event that good faith negotiations with other operators fail, as a default plan, Pegasus would file an application to operate at the 95.15°W orbital location to eliminate overlap in station-keeping volumes for the satellites at the nominal 95°W orbital location. *Id.* at 4.

On June 18, 2010, Hughes submitted comments, essentially rehashing its concerns regarding physical coordination of the satellites and encouraging Pegasus to amend its application immediately to reflect operations at the 95.15°W orbital location.<sup>9</sup> Pegasus responded to the comments, rebutting Hughes' concerns and reiterating that it would amend its

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<sup>5</sup> See Comments of Hughes Network Systems, LLC (November 2, 2009). Hughes qualified in its comments that it "did not object to or oppose the Pegasus Application in any way." *Id.* at 1.

<sup>6</sup> Consolidated Response, at 2 (November 17, 2009).

<sup>7</sup> See Letter to Bruce D. Jacobs and Tony Lin, Counsel for Pegasus, from Robert G. Nelson, Chief, Satellite Division, International Bureau (April 15, 2010).

<sup>8</sup> See Exhibit C, File No. SAT-AMD-20100528-00114, at 3-4.

<sup>9</sup> Comments of Hughes Network Systems, LLC, at 2-3 (June 18, 2010).

application to operate the Pegasus satellite at 95.15°W, rather than 95.0°W, in the event that good faith coordination negotiations with other operators fail.<sup>10</sup>

### **Discussion**

In order to simplify orbital management, eliminate the need for physical coordination discussions and decrease the likelihood of an in-orbit collision with other satellite systems at the nominal 95°W orbital location, Pegasus hereby amends its license application to operate its proposed satellite at 95.15°W, rather than 95.0°W. The station-keeping volume of the proposed satellite at the 95.15°W orbital location will not overlap the station-keeping volume of any other satellite, and accordingly, no physical coordination will be required.<sup>11</sup>

The proposed satellite, which will operate at full power and with full-interference protection at the 95.15°W location, consistent with Pegasus' initial application, continues to meet all of the FCC's technical requirements. The proposed operations at the offset orbital location have a *de minimis* impact on the satellite's technical parameters.<sup>12</sup> Because there are no 17/24 GHz satellites within four degrees of the 95.15°W orbital location,<sup>13</sup> Pegasus' proposed satellite

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<sup>10</sup> Response to Comments (July 1, 2010).

<sup>11</sup> Pegasus has reviewed the lists of FCC-licensed satellite networks, as well as those that are currently under consideration by the FCC, and networks for which a request for coordination has been published by the ITU within +/- 0.15 degrees of the relevant orbital location. Indeed, the FCC previously licensed the 95.15°W orbital location to another 17/24 GHz BSS applicant. *See In the Matter of Intelsat North America LLC*, DA 09-1132 (2009).

<sup>12</sup> For completeness, Pegasus is submitting a Technical Appendix, which includes revised interference analyses, antenna coverage contours and link budgets. Additionally, Pegasus is submitting a revised Schedule S that reflects these changes, corrects typographical errors, and also includes information that was included in part in the narrative text of the original application but inadvertently omitted from the Schedule S form (S.15 and S.16).

<sup>13</sup> DIRECTV is licensed to operate a 17/24 GHz satellite at 99.175°W, File No. SAT-AMD-20080114-00014; and on July 27, 2009, IntelSat surrendered its license to operate at 99.1°W, File No. SAT-AMD-20080114-00012, which previously prevented Pegasus from proposing full-power, full-interference protection operations at the 95.15°W orbital location. *See Surrender*

continues to comply the FCC's 4-degree spacing environment for 17/24 GHz BSS satellites, 47 C.F.R. § 25.140, and is not required to coordinate with adjacent satellites, pursuant to 47 C.F.R. § 25.262.

In an abundance of caution, Pegasus requests a waiver of Section 25.116 of the FCC's rules, to the extent necessary.<sup>14</sup> Under Section 25.116(d), any application for a GSO-like satellite license will be considered to be a newly filed application if it is amended by a major amendment, which includes an amendment application that "changes . . . orbital locations to be used." 47 C.F.R. § 25.116(b). Thus, in theory, the FCC could treat this application for a minor orbital offset as a major amendment, causing the application to be moved to the end of the processing queue. Although Pegasus' due diligence has revealed that there is no relevant 17/24 GHz BSS application presently in the processing queue, Pegasus is seeking waiver of the rule in an abundance of caution to avoid any potential risk of loss of its priority status in the processing queue.<sup>15</sup>

Waiver of the rule is appropriate here.<sup>16</sup> The FCC has authority to waive its rules for good cause and has stated it would do so where the underlying purpose of the rule would not be

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Letter, File No. File No. SAT-AMD-20080114-00012 (filed August 27, 2009). With respect to the nominal 91°W orbital location, there is no licensee or pending application for a 17/24 GHz satellite.

<sup>14</sup> Because Pegasus is proposing only a minor offset to its originally proposed orbital location, as opposed to an entirely different nominal orbital location, arguably the rule does not apply.

<sup>15</sup> As an alternative, in the event the waiver is denied and another 17/24 GHz BSS application would have FCC queue priority, Pegasus requests that the FCC permit Pegasus to withdraw the amendment application.

<sup>16</sup> See *In the Matter of Application of DIRECTV Enterprises, LLC to Amend its Pending Application for a 17/24 GHz BSS Authorization at the 107°W.L. Orbital Location*, DA 09-1625 (July 28, 2009) (implicitly granting waiver of section 25.116).

undermined and the public interest would be served.<sup>17</sup> The purpose of the rule is to ensure that subsequently-filed applications in the processing queue are not prejudiced by amendments to prior-filed applications, which create conflicts.<sup>18</sup> Grant of the waiver request would not undermine that purpose. The proposed offset operations have a *de minimis* impact on adjacent satellites and create no conflicts. In fact, Pegasus is submitting this application to resolve objections raised by Hughes and in the manner that Hughes supports.<sup>19</sup> FCC policy recognizes that exceptions to the major amendment rule should be made for applications that seek to resolve, rather than create, potential issues.<sup>20</sup> Any contrary result would discourage applicants in the future from taking similar voluntary initiatives to resolve disputes. For the foregoing reasons, Pegasus requests that the FCC grant Pegasus' application and waiver request, to the extent necessary.

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<sup>17</sup> 47 C.F.R. § 1.3; *see also* *WAIT Radio v. FCC*, 418 F.2d 1153 (D.C. Cir. 1969), *cert. denied*, 409 U.S. 1027 (1972); *Northeast Cellular Telephone Co., LP v. FCC*, 897 F.2d 1164 (D.C. Cir. 1990).

<sup>18</sup> *See In the Matter of Amendment of the Commission's Space Station Licensing Rules and Policies*, 18 FCC Rcd 10760, at ¶¶ 136-40 (2003).

<sup>19</sup> *See* Comments of Hughes Network Systems, LLC, at 2-3 (June 18, 2010).

<sup>20</sup> *See* 47 C.F.R. § 25.116(c)(2) (amendments to NGSO-like licenses are not considered major if the amendment resolves frequency conflicts with authorized stations or other pending applications but does not create new or increased frequency conflicts).

Respectfully submitted,

**95 License Subsidiary, LLC**

/s/

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May 3, 2011

## Technical Certification

I, Milenko Stojkovic of W.L. Pritchard & Co., L.C., consulting engineer to 95 License

Subsidiary, LLC, hereby certify under penalty of perjury that:

I am the technically qualified person responsible for preparation of the engineering information contained in this application, that I am familiar with Part 25 of the Commission's rules, that I have either prepared or reviewed the engineering information submitted in this application, and that it is complete and accurate to the best of my knowledge.

/s/

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Milenko Stojkovic  
Senior Engineer  
W.L. Pritchard & Co., L.C.

May 3, 2010

