

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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Federal Communications Commission
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Domestic Facilities Division
Satellite Radio Branch

File No. 20-
DSS-P/LA-90

In the Matter of the Application of
HUGHES COMMUNICATION GALAXY, INC.
and
SATELLITE TRANSPONDER LEASING CORPORATION

For Authority to Construct and Launch
One Hybrid Domestic Communications
Satellite, Galaxy VII(H), to Operate in
Both the C and Ku Bands to Serve as a
Replacement for the SBS-4 Satellite and
as a Substitute for the Galaxy VI Satellite

PETITION TO DENY

GE American Communications, Inc. ("GE Americom") hereby petitions to deny the above-captioned application of Hughes Communications Galaxy, Inc. ("HCG") and Satellite Transponder Leasing Corporation ("STLC") for authority to construct, launch and operate a new hybrid domestic communications satellite at 91° W.L., to be designated Galaxy VII(H). The application states that Galaxy VII(H) will be a "replacement" for STLC's current SBS-4 satellite at Ku-band and a "substitute" for HCG's Galaxy VI satellite (formerly Westar VI-S) at C-band.

The application raises a number of serious questions concerning HCG's intentions regarding its use of orbital positions and the future location of certain

of its satellites which, we believe, require denial. These are enumerated herein.

1. HCG Proposed Use of the Orbital Arc Conflicts with Commission Policies Governing Orbital Assignments

HCG states that it plans to launch Galaxy VI into 91° W.L. in June 1990 as the replacement for Westar III in C-band at that location. Apparently, Galaxy VI will stay at 91° W.L. only until "late 1991" when it will be shifted to 99° W.L. (HCG Application, p.10, n.12) Thus, it appears that the C-band position at 91° W.L. will be left open for at least a year until December 1992 (and possibly longer) when the Galaxy VII(H) satellite covered by this application would become available.*

As the Commission is aware, HCG already has been granted an 18-month extension of time to launch Galaxy VI and position it at 91° W.L., over the objection of another party, Western Union Corp., 3 FCC Rcd 6792, 6794 (released

* Indeed, HCG seems to be trying to "bootstrap" itself into an argument for early Commission authorization of Galaxy VII(H) by maintaining that a need exists to restore C-band service at 91° W.L. as soon as possible since it will be moving Galaxy VI out of that position. However, there has been no C-band service provided by HCG at 91° W.L. since at least June 1989 and no plans on HCG's part to restore such service on a permanent basis earlier than 1993.

Nov. 25, 1988), on the principal ground that that satellite represented "a logical replacement" for the Westar III C-band satellite operating at that location.* It now appears that, at most, Galaxy VI will be at 91° for 18 months before moving elsewhere, leaving no permanent C-band capacity at 91° until very late 1992 or early 1993, when Galaxy VII(H) becomes available, assuming this application were granted and timely implemented.

The approach being taken by HCG violates the letter and intent of the Commission's policy against "warehousing" of orbital slots. 1985 Orbital Assignment Order, 50 Fed. Reg. 35228 (Aug. 30, 1985), at Para 21. As recently stated by the Commission: "We do not allow licensees to hold locations for satellites that they may apply for in the future." 1990 Orbital Assignment Order, 5 FCC Rcd. 179, 182 (released January 11, 1990). By holding the 91° W.L. position at C-band for the new Galaxy VII(H) satellite, being applied for the first time

*According to a member of the Commission's staff, Westar III is not now in commercial use, has not been for some time and is considered "retired." Therefore, service continuity in C-band at 91° W.L. has been lost already and HCG has no plan to restore it on a permanent basis for approximately 3 more years. The FCC's Transponder Occupancy Data Report of June 30, 1989 shows all Westar III transponders as being inactive as of June 22, 1989.

here, rather than using it for Galaxy VI, HCG would be getting the very advantage which this policy was intended to discourage were this application to be granted in its present form. The 91° W.L. position at C-band is now effectively vacant, has been vacant for approximately a year and, except for the relatively brief period Galaxy VI now will spend there, will be vacant until 1993.* The approach being taken in this application also would give HCG the additional advantage of getting another desirable hybrid location outside of a regular orbital assignment processing round. Accordingly, there is ample justification for the Commission to require that 91° W.L. be returned to the pool for reassignment. Certainly, there is no justification for HCG to keep this position under its control from 1989 to 1993, without a fully-operational C-band satellite being committed permanently for use there.

HCG appears to be pursuing a strategy designed to retain desirable orbital positions, such as 91° W.L., notwithstanding their underuse or nonuse, while continuing to ask for new ones.** This strategy involves more than

* Since Westar III was very lightly loaded for an extended period prior to its removal from active service, HCG in reality has been holding this spot "in reserve" for an even longer period.

** For example, in the 1990 Processing Order, HCG received the C-band position at 81° W.L., previously assigned to GE Americom, for Galaxy 5-E. 5 FCC Rcd at 182.

routine, non-controversial actions, as HCG would have them characterized. HCG's requests to realign its satellites in this application should be looked at to insure compliance with the policies against warehousing and awarding of orbital assignments outside of a regular processing round. Otherwise, HCG will be able to keep increasing its already disproportionate share of prime arc locations,* deprive other applicants of the opportunity to use these locations and thereby place an undue restraint on competition in the domestic satellite market.

2. Assignment of 72° W.L. at C-band to HCG is Unwarranted and Would Require Relocation of an Active GE Americom Satellite.

After Galaxy VI is moved out of 99°, following its "temporary" stay there from "late 1991" until "mid-1993" (HCG Application at 9-10), HCG contends that "[o]ne potential orbital location for Galaxy VI is 72°, where it could serve as a replacement for HCG's Galaxy II satellite...." (HCG Application at 10) As the Commission is aware, 72° W.L. at C-band is the present orbital

* Of the 10 C-band and Ku-band eastern arc positions between 91° and 99°, six are now assigned to HCG (or will be after the completion of the HCG takeover of STLC).

location of GE Americom's operational Satcom 2R satellite, which has a currently-projected end-of-life of January, 1995. As the Commission further is aware, Galaxy II is assigned to and operating at 74° W.L.

We strongly object to, and formally seek denial of, any request by HCG to acquire the C-band position at 72° W.L. as a "home" for Galaxy VI while that position is occupied by Satcom 2R or a replacement.* Satcom 2R is a major carrier of U.S. Government traffic and an important link in various Defense Department communications systems. There is no public interest justification to move this satellite prior to its end-of-life to accommodate HCG.

If HCG is seeking any position for Galaxy VI, other than 74° W.L., such action should be taken only as part of a new processing round, in which the assignment of Galaxy VI will be considered on its merits together with assignment requests of others. Certainly, as GE Americom stressed in its comments of February 26, 1990, in

* It may be that HCG's reference to 72° W.L. as a potential location for Galaxy VI in 1993 was made in error. However, since SBS-6 is now at that location, we cannot ignore the possibility that HCG is attempting to create a potential hybrid location for itself at 72°.

connection with HCG's request to move Galaxy VI to 99° W.L. (File No. 13-DSS-ML-90), HCG should not, by virtue of having an in-orbit satellite, receive a preference over other applicants in obtaining another orbital location.* Despite HCG's statements that it would not seek any such preference (Reply of March 13, 1990 in connection with File No. 13-DSS-ML-90 at 2), it continues to pursue a strategy to improve its orbital assignments by these means.

3. Future Assignment of SBS-4 Should Be Held Pending a New Processing Round.

The way the HCG Application is drafted, it appears that the SBS-4 satellite, now at 91° W.L. will be retired when Galaxy VII(H) becomes operational. The application states in several places that, at Ku-band, Galaxy VII(H) will be "merely for replacement" of SBS-4 and does not indicate any follow-on use for SBS-4 or ask for another orbital position for that satellite. It is

* HCG acknowledges that, were it to seek another location for Galaxy VI, this would "trigger" a new processing round. HCG Application at 12, n. 15.

our understanding, however, that SBS-4 should have at least a year or more of life left after the proposed operational date of Galaxy VII(H) in early 1993.*

While no other orbital assignment for SBS-4 presently is being sought, based on the other actions being taken by HCG in this application, the Commission should take appropriate measures to assure that HCG does not receive any preference in obtaining such an assignment if it should seek one at a later date. Certainly, HCG should not be allowed to place SBS-4 "temporarily" at another prime location that may be open at the time of launch of Galaxy VII(H) as part of an attempt to hold onto that location for another yet unrequested permanent satellite to be positioned there years later.

As in the case of Galaxy VI, if an already assigned orbital location cannot be found for SBS-4, a request by HCG for a new or additional orbital location for that satellite should only be considered as part of a new processing round.

*The generally accepted end-of-life for SBS-4 within the industry is August 1994 (Broadcasting, July 17, 1989, p.38). The approximate lifespan of SBS-4 is confirmed by filings of Salomon Brothers, the satellite's owner, in connection with GE Americom's application to locate the K-3 satellite at 91° W.L. See Reply Comments of Salomon Brothers Holding Co., Inc., dated April 4, 1988, in connection with File Nos. 1970-DSS-MP/ML-86 et al., at 13.

4. Conclusion

This application involves a significant change from HCG's previously-filed plans for the use of 91° W.L., on which the Commission based its determination to continue HCG's right to retain that position at C-band. Under the circumstances, this application should not be granted. Rather, in order to be consistent with Commission policies governing the assignment of the U.S. orbital arc, the Commission should require that 91° W.L. be returned to the pool of orbital positions available for assignment in a new processing round. Certainly, HCG should not be allowed to use the present proceeding to parlay its already advantageous position with respect to orbital location assignments into an even stronger one, without going through the rigors of the Commission's comparative processing procedures.

Official notice may be taken of all facts upon which this Petition to Deny relies.

Respectfully submitted,

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April 30, 1990

CERTIFICATE OF SERVICE

I, VERONICA F. KILKEARY, hereby certify that on this 30th day of April, 1990, copies of the foregoing "COMMENTS OF GE AMERICAN COMMUNICATIONS, INC." were mailed, postage prepaid, to the following:

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