

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

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Federal Communications Commission
Office of the Secretary

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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

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

REPLY OF GE AMERICAN COMMUNICATIONS, INC.

GE American Communications, Inc. ("GE Americom") hereby replies to the opposition* of Hughes Communications Galaxy, Inc. ("HCG") to GE Americom's Petition to Deny the above-captioned application of 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 central issue in this proceeding is whether HCG's proposed acquisition of a 50-state hybrid position at 91° W.L. comports with applicable Commission policies requiring

* Although HCG's pleading is styled a "reply," it is functionally the equivalent of an "opposition." See 47 C.F.R. Sec. 1.45.

comparative awards of orbital positions and prohibiting the "warehousing" of orbital locations for extended periods. HCG is trying to store the C-band position at 91° W.L. for years without committing a permanent satellite to that position, thereby keeping 91° W.L. "off the market" and away from others who might use it to compete with HCG. The Commission should not allow this result.

HCG is proposing to operate an as yet unlaunched C-band satellite, Galaxy VI, in at least three different places in a space of approximately three years* as part of a plan to retain control of both the C and Ku-band positions at 91° W.L., without making permanent use of the C-band position there until Galaxy VII(H) begins operation in 1993. HCG intends to hold the C-band position at 91° W.L. assigned to Galaxy VI--which is now open and has been open for at least a year--even though Galaxy VI only will reside there temporarily before moving to 99° W.L.** Thus, if allowed to proceed with its plan, HCG would be able to keep both the C and Ku-band positions at both the 91° W.L. and 99° W.L. orbital locations, which would then become hybrid positions for two prospective HCG satellites, Galaxy VII(H) and Galaxy IV(H), which are not scheduled to become operational until 1993.

* Galaxy VI has been dubbed in the trade press "the wandering satellite." Satellite News, April 16, 1990, p. 10.

** 99° W.L. is now open at Ku-band and will be until Galaxy IV(H) becomes operational.

In defense of its "non-use" of 91° W.L., HCG asserts "launch problems" preventing it from getting Galaxy VI into orbit earlier and the general benefits of hybrid satellite technology. Neither of these asserted defenses, however, alters the fact that the 50-state C-band position at 91° W.L., which has been vacant since at least June 1989, will be uncovered by a permanent replacement satellite for approximately three more years.

The proposed use of Galaxy VI at 99° W.L. is entirely the product of a voluntary decision by HCG--it is not the result of circumstances beyond HCG's control, such as the 1986 Challenger disaster or the Arianespace launch failure earlier this year (HCG Reply at 5). But, even accepting HCG's argument on its face, delays in commercial launch vehicle availability, at most, explain why Galaxy VI could not be placed into its assigned position at 91° W.L. at an earlier date; they do not explain (or justify) the need to move that satellite out of 91° W.L. to 99° W.L. next year and somewhere else as yet undetermined in 1993.

The "bottom line" is that HCG's proposal is not driven by a force majeure event, such as the loss or failure of a satellite. Rather, it is part of a pre-conceived plan designed to abet HCG's commercial position at the expense of its competitors.

What HCG is proposing is to take advantage of a situation it created to acquire a hybrid position at 91° W.L. outside of

a regular orbital assignment processing round. Nor is HCG entitled to any special consideration because SBS-4 is now operating in Ku-band at 91° W.L. If HCG is prepared to retire (or move) SBS-4 to make room for its own hybrid, it should not be heard to object to taking the same action to accommodate another operator's satellite were this orbital position given to someone else. In sum, the practical effect of a grant of HCG's request would be to give it a 50-state hybrid orbital location on a "sole-source" basis.

HCG's other argument is that introduction of hybrid satellite technology will provide "public interest benefits." The flaw with this argument is that it is not responsive to the issue raised by GE Americom--namely, whether HCG is entitled to 91° W.L. for hybrid use based on the tactics it is pursuing here. There is nothing unique about hybrid satellite technology in general or the particular use of that technology HCG is proposing. Another applicant could provide the same (or similar) services using a hybrid satellite at the 91° W.L. orbital location if that location were made available to it. Indeed, if a 50-state hybrid location became available, GE Americom would be interested in acquiring it for the H-1 hybrid satellite, now assigned to 79° W.L.

HCG attempts to dismiss as "premature" GE Americom's legitimate concern that HCG not be allowed to use SBS-4 to repeat at a later date the scheme it is pursuing here with

Galaxy VI. Since HCG is, by its own voluntary action, proposing to use SBS-4's present slot for another satellite, Galaxy VII(H), there is ample justification for the Commission to adopt appropriate measures now to assure that HCG not be allowed to acquire a new location for SBS-4 outside of a comparative processing round. Certainly, HCG should not be given any procedural advantage over others by virtue of the fact that SBS-4's life is expected to extend beyond the proposed 1993 deployment date of Galaxy VII(H).

As pointed out in our Petition to Deny, HCG's instant application involves a significant change from its previous plans for the use of 91° W.L. on which the Commission allowed it to retain that position, over opposition, at C-band. Galaxy VI was authorized in November 1988 to operate at 91° W.L. on the basis that it would function there as a "replacement satellite" for Westar III (Western Union Corp., 3 FCC Rcd 6792, 6794). However, because of the retirement of Westar III in or about June, 1989, any claim by HCG to that position based on service continuity has been lost.

In conclusion, the Commission should not permit HCG to gain an unfair competitive advantage from a situation it itself is creating by allowing it to acquire an additional highly-desirable 50-state hybrid position in this manner, outside of a comparative processing round. There is nothing unique about hybrid satellite technology (indeed, every other

U.S. domestic satellite operator either is operating or is authorized to operate hybrid satellites) and HCG clearly is entitled to no special preference in the Commission's consideration because it is proposing to install a hybrid rather than separate C and Ku-band satellites at 91° W.L. Accordingly, the instant HCG application should be denied and 91° W.L. made available for reassignment, through the Commission's normal procedures for allocating orbital positions, as a hybrid position for use in the same approximate time frame as proposed by HCG.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I, GWENDOLYN WARDELL-O'NEAL, hereby certify that on this 30th day of May, 1990, copies of the foregoing "REPLY OF GE AMERICAN COMMUNICATIONS, INC." were mailed, postage prepaid, to the following:

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