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

In re	)	
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NORRIS SATELLITE COMMUNICATIONS, INC.	)	File No. 54-DSS-P/L-90
	)	File No. 54-DSS-P-90
Authorization to Construct, Launch and Operate Satellites in the Ka-Band	)	

To: The Commission

SECOND SUPPLEMENT TO APPLICATION FOR REVIEW

Norris Satellite Communications, Inc. ("Norris"), by counsel, hereby supplements its pending Application for Review ("Application"), filed April 15, 1996 and previously supplemented on May 23, 1996,[1] seeking reinstatement of the above-referenced Ka-band satellite authorization.[2] As demonstrated herein, this Second Supplement discusses the relevance of the Commission's recently-adopted First Report and Order and Further Notice of Proposed Rulemaking, CC Docket No. 92-297, released July 22, 1996 (the "28 GHz Order") to the arguments advanced by Norris in this proceeding, illustrating and reinforcing the prejudicial effect this protracted rule making proceeding has had on Norris' ability to complete

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[1] The May 23, 1996 Supplement discussed the significant distinctions between the instant matter and the Court of Appeals' decision in Advanced Communications Corporation v. FCC, No. 95-1551 (May 8, 1996).

[2] The Application seeks review of the International Bureau's action in Norris Satellite Communications, Inc., DA 96-363 (released March 14, 1996) ("Norris Order"). The Norris Order acted on Norris' February 16, 1996 filings captioned as: (a) Response to Request for Information and Contingent Request for Waiver; and (b) Request for Extension of Time (collectively, the "Requests").

construction of its Fixed Satellite Service ("FSS") system.[3]

In its Requests and its Application, Norris demonstrated that the pendency of Commission rule making proceedings regarding the 28 GHz band created "regulatory uncertainties involving . . . spectrum allocation." Application at p.14. Specifically, Norris explained that the Commission had not determined how it would allocate the 27.5-30.0 GHz spectrum band for FSS systems in the Ka-band, and that the ultimate spectrum sharing plan and interference protection standards could render meaningless the prior grant of its authorization. Conceivably, had Norris constructed its satellite system prior to the issuance of rules:

(a) the subsequent allocation of a different part of the 28 GHz band to Ka-band satellites would leave Norris as the only satellite permittee authorized in that band, making interference protection with Local Multipoint Distribution Service ("LMDS") and Mobile Satellite System ("MSS") feeder links impractical if not impossible;

(b) the subsequent adoption of rules requiring the 29.5-30.0 GHz portion of the 28 GHz band to be shared with LMDS or feeder links could require Norris to make prohibitively costly modifications requiring substantial capital resources and disrupting service to subscribers; or

(c) the subsequent adoption of rules could have required to Norris to change frequencies, an impractical and costly alteration (especially if the satellite had been launched and placed in service).

As stated in the Application, "the delays and uncertainties attendant to the FCC's consideration of spectrum allocation and interference issues -- events beyond Norris' control -- have compromised Norris' ability to finalize design and construction

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[3] Concurrently herewith, Norris is filing a separate request for waiver to file this Supplement.

plans." Id. at 19.

The 28 GHz Order recites and manifests the delays and uncertainty surrounding the 28 GHz band. Initial petitions seeking adoption of 28 GHz rules were filed in 1992,[4] and the Commission issued its notice of proposed rule making in January 1993.[5] Thereafter, in 1994, a committee appointed to negotiate technical rules met, but could not reach agreement notwithstanding the committee members' "significant efforts." 28 GHz Order at p.5. Subsequently, the Commission staff "conducted several meetings with interested parties to discuss further issues regarding band segmentation and sharing." Id. at p.6. In 1995, the Commission issued a further notice of proposed rule making specifically proposing a plan to segment the 28 GHz band.[6] Under this plan, the 29.5-30.0 GHz band segment would be allocated to FSS on a primary basis and to MSS feeder links on a secondary basis. Since the

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[4] One of these petitions was filed by Norris. See 28 GHz Order at p.34, n.142. At the time its petition was filed, Norris could not have anticipated that it would take four years for the Commission to promulgate technical rules. Rather, Norris expected rules to be in place in sufficient time for Norris to satisfy its construction and launch milestones.

[5] See In the Matters of Rulemaking to Amend Part 1 and Part 21 of the Commission's Rules to Redesignate the 27.5-29.5 GHz Frequency Band and to Establish Rules and Policies for Local Multipoint Distribution Service, 8 FCC Rcd 557 (1993).

[6] See In the Matter of Rulemaking to Amend Parts 1, 2, 21 and 25 of the Commission's Rules to Redesignate the 27.5-29.5 GHz Frequency Band, to Reallocate the 29.5-30.0 GHz Frequency Band, to Establish Rules and Policies for Local Multipoint Distribution Service and for Fixed Satellite Services and Suite 12 Group Petition for Pioneer's Preference, 11 FCC Rcd 53 (1995) ("Third NPRM").

Third NPRM was issued, parties representing the FSS, MSS and LMDS interests have met on several occasions, advancing numerous proposals, but were still unable to reach agreement on a band sharing plan.[7]

After more than three years of ongoing attempts to negotiate rules among the FSS, MSS and LMDS interests, the Commission on July 22, 1996 released the 28 GHz Order, in which it designated band segments in the 27.5-30.0 GHz band for FSS, LMDS and MSS feeder links. The Commission allotted 500 MHz in the 29.5-30.0 GHz segment (for which Norris was authorized) to FSS on a primary basis, with MSS systems having secondary status. Although the Commission concluded that FSS and MSS feeder links could not co-exist in the 29.5-30.0 GHz band, it stated that "the development of technology may enable these two different types of systems to co-exist in the same frequencies in the future." Id. at p.35 (emphasis added).

Ultimately, the rules adopted by the Commission in the 28 GHz Order do not alter the Commission's proposal for segmentation of the 29.5-30.0 GHz portion of the 28 GHz band set forth in the Third NPRM. While this affords Norris some comfort that the frequencies specified in its authorization are valid for FSS purposes, it cannot replace the four years of uncertainty preceding the

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[7] See, e.g., Letter dated February 5, 1996 from Endgate Corp., Hewlett-Packard, Inc. and Texas Instruments, Inc. to Mr. William F. Caton; Letter dated February 6, 1996 from Endgate Corp., Hewlett-Packard, Inc. and Texas Instruments, Inc. to Mr. William F. Caton; and Letter dated February 28, 1996 from Hughes Communications Galaxy, Inc., et al., to Mr. Scott Harris and Ms. Michele Farquhar.

Commission's action. It is the very lack of band segmentation, sharing and technical rules for the past four years that compromised and delayed Norris' construction plans, and last month's decision finally adopting rules cannot turn back the clock. Norris could not have been reasonably expected to obtain sufficient financing and complete construction when the most fundamental of rules -- spectrum allocation and interference protection -- awaited Commission adoption.

Significantly, the 28 GHz Order did not resolve all pending regulatory issues related to the 28 GHz band. The Commission specifically stated that "[w]e will address issues relating to service rules for both GSO/FSS and NGSO/MSS systems propoing to operate in the 28 GHz band in a forthcoming Report and Order." 28 GHz Order at p.4. Even now, after the adoption of the 28 GHz Order, Norris faces the specter of "service rules" that could undermine its ability to complete construction without having to undertake significant and expensive modifications or a complete re-build of the satellite system. Norris cannot reasonably be expected to complete construction when the future adoption of service rules could gut its efforts, resulting in the significant wasting of time, human and capital resources.

WHEREFORE, in view of the foregoing, Norris Satellite Communications, Inc. respectfully requests reinstatement of its above-captioned authorization and an extension of time to construct its satellite system, as described in its Requests and Application.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Victor Onyeoziri, with the law firm of Rini, Coran & Lancellotta, P.C., do hereby certify that the foregoing "Second Supplement To Application For Review" was served on the below-listed parties by hand delivery this 15th day of August, 1996.

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