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Federal Communications Commission APR 4 2001  
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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of )  
)  
Echostar Satellite Corporation ) File Nos. 167/168-SAT-P/L-95; SAT-LOA-  
) 19950929-00118/00019; 54-SAT-AMEND-  
) 96; SAT-AMD-19960124-00006;  
) SAT-MOD-20000222-00061/00062  
)  
Hughes Communications Galaxy, Inc. ) File Nos. 3/4-DSS-P/LA-94; SAT-LOA-  
) 19931203-00040/00041; 174-179-SAT-P/LA-95;  
) SAT-LOA-19950929-00124-00131  
)  
Loral CyberStar, Inc. ) File Nos. 205-SAT-P/LA-95; SAT-LOA-  
) 19950929-00157; 205/206-SAT-AMEND-95;  
) SAT-AMD-19950929-00157/00158  
)  
Morning Star Satellite Company, LLC ) File Nos. 190-193-SAT-P/LA-95;  
) SAT-LOA-19950929-00120-00123  
)  
Motorola, Inc. ) File Nos. 163-166-SAT-P/LA-95; SAT-LOA-  
) 19950929-00145-00148; 157-SAT-P/LA-  
) 96(72); SAT-LOA-19960904-00111;  
) 29-SAT-AMEND-97;  
) SAT-AMD-19961204-00141; 94-98-SAT-P/LA-  
) 97; SAT-LOA-19970715-00060-00064;  
) 79-SAT-P/LA-97(63);  
) SAT-LOA-19970613-00053;  
) SAT-AMD-19980729-00067  
)  
NetSat 28 Company, LLC ) File Nos. 194-SAT-P/LA-95; SAT-LOA-  
) 19950929-00150; SAT-T/C-19990727  
)  
PanAmSat Corporation ) File Nos. 00198/00199-SAT-LOA-95; SAT-  
) LOA- 19950929-00155/00154;  
) 00202-SAT-AMEND-95;  
) SAT-AMD-19950929-00109;  
) SAT-MOD-19980521-00070  
)  
Teledesic LLC ) File Nos. 22-DSS-P/LA-94; SAT-LOA-  
) 19940321-00012; 43-SAT-AMEND-95;  
) SAT-AMD-19941230-00099;  
) 127-SAT-AMEND-95;  
) SAT-AMD-19950713-00086; 195-SAT-ML-97;  
) SAT-MOD-19970926-00155

VisionStar, Inc.

) File Nos. 200-SAT-P/LA-95; SAT-LOA-  
) 19950929-00156; SAT-T/C-20001215-00163

WB Holdings I LLC

)  
) File Nos. 128-SAT-P/LA-95; SAT-LOA-  
) 19950712-00085; 203-SAT-P/LA-95;  
) SAT-LOA-19950928-00108  
) SAT-T/C-19990629-00071/00072

### INFORMAL OPPOSITION

Loral Space & Communications Ltd. (“Loral”), by its attorneys, submits this informal opposition to the Motion for Stay of First-Round Licensing Matters (“Motion for Stay”) filed by Pegasus Development Corporation (“Pegasus”).<sup>1</sup> Pegasus requests that the Commission stay all first-round licensing matters listed in Attachment A to its Motion for Stay pending action on its simultaneously filed Motion to Consolidate All First-Round and Second-Round Licensing Matters (“Motion to Consolidate”).<sup>2</sup> Pegasus’ Motion for Stay is frivolous, illogical, legally deficient and wholly without merit. It should be denied.

Pegasus’ Motion for Stay and Motion to Consolidate seek to hold what it characterizes as “pending” first Ka-band matters hostage to the resolution of the second Ka-band processing round. Ironically, the only reason many of the listed first round matters are “pending” is because of opposition pleadings filed by Pegasus, including various comments regarding certain modifications and petitions for reconsideration of various Commission orders. Not satisfied with filing against most of the Commission’s decisions in the first round, Pegasus now asks the Commission to stay proceedings that it initiated. Grant of the stay would delay, indefinitely, the progress of licensed operators to provide Ka-band service in the United States.

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<sup>1</sup> Pegasus Development Corporation Motion for Stay of First-Round Licensing Matters (filed Mar. 26, 2001).

<sup>2</sup> Pegasus Development Corporation Motion to Consolidate All First-Round and Second-Round Licensing Matters (filed Mar. 26, 2001).

Pegasus requests that two Loral matters, among numerous other first round issues, be consolidated with the second Ka-band processing round.<sup>3</sup> First, Pegasus requests stay of Loral's application to modify the Orion F7 Ka-band authorization at 89° W.L. to add a Ka-band payload to Telstar 8. Despite the fact that it has not applied for the 89° W.L. orbital slot in the second round, Pegasus filed comments regarding Loral's application. Essentially, Pegasus now seeks a stay of its own pleading. Loral would prefer that Pegasus merely withdraw its comments. Second, Pegasus requests a stay of the assignment of the 93° W.L. orbital location to Loral. Pegasus did not oppose the assignment of this orbital slot to Loral, and Loral's authorization is no longer subject to appeal. Therefore, under no circumstances may it be characterized as "pending."

In order to warrant grant of a stay, Pegasus must convincingly demonstrate each and every one of the following four elements: (1) likelihood of success on the merits; (2) irreparable harm to the movant absent a stay; (3) a stay would cause little harm to other parties; and (4) a stay would further the public interest.<sup>4</sup> Pegasus fails to establish even one of the four elements, which requires the Commission to deny its request.

First, Pegasus fails to prove that it will prevail on the merits. Pegasus claims it has a likelihood to succeed on the merits because "consolidation is the only practical and sensible approach." However, Pegasus has failed to meet the standard for consolidation in its Motion to Consolidate.<sup>5</sup> The Commission generally requires that the actions for which consolidation is

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<sup>3</sup> Motion for Stay at Attachment A.

<sup>4</sup> See Virginia Petroleum Jobbers Ass'n v. FPC, 259 F.2d 921, 925 (D.C. Cir. 1958).

<sup>5</sup> Motion for Consolidation at 3.

sought have parties or underlying facts or legal issues in common.<sup>6</sup> The Commission will also consider consolidation when it will bring a significant increase in administrative efficiency.<sup>7</sup> Neither factor applies in this instance—the actions that have arisen out of the first and second Ka-band processing rounds have been diverse in the issues raised and the parties affected. Consolidating these issues would not speed up the second round licensing process; instead it would inherently slow it down by tying up Commission resources. Although all the proceedings Pegasus cites involve the Ka-band, the issues in each proceeding “are sufficiently unique as to render consolidation inappropriate.”<sup>8</sup> Therefore, Pegasus’s underlying action is completely without merit, and a stay is inappropriate.

Second, Pegasus fails to prove that it will suffer irreparable harm. This is the most important of the four factors “without which other factors need not be considered.”<sup>9</sup> Pegasus claims that failure to resolve first round matters will delay completion of the second Ka-band processing round, causing second-round applicants to miss ITU deadlines. Pegasus’ claim is purely speculative and unsubstantiated. Loral’s Ka-band orbital locations were assigned in the

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<sup>6</sup> See 47 C.F.R. § 1.227(a) (2000) (“The Commission . . . will, where such action will best conduce to the proper dispatch of business and to the ends of justice, consolidate for hearing . . . any cases which involve the same applicant or involve substantially the same issues.”). The cases cited by Pegasus all address consolidation of various applications, not the consolidation of licenses with applications.

<sup>7</sup> Pegasus improperly relies on the “cumulative effect” analysis of In re Applications of First Charleston Corp., *Memorandum Opinion and Order*, 97 F.C.C.2d 271 (1984). In that case, the Commission consolidated two license applications for hearing following a court order to consider the cumulative effect of the applications on a third station. See *id.* at 272–73. *First Charleston* is not an addition to the requirement of similarity of parties, facts or issues. It is instead an elaboration on the procedure by which the Commission consolidates hearings on license applications that are mutually exclusive. See 47 C.F.R. § 1.227(b). As such, it bears little relation to the consolidation Pegasus requests here.

<sup>8</sup> See In re DIRECTV, Inc. v. COMCAST Corporation, *Memorandum Opinion and Order*, CSR 5112-P, CSR 5244-P, 15 FCC Rcd. 22802 at ¶ 2, n.4 (2000).

<sup>9</sup> In re Application of Telmex/Sprint Communications, LLC for International Section 214 Authority, *Order*, 13 FCC Rcd. 15678 at ¶ 4 (1998). “The key word in this consideration is irreparable. Mere injuries, however substantial, in terms of money, time and energy necessarily expended in the absence of a stay are not enough.” Virginia Petroleum Jobbers Ass’n, 259 F. 2d at 925.

first round and are simply not available to second round applicants. Indeed, the Commission explicitly instructed second round applicants that “not all bands or orbital locations proposed by [these applicants] will necessarily be available for authorization or assignment.”<sup>10</sup> The D.C. Circuit has said that “[b]are allegations of what is likely to occur are of no value,” because the critical issue is “whether the harm will in fact occur.”<sup>11</sup> Because the harm claimed by Pegasus is purely speculative, it has not shown irreparable harm.

Third, grant of a stay will harm other parties. “[H]arm to the parties goes to the very heart of the determination of whether to grant a requested stay.”<sup>12</sup> Under this prong of the test, the Commission must determine whether “despite showings of probably success and irreparable injury on the part of petitioner, the issuance of a stay would have a serious adverse effect on other interested persons.”<sup>13</sup> Staying pending Loral modification requests will delay construction and launches and have a serious adverse affect.

Last, the public interest will not be served by grant of the stay. Pegasus argues that the Commission must act quickly to preserve its international rights to Ka-band spectrum. However, Pegasus provides no evidence that such rights are at risk. This kind of customary declaration is completely inadequate to support a motion for stay. It is impossible to imagine how holding up first round licenses will expedite construction of these satellites or resolve issues outstanding in

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<sup>10</sup> Ka-Band Satellite Applications Accepted for Filing, Report No. SAT-00012, *Public Notice* (Mar. 16, 1999).

<sup>11</sup> Wisconsin Gas Co. v. FERC, 785 F.2d 669, 674 (D.C. Cir. 1985) (emphasis in original).

<sup>12</sup> In re Application of Satellite Television Corp. for Authority to Construct an Experimental DBS System, *Memorandum Opinion and Order*, 92 FCC 2d 1053 at ¶ 6 (1982). Here, the Commission denied a motion for stay in a satellite proceeding because granting a stay would delay the ability of the satellite operator to construct, launch and operate its satellite, harming both the licensee and the public.

<sup>13</sup> Virginia Petroleum Jobbers Ass'n, 259 F. 2d at 925.

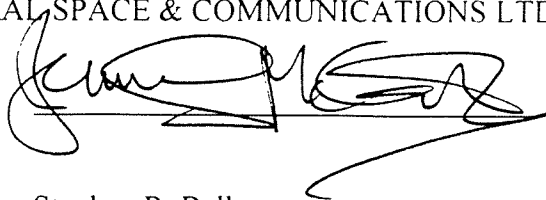
the second processing round. Grant of Pegasus' Motion for Stay would be therefore entirely inconsistent with the public interest.

Pegasus has premised its Motion for Stay on delay that only it has caused. It fails to demonstrate any of the four criteria which it must show in order for a stay to be granted.

Pegasus' Motion for Stay would not serve the public interest and should promptly be denied.

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Not admitted in D.C.

## CERTIFICATE OF SERVICE

I, Dennette Manson, do hereby certify that on this 4th day of April, 2001 copies of the foregoing Informal Opposition of Loral Space & Communications Ltd. were delivered by postage pre-paid first class mail, unless otherwise indicated, to the following parties:

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