

APR 10 2001

Federal Communications Commission
WASHINGTON, D.C.

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)	
)	
EchoStar Satellite Corporation	)	File Nos. 167/168-SAT-P/LA-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

OPPOSITION

Loral Space & Communications Ltd. (“Loral”), by its attorneys, submits this opposition to the Motion to Consolidate All First-Round and Second-Round Licensing Matters (“Motion to Consolidate” or “Motion”) filed by Pegasus Development Corporation (“Pegasus”).¹ Pegasus’ Motion to Consolidate is illogical, legally deficient and wholly without merit. It should be denied.

I. Pegasus has failed to meet the Commission’s standard for consolidation.

Although Pegasus complains that progress has not been made on second-round Ka-band licensing issues, it fails to explain how the relief it requests will achieve that result. Consolidation will do nothing but delay the progress of first round Ka-band licensees to implement their systems and provide service to the public. Such a result would inhibit rather than increase administrative efficiency, and is certainly not in the public interest.

Pegasus fails to satisfy the standard the Commission has established for consolidation. Pegasus attempts to sidestep this problem by instead citing the standard and precedent for consolidation of applications, not the far more unwieldy proposition of consolidation of licenses

¹ Pegasus Development Corporation, Motion to Consolidate All First-Round and Second-Round Licensing Matters (filed Mar. 26, 2001). Pegasus simultaneously filed a Motion for Stay of FCC action on all Ka-band matters listed in Attachment A to its Motion. Loral has opposed the Motion for Stay. Oppositions were also filed by Hughes Communications Galaxy, Inc., WB Holdings I LLC, Teledesic LLC, EchoStar Satellite Corporation and PanAmSat Corp.

with applications requested by Pegasus.² And yet Pegasus's proposal to consolidate first round proceedings with second-round application proceedings fails even to meet the Commission's standard for consolidation of applications. That standard generally requires that the actions for which consolidation is sought have parties and/or legal or factual issues in common.³ None of those factors apply to the proceedings involved here—the actions that have arisen out of the first and second Ka-band processing rounds have been diverse in both the issues raised and the parties affected.

Pegasus has made no attempt to explain how the proceedings it proposes to consolidate involve the same parties or factual or legal issues. That the proceedings Pegasus cites involve the Ka-band generally, although several address Ka-band licensing in the first processing round and the others address issues that were raised after the processing round's close, simply is not enough to justify consolidation under the Commission's standards. The factual and legal issues and the parties involved in each proceeding "are sufficiently unique as to render consolidation inappropriate."⁴ Each issue can and should be resolved independently of the other proceedings, affording no basis for consolidation.

Pegasus glosses over the lack of commonality brought about by its request by mischaracterizing all the proceedings listed in Attachment A as "pending." In fact, it has proposed that the Commission consolidate licenses that have already been granted or are in different stages of processing. In some of the proceedings that Pegasus seeks to consolidate, like

² See 47 C.F.R. §§ 1.201, 1.227 (2000).

³ 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.").

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

the proceedings that led to Loral's authorization at 93° W.L., the Commission has already issued a final order, while in others the Commission has yet to issue a public notice.⁵ Ironically, the only reason most of the listed first round matters are "pending" is because of opposition pleadings filed by Pegasus.

The Commission will consider consolidation when it will bring about a significant increase in administrative efficiency.⁶ But consolidating these procedurally and substantively distinct Ka-band issues and staying all Commission action on first round matters (as Pegasus also requests)⁷ will not speed up the second round licensing process: it will instead freeze all Ka-band proceedings and throw both the first and second Ka-band processing rounds into a chaotic stalemate. In most cases the window has closed on pleadings regarding these matters. Further, consolidation would permit the parties involved in every underlying proceeding to have procedural rights with respect to all other parties' applications and the right to judicial appeal on all matters.

⁵ The Commission is precluded from reaching this very result in other actions. See 47 C.F.R. § 1.227(b). Under the hearing consolidation rules, the Commission is precluded from consolidating applications that were filed outside of various deadlines set in the rules. For example, any mutually exclusive application must be filed within 5 days of publication of an earlier application on Public Notice for the Commission to consolidate the two. See id. at 1.227(b)(2). These deadlines are imposed for good reason: consolidation of proceedings at different stages can serve only to slow the process. Consolidation of all the proceedings in the Ka-band would do so exponentially, bringing the entire Ka-band licensing scheme to a standstill.

⁶ 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.

⁷ Pegasus Development Corporation Motion for Stay of First-Round Licensing Matters (filed Mar. 26, 2001).

II. Pegasus has failed to identify proceedings for which consolidation is appropriate.

Moreover, it is impossible to determine, based on Pegasus' Motion to Consolidate, exactly what proceedings Pegasus wishes to consolidate. The Motion identifies three proceedings as "key first-round licensing matters": (1) Netsat's application for review of the revocation of its license for 95° W.L., (2) Motorola's apparent abandonment of its Ka-band satellite plans, and (3) Visionstar's transfer of control application.⁸ Attachment A to the Motion lists other first Ka-band processing round issues Pegasus has identified as "relevant," but which are completely unrelated to the three "key" matters discussed in Pegasus' Motion. Further, the caption to the Motion includes file numbers for proceedings that appear in neither the text of the Motion nor its attachments.

Pegasus requests that two Loral matters, among numerous other first round issues, be consolidated with the second Ka-band processing round.⁹ First, Pegasus includes 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 objecting to Loral's modification application. Loral's underlying license to construct, launch and operate a Ka-band satellite at 89° W.L., however is final. The mere fact that a party has filed comments regarding a subsequent technical modification pending before the Commission does not place the underlying license in jeopardy. Loral's Ka-band authorization at 89° W.L. is not available to second round applicants.

Similarly, while Pegasus mischaracterizes as "pending" the assignment of the 93° W.L. orbital location to Loral, the Commission formally assigned this orbital location to Loral on

⁸ See Motion to Consolidate at 3.

⁹ See Motion for Stay at Attachment A.

January 30, 2001.¹⁰ Pegasus did not oppose this assignment, and Loral's authorization is no longer subject to reconsideration or appeal. Grant of the 93° W.L. orbital location to Loral is a final order, and under no circumstances may it be characterized as "pending." Even if Pegasus's arguments for consolidation had any merit, this particular order could not be consolidated with other proceedings. The Commission may not consolidate an order that is final.

Pegasus's Motion to Consolidate is completely without merit, and the Commission should promptly deny it.

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April 10, 2001

¹⁰ See In re CyberStar Licensee LLC, File Nos. 109-SAT-P/LA-95, 110-SAT-P-95, 187-SAT-AMEND-95, 188/189-SAT-P/LA-95, 102/103-SAT-AMEND-96, 103/104/105-SAT-ML-98, *Order and Authorization*, DA 01-223 (rel. Jan. 31, 2001). The underlying license for this Loral Ka-band slot was granted May 8, 1997. See In re Loral Space & Communications Ltd. Application for Authority to Construct, Launch and Operate a Ka-Band Satellite System in the Fixed-Satellite Service, *Order and Authorization*, 13 FCC Rcd. 1379 (1997).

Not admitted in D.C.

CERTIFICATE OF SERVICE

I, Dennette Manson, do hereby certify that on this 10th day of April, 2001 copies of the foregoing 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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