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

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

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In re)
)
Application of Hughes Communications)
Galaxy, Inc.,)
)
For Authority to Construct, Launch, and)
Operate Galaxy/Spaceway, a Hybrid)
Ka/Ku band Satellite System)

File Nos. 174-181-SAT-P/LA-95 FEB 9 1996

Satellite Policy Branch
International Bureau

To: Chief, International Bureau

REPLY TO OPPOSITION OF HUGHES COMMUNICATIONS GALAXY, INC.

PanAmSat Corporation ("PanAmSat"), by its attorneys, hereby submits this reply to the opposition of Hughes Communications Galaxy, Inc. ("Hughes"), to PanAmSat's petition to deny Hughes' above-referenced application.

In its petition to deny, PanAmSat detailed Hughes' domination of the domestic satellite industry. To help inject some measure of competition into domestic satellite services and ease the concentration in the domestic satellite market, therefore, PanAmSat opposed Hughes' Ka-band application and proposed that the Commission cap at five (5) the number of fixed-satellite orbital locations that may be held by any single entity or its affiliates.

Not surprisingly, Hughes has responded by urging the Commission to preserve the *status quo*, which has so benefited Hughes and which now operates to assure Hughes' dominance. Hughes would set in stone the policies that have fostered competitive stagnation in domestic satellite services while conjuring up phantom competitors where none exist.

The Commission should not be misled. Only by coming to grips with Hughes' position in the market can the Commission hope to restore competition in domestic satellite services. Thus, and for the reasons set forth below, Hughes' above-referenced application should be denied or held in abeyance while the

Commission completes its promised "comprehensive review of its satellite licensing policies."¹

I. The Time Has Come For The Commission To Reevaluate Its Conclusion That There Is No Separate Market For Satellite-Delivered Communications Services.

Hughes relies on prior Commission decisions that aggregated the markets for satellite-delivered and terrestrial communications services.² Hughes appears to believe that merely by reciting this prior Commission policy, the debate should be over. PanAmSat, however, does not depend upon, nor does its analysis end with, the Commission's earlier satellite decisions. Instead, PanAmSat asks that the Commission revisit the market definition issue and reevaluate its policies in light of current market conditions. The Commission's top to bottom review of its satellite policies reflects a recognition that a reevaluation is necessary.

The market for satellite-delivered communications services has evolved significantly since the Commission first considered the market definition issue. Based on early efforts to provide telecommunications service via satellite, the Commission initially believed that satellites would compete with terrestrial networks.³ Consequently, the Commission reasonably concluded that satellites would not constitute a separate telecommunications sub-market.

The factual assumptions underlying that conclusion no longer are valid. Today domestic satellites are used primarily as a means of distributing video programming and point-to-multipoint VSAT services. Because they are able to transmit to many different points throughout a large geographic area simultaneously, satellites are ideal for such distribution. As a result, satellites provide services for which terrestrial networks generally are not used or are not well-suited.

Indeed, the lack of interchangeability between satellite delivery and terrestrial networks is evidenced by the growing shortage of C-band satellite capacity and the resulting increases in C-band transponder rates. PanAmSat

¹ Public Notice, "International Bureau to Review Satellite Licensing Policies," IN-95-25 (Sept. 20, 1995).

² Hughes Opposition at 34.

³ See, e.g., Policy and Rules Concerning Rates for Competitive Common Carrier Services and Facilities Authorizations Therefor, 95 FCC2d 554, 567-71 (1983).

detailed this shortage in its petition to deny. Hughes, which describes itself as "operat[ing] the largest fleet of domestic communications satellites,"⁴ has benefited from this shortage by charging rates for C-band services that far exceed rates that would prevail in a competitive market.

The time has come, therefore, for the Commission to recognize that the world of satellite-delivered communications services has changed. The transformation in the marketplace has swept away the basis for the Commission's prior satellite market definition decisions. In light of those changes, PanAmSat requests that the Commission reevaluate its policies and deny Hughes' Ka-band application, grant of which would add 20 more satellites to Hughes' fleet and further concentrate the market. At the very least, Hughes' applications should be held in abeyance until the Commission completes its upcoming proceeding on satellite licensing policies, which promises to address specifically many of the issues raised by the changing satellite market.⁵

II. There Is Scant Hope For Competition To Hughes In The Domestic Market From New Domestic Applicants, Foreign Operators, Or Ka-Band Applicants.

Hughes argues, in any event, that it believes there is ample opportunity for new competitors to enter the domestic satellite market and claims that Hughes soon will face competition from new domestic C- and Ku-band applicants, foreign satellite operators, and domestic Ka-band applicants.⁶ Hughes' rhetoric, however, does not match reality.

To begin with, Hughes can expect little competition from any of the three new applicants in the current domestic C- and Ku-band processing round. Because of the scarcity of domestic orbital positions, and because Hughes already occupies the most sought-after domestic orbital locations, these "new entrants" can hope to gain at most only a toehold in the market — if they are able to survive the various regulatory and marketing hurdles that remain in their way.

⁴ Preparation for International Telecommunications Union World Radiocommunications Conferences, IC Docket No. 94-31, Comments of Hughes (filed July 15, 1994) at 1-2.

⁵ See Public Notice, "International Bureau to Review Satellite Licensing Policies," IN-95-25 (Sept. 20, 1995); Public Notice, "Roundtable Date Set On Satellite Licensing Policies," SPB-31 (Nov. 21, 1995).

⁶ See Hughes Opposition at 35.

Indeed, of the three would-be entrants, Hughes has opposed the applications of two for their alleged failure to meet the stringent domestic financial qualification requirement. Assuming that any of the applicants survives this process and actually launches a domestic satellite, it will then be forced to compete with Hughes' vast fleet and satellite resources. In short, under existing Commission rules, there is little, if any, hope on the horizon for meaningful competition in the domestic C- and Ku-band market.

With regard to foreign systems, Hughes' contentions are similarly unfounded. It is unclear which foreign systems Hughes has in mind. If it is existing Mexican or Canadian systems, these satellites do not have full coverage of the U.S. and, therefore, like U.S. separate satellite systems, they cannot compete effectively with Hughes, GE Americom and AT&T's domestic satellite systems. Foreign satellite systems are designed primarily to serve the needs of their home markets. Any U.S. domestic service provided from these satellites will be strictly ancillary or incidental to services provided to foreign locales. Thus, foreign operators cannot possibly be expected to compete with Hughes' fleet of U.S. domestic satellites.

Finally, Hughes includes current domestic Ka-band applicants within its list of parties that, in its view, will provide competition in the domestic market. Assuming that one or more Ka-band applicants (other than Hughes) finally are authorized by the Commission to provide U.S. domestic service (Hughes has opposed the Ka-band applications of Echostar, KaStar, Orion, VisionStar, and NetSat 28), it is nonetheless questionable whether the broadband services envisioned for Ka-band ever will be in direct competition with the video services that predominate in C-band and Ku-band domestically.

Moreover, although Ka-band satellite systems arguably some day may provide competition to Hughes' C- and Ku-band services, that day, if it ever arrives, will be many years away. Aside from the delays for licensing, construction, and launch of Ka-band satellites, there are significant technical and marketing problems that Ka-band operators will need to overcome. For instance, Ka-band attenuation margins limit the types of services that can be provided in this band. Likewise, current Ka-band user equipment is not as wide-spread or reliable as C-/Ku-band equipment. Thus, Hughes' inclusion of Ka-band applicants as a current source of competition wildly distorts reality.

In sum, there is no source of meaningful competition to Hughes, GE Americom and AT&T at this time. Nor is there likely to be any for years to come absent affirmative steps by the Commission to remedy the market failure in domestic satellite services. As two such steps, PanAmSat petitioned the Commission to deny Hughes' Ka-band application and to cap orbital assignments. By limiting Hughes' continued expansion into all aspects of satellite services, and by equitably distributing limited spectrum resources among a diverse group of competitors, the Commission can begin to create an open and competitive market for domestic satellite services.

III. The Issues Raised In PanAmSat's Petition To Deny Have Not Been Rendered Moot By The DISCO Report & Order.

Hughes, having failed with its claim that it is not dominant in the market for domestic satellite services (it is), and knowing the transparency of its assertion that competition in the domestic market is imminent (it is not), falls back on a "mootness" argument, claiming that PanAmSat's position was rejected by the Commission in its DISCO Report & Order.⁷ This claim, too, must fail.

In the DISCO Report & Order, the Commission concluded only that special limitations on domestic satellite operators are not needed to preserve competition in the international satellite market. Issues pertaining to the restoration of competition in the domestic market were not addressed. Indeed, the DISCO Report & Order specifically states that the Commission will entertain requests for reassignment of all satellites following the current domestic processing round.⁸ Moreover, in a recent statement before the "satellite roundtable," International Bureau Chief Scott Harris indicated that "all issues are on the table."⁹ Thus, the Commission has not resolved the issues raised in PanAmSat's petition to deny regarding the need to promote competition in the domestic market.

⁷ Id. at 36 (citing Amendment to the Commission's Regulatory Policies Governing Domestic Fixed Satellites and Separate International Satellite Systems, ("DISCO") IB Docket No. 95-41 (rel. Jan. 22, 1996) ¶¶ 35-43).

⁸ DISCO ¶ 14.

⁹ Remarks of Scott Harris, International Bureau Chief, FCC, at the "Satellite Roundtable" (January 26, 1996).

CONCLUSION

For the reasons stated herein and in its petition to deny, PanAmSat urges the Commission to deny the Application of Hughes Communications Galaxy, Inc., to construct, launch, and operate a hybrid Ka/Ku band satellite system.

Respectfully submitted,

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February 7, 1996

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Reply was sent by first-class mail, postage prepaid, this 7th day of February, 1996, to each of the following:

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