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

Received

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In the Matter of Applications of)	
)	
AT&T Corporation)	File Nos. 156-162-SAT-P/LA-95
)	
Echostar Satellite Corporation	)	File Nos. 167/168-SAT-P/LA-95
)	
Hughes Communications Galaxy, Inc.	)	File Nos. 174-181-SAT-P/LA-95
)	
KaStar Communications Corporation	)	File No. 203-SAT-P/LA-95
)	
Morning Star Satellite Co., L.L.C.	)	File Nos. 190-193-SAT-P/LA-95
)	
NetSat 28 Company, L.L.C.	)	File No. 194-SAT-P/LA-95
)	
Orion Asia Pacific Corporation	)	File No. 206-SAT-AMEND-95
)	
Orion Atlantic, L.P.	)	File No. 204-SAT-ML-95
)	
Orion Network Systems, Inc.	)	File Nos. 195-197-SAT-P/LA-95
	)	205 SAT-AMEND-95
)	
VisionStar, Inc.	)	File No. 200-SAT-P/LA-95
)	
For Authority to Construct, Launch)	
and Operate a Satellite System)	
or Satellites in the Ka Band)	
)	

Satellite Policy Branch
International Bureau

REPLY OF HUGHES COMMUNICATIONS GALAXY, INC.

Hughes Communications Galaxy, Inc. ("Hughes") hereby submits its Reply in connection with the above-captioned Ka band satellite applications.

The issues raised in the Petitions to Deny, Oppositions, Comments and Reply Comments filed in this proceeding have been fully briefed, and Hughes will not reiterate here

all of the positions it has taken in the last two pleading rounds. Hughes below responds only to selected issues in the oppositions and reply comments filed on January 24, 1996, that merit additional elaboration.

I. **Financially Unqualified Applicants**

Hughes and others have petitioned to deny the Ka band applications of Echostar, KaStar, Morning Star, Orion, and VisionStar primarily on financial qualification grounds.^{1/} The record is absolutely clear that these applications should be denied, and it is sound policy for the Commission to do so.^{2/}

None of these applicants seriously disputes the fact that they cannot meet the Commission's financial qualification standard for FSS systems. Instead, these applicants uniformly urge the Commission to waive its financial qualification rules, or fabricate new ones, based on a variety of policy reasons that are merely empty excuses for these applicants' demonstrated inability to provide any assurance that they can fund the construction, launch and operation of their proposed Ka band satellite systems.

VisionStar, for example, argues that strict application of the Commission's financial qualification rules unfairly discriminates against small companies, and urges the

^{1/} See Consolidated Petitions to Dismiss or Deny and Comments of Hughes Communications Galaxy, Inc. (Dec. 15, 1995), at 5-23. Hughes also petitioned to deny Orion's domestic applications to the extent that Orion requested one more orbital location for domestic U.S. coverage than is permitted under the Commission's rules. See id. at 25-26.

^{2/} See AT&T Comments (discussing financial qualifications deficiencies of Echostar, KaStar, Morning Star, Orion, and VisionStar); GE Americom Comments (same); see also NetSat Comments (petitioning to deny Morning Star, KaStar, VisionStar, and Orion, among others, on financial qualification grounds).

Commission to waive its rules to "promote the entry of small entrepreneurial satellite providers."^{3/} Orion similarly argues that the Commission should continue to apply its international two-stage showing to all satellite applicants "to open the market for domestic satellite services to smaller, entrepreneurial companies that do not have access" to the internal capital of larger companies.^{4/}

Such arguments provide no basis for the relief these applicants seek. Just two weeks ago, after having considered this issue fully in a rulemaking proceeding, the Commission stated:

We are sympathetic to small companies without large corporate parents or other access to the hundreds of millions of dollars needed to construct a satellite system. But our primary obligation is to ensure that the U.S. public has available to it the widest range of satellite service offerings from the greatest number of competitors possible. Our repeated experience is that applicants without ready access to the needed financing have difficulty obtaining that financing, and that their attempts are often unsuccessful. This has allowed applicants to hold orbital resources to the detriment of others willing and able to go forward immediately. This ultimately results in fewer choices to the public.^{5/}

Thus, the Commission has considered and properly rejected the precise rationale that Visionstar and Morning Star assert warrants a waiver of the Commission's FSS financial qualification rules. The Commission has recognized that while entrepreneurial spirit is

^{3/} See VisionStar Consolidated Opposition to Consolidated Comments and Petitions to Deny (Jan. 24, 1996), at 12.

^{4/} Orion Consolidated Reply to Comments and Opposition to Petitions to Deny (Jan. 24, 1996), at 5.

^{5/} Amendment to the Commission's Regulatory Policies Governing Domestic Fixed Satellites and Separate International Systems, Report and Order, FCC 96-14, IB Docket No. 95-41 (released January 22, 1996) ("International Satellite Order"), at ¶ 40 (footnote omitted) (emphasis added).

commendable and to be encouraged (among small and big companies), such intangibles standing alone cannot substitute for the enormous capital required to build a satellite system. Simply put, licensing orbital spectrum to unqualified applicants is highly likely to result in the loss or delay of service to the public.

For these reasons, the positions of KaStar and Echostar that the Commission has the capability to allocate slots to all applicants (qualified or not), and that it should do so,^{6/} is questionable as a matter of fact and ill-conceived as a matter of policy. First, contrary to these parties' assertions, it is far from clear that the all 72 slots requested by the Commission at the ITU either will be available to the United States or capable of accommodating both existing and future Ka band applicants.^{7/} Second, even if it were possible to accommodate some or all of the unqualified applicants, the Commission has acknowledged its "repeated experience" with the adverse consequences of trusting unqualified applicants ultimately to offer service to the public.^{8/} In this case, given the utter absence of any justification for a waiver, it would

^{6/} See Echostar Opposition to Petition to Deny and Reply Comments (Jan. 24, 1996), at 3; KaStar Consolidated Opposition to Petitions to Deny (Jan. 24, 1996), at 4.

^{7/} See, e.g., Initial Comments of AT&T Corp. (Dec. 15, 1995), at 2 (noting that it "is not clear that the Commission will be able to accommodate all of the requests for Ka band satellites being considered in this processing round, both because of the number of slots requested in this processing round, as well as the significant number of orbital positions already registered" at the ITU). This problem is exacerbated by the slew of untimely applications filed by PanAmSat and Orion after the Ka band cut-off, which should form the basis of the next Ka band processing round, and therefore should not be considered here.

^{8/} See International Satellite Order at ¶ 40; see, e.g., National Exchange Satellite, Inc., 7 FCC Rcd 1990 (Com. Car. Bur. 1992); Rainbow Satellite, Inc., Mimeo No. 2584 (Com. Car. Bur., released Feb. 14, 1985); United States Satellite systems, Inc., Mimeo No. 2583 (Com. Car. Bur., released Feb. 14, 1985) (domestic satellite licenses declared null and void for failure to begin implementation as required by license).

eviscerate the fundamental purpose of the qualification rules for the Commission to waive its rules for Echostar,^{9/} KaStar and other unqualified applicants.^{10/}

The Commission also should reject once and for all various applicants' strategic attempts to inject murkiness into the Commission's FSS financial qualification standards where

^{9/} Hughes notes that Echostar has now supplemented its deficient showing with a letter from Charles W. Ergen, the President and controlling shareholder of EchoComm and, through Echocomm, the controlling shareholder of EchoStar. In his letter, Mr. Ergen states that "in the event EchoStar is unable to complete the financing for the construction, launch, and/or first year operation of the system," he is "personally committed," "free of any conditions other than final FCC approval of EchoStar's application," to "liquidate any or all of the shares of common stock of EchoComm that I own as of the date thereof, or pledge any or all of such shares of common stock to secure adequate financing, as necessary to complete construction, launch and operate for one year of EchoStar's FSS system." See Echostar Opposition at 6; Echostar Minor Amendment (Jan. 23, 1996), Appendix I. Echostar has tried this ploy before, and Hughes has shown that Mr. Ergen's statement of his commitment to sell or pledge his common stock in EchoComm plainly is insufficient to demonstrate EchoStar's current financial ability to cover the costs of construction, launch, and first-year operating costs of the proposed system. In the Matter of Application of EchoStar Satellite Corporation for Authorization To Construct, Launch, and Operate a Ku Band Domestic Fixed Satellite Service System, File Nos. 36-DSS-P/LA-94, 37-DSS-P/LA-94, Opposition of Hughes Communications Galaxy, Inc. (Oct. 10, 1995). EchoStar once again has failed to satisfy the Commission's FSS financial qualification requirements.

^{10/} Echostar asserts that "ample precedent" exists for the proposition that "if all pending applications should be granted -- or may be grantable -- there is no reason to impose a strict financial qualification test on each applicant." Echostar Opposition to Petitions to Deny and Reply Comments at 3. Apart from a pending rulemaking notice, the only "precedent" Echostar cites is the Commission's decision to relax its financial qualification rules in establishing the radiodetermination service (RDSS). Amendment to the Commission's Rules to Allocate Spectrum For, and to Establish Other Rules and Policies Pertaining to, a Radiodetermination Satellite Service, 104 FCC 2d 650, 663-64 (1986). Yet that case is clearly inapposite. First, the Commission relaxed its financial qualifications in part because RDSS was a new and unproven service. See id. Here by contrast, in licensing new applicants to use Ka band spectrum, the Commission is not creating a new service, any more than it is when it licenses systems in the extended C and Ku band; there is no "new service" basis for relaxing traditional FSS processing rules as there was with RDSS. Second and in any event, the Commission's policy with respect to RDSS was a failure. As the Commission has noted, Geostar Corporation, a start-up company licensed in the RDSS, declared bankruptcy nearly five years after its licenses were issued according to the policy Echostar cites with such approval. Geostar never built a single satellite. See International Satellite Order at ¶ 40, n.57.

none exists. The Commission's International Satellite Order now has harmonized and clarified the strict financial standard applicable to all FSS systems proposing domestic and international coverage, including Ka band systems.^{11/} Parties that continue to urge different approaches in rulemaking fashion -- e.g., PanAmSat's or Orion's proposed relaxed 2-stage showing or MorningStar's "due diligence" approach -- have shown no legal or policy basis for adopting them here in the context of processing specific Ka band applications. The Commission should reject these approaches outright.

Finally, KaStar seems to think it significant that if the Commission were simply to enforce its qualification rules in a straightforward manner (as Hughes and others have advocated), a number of applicants would be dismissed. Apart from KaStar's acute sense of the obvious, this is not the undesirable result that KaStar suggests.^{12/} Processing speculative filings does nothing but waste Commission and party resources, and ultimately can tie up orbital locations for years so that they are not available either in this round or the next one.^{13/} The Commission is obligated to ensure that applicants make the best and most efficient use of

^{11/} International Satellite Order at ¶¶ 35-43.

^{12/} KaStar Consolidated Opposition at 5. KaStar's proposed alternative, citing Norris, would treat all applicants as "new entrants" in the Ka band service, such that no financial qualification standard would apply to any applicant in this processing round. See id. at 4. This approach is absurd on its face.

^{13/} As the Commission has noted, Geostar Corporation, a start-up company licensed in the radiodetermination satellite service, declared bankruptcy nearly five years after its licenses were issued without building any of its satellites. International Satellite Order at ¶ 40, n.57. And, for all of the unqualified applicants' attempts to invoke the Norris decision as precedent to support their waiver requests, the fact is that Norris has made little headway in satellite construction in the 3+ years since it was granted a financial qualifications waiver by the Commission.

the Ka band spectrum and speed the deployment of innovative satellite service to consumers. Permitting unqualified applicants like KaStar to warehouse this valuable public resource does nothing to advance these goals. The Commission should deny the applications of Echostar, KaStar, Morning Star, Orion, and VisionStar, and make room for qualified applicants to utilize the Ka band.

II. NetSat

NetSat has stated recently that it is "gratified to see that none of the parties has raised any truly substantive comments or issues concerning NetSat 28's application for a satellite authorization."^{14/}

The Commission should carefully examine the record in assessing the validity of this statement. Every party that has addressed the inherent defects in NetSat's proposed system has urged that it be rejected. Although NetSat claims far greater spectrum efficiency than the other proposed Ka band systems, NetSat still has provided absolutely no support for its claims of "revolutionary technology."^{15/} And NetSat still has provided no legal or policy rationale to justify an enormous change in Commission orbital spacing policy that would do nothing but markedly diminish competition from other Ka band systems.

As Hughes and other parties have repeatedly observed, the Commission has consistently attempted to achieve the smallest possible orbital spacing in order to maximize the

^{14/} Consolidated Reply Comments and Opposition of NetSat 28 Company L.L.C. (Jan. 24, 1996), at 2-3.

^{15/} See Consolidated Opposition and Reply Comments of NetSat (Jan. 24, 1996), at 11.

number of available orbital locations. Section 25.140(b)(3) of the Commission's rules,^{16/} its decade-old policies governing U.S. international separate systems,^{17/} and the Norris decision,^{18/} all make clear that the Commission's 2° spacing policy applies -- and for good reason -- to proposed Ka band systems.

NetSat may not consider its failure to comply with and desire to fundamentally change the cornerstone of Commission orbital spacing rules and policy^{19/} a "truly substantive" objection to its proposed system, but the Commission should. NetSat's proposed system would occupy seven consecutive orbital positions in a highly desirable part of the orbital arc (103° W.L.), precluding other qualified applicants -- including Hughes -- from

^{16/} This rule requires that each applicant for an FSS space station to provide an interference analysis demonstrating "the compatibility of its proposed system 2° from any authorized space station." 47 C.F.R § 25.140(b)(3).

^{17/} See Separate Svstems Order, 101 FCC 2d at 1167-68, ¶ 244 ("Our commitment to the efficient utilization of the geostationary orbit and the accommodation of the requirements of all countries, including additional U.S. requirements, for access to the orbit is too great to not use these criteria. Therefore, we are adopting the general policies and standards for the separate systems that we have developed to reduce the spacing between domestic satellites to 2°.") (footnote omitted). This policy has been incorporated into Section 25.140(b)(3), as modified by the International Satellite Order.

^{18/} See Norris, 7 FCC Rcd at 4291 & n.24.

^{19/} The Commission has repeatedly recognized its 2° spacing policy as the "cornerstone" of its past FSS orbital assignment plans, designed to "maximize the number of satellites that could be accommodated in orbit so that the increasing demand for satellite services could be met." In the Matter of Assignment of Orbital Locations to Space Stations in the Domestic Fixed-Satellite Service, 3 FCC Rcd 6972 (1988) ("1988 Orbital Assignment Order").

offering competing services in the 96° - 110° W.L. range. NetSat's system proposal is a non-starter from a public interest standpoint,^{20/} and its application should be denied.

III. Hughes' Ka Band FSS/Ku Band BSS Hybrid System and Other Global Systems

Two other statements of NetSat are worthy of response. First, NetSat has joined Lockheed and AT&T in arguing that the Commission should not consider the hybrid BSS nature of Hughes' GALAXY/SPACEWAY system, characterizing it as an unwarranted "preference" in orbital assignment.^{21/} Second, NetSat similarly has characterized any Commission effort to take into account the global nature of certain Ka band system proposals in allocating slots as a "preference" that would "disadvantage applicants that have proposed only domestic service."^{22/}

These assertions are absurd and inconsistent with FCC policy. Hughes has already shown that its Ka band orbital location selection was dictated by its business needs, system design and desired coverage in the same manner as the orbital requests of all other applicants. In this regard, it is axiomatic that the Commission always balances an applicant's orbital requests and business needs with other factors, including the "constraints imposed by satellite design,"^{23/} and Hughes has shown that its GALAXY/SPACEWAY system proposal

^{20/} NetSat once again has provided no evidence that its proposed system can operate in a 2° environment.

^{21/} Consolidated Opposition and Reply Comments of NetSat at 4-5.

^{22/} Id.

^{23/} See, e.g., Satellite Transponder Leasing Corp., 3 FCC Rcd 6737 (1988).

fully advances the Commission's policy favoring the development of hybrid communications satellites.^{24/}

Similarly, the global nature of system proposals is also a fundamental design element that the Commission can, should and always does consider as a factor in assigning orbital locations. To do otherwise would run counter to the Commission's policies favoring the development of international GSO separate systems, as well as global non-GSO systems such as those of Motorola and TRW, and the one proposed by Teledesic.

In the final analysis, the Commission should first discard those applications that do not comply with its rules (NetSat's does not), and then consider each proposed system's design, desired coverage area, and system flexibility as it assigns orbital locations. This is only common sense, and it is the method by which the Commission has always processed FSS applications. There is no need for deviation here.

IV. Intersatellite Links

One ground of Motorola's petition to deny Hughes application was that Hughes should not be permitted to use frequencies granted to the Iridium system for intersatellite links ("ISLs").^{25/} With respect to this issue, Hughes has shown the deficiency of Motorola's

^{24/} See Hughes Consolidated Opposition and Reply Comments at 20-24. Indeed, Hughes' system design stands in marked contrast to NetSat's proposal. Hughes has complied with all of the Commission's FSS processing rules, including 2° spacing, while NetSat has thrown Commission rules and policy to the wind and requested an enormous block of orbital spectrum that would flatly preclude the entry of a number of other Ka band systems. For any party to characterize Hughes' straightforward orbital location requests and selection rationale as a request for "preferential" treatment of its system is absurd. For NetSat to do so is outrageous.

^{25/} See Motorola Consolidated Comments and Petition to Deny (Dec. 15, 1995).

argument that its status as a currently authorized system gives it carte blanche to monopolize frequencies at 23 GHz for its exclusive intersatellite link use,^{26/} and has urged the Commission to reject Motorola's wholly conclusory and unsupported assertion that Hughes' proposed use of inter-satellite frequencies is incompatible with Motorola's Iridium system.^{27/}

Lockheed has noted that the "use of ISLs in commercial communications systems is relatively new," and urges the Commission to adopt a flexible approach with respect to ISL use by Ka band applicants that will "allow the applicants to explore the best possible ISL solutions for their respective systems."^{28/} Hughes supports this approach and urges the Commission to adopt it, including allowing of appropriate amendments to parties' applications when the ISL situation becomes more clear, both domestically and internationally.

V. Other Issues

A. AP3 Process

The parties in this proceeding uniformly support prompt Commission action in forwarding AP3s to the ITU. Even now the parties are working informally to resolve their spectrum conflicts, and Hughes fully supports all Commission and party efforts to protect U.S.

^{26/} See Hughes Consolidated Reply Comments and Opposition at 42. As Hughes pointed out, in the Big LEO Order, the Commission adopted new Section 25.279, the rule governing Motorola's intersatellite link operations, which expressly requires Motorola to coordinate with other applicants for intersatellite link frequencies. See 47 C.F.R. § 25.279; see Big LEO Order at ¶ 170.

^{27/} See Hughes Consolidated Reply Comments and Opposition at 42. Hughes observed that Motorola's allegations of intersatellite link interference are devoid of any technical support or analysis, and that in spite of its obligation to co-exist with other systems, and that Motorola has evidenced no willingness to even consider cooperating with other applicants.

^{28/} Lockheed Consolidated Opposition and Reply Comments at 25.

systems at the ITU through prompt submission of these filings. Hughes notes that there may be instances where it is necessary to forward one or two AP3 filings earlier than the Commission's current AP3 submission timetable in order to protect U.S. priority to certain orbital locations, and Hughes urges the Commission to do so.

B. Private Carrier Status

AT&T's initial comments urged the Commission to "question" whether Ka band applicants should be able to declare themselves to be private carriers, *i.e.*, choose their own regulatory classification. Other parties have disagreed emphatically with AT&T's suggestion,^{29/} and Hughes joins in this objection.

The Commission rightly has determined that satellite operators should be permitted to elect to operate on a common carrier or non-common carrier basis.^{30/} Market forces are sufficient to provide common carrier capacity without the need for a Commission mandate. As the Commission has observed, no transponder sales application has been opposed in the last decade,^{31/} and there is no reason this policy should not apply at Ka band.

VI. CONCLUSION

For the foregoing reasons, Hughes respectfully reiterates the need for the Commission to deny the applications of Echostar, KaStar, Morning Star, NetSat, Orion and

^{29/} See, e.g., Consolidated Opposition and Reply Comments of Comm. Inc. (Jan. 24, 1996), at 2-5; Orion Consolidated Reply to Comments and Opposition to Petitions to Deny (Jan. 24, 1996), at 12.

^{30/} International Satellite Order at ¶ 49.

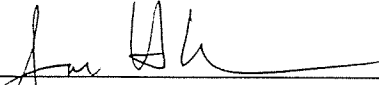
^{31/} Id.

VisionStar. The Commission should also take any other action it deems appropriate in view of the comments and positions set forth above and in Hughes' earlier filings in this proceeding.

Respectfully submitted,

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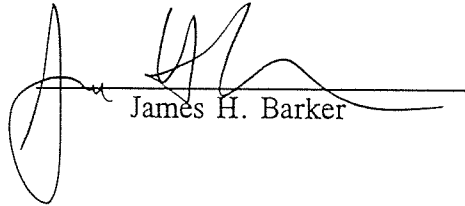
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