

FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

March 17, 1998

OFFICE OF
MANAGING DIRECTOR

Bruce D. Jacobs, Esquire
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95 through 99-SAT-PCA-98

Dear Mr. Jacobs:

This is in response to the petition you filed on behalf of Pegasus Development Corporation (Pegasus) requesting reinstatement of its application for authority to launch and operate a communications satellite system in the Ka band at 19.7-20.2/29.5-30.0, 28.35-28.6 GHz frequencies bands, and to your subsequent refiling of Pegasus' application with a petition for deferral of the required fee payment due to the return of its initial fee payment.

Pegasus filed its application requesting to operate ten geostationary satellites at five orbital locations together with a fee payment on December 22, 1997, the cut-off date for applications proposing satellite systems in the 28.35-28.6 GHz, 29.1-30.0 GHz, 167.7-18.8 GHz and 19.3-20.2 GHz Frequency Bands. See Satellite Applications Accepted for Filing in the Ka-band, Public Notice, Report No. SPB-106 (released October 15, 1997) ("Public Notice"). As a part of its application package, Pegasus submitted a fee payment of \$425,225.00 to cover the filing fees for five orbital locations (\$85,045.00 for each orbital location requested) together with a request for waiver of Section 1.1107(9)(b)(1) of the Commission's rules which requires a fee payment of \$850,450.00 with an application to launch and operate ten geostationary satellites (\$85,045.00 per satellite). As justification for the amount of its fee payment and its waiver request, Pegasus relied on "interim" fee payment procedures established for applicants requesting to locate multiple geostationary satellites at a single orbital location. See Interim Filing Fee Payment Established for Ka-Band Satellite Applications, Public Notice No. 56031, released September 28, 1995. The Fee Section returned Pegasus' application after concluding that its fee payment was insufficient due to revisions to the requirements set forth in the "interim" fee procedure. See letter from Claudette E. Pride, Chief, Fee Section to Pegasus Development Company, dated January 13, 1998; see also 47 C.F.R. §§ 1.1107, 1.1110.

In your request for reinstatement of Pegasus' application, you assert that Pegasus' fee payment was fully consistent with Public Notices permitting payments for Ka-band satellite systems based on the number of orbital locations an applicant proposed to occupy rather than the number of geostationary satellites proposed for operation. See, e.g., Filing Fee Waiver Established for Applications Proposing Geosynchronous Space Stations in Response to Reports Nos. SPB-88 and SPB-89 - Cut Offs Established in the 2 GHz and 36-51.4 GHz Frequency Bands, Public Notice No. 76181, released August 26, 1997. Further, you contend that the Public Notice, governing the filing of the second-round applications, was unclear concerning whether fees could be calculated pursuant to the fee payment rules or the "interim" fee payment procedure set forth in the above-described Public Notices.

The "interim" fee payment procedure was established in order to "afford the Commission an opportunity to determine whether to seek congressional amendment to the statutory filing fee schedule, as it now applies to geostationary space stations" because processing multiple satellites operating at a single orbital location "would require the same resources that an individual geostationary satellite requires." See Interim Filing Fee Payment Established for Ka-band Satellite Applications, Public Notice No. 56031, released September 28, 1995; see also letter to John P. Janka, Esquire from Andrew S. Fishel, Managing Director, dated August 26, 1995. Thus, the "interim" procedure permitted applicants to submit fees calculated upon their number of proposed orbital locations without regard to the number of satellites they proposed to operate and to simultaneously request a waiver of the balance due. If Congress does not amend the Schedule of Application Fees contained in Section 8 of the Communications Act to include a fee payment category for multiple geostationary satellites operating at single orbital location, applicants relying on the "interim" procedures to make their fee payments will be required to submit the full geostationary fee payment. See 47 U.S.C. § 158(g).

The Public Notice, governing Pegasus' application, was intended to modify the "interim" procedure's provision permitting the filing of fees on a "per orbital location" basis by requiring, instead, payment of the fee based on the number of geostationary satellites an applicant proposed while affording applicants an opportunity through the waiver process to obtain a refund of any amount paid above the amount due on a "per orbital location" basis. Specifically, the Public Notice, in describing the payment procedures, stated that "to be considered as a part of the processing round, applicants are required to apply for and file corresponding fees for launch and authority as set forth in Section 1.1107 of the Commission's rules, 47 C.F.R. § 1.1107. (Construction authority and corresponding fees are no longer required.) Thus, applicants for non-geostationary satellite


systems would file the fee listed for "Space Stations (Low Earth Orbit Satellite Systems)" on a per system basis (see 47 C.F.R. § 1.1107(10)(b)) and applications for geostationary satellite systems would file the fee listed for "Space Stations (Geostationary)" on a per satellite basis (see 47 C.F.R. § 1.1107(9)(b)(1)). Pursuant to Section 1.1117 of the Commission's rules, 47 C.F.R. § 1.1117, requests for a waiver of the fees will be considered on a case-by-case basis."

A careful reading of the Public Notice demonstrates that our determination to modify the "interim" procedure is unclear because its text is silent on whether an applicant could continue to rely on the existing practice of filing a waiver petition to request deferral of any required fee amount in excess of the fee required on a "per orbital location" basis. Thus, when viewed in the context of the existing "interim" fee procedure's provisions, the Public Notice may fairly be read to affirm, or at least not to prohibit, that applicants may continue to rely on the earlier "interim" procedure. In view of this ambiguity, we are persuaded that the text of the Public Notice related to fee payments, taken as a whole and read in the content of our earlier "interim" requirements, may not have been sufficiently plain to alert Pegasus that the fee payment procedures had been modified to include a requirement that applicants submit full payment of the geostationary satellite fee with their applications.

Accordingly, your request is granted. Pegasus' application is reinstated nunc pro tunc. Further, your request for waiver of the geostationary fee payment requirement and your request for deferral of Pegasus' fee payment are granted with the condition that Pegasus make a fee payment of \$425,225.00 within 20 days from the date of this letter.

If you have any questions concerning this matter, please contact the Chief, Fee Section at (202) 418-1996.

Sincerely,


Thomas M. Holleran
Acting Associate Managing
Director for Operations