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Telecom Division
International Bureau
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

VIA MESSENGER

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Written Ex Parte Presentation

Re: File Nos. SAT-AMD-19971219-00199, SAT-AMD-19971222-00204, SAT-AMD-19971222-00216, SAT-AMD-19971222-00229, SAT-AMD-19980123-00009, SAT-LOA-19951109-00185, SAT-LOA-19951109-00186, SAT-LOA-19970702-00057, SAT-LOA-19971222-00201, SAT-LOA-19971222-0205, SAT-LOA-19971222-00206, SAT-LOA-19971222-00207, SAT-LOA-19971222-00208, SAT-LOA-19971222-00209, SAT-LOA-19971222-00211, SAT-LOA-19971222-00212, SAT-LOA-19971222-00213, SAT-LOA-19971222-00214, SAT-LOA-19971222-00215, SAT-LOA-19971222-00223, SAT-LOA-19971222-00224, SAT-LOA-19971222-00225, SAT-LOA-19971222-00226, SAT-LOA-19971222-00227, SAT-LOA-19971222-00228, SAT-LOA-19980312-00018, SAT-LOA-19980312-00019, SAT-LOA-19980403-00025, SAT-LOA-19980403-00026, SAT-LOA-19980403-00027, SAT-LOA-19980403-00028, SAT-LOA-1998-0403-00029, 94- through 98-SAT/P/LA-97, SAT-LOI-19971222-0217, and SAT-LOI-19971222-0218

Dear Ms. Salas:

Hughes Communications, Inc. hereby replies to the proposed orbital assignment plans and other filings that applicants in the Commission's second GSO Ka band processing round have recently filed.

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On August 8, 2000, the twelve filers of the above-referenced applications and letter of intent in the second GSO Ka band processing round filed a joint *ex parte* letter. In that letter, the applicants indicated that they had agreed that each applicant would have opportunity to file, either individually or as part of a group of applicants, a proposed orbital assignment plan for the Commission's consideration.

Thereafter, two individual applicants, Loral Cyberstar, Inc. and PanAmSat Corporation, filed letters setting forth their current desires for orbital locations for their proposed systems. In addition, two groups of applicants filed comprehensive proposals for an orbital assignment plan. A group comprised of Hughes Communications, Inc., TRW, Inc., Celsat America, Inc., Lockheed Martin Corporation, CAI Data Systems, Inc., KaStarCom World Satellite, LLC, and Pacific Century Group, Inc. submitted one of the comprehensive proposals (the "*Majority Plan*"), while a group comprised of Pegasus Development Corp., DirectCom Networks, Inc., and CAI Data Systems, Inc. submitted the other comprehensive proposal (the "*Pegasus/DirectCom Plan*"). TRW, Celsat, Lockheed Martin, Hughes and Pacific Century Group have also filed individual letters in support of the Majority Plan.

At the outset, Hughes reiterates its support for the Majority Plan. Hughes strongly believes that the Majority Plan fairly and adequately accommodates all applicants. The Plan was developed by taking into account the relative "equities" of all of the applicants under all of the relevant Commission rules. Furthermore, each of the supporters of the Majority Plan has made compromises to ensure that the Plan is workable and fair for all applicants. Indeed, the fairness of the Majority Plan is demonstrated by the broad coalition that supports the Plan, which coalition includes a balanced mix of new entrants to the Ka band satellite services market, as well as existing Ka band satellite licensees, and both established and start-up, entrepreneurial companies. Also, the Majority Plan is, of course, supported by a majority of the second-round applicants. Finally, the Majority Plan provides to the Commission a workable, comprehensive solution to the second GSO Ka band processing round.

In contrast to the all-inclusive rationale behind the Majority Plan's approach, the rationale set forth in the Pegasus/DirectCom Plan relies heavily on only one of the relevant Commission satellite-licensing policies, namely the orbital-location limits set forth in Commission rule Sections 25.140(e) and (f). At the outset, the Pegasus/DirectCom Plan discusses Section 25.140(e) and (f) as though those rules have a settled interpretation in the context of applications for global, Ka band satellite systems. To the contrary, those rules have their genesis in the Commission's previous rules for domestic satellites, and to Hughes's knowledge those rules have not been expressly and definitively interpreted in any relevant context since the Commission removed the distinction between domestic and separate systems in the DISCO I proceeding. In fact, as the formal pleadings in this second Ka band processing round demonstrate, there is no settled interpretation of Sections 25.140(e) and (f), although most of the pleadings that addressed the issue suggested that if the rules are applied at all in the context of global, Ka band systems, they should be applied on a regional basis. Furthermore, the Commission has itself waived these rules in the context of international satellite systems that

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propose service to different regions of the world.¹ Moreover, as Hughes indicated in its formal pleadings in this second Ka band processing round,² the text of Sections 25.140(e) and (f) indicates that the Commission applies these rules to applicants only after it has applied its rules relating to legal, financial and technical qualifications, which rules form the backbone of the Commission's satellite-licensing policies.

Conspicuously absent from the rationale for the Pegasus/DirectCom Plan is any mention of the Commission's rules for legal, financial and technical qualifications, including rule Sections 25.140(b)(3), (b)(4) and (c) relating to financial qualifications. This is not surprising because both Pegasus and DirectCom requested waivers of those financial qualification rules in their Ka band applications³ and Commission precedent is clear that waivers of the financial qualification rules would not be appropriate in this case. The Commission will only waive its financial qualification rules where the grant of an application by a financially unqualified applicant will not prevent a qualified applicant from going forward with its proposal in the same service.⁴

Furthermore, the Commission has on several occasions noted the distinct import of the financial qualification rules in the context of satellite licensing. In *Constellation Communications*, the Commission recited the "enormous costs involved in constructing and launching a satellite system" and therefore the particular importance that "applicants for satellite licenses to use spectrum which is in high demand demonstrate, in advance, the financial ability to proceed with construction of their systems."⁵ Thus, Commission precedent is clear that when all applicants cannot be accommodated as requested, the Commission will not grant waivers of its financial qualification rules in Sections 25.140(b) and (c).⁶

¹ See *PanAmSat Licensee Corp.*, 14 FCC Rcd. 2719, 2723 (1998); *PanAmSat Licensee Corp.*, 13 FCC Rcd. 4743, 4745, 4747 (1997).

² Consolidated Opposition and Reply Comments of Hughes Communications Galaxy, Inc. and Hughes Communications, Inc. at 7-9 (filed June 11, 1999).

³ See Application of DirectCom Networks, Inc. at 16 (filed Dec. 22, 1997); Application of Pegasus Development Corporation at 43 (refiled April 3, 1998).

⁴ See *VisionStar, Inc.*, 13 FCC Rcd. 1428, 1431-32 (1997); see also *NetSat 28 Company, L.L.C.*, 13 FCC Rcd. 1392, 1396 (1997); *Morning Star Satellite Company, L.L.C.*, 12 FCC Rcd. 6039, 6043-44 (1997).

⁵ *Constellation Communications*, 11 FCC Rcd. 18502, 18506 (1996) (citing the Commission's Big LEO Order).

⁶ See *Amendment of the Commission's Rules to Establish Rules and Policies Pertaining to a Mobile Satellite Service in the 1610-1626.5/2483.5-2500 MHz Frequency Bands*, 9 FCC Rcd. 5936, 5949-50 (1994) (applying financial qualification demonstration requirement when all pending Big LEO applicants could not be accommodated).

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Hughes strongly believes that the Majority Plan appropriately takes account of all of the Commission's satellite-licensing policies and the relative "equities" of the applicants. The Majority Plan accommodates new entrants, but also recognizes that imposition of the Commission's financial qualification rule is appropriate in this second GSO Ka band processing round because the applicants have not been able to agree on a unanimous, comprehensive settlement of their competing proposals. The Majority Plan also recognizes that the Commission might apply some version of an orbital-location limitation to otherwise qualified applicants. In this manner, the Majority Plan represents the best accommodation of the competing interests in the second GSO Ka band processing round. Indeed, the broad coalition that supports that Majority Plan is testament to the balanced and realistic rationale underlying the Majority Plan.

Thus, Hughes urges the Commission to adopt the Majority Plan in full and to adopt it quickly so that implementation of the second GSO Ka band processing round systems can begin in earnest as soon as possible.

Respectfully submitted,



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All Second Round Ka-band Filers