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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

By Courier

Marlene H. Dortch
Office of the Secretary
Federal Communications Commission
445 12th Street SW
Washington, DC 20554

**Re: Certification of Milestone Compliance;
SAT-LOA-19980403-00025 to 00029;
Call Sign S2350 to S2354**

Dear Ms. Dortch:

Pegasus Development Corporation and Pegasus Development 107 License Corporation (collectively, "Pegasus") by this letter hereby respond to the December 12, 2002 inquiry by the International Bureau ("Bureau") regarding Pegasus' milestone compliance. As explained below, Pegasus has fully complied with its milestone requirement notwithstanding its decision not to contract for inter-satellite links ("ISLs") on its first satellite. The presence of ISLs on its first satellite is not material to Pegasus' operating the system it was authorized to operate or providing the services it has proposed to provide. The case that we are asked to distinguish involved substantially different facts. Indeed, there are several recent cases that are supportive of Pegasus' view regarding the irrelevance of ISLs to meeting milestone requirements.

The Bureau's letter notes that Pegasus' satellite construction contract does not appear to cover construction or operation of ISLs and that the Bureau has no record of any modification application. The Bureau requests that Pegasus either verify that its has contracted to include ISLs or explain why cancellation of the license is not required under *MCHI*.¹

¹ The Bureau quotes the following language in *MCHI* for this proposition: "[T]he execution of a contract that does not provide for complete construction of the satellites in question by [August

Footnote continued on next page

Pegasus has not contracted for ISLs on its first satellite. Pegasus' primary objective with its first satellite is to launch a competitive service on the accelerated schedule dictated by the compressed timeframe for bringing its slots into use. Pegasus has been forced to make a number of design tradeoffs in order to achieve a timely launch with the lowest possible schedule risk. Accordingly, ISLs will not be included on Pegasus' first satellite, although they may be deployed on other satellites.

Pegasus intends to file a minor change application within the next 60 days that will reflect changes to its system that have been occasioned by various factors. We note that nearly four years elapsed between the time Pegasus filed its application and the date of grant. That time saw many changes to satellite technology, the market for satellite services directed to consumers, the competitive environment, and thus Pegasus' needs. Design changes have been made (and reversed again) many times. In keeping with industry practice, and indeed, practicality, Pegasus has not filed minor amendments each time a design specification deviated from the details of the application Pegasus filed in 1997. Rather, Pegasus chose to make what we hope will be a single modification application. We expect to make that filing in early February, 2003.² The design changes individually and in aggregate – including the decision not to deploy ISLs on the first satellite – do not increase the potential for interference and are minor.³

Nothing in the *MCHI* decision that the Bureau's letter cites requires, or even suggests, a conclusion that Pegasus has failed to meet its milestone. The *MCHI* decision involved the failure of a licensee to meet its *second* milestone, requiring the execution of a satellite contract for the construction of the remaining fourteen satellites of the licensee's sixteen-satellite NGSO system constellation.⁴ Pegasus' first milestone requires procurement of its first satellite, not its entire system.

Footnote continued from previous page

2002] cannot satisfy a construction-commencement milestone requirement." *Mobile Communications Holdings, Inc.*, 17 FCC Rcd 11898, ¶ 11 (IB 2002) ("*MCHI*").

² *In the Matter of Teledesic LLC*, 17 FCC Rcd 11263, ¶ 8 (Sat. Div. 2002) (stating the Commission generally allows licenses to modify their satellite systems during the construction period) ("*Teledesic*").

³ 47 C.F.R. §25.116; see also *In the Matter of Teledesic LLC for Minor Modification of License*, 14 FCC Rcd 2261, ¶12 (IB 1999).

⁴ *MCHI*, ¶¶ 7-11.

Moreover, some deviation from the specific technical plan in place at the time of licensing is to be expected in the course of system buildout. In *Teledesic* the Bureau squarely addressed the issue of whether a licensee is required, in meeting its construction commencement milestone, to enter into a satellite construction contract providing that the manufacturer build a system based only on the Commission-licensed technical specifications.⁵ The Commission had authorized Teledesic to build an NGSO system comprised of 288 low-Earth orbit satellites capable of using ISLs. On the day of the construction commencement milestone deadline, Teledesic submitted a modification application and a satellite contract for the construction of a substantially different system, an NGSO system comprised of 30 medium-Earth orbit satellites with no ISL capability.⁶ In rejecting the argument that a licensee's contract is valid for milestone purposes only if it is for construction of the exact technical specifications approved by the Commission, the Bureau reiterated its long-standing policy granting licensees wide latitude to modify the technical design of their satellites. *Teledesic*, ¶ 8. Such a policy is logical given the number of years generally required to build satellites and the possible changes in technology and to business plans during that time. The Bureau also stated that "Teledesic's modification application will be decided on its own merit and does not factor into our determination as to whether Teledesic has met its initial construction milestone." *Id.* The Bureau made no specific mention of Teledesic's decision not to employ ISLs, presumably because it was so insignificant. A similar analysis here suggests that Pegasus' decision to deploy a less complex and costly initial satellite without ISLs is not relevant to the issue whether Pegasus entered into a non-contingent satellite construction contract.

Such an analysis is also supported by the Bureau's actions (or lack thereof) with respect to the first-round GSO Ka-band licensees. Pegasus is on the record that many of the first-round licensees decided long ago not to use ISLs on their Ka-band satellites.⁷ In fact, many of the first-round licensees admitted as much in statements to the Commission. *See, e.g.*, Letter to Magalie Salas from Arthur S. Landerholm (January 19, 2000) (noting in page 2 of the engineering attachment that Hughes' initial "two operating satellites [will] not be equipped with ISLs."); WB Holdings 1 LLC, Opposition to

⁵ *Teledesic*, ¶ 8.

⁶ *Id.* ¶ 5; *see also* Comments of TRW, Inc., File No. SAT-MOD-20020201-00011, at 3 n.4 (March 18, 2002) (discussing the removal of ISLs from Teledesic's system).

⁷ *See, e.g.*, Pegasus Petition for Reconsideration, File Nos. 128-SAT-P/LA-95, 203-SAT-P/LA-95 (March 2, 2001).

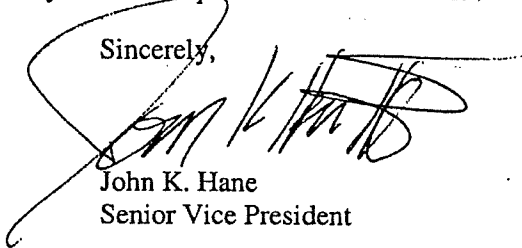
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Petition for Reconsideration, Files Nos. 128-SAT-P/LA-95, 203-SAT-P/LA-95, at 5 (March 15, 2001) (“[W]ork-in-progress was not compatible with ISLs.”). Many of those same licensees did not submit relevant modification applications. Nevertheless, in June 2002 the Bureau concluded in a routine public notice that those licensees had satisfied their construction commencement milestones. Report No. SPB-179 (June 18, 2002). Unlike the first-round licensees, Pegasus has never had any incentive to claim that it was deploying ISLs in order to take advantage of milestone extensions.

The Bureau also states in its letter that the submitted material “makes references to a payment plan and termination liability amounts, which were not included in the packet [the Bureau] received,” and requests that Pegasus provide this information. Pegasus understands, based on discussions with staff, that the Bureau has since found the payment plan and termination liability amounts in the materials Pegasus submitted to the Commission. Accordingly, Pegasus is not resubmitting that information with this letter.

Please contact me if you have any additional questions in this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "John K. Hane", is written over the word "Sincerely,". The signature is stylized and somewhat cursive.

John K. Hane
Senior Vice President

cc: Fern J. Jarmulnek
Jabin Vahora