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April 25, 2012

BY ELECTRONIC POSTING

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

**Re: Application of Hughes Network Systems, LLC for
Authority to Launch and Operate the EchoStar XVII Satellite
File No. SAT-LOA-20120424-00075**

Dear Ms. Dortch:

Hughes Network Systems, LLC (“Hughes”), by its attorneys, hereby substitutes the enclosed version of the Attachment called Exhibit Q43 to Hughes’s above-referenced application for authority to launch and operate the EchoStar XVII satellite for the version of the Attachment called Exhibit Q43 that was included with the original filing. Please use the enclosed version of Exhibit Q43 in lieu of the version originally filed.

Please let me know if you have any questions or require any additional information.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read 'Stephen D. Baruch', is written over a printed name.

Stephen D. Baruch

Attorney for Hughes Network Systems, LLC

Enclosure

cc (w/encl.) by email: Roderick Porter
Karl Kensinger
Stephen Duall

BEFORE THE
Federal Communications Commission
WASHINGTON, D.C. 20554

In re the Matter of)	
)	
Hughes Network Systems, LLC)	File No. SAT-LOA-20120424-_____
)	
Application to Launch and Operate a New)	Call Sign S2753
Ka-band Geostationary Fixed-Satellite)	
Service Satellite at the 107.1° W.L. Orbital)	
Location)	

APPLICATION OF HUGHES NETWORK SYSTEMS, LLC

Hughes Network Systems, LLC (“Hughes”), pursuant to Section 25.114 of the Commission’s Rules (47 C.F.R. § 25.114), hereby applies for authority to launch a new Ka-band geostationary orbit (“GSO) fixed-satellite service (“FSS”) satellite and operate the satellite from the orbital location at 107.1° West Longitude. The new Hughes satellite is named “EchoStar XVII.” Construction of EchoStar XVII has been completed and the satellite is being prepared for transportation to the launch site in anticipation of an Arianespace launch that is scheduled for June 19, 2012.¹

I. INTRODUCTION:

In order to maintain its launch schedule for EchoStar XVII, Hughes now presents the instant application for authority to launch and operate under Commission license the Ka-band FSS payload on EchoStar XVII that the Commission approved for access to the

¹ Hughes has satisfied all implementation milestones in the EchoStar XVII LOI Grant except the final milestone. *See* Public Notice Report No. SAT-00746, DA 10-2427, at 2 (released Dec. 29, 2010) (Hughes is found to have satisfied the first implementation milestone for EchoStar XVII); Public Notice Report No. SAT-00750, DA 11-75, at 2 (released Jan. 14, 2011) (Hughes is found to have satisfied the second and third implementation milestones for EchoStar XVII). To the extent necessary, Hughes hereby informs the Commission, under Section 25.113(f) of the Commission’s Rules, 47 C.F.R. § 25.113(f), that construction of the EchoStar XVII satellite has been undertaken at Hughes’s own risk.

U.S. market in a letter of intent (“LOI”) in File No. SAT-LOI-20091110-00119 (Stamp Grant, May 5, 2010) (“EchoStar XVII LOI Grant”). The authority Hughes requests here is for the exact same technical plan for the EchoStar XVII spacecraft (formerly known both as SPACEWAY 4 and Jupiter 1) that is authorized to Hughes in the EchoStar XVII LOI Grant. EchoStar XVII will be used by Hughes to provide broadband FSS to the United States as authorized in the EchoStar XVII LOI Grant. Hughes emphasizes that there is to be no technical change at all – either in TT&C or in communications/service operations – from the space station the Commission authorized in the EchoStar XVII LOI Grant and that Hughes has been implementing on an accelerated schedule ever since.²

In this way, the authorization Hughes seeks here is regulatorily indistinguishable from the authorization for a satellite license ViaSat, Inc. (“ViaSat”) obtained just last year for its ViaSat-1 satellite that had previously been authorized via a letter of intent as an Isle of Man-authorized spacecraft.³ In the ViaSat-1 Grant, ViaSat requested and obtained a license for ViaSat-1 just months before the scheduled launch, making the satellite a U.S.

² In the LOI submission for EchoStar XVII, Hughes explained that the frequency assignments to be used by EchoStar XVII are filed with the International Telecommunication Union (“ITU”) on Hughes’s ultimate behalf, by the United Kingdom’s Office of Communications (“Ofcom”) under the network name UKSAT-14. *See* EchoStar XVII LOI Submission in File No. SAT-LOI-20091110-00119, at Narrative Attachment, p. 1 n.1 (filed November 10, 2009) (“EchoStar XVII LOI Submission”). With this Application, the radiofrequency assignments required for the EchoStar XVII spacecraft will need to be filed for by the United States. Hughes will provide advance publication and coordination materials for these assignments in the electronic format required by the ITU to the Commission’s staff for immediate submission to the ITU under separate cover – along with a statement from Hughes that accepts all ITU cost recovery obligations without condition.

³ *See* Application of ViaSat, Inc., File No. SAT-LOA-20110722-00132, as amended (Stamp Grant, October 14, 2011) (“ViaSat-1 Grant”).

space object, while ViaSat's previously-granted letter of intent for the communications payload remained intact.⁴

As Hughes demonstrates below, the public interest, convenience, and necessity will be advanced by expedited Commission consideration and approval of the instant Application to place the EchoStar XVII satellite under Commission license. Hughes respectfully urges the Commission to grant this Application. In the event that any entity other than Hughes should become a party to this Application under Section 1.1202(d)(1) of the Commission's Rules, 47 C.F.R. § 1.1202(d)(1), Hughes, respectfully requests that the Commission designate the proceeding as "permit-but-disclose" for purposes of Subpart H of Part 1 of the Commission's Rules.

II. GENERAL DESCRIPTION AND SERVICES TO BE PROVIDED

Hughes explained in its LOI submission for EchoStar XVII that the new satellite is intended to expand upon Hughes' recent initiatives to meet the growing need in the U.S. and beyond for advanced two-way communications services, both business and residential. It noted that the demand and need for high-speed broadband service indicates that there is an ample market for the types of services that Hughes proposes to provide through the new satellite.⁵ The services to be provided over EchoStar XVII include high-speed data transmission, high definition video programming, on-demand entertainment, digital music, interactive television and high-speed Internet access. Isolated rural areas

⁴ Indeed, it appears that the Commission applied the original call sign for the ViaSat-1 LOI to the space station license. For this reason, Hughes includes the EchoStar XVII call sign (S2753) on this exhibit.

⁵ EchoStar XVII LOI Submission, Narrative Attachment, pp. 2-3. The EchoStar XVII satellite incorporates state-of-the-art engineering to achieve enhanced flexibility of service offerings. The satellite boasts capacity in excess of 100 Gbps, and will provide 60 spot beams operating through 15 gateway earth stations.

that are currently not well served by available terrestrial technologies are particularly likely to benefit from the availability of the new capacity. Provision of high-speed Internet service to such areas is currently a high national priority, the fulfillment of which should provide substantial new job opportunities and promote economic recovery.⁶

Grant of the instant application would be completely consistent with the market access already granted to Hughes for EchoStar XVII in the EchoStar XVII LOI Grant, and would ensure that oversight and control over the operation of the EchoStar satellite are fully within the jurisdiction of the United States. All TT&C functions for EchoStar XVII will be accomplished under the authority of Hughes from TT&C earth stations located in the United States.⁷ Thus, Hughes will be able to ensure that all obligations attendant to its status as a U.S. licensee will be carried out.

III. PUBLIC INTEREST CONSIDERATIONS SUPPORT EXPEDITED PROCESSING AND GRANT OF THIS APPLICATION.

As the Commission is aware, Hughes is the global leader in providing broadband satellite network solutions for large enterprises, governments, small businesses and consumers, with more than 1.5 million Very Small Aperture Terminal systems ordered or shipped to customers in over one hundred countries. Hughes pioneered the development of high-speed satellite Internet access services and IP-based networks, which it markets

⁶ See, e.g., *American Recovery and Reinvestment Act of 2009*, § 6001 (requiring the National Telecommunications and Information Administration to establish the Broadband Technology Opportunities Program to provide broadband service to unserved areas and improve access to broadband service in underserved areas).

⁷ Hughes holds licenses to operate TT&C earth stations in Castle Rock, Colorado and Fillmore, California under Call Signs E060382 and E060383, and a blanket authorization for gateway earth stations under Call Sign E110149. A modification of license application for user earth stations under Call Sign E060445 is pending before the Commission. In each case, the authorizations or applications for new antennas specify as a point of communication EchoStar XVII as a U.K. space object. Hughes is preparing application paperwork to substitute EchoStar XVII (US) as a point of communication for all of the antennas. As with the space station, there will be no technical parameter changes for any of the earth station licenses or applications.

in the United States and globally. Today, Hughes provides and enables a variety of managed network services and equipment that meet unique enterprise customer needs for data, voice and video communications, typically across geographically-dispersed locations. Importantly, Hughes also provides satellite broadband connectivity to approximately 626,000 consumer and small business subscribers in North America.

In August 2007, Hughes Communications, Inc. (“HCI”), parent corporation of Hughes, launched SPACEWAY 3, the company’s first Ka-band FSS satellite, into the 94.95° W.L. orbital location.⁸ SPACEWAY 3, following a period of in-orbit testing and validation, entered commercial service on April 3, 2008.

On May 5, 2010, the FCC’s International Bureau granted authority for Hughes to access the U.S. market using what is now known as the EchoStar XVII satellite, to be located at 107.1° W.L.⁹ As the Commission is aware, EchoStar XVII, which was constructed by Space Systems/Loral, is scheduled to be launched aboard an Arianespace launch vehicle on June 19, 2012.

The Commission has already determined that operation of EchoStar XVII, and its introduction of additional high-capacity satellite broadband service into the U.S. market, is fully consistent with the public interest. As mentioned above, this Application does not alter in any way the operation of EchoStar XVII as currently authorized in the EchoStar XVII LOI Grant. As only Hughes is authorized to provide FSS in the United States using Ka-band frequencies from the 107.1° W.L. orbital location, assuring this ability to initiate

⁸ In 2008, HCI effected a *pro forma* assignment of the SPACEWAY 3 license (Call Sign S2663) from HCI to Hughes. *See* File No. SAT-ASG-20080213-00041; Letter from Stephen D. Baruch, Counsel to HCI, dated August 11, 2008 (notifying the Commission of the consummation of the assignment).

⁹ *See* EchoStar XVII LOI Grant, *supra*.

service in 2012 by authorizing the launch and operation of EchoStar XVII as proposed in this Application will assure the advancement of the public interest with no negative consequences on any other provider and with no deviation from the processing of GSO applications that was already found to be fully satisfied in the EchoStar XVII LOI Grant.¹⁰ Indeed, the public interest considerations that led to the EchoStar XVII LOI Grant are all present and unchanged with the instant Application.

The imminent addition of EchoStar XVII to the Hughes fleet of spacecraft will reinforce the emergence of Ka-band FSS spectrum as a medium for delivery of that connectivity, and provide a critically-needed new platform for the delivery of state-of-the-art satellite broadband services to consumers and enterprises at high data rates.

To the extent required, and in recognition of the rapidly-approaching June 19, 2012 launch date for EchoStar XVII, Hughes respectfully requests expedited processing of this Application. This Application provides a mechanism by which the technical proposal the Commission has already approved for the provision of Ka-band FSS service to the United States by Hughes from the 107.1° W.L. orbital location can be implemented on the accelerated implementation scheduled pursued by Hughes to begin bringing this new satellite capacity to the public in 2012.¹¹

¹⁰ Hughes intends for the license requested here to supplant the same authority granted in the LOI. In this manner, and without regard to the frequency assignments Hughes will use to provide its service, there would be no inconsistency between the LOI authorization Hughes now holds to serve the United States from EchoStar XVII (UK), and the license it seeks to provide service via a U.S.-licensed EchoStar XVII satellite. .

¹¹ Hughes's request for expedited consideration under such circumstances is not without recent precedent. The initial application of ViaSat, Inc. for a Commission license for its ViaSat-1 satellite functions was filed in late July 2011, and was granted on October 14, 2011 (a mere two months plus later), in time for ViaSat to meet its late-October 2011 launch commitment. The time frame Hughes is proposing here is comparable.

IV. LEGAL AND TECHNICAL INFORMATION

A. Legal Qualifications

Hughes is 100 percent owned and controlled by EchoStar Corporation (“EchoStar”), which is, in turn, controlled by Mr. Charles W. Ergen. Hughes’s legal qualifications are set forth in this Application and in the corresponding FCC Form 312 (including associated exhibits). In addition, Hughes’s and EchoStar’s legal information and qualifications to hold Commission licenses are also a matter of record in the proceeding through which the FCC approved the transfer of control of Hughes to EchoStar.¹² Further detail on Hughes’s ownership structure is provided in Exhibit Q40 to this Application.

B. Technical Qualifications

Hughes’s technical qualifications to implement a new geostationary Ka-band satellite at the 107.1° W.L. orbital location are established as a matter of record in the EchoStar XVII LOI proceeding. **Hughes is making no changes whatsoever to the technical parameters of either the space or ground segment of the EchoStar XVII satellite network as established in the LOI proceeding and associated earth station licensing proceedings.**

Hughes hereby incorporates the complete Technical Annex and Schedule S submission for EchoStar XVII from File No. SAT-LOI-20091110-00119 into this

¹² See Hughes Communications, Inc., Transferor, and EchoStar Corporation, Transferee, Consolidated Application for Authority to Transfer Control, Stamp Grant, File Nos. SAT-T/C-20110228-00041, SAT-T/C-20110228-00042, SES-T/C-20110228-00221, SES-T/C-20110228-00222, SES-T/C-20110228-00223 and SES-T/C-20110228-00224, Experimental License File Nos. 0001-EX-TC-2011, 0002-EX-TC-2011 and 0003-EX-TC-2011)(granted June 8, 2011). See also *BRH Holdings GP, Ltd., Transferor and EchoStar Corporation, Transferee*, Applications for Consent to Transfer Control of Hughes Communications, Inc., Hughes Network Systems, LLC, and HNS License Sub, LLC, Order, 26 FCC Rcd 7976 (IB 2011).

application,¹³ and requests a waiver below of the obligation in Section 25.114 to provide a Schedule S submission with its space station license application.¹⁴ The Technical Annex that is incorporated by reference includes the orbital debris mitigation showing required under Section 25.114(d)(14) of the Commission's Rules, 47 C.F.R.

§ 25.114(d)(14).¹⁵ Hughes does not include EchoStar XVII (UK) in its interference analysis, as the operation of the U.S.-licensed EchoStar XVII satellite cannot interfere with the EchoStar XVII satellite authorized in the EchoStar XVII LOI Grant due to the fact that they are one and the same.¹⁶

V. OTHER REGULATORY REQUIREMENTS

A. Implementation Milestones and Performance Bond

EchoStar XVII is subject to milestone requirements established in the EchoStar XVII LOI Grant. As noted above, the Commission has determined that Hughes as satisfied the first three implementation milestones for EchoStar XVII, and the implementation bond has been duly reduced to \$750,000. Hughes notes that with the

¹³ With respect to the Schedule S portion of the EchoStar XVII LOI submission, the incorporation by reference here includes the items Hughes corrected via a December 11, 2009 Erratum. *See* Letter dated December 11, 2009, Hughes Network Systems, LLC Clarification/Erratum for [EchoStar XVII] Letter of Intent, File No. SAT-LOI-20091110-00119 (Call Sign S2798), at 1-2 ("December 2009 Clarification/Erratum").

¹⁴ *See* 47 C.F.R. §§ 25.114(a), (b), and (c). Hughes incorporates the complete Technical Annex and Schedule S information from the EchoStar XVII LOI submission.

¹⁵ *See* EchoStar XVII LOI Submission, Narrative Exhibit, Attachment A, at Section A.13. Hughes confirms here that the assessment in Section A.13.3 of current and planned satellites does not require supplementation at this time.

¹⁶ Hughes notes that it has completed coordination of the EchoStar XVII space-to-Earth operations in the 18.3-18.8 GHz and 19.7-20.2 GHz with federal government users in accordance with Footnote US334 of Section 2.106 of the Commission's Rules. *See* Condition No. 6 of the EchoStar XVII LOI Grant. Hughes will undertake to ensure that this coordination agreement is applicable to a Commission-licensed EchoStar XVII space station.

launch of EchoStar XVII scheduled for June 19, 2012, the final implementation milestone too is expected to be satisfied in a matter of months.

No new implementation bond or implementation milestones are required with this Application. There are no technical changes to the frequency assignments or spacecraft systems that Hughes has been implementing pursuant to the EchoStar XVII LOI Grant. As a result, there is no need for the Commission to impose any additional milestone obligations in connection with the grant of the instant Application, and there is no need to require Hughes to post an implementation bond for work that has already been found to have been successfully placed under contract, completed critical design review, and on which construction has found to have commenced.¹⁷

B. Reporting Requirements

Hughes will comply with all FCC reporting requirements that apply to Ka-band GSO FSS satellites.¹⁸

C. Compliance with FCC Technical Regulations

Hughes's proposed EchoStar XVII satellite has been found fully compliant with the Commission's two-degree spacing requirements, and not to cause harmful interference to any other authorized user of the spectrum.¹⁹ Except with regard to those requirements for which waivers are requested (*see* Section VI, below), Hughes's network – consisting both of the TT&C functions and the communications functions as authorized in the EchoStar XVII LOI Grant – will continue to comply fully with the applicable

¹⁷ *See Telesat Canada*, 22 FCC Rcd 588, 593 (¶ 14) (Int'l. Bur. 2007). Hughes includes a request for waiver of Sections 25.164 and 25.165 in Section VI below.

¹⁸ *See, e.g.*, 47 C.F.R. § 25.145(f).

¹⁹ *See* EchoStar XVII LOI Grant.

requirements of Part 25 of the Commission's Rules, including power flux-density requirements,²⁰ full frequency re-use requirements,²¹ and all operational requirements. Again, there are no changes whatsoever in technical parameters from those the Commission approved in granting the EchoStar XVII LOI in May 2010. Hughes hereby incorporates by reference all of the regulatory showings and waiver requests it made in the EchoStar XVII LOI Submission with respect to the frequency bands to be included and utilized on EchoStar XVII.²²

In particular, Hughes notes that it was found to have demonstrated that EchoStar XVII's secondary GSO operations in the primary NGSO uplink band at 28.6-29.1 GHz, as well as its operations in the primary NGSO downlink band at 18.8-19.3 GHz, under the waiver authority requested herein, will not cause harmful interference to present or future users with superior authorization status.²³

With respect to the Commission's two-degree spacing requirements, EchoStar XVII has been determined not to pose a risk of harmful interference to any other authorized user of the spectrum, and to be compatible with future Ka-band assignments consistent with the FCC's Rules. This Application changes nothing in either respect, and

²⁰ See Attachment A, at Section A.8 (Ka-band) and A.9 (V-band).

²¹ See Attachment A, at Section A.4.

²² See EchoStar XVII LOI Submission, Narrative Attachment and Attachment A.

²³ See EchoStar XVII LOI. Hughes's use of the NGSO bands will be on a strictly secondary, non-harmful interference basis. Hughes showed that it will be able to operate across the 2 x 500 MHz of NGSO primary spectrum at all times other than when there is insufficient angular separation between an NGSO satellite/associated Earth station and EchoStar XVII or its associated Earth stations. During such in-line events, EchoStar XVII and its Earth stations would not use the NGSO primary bands. There will be sufficient available spectrum on EchoStar XVII to allow Hughes to dynamically shift operations out of the NGSO spectrum for the duration of any in-line events. Hughes, of course, will not claim protection from harmful interference that may be caused to EchoStar XVII by such NGSO systems.

therefore is fully consistent with the procedures set forth by the Commission in the *Space Station Licensing Reform Order* regarding processing of GSO-like services.²⁴

D. Spectrum Access Limits

Hughes currently operates a single satellite (SPACEWAY 3 at 94.95° W.L.) in frequency bands overlapping those requested in this Application. Hughes's parent corporation, EchoStar, also operates a single satellite (EchoStar IX at 121° W.L.) in the Ka-band FSS allocation. As noted above, Hughes has previously been authorized to access the U.S. market using the EchoStar XVII satellite to be located at 107.1° W.L.²⁵ In August 2011, Hughes filed a letter of intent submission to access the U.S. market using a new Jupiter satellite (known as Jupiter 97W) to be located at the 97.1° W.L. orbital location.²⁶ On December 20, 2011, Hughes filed another new letter of intent submission to access the U.S. market from the 90.9° W.L. orbital location using a hybrid Ka-band and V-band satellite.²⁷ Most recently, on December 23, 2011, Hughes filed an application with the Commission to launch and operate another new Jupiter satellite (Jupiter 77W) to operate in the FSS at Ka-band and V-band from the nominal 77° W.L.

²⁴ See *Amendment of the Commission's Space Station Licensing Rules and Policies*, First Report and Order and Further Notice of Proposed Rulemaking, 18 FCC Rcd 10760, 10806 (¶113) (2003).

²⁵ See EchoStar XVII LOI Grant.

²⁶ See Hughes Network Systems, LLC, Letter of Intent to Access U.S. Market Using a Non-U.S. Licensed Ka-Band Geostationary Fixed-Satellite Service Satellite at the 97.1° W.L. Orbital Location, File No. SAT-LOI-20110809-00148 (Call Sign S2834) (filed Aug. 9, 2011) ("Jupiter 97W LOI Submission").

²⁷ See Hughes Network Systems, LLC, Letter of Intent to Access U.S. Market Using a Non-U.S. Licensed Ka-Band Geostationary Fixed-Satellite Service Satellite at the 97.1° W.L. Orbital Location, File No. SAT-LOI-20111220-00242 (Call Sign S2849) (filed Dec. 20, 2011) ("Jupiter 91W LOI Submission").

orbital location.²⁸ Neither EchoStar nor DISH Network Corporation (EchoStar's affiliate) has any authorized-but-unbuilt facilities or pending applications in either the Ka-band or V-band FSS allocations.

Accordingly, and even if the instant Application is considered to be a separate filing (rather than part and parcel of the EchoStar XVII LOI), the number of pending co-frequency applications and unbuilt Ka-band authorizations for Hughes will be five – and thus will not exceed the per-frequency band limit of five Applications/market access requests that is established for geostationary satellite network operators in Sections 25.137(d)(5) and 25.159(a) of the Commission's rules.

E. Spectrum Utilization

Hughes seeks authority to use spectrum on a primary basis in the 18.3-18.8 GHz and 19.7-20.2 GHz bands to support downlink operations and in the 28.35-28.6 GHz, 29.25-29.5 GHz, and 29.50-30.0 GHz bands to support uplink operations. This use is consistent with the Commission's intended use of the primary allocations for GSO FSS in these bands.

Hughes also seeks authority to use spectrum in the 18.8-19.3 GHz band to support downlink operations and spectrum in the 28.6-29.1 GHz band to support uplink operations on a secondary, non-harmful interference basis. Hughes noted in the EchoStar XVII LOI Submission that its use of spectrum in the primary NGSO FSS band at 28.6-29.1 GHz to support uplink operations is consistent with the Commission's intended use

²⁸ See Application of Hughes Network Systems, LLC to launch and operate a Ka-band/V-Band Geostationary Fixed-Satellite Service Satellite at the 77.3° W.L. Orbital Location, File No. SAT-LOA-20111223-00248 (Call Sign S2852) (filed Dec. 23, 2011) ("Jupiter 77W Application").

of the secondary allocation for FSS in this band.²⁹ Hughes reiterates that it will operate these links consistent with its obligations as a secondary service provider to avoid harmful interference to primary service providers in the band, as well as previously licensed secondary service providers, and to accept any interference received from primary users or previously licensed secondary users.³⁰

Hughes also seeks authority to use spectrum on a primary basis in the 19.7-20.2 GHz band to support downlink telemetry operations on EchoStar XVII and in the 28.35-28.6 GHz band to support EchoStar XVII telecommand operations. These uses are consistent with the Commission's intended use of the primary allocations for GSO FSS in these bands. All other spectrum uses on EchoStar XVII will remain as proposed by Hughes in the EchoStar XVII LOI submission, and as approved by the Commission in the EchoStar XVII LOI Grant.

VI. WAIVER REQUESTS

In this section, Hughes sets forth its requests and contingent requests for waivers of Commission Rules. Hughes presents the waivers and contingent waivers to ensure that the Commission's requirements for application contents are satisfied. The Commission will grant a waiver of its rules for good cause shown.³¹ As noted above, the waivers requested in this section are unique to this Application; Hughes does not repeat requests

²⁹ EchoStar XVII LOI Submission, Narrative Attachment, at 12.

³⁰ Because the 18.8-19.3 GHz band is allocated only for NGSO FSS operations, without a current secondary allocation for GSO FSS, Hughes requested and was granted a waiver of Section 2.106 of the FCC's Rules (47 C.F.R. § 2.106, footnote NG165), consistent with precedent, to permit it to operate its downlink operations in the 18.8-19.3 GHz band on a non-harmful interference basis. Hughes incorporates by reference, but does not repeat in Section VI below, this and other waivers requested in the EchoStar XVII LOI Submission and granted in the EchoStar XVII LOI Grant.

³¹ See 47 C.F.R. § 1.3. See also *WAIT Radio. v. FCC*, 459 F.2d 1203 (1972).

for waivers of continuing applicability that were sought in the EchoStar XVII LOI Submission and granted in the EchoStar XVII LOI Grant.

A. Sections 25.114(a) – (d)

To the extent necessary, Hughes requests a partial waiver of Sections 25.114(a) through (d) of the Commission's Rules to allow incorporation by reference of the Schedule S and associated technical portions of the instant license application from the 2009 EchoStar XVII LOI submission, as clarified in the December 2009 Clarification/Erratum. While Hughes has not provided a duplicate Schedule S and associated Section 25.114 technical material as electronic attachments to this Application, it is incorporating the material by reference to the EchoStar XVII LOI Submission on which this Application is directly based and in which file complete versions of these materials can already be found in the Commission's IBFS database.³² The purpose of the rules requiring detailed technical submissions is thus not undermined or flouted in any way. The public interest is satisfied by avoiding unnecessarily duplicative submissions in this unusual circumstance.

B. Section 25.158

To the extent necessary, Hughes requests a determination that the Commission can process the instant application through to grant despite the presence of the LOI Hughes holds to provide the same services on EchoStar XVII to and from the United States. In this case, as the operations to be licensed by the Commission are the same operations that it authorized Hughes to provide on a market-entry basis via the U.K.-

³² Such treatment is consistent with that afforded ViaSat with respect to the 2011 application, wherein the applicant actually withdrew via amendment a Schedule S submission in favor of cross-references to and incorporation of information already on file with respect to the applicant's previously-granted LOI. *See* ViaSat, Inc., File No. SAT-AMD-20110728-00140.

licensed EchoStar XVII satellite, there is no risk of harmful interference from the proposed U.S. satellite, and no mutual exclusivity. Only one satellite system will provide services via EchoStar XVII.³³

Insofar as Section 25.158(b) of the Commission's Rules requires the Commission to process satellite applications in the order received and placed into the queue, Hughes requests a waiver to allow the instant Application to be processed out-of-turn. The instant Application presents for consideration the exact same technical proposal the Commission has already approved in the EchoStar XVII LOI Grant, and there have been no substantial changes in Commission policy regarding the licensing of space stations in the two years since. The public interest in the inauguration of critically-required new satellite broadband services justifies the expedited consideration of and favorable action upon Hughes's license request. There certainly would be no public interest in forcing Hughes to delay a launch for non-technical reasons.

C. Sections 25.164(a) and 25.165

As noted above, and to the extent necessary, Hughes requests a waiver of the implementation milestone and performance bond requirements set forth in Sections 25.164(a) and 25.165 of the Commission's Rules, 47 C.F.R. §§ 25.164(a) and 25.165. The implementation milestones and performance bond obligations imposed upon Hughes in the EchoStar XVII LOI Grant remain in force, and apply to the space station that Hughes has been implementing under the LOI. Only the final milestone – the deadline to launch and operate EchoStar XVII on or before May 5, 2015 – remains unfulfilled. As this is the same space station that Hughes will now implement under a Commission

³³ See 47 C.F.R. §§ 25.158(b)(3) and (d).

license, there is no need to apply a duplicative set of milestone or bond showings or obligations. Hughes proposes to be bound by the performance bond amount of \$750,000 that remains for EchoStar XVII under the LOI, and proposes that a demonstration of completion of the final milestone for EchoStar XVII under the license requested here would be sufficient to allow the release of the bond amount remaining under the LOI. If needed, the waiver Hughes requests here would be fully consistent with the public interest in promoting timely implementation of space station authorizations, and would not contravene the intent of the rules as Hughes's EchoStar XVII satellite will remain fully subject to both sets of requirements.

VII. CONCLUSION

In summary, the proposed EchoStar XVII satellite is fully compliant with all applicable Commission rules and with the market access determination the Commission made in the EchoStar XVII LOI grant nearly two years ago. The implementation process leading to the June 19, 2012 launch of EchoStar XVII has long been in motion. Hughes respectfully requests that the Commission, with all due haste and expedience,

grant Hughes authority to launch and operate the same spacecraft on which the advanced Ka-band broadband satellite services that were authorized in the EchoStar XVII LOI Grant will be able to begin being provided later this year.

Respectfully submitted,

Hughes Network Systems, LLC

By: _____



Steven Doiron
Senior Director, Regulatory Affairs

April 24, 2012

Of Counsel:

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ENGINEERING CERTIFICATION

I, Steven Doiron, hereby declare, under penalty of perjury, that the following statements are true and correct to the best of my information and belief:

- (i) I am the technically qualified person responsible for the engineering information contained in the foregoing Application,
- (ii) I am familiar with Part 25 of the Commission's Rules, and
- (iii) I have either prepared or reviewed the engineering information contained in the foregoing Application and found it to be complete and accurate.

By: 

Steven Doiron, P. Eng.
Senior Director, Regulatory Affairs
Hughes Network Systems, LLC

Dated: April 24, 2012