

signed to operate at 91⁰ W.L.) is launched in October 1992. STLC seeks to operate SBS-4 at 77⁰ W.L. through the end of SBS-4's useful life in August 1994.⁴ No party objects to this proposal.

5. STLC seeks an interim orbital assignment for its Ku-band SBS-6 satellite. SBS-6 is operating at 99⁰ W.L. on a temporary basis, although it is assigned to 72⁰ W.L.⁵ STLC wants to relocate SBS-6 to 95⁰ W.L. in February 1993 when Galaxy 4H becomes operational at 99⁰ W.L. STLC wants to operate SBS-6 at 95⁰ W.L. until Galaxy 3H is launched into 95⁰ W.L. in January 1994. Comsat filed a petition to deny the STLC request arguing that it intends to operate SBS-3 at 95⁰ W.L. until 1995.⁶ GE Americom filed comments suggesting that if an interim orbital assignment is granted, the older SBS-4 should be used at 95⁰ W.L. instead of the newer SBS-6 so that HCG may not "leverage" regular authority from this grant.

III. DISCUSSION

Galaxy 3H

6. HCG proposes to implement a new Galaxy 3H hybrid satellite at 95⁰ W.L. instead of implementing a Ku-band satellite at 131⁰ W.L. and a C-band satellite at 95⁰ W.L. The proposed technical specifications of Galaxy 3-H are virtually identical to those authorized for the single-band satellites. Grant of this request would essentially entail reassigning HCG's Ku-band space segment from 131⁰ W.L. to 95⁰ W.L. HCG would receive no additional orbital locations. Comsat General is operating SBS-3 at 95⁰ W.L. using the Comsat maneuver. It has applied for authority to continue to use this maneuver to extend SBS-3's useful life beyond its November 1992 license expiration and the proposed launch date of Galaxy 3H. Comsat General asserts that if it is required to cease operations from 95⁰ W.L. before 1995, it will suffer irreparable economic harm.⁷

7. The Bureau has authorized the use of the Comsat maneuver to extend the operational life of older satellites until state-of-the-art satellites authorized to operate from the same locations are ready to be launched.⁸ However, those authorizations were not intended to be used to delay the availability of new satellite technology. Thus, authorizations to use the Comsat maneuver to operate a satellite beyond its license term include a condition rendering the

authorization subject to cancellation without a hearing should the Commission find it necessary to accommodate more efficient satellites or if, in the opinion of the Commission, circumstances should so require.⁹

8. HCG proposes to consolidate two single-band satellites into a state-of-the-art hybrid satellite that would operate at 95⁰ W.L. Operating a state-of-the-art hybrid satellite rather than two single-band satellites may have certain efficiencies. Construction, launch and insurance costs for one hybrid will be lower than the costs for two single-band satellites.¹⁰ Moreover, hybrid satellites can be designed with technical capabilities equivalent to single-band satellites. Thus, hybrid satellites can provide cost savings to operators and customers with no decrease in technical performance. Consequently, the Commission has attempted, when possible, to assign operators to corresponding C-band and Ku-band orbital locations.¹¹ We have also reassigned C-band and Ku-band satellites assigned to different locations to facilitate implementation of hybrid satellites.¹²

9. Comsat opposes HCG's proposal because Comsat General wants to continue to operate its SBS-3 satellite at 95⁰ W.L. beyond its November 1992 license expiration and past the launch of Galaxy 3H in January 1994.¹³ We find, however, it is not in the public interest to allow an obsolete satellite to continue to operate past its license term and effectively block the entry of a new, more efficient hybrid satellite that may be regularly assigned to that location. New state-of-the-art satellites employ technological advancements that use the spectrum more efficiently and that allow more customers to be served with maximum quality service. SBS-3, for example, does not employ full frequency re-use nor are its transmission powers comparable to the latest generation of satellites being built. Accordingly, we find it is in the public interest to permit HCG to combine its single-band licenses at 95⁰ W.L. and 131⁰ W.L. into one license for a state-of-the-art hybrid satellite at 95⁰ W.L.

10. Further, we do not find that Comsat's desire to operate SBS-3 beyond its license term gives rise to hearing rights or alters the availability of the 95⁰ W.L. orbital location for reassignment. Comsat has not applied for a replacement satellite for SBS-3.¹⁴ Consequently, Comsat has no renewal expectancy¹⁵ at 95⁰ W.L. and the location is available for reassignment at the expiration of SBS-3's license term.¹⁶ Any grant of extended operational authority for SBS-3 would be granted subject to cancellation in its

⁴ Originally, STLC proposed to relocate SBS-4 to 83⁰ W.L. Petitions to deny this proposal were filed by GE Americom, American Telegraph & Telephone (AT&T) and Primestar Partners, L.P. Consequently, STLC decided to propose an alternative interim location for SBS-4 at 77⁰ W.L.

⁵ See Satellite Transponder Leasing Corporation, 5 FCC Rcd 1651 (Com. Car. Bur. 1990).

⁶ See para. 2, *supra*.

⁷ Comsat also argues that the Commission is obligated to hold a hearing before it can grant HCG's applications pursuant to Section 309 of the Communications Act, 47 U.S.C. § 309 (1991), and *Ashbacker Radio Corp. v. FCC*, 326 U.S. 327 (1945), because Comsat argues the competing claims to 95⁰ W.L. are mutually exclusive.

⁸ See Comsat General Corporation, 4 FCC Rcd 3820 (Com. Car. Bur. 1989), at para. 8.

⁹ See, e.g., letters from Chief, Domestic Facilities Division, to H. Richard Juhnke (February 26, 1988) (Extension of operating authority and authority to use the Comsat maneuver for Westar 3) and Robert Mansbach (July 26, 1988, February 29, 1988 and

September 1, 1987) (Comsat maneuver for SBS-2, Comsat D-2/D-4 and SBS-1, respectively). See also GTE Spacenet Corporation, 5 FCC Rcd 1182 (Com. Car. Bur. 1990) (Comsat maneuver for GSTAR III).

¹⁰ See Hughes Communications Galaxy, Inc., 5 FCC Rcd 3423 (Com. Car. Bur. 1990).

¹¹ See Assignment of Orbital Locations to Space Stations in the Domestic Fixed-Satellite Service, 3 FCC Rcd 6972 (1988).

¹² See GE American Communications, Inc., 7 FCC Rcd 5169 (Com. Car. Bur. 1992).

¹³ Comsat General has stated that the Comsat maneuver can extend a satellite lifetime by five to seven years beyond the normal design life.

¹⁴ Comsat seeks to operate SBS-3 for an additional three years. Satellite operators may file applications for authority to construct and launch satellites up to five years in advance of the planned launch date. Licensing Space Stations in the Domestic Fixed-Satellite Service, 50 Fed. Reg. 36071 (1985), at para. 28.

¹⁵ 1988 Assignment Order, 3 FCC Rcd 6972, at note 31.

¹⁶ See, e.g., 1988 Assignment Order, 3 FCC Rcd 6972, at para. 11

entirety without a hearing, consistent with prior Division action.¹⁷ Thus, contrary to Comsat's claim otherwise, the Commission is not required to conduct a hearing pursuant to *Ashbacker Radio Corp. v. FCC*. In addition, Comsat, in its petition to deny, has failed to make specific allegations of fact sufficient to show that grant of HCG's application would be prima facie inconsistent with the public interest.¹⁸ Even assuming that all of Comsat's allegations are true, grant of HCG's request would not be contrary to the Commission's domestic satellite policies. As stated above, the Commission has recognized the public interest benefits inherent in state-of-the-art hybrid satellites.¹⁹ Moreover, the Commission has recognized the importance of implementing newer generation satellites by including a condition in all license terms extensions that allows the additional operating authority to be cancelled without hearing. Thus, we found above that grant of the Galaxy 3H proposal is consistent with the public interest because it allows the realization of the efficiencies gained by the regular assignment of a state-of-the-art satellite over the temporary assignment of an obsolete satellite operating past the end of its license term.

SBS-6

11. SBS-6 now operates at 99⁰ W.L. on a temporary basis, although it is assigned to 72⁰ W.L. STLC proposes to operate its Ku-band SBS-6 satellite temporarily at 95⁰ W.L. starting in February 1993 when Galaxy 4H becomes operational at 99⁰ W.L. and until Galaxy 3H is successfully launched into 95⁰ W.L. in January 1994. Comsat's Ku-band SBS-3 satellite has been operating at 95⁰ W.L. since its launch in November 1982. Comsat filed a petition to deny STLC's application, stating that it intends to use the Comsat maneuver to keep SBS-3 operational beyond its ten-year license term.²⁰

12. As stated above, this Bureau has found that it is in the public interest to allow operators to extend the useful life of older satellites until new state-of-the-art satellites are ready to be launched. This allows the operator of the older satellite to serve customers and to receive a return on its investment for as long as possible while not impeding the availability of new technologies and services.²¹ In this order, HCG is authorized to implement a new state-of-the-art satellite at 95⁰ W.L. in early 1994, when Galaxy 3H is launched. STLC's request to locate SBS-6 at 95⁰ W.L. on a temporary basis beginning in February 1993 would effectively require the decommissioning of SBS-3 one year before Galaxy 3H is operational. We will not permit HCG to "bootstrap" itself into an earlier stake in the 95⁰ W.L. orbital location by giving it a regular assignment beginning in 1994. While SBS-6 may be technically superior to the older SBS-3 satellite, SBS-6 is not assigned to 95⁰ W.L.

Rather, it is assigned to 72⁰ W.L., where it may begin providing service immediately. We do not believe that any public interest benefits to be gained from permitting HCG to occupy 95⁰ W.L. for eleven months would outweigh the costs to Comsat and its customers in requiring SBS-3 to vacate 95⁰ W.L. eleven months before it would otherwise be necessary. Therefore, until Galaxy 3H is launched in January 1994, we see no reason for SBS-3 to be decommissioned or moved.²²

Galaxy 6

13. HCG proposes to operate Galaxy 6 at 103⁰ W.L. for an interim period between the time Galaxy 4H replaces it at 99⁰ W.L. in early 1993 and the end-of-life of Galaxy 2 in December 1993. HCG then requests authority to move Galaxy 6 into Galaxy 2's 74⁰ W.L. location, where it will serve as Galaxy 2's replacement.

14. The 103⁰ W.L. location is within that portion of the orbital arc that is included in a Canadian, Mexican and United States trilateral arrangement reached in 1988.²³ Under the provisions of the arrangement, Canada is permitted to occupy the 104.5⁰ W.L. location with a C-band satellite until the 1994 time frame, when GTE Spacenet launches a hybrid satellite into 103⁰ W.L. Thus, we will not approve the interim C-band assignment of 103⁰ W.L. to Galaxy 6 without the express consent of the Canadian administration. This consent is found nowhere in the record. Moreover, we will not initiate renegotiations of the trilateral arrangement absent compelling public interest reasons to do so. HCG's desire to provide service from 103⁰ W.L. for less than one year does not warrant reopening the complex negotiations that preceded the signing of the 1988 arrangement. Therefore, we dismiss without prejudice the HCG application requesting an interim orbital assignment for Galaxy 6 of 103⁰ W.L.

15. No party opposes HCG's proposal to replace Galaxy 2 with Galaxy 6 at 74⁰ W.L. and therefore, we grant the application. In the interim period between the time Galaxy 4H replaces Galaxy 6 at 99⁰ W.L. and the end-of-life of Galaxy 2, HCG must co-locate Galaxy 6 with another one of its C-band satellites.²⁴

SBS-4

16. STLC proposes to operate its Ku-band SBS-4 satellite at 77⁰ W.L. through the end of its life in August 1994. SBS-4 has been operating at 91⁰ W.L. since its launch in 1984. It will be replaced in the next few months, however, with Galaxy 7-H. STLC's request to move SBS-4 to 77⁰ W.L. upon Galaxy 7-H's launch is unopposed. The 77⁰ W.L. location, however, has not been coordinated internationally. Accordingly, while we grant STLC's request for

(76⁰ W.L. reassigned from Safecom Partnership to National Exchange Satellite, Inc. after expiration of Safecom Partnership's licenses) and 5 FCC Rcd 179, para. 26 (85⁰ W.L. reassigned from American Telephone & Telegraph Company (AT&T) to Hughes Communications Galaxy, Inc. after expiration of AT&T's license).

¹⁷ See note 9, *supra*.

¹⁸ See *Astroline Communications Company Limited Partnership v. FCC*, 857 F.2d 1556, 1561 (D.C. Cir. 1988); *Arnold L. Chase*, 5 FCC Rcd 1642, 1644 (1990).

¹⁹ See para. 8, *supra*.

²⁰ Comsat also reiterates its claim that a hearing is necessary before STLC's request can be granted. See discussion at paras.

6-10, *supra*.

²¹ See para. 7, *supra*.

²² GE Americom's arguments regarding STLC's ability to leverage regular authority to operate at this location from an interim authorization are rendered moot by this decision.

²³ See letter from Chief, Common Carrier Bureau, FCC to Senior Assistant Deputy Minister, Government of Canada Department of Communications (August 19, 1988).

²⁴ For example, HCG could co-locate Galaxy 6 with Galaxy 2 at 74⁰ W.L. Also, because HCG's Galaxy 2-R will not be built, we render the authorization for Galaxy 2-R, Hughes Communications Galaxy, Inc., 3 FCC Rcd 6989 (1988), null and void.

reassignment, we will permit operation of SBS-4 at 77° W.L. on a non-interference basis only until such time as coordination is completed.²⁵

IV. ORDERING CLAUSES

17. Accordingly, IT IS ORDERED that Application File Nos. 5 & 6-DSS-MP/ML-92 ARE GRANTED and Hughes Communications Galaxy, Inc. IS AUTHORIZED to consolidate its Ku-band Galaxy B-R satellite at 131° W.L. and its C-band Galaxy 3-R satellite at 95° W.L. into the hybrid Galaxy 3-H at 95° W.L. as proposed in its application.

18. IT IS FURTHER ORDERED that the Ku-band portion of the 131° W.L. orbital location is available for reassignment.

19. IT IS FURTHER ORDERED that Application File No. 16-DSS-ML-92 requesting authority to locate Galaxy 6 at 103° W.L. temporarily IS DISMISSED WITHOUT PREJUDICE.

20. IT IS FURTHER ORDERED that Application File No. 17-DSS-ML-92 IS GRANTED and Hughes Communications Galaxy, Inc. IS AUTHORIZED to use Galaxy 6 to replace Galaxy 2 at 74° W.L. at the end of Galaxy 2's useful life.

21. IT IS FURTHER ORDERED that the authorization for Galaxy 2-R, Hughes Communications Galaxy, Inc., 3 FCC Rcd 6989 (1988), is NULL and VOID.

22. IT IS FURTHER ORDERED that Application File No. 18-DSS-ML-92 IS CONDITIONALLY GRANTED and Satellite Transponder Leasing Corporation IS AUTHORIZED to operate SBS-4 at 77° W.L. on a non-interference basis until international coordination is completed. The period of operation shall start when Galaxy 6H is launched and terminate at the expiration of SBS-4's license term.

23. IT IS FURTHER ORDERED that Application File No. 19-DSS-ML-92 requesting an interim orbital assignment of SBS-6 to 95° W.L. IS DENIED.

24. IT IS FURTHER ORDERED that the Petition to Deny filed by Communications Satellite Corporation IS DENIED as it pertains to the grant of Application File Nos. 5/6-DSS-ML-92 and IS GRANTED as it pertains to the denial of Application File No. 19-DSS-ML-92.

25. IT IS FURTHER ORDERED that this Order and Authorization will be effective upon adoption.

FEDERAL COMMUNICATIONS COMMISSION

Cheryl A. Tritt
Chief, Common Carrier Bureau

²⁵ See Section 25.111(b) of the Commission's rules, 47 C.F.R. § 25.111(b).