

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of the Applications of)
)
PANAMSAT LICENSEE CORPORATION)
)
For Authority To Construct, Launch,)
Operate Separate International)
Communications Satellites)
_____)

File Nos.: 91-SAT-MP/LA-95;
92-SAT-ML-95; CSS-94-015;
CSS-94-016; CSS-91-004

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**PETITION TO DENY OR TO HOLD IN ABEYANCE
OF HUGHES COMMUNICATIONS GALAXY, INC.**

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SUMMARY

The Commission should deny the pending applications of PanAmSat Licensee Corporation ("PanAmSat") to expand its separate satellite system using the proposed PAS-2R, PAS-6, PAS-8, PAS-9, and PAS-5 satellites. Alternatively, the Commission should hold those five applications in abeyance until the Commission resolves the pending applications of Hughes Communications Galaxy, Inc. ("HCG") to modify its Galaxy III(H) domestic communications satellite to provide temporary private international service to Latin America, and for authority to construct, launch, and operate its Galaxy VIII(I) international communications satellite to provide service to Latin America over the longer term.

PanAmSat, a company whose majority equity ownership is in the hands of Grupo Televisa, S.A., a foreign company, has spent much of the past year seeking to exclude U.S.-owned and controlled satellite operators, such as HCG, from competing with it in the provision of direct-to-home ("DTH") satellite television service to Latin America. Indeed, over the past year PanAmSat has filed no less than ten vexatious pleadings opposing HCG's applications and seeking to delay the entry of competition in the provision of DTH service to the home market of PanAmSat's majority foreign owner. At the same time, PanAmSat seeks Commission authority to expand its coverage and the services that it provides, and to seize as many orbital locations and frequency bands as possible before its potential U.S. competitors are granted the opportunity to compete with it.

Allowing PanAmSat to proceed with its plans to expand its separate satellite system in the face of its anticompetitive actions would contravene clear Commission policy by giving PanAmSat an unfair headstart in the provision of private international satellite

services abroad. Permitting a company with such substantial foreign ownership to benefit from the openness of U.S. policies at the same time that it seeks to bar U.S. companies from operating in the market of its foreign owner would directly undermine this unambiguous Commission policy. This is especially true since PanAmSat is seeking authority to appropriate to itself a large number of orbital locations and a vast amount of spectrum that are unavailable to other satellite operators, including locations and frequencies that presently are subject to a freeze on the acceptance of additional applications. Giving PanAmSat the unfair headstart that it has engineered through its delaying tactics would grant it undeserved special treatment to the detriment of the U.S.-owned and controlled companies, such as HCG, whose competition PanAmSat plainly fears.

Furthermore, particularly in light of PanAmSat's tactics, it is imperative that the Commission apply to PanAmSat's applications here the same standards that PanAmSat repeatedly has advocated in seeking to delay the initiation of competition from U.S. satellite operators in the provision of private international satellite services to Latin America. For example, PanAmSat recently has urged the Commission to exclude foreign satellite operators from the U.S. if those operators' home markets are closed to U.S. satellite operators. In addition, PanAmSat -- an operator that seeks to provide DTH service both internationally and to the southwestern United States -- has argued that the Commission must complete a rulemaking proceeding before a single satellite can be used to provide both domestic and international service, and before the Commission can resolve HCG's applications. Whatever the merits of PanAmSat's arguments, application of the principles that PanAmSat has advocated requires the Commission to deny or hold in abeyance PanAmSat's applications.

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**PETITION TO DENY OR TO HOLD IN ABEYANCE
OF HUGHES COMMUNICATIONS GALAXY, INC.**

Hughes Communications Galaxy, Inc. ("HCG") hereby petitions to deny or to hold in abeyance the pending applications of PanAmSat Licensee Corporation ("PanAmSat") to expand its existing separate international satellite system. Specifically, HCG requests that the Commission deny PanAmSat's applications:

- (i) to amend its ground spare application to request authority to construct, launch, and operate that satellite over the Atlantic Ocean Region ("AOR") at 43° W.L. as a replacement separate system satellite to be known as "PAS-2R" that is designed to provide direct-to-home ("DTH") video programming to Latin America;
- (ii) to modify PanAmSat's authorization to construct, launch, and operate a separate system satellite serving the Indian Ocean Region ("IOR") to be known as "PAS-6," and to operate that satellite at 68.5° E.L.;
- (iii) for authority to construct, launch, and operate its proposed satellites to be known as "PAS-8" and "PAS-9," which also are designed to provide DTH video programming to Latin America from 45° and 58° W.L., respectively; and
- (iv) for authority to construct, launch, and operate its proposed satellite to be known as "PAS-5," which would provide service between the west

coast of the United States and the Pacific Basin from 194° W.L., to the extent that application remains pending before the Commission.^{1/}

In the alternative, HCG requests that the Commission hold these five applications in abeyance until the Commission resolves HCG's pending applications to modify its Galaxy III(H) domestic communications satellite to allow the temporary provision of switchable Ku

^{1/} PanAmSat's PAS-2R and PAS-6 applications presently are on public notice, and on April 18, 1995, PanAmSat filed a major amendment to its PAS-9 application. This Petition is timely with respect to the proposed PAS-8 and PAS-5 satellite applications, even though those applications appeared on public notice some time ago. See Public Notice, "International and Satellite Applications Accepted for Filing," FCC Report No. I-6995 (released June 29, 1994) (PAS-8); Public Notice, International Satellite and Earth Station Applications Accepted for Filing, FCC Report No. I-6511 (released Nov. 16, 1990) (PAS-5). The Commission's current rulemaking proceeding intended to ensure that U.S.-owned and controlled companies have fair and equivalent competitive opportunities abroad mandates ongoing Commission review of applications, such as those submitted by PanAmSat, that seek to diminish the competitive opportunities of those U.S. companies in other countries. See Market Entry and Regulation of Foreign-Affiliated Entities, IB Docket No. 95-22, RM-8355, RM-8392 (released Feb. 17, 1995). Furthermore, disclosures made by PanAmSat to the Securities and Exchange Commission in the past month contain new information that, as discussed in more detail below, is highly relevant to the Commission's consideration of those applications, namely: (i) PanAmSat intends to use its proposed satellites to provide DTH service to the southwestern United States; (ii) the majority equity holder in PanAmSat, a foreign company, will control the day-to-day operations of the planned DTH business serving Latin America, the Caribbean and the United States; and (iii) PanAmSat's parent has recently undergone a transfer of control that does not appear to have been disclosed to, much less approved by, the Commission in advance. See PanAmSat Corporation, Prospectus for \$275,000,000 of 12¾ % Mandatorily Exchangeable Senior Redeemable Preferred Stock ("PanAmSat Prospectus"), at 6, 7, 13, 15, 16, 42, 44, 51, 71-72 (Apr. 13, 1995). Moreover, since the current freeze on satellite applications in the 30° to 60° W.L. range explicitly prohibits the acceptance for filing of any applications for that range, the normal 30-day period for filing petitions to deny does not apply to the PAS-8 and PAS-9 applications. If the Commission nevertheless declines to consider this Petition To Deny as timely with respect to any of PanAmSat's satellite applications, HCG requests that the Commission treat the Petition as a petition to hold in abeyance or as informal comments with respect to those applications.

band service from 95° W.L. to Mexico, Central and South America, and the Caribbean,^{2/} and for authority to construct, launch, and operate its Galaxy VIII(I) international fixed communications satellite at that orbital location to serve the Latin American region over the longer term.^{3/}

PanAmSat's own anticompetitive actions compel the filing of this Petition. The operator of by far the largest separate satellite system authorized by the Commission and a company with substantial foreign ownership and control, PanAmSat has been fighting vigorously for almost a year to exclude U.S.-owned and controlled satellite operators from competing with it in the provision of DTH services to Latin America. At the same time, PanAmSat seeks Commission authority to expand its coverage and the services that it provides, and to seize as many orbital locations and frequency bands as possible before its potential U.S. competitors are granted the opportunity to compete with it. Particularly at a time when the Commission is implementing measures to ensure the equitable treatment of U.S. telecommunications carriers seeking to operate abroad, the Commission should ensure that PanAmSat does not trample on the rights of U.S. companies seeking to compete in the home markets of PanAmSat's majority foreign owner. For the reasons set forth below, the Commission should deny or hold in abeyance PanAmSat's applications.

^{2/} See Hughes Communications Galaxy, Inc., FCC File Nos. 33-DSS-ML-94, CSS-94-014-MP/ML (filed Apr. 25, 1994).

^{3/} See Hughes Communications Galaxy, Inc., FCC File Nos. 47-DSS-P/LA-94; CSS-94-018 (filed July 15, 1994).

BACKGROUND

After arguing for years for the authority to compete with Intelsat in the provision of international satellite services, PanAmSat has become the main beneficiary of the Commission's Separate Systems order^{4/} and currently is the leading provider of private international satellite services to Latin America.^{5/} According to PanAmSat's most recent prospectus, Grupo Televisa, S.A. ("Televisa"), Mexico's leading television broadcaster and media company as well as the leading producer and owner of Spanish-language television programming in the world, through its wholly owned subsidiary, Univisa Satellite Holdings, Inc., currently holds 50.15% of the outstanding equity interest in the company.^{6/}

^{4/} Establishment of Satellite Systems Providing International Communications, 101 F.C.C.2d 1046 (1985) ("Separate Systems"), reconsideration, 61 Rad. Reg. 2d (P&F) 649 (1986), further reconsideration, 1 FCC Rcd 439 (1986).

^{5/} See PanAmSat Prospectus at 33, 38-39.

^{6/} Id. at 7, 13. Although the Commission has rejected challenges to the extent of PanAmSat's foreign ownership and control in the past, see, e.g., PanAmSat Carrier Services, Inc., 10 FCC Rcd 928 (1995); Alpha Lyracom, d/b/a Pan American Satellite, 8 FCC Rcd 376 (1992), the Commission granted consent to PanAmSat's application to transfer its satellite authorizations to a wholly owned subsidiary on the ground that the application did not involve a change in ownership or control of the company that would be contrary to the public interest, PanAmSat, L.P. and PanAmSat Licensee Corp., 9 FCC Rcd 668 (1994). Moreover, when the Commission consented to PanAmSat's current structure as a "licensee subsidiary" of a parent company, it explicitly required that PanAmSat inform the Commission of changes in its ownership. See id. at 668.

Since that 1994 order, the equity interest of Televisa in PanAmSat has passed the 50% threshold. Furthermore, on March 2, 1995, PanAmSat's parent company changed its corporate form from a limited partnership to a corporation, apparently without informing the Commission or obtaining its consent. After a review of available documents at the Commission, HCG has not been able to locate any document filed by PanAmSat informing the Commission of the latest change in PanAmSat's structure as required by the Commission's 1994 order. To the contrary, in an earth station application filed on March 30, 1995, which currently is on public notice, PanAmSat certified that its December 30,

(continued...)

Furthermore, PanAmSat's prospectus states that PanAmSat and Televisa will form a joint venture in which a wholly owned subsidiary of Televisa will manage a business that will control the delivery of 500 channels of DTH video programming to residents of Latin America over PanAmSat's satellites.^{7/} By its applications, PanAmSat now proposes to take advantage of its relationship with Televisa to extend its near-monopoly over the provision of private international satellite services by providing additional, new services and vastly expanding its geographical coverage. Indeed, in its latest prospectus, PanAmSat boasts that upon the launch of its new satellites, "PanAmSat will provide coverage of approximately 98% of the world's population and will become the world's first privately owned global satellite communications company."^{8/}

^{5/}(...continued)

1994 Form 430 on file with the Commission still is "complete and accurate." See PanAmSat Licensee Corp., FCC File No. 860-DSE-P/L-95, E950267, Form 493, Question 32 (filed Mar. 30, 1995).

HCG recognizes that separate system licensees are not subject to Section 310(b)(4) of the Communications Act. However, in light of the changes to PanAmSat's ownership, and the serious policy issues presented by PanAmSat's actions in challenging other operators' efforts to serve the markets of its majority foreign owner, the Commission should review this matter carefully to ensure that PanAmSat has complied fully with all disclosure requirements and that there has not been a change in effective control of the company. See, e.g., Restated Certificate of Incorporation of PanAmSat Corporation, §5.6 (describing corporate actions that require prior consent of Televisa).

As of the April 13, 1995 date of PanAmSat's prospectus, Televisa's stated equity ownership in PanAmSat was 50.15%. The offering may have closed since that date, and the stock sold in that offering may have been purchased by persons who may or may not be aliens. In any event, PanAmSat still would have very substantial foreign equity ownership, and the concerns raised in this Petition would be no less significant.

^{7/} PanAmSat Prospectus at 6, 15, 16, 42, 44-45.

^{8/} Id. at 5; see also id. at 11.

PanAmSat has pending applications for five proposed satellites to expand its current system. The first, PAS-2R, was to have been a ground spare to be used in the event of a launch or in-orbit failure of certain proposed PanAmSat satellites. PAS-2 was lost in a launch failure in December 1994. PanAmSat now proposes to use PAS-2R to replace PAS-2 over the AOR at 43° W.L., using the frequency bands 5.925--6.425 GHz (uplink), 3.70--4.20 GHz (uplink), 12.50--12.75 GHz (downlink), 11.70--12.20 GHz (downlink), and 14.00--14.50 GHz (uplink). PAS-2R would provide communications between the United States, Europe, and Latin America, and within Africa, and would initiate PanAmSat's planned DTH satellite video service to Latin America.

The second proposed satellite, PAS-6, is PanAmSat's proposed IOR satellite. PAS-6 would provide coverage of the Far East, Asia, Africa, and Europe, and the satellite also would provide Ku band DTH services to many countries in the region. The Commission granted PanAmSat conditional authority in 1992 to construct, launch, and operate PAS-6 at 68° E.L.^{9/} PanAmSat now requests authority to operate that satellite at 68.5° E.L. and to make certain design changes, as well as final authority to construct, launch, and operate the satellite. PAS-6 would use the frequency bands at 12.25--12.75 GHz (downlink), 11.45--11.70 GHz (downlink), 14.00--14.50 GHz (uplink), 5.925--6.425 GHz (uplink), and 3.70--4.20 GHz (downlink).^{10/}

^{9/} See Alpha Lyracom, d/b/a Pan American Satellite, 7 FCC Rcd 2974 (1992).

^{10/} Since PanAmSat has requested that its financial showing for its PAS-7 satellite be applied to its PAS-6 application, it is not clear when, or whether, PanAmSat plans to make a new financial showing for PAS-7 or to seek final authority to launch and operate PAS-7.

The third proposed satellite is PAS-8. PanAmSat proposes to operate PAS-8 at 45° W.L. at 10.70--10.95 GHz (downlink), 11.20--11.45 GHz (downlink), 12.75--13.25 GHz (uplink), 4.50--4.80 GHz (downlink), and 6.725--7.025 GHz (uplink). PanAmSat proposes to dedicate the satellite to the provision of DTH service to Latin America.

PAS-9, PanAmSat's fourth proposed satellite, would be a hybrid satellite located at 58° W.L. that also would provide DTH service to Latin America. On April 18, 1995, PanAmSat filed a major amendment to its PAS-9 application to add 2.8 GHz of additional spectrum to the satellite. That major amendment has not yet appeared on public notice. As amended, the PAS-9 application proposes to use a broad range of frequency bands.^{11/} By letter, PanAmSat has asked the Commission to defer action on those portions of the amendment that pertain to the use of Ka band frequencies, but has requested that the Commission proceed with the remainder of its amendment.^{12/}

The fifth pending application is for PanAmSat's proposed PAS-5 satellite. PAS-5 would be a hybrid satellite that provides service over the Pacific Ocean Region between the west coast of the United States and all major points in the Pacific Basin, as far west as Thailand and Singapore. PanAmSat proposes to operate PAS-5 at 194° W.L. using

^{11/} PanAmSat proposes to use the following frequency bands for PAS-9: 5925--6425 MHz (uplink), 3700--4200 MHz (downlink), 6725--7025 MHz (uplink), 4500--4800 MHz (downlink), 10.95--11.20 GHz (downlink), 11.45--12.20 GHz (downlink), 12.50--12.75 GHz (downlink), 13.75--14.50 GHz (uplink), 12.75--13.25 GHz (uplink), 10.70--10.95 GHz (downlink), 11.20--11.45 GHz (downlink), 6435--6715 MHz (uplink), 3410--3690 MHz (downlink), 27.50--30.00 GHz (uplink), and 17.20--20.20 GHz (downlink).

^{12/} See Letter from Counsel for PanAmSat to Chief, International Bureau (Apr. 25, 1995).

the frequency bands 5.925--6.425 GHz (downlink), 3.70--4.20 GHz (uplink), 11.45--11.70 GHz (downlink), 12.50--12.75 GHz (downlink), 11.70--12.20 GHz (downlink), and 14.00--14.50 GHz (uplink). It is not clear whether PanAmSat has abandoned that application, which has been pending at the Commission for four-and-a-half years.^{13/}

Like PanAmSat, HCG has identified Latin America as a region whose satellite needs are inadequately served, and accordingly HCG has applied for authority to modify its Galaxy III(H) satellite to serve that region on a temporary basis, and for authority to construct, launch, and operate its Galaxy VIII(I) satellite to serve the region over the longer term. Obviously fearful of the prospect of having to provide DTH services to Latin America on a competitive basis, PanAmSat has filed no less than ten pleadings at the Commission in the past ten months -- for an average of one pleading a month -- opposing HCG's plans to compete with it and seeking to protract the Commission's resolution of HCG's applications. PanAmSat has repeated the same vexatious and erroneous arguments time and time again: that allowing HCG to compete with it would be anticompetitive, that the Commission cannot authorize HCG to provide international services, and that HCG's applications should await the conclusion of a Commission rulemaking.^{14/}

^{13/} See Public Notice, International Satellite and Earth Station Applications Accepted for Filing, FCC Report No. I-6511 (released Nov. 16, 1990); Alpha Lyracom, d/b/a Pan American Satellite, FCC File No. CSS-91-004 (filed Nov. 7, 1990).

^{14/} PanAmSat has filed the following seven pleadings in opposition to HCG's request to modify Galaxy III(H): (1) Opposition of PanAmSat to HCG's Request for Expedited Processing of Section 319(d) Waiver Request To Begin Construction of Modifications to Galaxy III(H) Domestic Satellite (filed June 17, 1994); (2) Petition To Deny HCG's Application for Modification of Its Authority To Construct, Launch, and Operate a Hybrid Domestic Communication Satellite, Galaxy III(H) (filed July 15, 1994); (3) Reply to Hughes' (continued...)

HCG has responded to PanAmSat's meritless arguments on numerous occasions. In its responses, HCG has demonstrated that the only anticompetitive issue is PanAmSat's own conduct, that HCG's requests are fully consistent with Commission precedent, and that there is no basis for denying or holding in abeyance the Galaxy III(H) and Galaxy VIII(I) applications pending the outcome of a rulemaking proceeding. Nevertheless, each additional pleading that PanAmSat files gives PanAmSat precisely the result it seeks: a new pleading cycle, and thus further delay in the initiation of competition to PanAmSat in the provision of private international satellite services to Latin America.

^{14/}(...continued)

Response to Petition to Deny Galaxy III(H) Application (filed Aug. 17, 1994); (4) Motion for Leave To Supplement Reply to Hughes' Response to Petition To Deny, and Supplemental Reply to Hughes' Response to Petition To Deny HCG's Application for Modification of Its Authority To Construct, Launch, and Operate a Hybrid Domestic Communication Satellite, Galaxy III(H) (filed Oct. 25, 1994); (5) Reply of PanAmSat to Hughes' Response to Supplemental Reply to Petition To Deny Galaxy III(H) Application (filed Nov. 23, 1994); (6) Motion for Leave To Submit Additional Reply and Additional Reply of PanAmSat to Hughes' Response to Supplemental Reply to Hughes' Response to Petition To Deny HCG's Application for Modification of Its Authority To Construct, Launch, and Operate a Hybrid Domestic Communication Satellite, Galaxy III(H) (filed Dec. 13, 1994); and (7) Opposition of PanAmSat to HCG's Request for a Further Section 319(d) Waiver (filed Apr. 18, 1995).

PanAmSat also has filed the following two pleadings in opposition to HCG's pending application to construct, launch, and operate Galaxy VIII(I): (1) Petition To Deny HCG's Application for Authority To Construct, Launch, and Operate One Separate International Fixed Communications Satellite, Galaxy VIII(I) (filed Sept. 2, 1994); and (2) Reply to Hughes' Response to Petition To Deny Galaxy VIII Application (filed Oct. 4, 1994).

Further, in commenting on the application of International Private Satellite Partners, L.P., d/b/a Orion Atlantic, L.P., for authority to use six transponders on an international satellite to provide domestic communications services, PanAmSat took the opportunity yet again to argue against HCG's Galaxy III(H) and Galaxy VIII(I) applications. See Comments of PanAmSat, L.P. in International Private Satellite Partners, L.P., FCC File No. CSS-95-001 (filed Dec. 16, 1994).

PanAmSat has not limited its opposition to competition only to HCG's applications. PanAmSat also has fought other competitors' and potential competitors' efforts to expand their systems. For example, although PanAmSat has clearly stated its intention to use its proposed satellites to provide DTH service to the southwestern United States,^{15/} PanAmSat filed comments seeking to defer Commission action on the application of International Private Satellite Partners, L.P., d/b/a Orion Atlantic, L.P., for authority to use six transponders on an international satellite to provide domestic communications services.^{16/} Similarly, PanAmSat sought to defer Commission action on the request of Columbia Communications Corporation to provide domestic services using transponders that Columbia leases on NASA's TDRS satellites.^{17/}

PanAmSat's strategy is clear: While PanAmsat seeks to further its plans to move ahead with the proposed expansion of its private international satellite system to the benefit of its majority foreign owner, it urges the Commission through fanciful delaying tactics to prohibit U.S.-owned and controlled companies from expanding their own systems into its foreign owner's home market. For the reasons discussed below, the Commission should not condone PanAmSat's anticompetitive actions. Rather, the Commission should deny or hold in abeyance PanAmSat's applications until the Commission resolves HCG's pending Galaxy III(H) and Galaxy VIII(I) applications, and U.S.-owned and controlled

^{15/} See PanAmSat Prospectus at 33, 42, 44, 51, 60.

^{16/} See Comments of PanAmSat, L.P. in International Private Satellite Partners, L.P., FCC File No. CSS-95-001 (filed Dec. 16, 1994).

^{17/} See Comments of PanAmSat, L.P. in Columbia Communications Corporation, FCC File Nos. CSS-94-019, 46-DSS-ML-92(2), CSS-94-020, 46-DSS-ML-94(2) (filed Sept. 2, 1994).

companies have a fair opportunity to compete in the provision of private international satellite services abroad.

ARGUMENT

PanAmSat's anticompetitive actions against HCG and others amply warrant the denial of PanAmSat's pending applications or, at a minimum, the deferral of those applications until the Commission resolves HCG's pending Galaxy III(H) and VIII(I) applications. First of all, allowing PanAmSat to proceed with its plans to expand its separate satellite system in the face of its anticompetitive actions would contravene clear Commission policy by giving a company that has devoted most of the past year to seeking to bar U.S.-owned and controlled satellite operators from its foreign owner's and DTH partner's home market an unfair headstart in the provision of private international satellite services abroad. This is especially true since PanAmSat is seeking authority to appropriate to itself a large number of orbital locations and a vast amount of spectrum that are unavailable to other satellite operators. Further, particularly in light of PanAmSat's tactics, it is imperative that the Commission apply to PanAmSat's applications here the same standards that PanAmSat repeatedly has advocated in seeking to delay the initiation of competition from U.S. satellite operators. After all, PanAmSat cannot claim that it is entitled to special treatment over the U.S.-owned and controlled satellite operators whose competition PanAmSat so obviously fears.

I. THE COMMISSION SHOULD NOT GIVE PANAMSAT AN UNFAIR HEADSTART IN THE PROVISION OF ADDITIONAL, NEW PRIVATE INTERNATIONAL SATELLITE SERVICES.

It plainly would be inappropriate for the Commission to allow PanAmSat to profit from its anticompetitive tactics by granting it an unfair headstart over HCG and other U.S.-owned and controlled competitors in the expansion of its private international satellite system, and in particular in the provision of DTH services to Latin America. In the cellular area, the Commission previously recognized that it is fundamentally unfair to grant one competitor a headstart over another.^{18/} The Commission should apply the same policy here to ensure that PanAmSat does not obtain special treatment over its potential competitors at the same time that it works to delay those operators' applications to compete with it.

When the Commission established its policy in the cellular area that only one wireline cellular carrier and one nonwireline cellular carrier would serve each market, it expressly recognized that allowing the wireline competitor to begin providing service first could disadvantage the nonwireline competitor. The Commission therefore allowed nonwireline competitors to file petitions to defer the wireline carrier's initiation of cellular service to avoid the anticompetitive effects on nonwireline carriers of the wireline carriers' headstart in the marketplace.^{19/} The unfair headstart policy applied where the nonwireline

^{18/} See Inquiry Into the Use of the Bands 825-845 MHz and 870-890 MHz for Cellular Communications Systems; and Amendment of Parts 2 and 22 of the Commission's Rules Relative to Cellular Communications Systems ("Cellular Systems"), 89 F.C.C.2d 58, 74-75 & n.32 (1982).

^{19/} See id.

carrier demonstrated that harm to the public would result from allowing the wireline carrier early entry.^{20/}

The Commission should apply the unfair headstart policy here. PanAmSat's vexatious efforts to protract the resolution of HCG's Galaxy III(H) and VIII(I) applications, so that PanAmSat can expand its near-monopoly in the meantime to the benefit of Televisa, surely contravene U.S. public policy and thus harm the public (as well as HCG). Indeed, permitting PanAmSat to benefit from its anticompetitive actions could give it the opportunity to "corner the market" before U.S.-owned and controlled companies have a meaningful chance to compete. In an ongoing rulemaking proceeding, the Commission has expressed serious concerns about the inequitable conditions that U.S. telecommunications carriers face in seeking entry to many foreign markets, and the Commission has made clear that fair and equivalent competitive opportunities for U.S. companies abroad are essential.^{21/} Allowing a company with such substantial foreign ownership to benefit from the openness of U.S.

^{20/} Id.; Cellular Systems, 86 F.C.C.2d 469, 491 n.57 (1981). The Commission subsequently abolished the unfair headstart policy for cellular services, principally on the ground that a nonwireline carrier's ability to resell the wireline carrier's service until its own system was constructed precluded a finding that the wireline carrier's early entry hampered the nonwireline carrier's ability to compete. See Amendment of Part 22 of the Commission's Rules To Provide for Filing and Processing of Applications for Unserved Areas in the Cellular Service and To Modify Other Cellular Rules, 6 FCC Rcd 6185, 6226 (1991). Here, of course, HCG would not be able to "resell" PanAmSat's services; nor would HCG have any remotely comparable means of alleviating the anticompetitive effects of a headstart by PanAmSat. Thus, application of the unfair headstart policy here is critical to ensuring that U.S.-owned and controlled companies have fair opportunities to compete abroad.

^{21/} See Market Entry and Regulation of Foreign-Affiliated Entities, IB Docket No. 95-22, RM-8355, RM-8392, FCC 95-51 (released Feb. 17, 1995).

policies at the same time that it seeks to bar U.S. companies from operating in the market of its foreign owner would directly undermine this unambiguous Commission policy.

The headstart that PanAmSat seeks raises further concerns because of PanAmSat's attempt in its applications to obtain assignments to additional orbital locations and frequency bands beyond those allowed under current Commission policy. Specifically, PanAmSat seeks the assignment of PAS-8 to 45° W.L. and PAS-9 to 58° W.L., as well as a large amount of spectrum at each orbital location. The Commission has ordered, however, that "no applications, or amendments to applications, shall be accepted for filing for new space stations, or for relocation of previously authorized space stations, requesting orbital positions which are east of 60° W.L. and west of 30° W.L. in the 4, 6, 11, 12 or 14 GHz bands."^{22/} In addition, the Commission further ordered that the freeze it "shall be effective on its adoption and shall continue in effect until further order of the Commission."^{23/} Although the Commission contemplated that it subsequently would lift the freeze, it also stated that it would need to establish procedures for the acceptance of additional applications at the appropriate time.^{24/} The Commission has not established any such procedures.

While the freeze remains in effect, the Commission cannot accept for processing -- much less grant -- any application, such as PanAmSat's applications for PAS-8 and PAS-9, that requests the assignment of orbital locations or frequencies that are subject to

^{22/} Processing of Pending Applications for Space Stations To Provide International Communications Service, FCC 85-296, at ¶ 4 (released June 6, 1985) (footnote omitted).

^{23/} Id. at ¶ 5.

^{24/} See Separate Systems, 101 F.C.C.2d at 1163.

the freeze.^{25/} Although HCG has no objection in principle to the lifting of the freeze, the fundamental requirement of administrative fairness dictates that, if the Commission decides to lift the freeze, it must do so in a manner that gives all operators that wish to operate satellites using frequencies at those locations sufficient advance notice that the freeze is being lifted and that the Commission will accept their applications for filing and concurrent consideration. Nor is PanAmSat entitled to a limited waiver of the freeze to accommodate only its two new satellites, as it alternatively requests, since PanAmSat has shown no unique circumstances that even remotely begin to justify why it should be exempt from a decade-old policy.^{26/}

^{25/} The Common Carrier Bureau's placing of the PAS-8 and PAS-9 applications on public notice as having been accepted for filing therefore were administrative oversights that the International Bureau should correct by returning those applications as unacceptable for filing. See, e.g., Public Notice, Satellite Communications Services Information, FCC Report No. SPB-7 (released Apr. 12, 1995) (stating that applications that are found on initial review to be acceptable for filing may be returned without further consideration if they are not consistent with Commission rules or policies).

Since the Commission previously granted PanAmSat a waiver of the freeze for PAS-2, on the ground that PanAmSat's request to locate the satellite at 43° W.L. was a modification of an application that predated the freeze, see PanAmSat, L.P., 8 FCC Rcd 3905, 3907-08 (1993), HCG does not challenge PanAmSat's request for the use of frequencies at that location for the replacement PAS-2R. Neither the PAS-8 nor the PAS-9 application involves a request to relocate a satellite for which PanAmSat or its predecessors had applied prior to July 1985, and there thus is no basis for granting PanAmSat the same waiver for PAS-8 and PAS-9 that the Commission granted it with respect to PAS-2.

^{26/} See Turro v. FCC, 859 F.2d 1498, 1500 (D.C. Cir. 1988); WAIT Radio v. FCC, 418 F.2d 1153, 1157 (D.C. Cir. 1969); Norris Satellite Communications, Inc., 7 FCC Rcd 4289, 4290 (1992), reconsideration, 9 FCC Rcd 7370 (1993); Riverphone, Inc. t/a Maritel, 3 FCC Rcd 4690, 4691-92 (1988); Southwestern Bell Telephone Company's Petition for Waiver of Part 69, 3 FCC Rcd 4075, 4076 (Com. Car. Bur. 1988).

Affording all operators that wish to apply to use orbital locations and frequencies in the 30° to 60° W.L. range a fair and equal opportunity to do so is particularly important in light of the current congestion of the orbital arc, as the latest International Telecommunication Union ("ITU") Space Network List reflects. Such congestion was one of the reasons for the imposition of the freeze in the first place.^{27/} Other satellite operators presently factor this congestion into their business plans, understanding full well that certain orbital locations in the 30° to 60° W.L. range are particularly well suited for providing international service. The Commission has registered certain of those locations with the ITU for the use of U.S. satellites, and others besides PanAmSat may be interested in applying for authorizations to operate satellites at those locations once the Commission lifts the freeze. Principles of fundamental fairness dictate that those operators should have the same opportunity to apply for those authorizations as PanAmSat, especially since serious questions exist as to whether PanAmSat has satisfied the Commission's unambiguous policy that it will "not assign any additional orbital positions to an operator for international 'expansion' satellites until there is a showing that ' . . . in-orbit satellites are essentially filled and that an additional orbit location is needed to satisfy firm customer growth requirements'"^{28/}

^{27/} See Separate Systems, 101 F.C.C.2d at 1174-75.

^{28/} PanAmSat erroneously claims that its PAS-8 application does not implicate the Commission's policy on requesting expansion capacity for separate systems. PanAmSat urges that the assignment that it seeks for PAS-8 is not for an additional orbital location since PAS-1 already is located at that position and since the "planned band" frequencies that it proposes to use for that satellite were reserved for its use as an existing system in the ITU Radio Regulations, Appendix 30B. (PAS-8 Application at 3.) In fact, that reservation is simply for the use of a U.S. satellite. PanAmSat has no special right to the assignment of frequencies at that orbital location that is superior to the right of any other U.S. satellite

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The huge amount of "expansion" spectrum that PanAmSat seeks authority to use in the AOR is especially troubling. PanAmSat seeks authority to use 800 MHz of spectrum for PAS-8 and about 2800 MHz for PAS-9 -- or more than 3.5 GHz of spectrum that presently is subject to the Commission's freeze. This includes virtually all of the spectrum that is available for U.S. systems in the "planned" FSS bands.^{29/} Moreover, many of the frequency bands that PanAmSat seeks to use are not currently available under the Commission's rules for the services that PanAmSat wishes to provide.^{30/} Nor to HCG's knowledge is any rulemaking proceeding underway at the Commission to establish service rules to allow the licensing of those bands for the fixed satellite service.^{31/} Even if the freeze were not in effect, the Commission should not allow PanAmSat to succeed in taking

^{28/}(...continued)

applicant. Moreover, the Commission's anti-warehousing policies that underlie the limits on acquiring expansion capacity apply as fully to acquiring expansion frequency bands as they do to acquiring expansion orbital locations. Separate Systems, 101 F.C.C.2d at 1174-75. Nor can PanAmSat have any special claim to "planned band" frequencies for PAS-9 at 57° W.L., an orbital location for which PanAmSat years ago cancelled its authorization. See PanAmSat Licensee Corp., 9 FCC Rcd 6149, 6149 (1994).

^{29/} 4.50--4.80 GHz, 6.725--7.025 GHz, 10.70--10.95 GHz, 11.20--11.45 GHz, 12.75--13.25 GHz. See ITU Radio Regulations, Appendix 30B, Article 10.

^{30/} The following frequency bands that PanAmSat has requested are not available under Section 25.202 of the Commission's Rules for the uses for which PanAmSat has applied: With respect to PAS-2R, PAS-5, and PAS-6, no service rules have been adopted for 12.25--12.75 GHz; with respect to PAS-8, no service rules are in place for the 10.70--10.95, 11.2--11.45, 12.75--13.25, 4.50--4.80 GHz or 6725--7025 MHz bands; and for PAS-9, no service rules are in place for all or portions of 3410--3690 MHz, 6435--7025 MHz, 4500--4800 MHz, 12.50--12.75 GHz, 13.75--14 GHz, 12.75--13.25 GHz, 10.70--10.95 GHz and 11.20--11.45 GHz.

^{31/} See, e.g., Hughes Communications Galaxy, Inc., RM No. 8638 (filed Mar. 21, 1995) (requesting that the Commission allocate the 13.75--14.0 GHz band for use by international FSS uplinks and make conforming changes to the service rules contained in Parts 25 and 90).

advantage of the delays that it has caused in the Commission's resolution of its competitors' applications by hoarding for itself and its majority foreign owner as many orbital locations and frequency bands as it can while it has the chance.

In fact, PanAmSat already has achieved a significant headstart in the provision of private international satellite services to the Latin American region. PanAmSat's PAS-1 satellite currently is the leading satellite for television programming distribution in Latin America.^{32/} Moreover, Televisa's majority equity investment in PanAmSat through Univisa and its control of the Latin America DTH joint venture that it and PanAmSat intend to form provides PanAmSat with an important entree to new Latin American markets.^{33/} Particularly in light of PanAmSat's efforts to keep others from competing in the provision of DTH services to Latin America, there can be no serious dispute that allowing PanAmSat to begin providing those services using massive amounts of spectrum that presently are subject to a freeze substantially before HCG and other U.S. companies also are allowed to provide private international satellite services would harm competition and contravene public policy.

In short, PanAmSat's own anticompetitive tactics require the Commission to ensure that PanAmSat does not profit from its actions by obtaining an unfair headstart in expanding its separate satellite system. Any other result would give PanAmSat undeserved special treatment to the detriment of U.S.-owned and controlled operators such as HCG.

^{32/} See PanAmSat Prospectus at 33, 38-39.

^{33/} Id. at 6.

II. THE STANDARDS THAT PANAMSAT HAS ADVOCATED REQUIRE THAT THE COMMISSION DENY OR HOLD IN ABEYANCE PANAMSAT'S APPLICATIONS.

In its efforts to protect its near-monopoly in the provision of private international satellite services, PanAmSat repeatedly has advanced a series of baseless arguments. Whatever the merits of PanAmSat's arguments -- and HCG has demonstrated that none of the arguments that PanAmSat has sought to use against it has any merit whatsoever -- PanAmSat cannot seriously claim that the principles that it so ardently advocates for others somehow do not also apply to itself. Application of those principles to PanAmSat requires the Commission to deny or hold in abeyance PanAmSat's applications.

PanAmSat's comments in the Commission's ongoing reciprocity rulemaking proceeding^{34/} illustrate the appropriateness of requiring PanAmSat to adhere to the principles it has advocated. In that proceeding, PanAmSat supports the Commission's proposal to adopt an effective market entry test for analyzing whether the Commission should authorize foreign carriers to provide U.S. international facilities-based services. But more important, PanAmSat specifically has urged the Commission to extend that proposed effective market entry standard to satellite operators.^{35/} As PanAmSat explained in its comments, "[o]therwise, the foreign satellite operator will enjoy an unfair and undeserved competitive advantage."^{36/}

^{34/} Market Entry and Regulation of Foreign-Affiliated Entities, IB Docket No. 95-22, RM-8355, RM-8392, FCC 95-51 (released Feb. 17, 1995).

^{35/} See Comments of PanAmSat Corporation in Market Entry and Regulation of Foreign-Affiliated Entities, IB Docket No. 95-22, RM-8355, RM-8392, at 4-6 (filed Apr. 11, 1995).

^{36/} Id. at 4.

Application of the effective market entry test that PanAmSat advocates in the reciprocity proceeding requires the Commission to deny PanAmSat's applications, or at least to hold them in abeyance. It clearly would be inappropriate for the Commission to allow a company with PanAmSat's foreign ownership to proceed with plans to expand its services under the aegis of U.S. regulations when that same company has spent most of the past year filing a succession of meritless pleadings seeking to stave off potential competition from U.S.-owned and operated companies. Although HCG has no objection in concept to allowing companies with significant foreign ownership to obtain satellite authorizations from the Commission, the Commission should not grant such authorizations to companies that seek to preclude U.S.-owned and operated companies from competing with them in their foreign owners' home markets.^{37/}

^{37/} Indeed, in resolving foreign ownership challenges to prior PanAmSat applications, the Commission clearly recognized that companies with substantial foreign ownership could pose special problems for U.S. companies. For example, in granting the application of PanAmSat's parent to establish PanAmSat as a licensee subsidiary, the Commission ordered as follows:

IT IS FURTHER ORDERED that neither the Licensee, nor any persons or companies directly or indirectly controlling or controlled by the Licensee, or under direct or indirect common control with it, shall acquire or enjoy any right, for the purpose of handling traffic to or from the United States, its territories or possessions, to construct or operate space segment or earth stations, or to interchange traffic, which is denied to any other United States company by reason of any concession, contract, understanding, or working arrangement to which the Licensee or any persons or companies controlling or controlled by the Licensee are parties.

Alpha Lyracom d/b/a Pan American Satellite, 8 FCC Rcd at 379; see also PanAmSat Carrier Services, Inc., 10 FCC Rcd at 930.

PanAmSat's arguments against HCG's Galaxy III(H) and VIII(I) applications similarly require the Commission to deny or hold in abeyance PanAmSat's applications. As noted above, PanAmSat has objected strenuously to the Commission's resolving HCG's applications prior to holding a rulemaking proceeding on the issue whether HCG may provide private international satellite services. HCG has demonstrated that its pending applications are fully consistent with sound Commission precedent,^{38/} and that no rulemaking proceeding is required to resolve them. The Commission has begun a proceeding, however, that proposes, among other things, to eliminate the separate licensing requirements for satellite operators that seek to provide both domestic and international services.^{39/}

Although HCG continues to believe that the Commission need not and should not deny or hold any applications in abeyance pending the outcome of the rulemaking, PanAmSat steadfastly has advocated a contrary position. Under PanAmSat's arguments against HCG, PanAmSat would not be allowed to provide the very services that it plans for PAS-2R, PAS-8, and PAS-9, since PanAmSat claims that a rulemaking is necessary before a satellite operator may provide both domestic U.S. and international service from the same satellite.^{40/} Since the Commission's rulemaking could have an important impact on the

^{38/} See e.g., RCA American Communications, 101 F.C.C.2d 1342, 1356 (1985).

^{39/} See Amendment to the Commission's Regulatory Policies Governing Domestic Fixed Satellites and Separate International Satellite Systems, IB Docket No. 95-41, FCC 95-146 (released Apr. 25, 1995).

^{40/} Curiously, PanAmSat makes no mention in its prospectus of any need to hold a rulemaking prior to grant of its request to offer both domestic and international services from the same satellite, noting only that it will be required to seek Commission approval to

(continued...)

structure of separate systems, such as PanAmSat's, and since PanAmSat seeks to use its PAS-2R, PAS-8, and PAS-9 satellites to serve the United States, PanAmSat simply cannot be heard to complain about having its applications held in abeyance for a short time, until the resolution of HCG's Galaxy III(H) and VIII(I) applications.

For the sake of consistency, as well as for reasons of fundamental fairness, it is imperative that PanAmSat be subject to the same rules that it seeks to impose on others. Any other result would allow PanAmSat improperly to benefit from its anticompetitive actions to the benefit of its majority foreign owner and at the expense of its potential U.S.-owned competitors.

⁴⁰(...continued)

provide satellite services within the U.S. See PanAmSat Prospectus at 60. PanAmSat can offer no reason, however, as to why it should be entitled to provide both domestic and international services from a single satellite without a rulemaking, when it has urged the Commission to defer action on HCG's Galaxy III(H) application pending the outcome of such a proceeding.

CONCLUSION

For the foregoing reasons, the Commission should deny or hold in abeyance PanAmSat's applications: (i) to amend its ground spare application to request authority to construct, launch, and operate its PAS-2R satellite; (ii) to modify its authority to construct, launch, and operate its PAS-6 satellite; (iii) for authority to construct, launch, and operate its PAS-8 and PAS-9 satellites; and (iv) and for authority to construct, launch, and operate its PAS-5 satellite.

Respectfully submitted,

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May 12, 1995

CERTIFICATE OF SERVICE

I hereby certify that I have this 12th day of May, 1995, caused copies of the foregoing "Petition To Deny or To Hold in Abeyance of Hughes Communications Galaxy, Inc." to be served by hand on the following:

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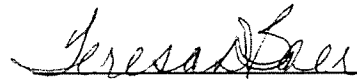
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