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

In the Matter of the Applications of	)	
	)	
PANAMSAT LICENSEE CORPORATION	)	File Nos.: 91-SAT-MP/LA-95;
	)	92-SAT-ML-95; CSS-94-015;
For Authority To Construct, Launch,	)	CSS-94-016; CSS-91-004
Operate Separate International	)	
Communications Satellites	)	

OPPOSITION TO PETITION TO DENY OR HOLD IN ABEYANCE

PANAMSAT LICENSEE CORP.

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May 25, 1995

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SUMMARY

Hughes concedes that its Petition has been filed solely for the purpose of delaying action on PanAmSat's applications for construction and launch authority and in retaliation for PanAmSat's filings on Hughes's applications and Section 319(d) waiver requests for Galaxy III(H) and Galaxy VIII(I). With the exception of the unique cellular "headstart" precedent, the Commission never has held back service to the public in order to benefit only a competitor and should not in this instance.

The few "public interest" concerns that Hughes scatters about in an attempt to cloak its delay purpose are either false or asserted without regard to whether they are true or false.

- PanAmSat is not foreign-controlled. Televisa's investment in PanAmSat does not constitute control — a fact that has not changed since the Commission first approved that investment — approval that Hughes urged upon the Commission (see attached).

- PanAmSat's shift to corporate form and minor changes in equity holdings do not constitute an unauthorized transfer of control but have been approved by the Commission.

- To the extent the "freeze" on applications for additional orbital locations in the Atlantic Ocean Region still applies, PanAmSat has made a sufficient showing to support lifting the freeze, with which the Commission has concurred.

- Hughes's reciprocity justification for denying or delaying PanAmSat's applications is too muddled to understand and betrays a nativism that ill-bespeaks a company that enjoys over 50 percent of the global market for satellite hardware and seeks now to enter the international satellite services market.

Hughes may be frustrated by the delay in final FCC action on its applications, but they cannot be granted until the Commission resolves the issues presented by those applications — issues that quite properly are the subject of a pending rulemaking. Unlike Hughes, PanAmSat did not raise frivolous issues. The Commission, quite obviously, agreed that a rulemaking proceeding was necessary before action on the Hughes applications could be taken.

PanAmSat, moreover, did not raise these issues for the purpose of delay, but because there are genuine concerns when very scarce U. S. domestic orbital locations are turned to international service and when the dominant satellite company in the world seeks to leverage that dominance into the international services market. PanAmSat will continue to air those concerns in the pending rulemaking.

PanAmSat's applications present no such issues or concerns or any other issues warranting consideration by the Commission. PanAmSat's "headstart" in the international satellite services market began in 1984, when it first sought authority to do precisely what is requested in its pending applications — provide a private, competitive alternative to the Intelsat system. PanAmSat's objective was and is consistent with U. S. policy. Until PanAmSat led the way, Hughes showed no inclination to provide international service and, in effect, compete with Intelsat — one of its larger customers. Now Hughes has chosen to enter the market opened by PanAmSat, but has done so by leveraging off its domestic orbital locations in a manner that presents novel issues that must be resolved in the pending rulemaking proceeding.

In its frustration, Hughes has lashed out at PanAmSat with a pleading as irresponsible as it is damaging to PanAmSat — damage that is not mitigated in any way by Hughes's whimsical service of copies of its Petition on dog "Spot," care of PanAmSat's ailing founder. The Commission should quickly dismiss the Hughes Petition as untimely and remove the cloud that Hughes has put over PanAmSat's applications and save Hughes the embarrassment of having to pursue a line of attack unworthy of the company.

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OPPOSITION TO PETITION TO DENY OR HOLD IN ABEYANCE

On May 12, 1994, Hughes Communications Galaxy, Inc. ("Hughes") filed a Petition to Deny or Hold in Abeyance ("Petition"). Hughes requested that the Commission deny the applications filed by PanAmSat Licensee Corp. ("PanAmSat") for additional satellites in the Atlantic, Pacific, and Indian Ocean Regions. These satellites are PAS-2R, PAS-5, PAS-6, PAS-8, and PAS-9. Alternatively, Hughes asked that the Commission hold PanAmSat's applications in abeyance until the Commission acts on two satellite applications filed by Hughes.

One of the satellites Hughes petitioned against (PAS-6) was applied for in 1990 and is scheduled to be shipped next month and launched in August. Another satellite (PAS-2R) is slated for launch by year end and is intended to replace a satellite that was lost in a launch failure last December. Collectively, these satellites will give PanAmSat global connectivity, thereby creating the first global satellite competitor to the Intelsat system.

PanAmSat, by its attorneys, hereby opposes the Hughes Petition. PanAmSat demonstrates below that the Petition is untimely. PanAmSat also shows that holding its applications in abeyance would be contrary to the public interest and that PanAmSat's applications conform fully to the Commission's requirements. Accordingly, the Commission should deny the Hughes Petition.

I. THE HUGHES PETITION IS UNTIMELY.

The Commission requires interested parties to comment on space station applications within 30 days of the date that the Commission gives "public notice" that the applications have been accepted for filing. 47 C.F.R. § 25.151(d). The Hughes Petition fails to satisfy this requirement.

Hughes concedes that the PAS-5 and PAS-8 applications came off of public notice "some time ago." Petition at 2 n.1. In fact, PAS-5 was on public notice well over four years ago. FCC Report No. I-6511 (Nov. 16, 1990). Similarly, PAS-8 appeared on public notice eleven months ago and the comment period for PAS-8 closed 30 days later. FCC Report No. I-6995 (June 29, 1994). By any standard, Hughes's objections to these applications are untimely.

Insofar as PAS-2R, PAS-6, and PAS-9 are concerned, it is true that Hughes filed its Petition within the public notice period for amendments to these applications. Hughes's objections, however, do not relate to the changes proposed in the amendments. Rather, Hughes's complaints concern licensee qualification issues that were ripe for consideration, and had come off of public notice, well in advance of the Hughes filing.

PAS-6 appeared on public notice in late 1990. FCC Report No. I-6522 (Dec. 12, 1990). PAS-9 appeared on public notice last summer. FCC Report No. I-6995 (June 29, 1994). Hughes did not file against either application. The PAS-6 amendment Hughes ostensibly has petitioned against makes a full financial showing, requests a half degree change in orbital location, and reflects certain changes in satellite design. The corresponding PAS-9 amendment also reflects changes in satellite design and makes changes in transponder bandwidth and frequency plans. In both cases, the focus of Hughes's Petition is on the underlying application and not the changes to be wrought by amendment. The Petition, therefore, is untimely.

Hughes's complaints concerning PAS-2/2R are similarly deficient. The Commission granted PanAmSat final authority to construct, launch and operate PAS-2 on October 21, 1994. Memorandum Opinion, Order and Authorization, DA 94-1178. Following the launch failure of PAS-2, PanAmSat filed an amendment to its pending ground spare application to conform the satellite's

technical specifications to those previously authorized for PAS-2 and to request authority to launch and operate.

Hughes filed its Petition on the last day of the public notice period for PanAmSat's amendment to its ground spare application. The Petition, however, addresses technical and legal qualification issues that came off public notice before the amendment ever was filed. In the case of technical qualifications, the time to object was last August, when the final modification for PAS-2 came off public notice. In the case of legal qualifications, the time to object was early 1994, when the ground spare application came off public notice. Hughes did not object in either case, and its Petition therefore seeks to raise matters that no longer are open for comment.

In sum, the Hughes Petition is untimely. Hughes petitioned against two satellite applications that came off public notice long ago. Hughes ostensibly petitioned against amendments to three other applications, but the Petition focused on the underlying applications, and not the amendments. On the basis of timeliness alone, therefore, the Petition should be denied.[1]

II. THE COMMISSION SHOULD NOT DEFER PROCESSING OF PANAMSAT'S APPLICATION.

A. The Cellular Headstart Policy Is Not Germane.

Common sense suggests, and the public interest and principles of administrative efficiency dictate, that applications should be processed based on their individual merits, rather than based on the timing of applications filed by competitors. Hughes's Petition would turn this principle on its head.

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[1] Hughes also asserts that the normal 30-day public notice period does not apply to applications, such as the PAS-8 and PAS-9 applications, for satellites located between 30° and 60° W.L. Petition at 2 n.1. There is no support for this proposition, and the express terms of the public notices accepting PAS-8 and PAS-9 for filing, which establish a 30-day comment period, refute the argument. In addition, Hughes contends that the Commission's review of market entry policies in IB Docket No. 95-22, and the facts set forth in PanAmSat's Securities and Exchange Commission ("SEC") filings, entitle it to file outside the prescribed time periods. *Id.* As discussed below (Section III), however, neither the market entry rulemaking nor information on file at the SEC has any bearing on the processing of PanAmSat's applications.

Hughes's primary contention is that the Commission should cease processing five space station applications filed by PanAmSat simply because PanAmSat has filed petitions against two Hughes applications. In the applications, Hughes requests authority to construct, launch and operate Galaxy VIII(I) and to modify the authorization for its Galaxy III(H) domestic satellite to permit Hughes to provide international service via switchable Ku-band transponders. Hughes asserts, principally by analogizing to the "headstart" doctrine employed in the cellular radio service, that continuing to process PanAmSat's applications while it considers PanAmSat's objections to Hughes's applications will give PanAmSat a headstart in the market for DTH services in Latin America.

PanAmSat's "headstart" in the international satellite services market, however, began in 1984, when it first sought authority to do precisely what is requested in its pending applications — provide a private, competitive alternative to the Intelsat system. PanAmSat's objective was and is consistent with U. S. policy. Until PanAmSat led the way, Hughes showed no inclination to provide international service and, in effect, compete with Intelsat — one of its larger customers.[2] Now Hughes has chosen to enter the market opened by PanAmSat and complains about PanAmSat's headstart.

Hughes's analogy to the cellular "headstart" experience is inapposite and overlooks the unique circumstances in which the Commission adopted a headstart policy for cellular. In the case of cellular, the Commission was faced with a new service for which it had created separate wireline and non-wireline frequency allocations and had limited competition to one wireline licensee, and one non-wireline licensee, per market. In most markets, there was only one wireline applicant, but numerous non-wireline applicants. The Commission was concerned that the wireline applicants, because they generally were not subject to competing applications, could be in a position to initiate service sooner than their non-wireline counterparts, thereby gaining a headstart in this new service. The

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[2] Hughes's affiliate company is the largest manufacturer of communications satellites in the world. In the rulemaking proceeding in which rules for separate systems were adopted, Hughes's affiliate submitted comments arguing that the creation of U.S. separate systems would lead Intelsat to decrease the amount of equipment it purchased from U.S. firms. International Communications, 101 F.C.C.2d 1046, 1152-53 (1985).

Commission, therefore, decided that non-wireline companies could petition to defer the initiation of cellular service by their wireline competitor The policy was limited to the issue of when service could be initiated, and never applied to the processing of wireline applications for authority to provide service.

In practice, the Commission repeatedly denied headstart petitions, finding that delaying the initiation of service would be contrary to the public interest. Indeed, the Commission abolished the cellular headstart policy in 1991. Amendment of Part 22, 6 FCC Rcd. 6185, 6226.

None of the circumstances that prompted the Commission to adopt a headstart policy for cellular are present in the satellite context. The fixed satellite service is not a new service and the Commission has not limited the number of fixed satellite operators that can compete in a market. To the contrary, PanAmSat already must compete with numerous domestic and regional systems. Most prominently, PanAmSat faces competition from the 24-satellite Intelsat system, which holds the lion's share of the market for fixed satellite services. All of this competition will continue regardless of when (or whether) Hughes's applications for Galaxy III(H) and Galaxy VIII(I) are granted.

The cellular headstart policy constituted a narrow exception to the general principle that delaying service is contrary to the public interest. To PanAmSat's knowledge, cellular is the only service for which the Commission has had a headstart policy since the Communications Act was enacted over 60 years ago. In the absence of the unique circumstances prompting the Commission to adopt a headstart policy for cellular, the general principle favoring prompt initiation of service must apply in this context. Holding PanAmSat's applications in abeyance pending consideration of objections to Galaxy III(H) and Galaxy VIII(I) will have the effect of depriving the public of new and additional services and of artificially restricting competition in order to benefit only one competitor. Among other things, a delay will deprive PanAmSat of the global connectivity it needs to compete with Intelsat worldwide. In short, granting Hughes's request for a deferral would be contrary to the public interest.[3]

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[3] The pendency of the Hughes Petition already is complicating PanAmSat's negotiations with potential customers, and ultimately could subject PanAmSat to substantial financial penalty if PanAmSat cannot satisfy its service commitments in a (footnote continued)

Moreover, endorsing the headstart philosophy espoused by Hughes would wreak havoc on the Commission's procedures. Applying these principles elsewhere, the Commission could, for example, have to instruct Hughes's sister company not to place its next DBS satellite in operation until issues concerning Tempo's proposed acquisition of a DBS permit from Advanced Communications are considered. Similarly, the Commission might have to delay the initiation of service by some "Big LEO" operators until it fully resolved qualification issues concerning the other Big LEOs. In other words, the Hughes position stands the public interest standard on its head.

B. PanAmSat Cannot Gain An Unfair Headstart.

Objective facts directly contradict Hughes's headstart claims. Hughes asserts that PanAmSat is gaining an unfair headstart *vis-a-vis* its other satellite operators because it "is seeking to appropriate for itself a large number of orbital locations and a vast amount of spectrum." Petition at 11. PanAmSat currently has or has applied for satellites in seven orbital locations. In contrast, Hughes has an existing satellite or a reservation in at least eleven orbital locations in the "domestic satellite arc" (*i.e.*, 64 to 105° W.L. and 121 to 143° W.L.[4]), an application pending at the Commission requesting six orbital assignments for 17 satellites for its Spaceway System, and, through AMSC (of which Hughes is the largest shareholder), a reservation for three additional locations. In addition, Hughes's affiliate holds authorizations for DBS satellites at multiple orbital locations. Given that Hughes and its affiliate have rights in over twenty prime orbital locations,[5] the assertion in the Petition that PanAmSat's seven orbital locations have given it an "unfair headstart" is untenable.

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timely fashion. Moreover, any significant delay in processing of PAS-6 and PAS-2R, both scheduled for launch this year, would disrupt the plans of PanAmSat's customers to bring important new services to the public and would cause PanAmSat to lose its place in line for launch services from Arianespace, which would have severe consequences.

4 See Memorandum Opinion and Order, FCC 88-373, para. 6 (December 7, 1988).

5 In addition to providing satellite services, Hughes (through an affiliate) is also the dominant manufacturer of satellites. In comments Hughes submitted In the Matter of Preparation for International Telecommunications Union World Radiocommunications Conferences, IC Docket No. 94-31 (July 15, 1994) at 1-2, Hughes stated that 100 Hughes-manufactured communications satellites have been launched to date, approximately 50 are now in service, and 25 are expected to be launched in the next two years. Hughes often retains a security interest in the satellites that it manufactures, including the (footnote continued)

Also without merit is the statement in the Petition that, by virtue of the operation of PAS-1, PanAmSat has a "near-monopoly" in the provision of private international satellite service to Latin America. Petition at 12. There are regional and domestic satellite systems serving Latin America. Additionally, U.S. domestic satellite operators, including Hughes, have long offered private satellite services to Latin America pursuant to their broad transborder authority.

Most importantly, there are eleven Intelsat spacecraft with coverage of Latin America and another ten domestic and regional satellites in operation in the region. Intelsat just launched a satellite from its new, higher powered VII-A series that can provide DTH services in South America. Given this development, if anyone has a headstart in the region it is Intelsat. Delaying PanAmSat's authorizations as suggested by Hughes simply would lengthen whatever headstart Intelsat already has and add to the numerous advantages worldwide that Intelsat already enjoys.

In any event, in light of the numerous satellite systems serving Latin America, assertions that PAS-1 gives PanAmSat a "near-monopoly" and "unfair advantage" are unfounded. Hughes's headstart complaints, moreover, ring particularly hollow when one considers the fact that, but for the launch failure of PAS-2, PanAmSat already would have an operational satellite capable of providing DTH services in South America with no objection having been raised by Hughes.

C. The Pendency of the Satellite Policy Proceeding Has No Bearing on the Processing of PanAmSat's Applications.

The Commission released a *Notice of Proposed Rulemaking* last month concerning possible revisions to the policies governing when domestic fixed satellites may provide international services and separate international fixed satellites may provide U.S. domestic services. Amendment to the Commission's Regulatory Policies Governing Domestic Fixed Satellites and Separate International Satellite Systems, FCC 95-146 (Apr. 25, 1995). Hughes claims that PanAmSat's applications for PAS-2R, PAS-8, and PAS-9 should be held in

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satellites Hughes built, and is building, for PanAmSat. As such, Hughes invariably has an interest in a great many more orbital locations than the twenty noted herein.

abeyance based on the connection it says PanAmSat has drawn between this rulemaking and the processing of Hughes's modification application for Galaxy III(H). Hughes, however, has mischaracterized the position taken by PanAmSat and has ignored a critical distinction between PanAmSat's applications and the Hughes modification application.

According to Hughes, "PanAmSat claims that a rulemaking is necessary before a satellite operator may provide both domestic U.S. and international service from the same satellite." Petition at 21. Hughes asserts that PanAmSat has sought to have Hughes's Galaxy III(H) application held in abeyance on this basis. Hughes claims that this same principle should apply to PAS-2R, PAS-8, and PAS-9, since PanAmSat intends to serve portions of the southwest United States with the South American direct to home services that will be carried on those satellites.

Hughes has mischaracterized PanAmSat's position. PanAmSat never has stated that a fixed satellite operator may not provide domestic and international service from the same satellite without a rulemaking. Rather, PanAmSat believes that the present requirements for domestic satellites providing international service and separate satellites providing U.S. domestic service must continue to be enforced unless and until those policies are changed in a rulemaking.

Hughes's modification application for Galaxy III(H) cannot be granted under present policies; PanAmSat's applications can. Accordingly, a rulemaking is needed to resolve the policy issues implicated by the Hughes application. No rulemaking is needed to grant PanAmSat's applications.

Hughes applied for authority to construct, launch and operate Galaxy III(H) in a processing round for domestic satellites. Hughes subsequently applied to modify its Galaxy III(H) authorization so it could use switchable Ku-band transponders for the provision of international service. The Commission's "transborder" policy limits the circumstances in which U.S. domestic satellites may be used to provide international services. Hughes made no attempt to satisfy the transborder criteria. PanAmSat has opposed the modification application, arguing (among other things) that the application cannot be granted without a change in policy and that the policy should not be changed absent a rulemaking. The Commission implicitly has concurred.

PanAmSat's plans to provide DTH service via PAS-2R, PAS-8, and PAS-9 are an entirely different matter. These DTH services will be international in scope, primarily transmitting Spanish-language and Portuguese-languaging programming to homes and other subscribers in South America. Any service to subscribers in the southwest United States will be international or ancillary and, therefore, fully consistent with present separate system policies. Separate Systems, 61 R.R.2d 649 at ¶¶ 41-43 (1986). Those policies do not preclude having points of communication within the United States; the vast majority of services on the PanAmSat system are transmitted from, or received in, the United States.

III. PANAMSAT IS QUALIFIED TO BE A SATELLITE LICENSEE.

Hughes questions various aspects of PanAmSat's qualifications to hold authorizations for PAS-2R, PAS-5, PAS-6, PAS-8, and PAS-9. As demonstrated below, Hughes arguments are baseless. Accordingly, to the extent that the Commission does not disregard these arguments because they are untimely, it should reject the arguments on their merits.

A. The Commission Approved PanAmSat's Transfer of Control.

Hughes claims that PanAmSat's parent company has undergone a transfer of control without prior Commission authorization. Petition at 2 n.2. Hughes refers to the conversion of PanAmSat's parent company from a limited partnership to a corporation and certain associated changes in ownership.

Hughes is incorrect. PanAmSat filed, and the Commission granted, transfer of control applications covering PanAmSat's separate satellite space station authorizations and domestic and international earth station authorizations. *See* FCC File Nos. 61-SAT-TC-95(5), 676-CSG-TC-95(9), and 22-DSE-TC-95(4). The applications expressly addressed the proposed conversion from a limited partnership to a corporation. PanAmSat demonstrated in the applications that the management of the new corporation was virtually identical to the management of its predecessor, PanAmSat, L.P., and that Rene Anselmo

therefore would retain control. The Commission granted the transfer of control applications on this basis.[6]

B. PanAmSat is Eligible For a Waiver of the AOR Freeze.

In June 1985, in order to facilitate the orderly licensing and development of a regulatory structure for the then-new international separate systems such as PanAmSat, the Commission adopted an order suspending its acceptance of applications "for new space stations, or for relocation of previously authorized space stations, requesting orbital positions which are east of 60° West Longitude and west of 30° West Longitude in the 4, 6, 11, 12 or 14 GHz bands."[7] The Commission emphasized that the "'freeze' will not bar favorable action on additional applications for new satellites in the future."[8]

Hughes concedes that the Commission "contemplated that it...would lift the freeze," Petition at 14. Nevertheless, Hughes asserts that the freeze should cause the Commission either to rescind its acceptance for filing nearly a year ago of the PAS-8 and PAS-9 applications, or (alternatively) to lift the freeze and entertain additional applications for the orbital locations requested by PanAmSat. Petition at 14-15. The Commission should reject both alternatives.

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[6] Hughes mistakenly equates equity percentages with control, and on that basis suggests that a subsidiary of Grupo Televisa, S.A. ("Televisa") may have succeeded to control. In fact, even under the prior ownership structure approved by the Commission, in which Televisa held 50% of the equity, the Commission determined that Televisa did not have control because Rene Anselmo outvoted Televisa in management decisions. Alpha Lyracom d/b/a Pan American Satellite, 8 FCC Rcd. 376 (1992). That remains the case under the new corporate structure, notwithstanding the fact that (as disclosed in the transfer of control applications) Televisa's equity interest slightly exceeds that of the "Anselmo group." PanAmSat initially requested approval of the transfer of control in anticipation of a common stock public offering. As was reported in the letters notifying the Commission that the transfer of control had been consummated, PanAmSat deferred its common stock public offering because of changes in market conditions. PanAmSat subsequently consummated a public offering of mandatorily exchangeable senior redeemable preferred stock on April 21, 1995 (the prospectus cited in Hughes's Petition related to this offering). PanAmSat will be filing an updated FCC Form 430 shortly to reflect the issuance of preferred stock.

[7] Processing of Pending Applications for Space Stations to Provide International Communications Service, FCC 85-296, released June 6, 1985 at 2.

[8] Id.

First, as shown in the PAS-8 and PAS-9 applications, the objectives underlying the freeze (*i.e.*, facilitating the orderly licensing and creation of a regulatory structure for separate systems) have been accomplished and, therefore, it safely may be lifted. The Commission has authorized several separate systems and, in the Report and Order, established a regulatory regime to govern their operation. Moreover, PanAmSat broke the necessary ground *vis-a-vis* Intelsat with its various Article XIV(d) consultations of PAS-1 and PAS-2, a path followed by Orion Satellite Corporation. While the consultation process long has outlived any usefulness, the continued existence of the freeze will neither ameliorate nor exacerbate the difficulties inherent in that process. Thus, the Commission can lift the freeze without concern for the continued development of separate systems and the PAS-8 and PAS-9 applications properly were accepted for filing.

Second, even if the Commission believes that the freeze continues to serve some valid purpose, PanAmSat demonstrated in its applications that there is good cause for waiving the freeze with respect to PAS-8 and PAS-9. As discussed therein, a waiver would facilitate the provision of new and innovative services, and would not undermine whatever public interest benefits might continue to flow from a freeze. A waiver would not restrict in any way the Commission's freedom to modify its regulatory regime for separate satellite systems. Similarly, whatever changes in the Article XIV(d) coordination process may occur during the next several years will emerge with or without the freeze being in place. For these reasons as well, the Commission's acceptance for filing of the PAS-8 and PAS-9 applications was the proper course.

Finally, there is no basis for soliciting additional applications for the PAS-8 and PAS-9 orbital locations nearly a year after the fact. The public notices accepting PAS-8 and PAS-9 served notice that PanAmSat planned to expand its system. Any interested party could have requested a waiver of the freeze at that time and sought the same orbital locations as PanAmSat. None did so. Accordingly, it would be inequitable to give Hughes and others a second bite at the apple and subject PanAmSat's requests for orbital locations to competing claims.

C. The Commission's Reciprocity Policies Are Irrelevant to the Processing of PanAmSat's Applications.

PanAmSat is a U. S.-controlled and U. S.-licensed satellite system. Therefore, all of Hughes's arguments regarding reciprocity policies are irrelevant and misleading.

The Commission has released a *Notice of Proposed Rulemaking* addressing the Commission's policies for permitting foreign carriers to provide facilities-based common carrier services in the United States. Market Entry and Regulation of Foreign-Affiliated Entities, FCC 95-53 (Feb. 17, 1995). PanAmSat filed comments in the proceeding. PanAmSat proposed that the Commission extend its reciprocity policies to applications to use non-U.S. satellites in the United States. The Commission could consider in the context of such applications whether U.S. satellites are permitted to operate in areas served by the foreign satellites. Hughes asserts that "adoption 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." Petition at 20.

Hughes is far off the mark. PanAmSat's proposal concerns non-U.S. satellite systems seeking to operate in the United States. PanAmSat believes that foreign regulatory authorities will be more receptive to U.S. satellite systems if they know that reciprocal access to the U.S. market hangs in the balance. PanAmSat has an acute interest in this issue having been the object of a boycott by Intelsat's members when PanAmSat launched its first satellite. Since the PanAmSat system is a U.S. satellite system, however, it makes no sense in the present context to discuss considerations of reciprocity. It is preposterous to think that denying U.S. access to the PanAmSat system could encourage foreign administrations to open their markets to U.S. satellite systems. In sum, Hughes's argument is based on a faulty premise.

IV. CONCLUSION

Hughes's Petition is deficient procedurally and substantively. The Petition is untimely in all respects. Taking the course of action advocated by Hughes would be contrary to the public interest because it would delay or

preclude the provision of new and innovative services. The qualifications arguments raised by Hughes, moreover, are inconsistent with the facts and applicable law. Accordingly, the Petition should be denied.

Respectfully submitted,

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December 28, 1992

BY HAND

Donna R. Searcy, Secretary
Federal Communications Commission
1919 M Street, N.W.
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Re: Applications of ALPHA LYRACOM d/b/a PAN AMERICAN SATELLITE, ALPHA LYRACOM SPACE COMMUNICATIONS, INC., and CYGNUS SATELLITE CORP. (Assignors) (hereinafter, collectively referred to as "PanAmSat") and PANAMSAT, L.P. (Assignee) for Consent to Pro Forma Assignment of Domestic and International Space Station and Earth Station Authorizations (FCC File Nos. CSS-93-002-AL, CSG-93-045-AL, 348-DSE-AL-93)

Dear Ms. Searcy:

Hughes Aircraft Company ("Hughes"), by its undersigned attorneys, hereby supports the above-referenced applications, and opposes the Petition to Deny filed by Orion Satellite Corp. ("Orion") on December 23, 1992, in response to the Commission's Public Notice concerning these applications released on December 18, 1992 (Report No. I-6748).

Hughes is a wholly-owned subsidiary of GM Hughes Electronics Corporation, which is in turn wholly-owned by General Motors Corporation.

As noted in the applications and in Orion's Petition to Deny, Hughes has entered into an agreement with PanAmSat to construct and launch three communications satellites. The Commission is aware of the contract between Hughes and PanAmSat,

and a term sheet detailing the relevant information concerning the contract was filed with PanAmSat's applications.

Hughes supports the prompt grant of these applications because the public interest will be served by such an action. PanAmSat's desire to establish a global international satellite system is clearly in the public interest. PanAmSat is the only separate international satellite system licensee in the U.S. that has assumed the financial risk of, and succeeded at, actually launching a satellite and placing it into operation, and PanAmSat now has a reliable track record of providing innovative services to the public. In addition, the grant of the PanAmSat applications will serve the national interest by facilitating the purchase of three new communications satellites from Hughes, a U.S. vendor.

We note that the previous Orion transfer to foreign interests raised concerns under Section 310(a) of the Communications Act that simply are not implicated by the transaction proposed by PanAmSat. The PanAmSat restructuring does not involve any investment by foreign governments or their representatives. Section 310(a), therefore, is inapposite. Moreover, the Commission has held that the alien ownership limitations of Section 310(b) do not apply to separate international satellite systems operated on a non-common carrier basis. See Orion Satellite Corporation, 5 FCC Rcd. 4937, 4940 & n.31 (1990); Separate Systems, 101 FCC 2d 1046, 1164 (1985).

While not Orion's principal argument, Orion also raises as grounds for denial of the PanAmSat applications the need for more information about the terms of the contract between PanAmSat and Hughes. Orion states that the Commission and the public should have an independent means of verifying that PanAmSat will be forced to terminate the satellite construction contract if it does not have assurances of the funds to continue construction (for which the grant of the subject applications is essential) by year end, as PanAmSat claims. See Orion Petition at 8.

The undersigned have been authorized by Hughes to confirm that PanAmSat will lose the right to terminate the construction contract with Hughes without penalty after December 31, 1992. Therefore, it is essential to PanAmSat that it have its financing in place by December 31, or it bears the risk of a

significant financial penalty if it later is unable or unwilling to fulfill the payment terms under the contract.[1/]

For the foregoing reasons, Hughes supports the grant of the above-captioned applications. Hughes urges the Commission to deny Orion's Petition to Deny and grant the applications within the time frame requested by the applicants.

Respectfully submitted,

Gary M. Epstein
Karen Brinkmann

Counsel for Hughes Aircraft Company

cc: Thomas J. Keller, Esq., Counsel for Orion
Henry Goldberg, Esq., Counsel for PanAmSat
Howard Polsky, Esq., Counsel for Comsat
George Li, Chief, International Facilities Division
Adam Kupetsky, International Facilities Division
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1. Orion also argues that "PanAmSat should be required to file copies of documents pertaining to the rights of Hughes, the satellite vendor, to obtain an equity interest in the partnership," citing the term sheet submitted by PanAmSat on December 4, 1992, in connection with the transfer of control applications. Hughes hereby confirms that it has no present equity interest either in any of the Assignors or in the proposed Assignee.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Opposition to Petition to Deny or Hold in Abeyance was sent by hand this 25th day of May, 1995, to each of the following:

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