

91-SAT-MP/LA-95

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

Received

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In the Matter of the Applications of )  
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PANAMSAT LICENSEE CORPORATION )  
 )  
For Authority To Construct, Launch, )  
and 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

**REPLY OF HUGHES COMMUNICATIONS GALAXY, INC.**

Hughes Communications Galaxy, Inc. ("HCG") hereby replies to the opposition of PanAmSat Licensee Corporation ("PanAmSat") to HCG's petition to deny or to hold in abeyance PanAmSat's pending applications to expand its separate international satellite system using the proposed PAS-2R, PAS-5, PAS-6, PAS-8, and PAS-9 satellites. In its petition, HCG demonstrated that the Commission should not permit PanAmSat and its partner, Grupo Televisa, S.A. ("Televisa"), to benefit from an unfair headstart in the provision of direct-to-home ("DTH") satellite television services abroad, particularly in light of PanAmSat's anticompetitive attempts over the past year to have the Commission deny or delay action on HCG's pending applications to use Galaxy III(H) and VIII(I) to provide DTH services in competition with PanAmSat and Televisa.

PanAmSat has not adequately responded to the significant issues that HCG has raised about PanAmSat's applications. Moreover, PanAmSat's new pleading completely mischaracterizes its past filings against HCG. In its opposition, for example, PanAmSat ignores the fact that it has not simply urged the Commission to defer action on HCG's

pending application to use Galaxy III(H) for temporary international satellite service and on HCG's application for the dedicated Galaxy VIII(I) international satellite. Rather, PanAmSat also has urged the Commission to deny those applications outright and to prevent HCG from expanding its business. PanAmSat conveniently neglects to note that it in fact has filed no less than ten pleadings against those two applications over the past year, irrespective of whether the pleading cycle on those applications already had closed.

PanAmSat has failed to show any grounds for the Commission to proceed with its applications at this time, for at least the following reasons:

First, contrary to PanAmSat's erroneous assertions (PanAmSat Opp. at 2-3), HCG's petition is timely. The fact that PanAmSat's PAS-5 and PAS-8 applications, and the applications underlying the PAS-2R, PAS-6, and PAS-9 amendments, are no longer on public notice does not restrict HCG's ability to challenge those applications when new and important information comes to light. In fact, PanAmSat itself regularly has used the argument that new information has come to light to support filing otherwise unauthorized additional pleadings against HCG's applications. In this case, PanAmSat's disclosures to the Securities and Exchange Commission in April 1995 regarding its plans to provide DTH services to the southwestern United States and the operation of a joint venture with Televisa under which Televisa will control the day-to-day provision of DTH services to Latin America, the Caribbean, and the United States raise new and important questions. Moreover, in view of the Commission's current rulemaking proceeding that is intended to ensure that U.S.-owned and controlled companies have fair and equivalent competitive

opportunities abroad,<sup>1/</sup> it is imperative that the Commission continue to review applications, such as PanAmSat's applications here, that potentially diminish those opportunities.<sup>2/</sup>

Second, PanAmSat has done nothing to address the significant issues that HCG has raised about PanAmSat's ownership and control. PanAmSat has not denied that Televisa has what appears to be a majority equity interest in the company, and PanAmSat curiously completely ignores the joint venture agreement with Televisa in its opposition. In view of PanAmSat's actions in seeking to bar competition from HCG in the provision of DTH services in Televisa's market, there can be no serious dispute that this joint venture arrangement raises substantial questions regarding the availability of equivalent competitive opportunities for U.S.-owned and controlled companies to enter new markets abroad, and that Commission review therefore is warranted.

Third, PanAmSat has not shown why it and Televisa should be entitled to an unfair headstart over U.S.-owned and controlled satellite operators in the provision of DTH satellite services to Televisa's market. The unfair headstart policy was designed to ensure that regulatory authorizations not permit one competitor to corner the market in a new service before another competitor has an opportunity to compete.<sup>3/</sup> PanAmSat concedes that the DTH service that both it and HCG seek to provide is a "new and innovative" service, but

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<sup>1/</sup> 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).

<sup>2/</sup> In any event, if the Commission determines that HCG's petition to deny is untimely in any respect, the Commission should consider the petition as a petition to hold in abeyance or as informal comments to that extent.

<sup>3/</sup> 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, 89 F.C.C.2d 58, 74-75 & n.32 (1982).

it nevertheless urges the Commission to disregard the unfair headstart policy. (PanAmSat Opp. at 5.) Contrary to what PanAmSat would have the Commission believe (PanAmSat Opp. at 3-7), however, the policies behind the unfair headstart doctrine remain highly relevant in circumstances such as this, where it would be fundamentally unfair to allow a company with possibly majority foreign ownership to proceed with its expansion plans when that same company has fought to keep potential U.S.-owned and controlled competitors out of its foreign partner's market.<sup>4/</sup> Indeed, at a time when Intelsat and regional systems are clamoring to begin providing DTH service to Latin America, it would be inappropriate for the Commission to allow PanAmSat to benefit from its actions against HCG by allowing PanAmSat to proceed as the first and only U.S.-licensed private provider of DTH services to the region.<sup>5/</sup>

Fourth, PanAmSat is attempting to obtain assignments to orbital locations and frequency bands that are not available under current Commission policy. Specifically, in

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<sup>4/</sup> As noted in HCG's petition, HCG has no objection in concept to companies with significant foreign ownership holding U.S. satellite licenses, but the Commission should not grant those licenses under the circumstances present in this case.

<sup>5/</sup> PanAmSat's argument that the headstart policy is irrelevant because it already has a ten-year headstart over HCG in the provision of private international satellite services in Latin America misses the point. (PanAmSat Opp. at 4.) Latin American DTH -- the business HCG has stated it intends to pursue -- is an entirely new business, and, as PanAmSat's attacks on HCG demonstrate, it is a new business that PanAmSat wants for itself. PanAmSat suggests that HCG's domestic satellite operations, together with HCG's affiliate's satellite manufacturing operations, would allow HCG to become a dominant provider of Latin American DTH services. (PanAmSat Opp. at 6-7.) PanAmSat has attempted unsuccessfully to make this argument in prior oppositions to HCG's pending Galaxy III(H) and VIII(I) applications. HCG has demonstrated in its responses there that its domestic operations and its affiliate's manufacturing operations are irrelevant to its future ability to compete in the provision of new DTH services in Latin America, a region that PanAmSat has served, but that HCG has been unable to serve to date.

1985 the Commission imposed a freeze on the acceptance of new applications for orbital locations between 30° and 60° W.L. in the 4, 6, 11, 12, and 14 GHz bands, until further order of the Commission.<sup>6/</sup> PanAmSat does not deny that it is attempting to seize more than 3.5 GHz of spectrum that is presently subject to the freeze, and PanAmSat conveniently ignores the Commission's dictate that, at the appropriate time, it would establish procedures for the acceptance of additional applications for the frozen locations and bands.<sup>7/</sup> The Commission has not yet established those procedures, and until it does so, it would be fundamentally unfair to PanAmSat's present and potential competitors to accord PanAmSat and its partner special treatment by granting PanAmSat a waiver to operate at those locations and bands simply on the ground that PanAmSat believes that the freeze is no longer necessary. (PanAmSat Opp. at 11.)<sup>8/</sup>

Fifth, the Commission cannot license PanAmSat at this time, because many of the frequency bands that PanAmSat plans to use are now unavailable under the Commission's

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<sup>6/</sup> See Processing of Pending Applications for Space Stations To Provide International Communications Service, FCC 85-296, at ¶¶ 4, 5 (released June 6, 1985).

<sup>7/</sup> See Establishment of Separate Systems Providing International Communications, 101 F.C.C.2d 1046, 1163 (1985) ("Separate Systems"), reconsideration, 61 Rad. Reg. 2d (P&F) 649 (1986), further reconsideration, 1 FCC Rcd 439 (1986).

<sup>8/</sup> There is no basis for PanAmSat's argument that the Commission intended to lift the freeze on FSS applications in the 30° to 60° W.L. range on an ad hoc basis for PanAmSat alone through the administrative act of putting those applications on public notice. (PanAmSat Opp. at 11.) Rather, the Commission specifically contemplated that it would lift the freeze for everyone at the same time by adopting processing rules that allowed all interested parties a fair opportunity to file applications to be considered simultaneously. Until that occurs, no applicant should be allowed to have its application proceed through an administrative processing oversight, and PanAmSat's applications for PAS-8 and PAS-9 are prohibited from being accepted for filing and processed.

rules for the services that PanAmSat seeks to provide.<sup>9/</sup> PanAmSat apparently has not even considered the lack of those service rules, having neither petitioned the Commission to hold a rulemaking proceeding to establish the necessary rules, nor so much as responded in its opposition to HCG's argument pointing out the problem. But since the Commission clearly cannot authorize PanAmSat to utilize those frequencies in the absence of service rules, the Commission must undertake a rulemaking proceeding to establish the parameters for use of the bands that PanAmSat seeks before granting PanAmSat's applications.<sup>10/</sup>

Finally, PanAmSat errs in urging that HCG's application to provide switchable international service from Galaxy III(H) must await the resolution of the Commission's current rulemaking proceeding proposing to eliminate the distinctions between domestic and separate satellite systems,<sup>11/</sup> while PanAmSat's applications to provide U.S. DTH services from its proposed PAS-2R, PAS-8, and PAS-9 satellites can proceed. Just as PanAmSat erroneously has argued in its numerous prior challenges to HCG's pending Galaxy III(H)

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<sup>9/</sup> As HCG noted in its petition to deny (see HCG Pet. at 17 n.30), the following frequency bands that PanAmSat has requested are not available for licensing 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, 11.20--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.

<sup>10/</sup> HCG has begun this process with respect to one of the bands that PanAmSat seeks to use for the proposed PAS-9 satellite. HCG has petitioned the Commission to allocate the 13.75--14.0 GHz band for the FSS service. See Hughes Communications Galaxy, Inc., RM No. 8638 (filed Mar. 21, 1995).

<sup>11/</sup> 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).

application, PanAmSat again claims that HCG should have to wait because the Commission does not currently allow a domestic satellite operator to provide temporary switchable international service from 95° W.L. (PanAmSat Opp. at 7-9.)<sup>12/</sup>

HCG has shown in its past responses to PanAmSat's claim that PanAmSat is wrong. In RCA American Communications,<sup>13/</sup> one of the very first "separate systems" cases, the Commission authorized RCA to use a portion of the capacity on a domestic satellite to provide international service from 67° W.L., a location that, like 95° W.L., PanAmSat incorrectly claims is reserved for the "'domestic satellite arc' (i.e., 64 to 105° W.L. and 121 to 143° W.L.)." (PanAmSat Opp. at 6.)<sup>14/</sup> As HCG has noted in its filings

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<sup>12/</sup> PanAmSat is simply wrong in urging that it "never has stated that a fixed satellite operator may not provide domestic and international service from the same satellite without a rulemaking." (PanAmSat Opp. at 8.) In fact, PanAmSat has made precisely that argument against HCG's Galaxy III(H) application on a number of occasions. See, e.g., Opposition of PanAmSat Corporation at 2 (filed Apr. 18, 1995) ("Importantly, the Commission's policies do not currently allow Hughes to provide both domestic and international satellite services from the Galaxy III(H) satellite."); Opposition of PanAmSat, L.P. at 2 (filed June 17, 1994) ("While Hughes points to [Commission decisions] in support of its proposition that authority to operate a combined domestic and international satellite is consistent with Commission precedent, the Commission, in fact, has never analyzed this issue comprehensively. Given the far-reaching implications of permitting domestic satellite operators to offer international satellite services, the Commission should not act on the Hughes Modification Request but should proceed by way of rulemaking.") (footnote omitted).

<sup>13/</sup> 101 F.C.C.2d 1342 (1985).

<sup>14/</sup> Although those locations may be suitable for the provision of domestic U.S. service because of the earth station angles that they provide, PanAmSat has not cited a single case that remotely suggests that international satellites cannot also be located in that range. To the contrary, as noted above, the Commission authorized RCA to use a satellite in that arc for international service, and foreign governments already use or have sought to register a number of the locations in the arc for their satellites, some of which provide U.S. coverage. For example, the ITU Space Network List reveals that Argentina already has claimed 85°, 80°, 76°, 72°, and 59° W.L.; Mexico has claimed the 138° W.L. location; Cuba has claimed 97° and 83° W.L.; Colombia has claimed 75.4° and 75° W.L.; and Brazil has

(continued...)

responding to PanAmSat's countless attacks, the case presented here is even easier than the RCA case. HCG is seeking temporary use of Galaxy III(H) to provide international service. The permanent service will come when the Galaxy VIII(I) international satellite is authorized. Thus, existing Commission policy clearly supports the immediate grant of HCG's more than one-year-old Galaxy III(H) application.<sup>15/</sup> Plainly, if PanAmSat believes that HCG nevertheless should have to await the outcome of the Commission's rulemaking proceeding, then PanAmSat also must wait before it can provide U.S. service.

In sum, HCG has raised a number of significant issues that require denial or at least deferral of PanAmSat's applications. But even if the Commission resolves these issues, the Commission should not allow PanAmSat to abuse the Commission's processes to gain an unwarranted advantage over HCG in the market for Latin American DTH services. In no

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<sup>14/</sup>(...continued)

claimed 70°, 65°, and 61° W.L. Moreover, the Commission's order imposing the Atlantic Ocean Region freeze clearly contemplates that both domestic and international satellites could be authorized in the 30° to 60° W.L. range.

Furthermore, PanAmSat's professed concern about protecting U.S. domestic orbital locations is belied by the fact that PanAmSat has never sought authority to provide domestic U.S. service. (PanAmSat Opp. at ii.) If PanAmSat's concern were truly genuine, PanAmSat would have filed for a domestic satellite authorization in the current domestic FSS satellite processing round, as Orion did.

<sup>15/</sup> PanAmSat errs in suggesting that domestic satellites already have an ability to compete with PanAmSat through their "transborder" authority. (PanAmSat Opp. at 8.) As PanAmSat well knows, transborder authority is limited to areas within the existing U.S. service beam of a domestic satellite. In cases where a domestic satellite also proposes to serve a separate geographic area (e.g., South America or Europe), the separate systems policy allows the licensee to be awarded a separate license for international service. See Separate Systems, 101 F.C.C.2d at 1174-75; RCA American Communications, 101 F.C.C.2d 1342 (1985).

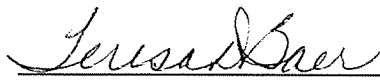


event should the Commission act on PanAmSat's proposals to provide Latin American DTH service before it acts on HCG's applications.

For these reasons, as well as the reasons set forth in HCG's petition to deny or to hold in abeyance, the Commission should deny or hold in abeyance PanAmSat's applications: (i) to modify its 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) for authority to construct, launch, and operate its PAS-5 satellite.

Respectfully submitted,

HUGHES COMMUNICATIONS  
GALAXY, INC.

By:   
Gary M. Epstein  
John P. Janka  
Teresa D. Baer  
LATHAM & WATKINS  
1001 Pennsylvania Avenue, N.W.  
Washington, D.C. 20004  
(202) 637-2200

June 2, 1995

**CERTIFICATE OF SERVICE**

I hereby certify that I have this 2nd day of June, 1995, caused copies of the foregoing "Reply of Hughes Communications Galaxy, Inc." to be served by hand on the following:

Chairman Reed E. Hundt  
Federal Communications Commission  
1919 M Street, N.W.  
Room 814  
Washington, D.C. 20554

Commissioner James H. Quello  
Federal Communications Commission  
1919 M Street, N.W.  
Room 802  
Washington, D.C. 20554

Commissioner Andrew C. Barrett  
Federal Communications Commission  
1919 M Street, N.W.  
Room 826  
Washington, D.C. 20554

Commissioner Susan Ness  
Federal Communications Commission  
1919 M Street, N.W.  
Room 832  
Washington, D.C. 20554

Commissioner Rachelle B. Chong  
Federal Communications Commission  
1919 M Street, N.W.  
Room 844  
Washington, D.C. 20554

Scott Blake Harris  
Chief  
International Bureau  
Federal Communications Commission  
2000 M Street, N.W.  
Room 830  
Washington, D.C. 20554

James L. Ball  
Associate Chief (Policy)  
International Bureau  
Federal Communications Commission  
2000 M Street, N.W.  
Room 800  
Washington, D.C. 20554

Thomas S. Tycz  
Chief  
Satellite and Radiocommunication Division  
2000 M Street, N.W.  
Room 811  
Washington, D.C. 20054

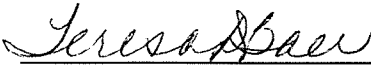
Cecily C. Holiday  
Deputy Division Chief  
Satellite and Radiocommunication Division  
International Bureau  
Federal Communications Commission  
2000 M Street, N.W.  
Room 520  
Washington, D.C. 20554

Fern J. Jarmulnek  
Chief  
Satellite Policy Branch  
Satellite and Radiocommunication Division  
International Bureau  
Federal Communications Commission  
2000 M Street N.W.  
Room 518  
Washington, D.C. 20554

Kathleen Campbell  
International Bureau  
Federal Communications Commission  
2000 M Street, N.W.  
Room 800  
Washington, D.C. 20554

and to be served by first class mail, postage prepaid, on the following:

Henry Goldberg  
Joseph A. Godles  
Daniel S. Goldberg  
Goldberg, Godles, Wiener, & Wright  
1229 Nineteenth Street, N.W.  
Washington, D.C. 20036



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Teresa D. Baer