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January 7, 2003

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

By Courier

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

**Re: Opposition to Proposed Order of Hughes Network Systems, Inc.
Relevant Proceedings Listed on Attached Page**

Dear Ms. Dortch:

Pegasus Development Corporation (“Pegasus”) hereby responds to the Proposed Order submitted by Hughes Network Systems, Inc. (“Hughes”) on December 20, 2002 regarding the referenced proceedings. Hughes should not receive any further authority until it has explained how the same satellites it has represented will be deployed for service to the United States can also be deployed to satisfy commitments it has made in connection with its application for Canadian Ka-band authority at 107.3°W. Hughes is playing a shell game that frustrates the Commission’s goals of facilitating new services and new competitors.

Hughes has an abundance of prime orbital resources.¹ Not counting those of its affiliate PanAmSat, Hughes holds authorizations to operate Ka-band satellites from twelve orbital locations,² including 99°W and 101°W, two of the best locations for

¹ See, e.g., Petition for Reconsideration, File Nos. 3-DSS-P/LA-94 *et al.* (March 2, 2001); Comments, File Nos. SAT-MOD-20011221-00135 *et al.* (February 2, 2002).

² On December 20, 2002, Hughes submitted a letter tendering for cancellation its first-round authorizations for Ka-band spacecraft at 54°E and 164°E. Hughes’ PanAmSat subsidiary holds authorizations for another 13 orbital locations.

providing full coverage of the United States and Canada. Nonetheless, shortly after the Commission awarded the 107°W orbital location to Pegasus, Hughes sought a license for the 107.3°W orbital location from Industry Canada. Hughes had never sought the 107°W location in the Commission's second round³ and had never sought the 107.3°W license in earlier license proceedings in Canada. Hughes' interest in the 107.3°W orbital location is oddly coincident with the Commission's grant of the 107°W license to Pegasus, over Hughes' objection. Grant of the Canadian 107.3°W license to Hughes would potentially convey ITU date priority to Hughes, in derogation of Pegasus' United States-issued license.

Hughes' Industry Canada effort undermines the Commission's licensing process. Hughes has further compromised the Commission's licensing process by promising Canada that, if licensed, it will re-purpose one of its SPACEWAY satellites, reportedly under construction, to the Canadian 107.3°W orbital location. Those are the same satellites Hughes has continually assured the Commission – in support of the instant modification request and in support of its milestone compliance– that it intends to deploy into some of its many United States-licensed orbital locations.⁴

Hughes has already begun returning licenses and has publicly indicated that it is substantially scaling back its Ka-band satellite ambitions.⁵ It has never claimed that it has enough Ka-band satellites on order to populate even half of the orbital locations for which it is licensed, yet it still controls 12 Ka-band orbital locations and is seeking yet another through Canada. Its second milestone occurs later this month. That will be the appropriate time to determine how many licenses Hughes reasonably requires to fulfill

³ See, e.g., Letter to Donald Abelson from Joslyn Read (June 26, 2001).

⁴ Though Canada holds ITU date priority at the 107.3°W Ka-band orbital location, that priority lapses in 2004. It is highly unlikely that any party can bring that orbital location into use pursuant to the Canadian filing unless it re-purposes a satellite already under construction. Hughes' commitment to re-deploy one of its United States-licensed SPACEWAY satellites was intended to address that issue.

⁵ See *Communications Daily*, Vol. 22 No. 241, at 9-10 (December 16, 2002). Hughes also recently received authorization to provide Ka-band services to Canada from its Commission-authorized satellites at 99°W and 101°W, raising more questions concerning its interest in a Canadian space station authorization for operation at 107.3°W.

Marlene H. Dortch
January 7, 2003
Page 3

plans that should be mature: Hughes applied for Ka-band authority nearly eight years ago, and it has been licensed for nearly six years. The Commission should make that decision based on Hughes' real requirements, which can only be expressed in terms of its genuine plans.

Given that the market is very different than it was a few years ago, Hughes and other licensees should be given reasonable flexibility. Nonetheless, Hughes should *not* be permitted to play a shell game, effectively using a limited procurement as both a sword, through Canada, and a shield, through protracted control of Commission licenses for orbital locations it has no concrete plans to pursue nearly six years after being authorized. When a company endowed with as many orbital resources as Hughes makes contradictory statements to two different regulatory bodies, and when the effect of those statements is to undermine both the interests of the United States and the plans of other licensees, the Commission can and should seek a simple clarification. In Hughes' case, that clarification is overdue. If the Commission waits to determine which of Hughes' prime orbital locations it has abandoned, it will be too late to reassign any orbital locations to Pegasus or another second-round licensee.

Hughes argues that Pegasus lacks standing to challenge the referenced proceedings and that the issues raised are moot as a result of the resolution of the second Ka-band processing round. Like other second-round licensees, Pegasus did not receive its first-choice of orbital locations, as many of the best orbital locations were previously licensed to first-round applicants that, like Hughes, have since abandoned or scaled back their Ka-band plans. Pegasus seeks the chance to request reassignment to one or more orbital locations that are or may become available from returned or reclaimed first-round licenses. As it seems clear that many of the licensed Ka-band orbital locations will not be brought into use prior to the ITU bringing into use deadlines, we support Commission efforts to match existing licensees with the orbital locations that best meet their business requirements and the public interest. Hughes controls orbital locations that are extremely compatible with Pegasus' business plans.⁶ Should any first-round orbital locations become available, Pegasus would need to modify its plans very quickly in order to meet the ITU deadline.

⁶ Specifically, either the 99°W or the 101°W Ka-band orbital location would allow Pegasus to provide the most seamless small dish service to its current customers, which are served primarily from 101°W.

Marlene H. Dortch

January 7, 2003

Page 4

In summary, the Commission should require Hughes to identify which orbital locations it intends to pursue, and specifically to state whether it plans to deploy one of the SPACEWAY satellites committed to fulfill its United States licenses, to Canada instead. In any case, absent a clear disclosure from Hughes, any action on this matter before the second, first-round milestone deadline passes is premature.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Bruce D. Jacobs', with a long horizontal flourish extending to the right.

Bruce D. Jacobs

Tony Lin

cc: Jennifer Gilseman
Selina Khan
John Janka, Counsel for Hughes

PENDING PROCEEDINGS

In the Matter of)	
)	
Hughes Network Systems, Inc.)	
)	
Application for Minor Modification of	)	File No. SAT-MOD-20011221-00135
Authority to Construct, Launch and Operate	)	S2133
a Ka-band Satellite System in the Fixed-	)	File No. SAT-MOD-20011221-00136
Satellite Service	)	S2132
	)	File No. SAT-MOD-20020815-00154
	)	S2341
	)	File No. SAT-MOD-20020815-00155
	)	S2339
	)	File No. SAT-MOD-20020815-00156
	)	S2338
	)	File No. SAT-MOD-20020815-00157
	)	S2340
	)	File No. SAT-MOD-20021018-00191
	)	S2188
	)	File No. SAT-MOD-20021018-00192
	)	S2187
	)	File No. SAT-MOD-20021023-00193
	)	S2190
	)	File No. SAT-MOD-20021023-00194
	)	S2185
)	
Application for Authority to Construct,	)	File No. 3-DSS-P/LA-94
Launch and Operate a Ka-band Satellite	)	IBFS No. SAT-LOA-19931203-00040
System in the Fixed-Satellite Service	)	File No. 4-DSS-P/LA-94
	)	IBFS No. SAT-LOA-19931203-00041
	)	File No. 174-SAT-P/LA-95
	)	IBFS No. SAT-LOA-19950929-00125
	)	File No. 175-SAT-P/LA-95
	)	IBFS No. SAT-LOA- 19950929-00126
	)	File No. 176-SAT-P/LA-95
	)	IBFS No. SAT-LOA-19950929-00127
	)	File No. 177-SAT-P/LA-95
	)	IBFS No. SAT-LOA-19950929-00128
	)	File No. 178-SAT-P/LA-95
	)	IBFS No. SAT-LOA-I 9950929-00129
	)	File No. 179-SAT-P/LA-95
	)	IBFS No. SAT-LOA-19950929-00137