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HUGHES NETWORK SYSTEMS, INC.

) International Bureau

) SAT-MOD-20030123-00045

) SAT-MOD-20030123-00046

Application for Authority to Construct,
Launch and Operate a Ka-band Satellite
System in the Fixed Satellite Service

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Int'l Bureau

JUL 21 2004

Front Office

**SUPPLEMENT OF THE DIRECTV GROUP, INC.
AND DIRECTV ENTERPRISES, LLC**

The DIRECTV Group, Inc. and DIRECTV Enterprises, LLC (collectively, "DIRECTV") hereby supplement the information provided in an April 25, 2003 request by their predecessor-in-interest, Hughes Network Systems, Inc. ("Hughes")¹ for the Commission to (1) determine that Hughes has met its January 31, 2003 interim milestone under its Ka-band satellite authorizations, or (2) extend that interim milestone for a period of two years, or (3) waive it.² As described below, as a result of certain developments that have occurred since last April, the scope of the request is now significantly more limited than before. Precisely because it is more limited, however, the justifications for granting it are even more compelling. In fact, DIRECTV is currently building satellites that are scheduled to meet all remaining launch milestones at all

¹ On May 27, 2004, the Commission authorized the *pro forma* assignment of two Ka-band satellite call signs to The DIRECTV Group, Inc. and one to DIRECTV Enterprises, LLC. See File Nos. SAT-ASG-20040520-00101 and -00102. Those assignments were consummated as of June 4, 2004.

² See Hughes Network Systems, Inc., Amended and Restated Request for Determination of Compliance With, or Extension or Waiver of, License Milestones, File Nos. 3-DSS-P/LA-94 (S2132), 4-DSS-P/LA-94 (S2133), 174-SAT-P/LA-95 (S2185), 176-SAT-P/LA-95 (S2187), 177-SAT-P/LA-95 (S2188), 179-SAT-P/LA-95 (S2190) (filed April 25, 2003) ("Milestones Request").

three of its remaining licensed Ka-band orbital locations. Accordingly, DIRECTV asks that the Commission grant the Hughes Milestones Request as soon as possible.³

I. BACKGROUND

The Milestones Request sets forth the history of Hughes' Ka-band authorizations through April 2003.⁴ At that time, the Commission had already found that Hughes' predecessor in interest had met the initial milestone for the 103° W.L. orbital location, leaving only the June 25, 2005 launch and operate milestone to be satisfied.⁵ Accordingly, the authorization for 103° W.L. was not the subject of the Milestones Request.

With respect to the authorizations Hughes received in the first Ka-band satellite processing round,⁶ the licenses authorized Hughes to operate two Ka-band satellites at certain locations, including 99° W.L. and 101° W.L., each using 500 MHz of uplink and downlink spectrum (which Hughes referred to as the "A Band" and "B Band").⁷ At other locations a single satellite was contemplated. The Commission had established milestones for these authorizations that required Hughes to (1) commence construction of its initial satellite by January 31, 2002; (2) commence construction of the remaining satellites by January 31, 2003; and (3) launch and operate satellites at the following orbital locations by the date indicated:

³ Specifically, for the reasons discussed below, only the requests related to the 99° W.L. and 101° W.L. orbital locations remain pending, as the issues related to other slots have become moot.

⁴ See Milestones Request at 2-8.

⁵ *Id.* at 5-6 (citing *International Bureau Satellite Division Information: First Round Ka-Band Licensee Compliance with Construction Implementation Milestone*, 17 FCC Rcd. 11271 (2002), and *PanAmSat Corp.*, 16 FCC Rcd. 2490 (Int'l Bur. 2001)).

⁶ Since Hughes had already returned its second-round Ka-band satellite authorizations for cancellation, those authorizations were no longer at issue. *Id.* at 4. n.10.

⁷ See *First Round Authorization Order*, 13 FCC Rcd. at 1351. The A band comprised the 19.7-20.2 GHz downlink and 29.5-30.0 GHz uplink frequencies, while the B Band ultimately comprised the 18.3-18.8 GHz downlink and the 28.35-28.6 GHz and 29.25-29.5 GHz uplink frequencies.

<u>Orbital Location</u>	<u>Launch and Operate Milestone</u>
101° W.L.	June 25, 2005
99° W.L.	June 25, 2005
49° W.L.	July 2, 2005
25° E.L.	October 10, 2004
101° E.L.	July 16, 2005
111° E.L.	October 10, 2004 ⁸

By April 2003, Hughes had commenced construction of three Ka-band spacecraft, designated for the 99° W.L., 101° W.L., and 103° W.L. orbital locations, under a contract with Boeing Satellite Systems (“Boeing”).⁹ Moreover, the Commission had found that Hughes had met its initial construction milestone with respect to its first-round Ka-band satellite authorizations.¹⁰ It had not, however, yet made a determination with respect to the interim milestone requirement for commencing construction of the remaining satellites in Hughes’ constellation. Hughes therefore requested that the Commission either determine that Hughes had already met its interim milestone (by commencing construction on the second and third of the remaining satellites), or, in the alternative, extend or waive any unmet milestone.

Circumstances have changed in three significant ways since Hughes filed the Milestones Request in April 2003. *First*, the authorizations have been assigned from Hughes to DIRECTV, which itself has undergone a transfer of control from General Motors Corporation to The News Corporation Limited (“News Corp.”). These transactions have resulted in both a revitalization of the company in general and a re-evaluation of Ka-band assets in particular. *Second*, DIRECTV

⁸ *Hughes Communications Galaxy, Inc.*, 16 FCC Red. 2470, 2477 (Int’l Bur. 2001) (“*First Modification Order*”).

⁹ The three satellites under construction were designed to operate using only the A Band frequencies assigned to the Hughes system. At that time, the B Band was to be used by a second co-located satellite at each of those orbital locations for which Hughes was authorized to operate two Ka-band satellites, including 99° W.L. and 101° W.L.

¹⁰ Milestones Request at 5, 14.

has now voluntarily surrendered Ka-band satellite licenses for all orbital locations other than 99° W.L., 101° W.L., and 103° W.L.¹¹ *Third*, DIRECTV has entered into contracts for the construction of three satellites – two by Boeing (Spaceway 1 and Spaceway 2)¹² and one by Space Systems/Loral (DIRECTV 8) – that, among other things, will operate in both the A and B bands of Ka-band spectrum licensed to DIRECTV at each of these three orbital locations and are scheduled to be launched next year.¹³ Specifically, DIRECTV has contracted for: (1) Spaceway 1 to ship in November 2004 for launch in January 2005; (2) Spaceway 2 to ship in February 2005 for launch in March 2005; and (3) DIRECTV 8 to ship in March 2005 for launch in April 2005. Thus, while many other Ka-band satellite licensees have faltered or failed,¹⁴ DIRECTV has proceeded to complete construction of its licensed Ka-band system and fully intends to meet its launch milestones.

As a result of these actions, the Milestones Request has become far narrower than it was last year. It then applied to six separate orbital locations – four of which lacked a satellite under construction. It now applies *only* to use of the B Band at 99° W.L. and 101° W.L. – for which one satellite is nearly complete, the construction of the second satellite is well underway, and launch preparations made. Investing the tens of millions of dollars required to add these B Band

¹¹ See Letter from Michael L. Cook to Marlene H. Dortch (dated Apr. 15, 2004) (tendering for cancellation licenses associated with call signs S2187, S2188, and S2185); Letter from Michael L. Cook to Marlene H. Dortch (dated May 19, 2004) (tendering for cancellation the license associated with call sign S2199).

¹² The Boeing contract also includes a third satellite being built as a ground spare.

¹³ DIRECTV will file these contracts under separate cover, with a request for confidential treatment in light of the highly confidential and proprietary nature of these documents. DIRECTV recently filed modification applications to conform its licenses to the parameters of its satellites under construction. See FCC File Nos. SAT-MOD-20040614-00113 and SAT-MOD-20040630-00128.

¹⁴ See, e.g., *CAI Data Systems, Inc.*, 18 FCC Rcd. 22332 (Int'l Bur. 2003)(canceling Ka-band license for failure to meet construction milestone); Public Notice, Rep. No. SPB-189, 18 FCC Rcd. 16402 (Int'l Bur. 2003)(listing Ka-band satellite orbital locations available due to cancellation or surrender by previous licensees).

payloads will provide DIRECTV additional capacity to support the provision of local-into-local services so that it can extend those services to more markets throughout the United States.

II. THE COMMISSION SHOULD GRANT HUGHES' MILESTONES REQUEST

Last year, Hughes set forth a compelling case that the Commission should either deem the interim milestones in its Ka-band licenses satisfied, or, in the alternative, extend or waive them. That case is even more compelling today, in light of intervening events that have greatly narrowed the scope of the request.

A. The Commission Should Deem the Interim Milestones Satisfied

Last year, Hughes explained why the Commission should deem the interim milestones satisfied as of commencement of construction of the second Ka-band satellite.¹⁵ Unlike milestones applicable to numerous similarly situated systems,¹⁶ Hughes' interim milestones do not state that construction must commence for "each" or "every" remaining satellite – or even "each" or "every" remaining satellite at any given orbital location – on a date certain.¹⁷ As Hughes then explained, "[g]iven that the Commission did not provide Hughes with specific commencement dates for *each* satellite or specify that construction must begin for '*all satellites*'

¹⁵ Milestones Request at 8 (citing *First Modification Order*, 16 FCC Rcd. at 2477).

¹⁶ See, e.g., *Morning Star Satellite Company*, 12 FCC Rcd. 6039 (1997) (requiring Morning Star to commence construction of the first satellite at remaining orbit locations by May 1999); *Orion Network Systems*, 12 FCC Rcd. 23027 (1997) (requiring Orion to commence construction of each of the three satellites in its system by a specific date for each satellite); *GE American Communications*, 12 FCC Rcd. 6475 (1997) (requiring GE to commence construction of the first satellite at remaining orbit locations by May 1999 and co-located satellites by May 1999); *Iridium, LLC*, 16 FCC Rcd. 13778, 13785 (2001) (requiring that licensee "[b]egin Physical Construction of All Satellites" within "30 months after authorization"); *Celsat America, Inc.*, 16 FCC Rcd. 13712, 13721 (2001) (requiring that licensee "[b]egin Physical Construction of All Satellites" within "36 months after authorization"); *Globalstar, L.P.*, 16 FCC Rcd. 13739, 13759 (2001) (requiring that licensee "[b]egin Physical Construction of All Satellites in GSO Component" within "36 months after authorization" and "[b]egin Physical Construction of all Satellites in NGSO Component" within "42 months after authorization").

¹⁷ Nor do the first round Ka-band authorizations require Hughes to enter into non-contingent contracts for remaining satellites. See *First Modification Order*, 16 FCC Rcd. at 2479.

as of a certain date, as it has specified for other licensees, it is apparent that the interim milestones for [the Ka-band system] require only that Hughes begin construction of some part, but not all, of the remaining satellites by the relevant dates.”¹⁸ This analysis is as compelling now as it was last year.

B. If It Does Not Deem the Interim Milestones Satisfied, the Commission Should Extend or Waive Them

The Commission may extend milestones, or waive them, if the public interest so requires.¹⁹ The Milestones Request set forth numerous reasons why the public interest would be disserved by strict application of Hughes’ interim milestones, and why the milestones should be extended or waived. Among other things, Hughes showed that the purpose of construction milestones – to ensure that spectrum and satellite resources are utilized promptly and are not “warehoused” by licensees²⁰ – is not an issue with respect to this particular Ka-band system, because Hughes had demonstrated its intention to complete and launch it.

There is no need to reiterate that argument here. But, as set forth above, intervening events have rendered the scope of Hughes’ request much narrower than it was last year, as it now applies *only* to use of the B Band at 99° W.L. and 101° W.L. This narrowing of scope makes the public interest case for extension or waiver even more compelling, because it eliminates any lingering questions that might have existed with respect to warehousing.

¹⁸ Milestones Request at 10.

¹⁹ See 47 C.F.R. § 25.117(e)(2) (stating that Commission may extend milestones where “there are unique and overriding public interest concerns that justify an extension”); 47 C.F.R. § 1.3; *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1166 (D.C. Cir. 1990) (providing that a waiver is appropriate where special circumstances warrant a deviation from the general rule and such deviation would better serve the public interest than would strict adherence to the rule). As Hughes set forth last year, a construction milestone may also be extended because of unforeseeable circumstances beyond a licensee’s control. See Milestones Request at 16-22.

²⁰ See, e.g., *Columbia Communications Corporation*, 15 FCC Rcd. 15566, 15571 (2000).

Last year, Hughes argued, among other things, that its progress on the Ka-band system to that point obviated concerns about warehousing for the rest of the system. In other words, it argued that construction of some Ka-band satellites justified extension or waiver of milestone requirements for Ka-band satellites on which construction had not yet commenced.²¹

Construction has certainly continued in the last 15 months. Indeed, DIRECTV has now largely completed more than \$1.3 billion in payments for spacecraft, and DIRECTV's total investment in its Ka-band system now totals more than \$1.5 billion, and will likely exceed \$1.8 billion.²²

But DIRECTV no longer needs to show that its efforts at one orbital location should justify Commission lenience at other orbital locations. DIRECTV's case for extension or waiver is now simpler and even more compelling: (1) it has nearly completed construction of one spacecraft and construction is well underway for a second spacecraft for the two orbital locations in question, and (2) by contracting to include the B Band payloads on these satellites, it has provided the strongest possible evidence that it will use these frequencies before its launch milestone deadlines. In such a situation, there is no question that DIRECTV will put the B Band frequencies at the 99° W.L. and 101° W.L. orbital locations to productive use in a timely manner. So there can be no conceivable policy justification for strict enforcement of the interim construction milestone for the B Band frequencies, which is all that remains at issue.

Commission precedent reflects this common-sense notion. The Commission, for example, has waived a construction milestone where, as here, the Ka-band spacecraft was

²¹ Milestone Request at 23-29.

²² See Letter from Michael L. Cook to Thomas S. Tycz (dated Feb. 20, 2004) (describing the cost-to-date of activities related to the Ka-band system).

substantially complete at the time of decision.²³ On another occasion, the Commission on its own motion waived a construction milestone where the applicant had “demonstrated, from early after licensing, its intent to proceed with [its Ka-band satellite] system” in part by keeping the Commission notified of its progress.²⁴ In this latter case, the Commission observed that, “[i]n every instance where the Commission has denied a milestone extension request, construction of the satellite either had not begun or was not continuing, thus raising questions regarding the licensee’s intention to proceed.”²⁵ Here, construction is nearly complete, launches have been procured, and no reasonable observer could question DIRECTV’s intention to proceed with respect to the licenses in question. The public interest would thus best be served by extension or waiver of the interim construction milestones.

²³ *Astrolink International LLC*, 17 FCC Rcd. 11267, 11268 (Int’l Bur. 2002) (granting extension of milestone where the satellite in question was 90 percent complete, preliminary testing of the payload had already been successfully completed, and preliminary tests performed on the constructed antenna indicated that the it met or exceeded expectations).


²⁴ *GE American Communications, Inc.*, 16 FCC Rcd. 11038, 11041-42 (Int’l Bur. 2001) (emphasis added) (noting also that the applicant had executed a non-contingent contract for construction of Ka-band satellites).

²⁵ *Id.* at 11041.

III. CONCLUSION

There can no longer be any doubt that DIRECTV intends to make timely and productive use of the only two orbital locations subject to the Milestones Request – 99° W.L. and 101° W.L. – for which DIRECTV retains Ka-band satellite authorizations. For the reasons elaborated herein, as well as those set forth in Hughes' Milestones Request, DIRECTV urges the Commission to grant that Request as soon as possible.

Respectfully submitted,



William M. Wiltshire

Michael D. Nilsson

HARRIS, WILTSHIRE & GRANNIS, LLP

1200 Eighteenth Street, NW

Washington, DC 20036

(202) 730-1300

*Counsel for The DIRECTV Group, Inc.
and DIRECTV Enterprises, LLC*

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