

BEFORE THE
Federal Communications Commission
 WASHINGTON, D.C. 20554

In the Matter of)
)
Hughes Communications, Inc.)
)
 Authorization To Launch and Operate a)
 Geostationary Orbit Space Station in the)
 Fixed-Satellite Service Using Ka-Band at the)
 95° W.L. Orbital Location)

File Nos. SAT-LOA-20050214-00038
 SAT-MOD-20050523-00106
 SAT-AMD-20060306-00025
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To: Chief, International Bureau

Policy Branch

Federal Communication Commission
 Bureau / Office

**DEMONSTRATION OF COMPLIANCE WITH
 SATELLITE IMPLEMENTATION MILESTONES**

Hughes Communications, Inc. ("Hughes"), by counsel and pursuant to Section 25.164 of the Commission's Rules, hereby demonstrates to the Commission that it has met the first three milestones set forth in the authorization issued on April 19, 2005 granting authority to launch and operate a Ka-band geostationary Fixed-Satellite Service ("FSS") payload at the 95° West Longitude orbital location. *See* SkyTerra Communications, Inc., SAT-LOA-20050214-00038, Grant Stamp, April 19, 2005 ("95W License Grant").¹ In particular, Hughes demonstrates herein that: (i) it is party to a binding and non-contingent contract (a copy of which is Attachment 1 hereto) for the timely construction of the FSS satellite authorized in the 95W License Grant; (ii) it has completed Critical Design Review for the spacecraft; and (iii) it has commenced physical construction of the authorized facility. As a result of these showings, Hughes respectfully requests that the International Bureau determine that Hughes has satisfied the first

¹ *See also* Public Notice, DA 05-1130 (rel. April 22, 2005). Pursuant to an August 2005 application for *pro forma* assignment of license, the license of SkyTerra Communications, Inc. was assigned to SkyTerra Holdings, Inc. *See* File No. SAT-ASG-20050826-00168. In December 2005, SkyTerra Holdings, Inc. informed the Commission that its name had changed to Hughes Communications, Inc. *See* Letter dated December 20, 2005, from counsel for Hughes and SkyTerra to the Secretary of the Commission, File No. SAT-ASG-20050826-00168. In this submission, references to "Hughes" shall include Hughes Communications, Inc. and, as applicable, its predecessors in interest with respect to the 95W License Grant, SkyTerra Communications, Inc. and SkyTerra Holdings, Inc.

three milestone requirements set forth in the 95W License Grant. The determination that Hughes has satisfied the first three of the four satellite implementation milestones will allow Hughes to reduce to \$750,000 the \$3 million bond that it posted on May 23, 2005 pursuant to the 95W License Grant.²

I. Executive Summary

The Commission granted Hughes' application for a Ka-band FSS space station license at the 95° W.L. orbital location on April 19, 2005. The 95W License Grant requires Hughes to meet four satellite implementation milestones, as follows:

- Execute a Binding Contract for Construction by April 19, 2006
- Complete the Critical Design Review by April 19, 2007
- Commence Physical Construction by April 19, 2008
- Launch and Begin Operations by April 19, 2010

See 95W License Grant at ¶ 2. Hughes was also required to post a \$3 million bond with the Commission within thirty days of the effective date of the grant pursuant to procedures established by the Commission. *Id.* Hughes filed the required bond with the Commission on May 23, 2005. See Letter from Robert A. Mazer, Counsel to SkyTerra Communications, Inc., to Marlene H. Dortch, Secretary, FCC, dated May 23, 2005 (transmitting performance bond).

Hughes is the 100% owner and parent of Hughes Network Systems, LLC ("HNS").³

² Hughes is filing this request with the attachments omitted from the copy intended for public disclosure (including its construction contract and other confidential and proprietary information). This request, with all attachments, is being filed contemporaneously under a request for confidential treatment.

³ On April 22, 2005, DIRECTV (through its wholly-owned subsidiary, Hughes Network Systems, Inc.), transferred to SkyTerra Communications, Inc. an initial 50% of the membership interests of HNS. See *Hughes Network Systems, Limited and Hughes Networks Systems, Inc., Assignors, and HNS License Sub, Limited and HNS License Sub, LLC, Assignees, Applications for Consent for Assignment of Earth Station Licenses and Associated Special Temporary Authorizations*, Order and Authorization, 20 FCC Rcd 8080 (2005), and Order, 20 FCC Rcd 9106 (2005). In September 2005, SkyTerra Communications, Inc. transferred its 50% of HNS to SkyTerra Holdings, Inc., a wholly-owned subsidiary of SkyTerra Communications, Inc. On January 1, 2006, DIRECTV (through its subsidiary DTV Network Systems, Inc. (formerly known as Hughes Network Systems, Inc.)) sold its remaining 50% of HNS to Hughes Communications, Inc. (formerly known as SkyTerra Holdings, Inc.), resulting in Hughes Communications, Inc. owning 100% of HNS. See Letter to Ms. Marlene H. Dortch, Secretary, Federal Communications Commission, from Mr. Tom W. Davidson, Esq., IBFS File Nos. SES-T/C-20050829-01180 and SES-T/C-20050829-01181 (Jan. 19, 2006).

Under the Commission's Rules, a geostationary satellite licensee may reduce the amount of its bond by \$750,000, twenty-five percent of the total amount, upon successfully meeting each of the milestones set forth in its authorization. *See* 47 C.F.R. § 25.165(d). The Commission's procedures provide that licensees will be permitted to file a new bond at a lower amount only after the International Bureau announces that the licensee has met the milestone(s). *See* FCC Public Notice, Report No. SPB-187, DA 03-2602, 18 FCC Rcd 16283 (2003).

On December 17, 1999, Hughes Network Systems, Inc. (a predecessor-in-interest to Hughes' wholly-owned subsidiary HNS) and Hughes Space and Communications, International, Inc. ("Boeing")⁴ entered into the Agreement for Delivery of Space Segment and System Engineering Services for the Spaceway North America System ("Spaceway Contract"). The Spaceway Contract provided for Boeing to construct the first two SPACEWAY satellites and to procure the long lead parts for SPACEWAY 3. The Spaceway Contract also contained an option to complete the construction of SPACEWAY 3. Boeing was directed in a November 29, 2004 amendment (Amendment No. 11) to the Spaceway Contract to complete and deliver SPACEWAY 3 per a defined schedule. On April 21, 2005, The DIRECTV Group, Inc. ("DIRECTV") assigned to its wholly-owned subsidiary, HNS, the rights to the satellite work in progress and the obligations for all future payments for the SPACEWAY 3 satellite. *See* Attachment 2, Bill of Sale and Assignment and Assumption Agreement between DIRECTV and HNS, dated April 21, 2005.

On March 6, 2006, Hughes applied for authority to conform the technical parameters of the spacecraft specified in the 95W License Grant (as then proposed to be modified by Hughes in

⁴ At the time that the contract was executed, both parties were subsidiaries of Hughes Electronics Corporation ("HEC"). Subsequently, Hughes Space and Communications International, Inc. was sold to The Boeing Corporation and was renamed Boeing Satellite Systems International, Inc. Thereafter, in December 2003, a controlling interest in HEC was sold to The News Corporation, and in March 2004 HEC was renamed The DIRECTV Group, Inc.

a still-pending May 2005 modification of license application) with the specifications of the SPACEWAY 3 work-in-progress that it had determined to associate with its license for the 95° W.L. orbital location. Progress toward completing this satellite is already well advanced.⁵ In fact, as of the date of this filing, Hughes has already reached three of the four milestones contained in the 95W License Grant, and is on target to reach the fourth milestone within approximately 12 months from now. As shown in Table 1, below, each of these milestones was met by Hughes in all respects on April 22, 2005, the date on which the ownership of the SPACEWAY 3 work-in-progress became attributable to Hughes through its initial acquisition of a 50% interest in HNS.⁶

⁵ See Hughes March 2006 Amendment, File No. SAT-AMD-20060306-00025, at Exhibit C (Notification of Commencement of Space Station Construction).

⁶ Although the milestones established in the 95W License Grant were satisfied in April 2005, coincidentally just days after the license application was granted, it was not until later that Hughes decided to associate the SPACEWAY 3 work-in-progress with its license for 95° W.L. See Hughes March 2006 Amendment, File No. SAT-AMD-20060306-00025, at Exhibit C (Notification of Commencement of Space Station Construction).

Table 1:

FCC Rule	Milestone	Milestone Deadline per 95W License Grant	Date on Which the Milestone was Satisfied by Licensee	Evidence of Completion⁷
25.164(b)(1)	Entry into a Binding, Non-Contingent Contract	April 19, 2006	April 22, 2005⁷ [Key dates: December 17, 1999 (contract executed); November 29, 2004 (completion of SPACEWAY 3 directed)]	Spaceway Contract signed on December 17, 1999 (binding contract to procure long lead parts for SPACEWAY 3). Spaceway Contract, Amendment 11 @ § 1 (option under December 1999 Spaceway Contract exercised; completion and delivery of SPACEWAY 3 directed)
25.164(b)(2)	Critical Design Review	April 19, 2007	April 22, 2005⁷ [Key Dates: March 9, 2001 (actual completion of CDR for SPACEWAY 3)]	Boeing Letter at ¶ 2 (Attachment 3 hereto); Hughes Declaration at ¶ 8 (Attachment 4 hereto)
25.164(b)(3)	Commencement of Physical Construction	April 19, 2008	April 22, 2005⁷ [Key Dates: December 17, 1999 (contract executed; ordering of long lead parts for SPACEWAY 3); November 29, 2004 (completion of SPACEWAY 3 directed)]	Boeing Letter at ¶ 3; Hughes Declaration at ¶ 9 Spaceway Contract signed on December 17, 1999 (binding contract to procure long lead parts for SPACEWAY 3). Spaceway Contract, Amendment 11 @ § 1 (option under Dec. 1999 Spaceway Contract exercised; completion and delivery of SPACEWAY 3 directed)

Each element summarized above is discussed below in detail, and each document referenced is fully identified.

Accordingly, Hughes is filing this notification pursuant to Sections 25.164(c), (d) and (e) of the Commission's Rules to report its completion of these three milestone requirements. In addition, because satisfaction of these requirements permits it to reduce the amount of the bond posted with the Commission,⁸ it is requesting that the Commission review this submission and

⁷ As discussed above, the SPACEWAY 3 work-in-progress was assigned to Hughes on April 21, 2005, evidence of which is provided in Attachment 2. The transfer of the initial 50% interest in HNS to Hughes' predecessor-in-interest on April 22, 2005 is a matter of record before the Commission.

⁸ See 47 C.F.R. § 25.165(d).

issue a Public Notice affirming that Hughes has met its first three implementation milestones, thereby allowing Hughes to reduce the amount of its performance bond to \$750,000, commensurate with the progress made to date in bringing the 95° W.L. facility into service. Appropriate showings regarding each of the three milestones are provided below.

II. Milestone Compliance

Milestone 1 – Entry into a Binding, Non-Contingent Construction Contract

The initial contracting milestone requires that the licensee enter into a binding, non-contingent contract for construction of the authorized facility. *See Amendment of the Commission's Space Station Licensing Rules and Policies*, 18 FCC Rcd 10760, 10831 (¶ 184) (2003) (“*SSLR Order*”). Hughes Network Systems, Inc., entered into the Spaceway Contract for construction of the SPACEWAY 3 space station on December 17, 1999. At that time, the parties to the Spaceway Contract agreed to the procurement of long-lead items for SPACEWAY 3, contemporaneously and in conjunction with the construction of the SPACEWAY 1 and 2 spacecraft that are now in orbit and are operated by DIRECTV. The binding, non-contingent contractual amendment to complete the construction and to deliver the SPACEWAY 3 spacecraft was signed on November 29, 2004.

A copy of the Spaceway Contract is attached hereto as Attachment 1,⁹ as required by Section 25.164(c) of the Commission's Rules, 47 C.F.R. § 25.164(c). As described above, the rights to the “work in progress” for SPACEWAY 3 under the Spaceway Contract were assigned to HNS on April 21, 2005. A copy of the April 21, 2005 Assignment is attached hereto as Attachment 2. Both are submitted under request for confidential treatment in a concurrently filed submission. Finally, as detailed above, on April 22, 2005, DIRECTV (through its wholly-

⁹ The Spaceway Contract also remains in effect with respect to other Spaceway satellites that will be implemented by DIRECTV. Amendment No. 12 to the Spaceway Contract pertains only to these other satellites, and therefore is not provided here.

owned subsidiary, Hughes Network Systems, Inc.), transferred to Hughes' predecessor-in-interest 50% of the ownership interests of HNS, bringing the work-in-progress under the control of the holder of the 95W License Grant, Hughes (at that time, SkyTerra Communications, Inc.).

The Spaceway Contract, as amended, satisfies the Commission's contract milestone obligation. The agreement is binding and non-contingent as between the parties; it identifies the specific satellite and design characteristics¹⁰; it specifies the dates for the start and completion of construction¹¹; and it includes payment terms (spread throughout the construction phase of the contract with significant initial payments and the majority of payments before the end of construction) that unequivocally demonstrate Hughes' investment and commitment to completion of the system.¹² These are the elements that the Commission looks to when assessing compliance with the first milestone.¹³

Milestone 2 – Completion of Critical Design Review

The Commission has not prescribed a particular method or standard for determining satisfaction of the second implementation milestone, the completion of Critical Design Review ("CDR"). It has, however, identified this stage as the point in "the spacecraft implementation process at which the design and development phase ends and the manufacturing stage starts." See *SSLR Order*, 18 FCC Rcd at 10833 (¶ 191). The Commission has suggested that evidence of compliance with this milestone may include: (i) proof of a large payment of money, often

¹⁰ See generally Spaceway Contract, Attachment A, Statement of Work at § 3.1, Attachment B, Space Segment Requirements Specification, and Amendment 11, dated November 29, 2004.

¹¹ See, e.g., Spaceway Contract, Attachment A, Statement of Work, at §3.1.1.2 (authorizing immediate procurement of long lead parts) and Amendment 11 at ¶ 2, dated November 29, 2004 (specifying a schedule for Consent to Ship to occur no later than a date certain).

¹² See Spaceway Contract, Attachment D, Amendment 11 at ¶ 4, dated November 29, 2004; Amendment 13, dated October 26, 2005; and Boeing Letter at ¶ 4, dated April 10, 2006.

¹³ See, e.g., *Mobile Communications Holdings, Inc.*, 18 FCC Rcd 11650, 11654 (2003), quoting *Tempo Satellite, Inc.*, 7 FCC Rcd 6597, 6600 (¶ 13) (1992).

coincident with the completion of CDR; (ii) affidavits from independent manufacturers; and (iii) evidence that the long lead items needed to begin physical construction of spacecraft have been ordered. *Id.*

As confirmed by Boeing, Hughes' contractor, the CDR for the 95° W.L. satellite was successfully completed on March 9, 2001. *See* Letter from Louis F. Benfanti, Manager, Contracts, Boeing Satellite International, Inc., to Craig Plastrik, Legal Counsel, HNS ("Boeing Letter"). The Boeing Letter is included as Attachment 3 to this Demonstration of Compliance with Satellite Implementation Milestones. The fact that the Ka-band FSS satellite licensed to Hughes is now in the late stages of construction (see discussion of Milestone 3, immediately below), and that it is scheduled to be shipped from Boeing's manufacturing facility in the fourth quarter of 2006, under the rationale of the *SSLR Order*, demonstrates unequivocally that Hughes has satisfied the CDR milestone.

Milestone 3 – Commencement of Physical Construction

As with the CDR milestone, the Commission has established no specific guidelines for determining satisfaction of the third implementation milestone, commencement of physical construction. Instead, it has stated that licensees are required "to provide sufficient information to demonstrate to a reasonable person that they have commenced physical construction of their licensed spacecraft." *SSLR Order*, 18 FCC Rcd at 10834 (¶ 193).

As stated above, actual construction of the SPACEWAY 3 satellite, now designated for the 95° W.L. orbital location and authorized to Hughes, began in December 1999, with the procurement of long-lead items for SPACEWAY 3 under the Spaceway Contract. *See also* Boeing Letter at ¶ 1; Hughes Declaration (Attachment 4 hereto) at ¶ 9. In November 2004, Boeing was directed to complete construction of the SPACEWAY 3 satellite and to deliver it per a set schedule.

Pursuant to the terms of the Spaceway Contract, Hughes (or its predecessors in interest) has made payments totaling 86% of the total amount due for SPACEWAY 3 under the Spaceway Contract. *See* Boeing Letter at ¶ 4.

III. Request for Determination of Milestone Compliance

Hughes has submitted the foregoing information in compliance with Sections 25.164(c), (d) & (e) of the Commission's Rules governing milestone compliance. This information demonstrates that three of the four implementation milestones set forth in the 95W License Grant have already been met. Hughes emphasizes that under Commission precedent, the fact that the milestone showing relates to a satellite with technical parameters that are proposed in the pending modification of license application, as amended, rather than to the technical parameters of the spacecraft identified in its authorization is immaterial for purposes of determining Hughes' satisfaction of the implementation milestones. The Commission has determined that so long as the contract the licensee submits to show milestone compliance is binding, non-contingent, and demonstrative of the licensee's intent to use the spectrum authorized in a manner consistent with the stated policy objectives of the milestone requirement (i.e., to employ the resource in a timely manner and to ensure that spectrum is not held by licensees unable or unwilling to proceed with their plans), the milestone will be satisfied even though a modification of license application is pending.¹⁴

A contract that requires the selected manufacturer to build a system that the Commission has not yet authorized is no impediment, and certainly does not render the license null and void. In addressing such a matter, the Commission indicated that such a contrary interpretation would:

overlook[] the fact that the Commission often receives requests from licensees to modify the technical design of their satellites while they are being constructed. In recognition of the several years required to construct a

¹⁴ *See Teledesic LLC*, 17 FCC Rcd 11263, 11265 (Int'l Bur. 2002).

satellite, ... the rapidly changing technology, and our goal of encouraging more efficient use of the radio spectrum, the Commission generally allows licensees to modify their satellite systems provided the modifications are consistent with Commission policies and do not present any particular interference problems. [Each] modification application will be decided on its own merit and does not factor into our determination as to whether [the licensee] has met its initial construction milestone.¹⁵

Under these circumstances, the fact that Hughes has a modification of license application pending, and has a binding, non-contingent contract to construct a satellite that reflects the technical parameters proposed in the modification application, in no way undercuts its satisfaction of the first (and the two subsequent) milestones. The Commission expects licensees to act exactly as Hughes has acted here.¹⁶

The 95W License Grant required Hughes to post a \$3 million performance bond thirty days following grant. See 95W License Grant at ¶ 2. Pursuant to the Commission's rules, geostationary satellite licensees "will be permitted to reduce the amount of the bond by \$750,000 upon successfully meeting" each milestone deadline. 47 C.F.R. § 25.165(d). Inasmuch as Hughes has demonstrated herein that it has completed the first three of the four implementation milestones to which it is subject, it respectfully requests that the Commission affirm this fact by issuing a Public Notice, thereby allowing Hughes to reduce the amount of its bond to \$750,000, the amount that its license and the Commission's rules permit a geostationary satellite licensee to post following completion of its first three implementation milestones.

* * * * *

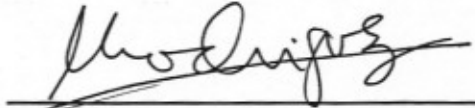
¹⁵ *Id.*

¹⁶ Hughes believes that the determination in the *Teledesic* proceeding is correct and remains vital Commission policy, even after the adoption of the implementation bond requirements in 2003. Should this not be the case, and should the Commission be inclined to determine that a binding, non-contingent contract to implement a proposed, but not yet authorized satellite is insufficient to satisfy the contract milestone, Hughes respectfully and contingently requests the Commission to stay the operation of the forfeiture process until action on Hughes' May 2005 modification of license application, as amended in March 2006, is completed. Such treatment would avoid an arbitrary and unnecessarily punitive result, and would not undermine the policy objectives of the milestone requirement. Hughes' application has been accepted for filing, drew no opposing comments or petitions to deny, and is ripe for imminent grant. Inasmuch as the satellite will be completely constructed in less than six months, the requested stay would not trigger any out-year chain reaction.

Should there be any questions regarding the foregoing information, please contact the undersigned counsel.

Respectfully submitted,

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April 19, 2006

ATTACHMENT 1

**SUBMITTED SEPARATELY
PURSUANT TO REQUEST FOR
CONFIDENTIAL TREATMENT**

ATTACHMENT 2

**SUBMITTED SEPARATELY
PURSUANT TO REQUEST FOR
CONFIDENTIAL TREATMENT**

ATTACHMENT 3

**SUBMITTED SEPARATELY
PURSUANT TO REQUEST FOR
CONFIDENTIAL TREATMENT**

ATTACHMENT 4

**SUBMITTED SEPARATELY
PURSUANT TO REQUEST FOR
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