

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

In re the Matter of)
)
HNS License Sub, LLC) File No. SES-MFS-_____)
)
Application to Modify Earth Station License)
to Change Point of Communication from)
SPACEWAY 3 (Call Sign S2663), a)
U.S.-licensed satellite, to SPACEWAY 3,)
a Non-U.S. Licensed Satellite Operating)
from the 94.95° W.L. Orbital Location in)
the 29.5-30 GHz and 19.7-20.2 GHz Bands)

MODIFICATION APPLICATION

I. Introduction and Description of Request

HNS License Sub, LLC (“Hughes”), by its attorneys and pursuant to Sections 25.117 and 25.137 of the Commission’s Rules, 47 C.F.R. §§ 25.117 and 25.137, hereby requests authority from the Commission to modify its Ka-band fixed-satellite service blanket earth station license under Call Sign E060445 to change its point of communication from SPACEWAY 3 as a U.S.-licensed satellite, to SPACEWAY 3 as a foreign-licensed satellite that operates pursuant to an authorization issued by the United Kingdom.¹

The SPACEWAY 3 satellite, Call Sign S2663, is authorized to Hughes’ corporate parent, Hughes Network Systems, LLC (“HNS”), for operation in the 29.5-30 GHz and 19.7-20.2 GHz frequency bands from the 94.95° W.L. orbital location. *See* File Nos. SAT-MOD-20071011-00139 and SAT-ASG-2008021300041. HNS has applied to the

¹ Hughes is filing companion modification applications that make the identical request with respect to the Hughes earth stations at Castle Rock, Colorado (Call Sign E060382) and Filmore, California (Call Sign E060383).

Commission for Letters of Intent to serve the U.S. market from three new satellites – SPACEWAY 4, SPACEWAY 5, and SPACEWAY 6, at the 107.1° W.L., 109.1° W.L., and 90.9° W.L. orbital locations, respectively – that are licensed to an HNS subsidiary by the United Kingdom. *See* File Nos. SAT-LOI-20091110-0011, SAT-LOI-20091110-00120, and SAT-LOI-20091110-00121. HNS intends to convert SPACEWAY 3 from a U.S.-licensed satellite to one that serves the U.S. under a U.K authorization held by HNS that uses the United Kingdom’s UKSAT-10 filing with the International Telecommunication Union (“ITU”).² To do this, the point of communication on each of Hughes’s earth station licenses for Ka-band must reflect a change from SPACEWAY 3 (US) to SPACEWAY 3 (UK).³

Hughes emphasizes that there will be no changes to the operation of either SPACEWAY 3 or the Hughes earth stations that communicate with SPACEWAY 3 as a result of the change in point of communication requested here. HNS will continue to operate SPACEWAY 3 satellite that the Commission authorized under Call Sign S2663 in precisely the same manner and subject to all of the same regulations and policies that now apply in exactly the same manner that the satellite is operated in today (SPACEWAY 3 was launched in 2007 and entered commercial operation in April 2008). Nor will this Modification Application result in any changes to the technical and operational parameters of any of the Hughes earth stations that are authorized today to communicate with

² Details can be found in IFIC No. 2538 under CR/C/1365, as published by the ITU on February 8, 2005.

³ To Hughes’s understanding, there are very few current earth station license issued to entities other than Hughes that list SPACEWAY 3 as a point of communication. Under the Commission’s Rules, any such licenses would need to be modified to specify SPACEWAY 3 (UK) as a point of communication in lieu of the current U.S.-licensed SPACEWAY 3. Under the circumstances, where there are no technical changes whatsoever to SPACEWAY 3, and the Commission’s market access policies would presumably be deemed satisfied upon a grant of this Modification Application, Hughes submits that it would be appropriate for the Commission, on its own motion, to determine that earth station licenses that specify SPACEWAY 3 (US) as a point of communication will automatically be considered to be specifying SPACEWAY 3 (UK) once Hughes informs the Commission that the authorized change has occurred.

SPACEWAY 3. All operations under each of the three Hughes earth station licenses that authorize communication with SPACEWAY 3 will continue exactly as they are proceeding today. Moreover, all other points of communication on the three earth station licenses will be unchanged as a result of this Modification Application.

Upon approval and implementation of all three earth station license modifications, HNS intends to surrender the U.S. authorization it holds under Call Sign S2663 for SPACEWAY 3, and operate the satellite exclusively under the United Kingdom authorization it holds for UKSAT-10. The SPACEWAY 3 satellite network will be entirely unchanged from its current operation; only the licensing administration of SPACEWAY 3 as a point of communication will change.

HNS is making the change in licensure to consolidate its fleet authorizations under a single licensing administration. This change will facilitate international coordination and produce economies of scale in operations that will improve the efficiency with which HNS provides its valuable, high-capacity broadband Ka-band fixed-satellite services to the American public.

The full technical information for SPACEWAY 3 is already on file with the Commission, including Schedule S, narrative technical materials, and interference analyses.⁴ Hughes hereby incorporates these materials, which demonstrate that SPACEWAY 3 complies fully with the Commission's technical rules, including the requirement for operations in a two-degree spacing environment, by reference herein, and submits that the circumstances dictate that Hughes be found in full compliance with the

⁴ See File No. SAT-AMD-20060300025 and Stamp Grant (June 29, 2006) ("June 2006 Stamp Grant"); File No. SAT-MOD-20060901-00093 and Stamp Grant (September 29, 2006); and File No. SAT-MOD-20071011-00139 and Stamp Grant (April 28, 2008).

information submission requirement of Section 25.137(b). The overall technical submission for the U.K.-licensed version of SPACEWAY 3 at 94.95° W.L. is identical in every respect to the technical facility that is now licensed to HNS under Call Sign S2663.

II. Public Interest Considerations Support the Grant of this Application.

As the Commission is aware, HNS is the global leader in providing broadband satellite network solutions for large enterprises, governments, small businesses and consumers, with more than 2.2 million systems ordered or shipped to customers in over one hundred countries. Hughes pioneered the development of high-speed satellite Internet access services and IP-based networks, which it markets in the United States and globally. Today, Hughes provides and enables a variety of managed network services and equipment that meet unique enterprise customer needs for data, voice and video communications, typically across geographically-dispersed locations. Hughes is also the largest satellite Internet access provider to the North American consumer market, providing satellite broadband connectivity to more than 500,000 consumer and small business subscribers.

SPACEWAY 3, the company's first Ka-band FSS satellite, was launched in August 2007. Following a period of in-orbit testing and validation, SPACEWAY 3 entered commercial service on April 3, 2008. The Hughes organization is fully committed to providing satellite broadband connectivity, and is relying heavily on the successful emergence of Ka-band FSS spectrum as a medium for delivery of that connectivity. The SPACEWAY 3 satellite's state-of-the-art Ka-band capabilities will continue to speed broadband services to consumers and enterprises at high data rates over a service area that embraces all of rural and remote America – including those areas not

served by digital subscriber lines, fiber, or cable modem Internet service. With the advanced and flexible design of this satellite and its proposed follow-on siblings, Hughes is positioned to respond capably and fully to the rapidly changing needs of its customers, particularly for broadband satellite services throughout the United States.

III. Effective Competitive Opportunities Showing Under *DISCO II* – 47 C.F.R. § 25.137(a)

The Commission's *DISCO II* framework applies to this Modification Application, because the SPACEWAY 3 satellite will be converted to operation under authority of the government of the United Kingdom.⁵ The *DISCO II* analysis includes consideration of a number of factors, such as the effect on competition in the United States, spectrum availability, eligibility requirements, technical requirements, national security, law enforcement, foreign policy and trade concerns.⁶

A. Effect on Competition in the United States

In *DISCO II*, the Commission established a rebuttable presumption that entry by non-U.S. satellites authorized by World Trade Organization (“WTO”) Members to provide services covered by the U.S. commitments under the WTO Basic Telecommunications Agreement will further competition in the United States.⁷ The United Kingdom is a member of the WTO, and Hughes seeks to use the requested spectrum to provide satellite services that are covered by the WTO Basic

⁵ *Amendment of the Commission's Regulatory Policies to Allow Non-U.S. Licensed Satellites Providing Domestic and International Service in the United States*, Report and Order, 12 FCC Rcd 24094, 24107-17(¶¶ 30-49) (1997) (“*DISCO II*”).

⁶ See e.g., *Telesat Canada, Petition for Declaratory Ruling for Inclusion of Anik F2 on the Permitted Space Station List, Petition for Declaratory Ruling to Serve the U.S. Market Using Ka-band Capacity on Anik F2*, Order, 17 FCC Rcd 25287, 25290(¶ 6) (2002).

⁷ *DISCO II* at 24112 (¶ 39); see also 47 C.F.R. § 25.137(a)(2).

Telecommunications Agreement. Accordingly, the presumption in favor of entry applies to SPACEWAY 3.

Allowing Hughes to serve the U.S. by accessing SPACEWAY 3 will uphold the intent of the WTO Basic Telecommunications Agreement to facilitate fair and open competition in satellite communications services, and provide equivalent opportunities to serve the U.S. market to facilities licensed in countries that allow U.S.-licensed satellites to access their domestic markets. Grant of this Modification Application will enhance competition in the U.S. satellite services market by permitting Hughes to introduce expanded satellite broadband services, thereby stimulating lower rates, improved service quality, increased service options, and greater technological innovation. The Commission consistently has relied favorably on these same public interest benefits in granting similar requests.⁸

B. Spectrum Availability

This Modification Application proposes to access the U.S. market via SPACEWAY 3 from the 94.95° W.L. orbital location using segments of the Ka-band designated for primary geostationary (“GSO”) FSS use. Hughes’s proposal is fully compliant with the Commission’s two-degree spacing requirements, will not cause harmful interference to any other authorized user of the spectrum, and is compatible with future Ka-band assignments consistent with the FCC’s Rules. Therefore, this request is

⁸ See, e.g., *Digital Broadband Applications Corp.*, 18 FCC Rcd 9455 (2003); *Pegasus Development Corp.*, 19 FCC Rcd 6080 (2004); *DIRECTV Enterprises, LLC, Request for Special Temporary Authority for the DIRECTV 5 Satellite*, 19 FCC Rcd 15529 (2004).

fully consistent with the procedures set forth by the Commission in the *Space Station Licensing Reform Order* regarding processing of GSO-like services.⁹

C. National Security, Law Enforcement, and Public Safety Matters

Grant of this Modification Application is consistent with U.S. national security, law enforcement and public safety considerations. HNS, a U.S. company, will continue to own and control the SPACEWAY 3 satellite to provide service to customers in the U.S., Canada and Mexico and elsewhere as authorized in the license for Call Sign S2663. Hughes has a long history of providing satellite communication services to U.S. government users.

HNS will be responsible for all aspects of the operation of the SPACEWAY 3 satellite. HNS, Ltd., as the United Kingdom licensee, will be responsible for and have authority over the network in order to ensure compliance with any rules and obligations established by Ofcom.

HNS, Ltd. is 100 percent owned and controlled by Hughes Network Systems Europe, Ltd., a U.K. holding company. Hughes Network Systems Europe, Ltd. is 100 percent owned and controlled by HNS.

The directors and officers of these two subsidiaries are listed below.

Hughes Network Systems Europe. Ltd

Directors

Pradman Kaul*
Bahram Pourmand*
Dean Manson*
Michael Cook*
Christopher Britton

⁹ See *Amendment of the Commission's Space Station Licensing Rules and Policies*, First Report and Order and Further Notice of Proposed Rulemaking, 18 FCC Rcd 10760, 10806 (¶113) (2003).

Officers

Christopher Britton, Managing Director
Dean Manson and Claire Denton, Joint Secretaries

Hughes Network Systems, Ltd (UK)

Directors

Christopher Britton
Bahram Pourmand*
Dean Manson*

Officers

Christopher Britton, Managing Director
Dean Manson and Claire Denton, Joint Secretaries

* *Also an officer of Hughes Network Systems, LLC*

IV. Legal and Technical Information – 47 C.F.R. § 25.137(b)

A. Legal Qualifications

Hughes's legal qualifications are a matter of record before the Commission. In June 2008, the Commission authorized the transfer of control of Hughes in File Nos. SES-T/C-20080905-01228 through SES-T/C-20080905-01231. Notice of the consummation of the assignment was provided in due course in August, 2008. As the ownership of Hughes is not changing in any way as a result of this Modification Application, and remains a matter of record before the Commission, Hughes hereby incorporates by reference the ownership information that is included in the Commission's files for Call Signs E060382, E060383, E060445, and S2663.

HNS's legal information is also a matter of record in the *pro forma* assignment application for SPACEWAY 3 granted in 2008 (*see* FCC File No. SAT-ASG-20080213-00041); the proceeding in which the transfer of control of HNS parent company (and then SPACEWAY-3 licensee Hughes Communications, Inc.) was approved last year (FCC

File No. SAT-T/C-20070904-00119); and the SPACEWAY letter of intent filings referenced above (*see, e.g.*, FCC File No. SAT-LOI-20091110-00119). In any event, this Modification Application and its attachments include all of the legal information required for space station applicants in Section 25.114 of the Commission's rules. 47 C.F.R. § 25.114.

B. Technical Qualifications

As noted above, the full technical information for SPACEWAY 3, as required in Section 25.114 of the Commission's Rules, is on file with the Commission and approved in the proceedings under Call Sign 2663. There are no changes at all to SPACEWAY 3, and Hughes has incorporated these materials by reference into the instant application in full satisfaction of Section 25.137(b). *See supra*, at note 3 and accompanying text.

Technical information for SPACEWAY 3 as a non-U.S.-licensed satellite that is duplicative in every respect of the technical information for SPACEWAY 3 (Call Sign S2663) that the Commission has already considered and approved is not reproduced as part of this application.

All conditions of the authorization for SPACEWAY 3 from the June 2006 Stamp Grant Order have been complied with and will continue to be complied with following conversion of the spacecraft from a U.S.-licensed satellite to a non-U.S.-licensed satellite. This includes the successful coordination with Federal FSS systems that is required under Note US334 to Section 2.106 of the Commission's Rules.¹⁰

¹⁰ June 2006 Stamp Grant, at ¶ 11.

V. Other U.S. Regulatory Requirements – 47 C.F.R. § 25.137(d)

A. Implementation Milestones

Hughes Communications, Inc. satisfied all implementation milestones for SPACEWAY 3 under Call Sign S2663. The satellite is in orbit and operational, and the implementation bond has been removed.¹¹

B. Reporting Requirements

HNS will continue to comply with all FCC reporting requirements that apply to SPACEWAY 3. *See, e.g.*, 47 C.F.R. § 25.145(f).

C. Compliance with FCC Technical Regulations

HNS's operation of SPACEWAY 3 under Call Sign S2663 has been found to comply fully with the Commission's two-degree spacing requirements, and this operation will not change in any respect when HNS operates SPACEWAY 3 under a license from the United Kingdom. SPACEWAY 3 does not now and will not cause harmful interference to any other authorized user of the spectrum. Except with regard to those requirements for which waivers were requested and granted during the SPACEWAY 3 authorization process under Call Sign S2663, HNS's U.K.-licensed version of SPACEWAY 3 complies fully with the applicable requirements of Part 25 of the Commission's Rules, including power flux-density requirements, full frequency re-use requirements, and all operational requirements. Again, there are no changes to the SPACEWAY 3 technical and operational characteristics from what is now authorized under Call Sign S2663.

¹¹ *See* Public Notice, Report No. SAT-00491, DA 07-5067, at 2 (December 21, 2007).

D. Posting of Performance Bond

Because SPACEWAY 3 is operational, there is no need for Hughes to post a performance bond pursuant to Section 25.165 of the Commission's Rules (47 C.F.R. § 25.165) upon grant of this Modification Application.

E. Spectrum Access Limits

Hughes's parent company, HNS, has filed letters of intent with respect to three spacecraft (SPACEWAY 4 at 107.1° W.L., SPACEWAY 5 at 109.1° W.L., and SPACEWAY 6 at 90.9° W.L.) in frequency bands overlapping those used by SPACEWAY 3. Hughes and its affiliated companies have no other pending applications for a license or spectrum reservation to which the limits of Section 25.137(d)(5) of the Commission's Rules apply. *See* 47 C.F.R. § 25.137(d)(5). Accordingly, Hughes is not subject to the limitation imposed by that rule.

F. Spectrum Utilization

SPACEWAY 3 will continue to use spectrum in the 19.7-20.2 GHz band to support downlink operations and spectrum in the 29.50-30.0 GHz band to support uplink operations on a primary basis. This use is consistent with the Commission's intended use of the primary allocations for GSO FSS in these bands.

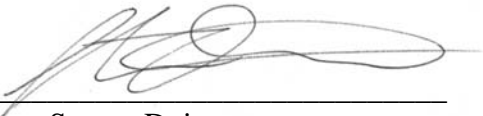
VI. Conclusion

In summary, the SPACEWAY 3 satellite is fully compliant with FCC rules relating to Ka-Band blanket licensing, system performance, flexibility, service quality, over all capacity, and spectrum efficiency, and will create a platform capable of offering more advanced broadband services.

For these reasons, Hughes urges the Commission to conclude that modifying Hughes's license for Call Sign E060445 to allow access to SPACEWAY 3 under a U.K. license is fully consistent with the public interest. Hughes respectfully requests that the Commission expeditiously grant this application.

Respectfully submitted,

HNS License Sub, LLC

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