

EXHIBIT 1

DESCRIPTION OF PROPOSED MODIFICATION (Response to Question 43, Form 312)

I. Request to Extend Construction Completion Date

Pursuant to 47 C.F.R. § 25.117(e), HNS License Sub, LLC (together with its affiliates, “Hughes”) requests authorization to further extend the required construction completion date of three gateway earth stations licensed for communications with EchoStar XXIV (also known as “Jupiter 3”), a Ka- and Q/V-band geostationary orbit satellite authorized to provide fixed satellite service. Specifically, Hughes seeks an additional six-month extension (*i.e.*, in addition to the initial seven- to 10-month extension previously granted)¹ of the required completion date, as specified in the table below.

Call Sign	Location	Required Completion Date	Proposed Completion Date
E170151	Bend, OR	December 31, 2021	June 30, 2022
E170163	Simi Valley, CA	December 31, 2021	June 30, 2022
E170166	Rifle, CO	December 31, 2021	June 30, 2022

II. The Requested Extension Is Warranted and Serves the Public Interest

As verified by the attached Declaration, the requested extension of time is warranted due to: (i) unforeseeable circumstances beyond Hughes’ control, including delays caused by COVID-19 and other manufacturing delays; and (ii) unique and overriding public interest considerations. Notably, the licensed gateways here are not ordinary, off-the-shelf equipment,

¹ See Hughes, Radio Station Authorizations, IBFS File Nos. SES-MOD-20210201-00194, SES-MOD-20210128-00159 & SES-MOD-20210128-00162 (Feb. 1 & 3, 2021).

thus requiring special components and manufacturing processes that have been impacted by unanticipated manufacturing delays.

Additionally, the ongoing coronavirus pandemic has caused severe supply disruptions, impacting all aspects of gateway construction, including securing access to gateway sites, installing related fiber and data centers, and procuring, assembling, and installing antenna facilities. For example, social distancing and working-from-home guidelines have created inefficiencies and restrictions on available personnel, resulting in delays in local site permitting and review of applications. The lack of experienced sub-contractors, crew, and other personnel available to travel and work on site also has created material delays in installing and testing antenna equipment. Consistent with its practice of authorizing similar relief and flexibility to licensees impacted by COVID-19,² the Commission previously granted an initial seven- to 10-month extension for 11 of Hughes' licensed EchoStar XXIV gateways, including those proposed here.³

Furthermore, Commission grant of the requested extension will permit deployment of key components of the overall EchoStar XXIV satellite network, thus enabling Hughes to offer unique and compelling public interest benefits, including additional and advanced broadband services to more than 1.5 million customers across the Americas. EchoStar XXIV, along with its capacity and speed capabilities, will join other satellites in the Hughes fleet to offer a true competitive broadband alternative across the country. The satellite will provide additional

² See, e.g., *The Office of Managing Director and Wireline Competition Bureau Suspend the Red Light Rule for the COVID-19 Telehealth Program*, Public Notice, 35 FCC Rcd 3685 (OMD/WCB 2020); *Sponsorship Identification Requirements*, Order, 35 FCC Rcd 3012 (MB 2020); News Release, FCC, *FCC Provides Relief that Enables Rural Broadband and Phone Providers to Immediately Waive Consumer Fees* (rel. Apr. 1, 2020).

³ See *supra* n.1.

capacity and help solve the digital divide by offering advanced broadband services with download speeds of 100 Mbps or higher to enterprises, the government, small businesses, and residential customers across the United States and the Americas. EchoStar XXIV also will support a variety of applications, including broadband access, aeronautical services for in-flight connectivity, residential and business VOIP, and next generation communications services, including 5G.

Additionally, ensuring successful launch and operations of the EchoStar XXIV satellite network will bolster Hughes' disaster relief efforts and capabilities. In many cases, satellite is the only reliable communications system following a natural disaster.⁴ Indeed, Hughes has provided crucial broadband services in the wake of numerous disasters, including Hurricane Michael in 2018 and Hurricane Dorian in 2019.⁵

Hughes's ubiquitous service coverage and capacity remain key to meeting unprecedented consumer broadband demand resulting from the coronavirus pandemic. Notably, during the ongoing pandemic, Hughes has provided invaluable broadband connectivity to rural, remote, and underserved areas, including by: (i) delivering service within two to three days, thus allowing subscribers to work remotely, participate in distance learning, engage with tele-health providers, and connect to advanced and specialized applications; (ii) deploying Internet access within a matter of days to a military base in North Carolina where troops were quarantined after returning

⁴ See Comments of Liga de Cooperativas de Puerto Rico, WC Dkt. No. 18-143 et al., at 1-2 (Jul. 2, 2018); see also *The Uniendo a Puerto Rico Fund and the Connect USVI Fund*, Report and Order and Order on Reconsideration, 34 FCC Rcd 9109, ¶ 46 (2019) ("We agree with numerous commenters that allowing inclusion of satellite providers is particularly valuable in the context of Puerto Rico and the U.S. Virgin Islands due to satellite's resilience and availability post-hurricanes.").

⁵ See, e.g., EchoStar Satellite Services, LLC, Special Temporary Authorizations to Extend Service to the Bahamas for Emergency Operations, File Nos. SAT-STA-20190925-00101 & SAT-STA-20190906-00088 (Sept. 13 & Nov. 14, 2019).

from deployment; and (iii) providing broadband service to homeless students staying with community members in rural New Mexico and connecting a community students' hub in rural Oklahoma, thus enabling students in hard-to-reach areas to continue their education without interruption.⁶ Consequently, as the COVID-19 pandemic continues to impact broadband usage and demand for years to come, the requested extension serves the public interest by facilitating deployment of additional advanced broadband services to consumers, including those in remote and underserved areas of the United States and the Americas.

III. The Requested Extension Requires No Additional Coordination

Despite Commission adoption of Section 25.136(h)'s re-coordination requirement for earth stations brought into operation more than a year after licensing,⁷ the new rule is inapplicable to the licensed gateways here. The Commission adopted the new re-coordination requirement in connection with its revision of Section 25.133(a)(2) to allow for an extended earth station build-out period that largely mirrors the five-year milestone period required for GSO satellites.⁸ In doing so, the Commission found that the re-coordination rule “serves as an important check on potential warehousing” and “is a reasonable tradeoff for the added flexibility [provided by the] longer build-out period.”⁹ Accordingly, the Commission required “earth

⁶ See Hughes, *How Satellite is Helping the Fight Against COVID-19* (Apr. 15, 2020), <https://www.hughes.com/resources/blog/how-satellite-helping-fight-against-covid-19>; Hughes, *Connecting Remote and Rural Businesses*, <https://www.hughes.com/collateral-library/connecting-remote-and-rural-businesses> (last visited Dec. 27, 2021);

⁷ See *Further Streamlining Part 25 Rules Governing Satellite Services*, Report and Order, 35 FCC Rcd 13285, ¶¶ 47-49 (2020).

⁸ See *id.* ¶ 47.

⁹ *Id.*

station operators that take advantage of the extended build-out period associated with deployment of a communicating satellite to re-coordinate with the UMFUS licensees.”¹⁰

Unlike prospective earth station licensees enjoying additional flexibility under an extended five-year build-out period, Hughes is not afforded the same flexibility under its existing licenses, but rather is required under Section 25.117(e) to demonstrate either “unforeseeable circumstances” beyond its control or “unique and overriding” public interest considerations in support of its requested build-out extension. Even then, Hughes is not assured of, and is not seeking, an extended five-year build-out period. Consequently, applying the new re-coordination rule to Hughes’ licensed gateways would not serve the Commission’s stated objectives to curb potential spectrum warehousing and provide a reasonable tradeoff for more flexible buildout requirements.

Furthermore, the Commission lacks authority to apply the new re-coordination requirement retroactively to existing licenses. Under the Administrative Procedure Act, agency rules “are prospective in application only”¹¹ and, unless authorized by Congress in “express terms,” courts will decline to uphold the application of retroactive rules.¹² The presumption against retroactive rulemaking is based on the notion that “[e]lementary considerations of fairness dictate that individuals should have an opportunity to know what the law is and to conform their conduct accordingly.”¹³ As the Commission has stated, “application of an

¹⁰ *Id.* ¶ 49.

¹¹ *Retail, Wholesale and Department Store Union v. NLRB*, 466 F.2d 380, 388 (D.C. Cir. 1972).

¹² *Bowen v. Georgetown University Hospital*, 488 U.S. 204, 208 (1988). *See also Yakima Valley Cablevision, Inc. v. FCC*, 794 F.2d 737, 745-46 (D.C. Cir. 1986) (“When parties rely on an admittedly lawful regulation and plan their activities accordingly, retroactive modification or rescission of the regulation can cause great mischief.”).

¹³ *Landgraf v. USI Film Products, Inc.*, 511 U.S. 244, 265 (1994).

agency's rule is impermissibly retroactive when it 'would impair rights a party possessed when he acted, increase a party's liability for past conduct, or impose new duties with respect to transactions already completed.'"¹⁴ Thus, applying the new re-coordination requirement to earth stations that have already been coordinated and licensed would impose new obligations and therefore exceed the Commission's authority.

Consequently, the Commission has declined to give retroactive effect to newly adopted rules after balancing the "potentially significant financial impact" on existing licensees against the public benefits of retroactively applying new rules to existing licensees.¹⁵ Here, requiring re-coordination could result in additional service delays and a loss of interference protection rights, thus undercutting substantial investments in the EchoStar XXIV satellite network and imposing potentially significant financial costs on Hughes.¹⁶

¹⁴ See *Mitigation of Orbital Debris*, Second Report and Order, 19 FCC Rcd 11567, ¶ 78 (2004) (citing *Celotronic Telemetry, Inc. v. FCC*, 272 F.3d 585, 588 (D.C. Cir. 2001) (citing *Landgraf*, 511 U.S. at 280)).

¹⁵ See *id.* ¶ 79.

¹⁶ In any event, to the extent that the re-coordination rule applies here, Hughes requests a waiver. The Commission may waive its rules for good cause, which may be found when: (i) particular facts would make strict compliance inconsistent with the public interest; and (ii) grant of a waiver would not undermine the policy objective of the rule. See 47 C.F.R. § 1.3; *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990); *WAIT Radio v. FCC*, 418 F.2d 1153, 1157-59 (D.C. Cir. 1969). As discussed in Section II above, strict compliance here would undercut substantial consumer benefits resulting from successful launch of the EchoStar XXIV satellite network, contrary to the public interest. Grant of a waiver also would not undermine, and indeed would have no impact on, the Commission's policy objectives of curbing potential spectrum warehousing and providing a reasonable tradeoff for more flexible buildout requirements. As further discussed above, these policy objectives arise solely from the Commission's adoption of more flexible buildout requirements, and thus are inapplicable to existing earth station licensees not afforded such flexibility.

IV. Conclusion

Based on the foregoing, Hughes urges the Commission to grant the requested six-month extension of time until June 30, 2022, to complete gateway construction due to disruptions caused by the COVID-19 pandemic and other unanticipated manufacturing delays.

DECLARATION

On behalf of HNS License Sub, LLC (“Hughes”), I declare under penalty of perjury that the following is true and correct to the best of my current knowledge, information, and belief:

- 1) the requested extension of time is warranted due to unforeseeable circumstances beyond Hughes’ control, including delays caused by the COVID-19 pandemic and other manufacturing delays, as detailed in Section II of the foregoing Exhibit 1; and
- 2) the requested extension of time is further warranted due to unique and overriding public interest considerations, as detailed in Section II of the foregoing Exhibit 1.

/s/ Jennifer A. Manner
Jennifer A. Manner
Senior Vice President, Regulatory Affairs

Date: December 28, 2021