

**EXHIBIT 1**

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

**I. Introduction**

Pursuant to 47 C.F.R. § 25.117, HNS License Sub, LLC (“Hughes”) seeks authorization to modify gateway earth stations licensed for communications with EchoStar XXIV (also known as “Jupiter 3”), a Ka- and Q/V-band geostationary orbit satellite authorize to provide fixed satellite services. Specifically, Hughes requests a seven- to 10-month extension, until December 31, 2021, of the required construction completion dates for the following six gateway earth stations:

<b>Call Sign</b>	<b>Location (City, State)</b>	<b>Existing Construction Completion Date</b>	<b>Proposed Construction Completion Date</b>
E170151	Bend, OR	March 2, 2021	December 31, 2021
E170159	Taos, NM	March 5, 2021	December 31, 2021
E170161	Driggs, ID	March 5, 2021	December 31, 2021
E170163	Simi Valley, CA	May 15, 2021	December 31, 2021
E170165	Lindon, UT	March 5, 2021	December 31, 2021
E170166	Rifle, CO	May 15, 2021	December 31, 2021

**II. Request to Extend Construction Completion Dates**

Consistent with 47 C.F.R. § 25.117(e) and 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 the novel coronavirus and other manufacturing delays; and (ii) unique and overriding public interest considerations. Notably, the licensed gateways here are not ordinary, off-the-shelf equipment, and thus require special components

and manufacturing processes, which have been impacted by unanticipated manufacturing delays. Moreover, the ongoing COVID-19 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.

Indeed, the Commission consistently has granted relief and increased flexibility to licensees impacted by COVID-19.<sup>1</sup> Grant of the requested extension is further warranted in view of the unique and compelling public interest benefits discussed in Section III below.

### **III. The Requested Extension Serves the Public Interest**

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 in North, Central, and South America. 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 capacity, allowing Hughes to provide advanced broadband services with download speeds of 100 Mbps or higher to enterprises, the government, small businesses, and residential customers across

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<sup>1</sup> 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).

the United States and the Americas, helping to solve the digital divide. 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.

Ensuring successful launch and operations of the EchoStar XXIV satellite network also will bolster Hughes' disaster relief efforts and capabilities. In many cases, satellite is the only reliable communications system following a natural disaster.<sup>2</sup> Indeed, Hughes has provided crucial broadband services in the wake of numerous disasters, including Hurricane Michael in 2018 and Hurricane Dorian in 2019.<sup>3</sup>

Moreover, Hughes's ubiquitous service coverage and capacity remain key to meeting unprecedented consumer broadband demand resulting from the novel COVID-19 pandemic. Notably, during the ongoing pandemic, Hughes has provided invaluable broadband connectivity to rural, remote, and underserved areas, delivering service within two to three days and thus allowing subscribers to work remotely, participate in distance learning, engage with tele-health providers, and connect to advanced and specialized applications.<sup>4</sup> Hughes also has deployed Internet access within a matter of days to a military base in North Carolina where troops were

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<sup>2</sup> 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.")

<sup>3</sup> 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 (Nov. 14 & Sept. 13, 2019).

<sup>4</sup> See Hughes, *Connecting Remote and Rural Businesses*, <https://www.hughes.com/collateral-library/connecting-remote-and-rural-businesses> (last visited Dec. 15, 2020); Hughes, *How Satellite Internet Helps Farmers Get Food from Farm to Table*, Blog, <https://www.hughesnet.com/media/how-satellite-internet-helps-farmers-get-food-farm-table> (last visited Dec. 15, 2020).

quarantined after returning from deployment.<sup>5</sup> Additionally, Hughes is providing broadband service to students living with community members in rural New Mexico and connectivity through a community student hub in rural Oklahoma, all to enable those in the hardest-to-reach areas to continue their education without interruption.<sup>6</sup> 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 throughout the United States and the Americas, including remote and underserved areas.

#### **IV. The Requested Extension Requires No Additional Coordination**

Although the Commission recently adopted a re-coordination requirement for earth stations brought into operation more than a year after licensing,<sup>7</sup> the new rule has not become effective yet and, more importantly, is inapplicable to the licensed gateways here. Notably, the Commission adopted the new re-coordination rule under Section 25.136(h) in connection with its revision of Section 25.133(a)(2) to allow for an extended build-out period, largely mirroring the GSO satellite milestone period of five years.<sup>8</sup> In doing so, the Commission explained 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.”<sup>9</sup> Accordingly, the Commission required “earth station operators that take advantage of the extended build-out

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<sup>5</sup> See Hughes, *How Satellite is Helping the Fight Against COVID-19*, Blog (Apr. 15, 2020), <https://www.hughes.com/resources/blog/how-satellite-helping-fight-against-covid-19>.

<sup>6</sup> See *id.*

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

<sup>8</sup> See *id.* ¶ 47.

<sup>9</sup> *Id.*

period associated with deployment of a communicating satellite to re-coordinate with the UMFUS licensees.”<sup>10</sup>

Unlike prospective earth station licensees enjoying additional flexibility under an extended build-out period of five years, Hughes is not afforded the same flexibility under its existing gateway licenses. Rather, Hughes 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 warehousing of spectrum and provide a reasonable tradeoff in exchange 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”<sup>11</sup> and, unless authorized by Congress in “express terms,” courts will decline to uphold the application of retroactive rules.<sup>12</sup> 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.”<sup>13</sup> As the Commission has stated, “application of an

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<sup>10</sup> *Id.* ¶ 49.

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

<sup>12</sup> *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.”).

<sup>13</sup> *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.'"<sup>14</sup> 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.

Indeed, 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.<sup>15</sup> 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.

Nonetheless, to the extent that re-coordination may be applicable, Hughes requests a waiver of such requirement. The Commission may waive its rules for good cause,<sup>16</sup> 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.<sup>17</sup> As discussed in Section III above, strict compliance here would undercut substantial consumer benefits resulting from successful launch of the EchoStar XXIV satellite network, contrary to the public interest.

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<sup>14</sup> See *Mitigation of Orbital Debris*, Second Report and Order, 19 FCC Rcd 11567, 11599 ¶ 78 (2004) (citing *Celotronic Telemetry, Inc. v. FCC*, 272 F.3d 585, 588 (D.C. Cir. 2001) (citing *Landgraf*, 511 U.S. at 280)).

<sup>15</sup> See *id.* ¶ 79.

<sup>16</sup> See 47 C.F.R. § 1.3.

<sup>17</sup> See *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); see also *Service Rules for the 698-746, 747-762 and 777-792 MHz Bands*, Order, 34 FCC Rcd 5134, ¶ 9 (WTB 2019).

Additionally, grant of a waiver would not undermine, and indeed would have no impact on, the Commission's policy objectives to curb potential spectrum warehousing and provide a reasonable tradeoff in exchange for more flexible buildout requirements. As 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 licenses not afforded additional flexibility under the revised buildout requirements.

## **V. Conclusion**

Based on the foregoing, Hughes urges the Commission to grant the requested seven- to 10-month extension of time, until December 31, 2021, 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, 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 (Description of Proposed Modification); and
- 2) the requested extension of time is further warranted due to unique and overriding public interest considerations, as detailed in Sections II and III of the foregoing Exhibit 1 (Description of Proposed Modification).

*/s/ Jennifer A. Manner*

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Jennifer A. Manner

Senior Vice President, Regulatory Affairs

Date: January 27, 2021



## EXHIBIT 2

### OTHER LICENSES AND APPLICATIONS (Response to FCC Form 312, Question 36)

On July 26, 2011, the FCC declared null and void an authorization of EchoStar Corporation, the parent company of HNS License Sub, LLC (together with their affiliates, “EchoStar”), to construct, launch, and operate a new Direct Broadcast Satellite at 86.5° W.L. for failure to meet the critical design review milestone, and rejected EchoStar’s request to modify its 86.5° W.L. authorization to allow the in-orbit EchoStar 8 satellite to provide service from that orbital location.<sup>1</sup>

The FCC also has denied a few of EchoStar’s applications for initial license or modification.<sup>2</sup> The FCC has dismissed, but not denied on the merits, a few of EchoStar’s license applications without prejudice to refileing.<sup>3</sup>

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<sup>1</sup> See *EchoStar Corporation*, Memorandum Opinion and Order, 26 FCC Rcd 10442 (IB 2011).

<sup>2</sup> See *Satellite Communications Services Information Re: Actions Taken*, Public Notice, Rpt. No. SES-00847, at 27 (IB rel. Aug. 16, 2006) (denying HNS License Sub, LLC’s, request for extension of construction milestones regarding File Nos. SES-MOD-20060404-00560 and SES-MOD-20060404-00561); *EchoStar Satellite LLC*, Memorandum Opinion and Order, 19 FCC Rcd 7846 (IB 2004) (denying applications to launch and operate four geostationary satellites because of interference concerns); *EchoStar Satellite LLC*, Order, 20 FCC Rcd 12027 (IB 2005); *EchoStar Satellite Corporation*, Memorandum Opinion and Order, 17 FCC Rcd 8831 (IB 2002) (denying request to extend construction milestone dates); *EchoStar Satellite Corporation*, Memorandum Opinion and Order, 16 FCC Rcd 14300 (IB 2001).

<sup>3</sup> See, e.g., Letter from Robert G. Nelson, Chief, Satellite Division, to Pantelis Michalopoulos, Counsel for EchoStar Corporation, 24 FCC Rcd 7132 (IB 2009); *EchoStar Corporation, Application to Operate a C-Band Geostationary Satellite Orbit Satellite in the Fixed-Satellite Service at the 84.9° W.L. Orbital Location*, Memorandum Opinion and Order, 25 FCC Rcd 10193 (IB 2010); Letter from Paul E. Blais, Chief, Systems Analysis Branch, Satellite Division, to Alison Minea, Corporate Counsel, EchoStar Broadcasting Corporation, 28 FCC Rcd 10214 (IB 2013); Letter from Paul E. Blais, Chief, Systems Analysis Branch, Satellite Division, to Alison Minea, Corporate Counsel, EchoStar Broadcasting Corporation, 28 FCC Rcd 10216 (IB 2013).