

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

MAY 5 1995

In the Matter of)
)
Amendment of Section 2.106 of the) ET Docket No. 95-18
Commission's Rules to Allocate) RM-7927
Spectrum at 2 GHz for Use)
by the Mobile-Satellite Service)

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COMMENTS OF HUGHES TELECOMMUNICATIONS AND SPACE COMPANY

Hughes Telecommunications and Space Company ("HTS") hereby submits these comments in response to the Notice of Proposed Rulemaking ("Notice") in the above-captioned proceeding.

I. Introduction

The Hughes family of companies is a leader in the field of domestic and international satellite communications. Hughes Space and Communications Company is a world-renowned manufacturer of commercial and military communications satellites. Hughes Communications Galaxy, Inc. ("HCG") operates a fleet of domestic C and Ku band satellites and plans to enter the Latin American satellite market early next year. In addition, HCG has an application pending before the Commission for the SPACEWAY global satellite network. Hughes Network Systems, Inc., an affiliate of HTS, is a leading manufacturer of small satellite earth stations. DirecTv, Inc., also an affiliate of HTS, now offers the first true Direct Broadcast Satellite ("DBS") service in the U.S.

Because of its broad ranging satellite interests, Hughes has a vital interest in the Commission's proposals in this proceeding, which are important to maintaining the U.S. satellite industry's worldwide leadership position. Hughes fully supports allocating spectrum

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at 2 GHz for use by the Mobile-Satellite Service ("MSS") because it will help meet the growing demand for MSS services and facilitate the development of a competitive marketplace for these services. Hughes is concerned, however, that the Commission's proposal to establish auctions as the preferred method to award 2 GHz MSS system licenses will hamper the viability of U.S.-based MSS systems and the ability of the U.S. satellite industry to generate new economic growth.

II. Auctioning Licenses for 2 GHz MSS Systems Would Adversely Affect the Satellite Industry

The Commission's touchstone in establishing licensing procedures for satellite services has been to seek ways to avoid the characterization of satellite applications as "mutually exclusive."^{1/} The Commission consistently has recognized that the high risk, large capital investment requirements and long lead times that are inherent in the satellite industry require the Commission to adopt flexible licensing procedures. The Commission has followed these policies in licensing fixed service and DBS satellites and more recently when it adopted licensing rules for MSS systems in the 1.6/2.4 GHz bands (the "Big LEOs"). Specifically, the Commission charged a Negotiated Rulemaking Committee with developing service rules to maximize multiple entry and avoid or resolve mutual exclusivity among the applicants and it encouraged the adoption of a spectrum sharing plan that would achieve the same result.^{2/} As a result of the adoption of the Commission's spectrum sharing plan, each Big LEO applicant who to date has met the Commission's financial qualifications rules has been able to obtain a license. In order to avoid adverse consequences to the

1. See GTE Satellite Corp., 93 FCC 2d 832, 837 (1983) ("GTE Reconsideration Order").

2. See Notice of Proposed Rulemaking, CC Docket No. 92-166, 9 FCC Rcd 1094 (1994) at ¶ 12 ("Big LEO Notice").

satellite industry, Hughes urges the Commission to follow here the same principles that have allowed the efficient and fair assignment of satellite spectrum in other bands and have enabled the development of a vibrant, competitive U.S. satellite industry.

There are at least two valuation problems inherent with pricing MSS system licenses for an auction. First, regardless of whether the MSS system is global or regional in nature, it will face significant international coordination issues with other MSS systems. As a practical matter, it is unclear how much spectrum that is nominally licensed to an MSS system actually can be used until the coordination is completed with competing or neighboring MSS systems. These uncertainties prevent parties from accurately "valuing" spectrum for auction purposes before the coordination process is completed. Simply stated, the absence of adequate information precludes entities from determining what they are paying for in advance. This type of valuation problem simply was not present when the Commission considered auctioning other spectrum licenses, such as PCS.^{3/}

The second valuation problem occurs because of the unknown impact that U.S. auctions will have on the licensing procedures of foreign countries. If the U.S. were to auction MSS systems licenses, other countries will be encouraged to use auctions as well or impose fees based on the "value" of the spectrum established in the U.S. to award U.S.-based systems the rights to access that country. The "market" cannot take this uncertainty into account accurately because perfect information is not available with respect to other

3. On a related note, the Commission has recognized that it must consider the terms under which foreign-based 2 GHz MSS systems will be allowed to provide service in the U.S. This issue should be decided before the Commission decides whether to use auctions to award 2 GHz MSS licenses because it will have significant consequences on the coordination process for U.S.-based systems internationally.

countries' conduct and the prices that will be paid to acquire spectrum in these countries. The resolution of these issues will not be known until U.S. auctions are completed. Consequently, the valuation process for U.S. spectrum will not be able to take into account the costs that may arise in worldwide licensing.

In light of the valuation problems addressed above, the use of auctions for 2 GHz MSS licenses would increase the expense of satellite technologies and place them at a disadvantage compared to terrestrial technologies. The international MSS satellite systems that are being proposed require substantial investor commitment around the world. Open-ended capital requirements and uncertainty associated with auctions will affect the ability of these satellite ventures to line-up investors. As a result, technologies in which capital requirements are certain will be favored as investors divert resources from satellite-based technologies in favor of those technologies with known costs.

Moreover, the use of auctions to award 2 GHz MSS licenses would place those systems at a competitive disadvantage vis-a-vis the Big LEOs because three of the Big LEOs have received their spectrum rights for free. As a result, auctions may retard the development and deployment of new satellite technologies, products and services because MSS services at 2 GHz will be more costly to develop. As a matter of fundamental fairness, the Commission should afford 2 GHz MSS applicants the same procedures the Commission has provided the Big LEOs to reach a consensus to accommodate all possible applicants.^{4/}

4. See Big LEO Notice at ¶¶ 5-10.

III. It is Premature to Adopt Auctions as the Preferred Manner to Award 2 GHz MSS License Before Service Rules Are Established

As set forth above, the Commission has longstanding policies that seek to avoid mutual exclusivity among satellite applicants. These policies are consistent with the mandate of the Commission's auction authority.^{5/} The Commission has recognized correctly in the Notice that it is required to use engineering solutions to maximize access to the spectrum by multiple systems.^{6/} Engineering solutions, however, are not the only means by which § 309(j) of the Communications Act obligates the Commission to avoid mutual exclusivity. The Commission also is required to employ negotiations, threshold qualifications, service regulations, and other means to avoid mutual exclusivity among applicants.^{7/} At a minimum, Section 309(j)(6) requires the Commission to afford these applicants the flexibility to resolve any mutual exclusivity that possibly could arise through sharing, technical and operational procedures, and financial qualifications standards. These procedures may include coverage requirements, system type (GSO, LEO, MEO) and access method (CDMA, TDMA) requirements.

IV. Conclusion

In light of the unique coordination and licensing procedures that characterize MSS systems, the use of auctions to award 2 GHz MSS licenses would unduly constrain the development and competitiveness of new MSS systems. At a minimum, the Commission

5. 47 U.S.C. § 309(j).

6. Notice at ¶ 17.

7. Indeed the Commission recognized when it established its service and licensing rules for the Big LEOs that it "is obliged to attempt to eliminate mutual exclusivity." See, Report and Order, CC Docket No. 92-166, FCC 94-261, (Released October 14, 1994) at ¶ 71.

should use every attempt to avoid mutual exclusivity among potential MSS licensees before resorting to the use of auctions to assign these licenses.

Respectfully submitted,

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