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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554

In the Matter of	)	
	)	IB Docket No. 95-59
Preemption of Local Zoning	)	DA 91-577
Regulation of Satellite	)	45-DSS-MISC-93
Earth Stations	)	

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COMMENTS OF HUGHES COMMUNICATIONS GALAXY, INC.

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**COMMENTS OF HUGHES COMMUNICATIONS GALAXY, INC.**

**I. SPACEWAY: THE SATELLITE FUTURE OF GLOBAL TELECOMMUNICATIONS**

As construction of the Global Information Infrastructure accelerates, satellite communications systems such as the SPACEWAY network, proposed by Hughes Communications Galaxy, Inc. ("HCG"), will provide a solid foundation.<sup>1/</sup> Before the end of the decade, satellites will allow data, video and images to travel swiftly around the globe and link users from around the world.

SPACEWAY is scheduled to commence North American operations in 1998, and will have immediate practical applications. Physicians will be able to treat far-away patients by reading x-rays transmitted in high resolution and at a rate nearly forty times as fast as current landline telephony. Teachers and students will interact at long distances with two-way distance learning, and will have rapid access to digital libraries (downloading the Sunday Washington *Post*, for example, would take about 42 seconds with SPACEWAY, compared with 28 minutes by phone line). Without leaving their desks, business users will

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1. The SPACEWAY network of satellites will provide both business and personal users access to high-speed and high-quality broadband telecommunications services.

be able to conference instantaneously by video and access remote computer networks. These are not "niche-market" services, but will make ubiquitous, low-cost service available to millions of people.

At the center of SPACEWAY's low cost, easy accessibility and mass appeal is the SPACEWAY "USAT" (ultra small aperture terminal) antenna. Costing less than \$1,000 and measuring 66 centimeters in diameter,<sup>2/</sup> the USAT antenna will be easy to install and available through commercial outlets. Additionally, the USAT antenna will both receive and transmit information, making SPACEWAY one of the first consumer-oriented transmit-receive radio services.

The cost advantage that makes SPACEWAY an attractive competitor to domestic and international terrestrial networks easily could be eroded by burdensome local zoning regulation. HNS needs a rule that ensures that local regulations cannot place significant costs and burdens upon the installation and use of smaller satellite antennas. The rule must also be clear enough so that both users unfamiliar with federal preemption and local officials skeptical of its impact on their ordinances readily recognize its scope.

## **II. THE RULE MUST PROTECT SMALL SATELLITE ANTENNA USERS**

HCG supports the comments submitted today by its affiliate Hughes Network Systems, Inc.,<sup>3/</sup> and agrees that all regulation that places a "substantial" burden on small

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2. In certain cases, larger antennas may be used to meet specific customer needs, but the vast majority of consumers will use the mass-marketed 66 centimeter dish.
  3. HCG and Hughes Network Systems are both wholly-owned indirect subsidiaries of the General Motors Corporation ("GM"), and are engaged in different segments of the satellite industry. DIRECTV, another wholly-owned indirect subsidiary of GM, is also filing comments today, which HCG supports.

satellite antennas<sup>4/</sup> should be preempted *per se*. If the Commission decides to adopt its scheme of presumptions and rebuttals, it must ensure that consumers are still free to install small antennas without delay or cost. In addition, the abolition of aesthetic regulation of small antennas is an important part of any presumption, as it will allow USAT users to clear what could be a major hurdle to installation. HCG also applauds the Commission's efforts to minimize the burdens placed upon users' access to satellite services. Finally, HCG encourages the Commission to preempt all local regulation relating to radio frequency radiation.

**A. The Commission Should Ensure that the Rule Provides The Same Protection to Receive-Only and Transmitting Antennas**

The Commission has structured its proposed rule so that its provisions specify receive-only antennas in the first instance, and incorporate transmitting antennas by reference. While the Commission clearly did not intend to afford any less protection to transmit antennas,<sup>5/</sup> this dichotomous structure does just that.

Any confusion regarding the application of the preemption rule to transmitting antennas could be devastating to SPACEWAY, which will be one of the first mass-marketed consumer services that utilizes transmit-receive antennas. As the proposed rule is currently written, a USAT user would have to show a local official that an ordinance affecting USATs is preempted because paragraph (b), while explicitly identifying solely receive-only antennas, incorporates paragraph (a), which in turn is incorporated by reference in paragraph (d),

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4. Small satellite antennas are those antennas one meter or less in diameter, or two meters or less and located in commercial or industrial areas, as more precisely identified in the proposed rule at 25.104(b). See *Notice of Proposed Rulemaking ("Notice")* at ¶ 46.

5. The Commission stated in the *Notice* that under the proposed rule, "[s]atellite transmitting antennas would receive the same degree of federal protection" as receive-only antennas. *Notice* at n.75.

which states that regulation of transmitting antennas is preempted to the same extent as provided in paragraph (a). Just reading the previous sentence demonstrates the unnecessary complexity created by the current formulation of the proposed rule; one can only imagine the interpretation that would be made by a local zoning official hostile to the concept of preemption.

Clarity is essential if the proposed rule is to achieve the Commission's goals. HCG suggests that all references to "receive-only antennas" be revised to read "satellite antennas," and that all references to "reception" be changed to "reception or transmission." In conjunction with these changes the proposed paragraph (d) should be deleted from the rule.<sup>6/</sup>

**B. Any Regulation of Small Satellite Antennas Must be Subject to Preemption**

In the communications market, where consumers demand quick, inexpensive, and hassle-free installation, burdensome regulations can substantially reduce the attractiveness and feasibility of satellite-based options. Given this potential impact upon competition, the Commission must be able to examine any local regulation that places more than a *de minimis* burden on the use of satellite antennas.

The SPACEWAY USAT antennas will be designed to offer consumers a low-cost and quick connection to the SPACEWAY communications system. The antennas are expected to sell at commercial retail outlets for less than \$1,000, and will be designed for easy installation. Even the specter of added costs or delays would have an adverse impact on

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6. As discussed below, HCG urges the Commission to preempt all local regulation based on the alleged affects of radio frequency radiation.

the competitiveness of SPACEWAY; consumers' enthusiasm for this service will be significantly chilled if it is accompanied by entanglement with local administrative processes.

Under the proposed rule, the Commission will examine for preemption only those regulations that impose "substantial costs" on satellite antennas or "substantially" limit reception by such antennas.<sup>7/</sup> The Commission has taken pains to indicate which burdens are too high, stating that this threshold is "rather low" and that it will examine any regulation that imposes burdens that are "not insignificant."<sup>8/</sup> Nevertheless, the rule still fails to provide the kind of clarity that will enable SPACEWAY USAT users to demonstrate to a local authority that its regulation is preempted.

Because SPACEWAY will be a consumer as well as business service, it must compete with other off-the-shelf consumer products; *any* extra costs or delays imposed upon consumers by local regulation will have an adverse impact on this competition. Consumers must be able to purchase the system without any local administrative burdens; if the customer must stop at Town Hall before setting up his SPACEWAY system, competing communications services become far more attractive. SPACEWAY therefore suggests that as to antennas for consumer use, the Commission define "substantial" to include the imposition of any costs or fees, being required to obtain any permit or other authorization, or being required to attend a hearing or meeting of any kind.<sup>9/</sup>

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7. See Notice at ¶ 46 (proposed rule 25.104(a)).

8. See Notice at ¶ 58.

9. Substantial should be defined in the following language:

If the antenna is for consumer use:

1. imposition of any costs or fees;
2. being required to obtain any permit or other authorization; or
3. being required to attend a hearing or meeting of any kind.

**C. The Presumption and Rebuttal System Must Allow Users to Install First, Challenge Later**

In order to allow satellite networks like SPACEWAY to compete effectively against other communications services, users must be able to install, operate and maintain their USAT antennas without substantial interference or delay from local authorities. Only a *per se* ban on "substantial" regulation of small satellite antennas can ensure that consumers will enjoy this freedom. Any other rule will provide local officials with the opportunity to justify and enforce burdensome regulations, leaving consumers with the choice of challenging or complying, neither of which is an attractive option.

If, however, the Commission does adopt its presumption and rebuttal scheme, the presumption must leave no room for doubt that local authorities will be required to come to the Commission to justify such an ordinance before attempting to enforce it against the user. If this system is instituted, HCG encourages the Commission to adopt the suggestion of Hughes Network Systems that proposed Paragraph (c) be revised to state that ordinances affecting small satellite antennas are preempted until the issuing jurisdiction has demonstrated to the Commission that it has met its rebuttal burden.

The Commission must also adhere to its plan to ban aesthetic regulation of small satellite antennas. While such regulations, if reasonable, may have their place for large antennas, the Commission has recognized that two meter antennas have a "diminished aesthetic impact";<sup>10/</sup> the SPACEWAY USAT antenna at 66 centimeters, are even less obtrusive. HCG wholeheartedly supports the Commission proposal to preempt all local aesthetic regulation of smaller satellite antennas.

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10. See Notice at ¶ 64.

#### **D. The Commission Must Preempt All Local RF Radiation Regulation**

The crux of the SPACEWAY system is that it allows users both to receive and transmit data, video and images from their USAT antennas. The Commission, however, has left a gaping loophole for local officials to push through any restrictions -- even outright bans -- on transmitting antennas based upon the theory that radio frequency radiation may pose some threat to health or safety.

While local regulators are competent to decide local zoning matters, and may be in a better position than the Commission to ensure that certain locally-applicable safety requirements are met, they are not expert in matters of radio frequency radiation. Indeed, it is the Federal Communications Commission that possesses this expertise. Rather than risk frustrating the policies behind its well-crafted rule, the Commission should protect these policies and use its expertise to make its own determination regarding radio frequency radiation.

### **III. THE COMMISSION MUST SOON ADDRESS PRIVATE RESTRICTIONS**

HCG recognizes that the current rulemaking is limited to the preemption of restrictive regulations enacted by local and state governments;<sup>11/</sup> however, restrictions on satellite antennas contained in deed covenants and homeowners' association rules pose an equally serious threat to the competitiveness of satellite communications. Indeed, the Commission has received many complaints of such undue interference.<sup>12/</sup>

Nevertheless, given the seriousness of this issue, HCG urges the Commission to initiate a new proceeding to deal with the problem of private restrictions on small satellite

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11. *See Notice* at n.14

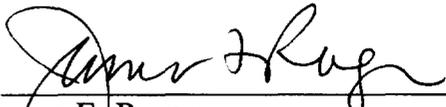
12. *Id.*

antennas. The Commission should begin now to develop the record needed to determine the scope of the problem and to explore the kinds of solutions available to ensure that consumers are able to enjoy the benefits of low-cost satellite information and communications services.

Dated: July 14, 1995

Respectfully submitted,

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## CERTIFICATE OF SERVICE

I certify that I have this 14th day of July, 1995 delivered by hand the foregoing Comments of Hughes Communications Galaxy, Inc. for preemption of local zoning regulation of satellite earth stations in IB Docket No. 95-59 to the following:

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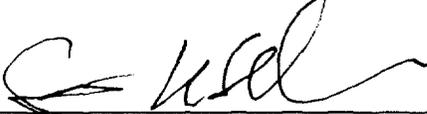
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