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January 4, 1999

JAN 4 1999

## BY HAND

Ms. Magalie Salas, Secretary  
Federal Communications Commission  
1919 M Street, NW, Room 222  
Washington, DC 20554

Re: Hughes Network Systems' Pending Petition for Reconsideration  
Petition for Reconsideration and Clarification of August 6, 1996 Order  
CS Docket 96-83, IB Docket 95-59

Dear Ms. Salas:

On behalf of Hughes Network Systems ("HNS"), we write to clarify an apparent misconception about the above-referenced Petition filed by HNS (the "Petition"). In its Order on Reconsideration in CS Docket 96-83, FCC 98-214, at footnote 145, the Commission characterized the Petition as "requesting that the Commission include [HNS's] 'DirecPC, a residential satellite Internet gateway service,' within the preemption restrictions" of 47 C.F.R. § 1.4000. In fact, in the Petition HNS did *not* request that the Commission include DirecPC and like services within the scope of Section 1.4000 of the Commission's Rules. Instead, HNS requested (and hereby continues to request) that the Commission amend Section 25.104 of the rules to correct an amendment that -- apparently inadvertently -- removed DirecPC and similar services from within the scope of Section 25.104(b), even though they are not covered by Section 1.4000. HNS's Petition is enclosed herewith for your reference.

If the Commission considers the above-referenced Order on Reconsideration to have denied and dismissed HNS's Petition in its entirety (*i.e.*, the Commission does not plan to consider the Petition in any further proceedings in IB Docket 95-59 or CS Docket 96-83), then this letter shall constitute a petition for reconsideration of the Order on Reconsideration pursuant to Rule 1.429.

LATHAM & WATKINS

January 4, 1999

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If you have any questions regarding this matter, please do not hesitate to contact the undersigned at (202) 637-2184.

Sincerely,

A handwritten signature in black ink, appearing to read 'S. Schulman', with a long horizontal flourish extending to the right.

Steven H. Schulman  
of LATHAM & WATKINS

Enclosure

cc: Selina Khan, FCC  
Rosalee Chiara, FCC  
Daryl Cooper, FCC

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Before the  
 FEDERAL COMMUNICATIONS COMMISSION  
 Washington, DC 20554

In the Matter of )  
 )  
 Preemption of Local Zoning Regulation )  
 of Satellite Earth Stations )  
 )  
 In the Matter of )  
 )  
 Implementation of Section 207 of the )  
 Telecommunications Act of 1996 )  
 )  
 Restrictions on Over-the-Air Reception )  
 Devices: Television Broadcast Service and )  
 Multichannel Multipoint Distribution Service )

IB Docket No. 95-59

CS-Docket 96-83

FEDERAL COMMUNICATIONS  
 COMMISSION  
 OFFICE OF SECRETARY

OCT 4 '96

RECEIVED

**HUGHES NETWORK SYSTEMS, INC: PETITION FOR RECONSIDERATION  
 AND CLARIFICATION OF AUGUST 6, 1996 ORDER**

**I. INTRODUCTION**

On August 6, 1996, the FCC adopted a new rule, 47 C.F.R. § 1.4000, preempting local governmental and nongovernmental restrictions on antennas, including direct broadcast satellite (“DBS”) dishes, pursuant to Section 207 of the Telecommunications Act of 1996.<sup>1</sup> In order to clarify that Section 1.4000 would govern the preemption of restrictions on DBS antennas, the Commission also amended its previously-promulgated preemption rule, 47 C.F.R. § 25.104, to eliminate the provisions relating to DBS antennas. This amendment did more than the Commission intended: while it corrected for the inclusion of DBS in a new rule, it unintentionally

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<sup>1</sup> See *Preemption of Local Zoning Regulation of Satellite Earth Stations*, IB Docket 95-59, *Implementation of Section 207 of the Telecommunications Act of 1996, Restrictions on Over-the-Air Reception Devices: Television Broadcast Service and Multichannel Multipoint Distribution Service*, CS Docket 96-83, Report and Order, Memorandum Opinion and Order, and Further Notice of Proposed Rulemaking, FCC 96-328 (August 6, 1996) (the “August 1996 Order”).

deleted the provisions in Section 25.104 covering non-DBS residential satellite antennas. Hughes Network Systems, Inc. ("HNS"), the provider DirecPC, a residential satellite Internet gateway service, requests that the Commission correct this oversight.

## II. THE AMENDMENTS TO SECTION 25.104 SHOULD BE CORRECTED

Section 1.4000, adopted in August 1996, preempts local restrictions on DBS and other video programming antennas. This new rule was promulgated pursuant to Section 207 of the Telecommunications Act, enacted by Congress to provide greater access to video programming services and promote competition to cable television. Neither Section 207 nor Section 1.4000 addresses other satellite services, such as DirecPC provided by HNS.<sup>2</sup>

In order to show clearly that DBS was covered by this new rule, the Commission deleted the provisions regarding DBS antennas from its existing rule preempting local satellite antenna regulations, Section 25.104. While this deletion was necessary to prevent confusion, the Commission inadvertently went too far, removing from Section 25.104 the protections for *all* antennas installed in residential areas, even those not covered under the new Section 1.4000, such as DirecPC, which uses a 24-inch antenna to provide consumers with a high-speed satellite gateway to the Internet.<sup>3</sup>

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<sup>2</sup> See *August 1996 Order* at ¶ 30 ("VSAT, a commercial satellite service that may use satellite antennas less than one meter in diameter, is not within the purview of the statute because it is not used to provide over-the-air video programming").

<sup>3</sup> The DirecPC system comes with the 24-inch dish antenna, manufactured to withstand severe weather and can be adapted to mount in a number of situations -- sloped roof, vertical wall, ground pole, and even exterior pipe. DirecPC's antenna can be installed quickly and easily -- in fact, the entire system can often be installed within an hour. The process involves assembling and mounting the antenna, installing the ISA adapter card into the computer, connecting the cable and antenna, and adjusting the antenna to pick up the correct satellite. See *www.direcpc.com*.

Prior to these August amendments and the adoption of Section 1.4000, the Commission had one rule preempting local regulations affecting residential antennas, including both DBS and DirecPC dishes -- Section 25.104(b)(1)(B):

47 C.F.R. § 25.104

\* \* \*

(b)(1) Any state or local zoning, land-use, building, or similar regulation that affects the installation, maintenance, or use of:

(A) a satellite earth station that is two meters or less in diameter and is located or proposed to be located in any area where commercial or industrial uses are generally permitted by nonfederal land-use regulation; or

(B) a satellite earth station that is one meter or less in diameter in any area, regardless of land use or zoning category.

shall be presumed unreasonable and is therefore preempted subject to paragraph (b)(2).

\* \* \*

The Commission removed DBS from Section 25.104 in two steps. The first step carved DBS antennas out of the old rule, adding a new paragraph (f), which states that "a satellite earth station that is designed to receive direct broadcast satellite service, including direct-to-home satellite services, that is one meter or less in diameter or located in Alaska is covered by the regulations in 47 C.F.R. Subpart S Section 1.4000." The second step, an extra (and unnecessary) measure of caution, removed paragraph 25.104(b)(1)(B) in its entirety, creating the unintended problems for non-DBS residential satellite antenna users. Because services such as DirecPC are not video programming services, they are not included within Section 1.4000, but are now not included in Section 25.104(b)(1)(B), either.<sup>4</sup>

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<sup>4</sup> Regulations affecting these antennas are still preempted pursuant to Section 25.104(a), a much lower level of scrutiny reserved for much larger C-band antennas. *See March 1996 Order*, 11 F.C.C. Rcd. at 5814, ¶ 27. The Commission has found that regulations

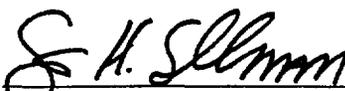
The effect of this second change on the preemption of non-DBS antennas was clearly unintentional. Nowhere -- not in the March 1996 Order and Further NPRM, not in the August 1996 Order, and not in any public notice -- has the FCC proposed to eliminate the protections for residential non-DBS satellite antennas one meter in diameter or smaller that it adopted in February 1996. HNS therefore requests that the FCC reverse the amendments made to Section 25.104(b)(1)(B). The Commission should leave intact the new Section 25.104(f), which makes clear enough that local DBS regulations are to be reviewed pursuant to Section 1.4000, not Section 25.104.

### III. CONCLUSION

For the reasons stated above, the Commission should reinstate Section 25.104(b)(1)(B) of its rules, which was inadvertently deleted when it promulgated the new Section 1.4000.

Respectfully submitted,

Hughes Network Systems, Inc.

By: 

James F. Rogers

Steven H. Schulman\*

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October 4, 1996

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appropriate for these larger antennas are often not appropriate for small, unobstrusive satellite dishes, such as the one used for DirecPC. *Id.*