FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

OCT 2 0 1998

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OFFICE OF
MANAGING DIRECTOR

86-285

John P. Janka, Esquire
Arthur S. Landerholm, Esquire
Latham & Watkins
1001 Pennsylvania Avenue, N.W.
Washington, D.C. 20004-2505

Re: Request for Waiver and Partial Refund of the Filing Fees for an Application for Multiple Ka Band Geostationary-Orbit Satellites

Dear Messrs Janka and Landerholm:

This is in response to your letter of December 22, 1997, on behalf of Hughes Communications, Inc.("HCI") requesting a waiver regarding the fee it paid for an application for multiple Ka Band Geostationary-Orbit Satellites. HCI paid a $680,360 filing fee for its applications to launch and operate SPACEWAY EXP, a network of eight geostationary-orbit Ka band satellites at four orbital locations.

You argue that there is good cause for determining the filing fee on a per-orbital-location basis, rather than a per-satellite basis. In support of your argument, you refer to the partial waiver granted HCI in its Expressway applications. See, letter addressed to John P. Janka, Esquire from Andrew S. Fishel, Managing Director dated August 26, 1997. You state that each of the "proposed spacecraft will be technically identical:capable of operating at any of the proposed orbital locations and capable of operating on exactly the same frequencies." We conclude that as long as all eight satellites are technically identical and are using the same frequency, a partial waiver is appropriate. Since advance publication, coordination and notification are required on a per geostationary satellite location basis, each location would require the same resources that an individual geostationary satellite application would require. Therefore, by applying the technically identical satellite criteria, HCI is entitled to a waiver and partial refund of $340,180 (4 orbital locations x $85,045). See Filing Fee Waiver Established for Applications Proposing Geosynchronous Space Stations in Response to Report Nos SPB-88 and SPB-89- Cut-Offs Established in the 2 GHz and 36-51.4 Frequency Bands (released August 26, 1997; see also letter addressed to George L. Hanbury, III, Esquire from Thomas M. Holleran, Acting Associate Director of Operations dated April 29, 1998.

Accordingly your request is granted. A check, made payable to the maker of the original check and drawn in the amount of $340,180 will be sent to you at the earliest practicable time. If you have any questions concerning this refund, please call the Chief, Fee Section at (202) 418-1995.

Sincerely,

Mark Reger
Chief Financial Officer

FCC Collection System User Test - omdsun01w

File CD Search Credit Card NSF Payment Search Report

Payment Search Detail

Fee Control Number	Payor Name	Remittance ID	Payment Amount	D A
9712238210222002	HUGHES COMMUNICATIONS INC	351875	$680,360.00	

Credit Card Info | Payor Info | Bad Check Info | Changer Info | Acct Info

Sequence	Quantity	Payment Type Code	Payment Amount	Trans Code	CallSign Other Id	Treasury Symbol	Date Last Changed	Changer Initials
1	8	BNY	$680,360.00	PMT	PACEWAYE	272429	12/24/97	SYS

Print Screen

Start | Novell-delivered | FCC Collection... | 5:24 PM

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December 22, 1997

BY HAND DELIVERY

Ms. Magalie Roman Salas
Secretary
Federal Communication Commission
1919 M Street, N.W., Room 222
Washington, DC 20554

Re: Request to the Managing Director for Partial Filing Fee Waiver

Dear Ms. Salas:

Enclosed for filing please find an original and four copies of a request by Hughes Communications, Inc. to the Managing Director, pursuant to Commission rule Sections 1.3 and 1.1117, for a partial filing fee waiver.

Please feel free to contact me at 202/637/2200 with any questions.

Sincerely yours,

John P. Janka

Enclosures

cc: Andrew S. Fishel

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December 22, 1997

BY HAND DELIVERY

Mr. Andrew S. Fishel
Managing Director
Federal Communications Commission
1919 M Street, N.W., Room 852
Washington, D.C. 20554

Re: Partial Waiver of the Filing Fees for an Application for Multiple Ka Band Geostationary-Orbit Satellites

Dear Mr. Fishel:

Pursuant to Sections 1.3 and 1.1117 of the Commission's Rules, Hughes Communications, Inc. ("HCI") hereby requests a partial waiver of the $680,360 filing fee that it is paying today with respect to its application to launch and operate SPACEWAY EXP, a network of eight geostationary-orbit Ka band satellites at four orbital locations. As set forth more fully in the SPACEWAY EXP application, each of the proposed spacecraft will be technically identical: capable of operating at any of the proposed orbital locations and capable of operating on exactly the same frequencies.

In accordance with the Commission's Public Notice of October 15, 1997,[1] HCI has submitted a filing fee based on the number of satellites proposed in this application. Thus, HCI has submitted a total filing fee of $680,360 (8 satellites x $85,045). In this case, however, there is good cause for determining the filing fee on a per-orbital-location basis, rather than a per-satellite basis as that Public Notice provides. Thus, HCI believes that the correct filing fee for this application should be $340,180 (4 orbital locations x $85,045). For the reasons provided below, HCI respectfully requests a refund of $340,180, which is half of the filing fee it has submitted for this system.

Grant of this request would be fully consistent with existing Commission precedent. Just four months ago, the Commission granted a waiver request under analogous circumstances. In connection with the filing window for satellite applications in the 2 and 36-51.4 GHz bands, the Managing Director determined that applicants proposing more than one technically identical space station at a single orbital location could file their fees based on the number of orbital locations they propose to occupy, rather than the number of space stations that they propose to launch and operate. In order to qualify for this waiver, the Managing Director required that "All satellites at each orbital location must be technically identical, including using exactly the same frequency band . . . ."[2]

The policy reasons for the fee waivers granted with respect to the 2 and 36-51.4 GHz bands apply with the same force here. As the Managing Director has noted, the United States coordinates GSO spacecraft on a per-orbital-location basis. As long as all satellites at each orbital location use exactly the same frequency band, the amount of resources that the Commission expends with respect to a satellite application is unaffected by the number of spacecraft proposed.[3]

Moreover, with respect to the Ka band (20/30 GHz), on September 28, 1995, the Managing Director released an initial response (the "Initial Response") to the interpretation of

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1 *See Satellite Applications Accepted for Filing in Ka-band; Cut-Off Established for Additional Applications in the 28.35-28.6 GHz, 29.1-30 GHz, 17.7 - 18.8 GHz, and 19.3 - 20.2 GHz Frequency Bands*, Report No. SPB-106, DA 97-2202 (rel. October 15, 1997).

2 *See Filing Fee Waiver Established for Applications Proposing Geosynchronous Space Stations in Response to Report Nos. SPB-88 and SPB-89 - Cut-Offs Established in the 2 GHz and 36-51.4 Frequency Bands* (rel. August 26, 1997)

3 *See* Letter from Managing Director, FCC to Counsel to Hughes Communications Galaxy, Inc. (August 26, 1997) (granting waiver with respect to the Expressway GSO satellite system). Congress intended that the filing fee for a given application reasonably approximate the cost of the Commission's services in processing that application. *See* H. R. REP. NO. 247, 101st Cong., 1st Sess. 545 (1989); H. R. REP. NO. 300, 99th Cong., 2nd Sess. 506 (1985).

Section 1.1107(9)(b) in the context of Ka band satellite applications, which provided for payment of the Section 1.1107(9)(b) filing fee based on the number of orbital locations requested by a GSO satellite system applicant.[4] The Initial Response acknowledged that, given the evolution of GSO satellite technology and the development of multiple space station GSO systems, a per space station filing fee might not be "suitable for th[e] fixed [satellite] service in the Ka band."[5] Instead, the Initial Response allowed for payment of the Section 1.1107(9)(b) filing fee based on the number of orbital locations requested by a GSO satellite system applicant. This ruling has not yet been modified by either a final interpretation of Section 1.1107(9)(b) or a comprehensive response to the arguments raised in the underlying request for declaratory ruling with respect to the Ka band.

Accordingly, HCI respectfully requests a waiver of the Commission's filing fee requirements with respect to the SPACEWAY EXP application to provide for a filing fee based on the number of orbital locations requested that will be occupied by technically identical spacecraft (i.e., 4 x $85,045). Thus, HCI also respectfully requests a refund of $340,180, which represents half of the total filing fee that it submitted for this four-orbital-location, eight-spacecraft, application.

Thank you for your prompt consideration of this request.

Respectfully submitted,

John P. Janka
Arthur S. Landerholm

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4 *See* Letter from Andrew S. Fishel, Managing Director, to John P. Janka (September 28, 1995) ("Interim Response"); Interim Filing Fee Payment Established For Ka-Band Satellite Applications, Public Notice No. 56031 (released September 28, 1995). This initial response was prompted by a request for a declaratory ruling as to Sections 1.1107(a) and (b) by Hughes Communications Galaxy, Inc. *See* Letter from John P. Janka to Andrew S. Fishel (September 19, 1995).

5 *See* Letter from Andrew S. Fishel, Managing Director, to John P. Janka (September 28, 1995).

BY: FEE CONTROL NUMBER

Fee Control Number	Payor Name	Account Number	Received Date
9712238210222002	HUGHES COMMUNICATIONS INC 1500 HUGHES WAY LONG BEACH CA 90810	FCC2039558	12/22/97

Payment Amount	Current Balance	Seq Num	Payment Type Code	Quantity	Callsign Other Id	Applicant Name	Applicant Zip	Bad Check	Detail Amount	Trans Code	Payment Type
$680,360.00	$680,360.00	1	BNY	8	PACEWAYE	HUGHES COMMUNICATIONS INC	90810		$680,360.00	1	PMT
Total 1									$680,360.00		

File

FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

OFFICE OF
MANAGING DIRECTOR

August 26, 1997

John P. Janka, Esquire
Latham & Watkins
1001 Pennsylvania Avenue, N.W.
Washington D.C. 20004-2505

Dear Mr. Janka:

This is in response to your letter, dated July 28, 1997, requesting, on behalf of Hughes Communications Galaxy, Inc. (Hughes), a declaratory ruling to resolve uncertainty concerning the fee amount required with applications for global geostationary orbit ("GSO") satellite systems, such as Hughes' Expressway satellite system. In the alternative, you request a waiver of the fees set forth in Section 1.1107(b)(9) of the Commission's rules. 47 C.F.R. § 1.1107(9)(b). Hughes filed its Expressway application on July 14, 1997. Applicants, including Hughes, proposing geosynchronous space stations in response to Cut-Off Notices in the 2 GHz and 36-51.4 GHz Frequency Bands (see Public Notices, Report Nos. SPB-88 and SPB-99 (July 22, 1997), as clarified, Report No. SPB-95 (August 13, 1997)), must file their applications on or before September 5, 1997.

You state that Hughes in its Expressway application requests authorization to launch and operate 14 technically identical geostationary space stations to be located at 10 orbital locations. You state that the plain language of Section 1.1107(9)(b) calls for a "per application" fee, regardless of the number of satellites proposed. You therefore believe that, since applicants for space stations may now file one consolidated system application for all space stations in a given satellite system, $85,045 should be the required fee for a single application for a GSO satellite system. In the alternative, you request a waiver. Specifically, you contend that due to technological advances in the design of satellite systems and for reasons of equity the appropriate fee for Hughes' Expressway application should be no more than the fee assessed by the Commission's rules for applications for authority to launch and operate non-geosynchronous orbit, including Low Earth Orbit (LEO), systems Satellite Systems. 47 C.F.R. § 1.1107(10)(b).

The Commission from the outset of its application fee program has construed the statutory fee schedule in Section 8 of the Communications Act to require a separate fee payment for each, individual geosynchronous space station an applicant requests.

Collection Program to Implement the Provisions of the Consolidated Omnibus Budget Reconciliation Act of 1986, 2 FCC Rcd 947, 974 (Each application for authority to launch and operate a space station will require a fee ... .). We therefore decline to construe the rules or statute in the manner you suggest.

Turning to your waiver arguments, you contend that no fewer Commission resources would be needed to process NGSO applications currently on file than to process Hughes' Expressway system application. Therefore, you believe that a system fee would be appropriate for Expressway. We disagree.

NGSO satellite systems are coordinated internationally with all other users of the same frequency bands. A single package of information is prepared for each stage of the ITU registration process: advance publication, coordination, and notification, as appropriate. Only one group of affected administrations is involved in the correspondence associated with the coordination of the entire system. The staff estimates that the coordination processing of an NGSO application requires about three times the resources as the processing of an individual geostationary satellite location application. Therefore, the NGSO application fee is approximately three times that of a single satellite application.

Additionally, you argue that NGSO architectures require rulemaking proceedings in order to be accommodated. You state that, in contrast, Hughes' Expressway GSO system falls within the current regulatory framework and does not require a rulemaking proceeding. Application fees, however, do not cover policy and rulemaking costs of the Commission. Costs associated with rulemakings are recovered through Section 9 fees and not Section 8 fees, which cover "Authorization of Service."

We do conclude, however, that a partial waiver is appropriate based on the other characteristics of your proposed system. The U.S. administration coordinates its GSO satellites with other affected GSO satellite networks in the same frequency bands as the proposed system. Certain elements of the ITU registration process are common to all satellites in a proposed system. However, advance publication, coordination and notification are required on a per geostationary satellite location basis. Affected entities differ for each location and frequency band. Separate ITU advance publication, coordination and notification packages are required for each location. A separate series of correspondence occurs for each location. Since notification and coordination occurs on a per location basis, each location would require the same resources that an individual geostationary satellite application requires. Therefore, we believe that the appropriate fee for GSO satellite systems is $85,045 "per location" assuming all satellites at each location use exactly the same frequency band.

In view of the above, we grant your request for waiver to the extent that Hughes may make a fee payment of $85,045, based upon the number of orbital locations it proposes to occupy with technically identical space stations rather than the number of space stations it proposes to launch and operate. All satellites at each orbital location must be technically identical in order for the waiver standard to be met. Based upon the 10 orbital locations proposed, Hughes' revised fee payment of $850,450 should be filed no later than September 5, 1997 along with a revised Fee Payment Form 159 (Payment Code BNY).

If you have any questions regarding the foregoing, please contact Regina Dorsey of my staff at (202) 418-1995.

Sincerely,

Andrew S. Fishel
Managing Director

Jim Mullins: OGC/Ad.Law
CC: File, Reading File, Attorney File, Susan Steiman

PUBLIC NOTICE

Federal Communications Commission
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News media information 202 / 418-0500
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76181

Released: August 26, 1997

FILING FEE WAIVER ESTABLISHED FOR APPLICATIONS PROPOSING GEOSYNCHRONOUS SPACE STATIONS IN RESPONSE TO REPORT NOS. SPB-88 AND SPB-89 -- CUT-OFFS ESTABLISHED IN THE 2 GHz AND 36-51.4 GHz FREQUENCY BANDS

The Managing Director has granted in part a request by Hughes Communications, Inc. for waiver of the fee required by Section 1.1107(9)(b) of the Commission's rules for geosynchronous space station applications. See letter to John P. Janka, Esquire, from Andrew S. Fishel, Managing Director, dated August 22 , 1997. In light of this waiver, the Managing Director has determined that similar waivers should be granted to all applicants who meet the criteria for waiver specified in his August 22, 1997 letter and who are filing geosynchronous space station applications in response to the Cut-Off Notices in the 2 GHz and 36-51.4 GHz Frequency Bands (*see* Public Notices, Report Nos. SPB-88 and SPB 89 (July 22, 1997), *as clarified*, Report No. SPB-95 (August 13, 1997)). The waiver permits applicants proposing more than one technically identical space station to be located at a single orbital location to file their fees based upon the number of orbital locations they propose to occupy rather than the number of space stations they propose to launch and operate. All satellites at each orbital location must be technically identical, including using exactly the same frequency band, in order for the waiver standard to be met.

The fee payment should be filed, along with underlying applications, no later than September 5, 1997. Applicants qualifying for the waiver should submit a fee payment of $85,045 per orbital location (Payment Code BNY) for authority to launch and operate one or more technically identical space stations at each orbital location, regardless of how many space stations are proposed for operation. Thus, for example, if an applicant requests authorization for nine technically identical satellites to operate at three orbital locations, it should submit three fee payments to launch and operate its space stations, totalling $255,135. These applicants should also submit with their applications a statement setting forth the reasons why their applications satisfy the criteria described above for a fee waiver.

Questions regarding the foregoing should be directed to Regina Dorsey, Chief, Billings and Collections Branch, (202) 418-1995 or Kathleen Campbell, International Bureau, at (202) 418-0753.

BY: FEE CONTROL NUMBER

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$680,360.00	$680,360.00	1	BNY	8	PACEWAYE	HUGHES COMMUNICATIONS INC	90810		$680,360.00	1	PMT
Total 1									$680,360.00		