

CERTIFICATE OF SERVICE

I, Kaigh K. Johnson, do hereby certify that true and correct copies of the foregoing "Application for Review" was mailed U.S. first class this 8th day of September, 1995 to the following:

*Chairman Reed E. Hundt
Federal Communications Commission
1919 M Street, N.W.
Room 814
Washington, D.C. 20554

*Commissioner James H. Quello
Federal Communications Commission
1919 M Street, N.W.
Room 802
Washington, D.C. 20554

*Commissioner Andrew C. Barrett
Federal Communications Commission
1919 M Street, N.W.
Room 826
Washington, D.C. 20554

*Commissioner Rachelle B. Chong
Federal Communications Commission
1919 M Street, N.W.
Room 844
Washington, D.C. 20554

*Commissioner Susan Ness
Federal Communications Commission
1919 M Street, N.W.
Room 832
Washington, D.C. 20554

*John Nakahata
Federal Communications Commission
1919 M Street, N.W.
Room 814
Washington, D.C. 20554

*Via Hand Delivery

*Rudolfo M. Baca
Federal Communications Commission
1919 M Street, N.W.
Room 802
Washington, D.C. 20554

*Lisa B. Smith
Federal Communications Commission
1919 M Street, N.W.
Room 826
Washington, D.C. 20554

*Jane Mago
Federal Communications Commission
1919 M Street, N.W.
Room 844
Washington, D.C. 20554

*Mary P. McManus
Federal Communications Commission
1919 M Street, N.W.
Room 832
Washington, D.C. 20554

*Scott Blake Harris
Federal Communications Commission
International Bureau
2000 M Street, N.W.
Room 830
Washington, D.C. 20554

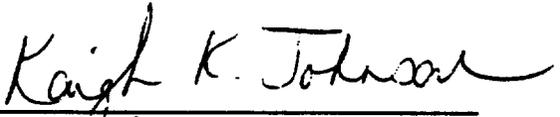
*Mark Grannis
Federal Communications Commission
International Bureau
2000 M Street, N.W.
Room 819
Washington, D.C. 20554

*Fern J. Jarmulnek
Federal Communications Commission
International Bureau
2000 M Street, N.W.
Room 518
Washington, D.C. 20554

*Cassandra Thomas
Federal Communications Commission
International Bureau
2000 M Street, N.W.
Room 810
Washington, D.C. 20554

*Marilyn J. McDermett
Associate Managing Director
for Operations
Federal Communications Commission
International Bureau
1919 M Street, N.W.
Room 848
Washington, D.C. 20554

*Thomas M. Holleran
Deputy AMD-O
Federal Communications Commission
International Bureau
1919 M Street, N.W.
Room 848
Washington, D.C. 20554


Raigh K. Johnson

*Via Hand Delivery

Payment Transactions Detail Report

Date: 2/2/98

BY: FEE CONTROL NUMBER

Fee Control Number	Payor Name	Account Number	Received Date
8408228835035009	COLUMBIA COMMUNICATIONS CORPOR 2000 K STREET NW SUITE 600 WASHINGTON DC 20006	0990237669	08/19/94

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
\$65,000.00	\$65,000.00	1	CSG1	1		COLUMBIA COMMUNICATIONS CORPOR			\$32,500.00	1	PMT
\$65,000.00	\$65,000.00	2	CSG1	1		COLUMBIA COMMUNICATIONS CORPOR			\$32,500.00	1	PMT
Total									<u>\$65,000.00</u>		

11-123010001000 /

BEFORE THE

Federal Communications Commission
WASHINGTON, D.C. 20554

11/12/97
FOD/
BCB/H

In the Matter of)
)
COLUMBIA COMMUNICATIONS CORPORATION)
)
Request For Reduction of Regulatory Fees)
For Fiscal Year 1997 Relating to The Use)
Of C-Band Transponders on the NASA/TDRS)
Satellites at 41° W.L. and 174° W.L.)

File No. _____

RECEIVED
FEDERAL COMMUNICATIONS COMMISSION

SEP 24 9 53 AM '97

RECEIVED

To: The Managing Director

REQUEST FOR REDUCTION AND REFUND OF REGULATORY FEES

Columbia Communications Corporation ("Columbia"), by its attorneys and pursuant to Sections 1.1159(a)(3) and 1.1165 of the Commission's Rules, hereby requests a reduction by one-half of the 1997 satellite space station regulatory fees paid today in connection with its two geosynchronous space station authorizations. Columbia has for three years sought a ruling allowing it to pay fees more commensurate with its unique status as operator of a portion of the capacity on the NASA Tracking and Data Relay Service ("TDRS") satellites. Each year it has submitted twice the amount that it believes it should be assessed. Columbia is once again submitting a full payment this year, but strongly protests the Commission's lengthy delay in granting the relief it has requested.

In view of the fact that action on Columbia's fee waiver request has been so long delayed, it asks that the Commission hold its 1997 fee payment check, and not tender it for payment pending final action on Columbia's request. Alternatively, Columbia requests that its 1997 fee payment be refunded in full following a favorable ruling on its request, with the excess

fees paid during prior years being applied to cover Columbia's 1997 regulatory fee liability. It further requests that any additional credit due Columbia for excess fees paid during 1994-1996 be applied to its 1998 fees.

Regardless of the outcome of Columbia's request with respect to geosynchronous satellite fees, Columbia further requests a refund in full of the international bearer circuit fees it is paying today, as this fee cannot lawfully be applied to non-common carriers such as Columbia.

Geosynchronous Space Station Fees

For the fourth consecutive year, Columbia is seeking relief from the disparate impact of the Commission's geosynchronous satellite regulatory fee to its marketing of the C-band spectrum on the NASA TDRS satellites.¹ The basis for this request is amply set forth in Columbia's Application for Review, filed over two years ago, on September 8, 1995 (by which Columbia requested Commission review of the Assistant Managing Director's denial of Columbia's request for reduction of its 1994 regulatory fees), coupled with its Supplement to Application for Review, filed September 13, 1996. The grounds set forth in these pleadings are equally applicable to this request for reduction of Columbia's 1997 fees.

¹ Columbia has previously requested reduction of regulatory fees paid for 1994, 1995 and 1996. See "Request for Reduction of Regulatory Fees," filed August 19, 1994; "Request for Reduction of Regulatory Fees," filed September 19, 1995; "Request for Reduction of Regulatory Fees," filed September 30, 1996. The initial 1994 request remains subject to an Application for Review, filed on September 8, 1995, by which Columbia requested Commission review of the denial of that request by the Assistant Managing Director for Operations. In each subsequent request, Columbia has requested that the ultimate decision concerning the 1994 fees be applied to payments made in the ensuing years.

Moreover, the arguments made by Columbia in its earlier pleadings are strengthened further by the Managing Director's recent action granting a request by Hughes Communications Galaxy, Inc. ("Hughes") for relief from payment of more than one satellite application fee for multiple identical spacecraft to be located at the same orbital location. See Attachment, Letter to John P. Janka, Esq. from Andrew S. Fishel, Managing Director, dated August 22, 1997 ("Hughes Waiver Letter"). This determination applies a rule of reason to satellite applicants, waiving the required "per space station" application fee under circumstances where payment on such basis would be inequitable. Similarly, Columbia seeks adjustment of the "per space station" regulatory fee on a *pro rata* basis to reflect its use of only a portion of the capacity on a satellite.^{2/} Indeed, the rationale for relief applies more strongly to Columbia's circumstance, as it is a small business employing capacity on a U.S. government satellite to provide low cost service to the public. It has generally been Commission policy to promote such

^{2/} It should be noted that the purposes of "application" fees and "regulatory" fees are distinct. Application fees are intended to recover the cost of processing applications, including the international notification and coordination processes. See Hughes Waiver Letter at 2. Regulatory fees are intended to recover the costs of "enforcement activities, policy and rulemaking activities, user information services, and international activities" (47 U.S.C. § 159(a)(1)) taking into account, *inter alia*, "factors that are reasonably related to the benefits provided to the payor of the fee" by these activities (47 U.S.C. § 159(b)(1)(A)). The Hughes application fee waiver is nonetheless relevant to Columbia's regulatory fee reduction request in that it illustrates a sensible application of a fee assessed on a "per space station" basis to reflect the actual nature of the facilities covered in relationship to the purpose of the fee. The decision also illustrates the fact that the costs of international coordination of orbital locations are covered by application fees not regulatory fees. Finally, Columbia's request for a *pro rata* reduction in its fees to reflect the limited nature of its capacity presents a stronger case for relief than Hughes' request given the express statutory directive that regulatory fees be "reasonably related to the benefits provided to the payor."

pro-competitive, entrepreneurial ventures through flexible and equitable application of its rules. Certainly, when a large company such as Hughes has been granted a fee waiver premised on a practical application of the Commission's fee rules, a small company such as Columbia should be treated no less favorably.

International Bearer Circuit Fees

Columbia also requests that the fees paid today for international bearer circuits be refunded to it. For the first time, the Commission has this year extended the international bearer circuit fee from common carriers to non-common-carriers as well. See Assessment and Collection of Regulatory Fees for Fiscal Year 1997, FCC 97-215, slip op. at 28-29 (¶¶ 70-71) (released June 26, 1997). The Communications Act, however, specifically defines "carriers," the entities subject to this fee under the statute, as "common carriers." See 47 U.S.C. § 153(10). The Commission lacks the power to alter the definition of this category or to create a new one applicable to non-common-carriers absent a change in its regulation of these carriers adopted either by rulemaking or by a change in the Act. See Comsat Corp. v. FCC, 114 F.3d 223, 227 (D.C. Cir. 1997).^{3/}

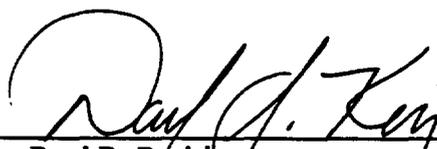
^{3/} Moreover, as a practical matter, the FCC does not regulate non-common-carriers as it does common carriers, and thus must not impose fees meant to cover the costs of common carrier regulation upon entities that are not subject to such regulation. Operators of satellite space segment capacity are subject to a separate, very substantial fee on a per space station basis which common carriers, including Comsat, are not required to pay.

Conclusion

Columbia respectfully requests that the Commission refrain from submitting Columbia's check for payment until the issue of its fee reduction request is resolved. In the event that the Commission overturns the AMD-O's initial ruling with respect to 1994, 1995 and 1996 geosynchronous space station fees, Columbia requests that the excess fees paid during these years be applied to Columbia's 1997 fee liability, and that the checks submitted today be returned, or alternatively, that the money be refunded to Columbia expeditiously. Regardless of the determination made concerning space station fees, Columbia requests a full refund of the international bearer circuit fees paid today because imposition of these fees on non-common carriers is contrary to statute and sound policy.

Respectfully submitted,

COLUMBIA COMMUNICATIONS CORPORATION

By: 
Raul R. Rodriguez
David S. Keir

Leventhal, Senter & Lerman, P.L.L.C.
2000 K Street, N.W.
Suite 600
Washington, D.C. 20006
(202) 429-8970

September 19, 1997

Its Attorneys

ATTACHMENT

FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

OFFICE OF
MANAGING DIRECTOR

August 26, 1997

John F. Janka, Esquire
Lathar & 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, 5 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.

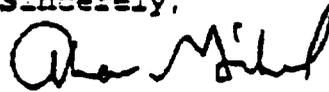
John P. Jarka, Esquire

3

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

BY: FEE CONTROL NUMBER

Fee Control Number	Payor Name	Account Number	Received Date
9709238835318007	COLUMBIA COMMUNICATIONS CORPOR 7200 WISCONSIN AVENUE SUITE 701 BETHESDA MD 20814	FCC2046530	09/19/97

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			
\$196,540.00	\$196,540.00	3	CIC7	118		COLUMBIA COMMUNICATIONS CORPOR	20814		\$590.00	1	PMT			
\$196,540.00	\$196,540.00	1	CSG7	1	TDRS4	COLUMBIA COMMUNICATIONS CORPOR	20814		\$97,975.00	1	PMT			
\$196,540.00	\$196,540.00	2	CSG7	1	TDRS5	COLUMBIA COMMUNICATIONS CORPOR	20814		\$97,975.00	1	PMT			
Total									3			\$196,540.00		

FY 98 Request



COLUMBIA COMMUNICATIONS CORPORATION

7200 WISCONSIN AVENUE, SUITE 701 • BETHESDA, MARYLAND 20814
TELEPHONE (301) 907-8800 • FACSIMILE (301) 907-2420

September 17, 1998

BY COURIER

Federal Communications Commission
c/o Mellon Bank
Three Mellon Bank Center
525 William Penn Way
27th Floor, Room 153-2713
Pittsburgh, Pennsylvania 15259-0001

Attn: FCC Module Supervisor

Re: 1998 Geostationary Satellite Regulatory Fees

Dear Sir or Madam:

Columbia Communications Corporation ("Columbia") submits herewith its regulatory fee payment for 1998. The total payment of \$238,000 covers Columbia's two satellites licensed under Section 25.121(d) of the Commission's Rules as of October 1, 1997 — TDRS-4 (41° W.L.) and TDRS-5 (174.3° W.L.). (Since that date, Columbia's former TDRS-4 authorization has been modified to specify operation of the Columbia 515 satellite at 37.5° W.L.)

Columbia is splitting its fee payment among three credit cards, which together cover \$41,000 of the total amount owed, and a check covering the remaining \$197,000. Columbia contacted the FCC's Office of Public Affairs, and was advised by Mr. Harrison Cox that this means of payment was acceptable to his supervisors. In accordance with Mr. Cox's advice, four FCC Forms 159 are enclosed, one for each method of payment. The remittances covered by these forms are to be applied as follows:

<u>Form Page #</u>	<u>Payment Instrument</u>	<u>Licensed Facility</u>	<u>Amount</u>
1	VISA Card Acct. # 0004442850133034	TDRS-4	\$18,999.00
2	VISA Card Acct. # 4495737005477261	TDRS-4	\$13,001.00

BEFORE THE
Federal Communications Commission
WASHINGTON, D.C. 20554

In the Matter of)
)
COLUMBIA COMMUNICATIONS CORPORATION) File No. _____
)
Request For Reduction of Regulatory Fees)
For Fiscal Year 1998 Relating to The Use)
Of C-Band Transponders on the NASA/TDRS)
Satellites at 41° W.L. and 174° W.L.)

To: The Managing Director

REQUEST FOR REDUCTION AND REFUND OF REGULATORY FEES

Columbia Communications Corporation ("Columbia"), by its attorneys and pursuant to Sections 1.1159(a)(3) and 1.1165 of the Commission's Rules, hereby requests a reduction by one-half of the 1998 satellite space station regulatory fees paid today in connection with its two geostationary space station authorizations. Columbia has for four years sought an equitable adjustment allowing it to pay annual regulatory fee charges in a manner more commensurate with its unique status as operator of a portion of the capacity on the NASA Tracking and Data Relay Service ("TDRS") satellites.^{1/} Each year Columbia has been compelled to submit fully twice the amount that it believes it should be assessed. Once again — for the fourth consecutive year without a resolution of its prior requests — it is submitting a full

^{1/} Earlier this month, Columbia's authorization for the TDRS-4 satellite was modified to permit it to substitute use of its Columbia 515 satellite at the 37.5° W.L. in lieu of TDRS-4's former operation at 41° W.L. See *Columbia Communications Corp.*, DA 98-1801, slip op. (IB, released September 8, 1998). This was a compromise effected in order to resolve a longstanding dispute between the United States Government and Intelsat over the future use of the 41° W.L. orbital location.

payment, but strongly protests the Commission's extraordinary delay in taking any action upon the relief it first requested more than four years ago.^{2/}

Columbia has recently been advised that a ruling on its 1995 Application for Review, which pertains to its fee payment for 1994 (the first year regulatory fees were collected), may finally be acted upon soon — although not likely before tomorrow's deadline for 1998 fee payments. Accordingly, in the event of a ruling granting Columbia's appeal, it requests that its 1998 fee payment be refunded in full following such action, with the excess fees paid during prior years being applied to cover Columbia's current 1998 regulatory fee liability. It further requests that any additional credit due Columbia for excess fees paid during the preceding four years (1994-1997) be applied to the fees owed in subsequent years.

The basis for Columbia's request is amply set forth in Columbia's Application for Review, filed over three years ago, on September 8, 1995, coupled with its Supplement to Application for Review, filed September 13, 1996. The grounds set forth in these pleadings are equally applicable to this request for reduction of Columbia's 1998 fees.

^{2/} Columbia has previously requested reduction of regulatory fees paid for 1994, 1995, 1996 1997. See "Request for Reduction of Regulatory Fees," filed August 19, 1994; "Request for Reduction of Regulatory Fees," filed September 19, 1995; "Request for Reduction of Regulatory Fees," filed September 30, 1996; and "Request for Reduction of Regulatory Fees," filed September 19, 1997. The initial 1994 request remains subject to an Application for Review, filed on September 8, 1995, by which Columbia requested Commission review of the denial of that request by the Assistant Managing Director for Operations. In each subsequent request, Columbia has requested that the ultimate decision concerning the 1994 fees be applied to payments made in the ensuing years.

Moreover, the arguments made by Columbia in its earlier pleadings are strengthened further by the Managing Director's action last year granting a request by Hughes Communications Galaxy, Inc. ("Hughes") for relief from payment of more than one satellite application fee for multiple identical spacecraft to be located at the same orbital location.^{3/} This determination applies a rule of reason to satellite applicants, waiving the required "per space station" application fee under circumstances where payment on such basis would be inequitable. As evidenced in this year's Public Notice providing regulatory fee filing instructions for international and satellite services, this same rule of reason has been extended to the payment of the "per space station" regulatory fee, to wit "[m]ultiple technically identical geostationary satellites co-located at the same orbital location will be considered one station for the purpose of per-space station regulatory fee calculation."^{4/} Columbia simply seeks a similar adjustment on a *pro rata* basis to reflect its use of only a portion of the capacity on a satellite.^{5/}

Indeed, the rationale for relief applies more strongly to Columbia's circumstance, as it is a small business employing capacity on a U.S. government satellite to provide low cost service to the public. It has generally been Commission policy to promote such pro-competitive,

^{3/} See Letter to John P. Janka, Esq. from Andrew S. Fishel, Managing Director, dated August 22, 1997 ("Hughes Waiver Letter").

^{4/} See Public Notice, "FY 1998 International and Satellite Services Regulatory Fees," Mimeo No. 84741 (dated August 3, 1998).

^{5/} Columbia's request for a *pro rata* reduction in its fees to reflect the limited nature of its capacity actually presents a stronger case for relief than Hughes' request given the express statutory directive that regulatory fees be "reasonably related to the benefits provided to the payor."

entrepreneurial ventures through flexible and equitable application of its rules. Certainly, when a large company such as Hughes has been granted a fee waiver premised on a practical application of the Commission's fee rules, a small company such as Columbia should be treated no less favorably. As it has developed, however, while Hughes' 1997 request for a declaratory ruling concerning application fees was granted less than a month after it was filed, Columbia's 1994 request for regulatory fee reduction has been once rejected, and has still not yet been granted more than four years after its initial filing.

Conclusion

Columbia respectfully requests that, in the event that the Commission overturns the AMD-O's initial ruling with respect to its 1994 geostationary space station fees, that the excess fees paid during that year and the subsequent three years, 1995-97, be applied to

Columbia's 1998 fee liability, and that the payments being submitted today be refunded to Columbia expeditiously. Columbia further requests that it be given a credit balance against the payment of regulatory fees in future years.

Respectfully submitted,

COLUMBIA COMMUNICATIONS CORPORATION

By: _____



Raul R. Rodriguez
David S. Keir

Leventhal, Senter & Lerman, P.L.L.C.
2000 K Street, N.W.
Suite 600
Washington, D.C. 20006
(202) 429-8970

September 18, 1998

Its Attorney