ORIGINAL

PAUL, WEISS, RIFKIND, WHARTON & GARRISON

1615 L STREET, NW WASHINGTON, DC 20036-5694

TELEPHONE (202) 223-7300
FACSIMILE (202) 223-7420

JEFFREY H. OLSON
COMMUNICATIONS COUNSEL

TELEPHONE (202) 223-7326
E-MAIL jolson@paulweiss.com

1285 AVENUE OF THE AMERICAS
NEW YORK, NY 10019-6064
TELEPHONE (212) 373-3000
FACSIMILE (212) 757-3990

62, RUE DU FAUBOURG SAINT-HONORÉ
75008 PARIS, FRANCE
TELEPHONE (33 1) 53 43 14 14
FACSIMILE (33 1) 53 43 00 23

FUKOKU SEIMEI BUILDING
2-2 UCHISAIWAICHO 2-CHOME
CHIYODA-KU, TOKYO 100-0011, JAPAN
TELEPHONE (81-3) 3597-8101
FACSIMILE (81-3) 3597-8120

2918 CHINA WORLD TOWER II
NO 1 JIANGUOMENWAI DAJIE
BEIJING, 100004
PEOPLE'S REPUBLIC OF CHINA
TELEPHONE (86-10) 6505-6822
FACSIMILE (86-10) 6505-6830

12TH FLOOR, HONG KONG CLUB BUILDING
3A CHATER ROAD, CENTRAL
HONG KONG
TELEPHONE (852) 2536-9933
FACSIMILE (852) 2536-9622

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Via Hand Delivery

Magalie Roman Salas, Secretary
Federal Communications Commission
445 12th St., S.W., Room TW-B204
Washington, D.C. 20554

Re: Ex Parte File Nos.ET Docket No. 98-206,
48-SAT-P/LA-97, 89-SAT-AMEND-97,
130-SAT-AMEND-98

Dear Ms. Salas:

On September 27, 2000, Mark MacGann, Vice President of SkyBridge, Guy Christiansen, Director of Regulatory Affairs, and the undersigned of Paul, Weiss, Rifkind, Wharton & Garrison, counsel to SkyBridge L.P., met in person with Clint Odom, Legal Advisor to Chairman Kennard, for the purpose of discussing issues relating to the above-referenced matters. At this meeting, the attached materials were discussed.

If there are any questions regarding this matter, please contact the undersigned.

Respectfully submitted,

Jeffrey H. Olson
Attorney for SkyBridge L.P.

Enclosure

cc: Clint Odom, Esq.

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NGSO FSS Ku-BAND LICENSING

- As Commission recognized in its first Section 706 Report, satellite systems -- and particularly LEO systems -- hold the greatest potential for bridging the digital divide, as they are the only systems capable of providing fully interactive, high-speed broadband services to all parts of the country, with the same costs for both rural and urban areas.

- The Report and Order in ET Docket 98-206 will establish allocation and service rules for Ku-band NGSO FSS systems, including the SkyBridge LEO system, which is specifically designed to provide the critical services identified by Congress and the Commission. These systems are now ready to be licensed.

- The FCC's traditional approach to satellite licensing -- encouraging the various applicants to reach a compromise -- will not work in the instant case. Many of the applicants have every incentive to delay the development of these Ku-band systems, because they are committed to the development of competitive satellite systems designed to operate in other frequency bands. A licensing compromise cannot be achieved unless all parties view compromise as being in their best interest.

- The only rational solution is to license all systems now, at the full bandwidth sought by each applicant, consistent with the allocation and service rules adopted in the Report and Order, with strict milestones established for construction, launch and operation.

- Each licensee should be authorized to use the full bandwidth requested in its application, subject to the obligation to coordinate with other licensees as new systems prepare to enter service.

- This is similar in approach to the recent 2 GHz Report and Order, but takes into account both the larger spectrum needs of broadband systems (as compared with the MSS systems at issue in the 2 GHz proceeding), as well as the increased interference avoidance capability afforded by most NGSO system designs (as compared with GSO satellites). Rather than assigning a narrow "home" band for each system, as was done in the 2 GHz proceeding, each Ku-band NGSO FSS licensee should be licensed for the full bandwidth requested in its application, which will facilitate coordination through satellite diversity solutions, in addition to the more traditional frequency diversity approach.

- An expedited, flexible licensing process of the sort described above will accelerate the deployment of affordable, high-speed interactive broadband services to every corner of the U.S.

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

In the Matter of	)	
Applications of	)	
	)	
SkyBridge L.L.C.	)	File No. SAT-AMD-19990108-00004
	)	
The Boeing Company	)	File No. SAT-LOA-19990108-00006
	)	
Denali Telecom, LLC	)	File No. SAT-AMD-19990108-00001
	)	
Hughes Communications Inc.	)	File No. SAT-LOA-19990108-00002
	)	
Hughes Communications Inc.	)	File No. SAT-LOA-19990108-00003
	)	
Teledesic, L.L.C.	)	File No. SAT-LOA-19990108-00005
	)	
Virtual Geosatellite, L.L.C.	)	File No. SAT-LOA-19990108-00007

MOTION FOR EXPEDITED LICENSING

SKYBRIDGE L.L.C.

Phillip L. Spector
Jeffrey H. Olson
Diane C. Gaylor
Paul, Weiss, Rifkind, Wharton & Garrison
1615 L Street, N.W., Suite 1300
Washington, D.C. 20036
Telephone: (202) 223-7300
Facsimile: (202) 223-7420

Its Attorneys

July 20, 2000

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SUMMARY

SkyBridge hereby petitions the Commission to license, in the expedited manner described herein, the pending first-round applications for NGSO FSS systems in the Ku-band. The need is urgent for such systems, which will provide state-of-the-art, fully interactive, broadband services to grossly unserved areas of the United States and the world. As demonstrated in this Motion, all elements are in place for the Commission to take this important step towards making affordable broadband access available to all Americans.

Most importantly, with full U.S. support, the recently-concluded WRC-2000 finalized the power limits that will apply to NGSO FSS systems for the protection of GSO FSS, GSO BSS, FS, Radiolocation and Space Sciences systems. As discussed herein, the Commission has at hand all the tools it needs to implement and enforce these limits.

Moreover, while the Commission has, in the past, often encouraged the members of processing rounds formed via a "cut-off" date to finalize, prior to licensing, a sharing arrangement by which all proposed systems can be accommodated, such an approach is not feasible in the instant proceeding. The system proponents in this processing round have set dramatically different priorities for their proposed projects. As a consequence, the proposed systems are in significantly different states of development, from both technical and financial standpoints. Under such conditions, the incentives of each party for early resolution of the sharing issues vary greatly, with several applicants having little motivation to put forth the resources and effort to reach agreement any time soon. Should the Commission require the applicants to produce a sharing agreement as a pre-requisite to licensing, deployment of systems will be dramatically delayed, adversely affecting the viability of the projects themselves, as well as injuring the public interest.

Nor would a sharing plan developed at this stage be particularly useful. As the Commission well knows -- from the Big LEO proceeding, for example -- not all applications filed with the Commission mature into actual operating systems. Any sharing plan developed now would soon be obsolete.

For these reasons, SkyBridge urges the Commission to expeditiously grant to all qualified NGSO FSS Ku-band applicants in the current processing round a license to launch and operate their proposed systems. Each license should be subject to certain conditions designed to ensure that all applicants have an equal opportunity to implement their systems and commence service at the earliest possible date.

First, each license should be conditioned on a requirement that, once that licensee's system is deployed, the licensee will coordinate in good faith to accommodate all other members of the processing round seeking to deploy their systems. As described in this Motion, the sharing arrangement among the NGSO applicants would be developed incrementally, as each system is actually deployed.

Second, each license should be conditioned on compliance with all of the power limits adopted by WRC-2000, as well as all procedural requirements adopted by the ITU and the Commission to ensure compliance with the limits.

Finally, the Commission should adopt and enforce strict milestones applicable to all licensed systems. Operators ready, willing and able to make productive use of the spectrum should not suffer prolonged uncertainties concerning the burdens that may be required to accommodate applicants that are not expeditiously making progress toward use of the valuable resource.

Expeditious licensing is critical to promoting the build-out of fully interactive, high-speed broadband communications services. The steps outlined in this Motion will permit all of the

applicants in this processing round to proceed quickly with deploying their systems and rolling out services to consumers worldwide.

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

In the Matter of Applications of	))	
SkyBridge L.L.C.	)	File No. SAT-AMD-19990108-00004
The Boeing Company	)	File No. SAT-LOA-19990108-00006
Denali Telecom, LLC	)	File No. SAT-AMD-19990108-00001
Hughes Communications Inc.	)	File No. SAT-LOA-19990108-00002
Hughes Communications Inc.	)	File No. SAT-LOA-19990108-00003
Teledesic, L.L.C.	)	File No. SAT-LOA-19990108-00005
Virtual Geosatellite, L.L.C.	)	File No. SAT-LOA-19990108-00007

MOTION FOR EXPEDITED LICENSING

SkyBridge L.L.C. ("SkyBridge"), by its attorneys, hereby petitions the Commission to license, in the expedited manner described below, the pending first-round applications for Non-Geostationary Orbit ("NGSO") Fixed-Satellite Service ("FSS") systems in the Ku-band. As discussed below, all elements are in place for the Commission to take this important step towards making affordable broadband access available to all Americans.

I. INTRODUCTION

Over three years ago, in February 1997, SkyBridge L.L.C. filed with the Commission its application to launch and operate the SkyBridge system, a Ku-band NGSO FSS designed to provide a wide range of state-of-the-art, fully-interactive broadband services to

millions of consumers on global basis.[1] SkyBridge will provide, for example, high-speed Internet access to homes and businesses in rural areas that have no hope of obtaining such services from terrestrial providers any time soon.

SkyBridge was designed to provide such access while sharing spectrum with a variety of services already deployed in the Ku-band. Soon after the filing of its application, SkyBridge filed a Petition for Rulemaking, proposing rules under which NGSO FSS systems could operate without imposing undue burdens on any of the other services.[2] SkyBridge's proposal included hard limits ("EPFD limits") on the power that could be transmitted by NGSO FSS satellite and earth station transmitters into GSO satellite and earth station receivers.

That same year, the 1997 World Radiocommunication Conference ("WRC-97") adopted allocations and rules, along with provisional EPFD limits, similar to those proposed by SkyBridge. In November 1998, the Commission issued a Notice of Proposed Rulemaking (the "NPRM"), proposing rules based on the WRC-97 decisions.[3] The Commission has not yet issued a Report and Order in this rulemaking. However, as discussed below, WRC-2000 recently finalized EPFD and per-satellite PFD limits and related sharing rules for NGSO FSS

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1 Application of SkyBridge L.L.C. for Authority to Launch and Operate a Global Network of Low Earth Orbit Communications Satellites Providing Broadband Services in the Fixed-Satellite Service, File No. 48-SAT-P/LA-97, filed February 28, 1997; Amendment, File No. 89-SAT-AMEND-97, filed July 3, 1997; Amendment, 130-SAT-AMEND-98, filed June 30, 1998; Amendment, File No. SAT-AMD-19990108-00004, filed January 8, 1999 (collectively, the "SkyBridge Application").

2 Petition for Rulemaking of SkyBridge L.L.C., RM No. 9147, filed July 3, 1997.

3 See Notice of Proposed Rulemaking, ET Docket No. 98-206, RM-9147, RM-9245, FCC 98-310, rel. No. 24, 1998 ("NPRM"); Comments of SkyBridge, ET Docket No. 98-206, RM-9147, RM-9245, March 2, 1999 ("SkyBridge NPRM Comments"); Reply Comments of SkyBridge, ET Docket No. 98-206, RM-9147, RM-9245, April 14, 1999 ("SkyBridge NPRM Reply Comments"); Supplemental Comments of SkyBridge, ET Docket No. 98-206, December 20, 1999 ("SkyBridge CPM Comments").

systems, and all elements are therefore in place for the Commission to issue domestic rules for NGSO FSS systems.

In addition to sharing with existing systems, SkyBridge has always maintained that its system could share spectrum with other NGSO FSS systems on a co-frequency, co-coverage basis. The Commission established a January 8, 1999, "cut-off" date for NGSO FSS systems in the subject bands, and by that date, several "first round" applications – those captioned above – were filed.[4] The Commission has not yet acted on any of these applications.[5]

Since the filing of its application, SkyBridge has embarked on an extraordinary effort, expending considerable resources, to demonstrate the ability of its system to operate compatibly with other services and systems in the band. During this time, the SkyBridge Application has remained pending, as the Commission waited for SkyBridge to reach consensus with each of the interested parties currently using the band. SkyBridge has indisputably met this burden, and the time is ripe for licensing SkyBridge and the other first round Ku-band NGSO FSS systems.

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4 See Public Notice, Cut-off Established for Additional Applications and Letters of Intent in the 12.75-13.25 GHz, 13.75-14.5 GHz, 17.3-17.8 GHz and 10.7-12.7 GHz Frequency Bands, Report No. SPB-141 (November 2, 1998).

5 See Public Notice, Satellite Applications Accepted For Filing in the 12.75-13.25 GHz, 13.75-14.5 GHz, 17.3-17.8 GHz and 10.7-12.7 GHz Frequency Bands, Report No. SAT-00013 (March 13, 1999); Comments and Consolidated Petitions to Deny and/or Hold in Abeyance of SkyBridge L.L.C., filed June 30, 1999 ("SkyBridge Petitions to Deny"); Opposition of SkyBridge L.L.C., filed August 4, 1999 ("SkyBridge Opposition"); Reply of SkyBridge L.L.C., filed August 16, 1999 ("SkyBridge Reply").

II. THE TIME IS RIPE FOR LICENSING NGSO FSS SYTEMS IN THE KU-BAND.

A. WRC-2000 has finalized the rules for NGSO FSS systems in the Ku-band.

With full U.S. support, the recently-concluded WRC-2000 finalized the power limits that will apply to NGSO FSS systems for the protection of Geostationary Orbit ("GSO") FSS, GSO Broadcasting-Satellite Service ("BSS"), Fixed Service ("FS"), Radiolocation and Space Sciences systems. Therefore, the stage is set for authorizing entry of NGSO FSS systems, conditioned on compliance with all of the power limits and related provisions adopted at WRC-2000.[6]

As described in detail in separate comments in ET Docket No. 98-206 being filed simultaneously herewith ("SkyBridge WRC-2000 Comments"), following more than three years of exhaustive study, WRC-2000 adopted a comprehensive package of hard limits, each tailored to address a concern of one or more existing services or systems in the band. Three kinds of power limits were placed in the ITU Radio Regulations for the protection of GSO earth stations from individual NGSO FSS systems. Compliance with the first type of limits (the "Validation Limits") will be assessed by the ITU Radiocommunication Bureau ("BR") prior to commencement of service, based on simulations using worst-case parameters.[7] The other, more

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6 As SkyBridge has explained in previous filings, established Commission precedent demonstrates that the Commission need not wait until its domestic rules are finalized to license systems under SkyBridge's proposal outlined below. See SkyBridge Opposition at 3-8. Moreover, although the Commission generally permits applicants to amend their applications after the adoption of service rules in order to correct any inconsistencies with those rules, here any such changes needed to conform systems to the regulatory scheme could take the form of a request for license modification. Such modification applications should be considered as part of the instant processing round; as a general rule, conforming modifications should not trigger a new round.

7 The specification for the software to be used by the BR was recently approved by the ITU Radiocommunication Assembly (see Recommendation ITU-R BO.1503), and two companies have provided software packages based on this specification for evaluation by the BR. It is therefore expected that the software will be available well before the commencement of service of any of the proposed systems. See SkyBridge WRC-2000 Comments at 3.

stringent, limits (the "Operational Limits" and "Additional Operational Limits") will apply during operation of the NGSO FSS systems, and bound the power levels actually generated into operational GSO earth stations.[8] In addition, WRC-2000 adopted a Resolution outlining safeguards to ensure that the aggregate interference produced by all operating NGSO FSS systems remains within specified bounds.[9]

WRC-2000 also finalized power limits for the protection of terrestrial FS systems. Furthermore, as SkyBridge has explained in previous submissions to the Commission, SkyBridge and the U.S. FS community have reached a landmark consensus on proposed Commission rules that would allow introduction of NGSO FSS systems while permitting expansion of FS operations in the Ku-band.[10]

Finally, WRC-2000 reached consensus on rules facilitating NGSO FSS sharing with Radiolocation and Space Sciences systems in the 13.75-14.0 GHz band.

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8 Working Party 4A of the ITU-R has developed a Preliminary Draft New Recommendation detailing feasible measurement techniques that could be used to identify violations of the Operational Limits. See Doc. 4A/TEMP/221(Rev.1), February 28, 2000. While any of the described methods could be employed now, it is anticipated that the Recommendation will be refined and finalized at the next 4A meeting in September. Similarly, Working Party 4A is also refining existing simulation techniques that could be useful to administrations in assessing compliance with the Additional Operational Limits. See SkyBridge WRC-2000 Comments at 5-6, 8.

9 This Resolution requests the ITU-R to develop a methodology for calculating the aggregate EPFD levels produced by multiple systems. For the reasons explained in the SkyBridge WRC-2000 Comments, such assessment must be conducted at an international level, and must include only operating systems. See SkyBridge WRC-2000 Comments at 9-11.

10 See Written *Ex Parte* Communications in ET Docket No. 98-206, jointly submitted by the Fixed Wireless Communications Coalition and SkyBridge L.L.C., December 8, 1999 and December 22, 1999; Public Notice DA 99-3008, December 27, 1999; Comments of SkyBridge on FWCC/SkyBridge Proposal, ET Docket No. 98-206, RM-9147, January 12, 2000.

Although it is anticipated that regulatory and procedural work on implementing the EPFD limits will continue within various ITU-R study groups,[11] the Commission already has at hand all the tools it needs to implement and enforce these limits, particularly in the near future.[12] Moreover, by the time that any of the proposed systems are actually up and operating, additional tools will be available that the Commission may employ to help resolve claims of non-compliance.[13] As detailed in the SkyBridge WRC-2000 Comments, the Commission can easily ensure the cooperation of NGSO FSS licensees in resolving disputes using any such additional tools or procedures developed by the ITU-R or the Commission, via appropriate license conditions.

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11 WRC-2000 put off any firm decision on enforcement procedures precisely because they will not be needed immediately. Even after a system is launched, it will take some time for subscribership to build, and hence there will be a lag before power levels reach the maximum design values. With respect to the aggregate limits in particular, several systems, all operating at peak power, would need to exist before there would be any cause for concern that the limits were being violated (assuming, of course, that each system is respecting the single entry limits). Particularly while there are only a few systems operating, the most important enforcement tools will be the BR software, and the techniques for measuring the maximum EPFD produced by a given system. Both of these tools are near completion, and can be used with existing Commission dispute resolution procedures. See notes 7 and 8 supra and SkyBridge WRC-2000 Comments at 6-7.

12 The Commission's rules already provide generic procedures for resolving interference complaints, which are appropriate for use in this context. See, e.g., 47 C.F.R. §§ 25.271-25.274. In addition, the Commission already has at hand a number of ways to deal with any proven non-compliance with any of the limits. As in the case of violation of any of the Commission's operational requirements, the Commission has the authority to require that the operator reduce its power so that it is within specified limits, as well as the authority to require the operator to cease operating if it fails to do so. The Commission also may impose forfeitures against licensees for violations of its rules, or, in extreme cases, revoke the relevant license. See, e.g., 47 U.S.C. § 312, 47 C.F.R. § 25.160.

13 See note 8 supra.

B. Expeditious licensing of the first-round Ku-band NGSO FSS systems is manifestly in the public interest.

The need is urgent for NGSO FSS systems, which will provide state-of-the-art interactive broadband access to grossly unserved areas of the United States and the world. The window of greatest opportunity and benefit of these systems is now, and it is manifestly in the public interest that the Commission take steps to facilitate their expeditious deployment.

Licensing of NGSO FSS systems is critical to promoting the build-out of such systems. The grant of licenses will provide investors with much-needed assurances of the Commission's commitment to facilitating deployment of multiple Ku-band NGSO FSS systems. It will also provide increased credibility for the proposed projects, thereby allowing funds to be allocated and contracts to be executed. For these reasons, licensing is vital to the rapid deployment of fully interactive, high-speed broadband communications services.

C. The Commission need not and should not require the members of the first processing round to reach a sharing agreement prior to licensing.

While the Commission has often encouraged the members of processing rounds formed via a "cut-off" date to finalize, prior to licensing, a sharing arrangement by which all proposed systems can be accommodated, such an approach is not feasible in the instant Ku-band NGSO FSS processing round. As explained below, should the Commission require the applicants to produce a sharing agreement as a pre-requisite to licensing, deployment of systems will be dramatically delayed, adversely affecting the viability of the projects themselves.

Put simply, the system proponents in this processing round have set dramatically different priorities for their proposed projects. As the Commission is well aware, while some applicants have been diligently promoting and developing their projects over the past few years, with a view to launching at the earliest possible time, others appear to have devoted little or no resources toward such a goal, except for the filing of the FCC application. In at least one case,

the Ku-band proposal constitutes a follow-on to a first generation Ka-band system that has not yet been built.

As a consequence, the proposed systems are in significantly different states of development. Some systems have been fully designed, down to the smallest detail, while others are clearly still on the drawing board. Several systems have simply not reached the maturity of design needed to conduct detailed sharing studies.[14]

Moreover, the commitment of funds to the projects varies greatly. Some applicants have established strategic manufacturing partnerships and have contracts in place for building out their systems, while others apparently do not. Some of the applicants have fully demonstrated their ability to fund their proposed systems and adhere to strict build-out timelines, while others have not only failed such tests, but fought against any such requirements.

Under such conditions, any hope that the NGSO FSS applicants can agree among themselves to a sharing plan in the near future is wildly optimistic. The incentives of each party for early resolution of the sharing issues vary greatly, with several applicants having little motivation to put forth the resources and effort to reach agreement any time soon.[15] Requiring

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14 As SkyBridge noted in its Petitions to Deny, several applicants have not sufficiently demonstrated the ability of their systems to simultaneously (1) comply with the EPFD limits, according to the assumptions used by the BR validation software; and (2) share with other NGSO FSS, FSS, BSS, Radiolocation and Space Sciences systems; while (3) maintaining a technically feasible design and financially viable service. Sharing discussions cannot succeed without a commitment from each applicant to the specific interference techniques it will use to achieve these objectives. Several of the applications fall far short of this requirement. See SkyBridge Petitions to Deny at 7-12. See also SkyBridge Opposition at 9, n.27.

15 Indeed, the threat of new competition could provide an incentive for some applicants to block progress for as long as possible. The Commission must adopt a licensing approach that prevents parties from stalling the process for anticompetitive or other reasons. See SkyBridge NPRM Comments at 85; SkyBridge Opposition at 9, n.23.

the parties to negotiate a sharing agreement prior to licensing will result only in unnecessary delay in the roll-out of advanced services by serious applicants.

Nor would a sharing plan developed at this stage be particularly useful. As the Commission well knows, not all applications filed with the Commission mature into actual operating systems. Between filing and launch, a variety of factors (e.g., financing, market demand, corporate strategy and management) lead to cancellation of projects and/or failure to meet Commission-imposed milestones. In the present case, it is clear that a number of applications could not comply with the Commission's proposed service rules, and would have to be modified.[16] It would be entirely unrealistic to expect that all of the applications in this processing round will be placed into service, particularly in their present form. Any sharing plan developed now would soon be obsolete.

The Commission has witnessed the consequences of these dangers in the 1.6/2.4 MHz NGSO MSS ("Big LEO") proceeding.[17] In that case, attempts by the six applicants to reach a sharing agreement delayed the proceeding over one year, and no consensus was reached.[18] A year and a half after the end of those negotiations, the Commission segmented the

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16 For example, several systems do not meet the Commission's proposed geographic coverage requirements. See SkyBridge Petitions to Deny at 22, 39, 48; SkyBridge Reply at 22, 26, n.70. Moreover, as SkyBridge and others have explained in previous filings, the integrity of the EPFD limits depends on their proper application to individual systems. Two of the applications in this processing round actually constitute parts of a single system, and should be considered together in assessing compliance with the EPFD limits. See SkyBridge Petitions to Deny at 31-32; SkyBridge Reply at 10.

17 See In the Matter of Amendment of the Commission's Rules to Establish Rules and Policies Pertaining to a Mobile Satellite Service in the 1610-1626.5/2483.5-2500 MHz Frequency Bands, Report and Order, CC Docket No. 92-166, FCC 94-261, rel. October 14, 1994 ("Big LEO R&O").

18 Big LEO R&O, ¶ 9.

band to ensure accommodation of all five LEO applicants.[19] All of the projects suffered delay and uncertainty due to the difficulties inherent in any premature attempt to develop a sharing agreement among multiple parties with diverse interests.

Of the five Big LEO applicants ultimately accommodated by the Commission's plan, one applicant dropped out after licensing, and one entered bankruptcy after launch. Two of the applicants failed to meet the financial requirements and have not been built to this day. Nearly a decade after the first Big LEO applications were filed, only one of the applicants is currently providing services to the public. While this outcome was the result of numerous factors, there can be no doubt that delays in licensing presented considerable obstacles to many of the applicants. Moreover, the Big LEO outcome dramatically illustrates the futility of developing a sharing plan far in advance of the time that it will be put to use.

For the same reasons pre-coordination was not effective in the Big LEO proceeding, it will not be effective in the Ku-band NGSO FSS proceeding. SkyBridge therefore proposes an alternative licensing proposal -- fully consistent with all of the Commission's rules and policies -- that will allow all qualified applicants an equal opportunity to move forward with deployment of their systems as soon as possible. This will encourage applicants to devote their resources toward competing in the marketplace, rather than in the regulatory arena.

III. PROPOSAL FOR EXPEDITIOUS LICENSING

For the reasons detailed above, SkyBridge urges the Commission to expeditiously grant to all qualified NGSO FSS Ku-band applicants in the current processing round a license to launch and operate their proposed systems according to the proposals contained in the respective applications. The Commission need not await the finalization of regulatory and procedural

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19 Id., ¶ 10, 43. At that time, the Commission limited the band to NGSO systems, effectively eliminating the one GSO applicant.

matters earmarked for study by the ITU; the Commission already has at hand the tools it needs to deal severely with any failure to comply with the limits, and the Commission can explicitly condition the licenses on compliance with any procedures the Commission may adopt in the future in this regard. Moreover, the Commission should not delay licensing by requiring the NGSO FSS applicants to first engage in what is likely to be a costly and lengthy effort to craft a sharing agreement that would be rendered useless as systems are actually deployed. Finally, with SkyBridge's proposal, the Commission need not make a technical determination about whether the applications are mutually exclusive. All systems in the processing round would be deemed to be compatible, and the burden would be on the operators of systems that have actually launched, or soon will, to find technical solutions to ensure that this is so.[20]

Nonetheless, SkyBridge fully recognizes the importance of the Commission's rules and policies regarding protection of existing services and systems, and the rights and obligations of members of a processing round.[21] Consistent with these rules and policies, SkyBridge proposes that, as soon as possible, the Commission grant licenses to all qualified applicants in the current Ku-band NGSO FSS processing round to launch and operate their systems as proposed in the respective applications,[22] subject to the conditions outlined below.[23]

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20 SkyBridge has pointed out in prior filings that accommodating even a relatively low number of non-homogeneous NGSO FSS systems can impose significant constraints and capacity penalties on these systems. See, e.g., SkyBridge Petitions to Deny at 5-6. While these technical constraints remain valid, SkyBridge is confident that, with appropriate qualification and service rules (particularly milestones), and good faith efforts on the part of all the applicants to equitably share these burdens consistent with the needs of each system, mutual exclusivity can be avoided. However, any risk that this is not so would be born by the applicants in this processing round.

21 The Commission stated in the NPRM that all NGSO FSS applications for the Ku-band filed before the cut-off date will be considered on an equal basis. NPRM, ¶ 71.

22 Consistent with current Commission practice, each licensee should be bound to operate in accordance with all of the technical parameters described in its application (and any
(cont.)

The conditions are designed to ensure that all applicants have an equal opportunity to implement their systems and commence service at the earliest possible date.

A. Each license should be conditioned on a requirement that the licensee coordinate in good faith to accommodate later-deployed licensees.

In order to preserve each applicant's rights as a member of the processing round, each license should be conditioned on a requirement that, once that licensee's system is deployed, the licensee will coordinate in good faith to accommodate all other members of the processing round seeking to deploy their systems. As the Commission stated in the NPRM, it expects "all NGSO FSS applicants to bear some portion of the technical and operational constraints necessary to accommodate multiple NGSO FSS systems."[24] In this way, the sharing

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amendments filed prior to the cut-off date), with the exception of any changes that would constitute a "minor modification" under the Commission's rules. This will maintain the integrity of the processing round by ensuring that all applicants are all bound to their proposals as filed by the cut-off date.

23 Although many aspects of SkyBridge's proposal are similar to the "negotiated entry" approach proposed by the Commission in its proceeding on the Mobile Satellite Service ("MSS") in the 2 GHz band, Notice of Proposed Rulemaking, IB Docket No. 99-81, RM-9328, FCC 99-50, rel. March 25, 1999, ¶ 40 ("2 GHz NPRM"), there are critical differences between the NGSO MSS systems addressed in the 2 GHz proceeding and the NGSO FSS systems of concern here. Most importantly, because the MSS systems employ omni-directional antennas on their user terminals, co-frequency, co-coverage sharing among systems is not possible (unless specific modulation techniques such as CDMA are employed) and band segmentation is necessary. In contrast, the user terminals of the NGSO FSS systems employ directional antennas. Therefore, multiple systems can share frequencies over the same geographic regions, primarily by the use of satellite diversity techniques, and band segmentation is neither necessary nor appropriate. Indeed, for NGSO FSS systems, band segmentation could prove fatal, as inadequate spectrum would be available to sustain the fundamental business case. See SkyBridge NPRM Comments at 79-81.

24 NPRM, ¶ 70. As SkyBridge has explained before, quantifying the burden that should be accepted by each system is difficult. Although the burden should be shared, as a practical matter, "equality" cannot be measured, given the level of non-homogeneity of the systems proposed. In any case, so long as each applicant has the technical ability to mitigate interference to other systems (such as through satellite diversity), and thereby participate meaningfully in the coordinations, SkyBridge is confident that the applicants can devise (cont.)

arrangement among the NGSO applicants would be developed incrementally, as each system is actually deployed. Licensing would not be delayed by attempts to pre-coordinate systems that are at vastly different stages of development, some of which may never be launched.

To implement such an approach, the Commission could adopt a threshold requirement that would trigger a system's right to coordinate with operational systems, such as complete construction of the first satellite, or execution of an unconditional launch contract.[25] On the other hand, the Commission could forgo establishing any such threshold, and simply require any member of the processing round to initiate coordination with any other member of the processing round upon the new entrant's request. Such flexibility may be desirable so that each system designer can ensure at the earliest possible time that its system will be able to accept its burden of technical and operational constraints to accommodate other systems, while still meeting its capacity and coverage goals. Either option would be acceptable to SkyBridge.

To ensure that the coordinations avoid unnecessary constraints on any operator, the Commission should require that the coordinations be conducted according to certain principles. Most importantly, as the Commission stated in the NPRM, the Commission should clarify that no system in the processing round is entitled to claim full protection from any other system for service in the U.S., and that all systems should be sufficiently capable of employing satellite diversity to facilitate co-frequency, co-coverage sharing with other members of the

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equitable sharing arrangements, taking into account the flexibility and constraints of each system. See SkyBridge Opposition at 13, n.33.

25 See 2 GHz NPRM, ¶ 40.

processing round.[26] Any party that cannot meet this burden should not expect to be fully accommodated by other members of the processing round.[27]

Moreover, Working Party 4A of the ITU is currently developing protection criteria for NGSO FSS systems, as well as methodologies for assessing the impact of other systems on an NGSO FSS system. The Commission should require that the criteria and methodologies ultimately developed by the ITU be taken into account in the NGSO/NGSO coordinations. The coordinations should also take into account the current and expected future operations of systems already launched and operating, to avoid unnecessary burdens on fully deployed systems. In the event the licensees are unable to resolve issues regarding operation of multiple systems, the Commission could facilitate resolution of disputes, in accordance with the its rules and policies.

The SkyBridge proposal outlined above gives all applicants an equal opportunity to proceed with their systems and commence provision of critical services to the public. Moreover, it provides an incentive to each member of the processing round to work toward deploying its system at the earliest possible time. While it might be argued that later entrants may experience certain de facto disadvantages (such as a greater number of parties to coordinate with prior to launch), this in no way diminishes the fact that such entrants were granted the opportunity by the Commission to avoid these disadvantages and launch first.[28]

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26 See SkyBridge Petitions to Deny at 17-18.

27 This is not to say that a system without sufficient satellite diversity capability could not be accommodated at all. It may be possible to accommodate such a system if, for example, the service provided by that system could tolerate periodic outages, or some other burden that facilitated sharing with other systems.

28 Moreover, as discussed below, SkyBridge urges the Commission to implement strict milestones, which would ensure that all applicants proceed expeditiously with their systems, thereby mitigating any advantage that may be gained by a system that deploys significantly in advance of another.

B. Each license should be conditioned on compliance with all of the WRC-2000 limits and related regulatory procedures that may be adopted.

Each license should be explicitly conditioned on compliance with all of the power limits adopted by WRC-2000, as well as all procedural requirements adopted by the ITU and the Commission to ensure compliance with these limits.[29] For example, each license should be conditioned on a favorable finding by the ITU BR as to the system's compliance with the Validation Limits.[30] It is not necessary that compliance with the BR validation software be completed before licensing, only that compliance be verified before a system enters service. Moreover, each license should stipulate that the licensee will be required to cooperate fully in all domestic procedures conducted under current or future Commission rules to ensure compliance with the single entry Operational Limits and Additional Operational Limits as well as the aggregate limits contained in Resolution COM 5/6 (WRC-2000).[31]

Finally, to enable the Commission to certify to the ITU that systems filed with the U.S. will meet the Additional Operational Limits, as required under the WRC-2000 agreements, the Commission should require each applicant to certify to the Commission that it will meet these limits in operation.[32]

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29 Although not all of the proposed ITU-R tools and procedures have been finalized, there is no reason the Commission could not make any of them it may later choose to incorporate into its rules apply to the licensees, via an explicit condition in each license.

30 SkyBridge WRC-2000 Comments at 3-4. As described in these comments, there seems to be no need for the Commission to independently assess compliance with the Validation Limits.

31 SkyBridge WRC-2000 Comments at 7, 9, 11. As SkyBridge has explained on numerous occasions, this may require providing the Commission with confidential information. SkyBridge CPM Comments at 18. However, this is a burden each applicant should be required to accept, so long as the Commission affords confidential treatment to any such submission, consistent with existing Commission rules. See 47 C.F.R. §§ 0.457-0.459.

32 Each applicant will already be required to provide to the Commission additional Appendix S4 information needed for the BR assessment of compliance with the Validation Limits. (cont.)

C. Each license should be conditioned on compliance with strict milestones.

The Commission should adopt and enforce strict milestones applicable to all licensed systems. As SkyBridge and others have detailed on numerous occasions, implementation milestones are needed to ensure that applicants and licensees that are not able to put spectrum resources to productive use do not tie up these resources, preventing other parties from putting these resources to use in service to the public.[33]

In the current instance, strict milestones will have the added benefit of providing a degree of certainty to NGSO FSS operators regarding the constraints introduced by sharing with other NGSO FSS systems in the band. Consistent with the policy objectives behind milestone requirements, operators ready, willing and able to make productive use of the spectrum should not suffer prolonged uncertainties concerning the burdens that may be required to accommodate applicants that are not expeditiously making progress toward use of the valuable resource.[34]

Moreover, the GSO community appears to be in full agreement with the need for such requirements. PanAmSat has urged the Commission impose strict, relatively short-term

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Certification of compliance with the Additional Operational Limits could be a part of the same submission.

33 See, e.g., SkyBridge NPRM Comments at 106; see also 2 GHz NPRM, ¶¶ 24, 83. Similarly, as explained in SkyBridge's NPRM Comments, SkyBridge also supports applying the Commission's reporting requirements to Ku-band NGSO FSS systems. This would require filing information describing satellite system implementation, anticipated launch dates, delays, etc., which would aid both the Commission and the other licensees in assessing the build-out progress of systems. SkyBridge NPRM Comments at 107.

34 The Commission recently recognized the importance of these objectives, and revoked certain Ka-band GSO FSS licenses for failure to comply with milestones. See, e.g., Morning Star Satellite Company, L.L.C., DA 00-1265, released June 26, 2000.

milestones so that GSO systems can know at any early stage the actual interference environment that can be expected from NGSO systems in the U.S.[35]

On the other hand, because SkyBridge's proposal does not require a sharing agreement among all the applicants prior to licensing, it eliminates the need for financial qualifications. If all systems are licensed immediately, and subject to strict milestones, there is little danger that financially-unqualified applicants will hold up the progress of other members of the processing round. This should considerably ameliorate the Commission's burden in this processing round.

CONCLUSION

SkyBridge submits that adoption of the foregoing plan represents the only means of expediting the delivery of affordable, state-of-the-art broadband satellite services to all Americans. Absent the rapid implementation of such a plan, bridging the "digital divide" – particularly the one that exists between rural and urban America – will be delayed indefinitely, and the introduction of new, robust competition in urban and suburban markets will be thwarted. Adoption of this expedited licensing system – which is fully compliant with the requirements of Ashbacker Radio Corp. v. FCC, 326 U.S. 327 (1945) – is manifestly in the public interest.

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35 Comments of PanAmSat Corporation, ET Docket No. 98-206, December 20, 1999, at 6-9, 24-25.

For the above reasons, SkyBridge urges the Commission to expeditiously grant licenses to the above-captioned applicants for Ku-band NGSO FSS systems, subject to the terms of the licensing approach outlined in this Motion.

Respectfully submitted,

SKYBRIDGE L.L.C.

By:

Phillip L. Spector
Jeffrey H. Olson
Diane C. Gaylor

PAUL, WEISS, RIFKIND, WHARTON & GARRISON
1615 L Street, N.W., Suite 1300
Washington, D.C. 20036
Telephone: 202-223-7300
Facsimile: 202-223-7420

Its Attorneys

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