

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

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Redesignation of the 17.7-19.7 GHz)
Frequency Band, Blanket Licensing of)
Satellite Earth Stations in the 17.7-20.2 GHz)
and 27.5-30.0 GHz Frequency Bands, and the)
Allocation of Additional Spectrum in the)
17.3-17.8 GHz and 24.75-25.25 GHz Frequency)
Bands for Broadcast Satellite-Service Use)

IB Docket No. 98-172
RM-9005
RM-9118

COMMENTS OF GE AMERICAN COMMUNICATIONS, INC.

GE American Communications, Inc. ("GE Americom"), by its attorneys, hereby submits its comments in support of the Petition for Partial Reconsideration filed by Hughes Electronics Corporation ("Hughes") regarding the Commission's Order in the above-captioned proceeding, FCC 00-212 (rel. June 22, 2000) (the "Order").

Like Hughes, GE Americom holds a license to launch and operate a global system of Ka-band satellites that will use downlink spectrum in the 18 GHz band, and GE Americom has actively participated in every stage of this proceeding. GE Americom joins Hughes in urging the Commission to reconsider decisions that will have the effect of impairing the availability and usefulness of 18 GHz spectrum for broadband satellite services.¹ In particular, the Commission must revisit its

¹ GE Americom is a member of the Satellite Industry Association ("SIA"), and also joins in the separate comments that SIA is filing today in support of the

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policies regarding the allocation, coordination, and sharing of spectrum and the technical standards for satellite services in the 18 GHz band.

I. KA-BAND SATELLITE SYSTEMS REQUIRE 1000 MHz OF SPECTRUM FOR UBIQUITOUS EARTH STATIONS

First, GE Americom supports Hughes' request for reconsideration of the decision not to allocate 1000 MHz of usable downlink spectrum for ubiquitously licensed Ka-band earth stations. GE Americom has repeatedly emphasized in its comments throughout this rulemaking proceeding that Ka-band satellite systems will require 1000 MHz of available spectrum in order to satisfy demand for broadband user services.² The *Order*, however, allocates 280 MHz of the downlink spectrum for Ka-band satellite services on a shared co-primary basis with terrestrial services. *Order* at ¶ 30. As Hughes explains, that decision is contrary to prior Commission precedent and to the public interest. Hughes Petition at 4-12.

First, the allocation fails to provide matched amounts of uplink and downlink spectrum. The Commission previously allocated 1000 MHz of uplink spectrum for Ka-band systems.³ Although 250 MHz of that spectrum was shared with MSS feeder links, there was previously no indication that the shared uplink

Hughes Petition and in opposition to the Petition for Clarification and Reconsideration filed by Winstar Communications, Inc.

² See, e.g., Comments of GE American Communications, Inc., Dkt. No. 98-172 (Nov. 19, 1998).

³ See *Rulemaking to Amend Parts 1, 2, 21, and 25 of the Commission's Rules to Redesignate the 27.5-29.5 GHz Frequency Band, to Reallocate the 29.5-30.0 GHz Frequency Band, to Establish Rules and Policies for Local Multipoint Distribution Service and for Fixed Satellite Service*, 11 FCC Rcd 19005, 19029-30 (1996).

spectrum would be unavailable for ubiquitous earth stations. The *Order*, however, concludes without any justification that ubiquitous licensing of earth stations should not be permitted in the shared uplink spectrum. *Order* at ¶ 6, 87. The Commission then determines that allocating only 720 MHz of downlink spectrum for ubiquitous terminals is reasonable. *Id.* at ¶ 59. As Hughes demonstrates, this rationale is at odds with the previous understanding regarding use of the uplink band and unjustifiably impairs satellite use of the downlink band. Hughes Petition at 6-8.

Second, the allocation fails to properly balance conflicting spectrum requirements. The Hughes Petition makes clear that the spectrum assignments made in the *Order* unfairly burden geostationary orbit satellite systems, while other industry segments have experienced no reduction in their spectrum rights. *Id.* at 9-12. The Commission's decision to sacrifice GSO/FSS spectrum in favor of other services cannot be reconciled with the record evidence in this proceeding, which strongly supports allocation of 1000 MHz for ubiquitous Ka-band terminals, or with the public interest in the introduction of broadband, distance-insensitive Ka-band satellite services.

II. THE COMMISSION MUST RECONSIDER ITS DECISION TO PROTECT "LEGACY LIST" TERRESTRIAL STATIONS

GE Americom also supports Hughes' argument that the Commission's decision to protect so-called "legacy list" terrestrial operations is substantively and procedurally flawed. *See* Hughes Petition at 12-16. The policy is designed to prevent interference from satellites into terrestrial fixed service receivers that are

pointed within two degrees of the geostationary arc. *Order* at ¶¶ 43-47. However, as Hughes points out, existing power limits in Section 25.208(c) on satellite operations are in place to address this potential problem. There is no justification for further burdening satellite operations by requiring licensees to pay to alleviate interference to terrestrial operations that may result from satellite transmissions that comply with Section 25.208(c). Terrestrial operators have long been on notice that the 18 GHz band would be used for satellite downlinks and knew or should have known that receivers pointed within two degrees of the geostationary arc would be particularly susceptible to interference. The Commission's decision to nevertheless protect these terrestrial receivers contradicts Commission precedent establishing the spectrum rights of satellite operators in the 18 GHz band.

The "legacy list" decision also conflicts with the requirements of the Administrative Procedure Act, 5 U.S.C. § 553(b)(3). The APA requires the Commission to provide notice and the opportunity to comment prior to adopting a rule change. Yet the "legacy list" policy was never mentioned in the Notice of Proposed Rulemaking in this proceeding.⁴ The Commission's failure to comply with the APA provides an independent basis for reconsideration of the "legacy list" rule.

⁴ See *Notice of Proposed Rulemaking, Redesignation of the 17.7-19.7 GHz Frequency Band, Blanket Licensing of Satellite Earth Stations in the 17.7-20.2 GHz and 27.5-30.0 GHz Frequency Bands, and the Allocation of Additional Spectrum in the 17.3-17.8 GHz and 24.75-25.25 GHz Frequency Bands for Broadcast Satellite-Service Use*, 13 FCC Rcd 19923 (1998).

III. THE *ORDER* FAILS TO JUSTIFY THE ELIMINATION OF SECONDARY SATELLITE DESIGNATIONS

The Commission's decisions regarding elimination of secondary designations for satellite services also require reconsideration. As Hughes observes, the *Order* contains little or no discussion of the justification for deleting the secondary designations for NGSO/FSS in band segments where GSO/FSS is primary or the secondary designations for GSO/FSS in spectrum where NGSO/FSS is primary. Hughes Petition at 16-18. Furthermore, the decisions fail to take into account the outcome of WRC-2000 regarding GSO/NGSO sharing and are inconsistent with the spectrum designations that apply in the corresponding satellite uplink bands. GE Americom concurs with Hughes that the appropriate way to consider these issues is through the development of an adequate record in response to a Further Notice of Proposed Rulemaking that comprehensively considers secondary spectrum allocations in both the uplink and downlink bands.

IV. BLANKET LICENSING OR STREAMLINED REGISTRATION SHOULD BE AVAILABLE THROUGHOUT GSO/FSS PRIMARY SPECTRUM

In addition, GE Americom concurs that blanket licensing or streamlined registration of earth stations should be permitted throughout the full 1000 MHz of spectrum in which GSO/FSS operations are primary. The *Order*, however, fails to address blanket licensing in the 29.25-29.5 GHz band that is shared between GSO/FSS and NGSO/MSS feeder links. Similarly, the *Order* does not address streamlined licensing or registration of receive-only earth stations in the 18.3-18.58 GHz band. *See Order* at ¶ 94.

Streamlined licensing procedures are critical to expedited implementation and roll-out of Ka-band services. Customer acceptance of Ka-band satellite offerings will depend heavily on the ease of deployment, and site-by-site licensing is incompatible with rapid delivery of service to users. As Hughes explains, blanket licensing is fully consistent with the sharing arrangements with NGSO/MSS feeder links in the 29.25-29.5 GHz band, and streamlined registration of operations in the 18.3-18.58 GHz band would not burden terrestrial operations. See Hughes Petition at 18-20. GE Americom recognizes that the Commission recently sought comment on the issues raised by Hughes in the context of a Notice of Proposed Rulemaking relating to sharing of spectrum between terrestrial and satellite services.⁵ However, these questions are more properly dealt with in the instant proceeding based on the record that has already been developed.

⁵ See Notice of Proposed Rulemaking, *In the Matter of FWCC Request for Declaratory Ruling on Partial-Band Licensing of Earth Stations in the Fixed-Satellite Service That Share Terrestrial Spectrum, FWCC Petition for Rulemaking to Set Loading Standards for Earth Stations In the Fixed-Satellite Service that Share Terrestrial Spectrum, Onsat Petition for Declaratory Order that Blanket Licensing Pursuant to Rule 25.115 (c) is Available for Very Small Aperture Terminal Satellite Network Operations at C-Band, Onsat Petition for Waiver of Rule 25.212(d) to the Extent Necessary to Permit Routine Licensing of 3.7 Meter Transmit and Receive Stations at C-Band, and Ex parte Letter Concerning Deployment of Geostationary Orbit FSS Earth Stations in the Shared Portion of the Ka-band*, IB Docket No. 00-203, at ¶¶ 98-99.

V. **CORRECTIONS TO THE *ORDER'S*
TECHNICAL RULES ARE NECESSARY**

Finally, GE Americom supports Hughes' request for modifications to the technical rules adopted in the *Order*. Three sets of changes are needed. First, Section 25.208 should be corrected to reflect the consensus of the Blanket Licensing Working Group with respect to the power-flux density ("pfd") limits for operations in the 17.7-19.7 GHz band. Hughes points out that the new rule as written would inexplicably apply a different pfd limit to GSO/FSS operations in the 18.3-18.8 GHz band than the limit that applies in other band segments. *See Hughes Petition at 20-22.* The *Order* also fails to address the comments in the record in support of a consistent pfd coordination threshold. GE Americom supports revision of Section 25.208 as requested by Hughes to retain flexibility for satellite systems.

Second, the Commission must correct the omission of the 18.58-18.8 GHz band from Section 138(a)(6), which lists the downlink pfd threshold for routine processing of blanket license applications. This omission is inconsistent with the text of the *Order*, which clearly contemplates that the same blanket licensing standards would apply to the 18.58-18.8 GHz band as to other band segments. *See Hughes Petition at 22-23.*

Third, the Commission should correct Section 25.138(b) by inserting the word "blanket" before the phrase "earth station license" in the first sentence of that rule. This change is necessary to conform the rule's text to its heading and to the proposal of the Blanket Licensing Working Group. As Hughes points out, the

rule as adopted could be interpreted in a way that would hamper operations using individually-licensed earth stations. See Hughes Petition at 23-25.

CONCLUSION

For the foregoing reasons, the Commission should grant the Hughes Petition and reconsider the *Order* with respect to the allocation of spectrum and licensing rules for satellite services in the 18 GHz band.

Respectfully submitted,

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