

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

In the Matter of)
)
Inquiry Concerning High-Speed Access to) GN Docket No. 00-185
the Internet Over Cable and Other Facilities)
)

JOINT REPLY COMMENTS OF
HUGHES NETWORK SYSTEMS, HUGHES COMMUNICATIONS, INC.,
AND HUGHES COMMUNICATIONS GALAXY INC.

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Hughes Network Systems, a division of Hughes Electronics Corporation, Hughes Communications Inc. and Hughes Communications Galaxy Inc. (together “*Hughes*”), hereby reply to the comments filed in response to the Notice of Inquiry in the above-referenced docket.¹ In its NOI, the Commission inquires what regulatory treatment should be accorded to cable modem services, and what impact any such action should have on other providers of high-speed services, including satellite service providers. Hughes Network Systems is the operator and provider of the DirecPC Ku-band high-speed Internet satellite service. Furthermore, Hughes also has significant interests in the Ka-band provision of broadband satellite communications. Hughes Communications Galaxy, Inc. is the licensee of the geostationary Ka-band SPACEWAY satellite system, and Hughes Communications, Inc. is the applicant for the SpacewayEXP geostationary and Spaceway non-geostationary Ka-band satellite systems.

¹ *Notice of Inquiry, In the Matter of Inquiry Concerning High-Speed Access to the Internet Over Cable and Other Facilities*, GN Docket No. 00-185, FCC 00-355 (rel. Sept. 28, 2000) (“*NOI*”);

A. Introduction and Summary

As an initial matter, Hughes does not currently take a position on the appropriate regulatory treatment, if any, that should be accorded to cable modem service and the cable modem platform used in providing that service. However, Hughes generally supports a continuation of the Commission's "hands-off" policy with respect to the regulation of the Internet, as well as the Commission's approach of combining regulatory restraint with the promotion of competition within the entire broadband market. As the Comments filed in this proceeding demonstrate, any attempt to regulate satellite-delivered broadband services would be both inappropriate and unnecessary. Moreover, it would undermine the Commission's policies of promoting broadband competition and service across all areas of the country.

B. Regulation Should Be Imposed Only to Remedy the Absence of Competition

Hughes strongly supports the Commission's aims of promoting the widespread and rapid deployment of high-speed Internet services. Consumers clearly benefit from competition – both within and between the various technologies used to deliver broadband services – which speeds deployment, stimulates innovation, energizes economic development, and encourages investment in the broadband market. The Commission should continue to take a hands-off policy and let the market develop free of unnecessary regulatory intervention unless the Commission clearly finds that the market forces alone are insufficient to yield true competition.

When considering whether to impose "open access" on any high-speed service provider, Hughes agrees that the critical threshold question is the extent to which that service

see also Public Notice, DA 00-2329 (Oct. 12, 2000) (extending filing dates for Comments and Reply Comments until December 1, 2000 and January 10, 2001, respectively).

provider operates in a competitive marketplace. If the marketplace is competitive and consumers have choice, there simply is no rational basis for requiring a high-speed service provider to “open up” its network to another service provider. To do so would stifle innovation and create an opportunity for companies to “free ride” on others who have developed their own technology and risked their own capital to build that network. In other words, in a competitive market, the Commission should refrain from regulation, and should let market forces work.

Hughes does not take a position on the appropriate regulatory status of cable modem services, which are the focus of this proceeding. However, any such regulation is unnecessary with respect to broadband services provided via satellite. Given the differences in technology between cable and satellite, and the degree of competition among satellite providers of broadband services, a “one size fits all” regulatory solution would be wholly inappropriate and hinder the continued development of the satellite broadband market.²

C. Broadband Competition

The provision of high-speed services over satellite technology is still in the very early stages of development.³ Hughes’s DirecPC service is a high-speed, Ku-band satellite-delivered, information service that offers download speeds of up to 400 kbps and (in the case of the new two-way satellite service) uplink speeds bursting to 256 kbps. In addition to accessing the Internet, DirecPC users are able to: access their choice of Internet Service Providers, receive cached information from websites and newsgroups automatically downloaded for off-line browsing, and access e-mail accounts.

² See Comments of AT&T Corp., GN Docket No. 00-185, at 3 (filed Dec. 1, 2000).

³ See *Deployment of Advanced Telecommunications Capability: Second Report* (“*Second 706 Report*”), CC Docket No. 98-146, FCC 00-290, at ¶¶ 56, 202 (rel. Aug. 21, 2000) (noting projected rapid increase in number of satellite service providers and subscribers through 2004).

Currently, DirecPC service is available either directly from Hughes or through “Powered by DirecPC” partners, such as America Online, DIRECTV, Pegasus, EarthLink and Juno. In addition, StarBand Communications Inc. offers a competitive Ku-band Internet satellite service.⁴ These developing satellite broadband services compete for the same customers not only with each other, but also with various terrestrial technologies, such as cable modem service, local telephone dial up service, and DSL service.

Unlike other technologies where it is difficult to gain access to a customer, satellite technology allows any interested entity to set up business and compete for the same customers that Hughes now serves. That is, any other potential competitor is able to do the same thing Hughes and StarBand have done: lease transponder capacity from any of a number of various satellite operators, and launch similar information services in the same geographic areas.⁵

As the Commission is well aware, a unique characteristic of satellite technology is that each spacecraft offers service to a similar, broad geographic “footprint.” This means that satellite-provided service is available to any subscriber within line of sight of the satellite, regardless of the subscriber’s location. Thus, there are a large number of spacecraft currently in orbit, whose capacity another company could use to serve the same homes that Hughes now serves. Because of the way that satellite operators such as GE, Loral and PanAmSat sell or lease transponder capacity, it is even possible for a competitor to acquire capacity on the very same spacecraft that Hughes now uses.

⁴ StarBand Communications Inc.’s strategic partners are partners Gilat Satellite Networks Ltd., Microsoft Corp., and Echostar Communications Corp.

⁵ *Accord* Comments of StarBand Communications, Inc., GN Docket No. 00-185, at 10 (filed Dec. 1, 2000) (“*StarBand Comments*”).

Competition in the provision of high-speed satellite services will continue to develop, as the “next generation” Ka-band systems are launched.⁶ Ka-band satellite systems that will begin to offer broadband service across the United States in the next few years include Hughes’s SPACEWAY system, as well as Astrolink, Loral Cyberstar, Wild Blue, and others.⁷

D. Conclusion

Hughes supports the Commission’s policy of allowing competition and market forces to operate in the broadband market unless market failure is clearly demonstrated. Satellite service providers already compete throughout the US not only with local cable companies, local telephone companies, and DSL providers (among others), but also with each other. Thus, there is no real risk of market power being exerted by a single high-speed satellite service provider. Moreover, when competition from other broadband technologies is factored in, it is clear that satellite broadband providers – either individually or as a whole – simply do not have market power. Any consideration of an open access requirement on satellite broadband provider therefore would be both inappropriate and unnecessary.

⁶ See, e.g., StarBand Comments at 4 (noting large number of competitors on horizon); Comments of the Satellite Broadcasting and Communications Association and the Satellite Industry Association Broadband & Internet Division, GN Docket No. 00-185, at 4 (filed Dec. 1, 2000) (noting satellite industry is rapidly deploying numerous competitive offerings).

⁷ See *In the Matter of Assignment of Orbital Locations to Space Stations in the Ka-Band*, Order, DA No. 97-967 (rel. May 9, 1997).

