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September 28, 2001

VIA HAND DELIVERY

RECEIVED

SEP 28 2001

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

EX PARTE

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: Ex Parte Communication in ET Docket No. 98-206; RM-9147; RM-9245; Applications of Broadwave USA et al., PDC Broadband Corporation, and Satellite Receivers, Ltd., to provide a fixed service in the 12.2-12.7 GHz Band; Requests of Broadwave USA et al. (DA 99-494), PDC Broadband Corporation (DA 00-1841), and Satellite Receivers, Ltd. (DA 00-2134) for Waiver of Part 101 Rules.

Dear Ms. Salas:

The attached ex parte letter from Sophia Collier of Northpoint Technology, Ltd., was delivered by hand on September 27, 2001, to Jonathan Levy of the Commission's Office of Plans and Policy.

Eighteen copies of this letter and its attachments are enclosed – two for inclusion in each of the above-referenced files. Please contact me if you have any questions.

Yours sincerely,

J. C. Rozendaal

Counsel for Northpoint Technology, Ltd.

enclosures

No. of Copies rec'd 0+18
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September 27, 2001

HAND DELIVERY

EX PARTE

Mr. Jonathan Levy
Federal Communications Commission
Office of Plans and Policy
445 12th Street, S.W.
Washington, DC 20554

Dear Jon:

As a follow up to my earlier letter to you regarding the disparate treatment that large and small companies receive at the Commission, I wanted to call your attention to the attached pleading, which the Boeing Company ("Boeing") recently filed in an ongoing proceeding. As you may know, some parties have presented the view that Northpoint should not have come to the Commission on its own and filed an application to provide terrestrial service in the 12 GHz band, but instead should have waited for the Commission to "call for applications." These parties argue that since we did not wait for this "call" our applications should not be processed until the Commission actually calls for applications.

In the attached pleading, Boeing defends the Commission action under which it was granted licenses for terrestrial use of spectrum ("feeder links") without a call for applications or any processing round. Boeing states the Commission "has frequently used its discretion to grant these types of authorizations without cut-off deadlines or application processing rounds." *See* attached pleading at ii, 9-14.

In stark contrast to the "frequent" experience of others, Broadwave's applications have been on file -- but not even accepted for filing, much less granted -- since January 1999.

If you have any questions about the attached or my earlier letter, please do not hesitate to call.

Sincerely yours,

Sophia Collier
President

Attachment

cc: David Sappington, Office of Plans and Policy
Peter Tenhula, Office of the Chairman
Bryan Tramont, Office of Comm'r Abernathy
Paul Margie, Office of Comm'r Copps
Monica DeSai, Office of Comm'r Martin

Before the

FEDERAL COMMUNICATIONS COMMISSION

Washington, DC 20554

In the Matter of Application of	)	
	)	
THE BOEING COMPANY	)	File Nos. 179-SAT-P/LA-97(16),
	)	SAT-LOA-19970926-00149,
Concerning Use of the 1990-2025/2165-	)	90-SAT-AMEND-98,
2200 MHz and Associated Frequency	)	SAT-AMD-19980318-00021
Bands for a Mobile-Satellite System	)	SAT-AMD-20001103-00159

To the Chief, International Bureau:

OPPOSITION OF THE BOEING COMPANY

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August 29, 2001

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SUMMARY

The Commission's authorization of Boeing's 2 GHz Mobile-Satellite Service ("MSS") network provides a critical step in the development of a satellite-based air traffic management infrastructure, capable of providing communication, navigation and surveillance services to the aviation industry on a global basis. As the record in this proceeding firmly establishes, development of a global air traffic management network can increase public safety and enhance the overall efficiency and capacity of the air transport industry.

Despite the unquestioned public interest benefits of Boeing's proposed service, two parties, Hughes and PanAmSat, filed petitions for reconsideration against the Commission's authorization of Boeing's 2 GHz MSS network. The petitions rely on a narrow procedural argument that is incorrect on its merits. In addition, Hughes repeats its previously addressed claim that Boeing has failed to demonstrate that its Ka-band feeder links can share spectrum with geostationary ("GSO") Fixed Satellite Service ("FSS") networks operating in the 29.25-29.5 GHz band. Finally, Hughes reiterates its request for clarification regarding the long standing coordination procedures for MSS networks providing Aeronautical Mobile Satellite (Route) Services ("AMS(R)S").

None of these arguments justify reconsideration or clarification of Boeing's 2 GHz MSS authorization. First, Hughes and PanAmSat are incorrect in claiming that the Commission must announce a separate cut-off deadline and establish a new processing round before granting a satellite system authorization with changed feeder link spectrum. The Commission's rules give the Commission considerable discretion in processing such satellite system applications, and it has frequently used its discretion to grant these types of authorizations without cut-off deadlines or application processing rounds.

Second, Hughes has failed to provide any evidence that Boeing's feeder links will be unable to share spectrum on a co-frequency basis with Ka-band GSO FSS networks. In contrast, the Commission concluded that a "reasonable likelihood" exists that Boeing will be able to demonstrate that its feeder links can operate on a co-frequency basis with Ka-band GSO FSS systems. Furthermore, the Commission correctly concluded that a final determination regarding Boeing's Earth-to-space feeder links appropriately should be made in association with a subsequent application by Boeing to construct and operate one or more feeder link earth stations.

Finally, no reason exists for the Commission to clarify its long standing policies regarding coordination of MSS feeder links used to support AMS(R)S. A number of satellite operators either provide, or have requested authority to provide, AMS(R)S, including one operator partially owned by Hughes. None of these operators have ever been granted special coordination privileges for their feeder link operations.

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of Application of	)	
	)	
THE BOEING COMPANY	)	File Nos. 179-SAT-P/LA-97(16),
	)	SAT-LOA-19970926-00149,
Concerning Use of the 1990-2025/2165-	)	90-SAT-AMEND-98,
2200 MHz and Associated Frequency	)	SAT-AMD-19980318-00021
Bands for a Mobile-Satellite System	)	SAT-AMD-20001103-00159

To the Chief, International Bureau:

OPPOSITION OF THE BOEING COMPANY

The Boeing Company ("Boeing"), by its attorneys and pursuant to Section 1.106 of the Commission's rules, hereby opposes the Petition for Reconsideration of PanAmSat Corporation ("*PanAmSat Petition*") and the Petition for Partial Reconsideration and Clarification of Hughes Electronics Corporation ("*Hughes Petition*").[1] Both petitions revisit arguments that were properly rejected by the International Bureau when it granted the above-captioned application, and accordingly the petitions should be summarily denied.

I. INTRODUCTION

On July 17, 2001, the Commission authorized Boeing to launch and operate a medium Earth orbit ("MEO") satellite network in the 2 GHz Mobile-Satellite Service ("2 GHz MSS").

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[1] *See Petition for Reconsideration of PanAmSat Corporation*, FCC File No. 179-SAT-P/LA-96(16), *et al.* (Aug. 16, 2001) ("*PanAmSat Petition*"); *Petition for Partial Reconsideration and Clarification of Hughes Electronics Corporation*, FCC File No. 179-SAT-P/LA-96(16), *et al.* (Aug. 16, 2001) ("*Hughes Petition*").

The Commission's authorization will enable Boeing to provide a new generation of air traffic management communication and navigation services, which would be available to the aviation industry on a global basis. Throughout this proceeding, no party has questioned the significant public interest benefits of Boeing's proposed air traffic management service, or Boeing's qualifications to provide these beneficial services to the public.

PanAmSat and Hughes filed petitions for reconsideration in this proceeding urging the Commission to rescind Boeing's 2 GHz MSS authorization ("*Boeing Authorization Order*") based on an incorrect reading of the Commission's application processing rules. Hughes also reiterates its unsupported claim that Boeing failed to demonstrate that its 2 GHz MSS feeder links can share spectrum with geostationary ("GSO") Fixed Satellite Service ("FSS") networks authorized to operate in the Ka-band. Finally, Hughes repeats its request for clarification regarding the coordination of MSS feeder links utilized for Aeronautical Mobile-Satellite (Route) Service ("AMS(R)S"). None of these arguments justify reconsideration or clarification of the *Boeing Authorization Order*. Therefore, the Commission should promptly and summarily deny the petitions.

II. BOEING HAS DEMONSTRATED ADEQUATELY THAT ITS FEEDER LINKS CAN OPERATE ON A CO-FREQUENCY BASIS WITH GSO FSS NETWORKS IN THE KA-BAND.

Section 25.258 of the Commission's rules requires operators of NGSO MSS networks applying for use of the 29.25-29.5 GHz band for Earth-to-space feeder links to demonstrate their system can share with GSO FSS systems authorized in the United States to operate in the band.[2]

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[2] *See* 47 C.F.R. § 25.258, *as amended by 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*

(Continued . . .)

The Commission recently explained that this requirement merely obligates a NGSO MSS network operator to "demonstrate that coordination with authorized GSO/FSS operation in that band is feasible."[3]

Pursuant to this requirement, Boeing submitted multiple technical filings to the Commission detailing the methods that would be used to protect GSO FSS networks in the Ka-band. Boeing also submitted to the Commission all of the technical information required by Section 25.114 of the Commission's rules.[4] Based on these showings, the Commission observed that "nothing in Boeing's Second Amendment precludes the possibility of sharing in the Ka-band" and "a reasonable likelihood" exists that Boeing "can and will" demonstrate that it can operate on a shared basis with GSO FSS networks.[5]

The Commission also observed that it is "neither necessary nor advisable" for Boeing to provide a conclusive demonstration regarding spectrum sharing in the 29.25-29.5 GHz band as a part of its application for space segment authorization.[6] This is because Boeing sought to use the

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(. . . continued)
Service and for Fixed Satellite Service, Memorandum Opinion and Order, 16 FCC Rcd 11,436 (2001) ("*Ka-band Reconsideration Order*").

[3] *Ka-band Reconsideration Order*, 16 FCC Rcd at ¶ 7.

[4] Hughes mistakenly claims in its petition that Boeing did not submit the information required by Section 25.114 of the Commission's rules. *See Hughes Petition* at 7. Hughes provides no specific examples, however, to support this claim.

[5] *The Boeing Company*, DA 01-1631, ¶ 22 (July 17, 2001) ("*Boeing Authorization Order*").

[6] *Id.*

29.25-29.5 GHz band for Earth-to-space feeder links, and Boeing must apply separately for such authority by filing an earth station application at the appropriate time.[7]

Despite Boeing's extensive technical demonstration regarding spectrum sharing in the Ka-band, Hughes seeks reconsideration of Boeing's 2 GHz MSS license, arguing once again that Boeing has failed to demonstrate that its Ka-band feeder links can share with GSO FSS networks. Consistent with Hughes' prior pleadings, Hughes fails to identify any specific shortcoming with Boeing's Ka-band feeder link proposal and provides no technical analysis to support its oft-repeated claim that Boeing's operations have "the potential for significant interference with Ka-band GSO FSS systems."[8] Furthermore, Hughes fails to include an affidavit of a qualified engineer showing that interference would be caused to Hughes' Ka-band GSO FSS satellite network, as required by the Commission's rules.[9] For this reason alone, Hughes' petition is defective and must be dismissed.

Rather than provide any evidence of a legitimate interference concern, Hughes claims incorrectly that the Commission "recognized" in its *Boeing Authorization Order* that "Hughes and other parties had raised legitimate concerns about Boeing's technical showing."[10] Based on these erroneous claims, Hughes accuses the Commission of an "irrational and unexplained

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[7] *See id.*, ¶ 16.

[8] *Hughes Petition* at 9.

[9] *See* 47 C.F.R. § 1.106(e) (2000).

[10] *Id.* at 4 (failing to cite to any portion of the *Boeing Authorization Order*).

departure from prior law and policy," which Hughes characterizes as "indisputably arbitrary and capricious."[11]

In making these arguments, Hughes ignores the specific language of the Commission's rules, and the Commission's long-standing policy of licensing MSS satellite systems and earth stations separately. The Commission's licensing policy dates back to its creation of MSS in 1986[12] and the licensing of AMSC Subsidiary Corporation ("AMSC") in 1987,[13] a proceeding in which Hughes was one of the applicants. This policy was carried forward in the Commission's Big LEO MSS proceeding[14] and, most recently, in the 2 GHz MSS proceeding.[15] Consistent with this policy, each of the 2 GHz MSS licensees, including Boeing, was directed to file separately applications for authority to construct and operate feeder link earth stations.[16]

The Commission's decision to grant Boeing's 2 GHz MSS authorization prior to coordinating its feeder link operations with Ka-band GSO FSS licensees is also consistent with

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[11] *Id.* at 7, 11.

[12] *See Land Mobile Satellite Service for the Provision of Various Common Carrier Services*, 2 FCC Rcd 485, 489 (1987) ("*L-Band MSS Order*") (creating MSS service in the L-band).

[13] *See Land Mobile Satellite Service for the Provision of Various Common Carrier Services*, 4 FCC Rcd 6041, 6056 (1989) ("*AMSC Authorization Order*") (issuing an authorization for the AMSC satellite network).

[14] *See 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*, 9 FCC Rcd 5936, 6016-17 (1994)

[15] *See Establishment of Policies and Service Rules for the Mobile Satellite Service in the 2 GHz Band*, 15 FCC Rcd 16,127, 16,190 (2000)

[16] *See, e.g., Mobile Communications Holdings, Inc.*, DA 01-1637, ¶ 12 (July 17, 2001) ("*MCHI 2 GHz MSS Order*") (stating that "this authorization should not be construed as a license for Earth-to-space transmissions" and noting that "[s]uch authority must be requested in the context of an earth station application filed pursuant to Section 25.130 of the Commission's rules").

the Commission's historic policy of granting space station authorizations conditioned on the completion of coordination with other licensees. For example, the Commission recently authorized Hughes and other applicants to operate GSO FSS networks in the Ka-band conditioned on coordination with co-primary terrestrial services in the 18.3-18.58 GHz band, non-U.S.-licensed satellite networks, and U.S. Government systems in the Ka-band.[17] The Commission issued these authorizations despite its conclusion that licensees "would have a difficult time implementing ubiquitous earth stations" in the 18.3-18.58 GHz band due to the large number of preexisting terrestrial fixed services.[18]

In stark contrast to this potentially difficult coordination, the Commission acknowledged that Boeing's proposal for Ka-band feeder links shows a " reasonable likelihood" that coordination with authorized GSO/FSS operation in the band is feasible.[19] The Commission's conclusions regarding Boeing's Ka-band feeder links provide more than adequate assurance that Boeing will be able to operate successfully in the Ka-band without resulting in harmful interference to Hughes' satellite operations. Therefore, the Commission should disregard

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[17] *See Hughes Communications, Inc.*, DA 01-1686, ¶¶ 14-15 (Aug. 3, 2001) ("*Hughes Ka-band GSO FSS Order*").

[18] *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*, 15 FCC Rcd 13,430, 13,446 (2000). The Commission also took the unusual step of warning Hughes and the other Ka-band licensees that "the Commission is not responsible for the success or failure of the required international coordination." *Hughes Ka-band GSO FSS Order*, ¶ 24.

[19] *Boeing Authorization Order*, ¶ 22.

Hughes' unsustainable claim that the grant of Boeing's application "will have detrimental effects" on Ka-band GSO FSS licensees.[20]

Hughes is also incorrect in claiming that Boeing's 2 GHz MSS authorization "violates their rights" by depriving Ka-band GSO FSS licensees of their "entitle[ment] to have their objections to Boeing's feeder link request considered as a part of the processing of Boeing's application."[21]

The Commission did consider the objections of Ka-band GSO FSS licensees as a part of this proceeding, and concluded that Boeing still must demonstrate that it can coordinate spectrum with GSO FSS licensees as a part of its application for earth station authorization. Furthermore, Hughes will have a second opportunity to file more detailed comments during the earth station authorization process.

Hughes belittles this opportunity, claiming that the Commission's authorization of Boeing's space segment "significantly and irrevocably biases the ultimate outcome" of Boeing's feeder link request.[22] Hughes also claims that "there appear to be no cases where the Commission has allowed a satellite system applicant to actually *launch* satellites "at its own risk."[23]

Hughes' arguments lack any basis in precedent. As noted above, the Commission routinely grants space segment authorizations conditioned on coordination with other parties and

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[20] *Hughes Petition* at 6.

[21] *Id.* at 6 & 9.

[22] *Id.*

[23] *Id.* (emphasis in the original).

resolution of interference concerns. No evidence exists that the Commission refrains from enforcing such requirements after a space segment authorization is granted and satellites are launched. In fact, space segment licensees often spend years attempting to resolve conditions imposed on their licenses.

For example, in 1989 the Commission granted Hughes affiliate, AMSC, a license to operate a GSO MSS network subject to a number of conditions and contingencies regarding operations in Canada and Mexico, use of the lower L-band, and provision of AMS(R)S.[24] AMSC launched its satellite "at its own risk" in 1995, and is still attempting to resolve multiple contingencies regarding its underlying authorization, including the completion of international spectrum coordination.

More recently, in 1997 the Commission granted Teledesic a license conditioned on spectrum sharing issues.[25] In 1999, Teledesic launched its first – albeit experimental – satellite, and is still working to resolve conditions that the Commission included in its authorization. Based on such examples, no foundation exists for Hughes' claim that the Commission's post-licensing decisions are biased towards satellite system licensees.

Finally, Hughes suggests that Boeing could attempt "to avoid the Commission's jurisdiction" by licensing its feeder link earth stations in foreign countries.[26] Even if Boeing

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[24] *See, e.g., AMSC Subsidiary Corporation Applications to Modify Space Station Authorizations in the Mobile Satellite Service*, 8 FCC Rcd 4040, 4048 (June 14, 1993) (conditionally authorizing AMSC to construct its satellite at its own risk to operate in the lower L-band); *AMSC Authorization Order*, 4 FCC Rcd at 6056.

[25] *See Teledesic Corporation*, 12 FCC Rcd 3154 (1997) (granting authorization conditioned on coordinating with U.S. government users of the bands, spectrum sharing with other NGSO FSS networks, and compliance with the rules adopted in related proceedings).

[26] *Hughes Petition* at 10.

were to license and construct feeder link earth stations in another country, Boeing would still be required under ITU-R rules to coordinate the operations of the earth stations with any administration requesting such coordination, including the U.S. government in its role as the licensing administration for Hughes' Ka-band GSO FSS network. This coordination process would provide the FCC with ample opportunity to enforce its spectrum sharing requirements. Furthermore, the Commission retains direct jurisdictional authority over Boeing through its 2 GHz MSS space segment authorization. Pursuant to this authority, Boeing will always be required to comply with the Commission's rules and the conditions that were placed on its license.

In summary, Hughes has provided no basis for reconsideration of the Commission's authorization of Boeing's Ka-band feeder links. The *Boeing Authorization Order* is consistent with long-standing policy and precedent and in no way disadvantages other authorized users of the Ka-band.

III. THE COMMISSION'S RULES AND POLICIES DID NOT REQUIRE THE ISSUANCE OF A CUT-OFF NOTICE OR INITIATION OF A SATELLITE APPLICATION PROCESSING ROUND BEFORE BOEING'S KA-BAND FEEDER LINK AUTHORIZATION WAS GRANTED

In seeking reconsideration of Boeing's 2 GHz MSS authorization, Hughes and PanAmSat both claim that the Commission's rules and policies required the International Bureau to issue a cut-off notice and establish a processing round before Boeing's Ka-band feeder link authorization could be granted. Hughes argues that the Commission's failure to do so was "arbitrary and capricious"[27] and PanAmSat claims that as a result of the Commission's failure, Boeing's

[27] *Id.* at 13.

application "leapfrogged" ahead of others who "might file Ka-band applications that conflict with Boeing's Ka-band proposal."[28]

The Commission's rules, however, do not require the issuance of a cut-off notice, or the initiation of a processing round, before Boeing's Ka-band feeder link request can be granted. Indeed, many other satellite system licenses, including one recently issued to PanAmSat, have been authorized without such administrative measures.

The Commission issues cut-off notices to ensure comparative consideration between mutually exclusive applications. Prior to 1997, the Commission established cut-off deadlines using two methods – either the Commission issued a public notice announcing a cut-off deadline, or, if no public notice was issued, a cut-off deadline was automatically designated as thirty days following the date of public notice listing the first potentially conflicting application as acceptable for filing.[29]

In 1996, the Commission concluded that these rules were confusing and changed them in its *Satellite Streamlining Order*.[30] Under the new rules, a cut-off deadline is established only if the Commission issues a public notice specifically creating such a deadline.[31] This new rule does not *require* the Commission to establish a cut-off deadline, it simply limits the approaches that the Commission may utilize if a cut-off deadline is warranted.

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[28] *PanAmSat Petition* at 3-4.

[29] *See* 47 C.F.R. § 25.155(b)(2) (1996).

[30] *See Streamlining the Commission's Rules and Regulations for Satellite Application and Licensing Procedures*, 11 FCC Rcd 21,581, 21,587 (1996) ("*Satellite Streamlining Order*").

[31] *See id.*; 47 C.F.R. § 25.155(b)(2) (2000).

Since the new rule went into effect, the Commission has issued public notices establishing cut-off deadlines in a number of proceedings where mutually exclusive satellite applications had already been filed, or where the Commission anticipated that mutually exclusive applications were likely to be filed. At the same time, the Commission has also granted a number of satellite system authorizations without announcing cut-off deadlines or establishing processing rounds because mutually exclusive conflicts did not exist and were unlikely to occur.

For example, in the 2 GHz MSS proceeding, the Commission issued public notices establishing cut-off deadlines for Iridium, Globalstar, and Celsat's Ka-band feeder link proposals,[32] along with Boeing's Ku-band feeder link proposal.[33] At the same time, the Commission did not establish cut-off deadlines for Constellation's "5, 7 & 15 GHz band" feeder

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[32] *See* Public Notice, "*Satellite Policy Branch Information: Satellite Applications Accepted For Filing in the Ka-band, Cut-off Established for Additional Applications in the 28.35-28.6 GHz, 29.1-30 GHz, 17.7 - 18.8 GHz, and 19.3 - 20.2 GHz Frequency Bands,*" Report No. SPB-106, at 2-3 (Oct. 15, 1997) ("*Ka-band Cut-off Notice*") (noting the feeder link applications of Iridium and Globalstar, but concluding that Celsat's application is not in conformance with the domestic spectrum allocation plan and directing Celsat to amend its application by the Dec. 22, 1997 cut-off deadline).

[33] *See* Public Notice, "*Satellite Policy Branch Information: 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, at 4-5 (Nov. 2, 1998).

link proposal,[34] MCHI's 7/15 GHz feeder link proposal,[35] Globalstar's 7/15 GHz band feeder link proposal,[36] or Iridium and Globalstar's proposals to operate inter-satellite links.[37]

The Commission's use of its flexible – and sensible – policy regarding cut-off deadlines is not limited to the 2 GHz MSS proceeding. For example, on August 2, 2001, the Commission authorized PanAmSat to operate a GSO FSS network in the Ka-band.[38] While PanAmSat's service links were subject to the Ka-band second processing round, PanAmSat's request for inter-satellite links was not subject to a cut-off deadline or processing round.[39] The Commission employed this same treatment for the inter-satellite link authorizes of Pegasus,[40] DirectCom,[41]

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[34] *See Constellation Communications Holdings, Inc.*, DA 01-1633, ¶¶ 9-12 (July 17, 2001) (authorizing Constellation to operate feeder links in the 5091-5250 MHz, 15.43-15.63 GHz and 6700-7075 MHz bands).

[35] *See MCHI 2 GHz MSS Order*, ¶¶ 9-13 (authorizing MCHI to operate feeder links in the 15.43-15.63 GHz and 6775-7075 MHz bands).

[36] *See Ka-band Cut-off Notice* at 2 (acknowledging Globalstar's request to operate Earth-to-space feeder links in the 15.45-15.65 GHz band, but not establishing a cut-off deadline for competing applications); *see also Globalstar L.P.*, DA 01-1634, ¶ 1 (July 17, 2001) ("*Globalstar 2 GHz MSS Order*") (authorizing Globalstar to operate feeder links in the 15.43-15.63 GHz and 6700-6800 MHz bands even though a cut-off deadline was not established for operations in either band).

[37] *See Globalstar 2 GHz MSS Order*, ¶¶ 31, 32 (authorizing Globalstar to operate inter-satellite links in the 65.0-65.1 GHz band); *Iridium LLC*, DA 01-1636, ¶ 13 (July 17, 2001) (authorizing Iridium to operate inter-satellite links in the 23.18-23.38 and 24.45-24.75 GHz bands).

[38] *See PanAmSat Corporation*, DA 01-1691 (Aug. 2, 2001).

[39] *See id.*, ¶¶ 16-17 (authorizing PanAmSat to operate inter-satellite links within the 54.25-58.20 GHz and 65.0-71.0 GHz bands).

[40] *See Pegasus Development Corporation*, DA 01-1692, ¶ 16 (Aug. 3, 2001) (authorizing Pegasus to operate inter-satellite links within the 65.0-71.0 GHz band).

[41] *See DirectCom Networks, Inc.*, DA 01-1683, ¶ 26 (Aug. 3, 2001) (authorizing DirectCom to operate inter-satellite links in either the 54.25-58.2 GHz or the 65.0-71.0 GHz band).

and Lockheed Martin,[42] along with the Commission's January 2001 modification of GE Americom's first round Ka-band GSO FSS authorization to add inter-satellite links.[43]

The Commission has also used its discretionary policy regarding cut-off deadlines to authorize satellite service link spectrum. As PanAmSat acknowledges in its petition, the Commission never establishes cut-off deadlines when authorizing replacement satellites.[44] In addition, the Commission has twice granted applications for Earth Exploration Satellite Service ("EESS") networks that were filed with the Commission after the new cut-off rules came into effect.[45] In neither case was a processing round established. The Commission also granted an application for a satellite network operating in the Broadcast Satellite Service (Sound) service even though a cut-off deadline was never announced and a processing round was never conducted.[46]

The Commission appropriately employed this discretion in processing Boeing's 2 GHz MSS application. Boeing did not seek, or require, comparative consideration with any Ka-band GSO FSS licensee or applicant. As indicated in the previous section, Boeing can operate its Ka-

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[42] *See Lockheed Martin Corporation*, DA 01-1688, ¶ 26 (Aug. 3, 2001) (authorizing Lockheed Martin to operate inter-satellite links in the 54.25-58.2 GHz band).

[43] *See GE American Communications, Inc.*, DA 01-225 (Jan. 31, 2000) (authorizing GE Americom to operate inter-satellite links in the 54.25-55.0 GHz, 55.25-55.5 GHz, 57.0-57.25 GHz and 57.8-58.20 GHz bands).

[44] *See PanAmSat Petition* at 3.

[45] *See AstroVision International*, DA 00-2581 (Nov. 15, 2000) (granting application that was filed with the Commission on May 18, 2000); *Orbital Imaging Corporation*, DA 99-353 (Feb. 12, 1999) (granting application filed with the Commission on February 2, 1998).

[46] *See Afrispace, Inc.*, DA 99-2849 (Dec. 17, 1999) (granting modification application that was filed with the Commission on January 22, 1999 and placed on public notice on March 4, 1999).

band feeder links on a shared basis with all of the licensed and applied for Ka-band GSO FSS networks proposing operations in the same frequency bands. As a result, Boeing's Ka-band feeder link request did not raise mutually exclusive conflicts with any GSO FSS application pending before the Commission, or any additional GSO FSS applications that might be filed in the immediate future.

In fact, the only applications that could possibly have raised mutually exclusive conflicts with Boeing's proposal were other applications for non-geostationary ("NGSO") MSS feeder links in the 29.1-29.5 GHz band. Two such applications were pending as a part of the second Ka-band processing round – Iridium and Globalstar's – but Boeing demonstrated that it could share spectrum with both systems and, importantly, neither party disputed this fact. No prospect existed for a fourth party to file an application to operate NGSO MSS feeder links in the Ka-band because each MSS applicant pending before the Commission had just been provided an opportunity to amend its MSS application to, *inter alia*, modify its feeder links. The Commission should therefore disregard PanAmSat's vague suggestion that other parties existed that "might file Ka-band applications that conflict with Boeing's Ka-band proposal."[47]

In summary, the Commission was in complete compliance with its rules and policies when it authorized Boeing's 2 GHz MSS application, and no party was prejudiced or harmed by the Commission's decision not to establish a new processing round for Boeing's Ka-band feeder links. Therefore, the Commission should summarily deny the petitions of PanAmSat and Hughes.

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[47] *PanAmSat Petition* at 3-4.

IV. THE COMMISSION DOES NOT NEED TO CLARIFY THE COORDINATION RIGHTS OF MSS FEEDER LINKS USED TO PROVIDE AMS(R)S

As a final matter, Hughes requests the Commission to clarify that satellite operators providing AMS(R)S are not entitled to any special coordination rights regarding their feeder links.[48] There is no need for such a clarification. For the past decade, several satellite operators have provided, or have been authorized to provide, AMS(R)S. None of these operators have been granted special coordination rights with respect to their feeder link frequencies. For example, Inmarsat provides AMS(R)S using feeder links in C-band spectrum, the Canadian M-SAT system provides AMS(R)S using feeder link transmissions in the Ku-band, and both Iridium and AMSC have proposed to provide AMS(R)S in the United States without any special regulatory protection for their feeder links. Accordingly, no reason exists for the Commission to clarify its existing policies regarding coordination rights for satellite licensees providing AMS(R)S.

V. CONCLUSION

The Commission's grant of Boeing's 2 GHz MSS application is in complete compliance with the Commission's long standing rules and policies regarding the processing of satellite system applications. No party was prejudiced or harmed by the Commission's decision not to establish a new processing round for Boeing's Ka-band feeder links. Indeed, the authorization of Boeing's 2 GHz MSS network will enable the provision of satellite-based air traffic management services to the significant benefit of the traveling public and the global aviation industry. Therefore, the Commission should conclude that no basis exists for reconsideration or

[48] *See Hughes Petition* at 13.

clarification of Boeing's authorization and summarily deny the petitions of PanAmSat and Hughes.

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CERTIFICATE OF SERVICE

I, Shannon Thrash, hereby certify that on this 28st day of September, 2001, copies of the foregoing, were served by hand delivery* and/or first class United States mail, postage prepaid, on the following:

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