

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of

Appropriate Framework for Broadband Access
to the Internet over Wireline Facilities

CC Docket No. 02-33

Universal Service Obligations of Broadband
Providers

Computer III Further Remand Proceedings:
Bell Operating Company Provision of
Enhanced Services; 1998 Biennial Regulatory
Review – Review of Computer III and ONA
Safeguards and Requirements

CC Docket Nos. 95-20, 98-10

**Comments of Hughes Network Systems, Inc., Hughes Communications, Inc.,
and Hughes Communications Galaxy, Inc.**

Hughes Network Systems, Inc., Hughes Communications, Inc., and Hughes Communications Galaxy, Inc. (collectively, “Hughes”) hereby submit the following comments on the Commission’s Notice of Proposed Rulemaking in the above-captioned dockets (the “Notice”).¹ Hughes strongly urges the Commission not to impose universal service contribution obligations on providers of satellite-delivered broadband Internet access services.

In the Notice, the Commission seeks comment on whether it should require broadband Internet access services (other than broadband delivered over wireline telecommunications facilities, such as those operated by local exchange carriers) to contribute to universal service mechanisms if it determines that such services are “information services with a telecommunication input.” Notice at ¶ 79. With respect to satellite-delivered broadband Internet access services, Hughes submits that the answer is a resounding “No.”

¹ *Appropriate Framework for Broadband Access to the Internet over Wireline Facilities*, CC Docket No. 02-33, *et. al.*, Notice of Proposed Rulemaking, FCC 02-42 (rel. Feb. 15, 2002).

To actually provide satellite-based broadband Internet access services to individual subscribers, Hughes and other providers of similar services must overcome a daunting set of obstacles. Cable modem, digital subscriber line, and other terrestrial providers of high-speed or broadband Internet access services already operate in many markets and provide service to residential users. Compared to these providers, Hughes faces significant pricing challenges, spectrum limitations, high up-front investment requirements, high subscriber acquisition costs, and much higher business risk than its competitors. Satellite-delivered broadband services require the customer to invest in equipment, including a satellite antenna, modem, and related electronic equipment, that is expensive and difficult to install compared to that needed to access competitive terrestrial services. Further, Hughes must make enormous sunk capital expenditures just to bring a satellite-based service to market in the face of uncertain demand, increasing competition, and new developments in other broadband technologies.

The Commission should not place another hurdle in Hughes' path by imposing an obligation to contribute to universal service programs. First, Section 254(d) does not compel such as result. Under Section 254, each "telecommunications carrier that provides interstate telecommunications services" is required to contribute to universal service.² But, Hughes does not provide any telecommunications service (*i.e.*, telecommunications provided on a common carrier basis) as part of its DIRECWAY services and does not plan to do so when it launches its SPACEWAY system. Indeed, under the Commission's hypothesis in the Notice, satellite-delivered broadband Internet access services incorporate only a "telecommunications" input, at most. *See* Notice at ¶ 79.

² Under the Act, a "telecommunications carrier" is "any provider of telecommunications services" with exceptions not relevant here. 47 U.S.C. § 153(44). A "telecommunications service" is "the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used." 47 U.S.C. § 153(46).

Second, given the high hurdles that providers of satellite-delivered broadband Internet access must clear, it would not serve the public interest for the Commission, as a matter of its discretion under the statute, to require these providers to contribute to universal service support mechanisms.³ Hughes agrees with the Commission that the “widespread deployment of broadband infrastructure has become the central communications policy issue of the day,”⁴ and further supports the Commission’s “primary policy goal to encourage the ubiquitous availability of broadband to all Americans.”⁵

Satellite-based broadband Internet access services represent the most promising technology available today to make this Commission goal a reality. The potential exists for satellite-delivered broadband to serve more of the Nation than any other broadband technology. 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 broadband service potentially can be provided to any subscriber within line of sight of the satellite, including the vast majority of those living in rural areas that may not yet have access to digital subscriber line, cable modem, or other forms of high speed Internet access or broadband technology.

Through today’s Ku-band satellite-delivered broadband Internet access services, such as Hughes’ DIRECWAY, users are able to access their choice of Internet service providers, receive cached information from websites and newsgroups automatically downloaded for faster browsing, and access e-mail accounts. Moreover, just last year, the Commission granted the second-round applications of Hughes and others to launch and operate new, Ka-band satellites to

³ Under Section 254(d), the Commission may require other providers of interstate telecommunications to contribute to such mechanisms. 47 U.S.C. § 254(d).

⁴ Notice at ¶ 1.

⁵ Notice at ¶ 3.

be used for “next-generation” satellite broadband services.⁶ These satellite operators will use higher frequencies than any commercial satellite system has ever employed and will provide broadband services at speeds many times higher than current satellite systems.

Satellite-delivered broadband services are still in the early stages of development,⁷ and, as noted above, many challenges exist to the actual provision of these services to individual subscribers. These challenges include the fact that Hughes (and subscribers) must make significant investments in infrastructure and subscriber equipment, and that Hughes must incur other large subscriber acquisition costs, before service to an individual subscriber even commences. If the Commission saddles these new and emerging services with the additional burden of universal service contribution obligations, it would make it all the more difficult for Hughes and other providers actually to deploy these services to residential users.⁸

⁶ See, e.g., *Hughes Communications, Inc. Application for Authority to Construct, Launch, and Operate a Ka-Band Satellite System in the Fixed-Satellite Service*, Order and Authorization, 16 FCC Rcd 14310 (Int. Bur. 2001).

⁷ See *Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996*, CC Docket No. 98-146, Third Report, FCC 02-33, at ¶ 60 (rel. Feb. 6, 2002) (“*Third 706 Report*”) (“Our data collection confirms that provision of high-speed services over satellite technology is still in the early stages of deployment with less than four providers reporting. High-speed service over satellite technology accounted for between 50,000 and 150,000 high-speed lines as of June 2001.”)

⁸ The challenges that Hughes faces are so daunting that, as explained in detail in Hughes’ submissions in the Hughes/Echostar merger application, CS Docket No. 01-348, the combination of Hughes and Echostar is required to allow the actual deployment of an economical, ubiquitously-deployed, satellite-delivered broadband service to residential subscribers throughout America. Imposing a universal service contribution requirement on these services would exacerbate these challenges.

For the foregoing reasons, the Commission should not impose universal service contribution obligations on providers of satellite-based broadband Internet access services.

Respectfully submitted,

HUGHES NETWORK SYSTEMS, INC., HUGHES
COMMUNICATIONS, INC., AND HUGHES
COMMUNICATIONS GALAXY, INC.

/s/ Richard R. Cameron

John P. Janka
Richard R. Cameron
LATHAM & WATKINS
555 Eleventh Street, N.W., Suite 1000
Washington, D.C. 20004
(202) 637-2200

Its Attorneys

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