

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

In the Matter of)	
)	
Application of)	
)	
EchoStar Communications Corporation, (a Nevada)	
Corporation), General Motors Corporation, and)	
Hughes Electronics Corporation (Delaware)	
Corporations))	
)	CS Docket No. 01-348
(Transferors))	
)	
and)	
)	
EchoStar Communications Corporation (a)	
Delaware Corporation))	
)	
(Transferee))	

To: Chief Administrative Law Judge Richard L. Sippel

Motion to Defer Hearing Fee

The National Association of Broadcasters (hereinafter "NAB"), by and through counsel and pursuant to Section 1.1117 of the Commission's Rules, 47 C.F.R. § 1.1117, hereby files a Motion to Defer, or in the Alternative, Waive Hearing Fee. Although NAB believes that it should not required to submit a fee to participate in the above-captioned matter, NAB styles its motion as one to defer the fee out of an abundance of caution.

In a Hearing Designation Order released October 18, 2002,¹ the Commission designated the above-captioned matter for hearing and designated NAB a party to proceeding pursuant to Section 1.221(d) of the Commission's rules, 47 C.F.R. §

¹ *Hearing Designation Order in CS Docket No. 01-348*, FCC 02-284, released October 18, 2002 (“*Hearing Order*”).

1.221(d).² NAB was directed to file a Notice of Appearance pursuant to Section 1.221(e) of the Commission's Rules, 47 C.F.R. § 1.221(e), and also instructed as follows:

Such written appearance must also be accompanied (sic) by the fee specified in Section 1.1108 of the Commission's Rules or be accompanied by a deferral request pursuant to Section 1.1117 of the Commission's Rules.³

NAB believes that no hearing fee should be required of non-applicant entities named as parties to the proceeding, and, accordingly, files this Motion to Defer Hearing Fee. In the event a hearing fee will be required, NAB requests that payment of the fee be deferred, at least until any amendments are filed in this proceeding,⁴ and if NAB chooses to participate in the hearing on these applications, as amended, NAB requests that the hearing fee, ultimately be waived.

When initially adopting the schedule of application processing fees relevant to hearing applications, the Commission stated:

We will not, however, require the hearing fee for parties designated for hearing in a renewal, assignment/transfer, or revocation proceeding. These actions are in the nature of an enforcement action against and licensee and the imposition of a fee against the licensee would be inconsistent with the licensee's right to a hearing.⁵

In the footnote attached to this finding, the Commission stated:

As we proposed in the NPRM, we will not assess a fee in the following situations: *individuals or organization named parties* (47 C.F.R. § 1.221); intervenors (47 C.F.R. § 1.223); non-parties who wish to appear and give evidence (47 C.F.R. § 1.225); *those who file Petitions to Deny* (47 C.F.R. § 73.3584); or Informal Objections (47 C.F.R. § 73.3587).⁶

² *Hearing Order* at ¶ 297.

³ *Id.*

⁴ At paragraph 295 of the *Hearing Order*, the Commission gave the parties an opportunity to amend their applications within 30 days. NAB, however, must file its Notice of Appearance within 20 days.

⁵ *Report and Order in Gen. Docket No. 86-285*, 2 FCC Rcd 947, 966 (1987) (“1987 Fee Order”), *recon. den.* 3 FCC Rcd 5987 (1988).

⁶ *Id.* at 985, n. 134. Although the language quoted above relates to Mass Media Bureau services, the Commission specifically made the hearing fee for proceedings involving Direct Broadcast Satellites subject to the limitations established in the 1987 Fee Order. *Id.* at 970.

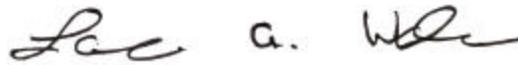
Therefore, as a party named to the proceeding, as well as one that filed a Petition to Deny the transfer of licenses at issue,⁷ NAB should not be required to submit a fee to participate in this hearing.

In addition, pursuant to Section 1.1117(a) of the Commission's rules, 47 C.F.R. § 1.1117(a), deferral and/or waiver of the hearing fee would promote the public interest because imposition of the fee would undermine NAB's right, and compromise NAB's ability, to participate in the Commission's licensing process under Section 309(d) of the Communications Act of 1934, as amended. 47 USC § 309(d). Under this provision of the Act, any party in interest may file a petition to deny and, "Any hearing subsequently held upon such application shall be a full hearing in which the applicant and all other parties in interest shall be permitted to participate." 47 USC § 309(e). Conditioning NAB's participation on the payment of a substantial hearing fee runs counter to the Act and eviscerates its right to fully participate in this hearing.

⁷ Petition to Deny, filed by National Association of Broadcasters in CS Docket No. 01-348, February 4, 2002.

Accordingly, the Commission's imposition of a hearing fee on NAB to participate in the above-captioned matter is neither justified nor permitted. In the event the Commission determines that NAB nevertheless must submit a hearing fee to participate in this proceeding, NAB requests that the fee be deferred at least until the applicant parties file any amendment, and, ultimately waived, based upon NAB's showing of good cause for waiver of the fee, as well as NAB's long-standing commitment to assisting the Commission in resolving this matter.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Lawrence A. Walke".

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November 15, 2002

CERTIFICATE OF SERVICE

I, Angela Barber, hereby certify that true and correct copies of the foregoing Motion to Defer Hearing Fee were served on the following individuals by first class mail, postage prepaid on this 15th day of November, 2002:

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