

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

In the Matter of)	
)	
Amendment of the Commission’s Space Station Licensing Rules and Policies)	IB Docket No. 02-34
)	
2000 Biennial Regulatory Review – Streamlining and Other Revisions of Part 25 of the Commission’s Rules)	IB Docket No. 00-248
)	
)	

**PETITION FOR RECONSIDERATION AND CLARIFICATION
OF HUGHES NETWORK SYSTEMS, INC.**

Hughes Network Systems, Inc. (“HNS”) hereby files this Petition for Reconsideration and Clarification of the Commission’s *Order* in this proceeding.¹

First, HNS respectfully requests that the Commission clarify two aspects about the operation of the new application processing “queue.” Namely, HNS asks that the Commission (i) clarify which modification applications will be placed in the queue, and which modification applications will be processed outside the queue, and (ii) clarify that the Commission will process U.S. market access requests by a non-U.S. licensed satellite system that has ITU priority notwithstanding the existence of a Commission authorization allowing another entity with lower ITU priority to provide service at the same, or a nearby (*i.e.*, less than 2 degrees away), orbital location and on the same frequencies. Second, HNS respectfully requests that the

¹ *Amendment of the Commission’s Space Station Licensing Rules and Policies*, First Report and Order and Further Notice of Proposed Rulemaking, IB Dkt No. 02-34, FCC 03-102 (rel. May 19, 2003) (the “*Order*”).

Commission reconsider those aspects of the *Order* that would apply to certain of the new “anti-speculation” rules to U.S. licensed systems intended primarily for transoceanic or non-U.S. communications---specifically those U.S.-licensed systems to be located at orbital locations outside the range of 60° W.L. to 140° W.L. (“Non-U.S. Orbital Slots”).

I. THE COMMISSION SHOULD CLARIFY THE PROCESSING OF MODIFICATION APPLICATIONS AND MARKET ACCESS REQUESTS

A. Clarification of Which Modification Applications Are to Be Processed Outside the Queue.

In the text of the new rules, the Commission has adopted a bright-line test for determining which modification applications will be considered in the queue and which modification applications will be processed outside the queue. Namely, revised Section 25.117(d)(2)(iii) draws a distinction, in the case of GSO-like modification applications, between those modification applications that involve a change of orbital location or the addition of a frequency band, and all other modification applications. The former types of modification applications expressly are to be processed within the queue, and all other modification applications are to be considered outside the queue:

(d) (2) Applications for modifications of space station authorizations will be granted except under the following circumstances:

. . . .

(iii) Except as set forth in paragraph (d)(2)(iv) of this section, applications for modifications of GSO-like space station authorizations granted pursuant to the procedure set forth in Section 25.158 of this Chapter, which seek to relocate a GSO satellite or add a frequency band to the authorization, will be placed in a queue pursuant to Section 25.158 of this Chapter and considered only after previously filed space station license applications or space station modification applications have been considered.²

² *Id.* at ¶ 131 (emphasis supplied). Section 25.117 (d)(2)(iv) provides: “Applications for modifications of space station authorizations to increase the authorized bandwidth will not be considered in cases in which the original space station authorization was granted pursuant to the procedures set forth in Section 25.157(e) or 25.158(c)(4) of this Chapter.”

Consistent with this new rule, in the FCC’s Public Forum on July 8, 2003, Commission staff distributed a three-page overview, confirming its interpretation that modification applications that do not involve an addition of frequencies or a new orbital location will be processed outside the queue. The text of the *Order*, however, contains some inconsistent language. In paragraph 144 of the *Order*, the Commission indicated that it was not inclined, at this time, to adopt a proposal to process certain “minor” modification applications outside of the new queue that had been established for space station applications.³

HNS agrees with the approach reflected in the new rules – license modification applications that involve a change in orbital location or frequency presumptively should be processed in the queue along with applications for new space station licenses, and all other modification applications presumptively should be processed outside the queue. HNS therefore requests that the Commission clarify that nothing in the text of the *Order* is intended to alter the processing approach for modification applications described in Section 25.117(d)(2)(iii) of the new rules and reflected in the materials distributed at the Public Forum.

B. Clarification Regarding the Processing of U.S. Market Access Requests.

HNS respectfully requests that the Commission clarify that non-U.S. licensed satellites seeking U.S. market access who assert ITU priority will have their requests considered notwithstanding the existence of a Commission authorization allowing another entity with lower ITU priority to provide service at the same, or a nearby (*i.e.*, less than 2 degrees away), orbital location and on the same frequencies.

In the *Order*, the Commission acknowledges its long-standing policy that U.S. licensees take their authorizations subject to the requirement to coordinate under ITU

³ *Order* at ¶ 144.

procedures, and subject to the ITU priority of any other system operating on the same frequency bands. Thus, U.S. space station licensees may have to “give way” to a subsequently launched non-U.S.-licensed system with higher ITU priority:⁴

As is the case now in processing rounds, U.S. licensees assigned to a particular orbit location in a first-come, first-served approach take their licenses subject to the outcome of the international coordination process. The Commission is not responsible for the outcome of any particular satellite coordination and does not guarantee the success or failure of the required international coordination. Moreover, we expect U.S. licensees to abide by international regulations when their systems are coordinated. This may mean that the U.S.-licensee may not be able to operate its system if the coordination cannot be appropriately completed.⁵

In recognizing the relevance of ITU priority, the Commission also resolved other concerns raised in the comments in this proceeding that a “first-come, first-served” licensing approach could, in certain circumstances, unreasonably preclude non-U.S. satellite operators from entering the U.S. market.⁶ The Commission indicated that no such preclusive effect would result as long as it licenses a U.S. satellite to operate on a temporary basis pending the launch and operation of a non-U.S. satellite with higher priority, and subject to the condition that such temporary operations not adversely impact the higher-priority non-U.S.-licensed satellite network.⁷ Similarly, the Commission indicated that when faced with market access requests from two or more non-U.S.-licensed satellite operators authorized by different Administrations, it could permit the lower ITU priority satellite to serve the U.S., subject to the requirement that such satellite cease service immediately upon the launch and operation of the higher ITU priority

⁴ *Order* at ¶ 96.

⁵ *Id.* (footnote omitted), *see also id.* at ¶ 295.

⁶ *Id.* at ¶ 91, 295

⁷ *Id.* at ¶ 295 & n. 703.

system.⁸ Both of these policies help ensure that the first-come, first-served U.S. licensing process is not used to “block” market access requests by a non-U.S.-licensed satellite system with higher ITU priority.

While the Commission emphasized its intention that “nothing in the procedures we adopt today precludes us from considering ITU precedence issues when reviewing requests from non-U.S.-licensed satellite operators for U.S. market [access],”⁹ the *Order* did not address certain details related to its new mandatory electronic filing system. Some of those issues were discussed at the June 8, 2003 Public Forum where the staff clarified that all requests for market access by non-U.S. satellite systems would be placed into the queue and processed along with applications for new licenses, in the order received.

At that Public Forum, the staff indicated that once a satellite authorization was issued, subsequently filed “conflicting” applications would be dismissed when they reach the front of the queue. The “Frequently Asked Questions” distributed at the July 8, 2003 Public Forum also suggest that the new electronic filing system would consider a “previously licensed” orbital location blocked, that is “not available” for filing further applications until the issuance of an Order or Public Notice revoking that authorization. In other words, the system would prevent a new applicant from being authorized “on top” of an entity with an existing FCC authorization, unless and until the existing FCC authorization is cancelled. It is unclear, however, the extent to which such a “block” also inadvertently could preclude the filing of a U.S. market access request by a non-U.S.-licensed satellite with ITU priority.

Specifically, neither the *Order* nor the materials provided at the Public Forum addressed the way the new electronic filing system would handle market access requests that are

⁸ *Id.* at ¶ 296.

⁹ *Id.* at ¶ 297.

made by non-U.S.-licensed satellite operators to provide service on frequency bands and at an orbital location that already have been authorized for use on a temporary basis by another satellite system – whether U.S. or non-U.S. licensed. Consistent with the policies articulated in the *Order* and described above, such requests should be processed in the normal course to ensure that the higher-priority satellite network would not be adversely impacted by any prior authorization granted to a lower-priority system.

It may make sense not to accept additional applications for a second U.S. license at a given orbital location as long as someone holds a valid authorization for that location. However, in light of the Commission’s stated policy to respect ITU priority, it would be inconsistent for the Commission not to accept requests for market access for that location by a system with higher ITU priority. HNS therefore urges the Commission, in implementing its new electronic filing system, to grant the market access requests of non-U.S.-licensed satellite systems seeking access for a location already authorized for service by a lower priority system, and, to the extent necessary, provide a mechanism on the Form 312 for those applicants to indicate that their request is based on a claim of higher ITU priority. Moreover, HNS asks the Commission to confirm that the new mandatory electronic filing system will allow an applicant to indicate that a letter of intent or a petition for declaratory ruling is fee-exempt.

Finally, HNS requests that the Commission clarify whether electronic filing and a Form 312 must be submitted for every type of U.S. market access request. The *Order* seems to indicate that any form of U.S. market access request---whether made through an earth station application, a letter of intent, or a petition for declaratory ruling---must be filed electronically, using the new form 312. The new form 312, however, does not appear to have a specific way to indicate that it is being used in connection with a petition for declaratory ruling.

II. THE COMMISSION SHOULD RECONSIDER CERTAIN ASPECTS OF THE ORDER PERTAINING TO NON-U.S. SATELLITE SYSTEMS

HNS respectfully requests that the Commission reconsider those aspects of the *Order* that would apply certain of the new “anti-speculation” rules to U.S. licensed systems intended primarily for transoceanic or non-U.S. communications---specifically those U.S.-licensed systems to be located at orbital locations outside the range of 60° WL to 140° WL (“Non-U.S. Orbital Slots”). The purpose of rules such as the “five GSO slot limit,” and the application of “black marks” in cases where systems are not implemented in accordance with milestones, is to prevent speculation and warehousing that might otherwise limit entry into the U.S. market.¹⁰ These concerns should be inapplicable to applications for Non-U.S. Orbital Slots. As indicated in its separate filing with a number of other leading satellite companies, HNS believes that the new bonding requirement should be eliminated entirely. But should the Commission not totally eliminate that requirement, HNS urges the Commission to remove the application of bonding to requests for Non-U.S. Orbital Slots.

Licensees intending to deploy Non-U.S. Orbital Slots face many sources of uncertainty that can lead them not to implement as originally planned. Many foreign jurisdictions have domestic spectrum allocation plans that are different from the U.S., and that effectively can block market entry by a satellite system. Moreover, Non-U.S. GSO systems typically face very challenging international coordination issues due the existence of many preexisting foreign filings ahead of the U.S. in the ITU queue, and the fact that many foreign satellite operators file at the ITU for multiple locations in order to establish an effective negotiating position during international coordination discussions. Likewise many foreign markets have far more volatile economies than the U.S., which can raise the risk of system

implementation to a level where it becomes commercially infeasible to launch a Non-U.S. System.

Moreover, the new limit of five U.S.-licensed GSO orbital locations slots per frequency band is particularly burdensome and unnecessarily limiting in the case of Non-U.S. Systems. This limit is barely adequate to provide a single global service with good look angles for each satellite. Indeed, it is more accurate to say the limit is wholly inadequate for a Non-U.S. System, because it does not afford the needed opportunity to have in-orbit redundancy in each region of the world. At a minimum, a global system needs access to eight orbital locations that can be successfully coordinated – two over the United States and Canada, two over the European/African region, two over the Asia Pacific region, and two optimized for South America. Furthermore, the five-slot limit places GSO-like systems at a competitive disadvantage vis-à-vis NGSO systems, because a U.S.-licensed GSO system cannot obtain a license for a network with coverage even remotely comparable to the service area provided by an NGSO system.

In addition, requests for Non-U.S. Orbital Slots have rarely numbered so many that the Commission has not been able to address them in an orderly fashion or where possible conflicts could not be resolved easily among U.S. applicants. Given that the demand for Non-U.S. Orbital Slots has already demonstrated itself to be reasoned and measured, there is no need for the Commission to impose a limit on Non-U.S. Orbital Slots or count them the same as if they substantially served the United States territory.

Thus, the application of “black marks,” and the forfeiture of a multi-million dollar bond, for failing to implement in accordance with a license milestone, are particularly punitive in the case of a Non-U.S. System, and do not serve any compelling U.S. policy purpose. Further,

the application of the five-GSO-like-orbital-location limit to applications for Non-U.S. Orbital Slots unduly constrains the deployment of a global satellite system, which in the past has been valued by the U.S. Administration. In fact, these restrictions have the unintended consequence of actually encouraging U.S. companies to seek licenses from foreign administrations instead of the Commission for Non-U.S. Orbital Slots.

The Commission should not penalize licensees of Non-U.S. Orbital Slots who intend to deploy their systems but encounter unforeseen regulatory and/or market circumstances that prevent them from operating a commercially feasible system. Nor should it unduly constrain their ability to attempt to deploy those systems in the first place. For these reasons, HNS respectfully requests that the Commission reconsider its “five slot limitation” and its new policy of awarding “black marks” for failing to implement a licensed system, as they would apply to requests for Non-U.S. Orbital Slots. Moreover, to the extent that the Commission does not eliminate its bonding requirement entirely, it should, at a minimum, remove its application as to Non-U.S. Orbital Slots.

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HNS therefore respectfully requests that the Commission clarify and reconsider its *Order* in this proceeding in the manner and to the extent specified above.

Respectfully submitted,

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