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

In the Matter of)
)
Request for Amendment of the)
Commission's Rules to Redesignate)
the 28.6-29.1 GHz (Earth-to-space) and)
18.8-19.3 GHz (space-to-Earth) Bands to)
Allow Geostationary Fixed-Satellite Service)
Operations on a Co-Primary Basis)

RM No. 10767

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OCT 27 2003

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

COMMENTS IN SUPPORT

Hughes Electronics Corporation ("Hughes") and Hughes Network Systems, Inc ("HNS") hereby file these comments in support of the above-captioned petition for rulemaking filed by EchoStar Satellite Corporation ("EchoStar") on August 27, 2003.¹ Hughes and HNS support the initiation of a rulemaking proceeding to explore the terms and conditions for co-primary sharing of the 18.3-18.8 GHz and 28.6-29.1 GHz bands by geostationary orbit ("GSO") and non-geostationary orbit ("NGSO") satellite systems in the fixed-satellite service ("FSS").

As a general matter, establishing the terms and conditions on which NGSO FSS and GSO FSS systems could share 18.3-18.8 GHz and 28.6-29.1 GHz on a co-primary basis promises to increase the efficiency with which valuable spectrum can be used and new and innovative satellite services can be introduced, particularly those employing small, ubiquitous earth stations. The Commission previously has authorized new NGSO FSS services in frequency bands historically used exclusively by GSO FSS and direct broadcast service ("DBS") operators.

¹ See *Public Notice*, Report No. 2628 (Sept. 25, 2003).

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even in instances where the bands are heavily utilized by operating GSO systems² By contrast, the Commission's policy in the other direction has been asymmetrical the Commission thus far has not permitted GSO systems to gain access to frequency bands exclusively allocated for NGSO service use, *even* on a secondary basis and *even* where the frequency bands are not utilized by any operating NGSO systems³

Hughes and HNS agree that the shared co-primary use of the 28.6-29.1 GHz and 18.8-19.3 GHz bands by GSO systems could yield important public interest benefits in terms of introducing additional and innovative satellite services to consumers Furthermore, there is no practical or policy reason that should cause the Commission to refrain from developing a record

² See Amendment of Parts 2 and 25 of the Commission's Rules to Permit Operation of NGSO FSS Systems Co-Frequency with GSO and Terrestrial Systems in the Ku-Band Frequency Range, Amendment of the Commission's Rules to Authorize Subsidiary Terrestrial Use of the 12.2-12.7 GHz Band by Direct Broadcast Satellite Licensees and Their Affiliates, and Applications of Broadwave USA, PDC Broadband Corporation, and Satellite Receivers, Ltd. to Provide a Fixed Service in the 12.2-12.7 GHz Band, First Report and Order and Further Notice of Proposed Rulemaking, 16 FCC Rcd 4096 (2000)

³ See, e.g., 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, IB Docket No. 98-172, First Order on Reconsideration, FCC 01-323 at ¶ 29 (rel. Nov. 1, 2001) (reaffirming Commission's decision to eliminate the domestic allocation that would have allowed secondary GSO FSS use of the 18.8-19.3 GHz band and Commission's designation of NGSO FSS as the only permitted satellite service in that band) ("18 GHz Order on Reconsideration"), see also, Astrolink International LLC, Application for Authority to Construct, Launch, and Operate a Ka-band Satellite System in the Fixed-Satellite Service, Order and Authorization, 16 FCC Rcd 20124 at ¶ 13 (2001) (declining to license Astrolink to operate GSO FSS systems on a secondary basis in the 18.8-19.3 GHz downlink band and the companion 28.6-29.1 GHz uplink band); GE American Communications, Inc., Application for Modification of Authorization to Construct, Launch and Operate a Ka-band Satellite Service in the Fixed Satellite Service, Memorandum Opinion and Order, 16 FCC Rcd 14306 at ¶¶ 6-7 (2001) (declining to license GE Americom to operate GSO FSS systems on a secondary basis in the 18.8-19.3 GHz downlink band and the companion 28.6-29.1 GHz uplink band)

on the feasibility of NGSO FSS and GSO FSS sharing of these frequency bands. Indeed, the Commission has effectively invited this type of rulemaking proposal for the Ka band.⁴

Thus, the Commission should initiate a proceeding to explore in detail the issues raised by EchoStar's petition⁵

Respectfully submitted,

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⁴ See *18 GHz Order on Reconsideration* at ¶ 29

⁵ Of course, until the Commission resolves the terms and conditions for sharing in such a rulemaking proceeding, and removes the existing prohibition of GSO use of the 28.6-29.1 GHz and 18.8-19.3 GHz bands, applications for shared GSO use of these bands are premature. See *Petition to Deny or Dismiss of Hughes and HNS*, IBFS File Nos. SAT-LOA-20030827-00180 (S2493), SAT-LOA-20030827-00182 (S2495); SAT-LOA-20030827-00185 (S2498), SAT-LOA-20030827-00187 (S2500) (filed Oct. 24, 2003).

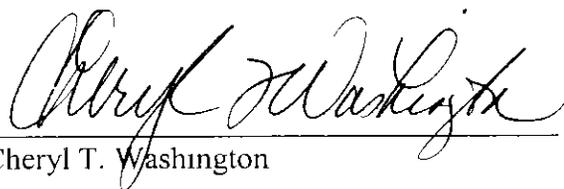
CERTIFICATE OF SERVICE

I hereby certify that on this 27th day of October, 2003, the foregoing "Petition to Deny or Dismiss of Hughes Electronics Corporation and Hughes Network Systems, Inc." was served by U S mail on the following persons:

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