15 April 2003

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

RE: Ex Parte Presentation - IB Dockets 00-248 and 02-34

Attached is a written ex parte submission for consideration in the above International Bureau dockets addressing concerns related to the imposition of a performance bond in the Commission's reform of its space station licensing procedures. This is filed on behalf of Hughes Network Systems, Inc., Lockheed Martin Corporation, Loral Space & Communications, Ltd., Panamsat Corporation, and SES Americom, Inc.

Sincerely,

/s/ Joslyn Read

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Assistant Vice President
Regulatory & International Affairs
Hughes Network Systems, Inc.

cc: S. Feder, J. Gilsenan, F. Jarmulnek, P. Margie, J. Manner, B. Ohlson, R. Porter, S. Spaeth, C. Thomas, B. Tramont, T. Tycz

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HUGHES NETWORK SYSTEMS INC., LOCKHEED MARTIN CORPORATION, LORAL SPACE & COMMUNICATIONS LTD., PANAMSAT CORP., AND SES AMERICOM, INC.,

VIEWS ON A PERFORMANCE BOND CONCEPT [1]

We understand that the Commission is considering establishing a requirement for an applicant for a new space station license to post a performance bond (with $10 million per orbital slot being posited). We also understand that the Commission's objectives in considering imposition of a performance bond concept are to (1) deter speculation, and (2) penalize companies that are unable to utilize the assigned orbital resources within the Commission's milestone framework.

1. Performance Bond Characteristics

   a. Issued, guaranteed and managed by a bank (letter of credit) or surety company (surety bond).

   b. Annual performance bond fees are paid to the surety company or bank that issues the bond, and are based on a percentage of the bond's value (typically ranging from 1-3%). Such fees are due annually to the issuing institution and are not refundable upon satisfaction of the terms of the bond. The bonds are also renewed annually.

   c. Companies with investment-grade (very good) credit ratings may not be required to collateralize bonds (through cash or other security) issued on their behalf. Such companies would pay an annual fee based on the bond's value.

   d. Companies with below investment grade (fair to good) credit ratings would be required to collateralize the bond amount, reserving a substantial part (*e.g.* 50%) of the bond value in an actual cash escrow account or other security acceptable to the surety or bank. Such companies would pay an annual fee based on the bond's value.

   e. Small businesses, new entrants and companies with either non-investment grade credit ratings or no credit ratings would be required by the surety company or bank to collateralize 100% of the bond value in the form of an irrevocable letter of credit (cash or other security acceptable to the bank issuing the letter of credit). In addition, such companies would pay an annual fee based on the bond's value.

   f. The collateralized amount is typically held in an escrow account. This escrowed cash is shown on a company's balance sheet as a restricted deposit. Outstanding bonds can affect the valuation and credit rating of a company depending on the financial condition of the company, the level of the bond, and to the degree of collateralization.

   g. Performance Bonds must contain clear and measurable conditions for return/release from the bond obligations.

[1] The commenters represent the views of both satellite operators and manufacturers.

2. Performance Bonds Will Not Encourage Growth of the US Satellite Industry

   a. The U.S. marketplace for satellite communications, launch services, manufacturing and earth station equipment has flourished under the FCC's policy of open skies, and the Commission's encouragement of innovation and competition among satellite service providers and owner/operators.

   b. A performance bond value of $10 million USD per orbital slot will:
      1. create new financial barriers to entry for new US entrants/small businesses to enter an already risky business, and
      2. drive the experienced and established global US companies to file for orbital resources through foreign administrations, thereby reducing US jurisdictional oversight to resolve policy/security concerns.

   c. Imposition of performance bonds may also encourage consolidation in the satellite industry and/or shared platforms.

   d. Collateral requirements and fees related to the performance bonds will undermine innovation and competition.

   e. For all the foregoing reasons, we oppose imposition of such a performance bond approach.

3. In the Event the Commmission Requires a Performance Bond, It Should Not Exceed $500,000

   a. A critical component to the performance bond approach is recognition that geostationary satellite systems are typically comprised of several orbital locations in order to achieve business/operational redundancy and global coverage. Therefore, the aggregate burden and financial impact of a performance bond requirement must be considered. That is, the level of the bond, if imposed, must be considered in light of the need for multiple performance bonds to be posted in order to request the required orbital slots for establishment of typical global satellite systems.

   b. In lieu of a $10 million performance bond, consideration of a performance bond of *$500,000 per orbital slot* combined with the condition for return/release being (1) satisfaction of the first milestone for a non-contingent contract for that slot's spacecraft, and (2) receipt of a certification from the licensee (e.g. from the Chief Financial Officer) indicating that the licensee has invested $10 million in the construction of that spacecraft.

   c. However, even at the $500,000 level, small businesses and new entrants are going to have substantial difficulty in participating in the US FCC licensing process.