

ORIGINAL

ORIGINAL

ANN BAVENDER*
 ANNE GOODWIN CRUMP
 VINCENT J. CURTIS, JR.
 PAUL J. FELDMAN
 FRANK R. JAZZO
 ANDREW S. KERSTING
 EUGENE M. LAWSON, JR.
 SUSAN A. MARSHALL*
 HARRY C. MARTIN
 RAYMOND J. QUIANZON
 LEONARD R. RAISH
 JAMES P. RILEY
 ALISON J. SHAPIRO
 KATHLEEN VICTORY
 JENNIFER DINE WAGNER*
 HOWARD M. WEISS
 ZHAO XIAOHUA*

* NOT ADMITTED IN VIRGINIA

FLETCHER, HEALD & HILDRETH, P.L.C.
 ATTORNEYS AT LAW

11th FLOOR, 1300 NORTH 17th STREET

EX PARTE OR LATE FILED
 ARLINGTON, VIRGINIA 22209-3801

(703) 812-0400

TELECOPIER

(703) 812-0486

INTERNET

www.fhh-telcomlaw.com

RETIRED MEMBERS
 RICHARD HILDRETH
 GEORGE PETRUTSAS
 CONSULTANT FOR INTERNATIONAL AND
 INTERGOVERNMENTAL AFFAIRS
 SHELDON J. KRYS
 U. S. AMBASSADOR (ret.)

OF COUNSEL
 EDWARD A. CAINE*
 DONALD J. EVANS*
 MITCHELL LAZARUS
 EDWARD S. O'NEILL*

WRITER'S DIRECT

703-812-0440

lazarus@fhh-telcomlaw.com

EX PARTE OR LATE FILED

December 6, 2000

RECEIVED

DEC 6 2000

FEDERAL COMMUNICATIONS COMMISSION
 OFFICE OF THE SECRETARY

BY HAND DELIVERY

Magalie R. Salas, Esq.
 Secretary
 Federal Communications Commission
 445 12th Street SW, Room TW-B204
 Washington DC 20554

Re: **IB Docket No. 98-172/**
Redesignation of the 17.7-19.7 GHz Frequency Band
Ex Parte Communication

Dear Ms. Salas:

On behalf of the Fixed Wireless Communications Coalition (FWCC), and as an accommodation to the Independent Cable & Telecommunications Association (ICTA), I am filing this response to a procedural issue raised in the Consolidated Reply of Hughes Electronics Corporation, filed on November 28, 2000 (Hughes Consolidated Reply).

Hughes requests that the Commission "not consider" the Comments filed by the FWCC, and the Opposition to Partial Reconsideration filed by ICTA, both on November 13, 2000, on the ground that the FWCC and ICTA failed to serve Hughes with their pleadings.¹ Hughes alleges it was prejudiced because of the delay in discovering these filings.²

¹ Consolidated Reply of Hughes Electronics Corporation at 6.

² *Id.*

No. of Copies rec'd
 List ABCDE

04/

Magalie R. Salas, Esq.
December 6, 2000
Page 2

The failure of both parties to serve Hughes was inadvertent. But the omission was also harmless, and did not prejudice Hughes.

First, Hughes in fact located both pleadings. Hughes established that it had actual notice by responding to both pleadings in detail.³

Second, if Hughes nonetheless believed it was prejudiced by the delay in discovering these pleadings, it could have requested an extension of the reply date.⁴

Third, Hughes may still study the pleadings at its leisure and reply further in an *ex parte* filing.

Fourth, Hughes's request that the Commission disregard these pleadings is not properly before the Commission, due to Hughes's own procedural lapse. Section 1.429(g) limits replies in the reconsideration phase to 10 pages. While all other parties appear to have complied with this page limitation, the Hughes Consolidated Reply runs to 16 pages. Hughes included in its filing a brief footnote requesting a waiver of the page limit,⁵ but the Commission's Rules clearly and specifically require that permission to exceed the page limit be sought and obtained well *in advance* of the date the pleading is actually filed.⁶ Because the Hughes Consolidated Reply did not comply with these requirements, it must be rejected.

Both the FWCC and ICTA strongly support and practice civility in their dealings before the Commission. The FWCC and ICTA believe the public interest is best served by responding to opponents on the merits of the issues, rather than procedural technicalities. Ordinarily neither group would raise objections to an over-long pleading, nor move to strike for failure to serve a pleading of which it had actual notice. In that spirit, the FWCC and ICTA would be pleased to drop their objection to the Hughes

³ *Id.* at 5-7.

⁴ Although the due date for reconsideration petitions is fixed by statute, 47 U.S.C. Sec. 405(a), the Commission is free to establish and revise the dates for comments and replies.

⁵ Consolidated Reply of Hughes Electronics Corporation at 1 n.1.

⁶ 47 C.F.R. Sec. 1.48(b). Furthermore, the rule states that "requests for permission to file pleadings in excess of the length prescribed by the provisions of [Part 1 of the Rules] shall not be routinely granted." *Id.*

Magalie R. Salas, Esq.
December 6, 2000
Page 3

Consolidated Reply exceeding its page limitations if the Commission accepts and considers the FWCC and ICTA filings on their merits.

Pursuant to Section 1.1206(b)(1) of the Commission's Rules, I am filing the original and one copy of this written communication for inclusion in the above-referenced docket.

Kindly date-stamp and return the extra copy of this letter.

If there are any questions about this filing, please call me at the number above.

Respectfully submitted,



Mitchell Lazarus
Counsel for the Fixed Wireless Communications
Coalition, and filing as an accommodation to
Independent Cable & Telecommunications
Association

ML:deb

cc: Service List
Leonard R. Raish, Esq.

SERVICE LIST

Donald Abelson
Chief, International Bureau
Federal Communications Commission
445-12th Street, S.W.
Washington, DC 20554

Mark A. Grannis
Samuel L. Feder
Harris, Wiltshire & Grannis LLP
1200 Eighteenth Street, NW
Washington, DC 20036
Counsel for Teledesic LLC

William J. Burhop
Executive Director
Independent Cable & Telecommunications
Association
3004 Oregon Knolls Drive, NW
Washington, DC 20015

Norman P. Leventhal
Stephen D. Baruch
David S. Keir
Leventhal, Senter & Lerman, P.L.L.C.
2000 K Street, NW, Suite 600
Washington, DC 20006
Counsel for TRW Inc.

Michael T.N. Fitch
Clayton Mowry
The Satellite Industry Association
225 Reinekers Lane, Suite 600
Alexandria, VA 22314

Raymond G. Bender, Jr.
Carlos M. Nalda
Dow, Lohnes & Albertson, PLLC
1200 New Hampshire Avenue, NW
Suite 800
Washington, DC 20036
Counsel for Astrolink International LLC

Mark R. O'Leary
GE American Communications, Inc.
Four Research Way
Princeton, NJ 08540

Peter A. Rohrbach
Karis A. Hastings
Hogan & Hartson L.L.P.
555 Thirteenth Street, NW
Washington, DC 20004
Counsel for GE American Communications, Inc.

Bruce D. Jacobs
Tony Lin
Shaw Pittman
2300 N Street, NW
Washington, DC 20037-1128
Counsel for Pegasus Development Corporation

Gary M. Epstein
John P. Janka
Arthur S. Landerholm
Latham & Watkins
1001 Pennsylvania, Ave., NW
Suite 1300
Washington, DC 20004
Counsel for Hughes Electronics Corporation

Gerald Musarra
Vice President, Government & Regulatory
Affairs
Lockheed Martin Global Telecommunications
Inc.
Crystal Square 2 - Suite 403
1725 Jefferson Davis Highway
Arlington, VA 22202

Jack Richards
Keller & Heckman
1001 G Street, N.W.
Washington, D.C. 20001
Counsel for Winstar Communications Inc.

Joseph Sandri
Barry Ohlson
Winstar Communications Inc.
1616 L Street, N.W., - Suite 1260
Washington, D.C. 20036