

FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)	
)	
PANAMSAT LICENSEE CORP.)	File No. CSS-91-004
)	
Application for authority to construct,)	
launch and operate a hybrid international)	
communications satellite)	

ORDER AND AUTHORIZATION

Adopted: October 2, 1998

Released: October 5, 1998

By the Chief, International Bureau:

1. By this Order, we grant PanAmSat Licensee Corporation ("PanAmSat")¹ authority to launch and operate a hybrid satellite ("PAS-5") at the 194° W.L. orbital location to provide services in the Pacific Ocean Region ("POR").² This will permit PanAmSat to enhance its service capabilities in the POR and provide customers with increased service options.

¹ The application was initially filed in the name of Alpha Lyracom d/b/a Pan American Satellite. Following a pro forma transfer of control, the name of the applicant was changed from Pan American Satellite ("PAS") to PanAmSat, L.P. by an amendment dated December 11, 1992. Following another pro forma transfer of control, the name of the applicant was changed from PanAmSat, L.P. to PanAmSat Licensee Corp. by amendment dated November 2, 1993. PanAmSat filed further amendments on January 3, 1995, October 2, 1995, and November 13, 1997 that did not affect the name of the applicant.

² Hughes Communications Galaxy, Inc. ("Hughes") filed a petition to deny or hold in abeyance PanAmSat's application. By letter dated June 23, 1993, Hughes withdrew its petition. See Letter from Scott B. Tollefsen, Vice President and Secretary, Hughes Communications to Scott Blake Harris, Chief, International Bureau, FCC. (June 23, 1993).

I. Background

2. PanAmSat is an indirect, wholly-owned, subsidiary of PanAmSat Corporation. Hughes Electronics Corporation ("HEC") indirectly owns over 70% of the issued and outstanding stock of PanAmSat Corporation.³ PanAmSat is authorized to operate satellites in all ocean regions. In the Atlantic Ocean Region ("AOR"), PanAmSat operates the PAS-1 satellite at 45° W.L., PAS-2R at 43° W.L.,⁴ PAS-8 at 43° W.L., and PAS-9 at 58° W.L. In the POR, PanAmSat operates PAS-4 at 191° W.L. PanAmSat operates the PAS-6 and PAS-21 satellites in the Indian Ocean Region ("IOR") at 191.5° W.L.⁵ In addition, PanAmSat also operates the following satellites providing primarily domestic service as a result of its merger with Hughes: Galaxy I-R at 133° W.L., Galaxy V at 125° W.L., Galaxy IX at 123° W.L., SBS-5 at 123° W.L., SBS-6 at 99° W.L., Galaxy III-R at 95° W.L., Galaxy VIII(I) at 95° W.L., Galaxy VII at 91° W.L., SBS-4 at 77° W.L., Galaxy VI at 74° W.L., and SBS-6 at 74° W.L. PanAmSat also has pending several applications to construct, launch, and operate additional PAS and Galaxy satellites.⁶

3. PAS-5 will be a state-of-the-art satellite operating in both C- and Ku-band frequencies.⁷ It will provide international service between the west coast of the United States and all major points in the POR and as far west as Thailand and Singapore. In addition, by virtue of an overlap in the Los Angeles area between the coverage areas or "footprints" of its POR and AOR satellites, PanAmSat states that it will be able to provide interconnected service between Europe and the Far East.

4. Comments in support of the application were filed by Capital Cities/ABC, Inc., CBS Inc. and National Broadcasting Company, Inc. (hereinafter "Networks"). The Networks

³ On April 4, 1997, the Commission authorized the merger of Hughes Communications Galaxy's satellite fleet with PanAmSat's satellite system. *See* Hughes Communications, Inc. and Anselmo Group Voting Trust/PanAmSat Licensee Corp., FCC 97-121. (released April 4, 1997). The transaction was consummated on May 16, 1997.

⁴ The PAS-2R satellite replaced the PAS-2 satellite which was lost due to launch failure.

⁵ By letter dated August 15, 1998, the Commission granted PanAmSat to launch PAS-21 and operate its Ku-band transponders for 180 days. *See* Letter from Thomas S. Tycz, Chief, Satellite and Radiocommunication Division, International Bureau, FCC to Joseph A. Godles, Esq., Goldberg, Godles, Wiener & Wright (August 15, 1998).

⁶ PanAmSat has applications pending for the construction, launch and operation of the PAS-12 satellite at 83° W.L., PAS-13 at 93° W.L., Galaxy II(H) at 74° W.L., and Galaxy XI(I) at 91° W.L.

⁷ The C-band is used here to refer to the 3700-4200/5925-6425 MHz frequency bands. The Ku-band traditionally refers to the 11.7-12.2 GHz/14.0-14.5 GHz frequency bands. PAS-5 will also use Ku-band downlinks in the following frequency bands: 11450-11700 MHz in Regions 2 and 3; and 12500-12750 MHz in Region 3.

state generally that introduction of PAS-5 will promote greater competition in the international marketplace, yielding substantial benefits to telecommunications users in the form of lower rates and new and innovative services.⁸ In particular, the Networks believe that PAS-5 will spur INTELSAT to reduce its rates for occasional use television.

II. Discussion

5. In considering an application to launch and operate a new satellite or satellite system, we examine whether an applicant possesses the requisite legal, financial, and technical qualifications and whether a grant of the application will serve the public interest.⁹ As set forth below, we find that PanAmSat is legally, financially, and technically qualified to launch and operate the proposed satellite and that a grant of its application will serve the public interest. Further, we find, for the reasons stated below, that we may act on PanAmSat's application without considering it in the context of a processing round.

6. Legal Qualifications. PanAmSat's legal qualifications are a matter of record before the Commission and the Commission has on several occasions found that PanAmSat possesses the necessary legal qualifications to be a Commission licensee.¹⁰

7. Financial Qualifications. We also find that PanAmSat is financially qualified to receive an authorization for the PAS-5 satellite. PanAmSat relies on the financial strength of its parent corporation, HEC, in making its full financial showing. An applicant relying on internal financing must submit a balance sheet documenting current assets and operating income sufficient to cover its costs.¹¹ PanAmSat provided a balance sheet and income statements of HEC demonstrating adequate funds to finance the construction, launch, and operation for one year of PAS-5.¹² HEC's balance sheet as of December 31, 1997 shows total current assets of \$4.8 billion and a net income of \$449 million.¹³ These amounts are more

⁸ Comments, p. 3.

⁹ *Establishment of Satellite Systems Providing International Communications*, 101 F.C.C.2d 1046, 1163 (1985) ("*Separate Systems Decision*"), *recon.*, 61 RR2d 649 (1986), *further recon.*, 1 F.C.C. Rcd. 439 (1986).

¹⁰ *See* para. 2, *supra*.

¹¹ *Licensing Space Stations in the Domestic Fixed-Satellite Service*, 58 R.R.2d (P&F) 1267, 1272-3 (1985).

¹² The Commission has held that current assets -- which includes cash, inventory, and accounts receivable -- provide a general measure of a company's ability to raise funds on the basis of its on-going operations. *Id.* at 1272.

¹³ The fact that the PAS-5 satellite has been constructed and is tentatively scheduled for launch in mid-October 1998 further supports our finding regarding PanAmSat's financial qualifications.

than adequate to cover PanAmSat's projected cost of \$200 million to construct, launch, and operate PAS-5 for one year.

8. Technical Qualifications. With one justifiable exception, we find that PAS-5 satisfies all applicable technical requirements. The PAS-5 satellite is capable of full frequency re-use at both the C- and Ku-bands. Moreover, the satellite is capable of operating in manner consistent with Commission rules and the International Telecommunication Union ("ITU") Radio Regulations.

9. We recognize, however, that locating PAS-5 at 194° W.L. does not satisfy the 2° spacing policy made applicable to U.S.-licensed international satellites in the *Separate Systems* decision.¹⁴ PAS-5 will not be located 2° away from PAS-4, the nearest satellite to the east. In its PAS-4 application, PanAmSat requested to operate at 192° W.L. and was conditionally authorized to operate at that orbital location.¹⁵ At that location, PAS-4 would have been 2° away from the 194° W.L. orbital location PanAmSat is requesting here for PAS-5. PanAmSat filed for modification of its conditional authorization for PAS-4,¹⁶ requesting permission to locate PAS-4 one degree further east to 191° W.L. in part because of a proposed PacStar satellite at 192.55° W.L.¹⁷ In an order released April 22, 1994, the Commission authorized PAS-4's move to 191° W.L., noting, *inter alia*, that the move to 191° W.L. would facilitate coordination with a proposed PacStar satellite at 192.55° W.L.¹⁸ Under these circumstances, we grant PanAmSat a waiver of the Commission's 2° spacing requirement. Requiring that PanAmSat locate PAS-5 one degree closer to PAS-4 to satisfy 2° spacing would undermine one of the reasons PAS-4 was permitted to move to 191° W.L.--to facilitate coordination with the proposed PacStar system at 192.55° W.L. PanAmSat would have a better chance at coordinating with the proposed system if PAS-5 is located at 194° W.L. than at 193° W.L.

10. We also note that, as a result of the *DISCO I* decision, one aspect of PAS-5's operations requires clarification.¹⁹ With the elimination of regulatory distinctions between

¹⁴ In *Separate Systems*, the Commission recognized that it could not unilaterally impose this standard without international coordination and, accordingly, required 2° spacing only between U.S. satellites. See *Separate Systems* at 1168.

¹⁵ *Alpha Lyracom d/b/a Pan American Satellite*, FCC 91-265 (released August 29, 1991).

¹⁶ See PanAmSat, L.P. application filed on June 17, 1993 (File No. CSS-93-008).

¹⁷ The proposed satellite at 192.55° W.L. is registered to Papua New Guinea.

¹⁸ *PanAmSat Licensee Corp.*, 9 FCC Rcd 1869 (1994).

¹⁹ See *Amendment to the Commission's Regulatory Policies Governing Domestic Fixed Satellites and Separate International Satellite Systems*, Report and Order, 11 F.C.C.Rcd. 2429 (1996) ("*DISCO I*")

U.S.-licensed domestic and international satellites in *DISCO I*. PanAmSat can now provide U.S. domestic service over PAS-5 subject to the limitations of its footprint. PanAmSat proposes to use a Ku-band downlink in the 11.45-11.7 GHz frequency band which is limited to international systems under the Table of Frequency Allocations.²⁰ Notwithstanding the Commission's policy allowing all U.S.-licensed satellites to provide both domestic and international services without limitation, we require that PanAmSat's use of the frequencies listed in NG104 be limited to international service.

11. Orbital Assignment Policy. In *Separate Systems*, the Commission determined that initial applicants would be awarded no more than two orbital positions in each frequency band and that additional orbital positions for "expansion" satellites would not be assigned in the absence of a showing that "in-orbit satellites are essentially filled and that an additional orbital location is needed to satisfy firm customer growth requirements, including reasonable protection requirements."²¹ PanAmSat notes that in imposing limitations on the number of orbital assignments, the Commission indicated that a waiver of this policy would be considered in the case of an applicant proposing to provide service to a region beyond the reach of its original facilities to more than one region of the world.²² PanAmSat requests a waiver of the Commission's policy because none of its existing AOR satellites can provide service in the separate and distinct POR.

12. We find that grant of an additional orbital assignment to PanAmSat (194° W.L.) is warranted under the circumstances. In *Separate Systems*, the Commission stated that it would entertain applications for more than two orbital locations where an applicant proposes international service to more than one region of the world and where those regions are so widely separated that more than one satellite must be used for the service. In this case, none of PanAmSat's AOR satellites can independently provide service in the POR. Although PanAmSat already has one satellite, PAS-4, in the POR, we find that assignment of the 194° W.L. orbital location is consistent with the Commission's orbital assignment policy. Where an applicant, such as PanAmSat, seeks to create a global satellite system operating in every ocean region and where the satellites in one region cannot provide service to either of the other regions, we believe our licensing policy permits us to license two orbital locations in each ocean region in the same frequency band.²³

²⁰ Non-Government ("NG") footnote NG104 to the Table of Frequency Allocations states that the use of the bands 10.7-11.7 and 12.75-13.25 GHz in the fixed-satellite service is limited to international systems.

²¹ *Separate Systems*, 101 F.C.C. 2d at 1174.

²² PanAmSat application, p. 4.

²³ Of course, once an applicant has been assigned two orbital locations in a particular ocean region, any further expansion in that ocean region would require a showing, *inter alia*, that existing satellites are filled and that an additional orbital location is needed to satisfy firm customer growth. See *Separate Systems*, 101 F.C.C. 2d at 1174.

13. We also find that this application may be granted outside of a processing round. Prior to *DISCO I*, applications to construct, launch, and operate U.S. domestic satellites were considered in processing rounds while applications to construct, launch, and operate U.S. international separate satellite systems were considered on a case-by-case basis. In *DISCO I*, the Commission eliminated the regulatory distinctions between U.S. domestic satellites and U.S. international separate satellite systems and said it would consider all future satellite applications in consolidated processing rounds after it acted on pending separate satellite system applications. Because the PAS-5 application was filed prior to the *DISCO I* proceeding, it is considered outside of a processing round.

III. Conclusion and Ordering Clauses

14. As set forth above, PanAmSat possesses the requisite legal, financial, and technical qualifications to construct, launch and operate the PAS-5 satellite. We also find that a grant of PanAmSat's application will serve the public interest by enhancing intramodal competition, which will result in increased customer choice, lower rates, and the stimulation of technological innovation and service development.²⁴

15. Accordingly, IT IS ORDERED that application File No. CSS-91-004 IS GRANTED and PanAmSat IS AUTHORIZED to launch and operate a new satellite ("PAS-5") at 194° W.L. as part of its communications satellite system in accordance with the terms, conditions, and technical specifications set forth in its application and formal instruments of authorization to be issued at a later date.

16. IT IS FURTHER ORDERED that PanAmSat's use of the frequencies identified in NG104, and discussed in paragraph 10, *supra*, is limited to international service.

17. IT IS FURTHER ORDERED that PanAmSat shall prepare the necessary information, as may be required, for submission to the ITU to initiate and complete the advance publication, international coordination, and notification process of this space station in accordance with the ITU Radio Regulations. We also remind all licensees that no protection from interference caused by radio stations authorized by other administrations is guaranteed unless coordination procedures are timely completed or, with respect to individual administrations, by successfully completing coordination agreements. Any radio station authorization for which coordination has not been completed may be subject to additional terms and conditions as required to effect coordination of the frequency assignments of other administrations. 47 C.F.R. § 25.111(b).

18. IT IS FURTHER ORDERED that this authorization is subject to the completion of consultations under Article XIV of the INTELSAT Agreement. Upon

²⁴ *Id.* at 1177.

completion of these consultations, and notification by the Department of State that the United States has fulfilled its international obligations with respect to Intelsat, no further action by this Commission will be required.

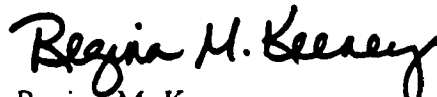
19. IT IS FURTHER ORDERED that the temporary assignment of any orbital location to PanAmSat is subject to change by summary order of the Commission on 30 days notice and does not confer any permanent right of the use of the orbit or spectrum.

20. IT IS FURTHER ORDERED that PanAmSat is obliged to comply with the applicable laws, regulations, rules, and licensing procedures in those countries it proposes to serve.

21. PanAmSat is afforded thirty days from the date of release of this order and authorization to decline this authorization as conditioned. Failure to respond within this period will constitute formal acceptance of the authorization as conditioned.

22. The Order is issued pursuant to Section 0.261 of the Commission's rules on delegated authority, 47 C.F.R. § 0.261, and is effective upon adoption. Petitions for reconsideration under Section 1.106 or applications for review under Section 1.115 of the Commission's rules, 47 C.F.R. §§ 1.106, 1.115, may be filed within 30 days of the date of the release of this order (see 47 C.F.R. § 1.4(b)(2)).

FEDERAL COMMUNICATIONS COMMISSION



Regina M. Keeney
Chief, International Bureau