

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	File No. EB-08-IH-0973
)	
Hughes Communications, Inc.)	NAL/Acct. No. 200932080035
)	
)	FRN No. 0007600661

ORDER

Adopted: March 31, 2009

Released: March 31, 2009

By the Investigations and Hearings Division, Enforcement Bureau:

1. In this Order, we adopt the attached Consent Decree entered into between the Enforcement Bureau (“Bureau”) and Hughes Communications, Inc. (“Hughes”). The Consent Decree terminates an investigation by the Bureau against Hughes for possible violation of section 310(d) of the Communications Act of 1934, as amended (the “Act”),¹ and section 25.119 of the Commission’s rules² in connection with the unauthorized transfer of control of various licenses and authorizations held both directly and indirectly by Hughes.

2. The Bureau and Hughes have negotiated the terms of the Consent Decree that resolve this matter. A copy of the Consent Decree is attached hereto and incorporated by reference.

3. After reviewing the terms of the Consent Decree and evaluating the facts before us, we find that the public interest would be served by adopting the Consent Decree and terminating the investigation.

4. In the absence of material new evidence relating to this matter, we conclude that our investigation raises no substantial or material questions of fact as to whether Hughes possesses the basic qualifications, including those related to character, to hold or obtain any Commission license or authorization.

5. Accordingly, **IT IS ORDERED** that, pursuant to section 4(i) of the Act³ and sections 0.111 and 0.311 of the Commission’s Rules,⁴ the Consent Decree attached to this Order **IS ADOPTED**.

6. **IT IS FURTHER ORDERED** that the above-captioned investigation **IS TERMINATED**.

¹ 47 U.S.C. § 310(d).

² 47 C.F.R. § 25.119.

³ 47 U.S.C. § 154(i).

⁴ 47 C.F.R. §§ 0.111, 0.311.

7. **IT IS FURTHER ORDERED** that a copy of this Order and Consent Decree shall be sent by first class mail and certified mail, return receipt requested, to Stephen D. Baruch, Senter & Lerman PLLC, 2000 K Street, N.W., Suite 600, Washington, DC 2 0006.

FEDERAL COMMUNICATIONS COMMISSION

Hillary S. DeNigro
Chief, Investigations and Hearings Division,
Enforcement Bureau

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CONSENT DECREE

1. The Enforcement (“Bureau”) and Hughes Communications, Inc. (“Hughes” or the “Company”), by their authorized representatives, hereby enter into this Consent Decree for the purpose of terminating the Bureau’s investigation into whether Hughes violated section 310(d) of the Communications Act of 1934, as amended (the “Act”),¹ and section 25.119 of the Commission’s rules² in connection with the unauthorized transfer of control of various licenses and authorizations held both directly and indirectly by Hughes.

I. DEFINITIONS

2. For the purposes of this Consent Decree, the following definitions shall apply:
- (a) “Act” means the Communications Act of 1934, as amended, 47 U.S.C. § 151 *et seq.*
 - (b) “Bureau” means the Enforcement Bureau of the Federal Communications Commission.
 - (c) “Commission” and “FCC” mean the Federal Communications Commission and all of its bureaus and offices.
 - (d) “Compliance Plan” means the program described in this Consent Decree at paragraph 15.
 - (e) “Effective Date” means the date on which the Commission releases the Adopting Order.
 - (f) “Hughes” means Hughes Communications, Inc. and its predecessors-in-interest and successors-in-interest.
 - (g) “Investigation” means the investigation commenced by the Bureau’s November 19, 2008 Letter of Inquiry³ regarding whether Hughes violated section 310(d) of the Act⁴ and section 25.119 of the Commission’s rules⁵ in connection with the unauthorized transfer of control of Hughes, which holds various licenses and authorizations both directly and indirectly.

¹ 47 U.S.C. § 310(d).

² 47 C.F.R. § 25.119.

³ See Letter from Trent B. Harkrader, Deputy Chief, Investigations and Hearings Division, Enforcement Bureau, FCC, to Stephen D. Baruch, Leventhal Senter & Lerman PLLC, dated November 19, 2008 (“LOI”).

⁴ 47 U.S.C. § 310(d).

⁵ 47 C.F.R. § 25.119.

- (h) “Order” or “Adopting Order” means an Order of the Commission adopting the terms of this Consent Decree without change, addition, deletion, or modification.
- (i) “Parties” means Hughes and the Bureau.
- (j) “Rules” means the Commission’s regulations found in Title 47 of the Code of Federal Regulations.

II. BACKGROUND

3. Section 310(d) of the Act requires that holders of FCC licenses or authorizations obtain a certificate of public convenience and necessity from the Commission before “transferr[ing], assign[ing] or dispos[ing] of [such licenses] in any manner, voluntarily or involuntarily, directly or indirectly, or by transfer of control of any corporation holding such permit or license. . . .”⁶ In accordance with section 25.119 of the Commission’s rules, a transfer of a station license by transfer of control of any corporation or any other entity holding such license requires application to and prior approval from the Commission.⁷ The Commission employs a public interest standard under section 310(d) of the Act that involves the examination of the public interest impact of a proposed transaction.⁸

4. Prior to July 13, 2007, Hughes was the indirect subsidiary of Apollo Capital Management IV, Inc. and AIF IV Management, Inc. (collectively, “Apollo IV”). Hughes directly controlled a noncommon carrier Title III space station license/authorization for the SPACEWAY 3 satellite (Call Sign S2663). Additionally, at all relevant times, Hughes was the parent company of Hughes Network Systems, LLC (“HNS”). HNS, in turn, was the parent of HNS License Sub, Limited and HNS License Sub, LLC (collectively, “HNS Subsidiaries”). Both prior to and immediately after July 13, 2007, the HNS Subsidiaries directly controlled 17 non-common carrier earth station licenses. Additionally, HNS License Sub, LLC directly controlled four authorizations in the Experimental Radio Service.

5. On July 13, 2007, in the second step of a three-step transaction that concluded on August 8, 2007, control of Hughes and the HNS Subsidiaries was transferred from Apollo IV to BRH Holdings GP, Ltd. No filing was made with the Commission to authorize the transfer of control over the licenses held by Hughes and the HNS Subsidiaries. One week after discovering the unauthorized transfers of control of the various Commission licenses, Hughes disclosed this matter to the Commission. Hughes and the HNS Subsidiaries filed applications requesting *nunc pro tunc* approval of transfer of control of the space and earth station licenses on September 4 and 5, 2007. Applications requesting approval for transfer of control of the experimental licenses were filed with the Commission on September 24, 2007. On June 12, 2008, the Commission granted consent for the transfer of control of the space station licenses.⁹ The Commission granted consent for the transfer of control of the earth station licenses on June 17, 2008,¹⁰

⁶ 47 U.S.C. § 310(d).

⁷ 47 C.F.R. § 25.119(d).

⁸ See 47 U.S.C. § 310(d).

⁹ *Actions Taken*, Public Notice, 23 FCC Rcd 9337 (2008).

¹⁰ *Satellite Communications Services Re: Actions Taken*, Public Notice, 2008 WL 2444752, Report No. SES-01043 (June 18, 2008).

and it granted consent for the transfer of control of the experimental radio services licenses on June 23, 2008.¹¹

6. On November 19, 2008, the Bureau issued a letter of inquiry to Hughes.¹² The LOI directed Hughes, among other things, to submit a sworn written response to a series of questions relating to the unauthorized transfer of control of various licenses and authorizations held both directly and indirectly by Hughes. Hughes responded December 9, 2008.¹³ Hughes also requested the Bureau consider resolving its investigation with a Consent Decree.

III. TERMS OF AGREEMENT

7. **Adopting Order.** The Parties agree that the provisions of this Consent Decree shall be subject to final approval by the Bureau by incorporation of such provisions by reference in the Adopting Order without change, addition, modification, or deletion.

8. **Jurisdiction.** Hughes agrees that the Bureau has jurisdiction over it and the matters contained in this Consent Decree and has the authority to enter into and adopt this Consent Decree.

9. **Effective Date; Violations.** The Parties agree that this Consent Decree shall become effective on the date on which the FCC releases the Adopting Order. Upon release, the Adopting Order and this Consent Decree shall have the same force and effect as any other Order of the Bureau. Any violation of the Adopting Order or of the terms of this Consent Decree shall constitute a separate violation of a Bureau Order, entitling the Bureau to exercise any rights and remedies attendant to the enforcement of a Commission Order.

10. **Termination of Investigation.** In express reliance on the covenants and representations in this Consent Decree and to avoid further expenditure of public resources, the Bureau agrees to terminate its investigation. In consideration for the termination of said investigation, Hughes agrees to the terms, conditions, and procedures contained herein. The Bureau further agrees that in the absence of new material evidence, the Bureau will not use the facts developed in this investigation through the Effective Date of the Consent Decree, or the existence of this Consent Decree, to institute, on its own motion, any new proceeding, formal or informal, or take any action on its own motion against Hughes concerning the matters that were the subject of the investigation. The Bureau also agrees that it will not use the facts developed in this investigation through the Effective Date of this Consent Decree, or the existence of this Consent Decree, to institute on its own motion any proceeding, formal or informal, or take any action on its own motion against Hughes with respect to Hughes's basic qualifications, including its character qualifications to be a Commission licensee or authorized common carrier or hold Commission authorizations.

11. **Compliance Plan.** Hughes agrees that it will develop, within thirty (30) calendar days from the Effective Date, an internal Compliance Plan to ensure Hughes's future compliance with the Act, the

¹¹ See File Nos. 0028-EX-TC-2007 (Call Sign WD2XFP), 0030-EX-TC-2007 (Call Sign WE2XEW), and 0031-EX-TC-2007 (Call Sign WD2XRV). The application for the fourth experimental radio service license (File No. 0029-EX-TC-2007, Call Sign WD2XJU) was dismissed without prejudice following the surrender of the license in May 2008.

¹² See November 19, 2008 LOI.

¹³ See Letter from Stephen D. Baruch and David S. Keir, Leventhal Senter & Lerman PLLC, to Gerald Chakerian, Attorney Advisor, Investigations and Hearings Division, Enforcement Bureau, FCC, dated December 9, 2008.

Commission's rules, and the Commission's orders governing the assignment or transfer of control of FCC licenses and authorizations. The Compliance Plan shall include the following components:

- (a) Compliance Training Program. Hughes will establish an FCC compliance training program for any employee who engages in activities related to the purchase, sale, acquisition, assignment or transfer of control of companies, entities or assets subject to FCC regulation by or involving Hughes. Training sessions will be conducted at least annually for such employees to ensure compliance with the Act and the FCC's regulations and policies pertaining to assignments and transfers of control and, for new employees who are engaged in such activities, within the first sixty (60) days of employment. The Compliance Training Program will contain information for Hughes personnel regarding the need to conduct thorough due diligence regarding potential FCC licenses of any company in a potential merger or acquisition transaction, the need to monitor any corporate reorganization for potential license assignment or transfer issues, and the need to obtain prior FCC approval for all assignments and transfers of control of FCC licenses or authorizations.
- (b) Review and Monitoring. Hughes management will review the FCC Compliance Training Program annually to ensure that it addresses the objectives set forth herein.
- (c) Parent Company(ies). Hughes will work with all direct and indirect parent companies to institute internal controls that ensure future transactions that contemplate a change in control of Hughes companies are communicated to Hughes management in advance of any actual transfer of control and ensure the requirements of all appropriate regulatory authorities are timely satisfied.
- (d) Annual Report. Twelve months and twenty-four months after the Effective Date, Hughes shall submit an affidavit or declaration under penalty of perjury, signed and dated by an authorized officer of Hughes with personal knowledge of the representations therein, verifying that Hughes has complied with the terms of this Consent Decree. The declaration shall be submitted to the Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street, S.W., Washington, D.C. 20554. The declaration or affidavit must comply with section 1.16 of the Commission's rules, 47 C.F.R. § 1.16, and be substantially in the form set forth therein.
- (e) Termination. Hughes's obligations under this Paragraph shall expire twenty-four (24) months after the Effective Date.

12. Voluntary Contribution. Hughes agrees that it will make a voluntary contribution to the United States Treasury in the amount of twelve thousand dollars (\$12,000.00). The payment will be made within 30 days after the Effective Date of the Adopting Order. The payment must be made by check or similar instrument, payable to the Order of the Federal Communications Commission. The payment must include the Account Number and FRN Number referenced in the caption to the Adopting Order. Payment by check or money order may be mailed to the Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000. Payment by overnight mail may be sent to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101. Payment by wire transfer may be made to ABA Number 021030004, receiving bank Federal Reserve Bank of New York, and account number 27000001. Hughes will also send electronic notification within forty-eight (48) hours of the date said payment is made to michele.berlove@fcc.gov.

13. **Waivers.** Hughes waives any and all rights it may have to seek administrative or judicial reconsideration, review, appeal or stay, or to otherwise challenge or contest the validity of this Consent Decree and the Order adopting this Consent Decree, provided the Commission issues an Order adopting the Consent Decree without change, addition, modification, or deletion. Hughes shall retain the right to challenge Commission interpretation of the Consent Decree or any terms contained herein. If either Party (or the United States on behalf of the Commission) brings a judicial action to enforce the terms of the Adopting Order, neither Hughes nor the Commission shall contest the validity of the Consent Decree or the Adopting Order, and Hughes shall waive any statutory right to a trial *de novo*. Hughes hereby agrees to waive any claims it may otherwise have under the Equal Access to Justice Act, 5 U.S.C. § 504 and 47 C.F.R. § 1.1501 *et seq.*, relating to the matters addressed in this Consent Decree.

14. **Subsequent Rule or Order.** The Parties agree that if any provision of the Consent Decree conflicts with any subsequent rule or Order adopted by the Commission (except an Order specifically intended to revise the terms of this Consent Decree to which Hughes does not expressly consent) that provision will be superseded by such Commission rule or Order.

15. **Successors and Assigns.** Hughes agrees that the provisions of this Consent Decree shall be binding on its successors, assigns, and transferees.

16. **Final Settlement.** The Parties agree and acknowledge that this Consent Decree shall constitute a final settlement between the Parties. The Parties further agree that this Consent Decree does not constitute either an adjudication on the merits or a factual or legal finding or determination regarding any compliance or noncompliance with the requirements of the Act or the Commission's Rules and Orders.

17. **Modifications.** This Consent Decree cannot be modified without the advance written consent of both Parties.

18. **Paragraph Headings.** The headings of the Paragraphs in this Consent Decree are inserted for convenience only and are not intended to affect the meaning or interpretation of this Consent Decree.

19. **Authorized Representative.** Each party represents and warrants to the other that it has full power and authority to enter into this Consent Decree.

20. **Counterparts.** This Consent Decree may be signed in any number of counterparts (including by facsimile), each of which, when executed and delivered, shall be an original, and all of which counterparts together shall constitute one and the same fully executed instrument.

Hillary S. DeNigro
Chief
Investigations and Hearings Division, Enforcement
Bureau

Dean A. Manson
Senior V.P., General Counsel & Secretary
Hughes Communications, Inc.

Date

Date