

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

In the Matter of)	
)	
VERIZON WASHINGTON D C, INC.	)	File No. 0004233156
)	
Application For Renewal of License For Common)	
Carrier Fixed Point to Point Microwave Station)	
KGC79)	
)	
VERIZON NEW YORK, INC.	)	File No. 0004233190
)	
Application For Renewal of License For Common)	
Carrier Fixed Point to Point Microwave Station)	
KEB29)	
)	
AT&T CALIFORNIA	)	File Nos. 0004244291, 0004248651
)	
Applications For Renewal of License For)	
Common Carrier Fixed Point to Point Microwave)	
Station KME49 and KMQ44)	
)	
VERIZON VIRGINIA, INC.	)	File No. 0004255375
)	
Application For Renewal of License For Common)	
Carrier Fixed Point to Point Microwave Station)	
KIP50)	
)	
VERIZON NEW JERSEY, INC.	)	File No. 0004258994
)	
Application For Renewal of License For Common)	
Carrier Fixed Point to Point Microwave Station)	
KEB35)	
)	
ILLINOIS BELL TELEPHONE COMPANY	)	File No. 0004264280
)	
Application For Renewal of License For Common)	
Carrier Fixed Point to Point Microwave Station)	
KSA96)	
)	
MICHIGAN BELL TELEPHONE	)	File No. 0004276706
)	
Application For Renewal of License For Common)	
Carrier Fixed Point to Point Microwave Station)	
KQH74)	
)	
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VERIZON PENNSYLVANIA, INC.)	File No. 0004295256
Application For Renewal of License For Common)	
Carrier Fixed Point to Point Microwave Station)	
KGB74)	
VERIZON MARYLAND, INC.	)	File No. 0004295232
Application For Renewal of License For Common)	
Carrier Fixed Point to Point Microwave Station)	
KGB72)	
BELL SOUTH TELECOMMUNICATIONS, INC.	)	File Nos. 0004295944; 0004295948
Applications For Renewal of License For)	
Common Carrier Fixed Point to Point Microwave)	
Station KIL20 and KZS88)	
FRONTIER WEST VIRGINIA, INC.	)	File No. 0004319746
Application For Renewal of License For Common)	
Carrier Fixed Point to Point Microwave Station)	
KQH73)	
OHIO BELL TELEPHONE COMPANY	)	File No. 0004320246
Application For Renewal of License For Common)	
Carrier Fixed Point to Point Microwave Station)	
KQG58)	
WISCONSIN BELL, INC.	)	File No. 0004320258
Application For Renewal of License For Common)	
Carrier Fixed Point to Point Microwave Station)	
KSE73)	
VERIZON DELAWARE, INC	)	File No. 0004321335
Application For Renewal of License For Common)	
Carrier Fixed Point to Point Microwave Station)	
KGG34)	
ALASCOM, INC	)	File No. 0004523906
Application for Renewal of License For Common)	
Carrier Fixed Point to Point Microwave Station)	
WSL69)	
GTE SOUTHWEST INC dba VERIZON	)	File No. 0004562030
SOUTHWEST)	

Application For Renewal of License For Common Carrier Fixed Point to Point Microwave Station KYJ33)	
)	
VERIZON CALIFORNIA INC.	)	File No. 0004575228
)	
Application For Renewal of License For Common Carrier Fixed Point to Point Microwave Station WAX78)	
)	
INFORMATION SUPER STATION, LLC	)	File No. 0004576055
)	
Application For Renewal of License For Local Television Transmission Service Station WMK817)	
)	
ACS WIRELESS LICENSE SUB, INC.	)	File No. 0004587843
)	
Application For Renewal of License For Common Carrier Fixed Point to Point Microwave Station WMP367)	
)	
HAWAIIAN TELECOM, INC.	)	File No. 0004590012
)	
Application For Renewal of License For Common Carrier Fixed Point to Point Microwave Station KVH83)	
)	
M.U.T. LICENSING, LLC	)	File No. 0004596696
)	
Application For Renewal of License For Common Carrier Fixed Point to Point Microwave Station WLT380)	
)	
Request to Exclude the 28.35-29.1 GHz and 29.25-29.5 GHz Band Segments From Included Frequencies on the Renewal of Licenses)	
)	

MEMORANDUM OPINION AND ORDER

Adopted: September 27, 2011

Released: September 30, 2011

By the Chief, Broadband Division, Wireless Telecommunications Bureau:

I. INTRODUCTION

1. In this *Memorandum Opinion and Order*, we grant in part requests filed by Hughes Network Systems, LLC (“Hughes”) and DIRECTV Enterprises, LLC (“DIRECTV”) to delete the 28.35-29.1 GHz and 29.25-29.5 GHz band segments from the list of frequencies included on the above-captioned licenses. Specifically, we grant the requests with respect to the 28.35-29.1 GHz band, deny the

requests with respect to the 29.25-29.5 GHz band, and direct processing of the renewal applications filed for these licenses. We also deny a motion filed by Hughes and DIRECTV to change the *ex parte* status of these application proceedings.

II. BACKGROUND

2. The licenses in question in this proceeding were originally authorized under the former Part 21 of the Commission's Rules prior to 1996.¹ Licensees "use these authorizations on an infrequent and irregular basis to operate back-up facilities when other forms of wireline services are unavailable or non-existent."² Except for the license for Station KMQ44, the licenses in question authorize operation, *inter alia*, in the 27.5-29.5 GHz band.³

3. In 1996, the Commission designated band segments for the 27.5-30 GHz band (28 GHz band) for several types of wireless systems, including Local Multipoint Distribution Service (LMDS) providers, Fixed Satellite Service (FSS) systems, and feeder links for certain Mobile Satellite Service (MSS) systems.⁴ The Commission designated 27.5-28.35 GHz and 29.1-29.25 GHz for LMDS,⁵ 28.35-28.6 GHz and 29.5-30 GHz for geostationary orbit (GSO) FSS systems,⁶ and 28.6-29.1 GHz for non-geostationary orbit (NGSO) FSS systems.⁷ The Commission authorized sharing of the 29.25-29.5 GHz band between GSO FSS and MSS feeder link earth stations on the basis of spectrum sharing principles provided by relevant interests.⁸ The Commission declined to retain a designation for fixed point-to-point microwave services (FS) in the 28 GHz band.⁹

4. In 2002, in response to a petition for reconsideration filed by Hughes, the Commission authorized blanket licensing of earth stations for geostationary orbiting (GSO) Fixed Service Satellite (FSS) in the 29.25-29.5 GHz band.¹⁰ The Commission noted the existence of the FS licenses at issue in this proceeding and required GSO FSS earth stations to "take these co-primary FS operations into account when deploying blanket earth stations in the 29.25-29.5 GHz band."¹¹ The Commission also stated:

¹ In the Matter of 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, *Second Order on Reconsideration*, 17 FCC Rcd 24248, 24260 ¶ 25 (2002) ("*Second Order*").

² *Id.*

³ The license for Station KMQ44 does not include the 28.35-29.1 GHz and 29.25-29.5 GHz bands that are in controversy. We therefore deny the comments filed by Hughes and DIRECTV with respect to that call sign as moot.

⁴ See Rulemaking to Amend Parts 1, 2, 21, and 25 of the Commission's Rules to Redesignate the 27.5-29.5 GHz Frequency Band, to Reallocate the 29.5 GHz Band, to Establish Rules and Policies for Local Multipoint Distribution Service and for Fixed Satellite Services, CC Docket No. 92-297, *First Report and Order and Fourth Notice of Proposed Rulemaking*, 11 FCC Rcd 19005, 19007 ¶ 2 (1996) ("*28 GHz Band Order*").

⁵ *Id.* at 19025 ¶¶ 45-46.

⁶ *Id.* at 19029-19030 ¶¶ 57-58.

⁷ *Id.* at 19030 ¶¶ 59-60.

⁸ *Id.* at 19034-19035 ¶¶ 72-74.

⁹ *Id.* at 19042 ¶¶ 93-94.

¹⁰ *Second Order*, 17 FCC Rcd at 24258-24261 ¶¶ 23-25.

¹¹ *Id.* at 24261 ¶ 25.

Due to the limited number of the legacy terrestrial licensees, the temporary nature of their operations, and the large amount of available authorized bandwidth, we anticipate that private arrangements among the GSO FSS operators and the terrestrial licensees in the 29.25-29.5 GHz band can protect terrestrial operations without the need for formal frequency coordination.¹²

5. Between May 4, 2010 and January 31, 2011, the Wireless Telecommunications Bureau received the above-captioned applications for renewal of common carrier point-to-point microwave licenses.¹³ Each of the licenses, which were originally issued prior to 1996 under the provisions of former Part 21 of the Commission's Rules, includes the 27.5-29.5 GHz band, in addition to other bands.

6. Hughes and DIRECTV hold a number of authorizations from the Commission to operate Ka-band fixed-satellite service earth stations that transmit on frequencies in the 28.35-29.5 GHz band.¹⁴ Between July 30, 2010 and February 24, 2011, Hughes and DIRECTV submitted joint comments on the applications.¹⁵ Hughes and DIRECTV seek to have the 28.35-29.1 GHz and 29.25-29.5 GHz band segments excluded from the licenses upon renewal.¹⁶ According to Hughes and DIRECTV, excluding these frequency band segments from the renewed licenses will remove uncertainty for satellite network operators with earth stations in the subject bands.¹⁷ Hughes and DIRECTV suggest that because the licenses at issue can operate in multiple frequency bands, it is reasonable to exclude the 28.35-29.1 GHz and 29.25-29.5 GHz band segments.¹⁸ In the alternative, Hughes and DIRECTV suggest that the Commission condition renewal of the licenses, allowing operations in the 28.35-29.1 and 29.25-29.5 GHz band only if the other licensed frequencies are unavailable for use, and then only subject to successful completion of coordination with FSS earth station licensees.¹⁹ One opposition was filed in response to the comments filed by Hughes and DIRECTV.²⁰

¹² *Id.* at 24261 n.72.

¹³ The Appendix to this *Memorandum Opinion and Order* provides a complete list of the applications and the comments filed by Hughes and DIRECTV, as well as pertinent dates. One of the licenses in question, Station WMK817, is a Local Television Transmission Service license.

¹⁴ *See, e.g.*, Comments of Hughes Network Systems, LLC and DIRECTV Enterprises, LLC, In re Application of Bellsouth Telecommunications, Inc. For Renewal of License Call Sign KZS88, File No. 0004295948 (filed Jul. 30, 2010) (Hughes/DIRECTV Comments) at 2.

¹⁵ *See* Appendix. There are no material substantive differences among the various comments filed by Hughes and DIRECTV. The comments filed on August 4 were filed more than 30 days after public notice was given that the applications were accepted for filing. With respect to those comments, Hughes and DIRECTV filed petitions for leave to submit late-filed comments. *See, e.g.*, Petition for Leave to Submit Late-Filed Comments, In re the Application of Illinois Bell Telephone Company for Renewal of License Call Sign KSA96, File No. 0004264280 (filed Aug. 4, 2010).

¹⁶ *See* Hughes/DIRECTV Comments at 2.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.* at 2-3.

²⁰ *See* Opposition of ACS Wireless License Sub, Inc., In re Comments of Hughes Network Systems, LLC and DIRECTV Enterprises, LLC, In re Application of ACS Wireless License Sub, Inc. for Renewal of License Call Sign WMP367, File No. 0004587843 (filed Mar. 9, 2011) (ACS Wireless Opposition). Hughes and DIRECTV filed a reply. Reply of Hughes Network Systems, LLC and DIRECTV Enterprises, LLC to Opposition of ACS Wireless License Sub, Inc. (filed Mar. 21, 2011).

III. DISCUSSION

7. *Late Filed Comments.* Section 1.46(a) of the Commission rules states that motions for extension of time are not to be routinely granted.²¹ In this instance, comments on the renewal applications were due 30 days after the applications were placed on public notice.²² Hughes and DIRECTV submitted comments on a number of the applications, together with a motion for leave to file late-filed comments, on August 4, 2010, more than 30 days after the filing deadlines.²³ Hughes and DIRECTV state they belatedly became aware of the license renewal applications and do not seek denial of the applications.²⁴ Further, they assert that the frequency exclusion they advocate in their late-filed comments would advance broadband satellite services and pose no meaningful detriment to the licensee or to terrestrial fixed service in general.²⁵

8. Hughes and DIRECTV have failed to persuade us that there is good cause to grant an extension for their comments. We find that they had ample time to submit these comments. Public notice of the relevant applications was given between May 12, 2010 and June 2, 2010.²⁶ Hughes and DIRECTV did not submit their comments until August 4, 2010, over two months after these public notices. Furthermore, their failure to become aware of the renewal applications in a timely fashion does not justify permitting them to late-file their comments. Consequently, we deny the petitions to submit formal late-filed comments. Hughes and DIRECTV alternatively request that the late-filed comments be treated as informal objections.²⁷ Pursuant to Section 1.41 of the Commission's Rules,²⁸ we grant this alternative request and will consider the late-filed comments as informal requests for Commission action.

9. *Requests to Exclude Band Segments.* We grant Hughes' and DIRECTV's request to exclude the 28.35-29.1 GHz band segment from the licenses in question. The Commission declined to retain a designation for FS in that band and did not provide for any grandfathering of existing microwave licenses in that band. While ACS Wireless, the only party to oppose Hughes and DIRECTV, argues that the grandfathering rights applied to the 29.25-29.5 GHz band (*see infra*) should also be applied to the 28.35-29.1 GHz band,²⁹ we decline to revisit at this time the Commission's decision to treat the two bands differently. Furthermore, ACS Wireless has not shown that excluding the 28.35-29.1 GHz band would limit its ability "to provide critical emergency services over its voice, data and Internet networks when its wireline backhaul facilities are unavailable."³⁰

10. We deny Hughes' and DIRECTV's request to exclude the 29.25-29.5 GHz band from the licenses in question. The requests are inconsistent with the Commission's determinations that (1) the

²¹ 47 C.F.R. § 1.46(a).

²² *See* 47 C.F.R. § 1.939(a)(2).

²³ *See* Appendix. Specifically, Hughes and DIRECTV untimely filed comments on applications for call signs KSA96, KQH74, KGC79, KEB29, KME49, KMQ44, KIP50, and KEB35.

²⁴ *See, e.g.*, Petition for Leave to Submit Late-Filed Comments, In re the Application of Illinois Bell Telephone Company for Renewal of License Call Sign KSA96, File No. 0004264280 (Aug. 4, 2010) at 1.

²⁵ *Id.*

²⁶ *See* Appendix.

²⁷ *See, e.g.*, Petition for Leave to Submit Late-Filed Comments, In re the Application of Illinois Bell Telephone Company for Renewal of License Call Sign KSA96, File No. 0004264280 (Aug. 4, 2010) at 1-2.

²⁸ 47 C.F.R. § 1.41.

²⁹ *See* ACS Wireless Opposition at 2-3 n.4.

³⁰ *Id.* at 1.

licenses in question would retain co-primary status,³¹ and (2) that FSS licensees should work out private business arrangements with microwave licensees in order to protect to those co-primary microwave operations.³² While Hughes and DIRECTV offer policy reasons why they believe the microwave licensees should be excluded from the band segments in question, they fail to acknowledge the Commission's determinations to the contrary in the *Second Order*. Accordingly, we must deny the request as inconsistent with established Commission policy. Furthermore, if Hughes and DIRECTV are correct that excluding the 29.25-29.5 GHz segments "in no meaningful way conflicts with the service objectives of the fixed wireless licensee,"³³ they are free to work out private agreements with the licensees to modify the licenses to delete the band segments in question. Hughes and DIRECTV make no showing that they have attempted to work out such arrangements.

11. We also deny Hughes' and DIRECTV's alternative request that the Commission allow operations in the 29.25-29.5 GHz band only if the other licensed frequencies are unavailable for use, and then only subject to successful completion of coordination with FSS earth station licensees. That restriction, too, would be inconsistent with the licenses' co-primary status and the Commission's determination that FSS licensees should work out business arrangements with microwave licensees. We also note that because the 29.25-29.5 GHz band is allocated for Earth-to-space use by FSS systems,³⁴ the potential for interference into GSO FSS from FS is limited.³⁵

12. *Request to Modify Ex Parte Status.* We deny Hughes' and DIRECTV's request to modify the *ex parte* status of this proceeding from restricted to permit-but-disclose.³⁶ Pursuant to Section 1.1208 of the Commission's Rules,³⁷ we may determine that a restricted proceeding be conducted according to the permit-but-disclose proceedings, if the proceeding "involves primarily issues of broadly applicable policy rather than the rights and responsibilities of specific parties. . . ."³⁸ As discussed above, our decision in this matter involves a determination of the rights and responsibilities of particular parties under existing policy, rather than revisiting an applicable policy ruling. Under these circumstances, we find that modifying the *ex parte* status of the proceeding would not be appropriate, and we therefore deny Hughes' and DIRECTV's request that we do so.

IV. CONCLUSION AND ORDERING CLAUSES

13. As explained above, we grant Hughes and DIRECTV's request to exclude the 28.35-29.1 GHz band from the licenses in question. We deny the request to exclude the 29.25-29.5 GHz band as inconsistent with Commission policy and not in the public interest. We therefore grant the comments in

³¹ *Second Order*, 17 FCC Rcd at 24261 ¶ 25.

³² *Id.* at 24261 n.72.

³³ See Hughes/DIRECTV Comments at 3.

³⁴ See 47 C.F.R. § 2.106.

³⁵ This is primarily an interference problem to the FS stations. Since these stations are point-to-point stations with highly directive receive antennas, there are a very limited number of geometric angles that could give rise to interference from earth stations. This factor, coupled with the extremely limited number of these stations, leads us to continue to believe that the potential for interference is very low.

³⁶ See Request to Modify Ex Parte Status to Permit-But-Disclose of Hughes Network Systems, LLC and DIRECTV Enterprises, LLC, In re Application of ACS Wireless License Sub, Inc. For Renewal of License Call Sign WMP367, File No. 0004587843 *et al* (filed Apr. 11, 2011) (Ex Parte Status Request).

³⁷ 47 C.F.R. § 1.1208.

³⁸ 47 C.F.R. § 1.1208 at n.2.

part and deny them in part, and direct the licensing staff of the Broadband Division to process the renewal applications consistent with this *Memorandum Opinion and Order*.

14. Accordingly, IT IS ORDERED that, pursuant to Sections 4(i) and 309 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 309, and Sections 1.3 and 1.41 of the Commission's Rules, 47 C.F.R. §§ 1.3, 1.41, that the comments filed by Hughes Network Systems, LLC and DIRECTV Enterprises, LLC on July 30, 2010, August 4, 2010, August 19, 2010, January 14, 2011, and February 24, 2011 against the applications listed in the Appendix ARE GRANTED to the extent indicated above and are otherwise DENIED.

15. IT IS FURTHER ORDERED, pursuant to Sections 4(i) and 309 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 309, and Sections 1.41, 1.46(a) and 1.939 of the Commission Rules, 47 C.F.R. §§ 1.41, 1.46(a), 1.939, that the Petitions for Leave to Submit Late-Filed Comments, filed by Hughes Network Systems, LLC and DIRECTV Enterprises, LLC on August 4, 2010 ARE GRANTED to the extent that the comments will be treated as informal requests for Commission action and are otherwise DENIED.

16. IT IS FURTHER ORDERED, pursuant to Sections 4(i) and 309 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 309, and Sections 1.949 of the Commission's Rules, 47 C.F.R. § 1.949, that the licensing staff of the Broadband Division SHALL PROCESS the applications listed in the Appendix in accordance with this *Memorandum Opinion and Order* by and the Commission's rules and policies. Any grant of these applications shall exclude the 28.35-29.1 GHz band from the licenses in question.

17. IT IS FURTHER ORDERED, pursuant to Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), and Sections 1.1200 and 1.1208 of the Commission Rules, 47 C.F.R. §§ 1.1200 and 1.1208, that the Request to Modify Ex Parte Status to Permit-But-Disclose, filed by Hughes Network Systems, LLC and DIRECTV Enterprises, LLC on April 11, 2011 IS DENIED.

18. These actions are taken under delegated authority pursuant to Sections 0.131 and 0.331 of the Commission's Rules, 47 C.F.R. §§ 0.131, 0.331.

FEDERAL COMMUNICATIONS COMMISSION

Blaise A. Scinto
Chief, Broadband Division
Wireless Telecommunications Bureau

APPENDIX

File Number	Call Sign	Licensee	Date Filed	Accepted for Filing	Date Comments Filed	Comments Timely ?
0004233156	KGC79	Verizon Washington D C Inc.	5/4/2010	5/12/2010	8/4/2010	No
0004233190	KEB29	Verizon New York, Inc.	5/4/2010	5/12/2010	8/4/2010	No
0004244291	KME49	AT&T California	5/12/2010	5/19/2010	8/4/2010	No
0004248651	KMQ44	AT&T California	5/14/2010	5/26/2010	8/4/2010	No
0004255375	KIP50	Verizon Virginia Inc.	5/21/2010	5/26/2010	8/4/2010	No
0004258994	KEB35	Verizon New Jersey Inc.	5/25/2010	6/2/2010	8/4/2010	No
0004264280	KSA96	Illinois Bell Telephone Company	5/28/2010	6/2/2010	8/4/2010	No
0004276706	KQH74	Michigan Bell Telephone	6/9/2010	6/16/2010	8/4/2010	No
0004295256	KGB74	Verizon Pennsylvania, Inc.	6/22/2010	6/30/2010	7/30/2010	Yes
0004295232	KGB72	Verizon Maryland Inc.	6/22/2010	6/30/2010	7/30/2010	Yes
0004295944	KIL20	BellSouth Telecommunications, Inc.	6/23/2010	6/30/2010	7/30/2010	Yes
0004295948	KZS88	BellSouth Telecommunications, Inc.	6/23/2010	6/30/2010	7/30/2010	Yes
0004319746	KQH73	Frontier West Virginia, Inc.	7/12/2010	7/21/2010	8/19/2010	Yes
0004320246	KQG58	Ohio Bell Telephone Company	7/12/2010	7/21/2010	8/19/2010	Yes
0004320258	KSE73	Wisconsin Bell Inc.	7/12/2010	7/21/2010	8/19/2010	Yes
0004321335	KGG34	Verizon Delaware, Inc.	7/13/2010	7/21/2010	8/19/2010	Yes
0004523906	WSL69	Alascom, Inc.	12/6/2010	12/15/2010	1/14/2011	Yes
0004562030	KYJ33	GTE Southwest Inc. dba Verizon Southwest	1/6/2011	1/12/2011	1/14/2011	Yes
0004575228	WAX78	Verizon California Inc.	1/18/2011	1/26/2011	2/24/2011	Yes
0004576055	WMK817	Information Super Station, LLC	1/18/2011	1/26/2011	2/24/2011	Yes
0004587843	WMP367	ACS Wireless License Sub, Inc.	1/25/2011	2/02/2011	2/24/2011	Yes
0004590012	KVH83	Hawaiian Telecom, Inc.	1/26/2011	2/02/2011	2/24/2011	Yes
0004596696	WLT380	M.U.T. Licensing, LLC	1/31/2011	2/09/2011	2/24/2011	Yes