

FEDERAL COMMUNICATIONS COMMISSION
 Washington, D.C. 20554

In the Matter of)	
)	
PANAMSAT LICENSEE CORP.)	File No. CSS-94-015
)	
Application for Authority)	
to Construct, Launch and)	
Operate an Expansion Band)	
Satellite in its Separate)	
International Communications)	
Satellite System)	

Order and Final Authorization

Adopted: July 2, 1997

Released: July 3, 1997

By the Chief, Satellite and Radiocommunication Division:

1. By this Order, we grant PanAmSat Licensee Corporation final authority to construct, launch, and operate its PAS-9 satellite at the 58° W.L. orbit location. This satellite will be a part of PanAmSat's fixed-satellite service ("FSS") communications satellite system.¹

I. Background

2. PanAmSat holds licenses for five Ku-band satellites.² It presently operates its PAS-1 satellite in the Atlantic Ocean Region ("AOR") at 45° W.L., its PAS-4 satellite over

¹ 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.

² The Ku-band encompasses 10.7-12.2/12.75-14.5 GHz. PanAmSat operates in these frequencies. The Commission recently adopted rules governing the allocation of the 13.75-14.0 GHz band for the Fixed Satellite Service. See Amendment of Parts 2, 25 and 90 of the Commission's Rules to Allocate the 13.75-14.0 GHz Band to the Fixed-Satellite Service, ET Docket No. 96-20, Report and Order, FCC 96-377 (released September 26, 1996). PanAmSat's earth station operations are expected to comply with parameters for Fixed Satellite Service ("FSS") operations in order to share those frequencies with U.S. Government operations. Any U.S. FSS earth station application operating in these bands will need to be coordinated with NTIA/IRAC.

the Pacific Ocean Region ("POR") at 169° E.L., its PAS-2R satellite at 43° W.L. in the AOR, and its PAS-6 satellite over the Indian Ocean Region ("IOR") at 68.5° E.L. PanAmSat has received final authority to construct, launch and operate the PAS-8 satellite at 43° W.L. It also has applications pending to construct, launch and operate additional Ku-band satellites: PAS-5 satellite at 194° W.L. in the POR, PAS-12 satellite at 81° W.L., PAS-13 satellite at 93° W.L. and PAS-21 satellite at 68.5° E.L. in the IOR.³

3. PanAmSat states that the PAS-9 satellite is designed to supplement the capacity of PAS-1 and PAS-2, as well as to provide direct-to-home ("DTH") subscription video programming service to those areas of Latin America not served by PAS-8. PAS-9 will be capable of reaching all of North and South America, providing users access to digital data services, communications circuits, and television programming presently available only in the United States and Europe.

4. According to PanAmSat, PAS-9 will be an advanced hybrid communications satellite operating in C- and Ku-band frequencies. These frequencies include those in the traditional FSS bands (5925-6425 MHz earth-to-space and 3700-4200 MHz space-to-earth) as well as those in the expansion bands.⁴ The "expansion bands" include the 10.70-10.95 GHz and 11.2-11.45 GHz frequencies in the space-to-earth direction and 12.75-13.25 GHz frequencies in the earth-to-space direction in the Ku-band and the 6.72-7.025 GHz frequencies in the earth-to-space direction and the 4.5-4.8 GHz frequencies in the space-to-earth direction in the C-band.⁵ The "expansion bands" are the subject of a plan adopted at the ORB-88 World Radio Conference. That plan assigned to countries specific orbit locations in these frequencies.⁶

5. Although PanAmSat's initial application stated that it would use 6.72-7.025 GHz frequencies in the earth-to-space direction and the 4.5-4.8 GHz frequencies in the space-to-earth direction in the C-band, in an amendment dated October 18, 1996 PanAmSat stated that no C-band expansion or planned band frequencies would be used on PAS-9 due to satellite weight and power restrictions. We also note that Non-Government ("NG") footnote

³ The PAS-12 and PAS-13 satellite applications request orbital locations in what is referred to as the U.S. domestic orbital arc.

⁴ PanAmSat initially requested authority to operate in the Ka-band as well, but withdrew this request in an amendment dated October 18, 1996.

⁵ See Amendment to the Commission's Regulatory Policies Governing Domestic Fixed Satellites and Separate International Satellite Systems, Notice of Proposed Rulemaking, 10 F.C.C.Rcd. 7789 (1995); Report and Order, 11 F.C.C. Rcd. 2429 (1996).

⁶ PanAmSat initially filed this application based on a reservation in Appendix 30B the expansion band plan, for USASAT 13H as an existing system at the 57° W.L. orbital slot. Although that reservation has since expired, PanAmSat's application still qualifies as an additional use under ITU Regulations.

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. Thus, although the Commission recently eliminated regulatory distinctions between U.S.-licensed domestic and international satellites, PanAmSat's use of the frequencies listed in NG104 shall be limited to international service.

6. Since PanAmSat already operates two satellites in the AOR and recently was licensed to operate its PAS-8 satellite in the AOR, it requests a waiver of the Commission's policy limiting licensees to no more than two orbital positions in the same region.⁷ 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 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 to provide the proposed service."⁸ Although PanAmSat concedes that the Commission, in establishing the waiver policy, contemplated a situation where satellites would be located in two different ocean regions, it asserts that a waiver is justified here despite the fact that it will have more than two satellites in the AOR. It asserts that PAS-9 will allow full U.S. interconnection capability. Without the use of PAS-9, PanAmSat states that a customer located in the Pacific Northwest would be incapable of transmitting or receiving satellite transmissions to or from any point within the footprint of PAS-1 or PAS-2R without arranging for supplemental communications links. In addition, PanAmSat states that PAS-9's high look angle of the United States and Latin America will permit it to provide service to portions of Antarctica south of Chile and Argentina, improved coverage of Mexico and DTH service in those areas of Latin America that PAS-8 cannot reach. Finally, PanAmSat states that its existing AOR satellites are effectively filled and PAS-9 is needed to satisfy firm customer requirements.⁹

7. On February 6, 1997, PanAmSat filed an amendment to its application which

⁷ See Establishment of Satellite Systems Providing International Communications, 101 F.C.C.2d 1046, 1174 (1985) ("Separate Systems Decision"), recon., 61 RR2d 649 (1986), further recon., 1 F.C.C. Rcd 439 (1986).

⁸ Separate Systems Decision, *supra* at 1164-5. Since PanAmSat's application was filed prior to the Commission's DISCO I decision eliminating regulatory distinctions between domestic and international satellites, PanAmSat's application is subject to the two-stage financial qualification showing previously applicable to separate international satellite systems. See *supra*, Amendment to the Commission's Regulatory Policies Governing Domestic Fixed Satellites and Separate International Satellite Systems, Report and Order.

⁹ We need not address here PanAmSat's argument that the Commission should lift the "freeze" on applications for space stations in the portion of the orbital arc east of 60° W.L. and west of 30° W.L. In authorizing the PAS-8 satellite located at 43° W.L. we found that the "freeze" no longer precludes space station authorization in this segment of the orbital arc, particularly where expansion bands are involved. See PanAmSat, DA 97-821 (released April 17, 1997).

included financial information concerning its ability to construct, launch and operate the PAS-9 satellite for one year.¹⁰ Based on this information, PanAmSat requested final authority for the PAS-9 satellite.

II. Discussion

8. We find that PanAmSat is legally, technically and financially qualified to launch and operate the proposed satellite. PanAmSat's legal and technical qualifications are evidenced by its well-documented experience in establishing and operating its international satellite system. We also find that PanAmSat is financially qualified to receive a final authorization for the PAS-9 satellite.

9. The Commission's rules governing applications to construct and operate fixed-satellite systems require that an applicant demonstrate its current financial ability to meet construction, launch and first year operating costs.¹¹ This requirement is intended to ensure that the orbit-spectrum resource is not tied up by entities unable to ultimately finance their proposals.¹² An applicant relying on internal financing must submit a current balance sheet documenting current assets and operating income sufficient to cover its costs.

10. In its amendment filed on February 6, 1997, PanAmSat states that it has analyzed the costs associated with satellite construction, telemetry, tracking and control ("TT&C"), communications gateway, and management of PAS-9 through the first year of operation, and anticipates that it will cost approximately \$181 million to construct, launch, and operate PAS-9 for one year. PanAmSat notes that, of that sum, it has expended approximately \$128 million pursuant to authority granted to it pursuant to a waiver of prior construction permit requirement under Section 319(d) of the Communications Act. This leaves a balance to complete construction of \$53 million.

11. The financial information submitted by PanAmSat includes a balance sheet and other financial documents of its parent, PanAmSat Corporation. PanAmSat's balance sheet for the period ending September 30, 1996 lists marketable securities in the amount of \$372 million. These securities consist of extremely low risk financial instruments, including U.S. government T-bills and other debt securities issued by U.S. government agencies.¹³

¹⁰ PanAmSat's amendment was placed on public notice on March 5, 1997. No comments were received.

¹¹ 47 C.F.R. § 25.140 (c).

¹² Notice of Proposed Rulemaking, CC Docket 92-76, FCC 93-28, released February 10, 1993.

¹³ See Consolidated Response of PanAmSat to Replies of Hughes and GE in File Nos. 105/108-SAT-AMEND-96 which includes an Affidavit from Patrick J. Costello, PanAmSat Corporation's Chief Financial Officer concerning these marketable securities.

PanAmSat notes that the only reason they do not qualify as current assets under Generally Accepted Accounting Principles is because they are dedicated for future satellite construction. Under these circumstances, we find that PanAmSat has sufficient assets to cover the remaining \$53 million required to construct, launch and operate the PAS-9 satellite for one year.¹⁴

12. We also find that PanAmSat's use of the expansion bands is consistent with ITU Radio Regulations. The United States requested to use these bands for a number of existing systems in the portion of the orbit for which PanAmSat seeks authority to operate. WARC ORB-88 recognized these existing systems in the Appendix 30B FSS allotment plan. In addition, the ITU Radio Regulations allow additional use of the expansion bands with a showing that such additional use does not cause unacceptable interference with the assigned frequencies and orbital positions of the plan.¹⁵ We believe that PanAmSat's application meets the ITU's additional use requirements. Nevertheless, PanAmSat is required to complete coordination of these expansion band operations in accordance with ITU Radio Regulations.

13. Finally, we find that grant of an additional orbital assignment to PanAmSat is warranted under the circumstances. PanAmSat states that its PAS-1 satellite is effectively filled and a high proportion of PAS-2R's capacity is subject to long-term commitments.¹⁶ Although PanAmSat was recently authorized to launch and operate the PAS-8 satellite at 43° W.L., that satellite provides service to different geographic areas than PAS-9, and PAS-9 will also provide restoration, protection and back-up services.

14. Accordingly, IT IS ORDERED that PanAmSat is granted final authority to construct, launch, and operate its PAS-9 satellite at 58° W.L. in accordance with the technical specifications set forth in its application, as amended.

15. IT IS FURTHER ORDERED that PanAmSat's use of the frequencies identified in NG104, and discussed in paragraph 5, supra, is limited to international service.

16. 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

¹⁴ Id.

¹⁵ The U.S. requested to use the 12.75-13.25 GHz expansion bands under the additional use clause of Appendix 30B of the ITU Radio Regulations. The ITU, however, has not yet responded to this request.

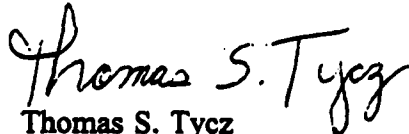
¹⁶ The PAS-2R satellite replaced the PAS-2 which was lost due to launch failure.

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). We also note that PAS-9 will not receive protection from U.S. Government operators in the 13.75-14.0 GHz band until it completes coordination with U.S. Government satellite system operators in the band.

17. 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.

18. 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

A handwritten signature in black ink that reads "Thomas S. Tycz". The signature is written in a cursive style with a large initial 'T'.

Thomas S. Tycz
Chief, Satellite and Radiocommunication Division