

IB 11-55

PUBLIC VERSION

IB Docket 11-55



WASHINGTON, DC

FILED/ACCEPTED

MAY 27 2011

Federal Communications Commission
Office of the Secretary

STEPHEN D. BARUCH
202.416.6782
SBARUCH@LERMANCENTER.COM

May 19, 2011

CONFIDENTIALITY REQUEST PURSUANT TO 47 C.F.R. § 0.459

BY ELECTRONIC SUBMISSION

Mr. Robert Nelson
Chief, Satellite Division
International Bureau
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: Hughes Network Systems, LLC's Response to Commission Request for Update on Implementation Progress for Its Jupiter 1 Ka-Band FSS Satellite at 107.1° W.L. (Call Sign S2753; FCC File No. SAT-LOI-20091110-00119)

Dear Mr. Nelson:

Hughes Network Systems, LLC ("Hughes"), by counsel, hereby requests that the materials being submitted in response to the Commission's request for additional information from Hughes with respect to the progress to date on construction of its above-referenced Jupiter 1 satellite ("Jupiter 1") be held in confidence and not made available for public inspection pursuant to Section 0.459 of the Commission's rules, 47 C.F.R. § 0.459. Confidential treatment in this circumstance is fully consistent with the Administrative Procedure Act and past Commission practice.

Hughes is submitting under cover of this request a letter ("Response Letter") that provides information requested orally by International Bureau staff with regard to the current status of construction of the Jupiter 1 satellite. Hughes intends to post the Response Letter as a supplement to the milestone showings for the first three implementation milestones under Section 25.164(b), 47 C.F.R. § 25.164(b), for Jupiter 1 – showings that have been accepted by the Commission in separate decisions in December 2010 and January 2011. Attached to the Response Letter as Attachment 1, and specifically made subject to this confidentiality request, is a recently taken photograph at the Space Systems Loral ("Loral") manufacturing facility where



the Jupiter 1 satellite is now in the advanced stages of assembly. Attached to the Response Letter as Attachment 2, and specifically made subject to this confidentiality request, is a declaration from Thomas McElroy, Senior Vice President and Controller of Hughes, that includes data regarding payments made to Hughes's major vendors for the Jupiter 1 space and ground segments, including the payments made by Hughes to date under the Jupiter 1 satellite construction contract with Loral.

Confidential treatment of these documents is appropriate under Exemption 4 of the Freedom of Information Act ("FOIA"), which applies to information constituting "trade secrets and commercial or financial information" that "would not customarily be released to the public." See 5 U.S.C. § 552(b)(4); 47 C.F.R. § 0.457(d).

In support of this request, Hughes provides the following information, as required under Section 0.459(b) of the Commission's Rules –

1. Specific Information For Which Confidential Treatment Is Sought -

§ 0.459(b)(1): Hughes seeks confidential treatment for the two attachments to the Response Letter that is being provided in response to oral requests from Commission staff. The materials include the photograph in Attachment 1 to the Response Letter that contains detailed technical information about Jupiter 1 and its implementation. Hughes also seeks confidential treatment for the May 19, 2011 Declaration of Thomas McElroy (Attachment 2 to the Response Letter) containing information concerning the amounts paid to date to Hughes's major vendors in respect of the Jupiter 1 satellite and its launch.

2. Circumstances Giving Rise To The Submission - § 0.459(b)(2): The

Commission has informally requested that Hughes provide information regarding the progress being made on the construction of the Jupiter 1 satellite.

3. Degree To Which The Information Is Commercial Or Financial, Or Contains A

Trade Secret Or Is Privileged - § 0.459(b)(3): The attachments to the Response Letter contain commercially sensitive information "which would customarily be guarded from competitors."¹ This information includes, but is not limited to, photographic evidence of the advanced state of construction of the Jupiter 1 satellite that Loral is now constructing for Hughes, as well as financial details of Hughes's contractual payments to vendors in respect of Jupiter 1 and its launch. This information is extremely confidential and highly proprietary to Hughes and its vendors, and the disclosure of this information would not only be competitively harmful if disclosed to competitors, but could also adversely affect possible future negotiations between Hughes and its vendors, as well as between Hughes or its vendors, on the one hand, and each of their potential contractors or customers, on the other hand. Disclosure of these terms would therefore be damaging to both Hughes and its vendors.

¹ James A. Kay, Jr., 17 FCC Rcd 1834 (2002) (withholding such information from public inspection).



4. Degree To Which The Information Concerns A Service That Is Subject To Competition - § 0.459(b)(4): As the Commission may be aware, there is substantial competition in the satellite industry and beyond it among both service providers and system manufacturers. The commercial provision of Fixed-Satellite Services (“FSS”) and competing terrestrial services is currently expanding, with the launch and planning of new competing systems, and Hughes believes that this space will continue to attract new competitive offerings.

5. How Disclosure Of The Information Could Result In Substantial Competitive Harm - § 0.459(b)(5): Information about both the status and content of the technical and operational arrangements between Hughes and Loral reflected in the attachments to the Response Letter could be misused by potential competitors to gain commercially exploitable knowledge of the company’s technical arrangements for Ka-band FSS, thereby allowing them to reap unfair advantages in formulating their own plans, pursuing technical development of competing systems, and/or negotiating their own satellite construction arrangements. Release of the details of this project to potential competitors would allow others to benefit from plans and information that Hughes has spent considerable time and money developing, and to adapt their own plans based on Hughes’s approach.

6. Measures Taken By Hughes To Prevent Unauthorized Disclosure - § 0.459(b)(6): Hughes’s contracts restrict the use and disclosure of the proprietary information. In accordance with these contract provisions, Hughes has limited access to the information solely to those officers, directors, employees, contractors and consultants who require knowledge of the details in order to perform their duties and fulfill the company’s obligations under the manufacturing contract. Any other disclosure not compelled by law requires prior written consent of the other party.

7. The Information Submitted Is Not Available To The Public and Has Not Previously Been Disclosed To Third Parties, Except For Appropriately Limited Circumstances - § 0.459(b)(7): The materials included as Attachments 1 and 2 to the Response Letter have not been publicly disclosed.

8. Period During Which The Submitted Material Should Not Be Available For Public Disclosure - § 0.459(b)(8): Hughes respectfully requests that the confidential information attached hereto be kept confidential for a period of ten years from the date of this filing, or until Hughes notifies the Commission that confidential treatment is no longer required.

9. Other Information Supporting Request For Confidential Treatment - § 0.459(b)(9): The Commission has long recognized that satellite space segment construction contracts contain competitively sensitive information.² The Commission has therefore adhered

² See Amendment of Space Station Licensing Rules and Policies, 18 FCC Rcd 10760, ¶ 187 (2003).



Mr. Robert Nelson
May 19, 2011
Page - 4 -

to a policy of declining to disclose such contracts "on the mere chance" that such disclosure might be helpful to a third party in some fashion, and has typically required a showing prior to disclosure that the information provides "a necessary link in a chain of evidence" that will resolve an open issue before the Commission.³ These policies and practices apply to the materials in Attachments 1 and 2.

* * * * *

For all of the foregoing reasons, Hughes requests that the Commission withhold the materials included as Attachments 1 and 2 to the enclosed Response Letter from public inspection, according them fully confidential treatment. Hughes has submitted a redacted copy of the Response Letter through IBFS, and requests that the Commission decline to provide access to the attached unredacted version absent a showing of compelling need.

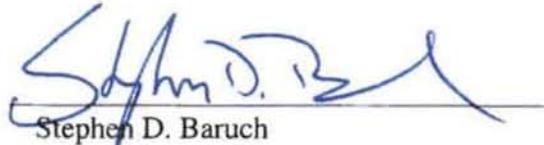
Hughes further requests that, in the event that disclosure of the attached copies of these documents is ultimately found necessary, any party ultimately examining such documents be required to enter into an appropriate protective order.

Please address any questions regarding this confidentiality request to me.

Respectfully submitted,

HUGHES NETWORK SYSTEMS, LLC

By:



Stephen D. Baruch

Lerman Senter PLLC
2000 K Street, NW, Suite 600
Washington, DC 20006
(202) 429-8970

Its Attorney

Attachment

³ See *Examination of Current Policy Concerning the Treatment of Confidential Information Submitted to the Commission*, 13 FCC Rcd 24816, ¶ 8 (1998).

ATTACHMENT



WASHINGTON, DC

STEPHEN D. BARUCH
202.416.6782
SBARUCH@LERMANCENTER.COM

May 19, 2011

BY ELECTRONIC SUBMISSION

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: Hughes Network Systems, LLC's Response to Commission Request for Update on Implementation Progress for Its Jupiter 1 Ka-Band FSS Satellite at 107.1° W.L. (Call Sign S2753; FCC File No. SAT-LOI-20091110-00119)

Dear Ms. Dortch:

Hughes Network Systems, LLC ("Hughes"), by counsel, hereby responds to the Commission's request for additional information from Hughes with respect to the progress to date on construction of its above-referenced Jupiter 1 satellite ("Jupiter 1"). In particular, Hughes provides information requested orally by International Bureau staff in response to the Demonstration of Compliance for the second (critical design review) and third (commencement of physical construction) milestones applicable to Hughes's Jupiter 1 satellite under Sections 25.164(b)(2) and (3) of the Commission's Rules.

Attached to this Response Letter as Attachment 1 is a recently taken photograph at the Space Systems Loral ("Loral") manufacturing facility where the Jupiter 1 satellite is now in the advanced stages of assembly. The photograph shows that the panels are complete and have been mated with the satellite bus, and that integration of the main body of the spacecraft is under way. Included as Attachment 2 to this Response Letter is a Declaration from Hughes's Senior Vice President and Controller that provides further details on the progress made to date on construction of the Jupiter 1 satellite.

LS |

Ms. Marlene H. Dortch

May 19, 2011

Page - 2 -

Please address any questions or requests for additional information to me.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Stephen D. Baruch". The signature is fluid and cursive, with a large initial "S" and a long, sweeping underline.

Stephen D. Baruch

Attorney for *Hughes Network Systems, LLC*

Attachments

ATTACHMENT 1

**Recent Photograph of the Jupiter 1 Spacecraft Under Construction at the
Space Systems Loral Facility**

[OMITTED AND SUBJECT TO A REQUEST FOR CONFIDENTIAL TREATMENT]

ATTACHMENT 2

Declaration of Thomas McElroy, Senior Vice President and Controller, Hughes Network Systems, LLC, dated May 19, 2011

[OMITTED AND SUBJECT TO A REQUEST FOR CONFIDENTIAL TREATMENT]



WASHINGTON, DC

FILED/ACCEPTED

MAY 27 2011

Federal Communications Commission
Office of the Secretary

PUBLIC VERSION

1B Docket 11-55

STEPHEN D. BARUCH
202.416.6782
SBARUCH@LERMANCENTER.COM

May 19, 2011

BY ELECTRONIC SUBMISSION

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: Hughes Network Systems, LLC's Response to Commission Request for Update on Implementation Progress for Its Jupiter 1 Ka-Band FSS Satellite at 107.1° W.L. (Call Sign S2753; FCC File No. SAT-LOI-20091110-00119)

Dear Ms. Dortch:

Hughes Network Systems, LLC ("Hughes"), by counsel, hereby responds to the Commission's request for additional information from Hughes with respect to the progress to date on construction of its above-referenced Jupiter 1 satellite ("Jupiter 1"). In particular, Hughes provides information requested orally by International Bureau staff in response to the Demonstration of Compliance for the second (critical design review) and third (commencement of physical construction) milestones applicable to Hughes's Jupiter 1 satellite under Sections 25.164(b)(2) and (3) of the Commission's Rules.

Attached to this Response Letter as Attachment 1 is a recently taken photograph at the Space Systems Loral ("Loral") manufacturing facility where the Jupiter 1 satellite is now in the advanced stages of assembly. The photograph shows that the panels are complete and have been mated with the satellite bus, and that integration of the main body of the spacecraft is under way. Included as Attachment 2 to this Response Letter is a Declaration from Hughes's Senior Vice President and Controller that provides further details on the progress made to date on construction of the Jupiter 1 satellite.

LS

Ms. Marlene H. Dortch
May 19, 2011
Page - 2 -

Please address any questions or requests for additional information to me.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Stephen D. Baruch". The signature is stylized with a large initial "S" and a long horizontal stroke.

Stephen D. Baruch
Attorney for Hughes Network Systems, LLC

Attachments

ATTACHMENT 1

**Recent Photograph of the Jupiter 1 Spacecraft Under Construction at the
Space Systems Loral Facility**

[OMITTED AND SUBJECT TO A REQUEST FOR CONFIDENTIAL TREATMENT]

ATTACHMENT 2

Declaration of Thomas McElroy, Senior Vice President and Controller, Hughes Network Systems, LLC, dated May 19, 2011

[OMITTED AND SUBJECT TO A REQUEST FOR CONFIDENTIAL TREATMENT]