

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

HUNTER COMMUNICATIONS, INC., and
HUNTER COMMUNICATIONS CANADA, INC.,

Plaintiffs,

v.

PANASONIC AVIONICS CORPORATION,

Defendant.

CIVIL ACTION NO. 7:20-cv-3434

PLAINTIFFS’ COMPLAINT AND JURY DEMAND

Plaintiffs Hunter Communications, Inc. and Hunter Communications Canada, Inc. (collectively “Plaintiffs” or “Hunter Communications”), by their undersigned attorneys, Duane Morris LLP, for their Complaint against Defendant Panasonic Avionics Corporation (“Defendant” or “Panasonic”), allege as follows:

NATURE OF THE ACTION

1. This is an action for money damages, declaratory judgment, and specific performance arising from the material breach of a service agreement pursuant to which Plaintiffs have provided, and continue to provide, Defendant with satellite transmission bandwidth within a specific technical coordinates and related services in exchange for a fixed monthly fee. Defendant has materially breached its obligation to make monthly payments for Plaintiffs’ services as required by the parties’ agreement.

PARTIES

2. Plaintiff Hunter Communications, Inc. is an independent satellite communications provider. Plaintiff Hunter Communications, Inc. is incorporated in New York and has a principal place of business located at 25 Archer Road, Harrison, New York 10528.

3. Plaintiff Hunter Communications Canada, Inc. is a corporate affiliate of, and shares common ownership with, Plaintiff Hunter Communications, Inc. Plaintiff Hunter Communications Canada, Inc. is incorporated in Canada and has a principal place of business located at 27206 Twp Rd 564, Sturgeon County, AB, Canada T8R 2J3.

4. Plaintiffs and Defendant, by their words and actions, agreed that Hunter Communications, Inc. acts on behalf of Hunter Communications Canada, Inc. in exercising the contractual right to issue invoices and collect payments for the satellite communications services provided to the Defendant pursuant to the agreement underlying this action. Plaintiffs jointly possess the claims asserted in this Complaint.

5. Upon information and belief, Defendant Panasonic Avionics Corporation is a Delaware corporation with a principal place of business located at 26200 Enterprise Way, Lake Forest, California 92630.

JURISDICTION AND VENUE

6. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1332 because there is complete diversity of citizenship between each Plaintiff and the Defendant, and the amount in controversy exceeds \$75,000. Diversity of citizenship exists because Plaintiffs are citizens of New York and Canada, respectively, and Defendant is a citizen of Delaware and California.

7. Personal jurisdiction over Defendant is proper. Defendant has agreed to submit to the jurisdiction of this Court when it agreed that “all actions brought [under the parties’ contract] shall be sited in the appropriate New York courts” and, as alleged below, Defendant has conducted business in the State of New York and this Judicial District, and has committed a breach of contract causing harm in this State and Judicial District.

8. Pursuant to 28 U.S.C. § 1391, venue properly lies in this Judicial District because Plaintiff Hunter Communications, Inc. is headquartered in this Judicial District, a substantial part of the events giving rise to the claims herein occurred in this Judicial District and because Defendant has agreed to submit to the personal jurisdiction of appropriate courts located in New York State to adjudicate or determine any lawsuit arising under the parties' contract giving rise to this lawsuit.

9. This Court has the authority to hear causes of action seeking a declaratory judgment pursuant to 28 U.S.C. §§ 2201, 2202.

FACTS COMMON TO ALL CLAIMS FOR RELIEF

A. Plaintiffs' Business

10. Hunter Communications is a satellite communications provider that, *inter alia*, acts as a satellite services reseller, buying access to satellite transmission bandwidth at various specific coordinates and reselling the rights to use that bandwidth to as many customers as it can. As a network-neutral, end-to-end communications integrator, its core business pairs available satellite capacity with ground segment technology to provide its customers with uninterrupted connectivity as satellites orbit the Earth and traverse delineated space segments.

11. Hunter Communications provides satellite communications services to customers in the government, energy, broadcast, maritime and aeronautical and other sectors. Its customers include numerous Fortune 500 companies, as well as government and defense contractors in North America and abroad.

B. Defendant's Breach of the Parties' Services Agreement

12. On February 27, 2015, Defendant entered into a Master Service Agreement with Hunter Communications (the "MSA") setting forth terms and conditions applicable to services that the parties agreed would be described in separately executed individual Service Order Forms.

13. On February 27, 2015, Defendant and Plaintiffs also agreed to and executed Service Order Form PAC 003 ("SOF"), pursuant to which Hunter Communications agreed to provide Defendant with certain bandwidth capacity on a specified satellite located at a specified longitude for service in North America (the "Satellite").

14. The parties agreed to amend the SOF twice. On or about October 18, 2018, the parties agreed to the second and currently applicable amendment to the SOF, titled PAC 003-A2 ("SOF 003-A2" and together with the MSA collectively "the Services Agreement").

15. Pursuant to SOF 003-A2, Hunter Communications agreed to provide Defendant and Defendant agreed to pay Hunter Communications for a specified total number of MHz a specified band capacity on the Satellite in two bandwidths over partially concurrent terms. Bandwidth number one commenced October 1, 2015, for a term running through January 31, 2019, and for which Defendant had a certain monthly payment obligation. Bandwidth number 2 also commenced October 1, 2015, for a term running through October 16, 2020, and for which Defendant had a separate specified monthly payment obligation.

16. Hunter Communications has performed all of its obligations, and continues to perform all of its obligations, under the Services Agreement, and the Services Agreement remains in effect as it relates to bandwidth number 2 through and until October 16, 2020.

17. On or about January 28, 2020, Hunter Communications issued its Invoice No. 33127 in the amount of \$296,780 to be paid by Defendant in advance for services to be rendered

under the Services Agreement in March 2020 (the “March Invoice”). A true and correct copy of the March Invoice, redacted to remove only Plaintiffs’ bank information, is attached hereto as Exhibit A.

18. On or about March 15, 2020, Hunter Communications issued its Invoice No. 33196 in the amount of \$296,780 to be paid by Defendant in advance for services to be rendered under the Services Agreement in April 2020 (the “April Invoice”). A true and correct copy of the April Invoice, redacted to remove only Plaintiffs’ bank information, is attached hereto as Exhibit B.

19. Defendant failed to timely pay the March Invoice.

20. Defendant has not provided written notice to Hunter Communications of any dispute as to the charges for service rendered in connection with the March Invoice.

21. Defendant failed to timely pay the April Invoice.

22. Defendant has not provided written notice to Hunter Communications of any dispute as to the charges for service rendered in connection with the April Invoice.

23. On April 15, 2020, Hunter Communications provided written notice to Defendant of its material breach of the Services Agreement based on its failure to pay the March Invoice and April Invoice, and demanded that Defendant cure its breaches.

24. Despite that notice and demand, Defendant has failed and / or refused to cure its breaches of the Services Agreement.

C. Defendant’s Refusal to Honor the Terms of the Services Agreement Going Forward

25. Upon information and belief, Defendant provides in-flight entertainment and communications services worldwide to airlines and their passengers. In order to maintain signal strength and uninterrupted service across several space segments, Defendant partners with multiple satellite communications providers like Hunter Communications who supply bandwidth capacity

at various specific coordinates, as well as alternative technology service providers that compete with satellite communications providers.

26. By letter dated April 3, 2020, Defendant notified Hunter Communications that it requested a telephonic meeting to negotiate modification or termination of the Services Agreement, purportedly in reliance on the Force Majeure provision of that agreement. In support of its position, Defendant stated only that the “COVID-19 Pandemic has crippled the commercial aviation industry and therefore meets the Agreement’s definition of a Force Majeure circumstance reasonably beyond the control of Company.”

27. On April 15, 2020, Hunter Communications wrote to Defendant providing notice of Defendant’s breaches for failure to timely pay the March Invoice and April Invoice.

28. In its April 15, 2020 letter, Hunter Communications also advised Defendant that the Force Majeure clause in the Services Agreement does not apply and does not justify Defendant’s failure to make timely payment of all monthly invoices for services rendered under that agreement.

29. To date, Defendant has made no response to Hunter Communications’ April 15, 2020 letter and it has failed to cure the breach of its obligation to pay the March Invoice and April Invoice. Defendant has not identified, and cannot identify, an event, act or occurrence meeting the terms of the Force Majeure provision of the Services Agreement, or otherwise excusing its failure to comply with its contractual obligation to pay the March Invoice and April Invoice.

30. No event, act or occurrence outside of the parties’ control has caused Defendant’s inability or failure to timely pay the March Invoice and April Invoice, or that will prevent Defendant making timely payment of monthly invoices going forward. Instead, Defendant’s April 3, 2020 letter merely explains a reason why Defendant finds it less profitable currently to resell

the satellite communications services obtained from Hunter Communications under the Services Agreement to Defendant's intended customers.

31. Defendant's obligation to timely pay monthly invoices for satellite communications services provided by Hunter Communications under the Services Agreement is not conditioned on any successful or profitable resale of those services by Defendant. The risk that Defendant will not be able to profitably resell the satellite communications services provided by Hunter Communications under the Services Agreement was allocated solely to the Defendant by the parties' agreement.

32. Defendant's refusal to honor its obligations to make timely payment of all monthly invoices under the Services Agreement in purported reliance on the Force Majeure provision of that agreement is a wrongful attempt to re-negotiate the risk that Defendant will not be able to profitably resell the satellite communications services provided by Hunter Communications under the Services Agreement.

33. As of April 30, 2020, Defendant has failed to timely pay a total of \$593,650 due and owing for services provided by Hunter Communications under the Services Agreement and billed in the March Invoice and April Invoice.

34. Defendant owes Plaintiffs interest on the invoiced amounts not timely paid, which accrues at a contractually specified rate per month until the fully payment is made. As of April 30, 2020, Defendant owes a total of \$13,421.88 in interest for the unpaid March Invoice and April Invoice, and interest on those amounts continues to accrue at the contractually specified rate each month.

FIRST CLAIM FOR RELIEF
BREACH OF CONTRACT

35. Plaintiffs reallege paragraphs 1 through 34 above and incorporate them by reference as if fully set forth herein.

36. Hunter Communications has fulfilled all of its obligations under the Services Agreement and is not in breach of any contract or agreement with Defendant.

37. Defendant, has materially breached the Services Agreement by failing to make timely payments of the March Invoice and April Invoice.

38. As a direct and proximate result of Defendant's breach of contract, Hunter Communications has suffered and continues to suffer damages in an amount to be determined at trial and currently exceeds \$606,981.88, accruing additional interest monthly until fully paid.

SECOND CLAIM FOR RELIEF
BREACH OF COVENANT OF GOOD FAITH AND FAIR DEALING

39. Plaintiffs reallege paragraphs 1 through 38 above and incorporate them by reference as if fully set forth herein.

40. Implied in all contracts governed by New York law is a covenant of good faith and fair dealing, which obligates the parties to act in good faith, to use their best efforts to deal fairly with one another, and to avoid impeding the other party from obtaining the benefits of the contract.

41. Defendant has improperly purported to invoke the Services Agreement's Force Majeure provision cynically referencing the COVID-19 pandemic merely as a pretext for a unilateral modification and early termination of the Services Agreement now that it has come to rely upon and prefer competing satellite communications services and other technologies to conduct its business operations. Defendant is aware that neither the pandemic nor any other event,

act or occurrence prevents Defendant from fully performing its obligations under the Services Agreement, including its obligation to make timely payments of monthly invoices.

42. By its conduct set forth above, Defendant has breached the covenant of good faith and fair dealing and has wrongfully deprived, impaired, and injured Hunter Communications' enjoyment of the rights, benefits and full value and fruits of the Services Agreement despite Hunter Communications' performance of all of its contractual obligations owed to Defendant.

43. As a direct and proximate result of the breach by Defendant of the covenant of good faith and fair dealing, Hunter Communications has suffered damages in an amount to be determined at trial and currently exceeds \$606,981.88, accruing additional interest monthly until fully paid.

THIRD CLAIM FOR RELIEF
DECLARATORY JUDGMENT

44. Plaintiffs reallege paragraphs 1 through 43 above and incorporate them by reference as if fully set forth herein.

45. There is a substantial controversy and a live dispute between the parties having adverse legal interests of sufficient immediacy and reality to warrant the issuance of a declaratory judgment. The dispute, therefore, between Hunter Communications and Defendant is a justiciable controversy appropriate for declaratory judgment under the Declaratory Judgment Act, 28 U.S.C. §§ 2201, 2202.

46. Hunter Communications has fulfilled all of its obligations under the Services Agreement and, therefore, is not in breach of any contract or agreement with Defendant. Eutelsat, a satellite operator from whom Hunter Communications sources satellite bandwidth capacity, continues to provide satellite bandwidth service on the Satellite, Hunter Communications

continues to pay Eutelsat for that service and, in turn, continues to provide satellite communications services to Defendant without interruption pursuant to the Services Agreement.

47. Defendant has provided notice to Hunter Communications that it considers itself excused from performing its obligations under the Services Agreement, including its obligation to timely make full payment of monthly invoices based on its interpretation of the Force Majeure provision of the Services Agreement.

48. A declaratory judgment that the Services Agreement remains in full force and effect and that no force majeure event or occurrence excuses Defendant's ongoing performance of all of its obligations under the Services Agreement will prevent the necessity of multiple successive lawsuits to recover payments of each monthly invoice that Defendant fails to pay timely during the remaining term of the Services Agreement. Declaratory judgment also will prevent irreparable harm to the Plaintiffs that will result should the Defendant use its erroneous interpretation of the Force Majeure provision to effect a unilateral modification and early termination of the Services Agreement.

49. Accordingly, Plaintiffs are entitled to the entry of a judgment declaring that the Services Agreement remains in full force and effect and that no force majeure event or occurrence excuses Defendant's ongoing performance of all of its obligations under the Services Agreement, including its obligation to make timely payment of each monthly invoice for services provided by Hunter Communications through the remaining term of the Services Agreement.

PRAYER FOR RELIEF

WHEREFORE, Hunter Communications respectfully request that the Court enter judgment as follows:

- a. That Defendant has materially breached its Services Agreement with Hunter Communications by failing to timely pay the March Invoice and April Invoice;
- b. That Hunter Communications is entitled to an award of damages arising out of Defendant's material breach of the Services Agreement in an amount satisfying the full amount of unpaid monthly invoices, plus interest on unpaid amounts accrued at the monthly rate set forth in the Services Agreement through the date of final judgment;
- c. Declaring that the Services Agreement remains in full force and effect and that no force majeure event or occurrence excuses Defendant's ongoing performance of all of its obligations under the Services Agreement, including its obligation to make timely payment of each monthly invoice for services provided by Hunter Communications through the remaining term of the Services Agreement;
- d. Declaring that Defendant is required to specifically perform all remaining obligations for the remainder of the term of the Services Agreement; and
- e. Such other relief as this Court deems just and proper

DEMAND FOR JURY TRIAL

Plaintiffs request a jury trial on all issues so triable.

Dated: New York, New York
May 1, 2020

Respectfully submitted,

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