

BEFORE THE

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Federal Communications Commission JUN 17 1991

WASHINGTON, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In re the Application of)
)
ORBITAL COMMUNICATIONS CORPORATION)
)
For Authority to Construct a)
Low-Orbit Mobile Satellite System)

File No. 22-DSS-MP-90(2)

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JUN 19 1991

DOMESTIC FACILITIES DIVISION
SATELLITE RADIO BRANCH

To: The Commission

COMMENTS OF STARSYS, INC.

STARSYS, Inc. ("STARSYS"), by its attorneys and pursuant to Public Notice Report No. DS-1067, DA 91-499 (released April 23, 1991), hereby submits its comments upon the September 21, 1990 amendment of Orbital Communications Corporation ("Orbcomm") to its above-captioned application. STARSYS initially submitted its views on Orbcomm's amendment in comments dated November 7, 1990. STARSYS ratifies its November 1990 comments, a copy of which is included as Attachment A hereto, and augments them to the extent noted below.

Until such time as the Commission has issued a rulemaking decision establishing rules to govern the low Earth orbit ("LEO") mobile satellite service ("MSS") or identifying which existing rules should be applied, there are no non-statutory legal, technical or financial qualifications standards for this service. In this regard, STARSYS observes that final informational and basic qualifying criteria were not specified for the international fixed-satellite service or the radiodetermination satellite service until the reports and orders establishing licensing policies for those services were

issued. See Establishment of Satellite Systems Providing International Communications, 101 F.C.C.2d 1046 (1985); Policy and Procedures for the Licensing of Space and Earth Stations in the Radiodetermination Satellite Service, 104 F.C.C.2d 650 (1986).

STARSYS has endeavored to supply the Commission with all of the information it believes relevant to the successful processing of its LEO MSS application. Included in STARSYS's submission is information required by Appendix B of the Space Station Application Filing Procedures, Information Required for Domestic Satellite Space Station Applications, 93 F.C.C.2d 1265 (1983). Whether, in fact, the informational requirements of Appendix B will be applied in toto to the LEO MSS service is a matter that has not yet been decided by the Commission, and will not be decided until such time as the Commission completes a rulemaking proceeding by issuing a report and order establishing the service.

STARSYS remains committed to complying with whatever informational and basic qualifications criteria the Commission sees fit to apply to the LEO MSS service. It fully expects that the Commission will, in its decision promulgating such criteria, afford all properly-situated applicants an opportunity to amend their applications to the extent necessary to comply with the requirements imposed. The Commission has indicated that it would provide such an opportunity in connection with other new satellite services. See, e.g.,

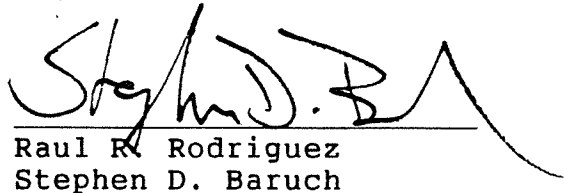
Public Notice, Report No. DS-1068, 6 FCC Rcd 2083, 2084 (1991) (in establishing cut-off for new satellite systems in the RDSS bands, the Commission required the submission of information specified in Appendix B, but stated that "[a]pplicants filing by the cut-off date will be afforded an opportunity to amend their applications, if necessary, to conform with any requirements and policies that may be adopted for satellite systems in these bands").

In sum, Orbcomm, like STARSYS, is entitled to submit whatever quantum of financial information it believes may assist the Commission in processing its LEO MSS application. It remains the case, however, that until such time as the Commission determines the processing rules by which the LEO MSS service will operate, all applicants should have an opportunity to amend their applications to conform their proposals with the obligations imposed.

Respectfully submitted,

STARSYS, INC.

By:


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June 17, 1991

Its Attorneys

ATTACHMENT A

BEFORE THE
Federal Communications Commission
WASHINGTON, D.C. 20554

In re the Application of)
ORBITAL COMMUNICATIONS CORPORATION)
For Authority to Construct a)
Low-Orbit Mobile Satellite System)

File No. 33-DSS-MP-90(20)

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To: The Commission

Federal Communications Commission
Office of the Secretary

COMMENTS OF STARSYS, INC.

STARSYS, Inc. ("STARSYS"), by its attorneys, hereby comments upon the September 21, 1990 amendment of Orbital Communications Corporation ("Orbcomm") to its above-captioned application. STARSYS's comments here are limited to a discussion of the appropriate financial qualifications standard by which to judge the applicants for authority to construct a low Earth orbit ("LEO") mobile satellite service ("MSS") system in the 137 MHz - 138 MHz and 148 MHz - 149.9 MHz bands.

Attachment 3 to Orbcomm's amendment is styled as "Supplemental Financial Information" ("Financial Supplement"). In its Financial Supplement, Orbcomm purports to submit financial information that is required by Appendix B of the Space Station Application Filing Procedures, Information Required for Domestic Satellite Space Station Applications, 93 F.C.C.2d 1265 (1983) ("Appendix B").

While Orbcomm is entitled to submit whatever quantum of financial information it deems appropriate -- and STARSYS has no comment on the particulars of the information submitted by Orbcomm -- the fact remains that the Commission has yet to establish a financial qualifications standard for application to the LEO MSS. Moreover, the Commission should not allow Orbcomm's financial information to cloud or control its actions in establishing a financial qualifications standard for the LEO MSS.

In recent years, the Commission has had occasion to establish regulatory policies for application to several new satellite services. Applicants for space station construction permits in newer satellite services (e.g., the international fixed-satellite and radiodetermination satellite services) are evaluated pursuant to a more lenient financial showing standard than that established in Appendix B for fixed domestic communications satellite applicants. See Establishment of Satellite Systems Providing International Communications, 101 F.C.C.2d 1046 (1985) (subsequent history omitted); Policies and Procedures for the Licensing of Space and Earth Stations in the Radiodetermination Satellite Service, 104 F.C.C.2d 650 (1986) ("RDSS Order").

The LEO MSS, like the radiodetermination and international fixed-satellite services, is a new service. Applicants attempting to enter the LEO MSS market should be

afforded the same opportunities that have been provided to other new entrants into satellite services markets. See Garrett v. FCC, 513 F.2d 1056, 1060 (D.C. Cir. 1975) (an agency cannot act arbitrarily or treat similar situations in dissimilar ways). Under these circumstances, it would be an error for the Commission to require that the domestic fixed-satellite financial qualifications standard be applied to applicants in the applied-for but as-yet-unestablished LEO MSS. See Aeronautical Radio, Inc., 4 FCC Rcd 6067, 6069 (1989) (it was error for Commission to dismiss a satellite application for a new service on the grounds that the applicant had failed to comply with a financial standard when the Commission had not formally announced a financial standard in advance).


Orbcomm has supplied the Commission with information in excess of the threshold level the Commission has set for new satellite services. It then attempts to argue that the Commission should adopt a standard commensurate with the level of detail it submitted. STARSYS disagrees. Instead, the Commission should adopt a standard in the course of the rulemaking proceeding to establish an LEO MSS, and provide applicants that are found not to have conformed with the

standard an opportunity to bring their proposals into compliance therewith.

Respectfully submitted,

STARSYS, INC.

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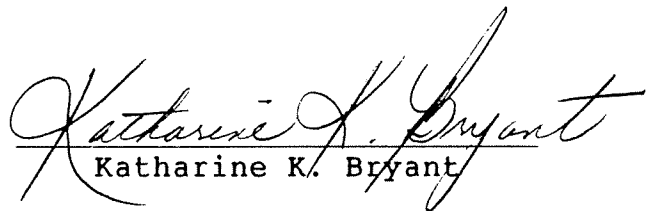
November 7, 1990

Its Attorneys

CERTIFICATE OF SERVICE

I, Katharine K. Bryant, do hereby certify that a copy of the foregoing "Comments of STARSYS, Inc." was mailed, first-class postage prepaid, this 17th day of June 1991, to the following:

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