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# Federal Communications Commission

WASHINGTON, D.C. 20554

Satellite Radio Branch

Federal Communications Commission  
Office of the Secretary

In re the Application of )  
 )  
 ORBITAL COMMUNICATIONS CORPORATION ) File No. <sup>28</sup>33-DSS-MP-90(20)  
 )  
 For Authority to Construct a )  
 Low-Orbit Mobile Satellite System )

To: The Commission

### 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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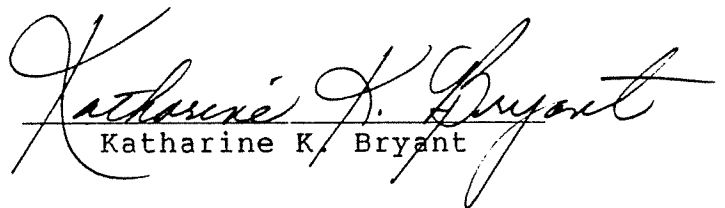
November 7, 1990

Its Attorneys

CERTIFICATE OF SERVICE

I, Katharine K. Bryant, do hereby certify that a copy of the foregoing "Comments of STARSYS, Inc." was mailed, United States first-class postage prepaid, this 7th day of November 1990 to the following:

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