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Before the  
FEDERAL COMMUNICATIONS COMMISSION FEDERAL COMMUNICATIONS COMMISSIC  
OFFICE OF THE SECRETARY

In the Matter of )  
 )  
Orbital Communications Corporation )  
 )  
Application to Construct a Low Earth )  
Orbit Satellite System, Including )  
a Major Amendment Thereto )

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RM-7399 DOMESTIC FACILITIES DIVISION  
File No. SATELLITE RADIO BRANCH  
22-DSS-MP-90(20)

**OPPOSITION TO REQUEST OF ORBCOM FOR A PIONEER'S PREFERENCE**

LEOSAT Corporation, an applicant for a license in the VHF LEO MSS service, hereby opposes the Request of Orbital Communications Corporation for a Pioneer's Preference, filed May 23, 1991. LEOSAT has developed an innovative, pioneering approach to meeting many of America's smart car/smart highway needs via a low-cost VHF LEO MSS system. Grant of the request of ORBCOM would be unmerited, fundamentally unfair to LEOSAT, and inconsistent with the Commission's recently adopted Pioneer's Preference Rulemaking. Contrary to ORBCOM's representations, it (1) did not pioneer the business or technology of VHF LEO MSS, and (2) grant of its requested pioneer's preference would conflict with numerous existing conflicting rules.

If the Pioneer's Preference Order applies to VHF LEO MSS, the appropriate preference is not more than a grant of two satellite approvals, thereby providing flexibility to authorize other systems.

## I. ORBCOM DID NOT PIONEER VHF LEO MSS, AND THERE IS NOTHING UNIQUE ABOUT ORBCOM JUSTIFYING A PIONEER'S PREFERENCE

Contrary to the representations of ORBCOM, it did not pioneer the VHF LEO MSS service, nor its frequency allocation. It did perform the best public relations effort for its VHF LEO MSS project, but pioneer's preferences are not for public relations.

With regard to the service, the technology of two-way VHF LEO MSS communications is thirty years old. As veteran satellite industry expert Walter Morgan noted (the Commission noted that expert opinions were relevant to Pioneer Preferences):

"In 1990, the industry began to retrace its steps to its origin through proposals for low earth orbit satellite services. At least one of these was filed by a manufacturer in search of a market for its rockets. Many of these satellites appear to be remarkably similar to the satellites that I worked on in the 1960s (such as the Tiros I to X series)."

View from the Top, Walter Morgan, Via Satellite, January 1991 at 66. Indeed, much of ORBCOM's Request for Pioneer's Preference is a sales piece for its Pegasus Rocket -- but surely pioneer's preferences for telecommunications should not be awarded for work in rocketry! See, ORBCOM Request for Pioneer's Preference based on rocketry at pages 3, 5, 6, 14. While ORBCOM claims at one time that its Pegasus rocket is vital to its VHF LEO MSS concept, elsewhere it

admits that the first ORBCOM-X is being launched by Arianespace. Indeed the Pegasus rocket has nothing to do with Pioneer's Preferences.

While ORBCOMM appears to admit in a page of footnote references (p. 13) to predecessor systems that VHF LEO MSS spacecraft are not sufficiently unique to warrant a pioneer's preference, it then tries to justify a preference based on frequency selection or technology commercialization. However, ORBCOM's uniqueness here too is only in public relations, for quieter system developers had accomplished most of what ORBCOM now claims credit for.

With regard to the touchstone of identifying a frequency band for VHF LEO MSS, VITA had accomplished that in 1988, specifying 148 MHz for part of a two-way MSS system more than two years before ORBCOM's petition. With regard to commercialization, MSS applicant Globesat Express described ORBCOM's constellation in the early 1980's, and Geostar Corporation provided commercial VHF LEO MSS service to terminals costing under \$1000 throughout most of 1987 and 1988. Nearly all of the user applications described in ORBCOM's System Proposal were clearly copied from other system developers, including environmental monitoring (copied from Argos), vehicle tracking (copied from Geostar), outpatient monitoring (copied from StarFind) and low power data terminal messaging (copied for Globesat Express). ORBCOM does not deserve a pioneer's

preference for copying existing technologies and concepts, and then marketing it as a "Pegasus-enabled pioneering achievement."

There is also nothing unique about ORBCOM's use of its so-called dynamic channel activity assignment system. This is simply a fancy name for connecting a spectrum analyzer to a transmitter, and not transmitting on a channel that is already occupied. Not surprisingly, ORBCOM does not claim a pioneer's preference solely on this mundane technology.

Finally, ORBCOM's positioning technology is not worthy of a pioneer's preference. ORBCOM's positioning technology ranks a shoddy second-place to free GPS positioning service available now in Rockwell chip sets for as low as \$250. Why would anyone pay ORBCOM \$400 plus a service charge for a positioning terminal with poor accuracy (See Application of ORBCOM), when a much lower priced alternative is available free of service charge via GPS?

In summary, the ORBCOM proposal taken as a whole is not pioneering, and neither are any of its constituent components. ORBCOM has copied other companies developments, and spent a big sum of money on public relations to convince the world that it "invented" VHF LEO MSS. ORBCOM's argument is untrue, and no amount of repetition by ORBCOM can make it true.

## II. GRANT OF A PIONEER'S PREFERENCE TO ORBCOM WOULD BE FUNDAMENTALLY UNFAIR TO LEOSAT AND WOULD CONFLICT WITH NUMEROUS OTHER RULES AND REGULATIONS

Aside from the fact that ORBCOM does not deserve a Pioneer's Preference, it also may not legally receive such a preference. A Pioneer's Preference to ORBCOM is legally infirm on each of the following grounds:

- ORBCOM's application has already been designated for mutually exclusive simultaneous consideration with LEOSAT's application. It would be a violation of LEOSAT's Ashbacker rights to provide ORBCOM with an after-the-fact preference. Indeed, LEOSAT filed its application in reliance on the Commission's Notice stating that applicants would be provided "an opportunity to amend their application to conform to any policies or requirements." If ORBCOM were to be granted its Pioneer's Preference, LEOSAT would lose any chance of receiving its license, without even an opportunity to amend its application as promised in the Public Notice.

- The Pioneer's Preference Rulemaking said it would apply only to proceedings in which no Notice of Proposed Rulemaking (and presumably no Cut-Off Notices) had yet been issued. However, the cut-off Notices issued for VHF LEO MSS systems, Reports DS-982, Released July 16, 1990, and DS-1067, Released April 23, 1991, are tantamount to a Notice of Proposed Rulemaking. They provide the

public with notice of the content of a proposed government decision -- to authorize VHF LEO MSS systems.

- The Pioneer's Preference requested by ORBCOM is inconsistent with the kind of Pioneer's Preference adopted by the Commission. ORBCOM is requesting a monopoly right to use the 137/148 MHz bands, via a 20 satellite constellation, to the exclusion of any other co-channel satellite system. (See ORBCOM Request at pages 14-15). For example, in paragraph 34 of the Pioneer's Preference Order, the Commission said:

"We further have decided not to provide a headstart for the pioneering entity beyond the de facto headstart that may occur due to the time it may take other entities to apply for and receive a license. ... For the Commission to go beyond this and guarantee the pioneer a temporary service monopoly would not appear to be justified at this time."

In this case, however, LEOSAT has already applied for a license, and grant of ORBCOM's requested pioneer's preference would make it impossible for LEOSAT to receive its license at all. Hence, the pioneer's preference requested by ORBCOM cannot legally be granted under the Pioneer's Preference Order.

## CONCLUSION

In summary, ORBCOM does not qualify for a pioneer's preference because its frequency, system design, and user applications are all copied from existing or past systems. Furthermore, the Pioneer's Preference Order cannot apply to VHF LEO MSS because competing applications were already designated for cut-off consideration, and an equivalent Notice of Proposed Rulemaking was in place. Finally, the kind of pioneer's preference requested by ORBCOM is inconsistent with FCC rules and regulations. At most, an appropriate pioneer's preference in the VHF LEO MSS would be a headstart authorization for two satellites, with prompt follow-up authorization of two satellites for other applicants. But ORBCOM's effort to preclude any competition and establish a monopoly via pioneer's preference is completely at odds with existing rules and regulations.

Respectfully Submitted,



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