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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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MAY 28 1993

OFFICE OF CHIEF
DOMESTIC FACILITIES DIVISION
COMMON CARRIER BUREAU

23-DSS-STA-90

In the Matter of)
)
ORBITAL COMMUNICATIONS CORPORATION)
)
Request For Waiver Under Section)
319(d) to Commence Construction)
of a Low-Orbit Mobile)
Satellite System)

REPLY TO OPPOSITION TO PETITION TO RESCIND

dbX Corporation ("dbX"), by its attorneys, hereby submits this reply to the Orbital Communications Corporation ("ORBCOMM") opposition to the STARSYS Global Positioning, Inc. ("STARSYS") petition to rescind in the above-captioned proceeding. On May 6, 1993, STARSYS filed its petition requesting that the Commission rescind a waiver granted to ORBCOMM, pursuant to Section 319(d) of the Communications Act of 1934, as amended, to begin construction of satellites for ORBCOMM's proposed non-voice, non-geostationary mobile satellite service ("NVNG MSS") system. ORBCOMM filed an opposition to the STARSYS petition on May 17, 1993.

Although dbX has not filed an application for a NVNG MSS system in competition with ORBCOMM or STARSYS nor participated in the Commission's Negotiated Rulemaking proceeding, dbX has previously indicated its interest in the outcome of

Commission proceedings for this new service. In its comments on the Commission's Notice of Proposed Rulemaking,¹ dbX stated that it anticipates that it will be actively involved in the NVNG MSS as a purchaser of channels, a reseller or in some other capacity to be determined in the future. Consequently, dbX encourages the Commission to consider the implications of its 319(d) waiver² in these circumstances and endorses STARSYS' request for the Commission to rescind the waiver.

As dbx stated in its comments to the Notice, dbX is concerned that the Commission take whatever steps necessary to ensure multiple entry in the NVNG MSS and to encourage robust competition among service providers. In that regard, dbX proposed specific safeguards to be included in the Commission's rules which would limit the amount of frequency assigned to initial system licensees and require a showing of sufficient traffic fill as a prerequisite to the grant of additional spectrum.

Although dbX applauds the Commission's efforts to encourage the introduction of NVNG MSS services in a timely manner, dbX is concerned that the Commission's grant of a Section 319(d) waiver permitting ORBCOMM to begin construction of its satellites may

¹ Amendment of the Commission's Rules to Establish Rules and Policies Pertaining to a Non-Voice, Non-Geostationary Mobile-Satellite Service, CC Docket 92-76, (FCC 93-28) Notice of Proposed Rulemaking (released February 10, 1993) ("Notice").

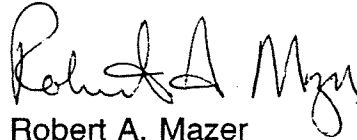
² Section 319(d) is intended to foreclose applicants from using premature construction, and the investments associated with such construction, as leverage to obtain a favorable spectrum assignment of FCC action. In this instance, where the Commission has not as yet established the technical and operational rules for the LEO satellite service and is still seeking public comment on the rules, the grant of permanent construction authority to ORBCOMM and the technical outcomes that come with ORBCOMM's construction serves to severely limit the Commission's options in response to public comments. See also Policy Statement on Experimental Satellite Applications, FCC 92-324 (July 21, 1992).

prejudge the issuance of rules for this service and may impair the Commission's ability to place adequate safeguards on NVNG MSS service providers. Specifically, dbX asserts that no NVNG MSS licensee should be permitted to construct satellites until the Commission establishes guidelines requiring that the licensee engage in bona fide coordinations with future competitors and that the licensee be made aware of limitations on the amount of spectrum to be used before construction is begun. As a practical matter, the Commission may be hard pressed to limit ORBCOMM's frequency use or the scope of ORBCOMM's initial system once the company has commenced satellite construction. Similarly, the Commission should not permit ORBCOMM to construct its satellites based on the belief that the initial ORBCOMM system will be entitled to the full 850 kHz envisioned in the negotiated rulemaking proceeding if the Commission intends to restrict the amount of frequency assigned to initial systems, as suggested in dbX's comments.

As a potential user of these NVNG MSS services, dbX is anxious to see the introduction of NVNG MSS systems in the next few years. Moreover, dbX appreciates that due to the number of satellites involved in these low earth orbit satellite systems, future service providers may require a number of years to manufacture and launch all the satellites necessary to establish a comprehensive system. Nonetheless, dbX remains convinced that any delay associated with rescinding or suspending the ORBCOMM 319(d) waiver is necessary to ensure that the Commission crafts rules that adequately protect competition without any concern for previously built satellites awaiting launch.

Consequently, dbX encourages the Commission to grant the STARSYS petition pending the issuance of final rules for licensing the service providers for NVNG MSS.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Robert A. Mazer". The signature is fluid and cursive, with the first name "Robert" being more prominent.

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May 26, 1993

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CERTIFICATE OF SERVICE

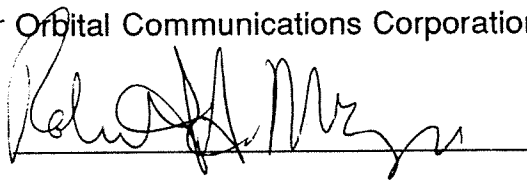
I , Robert A. Mazer, hereby certify that a copy of the foregoing reply of dbX Corporation was served by first class mail, postage prepaid, this 26th day of May, 1993 on the following:

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A handwritten signature in black ink, appearing to read 'Robert A. Mazer', is written over a horizontal line.

Robert A. Mazer