

RECEIVED

STEPTOE & JOHNSON

ATTORNEYS AT LAW

MAY 14 1991

PHOENIX, ARIZONA
CITIBANK TOWER

TELEPHONE: (602) 266-6610
FACSIMILE: (602) 274-1970

1330 CONNECTICUT AVENUE, N.W.
WASHINGTON, D.C. 20036-1795

(202) 429-3000
FACSIMILE: (202) 429-9204
TELEX: 89-2503

Federal Communications Commission
Office of the Secretary
S&J LEX INTERNATIONAL
AFFILIATE IN MOSCOW, U.S.S.R.

TELEPHONE: (011-7-095) 290-5775
(011-7-095) 928-2982

PHILIP L. MALET
(202) 429-6239

RECEIVED

May 14, 1991

MAY 16 1991
DOMESTIC FACILITIES DIVISION
SATELLITE RADIO BRANCH

Ms. Donna R. Searcy
Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

Re: Applications for Authority to Construct LEO
Satellite Systems in the RDSS Band (File Nos.
9-DSS-P-91(87), CSS-91-010, 11-DSS-P-91(6))

Dear Ms. Searcy:

Motorola Satellite Communications, Inc. ("Motorola"), through its counsel, responds to the May 2, 1991 letter from the attorney for Ellipsat Corporation addressed to the Commission's Public Notice, Report No. DS-1068, released April 1, 1991, as corrected by Report No. DS-1071, released April 18, 1991. Ellipsat's letter is procedurally defective and evidences a fundamental misunderstanding of the applicable cut-off rules for RDSS applications. Accordingly, the Commission should deny promptly Ellipsat's request for "priority" status of its RDSS application and for modification of the subject Public Notice.

The Commission's Public Notice reflects the acceptance for filing of Motorola's and Ellipsat's applications for authority to construct mobile satellite systems in the RDSS band. It further establishes June 3, 1991, as the date by which interested parties may file comments or petitions regarding these applications, and submit additional RDSS applications to be considered concurrently with the previously accepted applications.

In its letter, Ellipsat essentially requests reconsideration of this Public Notice. The Commission's rules and regulations, however, state that petitions for reconsideration of interlocutory actions "will not be entertained." See 47 C.F.R. §§ 1.102(b)(2) & 1.106(a)(1). The Commission's Public Notice neither grants nor denies Ellipsat's

May 14, 1991
Page 2

application and therefore, cannot be construed as a "final" action subject to reconsideration. Thus, Ellipsat's request should be rejected on procedural grounds alone.^{1/}

Moreover, Ellipsat simply is mistaken in its reading of Section 25.392(b) of the Commission's rules.^{2/} Ellipsat believes that because its application was filed within 60 days of the acceptance for filing of certain applications by Geostar Positioning Corporation ("Geostar"),^{3/} no more RDSS applications may be considered concurrently with its satellite system proposal. Ellipsat ignores, however, the applicability of the 60 day cut-off rule to its own RDSS application.^{4/} Pursuant to Rule 25.392(b), Motorola's and Ellipsat's RDSS applications must be considered together since Motorola filed its application within 30 days of the filing of Ellipsat's original application and four months prior to public notice of Ellipsat's application. In order to avoid the potential for a daisy chain of applications, the Commission announced the June 3, 1991 cut-off date for the establishment of an RDSS processing group. Such a processing

^{1/} In addition, Ellipsat's letter request does not comport with the Commission's filing requirements as to proof of service (47 C.F.R. § 1.47(g)) and to form (47 C.F.R. § 1.49(a)).

^{2/} Section 25.392(b) states in pertinent part that "[e]ach application ... shall be placed on public notice for 60 days A 60 day cut-off period shall also be established for the filing of applications to be considered in conjunction with an original application."

^{3/} See Public Notice, Report No. DS-999, released September 4, 1990. In that public notice, the Commission accepted for filing various applications proposing modifications to Geostar's first two dedicated RDSS satellites, the construction of two more dedicated satellites, and the extension of the construction and launch milestones for implementing its system.

^{4/} Ellipsat also ignores the impact of its January 30, 1991 "Technical Clarification and Erratum" which substantially amends its application and provides new information otherwise required by the RDSS rules. See 47 C.F.R. § 25.392(a). Ellipsat's original application was deficient in many material respects and not acceptable for filing under the RDSS application rules.

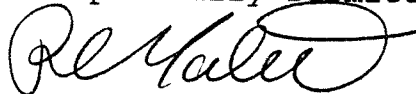
May 14, 1991
Page 3

approach has been used in the past for other satellite services, and makes good sense here.^{5/}

Ellipsat's complaint really is with the Commission's recent actions on Geostar's applications and not the RDSS Public Notice. However, in light of the denials and dismissal of virtually every aspect of Geostar's RDSS applications,^{6/} it would be difficult for Ellipsat to claim any prejudice from those actions. To the extent that Ellipsat believes it may have been adversely affected by the dismissal of Geostar's modification requests, it should request reconsideration or review of the Bureau's "final" Geostar order, rather than complain about the RDSS Public Notice.

In sum, the Commission did not misapply its RDSS procedural rules by placing Ellipsat's application on public notice with Motorola's application and by announcing a cut-off date for establishing an RDSS processing group. There is no basis for modifying the Public Notice accepting both RDSS applications for filing. Nor is Ellipsat's application entitled to any "priority" over Motorola's RDSS application. Pursuant to Section 25.392(b) of the rules, the Commission must consider Motorola's application in conjunction with Ellipsat's application for service in the RDSS band.

Respectfully submitted,



Philip L. Malet

Counsel for Motorola Satellite
Communications, Inc.

cc: Richard Firestone, Esquire
Geraldine Matise, Esquire
Cecily Holiday, Esquire
William Malone, Esquire
Michael Yourshaw, Esquire

^{5/} See e.g., Domestic Fixed-Satellite Service, 93 F.C.C. 2d 1260 (1983); Public Notice, Report No. DS-207, released September 9, 1983.

^{6/} See Geostar Positioning Corporation, DA 91-528, released April 30, 1991.