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

In re Applications of	)	
	)	
Constellation Communications, Inc.	)	File Nos. 17-DSS-P-91(48)
	)	CSS-91-013
	)	9-SAT-LA-94
	)	10-SAT-AMEND-94
	)	
Loral/Qualcomm Partnership, L.P.	)	File Nos. 19-DSS-P-91(48)
	)	CSS-91-014
	)	21-SAT-MISC-95
	)	
Mobile Communications Holdings, Inc.	)	File Nos. 11-DSS-P-91(6)
	)	18-DSS-P-91(18)
	)	11-SAT-LA-95
	)	12-SAT-AMEND-95
	)	
Motorola Satellite Communications, Inc.	)	File Nos. 9-DSS-P-91(87)
	)	CSS-91-010
	)	43-DSS-AMEND-92
	)	15-SAT-LA-95
	)	16-SAT-AMEND-95
	)	
TRW Inc.	)	File Nos. 20-DSS-P-91(12)
	)	CSS-91-015
For Authority to Construct, Launch, and Operate, Low Earth Orbit Satellite Systems to Provide Mobile Satellite Services in the 1610-1626.5 MHz/2483.5-2500 MHz Bands	)	17-SAT-LA-95
	)	18-SAT-AMEND-95

MEMORANDUM OPINION AND ORDER

Adopted: June 24, 1996 Released: June 27, 1996

By the Commission:

I. INTRODUCTION

1. By this Memorandum Opinion and Order, we address petitions for reconsideration[1] and applications for review of five orders issued by the International Bureau. By those orders, the International Bureau conditionally authorized three companies, Loral/Qualcomm, L.P. ("LQP"), Motorola Satellite Communications, Inc., and TRW Inc., to construct, launch, and operate low-Earth orbit ("LEO") mobile satellite service systems in the 1610-1626.5 MHz and 2483.5-2500 MHz bands.[2] These systems, commonly referred to as "Big LEO" systems, are capable of providing a wide range of voice and data services to hand-held terminals on a global basis. The International Bureau also concluded that two other applicants, Constellation Communications, Inc., and Mobile Communications Holdings, Inc. ("MCHI"), had not established that they were financially qualified, and deferred further consideration of their applications until January 31, 1996, to allow those two applicants additional time to submit the necessary showing.[3]

2. The parties have raised a number of issues. Constellation and MCHI filed a petition for reconsideration and an application for review, respectively, challenging the finding that they had not demonstrated their financial qualifications. MCHI also filed an application for review of the grant of a license to LQP, alleging that LQP did not meet Commission standards for demonstrating financial qualifications. LQP filed an application for review of the International Bureau's conclusion that changes in Constellation's ownership structure did not render its application ineligible for further consideration under Commission rules. Motorola filed a consolidated petition for reconsideration of the LQP and TRW license grants in which it requests that several additional conditions be included in the terms of the license. AMSC filed petitions for reconsideration of the LQP, Motorola, and TRW license grants urging that the grants be conditioned on the outcome of AMSC's request for reconsideration

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[1] The International Bureau has referred the petitions for reconsideration to the Commission for consideration. See 47 C.F.R. § 1.106(a)(1).

[2] See Loral/Qualcomm Partnership, L.P., 10 F.C.C. Rcd. 2333 (Int'l. Bur. 1995), as corrected by Erratum, 10 F.C.C. Rcd. 3926 (Int'l. Bur.1995)("Loral Order"); Motorola Satellite Communications, Inc., 10 F.C.C. Rcd. 2268 (Int'l. Bur. 1995), as corrected by Erratum, 10 F.C.C. Rcd. 3925 (Int'l. Bur. 1995) ("Motorola Order"); TRW Inc., 10 F.C.C. Rcd. 2263 (Int'l. Bur. 1995), as corrected by Erratum, 10 F.C.C. Rcd. 3924 (Int'l. Bur. 1995)("TRW Order").

[3] Constellation Communications, Inc., 10 F.C.C. Rcd. 2258 (Int'l. Bur. 1995) ("Constellation Order"); Mobile Communications Holdings, Inc., 10 F.C.C. Rcd. 2274 (Int'l. Bur. 1995) ("MCHI Order"). MCHI was previously known as Ellipsat.

of the Commission's Report and Order adopting licensing and service rules for Big LEOs.[4] The parties filed oppositions and replies.[5] MCHI also sought clarification of the procedures to be applied to applicants that did not establish their financial qualifications in connection with the November 16, 1994 deadline for amendments. These issues have been separately addressed in connection with our Big LEO Rules Reconsideration Order, or are otherwise moot. AMSC's concerns were addressed in the Big LEO Rules Reconsideration Order and its petition for reconsideration will therefore be dismissed as moot.

3. On January 26, 1996, the International Bureau extended the time for MCHI, Constellation, and AMSC to establish their financial qualifications until 60 days following the release of an Order disposing of MCHI's application for review.[6] The International Bureau also granted Constellation's request for a declaratory ruling that certain ownership changes it was contemplating would not foreclose further consideration of Constellation's application. LQP filed an application for review of this ruling.

4. We deny Constellation and MCHI's requests that we find them financially qualified. We also affirm the Bureau in all other respects, except insofar as a number of challenges to the Bureau's ruling have become moot.[7]

II. BACKGROUND

5. In 1990, Motorola and MCHI filed applications to provide mobile-satellite services (MSS) from constellations of non-geostationary satellites in the 1.6/2.4 GHz frequency bands.

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[4] In the Matter of Amendment of the Commission's Rules to Establish Rules and Policies Pertaining to a Mobile Satellite Service in the 1610-1626.5/2483.5-2500 MHz Frequency Band, 9 F.C.C. Rcd. 5936 (1994)("Big LEO Order"), on reconsideration, FCC 96-54 (released February 15, 1996)("Big LEO Rules Reconsideration Order").

[5] In addition, several pleadings were filed after the close of the formal pleading cycle. MCHI first filed a notice of supplemental authorities on February 15, 1996. TRW and Motorola filed oppositions to this pleading, and MCHI replied. In addition, MCHI filed additional pleadings on February 23, April 19, April 26, and May 10, 1996. The Office of Advocacy of the Small Business Administration filed letters with the Commission on or about April 24, 1996. TRW, Loral/Qualcomm, Motorola filed responsive pleadings, which MCHI and the Office of Advocacy opposed. TRW filed a reply. These filings have been considered to the extent they provide timely and relevant information addressed to the resolution of the specific licensing proceedings now before us.

[6] Constellation Communications, Inc., 11 F.C.C. Rcd. 1892 (Int'l. Bur. 1996).

[7] In light of our disposition of MCHI's application for review concerning its financial qualifications, we are also dismissing as moot an application for review, filed by LQP, of an International Bureau Order on Reconsideration, DA 94-1566 (Int'l. Bur. Dec. 21, 1994) which granted MCHI confidential treatment for certain information which the Bureau did not subsequently rely on in its decision.

We established a deadline for filing applications to be considered simultaneously with the initial two applications. Four other companies -- AMSC, Constellation, LQP, and TRW -- filed applications by that deadline.

6. To develop technical and licensing rules for the proposed systems, we conducted a "negotiated rule making proceeding" from January through April 1993. The proceeding provided the applicants and other interested parties the opportunity to develop recommendations to the Commission on issues such as compatibility among the proposed MSS systems, sharing between the proposed MSS systems and other services, and operation of inter-satellite and feeder links. The negotiated rule making proceeding resulted in consensus recommendations on a number of these issues. However, no consensus was reached on how to accommodate the six systems proposed by the applicants.

7. In October 1994, we issued the Big LEO Order, in which we adopted rules for this new satellite service. The rules require that applicants propose a non-geostationary system capable of serving all areas of the fifty United States, Puerto Rico, and the U.S. Virgin Islands continuously, and for 75% of the day in all areas of the world as far north as 70° latitude, and as far south as 55° latitude. The rules also require that applicants demonstrate they have sufficient financial resources to construct, launch, and operate for one year the satellites in their system. We concluded that only five Big LEO systems could be accommodated in the available spectrum, and that if all six applicants complied with the new rules, we would award the five available licenses through an auction. We gave the applicants until November 16, 1994 to amend their applications to conform to the new rules. Applicants had the option, however, of delaying their financial showings until January 31, 1996. Five of the six applicants chose to submit their financial showings on November 16, 1995. AMSC elected to defer its showing.

8. On January 31, 1995, the International Bureau issued licenses to LQP, Motorola, and TRW. It also concluded that Constellation and MCHI had not met the financial qualification standards because the sources of funds on which they were relying were not sufficiently committed to meet Commission standards. The Bureau also concluded that Constellation's application was eligible for further consideration even though there had been a substantial change in its ownership structure that, in the absence of a waiver of Commission rules, could warrant dismissal of its application. The Bureau reasoned that the ownership changes were sufficiently similar to prior Commission cases to warrant a waiver, and that the public interest would be served in this particular case by a waiver. The Bureau observed that it was reasonable to expect that changes in an applicant's ownership structure might be required to finance system construction, particularly in light of the substantial costs of constructing LEO MSS systems.

III. DISCUSSION

A. Financial Qualifications

9. In the Big LEO Order, we adopted a financial qualification standard patterned on the standard applied to applicants for satellites in the domestic fixed satellite service. We observed that the enormous costs involved in constructing and launching a satellite system have historically made it particularly important that applicants for satellite licenses to use spectrum which is in high demand demonstrate, in advance, the financial ability to proceed with construction of their systems. We noted our repeated experience that licensees without sufficient available resources spend a significant amount of time attempting to raise necessary funding, and that those attempts often end unsuccessfully.[8]

10. We observed that, "where a grant to an under-financed applicant may preclude a fully capitalized applicant from implementing its plans, and service to the public may be consequently delayed," a "stringent financial showing" is warranted.[9] We also observed that the Big LEO spectrum sharing plan we adopted did not accommodate all pending applicants, and left little or no room for expansion of existing systems or the development of future MSS systems in the United States. For these reasons, we determined that a strict financial requirement was warranted for the Big LEO service, and adopted a rule requiring that Big LEO applicants demonstrate committed internal or external financing sufficient to meet their systems' construction, launch, and first-year operating costs.[10]

11. Consequently, the financial qualification rules adopted for the Big LEO service require applicants for space stations to demonstrate that they, or their corporate parents, have current assets (cash, inventory, and accounts receivable) and operating income sufficient to cover the costs of construction and launch of the system's space segment, and of operating for one year following the launch of the first satellite. We also required that applicants submit evidence of a management commitment, from the applicant or its parent corporation(s), as appropriate, to expend the necessary funds. Alternatively, applicants relying on external financing, such as bank loans, were required to demonstrate that such financing is "irrevocably committed," i.e., that it has been approved and does not rest on contingencies which require action by either

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[8] Big LEO Order at ¶¶ 26-30.

[9] Big LEO Order at ¶ 26.

[10] Big LEO Order at ¶¶ 30-32.

party to the transaction.[11]

1. Constellation

12. In its financial showing, Constellation estimated the cost to build and launch the 46 satellites in its system, and to operate the system for one year after the launch of the first satellite, to be $1.721 billion. Constellation relied on two companies as sources of funds: Bell Atlantic, which holds an 8% interest in Constellation; and E-Systems, which holds a 30.7% interest. Both companies submitted evidence concerning their finances and their management commitments to Constellation.

13. The Bureau concluded that Bell Atlantic's management commitment was insufficient to meet Commission standards. Constellation had contended that the letter from Bell Atlantic submitted to demonstrate its commitment of funds was modeled on a letter the Commission found sufficient in National Exchange Satellite, Inc., 3 F.C.C. Rcd. 6992 (1988). The Bureau concluded that the Bell Atlantic letter differed in several respects from the National Exchange letter, and in each instance the departure from the National Exchange model introduced contingencies or limitations on the language in National Exchange. The Bureau also observed that the tentativeness of the Bell Atlantic commitment was particularly significant since the parent corporation submitting the commitment letter in National Exchange held a 60% equity interest in the applicant, as compared to Bell Atlantic's 8%. The Bureau observed that a majority stockholder could be more readily expected to commit funds unconditionally, "given its ability to control the subsequent expenditures of those funds by the subsidiary."[12]

14. Constellation challenges this determination. It argues that the Constellation Order converted the language of the National Exchange letter into a "talismanic standard," and that the standard amounts to a substantive rule adopted without prior notice and an opportunity for comment, in violation of the Administrative Procedure Act. It also argues that the Constellation Order failed to take into account two explanatory affidavits Constellation filed in pleadings concerning its financial showing, and that the Constellation Order improperly faulted the Bell Atlantic letter for indicating that Bell Atlantic's commitment was contingent on approval by Bell Atlantic's Board of Directors.

15. We affirm the Bureau's decision. We perceive no violation of the Administrative Procedure Act. The Constellation Order appropriately compared the Bell Atlantic letter to the letter found satisfactory to meet our financial qualifications rule in the National Exchange

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[11] These requirements, and the documentation necessary to establish they have been met, are outlined in greater detail at 47 C.F.R. § 25.140(c) and (d). See also 47 C.F.R. § 25.143(b)(3); Big LEO Order at ¶ 35.

[12] Constellation Order at ¶ 15.

case. Constellation itself had identified the case in its pleadings as a relevant Commission precedent, and Constellation concedes that it had actual notice of the text of that letter. Furthermore, the Constellation Order embodies an administrative adjudication, and "agency adjudication should not be confused with notice and comment rulemaking."[13] The notice and comment procedures applicable to agency rule making are not required where, as here, the agency proceeds by adjudication.[14]

16. We have also reviewed the affidavits Constellation submitted concerning its financial showing. The Bureau's omission of any discussion of these affidavits in the Constellation Order was not error in this case. Upon review of the affidavits, we conclude they provide no information concerning "management commitments" that in any material way differs from or supplements the information submitted in the original letters. In particular, the Bell Atlantic affidavit, upon which Constellation principally relies, provided only cumulative evidence on points addressed in the Bell Atlantic letter. The Bell Atlantic affidavit addressed two points. First, it stated: "By its letter, Bell Atlantic believes it has demonstrated the required intent to provide the necessary financial support for the Constellation LEO system under the Commission's Rules." We presume Bell Atlantic would not have submitted a "management commitment" letter if it did not believe that the letter met Commission requirements, even if that belief was incorrect. Thus, this affidavit does not advance Constellation's argument. Second, the affidavit addresses the status of the Constellation project in Bell Atlantic's internal corporate decision-making process. The Bell Atlantic letter had included a statement that "***actual [Bell Atlantic] financial commitments would be subject to negotiation of satisfactory agreements***; and our customary internal business approval procedures, including, if applicable, approval by the Board of Directors."[15] The affidavit indicates that this statement was included in recognition of Bell Atlantic's corporate approval requirements. Again, however, the affidavit merely confirms what can reasonably be inferred from the original Bell Atlantic letter, and thus presents no new evidence.

2. MCHI

17. In its financial showing, MCHI estimated the cost to build and launch the 16 satellites in its system, and to operate the system for one year after the launch of the first satellite, as $564 million. MCHI relied on "management commitments" from Westinghouse, Harris, Israeli Aircraft Industries, and Barclays. These companies submitted evidence concerning their finances and their management commitments to MCHI. MCHI also submitted evidence concerning external financing from a number of other sources.

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[13] Arkansas AFL-CIO v. FCC, 11 F.3d 1430, 1436 n.5 (8th Cir. 1993) (en banc).

[14] Beazer East, Inc. v. EPA Region III, 963 F.2d 603 (3rd Cir. 1992).

[15] Emphasis added.

18. The MCHI Order addressed in detail each of the sources and potential sources of funds MCHI relied on and concluded that, although some sources of funds were sufficiently committed to meet Commission standards, the amount of committed funds was insufficient to meet Commission standards. In particular, the MCHI Order addressed the four "management commitments" MCHI relied on, and concluded that they did not meet Commission standards.

19. MCHI does not take issue with most of the detailed conclusions in the MCHI Order concerning the inadequacy of its showing. Instead, it limits its objections to the MCHI Order's conclusions that commitments from Westinghouse and Israeli Aircraft Industries ("IAI") were insufficient to meet Commission requirements, and submits letters from those two companies in an effort to bolster their earlier statements.[16]

20. We affirm the International Bureau's conclusions concerning the Westinghouse and IAI commitments. We have also examined the explanatory letters MCHI submitted with its application for review, and conclude that they do not provide sufficient additional evidence that MCHI is financially qualified. The Westinghouse letter indicates that Westinghouse is considering increasing its equity interest in MCHI to 30% or more, and that the proceeds of this investment would be available to fund an unspecified portion of MCHI's costs.[17] It also indicates, however, that the transaction is contingent on "completion of final negotiations of mutually acceptable terms and conditions." Our rules require more. Specifically, our rules require that applicants not relying on their own assets must submit evidence of "fully negotiated" debt or equity commitments; these commitments cannot be "contingent on further performance by either party, such as marketing of satellite capacity or raising additional financing . . . ."[18] The IAI letter indicates that IAI now has a 10% equity share in MCHI, and an option to acquire additional shares, and that IAI does not "believe that IAI's commitment to the [MCHI] Project falls short of other industrial participants supporting competitive Applicants . . . ." This information does not warrant reversing the MCHI Order, since it fails to remedy the fundamental flaw in the IAI commitment -- it does not evidence a concrete commitment of IAI's current assets and operating income, in an amount of approximately $500 million (or in any substantial lesser amount).[19]

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[16] MCHI also argues that the LQP Order considered sufficient what amounted to only a "partial and contingent" commitment, and that the same standard should be applied to MCHI. We address MCHI's concerns regarding LQP's financial showing below, where we conclude that Loral's showing was neither partial nor contingent.

[17] Letter to the Secretary, FCC, from Milton F. Borkowski, Vice President and General Manager, Westinghouse Electric Corporation, Electronic Systems Group, C^{3}I and Marine Divisions, dated March 1, 1995.

[18] See 47 C.F.R. § 25.140(c),(d)(1-2).

[19] See Orion Satellite Corp., 5 F.C.C. Rcd. 4937, 4941 (1990).

21. MCHI also argues that the Telecommunications Act of 1996[20] supports grant of its application. Section 257 of the Act requires the Commission to examine market entry barriers for small businesses on a periodic basis and report to the Congress any regulations to eliminate barriers "that can be prescribed consistent with the public interest, convenience, and necessity."[21] The Act also notes national policies favoring "diversity of media voices, vigorous economic competition, technological advancement, and promotion of the public interest, convenience and necessity."[22] MCHI argues that this Congressional statement of policy requires grant of its application, since the Big LEO financial standard, as applied, is hostile to small business. We do not construe these provisions to require any action in this particular case. Our financial rules for the Big LEO service were crafted with the fact firmly in mind that some entities, including small businesses, might require additional time to develop financing. We specifically provided additional time for those entities to develop their financial plans. Neither Congress nor the Commission can alter the marketplace realities that Big LEO systems are highly capital intensive and that companies without adequate financing are unlikely to complete the steps necessary to provide Big LEO mobile satellite service to the public. Nor does the Act command us to ignore these realities. In addition, the MCHI Order was based on our Big LEO financial standard which is set forth in the Big LEO service rules we recently reaffirmed. Even if the 1996 Act required us to revise those rules in the future, the order under review would still be a correct application of those rules in MCHI's case. We conclude that MCHI is not financially qualified under currently applicable rules and thus, we affirm the Bureau's decision.

3. LQP

22. MCHI argues that LQP is financially unqualified, since the management commitment it is relying on from its parent corporation, Loral Corporation, was equivocal. In particular, MCHI points to Loral's statement, in a letter submitted with its November 16 amendment, that Loral is "prepared to expend the necessary funds, or take all reasonable steps to cause Loral to raise and expend the necessary funds" and observes that the use of the disjunctive in the letter renders Loral's commitment inadequate. In particular, MCHI argues that no Loral funds are truly committed by this phrasing, and that Loral is simply, like MCHI's shareholders have done for MCHI, supporting LQP by seeking to facilitate debt and equity placements to third parties. MCHI also argues that statements by Loral in filings with the Securities and Exchange Commission clearly indicate the contingent nature of Loral's commitment.

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[20] P.L. 104-104, § 257, 110 Stat. 56 (1996).

[21] 1996 Act, § 257(c)(1).

[22] 1996 Act, § 257(b).

23. With respect to the LQP commitment letter, we conclude that, taken in context, the letter is sufficient to establish that LQP is financially qualified. In the Big LEO Order, we stated:

> Applicants relying on internal financing need not set aside specific funds for their systems. Rather, as in the domestic fixed-satellite service, we require only a demonstration of current assets or operating income sufficient to cover system costs. The availability of internal funds sufficient to cover a system's costs provides adequate assurance at the time the Commission acts on the application that the system can be built and launched. Current assets . . . provide a general measure of a company's ability to finance the project itself or to raise funds from lenders and equity investors on the basis of its ongoing operations. Highly capitalized companies possess more collateral and, thus, are in a better position to borrow money than thinly-capitalized companies.[23]

LQP argues that the use of the disjunctive in its letter was meant to track the disjunctive form of the Commission's statements, and was not intended to condition or limit Loral's commitment in any fashion. This explanation is entirely credible, and LQP's submission of a further letter from Loral, dated December 29, 1994, as well as the fact that Loral holds a majority interest in LQP, provide sufficient indicia of committed funds under our rules.

24. With respect to Loral's statements in SEC filings, we have reviewed the statements and conclude that they are not inconsistent with a finding that Loral is financially qualified. As we have indicated in other cases, statements made in risk factor analyses in SEC filings are of limited relevance to FCC standards for financial qualifications, since those statements are designed to address different regulatory and legal concerns.[24] In particular, MCHI points to language in a SEC 10-K submission indicating that Globalstar intends to finance its system costs through sales of additional equity, advance payments from service providers, and debt financing. The 10-K submission also indicates that Loral has a total capital commitment of $107 million, and that it expects to reduce its equity share to approximately 25% through sales of Globalstar equity. Globalstar's SEC S-1 Registration Statement also includes the following precatory language:

> [a]lthough Globalstar believes that it will be able to obtain the additional financing it requires, there can be no assurance that the capital required to complete the Globalstar System will be available from the public or private capital markets or from its existing partners on favorable terms or on a timely basis, if at all. A substantial shortfall in meeting its capital needs would

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[23] Big LEO Order at ¶ 31 (emphasis added).

[24] MMM Holdings, Inc., 4 F.C.C. Rcd. 8243, 8250-51 n.15 (1989).

prevent completion of the Globalstar System.

MCHI argues that these statements conclusively demonstrate that Loral's commitment is unacceptably contingent. We view these statements as an attempt to assess candidly the normal business risks inherent in Big LEO systems -- systems that by their nature are inherently capital intensive. The FCC financial standard does not require an applicant to vouchsafe such risks for all future circumstances, but instead to demonstrate that it has the current capacity to meet the system's requirements.[25] It is entirely appropriate for risks that may arise from future events to be disclosed in materials designed to inform investors. It would thus be contrary to the public interest to penalize LQP for a candid assessment of business risks in its SEC filings.

25. Furthermore, while MCHI may be correct that the financing mechanisms LQP proposes to utilize once it begins to construct its system --debt and equity placements -- are similar to those MCHI proposes, there are substantial and material differences between the LQP and MCHI financing plans. The most fundamental difference is that a single majority shareholder of LQP, with assets adequate to meet estimated system costs, has unambiguously committed funds necessary to meet fully the estimated system cost. MCHI cannot make a similar claim. In fact, it has not even demonstrated that any single shareholder has made the lesser commitment of assets in proportion to its equity share in the company.

B. Constellation's Ownership Changes.

26. When Constellation filed its application on June 3, 1991, it reported that Microsat Launch Systems, Inc. owned 29% of its voting stock, and Defense Systems, Inc. ("DSI") owned 10.1%. Pacific Communication Science, Inc. ("PCSI") owned a voting interest of less than ten percent, and a number of additional individuals and corporations held Constellation stock. In connection with its November 16, 1994 amendment, Constellation reported that three of its larger investors had been acquired by other entities. First, CTA, Inc., which was not a party to Constellation's original application, acquired DSI in June 1992. Second, Cirrus Logic, Inc., acquired PCSI in March 1993. Third, CTA purchased Microsat in September 1993. Constellation also reported that in March 1993 and October 1994, respectively, E-Systems, Inc., and Bell Atlantic acquired new Constellation voting stock representing 31% and 8%, respectively, of Constellation's currently outstanding voting stock.

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[25] When it adopted the financial standard for Big LEO systems, the Commission specifically indicated that "applicants relying on internal financing need not set aside specific funds for their systems." Big LEO Order at ¶ 31. We also indicated that applicants who submit a balance sheet demonstrating sufficient "internal" assets are not required to make "an unalterable commitment that the funds will be expended regardless of market conditions." Big LEO Order at ¶ 35.

27. Under Section 25.116 of the Commission's Rules, an application is considered newly filed if, after a cut-off date for the filing of applications, it is amended by a major amendment. Major amendments include those which specify a substantial change in beneficial ownership or control (de jure or de facto) of an applicant. However, the rules explicitly exempt from treatment as a newly filed application an amendment which "reflects only a change in ownership or control found by the Commission to be in the public interest and, for which a requested exemption from a 'cut-off' date is granted."[26] A number of parties raised concerns that Constellation's ownership changes violated this rule, and did not warrant a waiver.

28. The Constellation Order concluded that, in the event a major change in Constellation's ownership had occurred, a waiver of the cut-off rule was warranted. LQP challenges this ruling. It argues that the Constellation Order improperly expands Commission precedent in a manner that will encourage speculative applications. It also argues that the International Bureau "glossed over" Constellation's violations of Commission rules requiring timely reporting of the ownership changes.

29. We affirm the conclusion that a waiver of Section 25.116 is warranted in this case under Commission precedents. In Air Signal International, Inc., the Commission addressed a request for an exemption from a cut-off rule virtually identical to the satellite cut-off rule in Section 25.116. The exemption, which was granted, involved a major change in ownership occasioned by the acquisition of an applicant's shareholder as an incidental part of a larger corporate acquisition. We concluded that such acquisitions are clearly for "an independent business purpose, and not primarily for acquiring pending applications."[27] The staff has also found major ownership changes in the public interest under the satellite cut-off rule, even though not incidental to acquisition of an applicant's shareholder or shareholders and clearly directed at acquiring an interest in an application.[28] Although not directly at issue in that case, we indicated in Air Signal that such changes may be permissible if they are the types of "ownership or control changes which tend to effect changes in business or financial factors overlaying the technical proposal."[29]

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[26] 47 C.F.R. § 25.116(c)(2).

[27] Air Signal International, Inc., 81 F.C.C.2d 472, 475 (1980) (waiving the cut-off rule in Part 22 of the Commission's Rules where Xerox had acquired Air Signal's parent, WUI, Inc.).

[28] See Satellite CD Radio, Inc., 9 F.C.C. Rcd. 2569 (Comm. Carr. Bur. 1994).

[29] Air Signal, 81 F.C.C.2d at 474 (citations omitted).

30. As the Constellation Order indicated, CTA's acquisitions of DSI and Microsat, and Cirrus Logic's acquisition of PCSI, involved acquisition of Constellation shareholders with substantial lines of business apart from Constellation's proposed business. These acquisitions were clearly for "an independent business purpose, and not primarily for acquiring pending applications," and thus fit squarely within the precedent established in Air Signal. As for the E-Systems and Bell Atlantic acquisitions, we conclude that they were intended to serve a legitimate business purpose and are consistent with the public interest. Specifically, the changes were intended to aid in securing financial backing sufficient to facilitate prompt implementation of a competitive service. These purposes are particularly relevant with respect to Big LEO satellite systems, which typically have capital requirements measured in the billions of dollars.

31. Constellation's ownership changes are also the types of changes "overlaying the technical proposal" that involve minimal disruption of the licensing process. Although LQP argues that Constellation altered its technical proposal roughly contemporaneously with Bell Atlantic and E-Systems becoming shareholders, LQP offers only speculative arguments that the ownership changes resulted in changes in Constellation's technical proposal. A review of the record indicates that the changes in Constellation's technical proposal were an outgrowth of efforts to accommodate multiple satellite systems in the Big LEO frequency bands, and to conform with Commission technical requirements. Each of the applicants made such changes, in varying degrees, as part of the negotiated rule making and rule making processes, a fact which indicates that these changes were not significantly related to ownership issues, but instead to the regulatory process. In fact, in the Big LEO Order, we specifically ordered applicants to amend their applications to conform their technical proposals to Commission frequency sharing requirements. Furthermore, the cost of Constellation's system increased due in significant part to the technical changes it was required to undertake in order to share radio frequency spectrum with multiple systems. Therefore, it would be inequitable now to limit Constellation's flexibility to respond to these changes by seeking additional investors.

32. This conclusion is unchanged if we also consider the ownership changes Constellation proposed subsequent to the Constellation Order, in its request for declaratory ruling. Specifically, Constellation proposed to convert its outstanding convertible debt to equity interests. The effect of this change is to decrease the relative shares held by some investors and increase the relative shares held by others, including E-Systems, Bell Atlantic, and Space Vest. These three companies would together own 72.6% of Constellation. Constellation indicates, however, that its management and business plans remain unchanged. While these changes would clearly have the cumulative effect of changing more than 50% of Constellation's ownership, they are the types of changes that we have found permissible under Section 25.116 of the Rules. Therefore, we will deny LQP's application for review of the International Bureau's ruling on this matter.

33. LQP also contends that Constellation's ownership changes constitute trafficking in applications, since its original shareholders will benefit from the increased value of their stock attributable to Constellation's sounder financial position. For this reason, LQP argues, the Bureau incorrectly concluded there was no evidence of trafficking. Constellation's core management group has remained essentially unchanged, and there is no evidence whatsoever that Constellation's original shareholders have sought to benefit disproportionately from the sale of interests in the applicant. Furthermore, approval of Constellation's revised ownership structure does not provide the type of incentive that might lead to speculative filings in the satellite services. In this regard, we note that strict financial qualification requirements, construction milestones, and other due diligence requirements lessen our concern that the satellite licensing process may attract applicants filing for purely speculative purposes. This is particularly true in the Big LEO service, since we have adopted a rule prohibiting the sale of a bare license for a profit.[30] Accordingly, we conclude that a waiver of the satellite cut-off rule is warranted. With respect to LQP's concerns about Constellation's alleged reporting violations, it is not clear from the record that such a violation occurred for anything other than a very short period of time. In any event, we also affirm the Bureau's conclusion that whatever technical violations of Section 1.65 of our Rules may have occurred, those violations do not warrant Constellation's disqualification.

C. Miscellaneous Issues

34. In their filings, AMSC and MCHI raise issues concerning the "two-tiered" processing mechanism adopted for the Big LEOs. We have separately addressed these issues in the Big LEO Rules Reconsideration Order. AMSC's petitions for reconsideration and MCHI's request for clarification are, therefore, moot. Motorola seeks reconsideration with respect to the TRW and LQP Orders, asking that we impose additional conditions on those licenses. One condition concerns a potential reduction in the bandwidth assigned TRW and LQP in the event only one of the two systems becomes operational. This proposal was specifically addressed and rejected in the Big LEO Order.[31] The other request is that we modify TRW's and LQP's licenses to include satellite system construction milestones. We fully intend to impose construction milestones at such time as we modify each of the Big LEO authorizations, including Motorola's, to include authority to launch and operate satellites with specific feeder link frequencies. We will, therefore, address in the near future the issue of milestones in connection with necessary further licensing orders for Big LEO feeder links.[32]

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[30] 47 C.F.R. § 25.143(g); Big LEO Order at ¶ 203.

[31] Big LEO Order at ¶ 55.

[32] On our own motion we are modifying Motorola's license to correct an error in the frequencies specified in the Motorola Order for Motorola's inter-satellite links. The modified license reflects the frequencies requested in Motorola's application. See ¶ 36, infra. We are also correcting a typographical error in

V. ORDERING CLAUSES

35. Accordingly, IT IS ORDERED, that the "Consolidated Application for Review and Request for Clarification" filed by Mobile Communications Holdings, Inc., on March 2, 1995, the "Petition for Reconsideration" filed by Constellation Communications, Inc., on March 2, 1995, the three pleadings entitled "Petition for Reconsideration" filed by AMSC Subsidiary Corporation on March 2, 1995, the "Consolidated Petition for Clarification and/or Reconsideration" filed by Motorola Satellite Communications, Inc., on March 2, 1995, the "Application for Review" filed by Loral/Qualcomm Partnership on March 2, 1995, and the "Application for Review" filed by Loral/Qualcomm Partnership on February 26, 1996, ARE DENIED or DISMISSED as indicated in this Order.

36. IT IS FURTHER ORDERED, that the inter-satellite link frequencies specified in the Order and Authorization issued to Motorola Satellite Communications, 10 F.C.C. Rcd. 2268, ¶ 26 (1995), ARE MODIFIED, to specify 23.18-23.38 GHz.

37. IT IS FURTHER ORDERED, that the number of satellites specified in the Order and Authorization issued to Loral/Qualcomm Partnership, L.P., 10 F.C.C. Rcd. 2333, ¶ 25 (1995), as corrected by Erratum, 10 F.C.C. Rcd. 3926 (1995), IS MODIFIED, to specify 48 low-Earth orbiting space stations and eight in-orbit spares.

FEDERAL COMMUNICATIONS COMMISSION

William F. Caton
Acting Secretary

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the number of satellites authorized LQP. See ¶ 37, infra.