

BEFORE THE

DUPLICATE

Federal Communications Commission RECEIVED

WASHINGTON, D.C. 20554

JUN 11 1997

JUN 17 1997

Federal Communications Commission
Office of Secretary

In the Matter of)	
)	
Application of Constellation Communications, Inc.)	File Nos. 17-DSS-P-91(48)
For Authority to Construct, Launch and Operate)	CSS-91-013
a Low Earth Orbit Satellite System in the)	10-SAT-AMEND-95
1610-1626.5/2483.5-2500 MHZ Bands)	11-SAT-LA-95
)	159-SAT-AMEND-96

**COMMENTS OF TRW INC. ON
MOTION FOR EXPEDITED ACTION**

TRW Inc. ("TRW"),¹ by its attorneys, hereby comments on the Motion for Expedited Action filed by Constellation Communications, Inc. ("Constellation") on May 27, 1997 in the above-captioned proceeding (the "Constellation Motion").

TRW favors expeditious Commission action in all matters, and therefore has no objection to such action with respect to Constellation's pending application for a license in the MSS Above 1 GHz. For the same reason, TRW has no objection to Constellation's request that its application be processed independently of the MSS Above 1 GHz application of Mobile Communications

¹ TRW is authorized to operate a satellite system in the Mobile Satellite Service Above 1 GHz (the "MSS Above 1 GHz") in the same service link bands sought by Constellation for its proposed system. See TRW Inc., 10 FCC Rcd 2263, erratum, 10 FCC Rcd 3924 (1995), recon./review denied sub nom. Constellation Communications, Inc., FCC 96-279 (released June 27, 1996). See also TRW Inc., DA 96-1923 (Int'l Bur., released November 19, 1996).

Holdings, Inc. ("MCHI").²

TRW must, however, take issue with Constellation's assertion that it has "demonstrated beyond dispute its financial qualifications" to hold an MSS Above 1 GHz license in the period since the International Bureau found it financially unqualified to do so in January 1995.³ In fact, as TRW has shown in detail,⁴ Constellation's most recent attempt to satisfy the MSS Above 1 GHz financial qualifications standard was woefully inadequate; Constellation has failed to provide the Commission with credible evidence that it has secured even one irrevocable financial commitment for its proposed satellite system from any source. The vague claims that Constellation now makes regarding alleged new agreements involving service providers and subcontractors come far too late to be considered as part of its financial showing. Even if they could legitimately be considered for that purpose, Constellation's claims are ineffectual because Constellation has failed to submit: (1) evidence that any such agreements actually exist; (2) the sums that would be available to Constellation pursuant those agreements; (3) the terms of the

² See Constellation Motion at 4-5.

³ Id. at 2.

⁴ See Petition to Deny of TRW Inc. (filed December 27, 1996) ("TRW Petition"); Reply to Consolidated Opposition (filed February 11, 1997) ("TRW Reply").

agreements;⁵ and (3) a demonstration that the agreements are irrevocable in nature.⁶

Constellation's argument that "[t]he remaining obstacle confronting Constellation is lack of an FCC license"⁷ is a blatant attempt to bootstrap itself into the authorization it desires. As TRW has previously explained, the Communications Act of 1934, as amended, and the FCC's rules require that Constellation demonstrate its qualifications in order to receive a license; they do not permit Constellation to obtain its qualifications by means of a license.⁸ The grant of a license to Constellation would add needlessly to the cost of MSS Above 1 GHz service for the user public and delay the provision of that service by forcing existing system licensees to engage in costly redesigns of their respective systems for the sake of a system that, in all likelihood, will never be built.

As Constellation has proven itself unable to satisfy the MSS Above 1 GHz financial standard, there is clearly no merit to its statement that "there are no regulatory constraints preventing grant of its application."⁹ Even assuming, arguendo, that the Commission were able to "accommodate the two outstanding applications [i.e., those of Constellation and MCHI] with the

⁵ See 47 C.F.R. § 25.140(d)(2) (requiring that an applicant relying on external financing supply, among other things, the terms of any fully negotiated loan or form of credit, sale or other placement of any equity or other form of ownership interest, or grant or other external funding commitment to be used to finance its proposed system).

⁶ See 47 C.F.R. § 25.140(d)(2)(iv).

⁷ Constellation Motion at 3.

⁸ TRW Reply at 17.

⁹ Constellation Motion at 2.

two remaining MSS Above 1 GHz licenses,"¹⁰ the Commission still cannot waive its financial standard with respect to Constellation's application — if that is what Constellation is suggesting.¹¹

In its decision establishing rules for the MSS Above 1 GHz, the Commission adopted a strict financial qualifications standard for a number of important reasons, including the following: all pending applicants could not be accommodated in the available service spectrum;¹² there appeared to be no room for future entry into the service;¹³ there was little or no spectrum available for expansion of existing systems;¹⁴ arranging for financing of the systems would be extremely difficult even after grant of a construction permit;¹⁵ and "adopting a lesser financial standard . . . could tie up spectrum for years . . . contrary to the public interest."¹⁶ Even if the Commission could now accommodate both pending MSS Above 1 GHz applicants in the 1.6/2.4 GHz bands, its concerns remain valid regarding expansion of existing systems, future entry, the

¹⁰ Id.

¹¹ As TRW has stated repeatedly, a waiver can be justified only when grant would serve the public interest and not undermine the policy of the rule for which waiver is being sought. See WAIT Radio v. FCC, 418 F.2d 1153, 1157 (D.C. Cir. 1969). See TRW Petition at 6 n.12; TRW Reply at 17 n. 58. Here, neither test is satisfied.

¹² See Amendment of the Commission's Rules and Policies Pertaining to a Mobile Satellite Service in the 1610-1626.5/2483.5-2500 MHz Frequency Bands, 9 FCC Rcd 5936, 5949 (1994) ("MSS Above 1 GHz Order").

¹³ Id. at 5950.

¹⁴ Id. at 5949.

¹⁵ Id. at 5950.

¹⁶ Id.

difficulty of arranging system financing and the danger of spectrum warehousing. Thus, the Commission cannot properly waive the strict MSS Above 1 GHz financial standard with respect to Constellation's system application.¹⁷

Similarly, there is no merit to Constellation's suggestion that the recent allocation of MSS spectrum in the 2 GHz band would justify grant of its application. The extremely high cost of MSS Above 1 GHz systems will continue to make system financing difficult regardless of how that allocation is used, and will become only more onerous if the Commission implements its proposal to require MSS licensees to pay the estimated \$1 billion required to relocate existing users from the 2 GHz band. Furthermore, it remains unclear at this time how many applicants can be accommodated in the 2 GHz band, and whether any 2 GHz spectrum will be made available to MSS Above 1 GHz licensees for system expansion. It also remains unclear how future applicants to the service will wish to make use of the band, and what their spectrum needs will be. The Commission can ill afford to exempt Constellation from the MSS Above 1 GHz financial qualifications standard in the face of these problems and uncertainties.¹⁸

¹⁷ See TRW Petition at 6; TRW Reply at 14-18.

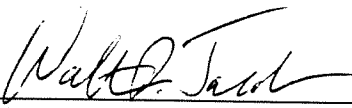
¹⁸ The International Bureau's recent decision granting Teledesic Corporation conditional authority to construct, launch and operate a nongeostationary satellite system does not support the grant of Constellation's application or the waiver of the MSS Above 1 GHz financial standard with respect to that application. See Teledesic Corporation, DA 97-527, slip op. (released March 14, 1997) ("Teledesic"). In Teledesic, the Bureau conditionally waived its yet-to-be adopted financial qualifications standard for the 28 GHz band with respect to Teledesic on grounds that "allowing Teledesic an opportunity to implement its business plans will not at this time impede a qualified applicant from proceeding with its system."

(continued...)

For the foregoing reasons, TRW urges the Commission to process Constellation's MSS Above 1 GHz application expeditiously, and to deny that application with prejudice.

Respectfully submitted,

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¹⁸(...continued)

Id. at 7 (¶ 13). The Bureau's decision is problematic for a variety of reasons, as set forth in L/Q Licensee, Inc.'s pending Petition for Reconsideration (filed April 14, 1997). Even if such were not the case, however, Constellation's situation differs materially in that grant of its application would impose uncertainty and substantial costs on existing MSS Above 1 GHz licensees, quite possibly resulting in delays in the provision of service to the public. Such grant would also compromise system expansion by those licensees and leave the possibility of future entry by truly qualified applicants in doubt.

CERTIFICATE OF SERVICE

I, Bernice Duckett, certify that a copy of the foregoing "Comments of TRW Inc. on Motion for Expedited Action" was mailed, first-class postage prepaid, this 11th day of June, 1997 to each of the following:

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