

BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554

In re Application of )

CONSTELLATION COMMUNICATIONS, INC. )

For Authority to Construct, Launch and Operate a )  
Low Earth Orbit Satellite System in the 1610 - )  
1626.5 MHz/2483.5 - 2500 MHz Band )

To: Chief, International Bureau

) File Nos. 17-DSS-P-91(48)

) CSS-91-013

) 9-SAT-LA-95

) 10-SAT-AMEND-95

) MAR 6 1995

Satellite and Radio Communication Division  
Satellite Policy Branch

PETITION FOR RECONSIDERATION

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Dated: March 2, 1995

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SUMMARY

In the accompanying Petition for Reconsideration, Constellation Communications, Inc. ("Constellation") asks the Chief, International Bureau to reconsider his Order, DA 95-129, released January 31, 1995, which deferred Constellation's Big LEO Application, subject to Constellation "submitting a showing demonstrating its financial qualifications no later than January 31, 1996". Upon reconsideration, the Bureau is urged to find that Constellation is financially qualified at the present time and to grant its Application.

Deferral of Constellation's Application will place it at a severe competitive disadvantage vis-a-vis other Big LEO applications that were granted on January 31, 1995. Hence, Constellation maintains that the subject Order is an appealable "final" action within the meaning of §1.106(a)(1), because, under the prevailing Big LEO competitive situation, deferral of Constellation's Application makes its future prospects for obtaining a license very uncertain.

The Order correctly concluded that Bell Atlantic Corporation qualifies as a "parent" for purposes of demonstrating Constellation's financial qualifications under §25.140(d)(1) of the Rules. However, it erroneously held that Bell Atlantic's "management commitment" letter was insufficient to demonstrate Constellation's financial qualifications, saying that while there is no "magic language" to demonstrate financial qualifications, the management commitment contained in the Bell Atlantic letter was "inadequate under the standards embodied in our rules and the 1988 National Exchange case". Constellation submits that this is reversible error because, at the time of the Order, there were no Commission pronouncements which provided adequate notice -- consistent with administrative due process -- of the Commission's management commitment "standards" for satellite applications. Thus, Constellation urges that it is a gross

denial of its administrative due process rights for it to be faulted for having selected -- on its own -- the National Exchange letter as a useful "model" only to have the Order transform that "model" into "standards" which, according to the Order, Bell Atlantic's letter did not meet. Put differently, Constellation submits that the Order erroneously converted the National Exchange case into a substantive "rule" without following the mandatory publication and notice-and-comment rulemaking requirements of Sections 552 and 553 of the Administrative Procedure Act ("APA"), and then incorrectly applied that "standard" to Constellation. While Constellation had actual notice of the text of the National Exchange letter, it did not have any notice that the Commission would make the precise language of that letter into a talismanic standard and penalize Constellation for any departures from its wording.

Constellation urges that the Order's APA violations are compounded by the fact that, unlike two other January 31, 1995 Orders, which discuss explanatory letters and declarations filed by the applicants in response to petitions to deny, Constellation's Order makes no reference to, and does not discuss at all, the Bell Atlantic Declaration filed by Constellation. This omission suggests that the Bureau did not consider this important Declaration when parsing Bell Atlantic's original management commitment letter. Assuming that Constellation is correct, this failure is not only reversible error, but it also suggests that if the Bureau had considered the Declaration, it would have resolved its concerns about Bell Atlantic's management commitment in Constellation's favor and would have found Constellation to be financially qualified. Constellation urges the Bureau to reconsider its action, to conclude that Constellation is financially qualified at the present time, and to grant its Application.

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For Authority to Construct, Launch and Operate a	)	9-SAT-LA-95
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1626.5 MHz/2483.5 - 2500 MHz Band	)	

To: Chief, International Bureau

**PETITION FOR RECONSIDERATION**

Constellation Communications, Inc. ("Constellation"), by its attorneys, pursuant to §1.106 of the Commission's Rules, hereby asks the Chief, International Bureau to reconsider his Order, DA 95-129, released January 31, 1995, which deferred Constellation's above-captioned Big LEO Application, subject to Constellation "submitting a showing demonstrating its financial qualifications no later than January 31, 1996".<sup>1</sup> In this Petition for Reconsideration ("Petition"), Constellation will show that the Order erred in concluding (at ¶26) that it "cannot find at this time that Constellation is financially qualified to construct, launch, and operate the Big LEO [Mobile Satellite Services ("MSS")] system it proposes". Reconsideration and reversal of the Order is

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<sup>1</sup> This Petition is timely filed under §1.106(f) of the Commission's Rules within 30 days after release of the Order being appealed. Constellation is "adversely affected" by the Order under §1.106(b)(1) of the Rules, because deferral of its Application will place it at a severe competitive disadvantage vis-a-vis the applications of Loral/Qualcomm Partnership, L.P. ("LQP"), Motorola Satellite Communications, Inc. ("Motorola"), and TRW, Inc. ("TRW"), which were granted by other January 31, 1995 Orders by the Chief, International Bureau. For the same reason, Constellation maintains that the subject Order is an appealable "final" action within the meaning of §1.106(a)(1), because, under the prevailing Big LEO competitive situation, deferral of Constellation's Application makes its future prospects for obtaining a license very uncertain.

appropriate under §1.106(d) of the Rules because the Order erroneously applied the Commission's evolving "management commitment" financial qualifications policy and made a mistaken finding as to a very material question of fact, namely whether Constellation is currently financially qualified to be a Big LEO licensee. Upon reconsideration, the Bureau is urged to find that Constellation is financially qualified at the present time and to grant its Application.

**I. Constellation Is Financially Qualified To Be A Big LEO Licensee At The Present Time**

Constellation's Application, as amended, has been opposed by LQP, Motorola, TRW, Mobile Communications Holdings, Inc. ("MCHI"), and AMSC Subsidiary Corporation ("AMSC") on ownership, technical, and financial grounds. The Order (at ¶¶18-22) resolved the ownership questions in Constellation's favor, and also concluded (at ¶¶23-25) that Motorola's feeder link technical objections were without merit. That leaves its opponents' challenges to Constellation's financial qualifications as the only bar to grant, rather than deferral, of Constellation's Application.<sup>2</sup>

In Constellation's January 3, 1995 "Opposition" to its Big LEO competitors' financial objections, Constellation asserted -- and reiterates now -- that it adequately demonstrated its financial qualifications under §25.140(d)(1) of the Rules in its November 16, 1994 Amendment to its pending Application. It did so in the same manner as

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<sup>2</sup> The Order (at ¶26) states that "we need not address Constellation's technical qualifications and we express no opinion on that issue". However, Constellation's opponents did not raise any technical issues apart from feeder links. Thus, the Commission should conclude, upon reconsideration, that its Application, as already amended, is technically qualified to be granted.

LQP, Motorola and TRW -- who were found to be financially qualified in the Bureau's other January 31, 1995 Orders -- i.e., by providing a balance sheet and a management commitment from its parents, Bell Atlantic Corporation ("Bell Atlantic") and E-Systems, Inc. ("E-Systems").

In the Order, the Bureau correctly concluded that Bell Atlantic and E-Systems qualify as "parents" for purposes of demonstrating Constellation's financial qualifications under §25.140(d)(1) of the Rules. However, as Constellation will now show, the Order erroneously held (at ¶¶13-15) that Bell Atlantic's "management commitment" letter was insufficient to demonstrate Constellation's financial qualifications.

**A. The Commission's Rules and Case Precedent Do Not Clearly Define a "Management Commitment"**

In the Report and Order in CC Docket No. 92-166, 9 FCC Rcd 5936 (1994) ("Report and Order"), the Commission established financial qualification standards for the 1.6/2.4 GHz MSS. Specifically, the Commission required applicants to meet the financial qualifications standard established for domestic satellite applicants in §25.140(d) of the Rules.<sup>3</sup> Under this Rule, an applicant must demonstrate current financial ability to meet the costs of its proposed system. If, as in Constellation's case, an entity is relying upon the financial backing of its corporate parent(s), §25.140(d)(1) requires the applicant's parent(s) to demonstrate current assets and operating income in excess of the financial resources required to construct, launch and operate for one year the proposed

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<sup>3</sup> 47 CFR §25.140(d). This Rule was originally adopted in 1985 in the Report and Order in CC Docket 85-135, FCC 85-395, released August 29, 1985.

satellite system. There also must be a general "management commitment" from the parent(s) to support the project. The Commission stated in the Report and Order (at ¶13) that it would "not require specific assets to be earmarked for the proposed satellite system nor will [it] generally require an explicit management commitment that funds will be available for the proposed system." Rather, it merely required a general management commitment. Id.

Hence, in accordance with §25.140(d)(1), Constellation determined that it would demonstrate its financial qualifications by relying on balance sheets and management commitment letters supplied by E-Systems and Bell Atlantic as its parents. The original Bell Atlantic and E-Systems "management commitment" letters (attached hereto as Exhibit 1 and 2, respectively) that were included in Constellation's November 16, 1994 Amendment were explicitly written to satisfy the requirements of §25.140(d)(1) and were modeled after a letter cited by the Commission in National Exchange Satellite, Inc., 3 FCC Rcd 6992 n.5 (1988), as demonstrating a "management commitment" by a parent (Opp. at 9-10). These important background facts were confirmed in the Bell Atlantic and E-Systems Declarations appearing in Exhibit A of Constellation's Opposition, which are attached hereto as Exhibit 3 (Declaration of Thomas R. McKeough, Vice President of Mergers and Acquisitions and Associate General Counsel, Bell Atlantic Corporation) and Exhibit 4 (Declaration of Peter A. Marino, Senior Vice President, E-Systems Corporation).

Nevertheless, Constellation recognized and emphasized in its Opposition (at 10-12) that there never has been any clear statement by the Commission as to precisely what wording must be in a "management commitment" letter in the context of satellite



applications. In searching for a useful model for its Bell Atlantic and E-Systems commitment letters, Constellation located the letter approved by the Commission in National Exchange, supra. There, Burlington Northern, Inc. ("BNI"), on behalf of domsat applicant National Exchange, Inc. ("NEX") stated: "BNI intends to provide the necessary financial support for [the NEX satellite project] subject to normal business reviews of market conditions and each project's progress to assure acceptable levels of risk and return."

In its Opposition (at 12), Constellation noted that its Bell Atlantic and E-Systems letters did not contain wording identical to BNI's, but Constellation also pointed out that the commitment letters provided by other pending LEO applicants varied and did not fully track the quoted National Exchange language, either. For instance, Motorola's letter stated that Motorola, Inc. is "fully committed to meeting the construction costs and operating expenses of [the] Iridium system,"<sup>4</sup> while LQP stated that "absent material changes in circumstances, [it] is prepared to expend the necessary funds or take all reasonable steps to cause LQP to raise and expend the necessary funds" (emphasis added).<sup>5</sup> Finally, TRW stated: "Absent a material change in circumstances, [it] is committed to expend the funds necessary to construct, launch and operate the Odyssey

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<sup>4</sup> See Letter from Carl T. Koenermann, Executive Vice President and Chief Financial Officer, Motorola, Inc. to William F. Caton, Acting Secretary, Federal Communications Commission, November 7, 1994.

<sup>5</sup> See Letter from Michael B. Targoff, Senior Vice President, Loral Corporation to the Federal Communications Commission, November 14, 1994.

system."<sup>6</sup>

Constellation maintains that all of these letters -- including Bell Atlantic's and E-Systems' -- show that there are no true "magic words" for demonstrating management commitment and that the actual wording may vary without undoing the commitment made. This view is fully supported by the fact that the Commission's January 31, 1995 Orders approved the Motorola, LQP, and TRW management commitments, despite the variations shown in the above-quoted language.

**B. The Bell Atlantic And E-Systems Letters Satisfy The Commission's Evolving Standard**

In the Order, the Commission agreed that Bell Atlantic's current assets and operating income were sufficient to demonstrate Constellation's financial qualifications. What it questioned was Bell Atlantic's "management commitment". While conceding that "there is no 'magic language' to demonstrate financial qualifications," the Order held that the management commitment contained in the Bell Atlantic letter (Exhibit 1) was "inadequate under the standards embodied in our rules and the 1988 National Exchange case". Order at ¶¶14, 16. Constellation submits that this is reversible error because, at the time of the Order, there were no Commission pronouncements which provided adequate notice -- consistent with administrative due process -- of the Commission's management commitment "standards" for satellite applications.

As Constellation has already shown above, neither the Report and Order nor

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<sup>6</sup> See Declaration of Ronald D. Sugar, Executive Vice President and Chief Financial Officer, TRW, Inc., November 9, 1994.

§25.140(d)(1) of the Rules contains any specific language which must be included or excluded from a management commitment letter for it to pass muster. Under these circumstances, Constellation urges that it is a denial of its administrative due process rights for it to be faulted for having selected -- on its own -- the National Exchange letter as a useful "model" only to have the Order (at ¶16) transform that "model" into "standards" which, according to the Order, Bell Atlantic's letter did not meet. Put differently, Constellation submits that the Order erroneously converted the National Exchange case into a substantive "rule" without following the mandatory publication and notice-and-comment rulemaking requirements of Sections 552 and 553 of the Administrative Procedure Act ("APA"), 5 U.S.C. §§552 and 553 (1982), and then incorrectly applied that "standard" to Constellation.

The Order takes great pains to compare and contrast the language of BNI's National Exchange letter with Bell Atlantic's letter and holds (at ¶13) that the Bell Atlantic letter differs from the National Exchange letter "in several material respects". Importantly, the Order (at ¶12) reproduces the language of BNI's letter, because this is the first time that the actual text of BNI's letter has ever appeared in a published Commission decision. The oft-cited footnote 5 in National Exchange, supra, does not contain the text of the letter; it merely identifies the date and author of the BNI letter. That is the essence of the Order's APA publication violation. See Kessler v. FCC, 326 F.2d 673 (D.C. Cir. 1963)(APA requires publication of all substantive rules, statements of general policy, and rules of procedure); cf. Eastern Carolinas Broadcasting Co. v. FCC, 762 F.2d 95, 101 (D.C. Cir. 1985)(where adjudication rather than notice-and-comment rulemaking is vehicle for announcing policy change, prior notice of new policy is still

required).

In addition, §0.445(e) of the Commission's Rules prohibits the Commission from relying upon or citing as precedent unpublished adjudicatory or rulemaking documents, except if the applicant has actual notice of the document. In the instant case, although the National Exchange decision was published, the important BNI letter was not. While Constellation had actual notice of the text of the BNI letter, it did not have any notice that the Commission would make the precise language of the BNI letter into a talismanic standard and penalize Constellation for any departures from its wording. But that is exactly what happened in the Order, creating the APA rulemaking violation. See Glaser v. FCC, 20 F.3d 1184, 1185 (D.C. Cir. 1994)(applying "hard look" policy to an application without prior notice-and-comment rulemaking violates §553 of APA); Telecommunications Research and Action v. FCC, 800 F.2d 1181, 1186 (D.C. Cir. 1986)(before Commission adopts substantive rule, §553 of APA requires notice-and-comment rulemaking).

Constellation urges that the Order's APA violations are compounded by the fact that, unlike the January 31, 1995 Motorola and MCHI Orders, which discuss explanatory letters and declarations filed by the applicants in response to petitions to deny, Constellation's Order makes no reference to, and does not discuss at all, the Bell Atlantic/McKeough (Exhibit 3) and E-Systems/Marino (Exhibit 4) Declarations filed by Constellation as part of its Opposition. This omission suggests that the Bureau did not consider these important Exhibits when parsing Bell Atlantic's and E-Systems' original letters. Assuming that Constellation is correct, this failure is not only reversible error under the equality of treatment requirements of Melody Music, Inc. v. FCC, 345 F.2d 730 (D.C. Cir. 1965), but it also suggests that if the Bureau had considered the two Exhibits, it

would have resolved its concerns about Bell Atlantic's management commitment in Constellation's favor and would have found Constellation to be financially qualified.

For example, and most importantly, the Order faults (at ¶13) Bell Atlantic's letter for merely pledging "to provide financial support" while the BNI letter pledged "to provide the necessary financial support" (emphasis in original), and the Order also holds (at ¶14) that "Bell Atlantic's departures from the language in the National Exchange letter indicate that Bell Atlantic's corporate approval process has not proceeded to this point". However, Constellation submits that Mr. McKeough's December 30, 1994 Declaration (Exhibit 3) lays all of these concerns to rest. Specifically, Mr. McKeough states (at ¶1)(emphasis added):

Bell Atlantic . . . provided financial statements showing assets well in excess of the required construction, launch and first year operation costs for the Constellation LEO system. By [Mr. Oliver's November 16, 1994] 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. 47 C.F.R. §25.140(d)(1).

Mr. McKeough also states (at ¶3) that the language in Mr. Oliver's letter concerning "negotiation of satisfactory agreements and . . . if applicable, approval by the Board of Directors" was included "in recognition of Bell Atlantic's corporate approval requirements". The quoted costs/necessary financial support language clearly reveals Bell Atlantic's awareness of the link between Constellation's costs and Bell Atlantic's intent to "provide the necessary financial support" therefor. And the quoted negotiation/approval language reflects customary approval procedures, not any lack of commitment by Bell Atlantic to the Constellation MSS. These procedures ensure that the company operates in a manner consistent with the fiduciary responsibilities Bell Atlantic has to its share-

holders, and such procedures are routinely used by most major U.S. corporations. Indeed, LQP, Motorola and TRW, like Constellation, will need future corporate approvals for additional specific investments.

In 1985, when the Commission first proposed to codify financial qualification for domestic satellite applicants, it proposed that "proof must . . . be submitted, that such funds are firmly committed to provide all capital expenditures with respect to the proposed domestic satellite project."<sup>7</sup> The Commission indicated that an example of such commitment would be a Board of Directors' resolution.<sup>8</sup> However, the Commission backed away from this requirement in adopting its Rules and indicated that "a general management commitment to the program would be sufficient."<sup>9</sup> This policy determination clearly indicates that Board of Directors' approval is not a prerequisite for a management commitment. Similarly, the possibility of later Board of Directors' approvals should not invalidate Bell Atlantic's "management commitment" letter.

In sum, the only real difference between the Bell Atlantic letter and the letters submitted by Loral, Motorola and TRW is that Bell Atlantic has been more open about its actual internal corporate approval process. For example, Loral has not committed to expend the entire \$1.6 billion necessary to fund the Globalstar program. It merely

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<sup>7</sup> See Notice of Proposed Rulemaking in CC Docket No. 85-135, 101 FCC 2d 223, 231-234 (1985).

<sup>8</sup> Id. at n.51.

<sup>9</sup> See Report and Order in CC Docket No. 85-135, supra n.2, at ¶¶10-15. As stated previously, the Commission indicated that it could only obtain a general management commitment since a "management commitment" can be withdrawn as easily as it is given. Id. at ¶13.


committed to "expend the funds or take all reasonable steps to cause LQP to raise and expend the necessary funds." Certainly, this commitment contains contingencies and requires future actions and approvals. Indeed, according to press reports, Globalstar's recently completed Initial Public Offering raised only \$200 million. This was \$82 million less than Globalstar was seeking (see Mobile Satellite News, February 23, 1995 at 1). It is extremely difficult to believe that Loral would provide Globalstar with \$82 million to cover this shortfall without further corporate approvals. Likewise, TRW has indicated that it will provide only 15% of the total funding required for the Odessey program (see Wall Street Journal, November 15, 1994 at A-2 and TRW, Inc. and TeleGlobe press releases, November 15, 1994). Again, it is difficult to believe that if TRW needs to provide an additional \$100 million to the Odessey program, this could be done without further corporate approvals. These applicants, like Bell Atlantic, have provided the necessary commitment to the proposed MSS program. All of these parties clearly have future corporate decisions to make. In short, Loral, TRW and Motorola have processes in place to insure that financial actions are taken in a manner consistent with their fiduciary responsibilities to their shareholders. Thus, Constellation submits that since the Bureau approved the management commitments supporting the LQP, TRW, and Motorola applications, it should also approve Bell Atlantic's commitment. See Melody Music, Inc. v. FCC, supra. The Bureau may do so by expressly evaluating and approving Constellation's financial qualifications showing in light of the Oliver letter and the McKeough and Marino Declarations.

## **II. Conclusion**

Constellation has shown above that it is fully qualified technically, financially, and legally to construct, launch and operate a 1.6/2.4 GHz LEO MSS system. Its demonstration of financial qualifications should be reconsidered, and the Chief, International Bureau should conclude that Constellation is financially qualified at the present time and that its Application should be granted.

Respectfully submitted,

**Constellation Communications, Inc.**

By:   
Robert A. Mazer  
Jerold L. Jacobs

ROSENMAN & COLIN  
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Suite 200  
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(202) 463-4645

Its Attorneys

Dated: March 2, 1995





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1310 N. Courth House Road  
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(703) 351-4504  
FAX (703) 351-4557

Brian D. Oliver  
Vice President  
Corporate Development

November 16, 1994

Mr. Bruce D. Kraselsky, Chairman  
Constellation Communications, Inc.  
10530 Rosehaven Street, Suite 410  
Fairfax, Virginia 22030

Dear Mr. Kraselsky:

The attached financial statements show Bell Atlantic Corporation (BAC) assets of \$29.544 billion and stockholders' equity of \$8.224 billion. In addition, BAC has credit lines of \$2.1 billion. Annual funds from operations exceeded \$4.2 billion for 1993. These available funds are well in excess of the amount which we understand is necessary to construct, launch and operate for one year the CCI LEO satellite system.

BAC has completed an initial review of CCI's FCC application and its business plans for satellite system construction and operation. It is BAC's intent to provide financial support for that satellite project subject to normal business reviews of market conditions and the project's progress to assure acceptable levels of risk and return.

Actual BAC 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.

Sincerely,

A handwritten signature in cursive script, appearing to read "Brian D. Oliver".

Vice President Corporate Development

# E-SYSTEMS

EXHIBIT 2

Senior Vice President

November 11, 1994

64000/4-155

Mr. Bruce D. Kraselsky, Chairman  
Constellation Communications, Inc.  
10530 Rosehaven Street, Suite 410  
Fairfax, VA 22030

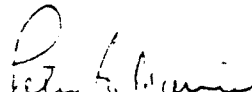
Dear Mr. Kraselsky:

E-Systems, Inc. is an equity owner in Constellation Communications, Inc. ("CCI"). The enclosed financial statements show E-Systems current assets of \$750 million and stockholders' equity of \$770 million. In addition, E-Systems has credit lines of \$350 million. Annual operating income exceeded \$180 million for 1993.

E-Systems has reviewed CCI's FCC application and its business plans for satellite system construction and operation. E-Systems intends to provide the necessary financial support for that satellite project subject to normal business reviews of market conditions.

I understand that this letter is to be provided to the Federal Communications Commission to demonstrate CCI's financial qualifications.

Sincerely,

  
Peter A. Marino

/lc

Enclosure

CORPORATE OFFICES

PCS OFFICE BOX 660248 • DALLAS, TEXAS 75266-0248 • (214) 661-1000

**DECLARATION OF THOMAS R. McKEOUGH**

I, Thomas R. McKeough, Vice President of Mergers and Acquisitions and Associate General Counsel, Bell Atlantic Corporation ("Bell Atlantic"), hereby submit this declaration in support of the application of Constellation Communications, Inc. ("Constellation") for authority to construct, launch and operate a low earth orbit ("LEO") satellite system in the 1610-1626.5 MHz and 2483.5-2500 MHz bands (File Nos. 17-DSS-P-91(48) and CSS-91-013).

1. Bell Atlantic's wholly-owned subsidiary, Bell Atlantic Enterprises International, Inc., is an equity investor in Constellation. As part of the Constellation minor amendment, filed November 16, 1994 ("Constellation Amendment"), Bell Atlantic submitted a letter, signed by Brian D. Oliver, Vice President, Corporate Development (dated November 16, 1994), in order to demonstrate Constellation's financial qualifications to construct, launch and operate for one year its LEO satellite system (see Exhibit 4 to Constellation Amendment). Bell Atlantic also provided financial statements showing assets well in excess of the required construction, launch and first year operation costs for the Constellation LEO system. 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. 45 C.F.R. § 25.140(d)(1).

2. As is customary with respect to ventures of this size and scope, Bell Atlantic confirmed that the necessary expenditures would be subject to "normal business review of market conditions and the project's progress to assure acceptable levels of risk and return." The Commission has allowed such language to be included in financial commitment letters, in recognition of the fact that material changes may affect the feasibility of projects of this type. (See Burlington Northern, Inc.

correspondence to National Exchange, Inc., dated August 20, 1987, submitted in the domestic fixed-satellite service proceeding.)

3. In its letter, Bell Atlantic also noted that "[a]ctual BAC 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." This language was included in recognition of Bell Atlantic's corporate approval requirements.

The foregoing is declared to be true and correct under penalty of perjury.



---

**Thomas R. McKeough**  
Vice President of Mergers and Acquisitions  
and Assistant General Counsel

Bell Atlantic Corporation  
1717 Arch Street  
32nd Floor  
Philadelphia, PA 19103  
(215)963-6491

Dated: 12/30/94

DECLARATION OF PETER A. MARINO

I, Peter A. Marino, Senior Vice President, E-Systems Corporation ("E-Systems"), hereby submit this declaration in support of the application of Constellation Communications, Inc. ("Constellation") for authority to construct, launch and operate a low earth orbit ("LEO") satellite system in the 1610-1626.5 MHz and 2483.5-2500 MHz bands (File Nos. 17-DSS-P-91(48) and CSS-91-013).

1. E-Systems, Inc. is an equity investor in Constellation. As part of the Constellation minor amendment, filed November 16, 1994, E-Systems submitted a letter, signed by me (dated November 16, 1994), in order to demonstrate Constellation's financial qualifications to construct, launch and operate for one year its LEO satellite system (see Exhibit 4 to Constellation Amendment). E-Systems believes it, along with Bell Atlantic Corporation, has demonstrated the commitment to provide the necessary financial support for the Constellation LEO system, as required under the Commission's Rules. 47 C.F.R. §25.140(d)(1).

2. As is customary with respect to ventures of this size and scope, E-Systems confirmed that the necessary expenditures would be subject to "normal business review of market conditions and the project's progress to assure acceptable levels of risk and return." The Commission has allowed such language to be included in financial commitment letters, in recognition of the fact that material changes may affect the feasibility of projects of this type. (See Burlington Northern, Inc. correspondence to National Exchange, Inc., dated August 20, 1987, submitted in the domestic fixed-satellite

service proceeding.)

The foregoing is declared to be true and correct under penalty of perjury.

*Peter A. Marino*

---

Peter A. Marino  
Senior Vice President  
E-Systems Corporation  
P.O. Box 660248  
Dallas, Texas 75266-0248  
(214) 661-1000

Dated: 1/3/95

CERTIFICATE OF SERVICE

I, Robert A. Mazer, hereby certify that the foregoing "Petition For Reconsideration" was served by hand or first-class mail, postage prepaid, this 2nd day of March, 1995, on the following persons:

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International Bureau  
Federal Communications Commission  
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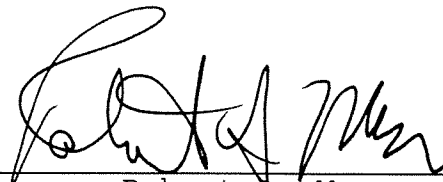
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