

Before The
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

Received

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Satellite and Radio Communication Division
Satellite Policy Branch

In re Application of)
)
CONSTELLATION)
COMMUNICATIONS, INC.)
)
For Authority to Construct,)
Launch and Operate a Low-Earth)
Orbit Satellite System in the)
1.6/2.4 GHZ Bands)
_____)

File Nos. 17-DSS-P-91(48)
and CSS-91-013
9-SAT-LA-95
10-SAT-AMEND-95

To: The Commission

APPLICATION FOR REVIEW

Submitted by:

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Dated: March 2, 1995

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APPLICATION FOR REVIEW

Pursuant to Section 1.115 of the Commission's Rules, Loral/QUALCOMM Partnership, L.P. (LQP), hereby applies for review of the International Bureau's Order, DA 95-129 (released January 31, 1995), regarding the above-referenced application.¹ LQP's Application for Review is limited to the decision in the Order which concluded that the recently disclosed major amendment to the application of Constellation Communications, Inc. does not require that the application be treated as "newly filed" under Section 25.116 of the Commission's Rules. See Order, ¶¶ 18-22.

¹ LQP filed a Petition to Deny Constellation's application on December 22, 1994. On January 31, 1995, LQP was authorized to construct, launch and operate a Big LEO MSS system which would compete with that proposed by Constellation. See Order and Authorization, DA 95-128 (released Jan. 31, 1995).

SUMMARY

In a November 16, 1994 amendment to its MSS Above 1 GHz application, Constellation reported that several sales of its voting stock over the previous three years had resulted in more than 50% of its stock changing hands. Constellation sought a waiver of the rules governing "major amendments" to satellite applications (47 C.F.R. § 25.116) to allow its application to remain in the current processing group. The Bureau erroneously granted this request and exempted Constellation from the Commission's cut-off rules, instead of treating its application as "newly filed" as a result of the substantial change in ownership.

In granting this exemption, the Bureau failed to adhere to applicable provisions of the Communications Act and the Commission's Rules and departed from controlling precedent and policies regarding the Commission's cut-off rules. Moreover, while waivers of the "major amendment" rule have been granted to certain satellite applicants in the past, the circumstances concerning Constellation's ownership changes distinguish it from these cases. The differences dictate a different analysis and outcome, and that no waiver be granted. Apart from straying from this clear precedent, the evil in the Order is that it provides a safe harbor for speculative satellite applications because it permits any change in ownership and control to go forward as long as the transfer infuses capital into the applicant. This standard is contrary to the Commission's prior cases which required an independent business reason, as well as a showing of no prejudice to competing applicants, to exempt a major change in ownership from the cut-off

rules. Moreover, the Bureau's decision stands in stark contrast to the Commission's decision to adopt the rigorous DOMSAT standard for Big LEO applicants. Report and Order, 76 RR 2d 202, ¶ 30 (1994) ("Big LEO Rules Order"). If not reversed, the standard adopted in the Order is likely to encourage filings by undercapitalized entities and thus frustrate the policies underlying the Commission's cut-off rules for the satellite services as well as the financial qualifications established for the Big LEO service.

Accordingly, LQP requests that the Order be modified to apply the cut-off rules and precedent. Under existing policy, Constellation's application must be deemed "newly filed" and placed in the next Big LEO processing group, because of the major amendment to its application arising from the admitted change in ownership and control of the applicant.

BACKGROUND

On June 3, 1991, Constellation filed an application for an authorization in the MSS Above 1 GHz Service. See Big LEO Rules Order, 76 RR 2d at 209. Pursuant to the Big LEO Rules Order, Constellation filed an amendment to its application on November 16, 1994. In this amendment, Constellation disclosed for the first time that between June 3, 1991 and November 16, 1994, a number of changes in the ownership of its voting stock had occurred. The cumulative effect of these changes was that more than 50% of Constellation's voting stock had changed hands. See Constellation Amendment and Application for Launch

Authorization and License, at Ex. 5, Att. A (Nov. 16, 1994) ("Amended Application").

According to Constellation, the ownership changes outlined below occurred over a period of several years:

<u>June 1991 Owners</u>		<u>November 1994 Owners</u>	
Microsat	39%	E-Systems	30.7%
David Wine	14.3%	CTA Launch	18.35%
Defense Systems	10.1%	Bell Atlantic	8%
Not identified	36.6%	Not identified	42.95%
Pacific Comm.	??%	Cirrus Logic	??% ²

Compare Constellation "Aries" Application, at App. F, FCC Form 430, Ex. VI (dated June 3, 1991) with Amended Application, at Ex. 5, FCC Form 430, Ex. VI (dated Nov. 16, 1994). Constellation explained that CTA, Inc. (the parent of CTA Launch) acquired Defense Systems and Microsat in June 1992 and September 1993, respectively, and that Cirrus Logic acquired Pacific Communication in March 1993. Amended Application, at Ex. 5, Att. A at 2-3. According to Constellation, E-Systems and Bell Atlantic acquired "newly issued stock" of Constellation in March 1993 and October 1994, respectively. Id. at 2 & n. 2; see also Constellation's Opposition, at 20 (filed Jan. 3, 1995).

These changes in ownership also resulted in a wholesale restructuring of Constellation's board of directors. The number of seats on and members of Constellation's board of directors changed radically between June 1991 to

² Constellation has only identified Pacific Communication Sciences and Cirrus Logic as shareholders, without providing a percentage of stock held.

November 1993 as outlined below:

June 1991

David Wine (ch) (Microsat)
Peter Diamondes (Microsat)
Bruce Kraselsky (Microsat)
Jason O'Neil (DSI)
C. Roberts (Microsat)
Bradley Schwartz (Microsat)

November 1994

Bruce Kraselsky (ch)

Bradley Schwartz (Microsat)
Ronald Lepkowski (CCI)
C.E. Velez (CTA)
Robert Van Brunt (BAC)
William Roughton (BAC)
M. Williamson (E-Systems)
J.R. Copple (E-Systems)
Talbot S. Huff (E-Systems)

Compare Constellation "Aries" Application, at App. F, FCC Form 430, Ex. VII, and App. E, Att. 1 (dated June 3, 1991) with Amended Application, at Ex. 5, FCC Form 430, Ex. VII (dated Nov. 16, 1994). Whereas originally five of six directors were affiliated with Microsat, the largest shareholder in June 1991, by November 1994, five of the nine directors were affiliated with the new shareholders, Bell Atlantic and E-Systems. In its "Opposition" to several petitions to deny, Constellation reported that Bell Atlantic had acquired two seats on the board in January 1993 (20 months before its stock purchase), and that E-Systems had acquired one seat in April 1993 and two more seats in February 1994. See Opposition, at Ex. B.

In its November 1994 Amended Application, Constellation conceded that the "cumulative effect" of these changes was a change in ownership of more than 50% of its voting stock. Amended Application, at Ex. 5, Att. A at 2. It claimed that no

"substantial change" in control had occurred, but filed a "contingent" request for waiver of Section 25.116 regarding major amendments to satellite applications.

Id.

On December 22, 1994, LQP filed a Petition to Deny Constellation's application.³ LQP pointed out that Section 309 of the Communications Act and Section 25.116 of the Commission's Rules required that Constellation's change in ownership be considered a major amendment, and therefore that Constellation's application must be deemed a "newly filed" application and placed in the next Big LEO processing group.

The Bureau rejected this position, stating:

We recognize that some of the changes in Constellation's ownership may be "major amendments" under Section 25.116 of the Commission's Rules, 47 C.F.R. § 25.116, jeopardizing Constellation's eligibility for consideration in the current processing group. However, our overriding concern in determining whether a "major amendment" to the applicant's ownership structure has occurred is whether the applicant has attempted to profit from the sale of an application. Unless there is evidence of this, we see no reason to prevent applicants from procuring partners to help finance the enormous costs of these systems. Regardless of whether there has been a transfer of control here, we find no intent to traffick in applications. Consequently, even if a "major" change in Constellation's ownership has occurred, we find these ownership changes to be in the public interest pursuant to Section 25.116(c)(2), and we will not treat Constellation's application as newly filed.

³ This Petition also argued that Constellation had not met the financial standard required for Big LEO applicants. Motorola Satellite Communications, Inc., TRW Inc., Mobile Communications Holdings, Inc., and AMSC Subsidiary Corporation also petitioned to deny or defer processing of Constellation's application.

Order, ¶ 21 (footnotes omitted).⁴

ARGUMENT

I. THE CHANGES IN CONSTELLATION'S OWNERSHIP AND CONTROL CONSTITUTE A MAJOR AMENDMENT UNDER THE COMMUNICATIONS ACT AND THE COMMISSION'S RULES.

In the Amended Application, Constellation argued that no major change had occurred in its ownership structure.⁵ The Bureau declined to take a definitive position on this issue in the Order.⁶ Since the Commission's cut-off rules for satellite applications are triggered by the filing of a "major amendment," the first step in the analysis of the impact of Constellation's ownership changes is to determine that a major change has occurred. Based on the facts in the record, there is no question that the changes in ownership resulted in a major amendment which triggers the cut-off rules.

Section 309 of the Communications Act of 1934, as amended, requires that a substantial change in the ownership or control of an applicant be deemed a major

⁴ Curiously, the Bureau addressed claims by MCHI that LQP had undergone a major change in ownership with the same language. See Order and Authorization, DA 95-128, ¶ 12 (released Jan. 31, 1995). LQP has in fact restructured its business organization since June 1991; but, in contrast to Constellation, there has never been a change in the ultimate equity participation and voting control of LQP's two partners: Loral Corporation (51%) and QUALCOMM Incorporated (49%). Indeed, the Bureau itself noted that the most recent restructuring of LQP represented a minor amendment. See id., at 5 n.17.

⁵ See Amended Application, at Ex. 5, Att. A at 1.

⁶ See Order, ¶ 21 ("even if a 'major' change in Constellation's ownership has occurred, we find these ownership changes to be in the public interest . . .").

change subjecting the application to Public Notice requirements. 47 U.S.C. § 309; see, e.g., Hughes Communications Mobile Satellite, Inc., 4 FCC Rcd 6041, 6045 (1989) (subsequent history omitted). A transfer of 50% or more of an ownership interest in an applicant is generally considered a substantial change in ownership or control under Section 309. Id.

For the satellite services, the mandate of Section 309 is implemented in Section 25.116. 47 C.F.R. § 25.116. This section requires that a satellite application be deemed "newly filed" if it is amended to reflect a major change in ownership or control. A "major amendment" to a pending application occurs:

If the amendment specifies a substantial change in beneficial ownership or control (de jure or de facto) of an applicant such that the change would require, in the case of an authorized station, the filing of a prior assignment or transfer of control application under Section 310(d) of the Communications Act, provided however, that the change would not be considered major where it merely amends an application to reflect a change in ownership or control of the station that had been previously approved by the Commission.

47 C.F.R. § 25.116(b)(3). Section 25.116(b)(4) states that an amendment itself or the "cumulative effect" of the amendment may be deemed a major change pursuant to Section 309. 47 C.F.R. § 25.116(b)(4).

By operation of Section 25.116(b), a "major amendment" occurs where the cumulative effect of changes in ownership of a satellite applicant's stock results in more than 50% changing hands. Both Constellation and the Bureau conceded that the cumulative effect of the reported ownership changes resulted in such a

substantial change of Constellation's voting stock.⁷ Accordingly, there is no question that the changes in ownership to Constellation resulted in a major amendment to its application.

II. THE BUREAU'S GRANT OF CONSTELLATION'S WAIVER REQUEST VIOLATED COMMISSION PRECEDENT.

A major change in ownership and control to a satellite application requires removal of the application from the current processing group, unless the Commission finds the change in ownership or control "to be in the public interest and, for which a requested exemption from a 'cut-off' date is granted." 47 C.F.R. § 25.116(c)(2). Accordingly, Constellation's application may continue in the current processing group only if the Commission finds that the public interest is served by granting an exemption under Section 25.116(c)(2), the section under which Constellation sought its "contingent" waiver request.⁸

The Commission's standard for granting a waiver of the cut-off rules was articulated in Airsignal International, Inc., 81 FCC 2d 472 (1980), and has been applied by the Common Carrier Bureau in the context of satellite applications in more recent cases. See Satellite CD Radio, Inc., 9 FCC Rcd 2569 (CCB 1994); STARSYS Global Positioning, Inc., 8 FCC Rcd 1662 (CCB 1993). Pursuant to these cases, a waiver may be granted where the ownership transaction (1) has an

⁷ See Order, ¶ 19; Amended Application, at Ex. 5, Att. A at 2.

⁸ See Public Notice, 6 FCC Rcd 2083 (CCB 1991) (setting June 3, 1991 cut-off date).

independent, legitimate business purpose and (2) serves the public interest. See Airsignal, 81 FCC 2d at 475-76.

However, the Bureau did not follow this standard; rather, it chose to create and apply an entirely new standard -- that there was no evidence of intent to traffic in applications, and, therefore, the waiver should be granted. Order, ¶ 21. This analysis was erroneous in failing (1) to apply Commission precedent and (2) to consider the impact of specific facts surrounding the Constellation application on the Commission's policies regarding cut-off rules.⁹ While precluding trafficking may be a factor in the analysis of whether to grant a waiver of the cut-off rules,¹⁰ the cut-off rules serve a broader set of policy goals.¹¹ The Airsignal analysis attempts to capture this broader set of concerns, and consideration of the relevant factors and policies under this test leads to the opposite conclusion reached by the Bureau.¹²

⁹ The Bureau appears to have engaged in the same "piecemeal picking and choosing of 'relevant' control criteria" which the D.C. Circuit Court of Appeals has found "is not 'reasoned decisionmaking but the very sort of arbitrariness and capriciousness we are empowered to correct.'" Telephone and Data Systems, Inc. v. FCC, 19 F.3d 655, 658 (D.C. Cir. 1994).

¹⁰ See Satellite CD Radio, 9 FCC Rcd at 2569 n.4.

¹¹ See Airsignal, 81 FCC 2d at 474 (granting exemption from cut-off rule requires balancing the Commission's statutory duty to inform the public and to protect administrative processes against the public interest in permitting applicants reasonable business flexibility to provide the best public service).

¹² Pursuant to Section 309(d) of the Communications Act of 1934, as amended, the Commission must conduct a hearing before granting an application when there are substantial and material questions of fact sufficient to show that grant of the application would be inconsistent with the public interest, convenience and necessity. See, e.g., IDB Communications, Inc., DA 94-1487, at ¶ 18 (released Dec.

Failure to Follow FCC Rules. Initially, it must be noted that the circumstances of Constellation's waiver request are substantially different from those presented in Airsignal, STARSYS, and Satellite CD Radio. In each of those cases, the applicants sought and obtained prior approval from the Commission for proposed changes in ownership as required for any change in ownership of more than 50% of an applicant pursuant to Section 309 of the Act. See Order, ¶ 22. In contrast, Constellation failed to request a waiver of the cut-off rules prior to the transactions.

Moreover, Constellation failed even to comply with the Commission's reporting requirements.¹³ Section 1.65 of the Commission's Rules imposes upon applicants the "responsibility for the continuing accuracy and completeness of information furnished in a pending application." 47 C.F.R. § 1.65. Applicants are required to update such information within 30 days of the change. It is undisputed that Constellation never reported any of the changes in its ownership or directors from June 1991 until its November 1994 amendment. There is nothing in the record to indicate that Constellation was unaware of this obligation. Rather, it simply chose not to comply with the Commission's Rules. The Bureau

15, 1994); Astroline Communications Co. v. FCC, 857 F.2d 1556, 1561 (D.C. Cir. 1988). In this case, the Bureau's decision is dependent upon a finding that the facts do not indicate any intent to traffic in applications. Order, ¶ 21. However, it never addressed the circumstances surrounding the Constellation transactions; the facts in the record, if anything, point away from granting the waiver.

¹³ In this regard, the Commission may wish to consider Attachment A, a certification by the Secretary of State for the State of Delaware that Constellation "is no longer in existence and good standing under the laws of Delaware"

impermissibly glossed over these unquestioned rule violations. See Order ¶ 22. These violations alone warranted denial of its waiver request.

Independent Business Purpose. In prior cases, an independent business purpose has been found where separate business reasons are demonstrated for acquiring ownership of the applicant, rather than simply to obtain an interest in the application itself.¹⁴ For example, in Airsignal and STARSYS, the Commission found that the primary purpose of the change in ownership was acquisition of the assets of the applicant's parent company. Airsignal, 81 FCC 2d at 476; STARSYS, 8 FCC Rcd at 1663. And, in Satellite CD Radio, the applicant proposed a public offering of stock in order to raise financing for pursuing the application and construction of the system. Satellite CD Radio, 9 FCC Rcd at 2571. In these cases, the new shareholders were not specifically attempting to assume control of the application.

By contrast, Constellation appears to be the target of the acquisitions, at least for the E-Systems and Bell Atlantic investments. The deep involvement of these two companies in the new Constellation is apparent in the amended application. First, of the nine directors on Constellation's board, five are affiliated with its two new shareholders, E-Systems and Bell Atlantic. Constellation admits that the acquisitions of its stock by these two companies was for the purposes of "infusing financial strength and technical expertise into

¹⁴ See Airsignal, 81 FCC 2d at 474 (exemption may be justified for ownership or control changes which tend to effect changes in business or financial factors overlaying a technical proposal).

Constellation." The changes to the board suggest that infusion of funding was at the cost of control, because while these two companies are reported to hold less than 40% of the voting stock of Constellation, together, they represent a majority of the directors on the board. Cf. Satellite CD Radio, 9 FCC Rcd at 2571, ¶ 11 (grant of waiver based in part on the fact that the original management team would not change).

Second, Constellation relied solely upon these two entities for its financial showing. See Amended Application, at 33-34. In contrast, in its initial application, Constellation stated that it had assurance that it could obtain financing for the costs of construction, launch and operation of its \$292 million "Aries" system. See Constellation Application, at 13 (June 3, 1991).

Constellation's amended application reflects a system for which construction, launch and first-year operation is expected to cost about \$1.7 billion. See Amended Application, at 33. While the Commission has assumed that Constellation's change in ownership was designed to help finance the cost of the system, there is no evidence that Constellation would have needed the help of its new shareholders but for its decision to submit a completely new system design on November 16, 1994. It should also be noted that the involvement by Constellation's two new shareholders appears to coincide with the radical modifications to the Constellation MSS system.¹⁵ Cf. Satellite CD Radio, 9 FCC

¹⁵ During the Negotiated Rulemaking Committee, Constellation indicated a plan to revise its system. See Final Report of the Majority of Active Participants of Informal Working Group 1, at § 1.1.1 (Att. 1 to Annex 1) (Apr. 6, 1993).

Rcd at 2571, ¶ 11 (transaction resulted in change of control of applicant, but service proposal remained constant). The financial and technical assistance provided by the new shareholders strongly suggest that, unlike Airsignal, STARSYS and Satellite CD Radio, the new owners have been interested in directing Constellation itself.

The Bureau conducted no analysis at all of the "independent" business purpose. Rather than applying this established test, the Bureau stated that its overriding concern in reviewing Constellation's change in ownership was "whether the applicant has attempted to profit from the sale of an application." Order, ¶ 21. Although it stated that it found no intent to traffic, the Bureau did not explain what evidence supported that conclusion, or why this criterion alone addressed the policies underlying the Commission's cut-off rules. As discussed in Airsignal, the cut-off rules also protect administrative finality and competing applicants.¹⁶

Moreover, the record reflects significant benefit to Constellation's shareholders. It is obvious that by "infusing financial strength and technical expertise into Constellation" (Opposition, at 26), E-Systems and Bell Atlantic have conferred a substantial benefit upon all the shareholders of the applicant. Not

According to the information provided by Constellation, by that time, the directors affiliated with Bell Atlantic had already taken seats on the Board (January 1993), and E-Systems had already completed its stock purchase (March 1993).

¹⁶ See Airsignal, 81 FCC 2d at 474; City of Angels Broadcasting, Inc. v. FCC, 745 F.2d 656, 663 (D.C. Cir. 1984).

only has Constellation admitted that it needed financial assistance from these two shareholders, it relied solely upon Bell Atlantic and E-Systems to attempt to demonstrate that it was financially qualified for a Big LEO authorization. It appears that the applicant would not have been able to proceed with the Amended Application without the participation by these two companies. If not, then all the shareholders of Constellation have "profited" through not losing their investments and the opportunity to obtain a valuable license in the Big LEO service.

Public Interest. In its prior decisions on "major changes" in ownership, the Commission has delineated several factors which must be considered with respect to the public interest determination. Of primary importance is whether grant of the requested waiver would prejudice other applicants. The Bureau did not even consider this factor. But sanctioning Constellation's failure to disclose its transfer of control by granting the requested waiver would prejudice the other Big LEO applicants. The harm arises from the fact recognized by the Commission that the central issue in this proceeding has been whether all pending applicants could be accommodated in the available spectrum. See Big LEO Rules Order, ¶ 27. In the Big LEO Rules Order, the Commission determined that five systems could be licensed to use the bands but that six could not. Id., ¶ 43. This again distinguishes Constellation's request from prior cases. See STARSYS Global Positioning, Inc., 8 FCC Rcd at 1663 ("there is little potential for harm to the other applicants in this proceeding, as we believe that all applicants will be able to implement their proposed systems"); Satellite CD Radio, 9 FCC Rcd at 2571, ¶ 12

(no competing applicants opposed waiver of cut-off rules.).

If Constellation were deemed a "newly filed" applicant, and therefore, eliminated from this processing group, the issue of mutual exclusivity among the Big LEO applicants would be resolved. At most only five applicants would remain, and the Commission and the remaining applicants might have been able to resolve this proceeding months prior to now, thereby expediting licensing and service to the public. Prejudice to other applicants is thus present. Because the second criteria of the Airsignal test is also not met, the requested waiver should have been denied.

III. THE POLICY OBJECTIVES OF THE CUT-OFF RULES ALSO REQUIRE THAT CONSTELLATION'S REQUEST FOR WAIVER BE DENIED.

Section 25.116 depends upon important Commission policies: applicants must provide (a) full disclosure of changes to pending applications, so that (b) a new owner cannot simply bootstrap a new application into the place held by an applicant which the met cut-off date to the prejudice of other applicants and the Commission's processes. Grant of Constellation's waiver request jeopardizes these public interest concerns.

First, by granting Constellation's request, the Bureau erroneously approved its failure to report changes in ownership and control of the applicant. As has been repeatedly stated in many contexts, "the Commission must rely heavily on the completeness and accuracy of the submissions made to it, and its applicants in turn have an affirmative duty to inform the Commission of the facts it needs in

order to fulfill its statutory mandate." RKO General, Inc. v. FCC, 670 F.2d 215, 232 (D.C. Cir. 1981), cert. denied, 456 U.S. 927 & 457 U.S. 1119 (1982). Allowing Constellation to proceed in the current processing group despite repeated violations of the reporting requirements sends the wrong signal to future applicants.

Second, grant of the requested waiver allows insertion into these three-year old proceedings of an application for a completely revised system with completely new sources of funding and new parties in interest. The Bureau's approach effectively rewrites the Commission's waiver standard, and opens it up to virtually any ownership change, no matter how radical. As long as such a transaction results in an infusion of financing for system costs, the standard applied to Constellation would deem the transaction in the public interest and waive the cut-off rules.

In this regard, the analysis used by the Bureau also undermines the Commission's attempts to ensure that the 1.6/2.4 GHz spectrum is not tied up for years by applications from undercapitalized entities. See Big LEO Rules Order, 76 RR 2d at 213, ¶ 30. Under the Bureau's reasoning, it does not matter whether an applicant has the financial ability to go forward when it applies. It can obtain financing through sale of equity, and transfer of control, at some time in the future. The Bureau's standard does not distinguish between those changes in ownership and control resulting from independent business transactions which justify exemption from cut-off rules and those resulting from trafficking in

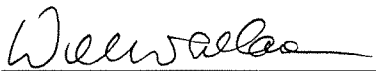
applications. Both can be swept under the category of "procuring partners to help finance the enormous cost of these systems." Such a result is erroneous and must be reversed.

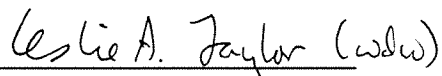
CONCLUSION

For the reasons set forth above, grant of Constellation's requested waiver of the "major amendment" rules is contrary to the Act and the Commission Rules, precedent and policy. Accordingly, review of this issue should be granted, and Constellation's application deemed "newly filed" pursuant to Section 25.116.

Respectfully submitted,

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Date: March 2, 1995

ATTACHMENT A

State of Delaware
Office of the Secretary of State

PAGE 1

I, EDWARD J. FREEL, SECRETARY OF STATE OF THE STATE OF DELAWARE DO HEREBY CERTIFY THAT THE CERTIFICATE OF INCORPORATION OF "NORTHSTAR CONSTELLATION, INC.", WAS RECEIVED AND FILED IN THIS OFFICE THE FOURTH DAY OF APRIL, A.D. 1991.

AND I DO HEREBY FURTHER CERTIFY THE SAID "NORTHSTAR CONSTELLATION, INC." FILED A CERTIFICATE OF AMENDMENT, CHANGING ITS NAME TO "CONSTELLATION COMMUNICATIONS, INC.", ON THE THIRD DAY OF JUNE, A.D. 1991, AT 9 O'CLOCK A.M.

AND I DO HEREBY FURTHER CERTIFY THAT THE AFORESAID CORPORATION IS NO LONGER IN EXISTENCE AND GOOD STANDING UNDER THE LAWS OF THE STATE OF DELAWARE HAVING BECOME INOPERATIVE AND VOID THE FIRST DAY OF MARCH, A.D. 1994 FOR NON-PAYMENT OF TAXES.

AND I DO HEREBY FURTHER CERTIFY THAT THE AFORESAID CORPORATION WAS SO PROCLAIMED IN ACCORDANCE WITH THE PROVISIONS OF GENERAL CORPORATION LAW OF THE STATE OF DELAWARE ON THE TWENTY-FIFTH DAY OF MAY, A.D. 1994, THE SAME HAVING BEEN REPORTED TO THE GOVERNOR AS HAVING NEGLECTED OR REFUSED TO PAY THEIR ANNUAL TAXES.



Edward J. Freel

Edward J. Freel, Secretary of State

2259217 8400

950042406

AUTHENTICATION: 7420899

DATE: 02-27-95

CERTIFICATE OF SERVICE

I, William D. Wallace, hereby certify that I have on this 2nd day of March, 1995, caused copies of the foregoing Application For Review to be delivered via hand delivery (indicated with *) or by U.S. mail, postage prepaid, to the following:

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