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

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

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In re Application of	)	
	)	
CONSTELLATION COMMUNICATIONS, INC.	)	File Nos. 21-SAT-DR-96
	)	17-DSS-P-91(48)
For Authority to Construct, Launch and Operate	)	CSS-91-013
a Low Earth Orbit Satellite System in the	)	9-SAT-LA-95
1610-1625.5 MHZ/2483.5-2500 MHZ Band	)	10-SAT-AMEND-95
	)	

Satellite Policy Branch  
International Bureau

**OPPOSITION TO APPLICATION FOR REVIEW**

Constellation Communications, Inc. ("Constellation"), by its attorneys, hereby opposes the Application for Review ("*Application*") L/Q Licensee, Inc. ("L/Q")<sup>1/</sup> filed in response to an Order the International Bureau released on January 26, 1996.<sup>2/</sup> As is shown below, the Commission should affirm the Bureau's *Order* because the Bureau correctly concluded that the transaction detailed in Constellation's November 21, 1995 Petition for Declaratory Ruling ("*Petition*") warranted a waiver of the Commission's cut-off rules. The L/Q *Application* does nothing more than rehash arguments which the Bureau has already rejected on multiple occasions and which are the subject of a meritless

<sup>1/</sup> L/Q Licensee, Inc. is a wholly-owned subsidiary of Loral/QUALCOMM Partnership, L.P. ("LQP"). LQP received its license to construct, launch and operate a satellite system on January 31, 1995. 10 FCC Rcd 2333 (1995). LQP assigned that license to L/Q.

<sup>2/</sup> *Memorandum Opinion and Order*, DA 96-76 (Jan. 26, 1996)(hereinafter "*Order*")

LQP Application for Review of a previous Bureau decision in this proceeding.<sup>3/</sup> These tired arguments should be rejected or ignored.

Constellation is concerned about the seemingly anticompetitive course of conduct being pursued by LQP and its web of affiliated companies. LQP already has a license to construct, launch and operate an MSS Above 1 GHz system. It is no longer in a position where it needs to contest the pending Constellation application for a system license. In essence, LQP has "won" that battle. Nonetheless, the entity which the Commission has determined is in a better position to serve the public interest by constructing, launching and operating a satellite system is devoting its resources to preventing competition for mobile satellite services ("MSS") and wasting limited Commission resources on frivolous pleadings. LQP and L/Q have no specific interest in whether the Commission grants or denies Constellation's *Petition*. These companies should be preoccupied with building a satellite system and initiating service to the public. Even so, L/Q has seen fit to harass Constellation with previously rejected arguments which are merely a thinly veiled attempt to limit the number of licensees for MSS services. The Commission should not permit itself to be dragged into such unseemly efforts which are an affront to the public interest in competition and the Commission's longstanding pro-competitive policies.

### **Background**

Constellation has before the Commission a pending application to construct, launch and operate a system for mobile communications in the MSS Above 1 GHz service. There are two

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<sup>3/</sup> LQP already has pending before the Commission an Application for Review of the Bureau's January 31, 1995 Order, 10 FCC Rcd 2258 (1995), which found that there was sufficient public interest justification to support a waiver of the Commission's cut-off rules with regard to prior Constellation transfers of ownership interests.

additional entities with pending applications in that service as well as three entities which have already received licenses to provide these services. On November 21, 1995 Constellation filed with the Commission its *Petition* which sought authorization to convert all its existing convertible debt into equity. As Constellation stated in its *Petition*, this conversion would facilitate Constellation's efforts to create a financial structure that is more conducive to satisfying the Commission's financial qualifications requirements. LQP filed an Opposition to that *Petition* which, like the instant *Application*, did little more than reiterate arguments already before the Commission in the form of a prior *Application for Review*.

The Bureau's January 26, 1996 *Order* granted the Constellation *Petition* finding that the LQP arguments contained in the Opposition, "largely duplicate the objections it has raised in an application for review of our ruling concerning prior Constellation ownership changes."<sup>4/</sup> The Bureau found that "the proposed ownership change would serve the public interest and would not require treatment of Constellation's application as newly filed."<sup>5/</sup> The Bureau authorized Constellation to undertake the requested transactions and extended the date for filing Constellation's financial qualifications to hold a system licence.

#### **The Bureau Properly Granted the Constellation *Petition***

The Bureau's *Order* properly granted Constellation authority to undertake the requested transaction and was consistent with the Commission's rules and precedent in this area.<sup>6/</sup> The

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<sup>4/</sup> *Order* at ¶ 3.

<sup>5/</sup> *Id.*

<sup>6/</sup> Constellation does not intend to reargue all of its arguments which are a matter of record in this proceeding. Instead, Constellation incorporates by reference its arguments in its March 17, 1995 Opposition to Application for Review and its December 13, 1995 Consolidated Reply of Constellation Communications, Inc.

Commission has granted waivers of its application cut-off rules in situations where the (1) change would further a legitimate business purpose and (2) the change in ownership is in the public interest.<sup>7/</sup> As the Bureau correctly concluded, Constellation has satisfied both of these tests.

Constellation sought authorization to engage in the requested transactions purely to further the legitimate business interest of creating an attractive financial structure to enable full implementation of the Constellation system and to allow Constellation to demonstrate to the Commission its financial qualification to hold a satellite system license. The public interest would be served by promoting competition for mobile satellite services through the licensing of multiple service providers. Constellation finds it particularly ironic that L/Q, which is engaged in this anticompetitive harassment campaign, has conveniently overlooked the public interest benefits of competition when concluding that there is no public interest justification for granting the Constellation request.

The most important element for the Commission to consider is the purpose behind the cut-off rules. *Airsignal* and its progeny fully support the Bureau's findings. Contrary to L/Q's assertions that the Bureau is creating a new waiver standard,<sup>8/</sup> review of the cases shows that the underlying policy theme involved in the two-prong test is to prevent trafficking in applications. Neither LQP nor L/Q has even made a claim that Constellation has been engaged in trafficking in applications. Thus, the Bureau's conclusions are completely consistent with its precedent in this area.

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<sup>7/</sup> See e.g. *Airsignal International, Inc.*, 81 FCC 2d 472 (1980).

<sup>8/</sup> See *Application* at 9.

**Conclusion**

For the foregoing reasons, Constellation Communications, Inc. requests that the Commission deny the L/Q Licensee, Inc. Application for Review. Constellation also requests that the Commission closely examine L/Q's interest in the Constellation *Petition* to determine whether LQP's and L/Q's overly zealous interest in denying Constellation a license constitutes anticompetitive activity that should be sanctioned and which may call into question LQP's and L/Q's qualifications to continue to serve as a Commission licensee.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Robert A. Mazer". The signature is fluid and cursive, with a long horizontal stroke at the end.

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Dated: March 12, 1996

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Opposition to Application for Review was sent by first-class mail, postage prepaid, this 12th day of March, 1996, to each of the following:

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