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Before The
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

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. 21-SAT-DR-96
17-DSS-P-91(48)
and CSS-91-013
9-SAT-LA-95
10-SAT-AMEND-95

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REPLY TO OPPOSITION

Satellite Policy Branch
International Bureau

Pursuant to Section 1.115 of the Commission's Rules, L/Q Licensee, Inc. ("LQL"), a wholly-owned subsidiary of Loral/QUALCOMM Partnership, L.P. ("LQP"), hereby replies to the "Opposition to Application for Review" filed by Constellation Communications, Inc. ("Constellation").

On February 26, 1996, LQL applied for review of the International Bureau's Memorandum Opinion and Order, DA 96-76 (released January 26, 1996), granting the Petition for Declaratory Ruling filed by Constellation. As set forth in the Application for Review, LQL believes that, contrary to the Commission's rules and policies governing satellite applications, the Bureau permitted the proponent of a space station application which has been cut-off to change more than 50% of its ownership structure without an independent, legitimate business purpose and nonetheless remain in its current processing group. See AirSignal International, Inc., 81 FCC 2d 472 (1980); 47 C.F.R. § 25.116.

A waiver of the cut-off rules may be granted for a major amendment involving a change in ownership where the applicant demonstrates that the ownership transaction (1) has an independent, legitimate business purpose and (2) serves the public interest. See Airsignal, 81 FCC 2d at 475-76. The Bureau's decision that Constellation's Petition met this standard is inconsistent with the Commission's established policies regarding both the cut-off rules and the effect of major changes in ownership of satellite applicants.¹

In its Opposition, Constellation argues that the "legitimate business interest" prong of the AirSignal test is met because it is "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." Opposition, at 4. Were this rationalization correct, it would eviscerate the AirSignal standard and undermine the purpose of the cut-off rules. Ownership changes generally bring new financial resources to bear on a project, and, therefore, without more, do not establish an "independent" business justification or create public interest benefits. Under Constellation's interpretation, an applicant could rejuvenate a deficient application after the cut-off date by claiming that changing owners in order to satisfy the Commission's qualifications constituted a legitimate business purpose. An ownership change

¹ As explained in the Application for Review, LQP had also filed an Application for Review on similar grounds concerning the January 31, 1995 Order on Constellation's qualifications to hold an MSS Above 1 GHz license. See Constellation Communications, Inc., 10 FCC Rcd 2258 (Int'l Bur. 1995). The first Application for Review remains pending.

designed to allow an applicant to comply with a rule on financial qualifications is patently inconsistent with the AirSignal requirement that the ownership change must arise from an independent transaction.

Constellation also argues that as long as the change did not arise from "trafficking" in the application, then it should be deemed permissible. Opposition, at 4. The simple answer to this argument is that, while the prevention of trafficking in satellite applications may be one goal of the cut-off rules, demonstration of the absence of trafficking is not the standard set forth in Section 25.116 or AirSignal.²

Constellation alleges that since LQL has been granted an MSS Above 1 GHz authorization, it has "no specific interest in whether the Commission grants or denies Constellation's Petition." Opposition, at 2. This allegation is, of course, wrong. The mere fact that the Globalstar application was granted first would not lessen the impact of a subsequent grant of Constellation's application, and does not lessen LQL's interest in Constellation's application.

For example, if Constellation's application for its CDMA MSS system is granted, it would be authorized to share the same frequencies with LQL pursuant to the Commission's spectrum-sharing plan for MSS Above 1 GHz. See Report

² LQL's position and arguments on the issues are set forth in detail in the Application for Review filed February 26, 1996, and the Application for Review and Reply regarding the January 31, 1995 Order. LQL incorporates by reference these arguments on the substantive issues into this Reply. Cf. Opposition, at 3. n.6

and Order, 9 FCC Rcd 5936, 5955-56 (1994); Loral/QUALCOMM Partnership, L.P., 10 FCC Rcd 2333 (Int'l. Bur. 1995). Such spectrum-sharing would involve coordination by Constellation and LQL of operations for their MSS Above 1 GHz systems. See Report and Order, 9 FCC Rcd at 5962-63.

Moreover, in 1995, LQP's application for assignment of feeder links was deferred pending action on new international allocations for nongeostationary MSS feeder links at the 1995 World Radiocommunication Conference (WRC-95). See Loral/QUALCOMM Partnership, L.P., 10 FCC Rcd at 2335. LQL recently filed an application for unconditional assignment of feeder link spectrum to the Globalstar system, requesting 5091-5250 MHz for earth-to-space transmissions and 6875-7055 MHz for space-to-earth transmissions, consistent with the WRC-95 allocations. See Application File No. 90-SAT-ML-96 (filed Mar. 8, 1996).

In its November 1994 modification application, Constellation proposed to use the 5050-5250 MHz band for feeder uplinks and the 6825-7025 MHz band for feeder downlinks. See Amendment and Application for Launch Authorization and License, at 16 (Nov. 16, 1994). If and when Constellation files an amended application, it may seek a similar set of feeder link bands which may overlap those requested for Globalstar™. Coordination may be required for both systems to use the 5/7 GHz bands as feeder links.

Constellation has thus proposed to operate in the same frequency bands with the Globalstar™ system. The coordination process attendant on sharing these frequencies may have an impact on operation of the Globalstar™ system.

The questions of who owns and manages Constellation and how its system is designed are both critical to LQL, and give LQL a substantial interest in proposals to modify the facts underlying these issues.

Accordingly, for the reasons set forth in its initial pleading and above, LQL requests that its Application for Review be granted.

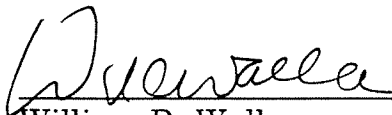
Respectfully submitted,

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I, William D. Wallace, hereby certify that I have on this 27th day of March 1996, caused copies of the foregoing Reply to Opposition to be delivered via hand delivery (indicated with *) or by U.S. mail, postage prepaid, to the following:

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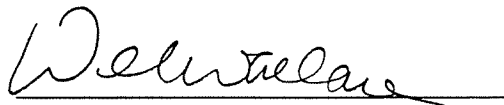
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