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Before The  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In re Application of )  
 )  
CONSTELLATION )  
COMMUNICATIONS, INC. )  
 )  
For Authority to Construct, Launch and )  
Operate a Low-Earth Orbiting 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

REPLY TO OPPOSITION TO  
APPLICATION FOR REVIEW

Pursuant to Section 1.115 of the Commission's Rules, Loral/QUALCOMM Partnership, L.P. (LQP), hereby replies to the "Opposition to Application for Review" filed by Constellation Communications, Inc.<sup>1</sup>

LQP demonstrated in its Application for Review that the recently disclosed substantial change in ownership of Constellation requires that its application be treated as "newly filed" under Section 25.116 of the Commission's Rules, and, that the International Bureau's decision granting Constellation a waiver of the rule must be reversed. See Order, DA 95-129, ¶¶ 18-22 (released January 31, 1995). Constellation's Opposition neither refutes LQP's Application for Review nor provides any justification for the Order. Rather, Constellation argues that the

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<sup>1</sup> This Reply is being submitted one day late due to computer malfunctions in the offices of counsel for LQP. Counsel for Constellation was contacted and agreed to a one-day extension. Because the Reply is the last pleading in the cycle, no party is prejudiced by the extension. LQP requests that the Reply be accepted with this one-day extension.

Commission should ignore its own rules, policies and precedent and also adopt a new policy on "major amendments" which would eviscerate the effectiveness of and policies underlying Commission's existing cut-off rules. There is no justification for such action. Accordingly, the Order on this issue must be reversed.

### ARGUMENT

The essential facts underlying Constellation's waiver request are not in dispute. In a November 16, 1994 amendment to its MSS Above 1 GHz application, Constellation reported that multiple sales of its voting stock over a three-year period resulted in more than 50% of its stock changing hands. Constellation sought a waiver of the rules governing "major amendments" to allow its application to remain in the current processing group.

The Commission's Rules provide that an ownership amendment to a pending satellite application, which specifies "a substantial change in beneficial ownership or control (de jure or de facto) of an applicant," generally requires that the application be treated as a newly-filed. 47 C.F.R. § 25.116(b)(3)-(c). An amendment itself or the "cumulative effect" of the amendment may be deemed a major change pursuant to Section 309 of the Communications Act. 47 C.F.R. § 25.116(b)(4). As LQP demonstrated in its Application for Review (at 7-9), Constellation's ownership changes constitute a "major amendment" to its application, which should, therefore, be treated as "newly filed."

Initially, Constellation claims (Opposition, at 3) that its changes in ownership should not be deemed a major amendment because there were no rules

for guidance on this issue until the rules for the MSS Above 1 GHz service were adopted in October 1994. See Report and Order, 76 RR 2d 202 (1994). This, however, completely ignores the fact that the Report and Order did not address application cut-off rules. In fact, the relevant rules were in effect while the ownership changes occurred. Specifically, Section 1.65 of the Commission's Rules makes Constellation responsible for the continuing accuracy and completeness of information in its pending application. 47 C.F.R. § 1.65. Section 309 of the Communications Act and Section 25.116 of the Commission's Rules dictate whether Constellation's ownership change constitutes a major amendment and apply independently of the service rules for MSS Above 1 GHz.

Constellation next claims that the Commission does not require approval of "separate multiple transfers of minority shares in companies occurring over an extended period of time." Opposition, at 3. Constellation again misses the point. A substantial change in ownership does not require that there be a "sudden 50% change in voting stock ownership or control." Id., at 5. The "cumulative effect" of several transfers can trigger Section 25.116, as Constellation recognized in its Amendment and Application for Launch and Authorization, Ex. 5, Request for Exemption, at 2 (filed Nov. 16, 1994) ("Amendment").

Finally, Constellation claims that the public interest supports grant of the requested waiver. Opposition, at 3. But, here again, Constellation's argument fails. The Commission's standard for granting a waiver of the cut-off rules was articulated in Airsignal International, 81 FCC 2d 472 (1980). See Satellite CD

Radio, 9 FCC Rcd 2569 (CCB 1994); STARSYS Global Positioning, 8 FCC Rcd 1662 (CCB 1993). A waiver may be granted where the ownership change (1) has an independent, legitimate business purpose and (2) serves the public interest. See Airsignal, 81 FCC 2d at 475-76; LQP's Application for Review, at 9-16.

Constellation claims that the multiple equity investments were independent transactions over which Constellation had no control. Opposition, at 3. But, the facts are otherwise. Constellation's Chairman, Mr. Kraselsky, only declared that Constellation had no control over the CTA and Cirrus Logic acquisitions of Constellation voting stock. See Constellation's Opposition, Ex. B, at 3 (filed Jan. 3, 1995). No such representation was made with respect to the Bell Atlantic and E-Systems investments. Indeed, these transactions were not "independent" because Constellation issued new stock to these two companies. See id. at 20-21, & Ex. B, at 2. In any event, the investments by these two companies cannot be viewed as "independent" of Constellation given the presence of representatives of these two companies on the board of directors and the companies' roles "of bringing greater financial strength to Constellation as well as significant technical expertise." Constellation's Amendment, Ex. 5, Request for Exemption, at 4.

With respect to the public interest, the Commission considers whether grant of the requested waiver would prejudice other applicants. See STARSYS, 8 FCC Rcd at 1663, ¶ 7; Satellite CD Radio, 9 FCC Rcd at 2571, ¶ 12. Here, prejudice is present because the Commission has determined that five but not six applicants can be accommodated in the available spectrum. See Report & Order, 76 RR 2d at

215, ¶ 44. Moreover, the cut-off rules are designed to preclude exactly this type of transfer, i.e., where an applicant injects new parties in interest along with a completely revised proposal into a long-standing proceeding. Thus, the criteria for grant of a waiver are not met. Indeed, under these circumstances, grant of Constellation's request for exemption would effectively eliminate the cut-off rules, contrary to the public interest. See LQP's Application for Review, at 16-18.

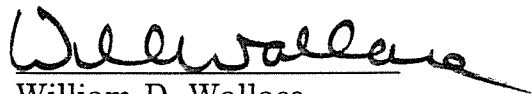
### CONCLUSION

For the reasons set forth above and in LQP's Application for Review, the Bureau's grant of Constellation's requested waiver must be reversed, and LQP's Application for Review granted.

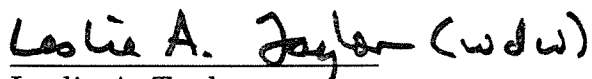
Respectfully submitted,

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Date: March 31, 1995

CERTIFICATE OF SERVICE

I, William D. Wallace, hereby certify that I have on this 31st day of March, 1995, caused copies of the foregoing "Reply to Opposition to 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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