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

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
 CONSTELLATION COMMUNICATIONS, INC.) File Nos. 9-SAT-LA-95
) 10-SAT-AMEND-95
)
 Application for Authority to Construct,)
 Launch and Operate a Non-Geostationary)
 Satellite System to Provide Mobile)
 Satellite Service in the 1.6/2.4 GHz Bands)

To: The Commission

OPPOSITION

Constellation Communications, Inc. ("Constellation"), by counsel, hereby submits its Opposition to the Petitions filed by AMSC Subsidiary Corporation ("AMSC"), Loral/Qualcomm Partnership, L.P. ("LQP"), Mobile Communications Holdings, Inc. ("MCHI"); Motorola Satellite Communications, Inc. ("Motorola") and TRW, Inc. ("TRW") (together, the "Petitioners"). In this Opposition, Constellation confirms that it is fully qualified to construct, launch and operate a low-earth orbit ("LEO") satellite system in the 1.6/2.4 GHz mobile-satellite services ("MSS").

I. Introduction

As the Commission is well aware, the almost four years of this proceeding have been characterized by extremely contentious and at times belligerent discussions. The parties to the proceeding, however, have worked very hard to protect and promote their positions so as to obtain licenses to operate in the 1.6/2.4 GHz bands. Much valuable information has been learned during this time period about non-geostationary MSS

technology and the business requirements necessary to implement this technology. The following facts are incontrovertible with regard to the applications and the 1.6/2.4 GHz LEO MSS technology and market:

- **The implementation of non-geostationary MSS systems operating in the 1.6/2.4 GHz bands will require enormous capital resources.**
- **No single company will fund an entire 1.6/2.4 GHz MSS non-geostationary system.**
- **The success of any individual proposal will rest on the business plan associated with that proposal and the ability of the applicant to attract strategic investors from around the world to share the risks associated with the proposed system.**

In June 1991, when Constellation submitted its application to construct a non-geostationary MSS system, it was a new company. There were numerous individual shareholders, including three ongoing businesses: Defense Systems, Inc. ("DSI"), Microsat Launch Systems, Inc. ("Microsat"), and Pacific Communications Sciences, Inc. ("PCSI"). At that time, Constellation was well aware that implementation of its proposed system would require substantial financial resources and that these resources were beyond what its shareholders alone would be willing to risk. This is precisely the same conclusion that Motorola, LQP, MCHI and TRW reached at the outset concerning their own systems. Constellation, like each of the other applicants, set out to develop additional strategic relationships to foster the development of a sound financial plan for implementing its system.

Constellation has worked diligently since June 1991 to refine its system and to obtain additional investors. Its search for strategic and financial parties has proven

fruitful, as demonstrated by the additional equity investments now made in Constellation by E-Systems, Inc. ("E-Systems") and Bell Atlantic Enterprises International, Inc. ("Bell Atlantic").¹ These companies are working with the other Constellation shareholders to implement a sound financial plan for the proposed 1.6/2.4 GHz MSS LEO satellite system.

In addition to the current equity investors, Constellation has assembled a broader team of strategic partners to implement its system.² TELEBRAS, the Brazilian national telephone company, alone has sufficient current assets to be capable of financing the entire Constellation system. The participation of Constellation's equity shareholders, along with TELEBRAS, and Martin Marietta Astro-Space, and Texas Instruments, Inc.,³ also insures that Constellation has an advanced state-of-the art system.

Given the enormous stakes and opportunities presented by the 1.6/2.4 GHz LEO MSS, it is not surprising that the other applicants are now engaged in a war of attrition against Constellation. Nevertheless, Constellation is disappointed by the level of mischaracterizations and innuendo in the Petitioners' arguments.

There are two issues raised by the Petitioners regarding Constellation's

¹ Bell Atlantic Enterprises International, Inc. is a wholly-owned subsidiary of Bell Atlantic Corporation. In 1993, Bell Atlantic Corporation had \$3.87 billion in assets, \$2.1 billion in lines of credit, and annual funds from operations in excess of \$4.2 billion; E-Systems had \$750 million in current assets, \$350 million in lines of credit and \$180 million in operating income.

² Although TELEBRAS is not yet a partner, it intends to make a substantial investment in Constellation's proposed satellite system, as evidenced by the November 10, 1994 letter from its President and Chief Executive Officer, Adyr da Silva. See Constellation's November 16, 1994 Amendment at Exhibits 4 and 8.

³ See Constellation's November 16, 1994 Amendment at 4-7.

qualifications. The first issue relates to Constellation's financial qualifications. As shown herein, Constellation has demonstrated its financial qualifications in a manner consistent with §25.140(d)(1) of the Commission's Rules. It did this by supplying the balance sheets and "commitment letters" from two of its parents -- Bell Atlantic and E-Systems. There can be no doubt that Bell Atlantic and E-Systems have assets and operating income in excess of the cost to construct, launch and operate for one year the Constellation system. Additionally, the "management commitment" letters supplied by Bell Atlantic and E-Systems are fully consistent with Commission policy and precedent.

The second argument raised by the Petitioners questions whether Constellation should be allowed to perfect its application by acquiring investment partners such as Bell Atlantic and E-Systems as parent-company shareholders.⁴ They raise this issue because a series of gradual changes in voting authority and ownership of Constellation's voting stock have occurred over the past three years. The only reason that this is an issue at all is because of the unrelated sale of three Constellation shareholders (DSI, PCSI and Microsat) to third parties for business reasons totally unrelated to Constellation and over which Constellation had absolutely no control. Constellation wants to be absolutely clear on this issue. As of the November 16, 1994 Amendment, more than 50% of Constellation stock is still owned by the original shareholders (including DSI, PCSI and Microsat) who held stock on June 3, 1991, the date the original Constellation application

⁴ Today, Constellation, LQP, Motorola and TRW, do not have all the "money set aside, waiting to be spent" that is necessary to construct their entire systems. This is confirmed through a recent review of the 10-Ks submitted by these applicants or their parents.

was submitted to the FCC.⁵ As Constellation demonstrates, there is no requirement for prior Commission approval of the separate and gradual transfers of minority interests in Constellation. Moreover, assuming arguendo, that prior approval was needed, the circumstances associated with the DSI, PCSI and Microsat transfers warrant granting of a waiver of any applicable rules on major amendments.

II. Constellation Has Demonstrated Its Financial Qualifications

Constellation demonstrated its financial qualifications under §25.140(d)(1) of the Commission's Rules in its November 16, 1994 Amendment to its pending application. It does this in the same manner as LQP, Motorola and TRW, i.e., by providing a balance sheet and a management commitment from its parents. Nothing in the Petitions refutes this conclusion.

There are two issues raised by the Petitioners regarding Constellation's financial qualifications. First, questions are raised whether Bell Atlantic and E-Systems can function as parents for purposes of demonstrating Constellation's financial qualifications under §25.140(d)(1) of the Commission's Rules. As the Petitioners know, the Commission has previously allowed minority stockholders to demonstrate an applicant's financial qualifications but has never precisely defined what constitutes a parent. It would be particularly egregious for the Commission not to allow Bell Atlantic or E-Systems to function as parents in this proceeding. This is because the parents of Motorola and LQP as well as TRW have all indicated that they will hold approximately

⁵ This statement continues to be true as of the date of this filing.

no more than 15% in a LEO MSS system.

The second question regarding Constellation's financial qualifications revolves around the "management commitment" letters provided by Bell Atlantic and E-Systems. These letters were explicitly written to demonstrate Constellation's financial qualifications under §25.140(d)(1) of the Rules. This is confirmed by the Declarations appearing in Exhibit A from Bell Atlantic and E-Systems. These letters were generally fashioned after a previous management commitment letter expressly cited by the Commission as demonstrating a "management commitment" of a parent. The Rules have not changed, and, thus, these letters demonstrate the requisite "management commitment" under §25.140(d) of the Commission's Rules. Petitioners also question the last paragraph of the Bell Atlantic letter which indicates that the actual financial commitments would be subject to Bell Atlantic's internal business approval processes. A review of the facts surrounding the LQP, Motorola and TRW applications reveal that, just as Bell Atlantic, the parents of each of these companies have future decisions to make and must follow the appropriate internal approval processes for making those decisions.

A. The FCC Financial Qualification Standard

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 Commission's Rules.⁶ Under this Rule, an applicant must demonstrate current financial ability to meet the costs of the proposed system.

There are three options available to an applicant. Under the first option specified in §25.140(d)(1), the applicant itself must demonstrate that it has current assets and operating income in excess of the financial resources required to construct, launch and operate for one year the proposed satellite system. Additionally, there must be a "management commitment" to support the project. Under the second option, also specified in §25.140(d)(1), an applicant's parent(s) must demonstrate current assets and operating income in excess of the financial resources required to construct, launch and operate for one year the proposed satellite system. There also must be a general "management commitment" from the parent(s) to support the project. The Commission stated 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."⁷ Rather, it merely required a general management commitment. Under the third option, which is specified in §25.140(d)(2), if an applicant cannot meet either of the other options, it must provide detailed information about fully negotiated loans or credit arrangements obtained from external financing sources.

Contrary to the presumption of the Petitioners, Constellation is not demonstrating

⁶ 47 C.F.R. §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.

⁷ Id. at para. 13. The Commission further noted in this Order that a management commitment could be withdrawn as easily as it is given.

its financial qualifications under the third option, which is specified in §25.140(d)(2).⁸ Constellation chose the second option specified in §25.140(d)(1) to demonstrate its financial qualifications. Pursuant to this Rule, Constellation is relying on the balance sheets and management commitment letters supplied by E-Systems and Bell Atlantic as its parents to demonstrate current assets and operating income in excess of the financial resources required to construct, launch and operate for one year the proposed satellite system.⁹

⁸ In a feeble attempt to disqualify Constellation, LQP refers to Commission precedent regarding financial qualifications of satellite applicants. However, the cases cited by LQP are of no precedential value. In National Exchange, Inc., 103 FCC 2d 836 (1985), and Equatorial Communications Services, 103 FCC 2d 631 (1985), the Commission evaluated financial qualifications pursuant to the third option specified at §25.140(d)(2) of the Commission's Rules. These cases dealt with external financing requirements. Again, Constellation is not attempting to demonstrate its financial qualifications under §25.140(d)(2).

LQP's reference to Satellite Business Systems, 103 FCC 2d 856 (1985), is also curious. LQP states that "the Commission found insufficient for purposes of internal financing a letter which indicated that an investor had committed funds to [the company's satellite programs] in the past and will continue to provide support." LQP Petition at 7. A review of this decision nowhere indicates that a letter was proffered with the above statement for purposes of demonstrating SBS' financial qualifications. In fact, the Commission concluded that SBS failed to provide a letter demonstrating a "management commitment" and requested that SBS subsequently provide such a letter.

⁹ In its Petition at 17, TRW complains that Constellation has not provided its own balance sheet. However, a careful reading of §25.140(d)(1) reveals no such requirement when an applicant, such as Constellation, relies on the balance sheets of its parents to demonstrate financial qualifications.

B. Constellation Is Financially Qualified Under The Commission's Rules

In compliance with §25.140(d)(1), Constellation stated in its November 16, 1994 Amendment that the total investment required to construct and launch the entire Constellation system of 46 operational and 8 in-orbit spare satellites is estimated to be \$1.695 billion. The cost of operating the system for one year after the launch of the first satellite is estimated to be \$26.4 million, for a total of \$1.721 billion. Exhibits 4, 6 and 7 of the Amendment contain balance sheets of Bell Atlantic and E-Systems together with letters from corporate officers of these companies demonstrating compliance with §25.140(d)(1). E-Systems and Bell Atlantic have combined assets of approximately \$4.620 billion and operating income of approximately \$3.0 billion, totalling more than approximately \$7.6 billion.¹⁰ There can be no doubt that Constellation's parents, Bell Atlantic and E-Systems, have combined assets in excess of the approximately \$1.7 billion necessary to implement the Constellation system.¹¹

Constellation also meets the second part of the Commission's test through the letters submitted by E-Systems and Bell Atlantic. The E-Systems and Bell Atlantic letters were written with the clear intention of demonstrating the financial qualifications

¹⁰ As is the case with all LEO systems, the Constellation's LEO system is inherently international in scope. The system will reflect ownership from major telecommunication entities outside the United States. As noted, TELEBRAS has indicated its intent to be a major shareholder in the venture.

¹¹ Motorola questions whether debt service should be included in a total projection of the funding required for the Constellation system. The Commission has never required that debt service be included in cost estimates, as is evidenced by Motorola's lack of citation supporting this proposition.

of Constellation under 47 C.F.R. §25.140(d)(1). These letters both describe each company's assets, operating income and lines of credit and together "these ... funds are well in excess of the amount which we understand is necessary to construct, launch and operate for one year the Constellation LEO satellite system." Both letters then state the intentions of these companies to provide financial support to Constellation.¹² The Petitioners question the actual wording of these letters, arguing that they do not represent a management commitment as required under §25.140(d). In preparation for its November 16, 1994 Amendment, Constellation reviewed previous financial commitment letters found acceptable under §25.140(d)(1). Specifically, the Bell Atlantic and E-Systems letters were generally fashioned after a letter expressly cited by the Commission as demonstrating a "management commitment" of a parent.¹³ Since the rules have not changed, this letter clearly contains acceptable language to demonstrate the requisite "management commitment".

**C. The Commission Has Recognized That
"Management Commitment" Can Be
Demonstrated In A Variety Of Ways**

The Petitioners attempt to review the E-System and Bell Atlantic letters word-by-word in order to discredit Constellation. However, the Commission must recognize that

¹² This is further reaffirmed in Declarations from Thomas R. McKeough, Vice President of Mergers and Acquisitions and Associate General Counsel, Bell Atlantic Corporation and Peter Marino, Senior Vice President, E-Systems Corporation, attached to this pleading as Exhibit A.

¹³ See National Exchange Satellite, Inc., 3 FCC Rcd 6992 n.5 (1988).

there never has been any clear statement on precisely what wording must be in a "management commitment" letter in the context of satellite applications. The variation in acceptable wording is clearly demonstrated through a review of the actual wording of previous domestic satellite applicants' letters and each of the commitment letters provided by the current applicants.

For instance, in 1987, Contel Corporation, one of the parents of American Satellite Company ("ASC"), provided a letter to demonstrate the financial qualifications of ASC, which stated, "if necessary and required Contel Corporation will take all reasonable steps to ensure that Contel ASC has the monies necessary" to fund the satellite system.¹⁴ Pursuant to this letter, ASC was found financially qualified.¹⁵ In the letter used as the basis for the E-Systems and Bell Atlantic letters, 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."¹⁶ Again, pursuant to this letter, NEX was found financially qualified by this Commission.¹⁷

Even the letters provided by other pending LEO applicants vary. These letters

¹⁴ See Letter from Malcom Holmes, Executive Vice President, Chief Financial Officer, Contel Corporation to William J. Tricarico, Secretary, Federal Communications Commission, August 31, 1987.

¹⁵ See Contel ASC, 3 FCC Rcd 6982 (1988).

¹⁶ See Letter from Gerald Grinstein, Vice Chairman, Burlington Northern, Inc. to Clay T. Whitehead, National Exchange, Inc., August 20, 1987.

¹⁷ See National Exchange Satellite, Inc. 3 FCC Rcd 6992 (1988).

demonstrate that the actual wording may vary without undoing the commitment made. For instance, Motorola's letter states that Motorola, Inc. is "fully committed to meeting the construction costs and operating expenses of [the] Iridium system,"¹⁸ while LQP states 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 expect the necessary funds."¹⁹ (Emphasis added.) TRW states in a Declaration that "[a]bsent a material change in circumstances, [it] is committed to expend the funds necessary to construct, launch and operate the Odyssey system."²⁰ All of these letters demonstrate that there are no true "magic words" for demonstrating management commitment.

D. All Applicants Will have A Minority Interest In Their Proposed Systems

The Petitioners question whether Bell Atlantic and/or E-Systems can be deemed "parents" of Constellation because of the amount of these companies' current equity investment. As the Commission knows, regardless of the equity held by any individual company in an applicant today, no company or "applicant" will hold a majority interest in an operating 1.6/2.4 GHz LEO MSS system. While the Commission has not directly addressed this question, it has, however, previously approved domestic satellite license

¹⁸ 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.

¹⁹ See Letter from Michael B. Targoff, Senior Vice President, Loral Corporation to the Federal Communications Commission, November 14, 1994.

²⁰ See Declaration of Ronald D. Sugar, Executive Vice President and Chief Financial Officer, TRW, Inc., November 9, 1994.

applications where a parent owned only a part of the outstanding shares of an applicant.²¹ The Rule states, "if the applicant is owned by more than one corporate parent"; it does not specify any minimum ownership level needed to be considered a "parent" and the Commission cannot reject Constellation on the basis of a specific percentage figure.

As the Commission evaluates this issue, it must recognize that the large financial requirements and international participation inherent in 1.6/2.4 GHz LEO MSS systems necessitate that all the initial applicants will eventually be minority owners of the operational systems and thus multiple minority "parents" will participate. This fact has been clearly recognized by LQP, Motorola and TRW. Each of these applicants has indicated that it would be a minority shareholder in its respective LEO system owner. For example, in its recently filed Form S-1 Registration Statement for an initial public offering of Globalstar Telecommunications Limited and its most recent Form 10-K, LQP states that it expects to have an interest of approximately 25% in the applicant and somewhat less than 25% in the entire Globalstar project.²² Similarly, Motorola indicated in its Form 10-K that it would hold an ownership interest in its proposed Iridium LEO system of "not less than 15% over time"²³ Likewise, TRW has indicated

²¹ See American Satellite Company, 103 FCC 2d 542 (1985), Satellite Business Systems, 103 FCC 2d 856 (1985), and National Exchange, Inc., 3 FCC Rcd 6992 (1988). Furthermore, LQP is using one of its parents -- Loral -- to demonstrate its financial qualifications.

²² See Globalstar Telecommunications Limited, Form S-1, November 29, 1994.

²³ See Motorola Inc. Form 10-K, "Securities and Exchange Commission for the Fiscal Year Ended December 31, 1993 at 12".

that TRW and Teleglobe will fund only 15% of the Odyssey system.²⁴ For the Commission to allow these self-professed minority parents to demonstrate financial qualifications of the applicants and at the same time disallow Bell Atlantic and E-Systems, who control 8% and 31% respectively of Constellation stock, would be totally unfair and inconsistent with existing Commission Rules and policies. Given the above, there should be no question that Bell Atlantic and E-Systems should be treated as parents of Constellation.²⁵

E. The Facts Reveal That All Applicants And Their Parents Have Future Decisions To Make Regarding The Proposed Big LEO Systems

Another issue regarding Constellation's qualifications relates to limitations included in the letters of Bell Atlantic and E-Systems. Specifically, Bell Atlantic and E-Systems state that their commitments are "subject to normal business reviews of market conditions and each project's progress to assure acceptable levels of risk and return." This is precisely the language that the Commission has previously allowed in recognition of the fact that material changes may affect the feasibility of projects of this type. It is also consistent with the language contained in the letters supplied by Loral and TRW.

²⁴ See Wall Street Journal, November 15, 1994 at A-2 and TRW Inc. and TeleGlobe Press Release, November 15, 1994.

²⁵ Unlike LQP, Motorola and TRW, Constellation is a small company that cannot demonstrate financial qualifications under §25.140(d)(1) on its own. If the Commission were to disallow the involvement of large strategic partners in Constellation, it would merely codify a prejudice in favor of big companies who can more easily demonstrate financial qualifications. However, there is no clear indication that these big companies will be any more or less successful than Constellation.

The Rule has not changed and, given the above, the language in the letters of E-Systems and Bell Atlantic is acceptable.

The Petitioners also question whether the wording in the last paragraph of the Bell Atlantic letter is sufficient to demonstrate a "management commitment". In particular, Bell Atlantic states that actual financial commitments would be subject to negotiation of satisfactory agreements, and its customary business approval procedures, including, if applicable, approval by the Board of Directors. This language merely reflects customary approval procedures. Moreover, if one reads beyond the actual wording of the Loral, Motorola and TRW letters, the facts reveal that these companies have made the same commitment as Bell Atlantic.

The paragraph in question is a statement concerning Bell Atlantic's actual corporate approval process. These procedures ensure that the company operates in a manner consistent with the fiduciary responsibilities Bell Atlantic has to its shareholders. This type of procedure is routinely used by most major U.S. corporations. This language cannot disqualify Constellation for two reasons. First, the Commission has rejected a requirement that Board of Directors' approval be provided to demonstrate a management commitment under the Rule in question. Second, LQP, Motorola and TRW, just 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."²⁶ The Commission indicated that an example of such commitment would be a Board of Directors' resolution.²⁷ The Commission backed away from this requirement in adopting its Rules and indicated that "a general management commitment to the program would be sufficient."²⁸ This policy determination clearly presumes that Board of Directors' approval is not a prerequisite for a management commitment. Similarly, the possibility of later Board of Directors' approvals does not invalidate a "management commitment" letter.

Given the current financial position of each of these applicants' proposed LEO MSS systems, it is fair to assume that any new financial commitments or other important commitments of a contractual nature provided by the applicants' "parent's" must be approved in a manner consistent with that "parents'" normal internal business procedures, if they involve substantial amounts of expenditures, such as those needed to complete system financing. The only real difference between the Bell Atlantic letter and the letters submitted by Loral, Motorola and TRW is that Bell Atlantic was more open about its actual internal corporate approval process.²⁹ Certainly, Loral, TRW and

²⁶ See Notice of Proposed Rulemaking in CC Docket No. 85-135, 101 FCC 2d 223, 231-234 (1985).

²⁷ Id. at n.51.

²⁸ See Report and Order in CC Docket No. 85-135 FCC 85-395, released August 29, 1985 at paras. 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 para. 13.

²⁹ It is important to note that Loral has not committed to expend the entire \$1.6 billion necessary to fund the Globalstar program. It merely committed to "expend the funds or take all reasonable steps to cause LQP to raise and expend the necessary

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Motorola have processes in place to insure that financial actions are taken in a manner consistent with their fiduciary responsibilities to their shareholders.

No one believes that any one company is going to expend billions of dollars on a single LEO MSS satellite project. As the Commission recognized previously, the best it can do is get a general "management commitment" for the project. E-Systems and Bell Atlantic have provided such a commitment.³⁰ It will now be up to the Commission to grant Constellation and the other qualified applicants a license and insure that its policy goals associated with financial qualifications are adhered to and the spectrum does not lay fallow.³¹

²⁹(...continued)

funds." Certainly, this commitment contains contingencies and requires future actions and approvals. It certainly is not clear that Loral will provide the required funding if the Globalstar public offering fails.

³⁰ Id. This is vastly different from the commitments provided in the MCHI application by Westinghouse, Harris, IAI and C&W, the only parties who could possibly demonstrate MCHI's financial qualifications under §24.140(d)(1). Westinghouse fails to make any financial commitment but merely states that it will help "move the project forward." Harris' letter is not signed by a corporate officer and states that it is committed to continuing to support MCHI under the terms of its existing business arrangement with MCHI. However, this business arrangement is never disclosed. IAI fails to provide its current assets and operating income and indicates that it is only prepared to support MCHI's efforts to raise the necessary funds. Finally, the C&W letter is not signed by a corporate officer nor does it provide any commitment to provide the necessary financial support.

³¹ This should be done through strict enforcement of system milestones. Constellation and its shareholders understand the obligations of Commission licensees not to traffic in bare licenses. See 47 C.F.R. §§25.143(g). The Commission has been diligent in enforcing this anti-trafficking policy in the context of other satellite licenses. For example, the Commission previously rejected an attempt by Ford Aerospace (now known as Space Systems/Loral, Inc.), which obtained a Commission license to construct, launch and operate a domestic satellite system and then attempted to sell the bare license to AT&T. See American Telephone and Telegraph Company and Ford Aerospace Satellite Services Corporation, 2 FCC Rcd 4431 (1987).

In summary, the E-Systems and Bell Atlantic letters were written based on a review of the rules and previous letters and with the clear intention of demonstrating the financial qualifications of Constellation under 47 C.F.R. §25.140(d)(1).³² These letters comply with the Rules and Constellation should be found financially qualified.

III. No Substantial Change In The Ownership Or Voting Control Of Constellation's Stock Has Occurred Or A Cut-Off Waiver Is Warranted

In Exhibit 5 of its November 16, 1994 Amendment, Constellation reported on its Form 430 certain changes in the identity of the entities holding or controlling more than 10% of Constellation's voting stock and in the membership of its Board of Directors. The Petitioners erroneously argue that these changes constitute a "substantial change in beneficial ownership or control" of Constellation which required contemporaneous notification to the Commission under §1.65 of the Rules and a major amendment of Constellation's application.³³

³² As noted, this is reiterated in Declarations from Thomas R. McKeough, Vice President of Mergers and Acquisitions and Associate General Counsel, Bell Atlantic Corporation, and Peter Marino, Senior Vice President, E-Systems attached to this pleading as Exhibit A.

³³ It should be noted that this proceeding has seen a number of significant amendments filed by the applicants affecting the applicant's technical design and ownership structure. For instance, AMSC filed an Amendment on November 16, 1994 changing its application from merely adding on the 1.6 GHz frequencies to its currently licensed geostationary system to an entirely new LEO system. Additionally, Motorola, LQP and MCHI have filed amendments notifying the Commission of corporate reorganizations as well as technical changes. It is hard to justify granting any of these significant amendments and at the same time preventing Constellation from obtaining additional investments.

The attempt by the Petitioners to paint Constellation's actions regarding this matter as inconsistent with the Commission's Rules is wrong. First, it was not until the Report and Order, which was released on October 14, 1994, that the Commission adopted rules for 1.6/2.4 GHz LEO MSS applicants. During 1992 and 1993, when most of the changes in ownership or voting control over Constellation stock occurred, there was no Commission guidance on these matters. The Commission has never required prior Commission approval of multiple transfers of minority shares in companies over an extended period of time. Moreover, even if the Commission were to find that a waiver of the major amendment rule is required because of corporate acquisitions of DSI, PCSI and Microsat, it has repeatedly granted waivers for such transactions where the transactions took place for reasons totally unrelated to the pending application. Therefore, the Commission should reject the Petitioners' claims regarding transfers of Constellation stock.

**A. The Changed Stock Interests
Do Not Constitute A Major Amendment**

At the outset, it is important to understand that, as explained in the attached Declaration of Bruce D. Kraselsky, Constellation's Chairman (Exhibit B), Constellation is a Delaware corporation whose voting stock is broadly owned by individuals and business entities. Thus, while only three individuals or entities each owned 10% or more of Constellation's voting stock when its application was filed in June 1991, some 18 other

individuals owned stock in Constellation, with each holding less than a 10% interest.³⁴

Exh. B. at ¶2(b). As reflected in Exhibit VI of Constellation's current Form 430 (Exhibit 5 of its November 16, 1994 Amendment), two entities now individually vote or own 10% or more of Constellation's voting stock (CTA Launch Services (formerly Microsat) and E-Systems); however, some 29 entities each own less than 10% of the stock, including Bell Atlantic's 8% voting interest. Exh. B at ¶2(b). Under these circumstances, it is clear that LQP is incorrect when it tries to characterize Constellation as a closely-held corporation with "five 20-percent shareholders" (LQP Petition at 13).

Once Constellation's Application was filed on June 3, 1991, no change in voting control or ownership of its voting stock occurred until 12 months later, when CTA purchased DSI. Nine months later, in March 1993, Cirrus Logic, Inc. purchased all of the outstanding stock of PCSI³⁵. Then, in September 1993, CTA purchased Microsat. Finally, in March, 1993 and October, 1994, respectively, E-Systems and Bell Atlantic³⁶

³⁴ The 10-percent benchmark is appropriate because Form 430 requires the disclosure of the identity and voting stock holdings of stockholders owning 10% or more of an applicant's voting stock.

³⁵ MCHI (Petition at 24) questions when and how PCSI acquired its stock in Constellation. PCSI was a stockholder in Constellation on June 3, 1991 but since its holdings were below 10%, it was not reported in the original Constellation Form 430. As of November 16, 1994, PCSI held the exact same number of shares in Constellation as it held on June 3, 1991.

³⁶ Several commenters question whether Bell Atlantic can invest in Constellation as a result of the line of business restrictions of the Modified Final Judgment (MFJ). See American Telephone and Telegraph Co., 552 F. Supp. 131, 227 (D.C. 1982), aff'd sub nom. Maryland v. United States, 460 U.S. 1001 (1983) The Commission has stated on a number of occasions that the determination of whether the operation of a particular service by a Bell Operating Company ("BOC") is lawful is a matter for resolution by the U.S. District Court for the District of Columbia. See GTE Mobilenet of Indiana Limited
(continued...)

acquired new Constellation voting stock. These transactions are more fully described in Section B below; however, it is clear from the transaction dates that the changes in ownership or voting control of Constellation's voting stock occurred over a more than 3-year period.

Perhaps the clearest and easiest way to analyze the net effect over the three years of these five minor transactions in Constellation's stock is to recognize that, out of the 814,819 outstanding shares of Constellation's voting stock at the present time, 408,889 shares, or 50.18%, are held by the same group of individuals and entities who owned Constellation stock in June 1991.³⁷ Exh. B at ¶12(a). It also should be emphasized that Microsat, DSI, and PCSI still hold the stock as separate corporations and continue to be the owners of record of Constellation's stock (see Amendment Exh. 5, Attachment A at n.1). While newly issued voting stock was sold to Bell Atlantic and E-Systems, it amounts to only approximately 39% of Constellation's outstanding voting stock -- Bell Atlantic, 8%; E-Systems, 31%.

Constellation understands that if one merely adds together the stock ownership percentages referenced above for Microsat, DSI, PCSI, Bell Atlantic, and E-Systems, the

³⁶(...continued)

Partnership Mobile Systems of Philadelphia, 2 FCC Rcd 7531 (1987), Bell Atlantic Mobil Services of Philadelphia, 2 FCC Rcd 717 (1987), and New York SMSA Limited Partnership, 58 RR 2d 525, 530 (1985).

³⁷ Specifically, DSI, Microsat, PCSI and David Wine all own roughly the same number of shares today as they owned on June 3, 1991, the day Constellation filed its application. The reduction in percentage interest in Constellation is a result of dilution from issuance of new shares bought by E-Systems and Bell Atlantic and shares sold to other individuals with minority interests.

sum of these percentages is more than 50%. However, the five stock transactions did not place ownership of more than 50% of Constellation's voting stock into the hands of individuals or entities who were not part of Constellation's original application, because 50.18% of Constellation's stock remains in original hands. Thus, there is absolutely no substance to the Petitioners' shrill claims that there has been a "near total change in ownership of Constellation" (LQP Petition at 17).

The same result obtains if one analyzes the roster of Constellation's officers and directors from June 1991 to the present, which was prepared by Mr. Kraselsky and is attached to his Declaration (Exh. B, supra). Mr. Kraselsky's chart shows very clearly that the changes in the officers and directors of Constellation over the last three years have been gradual and, most importantly, that there has not been a single point in time at which a majority of the officers or directors changed. Thus, Constellation rejects as groundless TRW's claim (Petition to Deny at 10) that "a de facto transfer of control" of Constellation's board occurred because of the five stock transactions discussed above. It is likewise frivolous for LQP to assert (Petition to Deny at 12) -- when it knows that Constellation has a total of nine directors -- that Bell Atlantic and E-Systems may now "control" Constellation because Bell Atlantic has two Constellation directors affiliated with it and E-Systems has three. Obviously, Bell Atlantic and E-Systems are distinct and unrelated business entities, and LQP has stated no basis, nor is there one, for lumping them together to measure "control".

In sum, the Commission has long recognized that gradual changes in voting stock interests and the officers and directors of a corporation over time -- such as described

above -- do not constitute a de facto or de jure transfer of control requiring prior Commission approval, or constituting a "major amendment," even when more than 50 percent of the stock or director seats are eventually held by new persons. In other words, where, as here there was not a sudden 50% change in voting stock ownership or control or in the majority of Constellation's Board of Directors, and no evidence that any shareholder or officer or director had "the power to dominate the management of ... corporate affairs," the Commission's transfer of control and major amendment policies do not come into play. See WHDH, Inc.,³⁸ 16 FCC 2d 29, 222-24 (I.D. 1966) (no transfer of control when more than 50% of voting stock of widely-held company changes hands over long period of time), aff'd on this point but reversed on other grounds, 16 FCC 2d 1, 6, 18 (1969), aff'd sub nom. Greater Boston Television Corp. v. FCC, 444 F.2d 841 (D.C. Cir. 1970), cert. denied, 403 U.S. 923 (1971); Tender Offers and Proxy Contests, 59 RR 2d 1536, 1545 n.40 (1986) ("In general, we have not required prior Commission approval in situations where a corporate election only results in a change in a minority of the Board of Directors, even if over time a majority of the Board is eventually replaced"); Transfers of Control of Certain Licensed Non-Stock Entities, 4 FCC Rcd 3403, 3404 (1989) ("an abrupt change (or change within a short period of time) in a majority of a controlling Board of Directors would likely constitute ... [a] transfer of

³⁸ MCHI (Petition at 25) erroneously cites an earlier Review Board interlocutory order (3 RR 2d 579 (1964)) in the WHDH proceeding for the mistaken proposition that whenever a 50% change in ownership occurs, there is a transfer of control. The cited Initial Decision specifically rejected that narrow view, and the full Commission affirmed the Hearing Examiner on that point. Thus, the WHDH case fully supports Constellation, and MCHI should be admonished for its misuse of Commission precedent.

control"); Sewell, "Sale of FCC Authorizations," ("Sewell"), 43 Fed. Comm. L.J. 277, 311-12 (1990).

Although Sewell asserts that "closely held corporations" are treated differently from publicly or widely-held corporations, id. at 312, Constellation has shown above that it is not a closely held corporation, or, at minimum, has a sufficient number of stockholders to be treated more like a publicly held corporation when evaluating control issues.³⁹ Hence, Constellation urges that the five gradual stock transactions in question and the gradual changes in Constellation's officers and directors over the last three years did not constitute a "substantial change" in Constellation's ownership within the meaning of Commission rule, policy, and case precedent. Therefore, no §1.65 notification or major amendment of Constellation's application was necessary.

B. Contingent Request For Exemption Or Waiver Of Major Amendment Cut-off Rule

On a contingent basis, Constellation also requested in Attachment A to Exhibit 5 of its November 16, 1994 Amendment an exemption, pursuant to §25.116(c)(2), from the rule's "cut-off" date requirement for major amendments, in the event that the Commission determined that the five stock transactions in question constitute a "substantial change" in Constellation's ownership or control, because of the "cumulative effect" of the transactions under §25.116(b)(4). The Petitioners have misread or distorted Constel-

³⁹ Constellation's shareholders are generally unrelated businesses or individual investors.

lation's exemption request, and Constellation will now rebut their erroneous arguments and conclusions.

Although §25.116 is relatively new, exemptions have been routinely granted under similar Commission rules where the Commission determined that (1) a change in ownership or control is calculated "to further a legitimate business purpose" (rather than merely to acquire the pending application itself) and (2) the acquisition is in the public interest. The leading cases applying this test -- the latter two specifically involving §25.116 -- are Airsignal International, Inc., 81 FCC 2d 472 (1980); ISA Communications Services, Inc., 90 FCC 2d 938 (1982); STARSYS Global Positioning, Inc., 8 FCC Rcd 1662, 1663 ¶¶ 6-7 (CC Bur. 1993); and Satellite CD Radio, Inc., 9 FCC Rcd 2569, 2569 (CC Bur. 1994).

Consistent with these rulings, Constellation urged in Attachment A of Amendment Exhibit 5 that the primary purpose of the purchases of DSI, Microsat, and PCSI were not to acquire Constellation stock or Constellation's application, but rather for business reasons totally unrelated to Constellation. Thus, in June 1992, CTA (a systems engineering and software development company) purchased DSI. This transaction was consummated to merge CTA's system engineering capabilities with DSI's manufacturing capabilities and was concluded on a bilateral basis between CTA and DSI. Nine months later, in March 1993, Cirrus Logic, Inc. purchased PCSI. Cirrus Logic is a large semiconductor manufacturer and was interested in acquiring PCSI's telecommunications capability. Six months after the PCSI/Cirrus Logic transaction was consummated, CTA

purchased Microsat in September 1993.⁴⁰ The acquisition of Microsat added launch services capabilities to CTA's system engineering and manufacturing capabilities. On the other hand, the minority voting stock acquisitions by Bell Atlantic and E-Systems in 1993 and 1994 were for the purpose of infusing financial strength and technical expertise into Constellation. However, just like the DSI, Microsat and PCSI transfers, the Bell Atlantic and E-Systems stock purchases were not to buy control of Constellation's pending application.

Most importantly, Constellation reemphasizes that the changes in voting control of Constellation's stock brought about by the Microsat, DSI and PCSI transactions were the incidental result of arm's-length transactions concerning which Constellation had no control and which were carried out for legitimate private business purposes wholly unrelated to Constellation's application. In each of the three unrelated transactions, consummated over a 15-month period, Constellation's voting stock was only an incidental asset obtained in the purchase. Hence, Constellation submits that, under the above-cited Airsignal line of cases, it is clear that an exemption under §25.160(c)(2) from any cumulative treatment of the Microsat, DSI and PCSI stock transactions is warranted.

As to the Bell Atlantic and E-Systems⁴¹ stock purchases, LQP appears to accept (Petition to Deny at 18) the sale of Constellation stock to acquire greater financial

⁴⁰ Id.

⁴¹ In a frivolous attempt to disqualify the E-Systems stock purchase, MCHI claims that E-Systems wants to step into the applicant's shoes. See MCHI Petition at 24. This is ridiculous since E-Systems does not control or have any interest in taking control over Constellation.

strength and expertise as a bona fide justification for an Airsignal waiver. In this respect, Constellation has taken a path identical to LQP and Motorola in attracting investors to foster implementation of their LEO proposals. However, the Petitioners err when they accuse Constellation of ceding control of Constellation to Bell Atlantic and E-Systems (LQP Petition to Deny at 22) or to CTA and E-Systems (TRW Petition to Deny at 8). As explained above, there is no factual support for these claims, especially since these companies are independent corporations and do not act together as a single "control" entity.⁴²

In short, the Petitioners are straining to find some way to disparage and link five unrelated stock transactions in order to disqualify Constellation. However, this tactic is unavailing because it lacks factual support and contains only innuendo, speculation, and surmise, which are inadequate grounds for further inquiry about Constellation's qualifications under §309(d) of the Communications Act of 1934, as amended, 47 USC §309(d) (the "Act"). See Perry S. Smith, 103 FCC 2d 1078, 1082 (Rev. Bd. 1985), rev. denied, FCC 86-109 (Comm'n 1986); Scott & Davis Enterprises, Inc., 88 FCC 2d 1090, 1099 (Rev. Bd. 1982), rev. dismissed, FCC 83I-129 (Comm'n 1983).

Finally, TRW attacks the propriety of Constellation's filing a contingent exemption request after the stock transactions occurred, citing, inter alia, ISA Communications Services, Inc., supra. However, in ISA, 90 FCC 2d at 942 (emphasis added), the

⁴² LQP also contends that Bell Atlantic and E-Systems may have acquired de facto control over Constellation because of these companies' willingness to provide letters to demonstrate Constellation's financial qualifications. However, like Constellation, LQP, Motorola and TRW will eventually have minority interest in the ownership of their respective LEO MSS systems.

Commission specifically held: "[T]he question of exemption from the cut-off rule should be addressed after the transfer has been completed, that is in the context of a 21.31(e)(3) exemption request". Thus, while seeking an exemption declaratory ruling prior to completion of a stock transfer may be preferable, it is not required, and Constellation cannot be faulted for not doing so.

Similarly, the Petitioners' assertions that Constellation violated §1.65's reporting requirements and lacked candor by not bringing the five subject transactions to the Commission's attention sooner are easily laid to rest with the realization that, as shown above, the transactions were not "substantial" or "significant" enough to require previous notification. Of course, Constellation could have reported the transactions anyway, but its decision not to do so cannot be labelled lack of candor, when the transactions in question are analyzed in a reasonable, good faith manner (above), found not to constitute a major amendment of Constellation's Application, and Constellation lacked any intention to deceive the Commission (a necessary ingredient when candor issues are raised).

In sum, Constellation urges that the five acquisitions, even if analyzed cumulatively, are fully consistent with §25.116(c)(2), because each meets the Airsignal tests of legitimate purpose and public interest benefit. Hence, Constellation urges that: (1) the gradual effect of the five subject transactions is not "substantial," and a "major" amendment is not required; or, alternatively, (2) even if the ownership and voting control changes brought about by the five transactions are deemed "substantial," they are "in the public interest" under §25.116(c)(2) and exempt from a "cut-off" date.

IV. The Commission Must Allow All Applicants To Make Technical Changes

Motorola contends that Constellation and other applicants' proposed increase in feeder link spectrum requirements results in a major amendment.⁴³ Constellation disagrees.⁴⁴ As Motorola well knows, the issue of feeder link requirements has been a very difficult issue throughout the course of this proceeding. There has been no clear path for any applicant to take for obtaining feeder link spectrum. Additionally, feeder link requirements have evolved with the changes in system design and the establishment of inter-system sharing conditions in the 1.6/2.4 GHz bands.⁴⁵ The amount of feeder link spectrum required for simple frequency changing transponder satellites such as Constellation's is proportional to the service link bandwidth and the number of satellite antenna beams. Constellation has increased its service link bandwidths and number of beams to support CMA band sharing and thus reduce interference conflicts. In doing so, it also has increased its spectrum efficiency. The increase in feeder link bandwidth

⁴³ Motorola Petition at 6-11.

⁴⁴ Constellation also disagrees with Motorola's interpretation of the Commission's Report and Order that would limit amendments to only those necessitated by the Report and Order as inconsistent with an applicant's right to amend its application at any time prior to Commission action.

⁴⁵ It is incongruous for Motorola, who has steadfastly resisted any attempt to share any of the frequencies it requests, to urge dismissal of other applications, such as Constellation, who are amending their applications to implement CDMA band sharing.

Even for Motorola, feeder link requirements appear to have changed. In its initial filing in 1990, Motorola indicated that it needed 100 MHz in each direction for feeder links. Now it claims to need 200 MHz of feeder link in each direction, although only 100 MHz of occupied bandwidth. Since Motorola expects to spread its 100 MHz of feeder link over 200 MHz, it is not an unreasonable conclusion that it will essentially use the entire 200 MHz since it is the 200 MHz assigned frequency band specified in the system authorization, not the amount of bandwidth within the assigned bandwidth that is actually occupied, that is determinative of whether additional frequencies are being requested.⁴⁷ By Motorola's own admission, if all the other applicants' feeder link requests constitute major amendments, so does Motorola's.

Regardless, the Commission has recognized that all applicants' feeder link requirements have been evolving and that further amendments are necessary.⁴⁸ For these reasons, Constellation urges the Commission to reject Motorola's arguments and accept Constellation's amendment.

V. 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. The Petition-

⁴⁷ For example, domsats typically have assigned bandwidths of 500 MHz even though portions of the assigned bandwidth cannot be occupied because of inter-satellite interference concerns, e.g., co-channel operations of TV-FM and SCPC carriers on adjacent satellites.

⁴⁸ See Report and Order at paras. 163-169.

rs' allegations do not establish a prima facie case for denying or deferring Constellation's application and do not raise any substantial and material questions of fact requiring a hearing or further inquiry into Constellation's qualifications under §309(d) of the Act. See Astroline Communications Co. v. FCC, 857 F.2d 1556 (D.C. Cir. 1988); Citizens for Jazz on WRVR, Inc. v. FCC, 775 F.2d 392 (D.C. Cir. 1985); California Public Broadcasting Forum v. FCC, 752 F.2d 670 (D.C. Cir. 1985); Tele-Media Corp. v. FCC, 466 F.2d 316 (D.C. Cir. 1972).

WHEREFORE, in light of the foregoing, Constellation respectfully requests that the Petitions of AMSC, LQP, MCHI, Motorola, and TRW should be denied and that its application should be granted.

CONSTELLATION COMMUNICATIONS, INC.

By: 

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Its Attorneys

Dated: January 3, 1995

EXHIBIT A

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

EXHIBIT B

DECLARATION OF BRUCE D. KRASELSKY

BRUCE D. KRASELSKY, under penalty of perjury, hereby declares:

1. I am chairman of the Board of Directors of Constellation Communications, Inc. ("Constellation"), an applicant for authority to construct, launch and operate a mobile satellite system in the 1.6/2.4 GHz bands. I have read the foregoing "Opposition," and the statements of fact contained therein are true and correct to the best of my knowledge, information, and belief.

2. As chairman of the Board, I have personal knowledge of the books containing the stock records of Constellation. I have reviewed those stock records, and attest to the following:

a. The Constellation shareholders of record on June 3, 1991 own more than 50% of the outstanding shares of Constellation as of November 16, 1994. Specifically, out of the 814,819 outstanding shares of Constellation's voting stock on November 16, 1994, 408,889, or 50.18% are held by the same group of individuals and entities who owned them on June 3, 1991. This includes the stock held by Microsat Launch Systems, Inc. ("Microsat"), Pacific Communications Services, Inc. ("PCSI"), Defense Systems, Inc. ("DSI"), and David Wine.

b. In addition to the three individuals or entities reported as owning 10% or more of Constellation's voting stock on June 3, 1991 in Constellation's Form 430 (Microsat, DSI, and

David Wine), 18 other individuals each had less than a 10% interest. In addition to the two entities reported as owning 10% or more of Constellation's voting stock on November 16, 1994 in Constellation's Form 430 (CTA Launch Services (formerly Microsat) and E-Systems, Inc.), 29 other individuals or entities each owned less than 10% of the stock.

c. On November 16, 1994, David Wine owned the same number of shares as he owned on June 3, 1991, and the percentage of stock he held on that date has been diluted to a level below 10%.

d. On November 16, 1994, DSI owned the same number of shares as it owned on June 3, 1991, and the percentage of stock it held on that date has been diluted to a level below 10%.

e. On November 16, 1994, Microsat held 25,496 fewer shares than it held on June 3, 1991, and the percentage of stock it held on November 16, 1994 has been diluted to 18.35%.

f. On November 16, 1994, PCSI owned the same number of shares as it owned on June 3, 1991, and the percentage of stock it held on that date remains below 10%.

g. The issuance of new Constellation shares to Bell Atlantic Corporation and E-Systems, Inc. resulted in a proportionate dilution of the percentage of shares held by all Constellation shareholders as of June 3, 1991.

3. Neither the Constellation Board nor its management had any control over the corporate acquisition of DSI and Microsat by CTA, Inc. or the acquisition of PCSI by Cirrus Logic, Inc.

4. I have prepared a chart of Constellation's officers and directors from June 1991 to the present, which indicates when each officer or director was appointed and resigned. The chart is attached to this Declaration. As the chart shows, there has not been a single point in time at which a majority of the officers or directors changed. The changes in officers and directors have occurred sporadically over more than three years.

5. I have read this Declaration, and the facts set forth herein are true and correct to the best of my knowledge, information, and belief. Further Declarant sayeth not.

Executed on: 3 January 1995


Bruce D. Kraselsky

ATT. (Officers and Directors Chart)

CONSTELLATION COMMUNICATIONS, INC. ("CCI") Officers and Directors June 1991 - Present

Name of Officer/Dir.	Affiliation	Position/Date of Election or Resignation												
		8/91	1/92	11/92	1/93	4/93	10/93	2/94						
David E. Wine	CCI ¹	N/C	N/C	Resigns	-	-	-	-	-	-	-	-	-	-
Bruce D. Kraselsky	Microsat/ CCI ²	N/C	N/C	Bd. Chmn.	N/C	N/C	N/C	N/C	N/C	N/C	N/C	N/C	N/C	N/C
Bradley J. Schwartz	Microsat	N/C	N/C	N/C	N/C	N/C	N/C	N/C	N/C	N/C	N/C	N/C	N/C	N/C
Peter Diamandes	Microsat	N/C	N/C	N/C	N/C	N/C	N/C	N/C	N/C	N/C	N/C	N/C	N/C	Resigns
Christopher B. Roberts	Microsat	N/C	N/C	N/C	N/C	N/C	N/C	N/C	Resigns	-	-	-	-	-
Jason O'Neil	DSI	N/C	N/C	N/C	N/C	N/C	N/C	N/C	N/C	Resigns	-	-	-	-
Ronald J. Lepkowski	CCI	Dir.	N/C	Secretary Director	N/C	N/C	N/C	N/C	N/C	N/C	N/C	N/C	N/C	N/C
O. Hoernig	Microsat	-	Dir.	N/C	N/C	N/C	N/C	N/C	N/C	Resigns	-	-	-	-
H. Van Trees	Independent	-	Dir.	N/C	N/C	N/C	N/C	N/C	N/C	N/C	N/C	N/C	N/C	Resigns
J.T. White	Bell Atlantic	-	-	-	Dir.	N/C	N/C	N/C	N/C	N/C	N/C	N/C	N/C	Resigns
Robert Van Brunt	Bell Atlantic	-	-	-	Dir.	N/C	N/C	N/C	N/C	N/C	N/C	N/C	N/C	N/C
P. Marino	E-Systems	-	-	-	-	-	-	-	Dir.	N/C	N/C	N/C	N/C	Resigns
C.E. Velez	CTA	-	-	-	-	-	-	-	Dir.	N/C	N/C	N/C	N/C	N/C
William Roughton	Bell Atlantic	-	-	-	-	-	-	-	-	-	-	-	-	Dir.
Marshall D. Williamson	E-Systems	-	-	-	-	-	-	-	-	-	-	-	-	Dir.
J.R. Copple	E-Systems	-	-	-	-	-	-	-	-	-	-	-	-	Dir.
Talbot S. Huff	E-Systems	-	-	-	-	-	-	-	-	-	-	-	-	Dir.

¹ Mr. Wine served on the CCI Board as a CCI-affiliated director, because of his ownership of CCI voting stock and his role as CCI's President.

² Mr. Kraselsky became Chairman of the Board of Directors of CCI in November 1992 and subsequently resigned from Microsat and became a CCI-affiliated director.

CERTIFICATE OF SERVICE

I, Robert A. Mazer, hereby certify that the foregoing "Consolidated Comments by Constellation Communications" was served by hand or first-class mail, postage prepaid, this 3rd day of January 1995, on the following persons:

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Federal Communications Commission
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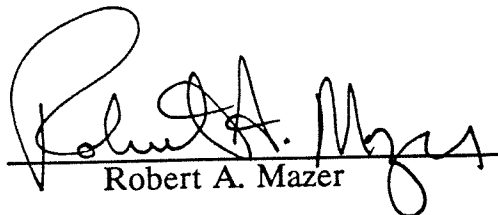
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