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

MAR 15 1995

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)	Satellite and Radiocommunication Division
)	Office of the Chief
Constellation Communications, Inc.)	File Nos. 17-DSS-P-91(48)
)	CSS-91-013
For Authority to Construct, Launch and)	9-SAT-LA-95
Operate a Low Earth Orbit Satellite System)	10-SAT-AMEND-95
Satellite System in the 1610 - 1626.5 MHz/)	
2483.5 - 2500 MHz Band)	

OPPOSITION TO PETITION FOR RECONSIDERATION

AMSC Subsidiary Corporation ("AMSC") hereby opposes the above-captioned Petition for Reconsideration ("Petition") filed by Constellation Communications, Inc. ("CCI"). CCI filed the Petition in response to the Commission's Order deferring CCI's application to construct, launch, and operate its proposed Mobile Satellite Service ("MSS") system.^{1/} Despite the arguments that CCI makes in its Petition, it remains clear that CCI is not financially qualified and that the Commission properly deferred its application.

Background

Pursuant to the Commission's Rules, Big LEO applicants were required to file conforming legal and technical amendments to their applications by November 16, 1994 and were given the option of submitting evidence of their financial qualifications either by

^{1/} Application of Constellation Communications, Inc., Order, DA 95-129 (January 31, 1995).

November 16, 1994 or by January 31, 1996.^{2/} The financial qualifications standard required each applicant to show that immediately upon grant of its license it could pay for construction, launch, and operation of its MSS system for one year after launch of the first satellite. Report and Order, at ¶¶ 32, 38, 41. An applicant that relied on internal financing was required to demonstrate that it had current assets or operating income sufficient to cover its costs. Id. at ¶ 31. In addition, the applicant was required to demonstrate that, absent a material change in circumstances, management was prepared to spend the necessary funds immediately upon grant of a license. Id. at ¶ 35. Applicants relying on financing from a parent corporation were required to make the identical showing with respect to the commitment by the parent corporation. Id.

In its application, CCI estimated that the cost of constructing and launching its proposed satellites and operating its satellite system for one year after the launch of its first satellite would be \$1.721 billion. To demonstrate its ability to finance this undertaking, CCI relied on letters from Bell Atlantic Corporation ("BAC") (an 8% shareholder), E-Systems, Inc. ("E-Systems") (a 31% shareholder), and Telecommunicacoes Brasileiras S.A. ("Telebras") (a potential joint venture partner). CCI later supplemented the BAC and E-Systems letters with declarations from BAC and E-Systems corporate officers. See CCI Opposition (January 3, 1995), at Exhibit A. The BAC declaration stated that BAC "believes

^{2/} Licensing Policies and Procedures, Satellite Communications, Report and Order ("Report and Order"), CC Docket No. 92-166, 9 FCC Rcd 5936 (1994), at ¶ 2. The Commission's rules are not clear as to what procedures apply to the submission of financial qualifications information prior to the second deadline.

that it has demonstrated the required intent to provide the necessary financial support” for CCI’s satellite project. Id.

In its Order, the Commission deferred processing of CCI’s application after concluding that CCI was not financially qualified. Order, at ¶ 2. The Commission based its conclusion upon the deficiencies of CCI’s alleged commitment letters. Specifically, the Commission stated that the commitment letter from BAC was merely an offer of support and not the requisite firm management commitment to fund CCI’s entire MSS system. Id. at ¶ 13. The Commission flatly rejected the E-Systems commitment letter due to the fact that E-Systems did not have the financial resources to fund CCI’s satellite system. Id. at ¶ 16. The Commission accorded similar treatment to Telebras since it had no financial stake in CCI and failed to submit adequate financial documentation. Id. at ¶ 8, n.8.

In its Order, the Commission also addressed CCI’s argument that BAC’s commitment letter was adequate because it was based on a letter that the Commission found to be adequate in an earlier domestic satellite case, National Exchange Satellite, Inc.^{3/} The Commission noted that although BAC’s letter was similar to the National Exchange letter, BAC’s letter contained significant caveats which transformed it from a commitment letter to a mere letter of general support. Order, at ¶ 12. These caveats included BAC’s indication that it had only made an “initial review” of CCI’s application, BAC’s offering to provide only an unspecified amount of financial support (in contrast to the commitment in National

^{3/} 3 FCC Rcd 6992, 6993 n.5 (1988).

Exchange to provide the necessary financial support), and the BAC commitment being conditioned upon approval by its board of directors.^{4/}

In its Petition, CCI claims that the Commission has transformed National Exchange and the commitment letter contained therein from useful models into “standards” and a “substantive rule” without providing adequate notice and comment, thus violating CCI’s right to administrative due process. Petition, at 7. Further, CCI complains that the Commission did not discuss the declaration that it submitted later from a BAC officer. Id. at 8.

Discussion

Despite CCI’s protests to the contrary, the record clearly establishes that CCI failed to meet the Commission’s financial qualifications standard. As detailed in the Order, the BAC letter was merely an offer of support, not the requisite firm management commitment to fund CCI’s entire satellite project. The language of the BAC letter and supplemental declaration demonstrate that BAC did nothing more than express an interest in investing an unspecified amount in CCI. Further, BAC stated that additional internal review and approval (including approval by the Board of Directors) might be needed before it could make an “actual” commitment. Although the Order notes that Board of Director approval is not necessarily a prerequisite under the financial qualifications showing, BAC specifically made its support for

^{4/} The Commission did not rule on the claim of AMSC and other applicants that even if BAC were willing to finance CCI’s satellite system, the Modification of Final Judgement (“MFJ”) would prohibit it. See AMSC Petition to Defer Processing of CCI Application (December 22, 1994). Instead, the Commission stated that it need not address the MFJ issue since it concluded that BAC’s financial commitment does not meet Commission standards on other grounds. Order, at n.9.

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the CCI satellite project contingent on board approval, thus impermissibly rendering the alleged commitment conditional. Under the Commission's rules, the financial commitment from a parent corporation must be firm, something that the BAC commitment clearly is not.

CCI's claim that the Order transforms National Exchange and the financial commitment letter therein into "standards" and a "substantive rule" is misplaced. It was CCI that interjected National Exchange as a model commitment letter. The Commission referred to the National Exchange letter only in order to explain why its rejection of CCI's showing was not inconsistent with its previous actions in reviewing domestic fixed satellite applications. As the Order states, "[t]he problem, however, is not that the [BAC] letter failed to reproduce the National Exchange letter verbatim. The problem is that [BAC] clearly started with the National Exchange language but modified it in ways that, without exception, introduce contingencies or limitations into language that had contained none." Order, at ¶ 14 (emphasis in original).

CCI also claims that because the Order did not specifically address the declaration of a BAC corporate officer subsequently submitted in the CCI Opposition, the deferment of CCI's application is reversible error. What CCI fails to mention is that the later-filed declaration did not offer any additional commitment or clarification of any ambiguity in the earlier commitment. To the contrary, all the supplemental declaration did was to state in conclusory terms BAC's view that it believed its initial showing to have been adequate to meet its interpretation of the Commission's financial standard. If such conclusory statements were all that the Commission required, the Commission could simply have asked the Big

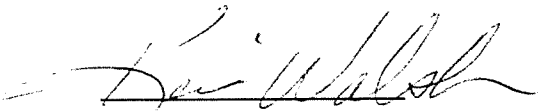
LEO applicants to certify that they were financially qualified. Instead, the Commission asked for a specific showing, one which BAC and Constellation failed to provide.

Conclusion

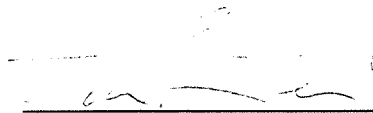
The Commission's rules in this proceeding make it imperative that it adhere strictly to its financial qualifications standard. CCI has failed to demonstrate that it is financially qualified to construct, launch, and operate its proposed MSS system for one year. Therefore, AMSC respectfully requests that CCI's Petition be dismissed and its application continue to be deferred.

Respectfully submitted,

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March 15, 1995

CERTIFICATE OF SERVICE

I, Cynthia L. Smith, a secretary in the law firm of Fisher Wayland Cooper Leader & Zaragoza L.L.P. do hereby certify that on this 15th day of March 1995, a copy of the foregoing "Opposition to Petition for Reconsideration" by AMSC Subsidiary Corporation was sent by U.S. first class mail, postage prepaid to:

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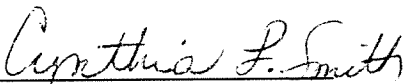
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