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

APR 27 1995

Satellite and
Radio Communications Division
File No. 23-SAT-P/International Bureau

In the Matter of Application of)
CTA COMMERCIAL SYSTEMS, INC.)

For Authority to Construct a Non-Voice,)
Non-Geostationary Mobile Satellite System)

E-SAT, Inc.)

For Authority to Construct, Launch, and)
Operate a Non-Voice, Non-Geostationary)
Satellite System for Domestic and)
International Operation)

FINAL ANALYSIS COMMUNICATIONS)
SERVICES, INC.)

For Authority to Construct, Launch, and)
Operate a Non-Voice, Non-Geostationary)
Mobile Satellite System in the 137-138 MHz,)
148-150 MHz, and 400-401 MHz Bands)

GE AMERICAN COMMUNICATIONS, INC.)

For Authority to Construct, Launch, and)
Operate a Low Earth Orbit Non-Voice,)
Non-Geostationary Mobile Satellite System)

ORBITAL COMMUNICATIONS)
CORPORATION)

For Modification of its License to Construct)
a Low Earth Orbit Mobile-Satellite System)

File No. 24-SAT-P/LA-95

File No. 25-SAT-P/LA-95

File No. 26-SAT-P/LA-95

No. 28-SAT-MP/ML-95

To: Chief, Common Carrier Bureau

CONSOLIDATED REPLY COMMENTS

Volunteers in Technical Assistance, Inc. ("VITA"), by its attorneys, hereby submits these consolidated reply comments addressing the comments filed in

response to its initial comments regarding the above-referenced applications.¹

In its comments, VITA demonstrated that, because it holds a pioneer's preference, each of the applicants must show that its proposed system (or, in ORBCOMM's case, its proposed addition of twelve satellites) will not cause interference to VITA's proposed system.² In particular, VITA is concerned about potential interference caused by the applicants' plans to use spectrum overlapping with VITA's proposed 90 kHz channel at 149.81-149.9 MHz.

In their responses to VITA's comments, only one of the applicants disputed that it must demonstrate that it will not cause objectionable interference to VITA's system.³ None of the applicants, however, made the required showing.⁴ Instead, the applicants asserted a variety of claims, each of which lack merit.

CTA

CTA's Consolidated Opposition did not address the concern raised in VITA's comments. As a result, this matter must be considered unresolved with respect to CTA's application.

¹ Consolidated Opposition of CTA Commercial Systems, Inc. ("CTA Consolidated Opposition"); Consolidated Reply to Petitions to Deny and Reply Comments of E-SAT, Inc. ("E-SAT Consolidated Reply"); Consolidated Opposition to Petitions to Deny and Consolidated Reply to Comments of Final Analysis Communications Services, Inc. ("Final Analysis Consolidated Opposition"); Opposition of GE American Communications, Inc. ("GE Americom Opposition"); and Consolidated Response of ORBCOMM ("ORBCOMM Consolidated Response").

² See 47 C.F.R. § 1.402(d). It is also likely that VITA's application will be acted upon by the Commission before the second-round applications are considered. If VITA's application is granted, second-round applicants will also bear the burden of demonstrating that they will not interfere with VITA's system pursuant to 47 C.F.R. § 25.142(a).

³ E-SAT alleged that VITA's pioneer's preference does not entitle VITA to deference concerning receipt of harmful interference. E-SAT Consolidated Reply at 14. E-SAT did not, however, explain how it believes this position to be consistent with the requirement of Section 1.402(d), which provides that VITA's application may not be subject to mutually exclusive applications. E-SAT merely referred to certain documents previously filed by ORBCOMM, Final Analysis, LEO One, STARSYS, and E-SAT, which challenge VITA's relationship to CTA in the context of VITA's most recent amendment but do not address Section 1.402(d)'s requirements. *Id.* at n.17.

⁴ Final Analysis's proposed amendment to its system retains its use of the 148.905-149.9 MHz band (with a future expansion to the 148.905-150.05 MHz band). See Amendment to Application at Figure II-6, Appendix at 11 (filed February 24, 1995). As a result, this Amendment does not resolve VITA's interference claim.

E-SAT

E-SAT contended that VITA failed to demonstrate adequately the risk of interference.⁵ VITA, however, has previously set forth in detail why it believes that sharing its 90 kHz band with another system, including a system using band-scanning techniques, may result in unacceptable interference. VITA's decision to refer to its prior filings on this matter provided an adequate factual basis for its second-round comments.⁶ It would have been a waste of resources for VITA to have repeated its previous showing with respect to each second-round application.

E-SAT also asserted that it would coordinate with VITA at some unspecified future date.⁷ This statement is unresponsive to VITA's comments. Until coordination has been successfully completed, rather than merely promised, any action on E-SAT's (or any other) application would be premature.

ORBCOMM

ORBCOMM essentially rested on the record it presented in response to VITA's petition for reconsideration.⁸ While VITA agrees that there was no need for ORBCOMM to restate the positions it had previously taken, ORBCOMM should have addressed VITA's concern that ORBCOMM's addition of twelve satellites to its constellation will increase the probability of interference. It did not.

ORBCOMM instead sought to deflect attention from the issue at hand. First, it resurrected its previous allegation of improper ex parte contacts by VITA, which already has been ruled upon by the Commission's Acting Secretary. Even if this question had not already been decided, the existence of such contacts is irrelevant to the additional interference that ORBCOMM's second-round amendment will cause to VITA's system.

Second, ORBCOMM alleged that VITA has altered the nature of its operations and, therefore, is attempting to repudiate the Joint Sharing

⁵ E-SAT Consolidated Reply at 13-14.

⁶ Indeed, VITA appended its previous filings setting forth the basis for its concern to each set of comments.

⁷ E-SAT Consolidated Reply at 14.

⁸ ORBCOMM Consolidated Response at 11.

Agreement. VITA's request that ORBCOMM demonstrate that its operations will not cause interference, however, is entirely consistent with the Joint Sharing Agreement. Under that Agreement, VITA agreed to limit transmissions from its first two satellites in the band in question to a narrow, 90 kHz segment. ORBCOMM, by way of contrast, has access under the Agreement to at least one-half of the 1,900 kHz in the 148-149.9 MHz band. VITA agreed to permit ORBCOMM to share its 90 kHz segment, based upon ORBCOMM's representation that these operations would not cause VITA interference.⁹ ORBCOMM, however, has thus far failed to demonstrate that this precondition to its shared use of VITA's 90 kHz segment has been satisfied. ORBCOMM, moreover, has rebuffed VITA's repeated requests for the information that would enable VITA to assess the likelihood that ORBCOMM will interfere with VITA.

Final Analysis and GE Americom

Final Analysis and GE Americom claimed that, because they propose to use scanning satellite receivers to identify available channels for uplink, they will not interfere with the VITA system.¹⁰ This argument is a blend of a technical claim (that band scanning will prevent interference) and a non-technical claim (if it's good enough for ORBCOMM, it's good enough for them). Both of these claims are flawed for several reasons.

To begin with, it is incumbent upon each second round applicant to demonstrate that its proposed system is not mutually exclusive with VITA's system. The applicant, not VITA, bears the burden of proof on this point.

Second, the Commission has not concluded with finality whether ORBCOMM's operations will interfere with VITA's proposed use of the 149.81-149.9 MHz band. VITA timely filed a petition for reconsideration of the Commission's grant of ORBCOMM's application. VITA noted that the Commission (in an apparent oversight) had not addressed VITA's interference concerns, and VITA set forth its reasons for concluding that ORBCOMM's

⁹ See Jointly Filed Supplemental Comments of ORBCOMM, STARSYS and VITA. CC Docket No. 92-76, at 4 (filed Aug. 7, 1992) ("ORBCOMM's uplink operations [in VITA's 90 kHz segment] will avoid interference with VITA's system in this band by detecting and avoiding VITA's uplink transmissions.").

¹⁰ Final Analysis Consolidated Opposition at 13-14; GE Americom: Opposition at 8.

proposed use will cause unacceptable interference to VITA's system. The Commission has not yet acted upon this petition.

Finally, Final Analysis and GE Americom fail to take into account the cumulative interference potential of their proposed systems, above and beyond any interference that will be caused by ORBCOMM. The probability of interference to VITA increases as the number of non-VITA transmissions increases; in turn, the total number of non-VITA transmissions is a function of the number of other systems using VITA's 90 kHz portion of the band (and, with respect to ORBCOMM's application, the number of satellites within a system that can be viewed simultaneously from a given uplink location), as well as the total amount of traffic carried over such systems. As a result, it is inappropriate for Final Analysis and GE Americom to attempt to hide behind ORBCOMM or to wrap themselves in the mantra of band scanning. They must recognize, but have not recognized, their obligation to demonstrate that they will not interfere with VITA.

CONCLUSION

For the reasons stated herein, in VITA's comments on each of the above-referenced applications, and in the documents referenced in or appended thereto, each of the applicants has failed to demonstrate that its system will adequately protect against harmful interference to VITA's proposed system. Until these frequency coordination issues are resolved, the Commission should refrain from granting any of these applications.

Respectfully submitted,

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April 25, 1995

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Consolidated Reply Comments was sent by first-class mail, postage prepaid, this 25th day of April, 1995, to each of the following:

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