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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

)		
In re Applications of)		
)		
AT&T Corporation	)	File Nos.	156-162-SAT-P/LA-95
COMM, Inc.	)	File Nos.	163-166-SAT-P/LA-95
EchoStar Satellite Corporation	)	File Nos.	167/168-SAT-P/LA-95
GE American Communications	)	File Nos.	169-173-SAT-P/LA-95
Hughes Communications Galaxy, Inc.	)	File Nos.	174-181-SAT-P/LA-95
KaStar Satellite Communications Corp.	)	File No.	203-SAT-P/LA-95
Lockheed Martin Corporation	)	File Nos.	182-186-SAT-P/LA-95
Loral Aerospace Holdings, Inc.	)	File Nos.	187-SAT-AMEND-95
	)		188/189-SAT-P/LA-95
Morning Star Satellite Co., L.L.C.	)	File Nos.	190-193-SAT-P/LA-95
NetSat 28 Company, L.L.C.	)	File No.	194-SAT-P/LA-95
Orion Asia Pacific Corporation	)	File No.	206-SAT-AMEND-95
Orion Atlantic, L.P.	)	File No.	204-SAT-ML-95
Orion Network Systems, Inc.	)	File Nos.	195-197-SAT-P/LA-95
	)		205-SAT-AMEND-95
PanAmSat Corporation	)	File Nos.	198/199-SAT-P/LA-95
	)		202-SAT-AMEND-95
VisionStar Inc.	)	File No.	200-SAT-P/LA-95

CONSOLIDATED OPPOSITION TO CONSOLIDATED COMMENTS
AND PETITIONS TO DENY

VisionStar Inc.

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January 24, 1996

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SUMMARY

As the U.S. satellite industry develops new systems designed to utilize the Ka-band, the FCC's licensing policies should promote open market entry in order to foster the provision of robust and competitive communications services to all U.S. consumers. Such policies would be consistent with the recent efforts by the FCC, pursuant to Congressional mandate, to promote small, entrepreneurial businesses seeking to provide broadband and narrowband PCS, SMR and MMDS services. VisionStar, a small entrepreneurial company and a new entrant in the satellite industry, proposes a high-quality video distribution service with interactive capability in the 28 GHz band that will serve millions of Americans in conjunction with LMDS, a revolutionary wireless terrestrial service. In its application, VisionStar has requested a waiver of the FCC's stringent financial qualifications requirement.

Grant of VisionStar's waiver request and application will serve the public interest. Grant of VisionStar's waiver will not preclude other Ka-band applicants from seeking spectrum for their satellite proposals, as sufficient capacity exists in the largely fallow 28 GHz band to accommodate all applicants. Moreover, strict application of the financial qualifications requirement would discriminate against small, entrepreneurial companies such as VisionStar. While the FCC's goal of preventing the warehousing of spectrum is laudable, the strict application of the financial qualifications requirement can prevent small companies from participating in the provision of satellite services. Ironically, global satellite conglomerates have relied on their parent company's corporate assets to meet the financial qualifications test, even when the parent company has not intended to finance the proposed satellite system with its internal assets. By contrast, small companies typically do not enjoy

the luxury of deep-pocketed corporate parents, and thus are clearly at an insurmountable financial disadvantage.

Alternatively, as the FCC has not yet finalized the allocation of Ka-band spectrum for FSS, the FCC should allow applicants to defer a further financial showing until the 28 GHz Rulemaking has been concluded and the uncertainty regarding domestic spectrum allocations and international frequency coordination issues involving the ITU has been resolved. Such a tiered processing approach is consistent with FCC precedent. In the Big LEO proceeding, the FCC concluded that uncertainty over the allocation of feeder link spectrum made it difficult for applicants to finalize financial arrangements for their systems, and therefore allowed applicants to defer their financial qualifications showing until after the spectrum issues were resolved. As in the Big LEO proceeding, the 28 GHz Rulemaking has not been concluded, as the FCC's proposed band plan has not been adopted and continues to be contested by some parties. As a result, reluctance on the part of investors to commit to finance proposed Ka-band systems that necessarily depend on spectrum allocations and specific orbital assignments is not surprising. Significantly, those most likely to suffer from such regulatory uncertainty are small, entrepreneurial companies, such as VisionStar, that cannot rely on parent company balance sheets in order to sustain their satellite proposals. Therefore, as an alternative to the grant of its waiver request, VisionStar requests that the FCC, consistent with the Big LEO proceeding, allow Ka-band applicants to defer a showing of financial qualifications until after the 28 GHz Rulemaking is concluded. Such action by the FCC will maximize the ability of all types of parties to participate in the provision of Ka-band satellite services, and thereby serve the public interest.

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VisionStar Inc.)	File No.	200-SAT-P/LA-95

**CONSOLIDATED OPPOSITION TO CONSOLIDATED COMMENTS
AND PETITIONS TO DENY**

VisionStar, Inc. ("VisionStar"), by its attorneys, hereby files a Consolidated Opposition to the Consolidated Comments and Petitions to Deny filed by Motorola/COMM, Inc. ("Motorola"), AT&T Corp. ("AT&T"), NetSat 28 Company, L.L.C. ("NetSat"), GE American Communications, Inc. ("GE Americom") and Hughes Communications Galaxy, Inc. ("Hughes") in the above-referenced proceeding.

I. BACKGROUND

On September 28, 1995, VisionStar filed an application for authority to construct, launch and operate a satellite in the domestic fixed satellite service ("FSS") that will provide

state-of-the-art satellite communications services in the Ka-band.¹ As set forth in the above-referenced application, VisionStar, a new entrant in the satellite communications industry, proposes to provide a high-quality video distribution service with interactive capability intended to serve millions of American families in conjunction with a new wireless terrestrial service, the Local Multipoint Distribution Service ("LMDS").

Pursuant to Section 25.140 of the Commission's Rules, in its application VisionStar provided detailed information regarding its legal, financial and technical qualifications to proceed expeditiously with the construction, launch and operation of the VisionStar system. VisionStar's financial demonstration included an estimation of the costs for the construction, launch and first-year operation of the VisionStar system, as well as letters from the Wall Street investment firms of Dillon, Read and Co., Inc. and Oppenheimer and Co., Inc. expressing their interest in participating in the financing of VisionStar.

Additionally, to the extent a waiver would be deemed necessary, VisionStar filed a request for a waiver of the Commission's financial qualifications requirement for domestic FSS applicants. In its waiver request, VisionStar demonstrated that grant of a waiver is consistent with Commission precedent² and would otherwise serve the public interest. Specifically, such a waiver would provide an opportunity for entrepreneurial companies to provide new and innovative communications services in the valuable, yet

¹ See File No. 200-SAT-P/LA-95.

² See e.g., EarthWatch Incorporated, 10 FCC Rcd 10467 (1995) ("EarthWatch"); Norris Satellite Communications, Inc., 7 FCC Rcd 4289 (1992) ("Norris").

largely fallow 28 GHz band. Moreover, Commission grant of a waiver for VisionStar would not prevent other potential domestic FSS applicants from seeking and receiving additional Ka-band orbital assignments.

On December 15, 1995, Motorola, AT&T, NetSat, GE Americom and Hughes (the "Petitioners") filed Consolidated Comments and Petitions to Deny challenging VisionStar's financial qualifications. AT&T also raised various policy and technical issues regarding the VisionStar system. As discussed below, VisionStar's system is technically sound, is in full compliance with Commission rules and policies and will provide important public interest benefits. Accordingly, the arguments of the Petitioners should be rejected, and the VisionStar application should be granted.

II. ARGUMENT

A. **Waiver of the Financial Qualifications Requirement for VisionStar is Consistent with Commission Precedent, Will Encourage Competition and Will Serve the Public Interest.**

Waiver of the financial qualifications requirement for VisionStar is consistent with Commission precedent, and will encourage competition among satellite providers. While there are fifteen applicants proposing Ka-band satellite systems, there still is sufficient spectrum and orbital slots to accommodate all applicants. In the instant proceeding, fifteen applicants are seeking 57 orbital slots; subsequently, with regard to these applications, in November 1995, the United States filed Appendix 4 materials with the International Telecommunications Union ("ITU") for 70 orbital slots, thus indicating that the informed view of the FCC and related governmental entities was that there was adequate 28 GHz spectrum to accommodate the requests of all applicants.

Importantly, consistent with the Commission's goal to promote the robust use of the spectrum for competitive consumer services, it is noteworthy that notwithstanding Petitioners' arguments to the contrary, the 28 GHz band is generally as fallow today as it was in 1992 when the Commission waived the financial qualifications requirement in Norris — with the only users being CellularVision of New York, L.P., for its commercially licensed LMDS system in the New York PMSA,³ and NASA, for its experimental ACTS satellite system.⁴ The fact that fifteen Ka-band FSS applications have been filed with the Commission does not, as AT&T suggests, "clearly demonstrate that the band will be developed in short order."⁵ Every application filed in the instant processing window still must face significant Commission scrutiny as to its legal, technical, and financial qualifications to construct, launch and operate their respective proposals. Additionally, with regard to financial qualifications, the applications not only face Commission review, but also considerable financial scrutiny from Wall Street investors and the entire financial community. Several of the proposed systems have projected completion costs of several billion dollars, raising serious doubts as to whether all of the proposed systems can be

³ See Hye Crest Management, Inc., 6 FCC Rcd 332 (1991); Applications of CellularVision, Inc., Memorandum Opinion and Order, File Nos. 1-CF-P-94, 1-CF-P-95 through 33-CF-P-95, DA-95-2429 (released December 7, 1995).

⁴ See Rulemaking to Amend Parts 1, 2, 21, and 25 of the Commission's Rules to Redesignate the 27.5-29.5 GHz Frequency Band, to Reallocate the 29.5-30.0 GHz Frequency Band, to Establish Rules and Policies for Local Multipoint Distribution Service and Fixed Satellite Service, Third Notice of Proposed Rulemaking and Supplemental Tentative Decision, CC Docket No. 92-297, FCC 95-287, para. 9 (released July 28, 1995) ("Third NPRM").

⁵ Initial Comments of AT&T Corp., December 15, 1995, p. 12.

financed. As a result, each Ka-band satellite applicant still must overcome considerable barriers before its proposed system can become a viable commercial satellite communications enterprise. In view of the fact that there is adequate capacity in the 28 GHz band today to accommodate all of the applicants, as well as the flexibility of the Commission to assign orbital slots among the various Ka-band satellite applicants, grant of VisionStar's waiver request will not preclude other potential satellite providers from implementing their own systems in the 28 GHz band.

Moreover, waiver of the financial qualifications requirement and grant of VisionStar's application clearly is in the public interest as it will further the Commission's policy of promoting competitive and innovative communications services. VisionStar is a new entrant in the satellite communications industry, and Commission grant of VisionStar's application will encourage competition in the provision of satellite-based services. Additionally, VisionStar's principal, Shant S. Hovnanian, also is the principal of CellularVision, the pioneer of a new terrestrial technology, LMDS, and CellularVision of New York, L.P., which holds the only commercial 28 GHz LMDS license granted by the Commission. As the Commission has explicitly recognized, LMDS offers enormous potential to consumers as a viable alternative to cable television as well as to telephony and data services.⁶¹ Based on the proposed role that VisionStar will play in the nationwide deployment of LMDS, when licensed and operational, grant of VisionStar's application will provide U.S. consumers with access to new and competitive services and technologies — services and technologies that will stimulate development of an ancillary

⁶¹ See Third NPRM, supra n.4, paras. 27-30.

LMDS-satellite based communications industry, which has enormous potential impact in terms of new high technology jobs. Indeed, several prominent companies in the communications industry and the beleaguered defense sector that participated in the 28 GHz Rulemaking proceeding, including Titan Information Systems Corporation, M/A-COM Inc., AEL Industries, Inc. and Andrew Corporation, have embraced LMDS as a new and viable industry, capable of creating substantial employment opportunities for U.S. workers in the areas of LMDS system operations and equipment manufacturing.

B. Alternatively, the Commission Should Allow 28 GHz FSS Applicants to Defer a Further Showing of Financial Qualifications Until the 28 GHz Rulemaking Proceeding Has Been Concluded and Uncertainty Regarding Spectrum Allocations Has Been Resolved.

Given the current uncertainty about the allocation of spectrum to FSS in the 28 GHz band, the uncertainty regarding the exact assignment of Ka-band spectrum and orbital assignments to each 28 GHz FSS applicant and the fact that international frequency coordination issues before the ITU also must be resolved, the Commission should provide 28 GHz FSS applicants with additional time to establish their financial qualifications. The provision of this type of tiered-processing priority for satellite applicants is consistent with Commission precedent. For example, in considering the Big LEO applications, the Commission noted that

until feeder link frequencies can be assigned to a particular system, which will not likely occur until after the next World Radio Conference to be held in November 1995 (WRC-95), it may be difficult for some of these applicants to finalize financial arrangements for their systems. Consequently, in an effort to afford an additional opportunity for entry by such applicants, we will allow applicants who cannot meet our financial qualifications requirement at this time an additional period of time to

establish their qualifications.⁷

Accordingly, in the Big LEO proceeding, the Commission created a two-tiered eligibility rule whereby it permitted applicants, due to the uncertainty of available feeder link spectrum, to choose to defer their financial qualifications showing until January 1996, two months after the conclusion of WRC-95.⁸

Likewise, in the instant case, while the Commission appears to be close to concluding its protracted deliberations regarding the allocation of spectrum in the 28 GHz band to satellite and terrestrial services, the Commission's band segmentation plan proposed in the Third NPRM has not yet been adopted. Indeed, several parties continue to challenge various aspects of the Commission's proposed band plan. As a result of this regulatory uncertainty, just as the Commission found in the case of the Big LEOs, it is predictable and understandable if the financial community proves to be initially reluctant to commit substantial sums of money to finance proposed satellite systems which are dependent on spectrum allocations and specific orbital assignments that have not yet been made. This uncertainty was readily apparent at a January 19, 1995 meeting between Commission officials, the Ka-band satellite applicants and NGSO/MSS licensees TRW, Inc. ("TRW") and Motorola Satellite Communications, Inc. ("Motorola Satcom"), that ended in a stalemate over the ability of NGSO/MSS systems and GSO/FSS systems to share the 29.25-29.5 GHz band, as proposed by the Commission in the Third NPRM.

⁷ Amendment of the Commission's Rules to Establish Rules and Policies Pertaining to a Mobile Satellite Service in the 1610-1626.5/2483.5-2500 MHz Frequency Bands, Report and Order, 9 FCC Rcd 5936, paras. 40-42 (1994).

⁸ See id.

The burden on a small entrepreneurial applicant who must rely on external sources of funding like VisionStar to obtain financial commitments under these circumstances is particularly onerous. In the Big LEO proceeding, the FCC allowed applicants to defer their financial qualifications showing in order to “afford an additional opportunity for entry” by applicants who could not obtain financial commitments due to uncertainty regarding the allocation of spectrum. Accordingly, as in the Big LEO proceeding, the Commission should take note of the compelling circumstances in the current situation and, in order to afford an opportunity for all types of applicants to participate in the provision of Ka-band satellite services, should provide 28 GHz FSS applicants with the option to defer the financial qualifications showing until a period at least several months after the 28 GHz Rulemaking proceeding has been finalized, and the amount of spectrum will be available for 28 GHz FSS systems is certain.

C. Strict Application of the Commission’s Financial Qualifications Requirements to Ka-band Satellite Applicants Unfairly Discriminates Against Small Companies, Ultimately Inhibiting New Competitive Entrants and Preserving the Dominance of the U.S. Satellite Industry By Several Large Global Companies.

The Commission’s financial qualifications requirement for satellite applications is designed to “[prevent] permittees from tying up orbital locations for several years while attempting to bring their financing plans to fruition . . . preventing qualified applicants from implementing their plans to provide service to the public.”⁹ Big LEO licensee Motorola Satcom demonstrated financial qualifications to the Commission’s satisfaction

⁹ Licensing Space Stations in the Domestic Fixed Satellite Service, 50 Fed. Reg. 36071, para. 8 (1985).

by relying on the balance sheet of its large corporate parent, Motorola, Inc., despite the fact that Motorola, Inc. had demonstrated no actual intention to finance its subsidiary's satellite system.¹⁰ Even though Motorola, Inc. did not actually intend to finance Motorola Satcom's system, the Commission concluded that Motorola Inc.'s "[c]urrent assets provide a general measure of a company's ability to finance the project itself or to raise funds from lenders and equity investors on the basis of its on-going operations."¹¹ Likewise, TRW, another Big LEO licensee, relied upon its own corporate balance sheet to meet the financial qualifications test, despite the fact that TRW admittedly would seek to fund its system primarily through external sources.¹²

While large satellite conglomerates like Motorola Satcom and TRW have been allowed to rely on corporate assets that will not be the actual source of funding for their respective satellite projects, the Commission's financial qualifications requirement discriminates against small companies, who typically do not have deep-pocketed corporate parents or their own internal balance sheets sufficient to rely upon to meet the financial qualifications requirement.¹³ Moreover, the fact that an applicant can rely on

^{10/} See Motorola Satellite Communications, Inc., 10 FCC Rcd 2268 (1995).

^{11/} Id., para. 7.

^{12/} See TRW, Inc., 10 FCC Rcd 2263 (1995).

^{13/} Consistent with VisionStar's position, PanAmSat, in comments filed with the Commission on December 19, 1995, also raised public policy concerns about the fact that the U.S. domestic fixed satellite market is controlled by just three companies, AT&T, GE Americom and Hughes. PanAmSat, therefore, argued that the FCC should relax its stringent financial qualifications requirement since it "effectively has acted as an insurmountable barrier to entry to smaller companies" and "is unnecessarily rigorous and bars many responsible, innovative entities from providing domestic satellite

(continued...)

the balance sheet of its corporate parent, or its own balance sheet, even when it or its corporate parent admittedly will not actually provide the funding for the system, further demonstrates the transparency and anti-competitive result inherent in the Commission's strict application of this standard.

Under these circumstances, strict application of the financial qualifications requirement discriminates against small companies, who are unable to take advantage of the inherent fiction underlying the Commission's financial qualifications procedures.

D. Strict Application of the Financial Qualifications Requirement to Small Companies is Inconsistent With the Explicit Federal Policy Providing Preferential Treatment for Small Businesses Seeking to Provide Spectrum-Based Services.

Strict application of the financial qualifications requirement to small entrepreneurial companies is inconsistent with the explicit federal policy providing preferential treatment for small businesses seeking to provide spectrum-based communications services. As part of the Omnibus Budget Reconciliation Act of 1993, Congress mandated that the Commission ensure through the competitive bidding process that "small businesses. . . are given the opportunity to participate in the provision of spectrum-based services," and that the Commission promote "economic opportunity and competition . . . by avoiding excessive concentration of licenses and by disseminating licenses among a wide variety of applicants, including small businesses . . ." ¹⁴ Pursuant to this Congressional mandate,

¹³(...continued)
services." PanAmSat Corporation, Satellite Licensing Policies, December 19, 1995, pp. 8, 13.

¹⁴ See 47 U.S.C. § 309(j)(3)(B), (4)(D).

the FCC recently has adopted various preferences, including spectrum set asides, for small entrepreneurial entities seeking to participate in new services that might otherwise face significant entry barriers.

For example, the Commission has established a spectrum set-aside and a menu of preferences for small businesses proposing to offer broadband personal communications services ("PCS"), including reduced upfront payments, auction bidding credits and installment payment plans.¹⁵ Small businesses participating in auctions for nationwide and regional narrowband PCS, Multipoint Distribution Service and 800 MHz and 900 MHz Specialized Mobile Radio licenses were also granted significant preferences designed to facilitate their entry into these spectrum-based services.¹⁶

In the 28 GHz Rulemaking proceeding, the Commission has proposed to license satellite services, in cases of mutual exclusivity, through the use of competitive bidding procedures, which the Commission believes would foster economic opportunity and the

^{15/} See Implementation of Section 309(j) of the Communications Act - Competitive Bidding, Sixth Report and Order, CC Docket 93-253, FCC 95-301 (released July 18, 1995); Second Report and Order, 9 FCC Rcd 2348 (1994).

^{16/} See Amendment of Part 90 of the Commission's Rules to Facilitate Future Development of SMR Systems in the 800 MHz Frequency Band, First Report and Order, Eighth Report and Order, and Second Further Notice of Proposed Rulemaking, PR Docket No. 93-144, FCC 95-501 (released Dec. 15, 1995); Amendment of Parts 2 and 90 of the Commission's Rules to Provide for the Use of 200 Channels Outside the Designated Filing Areas in the 896-901 MHz and the 935-940 MHz Bands Allotted to the Specialized Mobile Radio Pool, Second Order on Reconsideration and Seventh Report and Order, PR Docket No. 89-553, FCC 95-395 (released Sept. 14, 1995); Amendment of Parts 21 and 74 of the Commission's Rules With Regard to Filing Procedures in the Multipoint Distribution Service and in the Instructional Television Fixed Service, Report and Order, 10 FCC Rcd 9589 (1995); Implementation of Section 309(j) of the Communications Act - Competitive Bidding, Third Report and Order, 9 FCC Rcd 2941 (1994).

distribution of licenses among a variety of applicants including small businesses.¹⁷ Moreover, in an effort to “ensure that [small business] entities are given the opportunity to participate both in the competitive bidding process and in the provision of [LMDS and satellite] services,” the Commission is considering adopting small business preferences for both LMDS and satellite auction bidders, such as installment payments, auction bidding credits and reduced upfront payments.¹⁸

The strict application of the Commission’s financial qualifications requirement to satellite applicants in the 28 GHz band, which unfairly discriminates against small business applicants like VisionStar, is therefore inconsistent with Congressional policy and the resulting preferential treatment accorded small businesses by the FCC in other service areas. Rather than promote the entry of small entrepreneurial satellite providers, strict application of the financial qualifications requirement ultimately would further the status quo, which traditionally has favored large global communications companies, and would effectively exclude small businesses from participating in the provision of satellite services in the fallow yet valuable 28 GHz spectrum.

Even the Clinton Administration’s U.S. Small Business Administration (“SBA”) has noted the inability of smaller players to participate in providing satellite services. In Comments filed in the 28 GHz Rulemaking proceeding, the SBA recognized that “[g]iven the cost associated with the provision of satellite services, [it] does not believe that small businesses will have an opportunity to participate in the provision of services if the

¹⁷ See Third NPRM, paras. 128, 133.

¹⁸ See id., paras. 185-196.

Commission allocates the 28 GHz band to satellite users.”¹⁹

E. VisionStar’s Proposed System is Technically Sound and Proposes a Beneficial Use of Ka-band Spectrum

In a misplaced attempt to discredit VisionStar’s application, AT&T raises a number of broad and somewhat undefined policy concerns about the use of Ka-band satellite systems. Even if AT&T’s concerns were valid, they would be suited to deliberation only in a rulemaking proceeding of general applicability, rather than in a specific licensing proceeding. Nonetheless, as discussed below, despite the assertions of AT&T, the VisionStar system fully complies with the Commission’s technical requirements for FSS systems, proposes a beneficial use of the spectrum and will serve the public interest.

VisionStar proposes to use Ka-band spectrum, in conjunction with the terrestrial LMDS, to provide a high-quality video distribution service with interactive capability. AT&T contends, without providing any basis, that VisionStar should not be permitted to use the Ka-band satellite spectrum for such a “narrow purpose” as video distribution. However, video distribution has been a permissible use of domestic fixed satellites since the very beginning of the U.S. domestic satellite industry.²⁰ Moreover, the use of satellites for the purpose of video distribution has created major new industries in the United States, both by distribution to cable headends for retransmission to cable

^{19/} Comments of the Chief Counsel for Advocacy of the United States Small Business Administration on the Second Notice of Proposed Rulemaking, CC Docket 92-297, pp. 4-5 (filed March 28, 1994).

^{20/} See e.g. Establishment of Domestic Communication-Satellite Facilities By Non-Governmental Entities, Second Report and Order, 35 FCC 2d 844 (1972).

subscribers, and by distribution directly to home satellite dishes. It is surprising that AT&T would seek to condemn VisionStar's use of Ka-band spectrum for video distribution, when AT&T's own satellites are used to carry video.²¹ VisionStar's proposal contemplates a competitive satellite technology that will operate in conjunction with the revolutionary terrestrial LMDS, providing consumers, among other services, with a viable alternative to traditional cable television. AT&T offers no justification for now changing such a longstanding policy supporting the use of domestic satellites for video distribution services.

AT&T's claim that "much of the available spectrum would not be used by VisionStar" is flatly wrong.²² In the Third NPRM, the Commission has proposed to allocate a total of 1000 MHz on a primary or co-primary basis to GSO/FSS systems: 28.35-28.60 GHz and 29.5-30.0 GHz on a primary basis, and 29.25-29.5 GHz to be shared with MSS feeder links.²³ VisionStar proposes to use that entire 1000 MHz of proposed GSO/FSS Ka-band spectrum, consistent with the proposal in the Third NPRM. AT&T's suggestion to the contrary is unfounded.

AT&T offers no sound factual or public policy basis for its argument that because of VisionStar's "limited functionality and capacity,"²⁴ VisionStar should acquire capacity from a Ka-band system operator instead of launching its own system. Curiously, this

^{21/} See Glen Dickson, Telstar 402, part 2: No problem, Broadcasting and Cable, May 22, 1995, at 54.

^{22/} AT&T Comments at 28.

^{23/} See Third NPRM, para. 45.

^{24/} AT&T Comments at 28.

antiquated argument echoes the long-ago discarded assertion once made by AT&T when it was the sole monopoly long distance carrier, and private companies sought microwave licenses to operate private and special purpose microwave networks. The notion that common carriers make more efficient use of the radio spectrum, and therefore all non-common carrier users of spectrum should be required to lease capacity rather than owning it, was considered and firmly rejected by the Commission in its historic Above 890 MHz decision.²⁵ The same policies have been applicable to domestic satellite communications, as it is well recognized that non-common carrier satellite systems serve the public interest.²⁶ Again, AT&T offers no justification for now changing such a longstanding policy.

AT&T incorrectly alleges that VisionStar makes no provision for TT&C services. To the contrary, VisionStar's application includes such a frequency plan.²⁷

With regard to the issue of frequency reuse, VisionStar does not currently propose to employ frequency reuse, although the application notes that frequency reuse could be employed if necessary.²⁸ AT&T also notes that there is uncertainty whether the Commission's existing technical rules are applicable to Ka-band systems. AT&T observes, for example, that some applicants propose to employ steerable beams, which

^{25/} See Allocation of Frequencies in the Bands Above 890 MHz, Report and Order, 27 F.C.C. 359 (1959).

^{26/} See Domestic Fixed Satellite Transponder Sales, 90 F.C.C.2d 1238 (1982).

^{27/} See VisionStar Application, Technical Description, Section 3.4, p.16.

^{28/} See id., p.17.

may require modification of the current technical rules.²⁹ Those technical rules were adopted based on a record that examined only C-band and Ku-band technologies and, accordingly, it may be appropriate for the Commission to conduct a rulemaking proceeding to specifically address Ka-band technical and policy issues. If such a rulemaking proceeding is conducted, and the Commission adopts a policy requiring frequency reuse by Ka-band satellites, and that policy is applied to the current round of applicants, VisionStar would amend its application to conform with that policy.

III. CONCLUSION

Based on the foregoing, grant of VisionStar's application, and its request for waiver of the Commission's stringent financial qualifications requirement, is consistent with Commission precedent, will encourage robust competition in both the video distribution and satellite industries and will serve the public interest. Strict application of the financial qualifications requirement unfairly discriminates against small entrepreneurial companies, and grant of VisionStar's application and its waiver request will not prevent other potential Ka-band applicants from seeking and receiving orbital assignments. Alternatively, based on the current uncertainty regarding the allocation of spectrum in the 28 GHz band for FSS, the Commission should allow 28 GHz FSS applicants to defer a showing of financial qualifications, consistent with Commission precedent set forth in the Big LEO proceeding, until the 28 GHz rulemaking proceeding is concluded.

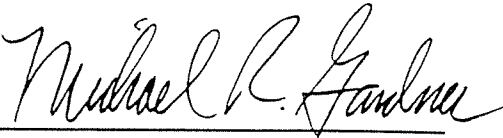
VisionStar's application is legally, financially, and technically sound. Accordingly,

^{29/} See AT&T Comments, n.8.

VisionStar respectfully requests that the Commission deny Petitioners' pleadings, and grant VisionStar's application.

Respectfully submitted,

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Certificate of Service

I, Ryan J. McCumber, hereby certify that copies of the foregoing "Consolidated Opposition to Consolidated Comments and Petitions to Deny" were delivered by hand on January 24, 1996 to the following parties:

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OFFICE OF SECRETARY

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January 24, 1996

By Hand

Received

JAN 26 1996

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
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Satellite Policy Branch
International Bureau

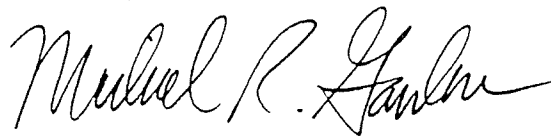
Re: Ka-band Satellite Applications
File Nos. 156 through 206-SAT-P/LA-95

Dear Mr. Caton:

Enclosed, on behalf of VisionStar Inc. ("VisionStar"), is an original and one (1) copy of a Consolidated Opposition to Consolidated Comments and Petitions to Deny filed in the above-referenced proceeding.

Please direct any questions regarding this matter to the undersigned.

Sincerely,



Michael R. Gardner
Charles R. Milkis
Rafael G. Prohias
Counsel for VisionStar Inc.

Enclosures