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FEDERAL COMMUNICATIONS COMMISSION

Washington, DC 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

Satellite Earth Station Branch
Int'l

In the Matter of the Applications of:)
AT&T Corporation)
GE American Communications, Inc.)
Hughes Communications Galaxy, Inc.)
EchoStar Satellite Corporation)
NetSat 28 Company, L.L.C.)
VisionStar Inc.)
Lockheed Martin Corporation)
Morning Star Satellite Company, L.L.C.)
Loral Aerospace Holdings, Inc.)
PanAmSat Licensee Corp.)
KaStar Satellite Communications Corporation)
Orion Network Systems, Inc.)
Orion Asia Pacific Corporation)
Orion Atlantic, L.P.)
For Authority To Construct, Launch, and Operate a Satellite System in the Ka-band.)

File No. 156-162-SAT-P/LA-95
 File No. 169-173-SAT-P/LA-95
 File No. 174-181-SAT-P/LA-95
 File No. 167/168-SAT-P/LA-95
 File No. 194-SAT-P/LA-95
 File No. 200-SAT-P/LA-95
 File No. 182-186-SAT-P/LA-95
 File No. 190-193-SAT-P/LA-95
 File Nos. 188-189-SAT-P/LA-95
 187-SAT-AMEND-95
 File Nos. 198-199-SAT-P/LA-95
 202-SAT-AMEND-95
 File No. 203-SAT-P/LA-95
 File Nos. 195-197-SAT-P/LA-95
 205-SAT-AMEND-95
 File No. 206-SAT-AMEND-95
 File No. 204-SAT-ML-95

CONSOLIDATED COMMENTS AND PETITION TO DENY

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December 15, 1995

SUMMARY

Comm, Inc., a wholly-owned subsidiary of Motorola, Inc., hereby submits these comments and petition on the above-captioned applications for authority to construct, launch, and operate Fixed-Satellite Service ("FSS") systems in the Ka-band.

First, several of the Ka-band applications have requested orbital slot locations and inter-satellite link frequencies that are inconsistent with those requested for Comm, Inc.'s proposed Millennium System. To the extent that the Commission determines that these interfering applications should otherwise be granted, the Commission must resolve this situation prior to making its licensing decisions. In the alternative, the Commission could permit the parties sufficient flexibility to resolve their conflicting orbital slot proposals through private negotiations and settlements.

Second, Comm, Inc. believes that the stringent financial standard established for the Domestic Fixed-Satellite Services is most applicable to processing all of the Ka-band applicants. Many of the Ka-band applications do not demonstrate that the applicants possess the requisite financial resources required under the Commission's Rules. PanAmSat, KaStar, VisionStar, Morning Star, NetSat 28, Orion Network Systems, Orion Asia Pacific Corporation, and Orion Atlantic, L.P. have all submitted insufficient financial showings under Section 25.140(d) of the Commission's Rules. These applicants have either submitted inadequate internal or external commitment letters or their applications simply lack evidence of the financial resources to immediately implement their proposed projects. Further, Comm, Inc. submits that KaStar, VisionStar, Morning Star, Orion Network Systems, Orion Asia Pacific

Corporation, and Orion Atlantic, L.P. have not adequately supported their requests for a waiver or deferral of the Commission's financial rules. Accordingly, the Commission should deny all of these financially deficient Ka-band applications, or in the alternative, defer their processing until they have met the Commission's financial qualifications requirements.

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Loral Aerospace Holdings, Inc.)	File Nos. 188-189-SAT-P/LA-95 187-SAT-AMEND-95
PanAmSat Licensee Corp.)	File Nos. 198-199-SAT-P/LA-95 202-SAT-AMEND-95
KaStar Satellite Communications Corporation)	File No. 203-SAT-P/LA-95
Orion Network Systems, Inc.)	File Nos. 195-197-SAT-P/LA-95 205-SAT-AMEND-95
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For Authority To Construct, Launch,)	
and Operate a Satellite System in the)	
Ka-band.)	
_____)	

CONSOLIDATED COMMENTS AND PETITION TO DENY

Comm, Inc., a wholly-owned subsidiary of Motorola, Inc. ("Motorola"), hereby submits these consolidated comments and petition to deny the above-captioned applications for authority to construct, launch, and operate satellite systems in the Ka-band. Comm, Inc. has filed a Ka-band application for its proposed Millennium System with the Commission.¹¹ Comm, Inc.'s concerns with the above-captioned applications are two-fold: (1) several of these applications request orbital slot locations and inter-satellite link frequencies that are inconsistent with those sought by Comm, Inc.; and (2) Comm, Inc. believes that many of these Ka-band applicants have made deficient financial showings in relation to the domestic FSS application standards contained in Section 25.140(d) of the Commission's Rules.²¹

I. SEVERAL OF THE KA-BAND PROPOSALS WOULD CAUSE HARMFUL INTERFERENCE TO THE MILLENNIUM SYSTEM

Several of the Ka-band applications request orbital slot locations and inter-satellite link frequencies inconsistent with those requested for the proposed Millennium System. To the extent that the Commission determines that these applicants are otherwise qualified, it must resolve these conflicts prior to making any licensing decisions, or at least permit the parties sufficient flexibility to resolve their conflicting proposals through private negotiations and settlements.

A. The Commission Should Not Authorize Satellite Applications That Have Less Than Two Degree Orbital Spacing

Under existing Commission policy, geostationary satellites operating in the 4/6 GHz and 12/14 GHz bands must be separated in the orbital arc by not less than

¹¹ See File Nos. 163-166-SAT-P/LA 95.

²¹ See Ka-Band Applications Accepted for Filing, Public Notice, DA 95-1689, at 3 (rel. July 28, 1995) ("Ka-Band Applications").

two degrees.^{3/} The Commission has proposed to continue the use of two degree spacing at 28 GHz, and has directed satellite applicants for the Ka-band to follow existing policies in submitting applications. These directions are subject to the Commission's adoption of specific rules for this service.^{4/}

Comm, Inc. has requested orbital locations at 105° W.L., 103° W.L., 88° W.L. and 86° W.L.^{5/} The orbital locations sought by AT&T, EchoStar Satellite Corporation and GE American Communications are inconsistent with the locations sought by Comm, Inc. in a 2° spacing environment. AT&T seeks 103° W.L. as one of its orbital locations.^{6/} EchoStar Satellite Corporation has requested the use of 85° W.L.^{7/} while Comm, Inc. intends to use 86° W.L, which is less than two degrees removed from the proposed EchoStar orbital location.^{8/} Finally, GE American

^{3/} Licensing of Space Stations in the Domestic Fixed-Satellite Service and Related Revisions of Part 25 of the Rules and Regulations, Report and Order, 54 RR 2d 577 (1983). The Commission has only recently sought informal public input as to whether orbital arc spacing can be reduced further. International Bureau to Review Satellite Licensing Policies, Public Notice No. IN 95-25, (rel. September 20, 1995). The International Bureau has asked for comment as to whether there are technical or other developments that may make it possible to separate FSS satellites by less than two degrees. Id. at 2.

^{4/} 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 for Fixed Satellite Services, Third Notice of Proposed Rulemaking and Supplemental Tentative Decision, CC Docket No. 92-297 at ¶ 126 (rel. July 28, 1995) ("28 GHz Proceeding"); See also, Ka-Band Applications Accepted for Filing, Public Notice, DA 95-1689 at 3-4 (rel. July 28, 1995).

^{5/} Comm, Inc. Ka-band Application at 2 (Sept. 29, 1995) ("Comm, Inc. Application").

^{6/} AT&T Corp. Ka-band Application at 4 (Sept. 29, 1995) ("AT&T Application").

^{7/} EchoStar Ka-band Application at 1 (Sept. 29, 1995) ("EchoStar Application").

^{8/} Comm, Inc. Application at 2.

Communications seeks use of 106° W.L., which is one degree removed from Comm, Inc.'s request to use 105° W.L.^{9/}

The Commission must resolve these inconsistent orbital requests prior to granting authorizations to construct, launch and operate these systems. In the alternative, the Commission could permit these parties to resolve their conflicting orbit requests through private negotiations and settlements.

B. The Proposed Inter-Satellite Links Of AT&T, Hughes, Lockheed Martin, And Loral Aerospace Have The Potential To Cause Harmful Interference To The Millennium System

The inter-satellite links proposed by AT&T, Hughes, Lockheed Martin and Loral Aerospace have the potential to cause harmful interference with the inter-satellite links proposed by Comm, Inc.

Comm, Inc. has proposed inter-satellite links at 59.5-60.5 GHz and 62.5-63.5 GHz.^{10/} AT&T has applied to use the 59.0-64.0 GHz band.^{11/} Hughes is seeking frequencies that also include 59.0-64.0 GHz.^{12/} Lockheed Martin is seeking spectrum in the 50-60 GHz band.^{13/} Loral Aerospace has applied to use the 60 GHz band.^{14/} These proposals have the potential to interfere with the proposed Millennium System.

^{9/} GE American Communications Satellites, Inc. Ka-band Application at 2 (Sept. 29, 1995) ("GE American Application").

^{10/} Comm, Inc. Application at 47-48.

^{11/} AT&T Application at 69.

^{12/} Hughes Communications Galaxy Inc. Ka-band Application at 44 (Sept. 29, 1995) ("Hughes Application").

^{13/} Lockheed Martin Corporation Ka-band Application at 53 (Sept. 29, 1995) ("Lockheed Application").

^{14/} Loral Aerospace Holdings, Inc. Ka-band Application at 3-34 (Sept. 29, 1995) ("Loral Application").

The Commission must either resolve these mutually exclusive requests, or permit the parties sufficient flexibility to resolve their conflicting proposals through private negotiations and settlements.

II. APPLICANTS IN THE KA-BAND SHOULD BE HELD TO THE STRINGENT FINANCIAL STANDARDS ESTABLISHED FOR DOMESTIC FIXED-SATELLITE SERVICE SYSTEMS

A. The Domestic FSS Standard Is Most Applicable For All Ka-Band FSS Satellite Systems

Motorola believes that the financial standard established for the Domestic Fixed-Satellite Services ("Domestic FSS") is most applicable to all of the Ka-band FSS applicants.^{15/} Although the Commission eventually granted a waiver in its Norris decision, it indicated that application of the Domestic FSS financial standards was appropriate for Ka-band applicants.^{16/} Indeed, the Commission's Public Notice which invited Ka-band applications correctly indicated that these applications needed to satisfy the Commission's Rules for Domestic FSS Systems found in Section 25.140, including the applicable financial requirements.^{17/} The Commission has also proposed the use of the Domestic FSS standard in its pending 28 GHz Rulemaking Proceeding.^{18/} Motorola supports the Commission's decision to apply the Domestic FSS financial requirements to Ka-band applications.^{19/}

^{15/} See Licensing Space Stations in the Domestic Fixed-Satellite Serv., 58 Rad. Reg. 2d (P&F) 1267 (1985) ("Domestic FSS Order"); 47 C.F.R. § 25.140(d) (1994).

^{16/} Norris Satellite Communications, Inc., 7 FCC Rcd. 4289, 4290 (1992) ("Norris").

^{17/} See Ka-Band Applications Accepted for Filing, Public Notice, DA 95-1689 at 3 (rel. July 28, 1995).

^{18/} 28 GHz Proceeding, at 46 ¶ 126.

^{19/} Indeed, several other Ka-band applicants have correctly made their financial

(continued ...)

In its Domestic FSS Order, the Commission determined that due to the finite number of orbital assignments available for domestic geostationary satellite services, the Commission should apply a stringent financial standard in order to deter applicants from warehousing orbital slots and spectrum.^{20/} The Commission's financial rules for FSS systems require an applicant to demonstrate that it has either the current assets, a fully negotiated credit arrangement, or a fully negotiated sale or lease of assets or transponder capacity sufficient to cover estimated costs of construction, launch and first-year's operating costs of the entire system.^{21/} The Commission concluded that financing arrangements that include contingencies are insufficient to meet the strict financial standards for Domestic FSS systems.^{22/}

Like other Domestic FSS satellite systems, the proposed Ka-Band satellite systems are primarily fixed-satellite systems that will serve the United States, among other parts of the world. Similarly, Ka-band applicants are confronted with a limited number of preferred orbital slots. Although there may be a sufficient number of orbital slots to accommodate the current group of Ka-band applicants, each applicant will not be able to receive its preferred orbital locations or acceptable alternatives to meet its business plan. Further, if the Commission grants all of the applications in the

^{19/} (... continued)

showing with the understanding that Section 25.140 of the Commission's Rules applies. See, e.g., VisionStar Application at 7; NetSat 28 Application at 50; Loral Application at 7-5.

^{20/} Domestic FSS Order, 58 Rad. Reg. 2d (P&F) at 1270-71. In general, where there are limited entry opportunities, the Commission has decided that a stringent financial standard is warranted. See Big LEO Report & Order, 9 FCC Rcd 5936, 5948 (1994) ("Big LEO") (The Commission applied a stringent financial standard to the Big LEO applications because it reasoned that financial requirements for satellite services should be fashioned "on the basis of entry opportunities in the particular service being licensed.").

^{21/} See 47 C.F.R. § 25.140(d).

^{22/} Domestic FSS Order, 58 Rad. Reg. 2d (P&F) at 1273.

current processing round, there may not be a sufficient number of orbital slots for future qualified applicants.

To require less than a stringent financial standard could result in an underfinanced applicant precluding a fully capitalized applicant from implementing its plans, thereby delaying satellite service to the public. The stringent Domestic FSS standard serves the public interest because it will ensure that an applicant granted a license will have the financial capability to immediately implement its system.

B. The International Satellite Systems Standard Should Not Be Applied To Ka-Band Systems

PanAmSat and Morning Star urge the Commission to judge their global Ka-band satellite systems by the financial standard created for International FSS systems.^{23/} In International Satellite Systems, the Commission applied a two-stage financial standard to international satellite applicants that requires a demonstration of their "preparedness to assume the costs and liabilities involved in constructing, launching and operating the system for one year."^{24/}

The International Satellite Systems financial standard, however, is not appropriate for this service. When that financial standard was originally adopted, the Commission stated that the "only reason for our two-stage approach here is the uncertainty caused by the INTELSAT Article XIV(d) consultation process."^{25/} This uncertainty may no longer exist. The 19th INTELSAT Assembly has recently adopted a presumption that no separate international satellite system interconnected to the public

^{23/} PanAmSat Application at 3 n.10 (Sept. 29, 1995); Application of Morning Star Satellite Company, L.L.C. at 40 (Sept. 29, 1995). See Establishment of Satellite Systems Providing International Communications, 101 F.C.C.2d 1046 (1985) ("International Satellite Systems").

^{24/} International Satellite Systems, 101 F.C.C.2d at 1164.

^{25/} Id. at 1165 n.152.

switched telephone network whose circuit capacity is below the threshold of 8,000 64 kbps equivalent bearer circuits will cause significant economic harm to the INTELSAT system.^{26/} Moreover, it is the United States' position that this threshold should be raised even further, if not eliminated, in the near future.^{27/}

The Commission itself has recognized that the need for a relaxed two-tiered financial standard with respect to international systems has disappeared. Accordingly, it recently proposed to eliminate this standard:

We believe the policy changes proposed herein will eliminate the necessity for a two-stage financial qualification showing by any applicant proposing to implement a U.S.-licensed fixed-satellite. . . . [T]he recent changes in the Intelsat Article XIV(d) process have removed most of the uncertainty with respect to gaining consent from foreign countries and completing consultation successfully.^{28/}

The elimination of the international satellite systems financial standard is consistent with the Commission's larger goal of adapting U.S. satellite policies to the increasingly global communications market by ensuring that all "U.S.-licensed satellites [are] being governed by the same policy guidelines."^{29/} As a result, the Commission should not apply the International Satellite Systems financial standard to these Ka-Band applicants.

^{26/} See In the Matter of Amendment to the Commission's Regulatory Policies Governing Domestic Fixed Satellites and Separate International Satellite Systems, 10 FCC Rcd 7789, 7792 n.21 (1995) ("Transborder/Separate Satellite Proposal") (noting recent INTELSAT Assembly action raising the threshold to 8,000 64 kbps equivalent bearer circuits).

^{27/} Id. at 7792 (United States has a goal of complete elimination of all interconnection restrictions by January 1997).

^{28/} Id. at 7795 (footnote omitted).

^{29/} Id. at 7792.

C. Possible Alternative Solution

If the Commission is unwilling to continue to apply the Domestic FSS financial standard to the pending applications, or otherwise believe that waivers are in the public interest, then it should process applications as follows: (1) those applications that meet the Domestic FSS financial standard would be assigned orbital slots first; and (2) the rest of the applicants would be assigned slots when they can demonstrate that they meet this standard. This approach is similar to the Commission's processing of other satellite services.^{30/}

III. CERTAIN KA-BAND APPLICATIONS FAIL TO SATISFY THE STRINGENT FINANCIAL STANDARD REQUIRED OF DOMESTIC FIXED-SATELLITE SERVICES

A. PanAmSat

PanAmSat's Ka-band application does not satisfy the Domestic FSS financial standard. PanAmSat does not provide a balance sheet that indicates it has sufficient current assets to internally finance its proposed project nor has it revealed any financial commitments to the project. Instead PanAmSat submits a letter from Morgan Stanley & Co. Incorporated, an investment banking and securities firm, stating that it is willing to assist PanAmSat in the raising of funds.^{31/}

This letter does not satisfy Section 25.140(d)(2)(i) of the Commission's Rules, as it does not provide sufficient details concerning the source of such external funds.^{32/} In addition, this letter does not provide evidence that external sources of

^{30/} See Processing Procedures Regarding Direct Broadcast Satellite Services, 95 F.C.C.2d 250, 253 (1983) (applicants assigned channels based upon meeting due diligence requirements); Big LEO Report and Order, 9 FCC Rcd at 5953 (according different processing priority depending upon how soon the applicant was able to make a complete financial showing).

^{31/} PanAmSat Application at Ex. 5.

^{32/} 47 C.F.R. § 25.140(d)(2)(i).

funding have been committed to PanAmSat for this project. As a result, the Commission should reject PanAmSat's application for failing to satisfy the financial requirements for a Domestic FSS system.

B. KaStar

KaStar's amended application still fails to satisfy the Commission's stringent financial standard.^{33/} KaStar's amendment does not submit any additional financial information to its original application. As Motorola and Comm, Inc. previously noted, KaStar's original application failed to provide evidence of a financial commitment (either internally or externally) sufficient to cover the cost of its proposed system.^{34/} Since KaStar has made no attempt to supplement the financial showing in its original application, Motorola continues to rely on the arguments in its original Consolidated Comments and Petition to Deny and its Consolidated Reply, and believes the Commission should deny KaStar's amended application because of its financial deficiencies.

C. VisionStar

VisionStar's application fails to satisfy the Commission's Domestic FSS financial standard, and should similarly be denied by the Commission. Although VisionStar acknowledges the applicability of Section 25.140 of the Commission's Rules,

^{33/} KaStar Application at 41.

^{34/} See Motorola Consolidated Comments and Petition to Deny at 11-14 (Sept. 29, 1995); Motorola and Comm, Inc. Consolidated Reply at 10-14 (Nov. 20, 1995). Besides making a deficient financial showing (i.e., demonstrating assets of only \$250,000 for a system projected to cost \$645 million), KaStar is seeking a waiver of the Commission's financial rules. In its Consolidated Comments and Petition to Deny and its Consolidated Reply, Motorola demonstrated that a waiver was entirely inappropriate for two reasons: (1) the number of current Ka-band applications indicates that the Ka-band is being developed; and (2) there are numerous applicants seeking to obtain a limited number of preferred orbital slots. See *id.*

it does not provide sufficient evidence of a financial commitment, either internally or externally, to satisfy the Commission's financial standard.^{35/}

VisionStar does not provide the balance sheet information which is necessary for internal financing. In an apparent effort to satisfy the external financing standard, VisionStar includes letters from the investment firms of Dillon, Read and Co., Inc. and Oppenheimer and Co., Inc. Its application states that each firm has "reviewed VisionStar's business plan and has expressed their **beliefs** that the investment communities **would be** enthusiastic about financing the VisionStar project."^{36/} These letters do not satisfy Section 25.140(d)(2)(i) of the Commission's Rules because they do not provide sufficient details as to the source and level of commitment of external funds.^{37/} Accordingly, the Commission must dismiss VisionStar's application for failing to satisfy the Commission's Domestic FSS financial standard.

VisionStar has also requested that the Commission waive its financial qualification requirements applicable to Domestic FSS systems.^{38/} VisionStar insists that the Commission's decision in Norris is applicable to its waiver request:

(1) because VisionStar's waiver will not prevent other potential domestic FSS applicants from seeking and receiving additional Ka-band orbital assignments; and
(2) because the Ka-band remains undeveloped.^{39/}

The waiver granted in Norris was based upon three unique circumstances. **First**, the Commission decided that a waiver would allow NorSat to

^{35/} VisionStar Application at 7 (Sept. 29, 1995).

^{36/} Id. (emphasis added).

^{37/} 47 C.F.R. § 25.140(d)(2)(i).

^{38/} VisionStar Application at 8.

^{39/} VisionStar Application at 9-11.

develop -- at that time -- the unused Ka-band.^{40/} **Second**, the Commission felt confident that a waiver would not preclude other entities from implementing systems in the Ka-band.^{41/} **Third**, the Commission granted a waiver because it determined that NorSat was the only commercial FSS applicant at the time in the new and vacant Ka-band, and, as such, faced "unique commercial and technical obstacles as the proposed initial Ka-band FSS provider. . . ."^{42/}

Despite the claims of VisionStar, the present processing round of Ka-band applicants is not analogous to Norris. **First**, although there may be a sufficient number of orbital slots to accommodate all of the current applicants, it is not clear that each applicant will be able to secure an orbital slot at the applicant's desired locations. Further, the large number of applicants makes it unlikely that fully-qualified future entrants will be able to be accommodated in the Ka-band. **Second**, the fourteen Ka-band applications currently on file with the Commission clearly demonstrate that the band will be developed in short order. A financial waiver is not needed now to ensure that the band will be utilized. Motorola submits that a stringent financial standard would do more to ensure that the Ka-band is fully utilized and that its benefits will be brought to the public promptly than waiver of the Rules.

Therefore, it is not in the public interest for the Commission to assign an orbital slot to an applicant, such as VisionStar, that has not demonstrated the necessary finances to carry through immediately with its proposed project. VisionStar's waiver request should be denied.

^{40/} Norris, 7 FCC Rcd at 4290.

^{41/} Id.

^{42/} Id.

D. Morning Star

Morning Star's application also fails to satisfy the Commission's stringent financial standard. For a system that is projected to cost \$846,786,000, Morning Star is only able to demonstrate internal financial resources of \$80,000,000.^{43/} Those resources fail to satisfy the Commission's domestic FSS standard for several reasons. **First**, this amount falls woefully short of the amount necessary to finance the entire system. **Second**, instead of submitting its financial information in the form of balance sheets supported by an affidavit as required by the Rules,^{44/} Morning Star has merely provided a copy of its Limited Liability Company Agreement.^{45/} This showing does not satisfy the Commission's Rules. As a result, Morning Star's application should be dismissed by the Commission because it is financially deficient.

To the extent necessary, Morning Star also seeks a waiver of the Commission's financial standards. Morning Star insists that requiring firm financial commitments at this stage of the proceeding is "premature" for a newly established entity, like Morning Star, because "[s]ound business judgment precludes capital markets from tying up such sums when the capacity to employ the funds remains uncertain."^{46/}

The high cost of satellite systems, and the uncertainty of the licensing process has not, in the past, deterred the Commission from instituting a stringent financial standard, or from rejecting requests for financial waivers. It was precisely the high cost of the Big LEO MSS systems that motivated the Commission to apply a

^{43/} Morning Star Application at 40 (Sept. 29, 1995).

^{44/} See 47 C.F.R. § 25.140(d)(1).

^{45/} Morning Star Application at Appendix B.

^{46/} Id. at 42.

stringent financial standard to Big LEO MSS applicants. In that proceeding, the Commission stated that

[Big LEO systems] are, by far, the most expensive satellite systems to date. ...[O]ur experience with the satellite industry has proven that arranging financing for any space station system, even one significantly less costly than a Big LEO system, is extremely difficult, even after a construction permit has been granted. Consequently, adopting a lesser financial standard than the domestic fixed-satellite standard. . . could tie up spectrum for years, with contrary [sic] to the public interest.^{47/}

There is no reason why the Commission should not apply similar logic to Morning Star's application and the other Ka-band applicants. Many of the proposed Ka-band systems are just as costly, and the Ka-band's spectrum is no less valuable than the spectrum allocated to the Big LEO MSS Systems.

Granting Morning Star's request for a waiver would only serve to encourage other financially deficient applicants to file "paper" applications with the Commission with little hope of ever being able to raise the necessary funds to implement its system. Such applications do not benefit the public interest and waste scarce Commission resources. The Commission should reject Morning Star's waiver request, and dismiss its Ka-band application as being financially deficient.

E. NetSat 28

NetSat 28 ("NetSat") has also failed to satisfy the Commission's stringent financial standard for Domestic FSS satellite systems. NetSat has projected the cost of constructing, launching and operating its satellite for one year to be \$250 million.^{48/} In its application, NetSat states that it has "sufficient financial resources to fund the

^{47/} Big LEO Report and Order, 9 FCC Rcd at 5949-50 (footnote omitted).

^{48/} NetSat 28 Application at 49 (Sept. 29, 1995).

construction, launch and operation of its satellite for one year."^{49/} The evidence that NetSat has submitted, however, does not indicate that the applicant has sufficient resources to fund its proposed satellite system.

Hellman & Friedman Capital Partners III, L.P. ("HFCP III"), a 33 1/3 percent owner of NetSat, has submitted a commitment letter stating that it has the resources to fund the NetSat project.^{50/} HFCP III's balance sheet, however, only indicates assets of approximately \$68 million, falling well short of the \$250 million necessary to finance NetSat's proposed system. The notes to HFCP III's financial statements further state that HFCP III has:

irrevocable commitments from partners to contribute capital of \$1,390.7 million to fund Investments and Partnership Expenses. As of September 27, 1995, the Partnership has received capital contributions of \$326 million. Consequently, remaining capital commitments to the Partnership are \$1,064.7 million.^{51/}

HFCP III has not provided the Commission with copies of these "irrevocable commitments" which are intended to cover the cost of NetSat's proposed system. Without evidence of these commitments, the Commission must reject NetSat's application as being financially deficient because it fails to indicate a sufficient level of resources and commitment in compliance with Section 25.140(d) of the Commission's Rules.

^{49/} Id. at 50.

^{50/} Id. at Exhibit A.

^{51/} NetSat 28 Application at Exhibit A, Attachment 1.

F. Orion Network Systems

1. Orion F7 And Orion F9 Satellites

For its Orion F7 and F9 satellites, Orion Network Systems ("ONS") has requested that the Commission defer its required financial showing for two reasons: (1) the Commission has proposed changes to its financial rules; and (2) the threat of competitive bidding or auctions has made securing external financing more difficult.^{52/}

Comm, Inc. submits that these justifications are insufficient to excuse ONS from submitting any financial materials. To the extent the Commission adopts new financial rules for the Ka-band, Comm, Inc. acknowledges that applicants, like ONS, will have an opportunity to amend their applications and submit additional financial materials to the Commission. Until that time, however, Comm, Inc. urges the Commission to apply the stringent Domestic FSS financial standard to all of the Ka-band applicants.

As mentioned above, the Commission has initially expressed a preference for a stringent financial standard for the Ka-band applications.^{53/} Even in the Domestic FSS and Separate International Satellite Systems Rulemakings to which ONS refers, the Commission has proposed implementing a stringent financial standard.^{54/} Accordingly, ONS should be held to this stringent financial standard until the Commission decides otherwise.

^{52/} Orion Network Systems, Inc. Application for Orion F7 at 8-11 (Sept. 29, 1995); Orion Network Systems, Inc. Application for Orion F9 at 8-11 (Sept. 29, 1995).

^{53/} See Ka-Band Applications Accepted for Filing, Public Notice, DA 95-1689 at 3 (rel. July 28, 1995); 28 GHz Proceeding, at 46 ¶ 126.

^{54/} See Amendment to the Commission's Regulatory Policies Governing Domestic Fixed Satellites and Separate International Satellite Systems, Notice of Proposed Rulemaking, 10 FCC Rcd 7789, 7794-95 (1995).

Comm, Inc. agrees with ONS that satellite auctions are not in the best interests of the public and advocates that they not be used for assigning spectrum in the Ka-band. A sufficient amount of Ka-band spectrum is available for all qualified applicants, and as a result, mutual exclusivity can be avoided. Comm, Inc. also agrees that the uncertainty of the auction process makes it difficult for applicants to raise finances externally.

Nevertheless, the financial uncertainty of auctions should not excuse ONS from submitting any financial materials to the Commission in support of its application. At a minimum, ONS should have attempted to secure external financing that was contingent upon auctions not being used to allocate spectrum in the Ka-band. By doing so, ONS would have been able to demonstrate some financial support for its project. Currently, ONS has not submitted any financial support for its Orion F7 and F9 satellites, and accordingly, these applications should be dismissed by the Commission. To do otherwise would be grossly unfair to the current group of Ka-band applicants that were able to demonstrate their financial qualifications.

2. Orion F8 Satellite

ONS's application for its Orion F8 satellite should similarly be dismissed.^{55/} For this satellite, Orion simply states that it "plans to raise funds in the capital markets" to finance its construction, launch and operation.^{56/} Orion also states that it will make a more complete financial showing after the INTELSAT Consultation for the satellite has been completed.^{57/}

The Commission must not accept such a weak financial demonstration. ONS's statements do not provide the Commission, or the other applicants with any

^{55/} Orion Network Systems Application for Orion F8 (Sept. 29, 1995).

^{56/} Id. at 8.

^{57/} Id.

evidence sufficient to indicate an internal or external commitment of funds to finance the construction, launch, and operation of the Orion F8 satellite. Proposing a costly satellite project without any evidence of financial commitment is not in the public interest.

Further, the Commission must not allow ONS to defer its financial showing until the INTELSAT Consultation process has been completed. As discussed above in Section II.B., the Commission has recognized that the uncertainty of the INTELSAT Consultation process no longer exists, thereby obviating the need to implement a two-tiered financial showing.^{58/} Instead, applicants, such as ONS, should be required to demonstrate that they have the necessary financing for their proposed system from the outset of filing an application. ONS has not come close to making an adequate financial demonstration for its Orion F8 satellite, and as a result the Commission should dismiss its application for failing to satisfy the Commission's stringent financial standards.

3. Orion F4 Satellite

ONS's amendment for the Orion F4 satellite should also be dismissed for lack of a sufficient financial showing. The amendment adds a Ka-band payload on a previously-filed Ku-band application.^{59/} In its amendment, ONS does not submit any new financial information, but instead appears to rely upon the financial qualification arguments it made in its original application. In that application, Orion requested that the Commission defer its financial showing until a later date because: (1) there was widespread industry expectation that demand for licenses would significantly exceed available orbital locations; and (2) the possibility of the introduction of competitive

^{58/} Transborder/Separate Satellite Proposal, 10 FCC Rcd at 7793.

^{59/} See Orion Network Systems Application, File No. 74-SAT-P/LA-95 (Feb. 15, 1995).

bidding makes it difficult for applicants to raise the necessary financial commitments.^{60/} The Commission must reject both of these arguments as they relate to the Ka-band, and deny ONS's request for a waiver of its financial showing for the Orion F4 satellite.

First, a large number of satellite applicants and a limited number of preferred orbital slots should prompt the Commission to require a stringent financial showing, and not defer ONS's financial demonstration. Faced with distributing a scarce resource, the Commission must ensure that an applicant awarded a license is able to immediately implement its proposed project. The Commission has acknowledged that the best method of doing so is requiring the applicant to demonstrate that it has sufficient financial resources from internal or external resources. ONS has not made this demonstration and its amendment for the Orion F4 satellite should be denied.

Second, as discussed above, the prospect of competitive bidding should not excuse an applicant from entirely deferring its financial showing. Instead, at a minimum, the Commission should require the applicant to provide external financial commitments that are contingent upon the Commission not utilizing auctions to license spectrum. With a Ka-band payload projected to cost approximately \$272 million, the Commission must insist upon evidence that ONS is able to immediately implement its proposed project if it is granted a license. ONS has not provided this evidence, and its amendment must be denied.

G. Orion Asia Pacific Corporation

Orion Asia Pacific Corporation ("OAPC") has submitted an amendment to its application for authority to construct, launch and operate a separate international communications satellite intending to serve the Asia-Pacific region.^{61/} Through its

^{60/} Id. at 7.

^{61/} See Orion Asia Pacific Corporation Application, File No. CSS-94-009 (Dec. 22, 1993).

amendment, OAPC intends to add an additional payload for Ka-band services. This amendment should be dismissed for lack of a sufficient financial showing because it does not submit any new financial information. Instead, the amendment would appear to rely upon the financial qualification arguments made in its original application, which stated that OAPC planned to raise funds in the capital markets to finance its project, and that it would make a complete financial showing at the conclusion of the INTELSAT consultation process.^{62/}

As mentioned above, the uncertainty of the INTELSAT consultation process has been removed, and the Commission has recognized that the need to permit a relaxed financial showing has waned.^{63/} Further, OAPC's "plans" to raise funds in the capital markets is an insufficient showing under § 25.140(d) because it lacks sufficient specificity and detail as to the level of commitment. OAPC should be required to demonstrate that it has the financial commitments to immediately proceed with its proposed satellite system. To date, it has not made any demonstration of financial commitments sufficient to satisfy the Commission's stringent financial standard. Its amendment should be denied.

H. Orion Atlantic, L.P.

Orion Atlantic, L.P. ("Orion Atlantic") has submitted an application for a modification of its previously granted authority to construct, launch, and operate an international satellite system serving the Atlantic Ocean Region.^{64/} The first satellite of this system, Orion F1, has been launched, and the second satellite, Orion F2, is under construction. Orion Atlantic would like to add a Ka-band payload to Orion F2. The Commission must dismiss this application for being financially deficient.

^{62/} Id. at 5.

^{63/} See Section III.B.

^{64/} See File No. CSS-83-002-P.

In its application, Orion Atlantic has submitted an exhibit stating that the estimated capital requirements for Orion F2 are approximately \$270 million.^{65/} Orion Atlantic has failed to submit either internal or external financial information which demonstrates that it is able to finance the addition of the Ka-band payload to its already authorized satellite system. It would appear that Orion Atlantic intends to rely upon its original financial showing submitted in the application for its international satellite system.

The addition of a Ka-band payload must be regarded as a new application that requires independent financial support. Orion Atlantic has not provided this support, and its application must be dismissed. If the Commission were to accept the earlier financial showing that does not even contemplate a Ka-band payload, it would be treating Orion Atlantic differently than other Ka-band applicants that were required to demonstrate their financial ability to immediately implement their proposed systems. Orion Atlantic has not made this financial showing, and accordingly, its application for the Ka-band payload must be dismissed.

I. AT&T And GE Americom

Motorola has been unable to evaluate the financial qualifications of the AT&T and GE Americom applications because these companies have sought confidential treatment of this information.^{66/} Without such a financial showing on the record, Motorola has been unable to evaluate the qualifications of AT&T and GE Americom.

^{65/} Orion Atlantic, L.P. Ka-band Application at Exhibit 2. It is unclear from Orion Atlantic's application whether this number is the total cost of adding a Ka-band payload to the second satellite, or whether it simply reflects the total cost of its satellite system with the Ka-band payload added in. Orion Atlantic must clarify the cost of adding the Ka-band payload to the Orion F2 satellite.

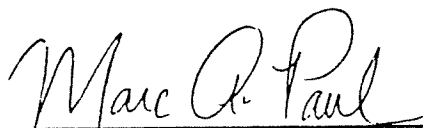
^{66/} Motorola filed an Opposition to these requests for confidentiality on November 6, 1995. The Commission has yet to act on these confidentiality requests.

IV. CONCLUSION

For the foregoing reasons, the Commission should resolve the orbital location and inter-satellite link requests of Comm, Inc. and the other Ka-band applicants, and it should deny certain Ka-band applications on financial grounds.

Respectfully submitted,

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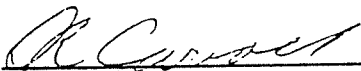
ENGINEERING CERTIFICATE

My name is David Carroll.

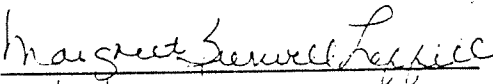
I am currently a Technical Staff Engineer for Spectrum and Standards in the Satellite Communications Division of Motorola, Inc.

I hereby certify that I am technically qualified to be responsible for the technical information submitted in the attached Consolidated Comments and Petition to Deny. The technical information presented in the attached Consolidated Comments and Petition to Deny is complete and accurate to the best of my knowledge and belief.

Dated this 14 day of December, 1995

By: 
Technical Staff Engineer
Spectrum and Standards
Motorola Satellite Communicaitons

Subscribed and sworn to before me this 14th of December, 1995 at Washington, D.C.

By: 
10/31/99

CERTIFICATE OF SERVICE

I, Marc A. Paul, do hereby certify that a copy of the foregoing
Comm, Inc.'s Consolidated Comments and Petition To Deny have been sent, via
first class mail, postage prepaid (or as otherwise indicated), on this 15th day of
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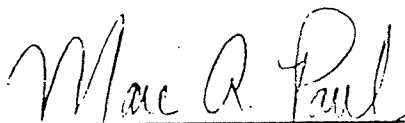
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