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

Federal Communications Commission  
Office of Secretary

In the Matter of the Applications of	)	
	)	
Celsat, Inc.	)	File Nos. 26/27/28-DSS-P/LA-97
	)	88-SAT-AMEND-98
	)	
The Boeing Company	)	File Nos. 178-SAT-P/LA-97(16)
	)	90-SAT-AMEND-98
	)	
Mobile Communications Holdings, Inc.	)	File No. 180-SAT-P/LA-97(26)
	)	
Globalstar, L.P.	)	File Nos. 182-SAT-P/LA-97(64) and
	)	183 through 186-SAT-P/LA-97
	)	
Iridium, L.L.C.	)	File No. 187-SAT-P/LA-97(96)
	)	
ICO Services Limited	)	File No. 188-SAT-LOI-97
	)	
Personal Communications Satellite Corporation	)	File No. 24/25-DSS-P/LA-97
	)	
TMI Communications and Company, L.P.	)	File No. 189-SAT-LOI-997
	)	
INMARSAT Horizons	)	File No. 190-SAT-LOI-97
	)	
For Authority to Launch and Operate Mobile Satellite Service Systems in the 2 GHz Bands	)	

**CONSOLIDATED OPPOSITION AND REPLY COMMENTS  
OF  
CONSTELLATION COMMUNICATIONS, INC.**

Constellation Communications, Inc. ("CCI"), by counsel, hereby files its Consolidated Opposition and Reply Comments in the above-captioned license proceedings. CCI takes strong exception to several of the commenters' argument that the Commission should either dismiss or defer the CCI application. There are no rules today for the 2 GHz Mobile Satellite Service ("2 GHz MSS")

and thus no basis to defer applications filed by existing Big LEO licensees or to make judgments regarding any applicant's financial qualifications. Although there are no eligibility standards for this service, there are minimum information requirements necessary to participate in these proceedings. CCI believes the Commission should dismiss any pending application as unacceptable for filing that failed to include the information required for Letter of Intent ("LOI") or satellite system applicants. Once it is determined how many applications are acceptable for filing, the Commission should evaluate whether these applicants can be accommodated in the available spectrum. Only after this process is completed should the Commission develop technical and financial qualification standards to process the pending applications. This approach will insure that licenses are issued in a manner that will promote the development of a competitive market for mobile satellite services and that the 2 GHz MSS frequency is used in an efficient manner. Finally, CCI urges the Commission to resolve any inter-service sharing issues through the regulatory process.

**I. The Commission Should Not Dismiss or Defer the CCI Application.**

Several of the commenters suggest that the CCI application be closely scrutinized to determine if CCI is financially qualified to hold a 2 GHz MSS FCC license. As the Commission made abundantly clear in its Public Notice announcing a cut-off date for acceptance of 2 GHz applications, currently there are no financial qualification rules for the 2 GHz MSS.<sup>1</sup> Thus, there is absolutely no basis in the rules for the Commission to make a determination regarding CCI's

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<sup>1</sup> See Clarification and Corrections to Public Notices Report Nos. SPB-88 and SPB-89, Report No. SPB-95, released August 13, 1997.

financial qualifications.<sup>2</sup> If financial qualification standards are established for the 2 GHz MSS,<sup>3</sup> CCI will demonstrate its compliance with any such standards.<sup>4</sup> As the Commission is aware, CCI is in the process of raising capital and developing its technical team. It remains quite confident that it will be able to satisfy any financial qualification standard established by the FCC for the 2 GHz MSS.<sup>5</sup>

Several of the applicants argue that the CCI application should be deferred until all new entrants are accommodated. Just as the case with financial qualifications, there is no Commission

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<sup>2</sup> Iridium argues that the CCI application should be dismissed because CCI did not demonstrate in CCI's 2 GHz MSS system application the financial qualifications specified for Big LEO systems. Iridium concedes that there are no financial qualification standards for the 2 GHz MSS but argues that CCI alone should be required to demonstrate the financial ability to construct, launch and operate its entire 2 GHz MSS system. This is based on the argument that CCI did not submit an application for a new system but stylized its application as a modification of an existing license. CCI submitted its 2 GHz MSS application in this manner because it anticipates that its 2 GHz and Big LEO systems will operate in a coordinated manner. Iridium provides no support for its claim that one particular financial qualification rule has priority where a satellite system contains two separate communication packages covered by two separate financial qualification rules. Rather, Commission precedent is to the contrary. In the recently completed Little LEO proceeding, Orbital Communications Corporation ("Orbcomm") was subject to a different set of rules and procedures for its first round application than it was for its second round application even though its second round application was stylized as a modification. *Compare Orbital Communications Corporation*, 9 FCC Rcd 6476 (1994), *recon. denied*, 10 FCC Rcd 7801 (1995) and *Orbital Communications Corporation*, DA 98-617 (released March 31, 1998).

<sup>3</sup> As the Commission is aware and the Big LEO proceeding has demonstrated, an applicant with a large balance sheet is not dispositive of success in implementing an MSS system. In the Big LEO proceeding, two small entrepreneurs, CCI and MCHI, appear to be succeeding where TRW, a Fortune 50 company, failed.

<sup>4</sup> MCHI's contention that CCI is not building a global Big LEO system is merely a fabricated argument, not based on facts, designed to serve MCHI's own parochial competitive purposes. Contrary to MCHI's argument, CCI is in the process of implementing a global MSS system in compliance with the rules for the Big LEO service. With regard to CCI's 2 GHz MSS proposal, there are no rules or global build-out requirements. Thus, even had CCI proposed a non-global 2 GHz system, there would be no basis to dismiss its application. It should be noted, however, that CCI proposed a 2 GHz system fully compliant with the FCC's global build-out requirement for Big LEO systems. The Commission must not condone MCHI's attempt to use the administrative process as means to spread lies and inaccurate information about its competitors and it should assess the appropriate sanctions against MCHI for its reckless behavior.

<sup>5</sup> On May 4, 1998, CCI and Orbital Sciences Corporation ("OSC") announced OSC will invest up to \$150 million in CCI and serve as system contractor for the first phase of the CCI system.

rule or policy granting new 2 GHz MSS applicants that do not currently hold FCC MSS licenses a priority vis-a-vis existing Big LEO licensees. Until the Commission considers the issues regarding such a priority and adopts appropriate rules, there is no legal basis to defer the CCI 2 GHz MSS application or the applications of any of the other Big LEO licensee.

Contrary to arguments of some of the commenters, the Commission should not adopt a rule excluding existing licensees before developing a band plan. In the recently concluded Little LEO proceeding, the Commission proposed to provide new entrants a priority vis-a-vis existing licensees only after it determined that all pending applicants could not be accommodated in the available spectrum.<sup>6</sup> The situation here is quite different for a number of reasons. First, there is no finding that 2 GHz MSS and Big LEO licensees will be providing the same services to the same markets. This is different from the Little LEO proceedings where the new second round entrants proposed to use the same frequency and offer the same services as the first round licensees. Second, unlike the second Little LEO proceeding, there is no finding by the Commission that all pending 2 GHz MSS applicants can be accommodated in the allocated spectrum. Thus, it would be premature to even consider establishing priorities for new applicants until it is determined whether the pending 2 GHz MSS applicants can be accommodated in the 2 GHz MSS bands. If indeed there is not enough spectrum to accommodate the acceptable applications, the Commission, as it did in the Little LEO proceeding, should determine whether the 2 GHz MSS and Big LEO systems are identical, compatible or different and based on this information develop a licensing regime that will best serve

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<sup>6</sup> See Notice of Proposed Rulemaking in IB Docket No. 96-220, FCC 96-426 (released October 29, 1996).

the public interest. Until such analysis is undertaken, there is no basis to defer any acceptable 2 GHz applicant.<sup>7</sup>

**II. There Is No Record to Support the View That All Applicants' Requirements Cannot Be Met in the 2 GHz Spectrum Allocated to the MSS.**

A number of the commenters presume that there is insufficient spectrum to accommodate all pending 2 GHz applicants. As discussed above, CCI believes that today the Commission has no basis to reach this conclusion. If the Commission had jumped to this presumption in 1990 in the first Little LEO processing round, in 1991 in the Big LEO proceeding, in 1994 in the second Little LEO processing round, or in 1995 in the Ka-band geostationary satellite proceeding, it would have been faced with mutual exclusivity and auctions in multiple satellite proceedings. Rather, the Commission prodded and tested the applicants through a variety of administrative actions to determine the applicants' "true" requirements. It was only through this vetting process that the Commission could determine if all the applicants' requirements could be met in the available spectrum. As history demonstrates, this process can result in settlements among the applicants and successful conclusion of satellite proceedings. There is nothing inherently different in the 2 GHz MSS proceeding that would lead to a different approach. Given this background, CCI urges the Commission to initiate a process to determine if all the applicants can be accommodated before it establishes any licensing policies for the 2 GHz MSS.<sup>8</sup>

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<sup>7</sup> ICO argues that the Big LEO licensees will warehouse 2 GHz spectrum. As ICO is aware, market projections for MSS are enormous. None of the pending applicants questions these projections. Thus, whether ICO or a Big LEO licensee is assigned 2 GHz MSS spectrum, the spectrum will be used to provide MSS to the public. The critical issue is whether the spectrum can be assigned in a manner that best meets the public interest.

<sup>8</sup> It should be noted none of the commenters provide any detailed technical information analyzing whether all the applicants can be accommodated in the available spectrum.

**III. The Commission Should Immediately Resolve Application Acceptability Issues.**

There are two issues raised in the comments regarding whether the pending applications are acceptable for filing. First, CCI, as well as some other applicants, have questioned whether TMI and Inmarsat have submitted the information required for LOI applicants. CCI agrees with Iridium that the Commission should immediately determine whether these applicants are eligible to be considered in the 2 GHz MSS processing round. If insufficient information has been provided, the application should be dismissed as unacceptable. Relatedly, CCI also agrees with Iridium that the Commission should determine the ability of Inter-Governmental Organizations ("IGO") (Inmarsat) or IGO-affiliated organizations (ICO) to participate in the 2 GHz MSS processing round.

Second, the Commission should immediately determine whether Aeronautical Mobile Satellite (Route) Services ("AMS(R)S") should be allowed to operate in the 2 GHz MSS bands. CCI agrees with Iridium that there is a "fundamental incompatibility between bona fide 2 GHz MSS and Boeing's AMS(R)S proposal"<sup>9</sup> and urges the Commission to dismiss the Boeing application as unacceptable.

**IV. Other Issues.**

The Wireless Cable Association International, Inc. ("WCA") requests that the Commission condition any 2 GHz satellite system on acceptance of interference from all Multipoint Distribution Service ("MDS") stations and Instructional Television Fixed Service ("ITFS") facilities operating in adjacent bands. CCI believes that such blanket protection is unnecessary and inconsistent with the methodology that spectrum managers use to resolve incompatibilities between two primary services. Rather, CCI urges the Commission to evaluate out-of-band interference issues to determine

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<sup>9</sup> See Comments of Iridium at 9.

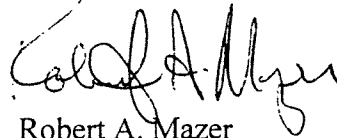
whether existing limitations are insufficient to allow both primary services to meet their performance requirements. If out-of-band emissions do present a problem, new criteria should only be adopted after completion of detailed technical analysis.

Teledesic expresses concern that some 2 GHz MSS applicants may seek to establish feeder links in the 28.6-29.1 GHz and 18.8-19.3 GHz bands. Although CCI anticipates that Teledesic's requirements will not be impaired, the Commission should consider all options in determining how to best accommodate 2 GHz MSS system feeder links.

V. **Conclusion.**

CCI urges the Commission to immediately initiate a process that will lead to the expeditious issuance of licenses to use 2 GHz MSS spectrum.

Respectfully submitted,



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Dated: June 3, 1998

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 3rd day of June, 1998, a true and correct copy of the foregoing Consolidated Opposition and Reply Comments of Constellation Communications, Inc. was served by first class mail, postage prepaid, upon the following:

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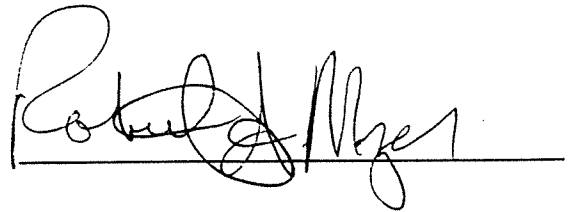
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A handwritten signature in black ink, appearing to read "Robert J. Meyer", is written over a horizontal line.