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

NOV 28 1990

Federal Communications Commission  
Office of the Secretary

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Domestic Facilities  
Satellite Radio Br

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In the Matter of: )  
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GEOSTAR POSITIONING CORP. )  
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For Modification of its )  
RDSS Space Station )  
Authorizations )  
\_\_\_\_\_ )

File Nos.  
43 thru 45-DSS-MP/ML-90;  
46, 48-DSS-P/LA-90;  
51 thru 53-DSS-EXT-90;  
CSS-90-012 thru 015(ML)

REPLY COMMENTS OF QUALCOMM, INC.

QUALCOMM, Inc., by its attorneys, hereby submits its Reply Comments in the above captioned proceeding.

I. BACKGROUND

In this proceeding Geostar Positioning Corporation ("Geostar") has requested authorization from the Federal Communications Commission ("FCC" or "Commission") to modify existing licenses for the construction and launch of a dedicated Radiodetermination Satellite Service ("RDSS") system. In addition, Geostar requests authorization for an additional dedicated RDSS satellite. On October 10, 1990, QUALCOMM petitioned the Commission to deny Geostar's applications because Geostar is not financially qualified to

construct, launch and operate an RDSS system. Nor has Geostar shown good cause for extension of construction and launch milestone requirements. QUALCOMM also addressed the general viability of an RDSS system and suggested that the Commission consider reallocation of spectrum. Finally, QUALCOMM suggested that the Commission reconsider authorizations for the Geostar interim system.

Two responses were filed. On November 5, 1990, Motorola, Inc. filed Comments which argue that Geostar's RDSS system is not viable, emphasizing the "radical changes to system design and vastly reduced transmission capacity" proposed in the modification requests.<sup>1/</sup> These raise serious questions as to Geostar's technical approach and long term viability. Like QUALCOMM, Motorola also warns the Commission against Geostar's attempts to bootstrap its interim system into an RDSS equivalent. Motorola argues that the Commission has already found that the interim system is not a substitute for an RDSS system and the same finding is applicable today.<sup>2/</sup>

Motorola also urges that the Commission no longer require that future RDSS applicants demonstrate their system compatibility with Geostar. Motorola states that, to its knowledge, "Geostar has taken no concrete action to construct

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<sup>1/</sup> Motorola Comments at 5 - 6.

<sup>2/</sup> Motorola Comments at 7.

and operate an RDSS system which remotely resembles its licensed facilities"<sup>3/</sup> Under these circumstances, the Geostar licensed system should not be the baseline for future system coordination.

On November 7, 1990, Geostar filed an Opposition to the QUALCOMM Petition to Deny. Geostar argues that it has made substantial and demonstrable progress in the implementation of its RDSS system, which progress the Commission should consider when acting on the instant applications. Geostar also argues that its SEC filings are typical of companies making the transition from start-up to operational status, and that the Commission should apply flexible standards to requests for extension of time. Geostar asks that the Commission be "generous and patient", as it has been with new satellite service licensees.<sup>4/</sup> Geostar also argues that grant of its applications will serve the public interest.

In these Reply Comments, QUALCOMM will first show that Geostar is not financially qualified to construct, launch and operate dedicated RDSS system, and that the Commission cannot grant the applications based upon the information currently before it. Second, QUALCOMM will demonstrate that the public interest will not be served by a "generous and patient"

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<sup>3/</sup> Id. at 8.

<sup>4/</sup> Geostar Opposition at 21.

attitude on the part of the Commission. For these reasons, QUALCOMM urges that the applications for modification and construction, launch and operation of the proposed Geostar system be denied.

## II. ARGUMENT

### A. Geostar Is Not Financially Qualified

In its Opposition, Geostar goes to great lengths to gain Commission sympathy for its financial difficulties, citing significant operational and financial obstacles it has overcome. QUALCOMM does not seek to minimize Geostar's accomplishments, or the misfortunes it has suffered. Nevertheless, the simple fact remains that Geostar does not have the financial resources to construct, launch and operate an RDSS system.

Geostar's most recent Securities and Exchange Commission ("SEC") Quarterly Report for the period ending September 30, 1990 shows that shareholder equity has been reduced to \$585,613 from \$5,142,750 as of June 30, 1990.<sup>5/</sup> Based on the recent rate of loss (\$1.5 million per month), this shareholder equity figure is probably now a significant negative amount. Further, shareholder equity (or loss) is greatly dependent on the true value of the "Geostar System",

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<sup>5/</sup> Geostar 1990 Third Quarter Form 10-Q at 3 (Attachment A).

classified as an asset of \$62.6 million by Geostar.<sup>6/</sup> QUALCOMM believes that either the interim system must become the permanent system (an outcome foreclosed by Commission policy and precedent) or a major writedown of these assets must occur, given the failure of the interim system to attract a viable customer base. Of course, any writedown would have a further negative impact on shareholder equity.

However poor the shareholder equity position, the Commission's real concern is the cash flow situation. Geostar's net working capital deficit increased in the last three months from \$23,611,354 to \$28,704,277, an increase of over \$5,000,000. The Company did not make convertible debenture interest payments in August 1990, causing an Event of Default to occur. Payment dates on loans and deferrals were extended during the Third Quarter of 1990. In particular, payment of a \$2,000,000 note was extended to December 21, 1990 and Geostar has agreed that no further delay will occur.<sup>7/</sup>

Geostar's revenues have not increased to permit repayment of these loans or to cover operating losses. Geostar's 1990 revenues actually decreased from \$2,512,217 in the second quarter to \$1,436,310 in the third quarter. An analysis of current cash flow indicates that Geostar receives

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<sup>6/</sup> Geostar 1990 10-Q at 3.

<sup>7/</sup> Geostar 1990 Form 10-Q at 87.

approximately \$250,000 in monthly revenue (other than for hardware sales) to cover approximately \$1,500,000 in space and ground segment costs, general and administrative and marketing expenses, and interest payments. In sum, Geostar does not have the revenues necessary for sustained viability, much less the construction of a dedicated RDSS satellite system.

In its Opposition, Geostar attempts to suggest that SEC filings do not provide an accurate assessment of Geostar's financial state.<sup>8/</sup> Financial statements, we are told, show only a "static picture" at "particular moments in time."<sup>9/</sup> Geostar is merely in a "valley" awaiting "the necessary funds to continue its operations."<sup>10/</sup> That this "valley" has persisted for over a year and that revenues have not grown to ease the passage through this "valley" are facts which Geostar chooses to ignore.

Geostar compares itself to companies that have survived financial difficulties and have succeeded in the marketplace. Geostar could also have compared itself to companies that have not survived financial difficulties and have not succeeded in the marketplace. The outcome of Geostar's struggle is unknown and such comparisons are

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<sup>8/</sup> Geostar Opposition at 6.

<sup>9/</sup> Id. at 16.

<sup>10/</sup> Id.

irrelevant to the issue before the Commission: whether Geostar is financially qualified to construct, launch and operate an RDSS system.

The fact is that Geostar is not so qualified. In a footnote, Geostar admits that it is "completing a long-term financial arrangement for the funding of its RDSS system."<sup>11/</sup> Unfortunately, details cannot be revealed. However, Geostar will supplement its applications "as soon as it is able to disclose such information publicly."<sup>12/</sup>

It is apparent that Geostar filed the pending applications (including the ghost "host" application), knowing they were incomplete, only because its failure to construct a dedicated RDSS system had been brought to the Commission's attention. Now, it seems, progress will be deferred while Geostar completes financings which, it has been rumored, may involve a change in control of the company. Clearly, any such application will require a period of public scrutiny and inquiry into the intentions and qualifications of the acquiring

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<sup>11/</sup> Geostar Opposition at note 24.

<sup>12/</sup> Id.

company.<sup>13/</sup> This will only cause further delay which, as is discussed below, is contrary to the public interest.

**B. The Public Interest Is Not Served By Further Delay**

Having conceded that a demonstration of financial qualifications must await a supplemental filing, Geostar then asks for "flexible standards" toward extensions of time. Geostar begs the Commission to treat it with generosity and patience, to give it "sufficient latitude" to develop its system. Geostar analogizes itself to applicants for international satellite and direct broadcast satellite services, whom the Commission has treated to relaxed due diligence standards.

However, unlike in the case of international or DBS satellite service applicants, Geostar's failure to develop a system prevents others from doing so as well. As Motorola points out, the Geostar system is the "model" or "baseline" for coordination of other systems. The regulatory scheme for RDSS provides for multiple entry and the use of the entire allocated frequency bands on a non-exclusive basis. In order to accomplish this, it is necessary that applicants coordinate

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<sup>13/</sup> It is also likely, given developments discussed below, that parties other than QUALCOMM will question whether continuation of a spectrum allocation for RDSS serves the public interest. If Geostar, after having obtained some \$125 million in funds (Opposition at 5), is unable to develop a viable RDSS market in seven years, what can be expected of an acquiring company, new to the field?



with licensees to avoid harmful interference.<sup>14/</sup> Since Geostar is the only existing RDSS licensee, the practical effect of this requirement is that other entrants must coordinate with Geostar.

Modifications to the technical parameters of the Geostar system -- such as those proposed in the instant applications -- and delays in the implementation of the Geostar system -- such as those proposed in the instant applications -- make it difficult for potential entrants to design new systems for the use of the RDSS frequencies. Moreover, when the modifications involve, as they do in this case, significant reductions in capacity based on the market's failure to develop, business plans and economic decisions will be affected. This is not a hypothetical problem. Motorola's Comments, and other recent events,<sup>15/</sup> make it clear that, as QUALCOMM's Petition suggested, there are uses for the RDSS spectrum that Geostar's procrastination inhibits or forestalls.

In these circumstances, a "generous and patient" attitude toward a licensee that has not met its milestones and

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<sup>14/</sup> See 47 C.F.R. § 25.392(f).

<sup>15/</sup> We draw the Commission's attention to the November 2, 1990 application of Ellipsat Corporation which proposes the construction, launch and operation of an elliptical orbit satellite system. This system proposes to use frequencies allocated for RDSS to provide radiodetermination and cellular services and was filed so as to be considered concurrently with the Geostar applications. See Ashbacker Radio Corporation v. FCC, 326 U.S. 328 (1945).

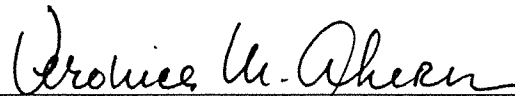
can not meet its milestones is contrary to the public interest and sets a dangerous precedent.

**III. CONCLUSION**

Geostar has filed applications that fail to demonstrate that it is qualified to construct, launch and operate its RDSS system. It proposes a supplemental filing to correct this fundamental omission. While the world awaits this filing, opportunities for qualified entrants may be lost, or, at the least, delayed. The Commission established qualifications and milestones to avoid this outcome. Now the Commission must be guided by the rule of law, not by pleas for sympathy, and deny the Geostar applications.

Respectfully submitted,

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November 28, 1990

CERTIFICATE OF SERVICE

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