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Federal Communications Commission
Office of the Secretary

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April 21, 1992

Ms. Donna Searcy
Secretary
Federal Communications Commission
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Washington, D.C. 20554

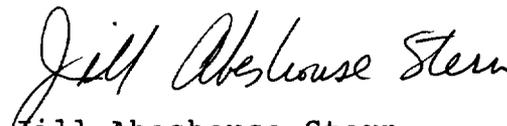
Re: Motorola Satellite Communications Inc.
ET Docket No. 92-28; File No. PP-32

Dear Ms. Searcy:

On behalf of Ellipsat Corporation, I am transmitting here-
with an original and four copies of "Motion to Strike Supplement
to Request for Preference or, Alternatively, to Establish New
Comment Dates."

Should there be any questions concerning this matter, kindly
communicate with the undersigned.

Sincerely,



Jill Abeshouse Stern
Counsel for Ellipsat Corporation

JAS:csg

Enclosures

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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

Federal Communications Commission
Office of the Secretary

In the Matter of:)
)
MOTOROLA SATELLITE) ET Docket No. 92-28
COMMUNICATIONS, INC.)
) PP-32
Request for Pioneer's Preference)
to Establish a Low-Earth Orbit)
Satellite System in the 1610-)
1626.5 MHz Band.)

To: Chief Engineer

**MOTION TO STRIKE
SUPPLEMENT TO REQUEST FOR PREFERENCE,
OR, ALTERNATIVELY, TO ESTABLISH NEW COMMENT DATES**

Ellipsat Corporation ("Ellipsat"), by its attorneys, hereby moves to strike the "Supplement to Request For Pioneer's Preference" filed April 10, 1992 by Motorola Satellite Communications, Inc. ("Motorola"). At a minimum, Ellipsat requests suspension of the reply comment date, and establishment of new comment dates, in the above-referenced proceeding so that the parties will be able to evaluate and provide meaningful comment upon Motorola's submission.^{1/}

On April 10, 1992 -- the final day for filing new pioneer's preference requests -- Motorola filed its "Supplement to Request For Pioneer's Preference." This voluminous filing, which also

^{1/} For the reasons detailed herein, return of Motorola's submission is warranted. If, however, the Commission should conclude otherwise, this motion also formally requests, in the alternative, that new comment dates be established consistent with Commission rules.

includes confidential material not available for review by the other parties, was filed two days after the April 8, 1992 filing date for comments on Motorola's pioneer's preference request. Significantly, although Motorola's request for preference was filed more than eight months before, it waited until April 10, 1992 -- the absolute deadline for new preference requests -- to file its "supplement." By filing on April 10, the "final day" for preference requests relating to satellite systems above 1 GHz, Motorola effectively conceded that it was filing a new pioneer's preference request not merely a supplement.

Motorola's filing is, in fact, a new request for preference, and should be treated as such. While the Motorola filing is composed largely of irrelevant press clippings, it does include new materials and information which may be relevant to Motorola's preference claim. The filing also contains a confidential submission which purportedly provides information about patents and experimental test results. Motorola does not intend to share this information with the other parties, and has asked for return of the information if confidentiality cannot be maintained.^{2/}

^{2/} Ellipsat is filing a separate opposition to Motorola's request for confidential treatment, and a request for inspection of the materials and information submitted by Motorola. For reasons detailed in its opposition, confidential treatment would be wholly improper in this contested proceeding. The Commission has characterized a pioneer's preference request as an adjudicative proceeding and indicated that similar procedural safeguards should apply. Report and Order, GEN. Docket No. 90-217, 6 FCC Rcd 3488, 3493 (1991).

In its April 10 submission, Motorola claims a preference, for the first time, for a number of alleged technological and service innovations.^{3/} In its initial Request for Preference filed eight months before, on July 30, 1991, Motorola based its preference claim solely upon intersatellite links and bidirectional capabilities.^{4/} The other parties, including Ellipsat, were therefore unable to consider or address Motorola's new preference claims when they filed comments on April 8, 1992 in opposition to Motorola's July 30, 1991 preference request.

Denial of a meaningful opportunity to review and comment upon this critical new information -- information that is directly relevant to the pioneer's preference proceeding -- would be extremely prejudicial to the other applicants.^{5/} This suggests that other parties may not yet have received a copy of Motorola's filing unless, like Ellipsat, they learned indirectly about the filing through other sources and requested a copy of the filing from Motorola's counsel. Moreover, this prejudicial impact is heightened by Motorola's request for confidentiality which appears to cover a large portion of the materials

^{3/} Supplement to Request at 6-7.

^{4/} See Request for Preference, filed July 30, 1991 at ¶ 5.

^{5/} Certainly, neither Ellipsat nor other interested parties can evaluate and comment upon the Motorola filing in the short period of time remaining in the present comment cycle. It is noteworthy that, as of the date of this motion, counsel for Ellipsat had not yet received a copy of the Motorola filing by mail. Other parties may have experienced similar delays in obtaining copies of the Motorola submission.

submitted. Due to concerns about this prejudicial impact, Ellipsat is filing a separate opposition to Motorola's request for confidentiality and a freedom of information request to permit inspection of the Motorola materials.

To prevent prejudice to the other parties and to ensure a complete record in this proceeding, all of the supplemental information submitted by Motorola should be stricken from the record, unless the other parties are provided with sufficient time to evaluate and comment upon the submission. The supplemental filing should, at a minimum, be placed on public notice and subjected to an additional round of comments. Under Commission rules, public notice of the Motorola supplemental filing must be given and a 30-day comment period established.^{6/}

In order to comply with the applicable procedural requirements, the Commission must immediately suspend the reply comment date in this proceeding. To proceed with the reply comments now would be an empty gesture, and would prejudice the other parties by forcing an expedited review process. Clearly, there are complex and novel issues relating to the preference that must be carefully, not hastily, considered by the parties and the Commission. If required to meet the current reply date, parties would need to undergo the expense and burden of filing yet another set of comments when new comment dates are established for the supplemental filing. While the Commission previously denied an

^{6/} 47 C.F.R. §§ 1.402, 1.405.

unopposed extension of time in this proceeding, Motorola's submission is clearly a new and material development that requires the Commission to suspend the April 23, 1992 reply comment date, and establish new comment dates.^{7/}

It bears emphasis that Motorola waited until after the comment date in this proceeding to file a new preference request and a raft of new material with the Commission. Its timing of these materials cannot be viewed as accidental. The Commission should not endorse Motorola's effort to manipulate Commission processes for its own benefit, and to deny the other parties a legitimate opportunity to evaluate and comment upon Motorola's claims.

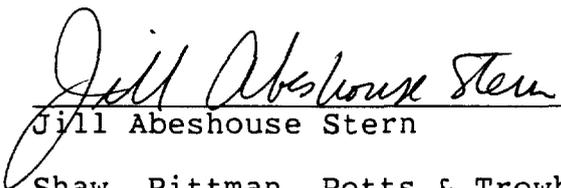
^{7/} Ellipsat shares the Commission's desire for finality in determining claims for preference. Nonetheless, it would be inconsistent for the Commission to have established an April 10, 1992 deadline in this case for new requests unless it intended to establish separate comment dates for any new requests filed on the deadline.

Conclusion

For the foregoing reasons, Ellipsat urges the Commission to strike Motorola's "Supplement to Request for Pioneer's Preference." At a minimum, the April 23, 1992 reply comment date in this proceeding must be suspended and new comment dates established to allow the parties to evaluate and comment upon the new materials submitted by Motorola on April 10, 1992.

Respectfully submitted,

ELLIPSAT CORPORATION

By: 
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April 21, 1992

CERTIFICATE OF SERVICE

I, Carla S. Gales, hereby certify that a copy of the foregoing document was served by first-class mail, postage prepaid, this 21st day of April, 1992 on the following persons:

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