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April 23, 1992

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APR 23 1992

Federal Communications Commission
Office of the Secretary

Ms. Donna Searcy
Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

Re: Celsat, Inc.
RM No. 7927; ~~PP-28~~

Dear Ms. Searcy:

On behalf of Ellipsat Corporation, I am transmitting here-
with an original and four copies of "Reply Comments in Support of
Dismissal" with respect to the above-referenced petition for
rulemaking and request for pioneer's preference of Celsat, Inc.

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

Sincerely,

Jill Abeshouse Stern
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)	
)	
CELSAT, INC.)	
)	
Petition for Rulemaking to)	RM No. 7927
Amend Parts 2, 22 and 25)	
For An Allocation of Frequencies)	
and Other Rules for a New)	
Nationwide Hybrid Space/Ground)	
Cellular Network for Personal/Mobile)	
Communication Services)	
)	
Request for a Pioneer's Preference)	PP-28

To: The Chief Engineer

REPLY COMMENTS IN SUPPORT OF DISMISSAL

Ellipsat Corporation ("Ellipsat"), by its attorneys, hereby submits its reply comments in support of the following petitions and oppositions, all of which were filed on April 8, 1992, seeking dismissal of the above-referenced Petition for Rulemaking and Request for Pioneer's Preference filed by Celsat Inc. ("Celsat"): "Petition to Dismiss," filed by Constellation Communications, Inc. ("Constellation"); "Opposition to Petition for Rulemaking" and "Comments in Opposition," filed by Loral Qualcomm Satellite Services, Inc. ("Loral"); "Petition to Dismiss or Deny Request for Pioneer's Preference of Celsat, Inc." and "Petition to Dismiss Rulemaking Request of Celsat, Inc.," filed by TRW Inc.; and "Opposition to Petition for Rulemaking," filed by Motorola Satellite Communications, Inc.

As the other parties correctly point out in their April 8, 1992 submissions, Celsat's petition for rulemaking and pioneer's preference are fatally defective for the simple reason that Celsat is precluded by the Commission's cut-off rules from filing an application in the 1610 to 1626.5 MHz and 2483.5 to 2500 MHz frequency bands. The Commission established a cut-off date of June 3, 1991 for the filing of applications to use these bands.^{1/} Celsat did not file an application by that date. Nor has Celsat subsequently filed any application with the Commission to implement its proposed satellite system. In fact, any such application could not be considered concurrently with the current processing group in the RDSS bands.

The Commission's authority to establish and apply cut-off dates is well-established. Most recently, the Commission dismissed the application of LEOSAT Corporation where the company missed the filing cut-off date established for the small LEO processing group.^{2/} Celsat has not sought a waiver of the cut-off rules and, even if it had, could not meet the heavy burden of establishing circumstances sufficient to justify a waiver.^{3/}

Because Celsat would be precluded from filing an application, its petition for rulemaking must be dismissed as moot. The

^{1/} Public Notice, Report No. DS-1068, DA 91-407, released April 1, 1991.

^{2/} LEOSAT Corporation, File No. 12-DSS-P-91(2), DA 92-463, released April 20, 1992.

^{3/} Id. at n. 9.

Commission has authority, under Commission Rule 1.407, to dismiss petitions that are "moot, premature, repetitive, frivolous, or which plainly do not warrant consideration by the Commission."^{4/} Upon dismissal of Celsat's rulemaking petition, its pioneer's preference request must also be dismissed. A rulemaking petition is a basic prerequisite for a preference.^{5/}

Celsat's submissions -- filed eight months after the application cut-off date in this proceeding -- must be dismissed in any event. There is nothing novel about Celsat's proposal and its preference request is therefore not entitled to serious consideration. As Loral correctly points out:

[Celsat] makes this request despite having no right to use the technology on which its proposal rests, despite not having pioneered any technology in its proposal, despite not having filed an application, despite not having any basis for not having timely filed to participate in current RDSS processing group, and despite the complete lack of any showing of viability for its proposal.^{6/}

Neither Celsat's concept of satellite and cellular in the same band, nor its proposal to deliver mobile satellite service by geostationary satellite, is new. In fact, Ellipsat has undertaken some work outside the United States relating to use of the same band for both terrestrial and satellite services. This

^{4/} See 47 C.F.R. §1.407. See also Petitions for Rulemaking, 47 R.R. 2d 1068, 1069 (1980).

^{5/} 47 C.F.R. § 1.402

^{6/} Comments in Opposition, RM-7927 (File No. PP-28), filed by Loral Qualcomm Satellite Services, Inc. on April 8, 1992.

approach is not compatible with the regulatory schemes of many countries, including the U.S. It is also not economical where a large cellular infrastructure is already installed.

In sum, Ellipsat agrees with the views expressed by Loral, TRW and Constellation, among others, that Celsat's petition for rulemaking and pioneer's preference request must be dismissed. Ellipsat urges the Commission to move forward promptly to dismiss Celsat's filings so that processing of the pending satellite applications, and implementation of the new services that have been proposed, can proceed expeditiously.

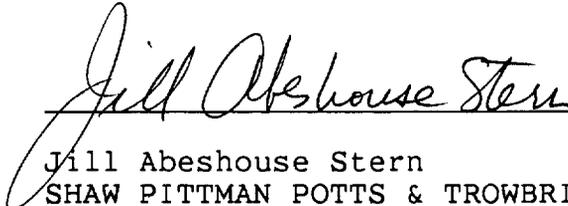
Conclusion

For the foregoing reasons, the petition for rulemaking and pioneer's preference request of Celsat, Inc. must be promptly dismissed or denied.

Respectfully submitted,

ELLIPSAT CORPORATION

By:



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April 23, 1992

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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 23rd day of April, 1992 on the following persons:

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