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MAY 19 1992

JILL A. STERN
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May 19, 1992

Federal Communications Commission
Office of the Secretary

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

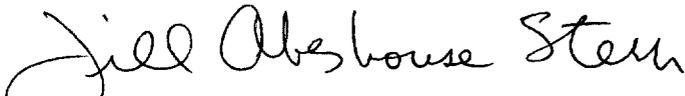
Re: Requests for Pioneer's Preference
ET Docket Nos. 92-28; PP-29; PP-30;
PP-31; PP-32; PP-33

Dear Ms. Searcy:

On behalf of Ellipsat Corporation, I am transmitting here-
with an original and four copies of "Comments in Partial Support
of Motion for Stay" with respect to the above-referenced
proceeding.

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

MAY 19 1992

Federal Communications Commission,
Office of the Secretary

In the Matter of)	
)	
Amendment of Section 2.106 of the)	ET Docket No. 92-28
Commission's Rules to Allocate)	
Spectrum to the Mobile-Satellite)	PP-29
Service above 1 GHz for)	PP-30
Low-Earth Orbit Satellites --)	PP-31
Requests for Pioneer's Preference)	PP-32
by Constellation, Ellipsat, Loral,)	PP-33
Motorola, and TRW.)	

To: The Commission

COMMENTS IN PARTIAL SUPPORT OF MOTION FOR STAY

Ellipsat Corporation ("Ellipsat"), by its attorney, submits its comments in partial support of the April 30, 1992 Motion for Stay of TRW Inc. ("TRW"). Ellipsat generally agrees with TRW that postponement of action on the pioneer's preference requests consolidated into ET Docket 92-28 is required under the present circumstances.

Ellipsat believes it is entitled to a preference for reasons detailed in its previous submissions. However, it is compelled, for strong public policy reasons, to support the requested stay of Commission action. In Ellipsat's view, the Commission should stay action on the preference until conclusion of the rulemaking adopting technical and service rules for the "big" LEOS. Because of the present controversy that surrounds the preference, and the unresolved policy questions, deferral of action is required in

order to allow full consideration of the underlying issues. This temporary delay will ultimately benefit the public by ensuring that the Commission carefully evaluates all of the relevant factors before reaching a preference decision.

Pioneer's preference requests have been filed by Ellipsat, TRW, Loral Qualcomm Satellite Systems, Inc. ("Loral"), Constellation Communications, Inc. ("Constellation") and Motorola Satellite Communications, Inc. ("Motorola"). As detailed in Ellipsat's previous submissions,^{1/} and those of other parties, it is apparent that significant uncertainty and controversy exists as to the meaning of the Commission's pioneer's preference rules and the application of those rules to cases involving mutually exclusive applications. Because of this controversy, and the high likelihood of substantial harm to the public from a premature and hasty decision, the Commission should defer action on the pioneer's preference in this proceeding until technical and service rules for the big LEOS are adopted.

In its previous filings, Ellipsat demonstrated that, if the Commission should award a preference, Ellipsat is the appropriate recipient of that preference. Ellipsat was the first company to develop a concrete system proposal and to file an application with the Commission. Ellipsat has further shown that, because of

^{1/} See Response to Oppositions and Reply to Comments, ET Docket No. 92-28, filed April 23, 1992; Opposition of Ellipsat Corporation to Pioneer's Preference Request of Motorola Satellite Communications, Inc., ET Docket No. 92-98, filed April 8, 1992.

its spread spectrum design, a preference award to Ellipsat would not preclude licensing of other systems (in contrast to the situation if Motorola were to receive a preference.)

Nonetheless, in order to avert the danger of a premature preference award that would ultimately harm the public interest by foreclosing multiple, competitive LEO services, Ellipsat supports the stay that TRW has requested. In Ellipsat's view, a stay of action is appropriate until technical and service rules are adopted. The Commission needs additional time to consider the impact of a preference award on the public, and whether an award would promote or preclude the underlying objective of the preference, i.e., to implement new services to the public.^{2/}

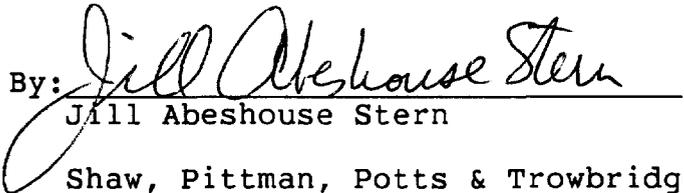
In conclusion, Ellipsat supports TRW's motion for stay because of the strong public interest reasons in favor of (1) full examination of the underlying issues involved and (2) avoidance of a premature and potentially prejudicial preference award. For this reason, Ellipsat is willing to forego consideration of the pioneer's preference, to which it has claimed

^{2/} Motorola filed an Opposition to Motion for Stay on May 12, 1992. Ellipsat will respond to this filing in detail on the appropriate reply date. It should be noted here, however, that the cases cited by Motorola are inapposite. A critical distinction is that, in the cases cited by Motorola, the Commission allowed all applicants an opportunity to amend, and eligibility criteria did not preclude other proposals entirely. Thus, in Hispanic Info. and Telecommunications Network, Inc. v. FCC, 865 F. 2d 1289 (D.C. Cir. 1989), the local applicant preference was available to any applicant that met the criteria adopted by the Commission, and applicants were allowed to amend their applications to qualify, in contrast to the present case.

entitlement, until the Commission proposes and adopts technical and service rules for the big LEOs. Only at that point will it be clear whether a preference is warranted and, if so, which company is the appropriate recipient. In view of the prejudicial impact that could be caused by a premature preference award, a temporary delay until the underlying policy issues in this proceeding are resolved is clearly warranted for the ultimate benefit of the public.

Respectfully submitted,

ELLIPSAT CORPORATION

By: 
Jill Abeshouse Stern

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Its Attorney

May 19, 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 19th day of May, 1992 on the following persons:

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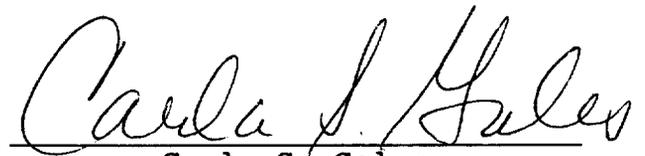
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