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July 10, 1992

ORIGINAL  
FILE

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

Re: Ellipsat Corporation  
Request for Pioneer's Preference  
ET Docket No. 92-28  
PP-30

Dear Ms. Searcy:

On behalf of Ellipsat Corporation, I am transmitting here-  
with an original and four copies of its "Opposition to Motions to  
Strike" with respect to the above-referenced pioneer's preference  
request.

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

Very truly yours,

*Jill Abeshouse Stern*  
Jill Abeshouse Stern

JAS:csg  
Enclosures

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JUL 10 1992

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

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the matter of: )  
 )  
 ELLIPSAT CORPORATION )  
 ) ET Docket No. 92-28  
 )  
 Request For a Pioneer's ) File No. PP-30  
 Preference With Regard to )  
 Its Applications For Authority )  
 To Construct ELLIPSO™, an )  
 Elliptical Low-Earth Orbit )  
 Satellite Communications System )

OPPOSITION TO MOTIONS TO STRIKE

Ellipsat Corporation ("Ellipsat"), by its attorneys, hereby opposes the June 18, 1992 and June 26, 1992 motions to strike, filed by Loral Qualcomm Satellite Services, Inc. ("LQSS"), with respect to Ellipsat's supplemental pioneer's preference materials. In support whereof, the following is shown.

I.  
FACTUAL BACKGROUND

On June 5, 1992, Ellipsat filed a supplement to its pioneer's preference request, consisting of confidential and non-confidential materials. The non-confidential supplement consisted of press articles relating to the ELLIPSO™ satellite system. These articles were submitted by Ellipsat to underscore the fact that it was the first to file a concrete system proposal at the Commission. The trade press coverage also illustrates that Ellipsat's system proposal was publicly perceived as novel when

it was filed in November 1990. The press coverage also documents the fact that the ELLIPSO™ system has been subsequently imitated by others, particularly its innovative market approach and elliptical orbit.

On June 5, 1992, Ellipsat also submitted patent materials and requested confidential treatment for those materials. The patent materials consisted of the title page and abstract of a patent application filed on June 2, 1992 for a "non-geostationary orbit satellite constellation for continuous coverage of northern latitudes above 25° and its extension to global coverage tailored to the distribution of populated land masses on earth." Ellipsat sought confidentiality on the basis of patent materials submitted by Motorola that were accorded confidential treatment. Upon denial of confidentiality by the Commission, Ellipsat resubmitted the information for public review on June 17, 1992.

LQSS filed a "Motion to Strike Supplemental Information" on June 18, 1992, directed against Ellipsat's June 5, 1992 public submission. LQSS subsequently filed a letter, dated June 26, 1992, in which it moved to strike the supplemental materials that were publicly resubmitted by Ellipsat on June 17, 1992.<sup>1/</sup> In both filings, LQSS essentially contends that Ellipsat's submissions are not relevant to the pioneer's preference.

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<sup>1/</sup> On June 30, 1992, Ellipsat filed a request for extension of the date for filing oppositions to the two LQSS motions until July 10, 1992.

Contrary to LQSS' contention, Ellipsat's supplemental materials are highly relevant to its pioneer's preference claim, and the LQSS motions should be denied. As shown below, Ellipsat bases its pioneer's preference claim on, among other things, the fact that it was the first applicant to file a concrete system proposal with the Commission for providing combined RDSS and mobile voice services using low earth orbiting satellites. Ellipsat also pioneered a system approach characterized by maximum coverage with a minimum number of satellites; a cost of service comparable to terrestrial systems; and open entry to multiple systems. Ellipsat's supplemental materials corroborate these irrefutable and highly relevant facts.

II.  
ELLIPSAT WAS THE FIRST TO  
FILE A CONCRETE SYSTEM PROPOSAL

As Ellipsat has previously stated, if the Commission should award a preference in this proceeding, Ellipsat is the appropriate recipient of that preference. Ellipsat was the first applicant to submit a concrete system application to the Commission, proposing the use of low earth orbiting satellites to provide combined RDSS/mobile voice services in the RDSS bands. Ellipsat's application, specifically the market and technical approach developed by Ellipsat, has been imitated by all of the June 3, 1991 LEO applicants, including LQSS.

Preparation of a satellite system application is a substantial undertaking that requires significant technical and market expertise. In Ellipsat's case, its system application offered an innovative approach to mobile satellite services, by combining a feasible technical design with a market plan that makes business sense. The elliptical orbit is one of the unique ELLIPSO™ features that allows Ellipsat to tailor its service initially to the United States market, and to achieve maximum coverage with a minimum number of satellites at a cost comparable to terrestrial cellular services.

While LQSS understandably seeks to downplay the significance of Ellipsat's "first-to-file" status, the fact remains that all of the applicants filing on June 3, 1991 -- including LQSS -- had a leisurely six months to use Ellipsat's system application as a blueprint for their own applications. It is noteworthy that all of the June 3, 1991 applicants, including LQSS, chose to imitate Ellipsat's technical and market approach in their applications.

The supplemental press materials submitted by Ellipsat on June 5, 1992 document the fact that it was the first to file a concrete system proposal. The trade press coverage also indicates that the Ellipsat approach was perceived as novel and as fundamentally different from the Iridium system concept.<sup>2/</sup> The

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<sup>2/</sup> See, e.g., "MSS Player Announces New Voice-RDSS Venture with 24 Satellites," Satellite Week, Nov. 12, 1990; "Ellipsat Applies to FCC for Low-Earth Orbit Radiodetermination/Cellular

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press coverage further documents the unique nature of the elliptical orbit and the fact that this orbit has been subsequently imitated by others.<sup>3/</sup>

In its June 18, 1992 motion and elsewhere, LQSS tries to devalue Ellipsat's status as the first to file a concrete satellite system proposal. While the Commission has said it will not necessarily award a pioneer's preference to the first filer, it is obvious that, in the present circumstances, it would be absurd to award a preference to any of the June 3, 1991 applicants. All of these applicants had an opportunity to analyze the Ellipsat and Motorola applications for more than six months and to use those applications as a blueprint for filing their own applications. (It is significant that all of the LEO applicants essentially adopted Ellipsat's technical and market approach, following that review and analysis.)

In order to demonstrate the extent to which LQSS benefitted from Ellipsat's prior research and development efforts, Ellipsat previously advised the Commission of circumstances relating to

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Voice System," Telecommunications Reports, Nov. 12, 1990; "Ellipsat Announces New Voice-RDSS Venture with 24 Satellites" Mobile Satellite Reports, Nov. 16, 1990; "MSS Entrant Announces Voice-RDSS Venture with 24 Satellites," Space Commerce Bulletin, Nov. 16, 1990; "Ellipsat Satellite System Offers New Mobile RDSS and Voice Services," Industrial Communications, Nov. 23, 1990.

<sup>3/</sup> See, e.g., "ESA Archimedes Project to Use Elliptical Orbits," Space News, May, 1992.

the March 1991 visit of Ellipsat CEO, Dr. David Castiel, to Qualcomm headquarters to make a presentation about ELLIPSO™ to Dr. Jacobs, CEO of Qualcomm, and Qualcomm's engineering staff.<sup>4/</sup> As previously explained, Dr. Castiel agreed to make the presentation to Qualcomm because, at that time, the parties were exploring the possibility of collaboration. It is Dr. Castiel's recollection that he was invited by Dr. Jacobs. In fact, Qualcomm reimbursed all of Dr. Castiel's travel expenses. During his day-long presentation, Dr. Castiel described the ELLIPSO™ system in great detail, and confidential business and technical information was provided to Dr. Jacobs. Among the areas discussed with Qualcomm in March 1991 were orbital parameters, interconnection with the ground system, spacecraft characteristics and economic data. In light of this detailed presentation (and the blueprint provided by Ellipsat's application), Ellipsat finds it surprising that LQSS attempts to question Ellipsat's pioneering role in this proceeding.<sup>5/</sup>

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<sup>4/</sup> Qualcomm, of course, is now a 49% stockholder of LQSS.

<sup>5/</sup> The LQSS July 8, 1992 Response to Ellipsat's motion to strike does not refute these statements. Dr. Jacobs concedes that Dr. Castiel visited Qualcomm on March 26, 1991 and made a technical presentation that was videotaped by Qualcomm. Dr. Jacobs does not deny that Dr. Castiel provided proprietary information to him. Ellipsat also finds significant the LQSS claim that the Globalstar application was being drafted even before Dr. Castiel's visit. This claim raises questions as to why Dr. Castiel was invited to Qualcomm, and encouraged to make a presentation, when the company was already planning to file a competing

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Ellipsat certainly does not question LQSS' right to file an application, or to pursue its own business activities. Nor does Ellipsat claim that Globalstar is a carbon copy of ELLIPSO™, which it is not.<sup>6/</sup> However, Ellipsat strongly challenges LQSS' repeated attempts to claim a preference as an innovator, and to minimize Ellipsat's pioneering role in light of the foregoing circumstances. Ellipsat mentions these circumstances solely to underscore the indisputable and significant fact that the other applicants, including LQSS, had more than 6 months -- between November 1990 and June 1991 -- to develop competing proposals (and to educate themselves at Ellipsat's expense.) Ellipsat's status as the first to file a concrete and novel system proposal is therefore highly relevant to the preference proceeding under the circumstances.

III.  
ELLIPSAT'S SUPPLEMENTAL MATERIALS  
UNDERSCORE THE INNOVATIVE NATURE OF ITS DESIGN

Ellipsat's supplemental materials included the title page and abstract from a patent application filed June 2, 1992 with respect to the ELLIPSO™ system. The patent covers Ellipsat's

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application. Clearly, Dr. Castiel would not have made the engineering presentation, nor the visit, if he had known that a competing application was underway.

<sup>6/</sup> For example, Globalstar has proposed 48 satellites in contrast to Ellipsat's 24-satellite system.

satellite constellation which is tailored to provide coverage to populated land masses. This supplemental material was submitted to evidence (1) the unique nature of Ellipsat's system; and (2) the further progress that has been made by Ellipsat in implementing the ELLIPSO™ system.

The patent filing also illustrates the contrast between the Ellipsat system, which tailors coverage to population, and other technical/market approaches, including the Iridium and Globalstar systems, which uniformly cover the Earth without regard to population distribution. Ellipsat has previously questioned the feasibility of a market approach that provides the same coverage to the U.S. as to Antarctica (i.e. Iridium) or to Easter Island (i.e. Globalstar).

Ellipsat is the only applicant to have sought a patent specifically relating to a low earth orbit satellite system. In contrast to the patent materials submitted by LQSS and Motorola, Ellipsat's materials are directly relevant to the ELLIPSO™ system. As Ellipsat pointed out in its June 25, 1992 motion to strike the LQSS supplement, the Qualcomm patents relate to cellular service or to geostationary satellite communications, not to low earth orbiting satellites. The Qualcomm patents involve methods or equipment (e.g., receivers, control circuits and amplifiers) that have no relevance whatsoever to low earth orbiting satellites in general or to the LQSS system in particular. By contrast, in its supplement, Ellipsat submitted only patent

information that pertains directly to the ELLIPSO™ satellite system.

Ellipsat has readily acknowledged that the pioneer's preference is intended to fulfill very different objectives than a patent, and is based on different criteria. No one has suggested otherwise. Ellipsat does not seek to base its pioneer's preference claim solely on a patent application. Nonetheless, since Motorola and others have chosen to submit patent materials, Ellipsat had no choice but to do so in order to negate the false impression created by Motorola that its patents (none of which relates to Iridium) somehow entitle Motorola to a preference. Ellipsat's patent application substantiates Ellipsat's prior comments, with respect to the Motorola and LQSS supplements, that all of the applicants can be expected to seek patents for unique system features in the course of system implementation.

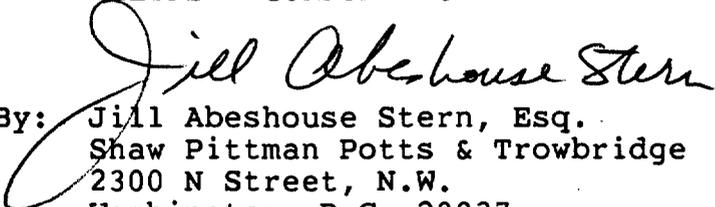
#### IV. CONCLUSION

For the foregoing reasons, the Commission should promptly deny LQSS' motions to strike Ellipsat's supplemental pioneer's preference materials. The pioneer's preference was intended to encourage innovators to come forward and undertake the onerous regulatory burdens that accompany introduction of a new service. This proceeding, which Ellipsat initiated by the filing of its system proposal in November 1990, is a case book illustration of the administrative nightmare that an innovative

company, like Ellipsat, faces in seeking to license a new service. Imitators have freely used the first-filed Ellipsat application, including Ellipsat's technical and market approach (and its choice of the RDSS frequencies), as a blueprint to develop and file their competing applications upon the invitation of the Commission. As the first applicant to file a concrete and innovative system proposal, Ellipsat is entitled to a preference if one should be awarded in this proceeding.

Respectfully submitted,

ELLIPSAT CORPORATION

  
By: Jill Abeshouse Stern, Esq.  
Shaw Pittman Potts & Trowbridge  
2300 N Street, N.W.  
Washington, D.C. 20037  
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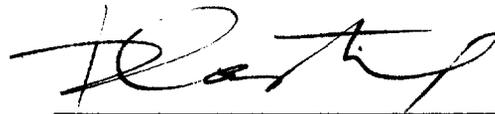
Counsel to Ellipsat Corporation

July 10, 1992

AFFIDAVIT

I, David Castiel, being duly sworn, hereby declare and state as follows:

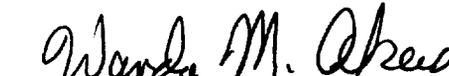
1. I am the Chairman and Chief Executive Officer of Ellipsat Corporation.
2. I have reviewed the foregoing "Opposition to Motions to Strike."
3. All of the facts contained in the foregoing document, except those as to which official notice may be taken, are true and correct to the best of my knowledge, information and belief.



\_\_\_\_\_  
David Castiel

District of Columbia ) ss:

I, Wanda M. Akers, a Notary Public in and for the District of Columbia, do hereby state that on this 10th day of July, 1992, David Castiel personally appeared before me and attested that the above information is true and correct to the best of his knowledge and belief.



\_\_\_\_\_  
Notary Public

My Commission Expires: September 30, 1996

**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 10th day of July, 1992 on the following persons:

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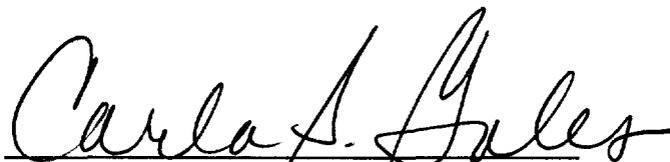
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