Communications Act of 1934, as amended, provides that "[a]ll applications for station licenses . . . shall set forth such facts as the Commission by regulation may prescribe as to the citizenship, character, and financial, technical and other qualifications of the applicant. . . ." 47 U.S.C. § 308(b) (1988). The Commission need not accept for filing or hold a hearing on applications that fail to meet these requirements or that do not provide the basic information deemed necessary for consideration of their merits. See, e.g., United States v. Storer Broadcasting Co., 351 U.S. 192, 202, 205 (1956); Aeronautical Radio, Inc. v. FCC, 928 F.2d 428, 438-39 (D.C. Cir. 1991); Salzer v. FCC, 778 F.2d 869, 877 (D.C. Cir. 1985); Ranger v. FCC, 294 F.2d 240, 242-43 (D.C. Cir. 1961); In re Advance, Inc., 88 F.C.C.2d 100, 106-07 (1981) (rejection of four DBS applications warranted in order to preserve the integrity of the cut-off procedures and encourage the rapid introduction of new services).

Financial Qualifications. As the Commission stated when it first adopted the RDSS rules:

> Given the huge costs and long lead time involved in constructing and launching a satellite system, the Commission traditionally has required satellite applicants to demonstrate their financial qualifications. Examination of an applicant's financial qualifications ensures that the orbit-spectrum resource is not tied up by entities unable to fulfill their plans, and also serves to discourage the filing of speculative applications. Further, a determination of an applicant's financial ability helps to ensure that service is promptly made available to users.

RDSS Licensing Order, 104 F.C.C.2d at 663. In light of the relative newness of the service, the lack of substantial internal assets of any of the pending applicants, and the fact that all of the applications could be granted at once ostensibly without harmful interference, the Commission decided to relax its financial qualifications standards and allow RDSS licensees to obtain financing in stages. Id. at 663-64. At the same time, the Commission contrasted its approach toward RDSS system financial requirements with the more stringent standards applied in the domestic fixed-satellite area.[31/] Id. at 664 n.45.

As previously indicated, in the five years since the adoption of these standards there have been significant developments in the RDSS industry. Most importantly, none of the licensees were ever able to obtain the financing required to construct dedicated RDSS systems with no immediate prospects for similar proposals. Moreover, unlike in the past, of the current group of applicants, several companies have substantial internal financial resources. It is also now apparent that all of the pending applications cannot be granted in the limited spectrum available.

The best guarantee that proposed systems will be constructed in a crowded field of applicants is for the Commission to award authorizations only to those applicants who can demonstrate their immediate and unconditional financial

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[31/] See In re Licensing Space Stations in the Domestic Fixed-Satellite Service, 58 R.R.2d (P & F) 1267, 1270-71 (1985), aff'd sub nom. Columbia Communications Corp. v. FCC, 832 F.2d 189 (D.C. Cir. 1987).

qualifications. The Commission cannot allow financially speculative applicants to prevent the introduction of new satellite systems by fully qualified entities. As in the domestic fixed-satellite services industry, the Commission must continue to require each applicant to demonstrate sufficient current assets and operating revenues to cover all construction and launch costs and first year operating expenses.[32/] These standards already are part of the RDSS requirements.[33/] Companies lacking sufficient internal or parent company resources should no longer be allowed to demonstrate financial qualifications by documenting a plan for raising debt and equity financing, but instead should be required to submit fully negotiated loan or stock agreements, complete but for signatures, on condition that they be signed and binding within 30 days of the grant of authorization and that they be irrevocable.

Technical Qualifications. The Commission must also strictly scrutinize each of the applicant's technical qualifications and system proposals so that it can be assured that it possesses the requisite ability to proceed with the respective projects. While most, if not all, of the proposed systems will require further development and design changes as construction commences and technologies advance, the Commission must be assured that its licensees possess the requisite skills and competence to proceed in a sound and expeditious manner. The

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32/ Applicants relying for financing upon more than one corporate parent must also submit evidence of commitment by each parent company to provide the needed financing.

33/ See RDSS Licensing Order, 104 F.C.C.2d at 664.

Commission must also be assured that any system it licenses meets applicable international Radio Regulations for use of the RDSS bands or otherwise can be operated without interfering with other users in the bands.

One measure of an applicant's technical qualifications is the completeness of its application and whether it has submitted a concrete and comprehensive system proposal. The Commission has repeatedly warned potential applicants that the failure to include all of the information required by the rules will cause an application to be returned as unacceptable for filing.[34/] Motorola has previously noted the failure of Ellipsat to comply with the informational requirements of the rules and its lack of qualifications to be an RDSS licensee.[35/]

The Commission also must dismiss as technically unqualified any applicant that either does not propose or cannot offer true RDSS services over its proposed system. The Commission initially allocated the 1610-1626.5 MHz and the 2483.5-2500 MHz bands for RDSS based upon a perceived need for this service. See RDSS Allocation Order, 58 R.R.2d (P&F) at 1416-17. As indicated above, while this market may not be sufficient to justify the expense of constructing a dedicated RDSS system, there still is a significant unmet demand for RDSS. In fact, the Commission has recognized the continuing need for an

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[34/] See, e.g., RDSS Licensing Order, 104 F.C.C.2d at 667; Public Notice, Report No. DS-1068 (April 1, 1991); New Space Stations Application Filing Procedures, 93 F.C.C.2d 1260 (1983). See also Section 25.112(a) of the Rules.

[35/] See Motorola's Petition to Dismiss and/or Deny.

RDSS allocation by proposing that RDSS be upgraded to primary status worldwide in these bands.[36/]

The Public Notice establishing the current RDSS processing group further supports the view that non-RDSS applications should be dismissed as unacceptable for filing. Specifically, the Commission stated that "interested parties wishing to file applications for satellite systems to provide RDSS service in the 1610-1626.5 MHz and 2483.5-2500 MHz bands to be considered concurrently with Motorola's and Ellipsat's applications may do so on or before June 3, 1991." See Public Notice, Report No. DS-1068, at 2-3 (emphasis added). While combined RDSS/MSS systems comply with this requirement, MSS only proposals clearly do not.[37/]

The Commission, therefore, should dismiss AMSC's application because it does not propose to offer true radiodetermination satellite services.[38/] The Commission's rules define "radiodetermination" as:

[36/] See WARC-92 Report, 6 F.C.C. Rcd. at 3906.

[37/] In addition, the Commission should dismiss Ellipsat's earlier filed ELLIPSO I application because of its technically inadequate application and its inadequate provision of RDSS -- on the order of only 2 percent availability over the United States. See Motorola's Petition to Dismiss and/or Deny, at 11-13.

[38/] AMSC claims that it should be licensed in the RDSS bands because of a perceived international shortage of spectrum for MSS systems and its asserted difficulties in coordinating its system internationally. See AMSC Petition at 2-7, 15-18. With the filing of its application for RDSS spectrum, AMSC now has pending requests for over 55 MHz of L-band spectrum in addition to the 28 MHz tentatively authorized to it. AMSC should be able to obtain through international coordination the 20 MHz its says it needs without occupying the RDSS bands.

> The determination of the position, velocity and/or other characteristics of an object, or the obtaining of information relating to these parameters, by means of the propagation properties of radio waves.

See 47 C.F.R. § 2.1(c) (1990). Instead, AMSC indicates that it will provide position location service through the use of the government's Global Positioning System ("GPS").[39] AMSC proposes to relay to its subscribers the position data generated by means of another satellite system and use of a separate circuit. The Commission already has concluded that the relaying of processed GPS information is different from RDSS.[40] See RDSS Licensing Order, 104 F.C.C.2d at 659.

C. THE COMMISSION SHOULD PROCESS ALL REMAINING APPLICATIONS FROM FULLY QUALIFIED ENTITIES

Once the Commission has determined which of the applicants are fully qualified to construct and launch their systems promptly and which of the proposed satellite systems are technically feasible, it should proceed to make a determination as to whether all such systems can be approved in the available spectrum. If the answer is yes, than the Commission should grant

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[39] AMSC Application, at 5-6 (June 3, 1991).

[40] In this regard, AMSC is mistaken in its claim that the Commission previously held that GPS "satisfies its requirement for RDSS." See Response of AMSC, at 14 n.8 (August 5, 1991). AMSC cites to the Commission's Memorandum Opinion and Order, 104 F.C.C.2d 637 (1986), wherein it addressed several petitions for reconsideration of its RDSS Allocation Order, 58 R.R.2d (P&F) 1416 (1985). In that memorandum the Commission clearly differentiated between the private RDSS services for which it was allocating spectrum and alternative GPS-based systems. 104 F.C.C.2d at 641.

conditional licenses to each of the fully-qualified applicants and allow them to coordinate their systems in order to avoid harmful interference. On the other hand, if the proposed systems cannot be accommodated, the Commission may have no other choice but to hold comparative hearings to determine which of the remaining applications should be granted. If required, such hearings should be streamlined to the greatest extent possible and consider only those issues which truly distinguish the applications. In light of the importance of these proceedings to the competitiveness of the U.S. satellite industry and the need for expedition, it may be appropriate for the Commission to sit en banc to consider these important policy issues.

D. THE COMMISSION SHOULD CONTINUE TO SUBJECT ALL RDSS LICENSEES TO STRICT MILESTONES

The Commission should continue to require that all RDSS licensees be subject to strict progress milestones with respect to the construction and launch of their systems.[41/] Based upon the RDSS applicants before it in 1986, the Commission required all licensees to begin constructing at least the first satellite in their systems within one year following grant of the construction permit, and to begin constructing the remaining satellites within two years of the grant date. Construction of the first satellite was to be completed within four years with full system launch and operation within six years of the original

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[41/] See RDSS Licensing Order, 104 F.C.C.2d at 664-65.

grant date. The Commission also cautioned that failure to obtain the financing necessary to proceed according to schedule would not be considered to be circumstances beyond the control of the licensee qualifying for an extension of time to fulfill the milestone conditions.[42/]

These milestones should continue for any applicant in this processing group which is granted a license. Some minor adjustments may have to be made for low-Earth orbit systems, because they typically have a larger number of satellites than geostationary systems. However, rigorous enforcement of construction and launch milestones will ensure that valuable spectrum is not warehoused and that the available frequencies are used efficiently and in a timely manner.

[42/] Id. at 665 & nn.47-48.

IV. CONCLUSION

For the foregoing reasons, the Commission should deny the pending Petitions for Rulemaking and promptly process all of the applications for service in the RDSS bands in accordance with Motorola's suggestions.

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I, Philip L. Malet, hereby certify that the foregoing **Comments** were served by first-class mail, postage prepaid, this 16th day of October, 1991 on the following persons:

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