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ATTORNEYS AT LAW

February 10, 1999

BY HAND DELIVERY

Ms. Magalie R. Salas
Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

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**FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY**

**Re: Ex Parte Presentation
ET-95-18/RM-9328; File Nos. 26/27/28-DSS-P/LA-97 and 88-
SAT-AMEND-98**

Dear Ms. Salas:

Pursuant to Section 1.1206 of the Commission's rules, Celsat America, Inc. submits for inclusion in the public record two copies of the attached written presentation in support of the International Bureau's proposal to use launch milestones for MSS systems in 2 GHz rather than traditional financial standards.

Please contact me with any questions about this matter.

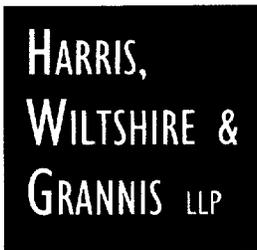
Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Kelly S. McGinn".

Kelly S. McGinn
Counsel for Celsat America, Inc.

Enclosure

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

BY HAND DELIVERY

Ms. Regina M. Keeney
Chief
International Bureau
Federal Communications Commission
2000 M Street, N.W.
Room 800
Washington, DC 20054

**Re: Ex Parte Presentation
ET-95-18; RM-9328; File Nos. 26/27/28-DSS-P/LA-97 and 88-
SAT-AMEND-98**

Dear Ms. Keeney:

On behalf of Celsat America, Inc., we write to commend you and your staff for your proposal to use launch milestones for MSS systems in 2 GHz rather than traditional financial qualifications standards. The traditional financial standard, which requires the applicant to show current assets sufficient to construct, launch, and operate a system for one year, is not predictive of success or even of true commitment to launching and operating a viable satellite system. In light of the evidence that this standard is out of step with today's satellite communications industry, Celsat urges the Commission to abandon the old rules in favor of standards that better ensure that spectrum resources will be used for service to the public.

The Commission's stated purpose in applying strict financial standards to satellite licensing has been to ensure that licensees will promptly initiate new service. The measure of this commitment in past practice has been the ability to produce a healthy balance sheet at the application stage, preferably representing the assets of a single corporate entity. Once upon a time, the Commission's assumption that only such an entity could be a realistic candidate to succeed in the satellite business may have been reasonable. However, it has been disproved by subsequent experience, including the high failure rate of licensees who met the standard but never launched satellites and the

emergence of a new model for successful satellite endeavors – start-up companies with sound business and technical plans that have the financial support of private investors.

There is no dispute that the successful launch and operation of a satellite system requires a significant commitment of financial resources. Yet, experience shows that use of a major conglomerate's balance sheet in accordance with the traditional financial qualification standard is not an adequate measure of true commitment to proceeding with construction, launch, and operation of a satellite system. A look back at the last fifteen to twenty years of satellite licensing shows that the financial qualifications test that has been most frequently applied is a very poor predictor. It is, in fact, worse than tossing a coin.

The low predictive value of the financial standards is dramatically illustrated by the 1983, 1985 and 1988 C- and Ku-band satellite licensing processing rounds. A review of these three geostationary FSS processing rounds demonstrates that *despite their financial qualifications*, licensees in these rounds exhibited a surprisingly low launch rate. Our review of the publicly available information suggests that only 41% of the licensed systems ever launched. Specifically, of the 19 applicants licensed in the 1983 Round, only 11 actually launched. In the 1985 Round, of the 23 applicants licensed, only three launched. Finally, in the 1988 Round, only 11 of the 19 licensees launched. Thus, notwithstanding their initial showing of their "financial qualifications" to the Commission in their license applications, the successful licensees in these rounds appear to have been no more likely to launch their systems and begin service than applicants who might have relied on outside investors and novel financing techniques.

In empirical terms, the traditional test yields an unacceptable number of "false positives" and "false negatives." Perhaps the best recent example of a "false positive" is TRW's proposed Big LEO system. In its order granting TRW a license on January, 1995, the Commission found that "TRW has submitted substantial evidence to show that it has current assets and operating income sufficient to construct and launch its system, and provided an unequivocal statement that it intends to spend the funds necessary to construct the proposed system. The Commission's rules and policies do not require more." The failure of TRW to implement its licensed Big LEO system illustrates the false premise upon which the financial standards are based. Having a conglomerate's healthy balance sheet does not demonstrate actual commitment of those resources to the launch and operation of a satellite system.

The TRW example stands in sharp contrast to that of EchoStar, which was licensed under the milestone approach embodied in the DBS rules. The most commonly applied financial standard would have yielded a "false negative" for EchoStar. Although it did not begin the licensing process with a robust balance sheet, Echostar's success flows from execution of a savvy business plan which attracted the support of private investors. Applicants like EchoStar must commit significant attention early on in the process to demonstrating their competence – technically, financially, and

otherwise – to cautious investors. Rather than relying on a balance sheet to glide through the licensing process, they must go one step further and actually demonstrate their commitment to the project to skeptical private investors. The type of determination that is necessary to convince both the Commission and private investors of the viability of a proposed system serves as a useful proxy for the amount of skill and determination that will be necessary to implement a proposed system and deliver on promises of commercial success to investors and service in the public interest to the Commission.

In conclusion, Celsat believes that the Commission is moving in the right direction by avoiding use of financial standards to winnow the field in the 2 GHz band plan. Acknowledging the limitations of the traditional financial standard is a major step forward in improving the licensing process in favor of innovative service and vigorous competition. Although financial backing will never cease to be a critical part of meaningful participation in the satellite industry, the Commission should move to a default rule where strict compliance with milestone requirements supplants a guessing game about true commitment of resources prior to licensing.

Respectfully submitted,

Celsat America, Inc.

By: 

Mark A. Grannis
Kelly S. McGinn

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cc: Magalie R. Salas (2 copies)
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