

DOCKET FILE COPY ORIGINAL
FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554
OCT 18 2000

CREDIT & DEBIT MANAGEMENT
GROUP, OMD

OFFICE OF
MANAGING DIRECTOR

86-205

Mr. Benjamin Varney
Vice President
Lake Huron Cellular Corp.
6311 Virginia Street
Cass City, MI 48726

RE: Request for Waiver of Late Charge
Penalty for FY 1999 Regulatory Fees
Lake Huron Cellular Corp.
Fee Control No. 9912148835028004
Late Penalty Due: \$585.50

Dear Mr. Varney:

This is in response to the request for waiver of the late charge penalty for late payment of the Fiscal Year (FY) 1999 regulatory fees, filed on behalf of Lake Huron Cellular Corp.

The Communications Act of 1934, as amended, requires the Commission to assess a late charge penalty of 25% on any regulatory fee not paid in a timely manner. It is the obligation of the licensees responsible for regulatory fee payments to ensure that the Commission receives the fee payment no later than the final date on which regulatory fees are due for the year. Your request does not indicate or substantiate that Lake Huron Cellular Corp. met this obligation. Therefore, your request is denied.

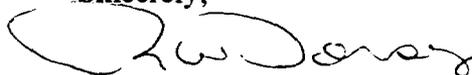
Payment of the late charge penalty in the amount of \$585.50 was assessed and due on September 23, 1999. The late charge penalty must be filed together with a Form FCC 159 (copy enclosed) within 30 days from the date of this letter. You are cautioned that the failure to submit payment as required may result in further sanctions and the initiating of a proceeding to recover the penalty and accrued interest pursuant to the provisions of the Debt Collection Improvement Act of 1996.

Mr. Benjamin Varney

2.

If you have any questions concerning this letter, please call the Credit & Debt Management Group at (202) 418-1995.

Sincerely,

A handwritten signature in black ink, appearing to read "Mark A. Reger". The signature is fluid and cursive, with a large initial "M" and "R".

✶ Mark A. Reger
Chief Financial Officer

CELLULARONE®

March 13, 2000

Federal Communications Commission
Regulatory Fees
P.O. Box 358835
Pittsburgh, PA 15251-5835

RE: Lake Huron Cellular Corp.
Fed ID: 13-3577096
Bill No: 2000-9-0737

Dear Sir or Madam:

We have received the attached notice assessing Lake Huron Cellular Corp. a late penalty fee in the amount of \$585.50, and we are requesting that the penalty be waived.

Although our regulatory fee was filed and paid late, this was done unintentionally. We are a small carrier and did not receive either the FCC Public Notice dated August 2, 1999 or the FCC Form 159 in the mail. Until recently our Company did not use the internet very extensively, but now realize that the FCC is making extensive use of the internet, and posting Public Notices as well as forms on its web site.

For the above reasons we are requesting that the above penalty be waived.

Please send your reply to:

Lake Huron Cellular Corp.
6311 Virginia Street
Cass City, MI 48726

Thank you.

Sincerely,


Benjamin Varney
Vice President

617 W. Sanilac Road
Sandusky, MI 48471
Ph. (810) 648-1666
Fax (810) 648-3129

1514 West Caro Road
Caro, MI 48723
Ph. (517) 673-1666
Fax (517) 673-5264

181 East H
Bad Axe, MI
Ph. (517) 2
Fax (517)

1-800-624-8766

FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

FEB 28 2000

OFFICE OF
MANAGING DIRECTOR

LAKE HURON CELLULAR CORP
1514 W CARO RD
PO BOX 435
CARO MI 48723

Re: Bill No.: 2000-9-0737

Dear Applicant:

This letter is notice that you were late paying your 1999 annual regulatory fee(s). Payment of regulatory fees was due to the Federal Communications Commission (FCC) by midnight, September 22, 1999. Your fee payment of \$2,342.00 was received on December 13, 1999.

In accordance with Section 9 [47 USC 159(c)(1)], a 25 percent late penalty in the amount of \$585.50 has been assessed. Unless you can show just cause why the penalty is inapplicable, payment is due within 20 days from the date of this letter.

Payment should be sent to the Federal Communications Commission, Regulatory Fees, P. O. Box 358835, Pittsburgh, PA 15251-5835. Write the above Bill Number on your remittance, and send it with the enclosed FCC Form 159 (Remittance Advice). The Payment Type Code has been entered on the Form 159 for your convenience. Please complete this form, and enter the Bill Number in Block 19A.

If you have any documentation that will establish that the fee was remitted and received at Mellon Bank by September 22, 1999, such as a carrier dated receipt, please include this documentation with your response so that we can clear your record(s).

You are cautioned that failure to respond and/or pay the penalty will subject you to further sanctions as defined in 47 CFR, Section 1.1164 of our Rules. These sanctions include subjecting the delinquent payer's pending applications to dismissal, and may require a delinquent payer to show cause why any existing instruments of authorization should not be revoked. Further sanctions include interest charges, and the full cost of collection to the Federal government pursuant to Section 3720A of the Internal Revenue Code, 31 USC 3717, and the provision of the Debt Collection Improvement Act, 31 USC 3717.

If you have any questions, you may contact my office at (202) 418-1995.

Sincerely,


Regina W. Dorsey, Chief
Credit & Debt Management Center

Enclosure

Payment Transactions Detail Report

Date: 02/07/2000

BY: FEE CONTROL NUMBER

Fee Control Number	Payor Name				Fcc Account Number	Payer TIN	Received Date				
9912148835028004	LAKE HURON CELLULAR CORP PO BOX 435 1514 W CARO RD CARO MI 48723				WP00019729	0133577096	2/13/1999 00:00:0				
Payment Amount	Current Balance	Seq Num	Payment Type Code	Quantity	Callsign Other Id	Applicant Name	Applicant Zip	Bad Check	Detail Amount	Trans Code	Payment Type
\$2,342.00	\$2,342.00	1	CDC9	7319		LAKE HURON CELLULAR CORP	48723		\$2,342.00	1	PMT
Total		1							\$2,342.00		

BUCKET FILE COPY ORIGINAL
FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554
OCT 18 2000

CREDIT & DEBIT MANAGEMENT
CENTER, OMD

OFFICE OF
MANAGING DIRECTOR

Raymond G. Bender, Jr., Esquire
Dow, Lohnes & Albertson, PLLC
1200 New Hampshire Avenue, N.W.
Suite 800
Washington, DC 20036

86-285

RE: Request for Partial Waiver and Refund of Fees
LMGT Astro License, LLC
Fee Control No. 9905288210337001

Dear Mr. Bender:

This is in response to the Request for Partial Waiver and Refund of Fees, filed on behalf of LMGT Astro License, LLC (LMGT). You request that we waive \$48,700.00 of the application filing fees for the assignment of the nine geostationary (GSO) space station authorizations for Astrolink satellites. The instant application fees total \$57,510.00, \$6,390.00 for each assignment authorization. You submitted \$57,510.00, but ask that the Commission reduce the total fee amount due to \$8,810.00 because you believe that this amount would reflect "the actual cost of processing a single assignment application for technically identical GSO satellites" and would "avoid unwarranted discrimination between geostationary satellite and non-geostationary ('NGSO') operators in the authorization assignment context."

You state that the application fees the Commission imposes on applicants should bear a reasonable relationship to the expenses the Commission expects to incur in processing such applications. You argue that, in your view, the Commission's rules impose a disproportionately large fee on GSO versus NGSO operators in the assignment context and, apparently are arguing that therefore the fee is not reasonably related to the expenses the Commission would expect to incur in processing the GSO application. You further argue that, if the Commission does not reduce the statutory application fees in your case to \$8,810.00, the Commission should reduce the fees to an amount calculated on a per orbit location basis rather than a per satellite basis. You argue that, in your view, processing applications for multiple satellites at the same orbit is no more costly than processing one application for a single satellite at such orbit.¹

¹ For the proposition that the Commission should reduce the assignment application fees due for the nine satellites based on per orbit location basis rather than on a per satellite basis and "automatically reimburse" LMGT \$25,560.00, you cite the "prior precedent" of the Commission's Public Notice 56031, *Interim Filing Fee Payment Established for Ka-Band Satellite Applications* (September 28, 1995). That public notice provided that applications for authority to construct and applications for authority to launch and operate in the Ka-Band context should be filed and paid for on a per orbit location basis. We note that the public notice did not address the issue of assignment applications. In any event, the determination of a request for waiver of fees is made on a case by case basis and our decision in any one case is not a precedent for subsequent requests. See 47 U.S.C. § 158(d)(2); 47 C.F.R. § 1.1117(a).

As you know, it is the Congress and not the Commission that established the statutory application fees that are reflected in the Commission's rules. See 47 U.S.C. § 158. The Commission, it is true, worked with Congress "to ensure that, to the best extent possible, fees reflect only the direct cost of processing the *typical* application or filing." *Establishment of a Fee Collection Program to Implement the Provisions of the Omnibus Budget Reconciliation Act of 1989*, 5 FCC Rcd 3558, 3574 (1990) (emphasis added).

Congress has authorized the Commission to "waive or defer payment of an application fee in any specific instance for good cause shown, where such action would promote the public interest." 47 U.S.C. § 158(d)(2); see also 47 CFR § 1.1117(a). A petitioner seeking a waiver bears the burden of establishing "good cause shown" and that the waiver "would override the public interest, as determined by Congress, that the government should be reimbursed for the specific regulatory action of the FCC." *Establishment of a Fee Collection Program to Implement the Provisions of the Consolidated Omnibus Budget Reconciliation Act of 1985*, 2 FCC Rcd 947, 961 (1987). The Commission has stated further that:

there will be individual situations in which the actual cost may be more or less [than the required application fee]. It is not our intention to make individualized determinations of the 'appropriate fee.' Rather, except in unusual cases in which the public interest requires otherwise, we will levy the fee as determined by Congress.

Establishment of a Fee Collection Program to Implement the Provisions of the Consolidated Omnibus Budget Reconciliation Act of 1985, 3 FCC Rcd 5987 (1988).

In this instance, the fees determined by Congress, as adjusted pursuant to the authorizing statute, are \$57,510.00. We note that you do not demonstrate how the public interest requires a partial waiver and reduction of the application fees in this case, you merely ask us to make an individualized determination of an "appropriate fee" based on your views of what is appropriate. Accordingly, we deny the request for partial waiver and refund of assignment application fees.

If you have any questions concerning this letter, please call the Credit & Debt Management Group at (202) 418-1995.

Sincerely,



Mark A. Reger
Chief Financial Officer

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20024

_____)
In the Matter of the Application of)
)
LMGT ASTRO LICENSE, LLC and)
ASTROLINK INTERNATIONAL LLC)
)
For Authority to Assign the Astrolink™)
System Authorization)
_____)

File No.

RECEIVED

MAY 27 1999

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

To: The Managing Director

**REQUEST FOR PARTIAL
WAIVER AND REFUND OF FEES**

LMGT Astro License, LLC and Astrolink International LLC have filed with the Commission an application for assignment of the space station authorization for the Astrolink™ System from LMGT Astro License to Astrolink International LLC. The Astrolink™ System is a global satellite network consisting of nine geostationary ("GSO") satellites in five orbit locations. Accompanying the assignment application are an FCC Form 312, FCC Form 159 and a check from Lockheed Martin Global Telecommunications, Inc. ("LMGT") in the amount of \$57,510 to cover the assignment application filing fee (based on a \$6,390 fee for assignment of each of the nine Astrolink™ satellites).¹ Although a total fee of \$57,510 has been tendered in accordance with the FCC's rules, the Commission should reduce the fee amount to no more than \$8,810 to reflect the actual cost of processing a single assignment application for technically identical GSO

¹ These materials are attached as Appendices 1, 2 and 3, respectively.

satellites and to avoid unwarranted discrimination between GSO satellite and non-geostationary satellite ("NGSO") operators in the authorization assignment context. Accordingly, this Request for Partial Waiver and Refund of Fees seeks reimbursement of \$48,700.²

Fees that the Commission imposes on applicants should bear a reasonable relation to the expenses that the Commission may be expected to incur in processing the application.³

However, Section 1.1107 of the Commission's rules imposes disproportionately large fees on GSO operators versus NGSO operators in the authorization assignment context. Section 1.1107 requires an application fee of \$6,390 for each GSO space station license to be assigned, even if they are technically identical GSO satellites that have been licensed pursuant to a single space station authorization. For an assignment of an NGSO authorization, however, Section 1.1107 requires a flat fee of only \$8,810 for an entire NGSO *system*, which can be comprised of *hundreds* of technically identical satellites.

² See 47 C.F.R. § 1.1107(9)(b). Under the Communications Act, the Commission may waive its fees "in any specific instance for good cause shown, where such action would promote the public interest." 47 U.S.C. § 158(d)(2); *see also* 47 C.F.R. § 1.1117(a).

³ See, e.g., *Nat'l Cable Television Ass'n, Inc. v. FCC*, 554 F.2d 1094, 1108-09 (D.C. Cir. 1976) ("A 'fee' is a payment for a special privilege or service rendered, and not a revenue measure. If the 'fee' unreasonably exceeds the value of the specific services for which it is charged it will be held unlawful"); *Establishment of a Fee Collection Program to Implement the Provisions of the Omnibus Budget Reconciliation Act of 1989*, Memorandum Opinion and Order, 5 FCC Rcd 3558, 3574 (1990) ("*1989 Fee Waiver Order*") ("The Schedule of Charges results from a determination by the Congress that the fees represent a fair approximation as to how the Commission's costs should be distributed We have worked with Congress to ensure that, to the best extent possible, fees reflect only the direct cost of processing the typical application or filing").

There is no rational reason why an assignment application for a system of technically identical GSO satellites requires a fee of \$6,390 *per satellite* -- which, in LMGT's case, would require a total fee of \$57,510 -- while the same assignment application for an NGSO system would require a fee of only \$8,810 *per system*, regardless of the number of technically identical satellites in the constellation. Indeed, the assignment application fee is more than *seven times* as large as the NGSO assignment application fee. The Telecommunications Act of 1996 seeks to prevent arbitrary discrimination among providers of similar telecommunications services.⁴ In order to treat GSO and NGSO system operators equitably, and to preserve and promote competition among all providers of satellite communications services, the Commission should forbear from applying Section 1.1107 of its rules in the authorization assignment context and should require LMGT to pay an application fee of no more than \$8,810 (the amount imposed on NGSO constellations) for the assignment of the Astrolink™ System authorization.

At a minimum, the applicable fee could be calculated on a *per orbit location* basis rather than a *per satellite* basis. Processing an assignment application that involves two identical satellites at the same orbit location is no more costly than processing an application that involves one satellite at such orbit location.⁵ Therefore, under prior precedent, the Commission should

⁴ See H.R.Rep. 103-213, 103d Cong., 1st Sess. 494 (1993) (Conference Report). See also H.R.Rep. No. 103-111, 103d Cong., 1st Sess. 259-60 (House Report); *see also Implementation of Sections 3(n) and 332 of the Communications Act*, GEN Docket No. 93-252, Second Report and Order, 9 FCC Rcd 1411, 1418 (1994) (similar commercial mobile radio services must be accorded similar regulatory treatment); *Implementation of Sections 3(n) and 332 of the Communications Act*, GEN Docket No. 93-252, Third Report and Order, 9 FCC Rcd 7988, 7996 (1994) (mobile services must be treated similarly if they compete against each other).

⁵ See, e.g., Federal Communications Commission, Public Notice 56031, *Interim*

automatically reimburse LMGT \$25,560, the portion of the fee associated with four Astrolink™ satellites that are collocated with other Astrolink™ satellites in the same orbit locations.

However, for reasons discussed above, a GSO applicant filing an assignment application should be required in this context to pay an application fee of no more than the \$8,810 amount imposed on NGSO constellations.

CONCLUSION

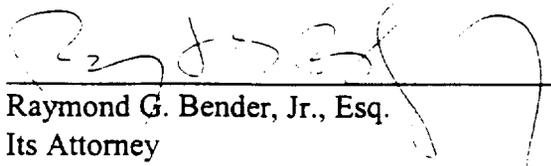
For the foregoing reasons, LMGT respectfully requests that the Commission waive Section 1.1107 of its rules and assess fees associated with this assignment application on a per system basis, rather than a per satellite basis. The Commission should impose an application fee for the assignment of the Astrolink™ System authorization from LMGT Astro License, LLC

Filing Fee Payment Established for Ka-Band Satellite Applications (Sept. 28, 1995) (“*Ka-Band Public Notice*”) (attached as Appendix 4) (assessing fees for GSO applicants per orbit location, rather than per satellite, “because of the evolution in geostationary satellite technology and the multiple geostationary space stations that applicants are anticipated to deploy in their systems”).

to Astrolink International LLC of no more than \$8,810 -- the same fee assessed for NGSO satellite licensees -- and refund the difference of \$48,700.

Respectfully submitted,

LOCKHEED MARTIN GLOBAL
TELECOMMUNICATIONS, INC.



Raymond G. Bender, Jr., Esq.
Its Attorney

DOW, LOHNES & ALBERTSON PLLC
1200 New Hampshire Avenue, N.W.
Suite 800
Washington, D.C. 20036

May 27, 1999

APPENDIX 4



PUBLIC NOTICE

FEDERAL COMMUNICATIONS COMMISSION
1919 M STREET N.W.
WASHINGTON, D.C. 20554

56031

News media information 202/418-0500 Recorded listing of releases and texts 202/418-2222

Release Date: September, 28, 1995

INTERIM FILING FEE PAYMENT ESTABLISHED FOR Ka-BAND SATELLITE APPLICATIONS

The Managing Director has established an interim filing fee payment for fixed Ka-band (17.7-20.2/27.5-30) satellite applications, based upon the total number of orbital locations that an applicant proposes to occupy. This action will afford the Commission an opportunity to determine whether to seek congressional amendment of the statutory filing fee schedule, as it now applies to geostationary space stations, because of the evolution in geostationary satellite technology and the multiple geostationary space stations that Ka-band applicants are anticipated to deploy in their systems.

The interim payment should be filed, along with underlying applications, no later than September 29, 1995. Ka-band satellite applicants should submit a filing fee payment of \$2,330 per orbital location (Payment Code BBY) to cover their applications for authority to construct and an additional fee payment of \$90,360 per orbital location (Payment Code BNY) for authority to launch and operate Ka-band satellites at each orbital location, regardless of how many space stations are proposed for operation. Thus, for example, if an applicant requests authorization for nine satellites to operate at three orbital locations, it should submit three fee payments to construct and three additional fee payments to launch and operate its space stations, totalling \$248,070.

Any Ka-band applicant submitting an interim fee payment, as described above, should also file with its check and Form 159 a cover letter stating that it is making an interim payment and that it will submit any further payment, if required by the Commission, within thirty (30) days of notification from the Commission that an additional payment remains due.

For further information, see letter to John P. Janka, Esquire from Andrew S. Fishel, Managing Director, dated September 28, 1995. Questions regarding the foregoing should be directed to Thomas M. Holleran, Deputy Associate Managing Director for Operations (202) 418-1925.

Payment Transactions Detail Report

Date: 07/19/1999

BY: FEE CONTROL NUMBER

Fee Control Number	Payor Name				Fcc Account Number	Payer TIN	Received Date				
9905288210337001	LOCKHEED MARTIN GLOBAL TELECOM 6701 DEMOCRACY BOULEVARD SUITE 900 BETHESDA MD 20817				WP00005652	0522124970	5/27/1999 00:00:0				
Payment Amount	Current Balance	Seq Num	Payment Type Code	Quantity	Callsign Other Id	Applicant Name	Applicant Zip	Bad Check	Detail Amount	Trans Code	Payment Type
\$57,510.00	\$57,510.00	1	BFY	9		ASTROLINK INTERNATIONAL LLC	20817		\$57,510.00	1	PMT
Total									<u>\$57,510.00</u>		

FEDERAL COMMUNICATIONS COMMISSION

Washington, D. C. 20554

OCT 18 2000

OFFICE OF
MANAGING DIRECTOR

96-285

Raymond G. Bender, Jr., Esquire
Dow, Lohnes & Albertson, PLLC
1200 New Hampshire Avenue, N.W.
Suite 800
Washington, DC 20036

RE: Request for Partial Waiver and Refund of Fees
In re Lockheed Martin Corporation For Authority for a
Pro Forma Assignment of the Astrolink™ System
Authorization
Fee Control No. 9901088210298001

Dear Mr. Bender:

We reviewed your request dated January 7, 1999 to reduce the application fees for the assignment of nine geostationary (GSO) space station authorizations for Astrolink satellites. You submitted funds of \$57,510 (based on a \$6,390 fee for each of the nine Astrolink satellites) and asked the Commission to reduce the total fee to \$8,810 on the grounds that the amount is "the actual cost of processing a single *pro forma* assignment application and to avoid unwarranted discrimination between geostationary satellite and non-geostationary ('NGSO') operators in the authorization assignment context." We are denying your request for partial waiver of the application fees and the concomitant refund of \$48,700.

You base the request for a downward fee adjustment on alternative grounds, e.g., the assignment is *pro forma* requiring only minimal effort, especially in view of the Commission's previous consideration of Lockheed's qualifications; GSO fees are disproportionately larger than NGSO; and that the fee should be calculated on a *per orbit location* basis rather than on a *per satellite* basis. On this latter ground, you theorize that processing an application with two satellites at the same orbit is no more costly than processing a single satellite at such orbit. We note that you did not demonstrate in any event how a partial waiver and reduction of the fee would promote the public interest.

Congress empowered the Commission to "waive or defer payment of an application fee in any specific instance for good cause shown, where such action would promote the public interest." 47 USC §158(d)(2). *See also* 47 CFR §1.1117(a). A petitioner seeking a waiver bears the burden of establishing "good cause shown" and that the waiver "would override the public interest, as determined by Congress, that the government should be reimbursed for the specific regulatory action of the FCC." *Establishment of a Fee Collection Program to Implement the*

Provisions of the Consolidated Omnibus Budget Reconciliation Act of 1985, Report and Order, 2 FCC Rcd 947, 961 (1987).

Applying this standard to your request, we find that reasons you advance do not establish good cause to waive the fees. Concerning the basis for the fees, we are well aware of our analysis. As you noted, “[t]he Schedule of Charges results from a determination by the Congress that the fees represent a fair approximation as to how the Commission’s cost should be distributed. Members of the affected telecommunications industries have had an opportunity to comment upon and suggest changes to the Schedule of Charges through the legislative process. [Conference Report at 433.] We have worked with Congress to ensure that, to the best extent possible, fees reflect only the direct cost of processing the typical application or filing.” *Establishment of a Fee Collection Program to Implement the Provisions of the Omnibus Budget Reconciliation Act of 1989, Memorandum Opinion and Order, 5 FCC Rcd 3558, 3574 (1990), at paragraph 36.* Our comment in this regard is in the context of our discussion of the fee process. We stated, “it is important for the public to understand that the amount of the fee represents the Commission’s estimate, accepted by Congress, on the *average* cost to the Commission of providing the service. Conference Report at 423. As an average, there will be individual situations in which the actual cost may be more or less. It is not our intention to make individualized determinations of the ‘appropriate fee.’ Rather, except in unusual cases in which the public interest requires otherwise, we will levy the fee as determined by Congress.” *Establishment of a Fee Collection Program to Implement the Provisions of the Consolidated Omnibus Budget Reconciliation Act of 1985, Opinion and Order, 3 FCC Rcd 5987 (1988).* It is well settled that the standard for the fees has never been based on the actual cost of the work involved in any single application. Your current request does not alter that analysis nor change the result.

We note that the Public Notice (PN) 56031, *Interim Filing Fee Payment Established for Ka-Band Satellite Applications* (Sep 28, 1995), with the established cut-off date of September 29, 1995, is not applicable to the present application. Moreover, it is not precedent upon which the Commission should “automatically reimburse Lockheed Martin \$25,560, the portion of the fee associated with four Astrolink satellites . . . collocated with other[s].” In that regard, our determination on a request for waiver is on a case by case basis and our decision in any one case is not precedence for subsequent requests. 47 U.S.C. § 158(d)(2); 47 C.F.R. §1.1117(a).

Reviewing the entirety of your request, we find that it did not address how the partial waiver would promote the public interest. The absence of that element is an additional reason to deny your request.

Raymond G. Bender, Jr., Esquire

3.

Accordingly, we deny your request for a waiver of the application fees. If you have any questions, please contact the Credit and Debt Management Group at (202) 418-1995.

Sincerely,

A handwritten signature in black ink, appearing to read "Mark A. Reger". The signature is fluid and cursive, with a large initial "M" and "R".

for Mark A. Reger
Chief Financial Officer

99010888210298001

DUG
COPY
FF8

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20024

In the Matter of the Application of)	
)	
LOCKHEED MARTIN CORPORATION)	File No.
)	
For Authority for a <i>Pro Forma</i> Assignment)	
of the Astrolink™ System Authorization)	
)	

To: The Managing Director

**REQUEST FOR PARTIAL
WAIVER AND REFUND OF FEES**

Lockheed Martin Corporation ("Lockheed Martin") has filed with the Commission an application to assign the space station authorization for the Astrolink™ System, a global satellite network consisting of nine geostationary ("GSO") satellites in five orbit locations, from Lockheed Martin to LMGT Astro License, LLC, an indirect wholly-owned subsidiary of Lockheed Martin. Accompanying the *pro forma* assignment application are an FCC Form 312, FCC Form 159 and a check in the amount of \$57,510 to cover the assignment application filing fee (based on a \$6,390 fee for assignment of each of the nine Astrolink™ satellites).^{1/} Although Lockheed Martin has tendered a total fee of \$57,510 in accordance with the FCC's rules, the Commission should reduce the fee amount to \$8,810 to reflect the actual cost of processing a single *pro forma* assignment application and to avoid unwarranted discrimination between geostationary satellite and non-geostationary satellite ("NGSO") operators in the authorization

^{1/} These materials are attached as Appendices 1, 2 and 3, respectively.

assignment context. Accordingly, this Request for Partial Waiver and Refund of Fees seeks reimbursement of \$48,700.^{2/} Fees that the Commission imposes on applicants should bear a reasonable relation to the expenses that the Commission may be expected to incur in processing the application.^{3/} However, Section 1.1107 of the Commission's rules imposes an assignment application fee of \$6,390 per GSO satellite, regardless of whether the application involves a mere *pro forma* assignment of the license to a subsidiary or an assignment to a third party whose qualifications the Commission has never before considered. As other portions of the Commission's fee schedule demonstrate, processing a *pro forma* assignment application involves significantly lower processing costs than a third-party assignment application.^{4/} In this case, an application fee of \$57,510 for the *pro forma* assignment of a space station authorization covering nine technically identical Astrolink™ satellites bears no reasonable relation to the reduced costs

^{2/} See 47 C.F.R. § 1.1107(9)(b). Under the Communications Act, the Commission may waive its fees "in any specific instance for good cause shown, where such action would promote the public interest." 47 U.S.C. § 158(d)(2); see also 47 C.F.R. § 1.1117(a).

^{3/} See, e.g., *Nat'l Cable Television Ass'n, Inc. v. FCC*, 554 F.2d 1094, 1108-09 (D.C. Cir. 1976) ("A 'fee' is a payment for a special privilege or service rendered, and not a revenue measure. If the 'fee' unreasonably exceeds the value of the specific services for which it is charged it will be held unlawful"); *Establishment of a Fee Collection Program to Implement the Provisions of the Omnibus Budget Reconciliation Act of 1989*, Memorandum Opinion and Order, 5 FCC Rcd 3558, 3574 (1990) ("*1989 Fee Waiver Order*") ("The Schedule of Charges results from a determination by the Congress that the fees represent a fair approximation as to how the Commission's costs should be distributed We have worked with Congress to ensure that, to the best extent possible, fees reflect only the direct cost of processing the typical application or filing").

^{4/} In the mass media context, for example, Section 1.1104 of the Commission rules requires a fee of \$105.00 per station for a *pro forma* assignment of license application, but a fee of \$725 per station for a third-party assignment of license application — a difference of nearly seven fold. See 47 C.F.R. § 1.1104(1)(f).

associated with processing the *pro forma* assignment, particularly because the Commission has already ruled on the license qualifications of Lockheed Martin.

Moreover, Section 1.1107 of the Commission's rules imposes disproportionately large fees on GSO operators versus NGSO operators in the authorization assignment context. Section 1.1107 requires an application fee of \$6,390 for each GSO space station license to be assigned, even if they are technically identical GSO satellites that have been licensed pursuant to a single space station authorization. For an assignment of an NGSO authorization, however, Section 1.1107 requires a flat fee of only \$8,810 for an entire NGSO *system*, which can be comprised of *hundreds* of technically identical satellites. There is no rational reason why a *pro forma* assignment application for a system of technically identical GSO satellites requires a fee of \$6,390 *per satellite* -- which, in Lockheed Martin's case, would require a total fee of \$57,510 -- while the same *pro forma* assignment application for an NGSO system would require a fee of only \$8,810 *per system*, regardless of the number of technically identical satellites in the constellation. Indeed, Lockheed Martin's *pro forma* assignment application fee is more than *seven times* as large as the NGSO assignment application fee. The Telecommunications Act of 1996 seeks to prevent arbitrary discrimination among providers of similar telecommunications services.⁵¹ In order to treat GSO and NGSO system operators equitably, and to preserve and

⁵¹ See H.R.Rep. 103-213, 103d Cong., 1st Sess. 494 (1993) (Conference Report). See also H.R.Rep. No. 103-111, 103d Cong., 1st Sess. 259-60 (House Report); *see also Implementation of Sections 3(n) and 332 of the Communications Act*, GEN Docket No. 93-252, Second Report and Order, 9 FCC Rcd 1411, 1418 (1994) (similar commercial mobile radio services must be accorded similar regulatory treatment); *Implementation of Sections 3(n) and 332 of the Communications Act*, GEN Docket No. 93-252, Third Report and Order, 9 FCC Rcd 7988, 7996 (1994) (mobile services must be treated similarly if they compete against each other).

promote competition among all providers of satellite communications services, the Commission should forbear from applying Section 1.1107 of its rules in the authorization assignment context and should require Lockheed Martin to pay an application fee of no more than \$8,810 (the amount imposed on NGSO constellations) for the *pro forma* assignment of the Astrolink™ System authorization.

At a minimum, the applicable fee could be calculated on a *per orbit location* basis rather than a *per satellite* basis. Processing a *pro forma* assignment application that involves two identical satellites at the same orbit location is no more costly than processing an application that involves one satellite at such orbit location.⁶⁷ Therefore, under prior precedent the Commission should automatically reimburse Lockheed Martin \$25,560, the portion of the fee associated with four Astrolink™ satellites that are collocated with other Astrolink™ satellites in the same orbit locations. However, for reasons discussed above, a GSO applicant filing a *pro forma* assignment application should be required in this context to pay an application fee of no more than the \$8,810 amount imposed on NGSO constellations.

CONCLUSION

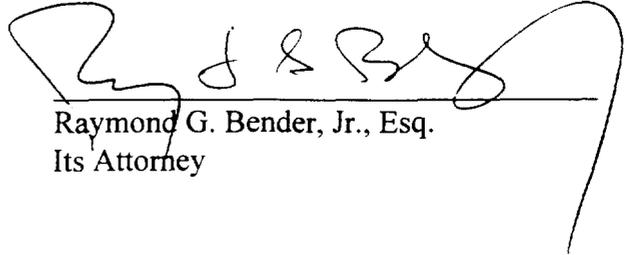
For the foregoing reasons, Lockheed Martin respectfully requests that the Commission waive Section 1.1107 of its rules and assess fees associated with Lockheed Martin's *pro forma* assignment application on a per system basis, rather than a per satellite basis. The Commission

⁶⁷ See, e.g., Federal Communications Commission, Public Notice 56031, *Interim Filing Fee Payment Established for Ka-Band Satellite Applications* (Sept. 28, 1995) (“*Ka-Band Public Notice*”) (attached as Appendix 4) (assessing fees for GSO applicants per orbit location, rather than per satellite, “because of the evolution in geostationary satellite technology and the multiple geostationary space stations that applicants are anticipated to deploy in their systems”).

should impose an application fee for the *pro forma* assignment of the Astrolink™ System authorization from Lockheed Martin to LMGT Astro License, LLC of no more than \$8,810 -- the same fee assessed for NGSO satellite licensees -- and refund the difference of \$48,700.

Respectfully submitted,

LOCKHEED MARTIN CORPORATION



Raymond G. Bender, Jr., Esq.
Its Attorney

DOW, LOHNES & ALBERTSON PLLC
1200 New Hampshire Avenue, N.W.
Suite 800
Washington, D.C. 20036

January 7, 1999

APPENDIX 4



PUBLIC NOTICE

FEDERAL COMMUNICATIONS COMMISSION
1919 M STREET N.W.
WASHINGTON, D.C. 20554

56031

News media information 202/418-0500 Recorded listing of releases and texts 202/418-2222

Release Date: September, 28, 1995

INTERIM FILING FEE PAYMENT ESTABLISHED FOR Ka-BAND SATELLITE APPLICATIONS

The Managing Director has established an interim filing fee payment for fixed Ka-band (17.7-20.2/27.5-30) satellite applications, based upon the total number of orbital locations that an applicant proposes to occupy. This action will afford the Commission an opportunity to determine whether to seek congressional amendment of the statutory filing fee schedule, as it now applies to geostationary space stations, because of the evolution in geostationary satellite technology and the multiple geostationary space stations that Ka-band applicants are anticipated to deploy in their systems.

The interim payment should be filed, along with underlying applications, no later than September 29, 1995. Ka-band satellite applicants should submit a filing fee payment of \$2,330 per orbital location (Payment Code BBY) to cover their applications for authority to construct and an additional fee payment of \$80,360 per orbital location (Payment Code BNY) for authority to launch and operate Ka-band satellites at each orbital location, regardless of how many space stations are proposed for operation. Thus, for example, if an applicant requests authorization for nine satellites to operate at three orbital locations, it should submit three fee payments to construct and three additional fee payments to launch and operate its space stations, totalling \$248,070.

Any Ka-band applicant submitting an interim fee payment, as described above, should also file with its check and Form 159 a cover letter stating that it is making an interim payment and that it will submit any further payment, if required by the Commission, within thirty (30) days of notification from the Commission that an additional payment remains due.

For further information, see letter to John P. Janka, Esquire from Andrew S. Fishel, Managing Director, dated September 28, 1995. Questions regarding the foregoing should be directed to Thomas M. Holleran, Deputy Associate Managing Director for Operations (202) 418-1925.

Payment Transactions Detail Report

Date: 2/22/99

BY: FEE CONTROL NUMBER

Fee Control Number	Payor Name			Fcc Account Number	Payer TIN	Received Date					
9901088210298001	LOCKHEED MARTIN CORPORATION 6801 ROCKLEDGE DRIVE BETHESDA MD 20817			FCC2047118		01/07/99					
Payment Amount	Current Balance	Seq Num	Payment Type Code	Quantity	Callsign Other Id	Applicant Name	Applicant Zip	Bad Check	Detail Amount	Trans Code	Payment Type
\$67,510.00	\$57,510.00	1	BFY	9		LMGT ASTRO LICENSE LLC	20817		\$57,510.00	1	PMT
Total									<u>\$57,510.00</u>		