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

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)	
)	
STARSYS GLOBAL POSITIONING, INC.)	
For Authority to Construct,)	File No 33-DSS-P-90 (24)
Launch and Operate a Low Earth)	
Orbit Communications Satellite)	
System)	

To: Chief, Common Carrier Bureau

OPPOSITION TO PETITION FOR EXPEDITED DECLARATORY RULING

LEOSAT Corporation ("LEOSAT"), by its attorneys, hereby submits its opposition to the Petition for Expedited Declaratory Ruling filed by STARSYS Global Positioning, Inc. ("STARSYS") on September 30, 1992. LEOSAT also takes this opportunity to comment upon the Comments of Orbital Communications Corporation ("Orbcomm") and the Reply Comments of STARSYS.¹

STARSYS seeks a ruling that its filing of a "post-cut-off major amendment" -- a transfer of control of STARSYS Class A stock from ST Systems Corporation to Hughes STX Corporation -- should not impact the competitive standing of STARSYS with other mutually-exclusive applications. It argues, in part, as justification for this

¹ FCC Public Notice DS-1263 "Request for Declaratory Ruling Filed by STARSYS Global Positioning, Inc.," released December 16, 1992, required the public to file comments or oppositions by December 30, 1992 and replies by January 6, 1993. For reasons unknown to LEOSAT, Orbcomm submitted premature comments on October 14, 1992 and STARSYS submitted premature reply comments on October 21, 1992. LEOSAT was neither served nor notified of these filings despite the fact that both parties knew of LEOSAT's ongoing interest in providing low earth orbit satellite services, as evidenced by LEOSAT's application to construct, launch and operate (dismissal of which is now under appeal) and LEOSAT's participation in the FCC Below 1 Ghz LEO Negotiated Rulemaking Committee.

declaratory ruling that its application may not be mutually-exclusive with any other application for authority to construct a LEO system due to the private agreement of STARSYS, Orbcomm and Volunteers in Technical Assistance ("VITA") to share the proposed LEO band.² In so doing, STARSYS conveniently ignores the established interest of LEOSAT and the potential interest of other members of the public in offering low earth orbit satellite services after the Commission adopts rules for the LEO service.

STARSYS's pleading seeks to transform a proposed private agreement to divide LEO spectrum into reality. In fact, nothing could be farther from the truth. The Commission has not endorsed this private agreement. Instead, it invited LEOSAT, STARSYS, VITA and Orbcomm to participate in a negotiated rulemaking process to propose technical rules that would aid the Commission in assigning spectrum for additional competitive LEO service providers. Significantly, the report of the negotiated rulemaking committee did not endorse this private agreement as a solution to the problem of mutual exclusivity.³ Therefore, until the Commission has completed its ongoing rulemaking in Common Carrier Docket 92-76, STARSYS cannot fairly claim that its amendment will not adversely impact other current or

² See Jointly Filed Supplemental Comments of Orbcomm, STARSYS and VITA in CC Docket No. 92-76 (filed August 7, 1992).

³ "Two sharing plans were presented that were intended to promote the goals [promote multiple entry and co-existence with other space and terrestrial systems, and avoid mutual exclusivity with present and future applicants] identified by the Commission. The Committee agreed that some sharing was possible in the plans presented, but it neither agreed or attempted to agree on how such sharing should be implemented, or which sharing plan represented the most efficient use of the spectrum." Report of the Below 1 Ghz LEO Negotiated Rulemaking Committee, page 7, September 16, 1992. See also Additional Views of LEOSAT filed at Part II of the Report.

future mutually-exclusive LEO applications.

STARSYS's reliance on Section 25.116 of the rules as the reason for its petition and as justification for its waiver request is at best premature. As LEOSAT previously noted, all LEO applications were filed with the Commission at a time when cut-off rules did not yet exist for any type of satellite application. Nor does a cut-off procedure -- and the accompanying decision as to what exactly is a "mutually-exclusive" application -- yet exist for low earth orbit applications.⁴ Thus, STARSYS's reliance on a rule and supporting case law that does not apply to LEO applications has no bearing on the treatment of this transfer of control. Moreover, until the Commission promulgates rules that will determine what is a "mutually-exclusive" application in the LEO satellite service, and how it will choose among such mutually-exclusive applications, it is impossible to determine whether this proposed transfer of control might provide STARSYS with the very competitive advantage in a possible future comparative hearing that a rule like 25.116 was meant to avoid.⁵

Suggested Alternative Declaratory Ruling and Conclusion

LEOSAT respectfully submits that the Commission cannot provide STARSYS with the requested declaratory ruling at this time. The rule and case law exceptions

⁴ See, LEOSAT Petition for Reconsideration and Request for Waiver in File No. 12-DSS-P91 (2), May 20, 1992, 16-19; Reply to the Opposition to its Petition for Reconsideration, June 11, 1992, 8-9.

⁵ It may very well be that the Commission would decide to use the financial resources and satellite operational experience of the satellite system applicant as a comparative criterion. If so, the replacement of STSC with Hughes STX as holder of the Class A common stock would provide STARSYS with an obvious comparative advantage.

cited by STARSYS in support of a declaratory ruling cannot be applied to LEO applications until the Commission promulgates LEO processing rules and procedures. The stock transfer may provide STARSYS with a comparative advantage under yet unspecified rules for the processing of mutually-exclusive LEO applications. And contrary to STARSYS's assertions, the Commission is faced with the need to accommodate current and future mutually-exclusive applications. Until the promulgation of processing rules, LEOSAT believes that applicants should not be permitted to amend a pending application, through an ownership change or otherwise, unless the applicant expressly agrees not to invoke such a change in any future comparative proceeding. Therefore, during this interim period with LEO applications on file but no rules in place, LEOSAT believes the Commission should issue a general declaratory ruling to this effect.

Like Orbcomm and STARSYS, LEOSAT "does not believe the regulatory processes should be used to stifle competition." Orbcomm Comments at 1; STARSYS Reply Comments at 1. Unfortunately, LEOSAT has been confronted with just such behavior in its attempt to compete for low earth orbit authority.⁶ Nevertheless, LEOSAT can well appreciate the difficulty of applicants who are faced with a patchwork of current and proposed rules and the need to make legitimate business decisions during an extended regulatory process. Therefore, LEOSAT would support a declaratory ruling that would permit current and future LEO applicants to amend

⁶ LEOSAT finds it difficult to understand how, for example, the Commission could reconcile the grant of what STARSYS characterizes as a post cut-off "major change" more than two years after the original STARSYS submission -- a change that could impact other applicants -- while dismissing LEOSAT's application on the smallest of technicalities (DA 92-463), an action vigorously supported by STARSYS and the other applicants who now decry using the regulatory process to snuff out competition.

their applications prior to the promulgation of final LEO processing rules if such amendments are not used to improve comparative positions.

LEOSAT therefore opposes the STARSYS request for declaratory ruling as filed. LEOSAT would support this request if STARSYS -- and other parties who may seek such amendments during this "pre-rule" period -- agrees to disavow any claim of comparative advantage in a future assignment proceeding that may otherwise result from an amendment of its application.

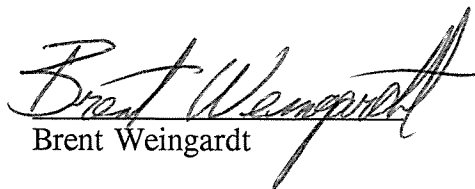
LEOSAT urges the Commission to move forward rapidly in the creation of processing rules for the Low Earth Orbit Mobile Satellite Service. This new service will provide the American public with an innovative, efficient and affordable mobile data service. The regulatory process should not hinder U.S. companies from continuing to lead in the race to provide this exciting service. Already nascent competitors from Europe and Mexico threaten to overtake U.S. companies simply because their rulemaking and assignment processes are less time consuming.

LEOSAT looks forward to providing further assistance to the Commission as it fashions rules and processes that will make this concept a reality. LEOSAT only asks that the Commission not allow the absence of current rules to be used as a means to gain a comparative advantage in future spectrum assignment proceedings.

Respectfully submitted,

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December 30, 1992

CERTIFICATE OF SERVICE

I hereby certify that on this 30th day of December, 1992, I caused copies of the foregoing "Opposition to Petition for Expedited Declaratory Ruling" to be mailed via first-class postage prepaid mail to the following:

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