

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

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JUN 19 1997
Federal Communications Commission
Office of Secretary

In re Application of)	
)	
STARSYS GLOBAL)	File No. 33-DSS-P-90(24)
POSITIONING, INC.)	42-DSS-AMEND-90
)	7-DSS-AMEND-94
For Authority to Construct, Launch and)	31-DSS-AMEND-94
Operate a Non-Voice, Non-Geostationary)	32-DSS-LA-94
Mobile Satellite System)	135-SAT-AMEND-95

OPPOSITION TO REQUEST FOR CONFIDENTIAL TREATMENT

Leo One USA Corporation ("Leo One USA"), by its attorneys, hereby submits this Opposition to the request of Starsys Global Positioning, Inc. ("GE Starsys") for confidential treatment of the construction contract between GE Starsys and Alcatel Espace S.A. ("Alcatel").^{1/} GE Starsys has failed to provide any compelling justification for denying the public access to this documentation. Because disclosure of the construction contract is vital for a fair adjudication of the question of GE Starsys' compliance with its construction milestones, Leo One USA requests that the Commission reject the request for confidential treatment and place the construction contract in the public record.^{2/}

On February 12, 1997, Leo One USA filed with the Commission a petition to declare null and void GE Starsys' license for failure to comply with the construction milestones in the GE Starsys license. GE Starsys' formal opposition to that petition was filed on February 26, 1997. On May 13,

^{1/} See Letter from Philip V. Otero to Thomas S. Tycz dated June 3, 1997.

^{2/} Leo One USA notes that it cannot provide meaningful comments on GE Starsys' response to the Commission's May 13, 1997 information request absent access to the construction contract. Leo One USA requests an additional ten days after release of the contract for comment on the substance of GE Starsys' showing.

1997, the International Bureau instructed GE Starsys to file within 15 days an attested copy of its construction contract. Notwithstanding the fact that GE Starsys was required to execute the contract by November 30, 1996. GE Starsys requested an additional 6 days to file the contract.²¹

GE Starsys' June 3, 1997 filing was accompanied by a cover letter stating:

The enclosed contract contains confidential information that is competitively sensitive. The contract is being provided here with the understanding that it will be treated as proprietary, and that access to the contract will not be provided to any third parties without the consent of Starsys.

GE Starsys' June 12, 1997 letter indicates it has held additional discussions with Commission staff about "the proprietary nature of the contract" but GE Starsys' arguments have not been publicly disclosed and do not appear to be part of the record.

The GE Starsys request does not comply with even the minimal standards required for confidential treatment of submitted information. The request is both procedurally deficit and contrary to Commission standards for proprietary treatment of information and must be denied.

Section 0.459 of the Commission rules²² requires that requests for confidential treatment include a statement of reasons for withholding the material from public inspection. The Commission's rules explicitly note that casual requests, such as the GE Starsys request, will not be considered.²³

²¹ Leo One USA notes that GE Starsys did not provide notice of its *ex parte* meetings with the Commission staff for 9 days, even though it directly addressed the merits of Leo One USA's petition. See Letter from Peter A. Rohrbach to Secretary, Federal Communications Commission dated June 12, 1997.

²² 47 C.F.R. §0.459.

²³ 47 C.F.R. §0.459. See *AT&T Corp.*, 11 FCC Rcd 2425, 2426 (Int'l Bur. 1996).

Any request for confidential treatment of information “must demonstrate by a preponderance of the evidence that nondisclosure is consistent with the provisions of the Freedom of Information Act (“FOIA”).”¹ The Commission has found disclosure appropriate when “the information is a necessary link in a chain of evidence that will resolve a public interest issue.”² The Commission has noted that when the material at issue is relevant to “a significant and material question of fact,” disclosure is required “to assure a fair adjudication of the open factual issue and a just resolution of the public interest question.”³

Here, the construction contract is a relevant item that may resolve the issues raised in Leo One USA’s petition. Resolution of the factual question of whether GE Starsys entered into a binding construction contract by November 30, 1996 is an important public interest issue which may affect licensing of new Non-Voice, Non-Geostationary Mobile Satellite Service systems.

Disclosure of the GE Starsys contract is consistent with the International Bureau’s recent handling of confidentiality requests. In the Big LEO proceeding, the International Bureau rejected Mobile Communications Holdings, Inc.’s (“MCHI”) broad requests to withhold from public inspection entire agreements.⁴ The Bureau found in that instance that withholding entire documents which contain relevant factual information would be inappropriate. Where MCHI requested

¹ *N.Y. Telephone Co.*, 5 FCC Red 874 (1990).

² *Classical Radio for Connecticut, Inc.*, 69 FCC 2d 1517, 1520 n. 4 (1978).

³ *Knoxville Broadcasting Corp.*, 87 FCC 2d 1103, 1105 (1981).

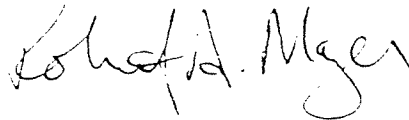
⁴ See Letter from Donald H. Gips, Chief, International Bureau to Jill Abeshouse Stern dated Oct. 29, 1996.

protection for limited portions of documents pertaining to cost and pricing information, the Bureau found confidential treatment to be acceptable.^{10/}

Leo One USA recognizes that the GE Starsys-Alcatel contract may contain limited amounts of proprietary cost and price information and would not oppose a narrowly tailored request to redact very limited portions of the document. GE Starsys' unsupported generalized request for non-disclosure, however, flies in the face of the Commission's interest in seeking public comment. The need to include the contract in the public record is particularly important where, as in this case, the document may resolve a factual question and where the party raising the question would be denied access to the information.

For the foregoing reasons, Leo One USA Corporation requests that the Commission reject GE Starsys' request for confidential treatment, place the GE Starsys-Alcatel contract in the public record and provide an additional 10 days from release of the contract for public comment.

Respectfully submitted,



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Dated: June 19, 1997

^{10/} *Application of Mobile Communications Holding, Inc.*, 10 FCC Rcd 1547, *Order on Reconsideration* (1994).

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Opposition to Request for Confidential Treatment of Leo One USA Corporation was sent by first-class mail, postage prepaid, this 19th day of June, 1997, to each of the following:

- * Chairman Reed E. Hundt
Federal Communications Commission
1919 M Street, N.W., Room 814
Washington, D.C. 20554
- * Ms. Fern Jarmulnek
Chief, Satellite Policy Branch
Satellite Radio Communication Division
International Bureau
Federal Communications Commission
2000 M Street, N.W., Room 518
Washington, D.C. 20554
- * Commissioner James H. Quello
Federal Communications Commission
1919 M Street, N.W., Room 802
Washington, D.C. 20554
- * Ms. Ruth Milkman
Assistant Bureau Chief
International Chief
Federal Communications Commission
2000 M Street, N.W. Ste 821
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- * Commissioner Rachelle B. Chong
Federal Communications Commission
1919 M Street, N.W., Room 844
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- * Mr. Daniel Connors
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- * Commissioner Susan Ness
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- * Mr. Harold Ng
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- * Mr. Peter Cowhey
Chief, International Bureau
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- * Mr. Thomas S. Tycz
Division Chief, Satellite &
Radiocommunication Division
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- * Ms. Cassandra Thomas
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*By Hand Delivery

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Counsel for GE/Starsys

A handwritten signature in cursive script that reads "Petra K. Shaw". The signature is written in black ink and is positioned above a solid horizontal line that extends across the width of the signature.

*By Hand Delivery