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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

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May 30, 1996

Received  
JUNE  
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*BY HAND DELIVERY*

Mr. William F. Caton  
Acting Secretary  
Federal Communications Commission  
1919 M Street, N.W., Room 222  
Washington, D.C. 20554

Satellite Policy Branch  
International Bureau

**Re: GE American Communications, Inc. and STARSYS Global Positioning, Inc. Motion to Dismiss Leo One Emergency Petition for Rulemaking; File Nos. 33-DSS-P-90(24) et al.**

Dear Mr. Caton:

Enclosed for filing is an original and four copies of the above-referenced Motion to Dismiss of GE American Communications, Inc. and STARSYS Global Positioning, Inc.

If you have any questions, please contact the undersigned.

Sincerely,



Julie T. Barton

Enclosures

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MAY 30 1996

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

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

MAY 05 1996

In re Application of	)		
	)		
<b>STARSYS GLOBAL</b>	)	File Nos.	33-DSS-P-90(24)
<b>POSITIONING, INC.</b>	)		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

Satellite Policy Branch  
International Bureau

To: The Commission

**MOTION TO DISMISS**

GE American Communications, Inc. ("GE Americom") and STARSYS Global Positioning, Inc. ("STARSYS"), by their attorneys, hereby move to dismiss the Emergency Petition for Declaratory Ruling ("Petition") filed May 17, 1996 by Leo One USA Corporation ("Leo One").

In the Petition, Leo One seeks a ruling that the grant of the referenced application for a Non-Voice, Non-Geostationary Mobile Satellite Service ("NVNG MSS") license be declared null and void. Leo One asserts that STARSYS has violated the terms and conditions of the grant, is not in compliance with Section 310 of the Act, and is financially unqualified to be an NVNG MSS licensee.

Leo One's filing should be promptly and summarily dismissed. The Commission has already fully addressed the arguments in the Petition. It is, in effect, a grossly untimely application for review of the International Bureau's decision. Such a filing should not be tolerated.

## I. BACKGROUND

In 1993, the Commission accepted an amendment to the referenced application concerning the acquisition by Hughes STX of a controlling interest in STARSYS which included the right to elect three of STARSYS's five directors. Ninety-five percent of the noncontrolling equity in STARSYS was then held by North American CLS, Inc. ("NACLS"). NACLS is a Delaware corporation that is wholly owned by Stargos S.A., a French company. Stargos, in turn, is 49.3% owned by Collecte Localisation Satellites ("CLS"), a French company that is 70% owned by organizations supported by the French government.

In April, 1995 Starsys indicated that NACLS and CLS would reduce their ownership in STARSYS, in the aggregate, to a level not in excess of 25%. In June of 1995, the International Bureau issued a Declaratory Ruling that STARSYS was qualified under Section 310 of the Communications Act to hold an NVNG MSS license if it diluted the interest of NACLS and CLS as it had described. <sup>1/</sup> In conformity with that ruling, on August 7, 1995, STARSYS filed a further amendment to the referenced application demonstrating its financial qualifications based on a proposed investment from GE Americom that would effectuate a dilution to the stipulated level. The International Bureau granted STARSYS's amended application on November 20, 1995. <sup>2/</sup>

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<sup>1/</sup> See STARSYS Global Positioning, Inc., Declaratory Ruling, 10 FCC Rcd 9392, at ¶ 15 (Int'l Bur. 1995) ("STARSYS Declaratory Ruling").

<sup>2/</sup> STARSYS Global Positioning, Inc., Order and Authorization, 11 FCC Rcd 1237, at ¶ 24 (Int'l Bur. 1995) ("STARSYS Order").

**II. LEO ONE’S PETITION IS AN UNTIMELY APPLICATION FOR REVIEW OF THE STARSYS ORDER.**

Leo One makes several arguments in support of its declaratory ruling request which constitute nothing more than an untimely application for review of the STARSYS Order.

**A. STARSYS and GE Americom Are Under No Deadline For Consummation of the Transaction.**

As Leo One itself admits, 3/ “the Commission’s Order did not specify a date for STARSYS to consummate the GE Americom-STARSYS transaction.” 4/ Leo One states that “it can be assumed” that the International Bureau did not specify a date, because it expected the closing to occur immediately. 5/ However, there is no basis in the record for such an assumption. By its own terms, the STARSYS Order set no closing deadline, and STARSYS cannot be faulted for “violating” a condition that is not there. Leo One is, in effect, making an untimely request for the addition of a retroactive condition. Such a request should be dismissed.

Leo One also argues that the terms and conditions of the STARSYS Order should be read to have implicitly required GE Americom to assume control over STARSYS “immediately” upon issuance of that order. But Leo One bases this argument solely on a misreading and mischaracterization of the STARSYS application. Leo One observes that the Commission authorized STARSYS to

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3/ Petition at 6.

4/ Id.

5/ Id. at 7.

construct an NVNG MSS-satellite service system “in accordance with the terms, conditions and technical specifications set forth in its application, as amended.”<sup>6/</sup> Leo One claims that one of those terms was that GE Americom would consummate its transaction with STARSYS “immediately” following grant of its application.<sup>7/</sup> But that is not what the applicants proposed or what the Commission required. Rather, STARSYS stated very clearly that “GE Americom is prepared to make its investment in STARSYS and assume control of the Company, promptly upon Commission approval of this petition, acceptance of the amendment, and final action approving the underlying applications.”<sup>8/</sup> Because a timely Petition for Reconsideration was filed by Orbital Communications Corporation on January 11, 1996 and remains pending,<sup>9/</sup> the grant of the STARSYS application is not yet “final.” Thus the fact that GE Americom has not yet completed its investment in STARSYS is entirely consistent with the applicants’ representations and the Commission’s grant. Leo One failed to make a timely filing with the Commission expressing any dissatisfaction with the Bureau’s decision not to impose a deadline

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<sup>6/</sup> Id. at 6, quoting STARSYS Order at ¶ 25.

<sup>7/</sup> Id. at 7.

<sup>8/</sup> Petition for Leave to Amend of STARSYS Global Positioning, Inc., File Nos. 33-DSS-P-90(24); 31-DSS-AMEND-94; 32-DSS-LA-94, at 6 (emphasis added) (dated August 7, 1995).

<sup>9/</sup> Orbital Communications Corporation, Petition for Reconsideration (filed January 11, 1996).

for consummation of GE Americom's acquisition of control of STARSYS. It cannot now complain. 10/

**B. STARSYS is in Compliance with Section 310.**

Leo One also contends that STARSYS is in violation of Section 310(a) of the Communications Act. The contention is also an untimely attempt to reargue issues previously rejected by the International Bureau. As the Bureau held in rejecting similar arguments of Orbcomm: "STARSYS's ownership structure, as proposed to be modified, fully complies with Section 310(a) of the Communications Act." 11/ Leo One effectively seeks untimely review of that decision.

**C. STARSYS is Financially Qualified.**

Leo One also claims that STARSYS is financially unqualified to be a NVNG MSS licensee. This argument is absurd on its face. STARSYS has satisfied the financial qualification standards set forth in § 25.140(d) of the Commission's rules and the Bureau found STARSYS to be financially qualified to hold an NVNG license. 12/ The Bureau based its findings on a letter from the Chairman and Chief

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10/ Leo One also argues that under Section 25.118(f) of the Commission's Rules, 47 C.F.R. § 25.118(f), GE Americom was required to complete its investment in STARSYS within 60 days. However, this rule is not applicable here. Section 25.118 applies only to assignments and transfers of control of existing licensees or permittees approved pursuant to the filing of FCC Form 702 or 704. That is not this case. STARSYS was not a licensee or permittee at the time that it requested Commission approval of its new ownership structure and, for that reason, did not file an FCC Form 704. Instead, the issue here is STARSYS's satisfaction of conditions on its acceptance of a new license.

11/ STARSYS Order at ¶ 15. As the Commission noted in the STARSYS Order, GE Americom is an "unquestionably and fundamentally American company." Id.

12/ Id. at ¶ 23.

Executive Officer of GE Americom that set forth GE Americom's intent to fund the construction, launch and operation for the first year of two satellites.<sup>13/</sup> GE Americom's representations regarding funding of the NVNG system were true when they were made in August 1995, and they are true today. Leo One has no basis for its suggestion that GE Americom's representations were false or that STARSYS is not financially qualified. Here too, Leo One's petition is nothing more than an unsupported and untimely request for review.

### III. STARSYS IS A U.S. COMPANY.

Finally, Leo One concludes its Petition with the gratuitous allegation that the interests of "STARSYS, a French company" (sic) (Petition at 11) are contrary to the interests of the United States. This allegation need not be addressed because its factual predicate is clearly erroneous. STARSYS has never been, and is not currently, "a French company." It is a Delaware corporation that has never been under the control of the French government or any foreign entity. The Commission has concluded as much, and here too Leo One is simply rehashing arguments in an untimely request for review of the STARSYS Order. STARSYS Order at ¶ 25.

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<sup>13/</sup> Letter from John F. Connelly, Chairman and Chief Executive Officer, GE American Communications, Inc. to William F. Caton, Acting Secretary, Federal Communications Commission, dated August 4, 1995.

IV. CONCLUSION

The Commission should dismiss Leo One's Emergency Petition for Declaratory Ruling as an untimely application for review. The Commission should not allow Leo One, a potential STARSYS competitor, to cloud this authorization.

Respectfully submitted,

GE AMERICAN COMMUNICATIONS, INC.

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May 30, 1996



CERTIFICATE OF SERVICE

I, Julie T. Barton, hereby certify that a true and correct copy of the foregoing Motion to Dismiss of GE American Communications, Inc. and Starsys Global Positioning, Inc. was sent by first-class mail, postage prepaid, this 30th day of May 1996, to each of the following:

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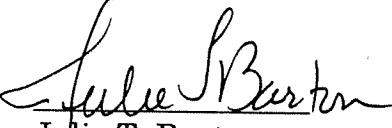
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