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Satellite Policy Branch
International Bureau

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

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

To: The Commission

EMERGENCY PETITION FOR DECLARATORY RULING

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Dated: May 17, 1996

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SUMMARY

In the accompanying Emergency Petition for Declaratory Ruling, Leo One USA Corporation ("Leo One USA") seeks a declaratory ruling that the license of Starsys Global Positioning, Inc. ("Starsys") to construct, launch, and operate a Non-Voice, Non-Geostationary Mobile Satellite Service ("NVNG MSS") system is null and void.

Specifically, Starsys has not complied with the representations made in its application which served as a basis for grant of its license. In its August 7, 1995 Amendment to its application, Starsys represented that GE American Communications, Inc. ("GE Americom") would assume control of Starsys upon FCC grant of its license. GE Americom was to acquire an 80% equity interest in Starsys in order to dilute the ownership interest held by North American CLS ("NACLS"). NACLS is wholly-owned by French interests, including significant French government interests. However, six months have passed since Starsys' license was granted, and this transaction has still not been consummated. As a result, Starsys is currently in violation of the Communications Act's prohibitions on alien ownership. In addition, Starsys has misrepresented its ability to satisfy the Commission's financial qualifications requirements.

For these reasons, Leo One USA seeks a declaratory ruling that the license of Starsys is null and void. Leo One USA urges the Commission to expeditiously consider this Emergency Petition because Starsys' unwarranted claim to be a valid licensee has significant implications on all pending NVNG MSS applications and the coordination of existing NVNG MSS systems with other administrations.

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To: The Commission

EMERGENCY PETITION FOR DECLARATORY RULING

Leo One USA Corporation ("Leo One USA")^{1/}, by its attorneys, pursuant to Section 1.2 of the Commission's Rules^{2/} and Section 5(d) of the Administrative Procedure Act^{3/} hereby seeks a declaratory ruling that the license of Starsys Global Positioning, Inc. ("Starsys") to construct, launch and operate a Non-Voice, Non-Geostationary Mobile Satellite Service ("NVNG MSS") system is null and void. Leo One USA encourages the Commission to find (1) Starsys has not complied with the representations made in its application which served as a basis for grant of its license; (2) Starsys currently is in violation of the Communications Act's prohibitions on alien ownership; and (3) Starsys has misrepresented its ability to satisfy the Commission's financial qualification

^{1/} Leo One USA Corporation has an application pending for before the Commission to construct, launch and operate an NVNG MSS system. Application of Leo One USA Corporation, File No. 57-DSS-P/LA-94(48). As an applicant for an NVNG MSS license, Leo One USA has a vital interest in the status of the Starsys license and Starsys' claims to NVNG MSS spectrum.

^{2/} 47 C.F.R. § 1.2.

^{3/} 5 U.S.C. § 554(e).

requirements. Leo One USA urges the Commission to expeditiously consider this Petition because Starsys' unwarranted claim to be a valid licensee has significant implications on the coordination of existing NVNG MSS systems with other administrations and the ability of the Commission to license additional NVNG MSS systems.

I. Background

On May 4, 1990, Starsys, a Delaware corporation, submitted its application to the Commission to construct, launch and operate an NVNG MSS system. That application detailed the following ownership structure which has not changed.^{4/} Ninety-five percent of the equity interest in Starsys is held by North American CLS ("NACLS"). NACLS is wholly-owned by Stargos S.A., which is in turn 49.3% owned by Collecte Localisation Satellites ("CLS") and 50.7% by French banking interests. Seventy percent of the equity of CLS is held by the French government.^{5/} Starsys recognized in its application^{6/} that this ownership structure raised serious foreign ownership issues under Section 310 of the Communications Act of 1934, as amended.^{7/} Consequently, during the last several years Starsys has proposed various changes to its ownership structure which the Commission has expended significant resources to review.

^{4/} Attachment A contains a diagram of the Starsys ownership structure.

^{5/} Centre National d'Etudes Spatiales ("CNES"), the French space agency, owns 55% of CLS. IFREMER, a French government-supported institute devoted to sea research, owns 15%.

^{6/} Application of Starsys Global Positioning, Inc. for a Low Earth Orbit Satellite System, Part VI, May 4, 1990.

^{7/} 47 U.S.C. § 310.

In particular, Starsys developed a structure whereby its Class A common shares, representing a 5% equity interest in the company, would be responsible for controlling Starsys.^{8/} This 5% was originally to be owned by MARCOR but was subsequently issued to ST Systems Corporation ("STSC").^{9/} In 1992, Hughes STX Corporation ("Hughes") sought to acquire STSC's interest in Starsys. At that time Starsys sought a declaratory ruling from the Commission that the transfer of control of its Class A shares to Hughes would not affect the pendency of its application.^{10/} In 1993, the Commission granted Starsys' declaratory ruling.^{11/} However, even after this ruling, issues concerning Starsys' foreign ownership remained. In March 1994, Starsys sought another declaratory ruling from the Commission that its ownership structure complied with Section 310 of the Communications Act.^{12/} In an April 20, 1995 letter to the Commission, Starsys stated that NACLS would reduce its 95% ownership share to no more than 25% by the time of Starsys' filing of its financial showing for its proposed NVNG MSS system.^{13/}

On June 1, 1995, the International Bureau released a Declaratory Ruling holding that if NACLS reduced its ownership interest in Starsys to no more than 25%, Starsys would not be in violation Section 310 of the Communications Act.^{14/} As a result of this ruling, on August 7, 1995

^{8/} *Starsys Global Positioning, Inc., v. Rothblatt and MARCOR*, Complaint for Declaratory Judgment, Case No. 139305, Montgomery County, Maryland (1995).

^{9/} *Id.*

^{10/} Request for Declaratory Ruling of Starsys Global Positioning, Inc., File No. 33-DSS-P-90(24)(1992).

^{11/} *Starsys Global Positioning, Inc.*, 8 FCC Rcd 1662 (1993).

^{12/} Petition for Expedited Declaratory Ruling of Starsys Global Positioning, Inc., File No. 33-DSS-P-90(24)(1994).

^{13/} *Starsys Global Positioning, Inc.*, 10 FCC Rcd 9392 (1995).

^{14/} *Id.*

Starsys filed an amendment to its application proposing that GE American Communications, Inc. ("GE Americom") acquire an 80% equity interest in Starsys, with NACLS retaining the remaining 20%.^{15/} The Petition which accompanied the Amendment stated:

Starsys has entered into an agreement pursuant to which, upon Commission approval of this application, GE American Communications, Inc . . . will acquire 80% of the voting stock and equity of the company.^{16/}

The following language from a letter from the Chairman and Chief Executive Officer of GE Americom which accompanied Starsys' August 7, 1995 Amendment contained this commitment:

This letter is to confirm that . . . GE American Communications, Inc. . . . has entered into an agreement to acquire 80% of the voting stock and equity of Starsys Global Positioning, Inc. . . . upon grant of the authorization requested in the [Starsys] application.^{17/}

Proposed amendments to the Starsys charter and by-laws to implement the proposed corporate changes were included as an attachment to the August 7, 1995 amendment.^{18/}

In conjunction with the proposed corporate restructuring, Starsys used GE Americom's financial assets to demonstrate Starsys' financial qualifications under Section 25.142(a)(4) of the Commission's rules.^{19/} GE Americom provided its balance sheet and a commitment from its Chairman and Chief Executive Officer to expend the funds necessary to construct, launch and

^{15/} Amendment to NVNG MSS Satellite System of Starsys Global Positioning, Inc., p. 2, File No. 33-DSS-P-90(24)(1995).

^{16/} Petition for Leave to Amend of Starsys Global Positioning, Inc., p. 5, File No. 33-DSS-P-90(24)(1995) (emphasis added).

^{17/} See letter from John Connelly to William F. Caton, Secretary, Federal Communications Commission, August 4, 1995 (emphasis added).

^{18/} Amendment to NVNG MSS Satellite System of Starsys Global Positioning, Inc., File No. 33-DSS-P-90(24)(1995).

^{19/} 47 C.F.R. § 25.142(a)(4).

operate for one year the Starsys system.^{20/} Based on this Amendment, the International Bureau, on November 21, 1995, found Starsys legally and financially qualified to be an NVNG MSS licensee and granted the Starsys application.^{21/} The International Bureau used these representations as a basis for determining that the GE Americom/Starsys ownership structure complied with Section 310 of the Act and that Starsys was financially qualified to hold an NVNG MSS license.

As of the date of the filing of this Emergency Petition for Declaratory Ruling, Starsys has failed to file with the State of Delaware its revised corporate charter or certificate of incorporation to reflect GE Americom's control of Starsys as represented in its August 7, 1995 amendment.^{22/} Nor has Starsys reported to the Commission that the transaction has been consummated. Consequently, as of this date, the Commission must assume 95% of Starsys' equity continues to be owned by French interests, including over 32% owned by the French government. Starsys' failure to consummate the GE Americom transaction and Starsys' current ownership structure leave the Commission with no option except to conclude (1) Starsys used misrepresentations to unjustifiably obtain its license; (2) Starsys is in violation of Section 310 of the Communications Act; and (3) Starsys has failed to demonstrate it is financially qualified to serve as an NVNG MSS licensee.

^{20/} Amendment to NVNG MSS Satellite System of Starsys Global Positioning, Inc., File No. 33-DSS-P-90(24)(1995).

^{21/} *Starsys Global Positioning, Inc.*, 11 FCC Rcd 1237 (1995).

^{22/} As of the date of this filing, CT Corporation had no record of a revised corporate charter or recent amendment to Starsys' certificate of incorporation.

II. Starsys' License Must be Declared Null and Void

Starsys has not acted in a manner consistent with the representations made in its August 7, 1995 amendment which served as the factual basis for its license from the FCC, and which became part of the terms and conditions of its license. As a result, Starsys is in serious violation of the terms and conditions of its license, is holding a license in direct contradiction to the statutory requirements regarding alien ownership, is not financially qualified to be an FCC licensee, and has engaged in an unauthorized transfer of control. This situation provides the Commission with little choice but to declare the Starsys license null and void.

A. Starsys has not acted in a manner consistent with the terms and conditions of its license.

The Starsys license was specifically conditioned on compliance "with the terms, conditions and technical specifications set forth in [the Starsys] application, as amended."^{23/} Obviously, one of the integral elements of the Starsys application was the participation of GE Americom. It was GE Americom's stock purchase^{24/} that enabled the Commission to find Starsys in compliance with the alien ownership requirements under Section 310 of the Act^{25/} and financially qualified to be an NVNG MSS licensee. The Starsys August 7, 1995 Amendment specifically represented that GE Americom would assume control over Starsys upon FCC grant of the license.^{26/} It is true that the Commission's Order did not specify a date for Starsys to consummate the GE Americom/Starsys

^{23/} *Starsys Global Positioning, Inc.*, 11 FCC Rcd 1237(1995) at ¶ 25.

^{24/} *Id.*

^{25/} 47 U.S.C. § 310.

^{26/} Amendment to NVNG MSS Satellite System of Starsys Global Positioning, Inc., File No. 33-055-P-90(24)(1995).

transaction. Although the Order failed to address this issue of timing, it can be assumed the Commission did not anticipate a need to set a deadline due to Starsys' representation that the transaction would happen immediately.^{27/} Amazingly, it is six months since the license was granted, and GE Americom has yet to assume control over Starsys.

Given the language in the August 7, 1995 Starsys Amendment, there is little doubt that Starsys has not proceeded in accordance with the terms and conditions of its license. The most time Starsys could possibly claim to complete the GE Americom transaction is 60 days. The Commission's rule for assignment or transfer of control of satellite station authorizations provides:

Assignments and transfers of control shall be completed within 60 days from the date of authorization. The Commission shall be notified by letter of the date of consummation. . . .^{28/}

Here, it has been approximately 180 days since the Commission granted Starsys a license, and the transfer of control still has not been consummated. This is well in excess of the time proscribed for a transfer of control and Starsys has not even bothered to report to the Commission the status of its relationship with GE Americom.^{29/} Given these facts, the Commission must find that Starsys is not in compliance with the terms and conditions of its authorization and declare its license null and void.

^{27/} *Id.*

^{28/} 47 C.F.R. § 25.118(f).

^{29/} As of the date of this filing, there were no documents in the Commission's files for Starsys' application indicating that Starsys has reported on the status of its relationship with GE Americom.

B. Starsys is not in compliance with Section 310 of the Communications Act.

To make matters worse, Starsys is engaging in a direct violation of Section 310 of the Communications Act. This section provides that a "station license required under this Act shall not be granted to or held by any foreign government or representative thereof."^{30/} The Commission has stated that if a foreign government or representative thereof has either *de facto* or *de jure* control of a licensee, it would be deemed to hold the license, and the entity would be excluded from a license grant.^{31/} In addition, section 310(b) of the Communications Act states that certain licenses may not be held by any corporation, directly or indirectly, controlled by any other corporation of which more than one-fourth of the capital stock is owned of record by a foreign government or representative thereof.^{32/} Today, the French government controls over 32% of Starsys,^{33/} and French interests own a total of 95% of Starsys. This arrangement violates Section 310(b) of the Communications Act and has never been found to be consistent with the statutory requirements under the Act. These statutory violations are extremely serious and cannot be ignored by the Commission.

C. Starsys is not financially qualified to be an NVNG MSS licensee.

As a result of this situation, Starsys is now financially unqualified to be a NVNG MSS licensee. In the *Report and Order in CC Docket No. 92-76*,^{34/} the Commission established financial

^{30/} 47 U.S.C. § 310(a).

^{31/} *Orion Satellite Corp.*, 5 FCC Rcd 4937, 4944 n.26 (1990).

^{32/} 47 U.S.C. § 310(b)(4).

^{33/} 70% of CLS is owned by the French government and CLS owns 49.3% of Stargos, which in turn owns 100% of NACLs, which in turn owns 95% of Starsys (.7 * .493 * 1 * .95 = 32.78%).

^{34/} *In the Matter of Amendment of Commission's Rules to Establish Rules and Policies Pertaining to a Non-Voice, Non-Geostationary Mobile Satellite Service*, 8 FCC Rcd 8450 (1993).

qualification standards for the NVNG MSS. Specifically, the Commission required applicants to meet the financial qualification standards established for domestic satellite applicants in § 25.140(d) of the Commission's Rules to construct, launch and operate for one year the first two satellites in a NVNG MSS system.^{35/}

Although the Commission did not require that an applicant demonstrate financial capability for the entire NVNG MSS system, it did impose strict financial standards on the first two satellites in the system. This conclusion was based on the Commission's repeated experience that licensees without sufficient available resources spend a significant amount of time attempting to raise the necessary financing and that those attempts often end unsuccessfully.^{36/} An undercapitalized applicant may thus preclude a fully capitalized applicant from implementing its plans, thereby delaying service to the public. As the Commission recognized, on several occasions it has granted licenses to underfinanced applicants which ultimately were unable to go forward with their system proposals, thereby warehousing spectrum and delaying service to the public.^{37/}

These policies underlying the strict financial standard should be invoked to declare the Starsys license null and void.^{38/} Under the existing Starsys ownership structure, Starsys does not have the financial resources to construct, launch and operate two NVNG MSS satellites. There is

^{35/} 47 C.F.R. § 25.140(d). The DOMSAT financial qualification rule was originally adopted in 1985 in the *Report and Order* in CC Docket 85-135, FCC 85-395 (August 29, 1985).

^{36/} *In the Matter of Amendment of Commission's Rules to Establish Rules and Policies Pertaining to a Non-Voice, Non-Geostationary Mobile Satellite Service*, CC Docket 92-76, *Notice of Proposed Rulemaking*, 8 FCC Rcd 6330 (1993) at n.31.

^{37/} *Id.*

^{38/} *See Advanced Business Communications, Inc.*, 100 FCC 2d 525 (1985) (fixed-satellite service applicant failed to obtain necessary financing, and authorization nullified by operation or law).

no discernable public policy why Starsys should be allowed to continue to hold an NVNG MSS license if it is financially unqualified. Failure to declare the license null and void would merely allow Starsys to use GE Americom as a basis to obtain an FCC license even though GE Americom never actually invested in Starsys. In order to preserve the integrity of the Commission's processes, this charade must be stopped.

D. Starsys has engaged in an unauthorized transfer of control.

Section 310(d) of the Communications Act provides that no "licenses, or any rights thereunder, shall be transferred, assigned, or disposed of in any manner, voluntarily or involuntarily, directly or indirectly or by transfer or control of any corporation holding such permit or license, to any person except upon application to the Commission and upon finding by the Commission that the public interest, convenience, and necessity will be served thereby."^{39/} Starsys' license was granted by the Commission to an entity of which 80% was owned by GE Americom and 20% by NACLCS. However, during the last six months NALCS and Hughes, not GE Americom, have controlled Starsys. Starsys has never sought approval from the Commission for this ownership arrangement. Moreover, the Commission has never found, and is unlikely to find, that such a transfer of control would be in the public interest since NACLCS is dominated by French government interests. Accordingly, Starsys has engaged in an unauthorized transfer of control in violation of Section 310(d) of the Communications Act and Commission rules.^{40/}

^{39/} 47 U.S.C. § 310(d).

^{40/} 47 C.F.R. § 25.118 (no transfer of control without prior Commission approval).

III. To Allow Starsys to Continue to Hold a License is Contrary to the Interests of the United States

The Starsys license was granted by the Commission based on the representations by Starsys that GE Americom would immediately establish *de jure* control over Starsys. Once the license was granted, the Commission proceeded to coordinate the Starsys system with other administrations. In an absolutely unbelievable set of circumstances, the Commission recently found itself in a situation representing Starsys at a coordination negotiation with the French government.^{41/} The French government was evidently represented at this meeting by CNES, the French Space Agency. This is the same CNES that owns 26% of Starsys. Consequently, the United States government, on behalf of Starsys, entered into a bilateral coordination with the French government. Sitting on one side of the table representing the French government was CNES. Sitting on the other side of the table were United States government officials and representatives of Starsys, a French company which includes significant ownership by CNES. This is an outrageous situation that reeks of conflict of interest, which was and is avoidable through proper application of the Commission's existing rules and the statutory requirements under the Communications Act.

These circumstances could have a significant detrimental impact on all the pending NVNG MSS applications and the United States' interest in promoting the development of this important new technology. In contravention to statements Starsys initially made regarding the ability of future entrants to enter the NVNG MSS market, Starsys has recently stated that no additional NVNG MSS systems can be accommodated in the 137-138 MHz band. The French evidently are also concerned

^{41/} In 1991, the French administration submitted Appendix 3 material to the International Telecommunications Union for an NVNG MSS system called S-80 with a design similar to the Starsys system.

about additional systems operating in the 137-138 MHz band. This situation could be a recipe for disaster for the United States because the French, by sitting on both sides of the table, may be able to effectively manipulate the coordination process to the detriment of the United States. This could eliminate the opportunity to implement additional NVNG MSS systems contrary to United States' interests in the development of a competitive NVNG MSS service. Given the above, the Commission must immediately cease any coordination discussions on behalf of Starsys until such time as the issues raised in this Emergency Petition are resolved.

IV. Conclusion

For the foregoing reasons, the Commission should immediately grant this Emergency Petition for Declaratory Ruling, and declare the Starsys license null and void.

Respectfully submitted,



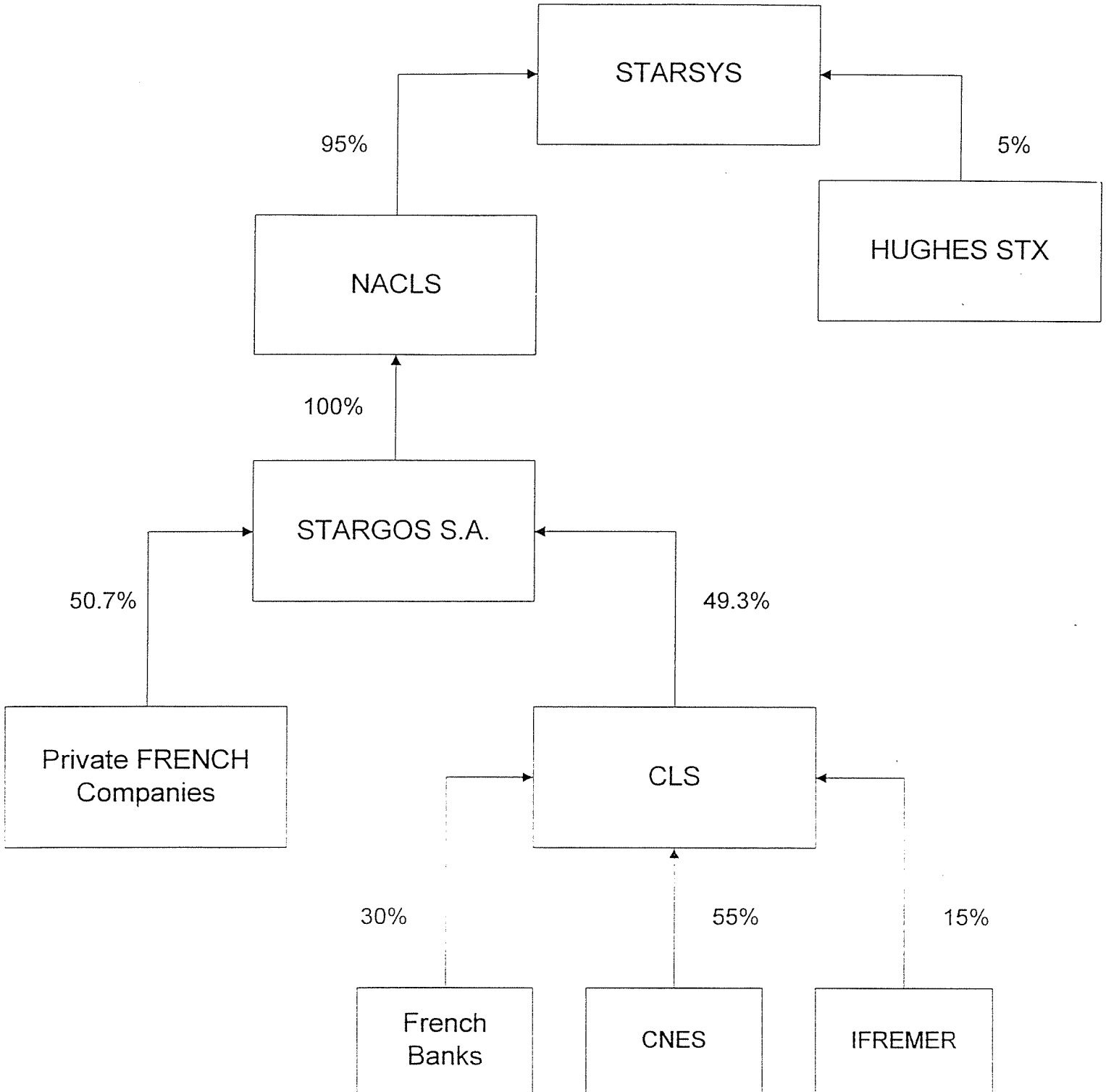
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Counsel for Leo One USA Corporation

Dated: May 17, 1996

Attachment A

STARSYS OWNERSHIP CHART



*CNES and IFREMER are owned and controlled by the French government.
Stargos and CLS are French companies.*

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Emergency Petition For Declaratory Ruling of Leo One USA Corporation was sent by first-class mail, postage prepaid, this 9th day of April 1996, to each of the following:

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A handwritten signature in cursive script, appearing to read "Amy Shuler", is positioned above a solid horizontal line.
