

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



JUN 20 1996

In re Application of)
)
STARSYS GLOBAL)
POSITIONING, INC.)
)
For Authority to Construct, Launch and)
Operate a Non-Voice, Non-Geostationary)
Mobile Satellite System)

File No.

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY
33-DSS-P-90(24)
42-DSS-AMEND-90
7-DSS-AMEND-94
31-DSS-AMEND-94
32-DSS-LA-94
135-SAT-AMEND-95
JUN 26 1996

Satellite Policy Branch
International Bureau

CONSOLIDATED REPLY OF LEO ONE USA CORPORATION

Leo One USA Corporation ("Leo One USA"), by its attorneys, hereby submits this Consolidated Reply to both the Motion to Dismiss and the Supplement of GE American Communications, Inc. ("GE Americom") and Starsys Global Positioning, Inc. ("Starsys") in the above-referenced proceeding. The Motion to Dismiss addressed Leo One USA's recent Emergency Petition for Declaratory Ruling which seeks a Commission determination that Starsys' license to construct, launch and operate a Non-Voice, Non-Geostationary Mobile Satellite Service ("NVNG MSS") system is null and void. The Supplement notifies the Commission of consummation of GE Americom's acquisition of Starsys and seeks dismissal of the Leo One USA Emergency Petition which it claims was rendered moot by the closing.

Leo One USA submits that the issues raised in the Emergency Petition have not been rendered moot. In fact, Leo One USA believes that the Motion to Dismiss and subsequent consummation of the acquisition of Starsys validate Leo One USA's claims that Starsys had failed to fulfill its obligations and was in violation of the Commission's rules and the Communications

Act.^{1/} Leo One USA was gratified to learn that the Commission has recognized the serious issues raised in the Emergency Petition and has requested additional information concerning Starsys' ownership.^{2/} Leo One USA encourages the FCC to fully investigate this situation to ensure that there has not been any intentional abuse of the Commission's processes. In particular, Leo One USA encourages the Commission to determine whether there was an intentional violation of the Act or the Commission's rules, and if so, whether a post-hoc consummation of the acquisition of Starsys negated the violation. To allow Starsys and GE Americom to "cure" any statutory or regulatory violations simply by consummating the acquisition of Starsys would encourage future applicants and licensees to similarly ignore their obligations until questioned by the Commission or third parties.

Notwithstanding the aggressive posturing of the Motion to Dismiss and the proponents' cavalier treatment of the issues raised in Leo One USA's Emergency Petition, GE Americom and Starsys have failed to address Leo One USA's concerns. It is ironic that the Motion to Dismiss claims Leo One USA's Emergency Petition "should not be tolerated."^{3/} It is Starsys' and GE Americom's abuse of the Commission's rules and the Communications Act itself which should not be tolerated. Given the serious nature of the issues raised here, the Commission must determine whether these companies have individually or jointly misled the Commission or abused the statutory or regulatory provisions governing licensing NVNG MSS systems. If so, appropriate sanctions must be imposed. To do otherwise calls into question the integrity of the Commission's processes.

^{1/} The Communications Act of 1934, as amended, 47 U.S.C. § 151, *et. seq.* (hereinafter "the Act" or "the Communications Act").

^{2/} See letter from Cecily C. Holiday to Raul R. Rodriguez dated June 12, 1996.

^{3/} Motion to Dismiss at 1.

A. Background

The Leo One USA Emergency Petition seeks a Commission determination that the Starsys license is null and void based on the following points: (1) Starsys has not acted in a manner consistent with the terms and conditions of its license; (2) Starsys has been in violation of the Section 310 prohibitions on alien ownership; (3) Starsys is not financially qualified to hold its NVNG MSS license; and (4) Starsys has engaged in an unauthorized transfer of control. Leo One USA does not need to reiterate these statements here, but refers the Commission to the text of the arguments contained in the Emergency Petition.

Starsys and GE Americom initially responded with their Motion to Dismiss claiming there was no need for the companies to consummate their transaction at this point and that Starsys had not violated the Act or the Commission's rules. The Motion to Dismiss asserted that (1) Leo One USA's Emergency Petition constituted an untimely application for review; (2) the Starsys "ownership structure, *as proposed to be modified*, fully complied with *Section 310(a)* of the Communications Act";^{4/} and (3) Starsys is financially qualified because of GE Americom's continued intention to fund the Starsys system. The Motion to Dismiss was followed by the Supplement, notifying the Commission of a reversal of the position of Starsys and GE Americom with the consummation of the acquisition of the former by the later.

This response indicated either a complete misunderstanding of the substance of the Leo One USA Emergency Petition or has to be interpreted as a continuation of a pattern of actions by these companies to mislead the Commission and ignore statutory requirements and FCC rules. The

^{4/} Motion to Dismiss at 5 (emphasis added).

Motion to Dismiss simply misconstrued or misinterpreted the Emergency Petition. The subsequently filed Supplement, however, stands out as an admission that Leo One USA was correct in its conclusions that Starsys was in violation of the rules and the Act.

Leo One USA believes the action of Starsys and GE Americom must be examined in greater detail. Leo One USA continues to assert that Starsys was in violation of Section 310 of the Act and the Commission's rules. Thus, its license must be null and void. Subsequently curing the violation cannot eliminate what has already occurred. In addition, Leo One USA is concerned that these companies have misled the Commission.

B. The Emergency Petition Was Not An Application For Review

Starsys and GE Americom attempted to mischaracterize the Leo One USA Emergency Petition as an untimely application for review of the International Bureau's decision^{5/} to approve the GE Americom investment in Starsys. There is no basis for this argument.

Leo One USA did not address the merits of the Starsys Order and Authorization. The Emergency Petition asked the Commission to find Starsys in violation of the terms of the Order and Authorization and grant, assuming *arguendo*, that the grant and license were valid. Leo One USA asked the Commission to examine Starsys' actions subsequent to the Bureau's decision in light of representations Starsys had made prior to and which had served as the basis for that decision. This had nothing to do with the merits of the Bureau's decision and cannot be viewed as an application for review.^{6/}

^{5/} See *Starsys Global Positioning Inc.*, Order and Authorization, DA 95-2343, released November 20, 1995 ("Order and Authorization").

^{6/} In fact, Leo One USA notes that it did not oppose the August 9, 1995 Amendment of Starsys detailing its relationship with GE Americom (except to the extent that GE Americom was allowed to participate

C. Consummating The Transaction Calls Into Question The Truthfulness Of The Motion To Dismiss

Starsys and GE Americom attempted to argue that GE Americom never intended to complete its investment in Starsys until after acceptance of Starsys' amended application became "final."^{2/} According to the Motion to Dismiss, the FCC order granting the Starsys license would be "final" only after resolution of the pending Orbital Communications Corporation Petition for Reconsideration of the FCC's decision granting Starsys' license. Presumably this would require that the Commission has acted on the Petition and such action is not subject to further review by the Commission or the U.S. Court of Appeals. Notwithstanding this representation made to the Commission on May 30th, these companies have come back to the Commission with a notification that the transaction was consummated eight days later. It is Leo One USA's understanding the Orbcomm Petition for Reconsideration referenced in the Motion to Dismiss,^{3/} which Starsys and GE Americom cited as a reason for delaying the acquisition of Starsys, is still pending before the Commission. It is hard to discern what caused a change in the Starsys/GE Americom position. Leo One USA finds it hard to believe an intervening event during those eight days prompted a complete reversal of corporate policy. Moreover, Leo One USA is skeptical that Starsys and GE Americom would have been able to consummate the transaction unless the closing had been set in motion and

in the second NVNG MSS proceeding round), or the original FCC decision approving of GE Americom's acquisition of Starsys and does not do so now. As Leo One USA has stated repeatedly since that order, however, the Commission must now render a decision on the status of GE Americom's application in the pending second NVNG MSS processing round given GE Americom's possession of a NVNG MSS license from the first round.

^{2/} Motion to Dismiss at 4.

^{3/} Motion to Dismiss at 4.

the paperwork initiated before May 30th. If that were the case, the Commission would be obligated to find the representations in the Motion to Dismiss false and intentionally misleading.

D. Starsys Has Violated Section 310 of the Act

Leo One USA's Emergency Petition raised concerns about violations of both Sections 310(a) and 310(b) of the Act.^{2/} The recent consummation of the transaction does not eliminate concern regarding these violations. The relevant analysis is whether Starsys was in violation of the Act on May 17, 1996, the date of the Leo One USA Emergency Petition. Subsequent events cannot undo existing violations of the Act. The Motion to Dismiss provides further cause for concern since Starsys and GE Americom have not contested Leo One USA's assertions of a violation of Section 310(b).

Leo One USA cannot emphasize too strongly the importance of looking at Starsys' and GE Americom's actions prior to consummation of their business transaction on June 7, 1996. To focus only on the current status of Starsys, would, in essence, allow these companies to nullify a violation of the Act. Commission acquiescence in such abuse would severely undermine the integrity of the Act and of the Commission's rules. The Commission would be setting a dangerous precedent and sending a signal to all applicants and licensees -- ignore the Commission's requirements until you are exposed by the Commission or a third party.

The most troubling aspect of this situation is that the Motion to Dismiss demonstrates Starsys and GE Americom had no intention of coming into compliance with the Act and the rules until confronted. Leo One USA finds it unlikely that the June 7th consummation of the transaction was

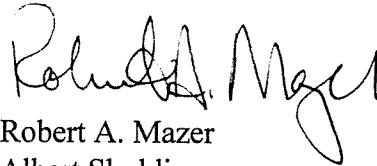
^{2/} 47 U.S.C. § 310(a) and (b).

unrelated to the Emergency Petition and heightened Commission scrutiny. The fact that it was consummated so unwillingly underscores the bad intentions of the parties. Allowing Starsys and GE Americom to thwart the requirements of the Act and the Commission's rules without nullifying the Starsys license or imposing some other significant sanction would set a dangerous precedent that could have far reaching implications beyond this proceeding.

F. Conclusion

For the foregoing reasons, Leo One USA Corporation requests that the Commission act on its Emergency Petition for a Declaratory Ruling to nullify the Starsys license or enact similar sanctions against Starsys and GE Americom.

Respectfully submitted,



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Dated: June 20, 1996

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Consolidated Reply of Leo One USA Corporation was sent by first-class mail, postage prepaid, this 20th day of June 1996, to each of the following:

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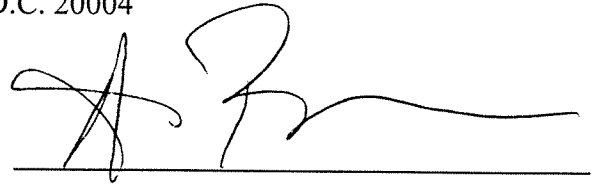
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