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

In re Application of	)	
	)	
STARSYS GLOBAL POSITIONING, INC.	)	File No. 33-DSS-P-90(24)
	)	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

PETITION

Leo One USA Corporation ("Leo One USA"), by its attorneys, hereby petitions to declare null and void the license of GE Starsys Global Positioning, Inc. ("GE Starsys")[1/] for failure to comply with the construction milestones the Commission imposed when granting that license. Recent press reports indicate GE Starsys has not yet commenced construction of its satellites and its commitment to implement its satellite system is unclear. Leo One USA requests that the FCC declare the GE Starsys license null and void and make the spectrum currently assigned to GE Starsys available to qualified applicants[2/] in the second processing round of the Non-Voice, Non-Geostationary Mobile Satellite Service ("NVNG MSS").

1/ Although its FCC license was issued in the name Starsys Global Positioning, Inc., the corporate name was changed to GE Starsys after acquisition of the applicant by GE American Communications, Inc. in 1996.

2/ Leo One USA uses the term "qualified applicants" to refer to second round applicants that ultimately satisfy the rules the Commission adopts in response to its Notice of Proposed Rulemaking for the NVNG MSS. *See Amendment of the Part 25 of the Commission's Rules to Establish Rules and Policies Pertaining to the Second Processing Round of the Non-Voice, Non-Geostationary Mobile Satellite Service*, IB Docket No. 96-220, *Notice of Proposed Rulemaking* (Oct. 29, 1996)("Notice").

Under the terms of its license, GE Starsys is required to commence construction of the first two satellites of its system within one year of the date of grant of the license, which was November 20, 1996.[3/] GE Starsys' license also states that failure to comply with the listed construction milestones will automatically render the license null and void.[4/]

Recent press reports reveal GE Starsys has not yet commenced construction of any satellites even though it is three months after the first construction milestone expired and fifteen months after grant of a license. An article in the January 13, 1997 *Space News* reports that the GE Starsys project manager indicated:

> actual construction of the satellites would not begin for another couple of months. 'We begin our preliminary design review in February' . . .[5/]

The failure to even commence *preliminary* design review prior to the expiration of the first construction milestone raises serious questions about GE Starsys' unsubstantiated claim that it has satisfied its obligations.[6/] The article also reports that the prime satellite contractor has only a memorandum of understanding with the subcontractor responsible for platforms. A memorandum of understanding cannot provide the Commission with any level of comfort that GE Starsys or its manufacturing team has made a commitment to this project. *Space News* quotes the president of

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[3/] *Starsys Global Positioning, Inc.*, 11 FCC Rcd. 1237, 1240-41 (1995).

[4/] *Id.* at 1240.

[5/] de Selding, *Starsys Financial Troubles Stir GE Officials' Doubts*, Space News, January 13-19, 1997 at 1, 18 (a copy of this article appears as Exhibit 1 hereto).

[6/] *See* Reply Comments of GE Starsys at 2, n.1.

Matra Marconi Space, the subcontractor responsible for "skeletal structures or platforms" as stating on January 9, 1997, "All I know is that funding for this is not resolved."[7/]

This report provides prima facia evidence of GE Starsys' failure to abide by the terms of its license. Absent immediate and substantial evidence that GE Starsys has satisfied its obligations, the GE Starsys license must be declared null and void. This is not a situation where the Commission lacks any reason to investigate the situation or take further action. Here, the Commission is confronted with an open admission from the project manager responsible for satellite construction confirming construction has not commenced.

The Commission imposed construction milestones in the GE Starsys license to ensure that GE Starsys does not warehouse valuable and scarce spectrum. The Commission has consistently found that its public interest obligations require that the Commission remain vigilant to prevent warehousing of valuable spectrum which could be put to use by another entity better able to implement a satellite system.[8/] Even in cases where there has been substantial excess capacity and where additional applicants could be accommodated, the Commission has imposed construction milestones to ensure licensees have not abused their license obligations.[9/] The Commission should continue to carry out that obligation in this case as well.

7/ *Space News* at 18.

8/ *See Amendment of the Commission's Rules to Establish Rules and Policies Pertaining to a Non-Voice, Non-Geostationary Mobile Satellite Service*, 8 FCC Rcd. 8450, 8455 (1993).

9/ *Norris Satellite Communications, Inc.*, 7 FCC Rcd. 4289 (1992). The Commission ultimately dismissed the Norris Satellite license for failure to construct according to the construction milestone requirements in its license. *Norris Satellite Communications, Inc.*, DA 96-363, *Order* (March 14, 1996).

The importance of strictly construing these milestones is amplified by both the critical shortage of NVNG MSS spectrum and the delays the Commission has already approved to facilitate implementation of the GE Starsys system. The shortage of NVNG MSS spectrum and the constraints this places on the Commission's ability to license new systems to compete with the only existing commercial NVNG MSS licensee is a matter of record before the Commission. The Commission's recent Notice[10/] proposes innovative and unprecedented sharing arrangements in an attempt to maximize the Commission's ability to license additional systems. GE Starsys' warehousing of NVNG MSS spectrum is particularly egregious in this situation where numerous potential service providers are seeking to provide the services GE Starsys is failing to pursue.

Notwithstanding its failure to commence construction of its first round licensed system, GE Starsys argues to the Commission that it should receive additional NVNG MSS spectrum, even if it prevents licensing additional systems.[11/] In addition, GE Starsys asks the Commission to consider the impact of additional systems on its operations.[12/] It would be ironic for the Commission to consider these issues when advanced by an entity that is not abiding by the terms of its own license.

GE Starsys has already delayed implementation of its system with multiple requests for additional time to qualify for a license which delays present additional justification for strictly construing the milestones. The Commission awarded GE Starsys an NVNG MSS license on November 20, 1995. Grant of the GE Starsys license had been delayed by a number of proceedings in which GE Starsys attempted to demonstrate its compliance with the Commission's alien

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10/ *See* supra n. 2.

11/ Comments of GE Starsys at 9.

12/ Comments of GE Starsys at 18 *et seq.*

ownership and financial qualification rules. In 1993, the Commission reviewed a number of changes in GE Starsys' ownership structure which were insufficient to remove foreign control of the applicant. In 1994, the FCC deferred the deadline for GE Starsys to demonstrate its financial qualifications pending resolution of a request for a declaratory ruling concerning compliance with Section 310(a) of the Communications Act. In 1995, GE Starsys again modified its ownership structure to address alien ownership issues. This modification led to the issuance of a declaratory ruling on GE Starsys' compliance with Section 310(a). In order to demonstrate its financial qualifications, however, the applicant undertook an additional ownership change in 1995, transferring 80% of its equity to GE American Communications, Inc.[13/]

These various ownership changes and related proceedings significantly delayed issuance of the GE Starsys license. Although the Commission considered both applications in the same processing round, the Commission granted a license to Orbital Communications Corporation ("Orbcomm") on October 27, 1994, more than a year before granting the GE Starsys license. Although Leo One USA recognizes the Commission took these extraordinary steps to give GE Starsys every opportunity to implement its system, Leo One USA notes the problems associated with GE Starsys' application have significantly delayed the provision of NVNG MSS services. In addition, delay in resolving GE Starsys' application prevented the Commission from expediting its consideration of second round NVNG MSS applications. This compounded the delay in bringing NVNG MSS services to the public. Because GE Starsys has already been afforded significant

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13/ Citations to and a discussion of these proceedings can be found in the Commission's Order granting GE Starsys' license. *Starsys Global Positioning, Inc.*, 11 FCC Rcd. 1237 (1995).

additional time to advance its system and because this has already delayed service to the public, the construction milestones applicable to GE Starsys' license should be strictly construed.

The admission that GE Starsys has not commenced construction of its satellites warrants a declaration that the GE Starsys license is null and void. Expedited action is particularly important in this case where the status of the GE Starsys license could have an impact on the Commission's NVNG MSS rulemaking proceeding and on the second processing round which is scheduled to be completed by late spring. At a minimum, the evidence presented herein warrants an immediate investigation of GE Starsys' compliance with its license obligations.

For the foregoing reasons, Leo One USA Corporation requests that the Commission grant this petition.

Respectfully submitted,

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EXHIBIT 1

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Starsys Finance Troubles Stir GE Officials' Doubts

By PETER B. de SELDING
Space News Staff Writer

PARIS — GE American Communications officials are having second thoughts about their proposed $170 million Starsys satellite messaging and position location system as they experience difficulties rounding up outside financing, according to officials familiar with the program.

These officials said the Princeton, N.J., company has set an informal deadline of early next month, by which time it hopes to have secured the needed equity participation to continue with Starsys.

"It is clear that GE has become tentative about the program since tying up the financial package is slower than expected," said one industry official whose company expects to participate in Starsys. "They are taking a new look at the business case."

Alcatel Espace of Paris remains under contract to GE Americom to provide the 70-kilogram Starsys satellites. Alcatel officials said last week they are continuing to work on the program, and that their contract with GE Americom remains in full force.

Under the contract, Alcatel is obliged to deliver the first two launch that month, probably aboard a Lockheed Martin LMLV-1 rocket.

The contract also stipulates that Alcatel will supply two additional satellites three months later, and another pair three months after that.

Paul Manuele, a spokesman for GE Americom, said Jan. 9 that the company had not abandoned Starsys and that the program remains on track.

"Both Alcatel and GE Americom have invested considerable resources in this program, and everything is proceeding the way it should," Manuele said. "There is a lot of work to be done in an undertaking of this size, but it is absolutely not on hold."

One U.S. industry official said GE Americom, when it signed the Starsys contracts last July, had counted on GE's transport division to be among the equity partners participating in the initial financing. The transport division, this official said, has since decided not to participate at this stage, even though it may be a major customer of Starsys services once the system is operational.

"The transport division's decision forced GE Americom to either increase its own stake in Starsys, or look for partners among other companies," this official said. "They chose the second route, and up to now have not been able to complete the package."

GE is routinely in discussions with potential partners for a range of programs but will not comment on negotiations related to Starsys, Manuele said, adding only: "This is a GE project and financing is not an issue."

Starsys satellites are designed to aid shipping companies in keeping track of their cargo containers. With small Starsys terminals on them, the containers would be able to send automatic 80-character messages on their temperature, pressure and other conditions, as well as their location.

GE Americom purchased a majority stake in Starsys Global Positioning Inc. in June and then created the GE Starsys company. The Alcatel contract followed the next month. Alcatel Espace in turn signed a memorandum of understanding with Matra Marconi Space of Velizy, France, for the satellite skeletal structures, or platforms.

Norbert Lannelongue, Starsys project manager at Alcatel, said actual construction of the satellites would not begin for another couple of months. "We begin our preliminary design review in February," Lannelongue said Jan. 9. "Under this schedule Matra then would deliver the first platform to us in June 1998."

Armand Carlier, president of Matra Marconi Space, said his company remains hopeful that Starsys will move forward.

"All I know is that funding for this is not resolved," Carlier said Jan. 9. "This is common in the business. It is a contract of up to 24 satellites for us. We were happy to be selected, and we would be happier if the project would continue."

Lannelongue said Alcatel officials are more than ever convinced that Starsys' market potential is huge, extending from the transport industry into utility companies that could station Starsys terminals at remote outposts to read meters.

GE Americom has yet to select a manufacturer of terminals.

Lannelongue said Alcatel, which will be managing Starsys marketing in Europe as well as providing the satellites, wants to ensure that the terminals are available as soon as the first spacecraft are in orbit.

Starsys officials have estimated that the construction and launch of the first six satellites, plus two U.S.-based ground control centers and six years of operations, would cost about $170 million.

One official said GE was under pressure to decide whether to proceed with Starsys before spring because after that it will begin incurring substantial costs associated with the work of Alcatel and Matra Marconi Space.

"If GE stops now, they can get away with paying Alcatel maybe a couple of million dollars," this official said. "But once those two companies begin attacking the construction of the satellites it will be much more expensive for them to buy their way out."

Staff writer Richard McCaffery contributed to this story from Washington.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Petition of Leo One USA Corporation was sent by first-class mail, postage prepaid, this 12th day of February, 1997, to each of the following:

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