

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

In the Matter of Application of

AFRISPACE, INC.

For Authority to Construct, Launch, and
Operate a Subregional Africa and
Middle Eastern Satellite Sound
Broadcasting Transmission System

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File No. CSS-90-017;
IBFS File Nos. SAT-LOA-
19900723-00002; SAT-
AMD-19990125-00016

ORDER AND AUTHORIZATION

Adopted: December 17, 1999

Released: December 17, 1999

By Chief, Satellite and Radiocommunication Division, International Bureau:

Introduction

1. With this Order, we authorize AfriSpace, Inc. ("AfriSpace") to launch and operate a satellite ("AfriStar") in the geostationary-satellite orbit ("GSO") in order to provide Broadcasting-Satellite Service (Sound) ("BSS(Sound)") on a non-common carrier basis to Africa and the Middle East in the 1452-1492 MHz frequency band. This satellite will distribute multiple channels of radio programming originating in Africa, Europe, and the United States that can be received by simple, handheld radio sets by individuals in Africa and the Middle East. The new service has the potential to increase the variety of programming available in areas that already have service and to provide service to rural areas that have previously had no programming available.

Background

2. On July 23, 1990, AfriSpace, Inc. ("AfriSpace") filed an application for a private international satellite system to provide BSS(Sound) service. On June 21, 1991, AfriSpace was granted an experimental license for the AfriStar satellite to locate at the 12° W.L. orbital location and to use the 2310-2360 MHz band. Since 1991, the experimental license has been renewed every two years. Various amendments and modifications have been made by AfriSpace, including amendments to bring its requested operating frequencies into compliance with the outcome of the World Administrative Radio Conference 1992 (WARC-92) of the International Telecommunication Union.

3. On March 3, 1992, WARC-92 allocated the band 1452-1492 for facilities downlinking BSS(Sound) in Region 1. WARC-92 allocated other frequencies in the S-

band, 2310-2360 MHz, to provide that service in the United States and India.¹ The S-Band was chosen for BSS-Sound in the United States because its operation in the L-band would have caused unacceptable interference to Mobile Aeronautical Telemetry Service (“MATS”). In order to address those concerns, AfriSpace reached an agreement with the National Telecommunications and Information Administration (“NTIA”) and the Department of Defense to change the orbital location of its AfriStar satellite from 12° W.L. to 21° E.L. The Commission granted the requested modifications in orbital location and downlink frequency and AfriSpace successfully launched its AfriStar satellite under the modified experimental license on October 28, 1998.²

4. On January 22, 1999, AfriSpace amended its pending application for a permanent license to bring its requested orbital location into conformance with the FCC experimental license granted in 1991, as amended, as well as with its actual operating location, and to modify its application to include the use of the lower frequencies allocated to the BSS(Sound) service in Region 1, specifically 1452-1467 MHz. On March 4, 1999, the Commission issued a Public Notice, requesting comment on that amendment.³

5. In addition, in its amendment, AfriSpace describes its satellite operations and ownership and system structure. For example, AfriSpace states that a Regional Operations Center (“ROC”) in Washington, D.C. will manage the performance and operation of all AfriStar satellite systems, including the on-board communications payload. The Washington, D.C. center will control and facilitate the delivery and quality of the signals to the satellite and route them through the onboard communications payload to their appropriate downlink carriers. Because the orbital location of the satellite was moved to 21° E.L., the locations of the earth station uplinks had to be moved offshore. The Washington, D.C. control center is currently connected to earth stations in Bangalore, India and Port Luis, Mauritius by dedicated telephone lines.⁴ AfriSpace states that these stations are “largely unmanned and controlled directly from the ROC in Washington, D.C. and that local contractors provide maintenance of these stations on an “as needed” basis.⁵ AfriSpace further states that the ROC in Washington, D.C. is the control center for all operations of the satellite, it can turn off any transponder if there is a

¹ In 1997, Mexico was added to the footnote to use the S-Band for BSS(Sound). See Article 55.393 of Chapter S II of the ITU Radio Regulations.

² The experimental license authorizes AfriSpace to operate in the 1467-1492 MHz band, a portion of the 1452-1492 MHz. frequency band allocated for BSS(Sound) services in Region 1. See Amendment to AfriSpace Application at 10, n.29. AfriSpace initially requested these frequencies in the upper portion of the band because they were immediately available. When the technical issues surrounding the use of the lower portion of the band were resolved, AfriSpace amended its application to request all allocated frequencies, *i.e.*, 1452-1492 MHz. *Id.* at iii.

³ Application of AfriSpace, Inc. for Authority to Launch and Operate a Satellite Sound Broadcasting Transmission System, File No. CSS-90-017, [IBFS File No. SAT-LOA-19900723-00002]; Amendment File No. SAT-AMD-19990125-00016 (Call Sign 52367), Report No. SPB-149 (Mar. 4, 1999).

⁴ Amendment to AfriSpace application at 20.

⁵ Response of WorldSpace, Inc. and AfriSpace, Inc. to the Comments of AeroSpace and Flight Test Radio Coordinating Council, at 10 (filed May 3, 1999).

technical problem, can control individual channels on half of the transponders and is being equipped to relay U.S. originated programming.⁶

6. In its 1999 amendment, AfriSpace describes its ownership structure as follows: AfriSpace is a Washington, D.C. corporation that is 100 percent owned by WorldSpace, Inc., a Maryland corporation. WorldSpace, Inc. is 97.5 percent owned by U.S. shareholders and 2.5 percent owned by foreign shareholders. In December, 1996, WorldSpace, Inc. sold all its non-AfriSpace assets to an offshore entity, WIN, in exchange for capital and a sixteen percent equity stake in WIN. The cash proceeds of the sale are being used to finance AfriSpace's financial needs through the second quarter of 1999. Simultaneously, the shareholders and holders of options of WorldSpace, Inc. were granted rights to exchange their WorldSpace, Inc. shares for WIN shares, subject to FCC approval. AfriSpace states that, if all of these rights were to be exercised, WorldSpace would become a wholly-owned subsidiary of WIN. AfriSpace acknowledges that, before those rights could be converted, WorldSpace would have to file a transfer of control application.⁷

7. AfriSpace represented that no party has filed a petition to deny its application.⁸ AfriSpace addressed the interference concerns that NTIA and the U.S. Department of Defense raised by agreeing to move the satellite to a location from which the satellite cannot interfere with MATS operations in the United States. Although the Aerospace and Flight Test Radio Coordinating Council ("AFTRCC") initially opposed AfriSpace's application because of concerns about the coordination of another satellite to be operated by WorldSpace in the Caribbean and to be licensed by Trinidad,⁹ AFTRCC has withdrawn its opposition.¹⁰ Similarly, the NTIA, Department of Defense and Federal Aviation Administration have withdrawn¹¹ their opposition¹² to the grant of AfriSpace's license. The Commission issued a special temporary authority to allow AfriSpace to operate while these issues were being resolved.¹³

⁶ Letter from Counsel for AfriSpace to Staff, Satellite and Radiotelecommunication Division at 2 (Oct. 15, 1999).

⁷ Amendment to AfriSpace application at 29.

⁸ Amendment to AfriSpace application at 6.

⁹ Letter from AFTRCC to the Secretary, FCC (Apr. 8, 1999). *See also* Letter from General Aviation Manufacturer's Association to the Secretary, FCC ("GAMA") (May 3, 1999) (GAMA endorsed AFTRCC's April 8th letter).

¹⁰ *See* letter from Rex D. Miller, AFTRCC to Secretary, FCC (Dec. 14, 1999) and letter from Edward M. Bolen, GAMA to Secretary, FCC (Dec. 13, 1999).

¹¹ *See* letter from Gregory L. Rohde, Assistant Secretary for Communications and Information, Department of Commerce, to William Kennard, Chairman, FCC (Dec. 14, 1999) (withdraws the objections of all three federal agencies).

¹² Letter from Arthur L. Money, Department of Defense, Larry Irving, Assistant Secretary for Communications and Information, Department of Commerce and Steven J. Brown, Associate Administrator for Air Traffic Services, Federal Aviation Administration to William E. Kennard, FCC (May 17, 1999).

¹³ *See* letter from Thomas S. Tycz, Chief of the Satellite and Radiotelecommunication Division, International Bureau to Tara Giunta, Counsel for AfriSpace (Oct. 20, 1999) (granted initial 30-day special temporary authority) and letter from Tycz to Giunta (Nov. 19, 1999) (granted 30-day extension of the special temporary authority).

Discussion

8. We find that AfriSpace is legally and technically qualified to hold a satellite BSS(Sound) license and that it is in the public interest to grant such a license.

9. AfriSpace proposes to use satellite technology to bring additional sources of information, entertainment and news to the vastly underserved people and communities of Africa and the Middle East. AfriSpace notes that Africa has an average of .8 radios per household, compared to 5.4 radios per household in the United States and 3.0 in Europe. AfriSpace states that most people in the regions to be served by AfriStar satellite rely on radio as a primary means of accessing local and national information. AfriSpace further states that a small percentage of the population in these areas has access to international news and information resources through unreliable shortwave radio.¹⁴ The radio signals from the AfriStar satellite will be capable of being received by small, inexpensive portable radios. Spectrum on the AfriStar satellite will be leased to programmers that will use it to deliver a mix of commercial and non-commercial programming, including public service information supplied by international, regional and national health and welfare social agencies. AfriSpace represents that these programmers, including U.S. based programmers, will be able to use the AfriStar satellite to reach over one billion people in Africa and the Middle East which previously have largely been inaccessible to these programmers.¹⁵

10. AfriSpace states that the coordination process in accordance with the International Telecommunication Union ("ITU") procedures is far along. AfriSpace has followed the ITU requirements by filing the advance publication and coordination information in a timely manner. The advance publication information describes the general parameters of the satellite system, such as orbital location and frequencies. The coordination information contains detailed technical data and provides other countries an opportunity to comment on how the proposed system may affect existing and future radio facilities. During the last phase of the ITU process, notification, the final technical parameters of the operation are published. Seventeen countries have informed the ITU Radiocommunication Bureau that they intend to authorize the use of the AFRIBSS satellite system within their territories.¹⁶

11. Because AfriSpace will offer service on a non-common carrier, non-broadcast basis, it is not subject to the statutory foreign ownership restrictions in Section 310(b) of the Communications Act.¹⁷ In addition, even if Section 310(b) applied to AfriSpace's

¹⁴ Amendment to AfriSpace application at iii (filed Jan. 22, 1999).

¹⁵ Amendment to AfriSpace application at iv.

¹⁶ Amendment to AfriSpace application at D-23. (The seventeen countries are Angola, Botswana, Central African Republic, Democratic Republic of the Congo, Egypt, Gabon, Gambia, Ghana, Kenya, Lesotho, Liberia Mauritius, Senegal, Sierra Leone, South Africa, Togo and Uganda.) *see also* Letter from Richard B. Engleman, FCC to the Director, Radiocommunication Bureau, ITU (June 21, 1999).

¹⁷ 47 U.S.C. § 310b). *See also* American Mobile Radio Corporation, Application for Authority to Construct, Launch and Operate Two Satellites in the Satellite Digital Audio Radio Service, Order and

application, we would nevertheless conclude that AfriSpace's application is not barred. According to AfriSpace's application, it is wholly owned by WorldSpace, Inc, a closely held Maryland corporation. All of WorldSpace's shareholders holding more than ten percent of the voting stock are U.S. entities and the total foreign ownership is 2.5 percent of the voting stock. All of the directors of both WorldSpace and AfriSpace are U.S. citizens. AfriSpace's total disclosed foreign ownership thus amounts to 2.5 percent, well below the relevant twenty-five percent statutory benchmark. Any potential transfer of WorldSpace to WIN, a foreign corporation, does not make WIN a real-party-in-interest at this time. Future ownership rights, such as options and convertible stock warrants, are not considered cognizable until exercised.¹⁸ Additionally, AfriSpace has stated that the exercise of options held by WorldSpace shareholders would be subject to Commission approvals.¹⁹

12. AfriSpace had applied for a pioneer preference as early as 1991.²⁰ Congress subsequently enacted a sunset provision, terminating the Commission's authority to grant pioneer preferences.²¹ The Commission subsequently dismissed all pending pioneer preference requests, including AfriSpace's.²² The court of appeals issued a ruling on the pioneer preference issue that disposed of all pending appeals by granting a pioneer preference only to Qualcomm.²³ AfriSpace is not currently contending that it has any rights to obtain a pioneer preference for the AfriStar satellite²⁴ and, therefore, that issue is moot.

Conclusion

13. We find that AfriSpace is qualified to be a Commission licensee and, pursuant to Section 309 of the Communications Act, that grant of its application will serve the public interest, convenience and necessity. Thus, AfriSpace's authorization is granted, subject to the conditions described below.

Authorization, DA 97-2210 (rel. Oct. 16, 1997); *In re Application of MCI Telecommunications Corporation for Authority to Construct, Launch and Operate a Direct Broadcast Satellite System at 110 Degrees W.L.*, DA 96-1793 (rel. Dec. 6, 1996).

¹⁸ American Mobile Radio Corporation, Application for Authority to Construct, Launch, and Operate Two Satellites in the Satellite Digital Audio Radio Service, 13 FCC Rcd 8829, 8836 (IB 1997).

¹⁹ Amendment to AfriSpace application at 29.

²⁰ Amendment to AfriSpace application at 9.

²¹ Uruguay Round Agreements Act, Pub. L. No. 102-465, § 801, 108 Stat. 4809, 5050-51, codified at 47 U.S.C. § 309(j)(13)(F) (terminated the Commission's authority to grant pioneer's preferences after September 30, 1998). Congress subsequently advanced the sunset date from September 30, 1998 to August 5, 1997. See Balanced Budget Act of 1997, Pub. L. No. 105-33, § 3002 (a)(1)(F), 111 Stat. 251, 259 (1997), amending 47 U.S.C. § 309 (j)(13)(F).

²² Dismissal of All Pending Pioneer Preference Requests; Review of the Pioneer's Preference Rules, *Order*, 12 FCC Rcd 14006, 14009 (1997); *Memorandum Opinion and Order*, 13 FCC Rcd 11485 (1998).

²³ See *Qualcomm Incorporated v. FCC*, 181 F.3d 1370 (D.C. Cir., Jul. 23, 1999).

²⁴ Letter from Counsel for AfriSpace to Staff, Satellite and Radiotelecommunication Division (Nov. 16, 1999).

Ordering Clauses

14. IT IS ORDERED that the application File No. CSS-90-017, as amended,²⁵ IS GRANTED, and AfriSpace, Inc. IS AUTHORIZED to launch and operate a geostationary satellite at the 21° E.L. orbital location for the purpose of providing a satellite digital audio radio service to Africa and the Middle East, in the 1452-1492 MHz (space-to-earth) frequency band in accordance with technical specifications set forth in its application and consistent with our rules, unless specifically conditioned or waived herein.

15. IT IS FURTHER ORDERED that, with respect to the operations authorized herein, AfriSpace shall prepare the necessary information, as may be required, for submission to the ITU to initiate and complete the advanced publication, international coordination, and notification process of this space station in accordance with the ITU Radio Regulations. We also remind all licensees that no protection from interference caused by radio stations authorized by other administrations is guaranteed unless coordination procedures are timely completed or, with respect to individual administrations, coordination agreements are successfully completed. Any radio station authorization for which coordination has not been completed may be subject to additional terms and conditions as required to effect coordination of the frequency assignments of other administrations, 47 C.F.R. § 25.111(b).

16. IT IS FURTHER ORDERED that AfriSpace is obligated to comply with the applicable laws, regulations, rules and licensing procedures for those countries it proposes to serve.

17. IT IS FURTHER ORDERED that the license term for the space station is ten years and will begin on the date AfriSpace, Inc. certifies to the Commission that its operations fully conform to the terms and conditions of this authorization.

18. IT IS FURTHER ORDERED that AfriSpace is afforded thirty days from the date of the release of this Order and authorization to decline this authorization as conditioned.

²⁵ IBFS File Nos. SAT-LOA-19900723-00002; as amended by SAT-AMD-19990125-00016.

19. This Order is issued pursuant to Section 0.261 of the Commission's rules on delegated authority, 47 C.F.R. § 0.261, and is effective upon release. Petitions for reconsideration under Section 1.106 or applications for review under Section 1.115 of the Commission's rules, 47 C.F.R. §§ 1.106 and 1.115, may be filed within thirty days of the date of public notice of this Order (*see* 47 C.F.R. § 1.4 (b)(2)).

FEDERAL COMMUNICATIONS COMMISSION

Thomas S. Tycz
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International Bureau