

Before the
Federal Communications Commission
Washington, DC 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In re:

KaStarCom World Satellite, LLC

Amendment to Application for Authority to
Construct, Launch and Operate a
Geostationary Orbit Fixed Satellite Service
System in the Ka-band

File No. SAT-AMD-20010607-00050

Received

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Satellite Policy Branch
International Bureau

Petition to Deny of DirectCom Networks, Inc.

DirectCom Networks, Inc. ("DirectCom"), by counsel, requests that the Commission deny KaStarCom World Satellite, LLC's ("KaStarCom's") purported "amendment" to the above-referenced application with respect to its recent expression of interest for assignment of 500 MHz of uplink and downlink Ka-band spectrum at the 109.2° W.L. orbital location.¹ As demonstrated below, the Commission should not assign the 109.2° W.L. orbital location to KaStarCom in the current processing round because: (1) KaStarCom's request constitutes a "major" modification with respect to its pending application for two satellites and an initial request for authority to launch and operate a third satellite that properly requires processing in a third round, if at all; (2) the international orbital locations requested in KaStarCom's original application are available for

¹ Letter from Stephen E. Coran, Counsel to KaStarCom World Satellite, LLC, to Magalie R. Salas, Secretary, FCC (dated June 7, 2001) ("*KaStarCom Amendment*") (amending KaStarCom's application to state a preference for 500 MHz at 73° W.L., 500 MHz at 109.2° W.L. and 1000 MHz at 111° W.L.); *Satellite Policy Branch Information, Applications Accepted for Filing*, Report No. SAT-00073, File No. SAT-AMD-20010607-00050 (June 19, 2001) (Public Notice).

assignment to it; and (3) the public interest in a fair and efficient resolution of the second processing round supports assignment of the 109.2° W.L. orbital location to DirectCom.

I. BACKGROUND

DirectCom and KaStarCom are both applicants in the pending second Ka-band processing round, which was established with a filing window deadline of December 22, 1997. In its timely-filed application, DirectCom sought a license for 1 GHz of uplink and 1 GHz of downlink Ka-band spectrum for each of two satellites with preferred orbital locations of 93° W.L. and 103° W.L.² One business day before its application was filed, however, the Commission reassigned those slots to first round licensees.³ Consequently, DirectCom was forced to seek alternative slots that would satisfy its business needs. As explained in its application, DirectCom seeks to provide a wide range of innovative and inexpensive, high speed, switched data, video and video telephone satellite communications services to individuals and businesses throughout the United States using two CONUS satellites. Toward this end, DirectCom initially expressed an interest in the highly contested 107° W.L. and 117° W.L. orbital locations as acceptable alternatives to 93° W.L. and 103° W.L. In an attempt to free orbital resources for assignment to the second round applicants as part of

² *DirectCom Networks, Inc., Application for Authorization to Construct, Launch and Operate a System of Two Ka-Band Satellites in the Fixed Satellite Service*, File Nos. SAT-LOA-19971222-00214/215 (filed Dec. 22, 1997). DirectCom also filed two unopposed amendments to reflect changes in its ownership structure, which resulted from mergers of its parent company. *DirectCom Networks, Inc., Amendment to Application for Authorization to Construct, Launch and Operate a System of Two Ka-Band Satellites in the Fixed Satellite Service*, File Nos. SAT-AMD-20001222-00169/170 (filed Dec. 22, 2000); *DirectCom Networks, Inc., Amendment to Application for Authorization to Construct, Launch and Operate a System of Two Ka-Band Satellites in the Fixed Satellite Service*, File Nos. SAT-AMD-19990526-00057/58 (filed May 26, 1999).

³ *Assignment of Orbital Locations to Space Stations in the Ka-Band*, 12 FCC Rcd 22004 (1997) (Order) (“Reassignment Order”).

a potential settlement, however, early in this proceeding DirectCom informed the other applicants of its willingness to access less than 1 GHz of spectrum at one of its two requested slots if it received an assignment of 1 GHz of uplink and downlink spectrum at the 117° W.L. orbital location and the remaining available Ka-band spectrum at 109.2° W.L.⁴ Assignment of these two slots to DirectCom would make the full 1 GHz of spectrum at 107° W.L. available to another applicant. At this time, the second round applicants unanimously agree that DirectCom should receive the 117° W.L. orbital location for one of its two requested slots.⁵ Thus, there is no dispute with respect to assignment of this slot to DirectCom. KaStarCom's eleventh hour request for assignment of 109.2° W.L., however, creates a conflict with DirectCom.

In contrast to DirectCom's well-established interest, KaStarCom recently, and quite informally, indicated to the Commission a desire to receive a license for the 109.2° W.L. orbital location. In its 1997 application, KaStarCom requested authority to launch and operate two

⁴ Declaration of Toby DeWeese, Vice President Corporate Development, DirectCom Networks, Inc.(dated July 5, 2001) (attached as Exhibit 1). DirectCom believes that the remaining capacity at 109.2° W.L. would be better suited to effectuate its business plans than a 1 GHz assignment at any other full CONUS slot. *Id.*; see Letter of CAI Data Systems, Inc., DirectCom Networks, Inc. and Pegasus Development Corporation to Magalie R. Salas, Secretary, FCC (dated Aug. 11, 2000) ("*Settlement Plan A*"). WB Holdings 1, LLC holds a first round license for 500 MHz of uplink and downlink spectrum at 109.2° W.L.

⁵ See *Settlement Plan A*; Letter of CAI Data Systems, Inc., Pacific Century Group, Inc., TRW Inc., Celsat America, Inc., Hughes Communications, Inc., Lockheed Martin Corporation, and KaStarCom World Satellite, LLC to Magalie R. Salas, Secretary, FCC (dated Aug. 8, 2000) ("*Settlement Plan B*"); Letter of CAI Data Systems, Inc., Pacific Century Group, Inc., TRW Inc., Celsat America, Inc., Hughes Communications, Inc., Lockheed Martin Corporation, KaStarCom World Satellite, LLC and PanAmSat Corporation to Magalie R. Salas, Secretary, FCC (dated Nov. 1, 2000) ("*Revised Settlement Plan B*").

satellites in the preferred orbital locations of 175° W.L. and 52° E.L.⁶ In support of its request, KaStarCom explained that:

the satellite location at 175° W.L. will provide coverage over the Pacific Rim including Japan, Korea, China, Philippines, Indonesia, Australia and New Zealand, while the satellite located at 52° E.L. will provide coverage over Europe, Western Russia and selected areas of China, Southeast Asia, India and Africa. The two orbital locations will permit KaStarCom to provide service in a significant portion of Region B.⁷

This proposed international business plan and orbital location preference for two satellites remained unchanged in the Commission's files for more than three years. On June 7, 2001, however, KaStarCom's counsel submitted a letter seeking for the first time authority to launch and operate *three* satellites in orbital locations capable for providing *U.S.* service, including the 109.2° W.L. orbital location. While referred to as a "preference for spectrum," the letter is more appropriately considered a major amendment to KaStarCom's pending second round applications and a request for initial "authority to launch and operate" a third satellite and, therefore, should be withheld pending a third processing round.

II. THE COMMISSION SHOULD NOT ASSIGN THE 109.2° W.L. ORBITAL LOCATION TO KASTARCOM

KaStarCom's last-minute application for a new satellite at 109.2° W.L. fails to comply with the Commission's basic procedural rules and applicable precedent; repudiates without reason or justification its original request for two clearly available international orbital assignments; and, if

⁶ *KaStarCom World Satellite, LLC, Application for Authority to Construct, Launch and Operate a Geostationary Orbit Fixed Satellite Service System in the Ka-band*, File No. SAT-LOA-19980312-00018 (Dec. 22, 1997) ("*KaStarCom Application*").

⁷ *KaStarCom Application*, at 1.

considered, would be unfairly prejudicial to DirectCom. Accordingly, the Commission should deny KaStarCom's request with respect to 109.2° W.L. and award that location to DirectCom. As shown below, such action would yield demonstrable public interest benefits.⁸

A. KaStarCom's Request for the 109.2° W.L. Orbital Location Is A Major Amendment And Application For New Satellite That Should Be Processed, If At All, In a Third Round

KaStarCom's decision to transform its application for two satellites for international service into a request to provide domestic service from three CONUS locations, including the 109.2° W.L. slot, is a "major" amendment and application for new satellite that properly requires processing in a third round.⁹ Under Section 25.116(b) of the Commission's rules, "increas[ing] the potential for interference, or chang[ing] the proposed frequencies or orbital locations to be used" of an application is a "major" amendment.¹⁰ When a major amendment is submitted after a cut-off date, the application is considered to be newly filed, and therefore loses its status in the current processing group.¹¹ The Commission's rules allow exemptions from this cut-off rule where the

⁸ To the extent that KaStarCom files an Opposition to this Petition to Deny that includes for the first time information intended to support assignment of 109.2 ° W.L., good cause would exist to allow DirectCom to file a reply.

⁹ To the extent the Commission treats the letter signed by KaStarCom's counsel as an "amendment," it should be rejected for failure to comply with other procedural requirements. 47 C.F.R. § 25.112. The letter submitted by KaStarCom's counsel seeks to change orbital locations for two satellites and to launch and operate a third satellite without filing the appropriate forms, fees and substantive support associated with such requests. In particular, KaStarCom should have filed a FCC Form 312 signed by the applicant, updated technical information or a certification that the technical information previously filed has not changed, a FCC Form 159 and paid \$2,670.00 for amendment of its pending applications and \$93,375.00 for authority to launch and operate a third satellite. 47 C.F.R. § 1.1107 and 25.116(d).

¹⁰ 47 C.F.R. §§ 25.116(b) and 25.116(b)(1).

¹¹ 47 C.F.R. § 25.116(c).

proposed change “resolves frequency conflicts with authorized stations or other pending applications but does not create new or increased frequency conflicts”¹² or “does not create new or increased frequency conflicts, and is demonstrably necessitated by events which the applicant could not have reasonably foreseen at the time of filing.”¹³ Applying these rules to the facts presented here, the Commission should deny KaStarCom’s amendment with respect to the 109.2° W.L. orbital location.

KaStarCom’s letter from counsel seeks to change two orbital locations and add a third satellite. As noted above, KaStarCom’s 1997 application sought a license to provide international Ka-band service using two satellites located in non-CONUS orbital locations (175° W.L. and 52° E.L.). Through informal correspondence with the FCC, KaStarCom now seeks to provide domestic Ka-band service using three satellites located in CONUS orbital locations (73° W.L., 109.2° W.L. and 111° W.L.). Because KaStarCom seeks substantially to relocate and increase the number of proposed satellites, its recent letter does not merely “re-affirm” prior expressions of interest.¹⁴ It is,

¹² 47 C.F.R. § 25.116(c)(1); see *Application of Orbital Communications Corporation for Authority to Construct, Launch, and Operate a Non-Voice, Non-Geostationary Mobile-Satellite System*, 9 FCC Rcd 6476, 6481 (1994) (Order and Authorization), *recon. denied*, 10 FCC Rcd 7801 (1995) (Memorandum Opinion and Order on Reconsideration) (concluding that minor frequency changes incorporated to resolve frequency conflicts with another applicant satisfy the requirements of Section 25.116(c)(1)).

¹³ 47 C.F.R. § 25.116(c)(4); see *Application of STARSYS Global Positioning, Inc. for Authority to Construct, Launch and Operate a Satellite System in the Non-Voice, Non-Geostationary Mobile-Satellite Service*, 11 FCC Rcd 1237, 1240 (1995) (Order and Authorization) (finding that the availability of new spectrum for a service did not present “demonstrably necessary events” required for a waiver pursuant to Section 25.116(c)(4) and explaining that the amendment did not satisfy the requirements of Section 25.116(c)(1) because, as a result of the new spectrum availability, there were no remaining domestic frequency conflicts for the amendment to resolve) (“*Starsys Order*”).

¹⁴ *KaStarCom Amendment*, at 1.

instead, a “major” amendment under Section 25.116 of the Commission’s rules and an initial request for a license to operate a third satellite.

Moreover, an exemption from the “cut-off” rules is not warranted because KaStarCom’s proposed orbital change will create, not resolve, frequency conflicts. KaStarCom’s request for the 109.2° W.L. orbital location creates a direct frequency conflict with DirectCom. In order to grant KaStarCom’s recently-expressed preferences, the Commission would be required to deny DirectCom’s long-standing request for the same orbital location. Consequently, the Commission’s rules prohibit KaStarCom from intruding into the most congested, and contested, part of the orbital arc.

Furthermore, while DirectCom’s preference for the 109.2° W.L. orbital location was necessitated by the FCC’s last minute decision to re-assign the 93° W.L. and 103° W.L. orbital locations to first round licensees immediately prior to the second round cut-off date,¹⁵ no such compulsion precipitated KaStarCom’s attempt to relocate its proposed satellites to the opposite side of the planet. The record is devoid of any explanation why KaStarCom now proposes to abandon its long-stated preferred orbital locations.¹⁶ Whatever the basis of the decision, however, it is within KaStarCom’s control and business judgment. Accordingly, KaStarCom’s desire to pursue the

¹⁵ Indeed, the Commission did not explain its decision to re-assign these orbital locations to first round licensees, thus making them unavailable for second round applicants, until three years and a half years after reassignment. *Assignment of Orbital Locations to Space Stations in the Ka-Band*, 2001 FCC LEXIS 2087 (Apr. 17, 2001) (Memorandum Opinion and Order).

¹⁶ KaStarCom’s last minute letter notes that WB Holdings 1, LLC already holds a license in the Ka-band for the 109.2° W.L. orbital location and, thus, KaStarCom “envisions” that it would jointly construct and own a single satellite with the co-located licensee at 109.2° W.L. *KaStarCom Amendment*, at 1. Of course, DirectCom would have the same opportunity as KaStarCom to negotiate with a co-located Ka-band licensee to combine satellite resources.

109.2° W.L. orbital location was not “necessitated by events which the applicant could not have reasonably foreseen at the time of filing.”¹⁷

Under analogous circumstances, the FCC has refused to grant an exemption to an applicant seeking to add spectrum/orbital resources and, accordingly, denying KaStarCom’s request with respect to 109.2° W.L. would comply with applicable precedent. The Commission rejected a request by STARSYS Global Positioning, Inc. (“Starsys”) to add frequencies to its pending application on the grounds that the addition of spectrum constituted a “major” amendment under Section 25.116 for which no exemption was warranted. The Commission determined that Starsys’ request could “increase frequency conflicts” because the spectrum “has been applied for by [other] applicants and may be needed to permit additional competitors to provide services.”¹⁸ The FCC further concluded that while Starsys “may not have foreseen the availability of the [additional spectrum] at the time it filed its initial application,” it could operate its system using the frequencies originally applied for and thus the availability of the spectrum did not constitute “demonstrably necessary events” sufficient to support a waiver.¹⁹ Like Starsys’ attempt to add spectrum, KaStarCom’s request to relocate a proposed satellite to the 109.2° W.L. orbital location creates a conflict with a pending applicant and, as noted below, sufficient international orbital locations are available for KaStarCom to operate its original proposed two satellite system. Consequently, since a change of spectrum or orbit is equally deemed a major amendment pursuant to Section 25.116(b),

¹⁷ *Starsys Order*, 11 FCC Rcd at 1240.

¹⁸ *Id.*

¹⁹ *Id.*

the Commission's rules and the precedent require KaStarCom's request for a license at 109.2° W.L. to be considered, if at all, in a subsequent processing round.

B. The Commission Could Grant KaStarCom The International Orbital Locations Requested In Its Initial Application

As an alternative to initiating a third processing round, the Commission could reject the recently-filed letter from counsel and assign KaStarCom the orbital locations specified in its original application. Both the 175° W.L. and 52° E.L. orbital locations are available for assignment in the second round. Indeed, KaStarCom's interest in the 175° W.L. orbital location is uncontested.²⁰ While Lockheed Martin also applied for the 52° E.L. orbital location, this insignificant conflict could be resolved by assigning either KaStarCom or Lockheed Martin the nearly identical 50° E.L. or 54° E.L. orbital location. Thus, the FCC has at its disposal the ability to grant KaStarCom the exact orbital locations initially applied for without prejudicing any other applicant and, thus, facilitate prompt licensing of the second round applicants.

C. The Public Interest Supports Assignment of 109.2° W.L. to DirectCom

Furthermore, the Commission should not accommodate KaStarCom's recent expression of interest in the 109.2° W.L. because the public interest in efficient spectrum management supports assignment of the remaining Ka-band spectrum at that slot to DirectCom. While its initial application sought 1 GHz assignments of Ka-band spectrum at each of two domestic orbital locations, DirectCom has expressed its willingness to accept a 1 GHz assignment at one domestic orbital location, 117° W.L., and all remaining uplink and downlink Ka-band spectrum available for assignment at the 109.2° W.L. orbital location. This accommodation has been made to facilitate

²⁰ See *Settlement Plan A*; *Settlement Plan B*; and *Revised Settlement Plan B*.

prompt resolution of the second round. Without the assignment at 109.2° W.L., however, DirectCom would seek to enforce its application preference for two 1 GHz full CONUS orbital allotments. Accordingly, assignment of 109.2° W.L. to DirectCom would make available an additional 1 GHz full CONUS orbital location for assignment to another applicant. Especially in light of the congestion in the Ka-band, every slot available becomes very important to a fair and prompt resolution of the round. Thus, to promote a fair and efficient assignment of scarce Ka-band spectrum in the already congested domestic arc, the Commission should grant the 109.2° W.L. orbital location to DirectCom.

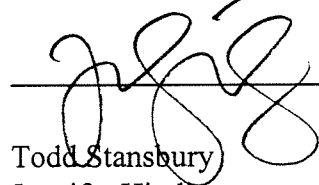
III. CONCLUSION

For these reasons, DirectCom respectfully requests that the Commission deny or postpone to a third round KaStarCom's amendment with respect to the 109.2° W.L. orbital location. Alternatively, the Commission could assign to KaStarCom the orbital resources requested in its original application.

Respectfully submitted,

DIRECTCOM NETWORKS, INC.

By: _____



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July 5, 2001

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **Petition to Deny of DirectCom Networks, Inc.** was delivered via first-class mail, postage prepaid unless otherwise indicated, on this 5th day of July, 2001 to:

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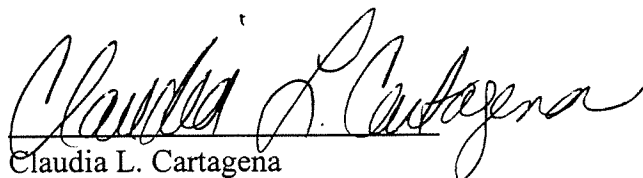
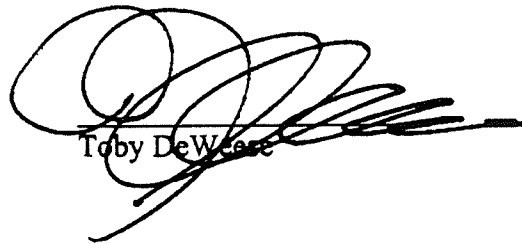

Claudia L. Cartagena

EXHIBIT 1

DECLARATION OF TOBY DEWEESE

I, Toby DeWeese, hereby declare under penalty of perjury as follows:

1. I am Vice President Corporate Development of DirectCom Networks, Inc., applicant for two full-CONUS satellites in the Ka-band.
2. I have reviewed the foregoing "Petition to Deny of DirectCom Networks, Inc.," and the facts contained therein are true and correct.



Toby DeWeese

July 5, 2001