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FEDERAL COMMUNICATIONS COMMISSION
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Policy Branch
International Bureau

SAT-LOA-2005311-0061

In the Matter of)
)
Afrispace, Inc.)
)
Application for Authority)
to Launch and Operate Afristar-2)

PETITION TO DENY

Ondas Spain, SL ("Ondas") hereby Petitions to Deny the above-captioned application. A review of the Afrispace application reveals that it is an application to provide Satellite-Digital Audio Broadcasting ("S-DAB") service to Europe. Ondas believes that the development of S-DAB in Europe is best determined by European regulatory authorities and as such urges the FCC to reject the Afrispace application. Ondas has a vital interest in the outcome of this proceeding since it currently is developing a European S-DAB system.

I. Background

Afrispace currently operates Afristar-1, a Broadcasting Sound Service ("BSS") satellite system in the 1452-1492 MHz band serving the Middle East and Africa. This satellite was licensed by the FCC in 1999.¹ On July 7, 2004 Afrispace submitted an application to the FCC to launch and operate Afrispace-2 and to co-locate it at 21° E.L. with its Afristar-1 satellite. Afrispace filed the application as an application for a replacement satellite. Evidently, after reviewing the technical specifications of Afristar-2, the FCC determined that the gain contours for Afristar-2² were quite different than Afristar-1 in that Afristar-2 is optimized to serve Europe

¹ See Afrispace, Inc., 15 FCC Red 1632 (1999).

² See Afristar-2 Application, Figure 3, Exhibit A at 9.

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AfrISpace, Inc.
AFRISTAR-2

not Africa. Consequently, the FCC rejected Afrispace's request to be considered a replacement satellite. When it was placed on Public Notice on September 24, 2004 the FCC determined "that this is an application for a new satellite."³ On March 4, 2005, the FCC dismissed the Afristar-2 application as technically defective. Afrispace subsequently resubmitted its application which was placed on Public Notice on March 18, 2005.⁴ A review of this newly filed Afrispace application reveals quite clearly that it is designed to control S-DAB spectrum over Europe. As discussed below, Ondas believes the development and implementation of European S-DAB service should be governed by European regulators not the FCC.

II. Afristar-2 is not a Replacement Satellite

Historically, the FCC has provided a replacement expectancy to replacement satellites that had technical characteristics consistent with those of the satellite being retired. However, the Commission recently noted that any attempt to expand coverage of a replacement satellite would not be included in the replacement expectancies.⁵ Here, there is no doubt that Afristar-2 is not a replacement satellite. Afrispace provides in the Afristar-2 application the contours for the northwest beam and northeast beam of Afristar-1. The center of both of these beams are in central Africa with some limited spillover into southern Europe. On the other hand, the Afristar-2 gain contours are centered over Western Europe with limited African coverage. In its attempt to argue that this is a replacement satellite, Afrispace states that with the launch of Afristar-2, Afrispace will be able to conserve power on Afristar-1 and thus prolong satellite lifetime. What is confounding about this argument is that according to Afrispace's application, Afristar-2 will

³ See FCC Public Notice, Report No. SAT-00243, September 24, 2004.

⁴ See FCC Public Notice, Report No. SAT-00279, March 18, 2005.

⁵ See Amendment of the Commission's Space Station Licensing Rules and Policies, First Report and Order and Further Notice of Proposed Rulemaking, IB Docket No. 02-34, 18 FCC Rcd 10760 (2003) at para 258.

have very limited capability to serve Africa and is optimized to serve Europe. This is nothing more than an attempt by Afrispace to use the FCC to get a foothold in Europe. This should be treated for what it is—a new application to provide S-DAB service to Europe.

III. The FCC has no obligation to consider Afrispace's European Proposal

The Afristar-2 application presents the FCC with a novel issue. Should the FCC be licensing BSS systems not serving the United States. As the Commission is aware, the WTO and DISCO II obligations do not extend to the BSS. Thus, the Commission has no affirmative obligation to consider a proposal for European S-DAB service. The question then presented is whether it is sound public policy for the FCC to assert jurisdiction over Afrispace-2.

IV. European Regulatory Authorities should license and establish S-DAB System

In 1992 ITU allocated 23 blocks of L-Band spectrum within the 1452-1492 MHz band on a co-primary basis with terrestrial DAB for the BSS. The frequency blocks designed to a DAB multiplex (per EIS 300.401) are each 1.536 MHz wide with central frequencies separated by 1.712 MHz. In 1995 the Conference of European Postal and Telecommunications Administrators ("CEPT") adopted an allotment plan for the introduction of terrestrial DAB in the 1457-1467.5 MHz band ("1995 Wiesbaden Agreement"). In 2002 CEPT adopted a second allotment plan in the introduction of terrestrial DAB in the 1467.5-1479.5 MHz band ("2002 Maastricht Agreement"). In October 2003, CEPT adopted a decision that designates the frequency band 1475.5-1492 MHz for use by S-DAB systems in Europe.⁶ As the above demonstrates, European regulators have been actively considering S-DAB issues during the last ten years. They have the knowledge, expertise and jurisdiction to best determine how S-DAB should be introduced in Europe. Moreover, as the Commission is aware there are a myriad of

⁶ See ECC Decision on Satellite Audio Broadcasting Systems, ECC/OEC/(03) 02, 17 October 2003.

broadcast, equipment and related regulations in Europe that will impact the introduction of S-DAB. Overlapping U.S. and European regulation of this service will not serve anyone's interest.

Afristar in its application seeks to launch and operate a geostationary satellite to serve Europe. Ondas has taken a different approach. Based on its research and analysis, Ondas believes that a geostationary satellite will have limited capabilities in Europe because of the high latitudes of most European countries. These high latitudes result in poor look angles inhibiting the service area and increasing the need for repeaters. Thus, Ondas proposes to launch a highly elliptical orbit S-DAB system. However, as a result of the existing priority in RR22.2 of the ITU regulations, the FCC's grant of Afristar-2's application could preclude the introduction of the Ondas system.⁷ This would essentially put the FCC in a position of making choices regarding European S-DAB implementation without a full record. The FCC does not have any information on the service requirements, technical requirements or market needs in Europe to make a determination as to which is the superior technology.

Here, Commission grant of the Afrispace application may have devastating impact on Ondas and the introduction of S-DAB in Europe. The net effect of an FCC decision granting the Afristar-2 application could be to preclude implementation of the Ondas system and limit Europeans to a geostationary S-DAB system. At a minimum, FCC consideration of this application will create significant jurisdictional issues between the U.S. and Europe resulting in the delay of the introduction of this important new service to European listeners.

Based on the above, Ondas urges the FCC to reject the Afristar-2 application. However, if the FCC determines that it has jurisdiction over this service, Ondas would like the opportunity

⁷ As the Commission is aware, CEPT has developed allotment plans for terrestrial DAB in 1452-1479.5 MHz band. Thus, only the 1479-1492 MHz is clearly available at this time for S-DAB in Europe. Based on the U.S. experience, 12.5 MHz is a minimum necessary to implement a viable S-DAB system.

to submit its own application and make the case why its technical approach is superior to the Afrispace approach.

V. Conclusion

For all the above reasons, Ondas urges the Commission to reject the Afrispace-2 application.

Respectfully submitted,

/s/

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