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Federal Communications Commission  
Office of Secretary

February 27, 2006

**VIA HAND DELIVERY**

Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 Twelfth Street, S.W.  
Washington, D.C. 20554

Re: **Ondas Reply to AfriSpace Opposition to Application for Review  
IBFS File No. SAT-LOA-20050311-00061**

Dear Ms. Dortch:

Transmitted herewith, on behalf of Ondas Spain, S.A. ("Ondas"), is a Reply pleading which responds to the February 17, 2006 "Opposition" of AfriSpace, Inc., in this docket.

Previously, on February 2, 2006, Ondas filed an Application for Review of the International Bureau's *Order and Authorization* granting AfriSpace, Inc.'s above captioned application for authority to launch and operate a new satellite, AfriStar-2, for the provision of Broadcasting Satellite Service (sound) to Europe and Africa in the 1452-1492 MHz band.

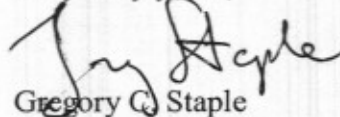
The Application and Reply explain why, in authorizing AfriStar-2, the Bureau erred in waiving the established processing rules for Non-Geostationary Orbit ("NGSO")-like satellites services which require the Bureau to invite competing license applications to use the radio spectrum and to consider them concurrently with any initial license application. Ondas is developing a competing satellite radio service for Europe with the support of Michigan-based Delphi Corp., and had requested the opportunity to file a competing application in the event that the Bureau did not classify Afri-Star-2 as a replacement satellite. The Bureau's action cut-off that opportunity and also potentially placed a greater international coordination burden on Ondas by according a higher ITU priority to AfriStar-2 as well as AfriStar-1.

Upon determining that AfriStar-2 could not legally be classified as a replacement satellite for AfriStar-1 and thus processed on an expedited basis, the Bureau should have either: (1) held the application in abeyance and, by public notice, initiated a modified satellite processing round to invite and concurrently consider competing applications; or (2)

dismissed AfriSpace's application as the Bureau had done twice before due to technical defects and the failure to request a rule waiver. Failing that, the Bureau should have limited any grant of authority to that needed for AfriSpace to operate a replacement satellite for AfriStar-1 with approximately the same service parameters focused on Africa, rather than granting AfriSpace vastly augmented operating rights for AfriStar-2 to serve new markets across Europe.

Please direct any questions concerning this filing to the undersigned.

Very truly yours,



Gregory C. Staple

*Counsel for Ondas Spain, S.A.*

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

|  |   |                                    |
|--|---|------------------------------------|
| In the Matter of                         | ) |                                    |
|  | ) |                                    |
| AFRISPACE, INC.                          | ) | IB File No. SAT-LOA-20050311-00061 |
|  | ) |                                    |
| Application for Authority to Launch      | ) | Call Sign: S2666                   |
| and Operate a Replacement Satellite,     | ) |                                    |
| AfriStar-2, at 21° E.L. and to Co-locate | ) |                                    |
| It with AfriStar-1                       | ) |                                    |

**ONDAS REPLY TO AFRISPACE OPPOSITION**

This Reply is filed on behalf of Ondas Media, S.A. ("Ondas") in response to the February 17, 2006 "Opposition" of AfriSpace, Inc. ("AfriSpace").

The main premise of Ondas' Application for Review is unchallenged by AfriSpace. The Opposition does not rebut Ondas' showing that a second BSS (sound) satellite, even at 21° E, need not interfere with the operations of AfriStar-1 because, *inter alia*, the majority of the 2.5 MHz used by this satellite is divided between two spot beams focused on Africa and the Middle East, thus affording sufficient geographic separation for the reuse of this spectrum by a second system in Europe. Curiously, AfriSpace also fails to explain why a second BSS (sound) satellite could not be coordinated for Europe within the 94% of the spectrum (37.5 MHz) in the 1452-1492 BSS (sound) band not occupied by AfriStar-1. Accordingly, Ondas reiterates that it was arbitrary for the Bureau to waive the NGSO-like processing rules and approve AfriStar-2 without notice and soliciting competing applications.

Instead of addressing these issues, AfriSpace contends that: (1) Ondas is not a *bona fide* satellite radio competitor; (2) Ondas has not been aggrieved and lacks standing; (3) Ondas has misunderstood the scope of the AfriStar-1 authorization; (4) the Bureau's waiver is justified by past precedent; and (5) no Ondas satellite could be coordinated with the Mobile Aeronautical Telemetry Service (MATS). Ondas is wrong on all counts.

## **I. Background on Ondas.**

Ondas Spain, S.L. was incorporated in Madrid, Spain in May 2004 and changed its name from Ondas Spain to Ondas Media, S.A. in late 2005.<sup>1</sup> Ondas is planning to be the first and premier pan-European satellite radio provider of subscription-based multilingual music, news, sports, video, telematics and other data services. Though still a development stage business, Ondas has already raised significant capital, established a world-class management team, entered into strategic industrial partnerships,<sup>2</sup> and established a detailed technical program.

Ondas currently plans to launch four satellites into Highly Elliptical Orbit ("HEO") starting in 2008. In Ondas' view, the quality of radio services that may be provided by this system architecture cannot be achieved by geostationary orbit ("GSO") systems in Europe. (However, Ondas has not ruled out an application for GSO service in some markets.) In the Summer of 2004, Ondas submitted an application to the Spanish regulatory authorities for its HEO system. That led the Spanish government to initiate a coordination process at the ITU.<sup>3</sup> In 2005, Ondas completed the process under Spanish law for obtaining the appropriate authorizations to implement its system.

## **II. Ondas Participated Below and Has Standing.**

The *AfriStar-2 Order* acknowledged that Ondas participated below by filing a timely Petition to Deny the *AfriStar-2 Application*.<sup>4</sup> The Bureau treated Ondas' filing as a Petition to Deny and, notwithstanding Ondas' inadvertent lack of service, AfriSpace had actual notice of the Petition to Deny and thus was in no way prejudiced. Further, even if Ondas' pleading was not a formal Petition to Deny, Ondas still has standing to file an Application for Review because Section 1.115(a) only requires a party

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<sup>1</sup> Undersigned counsel had not been informed of this name change and inadvertently filed the Application for Review in the name of Ondas Spain, S.L.

<sup>2</sup> In December 2005, Ondas entered into a comprehensive strategic partnership with a U.S. equipment leader, Delphi Automotive Systems, LLC, Electronics & Safety Division ("Delphi") for the development of receiver and antenna technology for the European market. See e.g., "Delphi Bets on New Satellite Market" by Sarah McBride, *Wall Street Journal*, January 4, 2006, p. B5.

<sup>3</sup> See ITU SNS No. 104540502 submitted by the Kingdom of Spain, September 9, 2004, WIC 2534, December 14, 2004.

<sup>4</sup> AfriSpace, Inc., *Order and Authorization*, 21 FCC Rcd 17, DA 06-4, released January 3, 2006 ("*Afristar-2 Order*"). In addition to referencing Ondas' "Petition to Deny" throughout the *Order* (see, e.g., Section F of the *Order* captioned "Petition to Deny"), the Bureau, in the Ordering Clauses, denied the "Petition to Deny" filed by Ondas.



to have “participated” below. Ondas met this standard under the *Vodafone* case<sup>5</sup> because, in contrast to the petition in *Vodafone*, Ondas directly challenged the merits of the AfriStar-2 application. That qualified Ondas as a participant even if its Petition were to be classified as an Informal Objection.

As a *bona fide* competitor in the European satellite radio market, Ondas is unquestionably aggrieved by the Bureau’s decision to grant AfriSpace a significantly larger footprint over Europe.<sup>6</sup> The Bureau’s decision (a) effectively foreclosed competing applications at the FCC for the non-replacement footprint of AfriStar-2, and (b) raised new hurdles to coordination because a later licensed Spanish (or other) operator will be required to coordinate with AfriStar-2 as well as AfriStar-1. In other words, even assuming *arguendo* that any Ondas ITU filing will be secondary, Ondas will be aggrieved by having to also coordinate with a second non-replacement AfriSpace satellite.<sup>7</sup>

### III. AfriSpace Has Not Rebutted Ondas’ Technical Showing.

AfriSpace has not rebutted the interference analysis presented by Ondas.<sup>8</sup> Rather, AfriSpace says that Ondas has (a) misunderstood the bandwidth and geographic coverage authorized for AfriStar-1; and (b) raises new facts on which the Bureau has been afforded no opportunity to pass. These arguments are both inconsistent and wrong. First, despite AfriSpace’s claims, AfriStar-1’s current authorization is limited to a small portion – approximately 2.5 MHz – of the 1452–1492 MHz band.<sup>9</sup> Likewise, the Bureau expressly authorized AfriStar-1 to serve “Africa and the Middle East”<sup>10</sup> and thus ruled that

<sup>5</sup> *Vodafone AirTouch, plc and Bell Atlantic Corporation*, 20 FCC Rcd 6438, FCC 05-52 (2005) (“*Vodafone*”).

<sup>6</sup> Contrast *WINV, Inc.*, 14 FCC Rcd 2032 (1998) and *Pan American Satellite Corporation*, 60 Rad. Reg. 2d 398 (1986), which are both cited by AfriSpace. Unlike the applicant in *WINV, Inc.*, Ondas has already filed a competing application with the Spanish government which may be impacted if it also must be coordinated with AfriStar-2. *PanAmSat* is also distinguishable because, unlike here, the applicant was not a party to the underlying licensing proceeding and was not requesting review of the licensing proceeding.

<sup>7</sup> See e.g., Opposition, p 11, n.32: “... the AfriStar-2 satellite would have priority over any later-filed geostationary satellites – and over all non-geostationary satellites, whether later-filed or not.”

<sup>8</sup> See Ondas Application, pp 10-11, and Exhibit B, ¶¶ 9-11. See also the Supplementary Engineering Affidavit appended as Exhibit A, hereto.

<sup>9</sup> See *AfriSpace, Inc., Order and Authorization*, 15 FCC Rcd 1632, ¶14 (Int’l Bur. 1999) (“*AfriStar-1 Order*”), authorizing AfriStar-1 to operate in the 1452-1492 MHz band “in accordance with technical specifications set forth in its applications and consistent with our rules, unless specifically conditioned or waived herein.” Attachment 2 to the AfriStar-1 Application, titled “System Technical Description,” expressly states at page 1 that the “AfriStar system is utilizing approximately 2.5 MHz of radio frequency (“RF”) spectrum.” AfriStar-2 is authorized to use 2.6 MHz. *AfriStar-2 Order*, ¶ 35.

<sup>10</sup> *AfriStar-1 Order*, ¶ 14.

AfriStar-2 was not a “replacement satellite” because “the footprint of AfriStar-2 is centered over Europe [not Africa or the Middle East] and would permit greater signal strength into Europe, as well as the western parts of Russia, than that currently provided by AfriStar-1.”<sup>11</sup>

AfriSpace is therefore wrong in claiming that (Opposition, p.14) “because AfriStar-1 blankets its coverage area in its stipulated bands, Ondas cannot coordinate a BSS (sound) system to provide service in Europe.” AfriStar-1 does not “blanket its coverage area in its stipulated bands.” The satellite operates in just 6% of the 40 MHz BSS (sound) band, and this comparatively small swatch of spectrum (2.5 MHz) is divided between three geographically distinct spot beams, so that only approximately 850 kHz is assigned to the North African beam which spills out into Europe. In these circumstances, the Bureau could not *a priori* determine that any other BSS (sound) satellite for the same orbital arc would automatically interfere with or fail coordination given that the ITU Constitution (Art. 44) requires states to use the minimum essential spectrum for a service and to try and accommodate other systems during coordination. (See *e.g.*, RR S9.51 and S9.52)

AfriSpace is also wrong in arguing that the Commission cannot rely upon the foregoing analysis because the underlying facts were unavailable to the Bureau. The operating parameters for AfriStar-1 – frequencies, spot beams, service foot prints – were docketed more than six years ago in the AfriStar-1 application. And the Bureau cited these parameters in concluding – albeit wrongly – that it could not authorize another BSS (sound) satellite in the 1452–1492 MHz band.<sup>12</sup>

#### **IV. The Bureau’s Waiver Is Not Supported By Prior Cases.**

The AfriStar-2 waiver is not supported by the Bureau’s prior decision to waive the NGSO-like processing rules in considering MSV’s application for a co-frequency South American Mobile Satellite Service (MSS) system.<sup>13</sup> The MSV waiver stemmed from the Bureau’s finding that there would be

<sup>11</sup> *AfriStar-2 Order*, ¶ 8.

<sup>12</sup> *Id.* at ¶ 13. In so doing, the Bureau also violated the notice provision of Section 309 of the Communications Act and Section 22.157 of the Rules by granting the application based on a previously unannounced and unpublished interference standard that no interested party had a chance to comment upon.

<sup>13</sup> *Mobile Satellite Ventures Subsidiary LLC, Order and Authorization*, 20 FCC Rcd 479 (Int’l Bur. 2005).

insufficient geographic separation between the service area of any South American MSS satellite and MSV's North American operations to permit frequency reuse. Here, by contrast, as shown in AfriSpace's own service map,<sup>14</sup> there is a large territorial separation between Ondas' proposed European market and the African/ Middle East spot beams of AfriStar-1.<sup>15</sup>

The EarthWatch case, also cited by AfriSpace, was decided in 1995 before the FCC had adopted formal rules for processing NGSO satellites and hence, there were no rules to waive. In addition, the Bureau's grant to EarthWatch did not have a preclusive effect; the use of LEO downlink spectrum by EarthWatch "must be on an equal status to all other authorized primary users of the frequency band."<sup>16</sup> Likewise, in *Lockheed Martin*, the Bureau waived the NGSO-like processing rules only because Lockheed's system had been coordinated with the co-frequency U.S. GPS System and would not reduce the ability of any future licensee to operate in the relevant bands, i.e., the decision was pro-competitive.<sup>17</sup>

#### V. The MATS Is not Relevant To This Proceeding.

Whether Ondas or any new BSS (sound) system may interfere with the U.S. Mobile Aeronautical Telemetry Service ("MATS")<sup>18</sup> is wholly irrelevant to the Application For Review. The Bureau concluded that no new BSS (Sound) satellite could be authorized in the 1452-1492 MHz band solely because it would cause interference to AfriStar-1 not to U.S. MATS operators. MATS is not even mentioned in the Bureau's decision; nor was it raised below by AfriSpace and its attempt now to provide the Bureau with a *post hoc* rationale for its action, based on arguments never presented to the Bureau,

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<sup>14</sup> See Application for Review, Exhibit A.

<sup>15</sup> In addition, in the BSS (sound), unlike the MSS, there is no need to coordinate a network of two-way (transmit/receive) terminals.

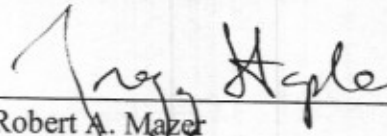
<sup>16</sup> *EarthWatch, Inc.*, 12 FCC Rcd 21637, ¶ 11 (1997).

<sup>17</sup> *Lockheed Martin Corporation*, 20 FCC Rcd 11023 (2005).

<sup>18</sup> See Opposition, pp 11-12. The L-Band MATS is used in conjunction with 2360-2385 MHz to provide data communication links for flight testing of manned and unmanned aircraft, missiles and space vehicles, as well as for associated communications (weather, chase aircraft).

cannot be accepted.<sup>19</sup>

Respectfully submitted,



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February 27, 2006

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<sup>19</sup> See 1.115(c). Absent a careful frequency and facilities specific interference analysis, it is not possible to determine the extent to which this band may be shared as the relevant ITU Recommendation (ITU-R M.1459) makes clear. Moreover, the Recommendation cited by AfriSpace only contains standards for the protection of MATS system from geostationary orbit ("GSO") satellites; it does not address the potential interference from HEO and other non-GSO BSS (sound) systems.



**AFFIDAVIT OF DANIEL F. DIFONZO**

**AFFIDAVIT OF DANIEL F. DIFONZO**

1. My qualifications are a matter of public record. I previously filed an affidavit in this proceeding and Paragraphs 1 to 12 are hereby incorporated by reference and should be considered as if they were restated herein under penalty of perjury.

2. In order to provide this second affidavit, I again reviewed the AfriStar-2 *Order and Authorization* (DA 06-4), the AfriStar-2 application and related pleadings (SAT-LOA-20050311-00061), the AfriStar-1 *Order and Authorization* (DA 99-2849), and the AfriStar-1 application and related pleadings (SAT-LOA-19990125-00016).

3. I also reviewed the Opposition of AfriSpace, Inc. filed on February 17, 2006. The foregoing Opposition does not provide any new technical information regarding the AfriStar-1 or AfriStar-2 satellite systems. The Opposition also does not contain any separate engineering statement. In view of the foregoing, and after reviewing my prior affidavit, I am confident that the conclusions reached in my prior affidavit were correct. It is still my professional view therefore that it is possible to coordinate other BSS (sound) satellites with AfriStar-1 for the reasons specified in paragraphs 9-12 of my first affidavit.

I declare under penalty of perjury that the foregoing statements in this affidavit are true and correct to the best of my knowledge and belief.

*Daniel F. DiFonzo.*

Daniel F. DiFonzo  
February 24, 2006

Sworn to and subscribed before me this 24th day of February, 2006.

**Karen M. Murray**  
**Notary Public, State of Delaware**  
**My Commission Expires 5-09-07**

*state of De- county of Sussex*  
*Karen M. Murray*  
\_\_\_\_\_  
Notary Public

My commission expires 5/9/07

**CERTIFICATE OF SERVICE**

I, Scott Woodworth, hereby certify that on this 27th day of February, 2006, copies of the foregoing "*Reply*" unless otherwise noted were sent via first-class mail, postage prepaid, to the following:

\*The Honorable Kevin Martin  
Chairman, Federal Communications  
Commission  
445 12th Street, SW  
Washington, DC 20554

\*The Honorable Michael Copps  
Commissioner, Federal Communications  
Commission  
445 12th Street, SW  
Washington, DC 20554

\*The Honorable Jonathan Adelstein  
Commissioner, Federal Communications  
Commission  
445 12th Street, SW  
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\*The Honorable Deborah Taylor Tate  
Commissioner, Federal Communications  
Commission  
445 12th Street, SW  
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\*Donald Abelson  
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(*Counsel to AfriSpace, Inc.*)

A handwritten signature in black ink, appearing to read "Scott Woodworth", written over a horizontal line.

Scott Woodworth

\* Via Hand Delivery

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