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

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MAR 10 2006

Federal Communications Commission
Office of Secretary

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)

To: Office of the Secretary
 Attn: Commission

Received
MAR 13 2006
Policy Branch
International Bureau

REQUEST TO MODIFY EX PARTE STATUS

Ondas Media, S.A. ("Ondas"), by its attorneys, hereby requests that the Commission modify the *ex parte* status of this proceeding from "restricted" to "permit-but-disclose" pursuant to Section 1.1200(a) so that Ondas and other interested parties may present their views directly to the Commission and its staff.¹

The non-discriminatory application of the Commission's processing rules for Non-Geostationary Orbit (NGSO)-like satellites and the potential impact of the FCC's decision on the international coordination process for the Broadcast Satellite Service (BSS) sound (BSS sound) raise important public issues which extend well beyond the current case. Derestriction is also warranted because the *AfriStar-2 Order*² raises engineering issues of first impression regarding the coordination of competing satellites that are more likely to be fully understood by the FCC

¹ 47 C.F.R. § 1.1200(a) ("Where the public interest so requires, the Commission and its staff retain the discretion to modify the applicable *ex parte* rules by order, letter, or public notice. . ."). Because this proceeding is not contained in the lists of exempt and permit-but-disclose proceedings, it is considered a restricted proceeding. See 47 C.F.R. § 1.1208; *Amendment of 47 C.F.R. § 1.1200 et seq. Concerning Ex Parte Presentations in Commission Proceedings, Report and Order*, 12 FCC Rcd 7348, 7352, ¶ 13 (1997).

² *AfriSpace, Inc., Order and Authorization*, 21 FCC Rcd 17, DA 06-4, released January 3, 2006 ("*Afristar-2 Order*").

and its staff if *ex parte* presentations are permitted by interested members of the public and their engineering consultants. Indeed, on March 6, 2006 AfriSpace, Inc. (“AfriSpace”) sought to augment the record by asking for a rule waiver in order to docket a letter outside of the ordinary pleading cycle so as to clarify its views on these issues.³

I. Background.

In the January 3, 2006 *AfriStar-2 Order*, the Bureau granted AfriSpace authority to launch and operate a new satellite, AfriStar-2, for the provision of BSS (sound) to Europe and Africa using 2.6 MHz of spectrum in the 1452-1492 MHz band. This action was wholly inconsistent with the Commission’s licensing rules for NGSO-like satellites, such as AfriStar-2, 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 Corporation (“Delphi”), and had requested the opportunity to file a competing application in the event that the Bureau did not classify AfriStar-2 as a replacement satellite. The Bureau’s decision cut-off that opportunity, and prejudiced Ondas’ European development plans and the international coordination process for Ondas’ own (BSS sound) system. Accordingly, on February 2, 2006, Ondas filed an Application for Review of the *AfriStar-2 Order*.⁴

II. Modification of the *Ex Parte* Status in this Proceeding in the Public Interest.

The current case raises several issues that have important implications beyond the grant of the AfriStar-2 application. These issues include interrelated procedural, legal, and policy

³ In this letter, AfriSpace requested a waiver of Section 1.45 of the Commission’s rules. Ondas does not object to this waiver request so long as the Commission grants Ondas’ instant Request to Modify the *Ex Parte* Status so that all interested parties can present their views directly to the Commission and its staff.

⁴ AfriSpace filed an Opposition on February 17, 2006 and Ondas filed a Reply on February 27, 2006. Delphi also filed a Reply on February 27, 2006 in support of Ondas’ Application for Review.

questions concerning (i) the processing procedures that apply to (BSS sound) applications, (ii) the Bureau's ability to waive the processing procedures for NGSO for NGSO-like satellites without prior public notice, and (iii) international coordination of satellite applications.

The Bureau's decision to waive the NGSO-like processing rules based on alleged interference considerations and to grant the AfriStar-2 application not only impacted Ondas but all other parties subject to the NGSO-like processing rules that were implemented in the *First Space Station Licensing Reform Order*. This is so because, unless reversed by the Commission, the Bureau's action may provide a precedent for rule waivers based on *ad hoc* interference standards established by the Bureau that have never been subject to prior public notice and comment. In addition, the Bureau's actions may impact the international coordination of various (BSS sound) systems beyond that of Ondas and AfriStar-2 because again, unless the decision is reversed, all later licensed operators will be required to coordinate with AfriStar-2 as well as AfriStar-1.

Under Section 1.1200(a) of its Rules, the Commission is authorized to modify the *ex parte* status of a proceeding "[w]here the public interest so requires."⁵ This standard is plainly met here given the broad satellite processing, international coordination, and complex technical issues involved. The FCC has frequently found that satellite licensing dockets,⁶ including

⁵ 47 C.F.R. § 1.1200(a).

⁶ See, e.g., Public Notice, Rep. No. SAT-00125 (Int'l Bur., Oct. 30, 2002) (modifying *ex parte* status for ICO and Lockheed Martin proceedings); Public Notice, "Lockheed Martin Corp., Regulus, LLC, Comsat Corp., and Comsat Government Services, Inc. Seek FCC Consent for Transactions," Rep. No. SPB-139 (Int'l Bur. Oct. 23, 1998); Public Notice, "Applications and Letters of Intent Filed by Nine Parties to Launch and Operate Systems to Provide Mobile Satellite Service in the 2 GHz Band," Rep. No. SPB-132 (Int'l Bur., July 29, 1998) (modifying *ex parte* status of 2 GHz MSS license applications to permit-but-disclose).

satellite radio proceedings such as the instant proceeding,⁷ provide strong public interest reasons for modifying the *ex parte* status of a proceeding.

This is particularly true where, as here, complex engineering matters are being disputed and hence, *ex parte* presentation may serve to clarify the position of each side. For example, the Office of Engineering and Technology recently derestricted a satellite licensing proceeding because it raised “policy and complex technical issues.”⁸ This is consistent with other satellite proceedings that have been derestricted because of complex technical, legal, and policy issues, “making it essential that the Commission obtain the most current information available.”⁹

Another case that is analogous to this proceeding involves York County, Pennsylvania’s request for a waiver of certain rules applicable to UHF frequencies.¹⁰ There, the Wireless Telecommunications Bureau found that, “because of the policy implications and potential impact of this proceeding on persons not parties to the waiver request, we believe that it would be in the public interest to treat this case as a permit-but-disclose proceeding.”¹¹ Here, as explained above, the review of the Bureau’s decision to waive the NGSO-like processing rules for AfriStar-2 impacts not only AfriSpace and Ondas but also other parties that may wish to file (BSS sound) applications as well as other parties subject to the NGSO-like processing rules.

⁷ See, e.g., Public Notice, Rep. No. SES-00590 (Int’l Bur. March 25, 2004) (modifying the *ex parte* status of DIRECTV’s Blanket Receive Only Earth Station Application to provide DBS service to the U.S. market in BSS spectrum); Public Notice, Rep. No. SAT-00201 (Int’l Bur. March 19, 2004) (modifying the *ex parte* status of DIRECTV’s STA request to relocate the DIRECTV 5 satellite).

⁸ Public Notice, DA 06-377 (OET February 17, 2006) (modifying the *ex parte* status of Inmarsat’s application for a new station in the Experimental Radio Service).

⁹ See, e.g., *Skybridge L.L.C.*, 13 FCC Rcd 11076, 11076 (Int’l Bur. 1998); *EchoStar Satellite Corp.*, 15 FCC Rcd 13797 (Int’l Bur. 2000).

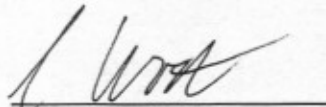
¹⁰ *Wireless Telecommunications Bureau Seeks Comment on Request for Waiver by the County of York, Pennsylvania*, 19 FCC Rcd 12313 (WTB July 7, 2004).

¹¹ *Id.*

III. Conclusion.

For all of the reasons stated above, the Commission should change the *ex parte* status of the AfriStar-2 proceeding to permit-but-disclose so that the FCC has the benefit of the most complete and current information available to it in deciding the legal and technical issues raised by Ondas' Application For Review.

Respectfully Submitted,



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March 10, 2006

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CERTIFICATE OF SERVICE

I, Scott Woodworth, hereby certify that on this 10th day of March, 2006, copies of the foregoing "**Request**" unless otherwise noted were sent via first-class mail, postage prepaid, to the following:

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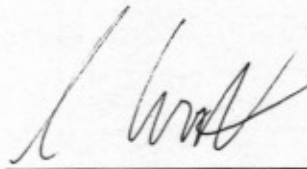
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