

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

In the Matter of)
)
SES Americom, Inc.) Call Sign S2763
) File No. SAT-LOA-20080910-00173
Application for Authority to Launch and)
Operate a 17/24 GHz Broadcasting-)
Satellite Service Space Station)

OPPOSITION OF SES AMERICOM, INC.

Karis A. Hastings
Hogan & Hartson LLP
555 13th Street, N.W.
Washington, D.C. 20004
Counsel for SES Americom, Inc.

Daniel C.H. Mah
Regulatory Counsel
SES Americom, Inc.
Four Research Way
Princeton, NJ 08540

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SES Americom, Inc. (doing business as “SES WORLD SKIES”),¹ by its attorneys and pursuant to Section 25.154 of the Commission’s Rules, 47 C.F.R. § 25.154, hereby submits its opposition to the petition of Star One S.A. (“Star One”)² to deny or defer in part SES WORLD SKIES’ above-captioned application for a Commission license to launch and operate AMC-22, a new space station in the 17/24 GHz Broadcasting-Satellite Service (“BSS”) at 67.5° W.L. (the “AMC-22 Application”).

INTRODUCTION AND SUMMARY

The Star One Petition objects only to the Brazilian beam of the AMC-22 spacecraft.³ Star One claims that SES WORLD SKIES’ request for authority to launch a 17/24 GHz BSS satellite with coverage of Brazil is premature because the Brazilian regulatory body, Agencia Nacional de Telecomunicacoes (“ANATEL”), has not yet established policies for use of this

¹ On September 7, 2009, SES S.A. announced that the newly integrated operations of SES Americom, Inc. and New Skies Satellites B.V. will be conducted under a single brand name, SES WORLD SKIES. The new brand name does not affect the underlying legal entities that hold Commission authorizations or U.S. market access rights.

² Petition to Deny or Defer in Part of Star One S.A., File No. SAT-LOA-20080910-00173, filed Nov. 23, 2009 (“Star One Petition”).

³ *Id.* at 2.

spectrum.⁴ A Commission grant of authority for the Brazilian beam of AMC-22, Star One argues, is inconsistent with International Telecommunication Union (“ITU”) rules and principles of international comity and would confer an unfair competitive advantage on SES WORLD SKIES.⁵

The Commission should reject Star One’s contentions.⁶ The Commission has long permitted U.S. satellite licensees to cover foreign jurisdictions subject to the requirement that they obtain all necessary local approvals to provide service and comply with ITU rules. The Commission should follow this approach here. As discussed below, grant of the AMC-22 Application is consistent with international law and Commission policy and would not result in any competitive inequities.

⁴ *Id.*

⁵ *Id.*

⁶ As a threshold matter, SES WORLD SKIES notes that Star One has not demonstrated that it has standing to petition to deny authority for the Brazilian beam proposed in the AMC-22 Application. Pursuant to Section 309 of the Communications Act and Section 25.154 of the Commission’s rules, a petition to deny must be supported by specific allegations of fact showing that the petitioner is a “party of interest” in the proceeding. 47 U.S.C. § 309(d); 47 C.F.R. § 25.154(a)(4). These allegations must show: “1) that the petitioner would suffer a direct injury that is more than hypothetical or purely speculative; 2) that the injury is causally linked to the challenged action; and 3) that the relief sought will likely be remedied with the Commission’s denial of the pending application.” *Riverside Youth and Rehabilitation*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 23 FCC Rcd 10360 (Audio Div. 2008) at ¶ 6 (footnotes omitted).

Star One asserts that it is a “party of interest,” Star One Petition at 2, but does not put forth facts sufficient to prove that claim. Star One states that its has satellites that serve Brazil operating in the C- and Ku-bands located at positions ranging from 68° W.L. to 92° W.L., and argues that the portion of the satellite arc between 65° W.L. and 70° W.L. is “crucial to providing ubiquitous and reliable satellite service throughout Brazil and South America.” *Id.* However, Star One does not explain how it would be harmed by grant of the AMC-22 Application. That application seeks authority for 17/24 GHz BSS spectrum in which Star One has neither current nor proposed operations, so there is no question of harmful interference to Star One from the Brazilian beam of AMC-22. Furthermore, the 67.5° W.L. location requested for AMC-22 is half a degree away from the nearest Star One satellite at 68° W.L., so AMC-22’s station-keeping volume will not overlap with that of the Star One spacecraft. In these circumstances, Star One clearly has not established that it is a party in interest.

I. COMMISSION LICENSING POLICIES ENSURE PROTECTION OF FOREIGN SOVEREIGNTY

Star One's arguments all share a common flaw: they assume that Commission licensing of AMC-22 will somehow constrain Brazil's ability to address matters within its sovereign authority and effectively prejudge the outcome of these matters in Brazil. In other words, Star One is suggesting that the Commission's action here both can and will shape determinations to be made solely by Brazil. Star One is wrong on both counts. Under long-established policies, the Commission routinely licenses satellites with foreign coverage. But these same policies make clear that the Commission acts only on matters within its own jurisdiction. Commission licensing actions do not and cannot confer foreign market access, and they are subject to the outcome of coordination with foreign administrations and compliance with ITU rules. Star One's assertion that mere grant of a U.S. license for the Brazilian beam of AMC-22 would unduly influence Brazil in its future decisions on these questions is speculative and unwarranted.

When it initially decided to license what were then known as international "separate systems" in the mid-1980's, the Commission explicitly stated that the licenses were granted "conditioned on one or more foreign authorities authorizing the use of the proposed system" and consistent with ITU rules.⁷ A decade later, in its *DISCO I* decision, the Commission "eliminate[d] the outdated regulatory framework that distinguished domsats from separate systems and allow[ed] all U.S.-licensed satellites in the fixed satellite service to provide both domestic and international services."⁸ In the same order, the Commission "extend[ed] the benefits of this new policy to other

⁷ *Establishment of Satellite Systems Providing International Communications*, 101 F.C.C.2d 1046, 1062 (1985), *recon.* 61 R.R.2d 649 (1986), *further recon.*, 1 FCC Rcd 439 (1986). *See also id.* at 1159 ("For the United States to license international facilities does not in any way challenge the sovereignty of other nations to adopt whatever policy they see fit").

⁸ *Amendment to the Commission's Regulatory Policies Governing Domestic Fixed-Satellites and Separate International Satellite Systems*, Report and Order, 11 FCC Rcd 2429, 2440 (1996) ("*DISCO I*").

services by permitting DBS satellites and geostationary MSS satellites to provide both domestic and international services.”⁹ The Commission adopted this policy to “enhance the opportunity for the provision of innovative satellite service offerings without artificial regulatory barriers.”¹⁰

Under *DISCO I*, however, a U.S. licensee’s authority to provide international service remained subject to receipt of any necessary foreign authorizations:

We have emphasized throughout this proceeding that U.S. operators that desire to provide service to another country must satisfy that country’s requirements for providing such service. We do not believe that a license condition to this effect is necessary since the service provider will need to obtain any necessary earth station authorization from the foreign country before it can initiate service.¹¹

Consistent with this policy, the Commission has authorized U.S. satellite licensees to cover foreign jurisdictions subject to compliance with applicable laws.¹² The Commission has even authorized satellites to operate at orbital locations from which service to the U.S. is impossible, *i.e.*, where the service is exclusively foreign. In such instances as well, the Commission has made it clear that service to other countries is subject to the receipt of required approvals from the countries in which service is proposed.¹³

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.* at 2432.

¹² *See, e.g., GE American Communications, Inc.*, Order and Authorization, 15 FCC Rcd 3385, 3395 (Sat. Div. 1999) (modifying satellite license to permit South American operations subject to compliance with laws in the countries proposed to be served).

¹³ *See, e.g., Intelsat North America LLC*, Stamp Grant, File No. SAT-MOD-20090309-00034 (granted Jun. 17, 2009) (authorizing Galaxy 26 to operate at 50.75° E.L. subject to a condition that: “In connection with the provision of service to any particular country, Intelsat is obliged to comply with the applicable laws, regulations, rules, and licensing procedures of that country.”).

The same policy applies to the licensing of 17/24 GHz BSS satellites. The Commission has already granted U.S. licenses for 17/24 GHz BSS systems with foreign coverage,¹⁴ including coverage of South America.¹⁵ A number of 17/24 GHz BSS licensees have also been authorized to operate in the 17.7-17.8 GHz band,¹⁶ which the Commission has specifically restricted to international service only.¹⁷ The Commission's authority in each instance is subject to the licensee's ability to gain market access in foreign jurisdictions and the outcome of international coordination.¹⁸

Because a U.S. satellite license does not purport to convey foreign market access rights, the Commission has found that issuing a license does not constrain foreign governments' ability to make their own determinations regarding the terms under which service may be offered. For example, in a 2006 decision, the International Bureau dismissed the claim that grant of a license for the AfriStar-2 BSS (sound) satellite would "prejudice the ability of European regulators

¹⁴ See, e.g., *EchoStar Corp.*, Stamp Grant, File Nos. SAT-LOA-20070105-00003 *et al.* (granted Mar. 18, 2009) ("*EchoStar License Grant*") (authorizing 17/24 GHz BSS spacecraft at 75° W.L. with coverage of Mexico).

¹⁵ See *Intelsat North America LLC*, DA 09-1132, 24 FCC Rcd 7058, 7060 (Sat. Div. 2009) ("*Intelsat License Order*"). Star One did not object to Intelsat's application despite the fact that the coverage pattern for Intelsat's proposed 17/24 GHz BSS satellite included Brazil. Intelsat subsequently relinquished this license. See Letter of Jennifer D. Hindin, Counsel to Intelsat North America LLC, to Marlene H. Dortch, Secretary, Federal Communications Commission, dated June 24, 2009, File Nos. SAT-LOA-20050210-00030 *et al.*, Call Sign S2661.

¹⁶ See, e.g., *EchoStar License Grant*, Attachment to Grant at 1; *Intelsat License Order* at 7058.

¹⁷ *Establishment of Policies and Service Rules for the Broadcasting-Satellite Service at the 17.3-17.7 GHz Frequency Band and at the 17.7-17.8 GHz Frequency Band Internationally, and at the 24.75-25.25 GHz Frequency Band for Fixed Satellite Services Providing Feeder Links to the Broadcasting-Satellite Service and for the Satellite Services Operating Bi-directionally in the 17.3-17.8 GHz Frequency Band*, Report & Order, FCC 07-76, 22 FCC Rcd 8842 (2007) at ¶ 55.

¹⁸ See *Intelsat License Order* at 7066 (emphasizing that the "United States is under a treaty obligation, in connection with its membership in the ITU, to adhere to the ITU procedures regarding coordination and notification of space station systems licensed by the United States.") (footnote omitted).

to establish and license BSS (sound) systems in Europe.”¹⁹ The Bureau emphasized that its “authorization of the AfriStar-2 satellite does not grant AfriSpace any authority for landing rights of the AfriStar-2 satellite in Europe” and made clear that “the launch and operation of the AfriStar-2 satellite is at AfriSpace’s risk that it may not receive authority to operate in countries where it proposes service.”²⁰ As a result, the Bureau found, “the ability of European regulators to determine which systems are authorized to serve their markets is unaffected by this Order.”²¹

Similarly, in allowing U.S. Direct Broadcast Satellite (“DBS”)²² licensees to provide international service, the Commission specifically rejected an argument that a grant of authority for international DBS service would compromise the rights of foreign administrations: “Those administrations would retain all rights they now have to license the provision of international DBS service to their countries. The Commission’s refusal to impose an additional layer of regulation upon those seeking to deliver international DBS service from orbital locations allocated to the U.S. in no way diminishes those rights.”²³ The same logic applies to the provision of international service by U.S. 17/24 GHz BSS licensees.

Thus, issuance of a U.S. license for a satellite with foreign coverage is appropriate under long-standing Commission policies and precedent, and does not interfere with the foreign administration’s ability to make market access decisions. Star One provides no reason why the Commission should not follow its precedent and grant the AMC-22 Application, including authorizing the Brazilian beam.

¹⁹ *AfriSpace, Inc.*, Order and Authorization, 21 FCC Rcd 17, 31 (IB 2006) (“*AfriSpace Order*”) (footnote omitted).

²⁰ *Id.*

²¹ *Id.*

²² “DBS” is known internationally as planned “BSS” in the 12.2-12.7 GHz band.

²³ *DISCO I*, 11 FCC Rcd at 2439, ¶ 68.

II. STAR ONE RAISES NO VALID OBJECTION TO GRANT OF THE AMC-22 APPLICATION

Given this context, there is no basis for Star One's assertion that Commission licensing of AMC-22 would conflict with ITU rules, principles of international comity, or fair competition.

A. ITU Rules

Contrary to Star One's claim, Article 23.13 of the ITU Radio Regulations does not preclude Commission grant of authority for the AMC-22 Brazilian beam. This is clear when Article 23.13 is read together with its companion provisions, Articles 23.13A, 23.13B and 23.13C, which set forth the procedures pursuant to which an administration can object to being in the service area of a BSS satellite network submitted for international coordination by another administration.²⁴ If a concern is raised, Article 23.13B requires the two involved administrations "to make every effort possible in order to resolve the issue."²⁵ If the parties do not reach agreement, the ultimate relief that can be sought is deletion of "the territory of the objecting administration from the service area" of the BSS spacecraft "without adversely affecting the rest of the service area."²⁶ Thus, even if these provisions were invoked, there would be no requirement that the BSS operator modify the coverage area of its satellite beams.

In this instance, Article 23.13 and its companion provisions have not been invoked. Indeed, Star One, as a private party, cannot invoke the Article 23.13 process. That prerogative belongs solely to the Brazilian administration and will be unaffected by the grant of the AMC-22 Application. Accordingly, Article 23.13 has no bearing on the Commission's decision regarding authorization of AMC-22's Brazilian beam.

²⁴ See ITU Radio Regulations Nos. 23.13A, 23.13B & 23.13C.

²⁵ *Id.*, No. 23.13B.

²⁶ *Id.*, Nos. 23.13B & 23.13C.

B. International Comity

Star One's claim that grant of the AMC-22 Application including the Brazilian beam would violate principles of international comity by undermining ANATEL's ability to develop domestic regulations for 17/24 GHz BSS networks²⁷ is similarly misplaced. Clearly nothing the Commission does will predetermine the outcome of Brazilian procedures to consider and establish the framework for 17/24 GHz BSS operations in that country.

As discussed above, the Commission's practice for over twenty years has been to routinely authorize satellites with coverage of foreign jurisdictions subject to compliance with local regulations in the jurisdictions the licensee proposes to serve. The Commission's grant of the AMC-22 Application consistent with this precedent will allow launch and operation of AMC-22, but will certainly not decide whether or under what terms SES WORLD SKIES will be permitted to use AMC-22 to serve Brazil. Instead, as the *AfriSpace Order* makes clear, a satellite licensee proposing operations outside the U.S. assumes the risk that it may not be granted market access in the jurisdictions it plans to serve.²⁸ Thus, SES WORLD SKIES understands that if it receives a license for AMC-22 and constructs and launches the spacecraft with the proposed Brazilian beam, it does so with no guarantee that it will be allowed to serve Brazil under the policies on 17/24 GHz BSS operations and market access that ultimately will be adopted by ANATEL.

Star One, however, suggests that Brazil will be unduly influenced to develop rules that "suit . . . AMC-22" but "may not be the most appropriate operating parameters for Brazil."²⁹ Star One claims that even though a Commission license will not permit SES WORLD SKIES to use AMC-22 to serve Brazil until authorized by ANATEL, the fact that the company "will have

²⁷ Star One Petition at 3-4.

²⁸ *AfriSpace Order*, 21 FCC Rcd at 31.

²⁹ Star One Petition at 3.

spent millions of dollars to construct and launch” the satellite will “exert significant pressure on ANATEL to develop rules that accommodate” AMC-22.³⁰

Star One is asking the Commission to engage in improper speculation. To the extent that Star One has any legitimate concerns regarding the interests that ANATEL should take into account in establishing its national 17/24 GHz BSS rules, it should address those concerns to ANATEL, not the U.S. Federal Communications Commission. Consistent with the principles of international comity cited by Star One, the Commission must assume that ANATEL will conduct its domestic rulemaking on 17/24 GHz BSS in accordance with the regulatory framework that applies under Brazilian law. Nothing the Commission does in this proceeding would compel ANATEL to take any particular course of action in its domestic rulemaking.³¹ Far from “regulatory imperialism,”³² such an approach demonstrates a proper respect for the integrity of foreign rulemaking and licensing processes.

Star One’s request that the Commission defer licensing AMC-22’s Brazilian beam until Brazil’s rulemaking on 17/24 GHz is complete is both unwarranted and impractical. Again, there can be no justification for withholding Commission authority for the AMC-22 Brazil beam given that such action cannot possibly prejudice the outcome of Brazil’s own regulatory procedures. Furthermore, taken to its logical extreme, Star One’s argument would preclude the Commission from licensing a 17/24 GHz BSS satellite with coverage of any foreign jurisdiction that has not yet developed rules for this spectrum. This would result in a wholly unworkable and unproductive

³⁰ *Id.* at 4.

³¹ *See AfriSpace Order*, 21 FCC Rcd at 31 (“authorization of the AfriStar-2 satellite will not prejudice the ability of European regulators to establish and license BSS (sound) systems in Europe”); *DISCO I*, 11 FCC Rcd at 2439, ¶ 68 (Commission decision to authorize international DBS service does not affect the rights of other administrations to license the provision of international DBS service to their countries).

³² Star One Petition at 4.

approach to licensing satellites for international service, and defeat the Commission’s policy goal of “enhanc[ing] the opportunity for the provision of innovative satellite service offerings without artificial regulatory barriers.”³³

The Commission’s policies today respect international comity by granting authority for foreign coverage subject to the requirement, among others, that satellite operators comply with local laws in jurisdictions they seek to serve. The Commission should reject Star One’s invitation to abandon this long-standing and proven approach with respect to AMC-22.

C. Competitive Parity

Finally, Star One claims that grant of the AMC-22 license will give SES WORLD SKIES “an unfair competitive advantage over other satellite operators in providing BSS in the Brazilian market.”³⁴ Again, however, Star One is misstating the impact of the Commission’s action. As Star One expressly recognizes, grant of the AMC-22 Application will not authorize SES WORLD SKIES to use the satellite to serve Brazil.³⁵ It is up to ANATEL to establish rules for Brazilian licensing of 17/24 GHz BSS systems and to determine whether, and on what terms, Brazilian market access for AMC-22 will be authorized. Any concerns about competition in Brazil are outside the Commission’s jurisdiction and should be addressed to ANATEL instead.

Star One’s assumption that competitive harms will result if AMC-22 is ultimately granted Brazilian market access is also without foundation. Although Brazil has not adopted rules to govern BSS operations in the 17/24 GHz BSS band, it has authorized the provision of similar direct-to-home video services in Fixed-Satellite Service spectrum. For example, Sky Brasil Servicos Ltda. (“SKY Brasil”) provides direct-to-home satellite video services to over 1.7 million

³³ *DISCO I*, 11 FCC Rcd at 2440, ¶ 74.

³⁴ Star One Petition at 4.

³⁵ *Id.*

subscribers.³⁶ Star One itself is providing the satellite capacity for its parent Embratel to provide the “Via Embratel” pay television service using the Star One C2 satellite.³⁷ To the extent AMC-22 is granted Brazilian market access for 17/24 GHz BSS operations, it will be competing as a new entrant against established service providers such as SKY Brasil and Via Embratel.

Star One’s proposed solution to its perception of competitive inequity is that the Commission should not license AMC-22 until Brazil has developed operating parameters for this spectrum. This would seem to do no more than limit or delay AMC-22’s ability to compete with Star One’s and Embratel’s own Brazilian DTH service. In any event, as discussed in the previous section, Star One’s suggestion is unworkable as a general principle, since it would require the Commission to defer licensing 17/24 GHz BSS coverage over any country that had not yet established a regulatory framework for 17/24 GHz BSS operations.

Finally, Star One’s complaint about competitive unfairness ignores the simple fact that Star One could do exactly what SES WORLD SKIES has done. Star One cannot get a Brazilian license for 17/24 GHz BSS operations until ANATEL adopts policies governing use of the spectrum. However, there is nothing stopping Star One from seeking a U.S. license for a satellite with Brazilian coverage under the policies that have already been established by the Commission.

³⁶ See <http://www.directvla.com/> (viewed on Dec. 4, 2009).

³⁷ See <http://www.lyngsat.com/packages/viaembratel.html> (viewed on Dec. 7, 2009).

CONCLUSION

In short, the Commission's long-standing policies concerning licensing of satellites with foreign coverage appropriately respect foreign jurisdiction and authority. Grant of a license for AMC-22 consistent with these policies does not raise any of the concerns identified by Star One.

Respectfully submitted,

SES AMERICOM, INC.

By: /s/ Karis A. Hastings
Karis A. Hastings
Hogan & Hartson L.L.P.
555 Thirteenth Street, N.W.
Washington, D.C. 20004
(202) 637-5600

Daniel C.H. Mah
Regulatory Counsel
SES Americom, Inc.
Four Research Way
Princeton, NJ 08540

December 8, 2009

CERTIFICATE OF SERVICE

I, Cecelia Burnett, hereby certify that on this 8th day of December, 2009, I caused to be served a copy of the foregoing "Opposition of SES Americom, Inc." on the following party by first-class U.S. mail, postage prepaid:

Alfred M. Mamlet
Petra A. Vorwig
Steptoe & Johnson LLP
1330 Connecticut Avenue, N.W.
Washington, D.C. 20036
Counsel for Star One S.A.

/s/ Cecelia M. Burnett