

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

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In the Matter of: )  
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**SES AMERICOM, INC.** )

File No. SAT-LOA-20080910-00173

) Call Sign S2763

For Authority to Launch and Operate a )  
Satellite in the 17/24 GHz Broadcasting )  
Satellite Service at 67.5° W.L. )

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**REPLY IN SUPPORT OF PETITION TO DENY OR DEFER IN PART**

On September 10, 2008, SES Americom, Inc. (“SES”) filed an application to launch and operate the AMC-22 satellite at 67.5° W.L. in the 17/24 GHz Broadcast-Satellite Service (“BSS”) spectrum (the “Application”).<sup>1</sup> In that Application, SES proposed to dedicate one of three beams to serving Brazil (“Brazilian beam”).<sup>2</sup> However, the Brazilian administration, Agencia Nacional de Telecomunicacoes (“ANATEL”), has not yet allocated the 17/24 GHz spectrum for BSS nor established licensing and service requirements. Star One S.A (“Star One”) filed a petition to deny or defer in part the portion of SES’ Application covering the Brazilian beam (“Petition to Defer”).<sup>3</sup> On December 8, 2009, SES opposed Star One’s Petition to Defer

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<sup>1</sup> File No. SAT-LOA-20080910-00173 (filed Sept. 10, 2008) (“Application”).

<sup>2</sup> *Id.*, Technical Appendix, at 2.

<sup>3</sup> Star One S.A., Petition to Deny or Defer in Part, *filed in* File No. SAT-LOA-20080910-00173 (filed Nov. 23, 2009) (“Petition to Defer”). Star One intends to apply for authority to provide 17/24 GHz BSS in Brazil once the spectrum has been allocated to BSS and licensing and service requirements have been established. As an entity that will seek to provide 17/24 GHz BSS service in Brazil, it would be directly harmed if the Commission authorizes the SES’ proposed Brazilian beam because SES would have coordination priority in Brazil whether or not it applied for or received authority to operate in Brazil, unduly limiting Star One’s potential operations. Similarly, SES would have the opportunity to develop and launch the AMC-22 with

(“SES Opposition”), and, pursuant to Section 25.154 of the Federal Communication Commission’s (“FCC” or “Commission”) rules, 47 C.F.R. § 25.154, Star One files this reply.

SES’ Application to launch and operate a satellite with a beam dedicated to serving the Brazilian market is an unabashed attempt to use the Commission to gain an unfair competitive advantage over Star One and any other prospective satellite operator proposing to provide service over the 17/24 GHz BSS spectrum in Brazil. Contrary to SES’ suggestions, the Commission has never granted an application to provide 17/24 GHz BSS in a foreign country that has yet to authorize this service over the objection of a competing satellite operator who would be disadvantaged by such an authorization.

SES’ “solution” to avoid a competitive disadvantage is for Star One itself to apply to the Commission for a U.S. license to provide BSS in Brazil.<sup>4</sup> While this “solution” flows from the logical development of SES’ position, it completely undermines the legitimacy of its Application. Star One is a Brazilian satellite operator that intends to provide 17/24 GHz BSS in Brazil – not the U.S. Neither SES nor the Commission has any basis for requiring Star One to apply for a Commission license to provide 17/24 GHz BSS in Brazil in order to maintain competitive parity. Star One should not be required to apply to the Commission, to subject itself to the U.S. licensing and service rules, and to maintain a bond and adhere to U.S. milestone requirements if it intends to serve Brazil and not the U.S. Instead of requiring every satellite operator in the world to obtain competitive parity by applying to the FCC for authority only to serve their home country, the Commission should either deny or defer the portion of SES’

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the Brazilian beam before Star One has an opportunity to file for authority in Brazil, limiting Star One’s ability to develop a satellite that operates over the 17/24 GHz BSS spectrum. Star One’s request to deny or defer the Brazilian beam described in the Application is limited and specific to the harm that will be caused. Accordingly, Star One is a party of interest in this proceeding.

<sup>4</sup> SES Opposition at 11.

Application that describes the Brazilian beam until ANATEL has developed licensing and service requirements for the 17/24 GHz BSS spectrum in Brazil and all operators can apply to provide this service.

**I. GRANT OF SES' APPLICATION WOULD HARM THE COMPETITIVE PROVISION OF 17/24 GHZ BSS SERVICE IN BRAZIL**

As Star One explained in its Petition to Defer, if SES is granted authority to build the Brazilian beam of the AMC-22 satellite as proposed, SES would gain a competitive edge over other entities who plan to provide 17/24 GHz BSS in Brazil if and when ANATEL authorizes such services and establishes licensing requirements. First, SES would gain ITU priority over Brazilian BSS in the 17/24 GHz band at 67.5° W.L., potentially enabling it to thwart another operator licensed by ANATEL to provide 17/24 GHz BSS at that and proximate locations. Second, SES would be able to exert undue influence on the development of Brazil's licensing requirements simply by having a developed satellite available for immediate service. If the Commission grants the Brazilian beam portion of the SES Application, then it would give SES a substantial competitive advantage in the Brazilian market for BSS, assuming ANATEL eventually authorizes this service in the 17/24 GHz band.

**A. SES Would Obtain ITU Priority, Providing an Unfair Competitive Advantage for Brazilian BSS in the 17/24 GHz Band**

Satellite applicants are required to provide the Commission with all of the information it requires for the Advance Publication of frequency assignments pursuant to the International Telecommunication Union ("ITU") Radio Regulations. 47 C.F.R. § 25.111(b). The Commission then submits this information to the ITU to establish the licensee's priority for the requested spectrum at the requested orbital location.

Once the Advance Publication information is filed for SES' proposed network, Article 9 of the ITU Radio Regulations requires any future networks proposing to operate in the 17/24 GHz BSS bands that may interfere with SES' network to effect coordination with SES. SES' ITU priority would extend to Brazil even though ANATEL has not authorized BSS in the band, and SES would maintain ITU priority even if ANATEL authorized a different operator to provide 17/24 GHz BSS at 67.5° W.L. (or other relevant locations). With this ITU priority, SES may be able to effectively prevent another operator from providing 17/24 GHz BSS in Brazil at or near this location, even if SES never applies for or obtains an ANATEL authorization. Recognizing this impediment, ANATEL may not effectively have any choice but to follow the Commission in authorizing SES to provide 17/24 GHz BSS in Brazil at 67.5° W.L.

**B. SES Would Also Obtain an Unfair Competitive Advantage in Shaping Brazil's 17/24 GHz BSS Licensing Regime**

In addition to obtaining ITU priority, SES would have an unfair advantage over competitors in the development of the Brazilian licensing and service rules for BSS in the 17/24 GHz band. While the Commission requires U.S. licensees seeking to provide international service to comply with a foreign country's domestic regulations, the practical effect of authorizing a satellite before such regulations are established are readily apparent. As ANATEL develops licensing procedures for 17/24 GHz BSS operations in Brazil, it would not be writing those rules on a clean slate. Rather ANATEL would be faced with a satellite that either would provide service if the licensing requirements fit the satellite's characteristics, or would be a "wasted asset" if the existing satellite did not meet ANATEL's requirements. Of course, SES would make it clear to ANATEL that it should shape Brazilian law to fit AMC-22 as authorized by the FCC. In addition to the "wasted asset" argument, SES would have the implied threat that

SES could use its ITU coordination priority to block Brazilian operators that meet ANATEL's requirements, even if the regulations do not conform to AMC-22.

Once ANATEL develops 17/24 GHz BSS service rules, SES would have an additional competitive advantage over other licensed providers from its head start on satellite construction and launch. An operator seeking to provide 17/24 GHz BSS only in Brazil is unlikely to begin construction of a satellite to compete with SES until ANATEL authorizes the service and develops service rules. Since SES will be able to provide service to the U.S., it will be able to construct and recover the cost of its satellite even if it is never authorized to operate in Brazil.

The precedents cited by SES are inapposite because they do not involve applications opposed by competing operators for service to countries where the bands had not been allocated.<sup>5</sup> For example, in AfriStar-2,<sup>6</sup> the applicant sought to launch AfriStar-2 to supplement and ultimately replace the AfriStar-1 satellite and expand service over parts of Europe.<sup>7</sup> Unlike Brazil, however, at the time of AfriSpace's application, the Conference of European Postal and

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<sup>5</sup> The international services proposed in the 17/24 GHz BSS applications filed by EchoStar Corporation and Intelsat North America LLC and cited by SES were not opposed during the comment period. *See* Stamp Grant, EchoStar Corporation, File Nos. SAT-LOA-20070105-00003, *et. al.*, n.1 (granted Mar. 18, 2009); *see also* Intelsat North America LLC, 24 FCC Rcd. 7058, ¶ 5 (Int'l Bur. 2009). Additionally, GE American Communications, Inc.'s application to provide international service in the "extended" Ku-band was not opposed. *GE American Communications, Inc., Applications for Modification of Authorizations to Construct, Launch, and Operate Space Stations in the Fixed Satellite Service And for Special Temporary Authority To Test Space Station at 72 °W.L.*, Order and Authorization, 15 FCC Rcd. 3385, 3385 n.18 (noting that PanAmSat was the only party to comment on the proceedings, and its concerns related to coordination among its satellites and GE American Communications' proposed operations). IntelSat North America LLC's application to operate a C- and Ku-band satellite at 50.75° E.L. was similarly unopposed. Stamp Grant, File No. SAT-MOD-20090309-00034, n.1 (granted Jun. 17, 2009).

<sup>6</sup> SES Opposition at 5-6.

<sup>7</sup> *AfriSpace, Inc., Application for Authority to Construct, Launch, and Operate a Subregional Africa and Middle Eastern Satellite Sound Broadcasting Transmission System*, Order and Authorization, 15 FCC Rcd. 1632, ¶10 (Int'l Bur. 1999).

Telecommunications Administrators (“CEPT”) had allocated the relevant bands for use in Europe.<sup>8</sup>

## **II. THE COMMISSION SHOULD DEFER ACTION ON THE BRAZILIAN BEAM**

To avoid creating the competitive imbalances discussed in the prior Section, and to recognize that ANATEL should shape Brazilian BSS policy, the Commission should defer action on the portion of the SES Application covering the Brazilian beam. Star One is not asking the Commission to reverse *DISCO I*.<sup>9</sup> Rather, the Commission should defer action on an application to serve a foreign country, which has not allocated spectrum for the service, when a satellite operator demonstrates that the applicant could obtain a competitive advantage for service in the foreign country from a FCC license.

### **A. ITU Regulation 23.13**

Deferral of Commission action on the Brazilian beam would also conform to Article 23.13 of the ITU Radio Regulations.<sup>10</sup> SES mischaracterizes Star One’s analysis of Article 23.13.<sup>11</sup> While the ITU Regulations do not “preclude” the Commission from licensing SES’ Brazilian beam, it establishes a principle of comity for the regulatory regimes in other countries and requires administrations to use “all technical means available . . . to reduce, to the maximum,

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<sup>8</sup> See Ondas Spain, SL, Petition to Deny, at 3, *filed in* File No. SAT-LOA-20050311-00061 (filed Apr. 18, 2005). Furthermore, the French administration, Agence Nationale des Fréquences, submitted a letter to the Commission in response to AfriSpace’s application noting that it “is supporting the development of a European Satellite Digital Radio programme . . . that will make use of frequency assignments in the same frequency bands to serve in particular Europe . . . .” Letter from François Rancy, Agence Nationale des Fréquences, to Tom S. Tcyz, Chief, Satellite Division, FCC, *filed in* File No. SAT-LOA-20050311-00061 (Apr. 27, 2005).

<sup>9</sup> SES Opposition at 3-6.

<sup>10</sup> ITU Radio Regs., Art. 23.13.

<sup>11</sup> See SES Opposition at 7.

the radiation over the territory of other countries unless an agreement has been previously reached with such country.”<sup>12</sup> SES is correct that the Brazilian administration may follow the procedures outlined in Articles 23.13B and C if it believes that the FCC has not used all technical means to reduce radiation over Brazil.<sup>13</sup> However, this procedure does not diminish the Commission’s primary obligation under Article 23.13 to avoid authorizing radiation into Brazil. Moreover, as SES points out, if the administrations do not reach an agreement and Brazil continues to object, the ITU would delete Brazil from the AMC-22 service area.<sup>14</sup>

**B. Star One Should Not Be Required to Apply to the Commission to Serve Brazil in Order to Maintain Competitive Parity**

As SES points out, the logical conclusion of SES’ position is that Star One must apply to the FCC to launch and operate a satellite solely for the purpose of providing service to Brazil if it wants to maintain competitive parity.<sup>15</sup> Specifically, SES suggests that Star One file an application with the Commission to provide service solely in Brazil. If Star One’s application were granted, Star One would be required to submit a \$3 million bond<sup>16</sup> and the milestones applied to such applications would begin to count down,<sup>17</sup> whether or not ANATEL ever authorizes 17/24 GHz BSS in Brazil. Similarly, Star One would have to design a satellite that

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<sup>12</sup> ITU Radio Regs., Art. 23.13.

<sup>13</sup> SES Opposition at 7.

<sup>14</sup> *Id.* See also ITU Radio Regs., Art. 23.13.

<sup>15</sup> SES Opposition at 11.

<sup>16</sup> 47 C.F.R. §25.165.

<sup>17</sup> 47 C.F.R. §25.164(a). The breathtaking reach of SES’ proposal is underlined further by the fact that the Commission does not have authority to authorize a foreign operator to provide service solely outside of the United States. 47 U.S.C. § 152(a). Accordingly, to obtain competitive parity for service in Brazil, Star One would also be required to create a U.S. subsidiary to apply for a FCC license to provide service only in Brazil.

meets the Commission's orbital spacing requirements even though Star One's satellite would serve only Brazil and the eventual ANATEL regulations might require different operating parameters within Brazil.

Of course, SES' suggestion actually proves Star One's point. A Commission license covering the Brazilian beam would give SES a substantial competitive advantage over Star One. This requirement that all satellite operators apply first to the FCC in order to maintain competitive parity in their home country demonstrates the overarching influence the FCC could exert over domestic service in Brazil that Star One warned of in its Petition.

### **III. CONCLUSION**

To avoid the concerns outlined above, Star One respectfully requests that the Commission grant its Petition to Deny or Defer in Part SES' request to construct and operate one fixed beam over Brazil.

Respectfully submitted,

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/s/

Alfred M. Mamlet  
Petra A. Vorwig  
Steptoe & Johnson LLP  
1330 Connecticut Avenue, N.W.  
Washington, D.C. 20036  
(202) 429-3000  
*Counsel for Star One S.A.*

December 18, 2009



**DECLARATION OF LUIZ OTÁVIO V. PRATES**

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct to the best of my knowledge, information and belief.

Executed on Dec 18<sup>th</sup>, 2009



Luiz Otávio V. Prates  
External Affairs Director  
Av. Presidente Vargas, 1.012 – 6 andar  
CEP 20071-910 Centro -- Rio de Janeiro  
Rio de Janeiro, Brazil

