

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

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In the Matter of )  
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**STAR ONE S.A.** )  
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 )  
Petition for Modification of )  
Declaratory Ruling That Added the )  
Star One C5 Satellite at 68° W.L. to )  
the Permitted Space Station List )  
\_\_\_\_\_ )

File No. SAT-PPL-20071113-00159  
Call Sign S2742

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**MAR 26 2008**

Federal Communications Commission  
Bureau / Office

To: The International Bureau

**OPPOSITION TO REQUEST FOR CLARIFICATION OR, IN THE ALTERNATIVE,  
FOR RECONSIDERATION**

Star One S.A. (“Star One”) hereby opposes the Request for clarification or, in the alternative, for reconsideration filed by the Administration of Colombia on behalf of the Andean Satellites Association and the Andean Community (collectively, “ASA”).<sup>1</sup> ASA is requesting a modification of the Declaratory Ruling which added the Star One C5 satellite – a C- and Ku-band satellite licensed by Brazil to operate at 68° W.L. – to the Commission’s Permitted Space Station List (the “C5 Ruling”).<sup>2</sup> Specifically, ASA requests the addition of a condition to address the possibility that ASA may launch the Simon Bolivar 2 (“SB2”) satellite network to 67° W.L., a location to which ASA claims to have ITU date priority for the C- and Ku-band frequencies.

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<sup>1</sup> See Letter from Maria Del Rosario Guerra, Minister for Communications, Republic of Colombia, to Mr. Kevin J. Martin, Chairman, FCC, *filed in* File No. SAT-PPL-20071113-00159 (dated Mar 13, 2008) (“Request”).

<sup>2</sup> See Stamp Grant, File No. SAT-PPL-20071113-00159 (granted Feb. 7, 2008).

For the reasons set out below, the ASA Request should be denied. The conditions set forth in the C5 Ruling are sufficient as written and should not be modified by the Bureau. In any event, ASA has not timely filed its Request and has not provided good cause for filing late. At the very least, the Bureau should hold the request in abeyance until such time as ASA requests U.S. market access and it is clear that ASA will be able to bring into use the SB2 network in time to preserve its ITU priority.

**I. ASA’S REQUEST SHOULD BE DENIED BECAUSE ASA FAILED TO PARTICIPATE IN THE EARLIER STAGES OF THE PROCEEDING**

The Request should be denied because ASA has failed to file any comments or otherwise participate in the earlier stages of this proceeding. The Commission’s rules are clear:

“[p]etitions to deny, petitions for other forms of relief, and other objections or comments must...[b]e filed within thirty (30) days after the date of public notice announcing the acceptance for filing” of the Star One C5 petition.<sup>3</sup> Moreover, a non-party to a proceeding may only file a petition for reconsideration of an order that results from such proceeding if it can “show good reason why it was not possible for him to participate in the earlier stages of the proceeding.”<sup>4</sup>

ASA has provided no such showing,<sup>5</sup> nor can it do so.

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<sup>3</sup> See 47 C.F.R. § 25.154(a)(2). The Star One C5 petition was placed on public notice on December 7, 2007, so the 30-day public comment period ended on January 7, 2008. See Public Notice, Report No. SAT-00487 (rel. Dec. 7, 2007).

<sup>4</sup> 47 C.F.R. § 1.106(b)(1).

<sup>5</sup> ASA asserts that it did not comment on Star One’s petition because it believed that the Commission’s practice was to require a lower priority satellite to cease service to the U.S. once a satellite with a higher ITU priority begins operation at the same orbital location. See Request at 2 (“For this reason, the Andean Community did not comment on Star One’s petition”). This is not a good reason for failing to participate earlier in this proceeding. Even though ASA was aware of Star One’s petition, it chose not to participate in the mistaken belief that the Commission would impose specific conditions to protect the SB2 network at 67° W.L. It should have been aware that a condition of the kind that it is now requesting has generally been imposed only when a party claiming superior ITU priority has actually filed timely comments in the

The purpose of the Commission's rule is also clear. The Commission and applicants are entitled to assume that all interested parties have participated in the initial proceeding, and to issue orders and make business decisions based on that assumption. Indeed, it would be extremely prejudicial to Star One for the Bureau to entertain ASA's request for reconsideration at this point. Star One timely submitted a \$3 million bond for the Star One C5 satellite (which was due several days *before* ASA filed its request for reconsideration) on the assumption that the Bureau's decision would be final because no party had opposed or commented on Star One's petition for declaratory ruling.<sup>6</sup>

## **II. ASA'S REQUEST IS ALSO PREMATURE BECAUSE IT IS HIGHLY UNCERTAIN WHETHER IT WILL BE ABLE TO BRING ITS HIGHER PRIORITY NETWORK INTO USE IN TIME**

Even if the Bureau were to consider ASA's untimely Request, it is highly uncertain whether the SB2 satellite network will in fact be fully operational by its new ITU bring-into-use date of September 17, 2010. Moreover, since ASA has yet presented a concrete proposal describing the parameters of its network, it is premature to determine whether coordination with Star One C5 would or would be possible.

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underlying proceeding. *See, e.g., Loral SpaceCom Corp.*, 18 FCC Rcd 16374 (2003) (cited at Request at 3 n.4); *PanAmSat Corp.*, 15 FCC Rcd 21802 (1999) (where Andean participation in the proceeding resulted in conditions to protect a higher priority ITU network). Thus, by failing to file any comments to protect its interests, ASA necessarily accepted the risk that no such conditions would be imposed.

<sup>6</sup> *See* Letter from Daniel C.H. Mah, Counsel for Star One S.A., to Marlene H. Dortch, Secretary, FCC, *filed in* File No. SAT-PPL-20071113-00159 (filed Mar. 10, 2008). As the Commission is aware, Star One is a substantial satellite operator with a track record of launching its satellites on time and ahead of the Commission's milestones. Star One recently launched and commenced operation of the Star One C1 satellite at 65° W.L., several months ahead of the March 29 launch milestone for that satellite. *See* Letter from Luiz Otavio Prates, Star One S.A. to Marlene H. Dortch, Secretary, FCC, *filed in* File No. SAT-PPL-20071113-00159 (filed Jan. 31, 2008). Star One is also scheduled to launch the Star One C2 satellite in April 2008, years ahead of the launch milestone for that satellite.

The SB2 satellite network was first filed with the ITU in 1989. The Commission last encountered the SB2 filing nine years later in 1998 in the context of GE Americom's request for the reassignment of the GE-3 satellite from 67° W.L. to 81° W.L.<sup>7</sup> The Commission granted GE Americom's request in part to avoid a potential conflict with the proposed SB2 network.<sup>8</sup> It has been a decade since the GE Americom reassignment, and nearly two decades since the original SB2 ITU filing, and still no Andean-licensed satellite has been deployed to the 67° W.L. orbital location on a permanent basis. Indeed, the ITU priority for the SB2 network would have expired in September 2007, but for an extension of the bring-into-use deadline obtained recently by the Andean Community during the 2007 ITU World Radio Conference.<sup>9</sup> The SB2 filing's new bring-into-use deadline is now September 17, 2010.

ASA asserts that "the Andean Community is actively negotiating with industry players...and has every expectation that the Andean filing will be brought into use and fully operational before September 2010."<sup>10</sup> Given the protracted history of the SB2 network, however, it is highly speculative whether the Andean filing will in fact be brought into use on time. Indeed, the Andean Community has been less than successful in bringing other ITU filings into use in a timely manner, which has prejudiced U.S. licensees in the past. In 1999, the Andean Community successfully opposed the grant of regular authority for PanAmSat to operate the HGS-1 / PAS-22 satellite at 60° W.L. on the basis that the Andean Community was planning

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<sup>7</sup> See *Assignment of Orbital Locations to Space Stations in the Domestic Fixed-Satellite Service*, 13 FCC Rcd 13863 (1998) (cited in Request at 2).

<sup>8</sup> See *id.* at ¶ 5.

<sup>9</sup> See Request at 2.

<sup>10</sup> *Id.*

to bring into use a satellite with higher ITU priority at 61° W.L.<sup>11</sup> Because of the Andean opposition, the Commission decided to grant PanAmSat “temporary” operating authority instead, subject to conditions designed to protect the planned Andean network at 61° W.L.<sup>12</sup> Today, the Brazilian-licensed Amazonas-1 satellite occupies the 61° W.L. slot. To the best of Star One’s knowledge, no Andean-licensed C- or Ku-band satellite has ever operated at the 61° W.L. orbital location.

Given this track record, the Bureau should either deny the Request on the merits, or at the very least wait and see if the Andean Community’s latest negotiations will result in a concrete proposal to bring the 67° W.L. slot into use by the September 2010 deadline. If not, then ASA’s request for reconsideration of the C5 ruling will be moot. Accordingly, if the Bureau were to decide not to deny the ASA Request, then the Bureau should hold the ASA Request in abeyance until and unless ASA actually files a request for U.S. market access and then only if, at that time, it appears that the Andean Community will in fact be able to deploy a satellite to 67° W.L. in time to preserve its ITU date priority.<sup>13</sup>

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<sup>11</sup> See *PanAmSat Corp.*, 15 FCC Rcd 21802, at ¶ 4 (1999).

<sup>12</sup> See *id.* at ¶¶ 12-14.

<sup>13</sup> Star One reserves the right to file further comments and/or oppose the imposition of additional conditions on the C5 Ruling at such later point, and nothing in this pleading should be read as prejudicing such right.

### III. CONCLUSION

For all of these reasons, the Bureau should deny ASA's request for clarification or reconsideration of the C5 Ruling. At the very least, the request should be held in abeyance until (a) ASA submits a request for U.S. market access, and (b) it is clear that the higher priority SB2 satellite network will be brought into use in time to preserve the Andean Community's ITU priority at 67° W.L.

Respectfully submitted,



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March 26, 2008

## CERTIFICATE OF SERVICE

I, Chung Hsiang Mah, hereby certify that on Wednesday, March 26, 2008, I caused true and correct copies of the attached "Opposition to Request for Clarification or, in the Alternative, for Reconsideration" to be served on the following parties by the method indicated:

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