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Federal Communications Commission
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Lima, Peru the 28th August, 2008

The Honorable Kevin J. Martin
Chairman
FEDERAL COMMUNICATIONS COMMISSION, FCC
445 12th Street SW
Washington D.C. 20554
United States of America

Reference: OPPOSITION TO APPLICATION FOR REVIEW,
In the Matter of STAR ONE S.A., Petition for Declaratory Ruling
For Inclusion of Star One C5 on the Permitted Space Station List,
File No. SAT-PPL-20071113-00159

Dear Chairman Martin,

The Andean Community¹ hereby opposes the Application for Review filed in this proceeding by Star One S.A.² Star One asks the full Commission to overturn the International Bureau's decision in the *Clarification Order* to clarify the entry for the Star One C5 satellite on the Permitted Space Station List (the "Permitted List") by more fully spelling out the need for international spectrum coordination.³ Contrary to Star One's assertions, the Bureau's action not only accords with Commission precedent, but is compelled by it. Moreover, as the Bureau found, the public interest is best served by clarification of the Permitted List entry for Star One C5 in order to place all parties – including potential U.S. earth station customers – on notice of potentially critical facts. Accordingly, Star One's Application for Review should be denied.

¹ This Opposition is submitted by the Secretary General of the Andean Community, acting on behalf of the Andean Community (before the ITU of the Andean Satellites Association which includes: Bolivia, Colombia, Ecuador, and Peru, collectively referred to herein as the "Andean Community"), and on behalf of the administrations of the Andean Community.

² Application for Review (dated Aug. 13, 2008).

³ See *Star One S.A.*, 23 FCC Rcd. 10896 (Int'l Bur. 2008) ("*Clarification Order*").



This proceeding involves Star One's request to add the Star One C5 satellite to the Permitted List.⁴ The Bureau granted that request, but conditioned that grant by requiring that Star One C5 operate in compliance with coordination agreements reached between its licensing administration (Brazil) and other administrations.⁵ Star One has not sought review of that order.

The Commission has previously made clear in its *Space Station Reform Order* that, absent proof of coordination with another administration that enjoys superior ITU priority, "the lower priority satellite would be required to cease service to the U.S. market immediately upon launch and operation of the higher priority satellite, or be subject to further conditions designed to address potential harmful interference to a satellite with ITU precedence."⁶ In order to clarify the application of that policy, the Andean Community filed a petition for clarification requesting only that this additional fact be reflected in the entry for Star One C5 on the Permitted List so that all parties – including operators and users of U.S. earth stations – would have a clear understanding of the potential implications of international coordination.⁷ Failing to include this condition would not change the consequences of failing to coordinate, but it would make those consequences less transparent to the public at large. In the *Reconsideration Order*, the Bureau granted this request and conformed Star One C5's Permitted List entry to the Commission's stated policies on international coordination. Star One now seeks review of that decision.

Star One has not disputed the Andean Community's recitation of Commission policy quoted from the *Space Station Reform Order*. This policy, which echoes the ITU satellite coordination regime, already applies to the Star One C5 grant regardless of the terms of its entry on the Permitted List. Thus, by clarifying the grant to include conditions more fully spelling out the potential consequences of international coordination, the Bureau did not materially change the grant. However, omission of such conditions would have left the grant materially less informative to the U.S. earth station operators and users whose knowledge of Star One's rights are likely to depend upon the entry for the Star One C5 satellite in the Permitted List.⁸ Thus, while omission might have served Star One's commercial interest in obscuring its coordination status, inclusion would serve the public interest – which is the rightful concern of the

⁴ See FCC File No. SAT-PPL-20071113-00159; Public Notice, Rep. No. SAT-00502, DA 08-394 (Feb. 15, 2008) (noting grant of petition).

⁵ See Stamp Grant, Condition 2, FCC File No. SAT-PPL-20071113-00159 (Feb. 7, 2008).

⁶ *Amendment of the Commission's Space Station Licensing Rules and Policies*, 18 FCC Rcd. 10760, ¶ 296 (2003) ("*Space Station Reform Order*").

⁷ See Letter from Maria del Rosario Guerra, Minister of communications, Republic of Colombia, to Mr. Kevin J. Martin, Chairman, FCC (dated March 13, 2008) ("Request").

⁸ See, e.g., *Amendment of the Commission's Regulatory Policies to Allow Non-U.S. Licensed Space Stations to Provide Domestic and International Satellite Service in the United States*, Order on Reconsideration, 15 FCC Rcd. 7207, ¶ 18 (1999) ("To ensure that parties are aware of, and are observing these conditions, we will also list them as a condition of access for that particular satellite on the Permitted Space Station list.").



Commission. As the Bureau found, while the clarification proposed by the Andean Community “*may be viewed as unnecessary in ordinary circumstances*” given Commission and ITU policies, the filings in this proceeding made clear that “*the public interest would be served by removing any uncertainty as to the applicability of Commission policy in this case.*”⁹

Unable to dispute the underlying policy or its demonstrable public interest benefits, Star One challenges the *Clarification Order* on two other, more technical grounds. First, it asserts that the Bureau should have dismissed the Andean Community’s Request as procedurally defective due to lack of participation in the original proceeding.¹⁰ But the rule cited by Star One applies only to petitions for reconsideration, and as the Commission has recently made clear there is no similar time limitation on the filing of a petition for clarification such as the one involved here.¹¹ Moreover, even if the reconsideration rule were deemed applicable, given both the Commission’s stated policy and its knowledge of the Andean Community’s coordination priority at the adjacent orbital location, there was every reason to believe that the Commission would include in the grant a more explicit discussion of coordination implications, as it had done in prior Permitted List grants.¹² The Bureau cited these facts in the *Clarification Order*.¹³ Star One argues that “surprise” is not a sufficient basis to justify failure to participate in the original proceeding.¹⁴ Yet the cases cited by Star One are inapposite to this context, as the Andean Community does not seek to *deny* Star One entry on the Permitted List or to enter an adversarial proceeding to seek relief not requested by the original complainant.¹⁵ It seeks only clarification to reflect stated FCC policy. More fundamentally, however, the Bureau found that clarifying the Permitted List entry for Star One C5 both (1) would not change the underlying consequences of coordination, and (2) would serve the public

⁹ *Clarification Order*, ¶ 5

¹⁰ See Application for Review at 3-5.

¹¹ See *Spectrum Five, LLC*, DA 08-1955, at n.16 (Int’l Bur., rel. Aug. 26, 2008) (granting request for clarification of international satellite spectrum coordination condition filed over six months after authorization was issued).

¹² See Request at 2-3 (citing *Loral SpaceCom Corp.*, 18 FCC Rcd. 16374, ¶ 31(b)-(d) (Int’l Bur. 2003) (“*Loral SpaceCom*”). Star One argues that the more complete set of conditions discussing coordination issues “has generally been imposed only when a party claiming superior ITU priority has actually filed timely comments.” Application for Review at 5 n.17. Yet in none of the previous cases where such conditions were not included had the Commission already fully familiar with the higher priority system from prior dealings on several occasions – including a prior instance of conditioning an authorization in recognition of its superior ITU priority. See Request at 2.

¹³ *Clarification Order*, ¶ 3.

¹⁴ See Application for Review at 4-5.

¹⁵ See *id.* at 4 n.12 (citing *Press Broadcasting Co. and Silver King Broadcasting of Vineland, Inc.*, 3 FCC Rcd. 6640 (1988) (petition to deny); *GTE Telenet Communications Corp. v. AT&T*, 1 FCC Rcd. 367 (1986) (complaint proceeding); *GTE Mobilenet of Houston L.P. v. AT&T*, 8 FCC Rcd. 2728 (1993) (same); *AT&T Corp. v. BellSouth Telecommunications, Inc.*, 20 FCC Rcd. 8578 (2005) (same)).

interest.¹⁶ Thus, to the extent necessary, there was ample basis for the Bureau to waive any procedural technicalities.¹⁷

Second, Star One asserts that the Bureau's clarifications were "*extremely prejudicial*" to its position.¹⁸ Yet for the reasons documented above, Star One would have faced the same coordination requirements whether or not the clarifications had been explicitly spelled out in the Permitted List entry. The only difference is that now those requirements will be more transparent to third parties in their dealings with Star One.

Hence, far from prejudicial, the *Clarification Order* is but a straightforward application of Commission policy and a reflection of the international satellite coordination process administered by the ITU. It is important to recall that the ITU Radio Regulations contain, among other rules, specific procedures for international coordination of spacecraft communications, and that these rule have the force of an international treaty that binds signatory states to their observance. Accordingly, Brazil (licensing administration of Star One C5), all Andean Countries (licensing administrations of SB2) and United States – which are all signatory administrations – should each proceed as prescribed under applicable ITU rules. In that view, the *Clarification Order* is fully consistent with the ITU coordination regime, and neither Star One nor its licensing administration can disregard the pending coordination duties with Andean Community in light of the relative priorities established under ITU rules. Since the *Clarification Order* did not change these underlying facts in any material way, there can be no prejudice to Star One.

For the forgoing reasons, the Andean Community requests that the Commission deny Star One's Application for Review of the Bureau's *Clarification Order*.

Sincerely,

Freddy Ehlers
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¹⁶ See *Clarification Order*, ¶ 5.

¹⁷ See, e.g., *WAIT Radio v. FCC*, 418 F.2d 1153 (D.C. Cir. 1969). The only statutory requirement is that a petition for reconsideration be filed within 30 days of Commission action. See 47 U.S.C § 405. Star One concedes that the Request was timely filed. See Application for Review at 6 n.23.

¹⁸ Application for Review at 6.

CERTIFICATE OF SERVICE

I hereby certify that on this 28th day of August, 2008, a copy of the foregoing Opposition to Application for Review was served by U.S. first class mail upon:

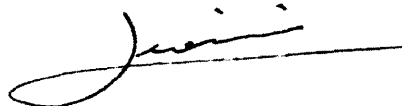
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