

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

FILED/ACCEPTED
SEP 10 2008
Federal Communications Commission
Office of the Secretary

In the Matter of)
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)

STAR ONE S.A.)

File No. SAT-PPL-20071113-00159

Call Sign S2742

Petition for Modification of)
Declaratory Ruling That Added the)
Star One C5 Satellite at 68° W.L. to)
the Permitted Space Station List)
_____)

To: The Commission

REPLY TO OPPOSITION TO APPLICATION FOR REVIEW

Star One S.A. ("Star One") hereby replies to matters raised in the Opposition to Application for Review filed in this proceeding by the Andean Community.¹

"Surprise" is not a good excuse for failing to participate in a proceeding until after the Commission has acted. The Andean Community attempts to distinguish the extensive Commission precedent on this point² on the grounds that it is "not seek[ing] to deny Star One entry on the Permitted List or to enter an adversarial proceeding to seek relief not requested by

¹ See Letter from Freddy Ehlers, Secretary General of the Andean Community to Kevin J. Martin, Chairman, FCC, filed in File No. SAT-PPL-20071113-00159 (filed Aug. 28, 2008) ("Opposition").

² See, e.g., *Press Broadcasting Co. and Silver King Broadcasting of Vineland, Inc.*, 3 FCC Rcd 6640, at ¶ 5 (1988) (holding that "surprise" is "no basis for a new party to file a petition for reconsideration"); *GTE Telenet Communications Corp. v. AT&T*, 1 FCC Rcd 367, at ¶ 6 (1986) (rejecting "surprise[]" at the result" as "good cause" for a new party to file a petition for reconsideration); *GTE Mobilenet of Houston L.P.*, 8 FCC Rcd 2728, at ¶¶ 4-5 (rejecting a mistaken assumption about how the Commission would rule as good cause for not participating earlier); *AT&T Corp. v. BellSouth Telecommunications, Inc.*, 20 FCC Rcd 8578, at ¶ 6 (2005) ("surprise" at the outcome of a Commission proceeding does not ordinarily excuse a failure to attempt to participate earlier in the proceeding."). See also *Committee for Community Access v. FCC*, 737 F.2d 74, 84 (D.C. Cir. 1984).

the original complainant.”³ This is a distinction without a difference. Section 1.106 of the Commission’s rules applies to petitions for reconsideration in *all* non-rulemaking proceedings, regardless of whether the proceeding is adversarial or whether the petitioner is requesting full or partial reconsideration of the original decision.⁴ As a result, a non-party filing a petition for reconsideration must comply with that rule and show “good reason” why it failed to participate earlier in the proceeding if its petition is to be considered.⁵ As Star One has shown, however, “surprise” is simply not a good excuse for failing to participate earlier in a proceeding under well-established Commission and court precedent in any context.⁶ Indeed, the Commission has expressly ruled that “unanticipated results” is a “legally insufficient” basis for a non-party to seek partial reconsideration in the context of a non-adversarial proceeding.⁷

The Andean Community’s reliance on the Spectrum Five decision is misplaced. The Andean Community also claims that the time limits on participation in Section 1.106 do not

³ Opposition at 3 (emphasis in original).

⁴ There are only two Commission rules governing petitions for reconsideration. *See* 47 C.F.R. §§ 1.106, 1.429. Section 1.429 of the Commission’s rules applies to petitions for reconsideration in rulemaking proceedings, while Section 1.106 applies to petitions for reconsideration in all other proceedings. *See* 47 C.F.R. § 1.106(a)(1) (“For provisions governing reconsideration of Commission action in notice and comment rule making proceedings, see §1.429. This §1.106 does not govern reconsideration of such actions.”).

⁵ 47 C.F.R. § 1.106(b)(1).

⁶ *See* Star One S.A., Application for Review at 4-5, filed in File No. SAT-PPL-20071113-00159 (filed Aug. 13, 2008).

⁷ *See The Seven Hills Television Co.*, 3 FCC Rcd 826 (1988) (“*Seven Hills*”) (dismissing non-party’s petition for partial reconsideration of license renewal to modify conditions of grant); *Seven Hills* at ¶ 2 (“[a]n unanticipated result is not conventionally recognized as ‘good cause’ for lack of earlier participation in an agency proceeding.”); *Seven Hills*. at ¶ 5 (“This basis, as we have said, is legally insufficient.”).

apply to its “petition for clarification,” as opposed to petitions for reconsideration.⁸ In this regard, the Andean Community relies on the International Bureau’s recent *Spectrum Five* decision, which modified the EchoStar 11 license months after the license was granted.⁹ That decision is inapposite, however. In that case, the EchoStar 11 license contained an express reservation of authority to the Commission to impose “additional terms and conditions” as required to effect coordination.¹⁰ In other words, modifications to the EchoStar 11 license could be requested and made outside of the procedure for reconsideration set out in Section 1.106 of the Commission’s rules. In contrast, there is no similar reservation of authority in the Star One C5 authorization, which means that the Andean Community’s post-grant request in this case must be treated as a petition for reconsideration that is subject to the limits on participation in Section 1.106. Indeed, there can be no doubt that the International Bureau did in fact treat that request as a petition for reconsideration, as its grant of that request is styled an “Order on Reconsideration.”¹¹

⁸ Opposition at 3 (“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.”). In fact, the Andean Community’s request was styled a “Request for Clarification or, in the Alternative, for Reconsideration.” See Letter from Maria Del Rosario Guerra, Minister for Communications, Republic of Colombia, to Kevin J. Martin, Chairman, FCC, *filed in* File No. SAT-PPL-20071113-00159 (dated Mar. 13, 2008).

⁹ See *Spectrum Five, LLC*, DA 08-1955, Order (rel. Aug. 26, 2008) (“*Spectrum Five*”).

¹⁰ *Id.* at ¶ 8 (“Pursuant to the EchoStar 11 license condition quoted above, EchoStar ‘may be subject to additional terms and conditions as required to effect coordination or obtain the agreement of other Administrations.’ We find here that an additional term of operation . . . is a necessary part of a successful coordination . . .”).

¹¹ See *Star One S.A.*, DA 08-1645, Order on Reconsideration, File No. SAT-PPL-20071113-00159 (rel. Jul. 14, 2008) (“*Reconsideration Order*”). This can be contrasted with the *Spectrum Five* decision, which the Bureau styled an “Order.” The Bureau also applied a different caption to that Order (rather than the EchoStar 11 caption) to indicate that it was not acting on reconsideration of the original grant.

The Bureau Did Not Waive the Procedural Defects in the Andean Community's

Request. The Andean Community suggests that “there was ample basis for the Bureau to waive any procedural technicalities.”¹² But the Bureau did not in fact waive any procedural defects in the Andean Community’s request. Indeed, the Bureau failed to even discuss Section 1.106, much less make a finding that there was “good reason” for the Andean Community’s failure to participate prior to the Bureau’s grant of the Star One C5 authorization. The Bureau did no more than note the Andean Community’s explanation for non-participation – namely, that it “expected” a different outcome¹³ – without reference to either the requirements of Section 1.106(b)(1) or the extensive Commission and judicial authority holding that “surprise” is not a good reason for failing to participate earlier in a proceeding.

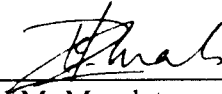
As a result, and as explained more fully in the Application for Review, the Bureau acted in clear conflict with established precedent and committed prejudicial procedural error. The Commission should therefore reverse the Bureau’s decision to grant the Andean Community’s request, and should re-affirm “the Commission’s – and indeed the public’s – interest in finality of licensing decisions.”¹⁴

¹² Opposition at 4.

¹³ *Reconsideration Order* at ¶ 3.

¹⁴ *Committee for Community Access v. FCC*, 737 F.2d 74, 84 (D.C. Cir. 1984) (“If we were to require the Commission to accept surprise as a sufficient justification for a new party to seek reconsideration, the Commission’s – and indeed the public’s – interest in finality of licensing decisions would be eviscerated.”)

Respectfully submitted,



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September 10, 2008

CERTIFICATE OF SERVICE

I, Chung Hsiang Mah, hereby certify that on Wednesday, September 10, 2008, I caused true and correct copies of the foregoing "Reply to Opposition to Application for Review " to be served on the following parties by the method indicated:

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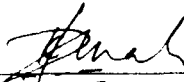
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