

Before the
Federal Communications Commission
Washington, D.C. 20554

In the matter of)
Star One, S.A.) IBFS File No. SAT-PPL-20081205-00225
Call Sign S2784
Petition for Declaratory Ruling to be Added to the) IBFS File No. SAT-PPL-20071113-00159
Permitted List) Call Sign S2742

ORDER

Adopted: October 13, 2010

Released: October 13, 2010

By the Chief, International Bureau:

I. INTRODUCTION

1. In this Order, we deny Star One, S.A.'s (Star One) request to substitute a 15-year-old in-orbit C-band space station (Star One B1, Call Sign S2784) for a new hybrid Ku- and C-band space station (Star One C5, Call Sign S2742) required by the Commission's authorization to Star One at the 68° W.L. orbital location. Both satellites are licensed by Brazil. Our 2008 grant of U.S. market access to Star One C5 and its associated listing on the Commission's Permitted Space Station List (Permitted List) required Star One to construct, launch, and bring Star One C5 into operation within five years of grant. Grant of Star One's request to substitute an aged space station for a new state-of-the-art space station would undercut the Commission's policy of ensuring that entities are timely building authorized state-of-the-art satellite systems to the benefit of U.S. consumers. Accordingly, we decline to permit Star One to use its C-band space station nearing its end-of-life as a substitute for meeting implementation milestones for a new C- and Ku- band space station.

2. While we do not allow the C-band capacity on Star One B1 to substitute for the C-band capacity on Star One C5, we add Star One B1 to the Permitted List on a conditional basis. This authorizes U.S. earth stations with "routine" technical parameters to communicate with Star One B1 in the 3700-4200 MHz/5925-6425 MHz frequency bands without further regulatory approval. Adding the C-band space station Star One B1 to the Permitted List will allow U.S. customers to receive services from an orbital location that is not now being used to serve the United States. In authorizing access by an older satellite that does not meet the Commission's rules, however, we do not confer any priority to Star One to continue to provide C-band service in the United States from this location with a next-generation satellite. In other words, if Star One seeks market access from the 68° W.L. orbital location in the C-band using

1 For purposes of this Order, the C-band refers to the 3700-4200 MHz (space-to-Earth) and 5925-6425 MHz (Earth-to-space) frequency bands, and the Ku-band refers to the 11.7-12.2 GHz (space-to-Earth) and 14.0-14.5 GHz (Earth-to-space) frequency bands.

2 The Permitted List denotes all C- and Ku-band satellites and services with which U.S. earth stations are permitted to communicate without additional Commission action, subject to certain technical requirements and appropriate conditions. 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, First Order on Reconsideration, IB Docket No. 96-111, 15 FCC Rcd 7207 (1999).

3 Star One C5 Petition for Declaratory Ruling, IBFS File No. SAT-PPL-20071113-00159, grant stamp, dated February 7, 2008. Public Notice, Report No. SAT-00502, DA 08-394 (February 15, 2008) (Star One C5 Grant).

another space station, it must file a new application seeking to serve the United States from the new space station. Such an application, together with any applications filed by other companies seeking similar authority, will be considered under the “first come, first served” processing framework for geostationary-satellite orbit space stations.⁴ In that regard, we note that at a future date, the International Bureau (Bureau) will release a public notice making the C- and Ku-band frequencies at the 68° W.L. orbital location available for reassignment.

3. At the same time, we also deny Star One’s alternative request to extend the contract execution milestone for Star One C5 until 14 days after the release of this Order. Star One has not provided evidence that an extension is needed based on circumstances beyond its control. Because of this, and because Star One failed to demonstrate that it had entered into a non-contingent satellite manufacturing contract by the date required under its market access grant, February 7, 2009, Star One has failed to meet its first milestone obligation. Thus, its February 7, 2008 market access authorization is null and void, and we remove Star One C5 from the Permitted List.

II. BACKGROUND

4. On February 7, 2008, the Bureau issued a Declaratory Ruling that authorized Star One to provide fixed-satellite service (FSS) in the C-band and Ku-band from the 68° W.L. orbital location using a new space station.⁵ In its initial market access request filed in 2007, Star One stated that it would be constructing and building this new space station, Star One C5, which was anticipated to have a 15-year life. Star One further stated that it would satisfy the Commission’s milestone requirements for the construction and launch of this space station.⁶ Consistent with the Commission’s rules, the Bureau imposed a milestone schedule on Star One’s grant of market access.⁷ Specifically, Star One was required to meet four milestones for Star One C5: (1) enter into a binding non-contingent construction contract for the satellite within one year of grant; (2) complete critical design review within two years of grant; (3) begin construction of the satellite within three years of grant; and (4) launch and operate the satellite within five years of grant.⁸ These milestones were incorporated as a condition of Star One’s market access grant for Star One C5, which also provided that failure to comply with a milestone would result in automatic cancellation of the grant of market access.⁹ In accordance with Commission rules, Star One was also required to file a bond for \$3 million within 30 days of grant.¹⁰ This bond becomes payable to the U.S. Treasury in the event that the operator does not meet one of its milestones and is not given an

⁴ Amendment of the Commission’s Space Station Licensing Rules and Policies, *First Report and Order and Further Notice of Proposed Rulemaking*, IB Docket No. 02-34, 18 FCC Rcd 10760, 10805 ¶¶ 108-110 (2003) (*Space Station Reform Order*); 47 C.F.R. § 25.158 (providing queue procedures for GSO-like satellite systems). Section 25.137 of the Commission’s rules provides that a “non-U.S.-licensed GSO-like satellite system seeking to serve the United States can have its request placed in a queue pursuant to Sec. 25.158.” 47 C.F.R. § 25.137(c).

⁵ See generally *Star One C5 Grant*.

⁶ Star One C5’s petition indicated that the space station would “provide a wide array of Fixed-Satellite Service services using the C-band and Ku-band frequencies on routes to, from and within the United States,” and that it would “enhance competition by providing consumers more alternatives in choosing communications providers and services, thereby stimulating lower rates, improving service quality, increasing service options and fostering technological innovation.” See *Star One S.A. Petition for Declaratory Ruling To Add the Star One C5 Satellite at 68° W.L. to the Permitted Space Station List*, IBFS File No. SAT-PPL-20071113-00159, at 2, 12, and Schedule S, S1.f.

⁷ 47 C.F.R. §§ 25.137(d), 25.164(a).

⁸ *Id.* § 25.164(a).

⁹ *Star One C5 Grant*, Condition 5.

¹⁰ *Star One C5 Grant*, Condition 5.e; 47 C.F.R. §§ 25.137(d), 25.165.

extension.¹¹ On March 10, 2008, Star One posted a \$3 million bond.¹²

5. On April 1, 2008, the Andean Community filed a petition requesting the addition of two conditions (see paragraph 12, below) to Star One C5's market access grant relating to the international coordination process.¹³ On July 14, 2008, the Bureau released an *Order on Reconsideration* granting the Andean Community's petition and adding the conditions.¹⁴

6. On December 5, 2008, Star One filed a request to modify the Star One C5 Declaratory Ruling by substituting the technical specifications of the more than 15-year-old C-band Star One B1 space station operating at the 68° W.L. orbital location,¹⁵ for the specifications approved for the C- and Ku-band C5 space station in the market access grant. Star One states that it plans to use Star One B1 to offer C-band capacity in the United States on a short-term or occasional-use basis.¹⁶ Star One also indicates that it may take Star One B1 out of service as early as 2011 due to its age,¹⁷ and that it intends to operate Star One B1 in an inclined orbit with a north/south excursion of 1.6 degrees.¹⁸ In addition, Star One requests authority, pursuant to Section 25.210(j) of the Commission's rules, to operate Star One B1 with an east-west longitudinal tolerance of ±0.10 degrees.¹⁹ Star One also requests waiver of Sections 25.210(a)(3) and 25.210(i) of the Commission's rules²⁰ and requests the Bureau to find that this

¹¹ *Space Station Reform Order*, 18 FCC Rcd at 10826 ¶ 170. This requirement also applies to non-U.S. licensed space stations. *Id.* at 10874-75 ¶¶ 308-09.

¹² Letter from Daniel H. Mah, counsel for Star One S.A., to Marlene H. Dortch, Secretary, Federal Communications Commission, filed March 10, 2008.

¹³ The Administration of Colombia, acting as the Notifying Administration before the ITU of the Andean Satellites Association, on behalf of the administrations of the Andean Community of Nations (Andean Community), Request for Clarification or, in the Alternative, for Reconsideration, filed April 1, 2008. The Andean Community is a group of nations that includes Bolivia, Colombia, Ecuador and Peru.

¹⁴ Star One S.A., Petition for Declaratory Ruling to Add the Star One C5 Satellite at 68° W.L. to the Permitted Space Station List, File No. SAT-PPL-20071113-00159, *Order on Reconsideration*, 23 FCC Rcd 10896 (Sat. Div., Int'l Bur. 2008) (*Order on Reconsideration*). On August 13, 2008, Star One filed an Application for Review of the Bureau's *Order on Reconsideration*. The Andean Community filed an opposition and Star One filed a reply. Star One's Application for Review is pending. The conditions added in the *Order on Reconsideration* are set forth in this Order below.

¹⁵ See Anatel, Relationship of Satellites Licensed to Operate in Brazil, 8/05/2009, <http://www.anatel.gov.br>. Last checked on April 1, 2010. Star One B1 was launched on August 10, 1994. Satellites generally have a 15-year life.

¹⁶ Star One S.A., Application for Modification of the Declaratory Ruling to Add the Star One C5 Satellite to the Permitted Space Station List, IBFS File No. SAT-PPL-20081205-00225 (Star One C5 Modification Application) at 4.

¹⁷ Star One C5 Modification Application at 4. U.S. satellite licenses are awarded for a term of 15 years. This coincides with the expected useful life of a satellite.

¹⁸ *Id.* Operation in an inclined orbit requires earth stations accessing the space station to have special tracking capabilities in order to maintain a usable signal. Inclined orbit is not typically employed in new satellites because it limits the types of services that can be offered. An inclined orbit is typically utilized to extend the useful life of the satellite because it conserves fuel. Disadvantages of inclined-orbit operation include intermittent loss of signal strength at the edges of the coverage beams in the downlink direction since the space station is not accurately pointing at its intended target area all of the time. Similarly, uplinks to inclined-orbit space stations will vary in signal strength because the space station is not always at the precise north/south position that the earth station is pointed toward. In either case, earth stations will need to adjust, usually by using computer-controlled repositioning mechanisms, to track the space station in order to provide consistent service to customers, albeit at increased expense to each earth station operator that wishes to communicate with the space station.

¹⁹ 47 C.F.R. § 25.210(j). Star One C5 Modification Application at 6.

²⁰ 47 C.F.R. §§ 25.210(a)(3) and 25.210(i). Star One C5 Modification Application at 5-6.

modification will satisfy all milestones for Star One C5. Finally, Star One requests that, in the event the Bureau denies this modification request, the Bureau should extend the contract execution milestone for Star One C5 for a period of 14 days after this Order is released, so that Star One may have time to enter into a non-contingent contract.²¹ No comments were filed in response to Star One's application.²²

III. DISCUSSION

7. In the 2003 *Space Station Reform Order*, the Commission adopted a first-come, first-served licensing process for space station applications.²³ As part of the new framework, the Commission adopted a package of market-driven safeguards designed to discourage speculative applications. Those safeguards also help to ensure that licensees remain committed and able to proceed with timely implementation of licensed space stations, which generally cost several hundred million dollars each to launch and operate.²⁴ The safeguards include: (1) a requirement that licensees post a bond within 30 days of license grant; and (2) a requirement to construct and launch the licensed satellite consistent with the milestone schedule specified in Section 25.164 of the Commission's rules.²⁵ The milestones track the three-to-five year period needed to construct and launch a satellite. The amount of the bond may be reduced as milestones are met.²⁶ If the licensee fails to meet a milestone, and an extension is not granted, the license becomes null and void and the outstanding balance of the bond is paid to the U.S. Treasury.²⁷ In the *Space Station Reform Order*, the Commission also determined that all of these safeguards, including the bond and milestone requirements, would apply to U.S. licensees as well as to non-U.S. licensed space station operators seeking to access the market in the United States.²⁸

A. Modification Application--Substitution of Star One B1 for Star One C5

8. The Commission granted Permitted List status to Star One C5, a proposed new space station that Star One stated would provide C-and Ku-band service to the United States for a period of 15 years. Instead of constructing and operating this new space station, Star One seeks to modify the terms of the market access grant in order to satisfy the milestones in the Star One C5 market access grant. The space station it desires to substitute (Star One B1), however, has been in orbit for more than 15 years, is nearing the end of its useful life, and operates only in the C-band. This will not serve the public interest.²⁹

²¹ Star One C5 Modification Application at 8, n.23.

²² We note that although Star One filed this application as a request for modification, the filing also requests that Star One B1 be placed on the Permitted List. Because the request involved a space station wholly separate from the spacecraft authorized in the market access grant, we gave this application a Petition for Permitted List (PPL) file number.

²³ *Space Station Reform Order*, 18 FCC Rcd 10760.

²⁴ *Id.* at 10823 ¶ 161; NetSat 28 Company, LLC, *Memorandum Opinion and Order*, 19 FCC Rcd 17722 (Int'l Bur. 2004).

²⁵ 47 C.F.R. § 25.164.

²⁶ *Id.* § 25.165(d).

²⁷ *Id.* § 25.165(c); *Space Station Reform Order*, 18 FCC Rcd at 10825 ¶ 167.

²⁸ *Space Station Reform Order*, 18 FCC Rcd at 10874-76 ¶¶ 308, 310-312; Amendment of the Commission's Space Station Licensing Rules and Policies, *First Order on Reconsideration and Fifth Report and Order*, FCC 04-147, 19 FCC Rcd 12637, 12660-62 ¶¶ 63-67 (2004); 47 C.F.R. § 25.137(d).

²⁹ 47 C.F.R. §§ 25.137(f), 25.117(d)(2)(ii) (explaining the public interest standard for modification requests). See also Columbia Communications Corporation, Petition to Revoke Authorization of Orion Satellite Corporation to Construct, Launch, and Operate an International Communications Satellite to be Located at 47° W.L., *Memorandum Opinion and Order*, 15 FCC Rcd 15566, 15572 ¶ 13 (Int'l Bur. 2000) (*Columbia Communications Corporation*

(continued....)

Even though Star One's proposed use of Star One B1 will allow it to provide some service to the United States from the 68° W.L. orbital location, the Star One B1 space station will not provide service commensurate with the level and scope of the proposed Star One C5 space station, upon which Star One's authorization is based. Star One's argument that it is unlikely that another satellite provider could provide the same C-band service from the 68° W.L. orbital location as Star One B1 fails to address the disparate capabilities of Star One C5 and Star One B1. It also fails to address how allowing an aged space station to substitute for a new state-of-the-art space station is consistent with our policy goal that satellite providers remain committed and able to proceed with the timely implementation of new, state-of-the-art space stations represented in their authorization requests to the benefit of U.S. consumers.

9. *Permitted List Precedent.* Star One contends that prior entries on the Commission's Permitted List provide support for its modification request. None of the cases cited by Star One, however, is analogous to its request here. Star One cites the grant of market access in 2001 to the in-orbit Brasilsat A2 space station (launched in 1986) that was operating at an inclined orbit at the 63° W.L. orbital location,³⁰ and the grant of market access in 2006 to the in-orbit Satcom C-4 space station (launched in 1992) that was operating at an inclined-orbit at the 104.95° W.L. orbital location.³¹ Neither grant of market access allowed an in-orbit space station to be used as a substitute for a new space station. While we may grant market access to in-orbit space stations—even for the Star One B1 space station on a conditional basis (as discussed below) – we have not permitted an older satellite to satisfy the milestone schedule for a new state-of-the-art satellite.

10. In further support of its request, Star One also asserts that the Commission has allowed non-U.S.-licensed space station operators to modify their market access grants to delete authorized frequency bands prior to launch in order to accommodate changed business plans. Star One cites the grant of Star One's application to modify its C- and Ku-band market access grant for the Star One C2 space station, to allow it to provide Ku-band service only.³² In contrast to the Star One C5 request, Star One C2's proposed space station design, capabilities, and coverage area remained unchanged. In other words, Star One was still constructing and launching the C- and Ku-band Star One C2 space station. The only change was a regulatory one – Star One's request to serve the United States in the C-band was dropped. This modification request bears little resemblance to Star One's request to swap the soon-to-be retired Star One B1 space station for the proposed new Star One C5 space station that was authorized to serve the United States. Thus, none of the cases that Star One cites supports grant of its request to substitute the Star One B1 space station for Star One C5 at the 68° W.L. orbital location on the Permitted List.

11. *International Coordination.* Star One also argues that we should modify the terms of its market access grant by allowing it to substitute the 15-year old Star One B1 space station for Star One C5

(...continued from previous page)

Order) (explaining that use of an older in-orbit satellite to provide temporary interim service does not justify a request to toll implementation milestones for a state-of-the-art satellite).

³⁰ Empresa Brasileira de Telecomunicações S.A., *Order*, 16 FCC Rcd 655 (Sat. & Rad. Div., 2001).

³¹ SES Satellites (Gibraltar) Limited, Petition For Declaratory Ruling Adding Satcom C-4 to the Permitted Space Station List for Operations from 105° W.L. IBFS File No. SAT-PPL-20060330-00035 (granted Jun. 21, 2006). The Commission originally licensed the Satcom C-4 space station in 1989. See Applications of GE American Communications, Inc., for Authority to Construct, Launch and Operate Space Stations in the Domestic Fixed-Satellite Service, *Order and Authorization*, 4 FCC Rcd 6534 (1989). In 2006, the licensing authority was transferred to a different licensing Administration - Gibraltar - at the time that the space station reached the 104.95° W.L. orbital location, as a condition of the grant of Satcom C-4's addition to the Permitted List. See SES Gibraltar Permitted List Filing for C-4, IBFS File No. SAT-PPL-20060330-00035, grant stamp dated June 21, 2006.

³² *Star One S.A.*, IBFS File No. SAT-MOD-20051014-00200 (granted Apr. 20, 2006).

space station because of unanticipated difficulties in international coordination. In the *Space Station Reform Order*, the Commission noted that space station operators licensed by the United States under the first-come, first-served approach take their licenses subject to the International Telecommunication Union (ITU) coordination process and the Commission does not guarantee the success of this coordination.³³ The Commission further stated that “this may mean that the U.S. licensee may not be able to operate its system if the coordination cannot be completed.”³⁴ The Commission also noted how this policy would apply in the context of two or more non-U.S.-licensed satellites seeking market access to the United States.³⁵ The Commission noted that “under the ITU’s Radio Regulations, it is the responsibility of Administrations with lower ITU priority to coordinate their networks with the networks of Administrations with higher priority.”³⁶ Nevertheless, the Commission also stated that it would permit a later-filed network to access the market in the United States if the first-filed network has not yet been launched. The later-filed network either would be subject to proof of coordination with the first-filed network or, absent proof of coordination, would be required to modify and/or cease service to the market in the United States once the first-filed network was launched, if necessary to address potential harmful interference to the satellite network with ITU date precedence.³⁷

12. Star One argues that its proposal to substitute Star One B1 for Star One C5 has been necessitated, at least in part, by the Commission’s grant of the Andean Community’s petition to add additional conditions to Star One C5’s market access grant that relate to the ITU coordination process. These conditions are as follows: “(a) In the absence of a coordination agreement with a satellite network with higher ITU date priority, Star One C5 must cease co-frequency service to the U.S. market immediately upon launch and operation of the higher ITU-priority space station, or be subject to further conditions designed to address potential harmful interference to a space station with ITU date precedence. (b) In the absence of a coordination agreement with a satellite network with higher ITU priority, U.S.-licensed earth stations communicating with Star One C5 must immediately terminate any operations that cause harmful interference to the higher priority space station.”³⁸ In granting the Andean Community’s request, however, the Bureau merely restated the Commission’s existing policies regarding the ITU

³³ *Space Station Reform Order*, 18 FCC Rcd at 10799-10800 ¶ 96. The ITU is a specialized agency of the United Nations that, among other things, coordinates the use of specific frequency bands at specific orbital locations. The ITU Convention is the basic instrument creating and defining the role of the ITU. The United States is a member of the ITU. The international coordination process is a complex process and can span a number of years. In broad terms, if an administration files advance publication information (API) with the ITU at a particular orbit location for particular frequencies, successfully completes coordination of its filing, and obtains recordation of the frequency assignment in the ITU’s Master International Frequency Register (MIFR), the administration’s space station is entitled to protection against harmful interference from operating space stations of other administrations that have not been coordinated and successfully entered into MIFR. In addition to this three-step process, frequency assignments must also be brought-into-use within certain dates or the frequency assignment can be suppressed by the ITU. ITU Radio Regulations, 2004 Edition, Article 9.

³⁴ *Id.* The Commission’s rules reflect this policy. 47 C.F.R. §§ 25.111(b) (“No protection from interference caused by radio stations authorized by other Administrations is guaranteed unless coordination procedures are timely completed or, with respect to individual administrations, by successfully completing coordination agreements. Any radio station authorization for which coordination has not been completed may be subject to additional terms and conditions as required to effect coordination of the frequency assignments with other Administrations.”), 25.275(b) (“Any coordination agreements, both domestic and international, concerning specific frequency usage constraints, including non-use of any particular frequencies within the frequency bands listed in the station authorization, are considered to be conditions of the station authorization.”).

³⁵ *Space Station Reform Order*, 18 FCC Rcd at 10870-71 ¶ 296.

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Order on Reconsideration*, 23 FCC Rcd at 10897.

coordination process between two non-U.S. licensed space station operators. Just as a space station operator licensed by the United States takes its authorization subject to the risk of the ITU coordination process, so too do non-U.S.-licensed space station operators granted access to the market in the United States.³⁹ The Andean Community's ITU filing for the Ku-band frequencies at 67° W.L. orbital location was in place long before Star One applied for authority to serve the United States from its Star One C5 C/Ku-band space station.⁴⁰ We have stated that difficulties encountered in the coordination process are not grounds for a waiver or extension of milestones.⁴¹ Consequently, Star One's argument that the additional conditions placed on its access grant for Star One C5 constitute an unforeseeable circumstance beyond its control is unconvincing.

13. Finally, Star One argues that the Star One B1 C-band space station will operate under Brazilian ITU priority at this location regardless of whether Star One is granted market access to the United States. Thus, it concludes that no other party would be able to provide C-band service from this location.⁴² Enforcement of the Commission's milestone policies is not measured against whether another satellite operator would choose to provide service at a given location. Indeed, Star One indicates that it may take Star One B1 out of service next year. Operators often make the business decision to implement satellites at orbital locations where another Administration has made filings at the ITU (including favorable entry in the MIFR) but where the other Administration does not have an operational satellite.⁴³ Thus, the ITU status of Star One B1 at this orbital location is not germane to our decision here.⁴⁴

14. In summary, the Star One B1 space station will neither provide the functional equivalent

³⁹ *Space Station Reform Order*, 18 FCC Rcd at 10870-71 ¶ 296.

⁴⁰ The API filed by the Andean Community for the Simon Bolivar 2 (SB2) satellite network was received by the ITU's Radiocommunication Bureau on September 21, 1998, identifying the 3400-3700 MHz and 6425-6775 MHz C-band frequencies and 11.45-11.7 GHz, 11.7-12.2 GHz, 13.75-14.0 GHz and 14.0-14.5 GHz Ku-band frequencies at the 67° W.L. orbital location. The ITU's Radiocommunication Bureau's Draft Resolution iap/14A1/31 (WRC-07), entitled "Extension, on this one occasion, of the deadline stipulated in the ITU Radio Regulations for satellite networks 'Simón Bolívar 2' and 'Simón Bolívar 2A' at orbital position 67° West," described the ITU filing history of the Andean Community Network as follows: "Advance publication of information, coordination request and subsequently notification information for the Simón Bolívar 2 satellite network were received by the Bureau within the regulatory time-limit. Resolution 49 information and confirmation of the date of bringing into use within the regulatory seven-year time-limit were also received on time by the Bureau. The Andean community indicated then that the use of the recorded assignments was suspended on 19 September 2005 under No. 11.49 of the Radio Regulations." The Andean Community filed for an extension of the BIU date in November 2007. The ITU Radiocommunication Bureau's resolution "[extended] the deadline for implementation of the satellite network 'Simón Bolívar 2' at orbital position 67° West, until 18 September 2010, in the interests of giving effect to the right of the Andean States to accede to the geostationary orbit under equitable conditions." *Id.*

⁴¹ Loral SpaceCom Corporation, Application for Extension of Milestone Dates, *Memorandum, Opinion and Order*, 20 FCC Rcd 12045, 12050 ¶ 13 (Int'l Bur. 2005) (*Loral SpaceCom Corporation Order*) ("Consequently, problems with coordination cannot be used as a basis for an extension of milestone requirements because the duty to coordinate with potentially affected satellite operators, and the risks inherent in this process, are assumed by the licensee upon acceptance of the authorization"); see also Petition for Modification of Declaratory Ruling That Added the Star One C5 Satellite to the Permitted Space Station List, *Memorandum Opinion and Order*, DA 08-538, 23 FCC Rcd 3915 (Int'l Bur., Sat. Div. 2008) (denying request to extend the 30-day bond filing requirement).

⁴² Star One C5 Modification Application, Legal Narrative at 7-8.

⁴³ See note 33 above regarding the ITU process.

⁴⁴ *Columbia Communications Corporation Order*, 15 FCC Rcd 15566 (in denying a petition to revoke a license held by Loral, the International Bureau explained that whether a licensee meets relevant ITU deadlines for specific U.S. filing is irrelevant for purpose of evaluating milestone compliance); VisionStar Incorporated, *Memorandum Opinion and Order*, 19 FCC Rcd 14820 (Int'l Bur. 2004) (preservation of ITU date priority did not justify an extension of a Commission milestone).

of Star One C5, nor the level or length of service that was contemplated in the Star One C5 Petition for Declaratory Ruling, as Star One itself has indicated, or in the Commission's market access authorization for Star One C5. As a result, U.S. consumers will not obtain the same or similar level of service contemplated in the original U.S. market access grant. Consequently, we find that the Star One B1 space station cannot be used to meet the milestones in the Star One C5 market access grant.

B. Star One B1 Permitted List Entry

1. Conditional Authorization

15. Although we deny Star One's request for modification of the Star One C5 authorization for the reasons discussed above, we find that the public interest would be served by authorizing Star One to provide C-band service to the United States from the 68° W.L. orbital location using the Star One B1 space station on a temporary basis.⁴⁵ In the past, we have granted applications for aging in-orbit space stations to operate on a temporary basis under certain conditions.⁴⁶ For example, in similar circumstances, the Bureau granted PanAmSat conditional authority to operate the SBS-4 satellite, an older Ku-band space station operating in inclined orbit, until it was retired or the space station regularly assigned to that location was ready to be launched, whichever came first.⁴⁷ The Bureau stated that while it would not allow PanAmSat to "bootstrap" itself into a "replacement expectancy" for a next-generation satellite at a new orbital location by moving an older, in-orbit satellite into that location, it saw no reason to prevent PanAmSat from providing service from a location that was not otherwise being used. The Bureau made clear that all applications for Ku-band space stations at this orbit location, including any PanAmSat might file in the future, would be considered pursuant to the first-come, first-served licensing procedure for GSO satellites.

16. Similarly, we will allow Star One to provide C-band service to the United States from Star One B1, and will add Star One B1 to the Permitted List at the 68° orbital location on a conditional basis, provided it is otherwise qualified pursuant to the *DISCO II* analysis below.⁴⁸ The Permitted List authorization will only apply to the Star One B1 space station and does not confer any priority to Star One to serve the United States with another C-band satellite at this orbital location. If Star One seeks to continue to serve the U.S. market with another space station at the end of Star One B1's service life,⁴⁹ it must file an application to do so. Additionally, any other applicant may file for authority to provide C-band satellite service to the United States from this orbital location.⁵⁰ All applications to provide C-band service to the United States from the 68° W.L. orbital location will be considered under the Commission's first-come, first-served licensing framework.

⁴⁵ Star One C5 Modification Application at 3.

⁴⁶ See Panamsat Licensee Corp. New Application for Launch Authority, 19 FCC Rcd 2012 (Int'l Bur., Sat. Div. 2004) (*PanAmSat SBS-4 Order*).

⁴⁷ *Id.*

⁴⁸ Amendment of the Commission's Regulatory Policies to Allow Non-U.S. Licensed Satellites Providing Domestic and International Service in the United States, *Report and Order*, IB Docket 96-111, 12 FCC Rcd 24094 (1997) (*DISCO II*) ("DISCO" stands for "Domestic and International Satellite Consolidation Order").

⁴⁹ Star One C5 Modification Application at 4-5 n.12.

⁵⁰ *Space Station Reform Order*, 18 FCC Rcd at 10806 ¶ 113. At this location, as with all other locations, any applicant would assume the risk of ITU coordination. *Id.* at 10870-71 ¶ 296.

2. *DISCO II* Analysis

a. General Framework

17. In *DISCO II*, the Commission set forth the public interest analysis applicable in evaluating applications to use non-U.S. licensed space stations to provide service in the United States. This analysis considers the effect on competition in the United States;⁵¹ eligibility and operating (*e.g.*, technical) requirements;⁵² spectrum availability;⁵³ and national security, law enforcement, foreign policy, and trade concerns.⁵⁴ We evaluate whether to authorize Star One B1 to serve the U.S. market under this framework.

b. Competition Considerations

18. In *DISCO II*, the Commission established a rebuttable presumption that entry by non-U.S. satellites licensed by WTO Members to provide services covered by the U.S. commitments under the WTO Basic Telecom Agreement will further competition in the United States.⁵⁵ These commitments include fixed-satellite service, but specifically exclude direct-to-home (DTH) services, Direct Broadcast Satellite Service (DBS), and Digital Audio Radio Service (DARS).⁵⁶ This means that we will presume that WTO-member licensed satellites providing WTO-covered services satisfy the competition component of the public interest analysis.⁵⁷

19. In this case, the presumption in favor of entry applies to Star One B1, which is licensed by Brazil, a WTO Member,⁵⁸ and which will provide non-DTH fixed-satellite service to customers in the United States. There is no evidence to rebut the presumption that Star One B1's entry into the U.S. market is pro-competitive. Therefore, we conclude that Star One B1's proposed entry for purposes of offering fixed-satellite services, excluding DTH, DBS, and DARS, will enhance competition for these services in the U.S. market. As a condition on Star One B1's placement on the Permitted List, however, we prohibit U.S. earth stations from accessing Star One B1 for DTH, DBS, or DARS.

c. Eligibility Requirements

(i) Technical Qualifications

20. The Commission's satellite licensing policy is predicated upon two-degree orbital spacing between geostationary space stations.⁵⁹ This policy permits the maximum use of the

⁵¹ *DISCO II*, 12 FCC Rcd at 24107-56 ¶¶ 30-145.

⁵² *Id.* at 24159-69 ¶¶ 151-74.

⁵³ *Id.* at 24157-59 ¶¶ 146-50.

⁵⁴ *Id.* at 24169-72 ¶ 175-82.

⁵⁵ *Id.* at 24112 ¶ 39.

⁵⁶ *Id.* at 24112 ¶ 25.

⁵⁷ *Id.* at 24112 ¶ 39; 24157 ¶ 143.

⁵⁸ See http://www.wto.org/english/thewto_e/whatis_e/tif_e/org6_e.htm (a list of WTO members).

⁵⁹ For more information regarding the Commission's two-degree spacing policy see Licensing of Space Stations in the Domestic Fixed-Satellite Service and Related Revisions of Part 25 of the Rules and Regulations, *Report and Order*, CC Docket No. 81-704, FCC 83-184, 54 Rad. Reg. 2d 577 (released Aug. 16, 1983), *summary printed in* Licensing Space Stations in the Domestic Fixed-Satellite Service, 48 F.R. 40233 (Sept. 6, 1983) (*Two Degree Spacing Order*).

geostationary space station orbit.⁶⁰ All space stations, including non-U.S. space stations seeking to serve the U.S. market, must comply with the Commission's two-degree orbital spacing requirements before being authorized to provide service in the United States.⁶¹ The Commission may license space stations that are not two-degree compliant (or earth stations seeking to access such), but only when the applicants can demonstrate that their operations will not cause harmful interference to existing compliant space station operations. Further, the Commission authorizes non-conforming operations subject to a condition that requires the non-conforming licensee to accommodate future space station networks serving the United States that are two-degree compliant.⁶²

21. We conclude that Star One B1 complies with all applicable Commission rules, except for Sections 25.210(a)(3) and 25.210(i) of the Commission's rules.⁶³ Star One asks for waivers of these rules. Additionally, Star One requests authority, pursuant to Section 25.210(j) of the Commission's rules, to operate Star One B1 within ± 0.10 degrees of its assigned orbital location in the east/west direction.⁶⁴ We discuss these issues below.

22. *Switchable Polarization.* Section 25.210(a)(3) requires all FSS space stations in the C-band to be capable of switching polarization sense upon ground command. This requirement allows space stations to be assigned to different orbital positions and mitigates potential interference between adjacent FSS systems transmitting analog television signals. Star One acknowledges that the polarization of the C-band payload of the Star One B1 space station cannot be switched.⁶⁵ Star One indicates that there are no co-frequency space stations located within two degrees of 68° W.L. Further, Star One indicates that it is not proposing to offer analog television services in the United States using Star One B1 at this time. Generally, the Commission may grant a waiver of its rules in a particular case only if the relief requested would not undermine the policy objective of the rule in question, and would otherwise serve the public interest.⁶⁶ Because Star One does not propose to offer analog television services in the United States, granting it a waiver of Section 25.210(a)(3) should not impact other U.S. operations. Consequently, we grant this waiver on the condition that Star One B1 is prohibited from transmitting or receiving analog television signals to, from, or within the United States. This waiver is limited to Star One B1's operation at the 68° W.L. orbital location. Further, Star One must accommodate future space station networks serving the United States that are two-degree compliant.

23. *Cross-Polarization Isolation.* Section 25.210(i) requires FSS space station antennas to provide a cross-polarization isolation such that the ratio of the on axis co-polar gain to the crosspolar gain of the antenna in the assigned frequency band is at least 30 dB within its primary coverage area. Star One indicates that the cross-polarization isolation of the Star One B1 space stations antennas will not be lower

⁶⁰ *Assignment of Orbital Locations to Space Stations in the Domestic Fixed-Satellite Service*, 11 FCC Rcd 13788, 13790 ¶ 6 (1996). Prior to the Commission's adoption of the two-degree spacing policy, space stations in the geostationary satellite orbit were usually spaced three or four degrees apart. By adopting rules that enabled space station operators to place their space stations two degrees apart, the Commission was able to accommodate more geostationary space stations.

⁶¹ *Space Station Reform Order*, 18 FCC Rcd at 10872 ¶ 300.

⁶² See, e.g., *Systematics General Corporation, Order and Authorization*, 2 FCC Rcd 7550, 7550-51 ¶ 9 (Com. Car. Bur. 1987); *New Skies Satellites, N.V., Order and Authorization*, 14 FCC Rcd 13003, 13038 ¶ 78 (1999).

⁶³ 47 C.F.R. §§ 25.210(a)(3), 25.210(i).

⁶⁴ *Id.* § 25.210(j).

⁶⁵ Star One C5 Modification Application at 5.

⁶⁶ *WAIT Radio*, 418 F.2d at 1157; *Dominion Video Satellite, Inc., Order and Authorization*, 14 FCC Rcd 8182, 8185 ¶ 5 (Int'l Bur. 1999) (*Dominion Video*).

than 27 dB within the primary coverage area.⁶⁷ We find that these shortfalls will not produce a significant increase in interference, except to the applicant itself, and will not adversely affect any other operator. Consequently, we grant the requested waiver. As a condition of the grant of this waiver, Star One must accommodate future space station networks serving the United States that are two-degree compliant.

24. *Station Keeping Tolerances.* Section 25.210(j) requires geostationary space stations to be maintained within $\pm 0.05^\circ$ of their assigned orbital locations in the east/west direction unless specifically authorized by the Commission to operate with a different longitudinal tolerance.⁶⁸ Star One seeks to operate Star One B1 within ± 0.10 degrees of its assigned orbital location in the east/west direction, indicating that there are no other space stations currently operating within ± 0.25 degrees of Star One B1, there is no basis for anticipating that any other space stations will be deployed in that vicinity in the near future, and the nearest existing space stations are owned by Star One.⁶⁹ As a result, Star One states that no space stations will be adversely impacted by the increased station-keeping volume.⁷⁰

25. We agree that the larger station-keeping volume of Star One B1 will not adversely affect the operations of other currently operating space stations. However, even though Star One states that there are no space stations currently operating within the station-keeping volume of Star One B1, it is possible that a future space station will be launched or moved into such a position. Thus, we grant Star One's waiver request to operate Star One B1 with $\pm 0.10^\circ$ East/West longitudinal tolerance, as long as no other space station is located within the station-keeping volume of Star One B1. Should such a spacecraft be launched or relocated into the station-keeping volume of Star One B1, but would not overlap a $\pm 0.05^\circ$ degree stationkeeping volume, Star One will be required to maintain $\pm 0.05^\circ$ East/West station-keeping, or coordinate its operations with that of the other space station.

(ii) Spectrum Availability

26. In *DISCO II*, the Commission determined that, given the scarcity of geostationary-satellite orbit locations and spectrum resources, it would consider spectrum availability as a factor in determining whether to allow a foreign space station to serve the United States.⁷¹ This is consistent with the Chairman's Note to the Basic Telecom Agreement, which states that WTO Members may exercise their domestic spectrum/frequency management policies when considering foreign entry.⁷² Thus, in *DISCO II*, we stated that when grant of access would create interference with U.S.-licensed systems, we may impose technical constraints on the foreign system's operations in the United States or, when conditions cannot remedy the interference, deny access.

27. Star One B1 will provide service to the United States from the 68° W.L. orbit location. Brazil has filed coordination information with the ITU for the C-band at 68° W.L. Star One states that it is authorized by Brazil to operate under this ITU filing.⁷³ There are no other space stations authorized to serve the United States operating in the conventional C-band that are located within two degrees of Star One B1.⁷⁴ Consequently, allowing Star One B1 to serve the United States from the 68° W.L. orbital

⁶⁷ Star One C5 Modification Application at 5.

⁶⁸ See 47 C.F.R. § 25.210(j).

⁶⁹ Star One C5 Modification Application at 7.

⁷⁰ *Id.*

⁷¹ *DISCO II*, 12 FCC Rcd at 24159 ¶ 150.

⁷² Chairman of the World Trade Organization Group on Basic Telecommunications, Chairman's Note, Market Access Limitations on Spectrum Availability, 36 I.L.M. at 372.

⁷³ Star One C5 Modification Application at 1 and 2, n.5.

⁷⁴ Star One C5 Modification Application at 7.

location at this time will not affect operations of any U.S.-licensed space stations nor contravene the Commission's spectrum/frequency management policies. As in all other orders permitting non-U.S. space stations to serve the United States, we require all communications between earth stations in the United States and Star One B1 to be in compliance with all space station coordination agreements reached by Brazil and other countries.

(iii) Other Requirements

28. Nothing in the record indicates that Star One is not legally qualified to provide service to the United States using its Star One B1 space station. Furthermore, nothing in the record raises any national security, law enforcement, foreign policy, or trade concerns.⁷⁵ Finally, because Star One B1 is already in-orbit and operating at the 68° W.L. orbital location, no bond is required.

C. Milestone Extension Request

29. In the event that we deny its modification request to substitute the Star One B1 space station for Star One C5, Star One requests a 14-day extension of the first milestone for the Star One C5 market access grant, measured from the date that we take action on its modification request.⁷⁶ Sections 25.161(a)(1) and 25.117(c) of the Commission's rules contemplate milestone extensions for "circumstances beyond the licensee's control."⁷⁷ In seeking an extension tied to action on its underlying modification request, in effect Star One seeks to toll its milestone deadline.

30. Star One's decision not to proceed with the construction of the Star One C5 satellite and to file a modification to utilize a more than 15-year-old-satellite in its place was a business decision wholly within the control of Star One. The Commission has held that it will not toll a milestone while a modification request is pending.⁷⁸ Thus, the Commission rejected a licensee's request to grant an "interim extension" of 90 days if an underlying request to modify a license and extend multiple milestone deadlines was denied. The Commission concluded that granting such an "interim extension" request "would be tantamount to granting any licensee that seeks a milestone extension an interim extension until 90 days after the Commission acts on its extension request. Such a result is not consistent with the milestone scheme contemplated by our rules."⁷⁹ Therefore, granting Star One a 14-day extension measured from the date that we take action on its modification request would be inconsistent with Commission policy. It would also allow authorization holders to extend indefinitely their

⁷⁵ *DISCO II*, 12 FCC Rcd at 24170-72 ¶¶ 178-182.

⁷⁶ Star One made this request in the alternative in a footnote to its application. Star One C5 Modification Application at 8, n.23. ("In the event that more time is needed to consider the application, Star One requests a short extension of the Star One C5 contract execution milestone until 14 days after the Commission rules on this application. There are ample grounds for the grant of a short extension for this limited purpose. See 47 C.F.R. § 25.117(c). While Star One's modified proposal to provide immediate C-band only service (instead of future C- and Ku-band service) from 68° W.L. would serve the public interest, it has also been necessitated (at least in part) by a change in circumstances beyond Star One's control. Despite nearly 20 years of inactivity, the Andean Community has expressed renewed interest in developing its 1989 ITU filing for the Ku-band frequencies at 67° W.L. Moreover, the Andean Community did not make its interest known in the C5 proceeding until after the Declaratory Ruling had been issued and after Star One had posted a bond for the satellite.").

⁷⁷ 47 C.F.R. §§ 25.161(a)(1) and 25.117(c).

⁷⁸ Emergency Application for Review and Request for Stay of Globalstar, L.P. *Memorandum Opinion and Order*, 19 FCC Rcd. 11548, 11563-11564, ¶¶ 34-35 (2004).

⁷⁹ *Id.*

nonperformance by repeated modifications of their licensed systems.⁸⁰

31. Alternatively, to the extent Star One argues that the changes were necessary because of international coordination difficulties, the Andean Community's filing at the ITU was in place when Star One filed its market access request with the Commission. In any event, difficulties encountered in the international coordination process are not grounds for a milestone extension.⁸¹ Star One has not presented any other grounds that would justify an extension of the milestone. We therefore deny its request. Accordingly, we find that Star One has missed the first milestone for its grant of market access for Star One C5 and thus its market access authorization is null and void by its own terms. We therefore remove Star One C5 from the Permitted List. Consequently, the outstanding balance on the bond for Star One C5, \$3 million, is now due to the U.S. Treasury.

IV. ORDERING CLAUSES

32. Accordingly, IT IS ORDERED that, pursuant to Sections 303(r), 308, 309, and 310 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 303(r), 308, 309, 310, and Sections 0.261 and 25.137(c) of the Federal Communication Commission's rules, 47 C.F.R. §§ 0.261, 25.137(c), the Star One B1 space station (Call Sign S2784), is added to the Commission's Permitted Space Station List and each U.S.-licensed earth station with "ALSAT" designated as a point of communication, IS GRANTED authority to provide Fixed-Satellite Services (FSS) in the 3700-4200 MHz and 5925-6425 MHz frequency bands, to, from, or within the United States, by accessing the Star One B1 space station (S2784) at the 68° W.L. orbit location, subject to the parameters set forth in its earth station license and subject to the following conditions: This conditional grant is limited to Star One S.A.'s use of the B1 space station at 68° W.L. and does not convey to Star One S.A. first-in-line status under the Commission's first-come, first-served processing framework. Accordingly, nothing in this grant precludes the Commission from accepting for filing an application from any party to operate a space station at this location using the 3700-4200 MHz and 5925-6425 MHz frequency bands.

- a) Star One B1 is not authorized to provide any Direct-to-Home (DTH) service, Direct Broadcast Satellite (DBS) service, or Digital Audio Radio Service (DARS) to, from, or within the United States;
- b) Communications between ALSAT-designated earth stations and the Star One B1 space station shall be in compliance with the satellite coordination agreements reached between Brazil and other Administrations;
- c) Operation of Star One B1 shall be in accordance with the power flux-density requirements of 47 C.F.R. § 25.208 of the Commission's rules.

33. IT IS FURTHER ORDERED that Star One S.A. IS GRANTED a waiver of Sections

⁸⁰ PanAmSat Licensee Corp., *Memorandum Opinion and Order*, 15 FCC Rcd 18720, 18723 ¶ 9 (Int'l Bur. 2001) ("The filing of a license modification application does not justify an extension of a milestone schedule because the decision to seek a modification of one's license is a business decision wholly within the discretion and control of the licensee. Otherwise, a licensee could routinely extend its milestone deadlines by filing repeated modification requests for its system."); *Columbia Communications Corporation Order*, 15 FCC Rcd at 15571-72 ¶ 12; *Advanced Communications Corporation, Memorandum Opinion and Order*, 11 FCC Rcd 3399, 3417 ¶ 45 (1995) (delays related to negotiations with potential investors do not constitute adequate justification for extension of milestones); *MCI Order*, 2 FCC Rcd at 234 ¶ 7 (mergers do not justify extension of milestones); *American Telephone and Telegraph Company and Ford Aerospace Satellite Services Corporation, Memorandum Opinion and Order*, 2 FCC Rcd 4431, 4433-34 ¶¶ 21-23 (1987) (neither negotiation of construction contract nor existence of in-orbit satellite at orbit location in question justify extension of milestones); *Tempo Enterprises, Inc., Memorandum Opinion and Order*, 1 FCC Rcd 20 (1986).

⁸¹ See ¶¶ 11-12 above.

25.210(a)(3), and 25.210(i) of the Commission's rules, 47 C.F.R. §§ 25.210(a)(3), and 25.210(i), for the purpose of operating Star One B1 in the conventional C-band. As a condition of the grant of these waivers, Star One must accommodate future space station networks serving the United States that are two-degree compliant. Additionally, with regard to the waiver of Section 25.210(a)(3), 47 C.F.R. § 25.210(a)(3), Star One B1 is prohibited from transmitting or receiving analog television signals to, from, or within the United States. This waiver is limited to Star One B1's operation at the 68° W.L. orbital location.

34. IT IS FURTHER ORDERED that authority IS GRANTED pursuant to Section 25.210(j) of the Commission's rules, to permit operations of earth stations with Star One B1, maintained at ± 0.10 degree of the 68° W.L. orbital location, subject to the condition that this authorization and the operations it permits shall terminate in the event that a satellite is launched into a location such that its stationkeeping volume would overlap the Star One B1 satellite's ± 0.10 degree stationkeeping volume, but would not overlap the Star One B1 satellite's $\pm 0.05^\circ$ degree stationkeeping volume, unless Star One has successfully coordinated its physical operations with those of the other spacecraft.

35. IT IS FURTHER ORDERED that Star One S.A.'s request to modify the declaratory ruling that added the proposed hybrid Star One C5 space station to the Permitted List at the 68° W.L. orbital location by substituting the technical characteristics of the Star One B1 space station for the technical characteristics of the proposed Star One C5 space station IS DENIED.

36. IT IS FURTHER ORDERED that Star One S.A.'s request for a 14-day extension of the contract execution milestone deadline associated with Star One C5 IS DENIED. Accordingly, Star One S.A.'s grant of market access for Star One C5, IBFS No. SAT-PPL-20071113-00159 (Feb. 7, 2008), is null and void. Consequently, we remove the Star One C5 space station from the Commission's Space Station Permitted List.

37. IT IS FURTHER ORDERED that Star One S.A.'s bond for the Star One C5 space station is now due and payable to the U.S. Treasury.

38. This Order is effective upon release. Petitions for reconsideration under Section 1.106 or applications for review under Section 1.115 of the Commission's rules, 47 C.F.R. §§ 1.106, 1.115, may be filed within 30 days of the date of the release of this Order. (See 47 C.F.R. § 1.4(b)(2).)

FEDERAL COMMUNICATIONS COMMISSION



Mindel De La Torre
Chief, International Bureau