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November 12, 2010

BY HAND DELIVERY

Marlene H. Dortch
Secretary
Federal Communications Commission
Room TW-A325
455 12th Street, S.W.
Washington, D.C. 20554

FILED/ACCEPTED

NOV 12 2010

Federal Communications Commission
Office of the Secretary

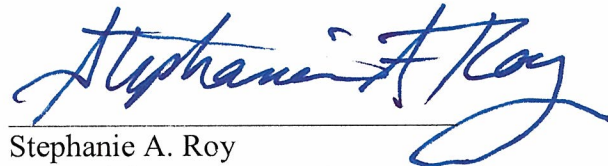
Re: **Star One S.A., Application for Review and Motion for Stay**
File Nos. SAT-PPL-20081205-00225, SAT-PPL-20071113-00159

Dear Ms. Dortch:

Pursuant to sections 1.41, 1.44, 1.49, 1.51, 1.52, and 1.115 of the Commission's Rules, Star One S.A. hereby submits the enclosed *Application for Review and Motion for Stay* in the above-referenced proceedings.

Please do not hesitate to contact me should there be any questions regarding the enclosures.

Respectfully submitted,



Stephanie A. Roy
Counsel for Star One S.A.

Enclosures

FILED/ACCEPTED

NOV 12 2010

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

Federal Communications Commission
Office of the Secretary

_____)	
In the Matter of)	
STAR ONE S.A.)	File No. SAT-PPL-20081205-00225
)	Call Sign S2784
)	
Petition for Declaratory Ruling to be)	File No. SAT-PPL-20071113-00159
Added to the Permitted List)	Call Sign S2742
_____)	

To: The Commission

MOTION FOR STAY

I. INTRODUCTION

Today, Star One S.A. (“Star One”) filed an *Application for Review*¹ of an order issued by the Chief, International Bureau (“Bureau”) on October 13, 2010 declaring Star One’s performance bond for the C5 satellite due and payable to the U.S. Treasury (the “*October 2010 C5 Order*”).² In this motion, Star One, by its counsel, seeks a stay of 1) the *October 2010 C5 Order*, and 2) any steps by the Commission to implement the *October 2010 C5 Order* by seeking payment on the outstanding bond from the surety or from Star One, pending the Commission’s decision on the Star One *Application for Review*.³ Star One respectfully requests action on this

¹ See Star One S.A., Application for Review, File Nos. SAT-PPL-20081205-00225, SAT-PPL-20071113-00159 (even date herewith) (“*Application for Review*”).

² Petition for Modification to the Declaratory Ruling Adding Star One C5 to the Permitted List, Order, File Nos. SAT-PPL-20081205-00225, SAT-PPL-20071113-00159 (rel. Oct. 13, 2010) (“*October 2010 C5 Order*”).

³ See Letter from Regina Dorsey, Deputy Chief Financial Officer, FCC, to North America Specialty Insurance Co., Inc. (Oct. 20, 2010).

motion on or before November 26, 2010, the date by which the Commission's letter to the surety requests payment.⁴

In the *Application for Review*, Star One demonstrates that the Bureau's actions to collect the C5 performance bond are arbitrary and capricious, and that the public interest requires the Commission either to grant Star One's request to modify its Permitted Space Station List ("Permitted List") entry for the C5 satellite and find that any applicable milestones have been met or, in the alternative, waive the C5 bond requirement for good cause shown. This Motion for Stay seeks suspension of the *October 2010 C5 Order* and the Commission's efforts to collect on the C5 bond pending a final resolution of this matter. A stay would be consistent with the Commission's actions in the *AtContact* matter, in which the Commission declined to take further action against the bond until it had decided *AtContact's* Petition for Reconsideration on the merits.⁵

This motion meets all the requirements for a stay. In evaluating a request for a stay, the Commission considers: 1) whether the movant is likely to succeed on the merits, 2) the balance of harms for the movant and any other parties, and 3) whether the public interest favors a stay.⁶

⁴ *See id.*

⁵ The Commission declined to press for the bond's remittance until after it issued its Order on Reconsideration. *See* Letter from Mark Stephens, Chief Financial Officer, FCC, to Western Region Surety Claims (Oct. 1, 2009) (deferring in its discretion further action to collect the bond); *AtContact Commc'ns, LLC*, 25 FCC Rcd. 7567 (June 3, 2010) (denying *AtContact's* Petition for Reconsideration on the merits); Letter from Mark Stephens, Chief Financial Officer, FCC, to Safeco (June 24, 2010) (requesting remittance of the bond more than two weeks after the Commission's decision on the merits in the case).

⁶ *See Va. Petroleum Jobbers Assoc. v. Fed. Power Comm'n*, 259 F.2d 921, 925 (D.C. Cir. 1958), as modified by *Wash. Metro Area Transit Comm'n v. Holiday Tours, Inc.*, 559 F.2d 841, 843 (D.C. Cir. 1977).

These factors are not prerequisites that must be met, but interrelated considerations that must be balanced together.⁷ No single factor is necessarily dispositive.⁸

In sum, Star One is likely to succeed on the merits because actions beyond the control of Star One precluded Star One from fulfilling the terms of its original authorization for C5. The Bureau's *October 2010 C5 Order* inexplicably fines Star One \$3 million for not proceeding with a system that the Bureau itself has ordered Star One not to deploy. There is no harm to the Commission, the U.S. Treasury, or any party to this proceeding because the bond itself already secures the \$3 million. Finally, a stay is in the public interest because it is settled law that if a bond is posted pending an appeal, then a stay will issue to allow parties their full due process rights to appellate review.

II. STAR ONE IS LIKELY TO SUCCEED ON THE MERITS

As Star One demonstrates fully in its *Application for Review*, which Star One hereby incorporates by reference, the Bureau acted contrary to established Commission policy and precedent by declaring the performance bond for C5 due and payable in lieu of granting Star One's request to substitute the C-band B1 satellite for C5 on the Permitted List.⁹ Actions taken

⁷ See *Mich. Coal. of Radioactive Materials Users v. Griepentrog*, 945 F.2d 150, 153 (6th Cir. 1991); *DeLorean Motor Co.*, 755 F.2d 1223, 1229 (6th Cir. 1985).

⁸ See *WTVG, Inc.*, Docket Nos. CSR-7024-N, CSR-7853-N, Order, DA 10-1557 (rel. Aug. 27, 2010); see also *Telecomms. Relay Servs. and Speech-to-Speech Servs. for Individuals with Hearing and Speech Disabilities*, 23 FCC Rcd. 1705 ¶ 4 (2008) (noting that “[i]f there is a particularly overwhelming showing in at least one of the factors, the Commission may find that a stay is warranted notwithstanding the absence of another one of the factors”).

⁹ The Bureau's *February 2008 C5 Order* authorized the Brazilian-licensed C5 satellite to serve the United States in the C- and Ku-bands from 68° W.L. In this Motion for Stay we refer to 68° to refer to both the 68° W.L. orbital slot and the 67° W.L. slot, since under the Commission's 2° spacing rule, the slots are essentially the same. See *Licensing of Space Stations in the Domestic Fixed-Satellite Service and Related Revisions of Part 25 of the Rules and*

by the Bureau and the Andean States Association (“ASA”) after Star One posted the bond for C5 preclude Star One from providing Ku-band service in the United States from 68°.

More than 20 years after its initial ITU filing for the Ku-band at 68°, the ASA entered into a new agreement with SES New Skies to relocate an aging satellite to 68° by its September 18, 2010 deadline for maintaining ITU priority (“*ASA-SES Relocation Agreement*”),¹⁰ and asked the Bureau to reconsider its *February 2008 C5 Order* to establish that this relocation maneuver would preclude Star One from offering Ku-band service in the United States.¹¹ The Bureau obliged by first changing the *February 2008 C5 Order* to add two new conditions that prohibit Star One from providing Ku-band service at 68° if ASA has a Ku-band satellite at 68°,¹² and later granting first Special Temporary Authority and then permanent authority to SES to relocate and operate AMC-4 in the Ku- and extended Ku-bands at 68°. ¹³ These actions preclude Star One from offering service to the United States in the Ku-band from 68°.

Regulations, 54 Rad. Reg. 2d 577 (1983). Moreover, as a technical matter, it is not possible for two satellites to operate in the same frequency band a mere one degree apart.

¹⁰ See Letter from Joaquin Restrepo, Ministry of Communications, Republic of Columbia, to Kevin J. Martin, Chairman, FCC, File No. SAT-PPL-20071113-00159 (filed May 15, 2008) (describing the agreement).

¹¹ See Letter from Maria Del Rosario Guerra, Minister for Communications, Republic of Colombia, to Mr. Kevin J. Martin, Chairman, FCC, File No. SAT-PPL-20071113-00159 (dated Mar. 13, 2008).

¹² See *Petition for Declaratory Ruling to Add the Star One C5 Satellite at 68° to the Permitted Space Station List*, 23 FCC Rcd. 10896 (2008) (“*C5 Reconsideration Order*”); see also Star One S.A., Opposition to Request for Clarification or, in the Alternative, for Reconsideration, File No. SAT-PPL-20071113-00159 (filed Mar. 26, 2008).

¹³ *SES Americom, Inc.*, Stamp Grant, File No. SAT-STA-20100525-00108 (granted July 29, 2010); *SES Americom, Inc.*, Stamp Grant, File No. SAT-MOD-20100623-00144 (granted Nov. 4, 2010).

The Bureau's *October 2010 C5 Order* effectively fines Star One \$3 million for not constructing and deploying a system that, under the *C5 Reconsideration Order* and the laws of physics, Star One could not operate. There is no utility in attempting to force Star One to build a satellite that it cannot deploy. It is *manifestly inequitable* to do so when circumstances beyond Star One's control, including the Bureau's own actions, preclude its use. The Bureau's actions were arbitrary and capricious because they conflict with established Commission policy and precedent in at least three respects.

First, it is settled Commission policy that the milestone and bond requirements will not be enforced when "circumstances beyond [the licensee's] control"¹⁴ prevent compliance. The new *ASA-SES Relocation Agreement* and the Bureau's new conditions in the *C5 Reconsideration Order* were just as much, if not more, outside of Star One's control as the manufacturing and testing delays for which the Bureau routinely grants milestone extension requests.¹⁵

Second, it is established Commission policy that a waiver of its rules will be granted when the waiver "would better serve the public interest than would strict adherence to the general rule."¹⁶ The milestone and bond requirements are designed to discourage the warehousing of spectrum and encourage parties to complete their planned systems. Enforcing the bond *could not* encourage Star One to complete its planned hybrid C/Ku-band satellite because Star One cannot operate in the Ku-band at 68° under the Bureau's orders. Indeed, it

¹⁴ *Amendment of the Commission's Space Station Licensing Rules & Policies*, 18 FCC Rcd. 10760 ¶ 170 (2003).

¹⁵ *See, e.g., TerreStar Networks, Inc.*, Stamp Grant, File No. SAT-MOD-20080718-00143 (granted Nov. 12, 2008) (granting extension of launch milestone for licensee to conduct additional, cautionary tests of the satellite before launch); *New ICO Satellite Services G.P.*, 22 FCC Rcd. 2229 ¶¶ 6-7, 14 (2007) (granting multiple milestone extensions for testing purposes).

¹⁶ *TMI Comms. & Co., L.P. and TerreStar Networks Inc.*, 19 FCC Rcd. 12603 ¶ 39 (2004).

would be a technical impossibility. Under the Bureau's rulings, *no satellite operator* would be permitted to provide Ku-band service from 68°. Star One's actions did not, therefore, result in any "warehousing" of spectrum.¹⁷ To the contrary, Star One sought to maximize the utility of the 68° slot by moving the B1 satellite to that location for immediate service. Indeed, it is the Bureau's *C5 Reconsideration Order* and *SES-ASA Relocation Order* that will allow the ASA to continue to "warehouse" this slot for Ku-service. There is no utility in attempting to force Star One to build a satellite that it cannot deploy. And it is *manifestly inequitable* to do so when circumstances beyond Star One's control, including the Bureau's own actions, preclude its use.

Finally, it is a bedrock principle of Commission policy and administrative law that similarly situated parties must be treated the same. At the time Star One posted its bond, the Commission's *Rainbow* decision was still good law.¹⁸ Star One's inability to proceed with its original plans for 68° because of the subsequent actions by the ASA and the Bureau are at least as good a cause as the financial challenges *Rainbow* experienced in its efforts to fulfill the terms of its license. There is no rational basis for treating Star One more harshly than *Rainbow*, and the Bureau's *October 2010 C5 Order* did not offer one.

III. THE BALANCE OF HARMS STRONGLY FAVORS A STAY

Without a stay, Star One would be forced to pay \$3 million in advance of a final determination on the merits of its case. Star One is entitled to have its administrative appeal determined by the full Commission without presuming the end result by requiring payment in advance. There is no harm to the Commission or U.S. Treasury because the entire \$3 million is secured by a bond.

¹⁷ *Id.*

¹⁸ *See Rainbow DBS Co. LLC*, 22 FCC Rcd. 4272 (2007).

Of course, it is standard American practice to stay enforcement of a monetary judgment pending appeal if a bond is posted.¹⁹ The bond secures the judgment in the event that the movant loses on appeal. In federal district court, a bond for the full amount of the judgment guarantees a movant a stay during the pendency of any appeal as a matter of right.²⁰ In fact, the federal courts often exercise their discretion to reduce or waive entirely the bond requirement when circumstances provide reasonable assurances that any final judgment will be paid.²¹ Here, Star One already has a bond in place securing the entire \$3 million that the Bureau's *October 2010 C5 Order* declares due and payable to the U.S. Treasury, providing ample security that such will be paid in the event that Star One does not prevail.²² There is no rational reason to require Star One to actually pay \$3 million into the U.S. Treasury when the merits are yet undecided.

Staying the collection on the C5 bond will not harm any other party or nonparty to this proceeding. Maintaining the status quo pending final resolution of this matter has no implication for the policies underlying the Commission's bond requirements. In the event that the full Commission ultimately disagrees with Star One's assessment in this matter, Star One will be required to remit the bond amount plus applicable interest from the original payment date. The bond requirement would therefore have fulfilled its purpose and the U.S. Treasury will receive

¹⁹ See, e.g., Fed. R. Civ. P. 62(d) ("If an appeal is taken, the appellant may obtain a stay by supersedeas bond."); *Fed. Prescription Serv. v. Am. Pharm. Ass'n*, 636 F.2d 755, 757-58 (D.C. Cir. 1980) ("Rule 62(d) [] operates to provide that an appellant in all cases may obtain a stay as a matter of right by filing a supersedeas bond."); see also Fed. R. App. P. 8 (providing for a bond to secure a judgment at the discretion of the appellate court).

²⁰ See *Fed. Prescription Serv.*, 636 F.2d at 757.

²¹ See, e.g., *Olympia Equip. Leasing Co. v. Western Union Tel. Co.*, 786 F.2d 794, 796 (7th Cir. 1986) (approving the district court's discretionary waiver of the full bond requirement).

²² See, e.g., Fed. R. Civ. P. 62(d).

the appropriate time value adjusted amount of the bond in full. No other party has any interest in the C5 bond.

IV. THE PUBLIC INTEREST FAVORS A STAY

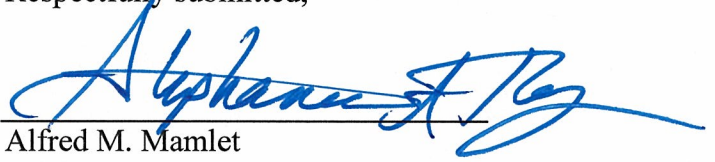
There is a strong public interest in allowing parties their full rights to appellate review. Requiring Star One to pay \$3 million before its appeal has been determined, when the entire amount has been secured by a bond, is clearly contrary to the public interest and the rule of law.

In addition, as Star One demonstrates in the *Application for Review*, the public interest militates in favor of returning the C5 bond to Star One. Star One's C5 Permitted List entry was for a hybrid C/Ku-band satellite that would have put a valuable orbital slot to use in the Ku-band after more than 20 years of delay by the ASA. The Bureau's *C5 Reconsideration Order*, the *ASA-SES Relocation Agreement*, and now the *SES-ASA Relocation Order* have combined, however, to definitively preclude Star One from providing Ku-band service from 68°. Star One has offered to provide the remaining C-band service to the United States with its in-orbit B1 satellite. The public has no interest in Star One being forced to construct and launch a satellite with a Ku-band payload that it is not allowed to use.

V. CONCLUSION

For the reasons described above, Star One requests that the Commission stay the *October 2010 C5 Order* and any efforts to collect on the C5 performance bond pending a final resolution of Star One's *Application for Review*.

Respectfully submitted,



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November 12, 2010

CERTIFICATE OF SERVICE

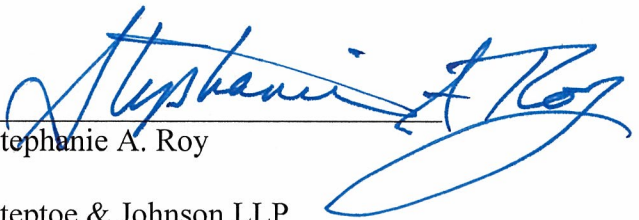
I, Stephanie A. Roy, hereby certify that on Friday, November 12, 2010, I caused true and correct copies of the enclosed "Motion for Stay" to be served on the following parties by the method indicated:

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