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John P. Stern
Deputy General Counsel

December 2, 2003

Tom Tycz
Chief, Satellite Division
International Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

S2474 SAT-WAV-20031202-00352
Loral Skynet do Brasil
Estrela do Sol 1

Re: SAT-PDR-20021010-00196: Loral Skynet do Brasil Petition for Declaratory Ruling to Add Telstar 14/Estrela do Sul 1 to the Permitted Space Station List ↗

Dear Mr. Tycz:

Loral Skynet do Brasil submits this letter to request grant of its Petition for Declaratory Ruling to add the Telstar 14/Estrela do Sul 1 Ku-band satellite, authorized by Brazil to operate at 63° W.L., to the Permitted Space Station List.¹ Loral Skynet do Brasil's Petition went on public notice on October 30, 2002, and is unopposed.² The satellite is fully constructed and has been shipped to Long Beach, California for its scheduled launch by Sea Launch on January 9, 2004. Loral Skynet do Brasil requests that the Commission grant its application in advance of the January 9 launch.

Loral Skynet do Brasil's Petition for Declaratory Ruling included a request for waiver of the Commission's financial qualification requirement.³ On August 27, 2003, and October 27, 2003, rules went into effect which replaced the Commission's satellite financial qualification requirement with the enforcement of milestone schedules and the

¹ The satellite will be commercially known and marketed in the U.S. as Telstar 14. Estrela do Sul is the name used by the Brazilian government and will be the commercial name of the satellite for marketing purposes in Brazil.

² Policy Branch Information, *Satellite Space Applications Accepted for Filing, Public Notice, Report No. SAT-00127* (rel. Oct. 30, 2002).

³ Petition for Declaratory Ruling to Add Loral Skynet do Brasil's Estrela do Sul 1 Ku-band Satellite to the Permitted Space Station List at 3 (filed October 10, 2002).

imposition of a \$5 million bond on all new GSO satellite licensees.⁴ The Commission has stated that the purpose of the new financial qualification requirement is to deter speculative applications and warehousing of orbital spectrum and to expedite service to the public.⁵ The Commission determined that certain non-U.S. licensed GSO satellite operators seeking to access the U.S. market with a satellite that is not in orbit and operating will also be subject to milestones and a bond in an amount up to \$5 million.⁶

The Commission also determined that the rules and procedures adopted in the *Satellite Licensing Reform Order* would apply to pending applications "in cases where doing so will help further the goals of this proceeding to expedite service to the public and discourage speculation."⁷ However, the Order only specifically states that V-band and Ka-band NGSO licensees will be subject to the bond-posting requirement and new milestones.⁸ The Order does not state that the new rules are applicable to pending petitions for declaratory ruling to add non-U.S. licensed satellites to the Permitted Space Station List, such as the one filed by Loral Skynet do Brasil a year before the effective date of the new rules. If the bond-posting requirement and new milestones adopted in the *Satellite Licensing Reform Order* are applicable to Loral Skynet do Brasil's Petition for Declaratory Ruling, Loral Skynet do Brasil respectfully requests that its pending request for waiver of the Commission's financial qualifications rules be deemed a request for waiver of the new bond and milestone requirements in Sections 25.137 and 25.149 of the Commission's rules.⁹

⁴ In re Amendment of the Commission's Space Station Licensing Rules and Policies, First Report and Order and Further Notice of Proposed Rulemaking, 18 FCC Rcd. 10760 at ¶¶ 165, 167-168, 175 (rel. May 19, 2003) ("Satellite Licensing Reform Order" or "the Order"). The bond requirement and amount is currently the subject of the pending further notice of proposed rulemaking. Id. at ¶¶ 334-336.

⁵ Id. at ¶¶ 167, 170.

⁶ Id. at ¶ 309. Numerous petitions for reconsideration have been filed seeking abolition of the new bond requirements and specifically imposition of bond and milestone requirements on non-U.S. licensed satellites. See Petition for Reconsideration and Clarification and Comments of the Satellite Industry Association (filed Sept. 26, 2003); Petition for Reconsideration and Comments of SES Americom, Inc. (filed Sept. 26, 2003); Petition for Reconsideration and Comments of The Boeing Company, Hughes Networks Systems, Inc., Lockheed Martin Corporation, Loral Space & Communications Ltd., Mobile Satellite Ventures LP., PanAmSat Corporation, and SES Americom, Inc. (filed Sept. 26, 2003); Comments, Or, In the Alternative, Petition for Clarification or Reconsideration of Telesat Canada (filed Sept. 26, 2003).

⁷ Id. at ¶ 275.

⁸ Id. at ¶ 281.

⁹ The Commission has stated that it will consider waivers of the bond requirement. Satellite Licensing Reform Order at ¶¶ 169, 309.

The Telstar 14/Estrela do Sul satellite is fully constructed.¹⁰ On November 17, 2003, it was shipped to the Sea Launch home port of Long Beach, California where it will be integrated with the launch vehicle for its scheduled launch on January 9, 2004.¹¹ There is no risk that grant of the Loral Skynet do Brasil Petition for Declaratory Ruling is speculative or will result in warehousing. The Commission has previously granted waivers of its financial qualification requirement and placed satellites on the Permitted Space Station List prior to their launch or operation. For example, in its Order granting Telesat Canada's Petition for Declaratory Ruling to add Anik F2 to the Permitted Space Station List, the Commission granted a waiver of the financial qualification requirement since "construction of Anik F2 is virtually complete, all steps to secure Canadian licensing have been concluded and Telesat has obtained a launch reservation."¹² In its recent Order placing Telstar 13 on the Permitted Space Station List, the Commission determined that a waiver of the financial qualification requirement was warranted given that construction of Telstar 13 was complete.¹³ The Commission conditioned its action on successful launch and placement into the assigned orbital location of Telstar 13 by a specific date.¹⁴

The Commission may waive its rules for "good cause shown."¹⁵ Indeed, waivers have been deemed appropriate if circumstances warrant a deviation from the rule and such deviation would better serve the public interest, and, further, when the relief requested would not undermine the policy objective of the rule.¹⁶ Similar to the old financial qualification requirement, the purpose of the new bond requirement is to deter speculative applications and warehousing of orbital spectrum and to expedite service to the public.¹⁷ Since the Telstar 14/Estrela do Sul satellite is fully constructed and ready

¹⁰ Attached as Exhibit 1 are current photographs of the satellite.

¹¹ See attached "Declaration and Statement of Verification" of John Brown, Vice-President of Satellite Engineering and Program Development for Loral Skynet.

¹² In re Telesat Canada Petition for Declaratory Ruling For Inclusion of Anik F2 on the Permitted Space Station List and Petition for Declaratory Ruling to Serve the U.S. Market Using Ka-band Capacity on Anik F2, Order, 17 FCC Rcd. 25287 at ¶ 14 (2002).

¹³ In re Loral SpaceCom Corporation Petition for Declaratory Ruling to Add Telstar 13 to the Permitted Space Station List, Order, SAT-PDR-20020315-00025, DA 03-2624 at ¶ 22 (rel. Aug. 8, 2003).

¹⁴ Id.

¹⁵ 47 C.F.R. § 1.3.

¹⁶ See Northeast Cellular Telephone Co. v. FCC, 897 F.2d 1166 (D.C. Cir. 1990); WATT Radio v. FCC, 418 F.2d 1153 (D.C. Cir. 1969).

¹⁷ Satellite Licensing Reform Order at ¶¶ 167, 170.

for launch, grant of Loral Skynet do Brasil's waiver request would not undermine the policy behind the new bond and milestone requirements.

The public interest will be served by an expeditious grant of Loral Skynet do Brasil's Petition for Declaratory Ruling. Loral Skynet do Brasil has numerous customers that wish to begin utilizing the satellite capacity on Telstar 14/Estrela do Sul as soon as the satellite is operational. For example, Boeing will use Telstar 14/Estrela do Sul as the primary vehicle by which it will provide its Connexion high-speed, two-way Internet-based connectivity to aircraft in-flight mobile information service. Until Telstar 14/Estrela do Sul is operational, Boeing is using temporary facilities to provide this important commercial service.

Grant of this waiver request and Loral Skynet do Brasil's Petition for Declaratory Ruling will also support the U.S. satellite business generally. Telstar 14/Estrela do Sul is a U.S.-built satellite. The in-orbit testing of the satellite will be conducted by a U.S. earth station. Tracking, Telemetry and Control (TT&C) during in-orbit testing will also be provided by a U.S. earth station. After that time, a U.S. earth station will provide TT&C backup services. These earth stations are not yet authorized to access Telstar 14/Estrela do Sul and await grant of the Petition for Declaratory Ruling before they may provide in-orbit testing or TT&C services.

Accordingly, Loral Skynet do Brasil respectfully requests grant of its Petition for Declaratory Ruling and a waiver of the Commission's GSO bond and milestone requirements, if applicable, in advance of the January 9, 2004 launch of Telstar 14/Estrela do Sul 1. In the alternative, Loral Skynet do Brasil requests that the Commission grant the Petition for Declaratory Ruling with an effective date of the launch of the Telstar 14/Estrela do Sul 1 satellite.

Respectfully submitted,



John P. Stern

cc: Karl Kensinger
John Coles
Jennifer Gilsenan

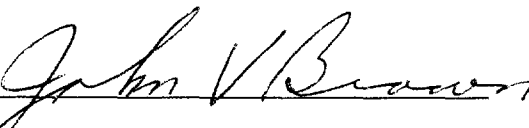
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**DECLARATION AND STATEMENT OF VERIFICATION REGARDING THE
UPCOMING LAUNCH OF ESTRELA DO SUL 1**

I am responsible for the design, construction, and performance of all Loral Skynet satellites. In that role, I act as liaison between Loral SpaceCom and Space Systems/Loral (SS/L), the satellite manufacturer, monitoring the progress of satellite construction, ensuring conformance of the satellite's performance and operation to specification, reviewing the results of design reviews and testing, and authorizing any changes to the satellite's specifications. Loral SpaceCom is overseeing the construction and launch of the Estrela do Sul 1/ Telstar 14 satellite on behalf of Loral Skynet do Brasil. I am informed of every development in the Estrela do Sul 1/ Telstar 14 construction process on an ongoing basis. I hereby declare and verify that on November 17, 2003, the satellite was shipped to the Sea Launch Home Port in Long Beach, Ca. where it will be integrated with the Launch Vehicle. The satellite is scheduled to be launched on January 9, 2004.

I have read the foregoing "Request for Waiver of payment of a bond and attest that these statements are true, correct and accurate to the best of my knowledge, information and belief.

Loral SpaceCom Corporation

By: 
Name: John V Brown

Title: Vice-President of Satellite Engineering
and Program Management

November 20, 2003

EXHIBIT 1

