

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

In the Matter of

STARSYS Global File No. 16-DSS-MISC-94
Positioning, Inc.

Request for a Declaratory Ruling
Concerning Section 310 of the
Communications Act

DECLARATORY RULING

Adopted: June 1, 1995;

Released: June 1, 1995

By the Chief, International Bureau:

I. INTRODUCTION

1. In this Order, we find that Section 310(a) of the Communications Act does not prevent foreign governments or their representatives from holding limited, indirect, non-controlling interests in Commission licensees. To read Section 310(a) more broadly, we would have to conclude that Congress intended a portion of Section 310(b) to be superfluous. We refuse to adopt such an interpretation.

2. Starsys Global Positioning, Inc. requests a declaratory ruling that it is qualified under Section 310 of the Communications Act to hold a space station license for a Non-Voice Non-Geostationary Mobile-Satellite Service (NVNG MSS or "Little LEO") system.¹ Orbcomm Communications Corporation ("Orbcomm") filed comments and Starsys replied. On April 20, 1995, Starsys revised its request. Orbcomm then commented, and Starsys replied. For the reasons discussed below, we find that Starsys, if structured as described in the April 20 letter, is qualified under Section 310 to hold a Little LEO license.

II. BACKGROUND

3. Starsys is an applicant to provide NVNG MSS in the frequency bands below 1 GHz.² Starsys is a Delaware corporation 5% of which is currently owned by Hughes STX. Starsys's original petition states that the remaining 95% of Starsys is owned by North American CLS, Inc. ("NACLS").³ NACLS, a Delaware corporation, is wholly

owned by Stargos S.A., which is in turn 49.3% owned by Collecte Localisation Satellites ("CLS"). Both Stargos S.A. and CLS are French companies. CLS is 70% owned by organizations that are directly supported by the French government,⁴ and 30% owned by French banks. The remaining 50.7% of Stargos S.A. is owned by a number of private companies with no affiliation to any foreign government or representatives thereof.

4. In its April 20 letter, Starsys states that NACLS will reduce its 95% ownership share to no more than 25% by the time of filing of its final financial showing. The April 20 letter does not indicate who will hold the remaining shares of Starsys, but says that no other shares in the ownership chain will be directly or indirectly held by foreign governments or representatives thereof.

5. Starsys's charter and by-laws provide that the 5% stockholder, Hughes STX, has the right to elect three of the five members of the board of directors. The by-laws also specify that the board of directors has exclusive responsibility for the management of the property, affairs, and business of the corporation,⁵ and that only one of the directors can have any affiliation with NACLS, its parent or affiliates, or a foreign government. The by-laws further provide that this arrangement cannot be altered without FCC approval. In its April 20 letter, Starsys does not indicate any changes to these arrangements.

III. DISCUSSION

6. Section 310(a) of the Communications Act, 47 U.S.C. § 310(a), states that a "station license required under this Act shall not be granted to or held by any foreign government or representative thereof." Section 310(b), 47 U.S.C. § 310(b), sets benchmarks regarding the level of direct and indirect interest that a foreign company, foreign government, or representative of a foreign government may hold in common carrier, broadcast, or aeronautical stations licensed by the Commission.

7. Starsys has applied for a license to construct, launch, and operate NVNG MSS satellites.⁶ Orbcomm argues that Starsys is in violation of Section 310(a) because the statute prohibits *any* foreign government interest in a licensee. Alternatively, it states that a 25% minority shareholder may be in control. Orbcomm argues that if Starsys does not eliminate French government ownership altogether, the Commission should impose safeguards to ensure that the French government does not control the day-to-day affairs of Starsys. Orbcomm also suggests that Starsys should not remain eligible to be in the first processing round of Little LEO applicants. In reply, Starsys asks for

¹ See 47 C.F.R. § 310; 5 U.S.C. § 544(e); 47 C.F.R. § 1.2.

² Starsys is one of three applicants in the first processing group of NVNG applications. The Commission has already granted a license to Orbcomm. Orbcomm Communications Corporation, 9 F.C.C. Rcd. 6476 (1994).

³ At present, Hughes STX holds 100% of the 500 Class A common shares, representing a 5% equity interest, and NACLS holds 100% of the 9,500 Class B common shares, representing a 95% equity interest. At every stockholders' meeting, each holder of stock of whatever class is entitled to cast one vote for each share of stock held for any and all purposes except for the election of directors.

⁴ Centre National d Etudes Spatiales, the French space agency, owns 55% of CLS, while IFREMER, a French government-supported institute devoted to sea research, owns 15%.

⁵ Starsys By-Laws at Article II, Section 1. See also Del. Code Ann. tit. 8, Section 141(a).

⁶ The Commission has determined that such satellites are non-common carrier in nature. Amendment of the Commission's Rules to Establish Rules and Policies Pertaining to a Non-Voice Non-Geostationary Mobile-Satellite Service, 8 F.C.C. Rcd. 8450 (1993). Consequently, Starsys's request does not trigger Section 310(b).

assurance that the ownership changes proposed in the April 20 letter will not constitute a major amendment under Section 25.116 of the Commission's rules.

8. When Section 310 of the Communications Act was enacted in 1934, the provisions contained in current Sections 310(a) and (b) were contained in a single Section 310(a).⁷ Significantly, the portion of Section 310(a) that has been renumbered Section 310(b)(3) prohibits certain licenses from being granted to or held by "any corporation... of which more than one-fifth of the capital stock is owned of record or voted by aliens or their representatives or by a foreign government or representative thereof..."⁸ If, as Orbcomm suggests, Section 310(a) prohibits a foreign government from holding any interest in a licensee, this provision limiting such ownership to 20% would be redundant. We will not read a statute so as to make a portion of it superfluous.⁹

9. Indeed, the Commission has held that a government entity must exercise control over the licensee to trigger Section 310(a). The Commission articulated the following standard for determining whether an entity is barred from being a licensee under Section 310(a): "If a foreign government or the representative thereof has either *de facto* or *de jure* control of the licensee, it would be deemed to hold the license," and thus the entity would be precluded from a license grant under Section 310(a).¹⁰ The Commission has defined *de jure* control as "control as a matter of law, such as a 51 percent or greater shareholder of a corporation..."¹¹ It has determined whether an entity is exercising *de facto* control over an applicant licensee on a case-by-case basis, "governed chiefly by the power to dominate the management of the corporate affairs."¹² The Commission has recognized that even majority shareholders' interests need not be attributable to control if they are adequately insulated from having influence over the management of a station. Specifically, the Commission has held that shareholders with non-voting stock or limited voting rights that do not "confer the power to influence or control a license" do not have attributable interests in the company.¹³

10. This conclusion is also consistent with judicial precedent. In *Noe v. FCC*, 260 F.2d 739 (D.C. Cir. 1958), the court concluded that Loyola University, a Jesuit institu-

tion, was not prohibited from holding radio licenses under Section 310(a) by virtue of its connection with the Society of Jesus and, in some cases, the Pope. The court concluded that even if Section 310(a) "had a semblance of relevance" to this case, it would be inapplicable since the license was owned by the university and no entity within the Society of Jesus exercised control over the operation of the university's radio station.¹⁴

11. We find that under the ownership structure described in Starsys's April 20 letter, the French government will not have either *de facto* or *de jure* control of Starsys.¹⁵ With respect to *de jure* control, only 12% of Starsys will be owned by entities that have ties to the French government.¹⁶ Thus, even if the French government were Starsys's largest shareholder, which we cannot determine from the April 20 letter, it would not have *de jure* control.

12. Nor do we find, on the record before us, that foreign government interests will exercise *de facto* control of Starsys. While each situation turns on its particular facts, those presented here do not suggest that foreign government interests will control the day-to-day affairs of Starsys. The by-laws provide the board with exclusive responsibility for managing Starsys's property and business. Under the by-laws, three of the five directors must be elected by Starsys Class A shareholders. In addition, four of the five directors must be unaffiliated with NACLS, or any parent or affiliate thereof, and may not be representatives of a foreign government. Three directors must be U.S. citizens. This portion of the bylaws may not be amended without FCC approval. The April 20 letter does not indicate that these provisions will change in any way. Under these circumstances, we cannot find that the French government is in *de facto* control of Starsys.¹⁷

13. Finally, Starsys asks us to make a decision under Section 25.116 that the amendment should be granted an exemption from the "cut-off" rules, if major. Starsys provided no specific details regarding the proposed stock transaction or the new potential investors. Under the circumstances, we cannot make a final determination that the amendment is in the public interest. However, although we reserve ultimate judgment as to the qualifications of the new owners, we have previously recognized the need for flexibility in financing new satellite systems. See,

⁷ In 1974, the Communications Act was amended to separate Section 310(a) into the current Sections 310(a) and (b).

⁸ 47 U.S.C. § 310(b)(3) (emphasis added). See also Section 310(b)(4), which contains similar benchmarks.

⁹ 2A N. Singer, Statutes and Statutory Construction § 46.06 (Sutherland 4th ed. 1984).

¹⁰ Orion Satellite Corp., 5 F.C.C. Rcd. 4937, 4944 n.26 (1990). See also Alpha Lyracom, d/b/a Pan American Satellite, et al., 8 F.C.C. Rcd. 376, 378 n.21 (Comm. Carr. Bur. 1992).

¹¹ Benjamin L. Dubb, 16 F.C.C. 274, 289 (1951).

¹² Id.

¹³ Corporate Ownership Reporting and Disclosure by Broadcast Licensees, 97 F.C.C. 2d 997, 1021 (1984) (power to compel dividends or financial distribution non-attributable). See also Cleveland Television Corp., 91 F.C.C. 2d 1129, 1161 (Rev. Bd. 1982), review denied, FCC 83-235 (released May 18, 1983), *aff'd*, 732 F.2d 962 (D.C. Cir. 1984) (stock considered to be non-voting for attribution purposes where voting rights in "certain narrow areas" were required under state law and did not involve "matters which would have an impact on the operation of the proposed station.")

¹⁴ 260 F.2d at 741.

¹⁵ Because we conclude that the foreign government interests involved here do not control Starsys, we need not decide whether any of the foreign government interests are in fact representatives of foreign governments.

¹⁶ This percentage is derived by employing a "multiplier" approach to calculate the attributable ownership in Starsys of the foreign government interests. Organizations directly supported by the French government hold a 70% interest in a 49% owner of 25% of Starsys's equity. Interests in excess of 50% are not reduced by a multiplier. Reexamination of the Commission's Rules and Policies Regarding the Attribution of Ownership in Broadcast, Cable Television and Newspaper Entities, 97 F.C.C. 2d 997 (1984), *recon.*, FCC 85-252 (released June 24, 1985) 58 R.R.2d 604, *further recon.*, 1 F.C.C. Rcd. 802 (1986).

¹⁷ Because we have not found evidence of *de facto* foreign government control on this record, we need not address Orbcomm's request that we impose structural safeguards on Starsys. Of course, if Starsys's ownership structure changes or if new facts come to light prior to licensing of Starsys's system, they will be fully considered at that time.

e.g., *Satellite CD Radio, Inc.*, 9 F.C.C. Rcd. 2569 (Comm. Carr. Bur. 1994). In *Constellation Communications, Inc.*, DA 95-126 (Jan. 31, 1995), *recon. pending*, we were faced with a similar question, and we stated with respect to LEO systems in the 1.6/2.4 GHz frequency bands ("Big LEOs") that our overriding concern is whether the applicant has attempted to profit from the sale of an application. Unless there is evidence of this, we do not prevent applicants from procuring partners to help finance the costs of their systems. We expect Starsys to seek a fact-specific ruling concerning our cut-off rules prior to consummating transactions that would have the cumulative effect of changing ownership or control of more than 50% of Starsys's stock, but the facts now before us would be consistent with a finding that the proposed ownership changes are in the public interest.

IV. CONCLUSION

14. As structured in the April 20 letter, we find no evidence that the French government will be in *de facto* or *de jure* control of Starsys. Accordingly, we find that Section 310(a) will not preclude grant of a satellite license to Starsys, so long as the company continues to shield its foreign government investors from the business and policy decisions of the licensee.

V. ORDERING CLAUSE

15. Accordingly, IT IS ORDERED, pursuant to Section 1.2 of the Commission's Rules, 47 C.F.R. § 1.2, and Section 0.261 of the Commission's Rules on delegations of authority, 47 C.F.R. § 0.261, that the request of Starsys Global Positioning, Inc. for a declaratory ruling IS GRANTED as described herein, and that Starsys Global Positioning, Inc., if restructured as described in the April 20 letter, is qualified under Section 310(a) of the Communications Act to hold a non-voice non-geostationary mobile-satellite service system license.

FEDERAL COMMUNICATIONS COMMISSION

Scott Blake Harris
Chief, International Bureau