

DUPLICATE

BEFORE THE  
**Federal Communications Commission**  
WASHINGTON, D.C. 20554

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JUL 14 2005

Federal Communication Commission  
Bureau / Office

In the Matter of )  
)  
**Lockheed Martin Corporation** )  
)  
Application To Launch and Operate a )  
Geostationary Orbit Space Station in the )  
Radionavigation Satellite Service at 133° W.L. )

File No. SAT-LOA-19990427-00047  
File No. SAT-AMD-20030730-00151  
File No. SAT-AMD-20040130-00009  
File No. SAT-AMD-20040203-00011  
File No. SAT-AMD-20040706-00129  
File No. SAT-AMD-20050210-00035  
Call Sign: S2372

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JUL 19 2005

To: Chief, International Bureau

Policy Branch  
International Bureau

**REQUEST FOR DETERMINATION OF  
COMPLIANCE WITH SATELLITE IMPLEMENTATION MILESTONES**

Lockheed Martin Corporation ("Lockheed Martin"), by counsel and pursuant to Section 25.164 of the Commission's Rules, hereby notifies the Commission that it has met the first three milestones set forth in the authorization issued on June 23, 2005 granting it authority to launch and operate a Radio-Navigation Satellite Service ("RNSS") payload at 133° West Longitude as part of its Regional Positioning System ("RPS"). See *Lockheed Martin Corporation*, DA 05-1747, slip op. (IB, released June 23, 2005) ("133W RPS License Order"). In particular, Lockheed Martin demonstrates herein that it: (i) has contracted for construction of the RNSS payload authorized in the 133W RPS License Order; (ii) has completed Critical Design Review of the payload; and (iii) has not only commenced but completed construction of the authorized facility. As a result of these showings, Lockheed Martin respectfully requests that the International Bureau determine that Lockheed Martin has satisfied the first three milestone requirements set forth in the 133W RPS License Order. The determination that Lockheed Martin has satisfied the first three of the four satellite implementation milestones will allow Lockheed

Martin to reduce the \$3 million bond that it is required to post by July 25, 2005 pursuant to the 133W RPS License Order to \$750,000.<sup>1</sup>

### Executive Summary

The Commission granted Lockheed Martin's application for an RNSS space station license at the 133° W.L. orbital location on June 23, 2005 in the 133W RPS License Order. Paragraph 49 of that Order requires Lockheed Martin to meet four satellite implementation milestones, as follows:

Execute a Binding Contract for Construction by June 23, 2006  
Complete the Critical Design Review by June 23, 2007  
Commence Physical Construction by June 23, 2008  
Launch and Begin Operations by June 23, 2010

See 133W RPS License Order at 14. In addition, the same paragraph also mandates that Lockheed Martin post a \$3 million bond with the Commission no later than July 25, 2005 pursuant to procedures established by the Commission. *Id.* Lockheed Martin expects to post the required bond by the deadline established in the 133W RPS License Order.

Under the Commission's Rules, a geostationary satellite licensee may reduce the amount of its bond by \$750,000, twenty-five percent of the total amount, upon successfully meeting each of the milestones set forth in its authorization and codified under Section 25.164 of the Rules. See 47 C.F.R. §25.165(d). The Commission's procedures provide that licensees will be permitted to file a new bond at a lower amount only after the International Bureau announces that the licensee has met the milestone(s). See FCC Public Notice, Report No. SPB-187, DA 03-2602, 18 FCC Rcd 16283 (2003).

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<sup>1</sup> Lockheed Martin is filing this request with the attachments (which include the contract with PanAmSat and other confidential and proprietary information) redacted. An unredacted version of this request, with complete attachments, is being filed contemporaneously under a request for confidential treatment.

Lockheed Martin's progress toward implementing its authority for the 133° W.L. RPS facility was well advanced at the time of licensing, and it has already reached three of the four milestone points contained in the 133W RPS License Order. A summary of the status of Lockheed Martin's compliance with the first three implementation milestones set forth in Section 25.164(b) is provided here for convenience:

FCC Rule	Milestone	Milestone Deadline per 133W RPS License Order	Date on Which the Milestone was Satisfied	Evidence of Completion
25.164(b)(1)	Entry into a Binding, Non-Contingent Contract	June 23, 2006	October 2, 2003—binding contract; October 10, 2003—non-contingent contract	PanAmSat Agreement, particularly Articles 5.A & 29.A and Attachment A.
25.164(b)(2)	Critical Design Review	June 23, 2007	May 13, 2004	PanAmSat Agreement, Attachment A (13% progress payment due following CDR); PanAmSat Letter
25.164(b)(3)	Commencement of Physical Construction	June 23, 2008	August 8, 2003 (note: physical construction completed June 2005)	Heil Declaration; PanAmSat Letter; PanAmSat 2005 Annual Status Report

Each element summarized above is discussed below in detail, and each document referenced is fully identified.

Accordingly, Lockheed Martin is filing this notification pursuant to Sections 25.164(c), (d) and (e) of the Commission's Rules to report its completion of these three requirements. In addition, because satisfaction of these requirements permits it to reduce the amount of the bond posted with the Commission,<sup>2</sup> it is requesting that the Commission review this submission and issue a determination that Lockheed Martin has met its first three implementation milestones, allowing it to reduce the amount of its performance bond to \$750,000, commensurate with the

<sup>2</sup> See 133W RPS License Order at 12 (¶ 30); 47 C.F.R. § 25.165(d).

progress made to date in bringing the 133° W.L. RPS facility into service. Appropriate showings regarding each of the three milestones are provided below.

**Milestone 1 – Entry into a Binding, Non-Contingent Construction Contract – Satisfied October 2003**

The initial contracting milestone requires that the licensee enter into a binding, non-contingent contract for construction of the authorized facility. *See Amendment of the Commission's Space Station Licensing Rules and Policies*, 18 FCC Rcd 10760, 10831 (¶ 184) (2003) (“*SSLR Order*”). Lockheed Martin entered into a binding agreement (“*Agreement*”) for construction of the authorized space station on October 2, 2003 when it signed a contract with PanAmSat Corporation (“*PanAmSat*”) which provided for PanAmSat to furnish an RNSS payload for Lockheed Martin's use on its Galaxy XV spacecraft, then already under construction. The *Agreement*, a copy of which is attached hereto as Attachment 1, as required by Section 25.164(c) of the Commission's Rules, 47 C.F.R. § 25.164(c), became non-contingent a few days later.<sup>3</sup> In late October 2003, Lockheed Martin notified the Commission that it had

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<sup>3</sup> The agreement included at Article 34 a Condition Subsequent providing that the agreement would only be effective if: (1) the FAA issued a contract modification authorizing the project and (2) PanAmSat's project contractors for satellite manufacturing and launch agreed to adhere to the same terms previously offered to PanAmSat for the Galaxy XV project. The agreement, however, required that these conditions be met by October 10, 2003, just eight days after contract execution – and these conditions were, in fact, met within that time period, rendering the contract non-contingent not later than October 10, 2003. *See Declaration of Dan Heil at ¶ 1 (“Heil Declaration”), attached hereto as Attachment No. 2. This is fully in accord with the Commission's interpretation of its binding, “non-contingent” contract requirement, which it has explained “does not mean that the contract cannot contain any contingencies,” but simply that the contract permits “neither significant delays between the execution of the contract and the actual commencement of construction, nor conditions precedent to construction.” SSLR Order, 18 FCC Rcd at 10831 (¶ 184). It is therefore sufficient that a contract “contains no unresolved contingencies that could preclude construction of the satellite.” Id. With the resolution of the Article 34 condition subsequent in October 2003, the Lockheed Martin-PanAmSat agreement became non-contingent shortly after its execution, on or before October*

arranged with PanAmSat to host an RNSS payload on Galaxy XV at the 133° W.L. orbital location. See Letter from Stephen D. Baruch, Counsel to Lockheed Martin, to Marlene H. Dortch, Secretary, FCC, File Nos. SAT-LOA-19990427-00046 and -00047; SAT-AMD-20030730-00150 and -00151, dated October 29, 2003.

There is no question that the Agreement satisfies the Commission's contract milestone. The Agreement is binding and non-contingent as between the parties<sup>4</sup>; it identifies the specific satellite and design characteristics<sup>5</sup>; it specifies the dates for the start and completion of construction<sup>6</sup>; and it includes payment terms (spread throughout the construction phase of the contract with significant initial payments and the majority of payments before the end of construction) that unequivocally demonstrate Lockheed Martin's investment and commitment to completion of the system.<sup>7</sup> These are the elements that the Commission has historically looked to when assessing compliance with the first milestone.<sup>8</sup>

#### **Milestone 2 – Completion of Critical Design Review – Satisfied May 2004**

The Commission has not prescribed a particular method or standard for determining satisfaction of the second implementation milestone, the completion of Critical Design Review ("CDR"). It has, however, identified this stage as the point in "the spacecraft implementation

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10, 2003, and has remained in effect since that time. *Id.* at ¶ 2. Thus, the contracting milestone was met well before the June 23, 2006 date specified in the 133W RPS License Order.

<sup>4</sup> See Agreement, Article 29.A ("[T]his Agreement will be binding upon the parties ..."). See also note 3, *supra*.

<sup>5</sup> See Agreement, Article 3.A, Articles 32.B(2) and 32.B(3) (Statement of Work and Navigation Payload Specification, both attached to and incorporated into Agreement).

<sup>6</sup> See Agreement, Article 4.A(x) (Payload Acquisition Phase).

<sup>7</sup> See Agreement, Article 5.A; Attachment A, Section 1.0 (Payment Schedule for Payload Acquisition Phase).

<sup>8</sup> See *Mobile Communications Holdings, Inc.*, 18 FCC Rcd 11650, 11654 (2003), quoting *Tempo Satellite, Inc.*, 7 FCC Rcd 6597, 6600 (¶ 13) (1992).

process at which the design and development phase ends and the manufacturing stage starts.”

*See SSLR Order*, 18 FCC Rcd at 10833 (¶ 191). It has suggested that proof of a large payment of money, often coincident with the completion of CDR; affidavits from an independent manufacturer; and evidence that all long lead items needed to begin physical construction of the spacecraft could provide demonstration that this milestone has been satisfied. *Id.*

As confirmed by PanAmSat, Lockheed Martin’s contractor, the CDR for the 133° W.L. RPS payload was successfully completed on May 13, 2004. *See* Letter from Kenneth Lee, Vice President, Space Systems Development & Acquisition, PanAmSat, to Robert Lorence, Subcontract Manager, Lockheed Martin, at 1, dated July 13, 2005 (“PanAmSat Letter”). The PanAmSat Letter is included as Attachment No. 3 to this Request. Pursuant to the terms of the Agreement, Lockheed Martin made a progress payment shortly after completion of CDR (Payment 4) that represented 13% of the total construction phase price. *See* Agreement, Attachment A, Section 1.0. With the payment upon completion of CDR, which was the fourth of the six payments that have been made to date to PanAmSat for payload construction and integration, Lockheed Martin had made payments totaling 43% of the total construction phase charges.<sup>9</sup> The fact that the RNSS payload licensed to Lockheed Martin has now been constructed to completion (see discussion of Milestone 3, immediately below) should, under the rationale of the *SSLR Order*, demonstrate sufficiently that Lockheed Martin has satisfied the CDR milestone.

### **Milestone 3 – Commencement of Physical Construction – Satisfied August 2003**

As with the CDR milestone, the Commission has established no specific guidelines for determining satisfaction of the third implementation milestone, commencement of physical

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<sup>9</sup> *See* Agreement, Attachment A, Section 1.0 and Table A-1.

construction. Instead, it has stated that licensees are required "to provide sufficient information to demonstrate to a reasonable person that they have commenced physical construction of their licensed spacecraft." *SSLR Order*, 18 FCC Rcd at 10834 (¶ 193).

Actual construction of the 133° W.L. RPS payload and modification of the Galaxy XV spacecraft by PanAmSat's satellite vendor, Orbital Sciences Corporation, began in August 2003 contemporaneously with the negotiation of the Agreement between Lockheed Martin and PanAmSat. *See* PanAmSat Letter at 1. The Galaxy XV satellite was itself under construction at the time Lockheed Martin and PanAmSat agreed to the arrangement for inclusion of the RPS RNSS payload. Construction and testing of the 133° W.L. RPS payload was successfully completed by PanAmSat and Orbital Sciences last week, on July 8, 2005. *Id.*; Heil Declaration at ¶ 3. *See also* PanAmSat Corporation 2005 Annual Status Report at 10 (filed June 30, 2005) ("Galaxy 15 has completed construction."). Lockheed Martin has now made six of the eight total payments provided for in its Agreement with PanAmSat, totaling approximately 70% of the scheduled non-recurring payload payments called for under the contract. PanAmSat Letter at 1. A seventh payment keyed to the completion of post-construction thermal vacuum testing has just been invoiced to Lockheed Martin, and the final payment will be due following successful launch and completion of in-orbit testing. *Id.* Currently, the Galaxy XV spacecraft and the on-board Lockheed Martin RNSS payload are being prepared for shipment to the Arianespace launch facility in Kourou, French Guiana. While the specific date for the launch has not been finalized, Galaxy XV is expected to be launched within the next few months, in the late summer or early fall of 2005. *See* PanAmSat Letter at 2; *see also* Heil Declaration at ¶ 3.

**Request for Determination of Milestone Compliance**

Lockheed Martin has submitted the foregoing information in compliance with Sections 25.164(c), (d) & (e) of the Commission's Rules governing milestone compliance. This information demonstrates that three of the four implementation milestones set forth in the 133W RPS License Order have already been met. The 133W RPS License Order requires Lockheed Martin to post a \$3 million performance bond no later than July 25, 2005, but also states that geostationary satellite licensees "may reduce the amount of the bond upon meeting each milestone." 133W RPS License Order at 12 (¶ 37). Inasmuch as Lockheed Martin has demonstrated herein that it has completed the first three of the four implementation milestones to which it is subject, it respectfully requests that the Commission affirm this fact, allowing it to reduce the amount of its bond to \$750,000, the amount that its license and the Commission's rules permit a geostationary satellite licensee to post following completion of its first three implementation milestones.

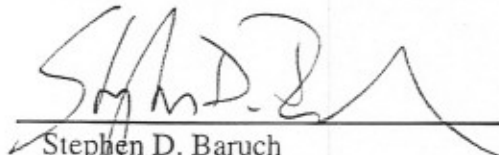


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Should there be any questions regarding the foregoing information, please contact the undersigned counsel.

Respectfully submitted,

LOCKHEED MARTIN CORPORATION

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July 14, 2005

**ATTACHMENT 1**

**(Construction Agreement Provided by Lockheed Martin Corp. Pursuant to Request for  
Confidential Treatment, dated July 14, 2005)**

ATTACHMENT 2

(Declaration of Dan Heil, Lockheed Martin Corp., Provided Pursuant to Request for  
Confidential Treatment, dated July 14, 2005)

ATTACHMENT 3

**(Letter from Kenneth Lee, PanAmSat Corp. is Provided by Lockheed Martin Corp.  
Pursuant to Request for Confidential Treatment, dated July 14, 2005)**