



ORIGINAL

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VIA HAND DELIVERY

Marlene H. Dortch  
Office of the Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, DC 20554

FILED/ACCEPTED

APR - 4 2007

Federal Communications Commission  
Office of the Secretary

**Re: MSV International, LLC  
Supplement to Request for Withdrawal and Release of Performance  
Bond  
Call Sign S2487**

Dear Ms. Dortch:

MSV International, LLC, a wholly owned subsidiary of Mobile Satellite Ventures LP (collectively "MSV"), hereby submits this Supplement to its Request for Withdrawal and Release of Performance Bond (June 12, 2006) ("Bond Release Request"). In a recent decision, the Commission concluded that, rather than strictly enforcing a satellite licensee's five performance bonds totaling \$11.25 million for the licensee's failure to meet applicable milestones, the public interest would be better served by granting the request by the licensee for the waiver, withdrawal, and release of the bonds. *See In the Matter of Rainbow DBS Company LLC*, FCC 07-11 (March 2, 2007), *amended by erratum* (March 9, 2007). The Commission explained that it was granting the licensee's request because the grant would "not undermine the three ways in which the bond requirement works to expedite service to the public in an environment of scarce spectrum (i.e. ensuring the licensee's financial ability to establish the licensed service, ensuring its good faith intent to provide the service, and discouraging the warehousing or speculative pursuit of scare spectrum)," (*id.* at ¶ 8) (emphasis added) and the public interest would be better served by encouraging qualified and motivated applicants to develop satellite services. *See id.* at ¶ 12. Because grant of MSV's Bond Release Request would similarly not undermine any of the purposes of the bond requirement and would also encourage satellite licensees to expand their existing services, the Commission should expeditiously grant MSV's request for the waiver or withdrawal and release of the performance bond for the above-referenced satellite license.

On June 12, 2006, MSV surrendered its authorization for a satellite at the 63.5°W orbital location ("MSV-SA") that would operate in the L band for service links and the Appendix 30B Ku band for feeder links. MSV asked the Commission for its consent to the withdrawal and release or, in the alternative, waiver of the \$2.25 million performance bond associated with the

S2487 SAT-LOA-20030827-00174 IB2003001595  
MSV International, LLC  
MSV-SA

satellite license.<sup>1</sup> No party opposed that request. As MSV noted in its Bond Release Request, MSV-SA was part of its next-generation satellite system, consisting of three satellites, two of which, MSV-1 and MSV-2, would provide next-generation service to North America and one of which, MSV-SA, would provide service to South America. In order to accelerate the construction, launch, and operation of its North American next-generation satellites, MSV elected to reallocate capital and resources from the construction of its South American satellite. At the time of the Request, MSV had paid the satellite manufacturer, Boeing Satellite Systems, Inc. (“Boeing”), \$27 million, of which \$5 million was specifically attributable under the contract to MSV-SA. MSV had also invested approximately \$1 million more in developing and contracting for MSV-SA in particular. Since the filing of the Bond Release Request, MSV has continued to make payments under the “accelerated” satellite system construction contract, and as of this filing, MSV has paid Boeing in excess of \$150 million for the construction of its next-generation satellite system. These facts readily demonstrate that none of the three purposes of the bond requirement would be undermined and the public interest would be better served by the grant of MSV’s Bond Release Request.

First, MSV has demonstrated the financial wherewithal to develop the licensed service. MSV has spent over \$1 billion on the development and operation of its existing satellite system and has made substantial progress in the construction of its next-generation satellite system. As noted above, in a little over two years, MSV has paid Boeing in excess of \$150 million pursuant to the satellite system construction contract, and the development of its next-generation North American satellites are well underway. Accordingly, grant of a waiver to MSV would not undermine the purpose of the performance bond requirement to ensure that licensees are financially able to establish service. *See In the Matter of Rainbow DBS, LLC*, at ¶ 9 (licensee that, in conjunction with its parent company, spent approximately \$1 billion over a six-year period to develop related satellite business evidenced its financial qualifications to deploy the licensed satellites).

Second, the facts show that MSV made significant progress on the construction of MSV-SA, demonstrating a good faith intent to deploy the licensed service. In January 2006, MSV executed a satellite construction contract for its three-satellite, next-generation system, which the Commission concluded satisfied the initial milestone requirement for MSV-SA. *See Public Notice, Report No. SAT-00356, DA 06-918, at 2 (April 21, 2006)*. By the time MSV submitted its Bond Release Request surrendering its MSV-SA authorization, MSV had paid Boeing \$27 million, of which \$5 million was specifically attributable under the contract to MSV-SA, and had also invested approximately \$1 million more in developing and contracting for MSV-SA specifically. Such expenditures exceed those of the licensee in *In the Matter of Rainbow DBS, LLC* and readily show MSV’s good faith intent to deploy the licensed service. *See In the Matter of Rainbow DBS, LLC*, at ¶ 10 (investment of more than \$13 million for a five-satellite system

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<sup>1</sup> The bond was initially posted on February 7, 2005 in the amount of \$3 million. Subsequently, the Commission determined that MSV met its initial contract execution milestone for MSV-SA, and MSV reduced the bond amount to \$2.25 million, as permitted under the Commission’s rules. *See Public Notice, Report No. SAT-00356, DA 06-918, at 2 (April 21, 2006)*.

(i.e. \$2.6 million per satellite) was sufficient to demonstrate “*bona fide* intent to provide a full-fledged satellite service to the public”).

Moreover, as MSV indicated in its Bond Release Request, MSV is not abandoning its proposed satellite to serve South America, but merely deferring further investment in order to reallocate capital and resources for the more rapid construction of its next-generation North American satellites. Thus, given MSV’s progress and investment in establishing its next-generation system, along with MSV’s reason for surrendering the license for MSV-SA, it cannot be said that MSV was “entering into this venture merely for the sake of speculation, without a *bona fide* intent to provide a satellite service to the public.” *In the Matter of Rainbow DBS, LLC*, at ¶ 10. Accordingly, grant of MSV’s request would not undermine the purpose of the bond requirement to ensure that licensees pursue in good faith the deployment of the licensed satellite service.

Third, grant of MSV’s request would not undermine the purpose of the bond requirement to discourage the warehousing or speculative pursuit of scarce spectrum. As MSV explained in its Bond Release Request, the frequencies licensed to MSV-SA are of little or no use to other prospective satellite operators.<sup>2</sup> With respect to the L band frequencies, MSV was permitted to use only those frequencies that the Commission had already coordinated and authorized for MSV’s present North American system. As the Commission explained in granting the MSV-SA license, MSV is the only entity that may use those same frequencies in South America due to the harmful interference that would otherwise result to MSV’s existing North American system. *See Mobile Satellite Ventures Subsidiary LLC*, 20 FCC Rcd 479, at ¶ 8 (2005). Thus, no entity was prejudiced by MSV’s license for L band frequencies at 63.5°W. With respect to MSV’s license for Appendix 30B Ku band frequencies at 63.5°W, there was no scarcity of comparable orbital locations for use of Appendix 30B Ku band frequencies while MSV held its license and there remains no scarcity of such orbital locations today. Any entity that desired a license to use these frequencies was free to apply, subject to ITU coordination, modification of the Appendix 30B band plan,<sup>3</sup> and compliance with the Commission’s policy that limits the number of earth

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<sup>2</sup> Additionally, as discussed above, MSV has made serious efforts in developing its next-generation satellite system, including the construction of MSV-SA in particular.

<sup>3</sup> *See* Bond Release Request, at 2; *Boeing, Order and Authorization*, DA 03-2073 (Chief, Int’l Bur. and Chief, OET, June 24, 2003) (granting license to use Appendix 30B Ku band frequencies at 120°W pursuant to amendment to Appendix 30B plan; Boeing subsequently surrendered its license on March 28, 2005); Application of Iridium 2 GHz LLC, File No. SAT-MOD-20030828-00286 (filed August 28, 2003) (proposing use of Appendix 30B Ku band frequencies at 87.5°W pursuant to amendment to Appendix 30B plan; Iridium subsequently withdrew its application on March 16 2005); Application of Mobile Satellite Ventures Subsidiary LLC, File No. SAT-LOA-20030827-00174 (filed August 27, 2003) (proposing use of Appendix 30B Ku band frequencies at 82°W pursuant to amendment to Appendix 30B plan; MSV subsequently amended this application to request the 63.5°W orbital location instead).

stations in the band to protest terrestrial operators that share the band.<sup>4</sup> It is these constraints, not MSV's license for MSV-SA, that limits the feasibility of using the Appendix 30B Ku band for most satellite operators. In fact, in the three and a half years since MSV applied to operate MSV-SA at 63.5°W in December 2003, only two new applications have been filed with the Commission to use Appendix 30B Ku band frequencies at any orbital location.<sup>5</sup> One of these applications was subsequently dismissed.<sup>6</sup> Moreover, during this same three-and-one-half year period, one license to use Appendix 30B frequencies was surrendered,<sup>7</sup> and two previously filed pending applications to use Appendix 30B frequencies were either withdrawn or dismissed.<sup>8</sup> To this day, MSV is aware of only four geostationary satellites authorized by the Commission for operation in the United States using the Appendix 30B Ku band.<sup>9</sup> Accordingly, there is sufficient alternative spectrum, such that MSV's licensing did not preclude other parties from obtaining comparable spectrum.<sup>10</sup> There can be no serious concern that MSV's application for MSV-SA was speculative or that the award of the license had any warehousing effect, and thus,

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<sup>4</sup> The Commission limits use of the band to "international only" systems in order to limit the number of satellite earth stations that can operate using these frequencies. 47 C.F.R. § 2.106, footnote NG104. The goal of this restriction is to minimize interference to terrestrial operators that share the band and to avoid impeding the growth of terrestrial operations with burdensome coordination requirements. *See Boeing Order* at ¶ 15. Domestic satellite operations permitted in the band have been limited to feeder link operations, which entails use of only a few earth stations. *See id.* at ¶ 16.

<sup>5</sup> *See* Application of EchoStar Satellite LLC, File No. SAT-LOA-20040210-00015 (filed February 10, 2004) (re-applying to use Appendix 30B frequencies at 101°W after dismissal of previous application); Application of PanAmSat Licensee Corp., File No. SAT-MOD-20070207-00027 (filed February 7, 2007) (seeking authority for a replacement satellite that will use Appendix 30B frequencies at 43°W).

<sup>6</sup> *See EchoStar Satellite LLC*, DA 05-1955 (July 6, 2005) (denying EchoStar's application to use Appendix 30B frequencies at 101°W).

<sup>7</sup> *See* Letter from The Boeing Company to FCC, File No. SAT-AMD-20040713-00132 (March 28, 2005) (surrendering license to use Appendix 30B frequencies at 120°W).

<sup>8</sup> *See* Letter from Iridium 2 GHz LLC to FCC, File No. SAT-MOD-20030828-00286 (March 16, 2005) (withdrawing application to use Appendix 30B frequencies at 87.5°W); Letter from Thomas S. Tycz, International Bureau, FCC, to David K. Moskowitz, EchoStar Satellite Corporation, File Nos. SAT-LOA-20030827-00179, SAT-AMD-20031126-00343 (February 9, 2004) (dismissing EchoStar application to use Appendix 30B frequencies at 101°W).

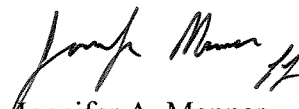
<sup>9</sup> These satellites are AMSC-1 at 101°W and its replacement, MSV-1; the Canadian-licensed MSAT-1 at 106.5°W; and IS 6B at 43°W.

<sup>10</sup> *See In the Matter of Rainbow DBS, LLC*, at ¶ 11.

grant of the Bond Release Request would not undermine the purpose of the bond requirement to discourage warehousing and speculation.<sup>11</sup>

Importantly, grant of MSV's request will better serve the public interest than strict application of the bond requirement. Similar to the licensee in *In the Matter of Rainbow DBS, LLC*, MSV has undertaken a substantial effort, both in terms of finances and good faith, to expand its next-generation satellite system using L band spectrum that is essentially unavailable for use to others and Appendix 30B frequencies that are abundant and available for use by other potential operators, subject to the constraints discussed above. Enforcing the bond requirement against this backdrop could have the effect of discouraging similarly qualified and motivated applicants from seeking to expand their satellite systems. As the Commission has noted, "[t]here is a strong public interest in affirmatively encouraging [entrepreneurial] participation [in the satellite industry], not possibly discouraging it by the pro forma application of the bond requirement in circumstances where . . . the three functions served by the requirement will not be undermined by the waiver grant." *In the Matter of Rainbow DBS, LLC*, at ¶ 12. For these reasons, MSV respectfully submits that it has demonstrated good cause for the grant of its Bond Release Request.

Very truly yours,



Jennifer A. Manner

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<sup>11</sup> *See id.* (where ten comparable orbital locations were available throughout the licensed period, licensee who surrendered five satellite licenses was not engaged in speculation and the licensing of those orbital locations had no warehousing effect). In MSV's case, there were and remain far more than ten available comparable orbital locations for use of Appendix 30B frequencies. In addition, in the case of Rainbow, there were other applicants who demonstrated an interest in the particular frequencies and orbital locations licensed to Rainbow. *See* SAT-LOA-20070314-00051 (applying for Ka-band frequencies at 77°W); SAT-LOA-20070309-00046 (applying for Ka-band frequencies at 77°W); SAT-LOA-20030827-00274 (applying for Ka-band frequencies at 119°W). In contrast, there has never been any demonstrated interest in use of the L band or Appendix 30B frequencies at the 63.5°W orbital location.

Ms. Marlene H. Dortch  
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