

SAT-LOI-20160308-00025

File # SAT-LOI-20160308-00026

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



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From 11/04/16 To: 11/18/16

Approved: *Stephan J. Duall*

Stephan J. Duall
Chief, Satellite Policy Branch

In the Matter of

Spectrum Five LLC Petition for Declaratory Ruling To Provide Service from 110.9

Spectrum Five LLC Petition for Declaratory Ruling To Provide Service from 115

*Extension of time
to post surety bonds
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MOTION FOR EXTENSION OF TIME OR, IN THE ALTERNATIVE, FOR WAIVER

In December 2015, the Commission comprehensively revised its milestone and bond rules.¹ Those rules took effect on September 19, 2016.² On October 5, 2016, the Commission granted Spectrum Five’s applications for satellite space station authorizations, seeking to provide service from 110.9° W.L. and 115° W.L.³ To Spectrum Five’s knowledge, these are the first approved applications for geostationary satellites under the newly effective milestone and bond rules.

Under those rules, and the conditions on the license, Spectrum Five must post a surety bond that complies with newly adopted 47 C.F.R. § 25.165(a)(2) & (b) by November 4, 2016.

Spectrum Five has worked diligently — both before and after the Commission granted its

¹ See Second Report and Order, *Comprehensive Review of Licensing and Operating Rules for Satellite Services*, 30 FCC Rcd 14713, ¶¶ 49-85 (2015) (“*Satellite Rules Order*”).

² See Public Notice, *International Bureau Announces Effective Date of Rules Adopted in the Part 25 Second Report and Order*, 31 FCC Rcd 9807 (2016).

³ See Stamp Grant, *Spectrum Five LLC Petition for Declaratory Ruling to Provide Service from 110.9*, SAT-LOI-20160308-00025 (Oct. 5, 2016); Stamp Grant, *Spectrum Five LLC Petition for Declaratory Ruling to Provide Service from 115*, SAT-LOI-20160308-00026 (Oct. 5, 2016).

application — with Marsh & McLennan Companies and Chubb Limited to develop a form of bond that complies with the new requirement for a surety bond, the value of which escalates on a daily basis from \$1 million to \$3 million over a five-year period.⁴ Although Spectrum Five has worked with Marsh and Chubb, or their predecessors, to obtain surety bonds for Spectrum Five’s prior satellite licenses under the prior milestone and bond regime, the new milestone and bond regime raises novel questions about the structure of a compliant surety bond.⁵ Although the guidance the International Bureau provided on October 7, 2016 — two days after the award of the licenses at issue here — clarified a number of aspects of the new regime,⁶ questions still remain.⁷ For example, although the guidance clarifies that a periodically increasing bond (*e.g.*, yearly) rather than a daily escalating bond is acceptable, the guidance is less clear about how increases in the bond amount are to occur.⁸ The guidance also does not address the return or release of fixed value bonds that are replaced by subsequent, fixed value bonds at a higher amount. Without a return or release, the successive bonds could become cumulative; at the same time, a provision limiting the period during which a bond is in effect could be viewed by the Commission as an unacceptable contingency.

⁴ See Declaration of Francis Curran (“Curran Decl.”) ¶ 6, attached; Declaration of David Wilson (“Wilson Decl.”) ¶¶ 4-5, attached.

⁵ See Curran Decl. ¶¶ 5, 7; Wilson Decl. ¶¶ 5-6.

⁶ See Public Notice, *International Bureau Updates Procedures for Filing and Maintaining Surety Bonds Pursuant to Revised Milestone and Escalating Bond Requirements*, DA 16-1157 (Int’l Bur. Oct. 7, 2016).

⁷ See Curran Decl. ¶ 7; Wilson Decl. ¶ 6.

⁸ Compare *id.* at 2 (referring to the “submi[ssion] of a new bond” at the end of the period covered by the fixed value bond) with *id.* at 2 n.9 (referring to submitting “annual increases” of the initial bond via amendment). The clarification that a fixed bond is permissible answered one of the most difficult questions, as the mechanics of providing security for a bond that increases in value daily posed insurmountable difficulties in implementation.

Although Spectrum Five has been working diligently with Marsh and Chubb through these and other issues raised by the Commission's novel regime, an additional two weeks is required to complete those efforts.⁹ Spectrum Five, therefore, requests a two-week extension, to November 18, 2016, of the 30-day deadline in 47 C.F.R. § 25.165(a) and in Condition 4.a of each license grant for posting of a conforming surety bond. In the alternative, Spectrum Five requests that the Commission waive the 30-day deadline in 47 C.F.R. § 25.165(a) and in Condition 4.a of each license grant, allowing the posting of a conforming surety bond on or before November 18, 2016.

The Commission has authority to grant extensions of deadlines, or to waive its rules, on a showing of good cause.¹⁰ Spectrum Five has met that standard here. Spectrum Five, along with its sureties, has worked diligently to comply with the novel milestone and bond regime the Commission adopted in the *Satellite Rules Order* in December 2015, beginning its efforts before the Commission granted the license applications at issue. Although those efforts were assisted by the Bureau's guidance issued after those rules took effect, that guidance was issued during the 30-day period for Spectrum Five to post its surety bonds and did not resolve all issues that Spectrum Five and its sureties had been discussing.¹¹ Given the novelty of the new regime, the fact that Spectrum Five's licenses appear to be the first to require surety bonds under the new

⁹ See Wilson Decl. ¶ 8.

¹⁰ See, e.g., Order, *Request for Initiation of Proceeding*, 17 FCC Rcd 25331, ¶ 4 (Wireline Comp. Bur. 2003) (finding "good cause for an extension of the deadline"); *Satellite Rules Order* ¶ 88 ("The Commission may waive any rule for good cause.").

¹¹ See Curran Decl. ¶ 7; Wilson Decl. ¶ 6.

regime,¹² and Spectrum Five and its sureties diligent efforts to comply with the new regime, Spectrum Five has shown good cause for the brief extension or waiver it seeks here.

The extension and waiver Spectrum Five seeks will not alter either its surety bond obligations under § 25.165(a)(2) or its launch milestone date under § 24.164(a). That is, both the minimum value of the bond required under § 25.165(a)(2) and the launch milestone date under § 25.164(a) will continue to be calculated from the date of the license grants (October 5, 2016).

For the foregoing reasons, the Commission should either extend the deadline for posting of the surety bonds for these two licenses to November 18, 2016, or should waive § 25.165(a) and Condition 4.a of the licenses to permit posting of those surety bonds on or before that date.

Respectfully submitted,

/s/ Scott H. Angstreich

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November 1, 2016

¹² At a minimum, these are the first surety bonds Marsh and Chubb have written under the new regime. *See* Curran Decl. ¶ 5; Wilson Decl. ¶ 3.

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DECLARATION OF FRANCIS J. CURRAN

1. I, Francis J. Curran, am the Mid-Atlantic Surety Practice Leader at Marsh & McLennan Companies. I have worked at Marsh for 15 years, where I provide brokerage services for the surety bond industry.

2. I have previously arranged for several surety bonds for companies developing satellites pursuant to the Federal Communication Commission's rules. Several of those surety bonds were placed with Chubb Limited, a large insurer, or its predecessors.

3. Each of the prior satellite performance bonds that I placed were issued under the Commission's prior rules requiring a fixed surety bond that could be reduced upon meeting several milestones.

4. I understand that, on September 19, 2016, the Commission amended its rules to require an escalating surety bond for companies developing satellites. I understand further that, on October 5, 2016, the Commission approved Spectrum Five's applications for the two licenses referenced in this document, with the requirement that Spectrum Five post surety bonds that comply with the new rules by November 4, 2016.

5. To the best of my knowledge, neither Marsh nor Chubb has placed a bond under these new rules.


6. Since before the October 5, 2016 license grants, I have been working diligently with David Wilson of Spectrum Five to place such a surety bond with Chubb. However, the process to secure the bonds has taken longer than usual due to the changes to the bonding requirement.

7. I have reviewed the Commission's guidance dated October 7, 2016, regarding how to comply with the revised bond rules. While that guidance was helpful, it did not resolve all of the issues we have had to resolve.

8. I attest that the foregoing statements are true and accurate to the best of my knowledge.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Executed in Philadelphia, Pennsylvania, this 1st day of November, 2016


Francis J. Curran

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DECLARATION OF DAVID WILSON

1. I, David Wilson, am the President and CEO of Spectrum Five LLC.
2. The Federal Communications Commission has previously granted Spectrum Five license to operate geostationary satellites. For those prior license grants, I have been involved in procuring the surety bond required by the Commission's rules. In each of these prior instances, the surety bond was provided under the Commission's prior rules requiring a fixed surety bond that could be reduced upon meeting certain milestones.
3. I understand that, on September 19, 2016, the Commission revised its bond rules to require that recipients of satellite licenses submit escalating surety bonds. Spectrum Five has never had to obtain a surety bond under these new rules, nor has Spectrum Five obtained a similar escalating surety bond. I am not aware of any other satellite company having obtained a surety bond under the new rules.
4. On October 5, 2016, Spectrum Five was granted two licenses to provide service from 110.9 W.L. and 115 W.L. After applying for those licenses, and before the Commission granted them, I contacted Fran Curran, a broker for surety bonds at Marsh & McLennan

Companies from whom Spectrum Five had previously obtained satellite surety bonds, and began discussions about securing surety bonds under the new rules in the event the Commission granted the license applications.

5. I have been working diligently with Mr. Curran and with Chubb Limited to obtain a surety bond that complies with the Commission's new rules through Mr. Curran. I understand that neither Marsh nor Chubb have issued surety bonds pursuant to the Commission's new rules.


6. I have reviewed the Commission's guidance dated October 7, 2016, regarding how to comply with the revised bond rules. While that guidance was helpful, it did not resolve all of the issues we have had to resolve.

7. Spectrum Five remains willing and able to post the required surety and to move forward with development of satellites for the 110.9 W.L. and 115 W.L. orbital locations.

8. I anticipate that we will be able to resolve all remaining issues by November 18, 2016, by which time I anticipate that Spectrum Five will be able to submit the surety bond.

Under penalty of perjury, I attest that the foregoing statements are true and accurate to the best of my knowledge.

Executed in Washington, D.C. this 1st day of November, 2016


David Wilson