

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

In the Matter of

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

SAT-LOI-20160308-00025

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

SAT-LOI-20160308-00026

**EMERGENCY MOTION FOR CLARIFICATION AND 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 licenses, Spectrum Five was initially required to post surety bonds that comply with newly adopted 47 C.F.R. § 25.165(a)(2) & (b) by November 4, 2016. On November 2, 2016, the Commission granted Spectrum Five’s Motion for

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).

Extension of Time Or, in the Alternative, for Waiver, extending to November 18, 2016 the due date for Spectrum Five to post those surety bonds.

Although Spectrum Five has continued to work diligently with Marsh & McLennan Companies and Chubb Limited to comply with the Commission's new surety bond rules, unresolved issues in the Commission's new rules are preventing Spectrum Five from completing the bond process. As Spectrum Five noted in its November 2, 2016 motion, the guidance the International Bureau provided on October 7, 2016 left open certain questions about the new regime. In particular, although the guidance clarifies that a periodically increasing bond (*e.g.*, yearly) rather than a daily escalating bond is acceptable, 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. As Spectrum Five explained, 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.

To avoid the risk of over-securitization, Chubb has developed a form for a fixed-value bond that provides, among other things, that the bond will have a fixed term that expires before the October 5, 2021 deadline for the licenses for the launch, positioning, and operation of a compliant space station.⁴ The bond form also states that no extension of time or increase in the bond amount shall be granted by the surety.⁵ The inclusion of the automatic expiration date provides Chubb with protection against the possibility of over-securitization when a subsequent, fixed-value bond of a higher amount is later obtained and provided to the Commission. But it is

⁴ See Declaration of Francis J. Curran ¶ 5 (Nov. 17, 2016) (attached hereto).

⁵ See *id.*

unclear whether the Commission will view that provision as placing an unacceptable contingency on the bond amount or otherwise non-compliant with the new rules.⁶

Spectrum Five, therefore, seeks clarification that a surety bond with these limitations satisfies the Commission's rules.⁷ If such terms do not satisfy the Commission's rules, Spectrum Five seeks clarification of how a license applicant and surety are to avoid over-securitization when using a series of fixed-value bonds to comply with the Commission's new rules. For example, are there terms that can be included in the bond itself that will ensure the automatic release of a bond upon posting of a subsequent bond? If no such terms are acceptable, does the Commission have in place, or does it intend to create, a process of the expeditious release of a bond upon posting of a subsequent bond? As the Commission is aware, under the old milestone regime, it was often the case that applicants satisfied intermediate milestones but had to wait months (or even years) to obtain approval to reduce the amount of their bond. That over-securitization led to increased costs for license applicants, which Spectrum Five understands that the Commission sought to avoid by enacting its new surety bond rules.

In conjunction with its request for clarification, Spectrum Five seeks a further extension of the deadline for posting surety bonds, so that the date for posting the bonds is two weeks after the Commission provides the requested clarification. In the alternative, Spectrum Five requests that the Commission waive 47 C.F.R. § 25.165(a) and Condition 4.a of each license grant to allow the posting of a conforming surety bond within two weeks of the issuance of the clarification requested in this motion.

⁶ *See id.* ¶ 6.

⁷ *See id.* ¶ 7 (agreeing that such clarification “would be welcomed before finalization of the surety bonds for these licenses”).

The Commission has authority to grant extensions of deadlines, or to waive its rules, on a showing of good cause.⁸ 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 as well as the two-week extension previously granted, that guidance did not resolve all issues that Spectrum Five and its sureties had been discussing and have continued to discuss.⁹ 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 regime,¹⁰ 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 provide the requested clarification and extend the deadline for posting the surety bonds for these two licenses to a date that is two weeks after the Commission provides the requested clarification, 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.

⁸ 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.”).

⁹ See Curran Decl. ¶¶ 4-7; Declaration of Francis J. Curran ¶ 7 (Nov. 1, 2016); Declaration of David Wilson ¶ 6 (Nov. 1, 2016).

¹⁰ At a minimum, these are the first surety bonds Marsh and Chubb have written under the new regime. See Curran Nov. 1, 2016 Decl. ¶ 5; Wilson Nov. 1, 2016 Decl. ¶ 3.

Respectfully submitted,

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November 18, 2016

**Before the
FEDERAL COMMUNICATIONS COMMISSION
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In the Matter of	
Spectrum Five LLC Petition for Declaratory Ruling To Provide Service from 110.9	SAT-LOI-20160308-00025
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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 am the same Francis Curran who filed a declaration in these dockets dated November 1, 2016.

2. As noted in that earlier declaration, the Commission's guidance dated October 7, 2016, regarding how to comply with the revised bond rules did not fully outline how to structure surety bonds in order to comply with the Commission's new rules.

3. Working with Chubb Limited, we have developed terms and pricing for an initial, fixed-value bond. I understand that, under the Commission's new rules, Spectrum Five would have the obligation to increase the amount of its fixed-value surety bond over time, to remain in compliance with the new rules.

4. However, neither the Commission's new rules nor the October 7, 2016 guidance addresses the return or release of the initial fixed-value bond upon replacement by a subsequent, fixed-value bond at a higher amount.


5. In an effort to address that concern, the surety bond that Chubb Limited has proposed would have a fixed end date that is before the October 5, 2021 deadline in the licenses for the launch, positioning, and operation of a compliant space station, and would provide that no extension of time or increase in the bond amount shall be granted by the surety.

6. Although I believe that a surety bond with such limitations would satisfy the new Commission rules — and that Spectrum Five would remain in compliance with those rules so long as it posted a replacement surety bond before the end date of the initial bond — neither the Commission’s rules nor the October 7, 2016 guidance makes clear that such a time limited bond satisfies the Commission’s new rules.

7. Because the Commission has no process for Commission review and pre-approval of bond terms, further clarification of the new rules would be welcomed before finalization of the surety bonds for these licenses, to ensure that the intent of all parties to the surety bond arrangement — Marsh, Chubb, and Spectrum Five — is fulfilled: namely, that the surety bonds satisfy the condition on these two spectrum licenses.

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

Executed in Philadelphia, Pennsylvania this 18th day of November, 2016.


Francis J. Curran