

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

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FEB - 2 2006

In re:)
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Loral Skynet Corporation)
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Request for Waiver of)
License Condition)

Federal Communications Commission
Office of Secretary

File No. SAT-MOD-20011130-00118

Received

FEB 07 2006

To: International Bureau

Policy Group
International Bureau

REQUEST FOR WAIVER OF LICENSE CONDITION

Loral Skynet Corporation ("Loral Skynet")¹ hereby requests a waiver of condition 11 of its authorization to launch and operate Telstar 11N, the replacement satellite for Telstar 11 located at 37.55° W.L.² The Telstar 11N Order included a condition that Telstar 11N must begin providing service contemporaneously with the discontinuation of service of the Telstar 11 satellite "in order to ensure continuity of service."³ Although

¹ Loral Skynet Corporation is an indirect wholly owned subsidiary of Loral Space & Communications Inc. ("Loral"). In connection with the emergence of Loral Space & Communications Ltd. ("Old Loral") and its debtor subsidiaries from bankruptcy, the International Bureau granted Old Loral authority to transfer control of certain of its subsidiaries, along with the space and earth station licenses held by such entities, from Old Loral to Loral. Applications of Loral Space & Communications Ltd. (DIP) for the Transfer of Control of Licenses and Authorizations Held by Loral Orion, Inc. (DIP), Loral SpaceCom Corporation (DIP) and Loral Skynet Network Services, Inc. (DIP) to Loral Space & Communications Inc., Public Notice, 20 FCC Rcd 15691 (2005) ("Transfer Order"). On November 21, 2005, Old Loral officially concluded its reorganization, emerged from bankruptcy and is now conducting business as Loral. The transfers of the FCC licensees from Old Loral that were approved in the Transfer Order were also consummated on that date.

² Grant of Application for Modification, SAT-MOD-20011130-00118 (with attached conditions), ¶ 11 (granted Sept. 28, 2004) ("Telstar 11N Order"). The modification was issued to Loral CyberStar, Inc. On May 17, 2002, a letter was filed with the Commission notifying it that the name of Loral CyberStar, Inc. had been changed to Loral Orion, Inc. Upon emergence from bankruptcy, the name of Loral Orion, Inc. was changed to Loral Skynet Corporation. In addition, at the time the modification request was granted, the replacement satellite was referred to as Telstar 11R but is now known as Telstar 11N.

³ Telstar 11N Order ¶ 11.

Telstar 11N will be in placed in service a full year ahead of its FCC milestone date, there will be a gap between the end of life of Telstar 11 and the commencement of operations of Telstar 11N. Loral Skynet has already complied with the requirement of providing continuity of service by relocating Telstar 11 customers to nearby satellites with equivalent coverage areas. Loral Skynet requests a waiver of the specific language set forth in the condition or a determination that Loral Skynet has met the underlying objective of the condition by ensuring continuity of service for its customers.

BACKGROUND

Telstar 11, a Ku-band satellite, began operations at the 37.5° W.L. orbital location on January 20, 1995.⁴ During its useful life, Telstar 11 has provided a range of communications services to government and commercial users. Loral Skynet filed an application to replace Telstar 11 on May 8, 1998. On June 19, 2001, the Commission authorized Loral Skynet to construct, launch and operate Telstar 11N as a replacement for Telstar 11.⁵

On November 30, 2001, Loral Skynet filed an application for modification of its replacement authorization to use an additional 250 MHz of spectrum in the extended

⁴ While the Telstar 11 satellite was originally launched into 37.5° W.L., pursuant to a March 2005 coordination agreement with SES Americom, Inc., the satellite is now operated at 37.55° W.L. A modification to the Telstar 11 authorization to reflect this relocation was granted on May 6, 2005. *Policy Branch Information Actions Taken, International Bureau*, 20 FCC Rcd 8839 (2005). A modification to the Telstar 11N authorization will be sought to permit continued operation at this revised orbital location.

⁵ Application of Loral Space & Communications Ltd., f/k/a Orion Atlantic, L.P. for Authority to Launch and Operate a Hybrid Ku-band/C-band Satellite System at the 37.5° W.L. Orbit Location, *Memorandum Opinion and Order*, 16 FCC Rcd. 12490 (2001) ("2001 Replacement Authorization").

Ku-band.⁶ On September 28, 2004, the International Bureau granted the request to modify the Telstar 11 replacement authorization.⁷ That decision authorized Loral Skynet to launch and operate the Telstar 11N Ku/extended Ku-band satellite in accordance with the terms, conditions and technical specifications set forth in its application, including the attached conditions of authorization and the Commission's rules.

The September 28, 2004 authorization required that Loral Skynet post a \$3 million bond. It also contained construction milestones for the Telstar 11N satellite, including a requirement that a binding construction contract be executed by September 28, 2005, and that the satellite be launched and begin operations by September 28, 2009.⁸ Loral Skynet entered into a binding, non-contingent satellite manufacturing contract for the construction of Telstar 11N, which was submitted to the Commission on September 28, 2005. Construction of Telstar 11N is now underway.

The satellite manufacturing contract contemplates that Telstar 11N will be launched in June 2008, over a year in advance of the milestone requirement. However, Telstar 11 must be de-orbited in Summer 2006⁹ in order to safely relocate it to an

⁶ Loral CyberStar, Inc. Application for Modification, SAT-MOD-20011130-00018 (Nov. 30, 2001). The modification request was unopposed.

⁷ Telstar 11N Order.

⁸ Id. ¶ 2.

⁹ The International Telecommunications Union regulations provide that "where the use of a recorded assignment to a space station is suspended for a period not exceeding eighteen months, the notifying administration shall, as soon as possible, inform the Bureau of the date on which such use was suspended and the date on which the assignment is to be brought back into regular use. The latter date shall not exceed two years from the date of suspension." International Telecommunication Union, Radio Regulations (ITU-R) art. 11.49 (2004). Loral Skynet expects to satisfy the ITU's requirements for use of the recorded assignment by launching the Telstar 11N satellite within the time permitted by ITU regulations,

appropriate storage altitude. As part of a normal late in life test to verify on-board propellant (this test can only be performed when the fuel nears exhaustion), it was discovered that less fuel remained on board than expected. An investigation into this issue indicated that problems during launch resulted in excessive fuel consumption. In order to ensure an eventual safe de-orbit of Telstar 11, the satellite was placed into inclined orbit on June 1, 2004, approximately one year earlier than expected.¹⁰ In addition, due to the excessive fuel consumption, the satellite will only be able to remain in inclined orbit for two years rather than the originally projected three year period. Thus, in order to comply with the Commission's new orbital debris policies, Loral Skynet plans to de-orbit Telstar 11 in Summer 2006, while it has sufficient fuel remaining to remove it to a safe disposal altitude.¹¹

The unexpected and excessive fuel consumption at launch and the need to safely de-orbit the satellite will preclude Loral Skynet from maintaining the Telstar 11 satellite in inclined orbit at 37.55° W.L. until launch of its replacement in 2008. Thus, Telstar 11N cannot be launched before the decommission date of Telstar 11. However, other options for continuity of service are available and have already been successfully implemented by Loral Skynet.

¹⁰ Approximately three months before the FCC issued its September 2004 Order prescribing the September 2009 launch milestone for Telstar 11N, Loral notified the FCC that Telstar 11 had been placed in inclined orbit. Letter from John Stern, Deputy General Counsel, Loral Space & Communications Ltd., to Thomas S. Tycz, Chief, Satellite Division, International Bureau, FCC (June 18, 2004).

¹¹ Section 25.283 of the Commission's rules requires geostationary orbit stations to be relocated at the end of their useful lives. 47 C.F.R. § 25.283(a). Although Telstar 11 is grandfathered from the orbital debris requirements because it was launched prior to March 18, 2002, Loral Skynet will de-orbit the satellite consistent with the new regulations. See 47 C.F.R. § 25.283(d) and Mitigation of Orbital Debris, Second Report and Order, 19 FCC Rcd 11567 (2004).

DISCUSSION

The Telstar 11N Order included a condition that Telstar 11N “must begin providing service contemporaneously with the discontinuation of service of the satellite it is replacing at the 37.5° W.L. orbital location.”¹² Loral Skynet seeks a waiver of the specific wording of this condition or a determination that Loral Skynet has met the underlying objective of the condition by ensuring continuity of service for its customers and demonstrating a commitment to the launch and operation of its authorized replacement satellite.

A. Loral Skynet will continue to provide service to customers, thereby satisfying the condition’s underlying purpose.

As discussed above, Telstar 11 began operations at 37.5° W.L. in 1995 and has provided service to customers throughout its useful life. The unexpected and excessive fuel consumption caused at launch and the need to safely de-orbit the satellite will preclude Loral Skynet from maintaining the Telstar 11 satellite in inclined orbit at 37.55° W.L. until launch of its replacement in 2008. Accordingly, Loral Skynet has attempted to ensure continuity of service for its customers for this two year period through other means.

Loral Skynet has ensured continuity of service by relocating Telstar 11 customers to suitable alternative satellite capacity until the launch of Telstar 11N.¹³ At its own expense, Loral Skynet has provided Telstar 11 customers with significant service engineering, operations and program management support in order to make the

¹² Telstar 11N Order ¶ 11.

¹³ Telstar 11 currently provides service to only one customer.

transition to alternative satellite capacity as seamless as possible. For each of these customers, Loral Skynet coordinated individual transmission plan changes and permitted dual-illumination periods (at no additional charge) to allow proper antenna re-pointing. In some instances, Loral Skynet sent ground operators to customer locations to install equipment and/or re-point their networks. Loral Skynet's program management team took the lead in the network migration to minimize customer impact. Loral Skynet also took measures to ensure that its access management facility was ready for migrations that involved multiple sites over a short period of time. Upon launch of Telstar 11N, Loral Skynet will migrate these customers back to 37.55° W.L. and provide service incentives and other service engineering, operations and program management support arrangements to assist customers with the transition.

The Commission imposes conditions such as those imposed on Telstar 11N in order to ensure continuity of service to satellite customers. The goal of continuity of service helps to ensure long-term investment in the satellite industry and provide security to both investors and customers.¹⁴ The Commission has previously agreed that methods of continuity of service other than contemporaneous launch of the replacement satellite meet the underlying objectives of this policy.

For example, the Commission has granted petitions filed by Hughes Communications Galaxy, Inc. related to replacement authorizations where Hughes proposed to temporarily fill a service "gap" by either moving another satellite to the

¹⁴ Licensing Space Stations in the Domestic Fixed-Satellite Service, Report and Order, 50 Fed. Reg. 36071, ¶ 27 (1985); Assignment of Orbital Locations to Space Stations in the Domestic Fixed-Satellite Service, Memorandum Opinion and Order, 3 FCC Rcd 6972, n.31 (1988).

applicable orbital location or utilizing capacity at an adjacent orbital slot.¹⁵ In one case, the orbital slot at issue was to remain vacant for several years, but the Commission determined that the public interest would be served despite the vacancy, as Hughes had “committed to implementing its satellite as soon as possible and [was] not holding the location to afford itself additional time to decide whether to proceed.”¹⁶

Most recently, the FCC imposed a similar condition on Columbia Communications Corporation's authorization to replace its C-band Columbia 515 satellite at 37.5° W.L.¹⁷ Similar to the instant case, Columbia indicated that there would be a two year “gap” between the de-orbiting of Columbia 515 and the launch of its replacement.¹⁸ Columbia responded by suggesting that continuity of service could be

¹⁵ See, e.g., Hughes Communications Galaxy, Inc. Application for Modification of Construction Permits and Licenses for the Galaxy 4-R and Galaxy A-R Domestic Fixed-Satellites, *Order and Authorization*, 5 FCC Rcd 3423, ¶ 11 (1990) (authorizing Hughes to utilize a replacement satellite to fill the gap between retirement of one satellite and the launch of a newly constructed satellite); Hughes Communications Galaxy, Inc. Application for Interim Orbital Assignment of the Galaxy 6 Domestic Satellite to 103° W.L. and Hughes Communications Galaxy, Inc. Application for Interim Orbital Assignment of SBS-6 to 95° W.L. and Application to Extend the Launch Date of the Galaxy 3H Hybrid Satellite, *Order and Authorization*, 8 FCC Rcd 4170 (1993) (conditionally granting a petition where, in its Reply Comments, Hughes proposed to cover the potential gap caused by a launch delay by either filling the gap with another satellite or utilizing capacity on satellites operating at nearby locations. Reply Comments of Hughes Communications Galaxy, Inc., File Nos. 19-DSS-ML-92 and 20-DSS-MLA-93 at 7 (Mar. 11, 1993)).

¹⁶ Application of Hughes Communications Galaxy, Inc. and Satellite Transponder Leasing Corporation for Replacement Satellite for SBS-4 and for Modification of Construction Permit and License of Galaxy 6 Satellite, *Order and Authorization*, 6 FCC Rcd 72, ¶¶ 9-10 (1991).

¹⁷ Columbia Communications Corporation, Authorization to Launch and Operate a Geostationary C-band Replacement Satellite in the Fixed-Satellite Service at 37.5° W.L., *Memorandum Opinion and Order*, 16 FCC Rcd 20176, ¶ 19 (2001).

¹⁸ Columbia Communications Corp., Authorization to Launch and Operate Geostationary C-band Replacement Satellite in the Fixed-Satellite Service at 37.5 W.L., *Petition for Reconsideration*, File No. SAT-LOA-20000407-00080 at 5-6 (Dec. 14, 2001).

accomplished by using adjacent satellites, moving another satellite into the orbital slot on a temporary basis, or contracting with third-party service providers.¹⁹

In its subsequent order, the FCC did not dictate which method of continuation of service must be employed and accepted Columbia's choice to accomplish continuity of service by filling the orbital slot for over two years with another satellite prior to launching Columbia 515's replacement. The Commission asserted that "Columbia has satisfied the underlying purpose of the condition requiring it to launch and operate a replacement satellite prior to retiring the Columbia 515 satellite, i.e., continuity of service to customers."²⁰

Thus, in accordance with the underlying purpose of the condition in the Telstar 11N Order, Loral Skynet has identified and vigorously implemented the most appropriate and seamless method of ensuring continuity of service for its customers. Despite unexpected excessive fuel consumption upon launch, which reduced Telstar 11's useful life by one and a half years, and considerations for safe de-orbiting of the satellite, the time between the de-orbiting of the Telstar 11 and launch of the Telstar 11N will be relatively brief. Therefore, the underlying purpose of condition 11 of the Telstar 11N Order is satisfied by Loral Skynet's successful efforts to continue service to its customers. Waiver of condition 11 in the Telstar 11N Order will permit Loral Skynet to complete construction of a state-of-the-art replacement satellite capable of providing

¹⁹ Id. at 6.

²⁰ See, Columbia Communications Corp., Authorization to Launch and Operate Geostationary C-band Replacement Satellite in the Fixed-Satellite Service at 37.5 W.L., Order and Authorization, 20 FCC Rcd 1863, ¶ 12 (2005); see also, IBFS File No. SAT-STA-20020517-00076 (granted July 17, 2002).

advanced communications services to existing and new customers, consistent with or in advance of its prescribed milestones.

B. Loral Skynet is fully committed to the launch and operation of its authorized replacement satellite before its mandated launch milestone.

Loral Skynet is fully committed to the launch and operation of its authorized replacement satellite. The Telstar 11N Order required that Loral Skynet file a bond with the U.S. Treasury in the amount of \$3 million by October 28, 2004. This bond was executed in a timely fashion.²¹ The Commission has determined that the bond requirement will “provide assurance that the licensee is fully committed at the time the license is granted to construct its satellite facilities.”²² The bond is payable upon failure to meet any milestone and may be reduced upon meeting each milestone.²³

In addition, consistent with its milestones, Loral Skynet has entered a binding non-contingent satellite manufacturing contract with Space Systems/Loral, Inc., which provides that Telstar 11N will be launched in June 2008, over a year before the Commission’s prescribed milestone requirement of September 28, 2009.²⁴ As required by the Commission’s rules, this contract was filed with the Commission on September 28, 2005.

²¹ Bond Number K07169681 (effective Oct. 28, 2004).

²² Amendment of the Commission’s Space Station Licensing Rules and Policies, First Report and Order and Further Notice of Proposed Rulemaking, 18 FCC Rcd 10760, ¶170 (2003).

²³ Id. ¶ 167.

²⁴ Telstar 11N Order ¶ 2.

CONCLUSION

As demonstrated above, Loral Skynet is fully committed to the launch and operation of a replacement satellite at 37.55° W.L. It has also taken steps to ensure continuity of equivalent service for customers of Telstar 11. These measures are consistent with the policy objectives underlying the requirements of condition 11 of the Telstar 11N Order, specifically continuity of service. Accordingly, Loral Skynet requests a waiver of the specific language set forth in condition 11 of its authorization or a determination that Loral Skynet has met the underlying objective of the condition by ensuring continuity of service for its customers.

Respectfully submitted,

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February 2, 2006