

**Before the
Federal Communications Commission
Washington, D.C. 20554**

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| In the Matter of |) | |
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| WB Holdings 1 LLC |) | |
| |) | File No. SAT-MOD-20040915-00178 |
| Application for Extension of |) | |
| Launch and Operation Milestone |) | Call Sign S2211 |
| |) | |
| |) | |
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MEMORANDUM OPINION AND ORDER

Adopted: June 20, 2005

Released: June 20, 2005

By the Chief, Satellite Division, International Bureau:

I. INTRODUCTION

1. By this Order, we grant WB Holdings 1 LLC's (WB Holdings) a one-year extension of its June 25, 2005 milestone to launch and operate its Ka-band satellite, WildBlue-1. In light of WB Holdings' continuing efforts to construct WildBlue-1 despite the spacecraft manufacturer's bankruptcy and the in-orbit failure of a similar satellite, we will afford WB Holdings additional time in which to arrange for the satellite's launch. Nevertheless, we will not grant WB Holdings its requested 18-month extension of time. Because the issues underlying the extension request have been resolved, we find that a one-year extension, to June 25, 2006, will provide WB Holdings sufficient time in which to launch WildBlue-1.

II. BACKGROUND

2. In 1997, the International Bureau authorized the predecessor of WB Holdings to launch and operate a geostationary satellite orbit (GSO) system at the 109.2° W.L. orbital location to provide fixed-satellite services in the Ka-band.¹ The Bureau modified the license in 2001 to authorize inter-satellite links

¹ KaStar Satellite Communications Corp., *Order and Authorization*, 13 FCC Rcd 1366 (1977). See Public Notice, Report No. SAT-00142, 18 FCC Rcd 5986 (Int'l Bur 2003). In a series of name changes and *pro forma* transfers of control and assignments, KaStar became iSky, which in turn became WildBlue Communications, Inc. See Letter from William M. Wiltshire, Counsel, WB Holdings, to Magalie Roman Salas, Secretary, Federal Communications Commission (November 3, 2000). See also Letter from William M. Wiltshire, Counsel, WB Holdings, to Magalie Roman Salas, Secretary, Federal Communications Commission (January 8, 2001) requesting *pro forma* assignment of the license held by KaStar 73 Acquisition LLC to KaStar 109.2 and to change the name of the surviving entity to WB Holdings 1 LLC. The licensee, WB Holdings 1 LLC, is a wholly owned subsidiary of WildBlue Communications, Inc. The record for this application includes information from both WildBlue and WB Holdings. For purposes of this Order, we refer only to WB Holdings.

and to assign implementation milestones for the construction, launch and operation of the satellite. Pursuant to its authorization, WB Holdings had to commence construction of its satellite by January 2002 and launch it by the International Telecommunication Union (ITU) "bringing-into-use" date, which is June 25, 2005.² In June 2002, the International Bureau released a public notice stating that WB Holdings had satisfied its construction commencement milestone.³ WB Holdings satisfied this milestone by entering into a non-contingent satellite manufacturing contract with Space Systems/Loral (Loral).

3. In September 2004, WB Holdings filed a modification application to extend its launch and operation milestone for 18-months, to December 25, 2006.⁴ In the application, WB Holdings states that the construction of WildBlue-1 is complete and that once final testing is concluded, WildBlue-1 will be ready for delivery.⁵ WB Holdings further states that an extension of the launch and operation milestone for WildBlue-1 is needed due to Loral's bankruptcy. As a result of the bankruptcy, Loral had the option to perform under the contract, or to reject the contract if that option was more favorable to the bankrupt estate. WB Holdings states that Loral's Plan of Reorganization for the bankruptcy did not disclose how it would treat the WildBlue-1 contract. Thus, although it continued making payments under the contract, WB Holdings states that it did not know when, or if, it would be able to take possession of the satellite. Given this uncertainty, WB Holdings maintains it is unreasonable to expect it to commit the tens of millions of dollars necessary to secure a launch date.⁶ This circumstance, WB Holdings states, is beyond its control and justifies an extension of the milestone. WB Holdings asserts that rigid enforcement of the launch milestone in this instance is not necessary because there is no concern that it is warehousing valuable spectrum and satellite resources.⁷ Rather, WB Holdings states it has invested hundreds of millions of dollars into its satellite system and that it would have satisfied the launch milestone except for Loral's intervening bankruptcy, something it could not have anticipated and over which it has no control. WB Holdings asserts that it is committed to proceed with its license and that Commission precedent supports an extension in this instance.⁸ WB Holdings states that an 18-month extension would provide sufficient time to clear the Loral bankruptcy and arrange for launch.⁹

4. On October 18, 2004, WB Holdings notified the Commission that the uncertainty regarding the status of WildBlue-1 arising from the Loral bankruptcy had been successfully resolved.¹⁰

² WB Holdings 1 LLC, *Order and Authorization*, 16 FCC Rcd 2513 (Int'l Bur. 2001).

³ *Public Notice*, International Bureau Satellite Division Information: First Round Ka-band Licensee Compliance with Construction Implementation Milestone, Report SPB-179, 17 FCC Rcd 11271 (Int'l Bur. 2002).

⁴ WB Holdings 1 LLC, Application for Extension of Launch and Operation Milestone, SAT-MOD-20040915-00178, filed Sept. 15, 2004 (*WB Holdings Application*).

⁵ *WB Holdings Application* at 1.

⁶ *WB Holdings Application* at 4.

⁷ *WB Holdings Application* at 7.

⁸ WB Holdings Application was placed on Public Notice, no comments were received in response to the Notice. *Public Notice*, Policy Branch Information, Report No. SAT-00245 (Sept. 29, 2004).

⁹ *WB Holdings Application* at 2, 7.

¹⁰ Letter to Marlene H. Dortch, Secretary, FCC, from David M. Brown, WildBlue Communications, Inc., dated October 18, 2004 (*October Letter*).

WB Holdings states that while it had entered into a contract with Arianespace in January 2003 to launch WildBlue-1, it has not yet secured a launch date from Arianespace. It further states that due to recent launch failures of other satellite systems, it was "quite likely" WB Holdings would not be able to satisfy its June 25, 2005 launch milestone.¹¹

5. In December 2004, in response to a request from the International Bureau, WB Holdings submitted additional information in support of its extension request. Specifically, WB Holdings notes that while construction of WildBlue-1 was "virtually complete," WildBlue-1 is similar in design to the Intelsat IA-7 satellite, also manufactured by Loral, that suffered an in-space anomaly in November 2004.¹² WB Holdings states that as a result of this problem, Loral must review WildBlue-1's components and make any design changes before delivery and launch.¹³ WB Holdings indicates that it cannot secure a launch date with Arianespace because it does not know when Loral will complete this review. Furthermore, WB Holdings states that once it requests a launch date, it will take several months for Arianespace to place the satellite on a launch manifest and launch the satellite, and that launch providers often postpone scheduled launches for various reasons.¹⁴ WB Holdings concludes that the uncertainties and contingencies surrounding WildBlue-1's construction and launch continue to require an 18-month extension of its launch milestone until December 2006.

III. DISCUSSION

6. Commission rules require satellite licensees to meet certain milestones for satellite system implementation. Milestone schedules are designed to ensure that licensees are proceeding with construction and will launch their satellites in a timely manner, and that valuable spectrum will not be held to the exclusion of others by licensees unable or unwilling to proceed.¹⁵ Milestones also ensure the prompt delivery of service to the public.¹⁶ Consequently, the Commission strictly enforces its milestone schedules. As a general rule, we will grant extensions when the delay is due to circumstances beyond the control of the licensee.¹⁷ Moreover, in these situations we expect licensees to consider alternatives or exercise reasonable care to attempt to resolve issues that may impede its ability to meet its milestones.

7. During the bankruptcy proceeding, WB Holdings did not know whether Loral would perform its obligations under the contract and deliver the satellite. Nonetheless, WB Holdings made a good faith effort to comply with its launch milestone by continuing with construction and by paying Loral for its work performed under the contract.¹⁸ Indeed, WildBlue-1 is fully constructed and WB

¹¹ *October Letter*.

¹² Letter to Marlene H. Dortch, Secretary, FCC, from William M. Wiltshire, Counsel for WB Holdings 1, LLC (December 13, 2004) (*December Letter*).

¹³ *December Letter* at 2.

¹⁴ *December Letter* at 2.

¹⁵ Columbia Communications Corp., *Memorandum Opinion and Order*, 15 FCC Rcd 15566 (Int'l Bur. 2000); NetSat 28 Company, LLC, *Memorandum Opinion and Order*, 19 FCC Rcd 17722 (Int'l Bur. 2004).

¹⁶ VisionStar Incorporated, *Memorandum Opinion and Order*, 19 FCC Rcd 14820, 14822 (Int'l Bur. 2004).

¹⁷ 47 C.F.R. § 25.117(c)(1); Intelsat LLC, *Order and Authorization*, 17 FCC Rcd 2391 (Int'l Bur. 2002).

¹⁸ *WB Holdings Application* at 4.

Holdings has a launch contract with Arianespace. Given WB Holdings' continuing and substantial progress in implementing the satellite despite these unforeseen circumstances, we find that an extension of the WildBlue-1 launch date is warranted.

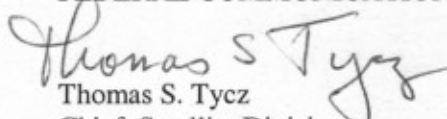
8. Nevertheless, we find that WB Holdings has not adequately justified an 18-month extension, to December 2006. The favorable resolution of the bankruptcy issue in October 2004 removed the uncertainty regarding Loral's intentions to deliver the satellite to WB Holdings. Further, we note that Sea Launch Company, LLC is preparing to launch Intelsat's similar Loral-manufactured IA-8 satellite in late June 2005.¹⁹ WB Holdings has presented no support as to why Loral cannot evaluate any issues surrounding WildBlue-1's design in a similarly prompt time frame. Consequently, we find that WB Holding's 18-month extension request is excessive. Rather, we find that a 12-month extension, until June 2006, is a reasonable amount of time in which to resolve any outstanding issues regarding the impact of the IA-7 satellite failure on WildBlue-1 and to secure a launch date with Arianespace. We understand that the process of securing a launch has a degree of uncertainty and takes several months, with additional time necessary to integrate the satellite with the launch vehicle and test power sources. A 12-month extension will give WB Holdings the flexibility to complete the launch mission and to commence operations on WildBlue-1.

IV. CONCLUSION AND ORDERING CLAUSE

9. Based on the foregoing, we find that granting WB Holdings a 12-month extension of WildBlue-1's launch date is warranted and will serve the public interest by allowing WB Holdings to launch a fully-built satellite that will expand the range of broadband services available to users throughout the United States.

10. Accordingly, IT IS ORDERED, that WB Holdings 1 LLC's Request for Extension of its Launch and Operation Milestone, File No. SAT-MOD-20040915-00178, Call Sign S2211, is granted in part, and denied in part, as specified herein. WB Holdings 1 LLC's satellite authorization is modified to require the launch and operation of WildBlue-1 by June 25, 2006, in accordance with the parameters of its authorization, as modified, or its authorization shall become null and void without further action on the Commission's part.

FEDERAL COMMUNICATIONS COMMISSION


Thomas S. Tycz
Chief, Satellite Division
International Bureau

¹⁹ See www.sea-launch.com/current_launch.htm (June 2005).