

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

In the Matter of )  
 ) File No. \_\_\_\_\_  
115 License Subsidiary, LLC ) Call Sign S2700  
 )

**REQUEST FOR EXTENSION OF MILESTONE**

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## Summary

115 License Subsidiary, LLC (“LicenseSub”) requests that the Commission grant an extension or waiver of LicenseSub’s commencement of construction milestone. LicenseSub has met the requirements specified by the Commission for its prior two milestones, but the International Bureau (“Bureau”) still has not ruled on LicenseSub’s compliance, despite having years to review LicenseSub’s milestone submissions. The Bureau has also failed to take even the most basic administrative step of placing LicenseSub’s transfer of control application on public notice, although it has been pending for nearly six months. These extraordinary delays and improper actions, which are beyond LicenseSub’s control, have created regulatory uncertainty regarding LicenseSub’s satellite authorization and, consistent with the precedent established in *Netsat 28*, warrant extension or waiver of LicenseSub’s commencement of construction milestone.

Independent of the Commission’s determination regarding LicenseSub’s extension request, the company requests that the Commission consent to the withdrawal and unconditional release of LicenseSub’s satellite performance bond. Experience over the last eight years in the 17/24 GHz band shows that the satisfaction of the bond requirement is not determinative of whether a licensee implements its system, invalidating an underlying justification for the bond requirement. To the extent there is any benefit to the bond requirement in deterring speculative applications and warehousing, it is outweighed by the substantial impediment it presents to satellite entrepreneurs seeking to develop the otherwise fallow spectrum.

The recent surrender of several 17/24 GHz licenses by DIRECTV and EchoStar, as a result of concerns regarding International Telecommunication Union priority, highlights the fact that there are orbital locations available for Commission assignment. There are also ample Commission requirements in place to address any concerns regarding speculation and

warehousing. Thus, there is simply no need to further discourage entrepreneurs from applying to use the 17/24 GHz spectrum. Indeed, in light of the current economic crisis, the Commission should be doing all in its power to encourage applications that could lead to the creation of the new businesses, services, and jobs. The Commission should not be enforcing a requirement that encumbers tens of millions of dollars, preventing the productive use of those funds in stimulating an ailing economy. Moreover, eliminating the bond requirement actually reduces the potential for warehousing by removing a primary incentive for a licensee to seek to maintain its license through waiver or extension, if it has not met its milestone, or to litigate an adverse Commission milestone assessment. For these reasons, LicenseSub requests that the Commission reevaluate the need for the performance bond requirement and consent to the withdrawal and unconditional release of LicenseSub's bond.

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**REQUEST FOR EXTENSION OF MILESTONE**

115 License Subsidiary, LLC (“LicenseSub” or the “Company”) hereby requests that the Commission grant LicenseSub an extension or, in the alternative, a waiver of the commence physical construction milestone applicable to the above-referenced licensed satellite system. Additionally, LicenseSub requests that the Commission consent to the withdrawal and unconditional release of LicenseSub’s satellite performance bond.

**Background**

LicenseSub is a Delaware limited liability company. Its ultimate parent, Xanadoo Company (“Xanadoo”), is the fruition of its founders’ experience over the last twenty five years building start-up companies dedicated to utilizing advanced technologies to bring new services to rural and underserved communities. Prior companies started by Xanadoo’s founders include:

- Cable Television de Mayaguez, which built and operated a cable system serving over 500,000 people in Puerto Rico;
- Pegasus Cable Television, which built and operated cable systems in rural Connecticut, Massachusetts and New Hampshire; and
- Pegasus Satellite Television, the largest independent distributor and servicer of DIRECTV satellite television services in the United States with over 1.4 million subscribers and over \$800 million in revenue in rural areas of 41 states.

Presently, Xanadoo's principal operating business, conducted through indirect subsidiaries, consists of the provision of wireless broadband Internet access services to communities in Texas, Oklahoma, and Illinois.<sup>1</sup>

On December 17, 2008, the International Bureau ("Bureau") granted LicenseSub a license to launch and operate a 17/24 GHz Broadcasting-Satellite Service space station at the 115.0°W orbital location.<sup>2</sup> Pursuant to the Commission's rules and the terms of the license, LicenseSub is required to meet the following satellite construction milestones:

- Execute a binding satellite construction contract by December 17, 2009;
- Complete the Critical Design Review ("CDR") by December 17, 2010;
- Commence physical construction of the space station by December 17, 2011; and
- Launch and begin operations by December 17, 2013.

The terms of the license also required that (i) LicenseSub post a \$3 million performance bond within 30 days of the license grant date and (ii) complete coordination of the physical operations of the space station with satellite operators with overlapping station-keeping volumes by February 17, 2011.<sup>3</sup>

On January 16, 2009, LicenseSub submitted to the Commission the \$3 million performance bond, as required.<sup>4</sup> On December 16, 2009, the Company executed a binding, non-

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<sup>1</sup> See <http://www.xanadoo.com/>.

<sup>2</sup> See Stamp Grant, File Nos. SAT-LOA-20060412-00044, SAT-AMD-20080114-00023 (December 17, 2008). Pegasus Development DBS Corporation, the direct parent company of LicenseSub, was the original licensee. Pursuant to the grant and consummation of a *pro forma* assignment, the license is now held by LicenseSub. See File No. SAT-ASG-20090921-00098.

<sup>3</sup> See *id.*

<sup>4</sup> See Public Notice, Report No. SAT-00576, DA No. 09-173 (January 30, 2009).

contingent satellite construction contract (the “Contract”) with Space Systems/Loral Inc. (“SS/L”) and made the initial payment due under the Contract to SS/L. LicenseSub provided a complete copy of the Contract to the Commission.<sup>5</sup> On April 8, 2010, LicenseSub and SS/L submitted clarifying information to the Commission confirming the timely submission of the Company’s initial payment to SS/L.<sup>6</sup> On June 2, 2010 and again on August 17, 2010, LicenseSub filed letters to the Bureau requesting prompt action on the determination of compliance with LicenseSub’s initial milestone requirement, noting that the Bureau’s delay was inexplicable and not without real world repercussions, including creating regulatory uncertainty.<sup>7</sup>

On August 19, 2010, two days after LicenseSub’s request for action, the Bureau issued a letter seeking additional information regarding the Company’s payments under the Contract since December 2009, stating that such information would “ensure that [the Commission] ha[s] an accurate understanding of the mutual obligations created by the contract.”<sup>8</sup> The Company responded, providing detailed payment information regarding the Contract, copies of the amendments to the Contract, and a letter from SS/L stating the progress it had made under the Contract, which included conducting a CONUS coverage assessment, analysis of new CONUS

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<sup>5</sup> See Letter from Bruce D. Jacobs and Tony Lin, Counsel for 115 license Subsidiary, LLC, to Marlene H. Dortch, Secretary, FCC (December 17, 2009).

<sup>6</sup> See Letter from Tony Lin, Counsel to 115 License Subsidiary, LLC, to Marlene H. Dortch, Secretary, FCC (April 8, 2010).

<sup>7</sup> See Letter from Tony Lin, Counsel to 115 License Subsidiary, LLC, to Robert Nelson, Chief, Satellite Division, International Bureau, FCC (June 2, 2010); Letter from Bruce D. Jacobs and Tony Lin, Counsel to 115 License Subsidiary, LLC, to Mindel Da La Torre, Chief, International Bureau, FCC (August 17, 2010).

<sup>8</sup> See Letter from Robert Nelson, Chief, Satellite Division, International Bureau, FCC, to Tony Lin, Counsel to 115 License Subsidiary, LLC (August 19, 2010).



beam patterns, and assessment of new system design options.<sup>9</sup> On September 30, 2010 and November 2, 2010, LicenseSub filed supplemental letters to the Bureau indicating that the Company had continued to make the respective monthly payment under the Contract.<sup>10</sup>

On December 15, 2010, LicenseSub submitted its showing of compliance with the CDR milestone.<sup>11</sup> The filing contained a soft copy of the CDR report supplied by SS/L and a letter by SS/L certifying to completion of CDR and receipt of all payments dues under the Contract.<sup>12</sup> On February 16, 2011, the Company notified the Bureau that LicenseSub had satisfied its license condition requiring completion of coordination of physical operations.<sup>13</sup>

On July 27, 2011, the Bureau issued another letter to LicenseSub seeking information regarding: (i) evidence of payments by the Company under the Contract from the period commencing November 1, 2010; (ii) changes to the Contract, if any; and (iii) supplemental information regarding the Company's demonstration of compliance with the CDR milestone.<sup>14</sup> As stated in the letter, the Bureau requested the information to facilitate its review of

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<sup>9</sup> See Letter from Tony Lin, Counsel to 115 License Subsidiary, LLC to Robert Nelson, Chief, Satellite Division, International Bureau, FCC (August 27, 2010).

<sup>10</sup> See Letter from Bruce D. Jacobs and Tony Lin, Counsel to 115 License Subsidiary, LLC to Robert Nelson, Chief, Satellite Division, International Bureau, FCC (November 2, 2010); Letter from Bruce D. Jacobs and Tony Lin, Counsel to 115 License Subsidiary, LLC to Robert Nelson, Chief, Satellite Division, International Bureau, FCC (September 30, 2010).

<sup>11</sup> See Letter from Bruce D. Jacobs and Tony Lin, Counsel for 115 License Subsidiary, LLC to Robert Nelson, Chief, Satellite Division, International Bureau, FCC (December 15, 2010).

<sup>12</sup> See *id.*

<sup>13</sup> See Letter from Bruce D. Jacobs and Tony Lin, Counsel for 115 License Subsidiary, LLC to Robert Nelson, Chief, Satellite Division, International Bureau, FCC (February 16, 2011).

<sup>14</sup> See Letter from Robert Nelson, Chief, Satellite Division, International Bureau, FCC, to Tony Lin, Counsel to 115 License Subsidiary, LLC (July 27, 2011).

LicenseSub's compliance with its milestone requirements to execute a non-contingent satellite construction contract and to complete CDR.<sup>15</sup>

On August 26, 2011, LicenseSub responded to the letter providing a chart summarizing all of the payments made under the Contract, copies of all amendments to the Contract, and detailed information regarding the CDR design verification activities and electrical and mechanical analyses conducted, as requested by the Bureau.<sup>16</sup> In the response, the Company expressed its concerns regarding the Bureau's repeated inquiries into the Company's post-milestone date actions under the Contract for purposes of assessing the Company's compliance with past milestones and questioned whether the Bureau essentially and impermissibly was imposing new milestone requirements on LicenseSub.<sup>17</sup>

The Company also called for the Bureau to take prompt action concluding that LicenseSub had met its first two milestone requirements.<sup>18</sup> The Company noted that it had submitted an application to transfer control of LicenseSub to Spectrum Five LLC on June 30, 2011<sup>19</sup> and that there was no basis to delay action on that filing because the transferee had affirmed that it "understands and accepts" the Company's existing milestone requirements.<sup>20</sup> LicenseSub notified the Bureau that its delay both in reviewing the Company's compliance with

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<sup>15</sup> *Id.* at 1.

<sup>16</sup> *See* Letter from Bruce D. Jacobs and Tony Lin, Counsel to 115 License Subsidiary, LLC, to Robert Nelson, Chief, Satellite Division, International Bureau, FCC (August 26, 2011).

<sup>17</sup> *Id.* at 2-3.

<sup>18</sup> *Id.* at 3-5.

<sup>19</sup> *See* File No. SAT-T/C-20110630-00124 (filed June 30, 2011).

<sup>20</sup> *See* Letter from Bruce D. Jacobs and Tony Lin, Counsel to 115 License Subsidiary, LLC, to Robert Nelson, Chief, Satellite Division, International Bureau, FCC, at 4 (August 26, 2011).

its milestones and with respect to the transfer of control application created regulatory uncertainty, imposed unnecessary costs, and hampered the development of the licensed spectrum.<sup>21</sup>

## Discussion

### I. THE COMMISSION SHOULD GRANT AN EXTENSION OR WAIVER OF LICENSEE'S MILESTONE REQUIREMENT TO COMMENCE PHYSICAL CONSTRUCTION

The Commission's rules permit milestones to be extended if additional time is required due to unforeseeable circumstances beyond the licensee's control or there are unique and overriding public interest concerns that justify an extension.<sup>22</sup> Similarly, the Commission's rules may be waived if there is "good cause" to do so.<sup>23</sup> Waiver is appropriate if: (i) it would not undermine the policy objective of the rule in question; (ii) it would better serve the public interest than strict adherence to the general rule; and (iii) the articulated standard for grant of the waiver is predictable, workable, and not susceptible to discriminatory application.<sup>24</sup> The courts and the Commission have recognized regulatory policy would be undercut if administrative rules do not "in some way take into account considerations of hardship, equity, or more effective implementation of overall policy."<sup>25</sup>

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<sup>21</sup> *Id.* at 5.

<sup>22</sup> 47 C.F.R. § 25.117(c).

<sup>23</sup> *See, e.g., Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) ("*Northeast Cellular*"); *WAIT Radio v FCC*, 418 F.2d 1153, 1157-59 (D.C. Cir. 1969) ("*WAIT Radio*").

<sup>24</sup> *See Northeast Cellular*, 897 F.2d at 1166; *WAIT Radio*, 418 F.2d at 1157-1159; *In the Matter of Columbia Communications Corp.*, Memorandum Opinion and Order, 15 FCC Rcd 16496, at ¶ 19 (Int'l Bur. 2000) ("*Columbia Communications Order*").

<sup>25</sup> *WAIT Radio*, 418 F.2d at 1159.

With respect to satellite milestones specifically, the Bureau has acknowledged that where it has taken action that “made it more difficult than it would have been otherwise for [the licensee] to attract investors” a waiver and extension of the applicable milestone is justified.<sup>26</sup> In *NetSat 28*, the Bureau issued a satellite license to NetSat 28 and subsequently, on its own motion, reconsidered the licensing decision, conditioning it on the outcome of a separate proceeding involving the character qualifications of one of the licensee’s corporate owners.<sup>27</sup> The Commission later determined that the scope of the character qualifications proceeding should not have included the NetSat 28 corporate owner and removed the condition on NetSat 28’s license.<sup>28</sup> NetSat 28 failed to timely meet one of its milestones and sought waiver and extension of that milestone. Because “NetSat 28 faced hardship as a consequence of a Commission action,” the Bureau determined that equity considerations justified granting NetSat 28’s waiver and extension requests.<sup>29</sup>

Here, the Bureau’s inexplicable delay in taking action confirming LicenseSub’s compliance with its first two milestones, repeated unwarranted and improper inquiries regarding LicenseSub’s post-milestone date actions for purposes of assessing the Company’s compliance with past milestones, and failure to take any steps in processing the Company’s pending transfer of control application cast a cloud of regulatory uncertainty on the Company’s license and justify

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<sup>26</sup> See *In the Matter of NetSat 28 Co., L.L.C.*, Memorandum Opinion and Order, 16 FCC Rcd 11025, at ¶ 7 (Int’l Bur. 2001) (“*NetSat 28*”).

<sup>27</sup> *Id.* at ¶¶ 7-8.

<sup>28</sup> *Id.* at ¶ 8.

<sup>29</sup> *Id.* at ¶ 9.

extension or, in the alternative, waiver of LicenseSub's commence physical construction milestone.

LicenseSub submits that the applicable deadline should be extended for a period of one year after the Commission has taken action on this request. This will allow sufficient time for the Company time to remedy the harm caused by the Bureau's actions.<sup>30</sup>

**A. The Bureau's ongoing delay in ruling on LicenseSub's compliance with its initial two milestones has prejudiced LicenseSub's ability to attract investment**

LicenseSub submitted its showing of compliance with respect to its execute contract milestone two years ago and its CDR milestone one year ago, but the Bureau has not reached any conclusions regarding LicenseSub's compliance. Instead, the Bureau has repeatedly sought additional information regarding License's post-milestone date actions that is irrelevant for assessing LicenseSub's compliance with past milestones. Like *NetSat 28*, the Bureau's actions were beyond LicenseSub's control and created an unnecessary and inappropriate cloud of uncertainty over the LicenseSub's license making it more difficult than otherwise to attract investment. These actions justify grant of an extension or waiver of the commence physical construction milestone.

**1. The evidence shows that LicenseSub has met its milestones to execute a non-contingent satellite construction contract and complete CDR**

With respect to the execute contract milestone, the Contract as initially executed specifies in detail the requirement for the construction of a specific satellite and its design characteristics,

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<sup>30</sup> For the same reasons, a comparable extension of License's final milestone, requiring launch and operations of the satellite, would also be warranted. LicenseSub will seek such an extension at the appropriate time, if necessary.

which are materially consistent with the license;<sup>31</sup> the Contract sets forth a specific construction schedule that meets all of the Company's milestones;<sup>32</sup> the Contract requires that the Company make significant initial payments and the majority of payments well before the end of the construction period;<sup>33</sup> the Contract describes the Company's payment terms and schedule in detail;<sup>34</sup> and the Contract imposes a significant financial penalty for any cancellation of the contract.<sup>35</sup>

With respect to the CDR milestone, the CDR report demonstrates that the Company has completed all material design work for the Company's licensed satellite system<sup>36</sup> and provides

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<sup>31</sup> See *In the Matter of Joint Application for Review of Constellation Communications Holdings, Inc., Mobile Communications Holdings, Inc. and ICO Global Communications (Holdings) Limited*, Memorandum Opinion and Order, 19 FCC Rcd 11631, at ¶¶ 8, 10 (2004) (“*Constellation Communications*”); *In the Matter of Emergency Application for Review and Request for Stay of Globalstar, L.P.*, Memorandum Opinion and Order 19 FCC Rcd 11548, at ¶¶ 8, 10 (2004) (“*Globalstar*”); *In the Matter of Teledesic LLC Application for Authority to Construct, Launch, and Operate a Ka-Band Satellite System in the Fixed Satellite Service*, Memorandum Opinion and Order, 17 FCC Rcd 11263, at ¶ 11 (Int’l Bur. 2002) (“*Teledesic*”) (“Generally, we look to the statement of work as an element in confirming that the contract is fully realized and does not leave significant aspects open to further or contingent negotiations on details.”).

<sup>32</sup> See *Constellation Communications*, at ¶¶ 7, 9, 10 (“[C]ontract must demonstrate that the licensee is committed to completing the construction of the satellite system within the time frame specified in the license.”); *Globalstar*, at ¶¶ 7, 9.

<sup>33</sup> See *Constellation Communications*, at ¶ 9; *Globalstar*, at ¶ 9.

<sup>34</sup> See *Constellation Communications*, at ¶ 7; *Globalstar*, at ¶ 7; *Teledesic*, at ¶ 11 (“[P]ayment schedule and payment commitments were detailed enough to allow us to conclude that the parties have a sufficiently realized agreement.”).

<sup>35</sup> See *In the Matter of Amendment of the Commission's Space Station Licensing Rules and Policies*, First Report and Order, 18 FCC Rcd 10760, at ¶ 184 (2003) (“*Satellite Reform Order*”).

<sup>36</sup> See *In the Matter of EchoStar Corporation*, Memorandum Opinion and Order, 26 FCC Rcd 10442, at ¶ 7 (Int’l Bur. 2011) (explaining that at CDR, the design and development phase shall have ended).

evidence of design verification activities and the completion of electrical and mechanical analyses and simulations unique to the Company's satellite.<sup>37</sup> SS/L also provided a certification with the CDR filing confirming the construction progress under the contract and satisfaction of the CDR milestone.<sup>38</sup> Although the Company's contract with SS/L does not require the Company to order any long lead parts prior to CDR, the delivery schedule both initially and at the time of the submission of the CDR materials to the FCC met all license milestone deadlines, and as the Commission has stated, it will grant significant flexibility to licensees in meeting their milestone requirements.<sup>39</sup>

The evidence shows that, under the tests specified by the Commission, LicenseSub met both its milestones to execute a satellite contract and complete CDR. Thus, the Bureau's inexplicable, ongoing delay in reaching that conclusion has unnecessarily created a cloud of regulatory uncertainty regarding the Company's license, making it more difficult than otherwise

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<sup>37</sup> *Id.* (explaining that to demonstrate compliance with the CDR milestone, the licensee should identify major components of the satellite and show how the components have been integrated into a functional electrical and mechanical design specific to the satellite). As LicenseSub has stated previously, a number of subsystems are already flight qualified and therefore tests of the mechanical and electrical system designs prior to spacecraft assembly are not required. Similarly, there are no new payload qualification items required under the contract. Indeed, these are some of the primary advantages of using the SS/L 1300 bus.

<sup>38</sup> See Public Notice, Report No. SPB204, DA 04-787 (March 25, 2004) (providing a list of factors that the Bureau may consider in its review of the CDR milestone, including a certification from the satellite manufacturer).

<sup>39</sup> See *Constellation Communications*, at ¶ 12 (“Instead of adopting . . . detailed rules requiring or prohibiting certain contract provisions or types of arrangements, the Commission has adopted general standards. . . . As a result licensees have more flexibility to consider different construction and related financing arrangements, as long as they meet the general standards developed in the Commission's precedents.”); *Globalstar*, at ¶ 12.

for LicenseSub to attract investment.<sup>40</sup> Under *NetSat 28*, an extension or waiver of LicenseSub's commence physical construction milestone, therefore, is warranted.

**2. The Bureau's requests for additional information regarding the Company's post-milestone date actions for purposes of assessing the Company's compliance with past milestones were improper and prejudicial**

While the Bureau has general authority to request additional information regarding a licensee's compliance with the FCC's rules, the Bureau's requests here were improper because they are fundamentally at odds with the plain meaning of the Commission's rules and policy that milestone compliance is assessed as of the date of the applicable milestone.<sup>41</sup> Indeed, the information the Bureau recently requested in August of this year concerning the Company's payments under the Contract from November 2010 to August 2011 can have little or no

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<sup>40</sup> The Bureau's delay in completing milestone compliance assessments for other 17/24 GHz licenses does not warrant denial of this request because it does not justify the underlying delay. Moreover, LicenseSub notes that the impact of Bureau delay may be less detrimental to established satellite operators that self-finance satellite construction.

<sup>41</sup> See 47 C.F.R. §§ 25.164(a), (b) (establishing specific milestone deadlines for all satellite licenses); 25.164(c) (requiring satellite licensees to submit a binding non-contingent contract on or before initial milestone deadline); 25.164(d) (requiring satellite licensees to submit information to demonstrate compliance with CDR milestone on or before milestone deadline); 25.164(e) (requiring satellite licensees to submit information to demonstrate compliance with commence physical construction milestone on or before milestone deadline); 25.165(c) ("A licensee will be considered to be in default if it fails to meet any milestone deadline set forth in § 25.164, and, *at the time of [sic] milestone deadline*, the licensee has not provided a sufficient basis for extending the milestone.") (emphasis added); *In the Matter of Amendment of the Commission's Space Station Licensing Rules and Policies*, Notice of Proposed Rulemaking and First Report and Order, 17 FCC Rcd 3847, at ¶¶ 101 (2002) (explaining that satellite licensees must "commence construction, complete construction, and launch its satellite *by the 'milestone' deadlines* specified in [the] license.") (emphasis added); *Satellite Reform Order*, at ¶¶ 181-85 ("We adopt [the] proposal to require satellite licensees to submit their contracts to the Commission *on or before the date of the contract execution milestone*.") (emphasis added); *In the Matter of Columbia Communications Corporation*, Order and Order on Reconsideration, 16 FCC Rcd 10867, at ¶¶ 17-18 (Int'l Bur. 2001) ("*Columbia Communications Reconsideration Order*") (rejecting the argument that Bureau should examine a licensee's satellite construction progress in the period between milestone deadlines to ensure continued progress).



relevance to whether the Company executed a contract two years ago or completed CDR a year ago.

The Bureau's inquiries also appear to focus myopically on contract payments. This is troublesome because the Commission expressly rejected cost-based milestone standards in 2003 when it adopted the current milestone tests.<sup>42</sup> Moreover, the Bureau itself had concluded in a prior decision that continued monitoring of a licensee's satellite construction progress in the period between milestones is impermissible because doing so effectively imposes new and additional milestone requirements.<sup>43</sup>

More fundamentally, to the extent the Bureau's tests for milestone compliance are no longer readily discernable from stated Commission decisions and policies or the Commission intends to revise its policies, the FCC has a duty to inform those it regulates.<sup>44</sup> Clear, announced standards for milestone compliance are crucial in the context of satellite milestones because various factors hinder the ability of satellite licensees to observe the bases for Bureau actions and

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<sup>42</sup> See *Satellite Reform Order*, at ¶ 207 (“We decide against replacing milestones with a requirement that licensees spend a certain amount of money on the construction of their satellite systems each year. . . . [M]eeting cost-based milestones would not necessarily show that the licensee is progressing towards implementation of its system.”).

<sup>43</sup> See *Columbia Communications Reconsideration Order*, at ¶¶ 7-18 (rejecting request that a satellite licensee demonstrate in the period between its milestone deadlines that it continues to make progress towards construction completion because such a requirement would impose new license conditions retroactively).

<sup>44</sup> See, e.g., *Jelks v. FCC*, 146 F.3d 878, 880 (D.C. Cir. 1998) (acknowledging that the FCC must provide notice of changes in requirements for radio broadcast applications); *Maxcell Telecom Plus, Inc. v. FCC*, 815 F.2d 1551, 1558 (D.C. Cir. 1987) (“[E]lementary fairness requires clarity of standards sufficient to apprise an applicant of what is expected.”) (quoting *Bamford v. FCC*, 535 F.2d 78,82 (D.C. Cir. 1976)); see also *In the Matter of Mobile Satellite Ventures Subsidiary LLC*, Order, 19 FCC Rcd 18133 (Int'l Bur. 2004) (reinstating dismissed application in light of ambiguity regarding the two-degree spacing requirements); *In the Matter contactMEO Communications, LLC*, Order and Authorization, 21 FCC Rcd 4035, at ¶ 35 n. 97 (Int'l Bur. 2006) (same).

decisions. Specifically: (i) milestone proceedings often involve only the licensee in question; (ii) Bureau letters of inquiries are not published in the Commission's Daily Digest;<sup>45</sup> (iii) satellite licensees often completely redact all material parts of their milestone compliance showing for competitive reasons;<sup>46</sup> and (iv) Bureau determinations that licensees have met milestones are conclusory statements made in public notices with no explanation or analysis provided.<sup>47</sup>

For these reasons, the Bureau's actions were improper. Combined with the delay in confirming LicenseSub's compliance with its earlier milestones, these actions exacerbated the prejudice to the Company in attracting investment.

**B. The Bureau's ongoing failure to place the transfer of control application on public notice after nearly six months is extraordinary and has prejudiced LicenseSub's ability to attract investment**

LicenseSub recognizes that the uncertainty created by a business decision, such as entering into an agreement for the transfer of control of a company and seeking regulatory approval for such transaction, is not a valid justification for obtaining a milestone extension or waiver.<sup>48</sup> LicenseSub, however, is not contending that the pendency of its transaction has

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<sup>45</sup> Although parties could in theory participate in or monitor all such proceedings, as a practical matter, doing so would be extremely onerous and burdensome.

<sup>46</sup> See *In the Matter of ATCONTACT Communications, LLC*, Order, 25 FCC Rcd 7567, at ¶¶ 27-29 (2010) ("ATCONTACT") (relying on redacted information submitted in another milestone proceeding as a basis for distinguishing a milestone compliance showing).

<sup>47</sup> See, e.g., Public Notice Report No. SAT-00797, DA No. 11-1353 (August 5, 2011); Public Notice Report No. SAT-00640, DA No. 09-2224 (October 16, 2009); Public Notice Report No. SAT-00553, DA No. 08-2045 (September 5, 2008).

<sup>48</sup> See, e.g., *In the Matter of Application of Motorola, Inc. and Teledesic, LLC for Consent to Assignment of Authority to Launch and Operate the Millennium Geostationary Fixed-Satellite Service System*, Memorandum Opinion and Order, 17 FCC Rcd 16543, at ¶¶ 11-21 (Int'l Bur. 2002); *Columbia Communications Order*, at ¶ 7.

created uncertainty, preventing it from moving forward with its plans.<sup>49</sup> Rather, the Bureau's failure to take any action on the transfer of control application for nearly six months, in combination with the Bureau's other actions, has improperly created a cloud of uncertainty regarding the validity of the LicenseSub's underlying license.

LicenseSub submitted its transfer of control application nearly 180 days ago, and the Bureau has yet to even place the application on public notice – a basic administrative step that requires only the non-substantive determination that the application is complete in substance and provides all the information required in the application form.<sup>50</sup> The Bureau's delay for such a simple assessment is extraordinary. Indeed, a review of transfer of control and assignment applications since 2008 shows that the Bureau, on average, places such applications on public notice after only 43 days.<sup>51</sup> Moreover, the only significant outliers were applications involving transactions that potentially raised competitive concerns and required the release of a special public notice and the creation of a separate docketed proceeding.<sup>52</sup>

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<sup>49</sup> See *Satellite Reform Order*, at ¶ 222 (“[L]icense purchaser will be required to comply with all the rules applicable to the original licensee, including but not limited to milestones.”); see also, e.g., *In the Matter PanAmSat Licensee Corp.*, Memorandum Opinion and Order, 16 FCC Rcd 11534, at ¶¶ 13, 25 (Int’l Bur. 2001) (stating that allowing licensees to extend milestones by filing modification applications would create a loophole in the milestone policy).

<sup>50</sup> See *In the Matter of Amendment of the Commission’s Space Station Licensing Rules and Policies*, Notice of Proposed Rulemaking, 17 FCC Rcd 3847, at ¶ 84 n. 103 (2002) (“[T]he Bureau now reviews applications to determine whether . . . they include all the information required by the Commission’s rules. The more detailed technical review is conducted after the Bureau finds that the application is acceptable for filing and has placed it on public notice.”).

<sup>51</sup> The analysis excludes *pro forma* applications, withdrawn or dismissed applications, and applications that otherwise are not required to be placed on public notice.

<sup>52</sup> See *Application of ICO Global Communications (Holdings) Limited, et al. and Dish Network Corporation*, IB Docket No. 11-150, File Nos. SAT-T/C-20110408-00071, *et al.* (April 8, 2011); *Application of SkyTerra Communications, Inc. and Harbinger Capital Partners Funds*, IB Docket No. 08-184, File Nos. SAT-T/C-20080822-00157, *et al.* (August 22, 2008).

With respect to the transfer application here, there can be no such concerns given the availability of 17/24 GHz spectrum.<sup>53</sup> Indeed, the Bureau recently placed on public notice after 49 days a different transfer of control application regarding a 17/24 GHz band license filed by essentially the same parties.<sup>54</sup> Combined with the Bureau's other actions, the Bureau's ongoing failure to place the transfer of control application on public notice has improperly prejudiced LicenseSub's ability to attract investment.

**C. Grant of an extension or waiver would not undermine the Commission's policy objective to prevent speculation and spectrum warehousing and would serve the public interest**

The primary objective of the Commission's milestone requirements is to prevent speculation and spectrum warehousing, which precludes other entities from implementing their own systems.<sup>55</sup> Here, waiver or extension of the milestone would enhance rather than undermine the Commission's policy objective. LicenseSub has executed a valid satellite construction contract with SS/L and completed CDR for the licensed system, as discussed above.<sup>56</sup> LicenseSub also has actively pursued strategic partners to facilitate deployment of its licensed system and has sought Commission approval for the transfer of control of the Company to facilitate those efforts. Thus, there can be no doubt that LicenseSub has taken substantial steps and intends to implement its system.

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<sup>53</sup> See *infra* Part I.C.

<sup>54</sup> See File No. SAT-T/C-20111013-00201 (October 13, 2011).

<sup>55</sup> See *Satellite Reform Order*, at ¶ 175; *In the Matter of Amendment of the Commission's Space Station Licensing Rules and Policies*, First Order on Reconsideration, 19 FCC Rcd 12637, at ¶¶ 21-26 (2004) ("*Satellite Reform Order on Reconsideration*").

<sup>56</sup> See *supra* Part I.A.1.

Additionally, the recent surrender of several 17/24 GHz licenses by DIRECTV and EchoStar, as a result of concerns regarding ITU priority, highlights the fact that there are orbital locations available for assignment.<sup>57</sup> Thus, grant of an extension or waiver of LicenseSub's commence physical construction milestone would not impair the ability of others to obtain 17/24 GHz band licenses.

LicenseSub believes that once the Commission lifts the cloud of uncertainty regarding the Company's satellite license, it will be able to obtain additional funding for its system, allowing the Company to move forward expeditiously. Once implemented, LicenseSub's satellite would provide much-needed competition for video and broadband services.<sup>58</sup> Accordingly, granting a waiver or extension and allowing LicenseSub to complete its system, would better serve the public interest than nullifying the license and having this spectrum lie fallow with no prospects of development.

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<sup>57</sup> See Letter from Pantelis Michalopoulos, Counsel for EchoStar Corporation and EchoStar Satellite Operating Corporation, to Marlene H. Dortch, Secretary, FCC, File Nos. SAT-LOA-20020328-00050, *et al.* (May 24, 2011); Letter from William M. Wiltshire, Counsel for DIRECTV Enterprises, LLC, to Marlene H. Dortch, Secretary, FCC, File Nos. SAT-LOA-19970605-00050, *et al.* (July 27, 2011).

<sup>58</sup> See *In the Matter of The Establishment of Policies and Service Rules for the Broadcasting-Satellite Service at the 17.3-17.7 GHz Frequency Band and at the 17.7-17.8 GHz Frequency Band Internationally, and at the 24.75-25.25 GHz Frequency Band for Fixed Satellite Services Providing Feeder Links to the Broadcasting-Satellite Service and for the Satellite Services Operating Bi-directionally in the 17.3-17.8 GHz Frequency Band*, Report and Order and Further Notice of Proposed Rulemaking, 22 FCC Rcd 8842, at ¶ 1 (2007) (“By these actions, we facilitate the introduction of new and innovative services to consumers in the United States and promote increased competition among satellite and terrestrial services.”).

## **II. INDEPENDENT OF THE COMMISSION'S DETERMINATION REGARDING LICENSESUB'S EXTENSION REQUEST, THE COMMISSION SHOULD CONSENT TO THE WITHDRAWAL AND UNCONDITIONAL RELEASE OF LICENSESUB'S SATELLITE PERFORMANCE BOND**

The Commission's bond requirement was established over eight years ago as a replacement to the financial qualifications requirement applicable to a satellite license applicant.<sup>59</sup> The original purpose of the financial qualifications requirement was to ensure that licensees had the financial wherewithal to implement the proposed satellite system.<sup>60</sup> In establishing the bond requirement, the Commission stated that its "current financial qualification requirements have not proven to be determinative of whether a licensee implements its system."<sup>61</sup> According to the Commission, the bond requirement would "provide assurance that the licensee is fully committed at the time its license is granted to construct its satellite facilities,"<sup>62</sup> expedite the provision of service<sup>63</sup> and safeguard against speculation and warehousing.<sup>64</sup> The Commission also emphasized its belief that imposing a bond requirement would "result in the financial community determining whether the licensee is likely to construct and launch its satellite system," rather than the Commission.<sup>65</sup>

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<sup>59</sup> *Satellite Reform Order*, at ¶¶ 161-72.

<sup>60</sup> *Id.* at ¶ 161.

<sup>61</sup> *Id.* at ¶ 164.

<sup>62</sup> *Id.* at ¶ 170.

<sup>63</sup> *Id.* at ¶ 167.

<sup>64</sup> *Id.* at ¶ 170.

<sup>65</sup> *Id.* at ¶ 167.

The industry's experience over the last eight years, with respect to the 17/24 GHz band, shows that the majority of these objectives have not been served by the bond requirement. While the requirement arguably deters speculation and warehousing, there are ample Commission requirements in place to address those concerns, and the availability of 17/24 GHz spectrum suggests that further deterrence is simply not necessary. Moreover, in light of the current economic crisis, the Commission should be doing all in its power to encourage applications, which could lead to the creation of new businesses, services, and jobs. For these reasons, the bond requirement should be eliminated, and the Commission should consent to the withdrawal and unconditional release of LicenseSub's bond requirement.<sup>66</sup>

**A. Satisfaction of the bond requirement is not determinative of whether a licensee implements its system**

A fundamental premise of the Commission's adoption of the performance bond requirement is that a licensee's ability to post a bond at the time of licensing demonstrates its ability and commitment to proceed with its licensed system.<sup>67</sup> However, this premise does not comport with the commercial realities of the satellite investment process with respect to new and untested frequency bands and services, such as the 17/24 GHz spectrum.

New satellite projects are inherently risky, involving technological and market uncertainties. To attract the hundreds of millions of dollars typically required for investment in such projects, a satellite entrepreneur often must first have an FCC license. New licensees also need a reasonable amount of time to raise funding for the project. It is simply unrealistic to

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<sup>66</sup> Although the request is specific to LicenseSub's 17/24 GHz license and associated bond, the Company would support a decision by the Commission to initiate a rulemaking proceeding expanding the scope of LicenseSub's request.

<sup>67</sup> *Id.* at ¶ 171 (“Again, the purpose of the bond is to require the licensee to commit at the time the license is granted to construct and launch and satellite system.”).

assume, as the Commission does, that at an early stage of the process a licensee would be financially able or committed to construction of a satellite.

Additionally, a satellite project may be subject to regular reevaluation throughout the period of development of a satellite system. As recent evidence in the 17/24 GHz band shows, licensees, and their investors, need to consider many factors, including changes in market supply and demand, technology, and the development of adjacent satellites with higher International Telecommunication Union (“ITU”) priority, in deciding whether to implement a satellite system.<sup>68</sup>

Similarly, there is no basis for the Commission’s conclusion that the bond serves as “a more accurate, market-driven determination of a licensee’s ability and willingness to proceed” with construction of its satellite.<sup>69</sup> A surety is not required at all to assess the likelihood of a licensee’s ability or willingness to construct a satellite or otherwise evaluate a licensee’s business plans. In fact, the only requirement to obtain a bond from a surety is being able to provide collateral sufficient to cover the full amount of the bond in the event of default. Thus, the

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<sup>68</sup> See, e.g., Letter from Pantelis Michalopoulos, Counsel for EchoStar Corporation and EchoStar Satellite Operating Corporation, to Marlene H. Dortch, Secretary, FCC, File Nos. SAT-LOA-20020328-00050, *et al.* (May 24, 2011) (surrendering authorizations, in part, because other administrations at or near the same orbital location may deploy actual satellites with higher ITU priority); Letter from William M. Wiltshire, Counsel for DIRECTV Enterprises, LLC, to Marlene H. Dortch, Secretary, FCC, File Nos. SAT-LOA-19970605-00050, *et al.* (July 27, 2011) (surrendering authorization because other administrations at or near the same orbital location may deploy actual satellites with higher ITU priority); Letter from Pantelis Michalopoulos, Counsel for EchoStar Corporation, to Marlene H. Dortch, File Nos. SAT-LOA-20030827-00186, *et al.* (March 9, 2009) (surrendering authorization given “the current condition of the capital markets”); Letter from Pantelis Michalopoulos, Counsel for EchoStar Corporation, to Marlene H. Dortch, File Nos. SAT-LOA-20040803-00154, *et al.* (September 2, 2009) (surrendering authorization after making the business determination that “other orbital resources are better situated for EchoStar’s stimulus projects”).

<sup>69</sup> See *ATCONTACT*, at ¶ 51; see also *Satellite Reform Order*, at ¶ 167.



Commission is mistaken that the bond creates a “market-driven” assessment of a licensee’s ability and willingness to construct a satellite.

Where a rule does not serve the purpose for which it was intended, the Commission has recognized that it should be eliminated. Indeed, for this exact reason, the Commission eliminated its satellite financial qualifications requirement in 2003,<sup>70</sup> and it should eliminate the bond requirement here, as well.<sup>71</sup>

**B. Any benefit of the bond requirement in deterring speculative applications and warehousing is outweighed by the impediment it presents to satellite entrepreneurs seeking to develop the otherwise fallow spectrum**

**1. The bond requirement imposes substantial costs on applicants, greatly deterring entrepreneurs from pursuing the development of the 17/24 GHz spectrum**

The only objective that is arguably supported by the bond requirement is the discouragement of speculative applications and warehousing. But, as the Commission has recognized, the bond requirement has this effect only because it deters the filing of all

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<sup>70</sup> See *Satellite Reform Order*, at ¶ 164 (“Our current financial qualification requirements have not proven to be determinative of whether a licensee implements its system. Our experience has shown that financially qualified licensees have chosen not to go forward, while other licensee who could not have met the requirement but were awarded a license because we waived the requirement, have successfully built and launched systems.”). For the same reason and given the unique facts presented here, any policy determinations made by the Commission in *ATCONTACT*, which were premised on the validity of the bond requirement, should be overturned, to the extent those determinations are inconsistent with the relief requested here.

<sup>71</sup> See, e.g., *In the Matter of Biennial Regulatory Review – Amendment of Parts 1, 22, 24, 27, and 90 to Streamline and Harmonize Various Rules Affecting Wireless Radio Services*, Notice of Proposed Rulemaking, 19 FCC Rcd 708, at ¶¶ 2-4 (2004) (“[T]he Commission is required to modify or repeal any such regulations that are no longer in the public interest.”); *In the Matter of the 2002 Biennial Regulatory Review*, Report, 18 FCC Rcd 4726, at ¶ 27 (2002) (the Commission has “broad authority . . . to consider proposed modification to or elimination of its rules” in the public interest).

applications, speculative or not, by substantially increasing the costs of pursuing a satellite system.<sup>72</sup>

Aside from the fixed costs of maintaining a bond, which the Commission has estimated to be approximately \$60,000.00 per year, there is the opportunity cost of the assets necessary to collateralize the bond, and the risk of default.<sup>73</sup> These costs disproportionately impact new entrants and those proposing new services in untested bands, like LicenseSub. Such entities are generally thinly capitalized, have limited funding sources, and experience a higher cost of capital than established satellite companies.<sup>74</sup> New entrants are more likely to have new and unproven business models and, accordingly, a higher risk of default.<sup>75</sup>

In its decision adopting the bond requirement, the Commission rationalized that the impact of the bond requirement would be minimal or otherwise outweighed by the benefits of discouraging speculative applications and warehousing.<sup>76</sup> However, this is not true.

Since January 2008, there have been only three new license applications for 17/24 GHz band spectrum, and only one applicant has elected to move forward with its proposed system.<sup>77</sup>

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<sup>72</sup> See *Satellite Reform Order on Reconsideration*, at ¶¶ 35, 42.

<sup>73</sup> *Id.* at ¶¶ 31-35.

<sup>74</sup> *Id.* at ¶ 35.

<sup>75</sup> *Id.*

<sup>76</sup> In support of that conclusion, the Commission analyzed the seven-month period between the adoption of the bond requirement and the release of the *Satellite Reform Order on Reconsideration*. The Commission noted that an insignificant number of entities, 3 of 11, had chosen not to post a bond and surrendered their licenses, presumably as a result of the recently implemented bond requirement. *Id.* at ¶ 44 (“The number of applications filed during this period weighs against any conclusion that a significant number of parties have been discouraged from applying for satellite applications.”).

In contrast, in that same period, fourteen licensees or applicants, including DIRECTV and EchoStar, have surrendered or withdrew their licenses or applications.<sup>78</sup> Thus, there is simply no need for discouraging entrepreneurs from applying to use the 17/24 GHz band.

**2. The Commission should encourage the development of the largely fallow 17/24 GHz spectrum**

The world is facing an unprecedented global economic crisis. Internationally, prominent European nations are at the brink of economic collapse, and there are serious concerns that those

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<sup>77</sup> Of these three applicants, only 95 License Subsidiary, LLC, an affiliate of LicenseSub, has elected to move forward with implementing its system. *See* Application of 95 License Subsidiary, LLC, File No. SAT-LOA-20090807-00084 (August 7, 2009); *see also* Letter from Karis A. Hastings, Counsel for SES Americom, Inc., to Marlene H. Dortch, Secretary, FCC, File No. SAT-LOA-20080910-00173 (October 24, 2011) (withdrawing 17/24 GHz band application); Public Notice, Report No. SAT-00822, DA No. 11-1871 (November 10, 2011) (acknowledging withdrawal of Skynet Satellite Corporation's 17/24 GHz band application).

<sup>78</sup> Letter from William Wiltshire, Counsel for DIRECTV Enterprises, LLC, to Marlene H. Dortch, Secretary, FCC, File Nos. SAT-LOA-19970605-00050, *et al.* (July 27, 2011); Letter from Pantelis Michalopoulos, Counsel for EchoStar Corporation and EchoStar Satellite Operating Corporation, to Marlene H. Dortch, Secretary, FCC, File Nos. SAT-LOA-20020328-00050, *et al.* (May 24, 2011); Letter from Tony Lin, Counsel to Pegasus Development DBS Corp., to Marlene H. Dortch, Secretary, FCC, File Nos. SAT-LOA-20060412-00042, *et al.* (August 27, 2009); Letter from Jennifer D. Hindin, Counsel to Intelsat North America LLC, to Marlene H. Dortch, Secretary, FCC, File Nos. SAT-LOA-20050210-00029, *et al.* (August 27, 2009); Letter from Jennifer D. Hindin, Counsel to Intelsat North America LLC, to Marlene H. Dortch, Secretary, FCC, File Nos. SAT-LOA-20050210-00031, *et al.* (August 27, 2009); Letter from William M. Wiltshire, Counsel for DIRECTV Enterprises, LLC, to Marlene H. Dortch, Secretary, FCC, File Nos. SAT-LOA-19970605-00049, *et al.* (August 27, 2009); Letter from Jennifer D. Hindin, Counsel to Intelsat North America LLC, to Marlene H. Dortch, Secretary, FCC, File Nos. SAT-LOA-20050210-00028, *et al.* (July 14, 2009); Letter from Jennifer D. Hindin, Counsel to Intelsat North America LLC, to Marlene H. Dortch, Secretary, FCC, File Nos. SAT-LOA-20050210-00030, *et al.* (June 24, 2009); Letter from William Wiltshire, Counsel for DIRECTV Enterprises, LLC, to Marlene H. Dortch, Secretary, FCC, File Nos. SAT-LOA-19970605-00051, *et al.* (December 9, 2008).

problems will spread.<sup>79</sup> Domestically, the real estate “bubble” has burst, well-respected financial institutions have failed, and unemployment rates are at historical highs.<sup>80</sup>

Congress and this Administration have recognized the need to bolster the economy, passing legislation establishing billions of dollars in loan and grant money to expand broadband deployment to rural areas,<sup>81</sup> providing tax relief to small business,<sup>82</sup> encouraging community banks to make small business loans,<sup>83</sup> and extending unemployment benefits.<sup>84</sup> Yet, the Commission continues to enforce the bond requirement that encumbers tens of millions of dollars in capital, preventing the productive use of those funds in stimulating the ailing economy.

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<sup>79</sup> See Eric Dash and Nelson D. Schwartz, *Crisis in Europe Tightens Credit Across the Globe*, N.Y. TIMES, November 28, 2011, *available at* [nytimes.com](http://nytimes.com) (companies around the world are “feeling the strain as European banks pull back on lending in an effort to hoard capital and shore up their balance sheets”); Floyd Norris, *For Banks, Unfortunate Echoes of 2008*, N.Y. TIMES, September 9, 2011, *available at* [nytimes.com](http://nytimes.com).

<sup>80</sup> See Floyd Norris, *For Banks, Unfortunate Echoes of 2008*, N.Y. TIMES, September 9, 2011, *available at* [nytimes.com](http://nytimes.com); Associated Press, *Housing Prices Continue to Decline, Index Shows*, N.Y. TIMES, November 29, 2011, *available at* [nytimes.com](http://nytimes.com); Ezra Klein, *Wonkbook: The Real Unemployment Rate is 11 Percent*, WONKBLOG, THE WASHINGTON POST, December 12, 2011, <http://www.washingtonpost.com/blogs/ezra-klein>.

<sup>81</sup> See American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5, § 6001(k), 123 Stat. 115, 516 (2009).

<sup>82</sup> See Small Business and Work Opportunity Tax Act of 2007, Pub. L. No. 110-28, § 8201 *et seq.*, 121 Stat. 112, 190 (2007).

<sup>83</sup> See The Small Business Jobs Act of 2010, Pub. L. No. 111-240, § 1001 *et seq.*, 124 Stat. 2504, 2507 (2010).

<sup>84</sup> See Supplemental Appropriations Act of 2008, Pub. L. No. 110-252, § 4001 *et seq.*, 122 Stat. 2323, 2353 (2008).

For example, with respect to the 17/24 GHz band alone, the Commission’s bond requirement has essentially frozen the use of \$30 million dollars.<sup>85</sup>

**C. Other Commission rules and requirements are sufficient to guard against speculation and warehousing**

Even assuming that there is a need to guard against speculation and warehousing in the 17/24 GHz band, which LicenseSub disputes,<sup>86</sup> the Commission has in place numerous other rules and procedures that adequately serve that purpose, including specifically: (i) limits on the number of applications that can be filed;<sup>87</sup> (ii) strict milestone requirements;<sup>88</sup> (iii) “strikes” for failing to implement a licensed system;<sup>89</sup> (iv) requirements regarding substantial completeness of satellite applications;<sup>90</sup> and (v) restrictions regarding the transferability of pending applications.<sup>91</sup> Additionally, as a practical matter, the administrative costs of simply filing an application for a

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<sup>85</sup> See Bond Submissions, File Nos. SAT-LOA-20020328-00050, SAT-LOA-20020328-00051, SAT-LOA-20020328-00052, SAT-LOA-20070105-00001, SAT-LOA-20070105-00003, SAT-LOA-20060908-00099, SAT-LOA-20060908-00100, SAT-LOA-19970605-00050, SAT-LOA-20090807-00084, and SAT-LOA-20060412-00044.

<sup>86</sup> See *supra* II.B.1.

<sup>87</sup> 47 C.F.R. § 25.159; *Satellite Reform Order*, at ¶¶ 229-230 (“[L]imiting pending satellite applications is a reasonable way to limit speculation.”).

<sup>88</sup> 47 C.F.R. § 25.164; *Satellite Reform Order*, at ¶ 175 (“[S]trict enforcement of milestones will help safeguard against speculative satellite applications.”).

<sup>89</sup> 47 C.F.R. § 25.159(d); *Satellite Reform Order*, at ¶ 200 (applying stricter numerical limit on the number of pending applications for entities that have missed milestones in the past “address[es] instances of warehousing” and “discourag[es] parties from applying for satellite licenses regardless of their intent to proceed.”).

<sup>90</sup> 47 C.F.R. §§ 25.112, 25.150; *Satellite Reform Order*, at ¶ 244 (“[A]ny relaxation of the requirement that satellite applicants submit substantially complete applications could encourage speculative applications.”).

<sup>91</sup> 47 C.F.R. § 25.158(c); *Satellite Reform Order*, at ¶¶ 240-43 (“[A]llowing applicants to sell their place in line would facilitate speculation.”).

domestic satellite system already require substantial financial resources, sufficient to deter frivolous filings.<sup>92</sup> Thus, eliminating the bond requirement would not open the door to speculative applications or warehousing.

**D. Elimination of the bond requirement could facilitate reassignment of licensed spectrum**

Ironically, the Commission's bond requirement encourages rather than protects against warehousing. The substantial financial repercussions for a licensee that fails to meet a milestone creates an incentive for a licensee to seek to maintain its license through waiver or extension, if it has not met its milestone, or to litigate an adverse Commission milestone assessment.<sup>93</sup> As a practical matter, these efforts could and have resulted in spectrum being tied up in legal proceedings for years. Elimination of the bond requirement would remove this perverse incentive and potentially facilitate more efficient reassignment of spectrum.

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<sup>92</sup> The regulatory fee is nearly \$100,000 for a geostationary satellite system application and \$400,000 for a non-geostationary satellite system application. That does not include legal or engineering consulting costs associated with preparing such applications, which are likely to be in the tens of thousands of dollars. Post-licensing, there are also substantial costs in the tens of thousands of dollars associated the preparation of and payment for ITU filings.

<sup>93</sup> See, e.g., *ATCONTACT Communications LLC*, Notice of Appeal, *ATCONTACT Communications LLC V. FCC*, No. 10-1149 (D.C. Cir. June 30, 2011); *Echostar Satellite Operating Corp.*, Petition for Reconsideration, File Nos. SAT-LOA-20030609-00113 *et al.* (August 25, 2011); *Star One S.A.*, Application for Review, File Nos. SAT-PPL-20081205-00225, *et al.* (November 12, 2010).

### **Conclusion**

For the reasons stated above, the Commission should grant an extension or waiver of the commence physical construction milestone. The Commission also should consent to the withdrawal and unconditional release of LicenseSub's satellite performance bond.

Respectfully submitted,

By: \_\_\_\_\_ /s/

Scott A. Blank  
Senior Vice President of Legal and  
Corporate Affairs and General Counsel  
115 License Subsidiary, LLC

Dated: December 16, 2011

**Declaration of Scott A. Blank**

I, Scott A. Blank, hereby declare under penalty of perjury that:

1. I am Senior Vice President of Legal and Corporate Affairs, General Counsel, and Secretary for 115 License Subsidiary, LLC;
2. The statements made in this application are true, complete, and correct to the best of my knowledge, information and belief. Specifically, extension or waiver of the construction commencement milestone applicable to 115 License Subsidiary, LLC is warranted for the reasons stated in the Request for Extension of Milestone;
3. No party to the application is subject to a denial of federal benefits pursuant to Section 5301 of the Anti Drug Abuse Act of 1988, 21 U.S.C. §853a.

\_\_\_\_\_/s/\_\_\_\_\_  
Scott A. Blank  
Senior Vice President of Legal  
and Corporate Affairs, General  
Counsel, and Secretary

December 16, 2011