



September 24, 2021

Via IBFS

Marlene H. Dortch
Secretary
Federal Communications Commission
45 L Street, NE
Washington, D.C. 20554

RE: Hiber Inc.
Surrender of Market Access Authorization and Associated License
Request for Waiver or Reduction of Surety Bond Default Payment Amount
IBFS File Nos. SAT-PDR-20180910-00069 (Call Sign S3038), SES-LIC-
20191217-01739 (Call Sign E191659)

Dear Ms. Dortch:

Hiber Inc. (“Hiber”) hereby surrenders its market access authorization for the above-authorized satellite system and associated earth station license. Hiber no longer seeks to provide services to the United States through this system. Hiber will not be further developing its authorized satellite system and is currently in the process of surrendering its space system license to the Administration of the Netherlands. Hiber also hereby surrenders its blanket license to operate 10,000 METs with its system, SES-LIC-20191217-01739 (Call Sign E191659).¹ As a result of surrendering its FCC market access authorization, Hiber acknowledges that the company’s surety bond will be used to pay the default payment specified in 47 C.F.R. § 25.165(c).²

Hiber also requests waiver or reduction of the surety bond default payment. The Commission may waive any of its rules if there is “good cause” to do so.³ In general, waiver is appropriate if (1) special circumstances warrant a deviation from the general rule; and (2) such deviation would better serve the public interest than would strict adherence to

¹ This letter does not affect Hiber’s other satellite applications or licenses, which involve the use of leased capacity on another satellite network. *See, e.g.*, IBFS File No. SES-LIC-20210607-00918 (filed June 7, 2021).

² Based on the formula specified in the Commission’s rules and the date of this letter, Hiber believes the default payment amount is \$1,920,000.00. *See* 47 C.F.R. 25.165(a)(1).

³ *See* 47 C.F.R. § 1.3; *Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1164 (D.C. Cir. 1990); *WAIT Radio v. FCC*, 418 F.2d 1153 (D.C. Cir. 1969).



the rule.⁴ Generally, the Commission will grant a waiver of its rules in a particular case if the relief requested would not undermine the policy objective of the rule in question and would otherwise serve the public interest.⁵ Hiber submits that good cause exists to waive or reduce the surety bond default payment.

Hiber has in good faith taken tangible steps in the deployment of its satellite system, demonstrating that Hiber has been committed to build its satellite network and has not been engaged in spectrum warehousing.⁶ For example, since the filing of the company's market access request in 2018,⁷ Hiber launched four of its authorized twenty-four satellites,⁸ constructed two ground station facilities (one in Delft, Netherlands, and the other in Svalbard, Norway) to support its satellite network, and engaged in and completed frequency coordination with a number of operators.⁹ Hiber also engaged in a global licensing effort for its system and obtained licenses to operate in Brazil, Canada, and the CEPT countries, among others. In total, Hiber spent approximately €28 million (about US\$33 million) since 2016 on the development, construction, and launch of its four satellites, development and manufacture of ground terminal equipment, development and construction of the ground network, international frequency coordination, international market access, and other associated costs.

⁴ See *Northeast Cellular*, 897 F.2d at 1166.

⁵ See *WAIT Radio*, 418 F.2d at 1157.

⁶ See, e.g., *Comprehensive Review of Licensing and Operating Rules for Satellite Service*, IB Docket No. 12-267, Second Report and Order, 30 FCC Rcd 14713 at ¶ 28 (2015) (explaining that the bond requirement helps ensure that the applicant is not using the application process to speculate or warehouse spectrum without the capability or intention to provide service).

⁷ See Application, IBFS File No. SAT-PDR-20180910-00069 (filed September 10, 2018); see also *In the Matter of Hiber Inc., Petition for Declaratory Ruling to Access U.S. Market Using the Hiberband Low-Earth Orbit System*, 35 FCC Rcd 4619 (2020) (granting market access request).

⁸ Hiber-1 was launched on an Indian PSLV rocket in November 2018, and Hiber-2 was launched on a Falcon 9 rocket in December 2018. See Gunter's Space Page, https://space.skyrocket.de/doc_sdat/hiber-1.htm (last visited September 21, 2021). Hiber-3 was launched on a Soyuz-2 Fregat rocket in March 2021, and Hiber-4 was launched on a Falcon-9 rocket in January 2021. See Gunter's Space Page, https://space.skyrocket.de/doc_sdat/hiber-1.htm and https://space.skyrocket.de/doc_sdat/hiber-4.htm (last visited September 17, 2021).

⁹ See, e.g., Letter from Bruce Henoach, Hiber Inc., and Janek Kaucz, Myriota Pty Ltd., to Marlene H. Dortch, IBFS File Nos. SAT-PDR-20180910-00069 and SAT-PDR-20190328-00020 (September 25, 2020) (providing notice of completion of a bilateral agreement regarding sharing of the 400 MHz mobile-satellite service band); Letter from Bruce Henoach, Hiber Inc., and Walter Sonnenfeldt, Orbcomm Inc., IBFS File No. SAT-PDR-20180910-00069 (August 13, 2020) (providing notice of completion of coordination with respect to operations in the 400.15-400.505 and 400.645-401 MHz bands).



As a result of factors beyond its control, Hiber is no longer in a position to deploy its satellite system and provide service to the United States. Two of the four launched satellites are non-operational and have been decommissioned, and technical issues with the other two satellites prevent Hiber from deploying its anticipated commercial service. Hiber believes that diagnosing and addressing the technical issues would be cost prohibitive. As a result of the satellite failures, Hiber has been unable to generate sufficient operating revenue to support the development of the remaining satellites of the Hiber system. Further, the COVID-19 global pandemic (including the total inability since March 2020 of Hiber's Dutch managers and directors to travel to the United States to meet with potential investors) has been devastating to Hiber's ability to obtain additional investment to support construction of the remaining satellites. For all of these reasons, Hiber no longer seeks to construct and launch its authorized satellite system and believes that a complete waiver of the surety bond default payment is warranted.¹⁰

As an alternative to a complete waiver of the surety bond default payment amount, Hiber requests reduction of the owed amount by 33%, which is equal to the number of satellites (4) Hiber constructed and launched divided by the number of satellites (12) Hiber was required to deploy to be relieved of the surety bond obligation.¹¹

For all the reasons stated above, Hiber submits that special circumstances warrant a deviation from the general rule and a waiver in this case would better serve the public interest than would strict adherence to the rule. Because of the demonstrated, tangible efforts by Hiber to deploy its satellite network and the impact of factors beyond its control, the waiver requested here would not undermine the purpose of the rule, *i.e.*, to discourage speculation and spectrum warehousing. Accordingly, the public interest would be better served by waiving or reducing the surety bond default payment amount.

Please feel free to contact me if you have any questions.

Sincerely,

/s/Bruce Henoeh

Bruce Henoeh
General Counsel
Hiber Inc.

¹⁰ Hiber has pivoted its business operations and intends to provide Internet-of-Things services through leased capacity on a third-party satellite network.

¹¹ See 47 C.F.R. §§ 25.164(b)(1), 25.165(d).



cc: Karl Kensinger
Kerry Murray
Merissa Velez
Alyssa Roberts

Tony Lin, Counsel for Hiber Inc.