

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

In the Matter of
115 License Subsidiary, LLC
17/24 GHz Broadcasting-Satellite Service Space
Station at the 115.0° W.L. Orbital Location; Ruling
on Milestones Completion
File No. SAT-LOA-20060412-00044
Call Sign S2700

ORDER

Adopted: June 15, 2016

Released: June 15, 2016

By the Chief, International Bureau:

I. INTRODUCTION

1. In this Order, we reverse in part an earlier decision in this case to conform with the Commission's decision in the Comprehensive Review of Licensing and Operating Rules for Satellite Services (2015 Part 25 Streamlining Order). Specifically, the International Bureau issues a waiver of certain interim milestone requirements in Section 25.164 of the Commission's rules as they relate to the previously surrendered authorization of 115 License Subsidiary, LLC (115 License Sub). As a result of the waiver, 115 License Sub's performance bond (paid by the surety) is reduced by \$1,500,000, and therefore the payor of record may request a refund of that amount from the U.S. Treasury.

II. BACKGROUND

2. 115 License Sub Authorization. On December 17, 2008, the Bureau's Satellite Division authorized Pegasus Development DBS Corporation (Pegasus) to construct, launch and operate a 17/24 GHz Broadcast-Satellite Service (BSS) space station at the 115.0° W.L. orbital location and Pegasus later assigned its authorization to 115 License Sub. Pursuant to the 115 License Sub Authorization, 115 License Sub was required to satisfy a schedule of milestones: (1) execute a binding contract for construction within one year; (2) complete critical design review within two years; (3) complete construction within three years; and (4) launch and begin operations within five years. 115 License Sub also needed to post a \$3,000,000 bond within 30 days of the grant. On December 17, 2009 and

1 See Comprehensive Review of Licensing and Operating Rules for Satellite Service, IB Docket No. 12-267, Second Report and Order, 30 FCC Rcd 14713 (2015) (2015 Part 25 Streamlining Order).

2 47 CFR § 25.164.

3 See generally, 115 License Subsidiary, LLC, Application for Review (filed Apr. 30, 2015) (redacted version) (115 License Sub AFR).

4 See Grant Stamp and Attachment to Grant for IBFS File Nos. SAT-LOA-20060412-00044 and SAT-AMD-20080114-00023 (granted Dec. 17, 2008) (115 License Sub Authorization); see also Pegasus Development DBS Corp., Application for Pro Forma Assignment, IBFS File No. SAT-ASG-20090921-00098 (filed Sept. 21, 2009).

5 115 License Sub Authorization at condition 4.

6 Id.

December 15, 2010, 115 License Sub submitted milestone showings for the first and second milestones, respectively.⁷ On May 2, 2012, 115 License Sub announced that it was surrendering its authorization and asked the Commission to make a finding that it had satisfied the first two milestones.⁸

3. *115 License Sub Order.* On March 30, 2015, the Bureau denied the request of 115 License Sub for a determination that it had met the first two milestones associated with its surrendered authorization to construct, launch and operate a 17/24 GHz Broadcasting-Satellite Service space station at the 115.0° W.L. orbital location.⁹ We concluded that the evidence provided did not support a finding that the milestones had been satisfied. As a result, 115 License Sub was directed to pay the full amount of its performance bond of \$3,000,000 to the U.S. Treasury.¹⁰ The Commission's records show the surety paid the full amount of the performance bond.¹¹

4. *115 License Sub Application for Review.* On April 29, 2015, 115 License Sub filed an application for review of the *115 License Sub Order*, which seeks, among other things, a Commission finding that 115 License Sub complied with the first two milestones, and thus is entitled to a reduction of its bond in the amount of \$1,500,000.¹² In relevant part, 115 License Sub claims that it satisfied the first two milestones: (1) execute a contract within one year of grant; and (2) complete critical design review within two years of grant.¹³

5. *2015 Part 25 Streamlining Order.* In the *2015 Part 25 Streamlining Order*, released on December 17, 2015 as part of a larger Part 25 streamlining effort, the Commission revised the milestone and bond requirements for recipients of geostationary orbit (GSO) and nongeostationary orbit (NGSO) satellite system authorizations.¹⁴ In particular, the Commission eliminated all milestones under Section 25.164, except the final milestone: to launch and operate.¹⁵

6. In that Order, the Commission also noted that there remained a number of interim milestone requests pending for space station authorizations that already have been surrendered, including the 115 License Sub AFR.¹⁶ These requests seek findings that they have satisfied one or some of their milestones, in order for their bonds to be reduced. The Commission found that “[p]rocessing these

⁷ See Letter from Bruce D. Jacobs and Tony Lin, Counsel for 115 License Subsidiary, LLC, to Marlene H. Dortch, Secretary, FCC (Dec. 17, 2009); see also Letter from Bruce D. Jacobs and Tony Lin, Counsel for 115 License Subsidiary, LLC, to Marlene H. Dortch, Secretary, FCC (Dec. 15, 2010).

⁸ Letter from Bruce D. Jacobs and Tony Lin, Counsel for 115 License Subsidiary, LLC, to Marlene H. Dortch, Secretary, FCC (May 2, 2012) (*115 License Sub Surrender Letter*).

⁹ See generally, *115 License Subsidiary, LLC, 17/24 GHz Broadcasting-Satellite Service Space Station at the 115.0° W.L. Orbital Location; Ruling on Milestones Completion*, Order, 30 FCC Rcd 2759 (IB 2015) (*115 License Sub Order*).

¹⁰ *Id.* at para. 1.

¹¹ See Letter from Robert D. Primosch, Counsel for 115 License Subsidiary, LLC, to Marlene H. Dortch, Secretary, FCC (Apr. 12, 2016) (*115 License Sub April 12 Letter*).

¹² See generally, *115 License Sub AFR*. 115 License Sub requests that the Commission: (1) reverse the decision in the *115 License Sub Order*; (2) determine that 115 License Sub has complied with the first two milestones and, thus, is entitled to a reduction of its bond in the amount of \$1,500,000; and (3) determine that 115 License Sub was prevented from completing its third and fourth milestones because the Bureau did not place the 115 W.L. Transfer Application on public notice and, thus, direct the release of the \$3,000,000 performance bond in its entirety. *Id.*

¹³ See generally, *115 License Sub AFR*.

¹⁴ See generally, *2015 Part 25 Streamlining Order*.

¹⁵ *Id.* at 14734, 14739, paras. 51, 63. Section 25.164, as revised, is not effective as of the adoption date of this Order, thus necessitating a waiver of that rule in this instance.

¹⁶ See *id.* at 14746-47, paras. 87-89, n.34.

requests as required by Section 25.164 is extraordinarily time-consuming and resource-intensive [a]nd, each of these licenses and grants has been surrendered and made available to others, thus minimizing ‘warehousing’ concerns. Accordingly, we direct the International Bureau to dispose of these pending milestone determination requests by waiving the requirements of Section 25.164 as needed.”¹⁷ Finally, the Commission noted that these parties would forfeit the remainder of their bonds for the milestones where no showings had been made.¹⁸

7. *EchoStar/Hughes Order*. Pursuant to the Commission’s decision in the *2015 Part 25 Streamlining Order*, the Bureau waived the milestone requirements in Section 25.164(a)¹⁹ in the cases of EchoStar Satellite Operating Corporation and Hughes Network Systems, LLC, both of which involved previously surrendered authorizations with interim milestone determination requests that remained pending.²⁰ In particular, the Bureau waived the requirements of Section 25.164 for the interim milestone showing submitted by each party, allowed the operators to reduce their applicable bonds, and required payment of the remaining bond amounts.²¹

8. *115 License Sub Ex Parte Letter*. On April 12, 2016, 115 License Sub submitted a letter requesting that the Commission waive the requirements of Section 25.164 for the interim milestone showing submitted by 115 License Sub, and issue a refund of the amount of the bond paid commensurate to those milestone showings submitted before their license surrender.²²

III. DISCUSSION

9. Given the Commission’s guidance in the *2015 Part 25 Streamlining Order*, we find it appropriate to revisit the *115 License Sub Order*. In particular, in the context of surrendered authorizations with pending milestone determination requests, the *2015 Part 25 Streamlining Order* specifically cites to the 115 License Sub case and the EchoStar and Hughes cases and directs the Bureau to dispose of pending milestone determinations by waiving the requirements of Section 25.164 as needed.²³ As noted above, the Bureau’s Satellite Division recently addressed the EchoStar and Hughes milestone determinations²⁴ and the Bureau will focus here on 115 License Sub’s filings.

10. As discussed below, we find that there is good cause to waive the first two milestone requirements in Section 25.164(a) for 115 License Sub and we apply the same waiver analysis here that was applied in the *EchoStar/Hughes Order*. The Commission may waive its rules for good cause.²⁵ As noted in the *2015 Part 25 Streamlining Order*, waiver is appropriate if special circumstances warrant a deviation from the general rule, and the deviation will serve the public interest.²⁶ In addition, the Bureau

¹⁷ *Id.* at 14746, para. 87.

¹⁸ *Id.*

¹⁹ 47 CFR § 25.164(a).

²⁰ See *EchoStar Corporation*, IBFS File Nos. SAT-LOA-20020328-00052, SAT-LOA-20020328-00051, SAT-LOA-20070105-00001, SAT-LOA-20070105-00003, SAT-LOA-20020328-00050; *Hughes Network Systems, LLC*, IBFS File No. SAT-LOA-20111223-00248.

²¹ See generally, *EchoStar Satellite Operating Corporation Application for Authority to Construct, Launch and Operate a 17/24 GHz Direct Broadcasting-Satellite Service Space Station, EchoStar EX-3, at the 79° W.L. Orbital Location et al.*, Order, DA 16-278 (IB, SATDIV Mar. 15, 2016) (*EchoStar/Hughes Order*).

²² See *115 License Sub April 12 Letter*.

²³ See *2015 Part 25 Streamlining Order*, 30 FCC Rcd at 14746, para. 87, n.229.

²⁴ See generally, *EchoStar/Hughes Order*.

²⁵ 47 CFR § 1.3.

²⁶ *2015 Part 25 Streamlining Order*, 30 FCC Rcd at 14716, para. 88, citing *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

may grant a waiver of its rules in a particular case if the relief requested would not undermine the objective of the rule in question.²⁷ Specifically, the objectives of the milestones in Section 25.164 include: (1) ensuring that licensees provide service to the public in a timely manner by preventing the warehousing of scarce orbit and spectrum resources;²⁸ (2) deterring speculative license applications;²⁹ and (3) ensuring that our satellite licensees fulfill their obligation to build their systems.³⁰

11. The Bureau previously ruled on 115 License Sub's milestone showings and an application for review of this decision is pending. In the 115 License Sub AFR, 115 License Sub claims, among other things, that it met the first two interim milestones and details how it believes it met them. The Commission, however, subsequently directed the Bureau to waive, as needed, the performance milestones for which 115 License Sub (and EchoStar and Hughes) had made interim milestone showings. There is good cause to waive the milestone requirements in Section 25.164(a)(1) and (2) based on the unique circumstances in this case. Significantly, 115 License Sub's authorization was surrendered over four years ago,³¹ making the spectrum resources available for reassignment, and 115 License Sub has a pending milestone determination request, the 115 License Sub AFR, before the Commission. As a result, we do not believe that our decision here, to reverse in part the Bureau's *115 License Sub Order* to conform it to the Commission's decision in the *2015 Part 25 Streamlining Order*, will undermine the deterrent effects that strictly enforcing compliance with the interim milestones are designed to have, *i.e.*, ensuring that our satellite licensees fulfill their obligations to build out and begin service to the public in a timely manner.

12. Given these considerations, along with the Commission's determination that the interim milestones in Section 25.164 are no longer necessary,³² we see little public interest benefit in going through the exercise of re-examining 115 License Sub's milestone showings in the context of the pending 115 License Sub AFR.³³ Therefore, consistent with the Commission's direction to the Bureau in the *2015 Part 25 Streamlining Order*,³⁴ the Bureau disposes of 115 License Sub's initial milestone determination request by granting waivers of the requirements in Section 25.164(a)(1) and (2). As a result, 115 License Sub may reduce its performance bond amount owed by \$1,500,000. We do not otherwise rule on the 115 License Sub AFR, which requests relief beyond that granted in this decision.³⁵

13. Given our waiver analysis above, we find that the Bureau's decision in the *115 License Sub Order* resulted in a collection of \$1,500,000 more than required, and was subsequently received by the

²⁷ *WAIT Radio*, 418 F.2d at 1157; *Dominion Video Satellite, Inc.*, Order and Authorization, 14 FCC Rcd 8182, 8185, para. 5 (IB 1999).

²⁸ *Amendment of the Commission's Space Station Licensing Rules and Policies*, IB Docket No. 02-34, First Report and Order and Further Notice of Proposed Rulemaking, 18 FCC Rcd 10760, 10827, para. 173 (2003) (*Space Station Licensing Reform Order*).

²⁹ *Id.* at 10828, para. 175.

³⁰ *Id.* at 10834, para. 196.

³¹ See generally, *115 License Sub Surrender Letter*.

³² See *2015 Part 25 Streamlining Order* at 14738-39, paras. 59, 61.

³³ As noted in paragraph 4, 115 License Sub seeks a Commission finding that it satisfied the first two milestones: (1) execute a binding contract for construction within one year and (2) complete critical design review within two years. See generally, 115 License Sub AFR.

³⁴ See *2015 Part 25 Streamlining Order*, 30 FCC Rcd at 14746-47, paras. 88-89.

³⁵ We note, however, that 115 License Sub has recently indicated that it plans to withdraw the 115 License Sub AFR assuming the Commission grants the waiver of the first two milestones and the partial refund that we are providing in this Order. See *115 License Sub April 12 Letter* at 2.

Commission for deposit as a miscellaneous receipt into the U.S. Treasury.³⁶ Because 115 License Sub (through the bond surety) has already paid the full amount of the \$3,000,000 performance bond, we find that the payor of record is due a refund of \$1,500,000 from the U.S. Treasury. In this instance, under 31 U.S.C. § 1322(b)(2), a refund from the U.S. Treasury may be made for money “erroneously deposited . . .” into the U.S. Treasury.³⁷

IV. CONCLUSION AND ORDERING CLAUSES

14. Accordingly, the *115 License Sub Order* is reversed in part to the extent that the International Bureau did not waive the interim milestone requirements in Section 25.164(a)(1) and (2) for 115 License Subsidiary, LLC’s milestone showings.

15. Accordingly, IT IS ORDERED that the interim milestone requirements of Section 25.164(a)(1) and (a)(2) are hereby WAIVED in the above-captioned case for the milestone determination showings submitted by 115 License Subsidiary, LLC.

16. IT IS ORDERED that the payor of record of the bond amount may obtain a partial refund of the performance bond previously submitted to the Commission for deposit into the U.S. Treasury.

17. IT IS ORDERED that, upon written request from the payor of record of the bond submitted to the Office of Managing Director (Attention, Chief Financial Officer, Financial Operations), the Chief Financial Officer shall initiate procedures to refund \$1,500,000 to the payor of record in connection with Call Sign S2700.

18. This Order is issued pursuant to Sections 0.51 and 0.261 of the Commission’s rules, 47 C.F.R. §§ 0.51, 0.261, and is effective on release.

FEDERAL COMMUNICATIONS COMMISSION

Mindel De La Torre
Chief, International Bureau

³⁶ See *115 License Sub Order*, 30 FCC Rcd at 2759, para. 1.

³⁷ 31 USC § 1322(b)(2). See also *Securities and Exchange Commission Authority to Refund Accounts Erroneously Collected*, 71 Comp. Gen. 464 (1992).