



PUBLIC NOTICE

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INTERNATIONAL BUREAU CLARIFIES PROCEDURES FOR MAINTAINING SATELLITE SPACE STATION SURETY BONDS PURSUANT TO ESCALATING BOND REQUIREMENTS

Report No. SPB-267

This Public Notice provides clarification on the procedures for maintaining surety bonds pursuant to the Federal Communications Commission's escalating bond requirements in Section 25.165 of the Commission's rules, 47 CFR § 25.165. Specifically, we clarify that until the International Bureau (Bureau) determines that a licensee or grantee of U.S. market access (collectively "licensee") has fulfilled its milestones under Section 25.164, the licensee must, as a condition of its authorization, continue to have a surety bond on file sufficient to cover the amount due to the U.S. Treasury in the event of default. Failure to maintain a bond for the required amount will render the license or grant of U.S. market access null and void, without the need for any further Commission action.

On December 15, 2015, the Commission adopted revisions to streamline its rules governing satellite services.¹ The revisions include modifications of the milestone requirements in Section 25.164 and a change to the surety bond requirements in Section 25.165.² These modifications permit licensees greater flexibility and reduce regulation, while deterring warehousing of U.S. orbital assets. On October 7, 2016, the Bureau released a Public Notice updating and explaining the procedures for complying with the revised milestone and bond provisions (*October 2016 Public Notice*).³

Section 25.165 requires a licensee, within 30 calendar days after grant of a space station application or petition for U.S. market access, to post and have on file at the Commission a surety bond in the specified penal amount payable through the Commission to the United States Treasury (Obligee).

¹ *Comprehensive Review of Licensing and Operating Rules for Satellite Services*, Second Report and Order, 30 FCC Rcd 14713 (2015) (*Second Report and Order*), corrected, 30 FCC Rcd at 14727 (2016). These revisions were published in the Federal Register on August 18, 2016, and became effective on September 19, 2016. Federal Communications Commission, *Comprehensive Review of Licensing and Operating Rules for Satellite Services*, 81 FR 55316 (Aug. 18, 2016).

² 47 CFR §§ 25.137(d)(4), 25.165.

³ *International Bureau Updates Procedures for Filing and Maintaining Surety Bonds Pursuant to Revised Milestone and Escalating Bond Requirements*, Public Notice, DA 16-1157 (Oct. 7, 2016). The *October 2016 Public Notice* did not address the application-stage bond requirement at the initial step of the optional two-step application process adopted in the Second Report and Order. *Second Report and Order*, 30 FCC Rcd at 14850, 47 CFR § 25.165(f). Nothing in today's Public Notice addresses such initial step application bond requirements.

Thereafter, each licensee must, as a condition of its license or grant of U.S. market access, maintain the surety bond pursuant to the formulas in Section 25.165 or the license or grant is null and void.⁴ By its terms, the bond must remain effective until the Bureau releases the bond, whether that release is a result of a replacement bond or a determination that the licensee has satisfied its milestone requirement set forth in Section 25.164.

To comply with this rule, a licensee could, for example, submit a surety bond of at least \$1.4 million with automatic escalation clauses for increases to cover at any point in time the licensee's maximum potential liability until the Bureau determines the launch and operate milestone is satisfied.⁵ Alternatively, a licensee may submit a fixed-value surety bond to cover its potential liability for a specific term, for example one year, to be succeeded without any gap in coverage by a subsequent bond, rider, or certificate to cover the next term, for example, the second year. A replacement or supplementary bond must be on file with the Commission before a previous bond will be released.⁶ In all cases, the bond, including any rider or succession bond, must provide continuing coverage and satisfy the increased potential liability pursuant to the formulas in Section 25.165 until the Bureau releases the bond. In addition, the bond by its terms should define the events of default sufficiently broad to include a situation in which the license or grant becomes null and void due to failure to maintain a surety bond in an adequate amount.

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⁴ The surety bond payment liability in the event of default is calculated pursuant to the formulas in Section 25.165 47 CFR § 25.165 (a)(1), (2):

For an NGSO licensee or holder of a grant of U.S. market access, the amount of the surety bond must require payment in the event of a default in an amount, at a minimum, according to the following formula, with the resulting dollar amount rounded to the nearest \$10,000: $A = \$1,000,000 + \$4,000,000 * D/2192$, where A is the amount to be paid and D is the lesser of 2192 or the number of days that elapsed from the date of the license grant until the date when the license was surrendered.

For a GSO licensee or holder of a grant of U.S. market access, the amount of the surety bond must require payment in the event of a default in an amount, at a minimum, according to the following formula, with the resulting dollar amount rounded to the nearest \$10,000: $A = \$1,000,000 + \$2,000,000 * D/1827$, where A is the amount to be paid and D is the lesser of 1827 or the number of days that elapsed from the date of the license grant until the date when the license was surrendered.

⁵ This amount would cover a period of one year for a GSO space station.

⁶ Once the subsequent bond is on file, the Bureau will act expeditiously to release the prior bond.