

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

In the Matter of)
Spectrum Five LLC) IB Docket No. 20-399
Petition for Enforcement of Operational Limits and)
for Expedited Proceedings to Revoke Satellite)
Licenses)

MEMORANDUM OPINION AND ORDER

Adopted: November 13, 2023

Released: November 13, 2023

By the Chief, Enforcement Bureau:

I. INTRODUCTION

1. In this Order on Reconsideration, we dismiss and, on alternative and independent grounds, deny a request filed by BIU, LLC (BIU) to reinstate the above-captioned Petition filed by Spectrum Five LLC (Spectrum Five).1 For the reasons discussed below, we dismiss BIU’s reconsideration request because it was filed late in violation of Section 405(a) of the Communications Act of 1934, as amended (the Act), and section 1.106(f) of the Commission’s rules.2 On alternative and independent grounds, after reviewing the record, we deny the reconsideration request because BIU has not demonstrated that the withdrawal of the Spectrum Five Petition was procured by fraud on the Commission’s processes.

II. BACKGROUND

2. On November 6, 2020, Spectrum Five filed the above-captioned Petition asking the Commission to require Intelsat License LLC (Intelsat) to come into compliance with the terms of its licenses for the Intelsat 30 and Intelsat 31 satellites.3 On April 12, 2023, Spectrum Five’s outside counsel submitted a letter stating that Spectrum Five withdraws its Petition.4 In response, the Commission’s Enforcement Bureau (Bureau) on April 24, 2023, publicly released an Order dismissing the Spectrum Five Petition with prejudice.5

1 See Letter from Michael H. Strub, Jr., Counsel for BIU, LLC, to Loyaan A. Egal, Chief, Enforcement Bureau, FCC, IB Docket No. 20-399 (filed June 9, 2023) (BIU Reconsideration Letter); Petition of Spectrum Five for Enforcement of Operational Limits and for Expedited Proceedings to Revoke Satellite Licenses, IB Docket No. 20-399 (filed Nov. 6, 2020) (Spectrum Five Petition).

2 47 U.S.C. § 405(a); 47 CFR § 1.106(f).

3 See Spectrum Five Petition.

4 See Letter from Samuel L. Feder, Counsel for Spectrum Five, LLC, to Marlene H. Dortch, Secretary, FCC, IB Docket No. 20-399 (filed Apr. 12, 2023) (“Spectrum Five LLC respectfully withdraws its petition for Enforcement of Operational Limits and for Expedited Proceedings to Revoke Satellite Licenses.”).

5 See Spectrum Five LLC, Order, DA 23-345, 2023 WL 3152002 (EB 2023) (EB Dismissal Order). On June 23, 2023, BIU filed a Petition for Review of the EB Dismissal Order with the United States Court of Appeals for the D.C. Circuit. See Petition for Review of Petitioner BIU, LLC, BIU, LLC v. FCC, No. 23-1163 (D.C. Cir. June 23, 2023). On August 14, 2023, the Commission filed a Motion to Dismiss the BIU Petition for Review. See Motion to (continued....)

3. On June 9, 2023, BIU filed a letter in the above-captioned proceeding alleging that the withdrawal of the Petition was “procured by fraud” at the direction of R. David Wilson, Chairman and CEO of Spectrum Five.⁶ In the letter, BIU alleges that BIU and Spectrum Five are parties to certain loan agreements.⁷ According to BIU, Spectrum Five defaulted on its loan, resulting by the terms of the loan agreements in the appointment of BIU as Spectrum Five’s exclusive attorney-in-fact with the sole authority to authorize the dismissal of the Spectrum Five Petition.⁸ BIU asserts that Mr. Wilson did not notify BIU of his withdrawal of the Petition.⁹ In its letter, BIU asks the Bureau to reinstate the Petition and reopen the docket.¹⁰

4. On August 25, 2023, Mr. Wilson, on behalf of Spectrum Five, replied to the BIU Reconsideration Letter, contending that BIU has no right to assert control over Spectrum Five and has no right to claim it represents Spectrum Five.¹¹ Rather, Mr. Wilson claims that he was the only person authorized to make decisions for Spectrum Five, and that the provisions of the loan agreements cited by BIU related only to BIU’s authority to perform ministerial functions on Spectrum Five’s behalf, such as signing of tax filings.¹²

5. On September 5, 2023, BIU responded to Spectrum Five’s August 25, 2023 letter, claiming that specified terms of the loan agreements “irrevocably designated, made, constituted, and appointed BIU as Spectrum Five’s true and lawful attorney-in-fact.”¹³ BIU claims that Spectrum Five’s interpretation of the contractual language would mean BIU’s power-of-attorney does not convey the right to protect BIU’s investment, which BIU alleges would violate the “fundamental principle of contract interpretation that a contract should be interpreted so as to give meaning to each of its provisions.”¹⁴

III. DISCUSSION

6. Pursuant to section 405(a) of the Act and section 1.106(f) of the Commission’s rules, a petition for reconsideration must be filed within 30 days from the date of public notice of the Commission action.¹⁵ Public notice of the Bureau’s decision to grant Spectrum Five’s request to withdraw its Petition and to terminate the proceeding was given on April 24, 2023, when the decision was released to the public.¹⁶ Pursuant to section 1.4 of the Commission’s rules, the first day to be counted in computing the 30-day reconsideration period was April 25, 2023, resulting in the last day for filing an acceptable petition

Dismiss of Respondent Federal Communications Commission, *BIU, LLC v. FCC*, No. 23-1163 (D.C. Cir. Aug. 14, 2023). On October 19, 2023, the D.C. Circuit granted the Motion to Dismiss. *See* Order, *BIU, LLC v. FCC*, No. 23-1163 (D.C. Cir. Oct. 19, 2023).

⁶ *See* BIU Reconsideration Letter, *supra* note 1, at 1.

⁷ *Id.* at 3.

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.* at 5.

¹¹ *See* Letter from R. David Wilson, Spectrum Five, LLC, to Loyaan A. Egal, Chief, Enforcement Bureau, FCC, IB Docket No. 20-399, at 2-3 (filed Aug. 25, 2023) (Spectrum Five Reply).

¹² *Id.* at 3.

¹³ *See* Letter from Michael H. Strub, Jr., Counsel for BIU, LLC, to Loyaan A. Egal, Chief, Enforcement Bureau, FCC, IB Docket No. 20-399, at 1 (filed Sept. 5, 2023) (BIU Response).

¹⁴ *Id.* at 1-2 (quoting *Nationwide Mut. Ins. Co. v. Nat’l REO Mgmt., Inc.*, 205 F.R.D. 1, 11 (D.D.C. 2000)).

¹⁵ 47 U.S.C. § 405; 47 CFR § 1.106(f).

¹⁶ 47 CFR § 1.4(b)(2) (providing that “for non-rulemaking documents released by the Commission or staff” the date of public notice is “the release date”); *see supra* note 5.

for reconsideration of May 24, 2023.¹⁷ BIU filed its reconsideration request on June 9, 2023, over two weeks after the statutory deadline for seeking reconsideration.¹⁸ While BIU claims that it did not become aware of the Bureau’s decision until June 6, 2023, the Bureau’s public release of the decision on April 24, 2023, provided BIU with constructive notice of the decision.¹⁹ Accordingly, we dismiss BIU’s reconsideration request as untimely.²⁰

7. On alternative and independent grounds, we deny the reconsideration request because BIU has not demonstrated that the withdrawal of the Spectrum Five Petition was procured by fraud on the Commission’s processes, but rather is a matter of private contract dispute between BIU and Spectrum Five. The Commission has previously considered procedurally improper petitions for reconsideration where there was undisputed evidence of fraud on the Commission’s processes.²¹ In this case, however, there is no such evidence. Rather, Spectrum Five and BIU disagree as to whether Mr. Wilson had authority to withdraw the Petition based on competing interpretations of contractual language. The Commission has long held that it is not the proper forum for adjudicating such private contractual disputes.²² This is solely a matter between BIU and Spectrum Five and is justiciable, if at all, in a court of competent jurisdiction and not by the Commission.²³ Accordingly, based on the record before us, we conclude that BIU has not demonstrated that the withdrawal of the Spectrum Five Petition was procured by fraud on the Commission’s processes. Therefore, on alternative and independent grounds, we deny the Spectrum Five Petition.

IV. ORDERING CLAUSES

8. Accordingly, **IT IS ORDERED** that, pursuant to sections 4(i) and 405(a) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 405(a), and section 1.106 of the

¹⁷ 47 CFR § 1.4(c)-(d).

¹⁸ See *supra* note 1.

¹⁹ See *K. Rupert Murdoch (Transferor) and Fox Entm’t Group (Transferee)*, Memorandum Opinion and Order on Reconsideration, 24 FCC Rcd 5824, 5827, para. 11 (2009) (“public notice constitutes constructive notice”); see also *Holy Family Oratory of St. Philip Neri*, Memorandum Opinion and Order, 29 FCC Rcd 13273, 13274, para. 5 (2014) (unawareness of public notice of decision insufficient basis for consideration of late-filed reconsideration petition).

²⁰ 47 U.S.C. § 405(a); 47 CFR § 1.106(f).

²¹ See, e.g., *Champion Communications Services, Inc.*, Order, 15 FCC Rcd 12832, 12832, para. 3 (WTB 2000) (both assignee and assignor agreed that assignment application was signed by unauthorized person); *Comtex Communications, Inc.*, Order, 15 FCC Rcd 11730, 11731, para. 6 (WTB 2000) (undisputed showing that assignor never authorized the assignment of its license).

²² See, e.g., *Arecibo Radio Corp.*, Memorandum Opinion and Order, 101 FCC 2d 545, 548 (1985); *Applications of Cellco Partnership d/b/a Verizon Wireless and Atlantis Holdings LLC*, Memorandum Opinion and Order and Declaratory Ruling, 23 FCC Rcd 17444, 17538, para. 214 (2008); see also *Listeners’ Guild, Inc. v. FCC*, 813 F.2d 465, 469 (D.C. Cir. 1987) (referring to the “Commission’s longstanding policy of refusing to adjudicate private contract law questions for which a forum exists in the state courts”).

²³ See *In Re Am. Indus. Door, Inc.*, Order on Reconsideration, 16 FCC Rcd 16300, 16302, para. 5 (WTB 2001) (finding insufficient evidence that assignment was procured by fraud on the Commission’s processes; rather, dispute was “solely a matter between assignor and assignee, justiciable, if at all, in a court with civil jurisdiction and not by the Commission”).

Commission's rules, 47 CFR § 1.106, the reconsideration request filed by BIU, LLC on June 9, 2023, is DISMISSED and, in the alternative, is DENIED.²⁴

9. **IT IS FURTHER ORDERED** that a copy of this Memorandum Opinion and Order shall be sent by first class mail and certified mail, return receipt requested, to Counsel for BIU, LLC, Michael H. Strub Jr., Esq., Greenberg Gross LLP, 650 Town Center Drive, Suite 1700, Costa Mesa, California 92626.

FEDERAL COMMUNICATIONS COMMISSION

Loyaan A. Egal
Chief
Enforcement Bureau

²⁴ This action is taken pursuant to authority delegated by sections 0.111 and 0.311 of the Commission's rules. *See* 47 CFR §§ 0.111, 0.311.