

**JOINT STATEMENT OF
COMMISSIONERS MICHAEL J. COPPS AND JONATHAN S. ADELSTEIN
DISSENTING**

Re: Rainbow DBS Company LLC; Consent to Withdraw and Unconditionally Release Bonds and Request for Waiver of the Bond Requirement; File Nos. SAT-LOA-20030827-00172 et al; Call Signs: S2485, S2554, S2488, S2555, S2486

While this is a case with difficult facts, we do not believe the public interest is served by granting Rainbow DBS Company LLC (“Rainbow”) relief from its \$11.25 million bond obligation. Given the clear Commission direction on the impact of changed economic circumstances on satellite licensees, it is unclear to us why the majority, without public comment, would substantially weaken the bond requirement and our relatively new satellite licensing rules for the benefit of one company.

We are sympathetic to the expenses incurred by Rainbow in attempting to develop its DBS service. The Commission actually took specific steps to promote the Rainbow service on several occasions.¹ But with regards to our bond requirements, the Commission has been clear that “to the extent petitioners are asserting that satellite entrepreneurs should be free to apply for and obtain satellite licenses and later abandon their licenses because of economic changes in the marketplace, we believe that such practices are inconsistent with the public interest.”²

Indeed, all satellite licensees will incur costs in the development of their systems. But the bond requirement should not rise or fall on how many dollars a licensee incurs in development or whether similarly situated spectrum may or may not be available.³ The Commission created the bond requirement in the first place to avoid these very questions. The theory behind the bond requirement is that the Commission does not have to be put in the position of having to look behind the original intent of the licensee. Instead, the applicant’s willingness to forfeit capital as a bond itself testifies to the applicant’s qualifications to secure the slot. “Thus, financial qualifications will become a market-driven rather than a regulatory determination.”⁴ How the slot ultimately is used, though, is in the sole discretion of the licensee.

In this case, Rainbow, and its parent company Cablevision, were well aware of the bond requirements at the time of receiving their five Ka-band licenses. In fact, the company initially submitted bonds in the amount of \$25 million (based on a \$5 million bond per satellite) before posting a reduced \$3 million per satellite as a result of changes to the Commission’s rules. After the company met the first milestone to execute a binding contract, the total bond amount was reduced from \$15 million to \$11.25 million, where it currently stands.

¹ See, e.g., *Rainbow DBS Co. LLC; Applications for Special Temporary Authority to Operate a Direct Broadcast Satellite Over Channels 23 and 24 at the 61.5° W.L. Orbital Local*, Order and Authorization, 18 FCC Rcd 19825 (2003).

² Amendment of the Commission’s Space Station Licensing Rules and Policies, *First Order on Reconsideration and Fifth Report and Order*, IB Docket No. 02-34, 19 FCC Rcd 12637, 12652 (2004) (*Fifth Report and Order*) (underline added).

³ As the item notes, EchoStar filed almost simultaneously with Rainbow for one of the Ka-band slots, but was denied access to that license because it was awarded to Rainbow under our first-come, first-served licensing regime.

⁴ Amendment of the Commission’s Space Station Licensing Rules and Policies, *First Report and Order and Further Notice of Proposed Rulemaking*, IB Docket No. 02-34, 18 FCC Rcd 10760, 10825 (2003).

While we believe the legal position set forth by the Commission in adopting the bond requirement counsels against a grant of the \$11.25 million bond waiver, we also are troubled by the lack of accountability in reaching this decision. It is difficult to understand how the Commission can part with \$11.25 million meant for the U.S. Treasury without seeking public comment or developing a record beyond Rainbow's initial three and half page filing. Where are the financial affidavits detailing the \$13 million purportedly spent on developing and constructing the five (5) Ka-band satellites? Is the \$2.6 million a typical amount that a licensee would expend to hit its first milestone? What is the financial impact of this decision with respect to current licensees with bond requirements?

The Commission has spoken definitively on the issue of satellite licensees facing changes in economic conditions that would lead them to alter business plans: "regardless of its intent, the actions of a licensee who obtains a license and surrenders it later have the same effect as the actions of a licensee who warehouses scarce orbit and spectrum resources."⁵ The situation involving Rainbow is on point, and we see no reason to upset that determination and the public interest for the benefit of one licensee.

⁵ *Fifth Report and Order* at 12652.