

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

<b>In the Matter of</b>	)	
	)	
<b>Amendment of the Commission's Space Station Licensing Rules and Policies</b>	)	<b>IB Docket No. 02-34</b>
	)	
<b>2000 Biennial Regulatory Review – Streamlining and Other Revisions of Part 25 of the Commission's Rules</b>	)	<b>IB Docket No. 00-248</b>
	)	
	)	

**PETITION FOR RECONSIDERATION AND COMMENTS  
OF  
THE BOEING COMPANY, HUGHES NETWORK SYSTEMS, INC., IRIDIUM  
SATELLITE LLC, LOCKHEED MARTIN CORPORATION,  
LORAL SPACE & COMMUNICATIONS LTD.,  
MOBILE SATELLITE VENTURES LP, PANAMSAT CORPORATION,  
AND SES AMERICOM, INC.**

September 26, 2003

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companies who arguably would be most harmed if such speculation occurred. However, the Petitioners firmly believe that the Commission's new bond requirement is unnecessary in light of the totality of the protections against speculation reflected in the new satellite licensing rules, and will impose significant and unnecessary costs on satellite operators. Accordingly, the Petitioners hereby request that the Commission eliminate the requirement that licensees post bonds that are payable upon failure to meet any license milestone.<sup>2</sup>

## I. INTRODUCTION AND SUMMARY

The Petitioners have an interest in this proceeding as licensees, operators or manufacturers of satellite systems that are used to serve the United States.<sup>3</sup> The Petitioners believe that the Commission has gone too far in its efforts to deter "speculation" by putative satellite licensees, and adopted a requirement that is instead likely to deter legitimate applications for U.S. satellite licenses and stifle innovation. The one aspect of the new licensing regime that Petitioners ask be eliminated is the new performance bond requirement.

First and foremost, the *Order* cites no statutory basis for the Commission's authority to impose the bond requirement. The law is plain that the Commission cannot require its licensees to pay a single dime for any purpose (much less \$5 million or more), unless that payment is authorized by statute. The Communications Act defines and narrowly circumscribes the Commission's authority to require payments: (i) application fees and regulatory fees, (ii) penalties and forfeitures in amounts specified by statute and in accordance with specified procedures, and (iii) payments in connection with license auctions. None of those statutory sources provides any authority whatsoever for the new multi-million dollar fine to be paid for

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<sup>2</sup> See *Order* ¶¶ 166-172.

<sup>3</sup> Petitioners accordingly have standing to bring this petition under the Commission's rules. See 47 C.F.R. § 1.429(a).

missing a license milestone. The Commission simply lacks authority to impose a strict-liability and process-free monetary forfeiture for failure to implement a satellite system in accordance with a license milestone.

Second, a bond requirement is unnecessary in light of the combined effect of the Commission's other new rules that are designed to deter speculation. The *Order* adopts no fewer than five other separate provisions that are intended to do so, including limits on transferability, strict construction milestones, "black marks" for failing to build a licensed system, an absolute limit on the number of licenses, and other measures.<sup>4</sup> Against this backdrop of Commission-determined deterrents, the additional requirement that licensees post a multi-million dollar bond is unnecessary.

Yet the bond requirement will pose significant costs on satellite operators. It will deter the development of new and innovative services by existing satellite operators, as well as the launch of spacecraft by potential new competitors. The fact that replacement satellites are exempt from the bond requirement means that the burden of the bond falls on new spacecraft--- those that by definition are more risky to deploy because of the need to develop new markets and services and/or because of the challenges inherent in deploying in "new" frequency bands.

Due to the inherently risky and capital-intensive nature of the satellite industry, the risk of default on a bond is unfortunately substantial. It is inevitable that some proposed and licensed satellite systems will not get built because the market is not yet ready to embrace the new technology or service; however, it is ultimately the market that decides. And even if a licensee never defaults, the bond requirement still poses a substantial cost in the form of fees that must be paid to the surety company and/or the cost of maintaining an escrow. All elements of

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<sup>4</sup> Some Petitioners are filing separately to address their own views on some of the anti-speculation measures adopted in the *Order*.

the satellite industry are adversely affected by satellite operators bearing these costs--- incumbents, and new entrants alike, as well as manufacturers downstream. The Commission should not burden the satellite industry with these costs; it should reconsider and remove the requirement that licensees post a bond.

## **II. THE COMMISSION LACKS LEGAL AUTHORITY TO IMPOSE A BOND REQUIREMENT**

The *Order* cites no statutory basis providing the Commission authority to impose the bond requirement. At its essence, the bond requirement provides that millions of dollars be paid to the government if a licensee misses any license milestone. The law is plain that the FCC cannot require its licensees to pay any sum of money for any purpose (much less \$5 million or more), unless that payment is authorized by statute.

The Communications Act defines and narrowly circumscribes the Commission's authority to require payments. It may collect application fees and regulatory fees, but only in amounts and under circumstances that are well defined and narrowly limited.<sup>5</sup> The Commission may also impose penalties and forfeitures, but the amount of those penalties is limited by statute, and those penalties may be levied only in accordance with specified procedures, which are designed to afford due process to the penalized party.<sup>6</sup> Finally, the Commission is specifically authorized to require applicants to make payments in connection with license auctions, but again that provision is scrupulously limited in its application and its scope.<sup>7</sup>

None of these sources provides any authority whatsoever for the new multi-million dollar forfeiture to be made upon missing a construction milestone. And indeed, the very

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<sup>5</sup> See 47 U.S.C. § 158 (application fees); 47 U.S.C. § 159 (regulatory fees).

<sup>6</sup> See generally 47 U.S.C. §§ 501-510 (Communications Act provisions related to penalties and forfeitures). See also generally 5 U.S.C. §§ 551-559 (Administrative Procedure Act).

<sup>7</sup> See 47 U.S.C. § 309(j).

existence of these other specific and narrowly limited authorizations in the Communications Act demonstrates that no more general authorization (such as would permit a multi-million dollar strict-liability penalty for failure to meet a license milestone) can be inferred. Rather, consistent with well-established principles of statutory construction, it would appear that “Congress implicitly excluded a general . . . rule by explicitly including a more limited one.”<sup>8</sup>

The *Order* fails to cite any source or authority to impose the multi-million dollar penalty. The only statutory provision cited in connection with the bond requirement merely sets out qualifications of those who would act as sureties for bonds payable to the government, and provides no substantive authorization to require bonds or other penalty payments in the first place.<sup>9</sup> Nor is any support provided by the *Private Paging Exclusivity Order*, on which the Commission heavily relies.<sup>10</sup> That order (like this one) breezily imposed its bond requirement without any discussion of its statutory authority; nor was that requirement apparently ratified by any court on appeal.<sup>11</sup> The Commission lacks authority to impose a strict-liability and process-free monetary forfeiture for failure to implement a satellite system in accordance with milestones.

### **III. THE COMMISSION HAS SUFFICIENTLY DEALT WITH THE POTENTIAL FOR SPECULATIVE APPLICATIONS**

The Commission correctly observed that, depending on how it was implemented, a first-come, first-served licensing system might allow “frivolous speculative applications.” In adopting its new licensing rules, the Commission has put in place a host of mechanisms –

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<sup>8</sup> *TRW v. Andrews*, 534 US 339, 346 (2001); *see also Leatherman v. Tarrant County Narcotics Unit*, 507 U.S. 163, 168 (1993) (applying *expressio unius maxim*).

<sup>9</sup> *Order* ¶ 170 n.397 (citing 31 U.S.C. § 9304 *et seq.*).

<sup>10</sup> *E.g.*, *Order* ¶ 170 (citing *Amendment of the Commission’s Rules to Provide Channel Exclusivity to Qualified Private Paging Systems*, Report and Order, 8 FCC Rcd 8318 (1993)).

<sup>11</sup> *Id.* ¶¶ 22-24.

including the bond requirement – that are intended to prevent this result.<sup>12</sup> As an initial matter it is unclear to what extent the Commission’s new first-come, first-served licensing scheme, as adopted, actually will encourage speculative applications. But even to the extent that it could do so, the Commission’s various other safeguards are sufficient to prevent such speculation, and the bond requirement is therefore unnecessary.

**A. There is little evidence that speculative applications will be a problem**

The Commission expressed its view in the *Order* that its prior system of licensing through processing rounds may have created incentives for speculation: “[A]nnouncing a cut-off date can cause a sense of scarcity to develop, when applicants recognize that this may be their only opportunity to secure access to that orbit/spectrum resource.”<sup>13</sup> Likewise, the Commission expressed the view that processing rounds may have facilitated speculative applications by creating and publicizing the application window: “By announcing a cut-off date in a processing round, the Commission gives both speculative and legitimate applicants an opportunity to file.”<sup>14</sup> It is against this background that the Commission designed its new first-come, first-served procedure.

Because the Commission has indicated that it intends to process applications “dramatically more quickly and efficiently,”<sup>15</sup> prospective applicants should not feel the need to make long-range forecasts and potentially to err on the side of over-applying. Nor should first-come licensing create the sense of “scarcity” that the Commission believes existed under its prior regime, and the resulting “land-rush” mentality that the Commission was concerned about. In

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<sup>12</sup> *Order* ¶ 226.

<sup>13</sup> *Id.* ¶ 227.

<sup>14</sup> *Id.* ¶ 227.

<sup>15</sup> *Id.* ¶ 74.

short, by the Commission's own reasoning, it has taken a number of steps designed to deter speculation. A bond requirement is unnecessary and overkill.

Nor do the precedents cited by the *Order* support the notion that first-come licensing should necessitate a bond requirement. The *Order* states that its new procedures will be "based in large part on the procedure used for FM radio and television licenses from 1985 to 1998."<sup>16</sup> But those procedures did not include a bond requirement.<sup>17</sup> The strongest evidence considered by the Commission, then – its own experience with first-come licensing in the broadcast context – suggests that posting a bond is not necessary to deter speculation in a first-come, first-served environment.

**B. The Commission has adopted more than adequate procedures to deter speculation**

The Commission has adopted a variety of procedures to deter speculative filings. These include: (i) limits on the number of applications that can be filed,<sup>18</sup> (ii) strict milestone requirements,<sup>19</sup> (iii) potential "black marks" for failing to implement a licensed system,<sup>20</sup> (iv) the requirement that satellite applications be substantially complete,<sup>21</sup> and (v) restrictions on the transferability of "queue" positions.<sup>22</sup> An unchanged element of the Commission's policy, which also serves to deter speculative filings, is the forfeiture of an applicant's filing fee. There is little

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<sup>16</sup> *Id.* ¶ 71.

<sup>17</sup> *See generally* Amendment of the Rules Concerning the Cut-Off Procedures for FM and TV Broadcast Stations, Report and Order, 50 Fed. Reg. 19936 (1965).

<sup>18</sup> *Order* ¶¶ 228-233.

<sup>19</sup> *Id.* ¶¶ 173-208.

<sup>20</sup> *Id.* ¶¶ 197-202.

<sup>21</sup> *Id.* ¶ 244.

<sup>22</sup> *Id.* ¶¶ 240-243.

doubt that these measures will limit and deter speculative filings, and render further safeguards superfluous.

One important deterrent to speculative filings is the strict numerical limit on applications: five GSO-like or one NGSO-like applications essentially limits an operator to applying for a single network in any given band.<sup>23</sup> Yet the limit of five GSO locations in a given frequency band is not adequate to provide a single global service with good look angles for each satellite, and it does not afford the needed opportunity to have in-orbit redundancy in each region of the world.<sup>24</sup> Accordingly, potential licensees will be forced to consider very carefully whether to proceed with a particular application, when doing so might hinder the ability to apply for another system in the future.

Likewise, the Commission has established a series of more stringent license milestones that are intended to act as a check against speculation and license “warehousing.”<sup>25</sup> The schedule adopted by the Commission requires execution of a non-contingent contract within one year of licensing and critical design review within two years, and the commencement of physical construction within 2.5 or 3 years, respectively, for NGSO and GSO systems. The clock will begin to run on this schedule soon after an application is filed, because the Commission has indicated that system licensing will be expedited under the first-come, first served framework. These multiple milestones will reduce the incentive and ability of operators to apply for and warehouse licenses that they do not intend to build.

Moreover, the construction milestones will have teeth: not only will failure to meet a milestone result in the cancellation of a license, but it will also result in a “black mark”

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<sup>23</sup> *Id.* ¶¶ 228-233.

<sup>24</sup> This Petition should not be construed as an endorsement of these strict limits.

<sup>25</sup> *Order* ¶¶ 173-208.

against the licensee.<sup>26</sup> An operator that misses three milestones in any three-year period will be considered to have established a “pattern of failure to meet milestones,” presumed to be a speculator, and be prohibited from maintaining more than two applications and/or unbuilt licenses at the same time, in *any* frequency band.<sup>27</sup> This draconian penalty will serve as an effective deterrent on the filing of speculative applications, for two such licensed-but-unbuilt systems would dramatically restrict an operator’s ability to expand or modify its services in a way that would require new satellites and new applications.<sup>28</sup>

Finally, the Commission will also continue to take a “hard look” at applications and to require that they be substantially complete – a requirement that should act as a significant deterrent to frivolous applications.<sup>29</sup> The Commission has also stated that applicants will be precluded from transferring their “queue” positions.<sup>30</sup> Like the Commission’s other requirements, these will establish an environment that is hostile to speculation, in which speculation bears little potential payoff but much potential risk.<sup>31</sup> Against the totality of these measures, there is no need to impose the additional requirement that licensees post a bond.

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<sup>26</sup> *Id.* ¶¶ 197-202.

<sup>27</sup> *Id.*

<sup>28</sup> *See also, supra* note 4. With respect to this particular provision, some clarification by the FCC may be needed with regard to the inter-relationship between the new attribution rules in Section 25.159(c) and the penalties with regard to future filings that are contained in Section 25.159(d).

<sup>29</sup> *Id.* ¶ 244.

<sup>30</sup> *Id.* ¶¶ 240-243.

<sup>31</sup> Nor is the bond requirement necessary as a substitute for the financial qualification requirements, which were intended to demonstrate an applicant’s financial ability to build a licensed system. *Cf. Order* ¶ 167. The ability of a licensee to obtain a bond has little or nothing to do with the market’s assessment of whether the licensee is likely to construct. Rather, it has everything to do with the market’s assessment of whether, at the end of the day, the licensee will have millions of dollars to repay the surety if the bond is ultimately forfeited.

**IV. THE BOND REQUIREMENT WILL IMPOSE SIGNIFICANT AND UNNECESSARY COSTS**

There is no question that the bond requirement will impose a substantial and additional cost on satellite operators that will be ultimately borne by end users. These costs will create barriers to legitimate risk-taking and will deter new and innovative satellite service proposals.

**A. Bonds will raise the cost of satellite systems**

First and foremost, the bond requirement will add to the cost of satellite systems. The exact cost of such a bond is unclear. In some cases, the bond may need to be collateralized in whole or part, which means that the licensee's out-of-pocket cost would be equal to its cost of capital for the sum of the collateral it needs to post. In the best case, with a company that is very strong financially, the out-of-pocket cost of having a surety post a bond would be on the order of four or five percent per annum. In all cases, the existence of a bond would appear as a liability on a company's balance sheet, and therefore could affect its credit rating. And in all cases the final cost associated with the bond is the risk (and significant cost) of default, which could be due to circumstances entirely outside the control of the licensee. Together, these costs are substantial and create unnecessary new burdens on licensees.

1. *Changed circumstances should not lead to a multi-million dollar default*

A five to seven and a half million dollar forfeiture for missing a license milestone is a severe penalty. The reality is that the failure to implement a satellite system typically reflects the workings of the marketplace---some economic, technical, or other condition is just not ripe. History demonstrates that many licensees who truly intended to construct and operate a system, and reasonably believed they had the expertise to do so, found that the time just was not right for their idea. The early days of the DBS industry demonstrate that a good idea is

sometimes years in the making. Certainly, early DBS pioneers arguably failed in their efforts to launch DBS. But no one views these pioneers as speculators; rather, they paved the way for successful ventures launched a decade later. It is not difficult to imagine the stifling effect on the development of the DBS industry that would have occurred if the pioneer DBS licensees had all forfeited five million dollars per slot.

And sometimes the market “speaks” and prevents the deployment of a new system because circumstances change. It is by no means a stretch to imagine, for example, that an entity might apply for and receive a license to construct and operate a system designed to provide long-haul data carriage, only to discover a few years into the process that there is a world-wide glut of data capacity resulting primarily from over-investment in terrestrial fiber-optic systems. Indeed, in the early days of the FSS industry, many business plans were based on the use of FSS spacecraft to provide long distance telephony. That turned out not to be a viable business model, and many of the early-licensed C and Ku band FSS spacecraft were never launched. Eventually, the industry developed a vibrant business based on providing video distribution to cable systems and broadcast networks and providing the backbone for VSAT and other private networks.

Indeed, the history of the satellite industry demonstrates that any number of marketplace or technical developments might render a licensed or partially-constructed satellite obsolete or otherwise impractical to proceed to completion and launch. These are market risks inherent in a rapidly changing industry and associated with developing new and innovative services. They must not be equated with “speculation.”

Nor is the risk inherent in satellite ventures limited to market and technical risks. For example, the process of ITU coordination poses its own additional risks. Even after the U.S.

grants a space station license it is not uncommon for the process of ITU coordination to impose significant and potentially prohibitive limits on the way in which such a license can be used. Specifically, in the *Order*, the Commission acknowledges its long-standing policy that U.S. licensees take their authorizations subject to the requirement to coordinate under ITU procedures, and subject to the ITU priority of any other system at the specified orbital location operating on the same frequency bands. Thus, a U.S. space station licensee may have to “give way” to a subsequently launched non-U.S.-licensed system with higher ITU priority:<sup>32</sup>

As is the case now in processing rounds, U.S. licensees assigned to a particular orbit location in a first-come, first-served approach take their licenses subject to the outcome of the international coordination process. The Commission is not responsible for the outcome of any particular satellite coordination and does not guarantee the success or failure of the required international coordination. Moreover, we expect U.S. licensees to abide by international regulations when their systems are coordinated. This may mean that the U.S.-licensee may not be able to operate its system if the coordination cannot be appropriately completed.<sup>33</sup>

Thus, if the U.S. licensee cannot secure a sufficient level of ITU priority, or if it must provide protection to other systems in a way that prohibitively limits its own ability to provide service, it again is left with a license that may not accommodate its own business plan.

Nor would grant of selective waivers allow licensees under these circumstances to avoid a multi-million dollar default.<sup>34</sup> An extension of time in which to meet a milestone, even if available, would do no good if the system proves economically untenable and simply will never be built. Nor would the circumstances described above appear to be the sort of “circumstances beyond [a licensee’s] control,” that the Commission appears to be contemplating in its stated

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<sup>32</sup> *Order* ¶ 96.

<sup>33</sup> *Id.* (footnote omitted), *see also id.* ¶ 295.

<sup>34</sup> *Order* ¶ 170 (“bond would not be payable if the licensee missed a milestone because of circumstances beyond its control that warrant a milestone extension.”).

exception to the bond's conditions of default.<sup>35</sup> Yet a changed business or regulatory environment can dictate an end to a proposed satellite service just as surely as would a natural disaster or any other circumstance beyond the licensee's control.

There is no legitimate basis for effectively levying a massive fine in the form of a forfeited bond against licensees who find that changed circumstances prevent them from completing a proposed system.

2. *The mere fact of posting a multi-million dollar bond will impose substantial costs and introduce the default risk*

The risk of default is not the only cost imposed by the bond requirement. In addition to the *potential* loss of the entire bonded amount on default, a licensee will face the smaller but *certain* loss of the cost of placing and renewing the bond and of the reduced debt capacity. If a licensee obtains a performance bond through a conventional surety, it must pay that surety a percentage of the bond amount as an annual fee. In standard construction and similar contexts that percentage can be up to four percent of the contract amount. On two five-million dollar bonds (covering two GSO orbital locations), the surety fee alone could well be up to \$400,000 in any given year. The satellite company's available borrowing capacity is reduced by the amount of the bond whether it is collateralized or not. There is additional cost if the bond must be collateralized.

Nor is it clear that a conventional surety would issue such a bond, or that it would do so on terms comparable to those received by highway contractors and the like.<sup>36</sup> Indeed, given the higher perceived venture risk, it seems likely that many licensees would be required by

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<sup>35</sup> *Id.*

<sup>36</sup> Indeed, it seems likely that contractors would receive better bond terms than would satellite operators, because contractors (i) generally receive periodic payments that mitigate the risk that they will run out of money before they complete the project, and (ii) carry no material risk of default on account of technological or marketplace changes.

the surety company to collateralize their performance bonds by placing money in escrow. In that case, the cost of the bond would be the difference between the licensee's cost of money, and whatever amount it could earn in interest on the sum placed in escrow. The cost of money to a satellite company might be on the order of 8 to 10 percent, yet in today's interest rate environment an escrow account is unlikely to receive more than 1 to 1.5 percent interest. Thus, the annual cost of maintaining two five million dollar escrows might be \$700,000 or more per annum; \$2.8 million over four years.

The requirement to post and maintain a multi-million dollar bond would impose unnecessary, unproductive costs on all satellite licensees. There would be no distinction between speculative licensees and legitimate ones: every satellite operator would be burdened with this cost without regard to the merits of its business plans, its satellite expertise, or its financial credibility. And that cost would act as does any other tax at the corporate level: it would raise the cost of the service being provided, and generally impact the competitiveness of the industry. The Commission has long sought to avoid imposing "unnecessary costs" on its licensees,<sup>37</sup> and should not impose this new burden on satellite providers.

**B. Bonds will impose particular costs on innovation**

The Commission itself recognized that the bond requirement might have a particular impact on new and innovative services, and accordingly asked parties to "explain in detail" what sort of impact it might have.<sup>38</sup> In fact, the impact of the bond requirement's costs will have a greater effect on new and innovative services, and indeed the bond requirement will impose certain burdens uniquely on such services.

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<sup>37</sup> See, e.g., *Year 2000 Biennial Review – Amendment of Part 22, Report and Order*, 17 FCC Rcd 18401 ¶ 12 (2002) (eliminating analog cellular requirement in order to avoid "unnecessary operating costs" on providers).

<sup>38</sup> *Order* ¶ 334.

In assessing the impact of the bond, it is important to recognize that the bond requirement will *only* apply to new satellites. Replacement satellites for existing systems will be exempt from the bond requirement, as will modifications to those satellites. Thus, the burden of the bond will fall on new spacecraft: the very systems that by definition are the most risky to deploy because of the need to develop new markets and services and/or because of the challenges inherent in deploying in “new” frequency bands. In this regard, the bond requirement imposes a disincentive and large cost on the ability of incumbent satellite companies to develop new and innovative offerings that might not be able to be deployed over their replacement satellites.

Innovative proposals always face more incremental risks than do proven business models. Moreover, innovation can come from both established operators and new entrants (whether through, *e.g.*, a new corporate business line or a small niche business). The bond requirement will impose on such innovative proposals higher costs because innovative models are likely to have a higher percentage failure rate, and thus, likely to result in some licensees defaulting on their bonds. Moreover, business plans proposing innovative and unproven models have a higher cost of capital and face higher risks than do the conservative business plans. In today’s capital-constrained markets, even conservative business plans and fleet expansion have difficulty getting funded. There is simply no question that the bond requirement will cause innovative proposals to incur unique costs and great burdens.

Furthermore, the bond requirement will impact new entrants in a separate way. New entrants generally are thinly capitalized, have limited funding sources, and experience a higher cost of capital than established companies. Any additional cost burden will have a greater impact on those entities and deplete precious funds that would otherwise be used to finance the

venture. For the same reason, new entrants would be viewed by a traditional surety as a greater risk – and they would be charged an accordingly higher premium. The incremental cost of the bond would have a disproportionate impact, of course, but more importantly the consequences of a multi-million-dollar bond default could be catastrophic. The concept that even equal costs have a disproportionate impact on new entrants is not novel, and for example the Commission recently declined to charge local phone companies for access to telephone numbers, based in part on the notion that such a requirement would “fall most heavily on new entrants that are already having a difficult time obtaining capital,” and that such a fee therefore “could harm new entrants’ ability to compete in the market.”<sup>39</sup>

**V. A U.S. BOND REQUIREMENT WOULD SET A DANGEROUS INTERNATIONAL PRECEDENT**

Striving for regulatory parity, and seeking to make the obligations of non-U.S.-licensed satellite operators “consistent with” those of U.S. licensees, the Commission determined to require foreign licensees seeking U.S. market access to post a bond in the same manner and amount as U.S. licensees. While laudable as an attempt at parity, this requirement could initiate a flood of comparable and potentially more onerous requirements throughout the world. This is precisely the type of risk that Congress sought to avoid when it passed the ORBIT Act prohibition on the auction of spectrum for international satellite systems.

The United States has traditionally been a steadfast proponent of free access to markets, and yet it now proposes to require a significant monetary bond or escrow of any foreign systems seeking access to its own market. Having set this example, the U.S. will be unable to seriously oppose such financial requirements when they are proposed by other nations. And

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<sup>39</sup> *Numbering Resource Optimization*, Third Report and Order and Second Order on Reconsideration, 17 FCC Rcd 252, ¶¶ 116-118 (2001).

there is every reason to believe that other countries, acting within their own parochial interests, would likely see fit to impose such requirements.

This could subject U.S. and foreign satellite operators to a patchwork of redundant, uncertain and potentially inconsistent financial requirements. Some countries might choose to require bonds to support their own national policies, payable according to their own peculiar timetables; others might choose to require substantial escrow deposits that begin to look much like fees for market access. The aggregate liability could be staggering, and could seriously hinder any efforts to obtain investment capital and establish an international system. Rather than impose a financial burden on its own licensees and then seek parity by similarly burdening foreign operators, the U.S. should relieve all satellite operators of the unnecessary and costly bond requirement.

Nor will exempting foreign systems from the U.S. bond requirement solve the problem by itself. These problems will become manifest even if the bond is imposed only on U.S.-licensed satellite systems. Even if the Commission ends up changing its rules, foreign regulators that have followed the current FCC precedent might not roll back their own bond requirements. Furthermore, if the Commission eliminates bonds for foreign systems but maintains them for U.S. operators, it will have created exactly the disparity it sought to avoid. Instead, the Commission should achieve general parity between U.S. and foreign systems by eliminating the bond requirement for everyone, not just foreign systems.

**VI. CONCLUSION**

In sum, the Commission lacks authority to impose a strict-liability and process-free monetary forfeiture for failure to implement a satellite system in accordance with milestones. A bond requirement is unnecessary in light of the combined effect of the Commission's other new rules that are designed to deter speculation. Additionally, a bond requirement will pose significant costs on satellite operators, deter the development of new and innovative services by existing satellite operators, and stifle the launch of spacecraft by potential new competitors. For these reasons, Petitioners urge the Commission to reconsider its bond requirement.

Respectfully submitted,

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