

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

In the Matter of)	
)	
Amendment of the)	IB Docket No. 02-34
Commission's Space)	
Station Licensing)	
Rules)	

To: The Commission

**COMMENTS IN SUPPORT OF PETITION
FOR PARTIAL RECONSIDERATION**

Pursuant to Section 1.429 of the Commission's Rules, 47 C.F.R. Section 1.429, @Contact, LLC ("@Contact") submits these Comments in support of the Petition for Partial Reconsideration ("Petition") of the Commission's First Report and Order filed by Northrop Grumman Space Technology and Mission Systems Corporation ("Northrop Grumman").¹ Specifically, @Contact agrees with Northrop Grumman that there is no discernible benefit from applying the bond requirement to applications already on file upon adoption of the First R&O. Moreover, the Commission's decision to impose a bond-posting requirement only on some pending applicants is arbitrary and unreasonable. For these reasons, @Contact supports Northrop Grumman's Petition that, among other things, asks the Commission to remove the bonding requirement on pending Ka-band NGSO applications.

The bonding requirement serves no reasonable purpose. As Northrop Grumman correctly observes, the bonding requirement adopted by the Commission's First R&O provides no disincentive to speculative application filers because the applications have already been submitted.² Moreover, Northrop Grumman states, there is no discernible distinction to be drawn among the groups of pending applications with respect to either the need for or the efficacy of efforts to discourage speculation and warehousing, *i.e.*, the bond posting requirement.³ The applications on which the Commission proposes to impose the bonding requirement were filed before or contemporaneously with other applications on which the Commission does not intend to impose a bonding requirement (Ku-band), or were applications granted prior to the adoption of new rules (Ka-band GSO).⁴ @Contact agrees with Northrop Grumman that imposing additional costs on operators solely based on the fact that the Commission has taken a longer period of time to process their applications constitutes an arbitrary and unreasonable action that the Commission must reconsider.⁵

Indeed, in view of the current condition of the satellite industry and the reduced demand for new satellite authorizations since the late 1990s, there is little risk of speculation in satellite applications. In fact, the Commission itself acknowledged that eliminating the anti-trafficking rule is "likely to expedite provision of service to the

¹ *Amendment of the Commission's Space Station Licensing Rules and Policies*, First Report and Order, 68 Fed. Reg. 51,499 (August 27, 2003) ("First R&O"). See Public Notice, Report No. 2636, October 9, 2003.

² Petition at 7-8.

³ *Id.* at 5.

⁴ *Id.* at 5-6, nn.5-6. See *First R&O* at para. 283.

⁵ *Id.*

public....”⁶ Also, the bonding requirement actually works against the Commission’s stated goal of providing innovative services to the public quickly, by imposing significant additional financial burdens on the few companies that remain interested in designing and building the systems necessary to provide new satellite services. In sum, there is simply no legal or practical justification for imposing a performance bond requirement on Ka-band NGSO applications that have been pending since 1997.

Applying a bonding requirement only on some applicants is arbitrary and unreasonable. Equally troubling is the Commission’s decision to apply a bonding requirement on a selective basis. The Commission merely states that considering pending applications for V-band and Ka-band NGSO systems under current procedures would frustrate its goals of allowing “faster service to the public, while maintaining adequate safeguards against speculation.”⁷ As Northrop Grumman notes, there is no explanation for then applying its bonding requirement policy to Ka-band NGSO and V-band applications but not to Ku-band applications. Indeed, the Commission’s International Bureau staff has publicly indicated that pending Ku-band NGSO applications will not be subject to the bond-posting requirement.⁸ Thus, were @Contact a Ku-band applicant rather than a Ka-band NGSO applicant since 1997, it would not be burdened with the formidable additional start-up costs of providing the newly required performance bond. No rationale is offered for distinguishing the applicants under this

⁶ *First R&O* at para. 281.

⁷ *Id.* at para. 279. *See also* para. 275.

⁸ *See* FCC Handout, “Frequently Asked Questions On the First Space Station Reform Order,” July 8, 2003 (Question 30) (“the new procedures will be applied to V-band applications, but not to Ku-band NGSO applications”); Tom Tycz, Chief, Satellite Division, SSPI Luncheon: Satellite Regulatory Update, June 3, 2003 (response to panelist question).

new policy, and @Contact agrees with Northrop Grumman that the bonding requirement on pending Ka-band applications is arbitrary and unreasonable.⁹

Conclusion. @Contact urges the Commission to grant Northrop Grumman's Petition to reverse imposition of the performance bond requirement on pending Ka-band NGSO applications.

Respectfully submitted,

@Contact, LLC

By: _____
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Its Attorney

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⁹ As Northrop Grumman correctly observes, "If a secondary retroactive effect of an agency rule is unreasonable, then the rule, like any other, may be struck down as arbitrary or capricious." Petition at 4, *citing Bowen v. Georgetown University Hospital*, 488 U.S. 204, 220 (1988) (Scalia, J., concurring); *also DIRECTV, Inc. v. FCC*, 110 F.23d 816, 826 (D.C. Dir.1997), *citing Bell Atlantic Telephone Cos. v. FCC*, 79 F.3d 1195, 1207 (D.C. Cir. 1996).

CERTIFICATE OF SERVICE

I, James M. Talens, have on this date, November 6, 2003, delivered by electronic means a copy of this pleading to counsel for Northrop Grumman Space Technology and Mission Systems Corporation as follows:

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