December 1, 2014

Via eRulemaking Portal

Office of the Secretary
Federal Communications Commission
445 12th Street S.W.
Washington, DC 20554

Re: Licensing and Operating Rules for Satellite Services
IB Docket No. 12-267

The Surety & Fidelity Association of America ("SFAA") is a non-profit corporation whose member companies collectively write the majority of surety and fidelity bonds in the United States. SFAA is a licensed rating or advisory organization in all states and is designated by state insurance departments as a statistical agent for the reporting of fidelity and surety experience. The vast majority of bonds that secure licensing and regulatory obligations are provided by SFAA members. We have had the opportunity to review the captioned proposed rule, which includes revisions to the surety bond requirements set forth in 47 CFR 25.165. We provide comments regarding these revisions.

Under proposed § 25.165(f), an applicant that has filed an API and Coordination Request must furnish a surety bond to ensure that the applicant completes an acceptable license application. The bond also would be payable if the application is denied. Considering that the applicant in this case would be securing "a place at the head of an application queue" (79 Fed. Reg. 65106, 65107), the Commission is seeking security to ensure that the applicant simply does not walk away from the application. However, the nature of the obligation to be secured by the bond may not be entirely susceptible to the typical underwriting of a surety bond. A surety bond secures an obligation that is owed by one party (bond principal) to another. In underwriting the bond, the surety seeks to avoid a loss caused by a default by assessing the qualifications and capabilities of the bond principal. This underwriting contemplates that the bond principal is able to control the events that lead to a default. This certainly is the case with respect to the obligation for completing the application within the required time. However, with respect to a denial of an application, many facts and variables are outside the bond principal's control. Therefore, the risk and exposure to loss caused by a default are enhanced, and a bond that would be payable upon
the denial of an application might not be widely available. We recommend that the bond should secure only the completion of the application within the required time.

In addition, the bond typically is available to cover damages or expenses that were incurred as a result of the default. The entire bond penalty should not be payable if the damages were less than the penal sum of the bond.

Finally, the provisions regarding the bond amounts set forth is § 25.165 is unclear (both with respect to the post-grant bonds (§ 25.165(a)) and the bond required under § 25.165(f)). The provisions suggest that the amount would be a floating amount based on the current rate of inflation. This framework would be difficult to underwrite. Part of the surety's underwriting involves an assessment of the bond principal's financial strength relative to the bond amount. Unlike other forms of insurance, in the event the surety must pay a loss, it has the right to seek indemnity from the principal. The surety will require a certain threshold of financial strength relative to the bond amount – the higher the bond amount, the higher the threshold. Thus, the surety must know the penal sum of the bond in order to conduct its underwriting.

Further, the penal sum must be fixed as an expression of the surety's maximum potential financial exposure. Sureties need to know its limits of exposure and need to have the ability to control the amount of exposure assumed for legal and compliance reasons. State insurance laws and Department of Treasury regulations, under 31 CFR 223.10, limit the amount of a single risk that a surety can accept. Without a definite penal sum, the surety cannot assure that it is in compliance with its legal requirements

We thank you for the opportunity to submit comments. SFAA would be happy to discuss our concerns further with you.

Sincerely,

[Signature]

Robert J. Duke