

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

FILED/ACCEPTED

AUG 14 2008

Federal Communications Commission
Office of the Secretary

In the Matter of

DIRECTV ENTERPRISES, LLC

Applications for Authority to Launch and
Operate 17/24 GHz Broadcasting-Satellite
Service Space Stations

Call Signs S2242 (SAT-LOA-19970605-
00049 *et al.*); S2243 (SAT-LOA-
19970605-00050 *et al.*); S2244 (SAT-
LOA-19970605-00051 *et al.*); S2711
(SAT-LOA-20060908-00099 *et al.*); and
S2712 (SAT-LOA-20060908-00100 *et
al.*)

RESPONSE OF DIRECTV ENTERPRISES, LLC

DIRECTV Enterprises, LLC. (“DIRECTV”) hereby responds to the comments filed by SES Americom, Inc. (“SES”) and its Canadian affiliate, Ciel Satellite Limited Partnership (“Ciel”), in connection with the above referenced applications.¹ SES and Ciel request that the Commission condition the grant of any 17/24 GHz BSS license it issues by making such license subject to coordination with satellite operators having equal or superior International Telecommunication Union (“ITU”) date priority.

The SES/Ciel proposal is not a new one. Indeed, another non-U.S. operator – Telesat Canada (“Telesat”) – proposed this same condition during the rulemaking proceeding for the 17/24 GHz BSS service. Telesat’s proposal was considered and rejected by the Commission because such a condition would not promote the public interest. There is no reason to change that policy decision now. Accordingly, the Commission should reject the condition proposed by SES/Ciel as well.

¹ See Comments of SES Americom, Inc. (dated Aug. 1, 2008); Comments of Ciel Satellite Limited Partnership (dated Aug. 1, 2008).

In the *BSS R&O*, the Commission adopted processing and service rules for the 17/24 GHz BSS service, including an orbital spacing regime in which licensees would be allowed to operate at full power and with full interference protection at designated “on grid” locations spaced four degrees apart.² Subsequently, in a *sua sponte* order on reconsideration, the Commission amended this approach to allow licensees to operate at locations up to one degree away from an on-grid slot if there are no licensed or previously-filed applications for 17/24 GHz BSS space stations less than four degrees away from the proposed offset slot.³

In reaching that decision, the Commission discussed a proposal submitted by Telesat that would condition the grant of a 17/24 GHz BSS license subject to the licensee coordinating with satellite operators having ITU priority.⁴ Although the Commission adopted several changes to the rules governing domestic coordination of 17/24 GHz BSS systems,⁵ it did not make the change requested by Telesat.

Accordingly, the issue raised by SES/Ciel in the this licensing proceeding has already been considered and rejected by the Commission. Neither SES nor Ciel seems to recognize this fact, as neither has provided any arguments in support of their proposed

² See *Establishment of Policies and Service Rules for the Broadcasting-Satellite Service at the 17.3-17.7 GHz Frequency Band and at the 17.7-17.8 GHz Frequency Band Internationally, and at the 24.75-25.25 GHz Frequency Band for Fixed Satellite Services Providing Feeder Links to the Broadcasting-Satellite Service and for the Satellite Services Operating Bi-directionally in the 17.3-17.8 GHz Frequency Band*, 21 FCC Rcd. 7426, ¶ 70 (2006) (“*BSS R&O*”).

³ See *Establishment of Policies and Service Rules for the Broadcasting-Satellite Service at the 17.3-17.7 GHz Frequency Band and at the 17.7-17.8 GHz Frequency Band Internationally, and at the 24.75-25.25 GHz Frequency Band for Fixed Satellite Services Providing Feeder Links to the Broadcasting-Satellite Service and for the Satellite Services Operating Bi-directionally in the 17.3-17.8 GHz Frequency Band*, Order on Reconsideration, 22 FCC Rcd. 17951, ¶ 1 (2007) (“*Reconsideration Order*”).

⁴ *Id.*, ¶ 7.

⁵ *Id.*, ¶¶ 23-24.

condition that were not already in the record at the time the Commission issued the *Reconsideration Order*. In other words, SES and Ciel have simply recycled Telesat's proposal in an attempt to rehash arguments already made, considered, and rejected by the Commission. SES and Ciel may disagree with the Commission's judgment on this matter, but its simple repetition of prior arguments cannot change the outcome.

Moreover, the SES/Ciel proposal is equally flawed as a matter of public policy. The Commission adopted an orbital grid with presumptive four-degree spacing for the 17/24 GHz BSS service in order to realize its "mutual goals of maximizing orbital capacity while accommodating small-diameter receiving antennas."⁶ This approach, the Commission found, would "maximize use of scarce orbital resources and opportunities for competitive entry," just as its two-degree spacing policy had done as the cornerstone of U.S. satellite licensing policy for GSO FSS satellites for the last 25 years.⁷ By contrast, "[a]llowing complete flexibility in orbital spacing would result in inefficient use of scarce geostationary satellite orbit resources and limit opportunities for competitive entry."⁸

In these circumstances, conditioning U.S. licenses on coordination with non-U.S. networks, is both unwise and unnecessary. The international coordination process runs parallel to the U.S. licensing process, and there is no reason to conflate the two.⁹

⁶ *BSS R&O*, ¶ 70.

⁷ *Id.*, ¶ 71.

⁸ *Id.*

⁹ It is also important not to confuse this case of U.S.-to-non-U.S. coordination with coordination between two non-U.S. systems seeking U.S. market access. In the latter case, the Commission has on rare occasion granted market access to a non-U.S. system with lower ITU priority but imposed conditions to protect future operations by an unlaunched non-U.S. system with higher ITU priority. *See, e.g., Loral SpaceCom Corp.*, 18 FCC Rcd. 16374, ¶ 31(b)-(d) (Int'l Bur. 2003). Where, as here,

Moreover, it is worth noting that several foreign administrations – including Canada and Luxembourg – have made numerous apparently speculative ITU filings in this band.¹⁰ Because the Commission does not make such filings, other administrations – including Canada and Luxembourg – may enjoy ITU priority throughout the CONUS portion of the geostationary arc. This introduces the potential for any number of non-U.S. applicants to gain from foreign administrations that which would not be available from the Commission itself – namely, either a way to trump the U.S. licensing process at an on-grid orbital location or a way to secure an off-grid orbital location unconstrained by the Commission’s carefully crafted service rules. Such an approach could disadvantage operators who have participated in the U.S.’s licensing regime and undermine the orbital efficiency inherent in the Commission’s spacing plan – and would effectively make the Commission complicit in this process.

This is not the way the Commission has applied its rules in other satellite services. For example, in the Ka-band, the Commission also adopted rules that establish a known and stable interference environment based on regular orbital spacing and compliance by all operators with certain baseline operating parameters.¹¹ Non-U.S.-licensed Ka-band satellite systems seeking market access must demonstrate compliance with those rules or

one of the systems is actually licensed by the U.S., no such condition is necessary as the Commission retains direct authority over its licensee to modify the space station license if necessary to achieve such protection. *See* 47 C.F.R. § 25.111(b).

¹⁰ Although the Canadian call for satellite license applications resulted in only two operators receiving provisional licenses at seven orbital locations in the 17/24 GHz BSS service, Canada currently has on file on the order of 23 advanced publication submissions covering 20 orbital locations, as well as 33 coordination requests covering 16 orbital locations across the CONUS arc. Similarly, Luxembourg – which is not even located in this hemisphere – has on the order of 18 advanced publication submissions covering 16 orbital locations on file, as well as 16 coordination requests covering 15 orbital locations, across the CONUS arc in the 17/24 GHz BSS service.

¹¹ *See, e.g.*, 47 C.F.R. § 25.138 (establishing parameters for routine blanket earth station licensing).

operate on a non-interference basis with respect to compliant systems.¹² The rules adopted for the 17/24 GHz BSS service impose a similar regime, designed to maximize spectral/orbital efficiency while still accommodating the use of small receive antennas. This is clearly another instance in which the Commission must be prepared to defend the integrity of its orbital spacing plan if it is to achieve the objectives of efficiency and opportunity that led to adoption of the rules for this service.

At the moment, there are no actual applications for market access from non-U.S. 17/24 GHz BSS systems before the Commission. If and when such applications are filed, the Commission will apply its ECO-Sat test to determine whether to grant access from a foreign orbital slot.¹³ Among other things, this will require a showing that the spectrum requested is available for assignment, and that the licensing country provides effective competitive opportunities for entry by U.S. systems operating in this band. By giving the international coordination process primacy, the SES/Ciel proposal could subvert this Commission policy as well, again placing U.S. licensees at an unnecessary disadvantage with respect to non-U.S. systems. Such a course would not further the public interest, and the Commission should decline SES/Ciel's invitation to proceed in this manner.


¹² See, e.g., *Telesat Canada*, 17 FCC Rcd. 25287, ¶ 27 (Int'l Bur. 2002) (where market access application did not demonstrate compliance with two-degree spacing environment, entry would be conditioned on non-interference with compliant systems).

¹³ See *BSS R&O*, ¶ 22.

For the foregoing reasons, DIRECTV respectfully submits that the Commission should reject the condition proposed by SES/Ciel.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that, on this 14th day of August, 2008, a copy of the foregoing Response of DIRECTV Enterprises, LLC was served by first class mail, postage prepaid, upon:

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