

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

In the Matter of)	
)	
DIRECTV ENTERPRISES, LLC)	Call Sign S2796 (File No. SAT-LOA-
)	20090807-00085)
Application for Authority to Launch and)	
Operate a 17/24 GHz Broadcasting-)	
Satellite Service Space Station)	

COMMENTS OF CIEL SATELLITE LIMITED PARTNERSHIP

Ciel Satellite Limited Partnership (“Ciel”), pursuant to Section 25.154 of the Commission’s Rules, 47 C.F.R. § 25.154, hereby submits its comments on the above-captioned application of DIRECTV ENTERPRISES, LLC (“DIRECTV”) for a Commission license to launch and operate a new space station, DIRECTV RB-2A, in the 17/24 GHz Broadcasting-Satellite Service (“BSS”) at the 102.765° W.L. orbital location (the “RB-2A Application”).¹ Consistent with Commission precedent and international law, any grant of the RB-2A Application must be subject to successful completion of international coordination requirements.

Ciel is Canada’s first competitive satellite service provider. After commencing service in 2005 using an interim satellite, Ciel in 2008 launched the Ciel-2 BSS spacecraft, which operates at the 129° W.L. orbital location. Ciel uses its facilities to provide a platform for the distribution of video and audio programming via satellite throughout North America.

¹ On October 23, Ciel filed a notice of its intent to participate with respect to the RB-2A Application and a motion requesting that the application proceeding be designated as permit-but-disclose for purposes of the Commission’s *ex parte* rules. Ciel Satellite Limited Partnership Notice of Intent to Participate and Motion to Designate Proceeding as Permit-But-Disclose, File No. SAT-LOA-20090807-00085 (filed Oct. 23, 2009). The Commission has not yet taken action on Ciel’s motion.

Ciel plans to significantly expand its fleet over the next several years. Industry Canada has issued Approvals in Principle (“AIPs”) to Ciel for new BSS and FSS deployments at several orbital locations, including rights to develop the 17/24 GHz BSS spectrum at 103° W.L. Pursuant to these authorizations, Ciel will be deploying several new satellites to bring high quality digital television and broadband services to homes and businesses throughout North America and beyond. Ciel has made material investments towards implementing the AIP at 103° W.L. and will place a spacecraft with a 17/24 GHz BSS payload at that orbital location in the near term.

The Canadian Administration has submitted filings with the International Telecommunication Union (“ITU”) for the 17/24 GHz BSS spectrum at 103° W.L. The Canadian filings, which cover operations in much of the Western Hemisphere, including Canada, the U.S., Mexico, Central and South America and the Caribbean, have date priority that is superior to the U.S. ITU filing for these frequencies at this orbital position.

In the RB-2A Application, DIRECTV proposes to deploy a 17/24 GHz BSS payload with a limited footprint on a spacecraft that is scheduled to be launched later this year.² DIRECTV states that it has designed and constructed this payload “at its own risk,”³ and proposes to use the payload to commence 17/24 GHz BSS operations pending launch of the RB-2 spacecraft licensed by the Commission earlier this year.⁴ DIRECTV acknowledges that Ciel has been authorized by Industry Canada to operate a 17/24 GHz BSS network at 103° W.L. and

² RB-2A Application, Narrative at 1.

³ *Id.* at 3.

⁴ *Id.* at 1, citing *DIRECTV Enterprises, LLC*, DA 09-1624 (Int’l Bur. rel. July 29, 2009) (“*RB-2 License Order*”).

recognizes that international coordination of DIRECTV's planned operations at this location with Canada "could be a significant challenge."⁵

In any action on the RB-2A Application, the Commission must conform to both its precedent and its obligations under international law by imposing a coordination condition. A recent 17/24 GHz BSS licensing decision reiterated the Commission's policies and the requirement for licensees to coordinate consistent with ITU rules:

It is longstanding Commission policy that grant of a license to launch and operate a space station carries with it the responsibility to coordinate with other potentially affected space station operators. The United States is under a treaty obligation, in connection with its membership in the ITU, to adhere to the ITU procedures regarding coordination and notification of space station systems licensed by the United States. The coordination procedures are intended to ensure that the operations of one country's space stations do not cause harmful interference to the operations of another country's radiocommunication network frequency assignments. The international coordination and notification responsibilities, codified in Section 25.111(b) of the Commission's rules, specifically provide that a licensee is not protected from harmful interference caused by foreign licensed space stations until it has successfully completed the ITU notification process. This provision is also typically imposed as a condition on the license.⁶

The *Intelsat License Order* also described the ITU framework for coordination of 17/24 GHz BSS. Specifically, because the service is non-planned, procedures for coordination, notification, and bringing into use of new satellite networks using these frequencies are contained in Articles 9 and 11 of the ITU Radio Regulations, and coordination "is based on the

⁵ RB-2A Application, Narrative at 3.

⁶ *Intelsat North America LLC*, DA 09-1132, (Sat. Div. rel. May 26, 2009) ("*Intelsat License Order*") at 8-9, ¶ 18 (footnotes omitted). The *RB-2 License Order* cited this Intelsat decision as providing background on international coordination procedures. *RB-2 License Order* at 13 n.80.

principle of ‘first come – first served.’”⁷ Under this framework, satellite networks with lower ITU date priority must coordinate with satellite networks that have higher ITU date priority.⁸ If coordination is not successful, the lower priority network is both unprotected from harmful interference and must, if it causes harmful interference to networks with higher ITU date priority, “immediately eliminate this harmful interference.”⁹ Thus, the date priority of the ITU filing for a 17/24 GHz BSS satellite network determines the network’s relative rights to operate and to be protected from interference.

The Commission has made clear that a Commission license does not confer any special status with respect to coordination or market access. The Commission has granted market access to a foreign licensee with ITU date priority notwithstanding the prior grant of a U.S. license for the same spectrum a fraction of a degree away.¹⁰ The Commission’s position is consistent with the treaty obligations of the United States to adhere to ITU procedures. In addition, under the Commission’s first-come, first-served licensing framework, an applicant for a specific orbital location assumes the risk that coordination at its chosen orbital location may not

⁷ *Intelsat License Order* at 9 n.45.

⁸ See ITU Radio Regulations 9.6, 9.27, Appendix 5.

⁹ ITU Radio Regulations 11.42; see also *id.* 11.41.

¹⁰ See *Telesat Canada Petition for Declaratory Ruling For Inclusion of Anik F2 on the Permitted Space Station List and Petition for Declaratory Ruling to Serve the U.S. Market Using Ka-band Capacity on Anik F2*, 17 FCC Rcd 25287 (IB 2002) at ¶¶ 25-26 (U.S. Ka-band licensee at 111.0° W.L. was reminded that its license was subject to the outcome of international coordination, and the subsequent grant of market access to a Canadian licensee with ITU priority at 111.1° W.L. was consistent with Commission spectrum management policies).

be successful and operation pursuant to the license may not be possible as a result.¹¹ The Commission has explained that:

ITU date priority does not preclude us from licensing the operator of a U.S.-licensed GSO satellite on a temporary basis pending launch and operation of a satellite with higher priority in cases where the non-U.S.-licensed satellite has not been launched yet. When we have authorized a U.S. licensee to operate at an orbit location at which another Administration has ITU priority, we have issued the license subject to the outcome of the international coordination process, and emphasized that the Commission is not responsible for the success or failure of the required international coordination.¹²

Consistent with this framework, any grant of the RB-2A Application must include the same coordination condition that was imposed in the *RB-2 License Order* and other 17/24 GHz authorizations.¹³ That provision explains that DIRECTV must comply with the international coordination requirements in the ITU Radio Regulations and is not entitled to protection from interference if it cannot coordinate its operations. The ITU rules embodied in the Commission's standard coordination condition require DIRECTV to "immediately eliminate [any] harmful interference" that the RB-2A satellite may cause to satellite networks with higher ITU date priority for which coordination has not been completed.

DIRECTV has accepted the RB-2 license as conditioned and has no grounds to object to imposition of the same coordination condition with respect to RB-2A. To the contrary, as discussed above, in the RB-2A Application DIRECTV expressly acknowledges the need for

¹¹ *Amendment of the Commission's Space Station Licensing Rules and Policies*, First Report and Order and Further Notice of Proposed Rulemaking, 18 FCC Rcd 10760 (2003) at ¶ 96.

¹² *Id.* at ¶ 295 (footnotes omitted).

¹³ *RB-2 License Order* at 16 ¶ 41.

international coordination and concedes that achieving such coordination with Canada presents a “significant challenge.”¹⁴

Even in this discussion, however, DIRECTV understates the difficulty involved. Specifically, DIRECTV appears to assume that the Ciel satellite at 103° W.L. will have Canadian coverage only, requiring coordination with DIRECTV’s operations only at the U.S.-Canadian border.¹⁵ But Ciel has repeatedly made clear that its network at 103° W.L. will have U.S. as well as Canadian coverage.¹⁶ Canada’s ITU priority applies throughout the service area described in the Canadian filings, which includes the United States (as well as Mexico, the Caribbean, Central America and South America). As a result, when Ciel initiates 17/24 GHz BSS service at 103° W.L. pursuant to these Canadian ITU filings, DIRECTV will have to modify or terminate its operations as necessary to protect Ciel, regardless of the impact on any DIRECTV customers, unless DIRECTV has reached a coordination agreement with Ciel. By imposing a coordination condition as part of any RB-2A license grant, the Commission will ensure that DIRECTV is aware of this obligation.

¹⁴ RB-2A Application, Narrative at 3.


¹⁵ *See id.* (“international coordination of a CONUS beam providing service all the way to the Canadian border with a Canadian system providing service across Canada could be a significant challenge”).

¹⁶ *See* Comments of Ciel Satellite Limited Partnership, File Nos. SAT-LOA-19970605-00049 *et al.*, filed Aug. 1, 2008 at 2; Reply Comments of Ciel Satellite Limited Partnership, File Nos. SAT-LOA-19970605-00049 *et al.*, filed Aug. 26, 2008 at 3.

For the reasons discussed herein, the Commission must impose a coordination condition on any grant of the RB-2A Application.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Scott Gibson, hereby certify that on this 2nd day of November, 2009, I caused to be served a true copy of the foregoing “Comments of Ciel Satellite Limited Partnership” by first class mail, postage prepaid, upon the following:

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