

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

_____)
Application of)

DIRECTV ENTERPRISES, LLC)

For Authority to Launch and)
Operate DIRECTV RB-2A, a Satellite)
in the 17/24 GHz Broadcasting Satellite)
Service at 103° W.L.)
_____)

File No. SAT-LOA-20090807-00085
Call Sign: S2796

REPLY COMMENTS OF DIRECTV ENTERPRISES, LLC

DIRECTV Enterprises, LLC (“DIRECTV”) hereby replies to the Comments of Ciel Satellite Limited Partnership (“Ciel”) concerning DIRECTV’s request of authority to launch and operate DIRECTV RB-2A, a geostationary 17/24 GHz Broadcast Satellite Service (“BSS”) satellite to be located at the nominal 103° W.L. position.¹ Ciel argues that the Commission’s domestic licensing authority should be rendered subordinate to the date priority of network filings at the International Telecommunications Union (“ITU”).

The Commission should take this opportunity to clarify its policies by definitively rejecting such an outcome.

DIRECTV holds a Commission license to operate another 17/24 GHz BSS satellite at the nominal 103° W.L. location to provide service into the United States.² Similarly, Ciel has been authorized by the Canadian government to provide 17/24 GHz

¹ *Satellite Space Applications Accepted for Filing*, Report No. SAT-00636 (Int’l. Bur., rel. Oct. 2, 2009); Comments of Ciel Satellite Limited Partnership, File No. SAT-LOA-20090807 (filed Nov. 2, 2009) (“Ciel Comments”).

² *DIRECTV Enterprises, LLC*, 24 FCC Rcd. 9393 (Int’l Bur. 2009) (“*RB-2 Order*”) (authorizing DIRECTV to operate the DIRECTV RB-2 satellite at the nominal 103° W.L. orbital location).

BSS service into Canada from the same slot. Ciel suggests that, because Canada enjoys ITU date priority over the United States for these frequencies at this orbital location, Ciel would be entitled to blanket the entire United States with 17/24 GHz BSS transmissions “regardless of the impact on any DIRECTV customers” in the absence of coordination.³

This assertion is mistaken. Canada’s ITU date priority does not give Ciel *carte blanche* to cause harmful interference in areas where it is not and cannot now be authorized to provide service. Canada’s ITU date priority means simply that U.S.-licensed operators cannot interfere with Ciel’s duly licensed operations – while Ciel itself is likewise obligated to minimize interference to licensed operators outside of its licensed area. Ciel’s sweeping assertions to the contrary betray an erroneous understanding of the ITU coordination process for BSS systems.

ARGUMENT

Ciel misstates the nature of international coordination obligations and the consequences of failure to reach agreement. According to Ciel, DIRECTV is required to protect Ciel’s operations throughout Region 2 because Canada’s ITU date priority extends throughout the entire region.⁴ Yet when it applied for a Canadian license, Ciel represented to Industry-Canada that it would serve Canada only, stating that “[o]ne hundred percent of the 17 GHz BSS capacity on Ciel-6 will be made available to the Canadian Broadcast and BDU community.”⁵ Industry Canada granted Ciel’s license for

³ Ciel Comments at 6. Ciel also argues that any authorization issued in this proceeding should be conditioned upon the outcome of international coordination, as the Commission has done in other cases. *See id.* at 3-5. DIRECTV’s application implicitly assumed that such a condition would be applied to any authorization granted in this proceeding. At one point, however, Ciel seems to assert that such a such a condition should be phrased in terms of “successful” coordination, *id.* at 1, but the Commission has never used such a formulation and it would not be appropriate.

⁴ Ciel Comments at 6.

⁵ Applications in Reply to Notice DGRB-001-06 - Call for Applications to License Satellite Orbital Positions at 5, attached hereto as Exhibit A.

103W based in part upon that representation. Nonetheless, Ciel now argues that, once it commences service, DIRECTV “will have to modify or terminate its operations as necessary to protect Ciel” in the United States, “regardless of the impact on any DIRECTV customers.”⁶

Ciel is wrong in suggesting that date priority alone determines a network’s “relative rights to operate and to be protected from interference.”⁷ To the contrary, the ITU Radio Regulations Board (“Board”) states that “coordination is a two-way process,” and that the intent of the date priority rules is simply “to identify to which administrations a request for coordination is to be addressed, and *not* to state an order of priority for rights to a particular orbital position.”⁸

ITU date priority, moreover, does not give any carrier the right to serve areas in which it not licensed. If it did, domestic licensing would be unnecessary, and the ITU would be the only regulatory body necessary for satellite authorizations. Thus, U.S.-Canada coordination at 103° W.L. will be constrained by the fact that Ciel cannot gain market access to the United States without Commission authorization⁹ – authorization which Ciel does not have.

⁶ Ciel Comments at 6.

⁷ *Id.* at 4.

⁸ ITU Radio Regulations Board, Rule of Procedure, Art. 9.6 (also providing that “no administration obtains any particular priority as a result of being first to start either the advance publication phase (Section I of Article 9) or the request for coordination procedure (Section II of Article 9).”).

⁹ *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*, 22 FCC Rcd. 8842, ¶ 17 *et seq.* (2007) (“BSS R&O”) (setting forth market access standard for non-U.S. licensed space stations).

Ciel's argument seems to presume that it might obtain such authorization, but it is difficult to see how that could come about.¹⁰ DIRECTV is already licensed under the Commission's rules to provide 17/24 GHz BSS service at 103° W.L.¹¹ Under these rules, a subsequent application will be granted only "if the proposed space station will not cause harmful interference to a previously licensed space station, or to a space station proposed in a previously filed application."¹² By contrast, "if an application reaches the front of the queue that conflicts with a previously granted license, [the Commission] will deny the application rather than keeping the application on file in case the lead applicant does not construct its satellite system."¹³

A satellite that would require DIRECTV to "modify or terminate its operations" "conflicts" with its previously granted license.¹⁴ This standard, moreover, explicitly applies to foreign-licensed satellites, which must take their place in the queue just as do U.S.-licensed satellites.¹⁵ There is thus no question of Ciel legally serving the United States so long as DIRECTV holds this license.

¹⁰ Ciel Comments at 4 (suggesting that the Commission will grant market access to a foreign licensee with ITU date priority notwithstanding a prior grant of a U.S. License for the same spectrum at the same orbital location) (*citing Telesat Canada*, 17 FCC Rcd. 25,287 (Int'l. Bur. 2002)).

¹¹ *RB-2 Order*, ¶ 1.

¹² *Id.*, ¶ 8 (*citing* 47 C.F.R. § 25.158(b)(3)).

¹³ *Amendment of the Commission's Space Station Licensing Rules and Policies*, 18 FCC Rcd. 10760, ¶ 113 (2003) ("*First Come, First Served Order*").

¹⁴ Ciel Comments at 6.

¹⁵ *First-Come, First-Served Order*, ¶ 294 ("Given that we will continue to consider public interest factors in reviewing requests for market access, we must determine the procedures for reviewing Letters of Intent in conjunction with the first-come, first-served procedure for GSO-like satellite applications we adopt in this Order. We conclude that Letters of Intent should be treated the same as satellite applications. This is consistent with our WTO commitments to treat non-U.S. satellite operators no less favorably than we treat U.S. satellite operators."); *BSS R&O*, ¶ 23 (providing that "all non-U.S.-licensed satellite operators must meet the requirements adopted in this proceeding, including but not limited to bond requirements, milestone requirements, geographic service requirements, public interest obligations and spacecraft end-of-life disposal requirements"). The *Telesat Canada* case, cited by Ciel for the proposition that it could obtain market access to operate at 103° W.L., did not concern licensing under the "first come, first served" rules that the Commission made applicable to 17/24 GHz BSS

In such circumstances, DIRECTV's proposed space station is subject to international coordination obligations as described in its application – “with a Canadian system providing service across Canada.”¹⁶ Because Canada's 17/24 GHz BSS ITU filing has date priority over that of the United States, DIRECTV cannot cause harmful interference to Ciel's licensed operations absent a coordination agreement.¹⁷ But because the system described in the instant application is composed of four independent spot beams, one of which is centered in western Texas and another of which is centered in Utah, DIRECTV has significant flexibility in accommodating Ciel's needs for protecting its Canadian service. Even the two remaining spot beams would protect services provided from the same orbital location over the vast majority Canada.

Canada's ITU date priority does not permit Ciel simply to “rain” harmful interference throughout areas where it is *not* authorized to provide service. To the contrary, ITU Radio Regulations state that, “[i]n devising the characteristics of a space station in the broadcasting-satellite service, all technical means available shall be used to reduce, to the maximum, the radiation over the territory of other countries unless an agreement has been previously reached with such countries.”¹⁸ Thus, just as ITU regulations require DIRECTV not to interfere with Ciel's Canadian operations, they also

applications. Moreover, *Telesat Canada* did not stand for the proposition that foreign-licensed satellites can obtain market access regardless of interference to existing U.S. licensees. Rather, it explicitly provided that, under *DISCO II* (not to mention the ECO-SAT test applicable here), “there may be cases where granting a non-U.S.-licensed satellite operator access to the U.S. market would create debilitating interference or require U.S.-licensed operators to alter their operations significantly” and that “[i]n that case, [the Commission] could place conditions on the foreign satellite operations to prevent harmful interference or, in cases where conditions cannot remedy the problem, deny entry.” *Telesat Canada*, ¶ 24.

¹⁶ Application, Narrative at 3.

¹⁷ ITU Radio Regulations Arts. 9.6, 9.27, 11.42.

¹⁸ ITU Radio Regulations Art. 23.13.

obligate Ciel to minimize interference into DIRECTV's U.S. operations to the greatest extent possible.

Were the rule instead as Ciel suggests, the Commission could be required to grant market access to satellite systems licensed by both Canada and Luxembourg, each of which has a network filing at this slot with ITU date priority over the U.S. Ciel has also recently filed comments in support of the pending application by a Netherlands-authorized operator to provide service in the U.S. from 103° W.L. -- even though the U.S. has ITU date priority over the Netherlands filing at this location.¹⁹ The regime Ciel posits would lead to multiple authorizations at a number of orbital locations, and the resulting regulatory confusion and uncertainty would wreak havoc with an industry that depends upon long-range planning and investments of hundreds of millions of dollars.²⁰

* * *

DIRECTV recognizes that it must engage in international coordination with Ciel regarding 17/14 GHz BSS operations at 103° W.L. It intends to do so diligently and in good faith, and expects those talks to be successful. Neither the ITU regulations nor the Commission's policies, however, permit Ciel to override the Commission's domestic licensing authority and cause widespread harmful interference throughout a country. Ciel is not licensed to serve to the detriment of a duly authorized licensee in that country. The Commission should take this opportunity to authoritatively reject Ciel's erroneous

¹⁹ See Comments of Ciel Satellite Limited Partnership, IBFS File No. SAT-LOI-20081119-00217 (Nov. 9, 2009).

²⁰ It is also not at all clear what would happen under Ciel's regime if a non-U.S. licensed 17/24 GHz BSS system with ITU date priority sought market access at a non-grid location between two previously licensed U.S. systems located on-grid. Under Section 25.262(d) of the Commission's rules, the off-grid foreign system would be required to protect the on-grid U.S. licensees (by operating at reduced power flux-density levels and accepting interference from the on-grid operators), but under Ciel's theory the on-grid licensees would have to accommodate the foreign system with ITU date priority (effectively eviscerating the Commission's four-degree spacing policy for this band).

assertions as to the interplay between the international coordination process and the Commission's domestic licensing authority.

Respectfully submitted,
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CERTIFICATE OF SERVICE

I hereby certify that on this 12th day of November, 2009, a copy of the foregoing

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