

**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	)	

**REPLY OF CIEL SATELLITE LIMITED PARTNERSHIP**

Scott Gibson  
Vice President & General Counsel  
Ciel Satellite Limited Partnership  
275 Slater Street, Suite 810  
Ottawa, Ontario, Canada  
K1P 5H9

## TABLE OF CONTENTS

	<u>Page</u>
INTRODUCTION AND SUMMARY.....	1
BACKGROUND .....	2
DISCUSSION.....	5
I. DIRECTV AGREES THAT THE COORDINATION CONDITION REQUESTED BY CIEL SHOULD BE IMPOSED.....	5
II. ABSENT A COORDINATION AGREEMENT, THE ITU RULES AND COMMISSION POLICIES REQUIRE DIRECTV TO YIELD TO CIEL.....	6
III. CIEL'S PLAN TO SERVE THE U.S. MARKET IS CONSISTENT WITH ITS CANADIAN AUTHORIZATION AND WITH U.S. LAW .....	11
A. Ciel's AIP Does Not Preclude Service to the U.S. ....	11
B. DIRECTV's License Does Not Preclude Granting Ciel U.S. Market Access for 17/24 GHz BSS Operations from 103° W.L. ....	13
IV. CONCLUSION.....	19

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Ciel Satellite Limited Partnership (“Ciel”), pursuant to Section 25.154 of the Commission’s Rules, 47 C.F.R. § 25.154, hereby submits its reply concerning the above-captioned application of DIRECTV Enterprises, LLC (“DIRECTV”) for a Commission license to launch and operate DIRECTV RB-2A, a 17/24 GHz Broadcasting-Satellite Service (“BSS”) payload at the 102.765° W.L. orbital location (the “RB-2A Application”).<sup>1</sup>

**INTRODUCTION AND SUMMARY**

Ciel’s initial comments demonstrate that consistent with Commission precedent and international law, any grant of the RB-2A Application must include the standard condition requiring DIRECTV to comply with international coordination requirements.<sup>2</sup> Notably, in its response DIRECTV does not oppose such a condition, and in fact expressly acknowledges its

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<sup>1</sup> 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.

<sup>2</sup> See Comments of Ciel Satellite Limited Partnership, File No. SAT-LOA-20090807-00085, filed Nov. 2, 2009 (“Ciel RB-2A Comments”).

responsibility to coordinate with Ciel, which is authorized to provide 17/24 GHz BSS at 103° W.L. pursuant to Canadian filings with date priority under International Telecommunication Union (“ITU”) rules.<sup>3</sup> Having made that key concession, DIRECTV abandons its discussion of the RB-2A Application and devotes the remainder of its response to arguments about how the ITU rules and Commission precedent apply to Ciel.

DIRECTV’s contentions on these matters misstate the facts and fly in the face of established law. Contrary to DIRECTV’s claims, the ITU rules and Commission precedent make clear that unless DIRECTV has coordinated successfully with Ciel, DIRECTV’s planned 17/24 GHz BSS operations at the nominal 103° W.L. position must be modified or terminated as needed to protect the Ciel network. The Commission’s prior rulings also dispose of DIRECTV’s assertion that Ciel is somehow barred from seeking to serve the U.S. market using the 17/24 GHz BSS spectrum at 103° W.L. because DIRECTV has a U.S. license there. If the Commission grants the RB-2A Application, it should make clear to DIRECTV that its rights to operate are subject to the outcome of coordination with Ciel, and that absent coordination, DIRECTV must operate on a non-harmful interference basis with respect to the Ciel network or cease operating altogether.

## **BACKGROUND**

As Ciel has explained in prior filings, Ciel is a Canadian satellite operator and service provider that operates the Ciel-2 BSS spacecraft at 129° W.L. and plans to significantly expand its fleet over the next several years.<sup>4</sup> Ciel holds Approvals in Principle (“AIPs”) issued

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<sup>3</sup> See Reply Comments of DIRECTV Enterprises, LLC, File No. SAT-LOA-20090807-00085, filed Nov. 12, 2009, corrected filing submitted Nov. 13, 2009 (“DIRECTV Response”) at 2 n.3 & 6.

<sup>4</sup> Ciel RB-2A Comments at 1-2.

by the Canadian Administration that authorize Ciel to deploy new BSS and FSS satellites at several orbital locations, including rights to develop the 17/24 GHz BSS spectrum at 103° W.L. 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 satellite network filings with the ITU for the 17/24 GHz BSS spectrum at 103° W.L.<sup>5</sup> 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 ITU date priority over the U.S. ITU filing for these frequencies at this orbital position.<sup>6</sup>

DIRECTV's RB-2A Application seeks authority for a 17/24 GHz BSS payload with a limited footprint to be included on a DIRECTV spacecraft scheduled to be launched later this year.<sup>7</sup> DIRECTV proposes to use the payload to initiate 17/24 GHz BSS operations at the nominal 103° W.L. location pending launch of the RB-2 spacecraft licensed by the Commission in July.<sup>8</sup> DIRECTV acknowledges that Ciel has been authorized by Industry Canada to operate a 17/24 GHz BSS network at 103° W.L. and recognizes that international coordination of DIRECTV's planned operations at this location with Canada "could be a significant challenge."<sup>9</sup>

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<sup>5</sup> See CAN-BSS11; CAN-BSS19.

<sup>6</sup> DIRECTV expressly acknowledges that "Canada's 17/24 GHz BSS ITU filing has date priority over that of the United States." DIRECTV Response at 5.

<sup>7</sup> RB-2A Application, Narrative at 1.

<sup>8</sup> *Id.* at 1, citing *DIRECTV Enterprises, LLC*, DA 09-1624, 24 FCC Rcd 9393 (IB 2009) ("RB-2 License Order").

<sup>9</sup> RB-2A Application, Narrative at 3.

In its comments, Ciel describes the coordination framework established in the ITU rules and implemented in Commission decisions on satellite licensing, including licensing of 17/24 GHz BSS spacecraft.<sup>10</sup> Pursuant to this framework, a Commission licensee must coordinate its operations consistent with ITU rules, which are based on a “principle of ‘first come – first served.’”<sup>11</sup> A Commission applicant who requests and is granted a license at an orbital location where the U.S. does not have ITU priority for the applicable spectrum accepts the risk that it will not be able to coordinate successfully, precluding its ability to operate.<sup>12</sup>

DIRECTV’s response again recognizes the company’s obligation to coordinate with Ciel.<sup>13</sup> However, DIRECTV disputes Ciel’s characterization of the ITU framework and argues that Ciel is attempting to subordinate the Commission’s domestic licensing procedures to ITU priority.<sup>14</sup> DIRECTV also alleges that acceptance of Ciel’s position on international coordination requirements would lead to regulatory confusion and uncertainty.<sup>15</sup> DIRECTV claims that Ciel is authorized to serve only Canada under its AIP for 17/24 GHz BSS authority at 103° W.L. and cannot receive U.S. market access because of DIRECTV’s existing license at that location.<sup>16</sup>

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<sup>10</sup> Ciel RB-2A Comments at 3-5.

<sup>11</sup> *Id.* at 3-4, quoting *Intelsat North America LLC*, DA 09-1132, 24 FCC Rcd 7058, 7066 (Sat. Div. 2009) (“*Intelsat License Order*”) at n. 45.

<sup>12</sup> Ciel RB-2A Comments at 4-5, citing *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) (the “*First-Come, First-Served Order*”) at ¶ 96.

<sup>13</sup> DIRECTV Response at 6.

<sup>14</sup> *Id.* at 1-3.

<sup>15</sup> *Id.* at 6.

<sup>16</sup> *Id.* at 2-4.

## DISCUSSION

DIRECTV is wrong on the facts and wrong on the law. Ciel's description of the significance of ITU date priority is consistent with both the ITU rules themselves and with the Commission's statements interpreting those rules. Applying that framework to competing claims for rights to provide service using the same spectrum at the same nominal orbital location is straightforward and leads to predictable, reliable results. Nothing in Ciel's AIP for 17/24 GHz operations from 103° W.L. constrains Ciel from offering service outside the borders of Canada, and nothing in Commission precedent precludes Ciel from applying for and obtaining U.S. market access simply because a prior U.S. license has been granted for the same location.

### **I. DIRECTV AGREES THAT THE COORDINATION CONDITION REQUESTED BY CIEL SHOULD BE IMPOSED**

Ciel's comments request that if the Commission grants the RB-2A Application, the terms of license include the standard coordination condition imposed in other 17/24 GHz BSS authorizations.<sup>17</sup> DIRECTV does not oppose this request. To the contrary, DIRECTV expressly confirms that such a condition is consistent with its expectations.<sup>18</sup> Both the RB-2A Application and the DIRECTV Response explicitly acknowledge that DIRECTV is obligated to coordinate with Ciel under ITU requirements.<sup>19</sup>

DIRECTV's concession is noteworthy because it means there is no dispute about the principal issue raised by Ciel with respect to the RB-2A Application. Ciel requests

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<sup>17</sup> See Ciel RB-2A Comments at 1 & 7. The condition requested by Ciel is included in the *RB-2 License Order*, 24 FCC Rcd at 9407, ¶ 41.

<sup>18</sup> Specifically, DIRECTV states that its RB-2A Application "implicitly assumed that [an international coordination] condition would be applied to any authorization granted in this proceeding." DIRECTV Response at 2 n.3.

<sup>19</sup> RB-2A Application, Narrative at 3; DIRECTV Response at 6.

imposition of a coordination condition, and DIRECTV agrees that such a condition is not only appropriate, but was also an assumption underlying the RB-2A Application.

The remainder of the DIRECTV Response, however, indicates a clear misunderstanding of the international coordination requirements to which DIRECTV is subject and of the Commission's precedent on U.S. market access. For the reasons set out below, the Commission should take this opportunity to correct DIRECTV's misunderstanding, and state clearly that: (1) absent a coordination agreement, DIRECTV is not protected from, and cannot cause harmful interference to, Ciel's 17/24 GHz operations at 103° W.L. under a Canadian ITU filing with higher ITU priority;<sup>20</sup> and (2) in light of Canada's ITU date priority, nothing precludes the Commission from subsequently granting Ciel U.S. market access simply because a prior U.S. license has been granted to DIRECTV.

## **II. ABSENT A COORDINATION AGREEMENT, THE ITU RULES AND COMMISSION POLICIES REQUIRE DIRECTV TO YIELD TO CIEL**

It is clear that if DIRECTV cannot successfully coordinate its planned 17/24 GHz BSS operations at the nominal 103° W.L. orbital position with the higher priority Ciel network, DIRECTV will have to adjust or even terminate those operations. Furthermore, DIRECTV will not be entitled to claim protection from interference caused by Ciel's network absent coordination. This outcome is ordained by the ITU rules and Commission precedent.

As the Satellite Division explained in a 17/24 GHz license decision earlier this year, procedures for coordination, notification, and bringing into use of new 17/24 GHz BSS

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<sup>20</sup> In a similar situation, the Bureau last year modified the terms of the EchoStar 11 license to make clear that EchoStar was "required to tailor its EchoStar 11 operations to avoid interference to any operational system that has a higher ITU priority than the priorities obtained by EchoStar." See *Spectrum Five, LLC Petition for Clarification of Condition in EchoStar 11 License*, DA 08-1955, 23 FCC Rcd 12786 (IB 2008) at ¶ 8.



satellite networks are contained in Articles 9 and 11 of the ITU Radio Regulations, and coordination “is based on the principle of ‘first come – first served.’”<sup>21</sup> Pursuant to these ITU regulations, a satellite network is required to coordinate with other networks that have higher ITU date priority.<sup>22</sup> If a coordination agreement is not reached, the lower priority network: (1) can only be notified provisionally in the ITU master register;<sup>23</sup> (2) is not entitled to protection from interference caused by the higher priority network;<sup>24</sup> and (3) must, if it causes harmful interference to a network with higher ITU date priority, “immediately eliminate this harmful interference.”<sup>25</sup>

DIRECTV agrees that “[b]ecause 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.”<sup>26</sup> However, DIRECTV suggests that ITU filing date precedence is not the only factor relevant to coordination and cites a statement by the ITU Radio Regulations Board describing coordination as a “two-way process.”<sup>27</sup> As of the date

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<sup>21</sup> *Intelsat License Order*, 24 FCC Rcd at 7066 n.45. The *RB-2 License Order* cited this Intelsat decision as providing background on international coordination procedures. *RB-2 License Order*, 24 FCC Rcd at 9405 n.80.

<sup>22</sup> See ITU Radio Regulations Nos. 9.6, 9.27, Appendix 5.

<sup>23</sup> See ITU Radio Regulations No. 11.41.

<sup>24</sup> See 47 C.F.R. § 25.111(b) (“No protection from interference caused by radio stations authorized by other Administrations is guaranteed unless coordination procedures are timely completed or, with respect to individual administrations, by successfully completing coordination agreements.”); ITU Radio Regulations No. 5.43.

<sup>25</sup> ITU Radio Regulations No. 11.42; see also *id.* No. 11.41.

<sup>26</sup> DIRECTV Response at 5 & n.17, citing ITU Radio Regulations Nos. 9.6, 9.27, 11.42.

<sup>27</sup> DIRECTV Response at 3 & n.8, citing ITU Radio Regulation Board, Rule of Procedure, Art. 9.6.

of this reply, DIRECTV has not yet contacted Ciel to initiate coordination discussions, but once those discussions are under way, Ciel recognizes its responsibility to consider and respond to any DIRECTV coordination proposals in good faith within the framework of the ITU rules. Ultimately, though, if no coordination agreement is reached, DIRECTV's lower priority network must yield.<sup>28</sup>

The Commission has repeatedly recognized that it must conform to these ITU policies and apply them to its licensees. For example, the Bureau in the *Intelsat License Order* stated that 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."<sup>29</sup>

Notwithstanding this well-established precedent, DIRECTV asks the Commission to reject what it characterizes as Ciel's attempt to make the Commission's domestic licensing authority "subordinate" to ITU date priority.<sup>30</sup> But it is DIRECTV, not Ciel, that is seeking to subvert the applicable legal framework. Through its arguments attempting to limit the significance of ITU priority, DIRECTV suggests that the Commission can and should use its licensing and market access procedures to deprive Ciel of its priority rights under the ITU rules. Because those rules are binding on the Commission under international law, the Commission cannot acquiesce to DIRECTV's efforts to evade them.

DIRECTV also argues that the ITU rules "obligate Ciel to minimize interference into DIRECTV's U.S. operations," citing as authority Article 23.13 of the ITU Radio

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<sup>28</sup> ITU Radio Regulations No. 11.42.

<sup>29</sup> *Intelsat License Order*, 24 FCC Rcd at 7066, ¶ 18.

<sup>30</sup> DIRECTV Response at 1.

Regulations.<sup>31</sup> Contrary to DIRECTV's suggestion, Article 23.13 does not constrain Ciel's right to transmit over the U.S. consistent with its AIP and the underlying Canadian ITU filings.

DIRECTV quotes selectively from the rule, which sets out procedures pursuant to which an administration can object to being in the service area of a BSS satellite.<sup>32</sup> DIRECTV ignores the fact that under these provisions the ultimate relief an administration can seek is deletion of "the territory of the objecting administration from the service area" of the BSS spacecraft "*without adversely affecting the rest of the service area.*"<sup>33</sup> There is no requirement that the BSS operator modify the coverage of its satellite. To Ciel's knowledge, the U.S. Administration has never invoked the Article 23.13 procedures, and has instead expressed concern about the implications of this provision for "the principle of free flow of information contained in Article 19 of the Universal Declaration of Human Rights."<sup>34</sup>

DIRECTV's reliance on Article 23.13 here smacks of hypocrisy. DIRECTV itself has sought and obtained authority to serve the U.S. using spacecraft operated pursuant to Canadian licenses.<sup>35</sup> DIRECTV offers no reason why, having permitted DIRECTV to benefit from Canadian BSS spacecraft with U.S. coverage, the U.S. should now object to deployment of such a spacecraft by Ciel.

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<sup>31</sup> DIRECTV Response at 5-6 & n.18.

<sup>32</sup> See ITU Radio Regulations Nos. 23.13A, 23.13B & 23.13C.

<sup>33</sup> See *id.*, No. 23.13C (emphasis added).

<sup>34</sup> See U.S. preliminary view for agenda item 1.19*bis*, Document PCC.III/1210/99, dated 6 April 1999. This U.S. view became part of CITEL's proposals to WRC-2000. CITEL Administrations Proposal for the Work of the Conference, Addendum 1 to Document WRC-2000/14, dated Mar. 27, 2000 at 94.

<sup>35</sup> See, e.g., *DIRECTV Enterprises, LLC*, 19 FCC Rcd 15529 (Sat. Div. 2004) at ¶ 8 (finding that granting request to serve the U.S. using DIRECTV 5 pursuant to a Canadian license would improve the quality of service to U.S. DBS consumers).

DIRECTV engages in scare tactics as well, claiming that recognizing ITU priority in U.S. market access decisions would lead to “multiple authorizations at a number of orbital locations,” creating confusion and uncertainty and “wreak[ing] havoc with an industry that depends upon long-range planning and investments of hundreds of millions of dollars.”<sup>36</sup> Specifically, DIRECTV alleges that under this approach, 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.”<sup>37</sup>

Contrary to DIRECTV’s attempts at fear-mongering, no uncertainty results from application of the Commission’s established policies that consider ITU priority in U.S. licensing and market access decisions. The Commission has applied clear and equitable rules for processing both U.S. license applications and U.S. market access requests. In either situation, if the underlying ITU filing does not have date priority, an authorization can be granted but is

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<sup>36</sup> DIRECTV Response at 6.

<sup>37</sup> *Id.* DIRECTV also asserts that Ciel filed comments supporting the Spectrum Five U.S. market access request at 103° W.L even though the U.S. has ITU date priority over the Netherlands filing on which Spectrum Five relies. *Id.* In fact, the Ciel comments in the Spectrum Five proceeding to which DIRECTV refers expressly took no position on the merits of the Spectrum Five market access request, other than to note that Canada enjoys ITU date priority over the Netherlands with respect to the 17/24 GHz BSS frequencies at the nominal 103° W.L. orbital location. *See* Comments of Ciel Satellite Limited Partnership, File No. SAT-LOI-20081119-00217, filed Nov. 9, 2009 at 2 n.2. Ciel subsequently submitted substantive comments requesting that any grant of the Spectrum Five market access request be subject to conditions requiring that Spectrum Five terminate its operations as necessary to protect a network with higher ITU priority unless Spectrum Five has successfully coordinated with that network. *See* Comments of Ciel Satellite Limited Partnership, File No. SAT-LOI-20081119-00217, filed Nov. 23, 2009 at 2-3. Ciel notes that the conditions it has requested be imposed on Spectrum Five would also protect DIRECTV’s spectrum rights at the nominal 103° W.L. orbital location vis-à-vis the operations proposed by Spectrum Five.

subject to the outcome of coordination with the higher priority network.<sup>38</sup> As explained above, absent coordination, the lower priority network must yield to the higher priority network.

Instead, it is DIRECTV that is proposing a framework that would lead to confusion and undermine investment. DIRECTV is advocating an approach pursuant to which a U.S. license applicant could leapfrog over foreign licensees with ITU priority and block their ability to gain U.S. market access. That result would clearly upset the reasonable expectations of entities planning to serve the U.S. market. Finally, and significantly, DIRECTV's approach, if implemented, would constitute a blatant violation of the Commission's obligation to conform to ITU requirements and Commission precedent concerning market access for foreign licensees.

### **III. CIEL'S PLAN TO SERVE THE U.S. MARKET IS CONSISTENT WITH ITS CANADIAN AUTHORIZATION AND WITH U.S. LAW**

Ciel has repeatedly made clear that its 17/24 GHz BSS network at 103° W.L. will have coverage of the U.S. and other jurisdictions in addition to its Canadian coverage and that Ciel intends to seek U.S. market access for its network.<sup>39</sup> Ciel's intention to serve the U.S. fully conforms to Ciel's AIP. Furthermore, there is no obstacle to a grant of U.S. market access under Commission precedent simply because a prior U.S. license has been granted for the same slot and frequencies.

#### **A. Ciel's AIP Does Not Preclude Service to the U.S.**

DIRECTV's suggestion that Ciel is restricted by the terms of the AIP to serving only Canadian customers from its network at 103° W.L. is simply wrong. Ciel's plan to include

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<sup>38</sup> See *First-Come, First-Served Order* at ¶¶ 295-96 (addressing ITU priority matters for both U.S. licensees and U.S. market access requests).

<sup>39</sup> 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; Ciel RB-2A Comments at 6.

regions outside of Canada in its service area for the network at 103° W.L. is consistent with the Canadian ITU filings, the Canadian authorization process, the terms of Ciel's application, and the AIP ultimately awarded to Ciel.

The Canadian ITU filings for 103°W.L. cover the entire ITU Region 2 in the 17/24 GHz BSS.<sup>40</sup> In seeking applications for the development of 17/24 GHz BSS satellite networks at the 103°W.L. orbital position, the Canadian Administration stated that it would “consider applications aimed at serving markets outside Canada.”<sup>41</sup> Consistent with that statement, the application filed by Ciel proposing to develop service indicated that Ciel would offer service within Canada but also seek to fulfill demand within the larger framework of the North American market. The language cited by DIRECTV, in which Ciel stated that it would make one hundred percent of the 17/24 GHz capacity at 103° W.L. available for use by Canadian broadcasters,<sup>42</sup> merely indicates that Ciel will give Canadian customers the first chance to purchase capacity on the network and amounts simply to a right of first refusal. Indeed, Ciel's AIP does not limit Ciel's ability to market services to users outside Canada once Canadian requirements have been met. To the contrary, the AIP requires Ciel only to make “reasonable efforts to make capacity on the new satellite available to Canadian satellite users and service providers” through a public “Call for Interest” that is presently under way.<sup>43</sup> In designing its 103° W.L. network, Ciel is taking into account the projected requirements of customers outside

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<sup>40</sup> See CAN-BSS11; CAN-BSS19.

<sup>41</sup> Industry Canada, *Call for Applications to License Satellite Orbital Positions DGRB-001-06*, July 2006 at 14.

<sup>42</sup> DIRECTV Response at 2, *citing* Ciel Satellite Group, Applications in Reply to Notice DGRB-001-06, Call for Applications to License Satellite Orbital Positions, 15 Nov. 2006.

<sup>43</sup> See Ciel Satellite Limited Partnership (Ciel), Conditions to Obtain Authority to Operate a 17 GHz BSS Space Station at the 103°W Orbital Position, amended Oct. 30, 2009, at 3 ¶ 6(b).

of as well as inside Canada. As a result, Ciel fully expects to have capacity available after satisfying the needs of Canadian users.

**B. DIRECTV's License Does Not Preclude Granting Ciel U.S. Market Access for 17/24 GHz BSS Operations from 103° W.L.**

As Ciel has recently explained in another proceeding, Commission precedent and policies make clear that Ciel, which has ITU date priority, can be granted U.S. market access notwithstanding DIRECTV's U.S. license for the same spectrum, orbital location, and coverage area.<sup>44</sup> In arguing here that the Commission's first-come, first-served policies bar Ciel from obtaining U.S. market access for its 17/24 GHz network at 103° W.L. because DIRECTV has already been licensed,<sup>45</sup> DIRECTV ignores or misconstrues contrary Commission rulings.

DIRECTV's theory is that having granted DIRECTV's license application for the RB-2 17/24 GHz BSS satellite at the nominal 103° W.L. position, the Commission cannot consider a future Ciel market access request because that request would impermissibly "conflict" with the RB-2 license.<sup>46</sup> But the *First-Come, First-Served Order*, on which DIRECTV relies for this claim, expressly contradicts DIRECTV. That decision explains that a U.S. license does not confer a right to operate if the licensee cannot successfully coordinate with a network holding ITU priority.

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<sup>44</sup> See Comments of Ciel Satellite Limited Partnership, File No. SAT-LOI-20081119-00217, filed Nov. 9, 2009.

<sup>45</sup> DIRECTV first states that it is "difficult to see" how Ciel could get U.S. market access authority given DIRECTV's existing license, but a few paragraphs later baldly asserts that "there is no question of Ciel legally serving the United States so long as DIRECTV holds" the RB-2 license. DIRECTV Response at 4.

<sup>46</sup> *Id.*, citing *First-Come, First-Served Order*, 18 FCC Rcd 10760, ¶ 113.

Specifically, the *First-Come, First-Served Order* provides that:

As is the case now in processing rounds, U.S. licensees assigned to a particular orbit location in a first-come, first-served approach take their licenses subject to the outcome of the international coordination process. The Commission is not responsible for the outcome of any particular satellite coordination and does not guarantee the success or failure of the required international coordination. Moreover, we expect U.S. licensees to abide by international regulations when their systems are coordinated. *This may mean that the U.S. licensee may not be able to operate its system if the coordination cannot be appropriately completed.* Indeed, with the first-come, first served approach, we assign applicants to the orbit location that is requested. Consequently, the applicant assumed the coordination risk when choosing that particular orbit location at the time it submitted its application.<sup>47</sup>

The decision goes on to observe 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.<sup>48</sup>

DIRECTV simply ignores these portions of the *First-Come, First-Served Order*, despite the fact that they squarely address the situation where a Commission license is requested but the U.S. does not have ITU priority. DIRECTV's failure to even acknowledge these provisions is telling because the language quoted above exposes the glaring fallacy in DIRECTV's argument. DIRECTV asserts that a "satellite that would require DIRECTV to

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<sup>47</sup> *First-Come, First-Served Order* at ¶ 96 (emphasis added; footnotes omitted).

<sup>48</sup> *Id.* at ¶ 295 (emphasis added; footnotes omitted).



‘modify or terminate its operations’ ‘conflicts’ with [DIRECTV’s] previously granted license.’<sup>49</sup> DIRECTV has it exactly backwards. The RB-2 license, consistent with Section 25.111(b) of the Commission’s rules and the terms of the *First-Come, First-Served Order*, is subject to the outcome of coordination and does not guarantee DIRECTV’s ability to operate absent coordination. To the contrary, DIRECTV’s RB-2 license explicitly provides that “[n]o protection from interference caused by radio stations authorized by other Administrations is guaranteed unless coordination and notification procedures are timely completed or, with respect to individual Administrations, by successfully completing coordination agreements.”<sup>50</sup> Moreover, far from protecting DIRECTV’s operations from subsequent modification, the RB-2 license explicitly declares that: “Any radio station authorization for which coordination has not been completed *may be subject to additional terms and conditions* as required to effect coordination of the frequency assignments with other Administrations.”<sup>51</sup>

Based on the plain terms of its license, DIRECTV is authorized to operate RB-2 pending launch and operation of Ciel’s network. However, once Ciel’s satellite enters into service, DIRECTV is on notice that it cannot claim interference protection from Ciel and “may not be able to operate its system”<sup>52</sup> if coordination with Ciel has not been completed. Thus, to the extent there is a “conflict,” it is between Ciel’s planned service to the U.S. from 103° W.L. and DIRECTV’s intended *operations*. There is no such conflict between Ciel’s planned service to the U.S. and DIRECTV’s *license*, which is expressly conditioned on DIRECTV’s obligation

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<sup>49</sup> DIRECTV Response at 4, *quoting* Ciel RB-2A Comments at 6.

<sup>50</sup> *RB-2 License Order*, 24 FCC Rcd at 9407 ¶ 41 (echoing 47 C.F.R. § 25.111(b)).

<sup>51</sup> *Id.*

<sup>52</sup> *First-Come, First-Served Order* at ¶ 96.

to conform to international coordination requirements. Grant of U.S. market access to Ciel is therefore fully consistent with the framework described in the *First-Come, First-Served Order*.

The terms of the *First-Come, First-Served Order* similarly dispose of DIRECTV's suggestion that a Ciel U.S. market access request would be barred because the Ciel network would "cause harmful interference to a previously licensed space station," *i.e.* DIRECTV RB-2.<sup>53</sup> The language cited by DIRECTV describes the criteria for grant of a U.S. license under the first-come, first-served approach and makes no mention of market access requests. In contrast, paragraphs 96 and 295 of the *First-Come, First-Served Order* directly address the treatment of U.S. market access requests and make clear that a foreign licensee with ITU priority can request and receive U.S. market access notwithstanding a prior U.S. license for the same frequencies and orbital position. In any event, DIRECTV can hardly invoke "harmful interference" as a talisman against a satellite network with higher ITU priority when its license, and the Commission's rules, expressly declare that "[n]o protection from interference caused by radio stations authorized by other Administrations is guaranteed unless coordination and notification procedures are timely completed."<sup>54</sup>

DIRECTV's argument that Ciel is not eligible for U.S. market access because of the DIRECTV license is also contradicted by precedent predating adoption of the first-come, first-served principle. In precisely the factual scenario at issue here, where a U.S. license had been issued subject to the outcome of international coordination, a subsequent request for U.S.

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<sup>53</sup> DIRECTV Response at 4, *citing RB-2 License Order* at ¶ 8 and 47 C.F.R. § 25.158(b)(3). Under DIRECTV's reading of this rule, grant of the RB-2A application is barred because RB-2A would cause harmful interference to RB-2.

<sup>54</sup> *RB-2 License Order* at ¶ 41; 47 C.F.R. § 25.111(b).

market access for the same frequencies, coverage, and nominal orbital position was granted because the foreign licensee had ITU priority and no coordination agreement had been reached.

Specifically, having granted a Ka-band license to KaStarCom at 111.0° W.L.,<sup>55</sup> the International Bureau subsequently authorized Telesat Canada to access the U.S. market using Ka-band frequencies from Anik F2 at 111.1° W.L.<sup>56</sup> The Bureau explained that:

Under the ITU's international Radio Regulations, any U.S. Ka-band satellite at 111.0° W.L. must be coordinated with Telesat's planned satellite at 111.1° W.L. Consequently, we conditioned KaStarCom's license on coordination with any non-U.S. satellite within two degrees of the KaStarCom satellite having filing date priority at the ITU. We also reminded KaStarCom that it takes its license subject to the outcome of the international coordination process, and that the Commission is not responsible for the success or failure of the required international coordination.

*In light of the fact that Canada has ITU priority at this location, we find that granting Telesat access to the U.S. market in the Ka-band from the 111.1° W.L. location is consistent with the Commission's spectrum management policies.*<sup>57</sup>

DIRECTV's attempts to distinguish the KaStarCom and Anik F2 precedent are unavailing. First, DIRECTV observes that the cases were not decided under the first-come, first-served licensing framework.<sup>58</sup> That is true and might be relevant if the *First-Come, First-Served Order* contained any indication that the Commission was changing its approach to handling license applications where the U.S. lacks priority, thereby effectively overruling the KaStarCom

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<sup>55</sup> See *KaStarCom. World Satellite LLC*, 16 FCC Rcd 14322 (IB 2001) (“*KaStarCom Order*”).

<sup>56</sup> *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) (“*Anik F2 Order*”).

<sup>57</sup> *Id.* at ¶¶ 25-26 (emphasis added).

<sup>58</sup> DIRECTV Response at 4-5 n.15.

and Anik F2 decisions. Instead, in the sections of the *First-Come, First-Served Order* quoted above, the Commission emphasized that U.S. licenses would continue to be granted “subject to the outcome of the international coordination process” under the first-come, first-served framework, just as they had been under the processing round approach.<sup>59</sup> Thus, the Commission explicitly reaffirmed the policy on which the KaStarCom and Anik F2 orders were based and even cited the *KaStarCom Order* as support in this discussion.<sup>60</sup> Clearly then, the KaStarCom and Anik F2 decisions remain good law following adoption of first-come, first-served processing.

DIRECTV next argues that the *Anik F2 Order* does not “stand for the proposition that foreign-licensed satellites can obtain market access regardless of interference to existing U.S. licensees.”<sup>61</sup> DIRECTV’s formulation, however, omits the key factor on which the Anik F2 decision turned: ITU priority. The Anik F2 decision does, as DIRECTV notes, discuss the Commission’s discretion to impose conditions on or deny foreign market access consistent with the spectrum availability prong of the Commission’s market access framework.<sup>62</sup> But this language is simply descriptive of the underlying law. In the following paragraphs, the International Bureau applies the law to the facts and makes its finding: “In light of the fact that Canada has ITU priority at this location, we find that granting Telesat access to the U.S. market . . . is consistent with the Commission’s spectrum management policies.”<sup>63</sup> In short,

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<sup>59</sup> See *First-Come, First-Served Order* at ¶¶ 96, 295.

<sup>60</sup> *Id.* at ¶ 295 n.704.

<sup>61</sup> DIRECTV Response at 5 n.15.

<sup>62</sup> *Id.*, citing *Anik F2 Order* at ¶ 24.

<sup>63</sup> *Anik F2 Order* at ¶ 26.


under longstanding Commission rules and precedent, there is no bar to Ciel requesting and receiving U.S. market access for its 17/24 GHz BSS network at 103° W.L.

**IV. CONCLUSION**

For the reasons discussed herein, the Commission should impose a coordination condition in any grant of the RB-2A Application and make clear to DIRECTV that absent successful coordination, DIRECTV must modify or terminate its operations as necessary to accommodate U.S. coverage by the Ciel 17/24 GHz BSS network operating under a Canadian ITU filing with date priority.

Respectfully submitted,

**CIEL SATELLITE LIMITED PARTNERSHIP**

By:   
Scott Gibson  
Vice President & General Counsel  
Ciel Satellite Limited Partnership  
275 Slater Street, Suite 810  
Ottawa, Ontario, Canada  
K1P 5H9

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**CERTIFICATE OF SERVICE**

I, Scott Gibson, hereby certify that on this 24th 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:

William Wiltshire  
Harris, Wiltshire & Grannis LLP  
1200 18th Street, N.W.  
Washington, DC 20036  
*Counsel to DIRECTV ENTERPRISES, LLC*

David Wilson, President  
Spectrum Five LLC  
1776 K Street, N.W., Suite 200  
Washington, DC 20006

Howard W. Waltzman  
Adam C. Sloane  
Mayer Brown LLP  
1999 K Street, N.W.  
Washington, DC 20006  
*Counsel to Spectrum Five LLC*

  
Scott Gibson