

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

In the Matter of)	
)	
Spectrum Five LLC)	Call Sign S2778 (File No. SAT-LOI-
)	20081119-00217)
Petition for Declaratory Ruling to Serve the)	
U.S. Market Using a Netherlands-)	
Licensed 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 comments on the Petition to Deny of DIRECTV Enterprises, LLC (“DIRECTV”)¹ with respect to the above-captioned U.S. market access request of Spectrum Five LLC (“Spectrum Five”).

DIRECTV argues that because it has received a Commission license to operate a 17/24 GHz Broadcasting-Satellite Service (“BSS”) space station at the nominal 103° W.L. orbital location, the Commission’s first-come, first-served policies require denial of Spectrum Five’s request for authority to serve the U.S. market using a proposed Netherlands-licensed spacecraft at the same orbital position. Ciel comments here for the limited purpose of demonstrating that under the Commission’s first-come, first-served framework, the award of a U.S. license does not bar the Commission from considering and granting a request by a foreign-licensed satellite operator for U.S. market access from the same nominal orbital position where the foreign operator’s licensing administration enjoys ITU date priority. To the contrary, Commission precedent and policies make clear that a foreign licensee with ITU date priority can

¹ Petition to Deny of DIRECTV Enterprises, LLC, File No. SAT-LOI-20081119-00217, filed Oct. 28, 2009 (“DIRECTV Petition”).

be granted market access notwithstanding the existence of a U.S. license for the same spectrum, orbital location, and coverage area.²

BACKGROUND

Ciel is a Canadian satellite operator and service provider. Ciel operates the Ciel-2 BSS spacecraft at the 129° W.L. orbital location and plans to significantly expand its fleet over the next several years. The Canadian Administration 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 satellite network filings with the 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 ITU date priority for these frequencies at this orbital position.

DISCUSSION

DIRECTV received a Commission license earlier this year for the RB-2 17/24 GHz BSS spacecraft to be located at 102.825° W.L.³ DIRECTV argues that because the

² Ciel takes no position at this stage on the merits of the Spectrum Five market access request, other than to note that Canada, through which Ciel is licensed, enjoys ITU date priority over the Netherlands with respect to the 17/24 GHz BSS frequencies at the nominal 103° W.L. orbital location. Ciel will be filing separate comments on the Spectrum Five request prior to the expiration of the applicable public notice period.

³ *DIRECTV Enterprises, LLC*, DA 09-1624 (IB rel. July 29, 2009) (“*RB-2 License Order*”).

Spectrum Five proposal to serve the U.S. market from the same nominal orbital location conflicts with the RB-2 license, the Spectrum Five request must be denied. In support of this argument, DIRECTV cites the Commission's decision adopting first-come, first-served processing for geostationary satellite applications, which states that "if an application reaches the front of the queue that conflicts with a previously granted license, we will deny the application."⁴

The language quoted by DIRECTV does not support the argument DIRECTV is making. The language certainly bars subsequent applications for a U.S. license after a U.S. license has already been issued. However, to the extent that DIRECTV is claiming that grant of a U.S. license blocks *any* subsequent request for U.S. market access using the same frequencies from the same nominal orbital location, DIRECTV is clearly wrong. Precedent pre-dating the adoption of the first-come, first-served framework clearly states that a foreign licensee with ITU priority can be granted U.S. market access despite a previously issued U.S. license for the same spectrum and orbital location. The *First-Come, First-Served Order* explicitly reiterates that policy.

Specifically, the International Bureau granted a request by Telesat Canada in 2002 to access the U.S. market using Ka-band frequencies from Anik F2 at 111.1° W.L.,⁵ notwithstanding the prior grant of a Ka-band license to KaStarCom at 111.0° W.L.⁶ The Bureau explained that:

⁴ DIRECTV Petition at 2-3, quoting *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 ¶ 113.

⁵ *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*") at ¶¶ 25-26.

⁶ See *KaStarCom. World Satellite LLC*, 16 FCC Rcd 14322 (IB 2001) ("*KaStarCom Order*").

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.*⁷

When it adopted first-come, first-served processing of geostationary space station applications, the Commission made very clear that it was not altering the policies described in the *Anik F2 Order*. The Commission expressly emphasized that U.S. licenses are issued subject to the outcome of coordination and do not guarantee the ability to operate if coordination with a satellite network with higher ITU priority cannot be completed:

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.⁸

⁷ *Anik F2 Order* at ¶¶ 25-26 (emphasis added).

⁸ *First-Come, First-Served Order* at ¶ 96 (footnotes omitted).

The Commission went 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.⁹

Importantly, the Commission cites the 2001 *KaStarCom Order* as support in this discussion.¹⁰ As noted above, the Commission in the *Anik F2 Order* found that, given the international coordination condition in the *KaStarCom Order*, it was “consistent with its spectrum management policies” to grant Telesat Canada U.S. market access for the same frequencies at the same orbital location “[i]n light of the fact that Canada has ITU priority.”¹¹

The Commission has reaffirmed this approach towards ITU priority in the context of 17/24 GHz BSS licensing:

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

⁹ *First-Come, First-Served Order* at ¶ 295 (emphasis added; footnotes omitted).

¹⁰ *Id.* at ¶ 295 n.704.

¹¹ *Anik F2 Order* at ¶ 26.

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.¹²

Thus, the simple fact that the International Bureau awarded DIRECTV a license for the RB-2 spacecraft does not represent an obstacle to the grant of authority to serve the U.S. market from a foreign-licensed satellite from the same nominal orbital position and using the same spectrum where the foreign licensee enjoys ITU date priority through its licensing administration. The RB-2 license, consistent with the Commission policies discussed above, included a condition identical in substance to the one in the *KaStarCom Order* that makes it clear that DIRECTV must comply with the international coordination requirements in the ITU Radio Regulations and is not entitled to protection from interference from a network with ITU priority if DIRECTV does not successfully coordinate its operations.¹³ Because of this condition, the subsequent grant of U.S. market access request to a foreign licensee with ITU priority would not “conflict with” the RB-2 license within the meaning of the *First-Come, First-Served Order* language relied on by DIRECTV.

Instead, the RB-2 license as conditioned authorizes DIRECTV to operate in the 17/24 GHz band at the nominal 103° W.L. orbital location only as long as its operations there conform to applicable ITU rules – in other words, “on a temporary basis pending launch and operation of a satellite with higher priority.”¹⁴ When Ciel initiates 17/24 GHz BSS service at

¹² *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.

¹³ *RB-2 License* at 16 ¶ 41.

¹⁴ *First-Come, First-Served Order* at ¶ 295.


103° W.L. pursuant to the Canadian ITU filings with date priority, which Ciel will do in the near term, DIRECTV will have to modify or terminate its operations as necessary, regardless of the impact on any DIRECTV customers, unless DIRECTV has reached a coordination agreement with Ciel. Furthermore, consistent with the Commission's *Anik F2 Order*, the RB-2 license will not represent an obstacle to a subsequent Ciel request for U.S. market access for its Canadian-licensed 17/24 GHz BSS spacecraft at 103° W.L.

CONCLUSION

Thus, to the extent the DIRECTV Petition suggests that the grant of a U.S. license to operate a satellite at a given orbital location and frequency precludes consideration of a subsequent request for U.S. market access by a foreign licensee with ITU priority, the Petition contradicts well-settled Commission precedent and must be rejected.

Respectfully submitted,

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November 9, 2009


CERTIFICATE OF SERVICE

I, Scott Gibson, hereby certify that on this 9th 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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