

**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 above-captioned request of Spectrum Five LLC (“Spectrum Five”) for authority to serve the U.S. using BSSNET2-103W, a Netherlands-licensed 17/24 GHz Broadcasting-Satellite Service (“BSS”) space station to be located at the nominal 103° W.L. orbital location (the “Spectrum Five Request”).<sup>1</sup> Consistent with Commission precedent and international law, any grant of the Spectrum Five Request must be subject to conditions designed to ensure that Spectrum Five does not cause harmful interference to a satellite network with higher International Telecommunication Union (“ITU”) priority.

As Ciel has explained in prior pleadings in this matter, 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>2</sup> Ciel holds Approvals in Principle

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<sup>1</sup> Ciel previously submitted comments in response to the DIRECTV Enterprises LLC petition to deny the Spectrum Five Request, but Ciel did not address the merits of the Spectrum Five Request at that time. *See* Comments of Ciel Satellite Limited Partnership, File No. SAT-LOI-20081119-00217, filed Nov. 9, 2009.

<sup>2</sup> *Id.* at 2.

(“AIPs”) issued 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. Pursuant to these authorizations, Ciel will be launching 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 over the Netherlands filings relied upon by Spectrum Five for these frequencies at this orbital position.

Spectrum Five requests Commission authorization to allow it to serve the U.S. using BSSNET2-103W, a planned Netherlands-licensed spacecraft. If the Commission grants the Spectrum Five Request, the grant must impose conditions requiring Spectrum Five to terminate its operations as necessary to protect a higher priority network unless Spectrum Five has successfully coordinated with that network.

Specifically, under applicable Commission precedent, any market access authorization granting the Spectrum Five Request should include the following conditions:

1. Communications between U.S. earth stations and BSSNET2-103W shall be in compliance with the satellite coordination agreements reached between the Netherlands and other Administrations.
2. In the absence of a coordination agreement with a satellite network with higher ITU priority, BSSNET2-103W must cease service to the U.S. market immediately upon launch and operation of the higher ITU priority satellite, or be subject to further conditions designed to address potential harmful interference to a satellite with ITU date

precedence.

3. In the absence of a coordination agreement with a satellite network with higher ITU priority, earth station licensees communicating with BSSNET2-103W must terminate immediately any operations that cause harmful interference.

Spectrum Five must also inform its customers that its rights to serve the U.S. market are subject to these limitations.

These requirements conform to Commission policy and are necessary to protect Ciel's superior spectrum rights. In its decision adopting first-come, first-served processing for geostationary satellites, the Commission described its approach to addressing ITU priority matters in the context of requests for U.S. market access by foreign licensees:

[I]n the first-come, first-served procedure, when considering requests for U.S. market access from two or more non-U.S.-licensed satellite operators licensed by different Administrations, we will continue to take into account the impact of the ITU coordination process. Under the ITU's international Radio Regulations, it is the responsibility of Administrations with lower ITU priority to coordinate their networks with the networks of Administrations with higher priority. In the event that a non-U.S.-licensed satellite operator is authorized to provide service in the United States, and that network is "affected," within the meaning of the ITU's international Radio Regulations, by a satellite network with lower priority seeking access to the U.S. market, we would permit the lower priority network to access the U.S. market if the higher priority satellite has not been launched. In that case, the lower priority satellite would be authorized to access the U.S. market subject to proof of coordination with the higher priority satellite. Absent such a demonstration, the lower priority satellite would be required to cease service to the U.S. market immediately upon launch and operation of the higher priority satellite, or be subject to further conditions designed to address potential harmful interference to a satellite with ITU date precedence.<sup>3</sup>

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<sup>3</sup> *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 ¶ 296 (footnote omitted).

The Commission has applied this policy by imposing conditions consistent with those requested by Ciel above when a foreign-licensed applicant requests U.S. market access but lacks ITU priority for the requested frequencies and orbital location. For example, last year the Satellite Division granted a request by the Andean Satellites Association to modify the terms of market access for the Star One C5 satellite.<sup>4</sup> The original grant had required that operations of the Brazil-licensed Star One C5 spacecraft conform to coordination agreements between Brazil and other administrations.<sup>5</sup> On reconsideration, additional conditions were imposed to “address the situation in which, in the absence of a coordination agreement, a satellite network with higher ITU filing-date priority than Star One C5 goes into operation, and Star One C5’s operations interfere with the operations of the higher priority space station.”<sup>6</sup> Because the underlying Commission policies regarding ITU priority were clear, the Division acknowledged that imposing express conditions could “be viewed as unnecessary,” but adopted the provisions nevertheless based on a finding “that the public interest would be served by removing any uncertainty as to the applicability of Commission policy in this case.”<sup>7</sup> The conditions requested by Ciel above track the language of the provisions in the Star One C5 grant as modified by the reconsideration decision.<sup>8</sup>

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<sup>4</sup> *Star One S.A., Petition for Declaratory Ruling to Add the Star One C5 Satellite at 68° W.L. to the Permitted Space Station List*, Order on Reconsideration, DA 08-1645, 23 FCC Rcd 10896 (Sat. Div. 2008).

<sup>5</sup> *Id.* at ¶ 2.

<sup>6</sup> *Id.* at ¶ 3 (footnote omitted).

<sup>7</sup> *Id.* at ¶ 5.

<sup>8</sup> *See id.* at ¶ 6.

Substantively identical requirements were also imposed when Loral's Telstar 13 spacecraft was added to the Commission's Permitted Space Station List.<sup>9</sup> The Satellite Division explained that:

As the Commission has recently affirmed, a lower ITU priority network may be permitted to access the U.S. market if a higher ITU priority satellite has not been launched, but in such a case the lower ITU priority network is subject to proof of coordination with the higher ITU priority satellite. Absent such demonstration, the lower ITU priority satellite must cease service to the U.S. market immediately upon launch and operation of the higher ITU priority satellite, or be subject to further conditions designed to address potential harmful interference to a satellite with ITU date precedence. We condition Loral's authorization accordingly. In addition, absent proof of coordination with affected Administrations, earth station licensees communicating with Telstar 13 must terminate immediately any operations that cause harmful interference.<sup>10</sup>

The *Telstar 13 Order* also highlighted the requirement to advise customers of the legal limitations pursuant to which service is being offered. The decision emphasized that its rejection of specific customer notification conditions requested by a commenting party “does not relieve Loral of the need to inform customers of the terms and conditions of its authorization to serve the U.S. market via the Telstar 13 satellite, including the condition that Loral cease operations to and from the U.S. via Telstar 13 in the event that a network with higher ITU priority, such as NSS-11, brings into use its satellite.”<sup>11</sup>

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<sup>9</sup> See *Loral Spacecom Corp., Petition for Declaratory Ruling to Add Telstar 13 to the Permitted Space Station List*, Order, DA 03-2624, 18 FCC Rcd 16374 (Sat. Div. 2003) (“*Telstar 13 Order*”) at 16380-81 & 16384-85, ¶¶ 16-17 & 31.

<sup>10</sup> *Id.*, 18 FCC Rcd at 16380, ¶ 16 (footnotes omitted).

<sup>11</sup> *Id.*, ¶ 18.

The Commission should impose similar requirements here. The Canadian ITU filings underlying Ciel's planned 17/24 GHz BSS spacecraft at 103° W.L. have date priority over the Netherlands ITU filings on which Spectrum Five relies, and Spectrum Five has not yet initiated, much less completed, coordination discussions with Ciel. Accordingly, any grant of market access to Spectrum Five must include provisions to ensure that absent a coordination agreement, Spectrum Five does not create harmful interference to the Ciel network.

For the foregoing reasons, the Commission should impose the conditions enumerated above on any grant of the Spectrum Five Request.

Respectfully submitted,

**CIEL SATELLITE LIMITED PARTNERSHIP**

By: 

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November 23, 2009


**CERTIFICATE OF SERVICE**

I, Scott Gibson, hereby certify that on this 23rd 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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