

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

In the Matter of)	
)	
)	
Spectrum Five LLC)	File No. SAT-LOI-20081119-00217
)	
Petition for Declaratory Ruling to)	
Serve the U.S. Market from the 103.15°)	Call Sign S2778
W.L. Orbital Location in the 17/24 GHz)	
Broadcasting Satellite Service Band)	
_____)	

RESPONSE TO COMMENTS OF CIEL SATELLITE LIMITED PARTNERSHIP

Spectrum Five LLC (“Spectrum Five”) hereby files this response in the above-referenced proceeding to the Comments of Ciel Limited Partnership (“Ciel”), which were filed November 23, 2009. Spectrum Five does not object to the Bureau’s imposition of conditions that are typically imposed on grants of applications such as Spectrum Five’s 17/24 GHz 103° Broadcasting-Satellite Service (“BSS”) application here. Moreover, Spectrum Five fully intends to comply with its coordination obligations under applicable International Telecommunication Union (“ITU”) rules and regulations.

Spectrum Five, however, disputes a number of Ciel’s assertions, and the inferences that Ciel draws from them. Specifically, Ciel states that it “will be launching several new satellites to bring high quality digital television and broadband services to homes and businesses *throughout North America* and beyond.”¹ Ciel asserts that it would provide such service pursuant to certain Canadian ITU filings “which cover operations in much of the Western Hemisphere, including

¹ Comments of Ciel Satellite Limited Partnership, *In re Spectrum Five LLC Petition for Declaratory Ruling to Serve the U.S. Market from the 103.15° W.L. Orbital Location in the 17/24 GHz Broadcasting Satellite Service Band*, File No. SAT-LOI-20081119-00217, Call Sign S2778 (“Ciel Comments”) at 2 (emphasis added).

Canada, the U.S., Mexico, Central and South America, and the Caribbean.”² And Ciel asserts that these Canadian filings “have ITU date priority over the Netherlands filings relied upon by Spectrum Five for these frequencies at this orbital position.”³

Ciel, however, is not currently authorized by the Federal Communications Commission (“Commission”) to provide service to the United States, nor has it applied for U.S. market access. Moreover, the ITU filings on which Ciel relies would foreclose the granting of a license to serve the U.S. market if Ciel were to seek such access.

As the ITU filings on which Ciel relies make clear, the Commission cannot grant Ciel authorization to serve the United States because Ciel cannot provide service to Hawaii or most of Alaska. Commission regulations unequivocally require 17/24 GHz BSS licensees who provide service in the contiguous United States to provide “comparable service to Alaska and Hawaii unless such service is not technically feasible or economically reasonable from the authorized orbital location.”⁴ The pertinent Canadian ITU applications—for CAN-BSS11 and CAN-BSS19—establish that neither Hawaii nor the bulk of Alaska are in the projected service area of

² *Id.*

³ *Id.*

⁴ 47 C.F.R. § 25.225(a). *See also* Report and Order and Further Notice of Proposed Rulemaking, *In re Establishment of Policies and Services 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*, IB 06-123, FCC 07-76, 22 FCC Rcd. 8842, 8861 (para. 49) (rel. May 4, 2007) (“Accordingly, 17/24 GHz BSS licensees, to the extent that such licensees provide DBS-like services, are required to certify that they will provide service to Alaska and Hawaii comparable to that provided to locations in the 48 contiguous United States (CONUS), unless such service is not technically feasible or not economically reasonable from the authorized orbit location.”).

Ciel's proposed space stations.⁵ The beam patterns set forth in the applications do not reach Hawaii at all, and merely skim a small portion of Alaska. It is indisputable, however, that Hawaii and Alaska can be served from the 103° W.L. orbital location. Thus, the exclusion of Hawaii and most of Alaska from Ciel's projected service area is not related to technical feasibility or economic reasonableness; Ciel purposefully designed a technical footprint optimized to serve its customers in Canada, not to serve the entire United States in accordance with the Commission's rules.

As a result, the ITU filings on which Ciel relies would not support an application for U.S. market access, and would not be acceptable for filing. To access the U.S. market, Canada would have to make new ITU filings providing for adequate coverage of the United States, including Hawaii and Alaska. Such new ITU filings, however, would not have ITU priority over the Netherlands ITU filings relied upon by Spectrum Five in its 17/24 GHz BSS 103° W.L. application.

As noted above, Spectrum Five does not object to coordinating with Ciel to avoid interfering with Ciel's *Canadian* operations in accordance with ITU rules and regulations. But Spectrum Five should not be required to coordinate to prevent interference with U.S. operations by Ciel that are not permissible under the existing Canadian satellite network filings with the ITU.

⁵ The BR6A Id number for the ITU application for CAN BSS-19 is 106520208. The omission of Hawaii and Alaska from the service area in the ITU application is apparent from figure five of the application.

Respectfully submitted,

David Wilson
President
Spectrum Five LLC
1776 K Street, N.W., Suite 200
Washington, D.C. 20006
(202) 293-3483

s/s Howard W. Waltzman
Howard W. Waltzman
Adam C. Sloane
Mayer Brown LLP
1999 K Street, N.W.
Washington, D.C. 20006
(202) 263-3000
Counsel to Spectrum Five, LLC

December 3, 2009

CERTIFICATE OF SERVICE

I, Howard W. Waltzman, hereby certify that on this 3rd day of December, 2009, I caused a true copy of the foregoing to served upon the following by e-mail:

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

I further certify that on this 3rd day of December 2009, I caused a true copy of the foregoing to be served upon the following by first class United States, postage pre-paid:

William M. Wiltshire
Wiltshire & Grannis LLP
1200 18th Street, N.W.
Washington, D.C. 20036
Counsel for DIRECTV Enterprises LLC

s/s Howard W. Waltzman
Howard W. Waltzman