

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

In the Matter of)	
)	
Hughes Network Systems, LLC)	Call Signs S2754 (File No. SAT-LOI-
)	20091110-00120) and S2755 (File No. SAT-
Letters of Intent to Serve the)	LOI-20091110-00121)
U.S. Market Using United Kingdom-)	
Licensed Ka-band Space Stations)	

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 letters of intent of Hughes Network Systems, LLC (“Hughes”) seeking authority to serve the U.S. using SPACEWAY 5 and SPACEWAY 6, United Kingdom-licensed Ka-band Fixed-Satellite Service (“FSS”) space stations to be located at 109.1° W.L. and 90.9° W.L., respectively (the “Hughes LOIs”). Consistent with Commission precedent and international law, any grant of the Hughes LOIs must be subject to conditions designed to ensure that Hughes does not cause harmful interference to a satellite network with higher International Telecommunication Union (“ITU”) priority.

Ciel is a Canadian satellite operator and service provider that operates the Ciel-2 Broadcasting-Satellite Service (“BSS”) spacecraft at 129° W.L., providing digital video programming delivery to the U.S. market. Ciel is significantly expanding its fleet over the next several years. Ciel holds Approvals in Principle (“AIPs”) issued by the Canadian Administration that authorize Ciel to deploy new FSS and BSS satellites at several orbital locations, including rights to develop the Ka-band FSS spectrum at 91° W.L. and 109.2° W.L. Specifically, Ciel is authorized to construct and launch the Ciel-3 and Ciel-5 satellites to those orbital locations,

where they will bring high-speed broadband services and digital video programming delivery to homes and businesses throughout North America and beyond.

The Canadian Administration has submitted satellite network filings with the ITU for the Ka-band FSS spectrum at 91° W.L. and 109.2° 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 United Kingdom filings relied upon by Hughes for these frequencies at these orbital positions.

Hughes requests Commission authorization to allow it to serve the U.S. using SPACEWAY 5 and SPACEWAY 6, planned spacecraft licensed by the United Kingdom. If the Commission grants the Hughes LOIs, the grants must impose conditions requiring Hughes to terminate its operations as necessary to protect the higher priority Ciel networks unless Hughes has successfully coordinated with Ciel.

Specifically, under applicable Commission precedent, any market access authorizations granting the Hughes LOIs should include the following conditions:¹

1. Communications between U.S. earth stations and SPACEWAY 5 shall be in compliance with the satellite coordination agreements reached between the United Kingdom and other Administrations.
2. In the absence of a coordination agreement with a satellite network with higher ITU priority, SPACEWAY 5 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 SPACEWAY 5 must terminate immediately any operations that cause harmful interference.

¹ The suggested conditions refer throughout to SPACEWAY 5. The Commission should use the same language in any grant concerning SPACEWAY 6, simply replacing the number to refer to the correct spacecraft.

Hughes 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.²

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, in 2008 the

² *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).

Satellite Division granted a request by the Andean Satellites Association to modify the terms of market access for the Star One C5 satellite.³ The original grant had required that operations of the Brazil-licensed Star One C5 spacecraft conform to coordination agreements between Brazil and other administrations.⁴ 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.”⁵ 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.”⁶ The conditions requested by Ciel above track the language of the provisions in the Star One C5 grant as modified by the reconsideration decision.⁷

Substantively identical requirements were also imposed when Loral’s Telstar 13 spacecraft was added to the Commission’s Permitted Space Station List.⁸ 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

³ *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).

⁴ *Id.* at ¶ 2.

⁵ *Id.* at ¶ 3 (footnote omitted).

⁶ *Id.* at ¶ 5.

⁷ *See id.* at ¶ 6.

⁸ *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.

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.⁹

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.”¹⁰

The Commission should impose similar requirements here. The Canadian ITU filings underlying Ciel's planned Ka-band FSS spacecraft at 91° W.L. and 109.2° W.L. have date priority over the United Kingdom ITU filings on which Hughes relies, and Hughes has not yet initiated, much less completed, coordination discussions with Ciel. Accordingly, any grant of market access to Hughes must include provisions to ensure that absent a coordination agreement, Hughes does not create harmful interference to the Ciel network.


⁹ *Id.*, 18 FCC Rcd at 16380, ¶ 16 (footnotes omitted).

¹⁰ *Id.*, ¶ 18.

For the foregoing reasons, the Commission should impose the conditions enumerated above on any grants of the Hughes LOIs.

Respectfully submitted,

CIEL SATELLITE LIMITED PARTNERSHIP

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February 16, 2010

CERTIFICATE OF SERVICE

I, Scott Gibson, hereby certify that on this 16th day of February, 2010, 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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