

DUPLICATE

BEFORE THE
Federal Communications Commission
WASHINGTON, D.C. 20554

In re the Applications of)
)
Hughes Network Systems, LLC) File Nos. SAT-LOI-20091110-00120
) and SAT-LOI-20091110-00121, Call
) Signs S2754 and S2755
Letters of Intent Seeking Access to the)
U.S. Market Using Ka-Band Space Stations)
Licensed by the Administration of the United)
Kingdom)

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To: Chief, International Bureau

Federal Communications Commission
Bureau / Office

REPLY COMMENTS OF HUGHES NETWORK SYSTEMS, LLC

Hughes Network Systems, LLC (“Hughes”), by its attorneys and pursuant to Section 25.154 of the Commission’s Rules, 47 C.F.R. § 25.154, hereby replies to the comments filed by Ciel Satellite Limited Partnership (“Ciel”) in response to the two above-referenced Letters of Intent (“LOIs”) that Hughes submitted to provide Ka-band fixed-satellite service (“FSS”) in the United States from Hughes satellites authorized by the Administration of the United Kingdom.¹ Ciel requests that the Commission subject the LOI grants for SPACEWAY 5 at 109.2° W.L. and SPACEWAY 6 at 91° W.L. to a series of burdensome conditions in order “to protect Ciel’s superior spectrum rights.”²

As Hughes explains below, Ciel has misapprehended the Commission’s policy with respect to satellite networks that have frequency assignments with earlier filing dates under the Radio Regulations and procedures of the International Telecommunication Union (“ITU”). Neither the Commission’s rules nor relevant and recent precedent warrant the imposition of the conditions Ciel requests.

¹ Hughes has filed three LOIs to add new Ka-band space segment capacity to its existing SPACEWAY 3 satellite at the nominal 95° W.L. orbital location. Hughes’s LOI for SPACEWAY 4 at 107.1° W.L. (File No. SAT-LOI-20091110-00118, Call Sign S2753) was not commented upon by Ciel.

² Ciel Comments at 2-3.

Ciel contends that it holds Approvals in Principle from the Government of Canada that authorize it to develop the Ka-band FSS spectrum at the 91° W.L. and 109.2° W.L. orbital locations, and that the Canadian Administration has submitted covering ITU filings under Article 9 of the Radio Regulations that “have date priority over the United Kingdom filings relied upon by Hughes for frequencies at these orbital locations.”³ According to Ciel, the Commission should condition the grants of the SPACEWAY 5 and SPACEWAY 6 LOIs on, *inter alia*, cessation of SPACEWAY operation immediately upon launch and operation of a higher ITU priority satellite, and provision by Hughes of notice to its customers that Hughes’s rights to serve the U.S. market through SPACEWAY 5 and SPACEWAY 6 are subject to the limitations Ciel proposes.⁴

The Commission most certainly should not condition the grants of market access to Hughes for SPACEWAY 5 and SPACEWAY 6 in the manner sought by Ciel. The only condition regarding international coordination that is required in the SPACEWAY 5 and SPACEWAY 6 LOI authorizations is the standard condition stated in Section 25.111(b) of the Commission’s Rules – i.e., that “[n]o protection from interference caused by radio stations authorized by other Administrations is guaranteed unless coordination and notification procedures are timely completed”⁵

First, the key facts that Hughes has submitted Letters of Intent to access the U.S. market from the 109.1° W.L. and 91° W.L. orbital locations, and that Ciel has not, are reason alone to issue the Hughes market authorizations subject only to the outcome of the international

³ Ciel Comments at 1-2. Hughes notes that the UK filing on which it relies for SPACEWAY 5 (UKSAT-16) is actually for the 109.1° W.L. orbital location.

⁴ *Id.* at 2-3.

⁵ 47 C.F.R. § 25.111(b). The rule also contains the admonition that space network authorizations 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. *Id.*

coordination process. Under the first-come/first-served procedure the Commission adopted in 2003,⁶ “Letters of Intent [are to be] treated the same as satellite applications.”⁷ The Commission noted that when it has issued an authorization to operate at an orbit location at which another administration has ITU “priority,” the Commission has “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.”⁸

Ciel’s request for application of the approach in Paragraph 296 of the *Space Station Licensing Reform Order* – i.e., its proposal to subject the so-called lower priority Hughes network to a condition that requires Hughes to cease service to the U.S. upon launch and operation of the higher priority Ciel satellite – is misplaced.⁹ Paragraph 296 only applies “[i]n 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” That case does not exist here. Under the first-come/first-served process, only first-filer Hughes can be granted access to the U.S. market in Ka-band FSS from the nominal orbital locations sought for SPACEWAY 5 and SPACEWAY 6. A Ciel request for LOI or earth station access, should one be filed now, would eventually be denied or dismissed by operation of Section 25.158(b)(3) of the Commission’s Rules, 47 C.F.R. § 25.158(b)(3). As a result, the Hughes LOIs do not present the case of a lower-ITU-priority network seeking market access after the Commission has already granted market access for the same resources to an entity with a higher-

⁶ *Amendment of the Commission’s Space Station Licensing Rules and Policies*, 18 FCC Rcd 10760 (2003) (“*Space Station Licensing Reform Order*”).

⁷ *Space Station Licensing Reform Order*, at ¶ 294.

⁸ *Id.* at ¶ 295 (footnote omitted).

⁹ *See* Ciel Comments at 3.

priority ITU filing. In other words, the U.K. Administration space network filings with which Hughes and SPACEWAY 5 and SPACEWAY 6 are associated are later in time than, and thus cannot be “affected” by, the earlier Canadian ITU filings associated with Ciel.

The situation here, with the earlier-filed request for LOI or license belonging to the lower-priority ITU filer, is directly analogous to the recent decision on comments Ciel filed in response to DirecTV Enterprises, LLC’s (“DirecTV”) application for a new 17/24 GHz BSS satellite at 103° W.L. In comments on the DirecTV application, Ciel, which had not filed an application or LOI for U.S. market access, raised its Canadian ITU date priority over the U.S. for a 17/24 GHz BSS satellite at 103° W.L. Because DirecTV had made a first-come/first-served filing while Ciel had not, the Commission determined that all that was required was the “standard licensing condition drawn from Section 25.111(b) of the Commission’s Rules, 47 C.F.R. § 25.111(b).”¹⁰

The same result is required here. Under the *Space Station Licensing Reform* decision of 2003, the fact that Hughes’s submission under the first-come/first-served process is an LOI filing rather than an application is immaterial.¹¹ Grant subject to the standard coordination condition – without regard for how challenging such coordination may be – is all that is required to protect Ciel’s inchoate interest in access to the U.S. market.¹²

Second, the Canadian Approvals in Principle to which Ciel refers in its comments do not give Ciel satellites the right to provide service to the United States. Section 7.3 of Industry

¹⁰ Application of DirecTV Enterprises, LLC, File No. SAT-LOA-20090807-00085, Stamp Grant at 2 n.3 (released January 8, 2010).

¹¹ See note 7, *supra*, and accompanying text.

¹² Interestingly, in its comments on the DirecTV application for 103° W.L., Ciel argued only for imposition of the standard condition. Given the comparable processing status of the DirecTV application and the Hughes LOI submissions under the first-come/first-served regime, Ciel’s comments requesting more stringent conditions on the SPACEWAY 5 and SPACEWAY 6 LOI filings present an unexplained and untenable discrepancy.

Canada's Call for Applications to Licence Satellite Orbital Positions – the invitation that led to Ciel's *Canadian* rights – states the following with respect to service beyond Canadian borders:

(d) Use of Spectrum Outside Canada. The authorizations to be issued pursuant to this licensing process should not be construed in any way as giving the licensee any rights to operate earth stations, or to otherwise provide satellite services, in any country other than Canada. Should any party intend to operate earth stations or provide satellite services outside Canada using the proposed space station, the Department recommends that they consult with the appropriate regulatory authorities of the administrations concerned.¹³

Once again, access to the U.S. market from Ka-band FSS satellites at the locations Hughes requested for SPACEWAY 5 and SPACEWAY 6 is determined through the Commission's first-come/first-served regulatory process. The fact remains that Hughes has submitted itself to the U.S. process and Ciel has not. Ciel certainly had opportunity to avail itself of the U.S. process. There was no "race to the courthouse" situation for U.S. market access from either the 109.2° W.L. or 91° W.L. orbital locations. The Ka-band frequencies at 109.2° W.L., for example, were available for applications/LOI submissions for more than two years before Hughes submitted the SPACEWAY 5 LOI in June 2008.¹⁴

Ciel has been on notice from Industry Canada since 2006 that ITU priority alone does not afford it the right to provide satellite service outside Canada. It still has not sought access to the U.S. market. To grant Ciel the conditions proposed in Ciel's comments would subvert and undercut the first-come/first-served process by allowing a non-filer to gain superior rights – priority if you will – over an entity that properly followed the Commission's rules and procedures. The ITU and FCC "priority" processes are different, and the standard coordination condition from Section 25.111(b) of the Commission's Rules establishes and maintains the

¹³ Canada Gazette, Gazette Notice DGRB-001-06, Call for Applications to Licence Satellite Orbital Positions, at Section 7.3 (July 15, 2006).

¹⁴ The Commission issued a public notice announcing the availability of the frequencies for application in May 2006, following the former licensee's surrender of its authorization at that location. See Public Notice Report No. SAT-00361, DA 06-1028 (released May 12, 2006).

proper relationship between the two processes with respect to national interests and international obligations. Nothing further is required, and to the extent Ciel's comments seek more, they should be rejected.

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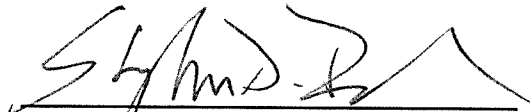
In keeping with the foregoing discussion, Hughes emphasizes that it fully understands that its entitlement to protection of the SPACEWAY 5 and SPACEWAY 6 networks from interference is dependent upon successful completion of coordination with all relevant space networks that are ahead of it in the ITU coordination queue, and intends to fulfill its coordination responsibilities. Coordination under the ITU Radio Regulations is, of course, a give-and-take process, with both parties to a bilateral coordination being expected to use mutual effort to overcome difficulties and reach a satisfactory result.¹⁵ Date priority at the ITU establishes a protocol for which entity is to request coordination and which entity is the recipient of a request for coordination; it does not and indeed cannot override the Commission's process for determining which if any entities are qualified to provide service to and from the United States. To the extent that Ciel urges the Commission to grant it rights it has not sought here, or to

¹⁵ See No. 9.53 of the Radio Regulations.

constrain Hughes despite Hughes's proper reliance on the first-come/first-served licensing procedure, Ciel's request must be denied.

Respectfully submitted,

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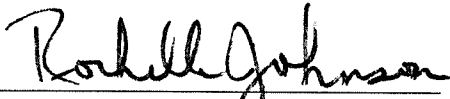
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February 26, 2010

CERTIFICATE OF SERVICE

I, Rochelle Johnson, hereby certify that a copy of the foregoing Reply Comments of Hughes Network Systems, LLC was sent by first-class U.S. mail, postage prepaid, to the following this 26th day of February 2010:

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