

**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	)	

**REPLY OF CIEL SATELLITE LIMITED PARTNERSHIP**

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**REPLY 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 submits its reply regarding 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”).

**INTRODUCTION AND SUMMARY**

Ciel holds Approvals in Principle (“AIPs”) issued by the Canadian Administration to construct and launch the Ciel-3 and Ciel-5 Ka-band satellites at 91° W.L. and 109.2° W.L. respectively. In its initial comments, Ciel requested that in any grant of the Hughes LOIs the Commission impose conditions designed to ensure that Hughes does not cause harmful interference to a satellite network with higher International Telecommunication Union (“ITU”) priority.<sup>1</sup> Ciel demonstrated that the requested conditions were consistent with Commission

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<sup>1</sup> Comments of Ciel Satellite Limited Partnership, File Nos. SAT-LOI-20091110-00120/121, filed Feb. 16, 2010 (“Ciel Comments”). Specifically, Ciel requested imposition of the following conditions with respect to any grant of the Hughes LOIs: (1) Communications between U.S. earth stations and SPACEWAY 5 and 6 shall be in compliance with the satellite coordination

precedent and international law and necessary to protect Ciel's superior spectrum rights under the Canadian ITU filings for Ka-band spectrum at the orbital locations requested by Hughes.<sup>2</sup>

Hughes opposes imposition of the conditions requested by Ciel, arguing that the conditions are not warranted under the Commission's rules or "relevant and recent precedent."<sup>3</sup> Hughes also claims that Ciel has "misapprehended the Commission's policy" with respect to treatment of networks that have date priority under ITU regulations.<sup>4</sup>

But it is Hughes that appears to need a refresher course in the applicable law. The Hughes filing simply ignores Commission decisions that have imposed the conditions Ciel requested in the same factual circumstances as those presented here, where a foreign licensee seeking U.S. market access has ITU rights inferior to those of a licensee of another foreign administration. Furthermore, while Hughes pays lip service to compliance with ITU coordination mandates, Hughes fails to acknowledge that the obligations on Hughes under the ITU rules directly correspond to those specified in the conditions Ciel has requested. Finally, Hughes' assertion that grant of the Hughes LOIs would preclude Ciel or any other future applicant from being awarded U.S. market access for Ka-band spectrum at these nominal orbital locations is contradicted by clear Commission precedent.

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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 and 6 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 and 6 must terminate immediately any operations that cause harmful interference. Ciel also asked that the Commission require Hughes to inform its customers that its rights to serve the U.S. market are subject to these limitations.

<sup>2</sup> *Id.* at 2-6.

<sup>3</sup> Reply Comments of Hughes Network Systems, LLC, File Nos. SAT-LOI-20091110-00120/121, filed Feb. 26, 2010 ("Hughes Response") at 1.

<sup>4</sup> *Id.*

Thus, if the Commission decides to award U.S. market access to Hughes for SPACEWAY 5 and 6, it must do so subject to the conditions consistent with the Commission's precedent, as requested by Ciel.

**I. COMMISSION PRECEDENT AND ITU RULES SUPPORT  
ADOPTION OF THE CONDITIONS REQUESTED BY CIEL**

As Ciel explained in its comments, the Commission made clear when it adopted the first-come, first-served processing framework for satellite applications that it would continue to consider and honour ITU priority.<sup>5</sup> Pursuant to that policy, the Commission has regularly and consistently imposed conditions designed to protect ITU priority rights when it has acted on applications filed under the first-come, first-served procedures.

Specifically, in both the *Star One C5* and *Telstar 13* U.S. market access decisions discussed by Ciel in its comments, conditions consistent with those requested by Ciel here were adopted because in each case the licensee of a foreign administration other than the one that had licensed the applicant for U.S. market access had priority under the ITU rules.<sup>6</sup> In *Star One C5*, the Satellite Division modified the conditions on the grant of U.S. market access to the Brazilian-licensed *Star One C5* spacecraft at 68° W.L. in order to protect the Andean Community's higher priority network at 67° W.L. As the Satellite Division explained, the 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*

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<sup>5</sup> Ciel Comments at 3, citing *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 ("*First-Come, First-Served Order*").

<sup>6</sup> Ciel Comments at 3-5, citing *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) ("*Star One C5*") and *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*").

C5's operations interfere with the operations of the higher priority space station.”<sup>7</sup> Similarly, in *Telstar 13*, the Satellite Division imposed conditions on the grant of U.S. market access for the Telstar 13 C-band payload at 121° W.L. in order to protect the Netherlands' higher priority network at 120.8° W.L. In that case, the Satellite Division expressly relied on the *First-Come, First-Served Order* in requiring Loral to terminate U.S. service on the satellite immediately upon launch and operation of a spacecraft with higher ITU priority.<sup>8</sup>

The Hughes Response does not even mention – much less make any attempt to distinguish – the *Star One C5* and *Telstar 13* decisions. Instead, Hughes asserts that the conditions Ciel is requesting are inappropriate because Ciel has not yet sought U.S. market access for Ka-band operations from the 91° W.L. and 109.2° W.L. locations.<sup>9</sup>

Hughes is clearly wrong. The fact that Ciel has not yet requested U.S. market access at the relevant orbital locations is completely immaterial to the question of appropriate conditions for the Hughes LOIs. As discussed above, substantively identical conditions to those Ciel has proposed here were imposed in the *Star One C5* and *Telstar 13* proceedings. In *Star One C5*, the conditions were added at the request of the Andean Satellite Association,<sup>10</sup> and in *Telstar 13*, New Skies was the operator with ITU priority. Neither the Andeans nor New Skies had filed for U.S. market access for the spectrum and orbital location at issue at the time the Satellite Division decided to impose the conditions to protect those parties' priority.

Thus, the submission of a market access request is not a prerequisite for a foreign licensee to seek and obtain Commission provisions to ensure ITU priority rights are respected. Both *Star One C5* and *Telstar 13* were decided under the first-come, first-served framework, and

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<sup>7</sup> *Star One C5* at ¶ 3 (footnote omitted).

<sup>8</sup> *Telstar 13*, 18 FCC Rcd at 16380, ¶ 16, citing *First-Come, First-Served Order* at ¶ 296.

<sup>9</sup> Hughes Response at 1-2.

<sup>10</sup> See *Star One C5* at ¶ 3.

both imposed conditions on the U.S. market access granted to a foreign licensee that lacked ITU priority in order to protect the rights of a licensee of another administration with ITU priority that had not yet requested U.S. market access. This is exactly the situation before the Commission here, and the precedent established in these cases is therefore controlling.

Hughes' reliance on the Satellite Division's recent action concerning the DIRECTV RB-2A payload is also misplaced. Hughes observes that Ciel had made filings in that proceeding to note its ITU priority for the spectrum at issue and request that any grant be made subject to the standard international coordination condition set forth in Section 25.111(b) of the Commission's rules.<sup>11</sup> Hughes asserts that in granting the RB-2A application, "the Commission determined that all that was required" was the standard Section 25.111(b) condition "[b]ecause DIRECTV had made a first-come/first-served filing while Ciel had not."<sup>12</sup>

This characterization of the DIRECTV RB-2A grant is completely unsupported: Hughes is improperly putting words in the Commission's mouth. Nothing in the RB-2A grant documentation suggests that the decision to impose "only" the standard coordination condition had anything to do with the fact that DIRECTV had made an application under the Commission's first-come, first-served framework while Ciel had not. First, as Hughes itself acknowledges, the standard Section 25.111(b) condition was all that Ciel requested in connection with RB-2A.<sup>13</sup> This was not an oversight on Ciel's part – it simply reflects the fact that the *Star One C5* and *Telstar 13* conditions are standard provisions to protect ITU priority in the context of an ITU priority contest between two foreign licensees seeking U.S. market access, while the

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<sup>11</sup> Hughes Response at 4.

<sup>12</sup> *Id.*

<sup>13</sup> *Id.* at 4 n.12 (suggesting that Ciel's filings "present an unexplained and untenable discrepancy" because Ciel requested only the standard coordination condition in connection with DIRECTV RB-2A, not the more extensive conditions proposed here for the Hughes LOIs).

international coordination condition in the RB-2A grant is typically imposed on U.S. licensees to achieve the same purpose.<sup>14</sup>

Furthermore, contrary to Hughes' suggestion, the RB-2A grant decision expressly declines to rule on issues "discussed by both DIRECTV and Ciel" concerning processing matters because "[i]t is not necessary to reach those issues" to act on the RB-2A application.<sup>15</sup> Hughes ignores the fact that the RB-2A grant, in addition to the standard coordination condition, also requires operations of the payload to be terminated if necessary to accommodate coordination concerns.<sup>16</sup> In short, Hughes' suggestion that the RB-2A Grant substantively rejected Ciel's arguments, and did so based on the relative filing situation of DIRECTV and Ciel, is wholly at odds with the plain language of that document.

Hughes' attempt to evade conditions imposed on other similarly situated applicants for U.S. market access that lacked ITU priority is unavailing. Hughes has presented no justification for the Commission to depart from the precedent established in the *Star One C5* and *Telstar 13* decisions when it rules on the Hughes LOIs.

The conditions requested by Ciel also conform to ITU coordination procedures. Under Articles 9 and 11 of the ITU regulations, a satellite network is required to coordinate with

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<sup>14</sup> *But see Spectrum Five LLC Petition for Clarification of Condition in EchoStar 11 License*, 23 FCC Rcd 12786 at ¶ 8 (IB 2008) (adding a condition that requires EchoStar to modify its operations if it has not completed coordination and a network with superior ITU priority is brought into use and receives harmful interference).

<sup>15</sup> *DIRECTV Enterprises, LLC*, Stamp Grant, File No. SAT-LOA-20090807-00085, Call Sign S2796 (granted Jan. 8, 2010) ("RB-2A Grant") at 2 n.3.

<sup>16</sup> *Id.* at 2, ¶ 2 ("DIRECTV must terminate operations" on RB-2A when a "17/24 GHz BSS space station regularly authorized to provide service to the United States pursuant to the Commission's first-come, first-served processing framework commences operations at the 103° W.L. location, or its offsets" unless DIRECTV "has entered into a coordination agreement with the operator of the newly launched 17/24 GHz BSS space station.").



other networks that have higher ITU date priority.<sup>17</sup> If a coordination agreement is not reached, the lower priority network: (1) can only be notified provisionally in the ITU master register;<sup>18</sup> (2) is not entitled to protection from interference caused by the higher priority network;<sup>19</sup> and (3) must, if it causes harmful interference to a network with higher ITU date priority, “immediately eliminate this harmful interference.”<sup>20</sup>

Hughes insists that it “intends to fulfill its coordination responsibilities” and expressly recognizes 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 networks that are ahead of it in the ITU coordination queue.”<sup>21</sup> In light of these pronouncements, there is no reason for Hughes to object to the conditions Ciel has requested. Ciel’s requested conditions simply have the effect of ensuring that Hughes’ communications with U.S. earth stations pursuant to Commission authorization comply with ITU coordination requirements.

Thus, imposition of the conditions requested by Ciel comports with the Commission’s routine practice in cases involving a request for market access by a foreign licensee who lacks ITU filing priority, as well as with the dictates of the ITU coordination requirements. As the Satellite Division explained in *Star One C5*, imposing express conditions could “be viewed as unnecessary” because the underlying Commission policies regarding ITU

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<sup>17</sup> See ITU Radio Regulations Nos. 9.6, 9.27, Appendix 5.

<sup>18</sup> See ITU Radio Regulations No. 11.41.

<sup>19</sup> See 47 C.F.R. § 25.111(b) (“No protection from interference caused by radio stations authorized by other Administrations is guaranteed unless coordination procedures are timely completed or, with respect to individual administrations, by successfully completing coordination agreements.”); ITU Radio Regulations No. 5.43.

<sup>20</sup> ITU Radio Regulations No. 11.42; see also *id.* No. 11.41.

<sup>21</sup> Hughes Response at 6.

priority are clear.<sup>22</sup> However, the Division found that “the public interest would be served by removing any uncertainty as to the applicability of Commission policy in this case.”<sup>23</sup> The same conclusion is warranted here.

## **II. HUGHES MISCHARACTERIZES THE COMMISSION’S FIRST-COME, FIRST-SERVED POLICY**

Hughes also argues that assuming the Hughes LOIs are granted, Ciel will be precluded from seeking U.S. market access in the future for the Ka-band spectrum at the orbital locations sought by Hughes because such a request would be barred under the first-come, first-served rules.<sup>24</sup> Under Hughes’ view of the first-come, first-served process, grant of a satellite authorization, whether it is a U.S. license or market access for a foreign licensee, bars any future request for satellite operations at the same nominal orbital location and frequencies.<sup>25</sup> In support of this assertion, Hughes cites to the *First-Come, First-Served Order* as well as to Commission rule Section 25.158(b)(3).<sup>26</sup>

The fatal flaw with Hughes’s theory is that it is directly contradicted by the language of the *First-Come, First-Served Order* itself. Paragraph 296 of that decision, which was quoted by Ciel in its comments and is relied on by Hughes in its reply, expressly

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<sup>22</sup> *Star One C5* at ¶ 5.

<sup>23</sup> *Id.*

<sup>24</sup> Hughes Response at 3.

<sup>25</sup> *See id.* at 3 (“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.”).

DIRECTV has made similar arguments to those of Hughes in the proceedings relating to use of the 17/24 GHz BSS spectrum at the nominal 103° W.L. orbital location, and Ciel’s pleadings in those proceedings provide a detailed rebuttal of this theory. *See* Comments of Ciel Satellite Limited Partnership, File No. SAT-LOA-20090807-00085, filed Nov. 2, 2009; Comments of Ciel Satellite Limited Partnership, File No. SAT-LOI-20081119-00217, filed Nov. 9, 2009; Reply Comments of Ciel Satellite Limited Partnership, File No. SAT-LOA-20090807-00085, filed Nov. 24, 2009. Ciel will not repeat that lengthy analysis here, but incorporates these prior pleadings by reference herein.

<sup>26</sup> *Id.* at 3.

contemplates that the Commission could grant a U.S. market access request to a foreign licensee with ITU priority and then subsequently authorize another foreign licensee with inferior ITU rights to serve the U.S. using the same frequencies and nominal orbital location.<sup>27</sup> If, as Hughes suggests, the Commission intended grant of an authorization under first-come, first-served to bar any subsequent requests, the scenario described in paragraph 296 would clearly be impossible.

Hughes emphasizes that there is a distinction between the facts described in paragraph 296, in which the first entity that requests market access is also the entity with ITU priority, and the facts at issue here, where Hughes has filed first at the Commission but Ciel has date priority at the ITU.<sup>28</sup> That distinction, however, works against Hughes. If a foreign licensee with *lower* ITU priority can obtain U.S. market access after another foreign licensee has been granted U.S. market access (as paragraph 296 makes clear), then *a fortiori*, a foreign licensee with *higher* ITU priority should be able to obtain U.S. market access.

Hughes' suggestion that if Ciel requests U.S. market access its filing will be subject to dismissal under Section 25.158(b)(3) is also misplaced. As a threshold matter, that rule addresses processing of satellite license applications, and thus by its terms does not appear to apply to a market access request. However, even if the rule applies, a Ciel market access request would not be subject to dismissal under the standard enunciated in the rule. The rule was adopted by the *First-Come, First-Served Order*, and must be read in light of the language in that

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<sup>27</sup> Specifically, paragraph 296 states that “[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, we would permit the lower priority network to access the U.S. market if the higher priority satellite has not been launched.” *First-Come, First-Served Order* at ¶ 296.

<sup>28</sup> Hughes Response at 3 (asserting that paragraph 296 “only” applies if the second foreign licensee requesting market access has lower ITU priority than the foreign licensee that has already been awarded market access).

decision that expressly permits the grant of U.S. market access to more than one foreign licensee at a given orbital location in the same spectrum.

More importantly, Section 25.158(b)(3) states that an application that reaches the front of the queue is eligible for grant only if it “will not cause harmful interference to any previously licensed operations.”<sup>29</sup> However, as Hughes itself recognizes, its operation of SPACEWAY 5 and SPACEWAY 6 is not entitled to protection from harmful interference absent successful coordination with higher ITU priority networks.<sup>30</sup> As a result, absent successful coordination that provides Hughes with protection from interference, a later Ciel request for market access based on Canadian ITU filings with date priority cannot, by definition, cause harmful interference to Hughes’s SPACEWAY 5 and SPACEWAY 6 operations.

In short, grant of the Hughes LOIs will have no impact on Ciel’s eligibility to seek Ka-band market access for the orbital locations at issue here. Ciel has not suggested that it can commence service to the U.S. without seeking Commission authority – Ciel recognizes that its Canadian authorizations do not bestow U.S. market access rights.<sup>31</sup> But Hughes’ assertion that its LOI filings foreclose Ciel from seeking such rights in the future flies in the face of the clear language of the Commission’s decisions and rules. Under the procedures spelled out in the *First-Come, First-Served Order*, Ciel will be eligible to seek and obtain U.S. market access whatever the outcome of the Hughes LOIs.

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<sup>29</sup> 47 C.F.R. § 25.158(b)(3).

<sup>30</sup> Hughes Response at 6 (recognizing 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 networks that are ahead of it in the ITU coordination queue.”).


<sup>31</sup> See Hughes Response at 5.

## CONCLUSION

Consistent with controlling Commission precedent and the dictates of the ITU rules, the Commission should impose the conditions requested by Ciel on any grants of the Hughes LOIs.

Respectfully submitted,

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March 10, 2010

## CERTIFICATE OF SERVICE

I, Scott Gibson, hereby certify that on this 10th day of March, 2010, I caused to be served a true copy of the foregoing "Reply of Ciel Satellite Limited Partnership" by first class mail, postage prepaid, upon the following:

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