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FILED ELECTRONICALLY

Mr. Robert Nelson
Chief, Satellite Division
International Bureau
Federal Communications Commission
445 Twelfth Street, SW
Room 6-A665
Washington, D.C. 20554

Re: Hughes Network Systems, LLC – Letters of Intent Seeking Access to the U.S. Market Using Ka-Band Satellites Licensed by the United Kingdom (File Nos. SAT-LOI-20091110-00120 and SAT-LOI-20091110-00121)

Dear Mr. Nelson:

This letter is submitted on behalf of Hughes Network Systems, LLC ("Hughes"), by counsel, to rebut persistent inaccuracies in pleadings submitted by Ciel Satellite Limited Partnership with respect to the application of the FCC's first-come/first-served process and other policies affecting the above-referenced applications, by which Hughes seeks to reserve Ka-band spectrum and geostationary orbital locations at 109.2 W.L. and 91 W.L. respectively for the purpose of providing fixed-satellite service ("FSS") in the United States via the SPACEWAY 5 and SPACEWAY 6 space stations authorized by the Administration of the United Kingdom. Specifically, this letter responds to assertions made in the "Reply of Ciel Satellite Limited Partnership," dated March 10, 2010 ("Ciel Reply").

Ciel continues to assert that burdensome conditions must be imposed on the grant of orbit/spectrum reservations to Hughes for SPACEWAY 5 and SPACEWAY 6 due to Ciel's claim of "ITU priority" (*see* Ciel Reply at 1 & n.1), despite the fact that first-in-time status at the ITU has no bearing on the assignment of orbit/spectrum resources through the FCC's first-come/first-served process. Specifically, Ciel fails to acknowledge that orbit/spectrum resources for satellite access to the U.S. market can be assigned to a licensee or reserved for the exclusive use of a letter of intent filer without regard to whether the filer has "ITU priority." *See, e.g.,*

Amendment of the Commission's Space Station Licensing Rules and Policies, 18 FCC Rcd 10760, 10870 (¶ 295) (2003) ("*Space Station Licensing Reform Order*").

Once orbit/spectrum resources have been assigned to specific operators by the FCC, that assignment cannot be disturbed simply because another entity may have submitted an earlier ITU filing.[1] Whether and how the entity assigned these resources by the FCC ultimately operates space segment capacity will, of course, be influenced by the outcome of ITU-mandated coordination, but this process does not itself disturb established rights with respect to the U.S. market. Accordingly, conditions premised on the order of ITU filings or on the outcome of coordination itself are neither necessary nor appropriate in this context.

The two market access cases repeatedly cited by Ciel were not letter of intent cases involving orbit/spectrum assignment, as is the case with the Hughes submissions, but instead involved non-U.S. satellite operators seeking permissive, non-exclusive market access via petitions to add a satellite to the FCC's "Permitted List."[2] Inclusion on this list generally permits Earth station operators with ALSAT designations to utilize any satellite on the list as a point of communication. The designation requires only a determination that the subject satellite is licensed by a WTO-member administration and/or that it has otherwise been demonstrated that allowing access to the U.S. market will be consistent with the public interest based on analysis of "the effect on competition in the U.S. market, *spectrum availability*, eligibility and operating (e.g., technical) requirements, and national security, law enforcement, foreign policy and trade concerns." *See Telesat Canada*, 22 FCC Rcd 588, 589 (¶ 2) (Sat. Div. 2007) (emphasis added).

Under this framework, the addition of a satellite to the Permitted List does not preclude later addition of another non-U.S. satellite at the same location or at a spacing of less than two degrees. Because of the requirement that spectrum be available in the U.S. market, however, even if a petitioner has the earliest submitted ITU filing with respect to an orbital location in a spectrum band, it can still be denied authority to serve the U.S. market from that location and frequency band if these resources have previously been assigned to a different entity either through direct FCC licensing or through the letter of intent process. *See, e.g., Pacific Century*, 16 FCC Rcd at 14361-62 & n.41. Ciel's characterization of the Letter of Intent process as non-

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[1] *See, e.g., Pacific Century Group, Inc.,* 16 FCC Rcd 14356, 14361-62 & n.41 (2001) ("*Pacific Century*") (letter of intent filer assigned Ka-band orbital locations different from those requested, despite first-in-time ITU filings, because the FCC had previously assigned the requested orbital locations to others).

[2] *See Star One S.A.*, 23 FCC Rcd 10896 (Sat. Div. 2008) ("*Star One*"); *Loral Spacecom Corporation*, 16 FCC Rcd 16374 (Sat. Div. 2003) ("*Loral Telstar 13*"). Unlike grants of declaratory rulings to add space stations to the Permitted List such as these, Letter of Intent grants reserve orbital locations in the specified frequency band for the grantee, while also requiring the grantee to meet the system implementation milestones established under the Commission's Rules. *See* 47 C.F.R. § 25.164.

exclusive, such that "Ciel will be eligible to seek and obtain U.S. market access whatever the outcome of the Hughes LOIs" is clearly erroneous. Ciel Reply at 10. The Commission made plain in the *Space Station Licensing Reform Order* that "Letters of Intent should be treated the same as satellite [license] applications."[3]

In neither *Loral Telstar 13* nor *Star One* did the Commission explain why it refers to the first-come/first-served procedures in evaluating requests to be added to the Permitted List, but it bears noting that the particular reference to the ITU coordination process relates to simultaneous consideration of several "requests for U.S. market access from *two or more* non-U.S. licensed operators" in which each can be granted rights to the same orbit/spectrum resources subject to the ultimate outcome of the coordination process, rather than a circumstance where only a single application is under consideration. *See, Space Station Licensing Reform Order*, 18 FCC Rcd at 10870-71 (¶ 296), *cited in Loral Telstar 13*, 18 FCC Rcd at 16380 (¶ 16) n.47, and *Star One*, 23 FCC Rcd at 10897 (¶ 5) n.8. Because Permitted List designation is non-exclusive, the relative access rights of other potential future applicants with respect to the same orbit/spectrum resources may be a relevant consideration in such proceedings. Nonetheless, in the most recent of these decisions, *Star One*, the Satellite Division stated that even in the context of a non-exclusive Permitted List designation "the inclusion of these conditions may be viewed as unnecessary in ordinary circumstances." *Star One*, 23 FCC Rcd at 10897 (¶ 5).[4]

Ciel itself inadvertently identifies a key distinguishing factor between the SPACEWAY applications and the Permitted List cases in its discussion attempting to distinguish the Commission's recent action granting the DIRECTV RB-2A license, where only the standard ITU coordination condition was imposed.[5] Ciel asserts that the broader conditions included in the *Star One* and *Loral Telstar 13* decisions "are standard provisions to protect ITU priority in the context of an ITU priority contest ***between two foreign licensees seeking U.S. market access***." Ciel Reply at 5 (emphasis added). Notwithstanding the fact that the FCC is not a forum for adjudication of "an ITU priority contest," it is also incontestably the case that these proceedings do not involve "two foreign licensees seeking U.S. market access"; there is only one party requesting such access – Hughes. As Hughes has established its precedence within the FCC filing process by submitting its Letter of Intent applications, and Ciel has not filed any

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[3] *Space Station Licensing Reform Order*, 18 FCC Rcd at 10870 (¶ 294). The Commission further noted that "[t]his is consistent with our WTO commitments to treat non-U.S. satellite operators no less favorably than we treat U.S. satellite operators." *Id.*

[4] If Ciel's proposition were correct, logic dictates that the burdensome conditions it requests as a result of "ITU priority" would be the default conditions, and would need to apply to all potentially affected ITU space networks ahead of SPACEWAY 5 and 6 in the ITU queue. This is not the case, of course, and the standard ITU provision in Section 25.111 exists for good reason.

[5] Application of DirecTV Enterprises, LLC, File No. SAT-LOA-20090807-00085, Stamp Grant (January 8, 2010).

application for the Ka-band orbital locations that Hughes seeks, this is not a processing round or other circumstance in which the relative status or eligibility of two entities merits consideration.

Hughes has properly submitted its SPACEWAY 5 and 6 applications in reliance on the Commission's well-established first-come/first-served procedures. Ciel nonetheless continues to urge the Commission to impose restrictions relevant only in circumstances that are not present here, and to constrain Hughes arbitrarily in connection with its Letter of Intent filings. Ciel's request for extraordinary conditions must accordingly be denied.

Respectfully submitted,

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cc: Stephen Duall, FCC
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