

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

In the Matter of)
)
INMARSAT HAWAII INC.) File No. SAT-LOI-20140326-00034
)
Letter of Intent Seeking Authority to Access
the U.S. Market Using a Ka-Band Satellite
at the Nominal 63° W.L. Orbital Location

REPLY OF TELESAT CANADA

In the above-referenced Letter of Intent (“LOI”) application, Inmarsat Hawaii Inc. (“Inmarsat”) requests authority to serve the U.S. market via a Ka-band satellite to be launched and operated by Inmarsat at 63° W.L.¹ Telesat Canada (“Telesat”) filed a Petition for Imposition of Conditions,² and Inmarsat filed an opposition to the Petition.³

Telesat hereby replies to Inmarsat’s Opposition. Telesat demonstrates in this Reply that Inmarsat has mischaracterized the Commission’s precedents and has chosen to ignore the affirmative steps Telesat is taking to perfect its interest in 63° W.L. Accordingly, Inmarsat’s arguments should be rejected and the condition sought by Telesat should be adopted.

¹ References in this petition to 63° W.L. are to the nominal orbital location of 63° W.L.

² Petition for Imposition of Conditions, File No. SAT-LOI-20140326-00034 (Apr. 21, 2014) (“Petition”).

³ Opposition of Inmarsat Hawaii Inc., File No. SAT-LOI-20140326-00034 (May 6, 2014) (“Opposition”).

DISCUSSION

Telesat has requested that the Commission, if it grants Inmarsat's application, require that Inmarsat cease providing service to the United States from 63° W.L. once a Ka-band satellite network that has higher ITU priority is placed into operation at that orbital location.⁴ As stated in Telesat's Petition, Telesat plans to operate its own Ka-band satellite at 63° W.L., and to seek U.S. market access for its satellite, based on a satellite network that has ITU priority over the satellite network with which Inmarsat's 63° W.L. satellite is associated.

In its Opposition, Inmarsat asserts that the Commission will not adopt a condition like the one requested by Telesat unless it already has granted U.S. market access to the satellite whose network has ITU priority.⁵ In support of its assertion, Inmarsat cites a single decision, involving Hughes Network Systems, LLC, in which the International Bureau declined to impose such a condition.⁶

Inmarsat has mischaracterized the Commission's policies, because the International Bureau has adopted a condition like the one sought by Telesat in circumstances in which the party whose satellite network had ITU priority had NOT been granted U.S. market access. In a 2008 case involving Star One,⁷ which was cited in

⁴ Petition at 1.

⁵ Opposition at 3.

⁶ *Hughes Network Systems, LLC, Letter of Intent Seeking Access to the United States Market*, Declaratory Ruling, 26 FCC Rcd 8521 (Int'l. Bur. 2011) ("*Hughes*").

⁷ *Star One S.A., Order on Reconsideration*, DA 08-1645 (Int'l. Bur. 2008) ("*Star One*").

Hughes,⁸ the International Bureau adopted the following conditions even though the party that had ITU priority, the Andean Satellites Association, had not been granted U.S. market access:⁹

“(a) In the absence of a coordination agreement with a satellite network with higher ITU date priority, Star One C5 must cease co-frequency service to the U.S. market immediately upon launch and operation of the higher ITU-priority space station, or be subject to further conditions designed to address potential harmful interference to a space station with ITU date precedence.

(b) In the absence of a coordination agreement with a satellite network with higher ITU priority, U.S.-licensed earth stations communicating with Star One C5 must immediately terminate any operations that cause harmful interference to the higher priority space station.”¹⁰

Similarly, in a case involving Loral Spacecom Corp., the International Bureau adopted conditions similar to those in *Star One* even though there was no suggestion that the party with ITU priority, New Skies, had been granted access to the U.S. market.¹¹

Accordingly, Inmarsat’s claim that there must be a grant of U.S. market access before the Commission will adopt a condition like that sought by Telesat is unfounded.

The different outcomes in *Hughes* and *Star One* might be explained by the more substantial plans in *Star One* that the party seeking the imposition of conditions had for its orbital location. That party, the Andean Satellites Association, had previously placed a satellite at the orbital location in question, using the frequencies in question, and had provided information to the Commission concerning its plans to station another satellite

⁸ See *Hughes*, 26 FCC Rcd 8521 at n. 64. The then pending reconsideration of the *Star One* decision that is also noted in the footnote involved other matters. See *Star One, S.A., Petition for Declaratory Ruling to be Added to the Permitted List*, Order, 25 FCC Rcd 14338 (Int’l. Bur. 2010).

⁹ See *Star One* at ¶ 4.

¹⁰ *Star One* at ¶6.

¹¹ *Loral Spacecom Corp., Petition for Declaratory Ruling to Add Telstar 13 to the Permitted Space Station List*, Order, 18 FCC Rcd 16374, ¶¶ 16-17, 31 (Int’l. Bur. 2003) (“*Loral*”).

there and to seek authority to serve the U.S. market.¹² It is also noteworthy that in *Loral* the Commission adopted a condition like the one Telesat is seeking even though there was no evidence “that construction of a higher-priority satellite ... [was] at an advanced stage, or that launch of such a satellite ... [was] imminent.”¹³

Given the *Star One* and *Loral* precedents, Telesat’s plans for 63° W.L. amply support adopting a “cease service when there is a higher priority ITU satellite network” condition. Telesat has a long history of providing satellite services from the 63° W.L. orbital position. The Telstar 14 (EdS1) Ku-band satellite was launched on January 11, 2004, and served the U.S. market from 63° W.L. for over seven years before being replaced by Telstar 14R (EdS2). The Telstar 14R (EdS2) Ku-band satellite was launched on May 20, 2011, and currently operates from the 63° W.L. orbital position with services in markets throughout the Americas. Telstar 14R is currently on the Permitted Space Station List.¹⁴

Telesat’s efforts to perfect its interest in Ka-band at 63° W.L. are similar to the efforts that the Andean Satellites Association made in *Star One*. Telesat currently operates the Ka-band payload of its Nimiq 2 satellite at 63° W.L. under the IOMSAT-KA-63W ITU satellite network, and notification and Res. 49 due diligence information has been received by the ITU-BR. A new satellite under design for 63° W.L., which includes Ka-band, will further aggregate spectrum resources at this prime Telesat

¹² Notice of Ex Parte Communications, Joaquin Restrepo, Ministry of Communications, Republic of Columbia to Kevin J. Martin, Chairman, FCC, File No. SAT-PPL-20071113-00159 (May 15, 2008).

¹³ *Loral* at ¶ 17.

¹⁴ *Telesat Brasil Capacidade de Satelites Ltda., Petition for Declaratory Ruling to be Added to the Permitted List*, Public Notice, DA No. 11-643 (rel. Apr. 8, 2011).

orbital position. Telesat plans to seek U.S. market access for the new satellite later this year. These facts demonstrate Telesat's commitment to 63° W.L. and, consistent with Commission precedent, warrant adopting the condition Telesat has requested.

In its Opposition, "Inmarsat accepts the 'risks inherent in international coordination process' in seeking U.S. market access."¹⁵ Given that the condition sought by Telesat merely expresses one of those risks, Inmarsat has no cause for complaint if the Commission adopts the condition.

CONCLUSION

For the reasons stated herein and in Telesat's Petition, the arguments in Inmarsat's Opposition should be rejected and the condition sought by Telesat should be adopted.

Respectfully submitted,

TELESAT CANADA

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¹⁵ Opposition at 4.

CERTIFICATE OF SERVICE

I hereby certify that on this 16th day of May, 2014, a copy of the foregoing Petition to Impose Conditions was sent by first-class, United States mail to the following:

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