

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

In the Matter of)	
)	
Spectrum Five LLC)	File No. SAT-LOI-20150416-00025
)	Call Sign S2940
Petition for Declaratory Ruling to Serve the)	
U.S. Market from the 110.9° W.L. Orbital)	
Location in the 17/24 Broadcasting)	
Satellite Service Band)	

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 submits its comments concerning the above-captioned application of Spectrum Five LLC (“Spectrum Five”) for authority to serve the U.S. using BSSNET2A-111W, a Netherlands-authorized 17/24 GHz Broadcast-Satellite Service (“BSS”) satellite to be located at 110.9° W.L. (the “Spectrum Five Petition”). Consistent with Commission precedent and international law, any grant of this request must be made subject to conditions designed to ensure that Spectrum Five does not cause harmful interference to a satellite network with higher International Telecommunication Union (“ITU”) priority.

Ciel is a Canadian-licensed satellite service provider. Ciel launched the Ciel-2 BSS spacecraft in 2008, which operates at the 129° W.L. orbital location. Ciel uses this facility to provide a platform for the distribution of video and audio programming via satellite throughout North America.

Ciel has plans to significantly expand its network over the next several years. Industry Canada has issued an Approval in Principle (“AIP”) to Ciel authorizing the

development and deployment of a new BSS satellite network using the 17/24 GHz BSS spectrum at the 111.1° W.L. orbital location. Ciel has made material investments towards implementing the authority at the 111.1° W.L. orbital location and intends to begin operating a spacecraft with a 17/24 GHz BSS payload at that orbital location in due course.

The Canadian Administration has submitted filings with the ITU for the 17/24 GHz BSS spectrum at 111.1° W.L. The Canadian filings, which cover operations in both Canada and the U.S., have date priority which is superior to the Netherlands ITU filing relied on by Spectrum Five for these frequencies at the nominal 111° W.L. orbital position.

In its Petition, Spectrum Five describes plans to deploy a 17/24 GHz BSS satellite network at 110.9° W.L., but does not address the obligation to undertake international coordination of the planned operations. In any action taken on the Spectrum Five Petition, the Commission must conform to both its precedent and its obligations under international law to ensure Spectrum Five's compliance with international coordination obligations. This necessitates imposing conditions requiring Spectrum Five to terminate its operations as necessary to protect a higher priority network unless Spectrum Five has successfully coordinated with that network.

Specifically, under applicable Commission precedent, any market access authorization granting the Spectrum Five Petition should include the following conditions:

1. Communications between U.S. earth stations and BSSNET2A-111W shall be in compliance with the satellite coordination agreements reached between the Netherlands and other Administrations.
2. In the absence of a coordination agreement with a satellite network with higher ITU priority, BSSNET2A-111W 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 BSSNET2A-111W must terminate immediately any operations that cause harmful interference.

Spectrum Five 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.¹

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

¹ *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).

lacks ITU priority for the requested frequencies and orbital location. For example, in 2008 the Satellite Division granted a request by the Andean Satellites Association to modify the terms of market access for the Star One C5 satellite.² The original grant had required that operations of the Brazil-licensed Star One C5 spacecraft conform to coordination agreements between Brazil and other administrations.³ 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.”⁴ 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.”⁵ The conditions requested by Ciel above track the language of the provisions in the Star One C5 grant as modified by the reconsideration decision.⁶

² *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).

³ *Id.* at ¶ 2.

⁴ *Id.* at ¶ 3 (footnote omitted).

⁵ *Id.* at ¶ 5.

⁶ *See id.* at ¶ 6.

Substantively identical requirements were also imposed when Loral's Telstar 13 spacecraft was added to the Commission's Permitted Space Station List.⁷ 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 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.⁸

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.”⁹

The Commission should impose similar requirements here. The Canadian ITU filings underlying Ciel's planned 17/24 GHz BSS spacecraft at the nominal 111° W.L. orbital

⁷ 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.

⁸ *Id.*, 18 FCC Rcd at 16380, ¶ 16 (footnotes omitted).

⁹ *Id.*, ¶ 18.

location have date priority over the Netherlands ITU filings on which Spectrum Five relies, and Spectrum Five has not yet initiated, much less completed, coordination discussions with Ciel. Accordingly, any grant of market access to Spectrum Five must include provisions to ensure that absent a coordination agreement, Spectrum Five does not create harmful interference to the Ciel network. Spectrum Five has conceded as much in a prior proceeding, stating its non-objection to conditions relating to international coordination in a situation where Spectrum Five was seeking U.S. market access pursuant to an ITU filing that did not have date priority.¹⁰


Spectrum Five should not assume that the Ciel satellite at 111.1 W.L. will have Canadian coverage only, requiring coordination only at the U.S.-Canadian border. The Ciel network will have U.S. as well as Canadian coverage. Canada's ITU priority applies throughout Ciel's planned service area, and as a result, when Ciel initiates 17/24 GHz BSS service at 111.1° W.L. pursuant to these Canadian ITU filings, Spectrum Five will have to modify or terminate its operations as necessary to protect Ciel unless Spectrum Five has reached a coordination agreement with Ciel. By conditioning any action on the Spectrum Five Petition in this manner, the Commission will ensure that Spectrum Five is aware of this obligation.

¹⁰ See Response of Spectrum Five LLC to Comments of Ciel Satellite Limited Partnership, File No. SAT-LOI-20081119-00217, Call Sign S2778 (filed Dec. 3, 2009) at 1.

For the reasons discussed herein, the Commission must impose the conditions enumerated above on any grant of the Spectrum Five Petition to ensure compliance with international coordination requirements.

Respectfully submitted,

CIEL SATELLITE LIMITED PARTNERSHIP

By: 


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11 September 2015

CERTIFICATE OF SERVICE

I, Scott Gibson, hereby certify that on this 11th day of September, 2015, 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:

**Mr. David Wilson, President
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Scott Gibson