

January 24, 2020

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BY ELECTRONIC FILING

Marlene H. Dortch
Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, DC 20554

Re: *IBFS File Nos. SAT-PDR-20180910-00069 and SAT-PDR-20190328-00020*

Dear Ms. Dortch:

Myriota Pty Ltd. (“Myriota”) hereby responds to a recent *ex parte* submitted by Hiber Inc. (“Hiber”) in the above referenced proceedings.¹ Hiber’s *ex parte* is itself a response to an earlier submission by Myriota discussing the need for all non-voice, non-geostationary (“NVNG”) satellite system applicants – including Hiber – to coordinate with each other, and arguing against the premature grant of any application in the ongoing processing round in the absence of a spectrum sharing arrangement.²

Hiber is now proposing that coordination with Myriota will be straightforward and that there should be no basis for waiting until sharing arrangements have been developed, citing language from Myriota’s application as to its ability to share NVNG spectrum efficiently.³ In assessing this argument, it is important to consider Hiber’s own statements about its ability to share spectrum. In its original application, Hiber stated that it could operate its system in a way that could accommodate future systems providing services in the United States using the UHF NVNG spectrum bands.⁴ But once the Commission initiated a processing round, Hiber took a very different position. It said that its willingness to accommodate other systems was “no longer applicable” and that “the Commission should disregard Hiber’s statement.”⁵ Instead, Hiber claimed that it “should be treated the same” as other participants in the processing round.⁶ Indeed, Hiber asserted that holding to its prior sharing commitment would be “unfair,” as would holding the other participants in the processing round – specifically including Myriota – to very similar

¹ See Letter from Bruce Hensch to Marlene H. Dortch, IBFS File Nos. SAT-PDR-20180910-00069 and SAT-PDR-20190328-00020 (Jan. 7, 2020) (“Hiber Ex Parte”).

² See Letter from William M. Wiltshire to Marlene H. Dortch, IBFS File Nos. SAT-PDR-20180910-00069 and SAT-PDR-20190328-00020 (Dec. 20, 2019).

³ See Hiber Ex Parte at 1-2.

⁴ See, e.g., Hiber, Inc., Petition for Declaratory Ruling, IBFS File No. SAT-PDR-20180910-00069, Narrative at 8 (Sep. 10, 2018).

⁵ Letter from Bruce Hensch to Marlene H. Dortch, IBFS File Nos. SAT-PDR-20180910-00069 and SAT-PDR-20190328-00020, at 1 (Sep. 16, 2019).

⁶ *Id.*

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statements they had made in their applications about sharing spectrum.⁷ In other words, contrary to its own statements, Hiber has now reneged on its promise to share spectrum with other NVNG systems, implied that it wants to be treated more favorably than other applicants by having its application processed sooner, and quoted language from Myriota's application that Hiber said would be "unfair" to consider. The Commission should reject Hiber's cynical attempt to obtain an unfair market advantage over other participants in the processing round.⁸

Hiber also argues that the Commission's rules do not require that a sharing agreement be in place as a precondition to granting an application in a processing round.⁹ In support of this argument, Hiber cites the recent Ka-band and V-band NGSO FSS processing rounds. Yet Hiber neglects to mention that the Commission has adopted a default sharing regime for NGSO FSS in the event that coordination agreements cannot be reached.¹⁰ No similar rule exists for NVNG systems. Hiber also notes that all authorizations are likely to be conditioned on the outcome of international coordination, but here again Hiber overlooks the fact that the Commission can and does specify coordination rules that apply for service to the United States – just as it has done in the NGSO FSS context cited by Hiber.

Lastly, Hiber itemizes attempts to coordinate with Myriota during one period in February 2018 and another just before and during the recent World Radio Conference in Egypt ("WRC-19"). At both of those times, the status of the NVNG spectrum was very much up in the air as it was the subject of an agenda item at WRC-19. Discussions between Hiber and Myriota leading up to and at WRC-19 related solely to that agenda item and did not include detailed discussion regarding sharing methods for the two systems while operating in the U.S. market. Now that WRC-19 has concluded and the new rules applicable to the 399.9-400.05 MHz uplink band have been adopted, NVNG operators have a common framework on which to build coordination discussions.

As stated in its last *ex parte* and not denied by Hiber, Myriota has reached out to Hiber to engage in coordination but is awaiting an opportunity for both parties to conduct necessary sharing studies together. Myriota strongly believes that the two companies should be able to conclude a satisfactory coordination agreement once they have had sufficient time to analyze the situation. In these circumstances, the last thing the Commission should do is short-circuit those discussions by choosing winners and losers in a processing round. Rather, the Commission should continue to encourage all NVNG applicants to work cooperatively to reach agreements for sharing the

⁷ *Id.* n.5.

⁸ Hiber's substantial and belated repositioning on these issues also explains why Myriota found it necessary to comment on Hiber's application outside the official pleading cycle. In any event, the Commission's rules contemplate the submission of such informal objections at any time during the pendency of a space station application. *See* 47 C.F.R. § 25.154(b).

⁹ *See* Hiber *Ex Parte* at 2.

¹⁰ *See* 47 C.F.R. § 25.261.

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spectrum at issue so that multiple competing systems can be licensed to provide innovative services to Americans in the spectrum at issue.

Sincerely,

A handwritten signature in blue ink that reads "William M. Wiltshire". The signature is written in a cursive style with a large initial 'W'.

William M. Wiltshire
Counsel to Myriota

cc: Jose Albuquerque
Tony Lin