

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of Application of

Eutelsat S.A.

Petition for Declaratory Ruling for
EUTELSAT 133WA to Access the U.S.
Market and to be Added to the Permitted
Space Station List at the Nominal
133° W.L. Orbital Location

File No. SAT-PPL-20180302-00018

Call Sign: S3031

PETITION TO DENY OF INTELSAT LICENSE LLC

Intelsat License LLC (“Intelsat”), by its attorneys, respectfully submits this Petition to Deny Eutelsat S.A.’s (“Eutelsat”) request for EUTELSAT 33C (call sign S3031, since renamed and referred to herein as “EUTELSAT 133WA”) to access the U.S. market and be added to the Permitted Space Station List at the nominal 133° W.L. orbital location (the “Petition”).¹ Intelsat respectfully requests that the Federal Communications Commission (“FCC” or “Commission”) deny Eutelsat’s Petition, because it seeks to circumvent the agency’s satellite authorization rules and policies to the detriment of the public interest.

Eutelsat seeks to provide service in the United States at 133° W.L. using a French-licensed, in-orbit, Ku-band satellite beginning mid-2018.² Intelsat has an application pending before the Commission to launch and operate a C-band replacement satellite with new Ku- and

¹ Eutelsat S.A., Petition for Declaratory Ruling for EUTELSAT 133WA to Access the U.S. Market and to be Added to the Permitted Space Station List at the Nominal 133° W.L. Orbital Location, Call Sign S3031, File No. SAT-PPL-20180302-00018 (filed Mar. 2, 2018) (“Eutelsat Petition”).

² *Id.*, at 1.

Ka-band frequencies, to be known as Galaxy 15R, at the 133° W.L. orbital location.³ Intelsat filed its application more than nine months before Eutelsat’s Petition, and has first-come, first-served licensing queue status with respect to use of Ku- and Ka-band frequencies at 133° W.L. under Sections 25.137(c) and 25.158 of the FCC’s rules.⁴

Eutelsat acknowledges Intelsat’s priority position in the International Bureau’s space station licensing queue, but nevertheless requests market access based on its offer to decommission EUTELSAT 133WA prior to the start of service by Galaxy 15R.⁵ This is a false promise. Although Eutelsat may in fact retire EUTELSAT 133WA, which is nearing the end of its operational life, prior to the launch and operation of Intelsat’s Galaxy 15R satellite, Eutelsat intends to continue serving the U.S. market long term from 133° W.L. with a “purpose built” Ku- and Ka-band satellite to be known as EUTELSAT 133WB.⁶ In fact, Eutelsat has already filed another application—also behind Intelsat’s application in the processing queue—seeking market access for EUTELSAT 133WB upon the decommissioning of EUTELSAT 133WA. Eutelsat’s Petition, though seemingly innocuous, is a first step in a broader strategy to secure the 133° W.L. orbital location for Eutelsat’s Ku- and Ka-band operations and circumvent the FCC’s application processing rules. The FCC should not allow operators to effectively circumvent the queue process in this manner. Doing so would violate long-standing policies and undermine confidence in the FCC’s satellite authorization rules.

³ Intelsat License LLC, Application for Authority to Launch and Operate Galaxy 15R, a Replacement Satellite with New Frequencies, at 133.0° W.L. (227.0° E.L.), Call Sign S3015, SAT-LOA-20170524-00078, SAT AMD-20170524-00078 (filed May 24, 2017).

⁴ See 47 C.F.R. §§ 25.137(c), 25.158.

⁵ See *Eutelsat Petition*, at 10-11, n.21.

⁶ See *id.*, at 2, n.3. See also Eutelsat S.A., Petition for Declaratory Ruling for EUTELSAT 133WB to be Added to the Permitted List and Access the U.S. Market from 133 W.L. using Ku-band and Ka-band Frequencies, Call Sign S3029, File No. SAT-PPL-20180129-00012 (filed Jan. 29, 2018).

Eutelsat requests expedited processing of its Petition and waiver of the FCC’s application processing rules, including its geostationary satellite orbit (“GSO”) queue procedures.⁷ Specifically, Eutelsat seeks waiver of Sections 25.137(c) and 25.158 of the agency’s rules, which provide that petitions by non-U.S. licensed GSO operators—like applications by U.S.-licensed GSO operators—will be placed in a queue and considered in the order that they are filed.⁸ Eutelsat, however, has failed to show cause for its request to waive the Commission’s application processing procedures. The FCC may only grant waiver “for good cause shown,”⁹ and waiver is appropriate “only if special circumstances warrant a deviation from the general rule and such deviation will serve the public interest.”¹⁰

Waiver in this case is not warranted, because it would undermine the important policy considerations served by the application processing rules. The Commission determined that the first-come, first-served procedure would allow the agency to act on satellite applications “dramatically more quickly and efficiently,” as well as preserve U.S. leadership in the satellite industry by “enabl[ing] U.S. satellite operators to comply with ITU bringing-into-use requirements more easily.”¹¹ Granting Eutelsat’s Petition, even with conditions to discontinue service upon arrival of Galaxy 15R, would set precedent that could compel the agency to continue reviewing second-in-time, third-in-time, and even more later-filed applications provided that the applicants claim their satellite will arrive in-orbit before the preceding applicant(s) or licensee(s). It would also signal to foreign operators, including those with

⁷ *Eutelsat Petition*, at 9-10.

⁸ *Id.* See 47 C.F.R. §§ 25.137(c), 25.158.

⁹ 47 C.F.R. § 1.3. See *WAIT Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969).

¹⁰ *N.E. Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

¹¹ *Amendment of the Commission’s Space Station Licensing Rules and Policies*, First Report and Order and Further Notice of Proposed Rulemaking, IB Docket No. 02-34, 18 FCC Rcd. 10760, ¶ 74 (2001).

dormant ITU filings, that they can obtain U.S. market access notwithstanding any first-in-time U.S. satellite applications or licenses. This would unwind the FCC's carefully-crafted GSO authorization procedures.

Granting Eutelsat's Petition would also harm the public interest. The initiation of service by Eutelsat would set up a situation in which customers on EUTELSAT 133WA would expect to have their service continued by a follow-on satellite. Such an expectation by customers is further compounded by Eutelsat's pending petition to provide Ku- and Ka-band service from 133° W.L. long term using EUTELSAT 133WB. Indeed, it is possible that Eutelsat may subsequently seek waiver of the FCC's first-come, first-served procedure for its EUTELSAT 133WB petition on the ground that it has established a robust customer base in the United States and that it would be contrary to the public interest to disrupt service—*the very service Eutelsat seeks to start with the instant Petition for EUTELSAT 133WA*. The public interest is disserved by creating uncertainty for U.S. consumers who may lose their service once Intelsat's Galaxy 15R satellite begins operating. Moreover, creating such confusion could impair Intelsat's business case for the location, despite Intelsat having been first to file for operational authority at 133° W.L.

For the reasons set forth above, Intelsat respectfully requests the Commission deny Eutelsat's Petition.

Respectfully submitted,

/s/ Jennifer D. Hindin

Jennifer D. Hindin

Madeleine M. Lottenbach

WILEY REIN LLP

1776 K Street NW

Washington, DC 20006

Counsel for Intelsat License LLC

Dated: May 7, 2018

CERTIFICATE OF SERVICE

I, Rheatte Brighthaupt, hereby certify that on this 7th day of May 2018, a copy of the foregoing Petition to Deny of Intelsat License LLC is being sent via first class, U.S. Mail, postage paid, to the following:

Jacques Dutronc
Eutelsat S.A.
70, rue Balard
75015 Paris
France

Carlos M Nalda
LMI Advisors
2550 M Street, NW Suite 345
Washington, DC 20037

Counsel for Eutelsat S.A.

/s/ Rheatte Brighthaupt

Rheatte Brighthaupt
WILEY REIN LLP
1776 K Street NW
Washington, DC 20006