

May 2, 2007

***Ex Parte Notice***

Marlene H. Dortch  
Office of the Secretary  
Federal Communications Commission  
445 12th Street, SW  
Washington, DC 20554

Re: In the Matter of the Establishment of Policies and Service Rules for the Broadcasting-Satellite Service at the 17.3-17.7 GHz Frequency Band and at the 17.7-17.8 GHz Frequency Band Internationally, and at the 24.75-25.25 GHz Frequency Band for Fixed Satellite Services Providing Feeder Links to the Broadcasting-Satellite Service and for the Satellite Services Operating Bi-directionally in the 17.3-17.8 GHz Frequency Band, IB Docket No. 06-123

Dear Ms. Dortch:

The DIRECTV *Ex Parte* submission of April 26, 2007,<sup>1</sup> concerning satellite-terrestrial coordination is notable for two things. First, it represents a very rare effort by the BSS satellite companies to address the coordination issue. Second, it fails to contribute anything useful to this important matter.

As an examination of the record in this proceeding shows, the issue of satellite-terrestrial coordination has received very little attention in this proceeding. That is unfortunate in light of its importance both to satellite companies contemplating the use of 24 GHz uplinks and to FiberTower Corporation (“FiberTower”), which holds virtually all of the 24 GHz terrestrial licenses issued by the Commission. Failure to deal adequately with the coordination issue will leave both satellite and terrestrial licensees in a potentially costly state of uncertainty. Further, the failure to appropriately distribute the relative rights and responsibilities in this context will cast a shadow over a range of matters critical to both satellite and terrestrial licensees, including investment, system design, and service configuration.

The *17/24 GHz BSS NPRM* raised the coordination issue, emphasizing in doing so the significant uncertainties surrounding sharing in the 24 GHz band. In this regard, the

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<sup>1</sup> See Letter from William M. Wiltshire to Marlene H. Dortch at 1 (April 26, 2007) (“DIRECTV *Ex Parte*”).

Commission specifically requested comment on whether “existing power levels and coordination procedures are sufficient given that 24 GHz FS systems have been licensed by geographic area and are not required to file site specific data.”<sup>2</sup> Unlike the BSS licensees, FiberTower attempted to respond to this request.

In November, 2006, FiberTower submitted a summary study conducted by Dr. William Rummler, a well-recognized authority in the field. Predicated on the undisputed view that the technical studies requisite to configuring rules assuring non-interfering operation of 24 GHz satellite and terrestrial facilities had not been undertaken and, in any event, would be costly, complicated, and given to obsolescence as new generations of equipment are introduced, Dr. Rummler proposed an exclusion zone around the terrestrial license areas as a workable, cost-effective solution. The practical aspects of the proposal mesh with the Commission’s expectation that the number of 17/24 GHz BSS feeder links would be limited<sup>3</sup> and, thus, economically could be sited away from the 77 SMSAs in which 24 GHz terrestrial service is licensed. Dr. Rummler also attempted to deal with the suggestion that the interference protection criteria found in 47 C.F.R. § 101.509 could usefully be applied to satellite-terrestrial sharing. He concluded that these criteria did not appear to be adequate and suggested they would need to be significantly tightened to assure non-interference.

Some five and one-half months after FiberTower submitted Dr. Rummler’s contribution, however, DIRECTV has undertaken to respond to what it mischaracterizes as a “new, alternative proposal.”<sup>4</sup> While we are grateful for the implicit, if belated, acknowledgment that coordination is important, we are constrained to point out that DIRECTV’s submission does not advance the discussion. Instead, it seeks to legitimate a false standard--the criteria found in Section 101.509--as 24 GHz satellite-terrestrial coordination guidelines. The criteria found in Section 101.509 apply to coordination between terrestrial 24 GHz systems and, as both a formal and practical matter, they apply to cross-border coordination between US and Canadian or Mexican licensees. The installation of these criteria as “guidelines” of uncertain juridical significance might serve DIRECTV’s purposes, assuming that those purposes are to defer any serious consideration of coordination to another day. The criteria, however, cannot form the basis for any legitimate attempt at distributing the rights and responsibilities of BSS and 24 GHz licensees. They were derived for an entirely different circumstance--terrestrial facilities--and in the context of bi-lateral negotiations with the Canadian administration over frequency sharing of broadband systems in the border regions. Moreover, the criteria have no practical import and thus have not been subject to any critical stress test in domestic use for a very

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<sup>2</sup> *In the Matter of the Establishment of Policies and Service Rules for the Broadcasting Satellite Service at the 17.3-17.7 GHz Frequency Band and at the 17.7-17.8 GHz Frequency Band Internationally, and at the 24.75-25.25 GHz Frequency Band for Fixed Satellite Services Providing Feeder Links to the Broadcasting-Satellite Service and for the Broadcasting Satellite Service Operating Bi-directionally in the 17.3-17.7 GHz Frequency Band*, 21 FCC Rcd. 7426 (2006) (“17/24 GHz BSS NPRM”).

<sup>3</sup> *Id.* at ¶ 70.

<sup>4</sup> DIRECTV *Ex Parte* at 2.

simple reason. Virtually all 24 GHz licenses are held by FiberTower. Any necessary “coordination” is an internal FiberTower matter. There simply is no credible case to be made that existing FCC regulations address 24 GHz satellite-terrestrial coordination. DIRECTV’s effort to install Section 101.509 for this purpose is unsustainable as a legal matter.

More significantly, DIRECTV has seriously understated the importance, both to FiberTower and to BSS licensees, of greater clarity in the matter of frequency coordination. The *17/24 GHz BSS NPRM* correctly recognizes that area-wide licenses pose different issues than site-specific licenses. The protection of the rights afforded area licensees (especially the flexibility at the very foundation of the area license concept) and of their investments is not nearly as trivial a matter as the DIRECTV *Ex Parte* submission would have it. DIRECTV’s effort to elide a difficult and important subject with claims that there are well-developed satellite-terrestrial procedures and relevant coordination guidelines applicable to sharing in the 24 GHz band should not be allowed to divert attention from the necessity to produce workable coordination arrangements.

Should you have any questions regarding this matter, please do not hesitate to contact the undersigned.

Respectfully submitted,

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/s/

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cc: Robert Nelson,  
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