

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

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

IB Docket No. 06-123

OPPOSITION OF DIRECTV, INC.

DIRECTV, Inc. (“DIRECTV”) hereby opposes the Petition for Reconsideration of the *Reconsideration Order*¹ filed by Telesat Canada (“Telesat”) in this proceeding.² The Petition is flawed both procedurally (because it seeks to rehash issues already considered by the Commission) and substantively (because its proposals would not promote the public interest). Accordingly, the Commission should reject the Telesat Petition.

In the *Reconsideration Order*, the Commission amended the processing and service rules for the 17/24 GHz BSS service such that licensees would be allowed to

¹ See *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*, Order on Reconsideration, 22 FCC Rcd. 17951 (2007) (“*Reconsideration Order*”).

² Petition for Reconsideration of Telesat Canada (Nov. 21, 2007) (“Telesat Petition”).

operate at full power and with full interference protection not only at designated “on grid” locations spaced four degrees apart, but also at locations up to one degree away from an on-grid slot if there are no licensed or previously-filed applications for 17/24 GHz BSS space stations less than four degrees away from the proposed offset slot.³ In reaching that decision, the Commission discussed a proposal submitted by Telesat that would (1) condition the grant of a 17/24 GHz BSS license subject to the licensee coordinating with satellite operators having International Telecommunication Union (“ITU”) date priority, and (2) make the orbital location specified in any such grant subject to modification to an offset location if necessary to facilitate coordination with a satellite operator having ITU date priority.⁴ It also discussed a further submission by Telesat which argued that departures of more than one degree from on-grid slots should be permitted if needed to facilitate international coordination.⁵

Although the Commission adopted several changes to the rules governing domestic coordination of 17/24 GHz BSS systems,⁶ it did not make the change requested by Telesat. Moreover, the Commission specifically rejected its proposal for full power, fully protected operations at locations more than one degree off-grid.⁷

³ *Reconsideration Order*, ¶ 1.

⁴ *Id.*, ¶ 7.

⁵ *Id.*, ¶ 12.

⁶ *Id.*, ¶¶ 23-24.

⁷ *Id.*, ¶ 18 n.56 (noting Telesat’s proposal and “decline[ing] to expand the flexibility adopted here to that extent”).

In its current Petition, Telesat once again requests that the Commission condition all 17/24 GHz BSS licenses in exactly the same way it previously proposed.⁸ Telesat does not provide any arguments in support of those two conditions that were not already in the record at the time the Commission issued the *Reconsideration Order*. In other words, the Telesat Petition is nothing more than an attempt to rehash arguments previously made, considered, and rejected by the Commission in this proceeding. Telesat may disagree with the Commission’s judgment on these issues, but its simple repetition of arguments does not warrant reconsideration.⁹

This procedural flaw alone should be sufficient to deny Telesat’s Petition.¹⁰ Yet the Petition is equally flawed as a matter of public policy. The Commission adopted an orbital grid for the 17/24 GHz BSS service in order to maximize spectral efficiency, but on reconsideration decided to allow variations of up to one degree off-grid in order to provide additional flexibility to match up these systems with existing Direct Broadcast Satellite assets.¹¹ It determined that this arrangement best reconciled the competing

⁸ Telesat Petition at 3.

⁹ See, e.g., *WWIZ, Inc.*, 37 FCC 685, 686 (1964), *aff’d sub nom. Lorain Journal Co. v. FCC*, 351 F.2d 824 (D.C. Cir. 1965), *cert. denied*, 383 U.S. 967 (1966) (petitions for reconsideration are not “merely for the purpose of again debating matters on which the tribunal has once deliberated and spoken”); *Lockheed Martin Corp.*, Order on Reconsideration, 18 FCC Rcd. 16605, ¶¶ 9-10 (2003) (rejecting arguments where petitioner “has presented no new evidence that would cause [the Commission] to reconsider [its] prior determinations,” and admonishing petitioner for “restat[ing] arguments that the Commission previously has ruled upon in this and other proceedings”); *GTE Corp. and Bell Atlantic Corp.*, Order on Reconsideration, 18 FCC Rcd. 24871, ¶ 5 (2003) (“*GTE/Bell Atlantic*”) (stating that “[r]econsideration is appropriate only where the petitioner either shows a material error or omission in the original order or raises additional facts not known or existing until after the petitioner’s last opportunity to present such matters”); *AVR, L.P.*, Memorandum Opinion and Order, 16 FCC Rcd. 1247, ¶¶ 3-4 (2001) (rejecting petitions for reconsideration where petitioner “essentially repeats the same arguments it relied upon in the comments and reply comments it filed” and “fails to raise new arguments or facts that would warrant reconsideration of [the underlying] order”).

¹⁰ See, e.g., *GTE/Bell Atlantic*, ¶ 5 (“We will deny any petition that merely repeats arguments previously considered and rejected.”).

¹¹ *Reconsideration Order*, ¶ 21.

interests of efficiency and flexibility. Telesat's proposal, which would allow for even greater off-grid operations at full power and with full interference protection, would upset this balance and could effectively render certain locations unusable by leaving only 2.5° of orbital separation. Accordingly, the Commission rejected the proposal – just as it should do again here.

Telesat's other proposal, which would condition U.S. licenses on coordination with non-U.S. networks, is both unwise and unnecessary. The international coordination process runs parallel to the U.S. licensing process, and there is no reason to conflate the two. Moreover, it is worth noting that several foreign administrations – including Canada – have made numerous apparently speculative ITU filings in this band.¹² Because the Commission does not make such filings, other administrations – including Canada – may enjoy ITU priority throughout the CONUS portion of the geostationary arc. This introduces the potential for any number of non-U.S. applicants to gain from foreign administrations that which would not be available from the Commission itself – namely, an off-slot orbital location unconstrained by the Commission's carefully crafted service rules. Such an approach could undermine the orbital efficiency inherent in the Commission's spacing plan – and would effectively make the Commission complicit in this process.

This is not the way the Commission has applied its rules in other satellite services. For example, in the Ka-band, the Commission also adopted rules that establish a known

¹² Although the Canadian call for satellite license applications resulted in only two operators receiving provisional licenses at seven orbital locations in the 17/24 GHz BSS service, Canada currently has on file 21 advanced publication submissions covering 18 orbital locations, as well as 32 coordination requests covering 15 orbital locations across the CONUS arc. Luxembourg and Holland are two other administrations that have made numerous apparently speculative filings in this band as well.

and stable interference environment based on regular orbital spacing and compliance by all operators with certain baseline operating parameters.¹³ Non-U.S.-licensed Ka-band satellite systems seeking market access must demonstrate compliance with those rules or operate on a non-interference basis with respect to compliant systems.¹⁴ This is clearly another instance in which the Commission must be prepared to defend the integrity of its orbital spacing plan if it is to achieve the objectives of efficiency and opportunity that led to adoption of the rules for this service.

At the moment, there are no actual applications for market access from non-U.S. 17/24 GHz BSS systems before the Commission. If and when such applications are filed, the Commission will apply its ECO-Sat test to determine whether to grant access from a foreign orbital slot.¹⁵ Among other things, this will require a showing that the spectrum requested is available for assignment, and that the licensing country provides effective competitive opportunities for entry by U.S. systems operating in this band. By giving the international coordination process primacy, Telesat's proposal could subvert this Commission policy as well, again placing U.S. licensees at an unnecessary disadvantage with respect to non-U.S. systems. Such a course would not further the public interest, and the Commission should decline Telesat's invitation to proceed in this manner.

¹³ See, e.g., 47 C.F.R. § 25.138 (establishing parameters for routine blanket earth station licensing).

¹⁴ See, e.g., *Telesat Canada*, 17 FCC Rcd. 25287, ¶ 27 (Int'l Bur. 2002) (where market access application did not demonstrate compliance with two-degree spacing environment, entry would be conditioned on non-interference with compliant systems).

¹⁵ See *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*, Report and Order and Further Notice of Proposed Rulemaking, 22 FCC Rcd. 8842, ¶ 22 (2007).

