Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 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	)	IB Docket No. 06-123
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	)	

CONSOLIDATED REPLY OF TELESAT CANADA

Joseph A. Godles
GOLDBERG, GODLES, WIENER & WRIGHT
1229 Nineteenth Street, NW
Washington, DC 20036
(202) 429-4900

Attorneys for Telesat Canada

February 21, 2008

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 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	)	IB Docket No. 06-123
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	)	

CONSOLIDATED REPLY OF TELESAT CANADA

On November 21, 2007, Telesat Canada ("Telesat") filed a Petition for Reconsideration of an Order on Reconsideration (the "*Sua Sponte Order*") in the above-captioned proceeding.[1] In the *Sua Sponte Order*, the Commission reconsidered, *sua sponte,* the processing and service rules it had adopted for the 17/24 GHz Broadcasting-Satellite Service ("17/24 GHz BSS") in an initial Report and Order ("R&O").[2] On February 11, 2008, DIRECTV, Inc. ("DIRECTV") and Intelsat North America LLC ("Intelsat") filed oppositions to Telesat's Petition for Reconsideration and SES Americom, Inc. ("SES Americom") filed comments raising objections to Telesat's filing. Comments also were filed by Ciel Satellite Limited Partnership ("Ciel"), which supported one of Telesat's requests and took

[1] Order on Reconsideration, FCC 07-174 (Sept. 28, 2007).

no position concerning the other of Telesat's requests. Telesat, by its attorneys and pursuant to Section 1.429 of the Commission's rules, hereby replies to the DirecTV, Intelsat, and SES Americom filings.

SUMMARY OF ARGUMENT

Telesat demonstrates below that the objections raised by DIRECTV, Intelsat, and SES Americom to the two license conditions Telesat proposed in its Petition for Reconsideration are without merit. The differing views expressed by the parties as to the interplay between licensing and coordination in the 17/24 GHz BSS band underscore the need for the very clarification that Telesat's proposed conditions would provide. There is no principled basis, moreover, for distinguishing between the 17/24 GHz BSS band and the other bands in which the Commission routinely applies a "subject to coordination" condition, and such a condition has the added benefit of providing appropriate incentives for international coordination. In addition, the Commission's rules support Telesat's request for a "subject to modification" condition, and the absence of this condition would discourage parties from entering into coordination agreements that could be used to resolve orbital assignment conflicts between administrations. Finally, the procedural objections raised by DIRECTV and SES Americom are rooted in a misreading of the Commission's rules and precedents and a mischaracterization of the Commission's actions in the *Sua Sponte Order*.

---

[2] Report and Order, 22 FCC Rcd 8842 (2007).

INTRODUCTION

In the R&O, the Commission adopted processing and service rules for the 17/24 GHz Broadcasting-Satellite Service. These rules include an orbital assignment plan for 17/24 GHz BSS satellites; the plan is comprised of a grid of orbital locations spaced four degrees apart that are identified in Appendix F of the R&O.

The Commission provided in the R&O that an applicant would be permitted to operate from an off-grid location if it could show that "the proposed satellite will not cause any more interference to any 17/24 GHz BSS satellite operating at a location specified in Appendix F, and in compliance with the rules for this service, than if the proposed satellite were positioned precisely at the Appendix F orbital location."[3] In the *Sua Sponte Order*, the Commission established an exception to the requirement that U.S. licensees operate at on-grid locations. It stated that it would "assign space stations to orbital locations that are offset from the Appendix F locations by up to one degree, without requiring them to reduce power or accept additional interference, if there are no licensed or prior-filed applications for 17/24 GHz BSS space stations less than four degrees away from the proposed offset space station."[4]

---

[3] R&O, ¶ 74.
[4] Order on Reconsideration, ¶ 1.

Telesat has pending a petition for reconsideration of the R&O. In its petition, Telesat requested that the Commission attach conditions to any 17/24 GHz BSS license grant: (1) making the grant subject to the licensee coordinating with satellite operators having ITU date priority; and (2) making the orbital location specified in the grant subject to modification to an off-grid location if necessary to facilitate coordination with a satellite operator having ITU date priority.

In its petition for reconsideration of the *Sua Sponte Order*, Telesat renewed this request. Telesat stated that although the "one degree off the grid" exception that the Commission adopted in the *Sua Sponte Order* may facilitate coordination in some cases, the exception is inapplicable to several of the 17/24 GHz BSS orbital locations Industry Canada has awarded to Telesat, either because: (1) a U.S. applicant has requested an adjacent, on-grid orbital location,; or (2) Telesat's orbital location is more than one degree off the grid. There is a continuing need, therefore, for the relief that Telesat requested previously.

DISCUSSION

1. There is a Need for Conditions

Telesat filed its petitions for reconsideration because it would like it made clear that there is sufficient flexibility in the service rules the Commission adopted to accommodate systems that are licensed outside the United States and that have ITU priority. To that end, Telesat asked for conditions that would put

17/24 GHz BSS licensees on notice that the grid system does not absolve them of the need to coordinate with non-U.S. systems and that would leave room for modifying 17/24 GHz BSS licenses to the extent necessary to accommodate the outcome of international coordination.

The oppositions and comments filed by DIRECTV, Intelsat, SES Americom, and Ciel underscore the need for clarification. Those parties express differing views as to the interplay between the Commission's licensing procedures and international coordination requirements in the 17/24 GHz BSS band. They cannot even agree as to the propriety of applying a "subject to coordination" condition in the 17/24 GHz BSS band that is standard in other bands. It is difficult to imagine a stronger case for clarification.

2. The Commission Should Include a "Subject to Coordination" Condition in 17/24 GHz BSS Band Grants.

Of the four parties that commented on Telesat's Petition for Reconsideration, only one gave unconditional support to Telesat's request for a "subject to coordination" condition. For purposes of determining whether to include this condition, however, there is no principled basis for distinguishing between the 17/24 GHz BSS band and other bands in which the Commission routinely requires coordination.

The same ITU treaty requirements that obligate U.S. licensees to engage in international coordination in other bands obligate them to engage in

international coordination in the 17/24 GHz BSS band. The same Part 25 rule (Section 25.111(b)) that withholds interference protection in other bands unless international coordination occurs also withholds interference protection in the 17/24 GHz BSS band unless international coordination occurs. The same "first come, first served" licensing procedures that the Commission employs in the other bands are employed in the 17/24 GHz BSS band. Under these procedures, the Commission has found, there is "sufficient opportunity to address ITU priority issues" because licenses are issued "subject to the outcome of the international coordination process."[5] The Commission, therefore, should follow its standard practice and condition 17/24 GHz BSS band grants on compliance with international coordination requirements.

Absent the clarification that would be provided by a "subject to coordination" condition, moreover, U.S. licensees in the 17/24 GHz BSS band may lack the appropriate incentives to engage in good faith coordination discussions with non-U.S. licensees that have been authorized to operate at off-grid locations. This outcome would be detrimental to the international coordination process, and the Commission should endeavor to avoid it.[6]

---

[5] 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 (2003) at ¶ 295.

[6] In support of its opposition to a "subject to modification" condition, DIRECTV attempts to analogize the four-degree grid in the 17/24 GHz BSS band to the Commission's two-degree spacing requirements in other bands. *See* DIRECTV Opposition at 4-5. This analogy does not withstand scrutiny. The two-degree spacing requirements are meant to ensure that satellites can operate as close as two degrees apart without causing objectionable adjacent satellite interference.

3. The Commission Should Include a "Subject to Modification" Condition in 17/24 GHz BSS Band Grants.

Intelsat, SES Americom, and DIRECTV all opposed Telesat's request for a "subject to modification" condition.

Intelsat does not object *per se* to license modifications that facilitate international coordination, but states that coordination can be accomplished in a variety of ways and modification of an orbital location is only one of them.[7] Telesat agrees, and did not mean to suggest that a change in orbital location is mandatory whenever there is a non-U.S. licensed satellite that has ITU priority for an off-grid orbital location. Rather, Telesat seeks clarification from the Commission that modifying a U.S. licensee's orbital position is permissible when necessary to accommodate the outcome of international coordination.

The Commission's rules support Telesat's position, and DIRECTV's and SES Americom's opposition to a "subject to modification" condition cannot be squared with those rules. Section 25.111(b) of the rules states that "[a]ny radio station authorization for which coordination has not been completed may be subject to additional terms and conditions as required to effect coordination of the frequency assignments with other Administrations." That is the essence of what Telesat has requested.

The four-degree grid, on the other hand, is an orbital assignment tool, not a tool for preventing adjacent satellite interference. Satellites in the 17/24 GHz BSS band need not be operated at grid locations to prevent adjacent satellite interference. For example, two adjacent 17/24 GHz BSS

Unless the Commission leaves itself with the flexibility to modify initial orbital assignments to facilitate international coordination, U.S. licensees will be discouraged from entering into coordination agreements that can be used to resolve difficult coordination issues. For example, Telesat has been authorized by Industry Canada to operate a 17/24 GHz BSS band satellite at 72.5° W.L. If a U.S. licensee were authorized to operate at 70° W.L., one degree from the U.S. grid location of 71° W.L., and if there were no U.S. licensee at 67° W.L., then Telesat and the U.S. licensee for 70° W.L. might conclude that coordination could be achieved by having the U.S. licensee relocate to 69° W.L. Absent a "subject to modification" condition, however, it is unlikely that a U.S. licensee would agree to coordination on these terms, because such an agreement would expose the licensee to having to protect a future U.S. applicant for 67° W.L., which is on the grid, to the same degree as it would be protected by a satellite operating at 70° W.L. The Commission should not have licensing policies that discourage reasonable approaches to resolving international coordination issues.

4. The Commission Should Reject the Procedural Objections Raised by SES Americom and DIRECTV.

DIRECTV opposes Telesat's Petition for Reconsideration on procedural grounds.[8] In support of its opposition, DIRECTV cites to cases in which petitions for reconsideration have been denied because they merely restated arguments

---

band satellites could operate at non-grid locations that are spaced eight degrees apart and present no adjacent satellite interference issues.

[7] Intelsat Opposition at 2.

that had been raised in initial comments and reply comments in a rulemaking proceeding and had been rejected by the Commission.[9] DIRECTV asserts that under these precedents Telesat should be precluded from seeking the two conditions it has requested in its Petition for Reconsideration. SES Americom makes a similar argument.[10]

The procedural objections raised by DIRECTV and SES Americom are inconsistent with the Commission's rules and mischaracterize the nature of the Commission's action in the *Sua Sponte Order*. Pursuant to Section 1.429 of the Commission's rules, Telesat is entitled to petition for reconsideration of the Commission's R&O in this proceeding. The need for the conditions Telesat has requested is a new issue that did not arise until the Commission adopted the grid system in the R&O. The first opportunity that Telesat had to address this issue formally was after the R&O was published in the Federal Register, and following Federal Register publication Telesat filed a Petition for Reconsideration.[11] Accordingly, the cases cited by DIRECTV, in which parties merely restated arguments they already had made in comments and reply comments, are inapposite.

---

[8] DIRECTV Opposition at 3.
[9] DIRECTV Opposition at n. 9.
[10] SES Americom Comments at 7.
[11] Petition for Reconsideration of Telesat Canada (Sept. 28, 2007). Notice of this petition has not been given in the Federal Register.

After seeking reconsideration of the R&O, Telesat petitioned for reconsideration of the *Sua Sponte Order* to make clear that the "one degree off the grid" exception adopted therein did not resolve Telesat's concerns. The fact that the *Sua Sponte Order*, in a footnote,[12] refers to those concerns as raised in one of Telesat's *ex parte* filings is no substitute for having a Commission decision on the merits on one or both of Telesat's petitions for reconsideration. The Commission's actions in the *Sua Sponte Order* were not taken in response to filings made by Telesat or other parties; *sua sponte* orders by definition are taken at the Commission's own initiative. The footnote in question, moreover, makes no mention of the two conditions Telesat has requested and does not address the merits of Telesat's arguments.[13]

In sum, the cases cited by DIRECTV are inapposite because Telesat's Petition for Reconsideration concerns a new issue and this is the first opportunity Telesat has had to raise the issue formally. The *Sua Sponte Order* does not even consider the merits of adopting the two conditions Telesat is seeking and is no substitute for a Commission determination on the merits. For all of these reasons, the Commission should address the merits of Telesat's Petition for Reconsideration, and DIRECTV's and SES Americom's procedural objections should be rejected.

---

[12] *Sua Sponte Order* at n. 56.

[13] The footnote merely states, without explanation, that the Commission was unwilling to have an exception that automatically would permit departures of more than one degree from the grid in order to facilitate international coordination. *Sua Sponte Order* at n. 56.

CONCLUSION

Accordingly, and for the reasons stated herein and in Telesat's Petition for Reconsideration, the Commission should attach conditions to any 17/24 GHz BSS license grant: (1) making the grant subject to the licensee coordinating with satellite operators having ITU date priority; and (2) making the orbital location specified in the grant subject to modification to an off-grid location if necessary to facilitate coordination with a satellite operator having ITU date priority.

Respectfully submitted,

TELESAT CANADA

By: /s/ Joseph A. Godles
Joseph A. Godles
GOLDBERG, GODLES, WIENER & WRIGHT
1229 Nineteenth Street, NW
Washington, DC 20036
(202) 429-4900

Its Attorneys

February 21, 2008

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing CONSOLIDATED REPLY OF TELESAT CANADA was sent by electronic delivery this 21st day of February, 2008, to the following:

Peter A. Rohrbach
Karis A. Hastings
Hogan & Hartson L.L.P.
555 Thirteenth Street, N.W.
Washington, D.C. 20004

Nancy J. Eskenazi
Vice President & Assoc. General Counsel
SES Americom, Inc.
Four Research Way
Princeton, NJ 08540

Susan Eid
Vice President, Government Affairs
Stacy R. Fuller
Vice President, Regulatory Affairs
DIRECTV, Inc.
444 North Capitol Street, N.W., Suite 728
Washington, DC 20001

William M. Wiltshire
Michael Nilsson
S. Roberts Carter III
Harris, Wiltshire & Grannis LLP
1200 Eighteenth Street, N.W.
Washington, DC 20036

Scott Gibson
Vice President & General Counsel
Ciel Satellite Limited Partnership
Suite 104, 240 Terence Matthews Crescent
Kanata, Ontario, CANADA
K2M 2C4

Bert W. Rein
Jennifer D. Hindin
Wiley Rein LLP
1776 K Street, N.W.
Washington, DC 20006

/s/Joseph A. Godles
Joseph A. Godles