

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)

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

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TABLE OF CONTENTS

SUMMARY OF ARGUMENT

INTRODUCTION.....

DISCUSSION

1. There is a Need for Conditions.....

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

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

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

CONCLUSION

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REPLY OF TELESAT CANADA

Telesat Canada (“Telesat”) has filed two petitions for reconsideration in this proceeding, both of which are pending. On September 28, 2007, Telesat petitioned for reconsideration of an initial Report and Order (“R&O”)¹ in which the Commission adopted processing and service rules for the 17/24 GHz Broadcasting-Satellite Service (“17/24 GHz BSS”). On November 21, 2007, Telesat petitioned for reconsideration of an Order on Reconsideration (the “Sua Sponte Order”)² in which the Commission reconsidered, *sua sponte*, the processing and service rules it had adopted in the R&O.

¹ Report and Order, 22 FCC Rcd 8842 (2007).

² Order on Reconsideration, FCC 07-174 (Sept. 28, 2007).

DIRECTV, Inc. (“DIRECTV”) has opposed both of Telesat’s petitions. On February 11, 2008, DIRECTV opposed, and others either opposed or filed comments on, Telesat’s petition for reconsideration of the Sua Sponte Order. Telesat filed a consolidated reply on February 21, 2008. On July 29, 2008, DIRECTV opposed Telesat’s petition for reconsideration of the R&O.³ Telesat, by its attorneys and pursuant to Section 1.429 of the Commission’s rules, hereby replies to DIRECTV’s latest opposition.

SUMMARY OF ARGUMENT

Telesat demonstrates below that the objections raised by DIRECTV to the two license conditions Telesat proposed in its Petition for Reconsideration are without merit. The differing views expressed by the parties to this proceeding 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

³ Opposition of DIRECTV, Inc.

used to resolve orbital assignment conflicts between administrations. Finally, the procedural objections raised by DIRECTV are rooted in a misreading of the Commission's rules and precedents and a mischaracterization of the Commission's actions.

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."⁴ 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

⁴ R&O, ¶ 74.

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.”⁵

In its petition for reconsideration of the R&O, 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.

Telesat renewed this request in its petition for reconsideration of the Sua Sponte Order. 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.

⁵ Sua Sponte Order, ¶ 1.

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 filings submitted by DIRECTV, Intelsat, SES Americom, and Ciel in this matter 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.**

For purposes of determining whether to include a "subject to coordination" condition in grants of 17/24 GHz BSS band applications, 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.”⁶ 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-

⁶ 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.

grid locations. This outcome would be detrimental to the international coordination process, and the Commission should endeavor to avoid it.⁷

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

Telesat has sought 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 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.

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

⁷ 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 5-6. 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. 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

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 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 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.

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

The procedural objections raised by DIRECTV 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. Accordingly, the cases cited by DIRECTV, in which parties merely restated arguments they already had made in comments and reply comments, are inapposite.

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,¹⁰ 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

⁸ DIRECTV Opposition at 3.

⁹ DIRECTV Opposition at n. 9.

¹⁰ *Sua Sponte Order* at n. 56.

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.¹¹

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 procedural objections should be rejected.

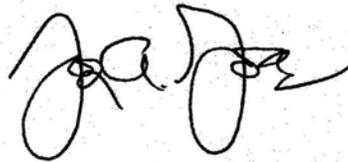
¹¹ The footnote merely states, without explanation, that the Commission was unwilling to have an exception that automatically would permit departures of more than one degree from the grid in order to facilitate international coordination. *Sua Sponte Order* at n. 56.

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

A handwritten signature in black ink, appearing to read 'J. Godles', is centered on the page. The signature is fluid and cursive, with a large initial 'J' and a long, sweeping tail.

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

Its Attorneys

August 8, 2008

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing REPLY OF TELESAT CANADA was sent by electronic delivery this 8th day of August, 2008, to the following:

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
Harris, Wiltshire & Grannis LLP
1200 Eighteenth Street, N.W.
Washington, DC 20036

/s/ Joseph A. Godles
Joseph A. Godles