

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

In the Matter of the Applications of)	
)	
TELQUEST VENTURES, L.L.C.)	
)	File Nos. 758-DSE-P/L-96
For a License for a Fixed-Satellite Transmit/)	759-DSE-L-96
Receive Earth Station to Communicate with a)	
Canadian DBS Satellite to be located at)	
91 Degrees W.L. and for Blanket License Authority)	
to Construct and Operate One Million Receive-Only)	
Earth Stations for use with a Canadian DBS Satellite)	
to be Located at 91 Degrees W.L.)	
)	
and)	
)	
WESTERN TELE-COMMUNICATIONS, INC.)	
)	File No. 844-DSE-P/L-96
For a License for a Fixed-Satellite Transmit/Receive)	
Earth Station to Communicate with Transponders)	
on a Canadian DBS Satellite to be located at)	
82 Degrees W.L.)	

REPORT AND ORDER

Adopted: October 29, 1996

Released: October 29, 1996

By the Chief, International Bureau:

Introduction

1. By this Order we deny petitions for reconsideration filed by TelQuest Ventures, Inc. and Western Tele-Communications, Inc. ("WTCI"). For the reasons discussed below, we find that the earth station applications were properly dismissed, without prejudice.

Background

2. TelQuest filed an application, on March 13, 1996, seeking authority to construct and operate a fixed transmit/receive earth station to uplink and receive U.S. and Canadian DBS programming

using 22 transponders on a satellite to be located at 91° W.L.¹ TelQuest also requested a blanket license for one million receive-only earth stations to offer its DBS service to residential and business customers. WTCI filed an application, on March 26, 1996, requesting authority to provide U.S. DBS service by uplinking U.S. programming from its existing earth station facilities in Littleton, Colorado using 27 transponders on a satellite to be located at 82° W.L. According to the applicants, the remaining transponders on both satellites would be used by a Canadian operator to serve Canada. Both satellites are to be built by WTCI and sold to a Canadian corporation, Telesat Canada ("Telesat"), which is seeking licenses for the satellites from the Canadian Government.

3. DirecTv, Inc., Echostar Satellite Corporation, Echostar DBS Corporation, MCI Telecommunications Corporation ("MCI"), News Corporation Limited ("NewsCorp"), and United States Satellite Broadcasting Company ("USSB") filed petitions to deny the original earth station applications.² The Cable Telecommunications Association ("CATA"), and many wireless cable providers filed comments supporting the applications. The Departments of State, Justice and Commerce and the United States Trade Representative (collectively, "Executive Branch") filed a joint letter on July 1, 1996 urging deferral of both applications until various competitive and trade-related concerns raised by the applications had been addressed.

4. On July 15, 1996, the International Bureau dismissed the earth station applications, without prejudice, as premature because Canada had not yet authorized the satellites with which WTCI and TelQuest proposed to communicate. The Bureau reiterated its policy to dismiss earth station applications, without prejudice, where the space station with which the earth station will communicate has not yet been licensed. This policy prevents premature consideration of systems that may never operate and deters applicants from filing competing premature applications in the hope of obtaining earth station authorizations from this administration for the purpose of influencing the space station licensing decisions of foreign administrations.

5. On August 12, 1996, TelQuest filed an Emergency Petition for Reconsideration of the Commission's decision, asserting that Canada has provided the necessary authorization for the space station segment and thus TelQuest's earth station application is ripe for Commission consideration. TelQuest contends that the Canadian Minister of Industry's support "in principle" is analogous to an FCC construction permit and, thus, sufficient for the Commission to consider its earth station applications.³ WTCI filed its Petition for Reconsideration and Request for Expedited Action on

¹ Pursuant to the Broadcast Satellite Service (BSS) Plan for Region 2, adopted by the ITU in 1983, Canada is assigned six orbital locations, including 82° W.L. and 91° W.L. Canada has filed a modification with the ITU to include service to the U.S. from these locations, which are capable of serving the continental United States ("full-CONUS").

² AlphaStar Television Network, Inc., AT&T Corporation, and the State of Hawaii also filed comments opposing the applications.

³ TelQuest also filed a motion to sever the two proceedings. TelQuest asserts that due to the distinctions between TelQuest's and WTCI's applications, TelQuest would be prejudiced by further consolidation of the proceedings. We dismiss TelQuest's motion because there has been no consolidation of proceedings. Since the applications of WTCI and TelQuest involve various common issues, several individuals have filed

August 14, 1996. WTCI states that Industry Canada has issued all the pre-launch authority that it customarily grants to satellite applicants and requests that the Bureau grant its application expeditiously so that WTCI can meet deadlines to ensure launch of the two satellites in December and February, respectively. WTCI and TelQuest also briefly attempt to address the concerns raised in the Executive Branch letter.

6. EchoStar, MCI, NewsCorp, AT&T, USSB, DirecTv, The Consumer Project on Technology, and the State of Hawaii oppose one or both petitions for reconsideration.⁴ Opponents assert that WTCI and TelQuest have presented no new evidence that would justify reconsideration of the Bureau's July 15, 1996 decision since Canada still has not authorized Telesat's satellites at 82° W.L. and 91° W.L. The Cable Telecommunications Association filed comments supporting both petitions for reconsideration. Telesat Canada filed comments in support of WTCI's petition. General Instrument, Golden Bear Communications, and Wireless Cable of Atlanta filed comments in support of TelQuest's petition asserting that approval of TelQuest's petition will allow wireless cable providers to compete with large cable companies.⁵ For the reasons discussed below, we deny the petitions for reconsideration filed by WTCI and TelQuest.

Discussion

7. This sole issue before the Bureau, on reconsideration, is whether the Bureau properly dismissed the earth station applications filed by WTCI and TelQuest as premature. In support of their applications, WTCI and TelQuest submitted additional letters to show that Telesat had received the support "in principle" of Industry Canada, subject to certain conditions, to operate two satellites in the orbital locations in question.⁶ The record before the Bureau reveals that, while Industry Canada may have stated its support in principle for Telesat's proposal, this conditional support does not authorize Telesat to launch its satellites in the 82° W.L. and 91° W.L. orbital locations.

8. Petitioners make several arguments why the Commission should not require that Telesat's

consolidated comments. We issued one decision to dismiss a procedural issue, common to both applications, for administrative convenience. We also issue one decision today since the issue being addressed and the outcome is identical for each petition. Since the proceedings have not been consolidated, we dismiss TelQuest's motion as moot.

⁴ MCI and NewsCorp filed a joint opposition against each petition. AT&T only filed in opposition to TelQuest's petition. The Consumer Project on Technology filed its opposition to WTCI's petition for reconsideration on the basis of its possible anti-competitive effects on the multi-channel video programming delivery ("MVPD") market.

⁵ General Instruments contends that grant of TelQuest's petition would further the United States position in promoting the North American standard for digital television.

⁶ See Consolidated Opposition of WTCI to Petitions to Deny, File No. 844-DSE-P/L-96, Exhibit 2 at 2 (filed, May 20, 1996). See also Consolidated Opposition of TelQuest to Petitions to Deny, File Nos. 758-DSE-P/L-96 and 759-DSE-P/L-96, Exhibit 15 at 2.

satellites be licensed before the petitioners' U.S. earth station applications will be considered. First, Petitioners maintain that their earth station applications are in compliance with Commission requirements because FCC Form 493, the Commission's earth station license application form, requires only that an applicant identify a specific satellite with which its earth stations will communicate not a "licensed" satellite.⁷ Petitioners maintain that the precedent cited by the Bureau is inapposite to their applications.⁸ Specifically, Petitioners assert that unlike their applications, the cases cited in our July 15 decision involve earth station applications which failed to identify an actual satellite. Petitioners also argue that since the cases cited in the Bureau's decision were never published, there was no notice of the Commission's policy requiring an earth station applicant to identify a licensed satellite.

9. The cases cited in our July 15, 1996 decision illustrate the policy by which the Commission treats premature earth station applications. Section 25.150 of the Commission's Rules provides sufficient notification to applicants that defective applications may be returned or dismissed. Our decision clearly identified the policy concerns that motivate our practice of dismissing a premature earth station application that seeks to communicate with a satellite that has not been licensed by any administration. The purpose of this policy is to deter premature filings and not to expend Commission resources in processing and reviewing premature files pending the outcome of uncertain licensing decisions. We disagree with the Petitioners that the mere identification of a satellite that has not been authorized by any administration satisfies our policy or the requirements of FCC Form 493. We do not believe that the public interest is best served by utilizing Commission resources to consider earth stations applications which identify satellites that may never be licensed.

10. Petitioners also argue that the Bureau erred in its determination that Telesat has not received authorization from the Canadian government for its satellites. Petitioners maintain that Telesat has, in fact, received the standard pre-launch authorization for its satellites at the 82° W.L. and 91° W.L. orbital locations. Petitioners argue that to require more would be to prescribe the manner in which Canada licenses its space stations. Petitioners submit a variety of documents to demonstrate that

⁷ WTCL cites Hughes Communications Galaxy, *Memorandum, Opinion, Order and Authorization*, 6 FCC Rcd 297 (Int'l Facilities Div. 1990), arguing that the Commission routinely grants transmit earth station applications that seek to communicate with foreign satellites that may not yet be authorized by foreign administrations. We disagree with WTCL that the International Facilities Division authorized any of the applicants in that decision to communicate with a satellite not yet licensed by a foreign administration.

⁸ See *In the Matter of the Applications of Western Tele-Communications, Inc. and TelQuest Ventures, Inc.*, DA 96-1128 (Released July 15, 1996) citing Letter from Chief, Domestic Facilities Division to Robert D. Briskman, Geostar Positioning Corporation (Aug. 29, 1990) (returning earth station applications as premature where applicant failed to identify satellite); and Letter from Chief, Domestic Facilities Division to Satellite CD Radio, Inc. (Aug. 2, 1993) (returning premature earth station applications for earth stations when space stations had not been authorized). Cf. *Orbital Communications Corporation ("Orbcomm") Authorization to Construct, Launch, and Operate a Non-Voice, Non-Geostationary Mobile Satellite System*, 9 FCC Rcd 6476 (1994) (the Commission received Orbcomm's earth station applications in April, 1994 but did not place applications on public notice until after the space station was licensed in October, 1994).

Canada has issued the requisite authorization to Telesat.⁹

11. First, Petitioners submit a February 27, 1996 Letter from Minister John Manley of Industry Canada, to Telesat ("Letter of Support") stating the Minister's "support in principle" for Telesat's proposal to utilize the 82° W.L. and 91° W.L. orbital locations.¹⁰ Minister Manley's Letter of Support conditioned actual licensing of the satellites on several factors: (1) that the satellites would be owned and operated by Telesat; (2) that DBS facilities shall be available on a first-come, first-served basis for those seeking to provide DBS programming; (3) approval of foreign countries served and successful modification of the ITU BSS Plan; (4) Canada's establishment of fees to charge Telesat based upon the fair market value of the spectrum and orbit resources; (5) that support is limited to the specific proposal; (6) the outcome of the GATS/NGBT talks;¹¹ (7) completion of any required negotiations with the United States and other affected countries; (8) approval of any required modifications to the Canadian government's DBS/DTH satellite policy; and (9) obtaining the concurrence of affected countries in the ITU coordination process.¹² TelQuest asserts that Telesat is in the process of satisfying the first five conditions and that one of the remaining outstanding conditions is FCC authorization for the earth station applications. Opponents argue that Petitioners have not demonstrated that the fees for use of the Canadian resources in question have been established and that the other conditions have not been satisfied.

12. As the Opponents correctly note, several of the Manley conditions have not been met, which could preclude Telesat from ultimately obtaining the requisite space station licenses. Minister Manley indicated in his Letter of Support that he would not issue a radio authorization to Telesat unless all the conditions have been met to his satisfaction. Minister Manley's support is conditioned on any required negotiations with the United States and other affected countries, which have not commenced. In addition, Canada has not yet established the fees to be charged to Telesat for use of the orbital slots. The Executive Branch in its July 1 letter raised a number of concerns associated with the WTCI and TelQuest proposals. The Executive Branch has not offered any indication that these concerns have been resolved. Telesat must also obtain any required modifications to the Canadian

⁹ See Letter from Minister John Manley, Industry Canada to Mr. Larry Boisvert, President and CEO, Telesat Canada (February 27, 1996) as identified in WTCI Petition for Reconsideration and Request for Expedited Action, Exhibit 1, File No. 844-DSE-P/L-96 (filed August 14, 1996) and TelQuest Emergency Petition for Reconsideration, Exhibit 3, File Nos. 758-DSE-P/L-96 and 759-DSE-P/L-96 (filed August 12, 1996). See also Letter from Minister John Manley, Industry Canada to Mr. Larry Boisvert, President and CEO, Telesat Canada (February 27, 1996), Exhibit 3 to WTCI Petition for Reconsideration and Exhibit 6 to TelQuest Petition for Reconsideration.

¹⁰ See WTCI Petition for Reconsideration and Request for Expedited Action, Exhibit 1, File No. 844-DSE-P/L-96 (filed August 14, 1996) and TelQuest Emergency Petition for Reconsideration, Exhibit 3, File Nos. 758-DSE-P/L-96 and 759-DSE-P/L-96 (filed August 12, 1996).

¹¹ This condition refers to the World Trade Organization's ongoing discussions regarding basic telecommunications services (related to the General Agreements on Trade and Services and the Negotiating Group for Basic Telecommunications).

¹² *Id.*

government's DBS/DTH policy. It is unclear which policies must be changed or when these changes will take place. Opponents also correctly note that the ITU has not published Canada's proposed modifications to the International Telecommunication Union's ("ITU") Region 2 BSS Plan. Therefore, the United States has not had an opportunity to comment on the proposal. WTCI and TelQuest have not established that the license fees have been established for Telesat's proposed use of the Canadian BSS orbital locations. The many conditions qualifying Minister Manley's support "in principle" could represent significant obstacles to Canada's licensing of the proposed satellites.

13. Petitioners assert that statements made by Minister Manley, subsequent to the Bureau's dismissal order, show Canada's commitment to Telesat's proposal.¹¹ But the issue in this proceeding is not whether the Canadian government supports Telesat's proposal in principle. The issue is whether Canada has authorized the Telesat satellites. In a letter to Minister Manley, dated July 16, 1996, Telesat describes its progress in implementing its proposal and requests final authorization from Industry Canada.¹² Minister Manley, in his response, declined to provide the requested authorization. Minister Manley also stated that he would explore alternative solutions to serve the Canadian market.¹³ This correspondence leaves no doubt that Canada has not yet issued a license or firmly committed to issue a license to Telesat for its satellites at 82° W.L. and 91° W.L.

14. Petitioners assert that, by obtaining the Letter of Support, Telesat has obtained the standard pre-launch authorization for use of the radio spectrum. Petitioners submit supporting documents, prepared by Telesat, which describe Canadian licensing procedures.¹⁴ Telesat explains that it has applied for authorization to use the Canadian BSS orbital locations in a manner similar to the applications procedures established for FSS authorization, since there are no standard or formal procedures by which to apply for and obtain a Canadian BSS license. Telesat, however, admits that the FSS procedures are based, in part, on its monopoly provider status, which it does not have with respect to BSS. Thus other BSS applicants may compete for the same location.¹⁵ Nothing in

¹¹ WTCI and TelQuest submit as exhibits to their petitions as July 18, 1998 News Release in which Minister Manley expressed continued support for the Telesat proposal. WTCI Petition for Reconsideration and Request for Expedited Action, Exhibit 2, File No. 844-DSE-P/L-96 (filed August 14, 1996) and TelQuest Emergency Petition for Reconsideration, Exhibit 5, File Nos. 758-DSE-P/L-96 and 759-DSE-P/L-96 (filed August 12, 1996).

¹² See Exhibit 4 to TelQuest's Emergency Petition for Reconsideration, Letter from Larry Boisvert, President, Telesat Canada to Minister John Manley, Industry Canada (July 16, 1996).

¹³ See Exhibit 3 to WTCI Petition for Reconsideration and Request for Expedited Action, and Exhibit 6 to TelQuest's Emergency Petition for Reconsideration, Letter from John Manley, Minister, Industry Canada to Larry Boisvert, President, Telesat Canada (July 23, 1996).

¹⁴ See Letter from Mr. Larry Boisvert, Telesat Canada to Mr. William Caton, Acting Secretary, Federal Communications Commission (August 13, 1996), Exhibit 4 of WTCI Petition for Reconsideration and Request for Expedited Action, File No. 844-DSE-P/L-96 (filed August 14, 1996)

¹⁵ In fact, Industry Canada has received a competing application from Shaw Communications for the 82° W.L. location.

Telesat's letter demonstrates that Canada has authorized Telesat's satellites.

15. We do not believe that the Petitioners have established that the Bureau erred in dismissing the earth station applications of WTCI and TelQuest as premature.¹⁶ Nothing in the record reflects a binding commitment by Industry Canada to license the two satellites at issue. Canada has not even established procedures for selecting among competing applicants for BSS satellite licenses. The Letter of Support issued by Minister Manley contains significant conditions that may preclude Telesat from receiving the authorization it has requested. Indeed, evidence submitted by petitioners to show greater commitment by Industry Canada toward licensing the satellites arguably demonstrates even greater ambiguity. We find that the Petitioners have not established that the Bureau erred in dismissing their earth station applications. Accordingly, we deny the petitions for reconsideration, filed by WTCI and TelQuest.

Conclusion

16. We deny the Petitions for Reconsideration filed by TelQuest Ventures, Inc. and Western Tele-Communications, Inc. We find that Petitioners have not established that the Bureau erred in dismissing, without prejudice, the earth station applications filed by WTCI and TelQuest.

Ordering Clauses

17. Accordingly, IT IS ORDERED, that the Petition for Reconsideration, filed by Western Tele-Communications, Inc., IS DENIED.

18. IT IS FURTHER ORDERED, that the Petition for Reconsideration, filed by TelQuest Ventures, Inc., IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION



Donald H. Gips
Chief, International Bureau

¹⁶ Section 1.106 of the Commission's Rules, 47 C.F.R. § 1.106, provides that a petition for reconsideration which relies on facts not previously presented may be granted if (i) the petition relies on facts which relate to events which have occurred or circumstances which have changed since the last opportunity to present such matters; (ii) the petition relies on facts unknown to the petitioner until after his last opportunity to present such matters which could not, through the exercise of ordinary due diligence, have been learned prior to such opportunity; or (iii) the Commission or designated authority determines that consideration of the facts relied on is required in the public interest. As discussed above, no new information has been presented that demonstrates that the Bureau erred in dismissing the earth station applications, without prejudice.