

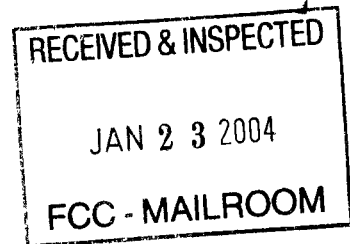


**Government of Bermuda**  
**Ministry of Tourism, Telecommunications & E-Commerce**  
**Office of the Minister**  
P. O. Box HM 101  
Hamilton HM AX Bermuda  
Telephone: (441) 292-4595  
Facsimile: (441) 295-1462

**Your Ref:** SPB-196  
**Our Ref:** DOT204/11  
**Date:** January 20, 2004

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Policy Branch  
International Bureau

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Honorable Michael K. Powell,  
Chairman  
U.S. Federal Communications Commission,  
445 12<sup>th</sup> Street, SW,  
Washington, DC 20554,  
U.S.A.

Dear Chairman Powell,

**New FCC BSS Satellite Technical Considerations Will Critically Impact Bermuda**

I write in response to the FCC's request for comment in the Public Notice released on December 16, 2003, regarding ITU Region 2 BSS Band Plan technical issues (SPB-196).

Bermuda urges the FCC International Bureau that any and all ostensible Band Plan technical issues "for establishing new orbital spacing for DBS in the United States," as stated in the Public Notice, must be reviewed *within* the total context of explicitly accommodating existing coordination requirements and market entry rights, as delineated by international treaties. This letter overviews:

- I. Bermuda's longstanding and significant trade relationship with the U.S., including telecommunications services;
- II. The existing Bermuda allotment of 96.2° W.L. in the BSS bands designated by the 1983 ITU Regional Administrative Radio Conference and specified in Appendix 30 of the International Radio Regulations.
- III. Bermuda's intent under DISCO II to achieve market entry to the U.S., and to file a concomitant notice of coordination for such entry at the ITU; and
- IV. Bermuda's request that the FCC, in its analysis and potential further actions, continue to protect our orbital resource both from harmful interference and from any conflicting new U.S. licence requests.

## **I. The U.S. and Bermuda: A Rich History of Trade and Mutual Support**

Bermuda shares a long standing, cultural and trade heritage with the U.S. This successful partnership was formed long before the current force of treaty, which the WTO and its recent attendant telecommunications protocols require.

Bermuda trades freely with the U.S. and accepts significant direct capital investment from the U.S. in Bermuda-based local and international telecommunications operators. Bermuda has in past years allowed U.S.-controlled communications facilities at U.S. Naval and Air Force bases to operate on our soil. Today Bermuda also authorizes U.S.-controlled communications at our airport for NASA to support possible emergency landings of America's Space Shuttles in Bermuda. As well, the U.S. Customs Service operate their own telecommunications at security clearing facilities, which are "forward deployed" by the U.S. on the ground in Bermuda.

Thus, in telecommunications, Bermuda is America's close ITU Region 2 commercial and governmental communications partner. Bermuda is only 826 miles and 100 minutes by nonstop air from Reagan National Airport, and is closer to your FCC headquarters than Miami by 100 miles. Thus as we see it, it is natural that Bermuda also should be considered one of the United States' closest Region 2 *satellite* communications partners. Together as neighbors, the U.S. and Bermuda can serve our citizens mutually and cost effectively from geo-synchronous satellite communications platforms. Bermuda shares with the U.S., perhaps more than any other administration except Canada or Mexico, complementary market service goals and the potential for superior satcom launch economics and operating efficiencies. Bermuda hopes its telecoms success can continue to work to the mutual economic advantage of both the People of Bermuda and the United States.

Bermuda's longstanding common belief with the U.S. in fair play has been proven for over three centuries by our repeated successful commercial interactions together. *Thus Bermuda formally calls upon the FCC in its review of public comment to be mindful that our common history binds the U.S. and Bermuda, and must be considered by the FCC International Bureau as part of the total context within which the radio transmission technical realities and BSS channel expansion needs are reviewed.* As outlined below, these technical issues specifically must continue to conform to the existing international Region 2 BSS Band Plan and operate within all treaty commitments.

## **II. Bermuda's Holds and is Actively Developing an ITU-Issued BSS Satellite Allotment at 96.2° W.L.**

Bermuda holds three ITU allotments from the 1983 ITU-sponsored Regional Administrative Radio Conference, one of which is for 16 channels at 96.2° W.L. Bermuda has long been appreciative of the world community granting this allotment. However, it has clearly been uneconomical to launch a satellite in a previously analog world and especially with a Bermuda-only beam footprint originally envisioned. The recent advent of improved digital and spot-beam capabilities, together with formal DISCO II administrative processes now in place, critically aid Bermuda in finally realizing the intended economic development benefits of the allotment.

But perhaps the most important new development of all is recent agreement by the two major DBS providers and SES that coordination can now succeed for "tweener" satellites, as evidenced in their very recent filings to the FCC. And fortunately

Bermuda's 96.2° W.L. satellite will achieve separation between the U.S. and Canadian satellites that slightly exceeds what SES and EchoStar find acceptable in their proposals. Thus, Bermuda can now appropriately move from husbanding this orbital resource to working diligently to exploit its allotment.

Though the "time is ripe," as DirecTV stated in its September 5, 2003 filing seeking "tweener" satellite locations for it to serve the U.S., the fact is that Bermuda already possesses an ideal "tweener." While the tweener language is novel, the concept is not. *Bermuda's allotment is now ripe* for development and the complementary U.S. market entry that Bermuda has long intended.

To briefly summarize Bermuda's position: We ask the FCC to remain mindful that any U.S.-centric new allotment considerations and technical proposals recently articulated in "tweener" language must also fully conform to the following:

- A) Bermuda's pre-existing allotment;
- B) Bermuda's legitimate market entry rights to serve the U.S. via the existing framework of DISCO II, which is consistent with the FCC's recent approval granted to another neighboring nation, Canada, for market entry from 91° W.L.; and
- C) The fact that Bermuda's existing allotment, as well as Bermuda's U.S. market entry prerogative, are protected by international treaty processes, in addition to painstakingly well-structured subsequent FCC Rulemakings and Orders, as in the case of DISCO II.

### **III. Bermuda Will Exercise Its U.S. Market Entry Rights and Coordinate via the ITU**

For Bermuda's allotment to ever have the real economic development potential, which the world community envisioned and should rightfully be enjoyed, entry to serve the U.S. market will be required. The Ministry has been diligently working on this matter for over two years. For the past eight months Bermuda has been engaged in the process of adopting the U.K. Outer Space Act of 1986 to Bermuda, in a similar manner as the Gibraltar administration outlined in its letter dated June 25, 2002, from the Gibraltar Regulatory Authority. In that letter, the GRA discussed the new 105.5° W.L. licence it issued to SES Americom, which began the process to seek a new ITU Region 2 BSS Band Plan allotment. As similarly outlined in that correspondence, Bermuda too will work with the British National Space Centre as agent for this Ministry for due diligence review of technical materials and insurance certifications. The Bermuda Government has tentatively selected a licensee, pending further final approvals and related governmental procedures. Bermuda will facilitate the filing with the FCC of a Letter of Intent (LOI) for U.S. market entry under the DISCO II Order. Finally, Bermuda will file a request for coordination under Article 11 of the International Radio Regulations at the ITU for a continental US (CONUS) footprint to complement our preexisting allotment.

#### **IV. The FCC Must Protect Our Orbital Position from Harmful Interference and Conflicting U.S. Licence Requests**

As part of the FCC's important and timely deliberations to expand the availability of channels in the U.S., the FCC must nevertheless also protect Bermuda's well-earned right as a full trading partner to serve both Bermuda and the U.S. from 96.2° W.L., free from harmful interference. Of particular immediate technical concern is the potential for the FCC to license 32 new channels requested at 96.5° W.L., where 16 of these channels would surely cause harmful interference to Bermuda's planned CONUS service. However, in any event, a new U.S. licence for the very same channels Bermuda holds would likely be in direct coordination conflict with Bermuda's existing base allotment for service into Bermuda.

In Conclusion, Bermuda has patiently awaited the confluence of events that have long been evolving. These now clearly allow Bermuda to succeed in developing the existing allotment:

- A) Increased global consumer demand for more telemedia services via BSS satellites;
- B) The advent of improved digital and spot beam technology;
- C) Reaffirming market entry rights and clarifying FCC administrative market entry procedures in telecommunications;
- D) Public acceptance by the leading U.S. service providers of the technical ability for coexistence and coordination with orbital spacing less than 9°; and
- E) The willingness of the FCC itself to review this matter now on a unified basis for the benefit of all, mindful of its preexisting, international treaty commitments and related major FCC Orders.

Please do not hesitate to contact the Ministry with further questions. Bermuda looks forward to working productively with the U.S. to serve our citizens' mutual interests.

Yours faithfully,



The Hon. Neletha Butterfield JP MP  
Acting Minister of Tourism, Telecommunications and E-Commerce

cc: The Hon. Paula Cox, Attorney General of Bermuda  
Mr. William Francis, Acting Director of Telecommunications  
Ms. Marlene H. Dortch, Secretary to the Commission  
Mr. Donald Abelson, Chief, FCC International Bureau  
Ms. Sheryl J. Wilkerson, Legal Advisor, Office of Chairman Michael K. Powell  
Ms. Jennifer Manner, Senior Counsel, Office of Com. Kathleen Q. Abernathy  
Mr. Paul Margie, International Legal Advisor, Office of Com. Michael J. Copps  
Mr. Sam Feder, International Legal Advisor, Office of Com. Kevin J. Martin  
Mr. Barry Ohlson, International Legal Advisor, Office of Com. Jonathan S. Adelstein