Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Telesat Canada	)	
	)	
Petition for Declaratory Ruling For Inclusion of Anik F2 on the Permitted Space Station List	)	File No. SAT-PDR-20010906-00082
	)	
Petition for Declaratory Ruling to Serve the U.S. Market Using Ka-band Capacity on Anik F2	)	File No. SAT-PDR-20020321-00027

ORDER

Adopted: December 17, 2002 **Released:** December 18, 2002

By the Chief, International Bureau:

I. INTRODUCTION

1. In this Order, we add a Canadian satellite, Anik F2, located at 111.1° W.L., to the Commission's Permitted Space Station List ("Permitted List"), with certain conditions. As a result of this action, U.S. earth stations with "routine" technical parameters will be able to communicate with Anik F2 immediately, in the conventional C- and Ku-band frequencies,[1] without license modifications. This should stimulate competition in the United States, provide consumers another alternative in choosing communications providers and services, reduce prices, and facilitate technological innovation. In this Order, we also grant Telesat's request to use the Ka-band capacity[2] of Anik F2 to provide two-way broadband communications services in the United States. This should also stimulate competition in the United States, and expand provision of broadband service in rural areas. Earth station operators seeking to access Anik F2 to provide Ka-band services may do so only after obtaining an earth station license that includes Anik F2 as an authorized point of communication or after modifying an existing license to add Anik F2 as a point of communication.

[1] The "conventional C-band" refers to frequencies in the 3700-4200 MHz (Earth-to-space) and 5925-6425 MHz (space-to-Earth) bands. The "conventional Ku-band" refers to frequencies in the 11.7-12.2 GHz (Earth-to-space) and 14.0-14.5 GHz (space-to-Earth) frequency bands.

[2] The term "Ka-band" refers to frequencies in the 17.7-20.2 GHz (space-to-Earth) and 27.5-30.0 GHz (Earth-to space) bands. Telesat plans to operate with Ka-band earth stations in the United States only in the 19.7-20.2 GHz and 29.5-30.0 GHz bands. Telesat Canada Petition for Declaratory Ruling Petition for Declaratory Ruling to Serve the U.S. Market Using Ka-band Capacity on Anik F2, filed March 21, 2002 ("Telesat Ka-band Petition") at 5.

II. BACKGROUND

2. In the *DISCO II Order*,[3] the Commission implemented the satellite services market-opening commitments made by the United States in the World Trade Organization Agreement on Basic Telecommunications Services ("WTO Basic Telecom Agreement").[4] It also established a framework under which it would consider access by foreign satellites not covered by the WTO Basic Telecom Agreement. By allowing non-U.S. licensed satellites to serve the U.S. market, this action provides U.S. consumers more alternatives in choosing communications providers and services, thus advancing the growth of satellite services in the United States and around the globe. Among other things, the *DISCO II Order* established a procedure by which a service provider in the United States could request immediate access to a foreign in-orbit satellite that would serve the U.S. market.[5] This procedure requires a U.S. earth station operator seeking to communicate with a non-U.S. satellite to file an earth station application for an initial license or for a modification of its existing earth station license, listing the foreign satellite as a point of communication.[6]

3. In the *DISCO II First Reconsideration Order*, the Commission streamlined the process by allowing the operators of in-orbit non-U.S. satellites offering fixed satellite service to request authority to provide space segment capacity service to licensed earth stations in the United States.[7] Under this process, the Commission conducts the analysis established in the *DISCO II Order* for a particular non-U.S.-licensed space station and a particular satellite service. If the satellite granted access operates in the conventional C- and Ku-bands, the satellite operator may also request authority to be added to the "Permitted List."[8] This list identifies all satellites and services with which U.S.-licensed earth stations with routinely authorized technical parameters are permitted to communicate, in the conventional C- and Ku-bands, without additional Commission action, provided that those communications fall within the same technical parameters and conditions established in the earth stations' original licenses.[9] The

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[3] *Amendment of the Commission's Regulatory Policies To Allow Non-U.S.-Licensed Space Stations To Provide Domestic and International Satellite Service in the United States*, Report and Order, IB Docket No. 96-111, 12 FCC Rcd 24094 (1997) ("*DISCO II"* or "*DISCO II Order"*).

[4] The WTO came into being on January 1, 1995, pursuant to the Marrakesh Agreement Establishing the World Trade Organization (the Marrakesh Agreement). 33 I.L.M. 1125 (1994). The Marrakesh Agreement includes multilateral agreements on trade in goods, services, intellectual property, and dispute settlement. The General Agreement on Trade in Services (GATS) is Annex 1B of the Marrakesh Agreement. 33 I.L.M. 1167 (1994). The WTO Telecom Agreement was incorporated into the GATS by the Fourth Protocol to the GATS (April 30, 1996), 36 I.L.M. 354 (1997) (Fourth Protocol to the GATS).

[5] *DISCO II*, 12 FCC Rcd at 24174 (para. 186). In *DISCO II*, the Commission also adopted a procedure for non-U.S. licensees of unlaunched satellites to participate in processing rounds by filing a letter of intent. *DISCO II*, 12 FCC Rcd at 24173-74 (paras. 183-85). When the Commission discussed "immediate access" for non-U.S.-licensed in-orbit satellites, it meant access without conducting a processing round, not that the satellite would be permitted access upon submission of its request.

[6] When an earth station has been granted authority to communicate with a specific satellite or group of satellites, those satellites are referred to in the earth station license as "points of communication."

[7] *Amendment of the Commission's Regulatory Policies to Allow Non-U.S.-Licensed Space Stations to Provide Domestic and International Satellite Service in the United States*, First Order on Reconsideration, IB Docket No. 96-111, 15 FCC Rcd at 7207, 7212 (para. 10) (1999) ("*DISCO II First Reconsideration Order*").

[8] *Id*. at 7212-13 (paras. 10-11). This request is to be in the form of a Petition for Declaratory Ruling.

[9] *Id*. at 7215-16 (para. 19).

Permitted List is maintained on our website, and is also available via fax or e-mail.[10]

4. On September 6, 2001, Telesat Canada ("Telesat"), a Canadian satellite services provider, filed a Petition for Declaratory Ruling to add its Anik F2 communications satellite to the Permitted List.[11] Telesat requests authorization to provide analog television, point-to-point and point-to-multipoint wideband and narrowband digital services, including voice and data, as well as Internet services, in the conventional C-band. Telesat also requests to provide the same services as requested in the C-band, plus VSAT services, in the conventional Ku-band.[12] It seeks permission to provide all of these C- and Ku-band services to, from, and within the United States, including Alaska and Hawaii.[13] Anik F2 is provisionally licensed by Canada.[14] No parties filed oppositions to this petition.

5. On March 21, 2002, Telesat filed a petition for declaratory ruling to use the Ka-band capacity of the Anik F2 satellite to provide two-way broadband communications services in the United States. PanAmSat Corporation ("PanAmSat") filed comments in support of Telesat's request for waiver of the financial showing for this satellite.[15] No comments were filed in opposition to Telesat's Ka-band Petition. Telesat filed a reply to PanAmSat's comments.[16] KaStarCom World Satellite, LLC ("KaStarCom"), in an *ex parte* meeting on May 10, 2002, asked the Commission to take into consideration its view that, as the U.S. Ka-band licensee at 111.0° W.L., KaStarCom may have certain rights to interference protection from Telesat Ka-band operations at 111.1° W.L.[17]

III. DISCUSSION

A. Permitted List Request

1. General Framework

6. In the *DISCO II Order*, the Commission set forth the public interest analysis applicable in evaluating applications to use non-U.S. licensed space stations to provide satellite service in the United States. This analysis considers the effect on competition in the United States,[18] eligibility and operating

[10] *Id*. This web site address is http://www.fcc.gov/ib/sd/se/permitted.html.

[11] Telesat Canada Petition for Declaratory Ruling for Inclusion of Anik F2 on the Permitted Space Station List, filed September 6, 2001 ("Telesat Permitted List Petition").

[12] Telesat Permitted List Petition, Exhibit I, at 11.

[13] Telesat Permitted List Petition, Exhibit I, at 2,11.

[14] Telesat Permitted List Petition at 5 and n.11. Industry Canada does not formally license a satellite until the satellite is launched. Instead, the satellite receives "approval in principle" that in this case, according to Telesat, "ensures that there is no uncertainty surrounding either Telesat's expectation of licensing or the operating parameters of Anik F2." *Id*.

[15] Comments of PanAmSat Corporation, File No. SAT-PDR-20020321-00027, at 1-2 (filed April 24, 2002) ("PanAmSat Comments").

[16] Reply of Telesat Canada, filed May 7, 2002 ("Telesat Ka-band Reply").

[17] Letter from Steven E. Coran, Counsel for KaStarCom World Satellite, LLC, to Marlene H. Dortch, Secretary, Federal Communications Commission (dated May 13, 2002).

[18] *DISCO II*, 12 FCC Rcd at 24107-56 (paras. 30-145).

(*e.g.*, technical) requirements,[19] spectrum availability,[20] and national security, law enforcement, foreign policy, and trade concerns.[21] We evaluate Telesat's C-band and Ku-band request under this framework.

2. Competition Considerations

7. In *DISCO II*, the Commission established a rebuttable presumption that entry by non-U.S. satellites licensed by WTO Members to provide services covered by the U.S. commitments under the WTO Basic Telecom Agreement will further competition in the United States.[22] These commitments include fixed-satellite service, but specifically exclude direct-to-home ("DTH") services, Direct Broadcast Satellite Service ("DBS"), and Digital Audio Radio Service ("DARS").[23] This means that we will presume that WTO-member licensed satellites providing WTO-covered services satisfy the competition component of the public interest analysis. The Commission concluded that the market access commitments made under the WTO Basic Telecom Agreement will help ensure the presence and advancement of competition in the satellite services market and yield the benefits of a competitive marketplace to consumers in the United States and other countries.[24]

8. In this case, the presumption in favor of entry applies to Anik F2, which is licensed by Canada, a WTO Member,[25] and which will be used to provide non-DTH fixed-satellite services to customers in the United States. No comments were filed to rebut the presumption that Anik F2's entry into the U.S. market is pro-competitive. Therefore, we conclude that Telesat's proposed entry for purposes of offering fixed-satellite services will enhance competition for these services in the U.S. market. As a condition on Anik F2's placement on the Permitted List, however, we prohibit U.S. earth stations from accessing Anik F2 for DTH, DBS, or DARS.

3. Spectrum Availability

9. In *DISCO II*, the Commission determined that, given the scarcity of orbit and spectrum resources, it would consider spectrum availability as a factor in determining whether to allow a foreign satellite to serve the United States.[26] This is consistent with the Chairman's Note to the WTO Basic Telecom Agreement, which states that WTO Members may exercise their domestic spectrum/frequency

[19] *DISCO II*, 12 FCC Rcd at 24159-69 (paras. 151-74).

[20] *DISCO II*, 12 FCC Rcd at 24157-59 (paras. 146-50).

[21] *DISCO II*, 12 FCC Rcd at 24169-72 (paras. 175-82).

[22] *DISCO II*, 12 FCC Rcd at 24112 (para. 39).

[23] *DISCO II*, 12 FCC Rcd at 24104 (para. 25). Non-U.S.-licensed satellite operators may obtain rights to provide these services if they can meet the Effective Competitive Opportunities for Satellites (ECO-Sat) test. *DISCO II*, 12 FCC Rcd at 24136-38 (paras. 98-101).

[24] *DISCO II*, 12 FCC Rcd at 24112 (para. 39); 24157 (para. 143).

[25] *See* http://www.wto.org/english/thewto_e/whatis_e/tif_e/org6_e.htm (a list of WTO members). *See also* http://www.wto.org/english/tratop_e/servte_e/gbtoff.htm (a list of WTO members that made market-access commitments, with links to each member's schedule of commitments and Article II exemptions).

[26] *DISCO II*, 12 FCC Rcd at 24158-59 (paras. 149-50).

management policies when considering foreign entry.[27]

10. In this case, Telesat plans to locate Anik F2 at an orbital position in accordance with a trilateral agreement for C- and Ku-band frequencies among the United States, Mexico, and Canada.[28] Consequently, in accordance with the *Trilateral Agreement*, the Commission has not licensed U.S. satellites in these frequency bands at or within two degrees of this location. Allowing Anik F2 to serve the United States from the 111.1° W.L. orbit location, by itself, will not affect operations of any U.S.-licensed satellites nor contravene the Commission's spectrum/frequency management policies.

4. Eligibility Requirements

11. The Commission's *DISCO II Order* requires that space station operators not licensed by the Commission meet the same legal, financial, and technical qualifications required of U.S.-licensed space station operators. Nothing in the record raises concerns about Telesat's legal qualifications to provide satellite services in the United States.[29] Telesat has requested a waiver of the financial demonstration requirement in Sections 25.114(c)(13) and (17), 25.137(b) and 25.140 of the Commission's rules.

a. Financial Qualifications

12. In the *DISCO II Order*, the Commission exempted in-orbit, non-U.S. space station systems from financial qualification requirements, reasoning that "where the foreign satellite is already in-orbit, there is no concern about whether the prospective entrant is financially capable of building and launching its system."[30] Although Anik F2 is not yet in orbit, Telesat asserts that the reasoning behind the exemption for in-orbit satellites is also applicable to Anik F2. Specifically, Telesat argues that there is no financial or regulatory risk that Anik F2 will not be constructed or launched because construction of the satellite is almost complete, a launch reservation has been obtained, and all steps necessary to obtain Canadian licensing immediately prior to or upon launch have been concluded.[31] Telesat also notes that there is no danger of spectrum warehousing because Telesat has secured the right to use the Canadian orbital position at 111.1° W.L. to the exclusion of all other providers and currently operates a satellite in that orbital location.[32] Further, Telesat notes that Anik F2 is a replacement satellite for the aging Anik E2

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[27] *See* Chairman of the World Trade Organization Group on Basic Telecommunications, Chairman's Note, Market Access Limitations on Spectrum Availability, 36 I.L.M. at 372 ("Chairman's Note to the WTO Basic Telecom Agreement").

[28] *Trilateral Arrangement Regarding Use of the Geostationary Orbit by Canada, Mexico, and the United States*, Public Notice, Mimeo No. 4406 (Sept. 2, 1988) ("*Trilateral Agreement"*).

[29] The Bureau has previously determined that Telesat is legally qualified to provide satellite services in the United States. *Telesat Canada, Request for Declaratory Ruling or Petition for Waiver on Earth Stations' Use of Anik E1 and Anik E2 Satellite Capacity to Provide Basic Telecommunications Service in the United States*, Order, 15 FCC Rcd 3649, 3653 (para. 13) (Int'l Bur. 1999) ("*Anik E2 Order*"); *Telesat Canada, Petition for Declaratory Ruling For Inclusion of Anik F1 on the Permitted Space Station List*, Order, 15 FCC Rcd 24828, 24831 (para. 10) (Int'l Bur. 2002) ("*Anik F1 Order"*).

[30] *DISCO II Order*, 12 FCC Rcd at 24176 (para. 191).

[31] Telesat Permitted List Petition at 4; Telesat Ka-band Petition at 6-8.

[32] Telesat Permitted List Petition at 4; Telesat Ka-band Petition at 6-8.

satellite at 111.1° W.L., which is already on the Permitted List.[33] Finally, Telesat submits that it is an established Canadian satellite provider with undeniable financial resources.[34]

13. Commission rules may be waived if there is "good cause" to do so.[35] Waiver is appropriate if special circumstances warrant a deviation from the general rule and such deviation would better serve the public interest than would strict adherence to the general rule.[36] Circumstances that would justify a waiver include "considerations of hardship, equity, or more effective implementation of overall policy."[37] Generally, the Commission may grant a waiver of its rules in a particular case if the relief requested would not undermine the policy objective of the rule in question and would otherwise serve the public interest.[38]

14. We conclude that there is good cause to grant Telesat a waiver of the financial qualification requirement in this case with respect to the Permitted List Request. The Commission's financial qualifications requirements are designed to prevent warehousing by requiring applicants to show that they have the means to proceed with their business plans. Construction of Anik F2 is virtually complete, all steps to secure Canadian licensing have been concluded and Telesat has obtained a launch reservation.[39] As Telesat has an exclusive right under the Trilateral Agreement to use the C- and Ku-band spectrum at 111.1° W.L., there are no concerns about spectrum warehousing.[40] Consequently, granting a waiver of our financial demonstration requirement in this case satisfies our policy objectives and serves the public interest.

b. Technical Qualifications

15. We must, however, review Anik F2's technical qualifications. The Commission's satellite licensing policy is predicated upon two-degree orbital spacing between geostationary satellites. This policy permits the maximum use of the geostationary satellite orbit. Applicants must demonstrate that they comply with the Commission's technical requirements, designed to permit two-degree orbital spacing, to be authorized to provide service in the United States. The Commission may license satellites

[33] Letter from Carl R. Frank, counsel for Telesat Canada, to Marlene H. Dortch, Secretary, Federal Communications Commission (dated Jun. 20, 2002) at 2 (Telesat June 20, 2002 *ex parte* statement).

[34] Telesat Permitted List Petition at 4-5; Telesat Ka-band Petition at 7.

[35] *See* 47 C.F.R. § 1.3 (2001). *See also* WAIT Radio v. FCC, 418 F.2d 1153 (D.C. Cir. 1969) ("*WAIT Radio"*); Northeast Cellular Telephone Co. v. FCC, 897 F.2d 1166 (D.C. Cir. 1990) ("*Northeast Cellular*").

[36] *Northeast Cellular*, 897 F.2d at 1166. *See also Comsat Corporation, Petition for Partial Relief from the Current Regulatory Treatment of Comsat World Systems' Switched Voice, Private Line, and Video and Audio Services*, Order, 11 FCC Rcd 9622, 9625 (para. 10) (1996); *Petition of General Communications, Inc. for a Partial Waiver of the Bush Earth Station Policy*, Memorandum Opinion and Order, 11 FCC Rcd 2535, 2536 (para. 4) (Int'l Bur. 1996).

[37] *WAIT Radio*, 418 F.2d at 1159.

[38] *WAIT Radio*, 418 F.2d at 1157; *Dominion Video Satellite, Inc.*, Order and Authorization, 14 FCC Rcd 8182, 8185 (para. 5) (Int'l Bur. 1999) ("*Dominion Video"*).

[39] Telesat Permitted List Petition at 4. Anik F2 is scheduled to be launched by Arianespace from Kourou in French Guiana in June 2003. *See* Letter from Bert W. Rein, Counsel to Telesat Canada, to Marlene H. Dortch, Secretary, Federal Communications Commission (dated Aug. 15, 2002) at 3 (Telesat August 15, 2002 *ex parte* statement).

[40] Telesat Permitted List Petition at 4; Telesat Ka-band Petition at 6-8.

that are not two-degree compliant (or earth stations seeking to access such), but only when the applicants can demonstrate that their operations will not cause harmful interference to existing two-degree compliant satellite operations. Further, non-conforming operations are authorized conditioned upon a licensee accommodating future satellite networks serving the United States that are two-degree compliant.[41]

16. Based on our review of the technical information in Telesat's petitions for declaratory ruling, we conclude that Anik F2 complies with all applicable Commission rules, except Section 25.210(a)(3). Section 25.210(a)(3) requires that C-band payloads on space stations be capable of switching polarity upon ground command.[42] Telesat asserts that the Commission's rules require polarity-switching capability for two reasons: to permit U.S.-licensed satellites the flexibility to be assigned to different U.S. orbital positions, and to mitigate potential interference between adjacent fixed-satellite systems transmitting analog TV signals.[43] Because it will operate only in a Canadian orbital position, in accordance with the *Trilateral Agreement*,[44] however, Telesat asserts that flexibility to operate in other orbital positions is not necessary in its case.[45] Telesat also claims that it has coordinated transmission of analog TV signals with adjacent C-band operators serving the U.S. market, and will transmit such signals only on the transponders that have been coordinated for such use.[46] Telesat thus seeks a waiver of Section 25.210(a)(3) of our rules.[47]

17. We grant Telesat a waiver of Section 25.210(a)(3).[48] We conclude that waiving Section 25.210(a)(3) will not undercut the policies underlying the Commission's adoption of this rule, provided that we place the appropriate conditions on this waiver. First, this waiver will remain in effect only as long as Anik F2 remains at one of the Canadian orbital positions under the *Trilateral Agreement*. Second, Telesat is required to operate Anik F2 in accordance with the coordination agreements it has reached with operators of satellites that have been authorized to provide service to the U.S. market, and any future coordination agreements. These conditions will be included on the Permitted List with respect to Anik F2.

18. Telesat plans to operate Anik F2 at the 13996.0 MHz and 14499.25 MHz frequencies for its command functions and at the 12198.75 and 12199.75 MHz frequencies for its telemetry.[49] Section 25.202(g) of the Commission's rules requires U.S.-licensed satellite operators to perform telemetry, tracking and control ("TT&C") functions within the communication band at the edges of the band.[50] Telesat's plans to perform command functions at 13996 MHz do not comply with this rule. Because

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[41] *See, e.g.*, *Systematics General Corporation*, Order and Authorization, 2 FCC Rcd 7550, 7550-51 (para. 9)(Com. Car. Bur. 1987); *New Skies Satellites, N.V.*, Order and Authorization, 14 FCC Rcd 13003, 13038 (para. 78)(1999).

[42] 47 C.F.R. § 25.210(a)(3) (2001).

[43] *See* Telesat August 15, 2002 *ex parte* statement.

[44] *See Trilateral Agreement*.

[45] Telesat August 15, 2002 *ex parte* statement at 3.

[46] *Id.*

[47] *Id*. at 2.

[48] We granted a similar waiver for the Anik F1 satellite. *See Anik F1 Order*, 15 FCC Rcd at 24830 (para. 17).

[49] Telesat Permitted List Petition at 4.

[50] 47 C.F.R. § 25.202(g) (2001).

Telesat's control center will be located in Canada rather than the United States, however, we find that these requirements do not apply to U.S. earth stations' communication with Anik F2. Moreover, the Table of Frequency Allocations places restrictions on many operations in the 13.75-14.0 GHz band.[51] Those restrictions are not relevant here because we are not authorizing any U.S.-licensed earth stations to communicate with Anik F2 in the 13.75-14.0 GHz bands in this Order.

5. Other Issues

19. As described above, under *DISCO II*, national security, law enforcement, foreign policy, and trade concerns are included in the public interest analysis. Nothing in the record before us raises any such concerns.

20. In *DISCO II*, the Commission adopted two procedures for non-U.S.-licensed satellite operators to request access to the U.S. market, the earth station license modification procedure discussed above for in-orbit satellites, and a Letter of Intent procedure for operators of non-U.S.-licensed, unlaunched satellites seeking to participate in a processing round. Telesat also requests that we consider the Canadian government's "approval in principle" to operate Anik F2 as the equivalent of being an "in-orbit" satellite for purposes of granting the satellite immediate access to the U.S. market rather than participating in a processing round.[52] We find that Telesat's request is justified. The purpose of our requirement that a satellite be "in-orbit" is to avoid spending Commission resources on "speculative" applications. As noted above, Telesat's demonstration that its satellite is nearing completion and is scheduled to be launched assures us of its commitment to launch and operate this satellite. Also, by treating the Anik F2 satellite in this manner, we will give Telesat the same opportunity that U.S. operators have to solicit customers after their satellites are licensed but before they are launched. Therefore, waiver of this requirement is warranted.

21. Finally, pursuant to the Bureau's Public Notice of December 17, 1999, placing a satellite on the Permitted Space Station List will permit international common carriers holding appropriate global international Section 214 authorizations to provide international telecommunications services using the satellite without the need to obtain additional Section 214 authority.[53] We find that it is in the public interest to allow common carriers with global international Section 214 authorizations to communicate with Anik F2.

B. Ka-band Request

1. Overview

22. In addition to the Anik F2 Permitted List request addressed above, Telesat has filed a petition for declaratory ruling to seek access to the U.S. market using Ka-band capacity on Anik F2. Our review of such petitions is identical to our review of other requests to access the U.S. market under

[51] *See* 47 C.F.R. § 2.106 (2001).

[52] Telesat Permitted List Petition at 3-4.

[53] *See International Bureau Announced Process for Providing Service Under Global International Section 214 Authorizations Using Approved Non-U.S.-Licensed Satellite Systems Listed on the Permitted Space Station List*, Public Notice, DA 99-2844 (released Dec. 17, 1999).

DISCO II.[54] Specifically we require the space station operator to provide the same information we require a U.S. space station applicant to provide and evaluate that information under the DISCO II criteria. If we grant a petition to access the U.S. market with a foreign space station, subsequent earth station licensees seeking to access that space station as a permitted "point of communication" must still apply for and receive authority to access that satellite as a point of communication in the earth station license.[55] They do not need to provide, however, supporting documentation, concerning the same space station, provided they communicate using the same technical parameters and under the same conditions as already authorized.[56]

23. Accordingly, we will use the same *DISCO II* framework to evaluate Telesat's Ka-band request as we used for the C- and Ku-band Permitted List analysis above. Our analysis for the Ka-band payload under the DISCO II framework is identical to the one used in the C- and Ku-band analysis for competition considerations, financial qualifications, and "other issues," and we will not repeat the analysis here.[57] We must however, evaluate the Ka-band request with respect to Spectrum Availability and Technical Qualifications.

2. Spectrum Availability

24. As outlined above, the *DISCO II* analysis includes spectrum availability as a factor. We also noted above that this policy is consistent with the Chairman's Note to the WTO Basic Telecom Agreement, which states that WTO Members may exercise their domestic spectrum/frequency management policies when considering foreign entry.[58] Moreover, as the Commission explained in *DISCO II*, there may be cases where granting a non-U.S.-licensed satellite operator access to the U.S. market would create debilitating interference or require U.S.-licensed operators to alter their operations significantly.[59] In that case, we could place conditions on the foreign satellite operations to prevent harmful interference or, in cases where conditions cannot remedy the problem, deny entry.

25. Telesat seeks to provide Ka-band service to the U.S. market from the Canadian Anik F2 satellite to be located at 111.1° W.L. KaStarCom holds a U.S. license to launch and operate a Ka-band satellite at the 111.0° W.L. orbit location.[60] Canada's Ka-band International Telecommunication Union ("ITU") filing at 111.1° W.L. has date priority relative to the U.S. Ka-band ITU filing at 111.0° W.L.[61]

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[54] *DISCO II*, 12 FCC Rcd at 24176 (para. 192); *DISCO II First Reconsideration Order*, 15 FCC Rcd at 7211-12 (para. 9).

[55] *DISCO II*, 12 FCC Rcd at 24176 (para. 192); *DISCO II First Reconsideration Order*, 15 FCC Rcd at 7209-10 (para. 5).

[56] *Id*.

[57] For the reasons we explained above, this Order does not authorize Ka-band earth station operators accessing Anik F2 to do so for purposes of providing DTH, DBS, or DARS services.

[58] *See* Section III.A.3., *supra*, *citing* Chairman's Note to the WTO Basic Telecom Agreement, 36 I.L.M. at 372.

[59] *DISCO II*, 12 FCC Rcd at 24159 (para. 150).

[60] *KaStarCom World Satellite, LLC, Application for Authority to Construct, Launch, and Operate a Ka-band Satellite System in the Fixed-Satellite Service*, Order and Authorization, 16 FCC Rcd 14322, 14330 (para. 26) (Int'l Bur. 2001) ("*KaStarCom Authorization Order*").

[61] *See* Telesat Ka-band Petition at 7, n.20.

Under the ITU's international Radio Regulations, any U.S. Ka-band satellite at 111.0° W.L. must be coordinated with Telesat's planned satellite at 111.1° W.L. Consequently, we conditioned KaStarCom's license on coordination with any non-U.S. satellite within two degrees of the KaStarCom satellite having filing date priority at the ITU.[62] We also reminded KaStarCom that it takes its license subject to the outcome of the international coordination process, and that the Commission is not responsible for the success or failure of the required international coordination.[63]

26. In light of the fact that Canada has ITU priority at this location, we find that granting Telesat access to the U.S. market in the Ka-band from the 111.1° W.L. location is consistent with the Commission's spectrum management policies. We also recognize, however, that KaStarCom holds a Ka-band license at the 111.0° W.L. orbit location, subject to coordination with Telesat. Accordingly, we will expect Telesat to comply with any coordination that it and KaStarCom may reach.

3. Technical Qualifications

27. We must also review Telesat's Ka-band technical qualifications. Telesat states that as the United States and Canada have concluded international coordination of Ka-band satellites, the Commission can grant a declaratory ruling approving market access without the technical information requested in Section 25.114(c) of the Commission's rules.[64] At present, an agreement exists between Canada and the United States[65] for those satellites operating at Ka-band with orbital separations of 2° or more. It is understood that operations by either country in the Ka-band that meet the requirements of the Blanket Licensing provisions of Section 25.138 are considered to be coordinated. Absent the more detailed technical information required by Section 25.114 of the Commission's rules, however, we cannot determine whether the Ka-band package on the Anik F2 satellite is operating in accordance with this agreement and thus can operate interference-free in a two-degree spacing environment. Accordingly, consistent with our treatment of U.S.-licensed systems, we will permit Ka-band earth stations to communicate with the Anik F2 satellite to provide service in the United States, on a non-interference basis only relative to two-degree-compliant satellite systems currently in operation. If Telesat subsequently submits technical information documenting that Anik F2's Ka-band operations are two-degree compliant, we will eliminate this condition.

28. Further, should the Commission authorize access to the U.S. market by another non-U.S.-licensed Ka-band satellite that is providing services that are two-degree compliant, Telesat would be expected to coordinate in good faith with the licensee of that satellite, when appropriate. If a coordination agreement is not reached, the operation of U.S. earth stations communicating with the Anik F2 satellite must be on a non-harmful interference basis relative to U.S. services provided by the compliant satellite.

29. Finally, future U.S.-licensed Ka-band earth stations that communicate with Anik F2 must coordinate with the U.S. Government systems in accordance with footnote US334 to the Table of

[62] *KaStarCom Authorization Order*, 16 FCC Rcd at 14330 (para. 25).

[63] *Id*.

[64] Telesat Ka-band Petition at 5.

[65] The U.S.A. – Canada Bilateral GSO/GSO Ka-Band Satellite Coordination Meeting, held February 1, 2000, and Letter from J. Payton, International Bureau, FCC, to Ms Chantal Beaumier Director, Space and International Regulatory Activities, Industry Canada (dated Nov. 13, 2001) ("*Agreement Summary Letter*").

Frequency Allocations.[66] This footnote requires coordination of commercial systems with U.S. Government GSO and NGSO FSS systems that are presently operating in the 17.8-20.2 GHz frequency band. These Government systems plan to operate in accordance with the power flux-density limits contained in the current ITU Radio Regulations.[67]

IV. CONCLUSION

30. We have performed a *DISCO II* analysis in this Order, and have determined that the conventional C-band and Ku-band operations of Anik F2 are two-degree spacing compliant, but for the ability to switch polarity from the ground. We grant a conditional waiver of this requirement in the Order above. As conditioned, Telesat's C-band and Ku-band operations of Anik F2 should not cause unacceptable interference to any other U.S. satellite system or to any non-U.S. satellite system authorized to serve the United States. Consequently, we add Anik F2 to the Commission's Permitted List, subject to the conditions set forth in this Order, thus allowing U.S.-licensed earth stations with "ALSAT" designations to access Anik F2 without modifying their licenses. We emphasize, however, that Anik F2 is not permitted to provide DTH, DBS, or DARS to users in the United States, and its inclusion on the Permitted List is so conditioned.

31. Further, we grant Anik F2 access to the U.S. market in the Ka-band from the 111.1º W.L. orbit location. Based on this declaratory ruling, U.S. earth stations may file earth station license applications and modification applications seeking to access Anik F2 in the Ka-band at the 111.1° W.L. orbit location. We will process those earth station applications without conducting another *DISCO II* analysis, provided that the earth station will comply with all requirements in Part 25 and the Table of Frequency Allocations applicable to Ka-band earth station operations.[68]

V. ORDERING CLAUSES

32. Accordingly, IT IS ORDERED that, pursuant to Sections 303(r), 308, 309, and 310 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 303(r), 308, 309, 310, and Sections 25.121(a) and 25.137(c) of the Commission's rules, 47 C.F.R. §§ 25.121(a), 25.137(c), each earth station with "ALSAT" designated as a point of communication, IS GRANTED authority to provide Fixed Satellite Services (FSS), to, from, or within the United States, by accessing the Anik F2 satellite, at the 111.1° W.L. orbit location in the 5.925-6.425 GHz, 3.7-4.2 GHz, 14.0-14.5 GHz, and 11.7-12.2 GHz frequency bands, subject to the conditions set forth in each earth station license and the following conditions:

(a) ALSAT-designated earth stations are not authorized to use Anik F2 to provide any

[66] *See* 47 C.F.R. § 2.106 US334. Government GSO space stations have been authorized by the National Telecommunications and Information Administration at 144° W.L., 141° W.L., 69° W.L., 65° W.L., 60° W.L., 30° W.L., 24° W.L., 13° W.L., 10° W.L., 0° E.L., 44° E.L., 75° E.L., 82° E.L., 92° E.L., and 110° E.L.

[67] *See Redesignation of the 17.7-19.7 GHz Frequency Band, Blanket Licensing of Satellite Earth Stations in the 17.7-20.2 GHz and 27.5-30.0 GHz Frequency Bands, and the Allocation of Additional Spectrum in the 17.3-17.8 GHz and 24.75-25.25 GHz Frequency Bands for Broadcast Satellite-Service Use*, Report and Order, IB Docket No. 98-172, 15 FCC Rcd 13430,13473 (para. 90) (2000) ("*18 GHz Band Report and Order*"). The power flux-density limits in the 18.3-18.6 GHz band are -115/-105 dB (W/m^2) in any one megahertz band, depending upon the angle of arrival. There are currently no power flux-density limits in the 19.7-20.2 GHz band. *See* Letter from William T. Hatch, National Telecommunications and Information Administration, to Dale Hatfield, Chief, Office of Engineering and Technology, Federal Communications Commission (dated Mar. 29, 2000).

[68] These requirements include Section 25.138 and footnote US334 to Section 2.106.

Direct-to-Home ("DTH") service, Direct Broadcast Satellite ("DBS") service, or Digital Audio Radio Service ("DARS") to, from, or within the United States.

(b) Telesat Canada's operation of Anik F2 must comply with coordination agreements reached with other satellite systems.

33. IT IS FURTHER ORDERED that the Anik F2 satellite, located at the 111.1° W.L. orbit location, IS PLACED on the "Permitted Space Station List," subject to the conditions set forth in this Order.

34. IT IS FURTHER ORDERED that Telesat Canada IS GRANTED a waiver of Section 25.210(a)(3) of the Commission's rules, 47 C.F.R. § 25.210(a)(3), for the purpose of communicating with Anik F2 in the conventional C- and Ku-bands.

35. IT IS FURTHER ORDERED that pursuant to Section 1.3 of the Commission's rules, 47 C.F.R. § 1.3, ALSAT-designated earth stations ARE GRANTED a waiver of Sections 25.114(c)(13) and (17), 25.137(b) and 25.140 of our rules, 47 C.F.R. §§ 25.114(c)(13) and (17), 25.137(b) and 25.140 of our rules, for the purpose described and to the extent set forth in the Order above.

36. IT IS FURTHER ORDERED, pursuant to Section 1.2 of the Commission's rules, 47 C.F.R. § 1.2, that the petition for declaratory ruling filed by Telesat Canada on March 21, 2002 IS GRANTED.

37. IT IS FURTHER ORDERED that Ka-band earth station operators authorized to access the Anik F2 satellite ARE REQUIRED to operate on a non-harmful-interference basis, under the following conditions:

(a) Ka-band operations over the Anik F2 satellite network shall not cause harmful interference to, nor shall operators accessing this satellite network claim protection from, U.S.-authorized services provided by non-U.S.-licensed satellite networks authorized to access the U.S. market that are compliant with the Commission's two-degree spacing rules.

(b) In the future, should the Commission authorize access to the U.S. market by a non-U.S.-licensed satellite that is providing Ka-band services that are two-degree-compliant, and is located two degrees or more from Anik F2, Telesat Canada would be expected to coordinate in good faith with the licensee of that satellite. If a coordination agreement is not reached, the operation of U.S. routine earth stations communicating with Anik F2 must be on a non-harmful interference basis relative to routinely licensed U.S. services provided by the compliant satellite.

38. IT IS FURTHER ORDERED that Ka-band earth station operators authorized to access the Anik F2 satellite may not use Anik F2 to provide any Direct-to-Home ("DTH") service, Direct Broadcast Satellite ("DBS") service, or Digital Audio Radio Service ("DARS") to, from, or within the United States.

39. IT IS FURTHER ORDERED that Telesat Canada must coordinate all of its Ka-band downlink operations with the U.S. government systems in accordance with footnote US 334 to the Table of Frequency Allocations, 47 C.F.R. § 2.106.

40. This Order is issued pursuant to Section 0.261 of the Commission's rules on delegated authority, 47 C.F.R. §0.261, and is effective upon release. Petitions for reconsideration under Section 1.106 or applications for review under Section 1.115 of the Commission's rules, 47 C.F.R. §§ 1.106, 1.115, may be filed within 30 days of the date of the release of this Order. (*See* 47 C.F.R. § 1.4(b)(2).)

FEDERAL COMMUNICATIONS COMMISSION

Donald Abelson
Chief, International Bureau