

States could request immediate access to a foreign in-orbit satellite that would serve the U.S. market.² This procedure requires a U.S. earth station operator seeking to communicate with a non-U.S. licensed 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 permitted point of communication.

3. Because the Commission does not issue duplicative U.S. licenses for space stations licensed under the jurisdiction of another administration,³ a U.S. earth station application often represents the Commission's first opportunity to evaluate whether the foreign space station complies with the Commission's technical, legal and financial qualification requirements. The first earth station application seeking to communicate with a particular foreign satellite must therefore include the same detailed information about the space station and its operations that the Commission requires from U.S. space station applicants.⁴ Financial information is not required if the satellite has already been launched, however, nor is technical information required if the satellite has completed international coordination with the United States.⁵

4. NSN seeks authority to add the NSS-8 satellite located at the 105° W.L. orbital location as an additional point of communications for its 9.0-meter earth station complex in Bristow, Virginia, to provide FSS to, from, and within the United States in the conventional C-band.⁶

5. We placed NSN's modification request on public notice on November 7, 2002.⁷ In response to the public notice, the Federal Telecommunications Commission of Mexico ("COFETEL") filed an opposition. COFETEL argues that the Commission cannot grant market access for NSS-8 until the international coordination process has been completed – in particular, until the competing requests for coordination filed by the Netherlands and Mexico with the International Telecommunication Union ("ITU") for the 105° W.L. orbital location have been resolved. COFETEL states that it is in the process of coordination and registration of the conventional C-band frequencies for its satellite network, SOLIDARIDAD C-1 at the 105° W.L. orbital location.⁸ COFETEL states that it has initiated the formal process with the U.S. and Canadian satellite networks that could be affected pursuant to Appendix S9.7 of the ITU's radio regulations and under the terms of the Trilateral Agreement between the Mexican government and the U.S. and Canadian governments.⁹ The Netherlands Administration, in an *ex parte* letter, dated November 7, 2001, supports NSS-8's request for earth station access to the U.S. and states that NSS-8 has date priority with the ITU at the 105° W.L. orbital location. For the reasons discussed below, we will allow the E000152 earth station licensed to NSN to access the NSS-8 satellite.

² *Id.* at 24174 (para. 186).

³ *Id.* at 24174 (para. 188).

⁴ 47 C.F.R. § 25.137. This regulation requires foreign satellites to provide the information required from U.S. space stations under 47 C.F.R. § 25.114.

⁵ 47 C.F.R. § 25.137(b).

⁶ The "conventional C-band" refers to frequencies in the 3700-4200 MHz (Earth-to-space) and 5925-6425 MHz (space-to-Earth) bands.

⁷ See Public Notice, Rep. No. SES-00338 (rel. November 7, 2001).

⁸ Letter from ING. Leonel Lopez Celaya, to Thomas Tycz, Chief, Satellite Division, International Bureau, Federal Communications Commission (dated December 10, 2001).

⁹ See "Trilateral Arrangement Regarding Use of the Geostationary Orbit Reached by Canada, Mexico, and the United States, Public Notice (Sept. 2, 1988) ("Trilateral Agreement").

III. DISCUSSION

A. Space Station Analysis

6. NSN seeks authorization to communicate with the NSS-8 space station. We analyze the public interest in granting such authority by evaluating NSN's application under the framework set out in *DISCO II*, considering the effect on competition in the United States, spectrum availability, eligibility requirements and operating requirements. In addition, we consider issues of national security, law enforcement, foreign policy and trade policy, when those issues are brought to our attention by the Executive Branch with regard to a particular application. We discuss these in turn.

1. Competition

7. In *DISCO II*, the Commission established a rebuttable presumption in favor of entry by satellites licensed by other WTO Member countries to provide services covered by the U.S. commitments under the WTO Agreement.¹⁰ These commitments include FSS, except for Direct-To-Home ("DTH") service. The Netherlands, which has authorized NSS-8, is a WTO member country, and no party to this proceeding has presented any argument to rebut the presumption in favor of entry. In addition, the Commission previously adopted the *New Skies Market Access Order*, which granted authority under the *DISCO II* framework to 136 earth stations to communicate with the New Skies satellites in operation at that time.¹¹ Consequently, we find that permitting NSS-8 to access the U.S. market to provide FSS, excluding DTH service, will further competition in the United States.

2. Spectrum Availability

8. The scarcity of orbit and spectrum resources requires that the Commission consider spectrum availability as a factor whenever it decides to allow a foreign satellite to serve the U.S. market.¹² 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 management policies when considering foreign entry. Thus, in *DISCO II* we stated that when grant of access would create interference with U.S.-licensed systems, we may impose technical constraints on the foreign system's operations in the United States or, when conditions cannot remedy the interference, deny access.

9. COFETEL opposes NSN's application because Mexico has filed a competing request for coordination of its SOLIDARIDAD C-1 satellite at the 105° W.L. orbital location with the ITU and, it contends, the Commission cannot grant market access for NSS-8 until the international coordination process has been completed.¹³ The Commission, however, has previously considered this argument -- and rejected it. Specifically, when New Skies objected to market access for Telesat Canada's Anik F-1 satellite because international coordination between Canada and the Netherlands had not yet been

¹⁰ *DISCO II*, 12 FCC Rcd at 24112 (para. 39).

¹¹ *New Skies Market Access Order*, 14 FCC Rcd at 13039 (para. 82).

¹² *DISCO II*, 12 FCC Rcd at 24158 (para. 149).

¹³ Letter from ING. Fernando Carillo Valderrabano, to Thomas Tycz, Chief, Satellite Division, International Bureau, Federal Communications Commission (dated December 6, 2001) and Letter from ING. Leonel Lopez Celaya, to Thomas Tycz, Chief, Satellite Division, International Bureau, Federal Communications Commission (dated December 10, 2001).

completed, the Commission stated that it was not necessary to complete international coordination before a satellite system could be authorized to provide service in the United States.¹⁴ In the *Telesat* Order, without waiting for the outcome of further coordination negotiations, the Commission granted Telesat full market access for Anik F-1. Since the NSS-8 satellite has been fully coordinated with the United States for C-band operation at 105° W.L.,¹⁵ we will continue to evaluate NSN's request for market access. We do expect that Mexico and the Netherlands will cooperate to resolve the outstanding coordination issues between their two systems and coordinate in good faith.

10. According to the publications in the ITU database, the Netherlands' ITU coordination request filing at 105° W.L. was received by the BR before Mexico's coordination request filing at that orbit location. Under the ITU's international Radio Regulations, the Netherlands' satellite network is "affected" by the Mexican SOLIDARIDAD C-1 satellite network, but not the other way around. Therefore, Mexico has the responsibility to coordinate its network at the 105° W.L. orbit location with the Netherlands' network at that location. The Netherlands' satellite network at 105° W.L. orbit location need not coordinate with the Mexican network at 105° W.L. orbit location and may operate the NSS-8 satellite within the constraints of the NSS-12 network filings without such coordination. Therefore, in the event that Mexico were to seek to provide service to the U.S. from the 105° W.L., it must coordinate with the Netherlands. The Commission is not responsible for the result of such coordination between Mexico and the Netherlands.

11. In light of the fact that the Netherlands has ITU priority at this location, we find that granting NSS-8 access to the U.S. market from the 105° W.L. location is consistent with the Commission's spectrum management policies. We also recognize, however, that Mexico has an ITU filing at the 105° W.L. orbit location, which is subject to coordination with satellite systems with date priority. Accordingly, we require U.S. services carried on the NSS-8 via the NSN earth station E00152 to comply with any coordination agreement that the Netherlands and Mexico may reach.¹⁶

3. Eligibility Requirements

12. The Commission's order in *DISCO II* 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.

a. Legal Qualifications and Financial Qualifications

13. We also find that New Skies is financially qualified to construct, launch and operate the NSS 8 satellite. NSN submitted a balance sheet that demonstrates that New Skies has the current assets and operating incomes sufficient to meet the Commission's financial qualifications rules. There is also nothing in the record that raises concerns about NSN's legal qualifications to provide satellite services in the United States. NSN currently holds a number of Commission earth station authorizations and provides

¹⁴ *Telesat Canada*, 15 FCC Rcd. 24828, 24834 (para. 14)(Int'l Bur. 2000)(emphasis added).

¹⁵ The Trilateral Agreement among the United States, Mexico, and Canada did not allocate the C-band portion of the 105° W.L. orbital location to any of the parties to that agreement. See "Trilateral Arrangement Regarding Use of the Geostationary Orbit Reached by Canada, Mexico, and the United States, Public Notice (Sept. 2, 1988). In any event, that agreement does not affect ITU date priority or the ITU coordination process. All satellites implemented in accordance with the Trilateral Agreement still need to be coordinated in accordance with the ITU procedures.

¹⁶ See generally *Telesat Canada, Petition for Declaratory Ruling For Inclusion of ANIK F2 on the Permitted Space Station List*, Order, DA 02-3490 (Sat. Div., released Dec. 18, 2002).

satellite services to, from, and within the United States.

b. Technical Qualifications

14. The Commission's satellite licensing policy maximizes use of the geostationary-satellite orbit by requiring applicants to demonstrate that their systems can be spaced as close as two-degrees in orbit from adjacent systems.¹⁷ Satellite systems licensed outside the United States must also demonstrate compliance with our two-degree spacing policy before being authorized to provide service in the United States. We have allowed satellites that are not two-degree compliant to serve the United States, but only when the applicants can demonstrate that their operations will cause no harmful interference to existing compliant satellite operations or where the adjacent satellite operators have reached a coordination agreement. Further, we require satellites that are not two-degree compliant to operate on a non-harmful interference basis relative to any future satellite networks serving the United States that are two-degree compliant or to complete coordination agreements with those future U.S. satellites.¹⁸

15. New Skies states that the United States and the Netherlands have fully coordinated NSS-8. New Skies states that the Commission has all required technical information for the satellite from this coordination and from the supplemental information provided in the NSN earth station modification application.¹⁹ Accordingly, New Skies is not required to submit additional technical information for NSS-8.²⁰ Based on the agreement with the Netherlands during the coordination process, we can determine that the NSS-8 satellite will not cause unacceptable interference to U.S.-licensed satellites considered in the coordination agreement. Nevertheless, the information we have is not sufficient to make a determination as to whether NSS-8 is two-degree compliant. Specifically, we do not have information that demonstrates whether NSS-8 meets the requirements in Sections 25.210(a) (orthogonal linear polarization), 25.210(i) (cross polarization isolation), and 25.211(a)(center frequencies for downlink analog video transmissions) of the Commission's rules.²¹ Accordingly, we permit New Skies's Bristow, Virginia earth station to communicate with the NSS-8 satellite to provide service in the United States, on a non-interference basis with respect to *future* satellites, both U.S. licensed and non-U.S. licensed services, that are two-degree spacing compliant serving the U.S. market and not coordinated at that time. We make clear that New Skies must accept all interference with respect to two-degree compliant services on *future* satellites, both U.S. licensed and non-U.S. licensed, until such coordination agreements with those future U.S. satellites are concluded.

¹⁷ See Licensing of Space Stations in the Domestic Fixed-Satellite Service and Related Revisions of Part 25 of the Rules and Regulations, Report and Order in Docket 81-704, 54 Rad. Reg. 2d 577 (1983), and 48 Fed. Reg. 40233 (Sept. 6, 1983).

¹⁸ See, e.g., *Systematics General Corporation*, Order and Authorization, 2 FCC Rcd 7550, 7550-51 (para. 9) (Com. Car. Bur. 1987); *New Skies Market Access Order*, 14 FCC Rcd at 13038 (para. 78). See also *Telesat Canada, Petition for Declaratory Ruling For Inclusion of ANIK F2 on the Permitted Space Station List*, Order, DA 02-3490 ¶ 15 (Sat. Div., released Dec. 18, 2002).

¹⁹ The technical information requirements found at 47 C.F.R. § 25.114(c), which are applied to non-U.S.-licensed space stations by 47 C.F.R. § 25.137.

²⁰ See 47 C.F.R. § 25.137(b). See also *DISCO II*, 12 FCC Rcd at 24176 (para. 191) (non-U.S. satellite operators are not required to submit technical information for satellites for which international coordination has been completed).

²¹ 47 C.F.R. §§ 25.210(i) and 25.211(a).

4. Other Public Interest Issues

16. Under the *DISCO II Order*, the public interest analysis for considering non-U.S. satellite access to the U.S. market includes issues of national security, law enforcement, foreign policy and trade policy, when Executive Branch agencies bring those issues to our attention. No such issues have been raised against this application.

B. Earth Station Analysis

17. Having found no problems in allowing NSS-8 to provide FSS services (excluding DTH) in the U.S. market, we turn to the NSN earth station application. NSN seeks to modify its earth station license only by adding NSS-8 as an authorized point of communication. It requests no other technical changes to the earth station. The frequency coordination report submitted in NSN's initial application indicated that the 9.0-meter C-band earth station accessing NSS-8 at the 105° W.L. was previously fully coordinated with terrestrial microwave users over the appropriate orbital arc.²² Consequently, we do not need to consider any additional technical issues related to NSN's earth station.

IV. CONCLUSION

18. NSN has demonstrated that its earth station's communications with NSS-8 will be consistent with the Commission's policies regarding U.S. access to space stations licensed by foreign administrations. We therefore grant the earth station modification application.

V. ORDERING CLAUSES

19. Accordingly, IT IS ORDERED that Application File Number SES-MOD-20011026-01952 IS GRANTED and that New Skies Networks, Inc. earth station E000152 IS AUTHORIZED to communicate with the NSS-8 space station at 105° W.L. as an additional point of communication. This authorization is limited to the provision of Fixed-Satellite Service (excluding Direct-To-Home service, Direct Broadcasting Service, and Digital Audio Radio Service) to, from, and within the United States.

20. IT IS FURTHER ORDERED that access to NSS-8 shall be in compliance with all satellite coordination agreements regarding the operations of NSS-8.

21. IT IS FURTHER ORDERED that New Skies Networks, Inc. is authorized to communicate with NSS-8 only in the 3700-4200 MHz and 5925-6425 MHz frequency bands.

22. IT IS FURTHER ORDERED that the New Skies Networks Inc. earth station designated as a point of communication may communicate with NSS-8 under the conditions set forth below:

- (a) In the future, should the Commission authorize access to the U.S. market by a satellite that is two-degree spacing compliant, and is located as close as two-degrees from the NSS-8 satellite, New Skies would be expected to coordinate, in good faith, with other administrations and other U.S. licensees.
- (b) If a coordination agreement is not reached, New Skies's operation of NSS-8 must be on a non-harmful interference basis relative to U.S. services being provided by the compliant satellite.

²² See 47 C.F.R. § 25.203. See also SES-LIC-20000322-00529.

- (c) If a coordination agreement is not reached, NSS-8 satellite shall not cause harmful interference to, nor shall operators accessing these satellite networks claim protection from, U.S. services provided over U.S.-authorized satellite networks, and/or U.S.-authorized services provided over non-U.S.-authorized satellite networks that are providing service to the United States that are compliant with the Commission's two-degree spacing rules.
- (d) In addition, operation of NSS-8 in the conventional C-band, shall cease immediately upon notification of harmful interference. Complaints of all radio interference shall be forwarded to the Commission in writing.

23. IT IS FURTHER ORDERED that the New Skies earth station, E000152, must operate on a non-harmful interference basis with respect to *future* satellites, both U.S. licensed and non-U.S. licensed services, that are two-degree spacing compliant serving the U.S. market and currently not coordinated at that time.

24. IT IS FURTHER ORDERED that this Order is issued pursuant to Section 0.261 of the Commission's rules on delegations of authority, 47 C.F.R. § 0.261. This Order SHALL BE EFFECTIVE upon adoption. 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 and 1.115, may be filed within 30 days of public notice of the release of this Order. This grant is subject to Section 1.110 of the Commission's rules. 47 C.F.R § 1.110.

FEDERAL COMMUNICATIONS COMMISSION

Thomas S. Tycz
Chief
Satellite Division
International Bureau