

FCC MAIL SECTION

Federal Communications Commission

FCC 99-325

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

DISPATCHED BY

In the Matter of)	
)	
Amendment of the Commission's)	
Regulatory Policies to Allow Non-U.S.)	IB Docket No. 96-111
Licensed Space Stations to Provide)	
Domestic and International Satellite)	
Service in the United States)	
)	

FIRST ORDER ON RECONSIDERATION

Adopted: October 28, 1999

Released: October 29, 1999

By the Commission:

I. INTRODUCTION

1. In this *Order*, and on our own motion, we streamline the process by which non-U.S. licensed fixed satellites may obtain authority to serve the U.S. market. This process was established in the Commission's 1997 *DISCO II Order*,¹ which adopted a regulatory framework governing entry by non-U.S. satellite systems into the United States. Based on our experience in implementing *DISCO II*, and concerns raised by non-U.S. satellite service providers when seeking access to the United States, we adopt two procedural changes to the *DISCO II* framework for fixed-satellites offering fixed-satellite service in conventional C-band and Ku-band frequencies.² First, we adopt a procedure that permits the *operators* of in-orbit non-U.S. satellites to request authority to provide space segment capacity service to licensed earth stations in the United States. Under *DISCO II*, this request can only be made by an earth station operator. As a result, a foreign space station operator will be in a position to market its services to prospective earth station customers in a manner that is consistent with the opportunities afforded to U.S. satellite providers. Second, we adopt a procedure that will permit earth station licensees to access a particular non-U.S. satellite to provide particular services without further regulatory approval once that non-U.S. satellite is authorized to provide those services in the United States. Under *DISCO II*, an earth station licensee must file a modification application if it seeks to add a non-U.S. satellite as a point of communication.

¹ Amendment of the Commission's Regulatory Policies to Allow Non-U.S. Licensed Satellites Providing Domestic and International Service in the United States, Report and Order, IB Docket No. 96-111, 12 FCC Rcd 24094 (1997) ("*DISCO II Order*" or "*DISCO II*"). The DISCO acronym stands for Domestic-International Satellite Consolidation.

² The conventional C- and Ku-bands are 3700-4200 MHz and 5925-6425 MHz, and 11.7-12.2 GHz and 14.0-14.5 GHz, respectively.

2. The procedures adopted in *DISCO II* governing foreign satellite entry into the U.S. market are adequate to implement fully our obligations under the World Trade Organization ("WTO") Basic Telecommunications Agreement ("WTO Telecom Agreement").³ We conclude, however, that we can streamline the process for entry into the U.S. fixed-satellite services market even further, without affecting our ability to ensure that such entry will not cause harmful interference to existing satellite operators. The actions here are also consistent with our view that further simplifying procedures for foreign entry into the U.S. market for fixed-satellite services in the conventional C- and Ku-bands will further the public interest by stimulating competition in the U.S. marketplace.⁴ Enhanced competition will provide consumers more alternatives in choosing communications providers and services, as well as reduce prices and facilitate technological innovation.⁵ In addition, streamlining our procedures furthers the public interest by accelerating the deployment of satellite services provided to U.S. customers. Accordingly, on our own motion, we reconsider *DISCO II* to the extent necessary to implement the procedures described below.⁶ We also revise Section 25.137 of our rules as set forth in Appendix A to this Order.

II. BACKGROUND

3. *WTO Telecom Agreement*. The WTO Telecom Agreement, which took effect on February 5, 1998, was the culmination of the efforts of the United States and 68 other countries to bring competition to global markets for telecommunications services, including certain satellite services. The markets of the participants accounted for more than 91 percent of global telecommunications revenues.⁷ Under the terms of the WTO Telecom Agreement, the United States and 49 other WTO members made binding commitments to open their markets to foreign competition in satellite services.⁸ The United States made market access commitments for fixed and mobile satellite services, but did not make market access commitments for Direct-to-Home ("DTH") Service, Direct Broadcast Satellite

³ The WTO is an international organization that provides global rules of trade among nations. Its main function is to ensure that trade flows as smoothly, predictably, and freely as possible. WTO Web Page, *About the WTO* <<http://www.wto.org/wto/inbrief/infr00.htm>> ("WTO Web page"). WTO members are bound to the obligations defined in the General Agreement on Trade in Services ("GATS"). GATS operates on three levels: the main text containing general principles; annexes establishing rules for specific sectors; and individual countries' specific market access commitments. WTO Web Page, *General Agreement on Trade in Services* <<http://www.wto.org/wto/services/services.htm>> ("WTO GATS Web Page").

⁴ *DISCO II Order*, 12 FCC Rcd at 24099 (para. 10).

⁵ *DISCO II Order*, 12 FCC Rcd at 24097 (para. 4).

⁶ Five petitions for reconsideration of the *DISCO II Order* are pending, and we will address the issues raised in those petitions in a future Order.

⁷ WTO Web Page, *Telecommunications Agreement* <<http://www.wto.org/wto/services/tel01.htm>> ("WTO Telecom Web Page").

⁸ See *DISCO II Order*, 12 FCC Rcd at 24102 (para. 19).

Service ("DBS"), and Digital Audio Radio Service ("DARS"), and took an MFN exemption for these services as well.⁹

4. *DISCO II Order*. In the "*DISCO II Order*," the Commission adopted rules implementing the U.S. commitments under the WTO Telecom Agreement. The Commission also adopted a framework under which it would consider requests for access to the U.S. market for satellite services for which the United States did not make commitments in the WTO Telecom Agreement. Furthermore, the Commission adopted a presumption in favor of entry by WTO Members to replace the "ECO-Sat test," which requires parties to demonstrate that U.S.-licensed satellite systems have effective competitive opportunities in foreign markets.¹⁰ The Commission concluded that providing opportunities for non-U.S.-licensed satellites to deliver services in the United States would bring U.S. consumers the benefits of enhanced competition.¹¹ This policy also promotes greater opportunities for U.S. companies to enter previously closed foreign markets, thereby stimulating a more competitive global satellite services market.¹²

5. In *DISCO II*, the Commission established two procedures by which a satellite provider could bring before it requests to allow a non-U.S. satellite to provide service in the United States.¹³ The first procedure is applicable in cases where the non-U.S. satellite operator wishes to participate in a space station processing round. This Order does not change this procedure.¹⁴ The second procedure is applicable in cases where the non-U.S. satellite operator seeks immediate access to the U.S. market through an in-orbit satellite, and has initiated international coordination negotiations for that satellite network pursuant to the International Telecommunication Union's ("ITU's") international Radio

⁹ Generally, GATS requires WTO member countries to afford most-favored nation ("MFN") treatment to all other WTO member nations. "With respect to any measure covered by this Agreement, each Member shall accord immediately and unconditionally to services and service suppliers of any other Member treatment no less favourable than that it accords to like services and service suppliers of any other country." GATS Article II, paragraph 1. Member nations are permitted to take "MFN exemptions," however, under certain circumstances specified in an annex to GATS. See GATS Annex on Article II Exemptions.

¹⁰ See *DISCO II*, 12 FCC Rcd at 24112-13 (para. 40); 47 C.F.R. § 25.137(a). The Commission decided to continue applying the ECO-Sat to non-U.S. satellites licensed by non-WTO countries. *DISCO II*, 12 FCC Rcd at 24127 (para. 72).

¹¹ *DISCO II Order*, 12 FCC Rcd at 24097 (para. 4).

¹² *DISCO II Order*, 12 FCC Rcd at 24099 (para. 10).

¹³ *DISCO II Order*, 12 FCC Rcd at 24174 (para. 188).

¹⁴ A foreign satellite operator can participate in a processing round in one of two ways: (1) by filing an earth station application seeking to communicate with that non-U.S. satellite, demonstrating that the space station will meet all applicable Commission requirements, or (2) the foreign space station operator could file a "letter of intent" to use its non-U.S. satellite to provide service in the United States through future earth stations that may or may not be ultimately licensed to it. *DISCO II Order*, 12 FCC Rcd at 24173-74 (paras. 184-85, 188).

Regulations.¹⁵ Under this procedure, a prospective U.S. earth station operator seeking to communicate with the non-U.S. space station must file an application for an initial earth station license, listing the non-U.S. space station as a "point of communication," and demonstrating that the space station meets all applicable Commission requirements.¹⁶ Further, if an existing earth station licensee seeks to communicate with a non-U.S. satellite, it must file a modification application to add the satellite as a permitted point of communication on its license. This application must be accompanied by a demonstration that the non-U.S. satellite complies with the Commission's rules. This demonstration is identical to that required of U.S.-licensed space station operators. Subsequent earth station licensees seeking to access that space station as a permitted "point of communication" do not need to provide supporting documentation, provided they communicate using the same technical parameters and under the same conditions as the first earth station applicant.¹⁷

6. On April 27, 1998, Telesat Canada ("Telesat") requested that the Commission issue a Declaratory Ruling or grant a waiver of the Commission's earth station licensing procedures to permit U.S. earth stations to access the Canadian ANIK E1 and ANIK E2 satellites without requiring earth station licensees to file modification applications to add these satellites as authorized points of communication.¹⁸ Telesat notes that many U.S. earth station licenses permit those licensees to communicate with "ALSAT," meaning "all U.S.-licensed satellites." Under ALSAT, earth station operators providing fixed-satellite service in the conventional C- and Ku-bands¹⁹ may access any U.S. satellite without additional Commission action, under the technical parameters authorized in the earth

¹⁵ *DISCO II Order*, 12 FCC Rcd at 24174 (para. 186).

¹⁶ *See generally* 25 C.F.R. § 25.137. The Commission does not require the foreign space station operator to submit technical information if it has completed the coordination process with the United States, or to submit financial information if the satellite has been launched. *See* 25 C.F.R. § 25.137(b); *DISCO II Order*, 12 FCC Rcd at 24175-76 (para. 191).

¹⁷ *DISCO II Order*, 12 FCC Rcd at 24176 (para. 192). Throughout this Order, the "technical parameters" we refer to include all the technical requirements of Part 25 of the Commission's rules, including but not limited to frequency bands, e.i.r.p., density, polarization, power, and emission characteristics.

¹⁸ Loral Space and Communications LTD ("Loral") and GE American Communications, Inc. ("GE Americom") filed oppositions to Telesat's petition, while JFL Communications, Inc. ("JFL") filed comments supporting Telesat's petition. Telesat filed a reply to the oppositions, and Loral filed a further opposition to Telesat's reply.

¹⁹ We have in the past issued earth station licenses with "ALSAT" as the point of communication only for the fixed-satellite service in the conventional C-band and Ku-band frequencies and for earth stations in other FSS frequency bands that meet our two degree spacing policies. There exists an established operating environment for these systems and it is possible to maintain acceptable levels of interference to other systems operating in the same environment when a licensee offering these services switches from one satellite to another. However, for services such as MSS and BSS, and FSS services which are not consistent with our two degree policies, service rules are either non-existent or recently adopted by the Commission. The operating environment for these services is continuing to evolve and could substantially change if an earth station licensee providing these services were to switch from one satellite to another without prior Commission authorization.

station licenses. Telesat requests us to broaden the scope of "ALSAT" to include the ANIK E1 and ANIK E2 satellites.

III. DISCUSSION

7. It has been one and one-half years since we adopted the *DISCO II* framework for considering access by non-U.S. satellites to the U.S. market. During that time, we have received numerous requests by both earth station and space station operators for authority to use non-U.S. satellites in the United States. As in the domestic area, we regularly examine our procedures with a view towards eliminating or streamlining regulatory requirements when possible. Telesat's petition raises two general issues regarding the *DISCO II* procedural framework. The first involves whether we should permit operators of in-orbit non-U.S. satellites to seek access to the United States directly through a request for a Declaratory Ruling, as an alternative to an earth station application requesting authority to operate with that satellite. The second issue involves whether, and to what extent, we should allow U.S.-licensed earth stations to access authorized non-U.S. satellites, by including those satellites under an "ALSAT" or other general designation.²⁰ We discuss each of these in turn.

A. Declaratory Ruling

8. Under *DISCO II*, a non-U.S. space station operator seeking immediate access to the U.S. market must identify a U.S. earth station operator to file an earth station application or a modification to an existing earth station license to communicate with that space station.²¹ To determine whether the non-U.S. satellite complies with all applicable Commission requirements, the earth station application must be accompanied by substantially the same detailed information about the non-U.S. space station and its operations that the Commission requires U.S. space station applicants to provide. Specifically, each earth station application must contain the information required in Section 25.114 of the Commission rules, which governs applications for space station authorizations.²² Applications to provide DTH, DBS, and DARS or for satellites from non-WTO member countries must include an exhibit demonstrating that U.S.-licensed satellite systems have effective competitive opportunities in the relevant foreign markets (the ECO-SAT showing).²³

9. Telesat asserts that it is often difficult for a non-U.S. satellite operator to attract an earth station customer before the Commission authorizes the satellite operator to offer service in the United

²⁰ In a separate Order to be released shortly, the International Bureau ("Bureau") will address the specific issues of whether to permit ANIK E1 and ANIK E2 to provide fixed-satellite services in the United States.

²¹ *DISCO II*, 12 FCC Rcd at 24174 (para. 188).

²² We do not, however, require earth station applicants to provide financial information regarding the non-U.S. licensed satellite if that satellite is in-orbit and operating or to provide technical information when the international coordination process has been completed between the United States and the foreign satellite. See 47 C.F.R. § 25.137; *DISCO II*, 12 FCC Rcd at 24175-76 (para. 191).

²³ See 47 C.F.R. § 25.137(a).

States.²⁴ Loral responds that some non-U.S. satellite operators have obtained authority to provide service in the United States through earth station applications.²⁵ We agree with Loral that non-U.S. satellite operators have obtained access to the United States under the current procedure by filing earth station applications. Nevertheless, we also agree with Telesat that another procedural vehicle, in addition to the current earth station application procedure, could facilitate foreign entry without affecting our ability to ensure that such entry is consistent with all Commission requirements. Telesat's proposed "Declaratory Ruling," if accompanied by all required Section 25.114 and 25.137 information with respect to the foreign satellite, will allow us to make a finding as to whether, and under what conditions, to permit the non-U.S. satellite to serve the U.S. market. This finding would be identical to the finding we make when we consider an earth station application to access a non-U.S. satellite, and would permit non-U.S. space segment providers to market capacity to prospective customers with the assurance that service already has been authorized in the United States. Further, this procedure in no way affects our *DISCO II* decision that we will not re-license non-U.S. satellites.²⁶ We will continue to look to the earth station licensees communicating with these satellites as our regulatory control point, as described below.

10. Therefore, in addition to obtaining U.S. access through an application filed by an earth station operator, non-U.S. satellite operators may now file Petitions for Declaratory Ruling, on their own behalf, seeking a ruling as to whether the Commission will permit the non-U.S. satellite to provide service in the United States. These petitions must be accompanied by the same documentation that must accompany an earth station application to access a foreign satellite, specifically, all information required by Sections 25.114 and 25.137 of the Commission's rules²⁷ for the non-U.S. satellite.

11. In evaluating a Petition for Declaratory Ruling, as we do when considering earth station applications, we will conduct a *DISCO II* analysis of the information submitted to determine whether the non-U.S. satellite will operate consistently with all applicable Commission requirements, including technical requirements. The Commission also will apply the presumption in favor of entry where the satellite is licensed by a WTO Member, and will determine whether the satellite meets the effective competitive opportunities test (ECO-SAT test) where the proposed service is for DBS, DTH, and DARS, or where the non-U.S. satellite is from a non-WTO member country. In addition, the Commission will consider whether communications with that satellite system raise any other public interest concerns, including but not limited to national security concerns.²⁸

²⁴ Telesat Reply at 5-6.

²⁵ Loral Reply at 3.

²⁶ *DISCO II*, 12 FCC Rcd at 24174 (para. 188).

²⁷ 47 C.F.R. §§ 25.114, 25.137.

²⁸ Specifically, the *DISCO II Order* concluded that the Commission's public interest analysis should consider issues relating to competition; spectrum availability; eligibility and operating requirements; and national security, law enforcement, foreign policy, and trade concerns. *DISCO II*, 12 FCC Rcd at 24107-24172 (paras. 30-182).

12. The Commission will issue its decision in a Declaratory Ruling, which will contain any additional operating conditions or constraints on earth stations accessing this satellite to ensure that operations will not cause harmful interference to other satellite systems and are otherwise in the public interest. For example, if a non-U.S. satellite does not meet the Commission's two-degree spacing requirements,²⁹ we may indicate in the Declaratory Ruling that we will require earth stations accessing that satellite to limit both transmitting and receiving powers to mitigate any interference potential, or where the non-U.S. satellite could offer DBS, DTH, or DARS, that the earth station license would be conditioned to exclude those services. We will also impose any appropriate administrative sanctions, such as forfeitures or license revocations, on earth station licensees failing to meet these requirements.

B. Permitted Space Station List

13. Routine U.S. earth stations providing fixed-satellite service (FSS) in the conventional C- and Ku-band are typically licensed to communicate with all U.S. licensed satellites operating in these bands. This is reflected by specifying "ALSAT" as the authorized point of communication on the license.³⁰ Thus, once a new C- or Ku-band FSS U.S. satellite is authorized, U.S.-licensed earth stations containing "ALSAT" as a point of communication may immediately communicate with the new satellite, under the technical parameters authorized in their licenses, without any additional regulatory or licensing requirements.³¹ Non-U.S. satellites are not currently included in "ALSAT," but are individually listed in earth station licenses as authorized points of communication. Consequently, an earth station licensee seeking to access a non-U.S. space station in the provision of fixed-satellite service in the conventional C- and Ku-bands must file an application to modify its license to add the non-U.S. satellite as an authorized point of communication.

14. Telesat argues that the WTO Telecom Agreement requires us to treat foreign space segment service providers no less favorably than U.S. space segment service providers. According to

²⁹ For more information regarding the Commission's two-degree spacing policy, see Licensing Space Stations in the Domestic Fixed-Satellite Service, 48 F.R. 40233 (Sept. 6, 1983).

³⁰ In this case, a "routine" earth station is one that operates consistently with the technical requirements of Part 25.

³¹ Generally, a U.S. earth station with an ALSAT license can access any U.S.-licensed space station without causing potential interference, provided that it complies with the Commission's technical requirements, and operates under the conditions on its license. Nothing in the ALSAT framework, however, eliminates the need for an earth station or space station to request authority to make technical changes to its facility where those changes require prior Commission approval under Sections 25.117 and 25.118 of the Commission's rules. For example, if an ALSAT earth station needed to change the feed system of the earth station antenna to convert a linear polarization to a circular polarization in order to access another space station permitted to provide service to the United States, we would require that earth station operator to apply for a major modification to its authorization. Furthermore, if an ALSAT earth station operator has only "transmit-only" authority, it would not have authority to receive transmissions from any ALSAT space station unless it obtained a modification to its authorization. Similarly, an ALSAT earth station operator with "receive-only" authority may not transmit to any ALSAT space station unless it obtained a modification to its authorization. Nothing in this Order affects these requirements in any way.

Telesat, requiring earth station operators to apply separately for authority to communicate with each foreign space station may be inconsistent with the WTO Telecom Agreement.³² To remedy this inconsistency, Telesat requests us to include the ANIK E1 and ANIK E2 satellites under the "ALSAT" designation. JFL notes that Telesat's proposal would improve competition by giving earth station operators a wider choice of satellites with which to communicate.³³ Loral contends, however, that granting a foreign space station "ALSAT-like" status would preclude the Commission and interested parties from determining whether communications with that satellite will cause harmful interference to existing U.S. operations.³⁴

15. Telesat is correct that, at this time, a U.S. earth station operator with an ALSAT designation in its license must take an additional procedural step to communicate with a non-U.S. in-orbit satellite in the fixed-satellite service that is not required when that earth station communicates with a U.S.-licensed fixed satellite. We agree that the procedures applicable to non-U.S. space station operators seeking access to the U.S. fixed-satellite services market could be streamlined, without increasing substantially the prospect of harmful interference or otherwise compromising the Commission's satellite rules and policies.

16. We conclude that U.S. earth stations with ALSAT licenses should be permitted to communicate with any non-U.S. satellite just as easily as they communicate with any U.S.-licensed satellite, provided that those communications do not cause harmful interference to or require protection from adjacent satellite operations, and otherwise comply with *DISCO II*. For reasons discussed below, however, we will not automatically extend "ALSAT" status to each non-U.S. space station once it has been approved entry. Rather, we will establish a new "Permitted Space Station" list, listing non-U.S. satellites individually. All existing ALSAT-designated earth stations will then be authorized to communicate with any satellite on the Permitted Space Station list, subject to any conditions included on that list. In addition, on a going-forward basis, we will authorize all future "routinely-licensed" earth stations to communicate with any satellite on the Permitted Space Station list, subject to any conditions included on that list. This will provide authorized earth station operators the flexibility to access any satellite authorized to serve the United States, while ensuring that technical requirements and other public interest considerations are met.

17. In the case of U.S.-licensed satellites, ALSAT-designated earth stations will not cause harmful interference into adjacent satellite operations. Most ALSAT-designated earth stations and all U.S.-licensed space stations comply with the Commission's technical requirements to accommodate satellites at two-degree orbital spacings. Thus, regardless of which U.S.-licensed space station a two-degree spacing compliant earth station is accessing, it should not interfere with an adjacent satellite system two-degrees away. Those ALSAT-designated earth stations that are not compliant with two-degree spacing requirements must provide a showing that operation of that earth station will not cause

³² Telesat Request at 9-10.

³³ JFL Comments at 1-3.

³⁴ Loral Opposition at 3-4.

any more interference than would be caused by a compliant earth station.³⁵ Often, these earth station licenses are granted with conditions to ensure that there is no harmful interference to other systems.

18. By contrast, in the case of non-U.S. satellites, we cannot assume that a particular foreign satellite complies with the Commission's technical requirements. For example, many foreign satellite networks do not meet the Commission's two-degree spacing requirement. These systems cannot serve the same geographic area as other satellite systems less than two degrees away without causing unacceptable interference into adjacent satellite operations. Thus, we envision that we will need to impose operating conditions on operations being conducted over any non-compliant foreign satellite. In the first instance, these conditions will be described in a Declaratory Ruling with respect to U.S. access by that foreign satellite or in the first earth station license that permits access to that satellite. To ensure that parties are aware of, and are observing these conditions, we will also list them as a condition of access for that particular satellite on the Permitted Space Station list. We expect the satellite operator responsible to inform its customers, whether service suppliers or end-users, that use of its space segment capacity is subject to the conditions and technical requirements specified on the Permitted Space Station list, as well as the technical requirements in the Commission's rules designed to prevent harmful interference. Further, we will require earth station licensees to terminate any interfering operations immediately upon notification of interference, and will impose forfeitures or other administrative sanctions, including license revocation, when appropriate.³⁶

19. Although, for these reasons, we will not include non-U.S. satellites under the general "ALSAT" designation, we see no reason to treat any non-U.S. satellite differently than U.S. satellites once we have determined to grant it access to the United States market for fixed-satellite services in the conventional C- and Ku-bands. In particular, earth stations in the United States should be able to access that satellite immediately under the same service restrictions and operating conditions as placed on the original authorization of access. To this end, we will compile a list of satellites authorized to provide service in the United States, noting any service restrictions or operating conditions for that particular satellite. "ALSAT" -- all U.S.-licensed satellites -- will be the first entry on this list. Non-U.S. satellites will be individually listed. All U.S.-licensed earth stations with "ALSAT" designations will be permitted to communicate immediately with any satellite on the Permitted Space Station list, under the same technical parameters authorized in their licenses, and in accordance with any operating conditions noted on the Permitted Space Station list for the particular non-U.S. satellite.³⁷ We will update the Permitted Space Station list as warranted. We will include a reference to this list in new

³⁵ Earth station operators can make this showing with a computer program known as the Adjacent Satellite Interference Analysis ("ASIA"). See, e.g., 47 C.F.R. § 25.134(b). In addition, we would consider granting a non-compliant earth station license if the operator has coordinated the non-compliant operation with all potentially affected parties.

³⁶ See Section 25.273(a)(3) of the Commission's rules, 47 C.F.R. § 25.273(a)(3).

³⁷ The Commission adopted a similar expansion of "ALSAT" earth station authority in the *DISCO I Order*, when it modified all ALSAT-designated earth station licenses to access international separate satellite systems as well as domestic satellite systems. See Amendment to the Commission's Regulatory Policies Governing Domestic Fixed Satellites and Separate International Satellite Systems, Report and Order, IB Docket No. 95-41, 11 FCC Rcd 2429, 2437 (para. 55) (1996) (*DISCO I Order*).

earth station authorizations, in modifications to existing earth station licenses in which an earth station operator first requests access to a non-U.S. satellite to provide a particular service, and in the Declaratory Rulings, whichever appropriate. We will post the current list on the FCC web site,³⁸ and upon request provide a copy of the list by fax or by e-mail.

20. Initially, we will place "ALSAT" on the Permitted Space Station list, to signify that all U.S.-licensed space stations are permitted points of communication. On a going-forward basis, we will place non-U.S.-licensed space stations on the Permitted Space Station list, with any requisite conditions, after we have authorized them to access the United States through either an earth station application or a petition for a Declaratory Ruling.

C. Revisions in Procedural Rules

21. Loral contends that we cannot grant Telesat the relief it seeks outside of a rulemaking proceeding.³⁹ We disagree, however. Section 1.108 of the Commission's rules enables the Commission to reconsider its Orders on its own motion within thirty days from the date of public notice of the action.⁴⁰ Several petitions for reconsideration of the *DISCO II Order* have been filed and are pending. Consequently, we may reconsider the rules adopted in the *DISCO II Order* at this time without initiating a rulemaking.

22. Furthermore, pursuant to Section 1.2 of the Commission's rules, the Commission may issue a Declaratory Ruling at any time to terminate a controversy or remove uncertainty.⁴¹ The Commission has wide discretion within this framework to determine whether a Declaratory Ruling is necessary.⁴² We see no reason to refrain from issuing a Declaratory Ruling to clarify whether a foreign space station operator has demonstrated its qualifications to provide satellite service in the United States consistent with our rules and policies.⁴³

³⁸ The address for the Permitted Space Station List is as follows:
"<http://www.fcc.gov/ib/srd/se/permitted.htm>".

³⁹ Loral Reply at 1-3.

⁴⁰ See 47 C.F.R. § 1.108. See also *Central Florida Enterprises, Inc. v. FCC*, 598 F.2d 37, 48 n.51 (D.C. Cir. 1978), *cert. dismissed*, 441 U.S. 957 (1979), *cert. denied*, 460 U.S. 1084 (1983); *Radio Americana, Inc.*, 44 FCC 2506, 2510 (1961).

⁴¹ 47 C.F.R. § 1.2.

⁴² See *Yale Broadcasting Co. v. FCC*, 478 F.2d 594, 602 (D.C. Cir. 1973).

⁴³ In contrast, the Commission has declined to issue a declaratory ruling when facts were disputed or not clearly developed. *American Network, Inc., Petition for Declaratory Ruling Concerning Backbilling of Access Charges*, 4 FCC Rcd 550 (Com.Car.Bur. 1989). The Commission has also stated that it "will not issue declaratory rulings to resolve abstract issues of law, without the requisite showing of a 'controversy' or 'uncertainty'." *Request for Declaratory Ruling by Harry Furgatch*, 2 FCC Rcd 1656, 1656 (para. 3) (1987).

IV. PROCEDURAL MATTERS

A. Paperwork Reduction Act Analysis

23. The decision contained herein has been analyzed with respect to the Paperwork Reduction Act of 1995, Pub. L. 104-13, and has been found to contain new or modified information collection requirements that are subject to Office of Management and Budget ("OMB") review. As part of the Commission's continuing effort to reduce paperwork burdens, we invite the general public and OMB to take this opportunity to comment on the information collections contained in this decision, as required by the Paperwork Reduction Act of 1995. Comments should address: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

24. Public comments on the information collection requirements are due 30 days from the date of publication of this decision in the Federal Register; OMB comments are due 60 days from the date of publication of this decision in the Federal Register. A copy of any comments on the information collection requirements should be submitted to Judy Boley, Federal Communications Commission, Room 1-C804, 445 12th Street, S.W., Washington, DC, 20554, or via the Internet to jboley@fcc.gov; and to Virginia Huth, OMB Desk Officer, Room 10236, NEOB, 725 - 17th Street, N.W., Washington, DC, 20503, or via the Internet to VHuth@omb.eop.gov.

B. Supplemental Final Regulatory Flexibility Analysis

25. As required by the Regulatory Flexibility Act ("RFA"),⁴⁴ the Commission incorporated an Initial Regulatory Flexibility Analysis ("IRFA") in the *DISCO II Notice* in this docket.⁴⁵ In the *DISCO II Order*,⁴⁶ the Commission prepared a Final Regulatory Flexibility Analysis ("FRFA") of the possible significant economic impact this order might have on small entities, in conformance with the RFA.⁴⁷ We hereby incorporate the FRFA herein, and nothing in this Order on Reconsideration requires us to revisit any of our conclusions in the FRFA.

⁴⁴ See 5 U.S.C. § 603. The Contract With America Advancement Act of 1996, Pub. L. No. 104-121, 110 Stat. 847 (1996) ("CWAAA"), amended the RFA. Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 ("SBREFA").

⁴⁵ Amendment of the Commission's Regulatory Policies to Allow Non-U.S. Licensed Satellites Providing Domestic and International Service in the United States, Notice of Proposed Rulemaking, IB Docket No. 96-111, 11 FCC Rcd 18178 (1996) (*DISCO II Notice*).

⁴⁶ *DISCO II Order*, 12 FCC Rcd at 24195-98 (App. D).

⁴⁷ See 5 U.S.C. § 604.

V. CONCLUSION

26. With these procedural changes to the *DISCO II* framework, we streamline the regulatory process by which non-U.S. satellites may access the United States, while ensuring that foreign entry is consistent with U.S. satellite policy and is otherwise in the public interest. The procedural changes adopted here should reduce the number of earth station license modification requests, result in substantial savings, and allow more rapid service to the public. This, in turn, should result in increased competition in the U.S. market for fixed-satellite service in the conventional C- and Ku-bands, providing consumers with more choices at better prices.

VI. ORDERING CLAUSES

27. Accordingly, IT IS ORDERED, pursuant to Sections 1, 2, 4(i), 303(r), 308, 309, and 310 of the Communications Act, 47 U.S.C. §§ 151, 152, 154(i), 303(r), 308, 309, 310, and Section 1.108 of the Commission's rules, 47 C.F.R. § 1.108, the policies, rules, and requirements discussed herein ARE ADOPTED and Part 25 of the Commission's rules, 47 C.F.R. Part 25, IS AMENDED as set forth in Appendix A.

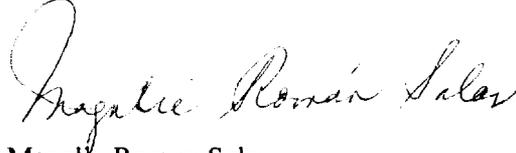
28. IT IS FURTHER ORDERED, pursuant to Section 1.2 of the Commission's rules, 47 C.F.R. § 1.2, that non-U.S. satellite operators may request access to the United States to provide fixed-satellite services in the conventional C- and Ku-bands by submitting a Request for a Declaratory Ruling, accompanied by the information required in Sections 25.114 and 25.137 of the Commission's rules, 47 C.F.R. §§ 25.114 and 25.137, for the non-U.S. satellite.

29. IT IS FURTHER ORDERED that the Commission will make public a list of non-U.S. satellites providing fixed-satellite services in the conventional C- and Ku-bands that have been approved to provide space segment capacity service in the United States, together with any applicable conditions or limitations on that access.

30. IT IS FURTHER ORDERED that earth stations licensed before the effective date of this Order that are authorized to access "ALSAT" as points of communications may access any satellite on the Permitted Space Station list, including any subsequent revisions to the list, when this Order becomes effective, provided that operations comply with its license and any applicable conditions or limitations placed on communications with the non-U.S. satellite providing fixed-satellite services in the conventional C- and Ku-bands.

31. IT IS FURTHER ORDERED that the amendments to Part 25 of the Commission's rules, 47 C.F.R. Part 25, and the policies, rules, and requirements discussed herein shall take effect thirty days after a summary of this Order is published in the Federal Register, or in accordance with the requirements of 5 U.S.C. § 801(a)(3) and 44 U.S.C. § 3507, whichever occurs later. The Commission will publish a notice, following publication of this Order on Reconsideration in the Federal Register, announcing the effective date of this Order on Reconsideration.

FEDERAL COMMUNICATIONS COMMISSION



Magalie Roman Salas
Secretary

APPENDIX A**AMENDMENTS TO THE CODE OF FEDERAL REGULATIONS****PART 25 – SATELLITE COMMUNICATIONS**

1. The authority citation continues to read as follows:

Authority: 47 U.S.C. 701-744. Interprets or applies 47 U.S.C. sections 154, 301, 302, 303, 307, 309, and 332, unless otherwise noted.

2. In § 25.137, revise paragraphs (a) and (b) to read as follows:

§25.137 Application requirements for earth stations operating with non-U.S. licensed space stations

(a) Earth station applicants or entities filing a "letter of intent" or "Petition for Declaratory Ruling" requesting authority to operate with a non-U.S. licensed space station to serve the United States must attach an exhibit with their FCC Form 312 application with information demonstrating that U.S.-licensed satellite systems have effective competitive opportunities to provide analogous services in: * * *

* * *

(b) Earth station applicants, or entities filing a "letter of intent," or "Petition for Declaratory Ruling," requesting authority to operate with a non-U.S. licensed space station must attach to their FCC Form 312 an exhibit providing legal, financial, and technical information for the non-U.S. licensed space station in accordance with part 25 and part 100 of this Chapter. * * *