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Wiley, Rein & Fielding

1776 K Street, N.W.
Washington, D.C. 20006
(202) 719-7000

Jennifer D. Hindin
(202) 719-4975
jhindin@wrf.com

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FEDERAL COMMUNICATIONS COMMISSION
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Fax: (202) 719-7049
www.wrf.com

May 7, 2001

BY HAND

Ms. Magalie Roman Salas, Secretary
Federal Communications Commission
The Portals
445 Twelfth Street, S.W.
12th Street Lobby, TW-A325
Washington, DC 20554

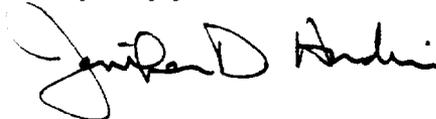
Re: **IB Docket No. 00-248**

Dear Ms. Salas:

On behalf of Telesat Canada, enclosed please find a diskette containing a copy of the Reply Comments of Telesat Canada in the above-referenced docket. The original Reply Comments are being filed by paper on this same date.

Should you have any questions, please do not hesitate to contact the undersigned.

Very truly yours,



Jennifer D. Hindin

cc: International Transcription Services

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

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MAY - 7 2001

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of

2000 Biennial Regulatory Review
Streamlining and Other Revisions of Part 25
of the Commission's Rules Governing the
Licensing of, and Spectrum Usage by, Satellite
Network Earth Stations and Space Stations

IB Docket No. 00-248

REPLY COMMENTS OF TELESAT CANADA

Telesat Canada ("Telesat"), by its attorneys, replies to the comments filed by New Skies Satellites N.V. ("New Skies") in the Federal Communications Commission's ("FCC" or "Commission") above-referenced biennial regulatory review to streamline satellite space and earth station regulations.¹ Specifically, Telesat, a Canadian-licensed fixed satellite service provider with three satellites on the U.S. Permitted Space Station List ("Permitted List"), objects to New Skies' proposal to add regulations (1) establishing explicit limits on the downlink power levels of C-Band satellites, and (2) delineating the conditions under which receive-only earth stations may communicate with satellites on the Permitted List without a FCC license.² As explained below, adoption of New Skies' proposals is unnecessary and would be contrary to the streamlining objectives of this Biennial Review.

¹ 2000 Biennial Regulatory Review – Streamlining and Other Revisions of Part 25 of the Commission's Rules Governing the Licensing of, and Spectrum Usage by, Satellite Network Earth Stations and Space Stations, FCC 00-435 (Dec. 14, 2000) (Notice of Proposed Rulemaking) ("Biennial Review").

² Comments of New Skies Satellites N.V. (filed Mar. 27, 2001) ("New Skies Comments").

C-Band Downlink Power Limit

The Commission should not adopt New Skies' proposal to establish limits on the downlink EIRP of C-band satellites in order to minimize variations between adjacent satellite operators. As New Skies admits, the Commission has previously considered and rejected such a limit in 1983 concluding that "inhomogeneities can be maintained within reasonable limits with advance planning and careful coordination."³ Over the course of the last two decades, the satellite industry and affected administrations have found that this planning and coordination-based solution continues to work well and allows technological advancement and flexibility. New Skies has offered no evidence to demonstrate that this well-established coordination process will be inadequate at handling future satellite developments.

New Skies' supposed impetus for its proposed new regulatory restriction is that the C-band satellite industry has changed. In this connection, New Skies argues that the power levels of satellites have increased and, due to the WTO Basic Telecommunications Agreement, the number of satellites in the U.S. market has increased as well. Fundamentally lacking in New Skies' argument, however, is any evidence that these recent developments in the number and power of C-band satellites serving the U.S. market dramatically alters or undermines the effectiveness of the industry's historic coordination-based regime. Harmful interference between adjacent satellites has customarily been avoided by coordination between administrations. This

³ *Licensing of Space Stations in the Domestic Fixed-Satellite Service and Related Revisions*, 48 Fed. Reg. 40233 at ¶ 33 (Sept. 6, 1983). The Commission has concluded over time that the current rules regulating operations in the C-band are adequate. See 47 C.F.R. §§ 25.208(a), 25.211(d), 25.212(d). Even though the Commission has limited the EIRP density for downlink transmissions in the Ku-band (47 C.F.R. § 25.212(c)), such a limit has been found unnecessary for the C-band. Similarly the ITU Radio Regulations limit C-band flux density (which in turn limits EIRP), but places no other limits on downlink power.

case-by-case approach allows far more flexibility to consider complex technical issues and to adapt to changing conditions and technological advancements than the restrictions suggested by New Skies. The current flexible regime has also permitted new satellite operators to serve the U.S. market without jeopardizing continuity of service by current satellite operators.

Accordingly, the Commission should reject New Skies' unnecessary proposal to establish a C-band downlink power limit.

Receive Only Earth Stations and the Permitted Space Station List

New Skies proposes that certain small U.S. C-band receive-only earth stations should not be allowed to receive transmissions from Permitted List satellites without a license.⁴ To effectuate this new policy, New Skies seeks to add a regulation that would require Permitted List satellites to make a non-interference showing for operations with non-routine earth stations. For purposes of this showing, New Skies suggests that "non-routine" C-band earth stations would include all earth stations less than 4.5 meters in diameter.⁵ Further, New Skies requests that the

⁴ New Skies inappropriately raised this same issue as a request for clarification of the Commission's decision to add Telesat's Anik F1 satellite to the Permitted List. That decision, however, did not purport to alter the Commission's regulation of receive-only earth stations. Telesat respectfully submits that this proceeding, which the FCC expressly initiated to streamline earth station regulation, is a more appropriate venue to address New Skies' concern. *See Telesat Canada Petition for Declaratory Ruling for Inclusion of ANIK F1 on the Permitted Space Station List*, DA 00-2835 (Int'l Bur. Dec. 19, 2000)("Order")("F1 Order"); *New Skies Satellites N.V. Request for Clarification or, in the Alternative, For Reconsideration* (Jan. 17, 2001); *Telesat Canada Opposition to New Skies Satellites N.V.'s Request for Clarification or, in the Alternative, For Reconsideration* (Jan. 29, 2001); *Reply to Opposition to Request for Clarification or, in the Alternative, For Reconsideration* (Feb. 7, 2001).

⁵ New Skies' suggestion that a "routine" earth station must be larger than 4.5 meters in diameter confuses the Commission's separate regulatory regimes for receive-only and transmit/receive earth stations. A routine earth station is defined as an earth station that operates consistent with the technical requirements of Part 25. *Amendment of the Commission's Regulatory Policies to Allow Non-U.S. Licensed Space Stations to Provide Domestic and*

(Continued...)

Commission, upon receipt of this showing, indicate on the Permitted List the smallest size earth station antenna that may receive transmissions from the satellite without additional licensing. These new regulations, characterized as “streamlining” proposals, stem from New Skies’ erroneous belief that, under the current Commission rules, all receive-only earth stations must be licensed prior to receiving transmissions from satellites on the Permitted List.

New Skies fundamentally misunderstands the Commission’s current regulations governing the Permitted List and receive-only earth stations. For more than 20 years, the FCC has permitted the unlicensed operation of C- and Ku-Band receive-only earth stations of any size.⁶ Receive-only earth stations have the option of obtaining a license or registration in order to receive interference protection. Unlike transmit/receive earth stations, however, the FCC’s rules establish no minimum size for a C- or Ku-Band receive-only dish to obtain such protection. The only time receive-only earth stations still need to be licensed under the Commission’s Rules is to communicate with a non-U.S. licensed foreign satellite not on the Permitted List.⁷

(...Continued)

International Satellite Service in the United States, 15 F.C.C. Rcd 7207, 7213 n.30 (1999) (First Order on Reconsideration) (“*DISCO II Reconsideration*”). No section of Part 25 limits or mandates the size of a receive-only earth station, which thus could be ‘routinely licensed’ at any size. In contrast, the FCC rules state that only a C-band transmit/receive “earth station with an equivalent diameter of 4.5 meters or greater may be routinely licensed.” 47 C.F.R. § 25.212(d).

⁶ See *Regulation of Domestic Receive-Only Satellite Earth Stations*, 74 F.C.C. 2d 205, 221 (1979) (First Report and Order); compare 47 C.F.R. § 25.130 (establishing licensing procedures for transmit/receive earth stations); with 47 C.F.R § 25.131 (permitting receive-only earth stations to operate with approved satellites without a license and allowing voluntary registration of earth stations desiring protection from outside interference).

⁷ 47 C.F.R. § 25.131(j).

Under the Commission's existing rules, unlicensed receive-only earth stations may downlink lawful signals from any U.S.-approved satellite, including a Permitted List satellite. This conclusion logically flows from analyzing the Commission's *DISCO II Reconsideration Order* (creating the Permitted List) in conjunction with Section 25.131 of the rules (providing filing procedures for receive-only earth stations). The *DISCO II Reconsideration Order* established a policy whereby a foreign satellite on the Permitted List is the equivalent of a "U.S.-licensed satellite." The Commission expressly concluded that it would not "treat any non-U.S. satellite [on the Permitted List] differently than U.S. satellites."⁸ Indeed, all "U.S.-licensed satellites" are on the Permitted List. As a result, satellites on the Permitted List necessarily do not fall within those "foreign satellites" for which a receive-only earth station must still employ prior licensing.⁹ Accordingly, the Commission should not, as New Skies requests, regulate the size of U.S. receive-only earth stations that may receive transmissions from Permitted List satellites without a license.

⁸ *DISCO II Reconsideration*, at 5 F.C.C. Rcd at 7215, ¶ 19. New Skies' proposal would require receive-only earth stations, smaller than 4.5 meters in diameter, to seek a license to communicate with Commission-approved foreign satellites but not Commission-approved U.S. satellites. If the FCC accepted such a proposal, it would violate the GATS principle of National Treatment for no apparent purpose. Simply put, the Commission's thorough review of a foreign satellite's technical and competitive qualifications to serve the U.S. market prior to placement on the Permitted List obviates the agency's concerns that previously justified issuing licenses to receive-only earth stations (*i.e.*, an inability to maintain control over interfering downlink transmissions or to investigate competitive conditions in the country licensing the satellite). *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*, 12 F.C.C. Rcd 24094, 24179-80, ¶ 201 (1997) (Report and Order) ("*DISCO II*").

⁹ See 47 C.F.R. § 25.131(j).

The Satellite Industry Association (“SIA”), in a separate proceeding, recently reached the same conclusion. SIA noted that any requirement for a receive-only earth station to obtain a license prior to operating with a Permitted List satellite would be “inconsistent with” the Commission’s determination that “all U.S. earth stations with ALSAT licenses should be permitted to communicate with any non-U.S. satellite on the new Permitted Space Station List without obtaining an additional authorization.”¹⁰ Thus, SIA advocated a partial elimination of the receive-only licensing requirement in Section 25.131(j). Telesat submits that SIA’s requested relief is unnecessary because the *DISCO II Reconsideration Order* already implicitly eliminated the receive-only earth station licensing requirement with respect to satellites on the Permitted List. Should the Commission nevertheless seek to clarify its rules, Telesat agrees with SIA that receipt of transmissions from Permitted List satellites by receive-only earth stations should be wholly exempt from the licensing obligation set forth in Section 25.131(j).

Furthermore, adoption of New Skies’ proposal would add an unnecessary regulatory hurdle before certain small receive-only earth stations could operate with previously-approved satellites. Such action would contradict the stated purpose of the Biennial Review, which is to streamline and simplify the Commission’s earth station regulations.¹¹

¹⁰ See Satellite Industry Association Comments, Promoting Efficient Use of Spectrum Through Elimination of Barriers to Development of Secondary Markets, WT Docket No. 00-230 (2/9/01).

¹¹ See Biennial Review at ¶2 (stating that the Commission has initiated a comprehensive review of telecom and other regulations to promote meaningful deregulation and to streamline the FCC’s procedural requirements). The Biennial Review process also seeks to streamline the regulatory process by reducing paperwork (simplifying forms), processing time (requiring electronic filings), and necessary agency actions (eliminating unnecessary regulations).

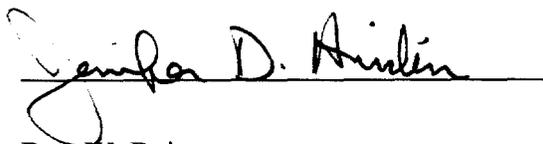
* * *

For the above reasons, Telesat respectfully requests that the Commission reject New Skies' proposals to establish a C-band downlink power limit and to require Permitted List satellites to make a non-interference showing for operations with receive-only earth stations smaller than 4.5 meters in diameter.

Respectfully submitted,

TELESAT CANADA

By:

A handwritten signature in black ink, appearing to read "Jennifer D. Hindin", is written over a horizontal line.

Bert W. Rein

Carl R. Frank

Jennifer D. Hindin

of

Wiley, Rein & Fielding

1776 K Street, N.W.

Washington, DC 20006-2304

(202) 719-7000

Its Attorneys

May 7, 2001