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

In the Matter of	)	
Amendment of the Commission's Space Station Licensing Rules and Policies	)	IB Docket No. 02-34
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
Home Box Office Motion for Clarification And Declaratory Ruling	)	IB Docket No. 96-111

SECOND REPORT AND ORDER IN IB DOCKET NO. 02-34, SECOND REPORT AND ORDER IN IB DOCKET NO. 00-248, AND DECLARATORY ORDER IN IB DOCKET NO. 96-111

Adopted: June 4, 2003 Released: June 20, 2003

By the Commission:

I. INTRODUCTION

1. In this Order, we adopt a procedure that will give operators the flexibility to operate satellites in their fleets at any one of their orbit locations assigned to their fleet without individual prior Commission approval. We also adopt a rule that will permit receive-only earth stations to access foreign-licensed satellites on the "Permitted List."[1] By these actions, we provide U.S.-licensed and non-U.S.-licensed satellite operators authorized to provide service to the United States more flexibility to meet their customers' needs.

II. BACKGROUND

2. In the *Space Station Reform NPRM*, the Commission proposed to streamline its space station licensing procedures. Although the Commission directed its attention to replacing or

[1] The Permitted List includes all satellites with which U.S.-licensed earth stations with routinely authorized technical parameters operating in the conventional C-band and Ku-band are permitted to communicate without additional Commission action, provided that those communications fall within the same technical parameters and conditions established in the earth stations' original licenses. 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 7207, 7214-16 (paras. 16-20) (1999) (*DISCO II First Reconsideration Order*).

revising processing rounds,[2] it also proposed other streamlining measures, such as eliminating the anti-trafficking rule for satellites,[3] and streamlining the procedure for replacement satellite applications.[4] The Commission addressed these issues in an Order adopted recently.[5]

3. In addition, the *Space Station Reform NPRM* invited parties to propose other streamlining measures.[6] In response, SIA recommends streamlining the procedure for modifications of space station licenses in cases where the licensee seeks to relocate one or more satellites to another location at which the licensee has already been authorized to operate a satellite.[7] Specifically, SIA proposes allowing such modifications upon a 10-day advance notification.[8] For purposes of this Order, we refer to these types of modification requests as a minor satellite license modification for "fleet management" purposes.

4. The Commission's rules do not distinguish between major and minor modifications to licensed space stations. With respect to earth stations, the Commission allows licensees to make "minor" modifications to their earth stations, provided that they notify the Commission within 30 days of making the modification.[9] For reasons discussed below, we adopt a similar streamlined procedure for modifications of space station licenses for fleet management purposes. This procedure is applicable to all space stations authorized to serve the United States, including non-U.S.-licensed satellites.

5. In addition, parties filing comments in response to the *Part 25 Earth Station Streamlining NPRM* suggested another streamlining measure for non-U.S.-licensed satellite operators seeking access to the U.S. market.[10] Currently, U.S. receive-only earth stations receiving

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[2] For a discussion of processing rounds, we direct the reader to *Space Station Reform NPRM*. Amendment of the Commission's Space Station Licensing Rules and Policies, *Notice of Proposed Rulemaking*, IB Docket No. 02-34, 17 FCC Rcd 3847, 3850-52 (paras. 5-10) (2002) (*Space Station Reform NPRM*).

[3] *Space Station Reform NPRM*, 17 FCC Rcd at 3883-86 (paras. 109-17).

[4] *Space Station Reform NPRM*, 17 FCC Rcd at 3887-88 (paras. 119-20).

[5] Amendment of the Commission's Space Station Licensing Rules and Policies, *First Report and Order*, IB Docket No. 02-34, FCC No. 03-102 (released May 19, 2003) (*First Space Station Reform Order*).

[6] *Space Station Reform NPRM*, 17 FCC Rcd at 3897 (para. 147).

[7] SIA Space Station Comments at 20-21.

[8] SIA Space Station Comments at 20.

[9] 47 C.F.R. § 25.118. The Commission adopted the earth station minor modification procedure in 1996. Streamlining the Commission's Rules and Regulations for Satellite Application and Licensing Procedures, *Report and Order*, IB Docket No. 95-117, 11 FCC Rcd 21581, 21594-96 (paras. 32-37) (1996) (*1996 Streamlining Order*). In general, minor modifications to earth station facilities are those changes that do not increase the potential for interference into other licensed facilities operating on a co-equal (or co-primary) basis in that frequency band.

[10] 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, *Notice of Proposed Rulemaking*, IB Docket No. 00-248, 15 FCC Rcd 25128 (2000)

transmissions from non-U.S.-licensed satellites must be licensed, although other U.S. receive-only earth stations need not be licensed. For the reasons below, we eliminate the licensing requirement for U.S. earth stations receiving transmissions from non-U.S.-licensed satellites on the Permitted List,[11] provided that the non-U.S.-licensed satellite is operating within the Permitted List parameters governing its provision of service to customers in the United States.[12]

III. DISCUSSION

A. Streamlined Procedure for Satellite Fleet Management Modifications

1. Satellite Requirements

6. *Background.* SIA recommends a procedure for satellite system fleet management modifications that is comparable to the earth station minor modification procedure. SIA recommends allowing satellite operators to move licensed satellites to any orbit location assigned to that operator for a satellite in that frequency band without prior authorization, but on 10 days' notification to the Commission and any potentially affected licensed spectrum users. SIA also states that any move should be subject to the following conditions: (1) the satellite will continue to meet all license conditions and applicable rules after the relocation, (2) the satellite operator continues to comply with all applicable coordination agreements at the appropriate orbital location, and (3) the satellite operator limits the operation of the satellite to TT&C operations during the drift.[13] Intelsat urges the Commission to extend the "deem-granted" procedure proposed for satellite renewals in the *Space Station Reform NPRM* to satellite modification applications.[14]

7. *Discussion.* Establishing a streamlined procedure for satellite fleet management modifications, of the kind SIA describes, would expedite grant of modification applications that do not involve increased interference potential. We have previously allowed satellite operators to rearrange satellites in their fleet to reflect business and customer considerations where no other

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(*Part 25 Earth Station Streamlining NPRM*). Home Box Office, Inc. (HBO) made a similar proposal in a petition for declaratory ruling.

[11] The Permitted List is discussed in detail in Section III.C. below.

[12] Twelve parties filed comments and seven filed replies in response to the *Space Station Reform NPRM*. Thirteen parties filed comments and eleven filed replies in response to the *Part 25 Earth Station Streamlining NPRM*. These pleadings, together with the terms we use to refer to each of the parties, are listed in Appendix A. For purposes of this proceeding, we refer to the pleadings filed in response to the *Part 25 Earth Station Streamlining NPRM* as "Earth Station Comments" or "Earth Station Reply." We refer to the pleadings filed in response to the *Space Station Reform NPRM* as "Space Station Comments" or "Space Station Reply."

[13] SIA Space Station Comments at 20-21.

[14] Intelsat Space Station Comments at 21. In the *Space Station Reform NPRM*, one of our proposals for streamlining the procedure for replacement satellite applications was to deem unopposed replacement satellite applications granted after a specific amount of time after the date for petitions to deny has passed, unless we issue a public notice stating that we need more time to review the application. Under this proposal, once we have decided to allow the application to be deemed granted, we would issue a public notice announcing that fact. We sought comment on limiting this procedure to unopposed replacement satellite applications. *Space Station Reform NPRM*, 17 FCC Rcd at 3887 (para. 120).

public interest factors are adver ıy affected.[15] Moreover, such a streamlined procedure w..d facilitate satellite operators' efforts to meet the service needs of their customers. Further, by devoting fewer administrative resources to satellite fleet management modification requests, we can direct more attention to other pending applications.

8. We disagree, however, with SIA that 10 days would be enough to determine whether a space station relocation request should be eligible for the streamlined modification procedure. In order to be eligible, the satellite to be substituted for the satellite initially assigned at a particular orbit location must be technically identical to the original satellite or must operate within the original satellite's authorized and/or coordinated parameters. This analysis will take some time. Therefore, we will require space station operators to provide notification to the Commission and any potentially affected licensed spectrum users 30 days before they begin to relocate their satellites. In addition, we will require the space station operator to certify with an appropriate explanation that, among other things, it will continue to operate within the parameters of its coordination agreements, and that the relocation of the satellite will not result in a lapse of service for any current customer.[16] In the event that a space station licensee provides notification of a planned license modification pursuant to this notification procedure, and the Commission finds that the proposed modification does not meet the requirements below, the Commission will issue a public notice announcing that the proposed license modification will be considered pursuant to the current modification procedure.

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[15] GE American Communications, Inc., *Memorandum Opinion and Order*, 15 FCC Rcd 23583, 23588 (para. 11) (Int'l Bur., Sat. and Rad. Div., 2000); *citing* Hughes Communications Galaxy, Inc., *Memorandum Opinion and Order*, 5 FCC Rcd 4497 (Com Car. Bur. 1990).

[16] In considering the possible relocation of satellites for fleet management purposes, it is instructive to look at the Commission's policy regarding the transition of service to replacement satellites. The Commission defines a "replacement" satellite as "one that is substituted for an existing satellite *at the end of its life*," thus ensuring that there is no lapse in service. GE American Communications, Inc., *Order and Authorization*, 10 FCC Rcd 13775, 13775 (para. 6) (Int'l Bur. 1995) (*GE Americom 1995 Replacement Order*) (*emphasis added*), *citing* Licensing Space Stations in the Domestic Fixed-Satellite Service, *Report and Order*, CC Docket No. 85-135, FCC 85-395, 58 Rad. Reg. 2d 1267, 1277-78 (paras. 26-27) (released Aug. 29, 1985) (*Domestic Satellite Policy Order*). *See also* Hughes Communication Galaxy, Inc., *Order and Authorization*, 3 FCC Rcd 6989, 6990 (para. 10) (1988) (goal of replacement policy is to ensure continuity of service); Loral Spacecom Corp., *Order and Authorization*, 13 FCC Rcd 16348, 16440 (para. 5) (Int'l Bur., Sat. and Rad. Div., 1995) (*Loral Replacement Order*) (Commission policy favors continuity of service). Columbia Communications Corporation, Authorization to Launch and Operate a Geostationary C-band Replacement Satellite in the Fixed-Satellite Service at 37.5° W.L., *Memorandum Opinion and Order*, 16 FCC Rcd 20176, 20180-81 (para. 14) (Int'l Bur. 2001) (*petition for recons ..ration pending*) (conditioning replacement satellite license on launch of replacement satellite at the ..e of retirement of existing satellite). *See also* GE American Communications, Inc., *Order and Auth ..tion*, 11 FCC Rcd 11497, 11498 (para. 3) (Int'l Bur., Sat. ..d Rad. Div., 1996) (*GE Americom 199.. acement Order*) (we routinely authorize replacement satellit.. at their present locations without a pro.. ..g round, to ensure continuity of service for customers without requiring them to repoint their antenn.. Thus, consistent with the Commission's past policy, we will not permit satellite licensees to relocate satellites under the minor modification procedure we adopt here if the relocation results in a lapse in service for any satellite customer, or requires any satellite customer to repoint its earth station antenna.

9. We adopt Section 25.118(e) as set forth in Appendix B to establish a streamlined modification procedure for satellite fleet management.[17] Accordingly, a space station operator may modify its license without prior authorization, but upon 30 days prior notice to the Commission and any potentially affected licensed spectrum user, provided that the operator meets the following requirements:

> (1) The space station licensee will relocate a Geostationary Satellite Orbit (GSO) space station to another orbit location that is assigned to that licensee;
> (2) The relocated space station licensee will operate with the same technical parameters as the space station initially assigned to that location, or within the original satellite's authorized and/or coordinated parameters;
> (3) The space station licensee certifies that it will comply with all the conditions of its original license and all applicable rules after the relocation;
> (4) The space station licensee certifies that it will comply with all applicable coordination agreements at the newly occupied orbital location;
> (5) The space station licensee certifies that it has completed any necessary coordination of its space station at the new location with other potentially affected space station operators;
> (6) The space station licensee certifies that it will limit operations of the space station to Tracking, Telemetry, and Control (TT&C) functions during the relocation and satellite drift transition period; and
> (7) The space station licensee certifies that the relocation of the space station does not result in a lapse of service for any current customer.

This is consistent with both SIA's recommendation to create a streamlined procedure for satellite fleet management modifications, and Intelsat's proposal to deem certain space station modification requests granted after a specified number of days. We will not adopt Intelsat's proposal to consider *all* satellite modification applications to be deemed granted after some number of days, however. Some satellite modifications, other than fleet management modifications that meet the criteria set forth above, could increase the potential for interference into other licensed satellite systems, and therefore its review will require more time.

2. Earth Station Requirements

10. As a logical outgrowth of the streamlined procedure for satellite fleet management modifications we adopt here, we also revise our rules so that many earth station modifications associated with streamlined fleet management relocations will be considered minor. Currently, while operators of ALSAT-designated earth stations do not need to request license modifications to reflect satellite relocations,[18] other earth station operators do. Examples of such earth station licenses are those listing a satellite as a specific point of communication,[19] and communicating

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[17] We find that no revisions to Form 312 are needed to implement this procedure because the Main Form of Form 312 already can be used to request a minor modification to a space station license. *See* Form 312, Main Form, Items 17a2 and 17b7.

[18] An ALSAT-designated earth station is one for which "ALSAT" is listed as a point of communication on the earth station license. A point of communication is a satellite listed in an earth station license with which the earth station operator is allowed to communicate. By specifying "ALSAT" as a point of communication, we authorize the earth station to communicate with all satellites on the Permitted List in the conventional C- and Ku-bands.

[19] One example of an earth station license listing specific points of communication is a license for a network of very small aperture terminal earth stations operating in the C-band (CSATs). *See*

with satellites out of the conventional C-band or conventional Ku-band.[20] When a satellite licensee makes a fleet management modification, such an earth station licensee would have to choose between repointing its antenna to continue to communicate with the satellite listed in its earth station license at its new location, or switch to the satellite at which it is currently pointing. In either case, the earth station operator will need to modify its license to reflect the change. Earth station modification applications to modify a point of communication, either by repointing the antenna or communicating with a new satellite at the same orbit location as initially authorized, are defined as major under the Commission's current rules.[21]

11. When the earth station operator chooses not to repoint its antenna, it is not required to change any of the technical parameters of its operations. The licensee only needs to change the name of the satellite with which the earth station will communicate. In these kinds of cases, the modification does not increase the potential for harmful interference, and the modification is purely administrative. Therefore, we revise our rules to treat these earth station modifications as minor. In other words, earth station licensees will not be required to obtain prior authorization merely to change a point of communication in its earth station license, provided that the change was prompted by a fleet management satellite modification made pursuant to this Order, and the earth station antenna is not repointed. Such earth station licensees will be required to notify the Commission within 30 days of the license modification.[22]

12. When the earth station operator chooses to redirect its antenna so that it can continue to communicate with the relocated satellite, we will continue to classify that as a major modification. Redirecting an earth station antenna can increase the potential for harmful interference, particularly when that redirection requires it to recoordinate its operations with NTIA, or to perform a new frequency coordination. Therefore, we will continue to require such earth station operators to obtain Commission authorization prior to modifying their operations. Finally, we recommend that space station operators planning to relocate a satellite inform their earth station customers with sufficient notice to enable the earth station operators to request and receive any necessary modification of their earth station licenses.

B. Fleet Management for Non-U.S.-Licensed Satellite Systems

FWCC Request for Declaratory Ruling on Partial-Band Licensing of Earth Stations in the Fixed Satellite Service That Share Terrestrial Spectrum, *First Report and Order*, IB Docket No. 00-203, 16 FCC Rcd 11511 (2001) (*FWCC/Onsat First Report and Order*) (adoption of CSAT rules, including requiring CSAT operators to communicate with no more than three satellites listed as specific points of communication).

[20] For purposes of this Order, the term "conventional C-band" denotes the 3700-4200 MHz and 5925-6425 MHz frequency bands. The term "conventional Ku-band" denotes the 11.7-12.2 GHz and 14.0-14.5 GHz frequency bands.

[21] *See* 47 C.F.R. 25.118.

[22] *See* 47 C.F.R. 25.118.

13. In the World Trade Organization (WTO) Agreement on Basic Telecommunications Services (WTO Telecom Agreement),[23] the United States made a binding commitment to open its market to foreign competition in satellite services.[24] Consistent with that commitment, the Commission adopted a framework in *DISCO II* for considering requests for U.S. market access by non-U.S.-licensed space station operators. In the *Space Station Reform NPRM*, the Commission invited comment on revising several rules governing U.S. market access by non-U.S.-licensed satellite operators to make them consistent with the procedures for U.S. satellite applicants.[25] The Commission adopted those proposals in the *First Space Station Reform Order*,[26] and observed that this is consistent with the Commission's WTO commitments to treat non-U.S.-licensed satellite operators equivalently to the way the Commission treats U.S. satellite operators.[27]

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[23] 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).

[24] Fourth Protocol to the GATS, 36 I.L.M. at 363. *See also* 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, 24102 (para. 19) (1997) (*DISCO II*). The United States made market access commitments for fixed and mobile satellite services. It did not make market access commitments for Direct-to-Home (DTH) Service, Direct Broadcast Satellite Service (DBS), and Digital Audio Radio Service (DARS), and took an exemption from most-favored nation (MFN) treatment for these services as well. *See* Fourth Protocol to the GATS, 36 I.L.M. at 359. 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.

[25] *Space Station Reform NPRM*, 17 FCC Rcd at 3890-94 (paras. 127-40).

[26] *First Space Station Reform Order* at paras. 290-97.

[27] *First Space Station Reform Order* at para. 294. *See also Space Station Reform NPRM*, 17 FCC Rcd at 3890 (para. 127). In the *DISCO II Order*, the Commission determined that spectrum availability and technical requirements would be considerations in allowing non-U.S. licensed satellites to serve the United States pursuant to WTO commitments. The Commission also explained that it would consider spectrum availability as a factor in determining whether allowing a non-U.S.-licensed satellite to serve the U.S. market is in the public interest. In particular, we noted that there could be cases in which granting an earth station operator authority to communicate with a non-U.S.-licensed satellite would create harmful interference problems, or create a heavy burden on U.S.-licensed satellite systems by requiring them to alter their operations significantly. In those cases, we stated that we would impose technical constraints on the foreign system's operations in the United States, or where such measures would be insufficient to remedy the technical problem, deny the request. *DISCO II*, 12 FCC Rcd at 24158-59 (paras. 149-50).

14. Similarly, we extend the satellite fleet management modification procedure to non-U.S.-licensed satellites on the Permitted List. Specifically, non-U.S.-licensed satellite operators will be permitted to file petitions for declaratory ruling providing the information set forth above, and requesting revisions to the terms of access specified on the Permitted List.

C. Receive-Only Earth Stations and Non-U.S.-Licensed Satellites on the Permitted List

1. Background

15. In 1979, the Commission eliminated the licensing requirement for U.S. receive-only earth stations receiving domestic satellite service from U.S.-licensed satellites.[28] Later, in the 1997 *DISCO II* decision, the Commission eliminated the licensing requirement for receive-only earth stations receiving international signals from U.S.-licensed satellites.[29] *DISCO II* also reaffirmed the Commission's previous decision to retain the licensing requirement for receive-only earth stations receiving transmissions from non-U.S.-licensed satellites. The Commission determined that, without this regulatory control point, it would have no means of controlling a non-U.S. satellite transmission that causes interference into U.S. satellite systems.[30] The Commission also found that licensing these receive-only earth stations provided the only procedural vehicle to evaluate effective competitive opportunities in foreign countries and other public interest considerations.[31] To minimize the burden of this licensing requirement, the Commission stated it would grant blanket license applications for large numbers of technically identical receive-only antennas.[32]

16. Subsequently, in the *DISCO II First Reconsideration Order*, the Commission streamlined the *DISCO II* process by which non-U.S.-licensed satellite operators can obtain access to the U.S. market.[33] Under this streamlined process, once we have completed the analysis established in *DISCO II* for a particular non-U.S. space station, and determined that it can be permitted to access the U.S. market, the satellite is placed on the Permitted List upon the applicant's request. This list includes all satellites with which U.S.-licensed earth stations with

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[28] Regulation of Domestic Receive-Only Satellite Earth Stations, *First Report and Order*, CC Docket No. 78-374, 74 FCC 2d 205 (1979) (*Receive-Only Earth Station Permissive Licensing Order*). The Commission originally adopted a permissive rather than a mandatory licensing scheme for these earth stations. In 1991, the Commission replaced this permissive licensing regime with a more streamlined registration procedure. Amendment of Part 25 of the Commission's Rules and Regulations to Reduce Alien Carrier Interference Between Fixed-Satellites at Reduced Orbital Spacing and to Revise Application Processing Procedures for Satellite Communications Services, *First Report and Order*, CC Docket No. 86-496, 6 FCC Rcd 2806, 2807 (para. 7) (1991). Operators of C-band receive-only earth station receiving from U.S.-licensed satellites may register their earth stations to obtain protection from interference, but they are allowed to operate their earth stations without a license or a registration if they do not want protection from interference.

[29] *DISCO II*, 12 FCC Rcd at 24180 (para. 202).

[30] *DISCO II*, 12 FCC Rcd at 24179-80 (para. 201).

[31] *DISCO II*, 12 FCC Rcd at 24179-80 (para. 201).

[32] Space station operators, service suppliers, equipment manufacturers, or electronics retailers may file such blanket license applications. *DISCO II*, 12 FCC Rcd at 24180-81 (para. 204).

[33] *DISCO II First Reconsideration Order*, 15 FCC Rcd at 7207 (para. 1).

routinely authorized technical parameters operating in the conventional C-band and Ku-band are permitted to communicate without additional Commission action, provided that those communications fall within the same technical parameters and conditions established in the earth stations' original licenses.[34]

17. The *DISCO II First Reconsideration Order* was prompted by a petition for declaratory ruling filed by Telesat,[35] which focused on transmit/receive earth stations with ALSAT licenses.[36] Consequently, the *DISCO II First Reconsideration Order* did not address issues specific to receive-only earth stations in any detail.[37]

18. Home Box Office (HBO) raised this issue in a petition for declaratory ruling seeking clarification of the *DISCO II First Reconsideration Order*.[38] In addition, several parties raise the same issue regarding our receive-only earth station licensing requirement in response to the *Part 25 Earth Station Streamlining NPRM*. We consider this issue here.

2. Licensing Requirement

19. *Background*. Loral, New Skies, and HBO request us to construe our rules to allow receive-only earth stations to communicate with non-U.S.-licensed space stations on the Permitted List without a license.[39] New Skies, however, argues that we should eliminate the licensing requirement only for routine receive-only earth stations, and that we should still require non-routine receive-only earth stations communicating with non-U.S. satellites to be licensed.[40] Telesat states that our rules do not distinguish between "routine" and "non-routine" receive-only

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[34] *DISCO II First Reconsideration Order*, 15 FCC Rcd at 7214-16 (paras. 16-20). A "routine" earth station is one that meets all the "2° spacing" requirements in Part 25 of the Commission's rules. In 1983, the Commission instituted its 2° orbital spacing framework to maximize the number of satellites in orbit. Under this framework, the Commission assigns adjacent in-orbit co-frequency satellites to orbit locations 2° apart in longitude. Licensing of Space Stations in the Domestic Fixed-Satellite Service and Related Revisions of Part 25 of the Rules and Regulations, *Report and Order*, CC Docket No. 81-704, FCC 83-184, 54 Rad. Reg. 2d 577 (released Aug. 16, 1983); *reprinted at* Licensing Space Stations in the Domestic Fixed-Satellite Service, 48 F.R. 40233 (Sept. 6, 1983) (*Two Degree Spacing Order*), *cited in Space Station Reform NPRM*, 17 FCC Rcd at 3879 n.124. A "2° compliant" or "routine" earth station is one that meets all the technical requirements in Part 25 designed to prevent earth stations from causing harmful interference to a satellite as close as 2° away from the satellite with which the earth station intends to communicate. *See Part 25 Earth Station Streamlining NPRM*, 15 FCC Rcd at 25132 (para. 7), *cited in Space Station Reform NPRM*, 17 FCC Rcd at 3879 n.125.

[35] *DISCO II First Reconsideration Order*, 15 FCC Rcd at 7210 (para. 6).

[36] *See DISCO II First Reconsideration Order*, 15 FCC Rcd at 7210 (para. 6).

[37] The Commission said only that the *DISCO II First Reconsideration Order* does not authorize receive-only earth stations with ALSAT licenses to transmit. *DISCO II First Reconsideration Order*, 15 FCC Rcd at 7213 n.31.

[38] No comments were filed in response to HBO's petition.

[39] Loral Earth Station Comments at 15-16. *See also* SIA Earth Station Reply at 22.

[40] New Skies Earth Station Comments at 5-8.

earth stations, as they do [illegible] ansmit-receive earth stati[illegible] [41] PanAmSat opposes providing any interference protection to [illegible] routine receive-only ante[illegible] from subsequently licensed facilities operating on a co-primary [illegible]sis in the same frequency b[illegible] [42]

20. *Discussion*. We agree that we can eliminate our earth station licensing requirement for routine receive-only earth stations operating in the conventional C-band and Ku-band and receiving authorized services from non-U.S. satellites on the Permitted List. The Commission created the Permitted List to give non-U.S.-licensed satellite operators an alternative to one of the procedures adopted in the *DISCO II Order* to obtain access to the U.S. market. Specifically, rather than relying on earth station operators to provide information regarding the non-U.S.-licensed satellite as required by the *DISCO II Order*, the Permitted List enables non-U.S.-licensed satellite operators to provide that information directly in a petition for declaratory ruling. When we grant such a declaratory ruling, we find that the non-U.S.-licensed satellite operator meets all the applicable criteria in the *DISCO II Order*, and we authorize all routine C-band and Ku-band earth station operators to communicate with that satellite. Thus, we conduct a *DISCO II* analysis to determine whether and under what conditions to grant a petition for declaratory ruling to place a satellite on the Permitted List. Consequently, an earth station application to access a non-U.S.-licensed satellite no longer provides the only vehicle by which we conduct a *DISCO II* analysis.

21. In addition, we do not need a licensing procedure for routine receive-only earth stations to prevent them from causing harmful interference, because such receive-only operations cannot cause unacceptable interference into other U.S.-licensed operations.[43] Further, the Permitted List provides a means by which we can ensure that the non-U.S.-licensed satellite is operating in compliance with any conditions placed on its U.S. operations. If a non-U.S.-satellite operator does not comply with any applicable Commission rule, or any conditions we place on its provision of service in the United States, such as precluding provision of direct-to-home services, we would take appropriate action. This could include removing the non-complying satellite from the Permitted List, which would mean that unlicensed U.S. receive-only earth stations and U.S. ALSAT-designated transmit-receive earth stations would no longer be authorized to communicate with the non-U.S.-licensed satellite.[44] These sanctions are similar to those applicable to U.S. licensees that violate Commission rules or license conditions.[45] Therefore, we need no longer rely on direct jurisdiction over an earth station facility as the sole means of ensuring that a foreign satellite's provision of service in the United States meets all the requirements of the Commission's rules.

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[41] Telesat Earth Station Reply at 5-6.

[42] PanAmSat Earth Station Comments at 4-5.

[43] *Receive-Only Earth Station Permissive Licensing Order*, 74 FCC 2d at 218 (para. 31). Routine receive-only earth stations are protected from receiving harmful interference under our rules, and we are not doing anything to change that interference protection in this Order. *See* 47 C.F.R. § 25.209(c). *See also* 47 C.F.R. § 25.131(b).

[44] Removing a non-U.S.-licensed satellite from the Permitted List would not, by itself, affect an earth station operator who modified its license to list that satellite as a point of communication. We can impose forfeiture penalties on such an earth station operator, however, if its communications with the non-U.S.-licensed satellite do not comply with a condition in the earth station license, or with any Commission rule.

[45] *See* 47 C.F.R. § 25.160.

22. We emphasize that only routine receive-only earth stations will be permitted to receive transmissions from satellites on the Permitted List without a license. Non-routine earth stations will still have to apply for licenses before they can lawfully receive transmissions from non-U.S. satellites. Telesat is mistaken in asserting that the routine licensing standards do not apply to receive-only earth stations.[46] Moreover, by placing a satellite on the Permitted List, we authorize only ALSAT-designated earth stations to communicate with that satellite, and only routine earth stations are eligible for ALSAT earth station licenses.[47] Thus, by definition, placing a satellite on the Permitted List cannot authorize any non-routine earth station satellite to receive transmissions from that satellite. Also, if the satellite is on the Permitted List but has not been authorized to provide DTH services, unlicensed receive only earth stations will not be allowed to receive DTH services from that satellite.[48] In Appendix B of this Order, we revise Section 25.131(j) of the Commission's rules to make clear under what circumstances an unlicensed receive-only earth station may receive transmissions from a non-U.S. satellite.

3. Blanket Licensing

23. To the extent that we retain any licensing requirement for receive-only earth stations operating with non-U.S.-licensed satellites, HBO requests us to adopt a blanket licensing procedure.[49] The *DISCO II Order* stated that the Commission would consider applications for blanket licenses for large numbers of technically identical receive-only earth station antennas, such as those used to receive direct-to-home services.[50] The Commission explained that blanket license applications could be filed by space station operators, service providers, equipment manufacturers, or electronics retailers.[51] Furthermore, the Commission's rules currently explain how to apply for a blanket license.[52] Thus, the Commission has already implemented a blanket licensing procedure as HBO requests.

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[46] Televisa International, LLC, *Order and Authorization*, 13 FCC Rcd 10074 (Int'l Bur., 1997) (*Televisa Order*).

[47] *See DISCO II First Reconsideration Order*, 15 FCC Rcd at 7214-15 (para. 17); Telesat Canada, Petition for Declaratory Ruling For Inclusion of ANIK F1 on the Permitted Space Station List, *Order*, 15 FCC Rcd 24828, 24834 (para. 15) (Sat. and Rad. Div., Int'l Bur., 2000); Telesat Canada, Petition for Declaratory Ruling For Inclusion of ANIK F1 on the Permitted Space Station List, *Order*, 16 FCC Rcd 16365, 16369 (para. 7) (Int'l. Bur. 2001).

[48] Because the United States has taken an exception from most favored nation treatment for DTH, DBS, and DARS services, most receive-only earth stations receiving transmissions from non-U.S.-licensed satellites are probably cable head-ends. Because we have considered transmissions to cable head-ends to be FSS service, limitations on DTH, DBS, or DARS services do not apply to cable head-ends.

[49] HBO Petition at 8.

[50] *DISCO II*, 12 FCC Rcd at 24180-81 (para. 204).

[51] *DISCO II*, 12 FCC Rcd at 24181 (para. 204).

[52] *See, e.g.*, 47 C.F.R. § 25.115(c) (allowing applicants to request blanket licensing of large numbers of technically identical earth stations with Form 312). *See also Televisa Order*, 13 FCC Rcd at 10075 (para. 4) (applicant requesting blanket licenses for receive-only earth stations to receive transmissions from a Mexico-licensed satellite).

IV. PROCEDURAL MATTERS

24. *Final Regulatory Flexibility Certification.* The Regulatory Flexibility Act of 1980, as amended (RFA)[53] requires that a regulatory flexibility analysis be prepared for rulemaking proceedings, unless the agency certifies that "the rule will not have a significant economic impact on a substantial number of small entities."[54] The RFA generally defines "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."[55] In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.[56] A small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).[57]

25. In this Second Report and Order in IB Docket No. 02-34, the Commission adopts a streamlined procedure for space station license modification applications. The effect of these rule revisions is to reduce the administrative burdens associated with requesting space station modifications. In this Second Report and Order in IB Docket No. 00-248, the Commission eliminates a licensing requirement for certain receive-only earth stations. This will reduce the administrative burdens of those receive-only earth station owners. We expect that these changes will be minimal and positive. Therefore, we certify that the requirements of these Second Reports and Orders will not have a significant economic impact on a substantial number of small entities. The Commission will send a copy of the Second Reports and Orders, including a copy of this final certification, in a report to Congress pursuant to the Congressional Review Act, *see* 5 U.S.C. § 801(a)(1)(A). In addition, the Second Reports and Orders and this certification will be sent to the Chief Counsel for Advocacy of the Small Business Administration, and will be published in the Federal Register. *See* 5 U.S.C. § 605(b).

26. *Final Paperwork Reduction Act Analysis.* This Order contains new and modified information collections subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. It will be submitted to the Office of Management and Budget (OMB) for review under Section 3507(d) of the PRA. OMB, the general public, and other Federal agencies are invited to comment on the new or modified information collection(s) contained in this proceeding. Implementation of these new or modified reporting and/or recordkeeping requirements will be subject to approval by the OMB, as prescribed by the Act, and will go into effect upon announcement in the Federal Register of OMB approval.

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[53] The RFA, *see* 5 U.S.C. § 601 *et. seq.*, has been amended by the Contract With America Advancement Act of 1996, Pub. L. No. 104-121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

[54] 5 U.S.C. § 605(b).

[55] 5 U.S.C. § 601(6).

[56] 5 U.S.C. § 601(3) (incorporating by reference the definition of "small business concern" in Small Business Act, 15 U.S.C. § 632).

[57] Small Business Act, 15 U.S.C. § 632.

27. *Additional Information.* For general information concerning this rulemaking proceeding, contact Steven Spaeth, International Bureau, at (202) 418-1539, International Bureau; Federal Communications Commission, Washington, D.C. 20554.

V. ORDERING CLAUSES

28. Accordingly, IT IS ORDERED, pursuant to Sections 4(i), 7(a), 11, 303(c), 303(f), 303(g), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 157(a), 161, 303(c), 303(f), 303(g), 303(r), that this Second Report and Order is hereby ADOPTED.

29. IT IS FURTHER ORDERED that Part 25 of the Commission's rules IS AMENDED as set forth in Appendix B. These rule revisions contain new or modified information collections that have not been approved by OMB. The Commission will publish a document in the Federal Register announcing the effective date of these rules.

30. IT IS FURTHER ORDERED that the revisions to Part 25 adopted in this Second Report and Order and set forth in Appendix B are contingent upon approval by the Office of Management and Budget.

31. IT IS FURTHER ORDERED that the Consumer Information Bureau, Reference Information Center, SHALL SEND a copy of this Order, including the Final Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the Small Business Administration.

32. IT IS FURTHER ORDERED, pursuant to Sections 0.261(a)(15) and 1.2 of the Commission's rules, 47 C.F.R. §§ 0.261(a)(15), 1.2, that the Motion for Clarification and Declaratory Ruling filed by Home Box Office on January 4, 2000, IS DENIED IN PART, to the extent indicated above.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

APPENDIX A

Parties Filing Pleadings

I. Pleadings in Response to the *Part 25 Earth Station Streamlining NPRM*

A. Comments, filed March 26, 2001 (Earth Station Comments)

1. Aloha Networks, Inc. (Aloha Networks)
2. Andrew Corporation
3. Astrolink International LLC (Astrolink)
4. GE American Communications, Inc. (GE Americom)[1]
5. Globalstar USA, Inc. and Globalstar, L.P. (Globalstar)
6. Hughes Network Systems, Hughes Communications, Inc., and Hughes Communications Galaxy, Inc. (together, Hughes)
7. Loral Space & Communications Ltd. (Loral)
8. Motient Services, Inc. (Motient)
9. New Skies Satellites N.V. (New Skies)
10. PanAmSat Corporation (PanAmSat)[2]
11. Spacenet, Inc., and StarBand Communications, Inc. (together, Spacenet)
12. Telesat Canada (Telesat)
13. WorldCom, Inc. (WorldCom)

B. Replies, filed May 7, 2001 (Earth Station Replies)

1. Aloha Networks[3]
2. Astrolink
3. Comtech Mobile Datacom Corp. (CMDC)
4. GE Americom
5. Hughes
6. National Radio Astronomy Observatory (NRAO)
7. OnSat Network Communications, Inc. (Onsat)
8. PanAmSat
9. Satellite Industry Association (SIA)
10. Spacenet
11. Telesat

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[1] GE Americom filed its comments and its reply in this proceeding before the International and Wireless Telecommunications Bureaus granted its application to merge with SES Global S.A. Application of General Electric Capital Corporation, Transferors, and SES Global, S.A., Transferees, *Order and Authorization*, 16 FCC Rcd 17575 (Int'l Bur. and Wireless Bur., 2001).

[2] On April 10, 2001, PanAmSat corrected certain minor errors and re-filed its comments.

[3] On May 9, 2001, Aloha Networks corrected certain minor errors and re-filed its reply.

II. Pleadings in Response to the *Space Station Reform NPRM*

A. Comments, filed June 3, 2002 (Space Station Comments)

1. Boeing Company (Boeing)
2. Cellular Telecommunications & Internet Association (CTIA)
3. Final Analysis Communication Services, Inc. (Final Analysis)
4. Hughes Network Systems, Inc., Hughes Communications, Inc., and Hughes Communications Galaxy, Inc. (Hughes)
5. Inmarsat Ventures PLC (Inmarsat)
6. Intelsat LLC (Intelsat)
7. PanAmSat Corporation (PanAmSat)
8. Pegasus Development Corporation (Pegasus)
9. Satellite Industry Association (SIA)
10. SES Americom, Inc. (SES Americom)
11. Teledesic LLC (Teledesic)
12. Telesat Canada (Telesat)

B. Replies, filed July 2, 2002 (Space Station Replies)

1. ICO Global Communications (Holdings) Ltd. (ICO)
2. Intelsat
3. ORBCOMM LLC (Orbcomm)
4. PanAmSat
5. SES Americom
6. Teledesic
7. Telesat

APPENDIX B

Rule Revisions

For the reasons discussed above, the Federal Communications Commission amends title 47 of the Code of Federal Regulations, part 25, as follows:

PART 25 -- SATELLITE COMMUNICATIONS

1. The authority citation for Part 25 continues to read as follows:

Authority: 47 U.S.C. 701-744. Interprets or applies Sections 4, 301, 302, 303, 307, 309, and 332 of the Communications Act, as amended, 47 U.S.C. Sections 154, 301, 302, 303, 307, 309, 332, unless otherwise noted.

2. Amend § 25.117 by revising paragraph (d)(1) and adding (d)(3), to read as follows:

§25.117 Modification of station license.

* * * * *

(d)(1) Except as set forth in Section 25.118(e), applications for modifications of space station authorizations shall be filed in accordance with § 25.114, but only those items of information listed in § 25.114 that change need to be submitted, provided the applicant certifies that the remaining information has not changed.

(2) * * *

(3) In the event that a space station licensee provides notification of a planned license modification pursuant to Section 25.118(e) of this part, and the Commission finds that the proposed modification does not meet the requirements of Section 25.118(e), the Commission will issue a public notice announcing that the proposed license modification will be considered pursuant to the procedure specified in paragraphs (d)(1) and (d)(2) of this section.

* * * * *

3. Amend § 25.118 by adding paragraph (c)(6), revising paragraph (d) and adding paragraph (e) to read as follows:

§25.118 Modifications not requiring prior authorization.

* * * * *

(c) * * *

(6) Earth station operators may change their points of communication without prior authorization, provided that the change results from a space station license modification described in paragraph (e) of this Section, and the earth station operator does not repoint its antenna.

(d) Earth station licensees must notify the Commission using FCC Form 312 within 30 days after a modification described in paragraph (c) of this section is completed.

(e) *Space Station Modifications.* A space station operator other than a Direct Broadcast Service (DBS) or a Digital Audio Radio Service (DARS) satellite operator may modify its license without

prior authorization, but upon 30 days prior notice to the Commission and any potentially affected licensed spectrum user, provided that the operator meets the following requirements:

(1) The space station licensee will relocate a Geostationary Satellite Orbit (GSO) space station to another orbit location that is assigned to that licensee;
(2) The relocated space station licensee will operate with the same technical parameters as the space station initially assigned to that location, or within the original satellite's authorized and/or coordinated parameters;
(3) The space station licensee certifies that it will comply with all the conditions of its original license and all applicable rules after the relocation;
(4) The space station licensee certifies that it will comply with all applicable coordination agreements at the newly occupied orbital location;
(5) The space station licensee certifies that it has completed any necessary coordination of its space station at the new location with other potentially affected space station operators;
(6) The space station licensee certifies that it will limit operations of the space station to Tracking, Telemetry, and Control (TT&C) functions during the relocation and satellite drift transition period; and
(7) The space station licensee certifies that the relocation of the space station does not result in a lapse of service for any current customer.

4. Amend § 25.131 by revising paragraphs (b) and (j) to read as follows:

§ 25.131 Filing requirements for receive-only earth stations.

* * * * *

(b) Except as provided in paragraph (j) of this section, receive-only earth stations in the fixed-satellite service that operate with U.S.-licensed satellites may be registered with the Commission in order to protect them from interference from terrestrial microwave stations in bands shared co-equally with the fixed service in accordance with the procedures of §§ 25.203 and 25.251.

* * * * *

(j)(1) Except as set forth in this paragraph below, receive-only earth stations operating with non-U.S. licensed space stations shall file an FCC Form 312 requesting a license or modification to operate such station.

(2) Receive-only earth stations used to receive transmissions from non-U.S.-licensed space stations on the Permitted Space Station List need not file for licenses, provided that:

(i) The earth station antenna meets the antenna performance standards set forth in Sections 25.209(a) and (b) of this Chapter, and

(ii) The space station operator and earth station operator comply with all applicable rules set forth in this Chapter, and the conditions on the Permitted Space Station List applicable to that space station.

5. Amend § 25.137 by revising paragraph (f) to read as follows:

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

* * * * *

(f) A non-U.S.-licensed satellite operator that has been permitted to serve the United States pursuant to a Letter of Intent or Petition for Declaratory Ruling, may modify its U.S. operations under the procedures set forth in Section 25.117(d) of this Chapter. In addition, a non-U.S.-licensed satellite operator that has been permitted to serve the United States pursuant to a Petition for Declaratory Ruling, may modify its U.S. operations under the procedures set forth in Section 25.118(e) of this Chapter.