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

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In the Matter of	)	
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Telesat Canada Petitions for Reconsideration	)	
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The Establishment of Policies and Service Rules for the Broadcasting-Satellite Service at the 17.3-17.7 GHz Frequency Band and at the 17.7-17.8 GHz Frequency Band Internationally, and at the 24.75-25.25 GHz Frequency Band for Fixed Satellite Services Providing Feeder Links to the Broadcasting-Satellite Service and for the Satellite Services Operating Bi-directionally in the 17.3-17.8 GHz Frequency Band	)	IB Docket No. 06-123

SECOND ORDER ON RECONSIDERATION

Adopted: October 29, 2010 **Released:** November 1, 2010

By the Commission:

I. INTRODUCTION

1. In this Second Order on Reconsideration, we deny two petitions for reconsideration filed by Telesat Canada (Telesat) challenging certain aspects of the processing and technical rules adopted for the 17/24 GHz Broadcasting-Satellite Service (BSS).[1] Specifically, we decline to adopt Telesat's proposal that the Federal Communications Commission (Commission) impose additional blanket international coordination licensing conditions on U.S.-licensed 17/24 GHz BSS space stations. Commission provisions for imposing additional coordination requirements already exist and can be invoked, if needed, on a case-by-case basis. While we reject Telesat's petition for reconsideration on this point, we will continue to follow the applicable coordination procedures set out in the International Telecommunication Union's (ITU) Radio Regulations for the particular band segment being coordinated. Finally, we are not persuaded by Telesat's argument that the Commission's technical and procedural rules concerning assignment of orbital locations and frequencies are inapplicable to requests filed by non-U.S.-licensed 17/24 GHz BSS space stations operators seeking to access the market in the United States. These rules apply to both U.S.- and non-U.S.-licensed operators.

II. BACKGROUND

2. *Rulemaking.* In May 2007, the Commission released a Report and Order adopting processing and service rules for the 17/24 GHz BSS.[2] In the *17/24 GHz BSS R&O*, the Commission

[1] Telesat Canada, Petition for Reconsideration, filed September 28, 2007 (Telesat First Petition for Reconsideration); Telesat Canada, Petition for Reconsideration, filed November 21, 2008 (Telesat Second Petition for Reconsideration). The attached Appendix contains a complete list of comments and replies filed with respect to each petition.

[2] The Establishment of Policies and Service Rules for the Broadcasting-Satellite Service at the 17.3-17-7 GHz Frequency Band and at the 17.7-17.8 GHz Frequency Band Internationally, and at the 24.75-25.25 GHz Frequency Band for Fixed Satellite Services Providing Feeder Links to the Broadcasting-Satellite Service and for the Satellite

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decided to apply the first-come, first-served licensing process to applications for geostationary satellite orbit (GSO)-like space stations in this service. At the same time, the Commission also adopted technical rules, including a framework in which 17/24 GHz BSS space stations would operate at orbital locations spaced at four degree intervals, as set forth in *17/24 GHz BSS R&O* Appendix F (known as Appendix F locations). In adopting this four-degree spacing framework, the Commission recognized that rigid application of the spacing plan would not serve the public interest because at some Appendix F locations there might be undesirable operational constraints required to coordinate physical operations with co-located satellites, or because there might be a co-primary Direct Broadcast Satellite (DBS) or other ITU Region 2 BSS satellite receiving feeder-link signals in the 17.3-17.8 GHz band at or very near that location.[3] As a result, the Commission also provided the flexibility to operate at locations offset from the Appendix F locations with accompanying reductions in power and interference protection.[4] In addition, the Commission adopted limits for uplink and downlink power levels to minimize the possibility of harmful interference, stipulated criteria to facilitate sharing in the 24.75-25.25 GHz and 17.3-17.8 GHz bands, adopted a minimum antenna diameter, and adopted antenna performance standards. The Commission also adopted its proposal to apply the *DISCO II*[5] framework to requests by non-U.S.-licensed 17/24 GHz BSS space stations operators to serve the market in the United States.[6] In addition, the Commission adopted geographic service rules to require space station licensees to provide service to Alaska and Hawaii. At the same time, the Commission issued a Further Notice of Proposed Rulemaking seeking comment on coordination parameters relating to space-path and ground-path interference between 17/24 GHz BSS systems and DBS service systems operating in the 17.3-17.8 GHz band.[7]

3. In its first petition, Telesat explains that Industry Canada awarded it authority to operate four 17/24 GHz BSS space stations.[8] Telesat states that it intends to provide coverage to both the United States and Canada using these Canadian-licensed space stations and that it will file a request to serve the United States market.[9] Telesat argues that there "may be confusion" among 17/24 GHz BSS applicants seeking U.S. licenses regarding their ITU coordination obligations, and that this confusion may impact

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Services Operating Bi-directionally in the 17.3-17.8 GHz Frequency Band, *Report and Order and Further Notice of Proposed Rulemaking*, IB Docket No. 06-123, FCC 07-76, 22 FCC Rcd 8842 (rel. May 4, 2007) (*17/24 GHz BSS R&O*).

[3] *Id.* at 8872, para 74.

[4] *Id.*

[5] Amendment of the Commission's Regulatory Policies to Allow Non-U.S.-Licensed Space Stations to Provide Domestic and International Satellite Service in the United States, *Report and Order,* 12 FCC Rcd 24094 (1997) (*DISCO II Order*).

[6] *17/24 GHz BSS R&O,* 22 FCC Rcd 8852 at para. 22.

[7] The 17 GHz band is known as the "reverse band" because the BSS downlink is conducted in the same band as the Direct Broadcast Satellite (DBS) service uplink. Specifically, the 17.3-17.8 GHz band is allocated for BSS in the space-to-Earth direction and is co-primary with DBS for feeder links in the Earth-to-space direction.

[8] Telesat First Petition for Reconsideration at 2 ("On June 13, 2007, Industry Canada announced that it would award Telesat 17/24 GHz BSS licenses for the following orbital locations: 72.5° W.L., 82° W.L., 86.5° W.L., and 118.7° W.L.").

[9] Telesat First Petition for Reconsideration at 2. Telesat indicated it would file its application after the Commission lifted the freeze on new 17/24 GHz BSS applications. *Id.* The freeze was lifted on September 10, 2008. International Bureau Lifts Freeze on Filing of 17/24 GHz BSS Applications, Report No. SPB-228, *Public Notice*, DA 08-1887 (rel. August 11, 2008); International Bureau Reschedules Date that Freeze on Filing of 17/24 GHz BSS Applications Is Lifted, *Public Notice*, DA 08-1900 (rel. August 13, 2008). To date, Telesat has not filed an application.

Telesat's future provision of service in the United States.[10] Telesat requests that the Commission impose additional coordination conditions on each U.S.-licensed 17/24 GHz BSS space station in addition to the existing international coordination requirements applicable to this service in Section 25.111(b) of the Commission's rules.[11] Telesat also asks the Commission to clarify the terms and conditions under which the Commission will grant market access to non-U.S.-licensed 17/24 GHz BSS space station operators. Specifically, Telesat states that the *17/24 GHz BSS R&O* does not explicitly address whether the offset rules apply to a request for market access by a non-U.S.-licensed 17/24 GHz BSS operator.[12] Telesat further argues that it would be inconsistent with the Commission's rules and precedent to apply the offset rules adopted in the *17/24 GHz BSS R&O* to non-U.S.-licensees that have "ITU date priority."[13]

4. On September 28, 2007, the Commission, *sua sponte*, released an Order on Reconsideration to provide space station operators additional flexibility to operate full-power space stations at orbital locations offset by up to one degree from an Appendix F location, in instances where there are no licensed or prior-filed applications for 17/24 GHz BSS space stations less than four degrees away from the proposed offset space station.[14] In response to the *17/24 GHz BSS Sua Sponte Recon*, Telesat filed a second petition for reconsideration arguing that the additional flexibility did not resolve issues it raised in its original petition for reconsideration. Telesat reiterates its requests that we impose specific additional conditions on each U.S.-licensed 17/24 GHz BSS space station relating to international coordination.[15] In particular, Telesat asks us to impose a condition on each U.S. license that allows us to modify the assigned orbital location by more than one degree from an Appendix F location if necessary to facilitate coordination with a non-U.S.-licensed 17/24 GHz BSS space station operator.[16]

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[10] Telesat First Petition for Reconsideration at 4.

[11] 47 C.F.R. § 25.111(b) ("Applicants, permittees and licensees of radio stations governed by this part shall provide the Commission with all information it requires for the Advance Publication, Coordination and Notification of frequency assignments pursuant to the International Radio Regulations. No protection from interference caused by radio stations authorized by other Administrations is guaranteed unless coordination procedures are timely completed or, with respect to individual administrations, by successfully completing coordination agreements. Any radio station authorization for which coordination has not been completed may be subject to additional terms and conditions as required to effect coordination of the frequency assignments with other Administrations.").

[12] Telesat First Petition for Reconsideration, Attachment: Letter from Paul Bush, Vice President Broadcasting and Corporate Development, Telesat Canada, to Marlene H. Dortch, Secretary, Federal Communications Commission (dated September 12, 2007).

[13] *Id. Attachment at 13* ("The R&O does not explicitly address whether the 'no more interference/accept interference' standard applies to a non-U.S.-licensed 17/24 GHz BSS satellite operator that has ITU date priority and that has been assigned by its licensing administration an orbital location less than four degrees from an orbital location on the U.S. grid.").

[14] The Establishment of Policies and Service Rules for the Broadcasting-Satellite Service at the 17.3-17-7 GHz Frequency Band and at the 17.7-17.8 GHz Frequency Band Internationally, and at the 24.75-25.25 GHz Frequency Band for Fixed Satellite Services Providing Feeder Links to the Broadcasting-Satellite Service and for the Satellite Services Operating Bi-directionally in the 17.3-17.8 GHz Frequency Band, *Order on Reconsideration*, 22 FCC Rcd 17951 (2007) (*17/24 GHz BSS Sua Sponte Recon*).

[15] Telesat Second Petition for Reconsideration at 4.

[16] Telesat first made this request in *ex parte* filings made after the release of the *17/24 GHz BSS R&O*. The *17/24 GHz BSS Sua Sponte Recon* acknowledged receipt of Telesat's *ex parte* filing but declined to expand the flexibility in the spacing framework to the extent sought by Telesat. *17/24 GHz BSS Sua Sponte Recon*, footnote 56 (*citing* Letter from Paul D. Bush, Telesat Canada to Marlene H. Dortch, Secretary, Federal Communications Commission, dated September 26, 2007). DIRECTV argues that because we acknowledged the *ex parte* filing in the *17/24 GHz BSS Sua Sponte Recon*, the Commission may decline to address the issue as repetitive. DIRECTV July 28, 2008 Opposition at 3. We disagree. The mere mention of the *ex parte* in our *17/24 GHz BSS Sua Sponte Recon* without any substantive discussion is not a procedural barrier to Telesat's timely filed Petition for Reconsideration.

5. *Licensing*. At the time the Commission issued its *17/24 GHz BSS Report and Order*, there were a number of pending applications for 17/24 GHz BSS space station authorizations.[17] To implement its decisions, the Commission directed the International Bureau to release a public notice after the rules became effective, establishing a deadline for applicants to amend pending applications to conform to the newly-adopted rules. The 17/24 GHz BSS rules, as modified by the *17/24 GHz BSS Sua Sponte Recon*, became effective on November 23, 2007.[18] In December 2007, the Bureau released a public notice with instructions for filing conforming amendments.[19] The amended applications that were acceptable for filing were placed on public notice and comments were filed by various parties, not including Telesat.[20] The Bureau subsequently completed processing of all of the applications pending at the time the *17/24 GHz BSS R&O* was released. As of the date of this order, the Bureau has authorized nine space stations in this service.[21]

6. The *17/24 GHz BSS Report and Order* also adopted a freeze on filing new applications and delegated authority to the Bureau to lift the freeze after, among other things, the newly adopted processing and service rules became effective and the pending applications were amended to conform to the new rules. The Bureau lifted the freeze on new 17/24 GHz BSS applications and requests for market access by non-U.S.-licensed space stations in September 2008. Since that date, a number of entities have filed new applications, including requests for access to the market in the United States, with the Commission.[22] While Telesat has not yet filed a request to access the U.S. market from a Canadian licensed 17/24 GHz BSS space station, one of Telesat's wholly owned subsidiaries, Skynet Satellite Corporation (Skynet), has filed an application to be a U.S.-licensed 17/24 GHz BSS space station operator.[23]

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[17] *17/24 GHz BSS Report and Order*, 21 FCC Rcd 7426, Appendix E.

[18] Establishment of Policies and Service Rules for the Broadcasting-Satellite Service, 72 Fed. Reg. 60272 (Oct. 24, 2007).

[19] International Bureau Establishes Deadline for Amendments to Pending 17/24 GHz BSS Applications, *Public Notice*, Report No. SPB-223, DA 07-4895 (December 5, 2007). The *ex parte* status of the applications was made permit-but-disclose on June 15, 2007. Policy Branch Information, Actions Taken, *Public Notice*, DA 07-2652, Report No. SAT-00451 (rel. June 15, 2007).

[20] Policy Branch Information, Satellite Space Applications Accepted for Filing, *Public Notice*, Report No. SAT-00535 (rel. July 2, 2008); Policy Branch Information, Satellite Space Applications Accepted for Filing, *Public Notice*, Report No. SAT-00537 (rel. July 11, 2008) (corrections). During the comment period, comments were filed by SES Americom, Inc; Ciel Satellite Limited; and Pegasus Development DBS Corporation.

[21] The current authorizations in this service are as follows: Pegasus Development DBS Corporation authorized at the 115° W.L. orbital location; DIRECTV Enterprises authorized at the 110.9° W.L., 99.175° W.L., 102.825° W.L. and 102.765° W.L. orbital locations; and EchoStar authorized at the 62.15° W.L., 75° W.L., 79° W.L., 110.4° W.L., and 107° W.L. orbital locations. Policy Branch Information, Actions Taken, *Public Notice*, DA 08-2733, Report No. SAT-00570 (rel. Dec. 19, 2008); *DIRECTV Enterprises, LLC*, Order and Authorization, DA 09-1624 (Int'l Bureau, rel. Jul. 28, 2009), *recon pending*; Policy Branch Information, Actions Taken, *Public Notice*, DA 09-1724, Report No. SAT-00620 (Jul. 31, 2009); Policy Branch Information, Actions Taken, *Public Notice*, DA 09-651, Report No. SAT-00590 (rel. Mar. 20, 2009); Policy Branch Information, Actions Taken, *Public Notice*, Report No. SAT-00598 (rel. Apr. 24, 2009). The Bureau granted eight other first-round licenses. These authorization were surrendered prior to filing the bond. Policy Branch Information, Actions Taken, *Public Notice*, DA No. 09-2036, Report No. SAT-00632 (Sept. 11, 2009).

[22] *See, e.g.*, IBFS File Nos. (SAT-LOA-200809100174 (application of Skynet Satellite Corporation), SAT-LOA-2008091000173 (application of SES Americom, Inc.), and SAT-LOI-2008111300216 (market access request of Spectrum Five LLC).

[23] Skynet is wholly owned by Telesat Satellite Holdings Corporation. Telesat Satellite Holdings Corporation, in turn, is wholly owned by Telesat Canada. IBFS File No. SAT-LOA-20080910-00174, Response to Question 36.

III. DISCUSSION

A. Proposed Additional ITU Coordination Conditions.

7. Telesat proposes that the Commission adopt additional blanket ITU coordination conditions for the 17/24 GHz BSS service. For the reasons stated below, we deny Telesat's request as unnecessary.

8. The United States is under a treaty obligation, in connection with its membership in the ITU,[24] to adhere to the ITU procedures regarding coordination and notification of satellite networks licensed by the United States.[25] The coordination procedures are intended to ensure that the operations of one country's space stations do not cause harmful interference to the operations of another country's radiocommunication network frequency assignments.[26] The coordination process is a complex process and can span a number of years. In broad terms, for services such as the 17/24 GHz BSS service,[27] the procedure for effecting coordination of a satellite network is a three-step process consisting of the following: (1) the filing of advance publication information (API),[28] where an Administration makes known its plans to implement a satellite network at particular frequencies and orbital parameters (*e.g.*, location); (2) the filing of a coordination request (CR),[29] within two years of the API, where the Administration seeking to implement the new satellite network negotiates with other countries whose operating or planned satellites may be affected[30] by the new satellite network's operations to ensure interference-free operations of the new satellite; and (3) notification, where coordination has been

[24] Final Acts of the World Administrative Radio Conference for Space Telecommunications, Geneva, 1971. Because orbital locations and spectrum must be shared among nations and because satellite coverage areas cross national boundaries, international procedures have been developed to ensure that interference levels remain acceptable when accessing the orbit-spectrum resource.

[25] *See* Amendment of Parts 2, 22 and 25 of the Commission's Rules to Allocate Spectrum for and to Establish Other Rules and Policies Pertaining to the Mobile Satellite Service for the Provision of Various Common Carrier Services, 6 FCC Rcd 4900 (1991) (describing the international coordination process).

[26] The 17/24 GHz BSS is a non-planned broadcasting satellite service. Thus, the procedures for coordinating this service are contained in Article 9 of the ITU Radio Regulations (RR) and the procedures for notification of the bringing into use of a new satellite network in this service are contained in Article 11. The API filing contains the information specified in Appendix 4 of the RR. Subsection IB of Article 9 of the RR describes the API process. *See* Coordination of Satellite Networks, http://www.itu.int/ITU-R/conferences/seminars/geneva-2006/index.html; *see also*, document, 2006-20, Notification and Recording of Frequency Assignments Notices in the Space Services, http://www.itu.int/ITU-R/conferences/seminars/geneva-2006/index.html. The ITU Radio Board has explained in its rules of procedures that in applying Article 9, no administration obtains any particular priority as a result of being the first to start either the API phase (Section I of Article 9) or the CR phase.

[27] The specific procedures followed for individual services may vary. At the highest level, similar concepts apply to most satellite services, but to avoid undue confusion this discussion is specifically limited to 17/24 GHz BSS satellite networks.

[28] The API must be re-initiated if frequency bands are added to the satellite network, if the location of the satellite is changed by more than six degrees, or if no coordination request is sent to the ITU's Radiocommunication Bureau (BR) within two years after the BR receives the API filing.

[29] The CR contains more detail regarding the satellite network than is required for the API filing. *See* Appendix 4 of the RR. Coordination agreements may be based on technical criteria other than those that are listed in the RR as coordination triggers. The complexity of this process is highlighted when considering that coordinations are not limited to the specific orbit location, but typically include CRs for networks within eight degrees of the requested location.

[30] Coordination is only required with those frequency assignments for which a CR was received before the CR for the proposed new satellite network, and for which the BR has not made an unfavorable finding.

successfully completed and the frequency assignment is favorably recorded in the ITU's Master International Frequency Register (MIFR). Those countries that file with the ITU at a particular orbital location, successfully complete coordination, and obtain recordation of the assignment in the MIFR are entitled to protection against harmful interference from operating space stations that have not been coordinated and successfully entered into MIFR.[31] In addition to this three-step process, frequency assignments favorably entered into the MIFR must also be brought into use within seven years of the API filing date or the frequency assignment can be suppressed by the ITU's BR.[32]

9. It is longstanding Commission policy that grant of an authorization to construct, launch, and operate a space station carries with it the responsibility to coordinate with other potentially affected space station operators.[33] The international coordination and notification responsibilities of U.S.-licensed operations, as codified in Section 25.111(b) of the Commission's rules, specifically provide that a licensee is not protected from harmful interference caused by foreign-licensed space stations until it has successfully completed the ITU notification process.[34] The Commission's rules also specifically contemplate that space station authorizations may be subject to additional terms and conditions as required to effect coordination of the frequency assignments with other Administrations.[35] This provision is also typically imposed as a condition on the license.[36]

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[31] In accordance with Resolution 49 (Res. 49) of the RR, an Administration must also send to the BR due diligence information relating to the identity of the satellite network (name of the satellite, notifying administration, reference to the special section publication, frequency range, name of the operator, and orbital characteristics) and the spacecraft manufacturer (name of the manufacturer, date of execution of the contract, delivery window, and number of satellites procured). This information is to be submitted as early as possible before the network is brought into use, but must in any case be received before the end of the period established as a limit to bringing into use the satellite network, *i.e.*, seven years after the BR receives the API filing. If the Res. 49 filing comports with the requirements of the RR, the BR publishes a Res. 49 special section in the International Frequency Information Circular containing the information provided in the due diligence filing.

[32] ITU Radio Regulations, 2004 Edition, Article 9.

[33] Amendment Of Parts 2, 22 and 25 of the Commission's Rules to Allocate Spectrum for and to Establish Other Rules and Policies Pertaining to the Mobile Satellite Service for the Provision of Various Common Carrier Services, *Tentative Decision*, 6 FCC Rcd 4900 (1991) (describing the international coordination process); Amendment of the Commission's Space Station Licensing Rules and Policies, *First Report and Order*, 18 FCC Rcd. 10760, para. 96 (2003); Second Round Assignment of Geostationary Satellite Orbit Locations to Fixed Satellite Service Space Stations in the Ka-Band, *Order*, DA 01-1693, 16 FCC Rcd 14389, at 14397, para. 22 (2001) (*Ka-band Second Round Order*) ("The United States is under a treaty obligation, in connection with its membership in the ITU, to coordinate all U.S. authorized satellite services internationally.").

[34] 47 C.F.R. § 25.111(b) ("Applicants, permittees and licensees of radio stations governed by this part shall provide the Commission with all information it requires for the Advance Publication, Coordination and Notification of frequency assignments pursuant to the International Radio Regulations. No protection from interference caused by radio stations authorized by other Administrations is guaranteed unless coordination procedures are timely completed or, with respect to individual administrations, by successfully completing coordination agreements. Any radio station authorization for which coordination has not been completed may be subject to additional terms and conditions as required to effect coordination of the frequency assignments with other Administrations.").

[35] 47 C.F.R. § 25.111(b); *see also* 47 C.F.R. § 25.275(b) ("Any coordination agreements, both domestic and international, concerning specific frequency usage constraints, including non-use of any particular frequencies within the frequency bands listed in the station authorization, are considered to be conditions of the station authorization.").

[36] *See* AT&T Corp, *Memorandum Opinion and Order*, 11 FCC Rcd 15038 at para. 22 (Int'l Bur. 1996) (*Telestar 9 Order*). This condition has been imposed on all 17/24 GHz BSS space station authorizations granted to date. *See, e.g.*, Intelsat North America LLC, *Order and Authorization*, DA 09-1132, 24 FCC Rcd 7058, para. 32; Pegasus Development DBS Corporation, File Nos. SAT-LOA-20060412-00044 and SAT-AMD-20080114-00023, granted with conditions on December 17, 2008.

10. In the 2003 *Space Station Reform Order*, we reminded space station applicants of this obligation and stated that they "take their licenses subject to the outcome of the international coordination process" and that the Commission "does not guarantee the success of the required coordination."[37] We specifically noted that "this may mean that the U.S.-licensee may not be able to operate its system if the coordination cannot be appropriately completed. Indeed, with the first-come, first-served approach, we assign applicants to the orbit location that is requested. Consequently, the applicant assumed the coordination risk when choosing the particular orbit location at the time it submitted its application."[38] We further recognized that "under the ITU's Radio Regulations, it is the responsibility of Administrations with lower ITU priority to coordinate their networks with the networks of Administrations with higher priority."[39] Thus, in cases where a satellite system licensed by the United States commences operations but has not yet coordinated its operations, if a satellite system with a favorable entry in the MIFR is operating at that location (consistent with the terms of its entry into the MIFR),[40] the U.S. licensee must operate on an unprotected non-harmful interference basis with respect to the operating satellite.[41]

11. Telesat's argument concerns the international coordination obligations of U.S.-licensed 17/24 GHz BSS space station operators. Telesat argues that there "may be confusion" among 17/24 GHz BSS applicants regarding their international coordination obligations with non-U.S.-licensed 17/24 GHz BSS operators that have ITU date priority. To mitigate any such confusion, Telesat requests that the Commission attach conditions to any 17/24 GHz BSS authorization requiring U.S. licensees to coordinate with non-U.S-licensed satellite operators that have ITU date priority. In light of our existing ITU coordination rule[42] and our prior statements on this issue, we find Telesat's contention that there "may be confusion" regarding ITU coordination obligations to be unsupported. Thus, we find that any further condition requiring ITU coordination, as proposed by Telesat, is redundant and is otherwise unnecessary as a general matter.[43]

12. Similarly, Telesat's second proposed condition -- that 17/24 GHz BSS space station authorizations are subject to modification to an off-grid location to facilitate coordination with a foreign-

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[37] Amendment of the Commission's Space Station Licensing Rules and Policies, *First Report and Order*, 18 FCC Rcd 10760, 10799-10800, para. 296 (2003) (*Space Station Reform Order*).

[38] *Id.*

[39] *Id.* Where a party contends that it holds "ITU priority" in any filing before the Commission, we request that the party establish that the ITU filing at issue has received a favorable entry into the MIFR and also include the relevant bringing-into-use date associated with the ITU filing.

[40] A satellite might be designed in a manner that is not consistent with its entry into the MIFR. As a result, the licensing administration may seek to modify its frequency assignment. This may result in a new three-step coordination process depending on the divergence between the system as originally filed and the system as operational.

[41] *Ka-band Second Round Order*, 16 FCC Rcd at 14391, para. 6.

[42] 47 C.F.R. § 25.111(b).

[43] We note that in the course of the proceeding, Telesat appears to suggest that our existing rule, Section 25.111(b), and the standard condition modeled on this rule are adequate to address its concerns. *See* Consolidated Reply of Telesat Canada, filed February 28, 2008 at 7 (citing Section 25.111(b) and stating that the rule is "the essence of what Telesat has requested"); *see also* Comments of SES Americom at 3 (noting that coordination is required under current rules even without an express license condition); Comments of Ciel Satellite (noting that Telesat's request "conforms to existing FCC practice and international obligations").

licensed satellite operators with ITU priority -- is also unnecessary. As most comments note,[44] Section 25.111(b) of the Commission's rules already explicitly provides that "[a]ny radio station authorization for which coordination has not been completed *may be subject to additional terms and conditions as required to effect coordination* of the frequency assignments with other Administrations."[45] Thus, specifically listing only one theoretical solution to a coordination issue is unnecessary. Further, such a condition might prejudice the Commission's position in a future international coordination.[46] Thus, we concur with Intelsat that such a condition, in addition to being unnecessary, might inject additional uncertainty into the four-degree spacing framework.[47]

13. While we decline to adopt the additional blanket coordination conditions proposed, Telesat, like any other interested party, may propose conditions relevant to the unique circumstances presented by any specific application.[48] The Commission takes such comments into consideration when reviewing any application and may adjust licensing conditions if circumstances warrant. A party proposing further international coordination conditions -- in addition to the standard condition drawn from Section 25.111(b) -- bears the burden of establishing that its proposed condition is required by the facts presented in the particular application at issue. Finally, although we reject Telesat's petition for reconsideration on this point, in coordinating U.S.-licensed satellite networks with satellite networks of other Administrations, we will follow the applicable coordination procedures set out in the ITU Radio Regulations for the particular band segment being coordinated.

B. Application of Technical Rules to Non-U.S.-Licensed Operators Seeking Access to the U.S. Market

14. The Commission's *DISCO II Order*[49] implemented the market-opening commitments made by the United States in the World Trade Organization's (WTO) Agreement on Basic Telecommunications Service (WTO Basic Telecom Agreement). In particular, the *DISCO II Order* established a framework under which the Commission considers requests by operators of non-U.S.-licensed space stations to serve the United States.[50] The Commission's analysis considers the effect on

[44] *See* Intelsat Comments at 3; Comments of SES Americom, Inc. filed Feb. 11, 2008 at 4 (noting that in light of the fact that the Commission has codified requirements relating to international coordination in Section 25.111 of its rules, a specific license condition requiring coordination is unnecessary).

[45] 47 C.F.R. § 25.111(b) (emphasis added).

[46] Further, adopting the condition proposed by Telesat without significant explanatory text might be construed to constrain the Commission to only one mechanism for resolving a coordination matter.

[47] *See* Intelsat Comments at 2.

[48] As noted above, the original 17 pending 17/24 GHz BSS applications were accepted for filing in July 2008. Telesat Canada did not file comments on those applications. *See supra* note 20.

[49] *DISCO II Order*, 12 FCC Rcd 24094 (1997).

[50] To implement this framework, the Commission, among other things, established a procedure by which a service provider in the United States could request immediate access to a foreign in-orbit space station that would serve the U.S. market. *DISCO II Order*, 12 FCC Rcd at 24174, para. 186. This procedure allows a non-U.S.-licensed earth station operator seeking to communicate with a non-U.S.-licensed space station to file an earth station application for an initial license or for a modification of its existing earth station license, listing the foreign-licensed space station as a permitted point of communication. Because the Commission does not issue duplicative U.S. licenses for space stations licensed by other countries, a U.S. earth station application often represents the Commission's first opportunity to evaluate whether the foreign-licensed space station complies with the Commission's technical, legal, and financial qualification requirements.

competition in the United States;[51] eligibility and operating requirements;[52] spectrum availability;[53] and national security, law enforcement, foreign policy, and trade concerns.[54]

15. In the *17/24 GHz BSS R&O*, the Commission stated unequivocally that it would evaluate the applications of non-U.S.-licensed 17/24 GHz BSS satellite operators seeking market access to the United States under the *DISCO II* framework used for all other satellite services.[55] The Commission further explained that, as such, all non-U.S.-licensed space stations and operators seeking to access the market in the United States would be required to meet the same legal, technical, and financial requirements that we require U.S. applicants to meet.[56] The Commission also explained that such applicants would be required to provide the same information concerning the space station as U.S. applicants must provide when applying for a space station license.[57] This information allows the Commission to determine whether the foreign-licensed space station complies with all Commission technical and service requirements, and whether it may cause interference to space stations providing authorized services to customers in the United States.[58] Thus, in this service, as in all other satellite

[51] *Id.* at 24107-56, paras. 30-145.

[52] *Id.* at 24159-69, paras. 151-74.

[53] *Id.* at 24157-59, paras. 146-50.

[54] *Id.* at 24169-72, paras. 175-82.

[55] *17/24 GHz BSS R&O*, 22 FCC Rcd at 8851-8853, paras. 17-23.

[56] *Id.* ("[T]he Commission also proposed, in the NPRM, to extend to 17/24 GHz BSS operators the *DISCO II* policy that requires foreign-licensed space stations and operators to meet the same legal, technical and financial requirements that we require U.S. applicants to meet."). Section 25.137(c) of our rules provides that non-U.S.-licensed GSO-like space stations seeking to serve the United States can file space station applications that will be processed under our first-come first-served queue pursuant to Section 25.158 of the Commission's rules. 47 C.F.R. § 25.137 (c) ("[A] non-U.S.-licensed GSO-like satellite system seeking to serve the United States can have its request placed in a queue pursuant to § 25.158 and considered before later filed applications of other U.S. satellite system operators . . . ."). Under this licensing queue, originally adopted in the *Space Station Reform Order* in 2003, an application that is not otherwise defective and has been placed on public notice as accepted for filing will be granted if the application meets the standards set forth in Section 25.156(a), and if the proposed space station will not cause harmful interference to a previously licensed space station, or to a space station proposed in a previously filed application. The standards in Section 25.156(a) measure whether the applicant is legally, technically and otherwise qualified, and whether the proposed facilities and operations comply with all applicable rules, regulations, and policies, and, in light of those assessments, whether grant of the application will serve the public interest, convenience and necessity. 47 C.F.R. § 25.156(a).

[57] *17/24 GHz BSS R&O*, 22 FCC Rcd at 8852, para. 20 (citing *First Space Station Licensing Reform Order*, 18 FCC Rcd at 10872, para. 300, and 47 C.F.R. § 25.137); *id.* at 8852, footnote 74 ("Thus, foreign entities must file a Schedule S and a narrative exhibit providing all the information required in Section 25.114 (d) of the Commission's rules. 47 C.F.R. § 25.114(d).").

[58] *Id.* at 8852, para. 20; 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, *Notice of Proposed Rulemaking*, 11 FCC Rcd 18178, 18184, para.10 (1996) (*DISCO II NPRM*) ("However, because non-U.S. satellite systems are, by definition, systems that operate without space station licenses from the United States, our framework for expanding their access to the U.S. market must include some mechanism for achieving the critical spectrum management goals that are normally served by our space station licensing process. For example, in order to determine the extent to which competing satellite operators may share frequencies within the same service area without interference, it is important that we have the same technical information about non-U.S. systems that we require from U.S. space station licensees. Similarly, it is important that our technical standards be observed by all the systems authorized to operate within the United States, regardless of which administration coordinates the space stations internationally. The United States must also have adequate assurance that interference can be prevented or remedied by any available means, including pre-launch coordination, modification of system coverage, or, in extreme cases, cessation of service—all of which we can require of U.S. licensees.").

services, non-U.S.-licensed operators seeking access to the market in the United States are required to satisfy the same eligibility and operating requirements as a U.S.-licensed operator.[59]

16. Consequently, we reject Telesat's contention that our technical and licensing rules do not apply to non-U.S.-licensed 17/24 GHz BSS satellite operators seeking access to the market in the United States. The Commission's space station licensing policy for the 17/24 GHz BSS is predicated upon four-degree orbital spacing between geostationary space stations. The 17/24 GHz BSS service rules allow space station operators to operate full-power space stations at orbital locations offset by up to one degree from an Appendix F location in cases where there are no licensed or previously filed applications for 17/24 GHz BSS space stations less than four degrees away from the proposed offset space station. This four-degree orbital spacing framework and accompanying offset rules are technical rules equally applicable to non-U.S.-licensed space stations seeking to access the market in the United States. Telesat apparently seeks to exempt non-U.S.-licensed space stations from our technical rules if ITU filings made by the licensing Administration on behalf of these networks precede those made by the United States at nearby orbital locations.[60] Nothing in *DISCO II* supports a blanket exemption for market access requests from our technical rules, including the four-degree spacing framework, based upon the status of filings at the ITU. Accordingly, we reject Telesat's petition for reconsideration.

17. We note, however, our decision here does not preclude non-U.S.-licensed operators from seeking a waiver of any technical rules based on the facts presented in a particular market access request. Further, while our technical rules apply to an application filed before the Commission for access to the market in the United States, our technical rules do not constrain another licensing Administration in the context of ITU coordination with the United States. In that context, the ITU Radio Regulations govern. Thus, our decision here is limited to the determination that when applying for market access in the United States, non-U.S.-licensed operators must meet the same legal and technical rules as U.S. licensees, and where departures from those rules are sought, the same waiver standards apply.

IV. ORDERING CLAUSES

18. Accordingly, IT IS ORDERED that, pursuant to the authority contained in Sections 1, 4(i), 4(j), 7(a), 301, 303(c), 303(f), 303(g), 303(r), 303(y), and 308 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 154(j), 157(a), 301, 303(c), 303(f), 303(g), 303(r), 303(y), 308, this Order on Reconsideration IS ADOPTED.

19. IT IS FURTHER ORDERED that Telesat Canada's Petition for Reconsideration filed on September 28, 2007 IS DENIED.

20. IT IS FURTHER ORDERED that Telesat Canada's Petition for Reconsideration filed on November 21, 2007 IS DENIED.

21. IT IS FURTHER ORDERED that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center shall send a copy of this *Order on Reconsideration*, including the final regulatory flexibility act certification, to the Chief Counsel for Advocacy of the Small

[59] For example, in the Ka-band the Commission adopted similar rules that established a known and stable interference environment based on regular orbital spacing and compliance by all operators with certain baseline operating parameters. *See* Telesat Canada, Petition for Declaratory Ruling for Inclusion of Anik F2 on the Permitted Space Station List, Petition for Declaratory Ruling to Serve the U.S. Market Using Ka-band Capacity on Anik F2, 17 FCC Rcd 25287, 25296 at para. 27 (granting market access for the Ka-band capacity on Anik F2 for broadband where market access application did not demonstrate compliance with two-degree spacing environment, entry would be conditioned on non-interference with compliant systems); *see also* Comments of DIRECTV (July 29, 2008) at 5 and footnotes.

[60] *See supra* note 13.

Business Administration, in accordance with Section 603(a) of the Regulatory Flexibility Act, 5 U.S.C. § 601, *et seq.* (1981).

22. IT IS FURTHER ORDERED that the Commission SHALL SEND a copy of this *Order on Reconsideration* in a report to be sent to Congress and the General Accountability Office pursuant to the Congressional Review Act, see 5 U.S.C. § 801(a)(1)(A).

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

APPENDIX

Parties Filing Comments and Replies to Telesat's September 28, 2007 Petition for Reconsideration

DIRECTV, Inc. (July 29, 2008)

Telesat Canada (August 8, 2008)

Parties Filing Comments and Replies to Telesat's November 21, 2007 Petition for Reconsideration

Ciel Satellite Limited Partnership (February 11, 2008)

SES Americom, Inc. (February 11, 2008)

DIRECTV, Inc. (February 11, 2008)

Intelsat North America LLC (February 11, 2008)

Telesat Canada (February 21, 2008)