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

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FCC Mail Room

In the Matter of)
)
Removal of Approved Non-U.S.-Licensed Space) IB Docket No. 07-23
Stations from the Section 214 Exclusion List)

ORDER

Adopted: June 30, 2011

Released: June 30, 2011

By the Chief, International Bureau:

I. INTRODUCTION

1. On January 18, 2007, the International Bureau released a public notice¹ inviting comment on its proposal to remove from the Section 214 Exclusion List those non-U.S.-licensed space stations that have been granted market access in the United States pursuant to the procedures adopted in the *DISCO II Order*.² The International Bureau received comments from AT&T, Inc. (AT&T) and Inmarsat Ventures Limited (Inmarsat).³ In this Order, we adopt our proposal to remove from the Section 214 Exclusion List

¹ See *International Bureau Invites Comment on Proposal to Remove Certain Non-U.S.-Licensed Satellites from the Exclusion List for Global International Section 214 Authorization Purposes*, DA 07-100, Public Notice, 22 FCC Rcd 531 (2007) (January 2007 Public Notice), *erratum* Feb. 12, 2007 (issuing a new Docket Number and correcting the comment and reply comment dates).

² The Commission's *DISCO II Order* 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 market in the United States. This analysis considers the effect on competition in the United States, spectrum availability, eligibility and operating (*e.g.*, technical) requirements, and national security, law enforcement, foreign policy, and trade concerns. See *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*, IB Docket No. 96-111, Report and Order, FCC 97-399, 12 FCC Rcd 24094, 24107-72, ¶¶ 30-182 (1997) (*DISCO II Order*).

³ Inmarsat also had submitted reply comments, but subsequently withdrew them. See letter from John P. Janka and Jarrett S. Taubman, Counsel for Inmarsat Ventures Limited, to Marlene H. Dortch, Secretary, Federal Communications Commission (dated November 23, 2010). In addition, LightSquared Subsidiary LLC (LightSquared) had submitted comments and reply comments, but subsequently withdrew them. See letter from Randy Segal, Senior Vice President and General Counsel, MSV US, and Bahman Azarbar, Vice President, Regulatory Affairs, MSV Canada, to Marlene H. Dortch, Secretary, Federal Communications Commission (dated January 14, 2008). LightSquared was formerly known as SkyTerra Subsidiary LLC. See letter from Jeffrey J. Carlisle, Executive Vice President, Regulatory Affairs and Public Policy, LightSquared GP Inc., to Marlene H. Dortch, Secretary, Federal Communications Commission (dated July 20, 2010) (notifying the Commission of the corporate name changes of the SkyTerra-named entities). SkyTerra Subsidiary LLC was formerly known as Mobile Satellite Ventures Subsidiary LLC. See letter from Jennifer Manner, Vice President, Regulatory Affairs, SkyTerra Subsidiary LLC, to Marlene H. Dortch, Secretary, Federal Communications Commission (dated December 15, 2008).

those non-U.S.-licensed space stations approved to serve the U.S. market pursuant to the *DISCO II* procedures.

II. BACKGROUND

2. In the *1996 Streamlining Order*, the Commission promulgated rules for carriers to apply for and receive a global facilities-based Section 214 authorization, which allows carriers to provide international services using any U.S.-licensed facilities, such as U.S.-licensed space stations, without filing a separate Section 214 application for each new facility.⁴ In that Order, the Commission also established the Section 214 Exclusion List, which identifies particular facilities and/or particular countries that are not included in a global facilities-based Section 214 authorization, and, therefore, requires service providers to obtain a separate authorization⁵ under Section 214 of the Communications Act, as amended, in order to access those facilities and/or countries on the Section 214 Exclusion List.⁶

3. Initially, the Section 214 Exclusion List included all non-U.S.-licensed space stations. In 1999, however, the Commission, as a matter of administrative convenience, removed from the Section 214 Exclusion List those non-U.S.-licensed space stations that were on the Commission's Permitted Space Station List.⁷ The Permitted Space Station List includes all space stations providing fixed-satellite service in the "conventional" C- and Ku-bands⁸ with which U.S. earth stations with routinely authorized technical parameters 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.⁹ The Permitted Space Station List includes all U.S.-licensed space stations

⁴ See *Streamlining the International Section 214 Authorization Process and Tariff Requirements*, IB Docket No. 95-118, Report and Order, FCC 96-79, 11 FCC Rcd 12884, 12893, ¶ 9 (1996) (*1996 Streamlining Order*). The Section 214 Exclusion List is subject to change by the Commission when the public interest requires. Before amending the list, the Commission will first issue a public notice giving affected parties the opportunity for comment and hearing on the proposed changes. *Id.* at 12893, ¶ 18. See also Exclusion List for International Section 214 Authorizations, available at <http://www.fcc.gov/ib/pd/pf/telecomrules.html#exclusionlist>.

⁵ See *1996 Streamlining Order*, 11 FCC Rcd at 12892, ¶ 17. See also 214 Filing Guidelines at <http://www.fcc.gov/ib/pd/pf/214guide.html> (stating that, currently, the Section 214 Exclusion List prohibits authorized carriers from providing services to Cuba or accessing non-U.S.-licensed satellite systems that are not on the Permitted Space Station List, without complying with the separate filing requirements).

⁶ 47 U.S.C. § 214.

⁷ See *International Bureau Announces Process for Providing Service Under Global International Section 214 Authorizations Using Approved Non-U.S.-Licensed Satellite Systems Listed on the Permitted Space Station List*, Public Notice, DA 99-2844, 15 FCC Rcd 3689 (Int'l Bur. 1999).

⁸ The conventional C-band encompasses the 3700-4200/5925-6425 MHz frequency bands; the conventional Ku-band encompasses the 11.7-12.2/14.0-14.5 GHz bands.

⁹ *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*, IB Docket No. 96-111, First Order on Reconsideration, FCC 99-325, 15 FCC Rcd 7207, 7214-16, ¶¶ 16-20 (1999) (*DISCO II First Reconsideration Order*). In the *DISCO II First Reconsideration Order*, the Commission allowed the operators of in-orbit non-U.S.-licensed space stations offering FSS to request approval to provide space segment capacity service to licensed earth stations in the United States. Previously, under *DISCO II*, this request could be made only by an earth station operator. Further, once a non-U.S.-licensed FSS space station is permitted to access the U.S. market in the conventional C- and Ku-bands pursuant to a *DISCO II* analysis, it is placed on the Permitted Space Station List upon the applicant's request.

providing FSS in the conventional C- and Ku-bands (ALSAT), as well as those non-U.S.-licensed space stations approved to provide FSS to the U.S. market in the conventional C- and Ku-bands.¹⁰

4. In the January 2007 Public Notice, we noted that the administrative convenience provided by using the Permitted Space Station List to determine which non-U.S.-licensed space stations would be included in a global facilities-based Section 214 authorization is limited by the fact that the Permitted Space Station List includes only FSS space stations operating in the conventional C- and Ku-bands. Non-U.S.-licensed space stations that provide other services such as mobile satellite services (MSS), or operate in other frequency bands such as the “extended” C- and Ku-bands, and the L-, Ka-, or V-bands, do not qualify for inclusion in the Permitted Space Station List. Therefore, such space stations still require a separate Section 214 authorization.¹¹ Therefore, the International Bureau sought comment on its proposal to remove from the Section 214 Exclusion List all non-U.S.-licensed space stations that have been granted access to the market in the U.S. market pursuant to *DISCO II*.

5. AT&T and Inmarsat support the International Bureau’s proposal to remove from the Section 214 Exclusion List all non-U.S.-licensed space stations that receive approval to provide service in the United States pursuant to the procedures in *DISCO II*.¹² In addition, Inmarsat proposes that the Commission maintain a list of the non-U.S.-licensed space stations not on the Exclusion List.¹³ Inmarsat claims that, without a list, service providers will “need to review a series of Commission orders in order to determine which spacecraft they may access.”¹⁴

III. DISCUSSION

6. We adopt our proposal in the January 2007 Public Notice to remove from the Section 214 Exclusion List any non-U.S.-licensed space stations that have been allowed to provide service to the United States market under the *DISCO II* procedures.¹⁵ We agree with commenters that removing these non-U.S.-licensed space stations from the Section 214 Exclusion List further streamlines the Section 214 authorization process and eliminates the costs and delay of obtaining a separate Section 214 authorization for accessing certain non-U.S.-licensed space stations.¹⁶ We also agree with commenters that such action will help to further the Commission’s objective to promote competition in the U.S. satellite services market, which, in turn, should promote the development of innovative satellite services for U.S. consumers.¹⁷ In addition, by removing from the Section 214 Exclusion List those non-U.S.-licensed space stations that have been approved to serve the U.S. market pursuant to the procedures in *DISCO II*,

¹⁰ *DISCO II First Reconsideration Order*, 15 FCC Rcd at 7215, ¶ 19.

¹¹ See *1996 Streamlining Order*, 11 FCC Rcd at 12892, ¶ 16; *1998 Biennial Regulatory Review – Review of International Common Carrier Regulations*, IB Docket No. 98-118, Notice of Proposed Rulemaking, FCC 98-149, 13 FCC Rcd 13713, 13723, ¶ 24 (1998) (stating that “facilities-based carriers desiring to serve a market or use a facility listed on the exclusion list must file a separate Section 214 application for that purpose”). See also 47 C.F.R. §§ 63.18(e)(3), 63.22(c).

¹² See generally AT&T Comments; Inmarsat Comments.

¹³ See Inmarsat Comments at 4-5.

¹⁴ *Id.* at 5.

¹⁵ Non-U.S.-licensed satellites operating in the United States pursuant to Special Temporary Authority shall remain on the Section 214 Exclusion List. These satellites have not been authorized under the procedures of *DISCO II*, which is required in order to be removed from the Section 214 Exclusion List.

¹⁶ See AT&T Comments at 2; Inmarsat Comments at 3.

¹⁷ See AT&T Comments at 1; Inmarsat Comments at 1, 4.

we avoid the duplication of performing a public interest analysis under both Section 214 and *DISCO II*.¹⁸ We note that the Permitted Space Station List will no longer be used for international Section 214 authorization purposes. Accordingly, non-U.S.-licensed space stations approved to serve the U.S. market pursuant to the procedures in *DISCO II* will be removed from the Section 214 Exclusion List.

7. In addition, rather than maintaining a list of the non-U.S.-licensed space stations not on the Exclusion List, as Inmarsat proposed above,¹⁹ we will create a web page that provides access to the space stations approved pursuant to the *DISCO II* procedures in one central location. Specifically, on the International Bureau's web page, we plan to insert a link entitled "*Space Stations Approved for U.S. Market Access*." Once users click on that link, they will be taken to a page with that same title that provides users a way to determine which space stations have been granted market access to the United States under *DISCO II*. The web page will include links to other lists already maintained for *DISCO II* purposes, such as the Permitted Space Station List and the I-SAT List, as well as entries for non-U.S.-licensed space stations approved for U.S. market access through other procedural means. We expect that centralizing this information on a web page will facilitate access to such information by common carriers and should address Inmarsat's concern about burdening carriers with the need to review multiple Commission orders in order to determine whether they may access a particular space station. Finally, as a related matter, we note that a non-U.S. space station operator must inform customers that communications with its space station is subject to the conditions and technical requirements specified in the document approving its entry into the U.S. market in addition to the technical requirements in the Commission's rules.²⁰

8. Furthermore, Inmarsat, in its comments, appears to assume that, pursuant to the proposal we adopt today, a carrier will no longer be required to modify its Section 214 authority when a space station that is authorized to serve the U.S. market is replaced by another space station.²¹ The Commission affords non-U.S. satellites the same replacement expectancy as it does U.S.-licensed satellites.²² Nevertheless, a replacement space station, just like any new non-U.S.-licensed space station, must be evaluated under the *DISCO II* framework before it will be allowed to enter the U.S. market. This

¹⁸ See Inmarsat Comments at 4. The *DISCO II* public interest analysis has proven to be comparable to the public interest analysis undertaken for Section 214 authorization of non-U.S.-licensed satellites. *Compare with 1998 Biennial Regulatory Review – Review of International Common Carrier Regulations*, IB Docket No. 98-118, Report and Order, FCC 99-51, 14 FCC Rcd 4909, 4935, ¶ 63 (1999) (in 1999, the Commission declined to remove all non-U.S.-licensed space stations from the Section 214 Exclusion List, in part because the record at that time was insufficient to conclude that the Section 214 inquiry is redundant with the analysis used for granting an earth station license to communicate with a non-U.S.-licensed space station).

¹⁹ See Inmarsat Comments at 4-5.

²⁰ Upon occasion, an operator may only seek market access for a subset of frequencies included on the space station. Further, the operator may only seek to provide certain limited services. Thus, to obtain a detailed understanding of the scope of market access granted, parties are encouraged to review the underlying file associated with the market access grant.

²¹ See Inmarsat Comments at 3.

²² In this regard, the Commission has stated that, "we will permit the proposed replacement satellite to access the U.S. market provided that the location remains available to a satellite authorized by the Administration that authorized the existing satellite, and the technical characteristics of the proposed replacement allow it to be assigned to the location." *Amendment of the Commission's Space Station Licensing Rules and Policies; Mitigation of Orbital Debris*, IB Docket Nos. 02-34, 02-54, First Report and Order and Further Notice of Proposed Rulemaking in IB Docket No. 02-34 and First Report and Order in IB Docket No. 02-54, FCC 03-102, 18 FCC Rcd 10760, 10879-80, ¶ 324 (2003). Thus, the application for the replacement satellite is processed without being placed in the first-come, first-served processing queue.

ensures that the new space station meets all Commission technical and legal requirements and that spectrum remains available for service to the United States. It also ensures that no national security, law enforcement, foreign policy, or trade concerns are involved in connection with the new satellite.²³ Accordingly, a replacement space station will be placed on the Exclusion List until the Bureau grants the space station U.S. market access.

IV. CONCLUSION

9. In this Order, we remove from the Section 214 Exclusion List those non-U.S.-licensed space stations that have received Commission approval to operate in the U.S. market pursuant to the *DISCO II* procedures. As a result, we further streamline the Section 214 authorization process by alleviating the administration burdens on both the Commission and the applicant. In addition, such action should promote competition in the U.S. satellite services market.

V. ORDERING CLAUSES

10. IT IS ORDERED that, pursuant to Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), and Section 0.261 of the Commission's rules, 47 C.F.R. § 0.261, this Order IS ADOPTED.

11. IT IS FURTHER ORDERED that this Order SHALL BE EFFECTIVE upon release. Petitions for reconsideration under Section 1.106 of the Commission's rules, 47 C.F.R. § 1.106, may be filed within 30 days from the date of public notice of this Order.

FEDERAL COMMUNICATIONS COMMISSION


for Mindel De La Torre
Chief, International Bureau

²³ Our experience has shown that, in many cases, much of the analysis done in connection with the market access grant for the retired space station will continue to apply to the new space station. Thus, the *DISCO II* review process is generally expedited for the replacement satellite.