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

In the Matter of	)	
Mabuhay Philippines Satellite Corp. Petition for Declaratory Ruling	)	File Nos. SES-LIC- 19980520-00614
Application of Loral CyberStar, Inc. for Authority to Operate Two Transmit/Receive Earth Stations at Kapolei, Hawaii, for Use in Conjunction with the Mabuhay Satellite Located at 146° E.L.	)	Call Sign: E980250 File Nos. SES-LIC-19980921-01353 994-DSE-P/L-98 Call Sign: E980450

ORDER AND AUTHORIZATION

Adopted: December 1, 2000 Released: December 5, 2000

By the Chief, Satellite and Radiocommunication Division, International Bureau:

I. INTRODUCTION

1. By this Order, we add the Mabuhay satellite to the Permitted Space Station List.[1] The Mabuhay satellite is owned and operated by the Mabuhay Philippines Satellite Corporation (Mabuhay Corporation), and is located at 146° E.L.[2] This orbit location and associated frequency assignments are registered to Indonesia in accordance with the International Telecommunication Union (ITU) Radio Regulations. We also grant Loral CyberStar, Inc. (Loral)[3] licenses to operate two earth stations in

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[1] The Commission established the Permitted Space Station List in the *DISCO II First Reconsideration Order*. 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, Order, IB Docket No. 96-111, 15 FCC Rcd 7207 (1999) (*DISCO II First Reconsideration Order*). The Permitted Space Station List includes all satellites 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' licenses.

[2] The Mabuhay satellite was formerly known as "Agila 2," and "Palapa Pacific CKU."

[3] These earth station applications were originally filed by Orion Network Services, Inc. (Orion). Orion later merged with Loral Space & Communication Ltd. *See* Loral Space & Communication Ltd. and Orion Network Systems, Inc. International Private Satellite Partners, L.P. (d/b/a) Orion Atlantic, L.P., Application for the Transfer of Control of Various Space Station, Earth Station, and Section 214 Authorizations, Order and Authorizations, 13 FCC Rcd 4592 (Int'l Bur. 1998); Letter from Stephen R. Bell and Jennifer D. McCarthy, Counsel for Loral CyberStar, Inc., to Magalie Roman Salas, Secretary, FCC, dated Jan. 5, 2000. For the sake of consistency, we refer to this company as "Loral" throughout this Order.

Kapolei, Hawaii in the conventional C-band,[4] to allow Loral to communicate with the Mabuhay satellite. In doing so, we also grant Loral a conditional waiver of Section 25.210(a)(3) of the Commission's rules with respect to these two earth stations.[5]

II. BACKGROUND

2. The Commission's *DISCO II Order* adopted a framework under which the Commission would consider requests for non-U.S. satellite systems to serve the United States. 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 satellite that would serve the U.S. market.[6] This procedure requires a U.S. earth station operator seeking to communicate with a non-U.S. space station to file an earth station application for an initial license or a modification to an existing earth station license that specifically lists the foreign satellite as a permitted "point of communication."[7] To determine whether the non-U.S. satellite complies with all applicable Commission requirements, the earth station application must be accompanied by the same detailed information about the non-U.S. space station and its operations that the Commission requires U.S. space station applicants to provide. Specifically, each application must contain the information required in Section 25.114 of the Commission's rules, which governs applications for space station authorizations.[8]

3. In May 1998, Loral requested authority to operate a fixed earth station in Kapolei, Hawaii, with a 13-meter antenna, to transmit and receive signals in the conventional C-band.[9] Loral lists only Mabuhay

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[4] For purposes of this Order, the conventional C-band is 3700-4200 MHz and 5925-6425 MHz.

[5] Section 25.210(a)(3) requires applicants to show that the space station in question is capable of switching polarity upon ground command. 47 C.F.R. § 25.210(a)(3).

[6] 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, 24174 (para. 186) (1997) (*DISCO II Order* or *DISCO II*). For a more detailed summary of the *DISCO II* framework, see *DISCO II First Reconsideration Order*, 15 FCC Rcd at 7209-10 (paras. 4-5).

[7] *DISCO II*, 12 FCC Rcd at 24174 (para. 188). Subsequent earth station licensees are permitted to seek modifications of their licenses to add that space station as a permitted "point of communication," without providing supporting documentation, provided that those earth stations communicate using the same technical parameters and operate under the same conditions applied to the first earth station licensee. *DISCO II*, 12 FCC Rcd at 24176 (para. 192). In the *DISCO II First Reconsideration Order*, the Commission streamlined the *DISCO II* procedures, but Loral filed its modification applications pursuant to the original *DISCO II* procedures.

[8] *See generally* 25 C.F.R. § 25.137; *DISCO II*, 12 FCC Rcd at 24174 (para. 188). The Commission does not require the non-U.S. space station operator to submit technical information if it has completed the coordination process with the United States, or to submit financial information if the satellite has been launched. *See* 25 C.F.R. § 25.137(b); *DISCO II*, 12 FCC Rcd at 24175-76 (para. 191).

[9] Six Mabuhay transponders operate outside the conventional C-band, in the 3560-3700 MHz and 6585-6725 MHz frequency bands, but Loral does not plan to access those transponders with either of the two Loral earth stations addressed in this Order. Loral 4.5-meter Application, Exh.1 at 1 n.2; Loral 13-meter Application,

as the point of communication for this earth station.[10] Later, in September 1998, Loral sought authority for a temporary-fixed earth station[11] with a 4.5-meter antenna in the conventional C-band, and listing Mabuhay and "ALSAT"[12] as points of communication.[13] Loral explains that the temporary-fixed earth station was necessary to provide additional testing capability for the services it plans to provide via its 13-meter antenna.[14] The Satellite and Radiocommunication Division of the International Bureau (Division) has granted Loral Special Temporary Authority (STA) to operate these two earth stations. The current STAs expire on March 14, 2001.[15]

4. We placed Loral's 13-meter earth station application on public notice on August 12, 1998, and its 4.5-meter application on November 4, 1998. No comments were filed. On January 13, 2000, Loral filed supplemental data showing that Mabuhay is designed with the capability of being maintained in orbit within 0.05° of its assigned longitudinal tolerance, as required by Section 25.210(j)(2).[16] On January 13, 2000, Loral also filed a petition for waiver of Section 25.210(a)(3),[17] which requires applicants to show that the space station in question is capable of switching polarity upon ground command.[18]

5. Finally, the Mabuhay Corporation requested us to add the Mabuhay satellite to the Permitted Space Station List, in a letter dated January 21, 2000.[19] The Mabuhay Corporation does not provide any

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Exh.1 at 1 n.2. Therefore, our action to place this satellite on the Permitted List does not include these frequency bands.

[10] The 13-meter application is File No. SES-LIC-19980520-00614, 994-DSE-P/L-98.

[11] A temporary fixed earth station is an earth station intended "to remain at a single location for fewer than 6 months . . . ." 47 C.F.R. § 25.277(a).

[12] "ALSAT" means "all U.S.-licensed space stations." Under an ALSAT earth station license, an earth station operator providing fixed-satellite service in the conventional C- and Ku-bands may access any U.S. satellite without additional Commission action, under the technical parameters authorized in the earth station licenses. *See DISCO II First Reconsideration Order*, 15 FCC Rcd at 7210-11 (para. 6).

[13] The 4.5-meter application is File No. SES-LIC-19980921-01353.

[14] Letter from Olga Madruga-Forti, Executive Director - Regulatory Affairs, Loral, to Federal Communications Commission, dated September 18, 1998 (cover letter for temporary-fixed earth station application).

[15] *See* Application File No. SES-STA-200000908-01664 (request to extend STA for earth station with 13-meter antenna); Application File No. SES-STA-200000908-01665 (request to extend STA for earth station with 4.5-meter antenna). These applications were granted on October 2, 2000.

[16] 47 C.F.R. § 25.210(j)(2).

[17] 47 C.F.R. § 25.210(a)(3).

[18] Loral Waiver Petition.

[19] Letter from Gabriel Z. Pimentel, President and CEO, Mabuhay Philippines Satellite

technical information in its request, but rather refers to the information included in Loral's earth station applications.[20] Accordingly, we base our decision regarding the Mabuhay Corporation's Permitted List request on the information Loral submitted in its license applications.

6. We include the Mabuhay satellite on the Permitted List, together with the conditions set forth in this Order. We also grant Loral's earth station applications, as conditioned in this Order. Finally, we grant Loral's petition for waiver as conditioned in this Order, and we grant a similar waiver on our own motion to other ALSAT earth station operators to be able to communicate with the Mabuhay satellite.

III. DISCUSSION

A. Permitted List Request

1. General Framework

7. In *DISCO II*, the Commission set forth the public interest analysis applicable in evaluating applications to use non-U.S. licensed space stations to provide satellite service in the United States. This analysis considers the effect on competition in the United States,[21] spectrum availability,[22] eligibility and operating (*e.g.*, technical) requirements,[23] and national security, law enforcement, foreign policy, and trade concerns.[24] We evaluate the Mabuhay Corporation's Permitted List request under this framework.

2. Competition Considerations

8. In *DISCO II*, the Commission established a rebuttable presumption in favor of entry by non-U.S. satellites licensed by World Trade Organization (WTO) Members to provide services covered by the U.S. commitments under the WTO Agreement on Basic Telecommunications Services (WTO Basic Telecom Agreement).[25] These commitments included fixed-satellite service, except for direct-to-home (DTH) service. The Commission concluded that the market access commitments made by WTO Members under the WTO Basic Telecom Agreement will help ensure the presence and advancement of competition in the satellite services market and yield the benefits of a competitive marketplace to consumers in the United States and other countries.[26] In this case, the presumption in favor of entry is applicable to Mabuhay,

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Corporation, to Thomas S. Tycz, Chief, Satellite and Radiocommunication Division, dated Jan. 21, 2000 (*January 21 Letter*).

[20] *January 21 Letter* at 1.

[21] *DISCO II*, 12 FCC Rcd at 24107-24156 (paras. 30-145).

[22] *DISCO II*, 12 FCC Rcd at 24157-59 (paras. 146-50).

[23] *DISCO II*, 12 FCC Rcd at 24159-69 (paras. 151-74).

[24] *DISCO II*, 12 FCC Rcd at 24169-72 (paras. 175-82).

[25] *DISCO II*, 12 FCC Rcd at 24112 (para. 39).

because Indonesia and the Philippines are WTO Members[27] and signatories to the Basic Telecom Agreement,[28] and because only covered fixed-satellite services are contemplated.

3. Spectrum Availability

9. In *DISCO II*, the Commission determined that, given the scarcity of orbit and spectrum resources, it would consider spectrum availability as a factor in determining whether to allow a foreign satellite to serve the United States.[29] This is consistent with the Chairman's Note to the WTO Basic Telecom Agreement, which states that WTO Members may exercise their domestic spectrum/frequency management policies when considering foreign entry. The Mabuhay satellite is located at 146° E.L. There are no other U.S.-licensed satellites operating in the conventional C-band within two degrees of Mabuhay. Therefore, allowing the Mabuhay Corporation to serve the United States from this orbit location will not affect operations of any U.S.-licensed satellites nor contravene the Commission's spectrum/frequency management policies at this time.

4. Eligibility Requirements

10. In *DISCO II*, the Commission stated it would require non-U.S. space station operators to meet the same technical, legal, and financial qualifications that U.S.-licensed space station operators must meet to obtain a license.[30] In this case, we need not, however, consider the Mabuhay Corporation's financial qualifications to construct and launch a satellite, because the Mabuhay satellite is already in orbit.[31]

11. We must, however, determine whether the Mabuhay Corporation meets the Commission's technical requirements. The Commission's satellite licensing policy is predicated upon two-degree orbital spacing between geostationary satellites.[32] This policy permits the maximum use of the geostationary satellite orbit.[33] Applicants must demonstrate that they comply with the Commission's technical

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[26] *DISCO II*, 12 FCC Rcd at 24112 (para. 39).

[27] *See* <www.wto.org/wto/services/tel01.htm> at n.2 (a list of Basic Telecom Agreement signatories).

[28] *See* <www.wto.org/wto/about/organsn6.htm> (a list of WTO Members).

[29] *DISCO II*, 12 FCC Rcd at 24159 (para. 150).

[30] *DISCO II*, 12 FCC Rcd at 24161-63 (paras. 154-59).

[31] *DISCO II*, 12 FCC Rcd at 24176 (para. 191) (financial qualification showing is not required for in-orbit satellite).

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

[33] Assignment of Orbital Locations to Space Stations in the Domestic Fixed-Satellite Service, 11 FCC Rcd 13788, 13790 (para. 6) (1996). Prior to the Commission's adoption of the two-degree spacing policy, satellites in the geostationary satellite orbit were usually spaced three or four degrees apart. By adopting rules that

requirements, designed to permit two-degree orbital spacing, before being authorized to provide service in the United States. The Commission may license satellites that are not two-degree compliant (or earth stations seeking to access such), but only when the applicants can demonstrate that their operations will not cause harmful interference to existing compliant satellite operations. Further, non-conforming operations are authorized conditioned upon a licensee accommodating future satellite networks serving the United States that are two-degree compliant.[34]

12. We have reviewed the technical information regarding the Mabuhay satellite provided in Loral's earth station applications, and the information in Loral's waiver petition. We conclude that the Mabuhay space station complies with all the technical requirements in Part 25 of the Commission's rules,[35] with the exception of Section 25.210(a)(3), which requires that the C-band payload on the space station in question be capable of switching polarity upon ground command. Loral states that polarity-switching capability is necessary only to mitigate potential interference between adjacent satellites operating with FM video carriers, and disavows any plans to provide FM video services via the two earth stations addressed in this Order.[36]

13. We grant Loral's waiver request. Loral is correct that polarity-switching capability is necessary primarily to avoid interference with analog television transmissions. Because Loral will not use its two Kapolei, Hawaii, earth stations to operate with FM video carriers, Loral has demonstrated "particular facts" warranting a waiver under Section 1.3 of the Commission's rules.[37] In addition, as a condition on this waiver, and as a condition on Loral's earth station licenses, Loral is precluded from using either of these earth stations to transmit or receive analog television signals from the Mabuhay satellite. In addition, on our own motion, we grant all ALSAT-designated earth stations a waiver of Section 25.210(a)(3) for the limited purpose of communicating with the Mabuhay satellite at 146° E.L. in the conventional C-band. As a condition on this waiver, ALSAT-designated earth stations are precluded from transmitting or receiving analog television signals from the Mabuhay satellite. This condition will be included on the Permitted List with respect to the Mabuhay satellite. If any earth station operator decides to provide FM video TV signals, a separate modification application will be required, which must include a 2° spacing compliance analysis, or an affidavit demonstrating that the Mabuhay satellite has been coordinated for the specific frequencies to be used for such operations, as specified in Section 25.211(b) of

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enabled satellite operators to place their space stations two degrees apart, the Commission was able to accommodate more geostationary satellites.

[34] *See, e.g.*, Systematics General Corporation, Order and Authorization, 2 FCC Rcd 7550, 7550-51 (para. 9) (Com. Car. Bur. 1987); New Skies Satellites, N.V., Order and Authorization, 14 FCC Rcd 13003, 13038 (para. 78) (1999).

[35] 47 C.F.R. Part 25.

[36] Loral Petition for Waiver at 1.

[37] Rules may be waived if there is "good cause" to do so. *See* Section 1.3 of the Commission's Rules, 47 C.F.R. § 1.3. The Commission may exercise its discretion to waive a rule where particular facts would make strict compliance inconsistent with the public interest. WAIT Radio v. FCC, 418 F.2d 1153, 1159 (D.C. Cir. 1969).

the Commission's rules.[38]

5. Other Issues

14. As described above, under *DISCO II*, national security, law enforcement, foreign policy, and trade concerns are included in the public interest analysis.[39] Nothing in the record before us raises any such concerns.

15. Finally, pursuant to the Bureau's Public Notice of December 17, 1999, placing a satellite on the Permitted List will permit international common carriers holding appropriate global international Section 214 authorizations to provide international telecommunications services using the satellite without the need to obtain additional Section 214 authority.[40] We find that it is in the public interest to allow common carriers with global international Section 214 authorizations to communicate with the Mabuhay satellite.

B. Earth Station Analysis

16. Loral requests authority to operate a new transmit-receive earth station in Kapolei, Hawaii, using a 13-meter antenna to communicate with the Mabuhay satellite in the conventional C-band. Loral's proposed earth station complies with all the requirements of Part 25. In addition, we determined above that allowing U.S.-licensed earth stations to access the Mabuhay satellite is in the public interest. Accordingly, we grant Loral's application.

17. Loral also seeks a temporary-fixed earth station license for its earth station with the 4.5-meter antenna to operate in Kapolei, Hawaii. A temporary-fixed earth station is one that is intended to remain at a single location six months or less.[41] A temporary-fixed earth station may not transmit while moving from one location to another. In addition, a temporary-fixed earth station operator in the C-band is required to coordinate with potentially affected operators in the C-band before transmitting.[42] Part 25 specifies that C-band earth stations may be routinely licensed if they have antennas 4.5 meters in diameter or larger.[43]

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[38] Section 25.211(b) requires that "[a]ll 4/6 GHz analog video transmissions shall contain an energy dispersal signal at all times with a minimum peak-to-peak bandwidth set at whatever value is necessary to meet the power flux density limits specified in §25.208(a) and successfully coordinated internationally and accepted by adjacent U.S. satellite operators based on the use of state of the art space and earth station facilities."

[39] *DISCO II*, 12 FCC Rcd at 24170-72 (paras. 178-82).

[40] *See* International Bureau Announced 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 (released Dec. 17, 1999).

[41] 47 C.F.R. § 25.277(a).

[42] 47 C.F.R. § 25.277(c), (d).

[43] *See* 47 C.F.R. § 25.212(d).

Accordingly, Loral's earth station with the 4.5-meter antenna is authorized to communicate with Mabuhay, but Loral must coordinate its operations with terrestrial services before beginning transmissions, as required by the Commission's rules.

VI. ORDERING CLAUSES

18. Accordingly, IT IS ORDERED that, pursuant to Sections 303(r), 308, 309, and 310 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 303(r), 308, 309, 310, and Section 25.137(c) of the Commission's rules, 47 C.F.R. § 25.137(c), each earth station with "ALSAT" designated as a point of communication, IS GRANTED authority to provide Fixed Satellite Services (FSS), excluding FSS Direct-to-Home services, in the 3700-4200/5925-6425 MHz frequency bands, to, from, or within the United States, by accessing the Mabuhay satellite, located at the 146° E.L. orbit location, subject to the conditions set forth in its earth station license and in this Order above.

19. IT IS FURTHER ORDERED that the Mabuhay satellite IS PLACED on the Permitted Space Station List, subject to the following conditions:

(a) Mabuhay is not authorized to provide any Direct-to-Home (DTH) service, Direct Broadcast Satellite (DBS) service, or Digital Audio Radio Service (DARS) to, from, or within the United States.
(b) ALSAT-designated earth stations ARE PROHIBITED from sending or receiving any analog FM video television signal to or from the Mabuhay satellite.

20. IT IS FURTHER ORDERED that ALSAT-designated earth station operators ARE GRANTED a waiver of Section 25.210(a)(3) of the Commission's rules for purposes of communicating with the Mabuhay satellite at 146° E.L. in the conventional C-band. As a condition on this waiver, ALSAT-designated earth stations ARE PROHIBITED from sending or receiving any analog FM video television signal to or from the Mabuhay satellite.

21. Accordingly, IT IS ORDERED that, pursuant to Section 309(a) of the Communications Act, as amended, 47 U.S.C. § 309(a), and Sections 0.51 and 0.261 of the Commission’s Rules, 47 C.F.R. §§ 0.51, 0.261, Loral CyberStar, Inc. IS GRANTED authority to operate a transmit/receive earth station at Kapolei, Hawaii, as specified in Application File No. SES-LIC-19980921-01353, subject to the conditions set forth in paragraph 19 of this Order.

22. Accordingly, IT IS ORDERED that, pursuant to Section 309(a) of the Communications Act, as amended, 47 U.S.C. § 309(a), and Sections 0.51 and 0.261 of the Commission’s Rules, 47 C.F.R. §§ 0.51, 0.261, Loral CyberStar, Inc. IS GRANTED authority to operate a temporary-fixed transmit/receive earth station at Kapolei, Hawaii, as specified in Application File Nos. SES-LIC-19980520-00614, 994-DSE-P/L-98, subject to the conditions set forth in paragraph 19 of this Order.

23. This Order is issued pursuant to Section 0.261 of the Commission's rules on delegated authority, 47 C.F.R. § 0.261, and is effective upon release. Petitions for reconsideration under Section 1.106 or applications for review under Section 1.115 of the Commission's rules, 47 C.F.R. §§ 1.106, 1.115, may be filed within 30 days of the date of the release of this Order. (*See* 47 C.F.R. § 1.4(b)(2).)

FEDERAL COMMUNICATIONS COMMISSION

Thomas S. Tycz
Chief,
Satellite and Radiocommunication Division
International Bureau