

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

)	
In the Matter of)	
)	
European Telecommunication)	
Satellite Organization (EUTELSAT))	File Nos. SAT-PDR-20010118-00011
)	SAT-PDR-20010207-00012
Petitions for Declaratory Ruling)	
To Add EUTELSAT Satellites)	
ATLANTIC BIRD™ 1 at 12.5° W.L and)	
ATLANTIC BIRD™ 2 at 8° W.L to the)	
Commission's Permitted Space Station List)	

ORDER

Adopted: August 29, 2001

Released: August 30, 2001

By the Deputy Chief, Satellite and Radiocommunication Division:

I. INTRODUCTION

1. In this Order, we add the European Telecommunications Satellite Organization's (EUTELSAT's) Atlantic Bird™ 1 (AB-1) satellite at 12.5° W.L. and its Atlantic Bird™ 2 (AB-2) satellite at 8° W.L. to the Commission's Permitted Space Station List (Permitted List), with certain conditions. The Permitted List denotes all satellites with which U.S. earth stations with routinely authorized technical parameters are permitted to communicate without additional Commission action.¹ As a result of this action, routine-licensed earth stations in the United States will be able to uplink fixed-satellite service transmissions to either or both of the EUTELSAT satellites. Downlink transmissions from the EUTELSAT satellites, which are in non-conventional frequency bands, are not permitted. Placing the EUTELSAT satellites on the Permitted List for the Earth-to-space transmissions from the United States will stimulate competition in the United States, provide alternatives in choosing communications providers and services, reduce prices, and facilitate technological innovation.

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.² To implement this

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*).

² Amendment of the Commission's Regulatory Policies to Allow Non-U.S. Licensed Satellites Providing

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.³ In the *DISCO II First Reconsideration Order*,⁴ the Commission streamlined this process by allowing space station operators of in-orbit non-U.S. satellites offering fixed-satellite service to request authority to provide space segment capacity service to licensed earth stations in the United States.⁵ We evaluate such requests under the analytical framework set forth in *DISCO II*.⁶ Our analysis considers the effect on competition in the United States, spectrum availability, eligibility and operating requirements, and national security, law enforcement, foreign policy, and trade concerns.⁷ If we determine that, pursuant to a *DISCO II* analysis, it is appropriate for the non-U.S. space station to access the U.S. market, the non-U.S. space station is placed on the Permitted List upon the applicant's request.⁸ The Permitted List includes all satellites with which U.S. earth stations with routinely authorized technical parameters (known as "ALSAT" earth stations) providing service in the conventional C and Ku-bands⁹ are permitted to communicate without the need to seek additional Commission approval.¹⁰

3. We have previously considered requests concerning EUTELSAT's access to the U.S. market and the inclusion of one of its satellites on the Commission's Permitted List. In February 2000, we granted authority to two fixed-satellite earth stations to communicate with the EUTELSAT II-F2 satellite,¹¹ and in August 2000, we granted EUTELSAT's petition to include its EUTELSAT II-F2 satellite at 12.5°

Domestic and International Service in the United States, *Report and Order*, IB Docket No. 96-111, 12 FCC Rcd 24094 (1997) (*DISCO II* or *DISCO II Order*).

³ *Id.* at 24174 (para. 186).

⁴ *See supra* note 2.

⁵ Under *DISCO II*, only U.S. licensed earth station operators could make this request.

⁶ *See DISCO II Order*, 12 FCC Rcd at 24107-24172 (paras. 30-182).

⁷ *Id.*

⁸ The Permitted List is maintained on our web site at www.fcc.gov/ib/srd/se/permitted.html.

⁹ The conventional C-band frequencies are 3700-4200 MHz (space-to-Earth) and 5925-6425 MHz (Earth-to-space). The conventional Ku-band frequencies are 11.7 -12.2 GHz (space-to-Earth) and 14.0 -14.5 GHz bands (Earth-to-space).

¹⁰ *See DISCO II First Reconsideration Order*, 15 FCC Rcd at 7214-16 (paras. 16-20). "ALSAT" means "all U.S.-licensed space stations." Originally, under an ALSAT earth station license, any earth station operator providing fixed-satellite service in the conventional C- and Ku-bands could access any U.S. satellite without additional Commission action, provided that those communications fell within the same technical parameters and conditions established in the earth stations' license. We later expanded ALSAT earth station licenses to permit access to any satellite on the Permitted List. *Id.* Because of interference concerns with other services, however, earth station operators' access to satellites on the Permitted List are only authorized in the conventional C and Ku-bands. *Id.* Transmissions other than those in the authorized conventional C and Ku-bands require Commission approval on a case-by-case basis.

¹¹ *See Applications of BT North America Inc. and CBS Broadcasting, Inc. for Modification of Earth Stations, Order*, 15 FCC Rcd 15603 (Int'l. Bur., 2000) (*EUTELSAT Earth Station Order*).

W.L. on the Permitted List for Earth-to-space (uplink) transmissions.¹² Our review in these cases determined that permitting EUTELSAT to serve the U.S. market would further competition in the United States.¹³ We also found that the EUTELSAT II-F2 satellite met the Commission's technical requirements.¹⁴ We placed several conditions on EUTELSAT II-F2's entry into the U.S. market, however. These conditions limited permissible transmissions to uplink transmissions only and limited permissible services to fixed-satellite services (FSS), specifically excluding Direct-to-Home FSS.¹⁵

III. DISCUSSION

A. EUTELSAT's Petitions

4. In this order, we consider two separate petitions filed by EUTELSAT requesting that we add two additional satellites – the AB-1 satellite at 12.5° W.L. and the AB-2 satellite at 8° W.L. – to the Permitted List.¹⁶ No comments or oppositions were filed on either petition. We describe below each of EUTELSAT's petitions, followed by our analysis and findings in accordance with the public interest standard set forth in *DISCO II*.

5. ***EUTELSAT AB-1 Satellite:*** In its petition, EUTELSAT states that it plans to launch the AB-1 satellite at 12.5° W.L. later this year to replace the EUTELSAT II-F2 satellite now operating at that location.¹⁷ EUTELSAT states that adding the AB-1 satellite to the Commission's Permitted List will permit U.S. Ku-band earth stations with an ALSAT designation to continue enjoying services currently available from EUTELSAT II-F2 once it is replaced by AB-1 and will allow for a smooth transition of EUTELSAT's current U.S. earth station operator customers to the new satellite. EUTELSAT also states that such grant will permit EUTELSAT to enhance its capacity to provide service to the U.S. market from the 12.5° W.L. orbital location and that continued availability of EUTELSAT space segment to the U.S. fixed-satellite service market will benefit U.S. customers by continuing to stimulate lower prices, improve service quality, increase service options and foster technological innovation.¹⁸ EUTELSAT's filing includes a completed FCC Form 312 application, together with exhibits containing financial and technical

¹² See European Telecommunications Satellite Organization, Petition for Declaratory Ruling, *Order*, 15 FCC Rcd 23486 (Int'l Bur., 2000) (*EUTELSAT Permitted List Order*).

¹³ See *EUTELSAT Earth Station Order*, 15 FCC Rcd at 15605; *EUTELSAT Permitted List Order*, 15 FCC Rcd at 23487.

¹⁴ *EUTELSAT Earth Station Order*, 15 FCC Rcd at 15606; *EUTELSAT Permitted List Order*, 15 FCC Rcd at 23487.

¹⁵ These conditions were provided in our orders and are noted on our web site in order to ensure all interested parties have adequate notice of the terms of our grant. See *EUTELSAT Earth Station Order*, 15 FCC Rcd at 15607-09; *EUTELSAT Permitted List Order*, 15 FCC Rcd at 23488. See <http://www.fcc.gov/ib/srd/se/permitted.html#3>.

¹⁶ Petition for Declaratory Ruling to Add EUTELSAT Atlantic Bird 1 Satellite at 12.5° W.L. to the Permitted Space Stations List, filed Jan. 18, 2001 (*AB-1 Satellite at 12.5° W.L. Petition*); and Petition for Declaratory Ruling to Add EUTELSAT Atlantic Bird 2 Satellite at 8° W.L. to the Permitted Space Stations List, filed Feb. 7, 2001 (*AB-2 Satellite at 8° W.L. Petition*). On February 16, 2001, we placed both of EUTELSAT's petitions on public notice. See Report No. SAT-00064, released Feb. 16, 2001.

¹⁷ See *AB-1 Satellite at 12.5° W.L. Petition* at 2.

¹⁸ *Id.* at 2, 6.

information consistent with requirements under our rules.¹⁹

6. ***EUTELSAT AB-2 Satellite:*** EUTELSAT states that it plans to launch the AB-2 satellite later this year at 8° W.L.²⁰ According to EUTELSAT, this satellite will provide capacity for transatlantic communications services as a complement to capacity that is now available at the 12.5° W.L. orbital position via the EUTELSAT II-F2 satellite (and later this year through the replacement satellite AB-1). EUTELSAT states that addition of the AB-2 satellite to the Commission's Permitted List will permit all U.S. Ku-band earth stations with an ALSAT designation to enjoy greater access to enhanced transatlantic facilities and services through expansion of EUTELSAT's space segment capacity made available for such services.²¹ In addition, EUTELSAT provides a completed FCC Form 312 application, together with exhibits containing financial and technical information consistent with the requirements under our rules.²²

B. *DISCO II* Framework

7. We have evaluated EUTELSAT's petitions to add its AB-1 satellite at 12.5° W.L. and its AB-2 satellite at 8° W.L. to the Permitted List under the public interest standard set forth in *DISCO II*. As provided under the *DISCO II* framework, the following discussion evaluates EUTELSAT's petitions in terms of the effect on competition in the United States,²³ spectrum availability,²⁴ eligibility (*e.g.*, legal, technical, and financial qualifications) and operating requirements,²⁵ and national security, law enforcement, foreign policy, and trade concerns.²⁶ We have considered many of these factors in our previous orders authorizing EUTELSAT to serve the U.S. market through its II-F2 satellite,²⁷ and to the extent described below, we rely on the analysis and findings made in our previous decisions.

8. ***Effect on Competition in U.S. Market:*** In the *DISCO II Order*, we established a rebuttable presumption that allowing non-U.S. satellites licensed by World Trade Organizations (WTO) Members and affiliates of certain intergovernmental satellite organizations (IGO's) licensed by WTO members, such as EUTELSAT, to provide services covered by the U.S. commitments under the WTO Basic Telecom Agreement would further competition in the U.S. market.²⁸ These services include the fixed-satellite

¹⁹ *Id.* Attached to its petition is a completed FCC Form 312, Attachment A (Technical Information), and Attachment B (Financial Information). *See e.g.*, 47 C.F.R §§ 25.114, 25.137, and 25.140.

²⁰ *See AB-2 Satellite at 8° W.L. Petition at 2.*

²¹ *Id.*

²² *Id.* Attached to its petition is a completed FCC Form 312, Attachment A (Technical Information), and Attachment B (Financial Information). *See e.g.*, 47 C.F.R §§ 25.114, 25.137, and 25.140.

²³ *DISCO II Order*, 12 FCC Rcd at 24107-56 (paras. 30-145).

²⁴ *Id.* at 24157-59 (paras. 146-50).

²⁵ *Id.* at 24159-69 (paras. 151-74).

²⁶ *Id.* at 24169-72 (paras. 175-82).

²⁷ *See supra* para. 3. Our analysis of the *DISCO II* public interest factors were detailed in *EUTELSAT Earth Station Order* and subsequently considered in *EUTELSAT Permitted List Order*.

²⁸ *See DISCO II Order*, 12 FCC Rcd at 24150 (para. 128).

services EUTELSAT seeks to provide. No comments or oppositions were filed to rebut the presumption that EUTELSAT's entry into the U.S. market is pro-competitive. Further, we have no evidence of exceptional circumstances that would raise our concern about the potential for anti-competitive harm in the U.S. market with entry by EUTELSAT. Thus, consistent with our findings in our earlier decisions regarding EUTELSAT's II-F2 satellite, we conclude that access to the U.S. markets by EUTELSAT's AB-1 and AB-2 satellites for the proposed fixed-satellite services will further competition in the U.S. market.²⁹

9. The United States' market-opening commitments in the WTO Basic Telecom Agreement, however, exclude Direct-to-Home (DTH) satellite services, Direct Broadcast Satellite Service, and Digital Audio Radio Service.³⁰ Thus, we will not permit EUTELSAT to provide Direct-to-Home fixed-satellite services, Direct Broadcast Satellite Service or Digital Audio Radio Service to, from, or within the United States from either the AB-1 and AB-2 satellites.³¹

10. **Spectrum Availability:** 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.³² 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 EUTELSAT AB-1 satellite is located at 12.5° W.L. and the EUTELSAT AB-2 satellite is located at 8° W.L. There are no other U.S. licensed satellites operating in the Ku-band within two degrees of either of these satellites. Further, no party has filed comments opposing EUTELSAT's petitions for adding these satellites to the Permitted List. Based on our review of information provided by EUTELSAT, we conclude that allowing the EUTELSAT to serve the United States from the orbital locations 12.5° W.L. and 8° W.L. will not affect the operations of any U.S.-licensed satellites nor contravene the Commission's spectrum and frequency management policies at this time.³³

11. As a general rule, because of interference concerns with other services, ALSAT earth stations are authorized to communicate with Permitted List satellites *only* in the conventional C and Ku-bands without further Commission approval.³⁴ Although EUTELSAT's AB-1 and AB-2 satellites operate

²⁹ See *EUTELSAT Earth Station Order*, 15 FCC Rcd at 15605; *EUTELSAT Permitted List Order*, 15 FCC Rcd at 23487.

³⁰ See *DISCO II Order*, 12 FCC Rcd at 24104 (para. 25).

³¹ Even though EUTELSAT has not proposed to provide DTH fixed-satellite services, we include this condition to clarify the scope of the services EUTELSAT may provide in the U.S. market and to ensure that all potential customers have adequate notice of the terms of EUTELSAT's access to the U.S. market. See e.g., *See EUTELSAT Earth Station Order*, 15 FCC Rcd at 15608; *EUTELSAT Permitted List Order*, 15 FCC Rcd at 23488.

³² *DISCO II*, 12 FCC Rcd at 24159 (para. 150).

³³ See *AB-1 Satellite at 12.5° W.L. Petition* at p. 3-4 and Attachment A; *AB-2 Satellite at 8° W.L. Petition* at p. 4-5 and Attachment A. EUTELSAT also states that operation of the AB-1 at 12.5° W.L. has been coordinated previously between France, which serves as EUTELSAT's notifying administration for purposes of international satellite coordination, and the United States. Coordination of AB-2 at 8° W.L. has not yet been completed, however, EUTELSAT states that there are no Ku-band U.S. networks operating or proposed for operation in the vicinity of 8° W.L. See *infra*. para. 13 concerning compliance with the Commission's two-degree spacing policy.

³⁴ *DISCO II First Reconsideration Order*, 15 FCC Rcd at 7215 (para. 19). See also *supra*. n. 11.

in the conventional Ku-band uplink frequencies (*i.e.*, 14.0-14.5 GHz), they do not operate in the conventional Ku-band downlink frequencies (*i.e.*, 11.7-12.2 GHz).³⁵ Rather, both the AB-1 and AB-2 satellites operate downlinks in non-conventional or “extended” Ku-band frequencies with coverage areas illuminating the United States.³⁶ As in our previous decisions, we emphasize that placing EUTELSAT AB-1 and AB-2 on the Permitted List authorizes ALSAT earth station operators to access EUTELSAT AB-1 and AB-2 only in the conventional Ku-band frequencies. In other words, ALSAT earth station operators may only transmit to EUTELSAT AB-1 and AB-2 in the uplink frequencies of 14.0-14.5 GHz. ALSAT earth station operators may not transmit to EUTELSAT AB-1 or AB-2 in any other band, and may not receive transmissions from EUTELSAT AB-1 or AB-2 in any band without first obtaining authorization to do so.³⁷

12. ***Eligibility Considerations:*** We find that EUTELSAT is legally, financially, and technically qualified to provide satellite services in the United States.³⁸ EUTELSAT has demonstrated its current assets exceed the costs of constructing, launching, and operating each of the two satellites for one year as required under our rules.³⁹

13. Our review of EUTELSAT’s technical qualifications is governed by the Commission’s satellite licensing policy that seeks to maximize use of the geostationary orbit by requiring applicants to demonstrate that their system can be spaced as close as two degrees in orbit from adjacent systems.⁴⁰ Satellite systems licensed outside the United States must also demonstrate compliance with our two-degree spacing policy before being authorized to provide service in the United States.⁴¹ EUTELSAT’s AB-1 and AB-2 satellites meet the Commission’s technical requirements contained in Part 25 of the Commission’s rules and can operate in a two-degree spacing environment.⁴² As with U.S. satellites, the Commission may, in the future, authorize services over U.S.-licensed or non-U.S.-licensed space stations that are two-degree compliant at orbital locations as close as two degrees from the AB-1 or AB-2 satellites. Should the Commission do so, EUTELSAT would be expected to coordinate, in good faith, with the licensee of that

³⁵ See *AB-1 Satellite at 12.5° W.L. Petition*, Attachment A; *AB-2 Satellite at 8° W.L. Petition*, Attachment A.

³⁶ *Id.* The EUTELSAT-AB-1 operates in the 10.95-11.20 GHz and 11.45-11.70 GHz frequency bands; the EUTELSAT-AB-2 operates in the 10.95-11.70 GHz and 13.75-14.0 GHz frequency bands.

³⁷ We recognize that EUTELSAT has proposed to offer only one-way services from the United States to international points in the conventional Ku-band. Nevertheless, we include in this order a condition that earth station operators are not authorized to communicate with EUTELSAT’s AB-1 and AB-2 satellites in the extended Ku-band downlink frequencies to avoid confusion and to ensure all prospective customers have adequate notice of the terms EUTELSAT’s access into the U.S. market.

³⁸ See *EUTELSAT Earth Station Order*, 15 FCC Rcd at 15606; *EUTELSAT Permitted List Order*, 15 FCC Rcd at 23489.

³⁹ 47 C.F.R §§ 25.114 and 25.140. See *AB-1 Satellite at 12.5° W.L. Petition* at p. 5-6 and Attachment B; and *AB-2 Satellite at 8° W.L. Petition* at p. 5 and Attachment B.

⁴⁰ See *Licensing of Space Stations in the Domestic Fixed-Satellite Service and Related Revisions of Part 25 of the Rules and Regulations*, Report and Order in Docket 81-704, 54 Rad. Reg. 2d 577 (1983), and 48 Fed. Reg. 40233 (Sept. 6, 1983).

⁴¹ *DISCO II*, 12 FCC Rcd at 24168 (para. 173).

⁴² See 47 C.F.R. § 25.149(b)(2). See *AB-1 Satellite at 12.5° W.L. Petition*, Attachment A; *AB-2 Satellite at 8° W.L. Petition*, p. 5 and Attachment A.

satellite.

14. **Other Issues:** In *DISCO II*, we stated that in considering requests by non-U.S. satellite systems to serve the United States issues of national security, law enforcement, foreign policy and trade policy are included in the public interest analysis when Executive Branch agencies bring those issues to our attention.⁴³ No such issues have been raised against these petitions.

15. Finally, the Permitted List allows international common carriers holding appropriate global international Section 214 authorizations to provide international telecommunications services to satellites on the Permitted List without the need to obtain additional Section 214 authority.⁴⁴ Accordingly, we find it is in the public interest to allow common carriers with global international Section 214 authorizations to communicate with the EUTELSAT AB-1 satellite at 12.5°W.L. and AB-2 satellite at 8.0° W.L.

IV. CONCLUSION AND ORDERING CLAUSES

16. Consequently, we add EUTELSAT's AB-1 satellite at 12.5° W.L. and AB-2 satellite at 8° W.L. to the Permitted List to enable EUTELSAT to offer fixed-satellite service (excluding DTH FSS) from the United States to international points using these two satellites without further Commission action. Finally, common carriers with global international Section 214 authorizations may communicate with the EUTELSAT AB-1 satellite at 12.5°W.L. and AB-2 satellite at 8.0° W.L. without obtaining additional Section 214 authority from the Commission.

17. 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 Sections 25.121(a) and 25.137(c) of the Commission's rules, 47 C.F.R. §§ 25.121(a), 25.137(c), EUTELSAT's Petitions for Declaratory Ruling, File Nos. SAT-PDR-20010118-00011 and SAT-PDR-20010207-00012, ARE GRANTED and the EUTELSAT Atlantic Bird™-1 satellite, located at the 12.5° W.L. orbit location and the EUTELSAT Atlantic Bird™-2 satellite located at the 8° W.L. orbit location are placed on the Permitted List subject to the following conditions:

- (a) ALSAT-designated earth stations are permitted to communicate with the EUTELSAT AB-1 satellite and EUTELSAT AB-2 satellite in the uplink frequencies of 14.0-14.5 GHz. consistent with the technical parameters contained in the earth station authorization. Communications in any other band are not permitted;
- (b) ALSAT-designated earth stations may not receive transmissions from the EUTELSAT AB-1 and AB-2 satellites unless expressly authorized by the earth station license;
- (c) Operations between ALSAT-designated earth stations and the EUTELSAT AB-1 and EUTELSAT AB-2 satellites shall be in compliance with the satellite coordination agreements reached between the United States and France; and

⁴³ *DISCO II Order*, 12 FCC Rcd at 24170-72 (paras. 178-82).

⁴⁴ 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).

- (d) Service between ALSAT-designated earth stations and the EUTELSAT AB-1 and EUTELSAT AB-2 satellites is limited to fixed-satellite service, excluding direct-to-home services. Provision of Direct-to-Home (DTH), Direct Broadcast Satellite (DBS), or Digital Audio Radio Service (DARS) is prohibited.

18. 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

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