

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

In the Matter of
SpaceData International LLC
Petition for Waiver
File No. SAT-WAV-20010906-00079

ORDER

Adopted: October 10, 2001 Released: October 11, 2001

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

I. INTRODUCTION

1. With this Order, we grant SpaceData International LLC (SDI) a limited waiver of one of the conditions we placed on its license to operate for commercial purposes, on a time-share basis, four satellites now operating as part of the Tracking and Data Relay Satellite System (TDRSS), owned by the National Aeronautics and Space Administration (NASA). This waiver will enable SDI to facilitate the exploration of a particular portion of the ocean floor in the Gulf of Mexico, which in turn may facilitate the development of new oil and gas resources.

II. BACKGROUND

2. SDI provides a service it calls the SeismicStar Communications System (SeismicStar) to the marine seismic industry, which surveys the ocean floor to identify potential oil and gas deposits. Before the SeismicStar service was available, survey vessels located oil and gas deposits by taking soundings of the surveyed areas, recording the soundings on computer data storage tapes, and transporting the tapes to land-based data-processing centers by ship. This process could take from six weeks to several months. SeismicStar greatly expedites this process by enabling survey vessels to transmit their data by satellite to NASA's facility in White Sands, New Mexico, and then to a data processing center in Houston, Texas via land lines.

1 See Application of SpaceData International LLC For Authority to Operate on a Time Share Basis NASA's Tracking and Data Relay Satellite System, Order and Authorization, 16 FCC Rcd 9266 (Int'l Bur., 2001) (SDI Order).

2 SDI Order, 16 FCC Rcd at 9266 (para. 2).

3 SDI Order, 16 FCC Rcd at 9266 (para. 2).

4 SDI Order, 16 FCC Rcd at 9266 (para. 2).

5 SDI Application at 2.

6 SDI Order, 16 FCC Rcd at 9266-67 (paras. 2-4).

3. SDI has contracted with NASA to use excess capacity on four of NASA's TDRSS satellites to provide its service.<sup>7</sup> In May 2001, the Bureau granted SDI a license to operate those four TDRSS satellites on a time-share basis under Section 303(c) of the Communications Act of 1934, as amended (Act).<sup>8</sup> SDI's authorization is subject to several conditions, including a prohibition from using TDRSS satellites to transmit to or receive from earth stations on any vessel when it is located less than 100 km from any coastline.<sup>9</sup>

4. On September 6, 2001, SDI requested a waiver of this 100-km condition for one earth station on one vessel, the Western Patriot,<sup>10</sup> for purposes of conducting an ocean floor survey in a specific area in the Gulf of Mexico southeast of South Padre Island, Texas.<sup>11</sup> The area to be surveyed is bounded by the coordinates in the table below. This area is 32.5 km from shore at its closest point.<sup>12</sup> SDI requests waiver of this condition until December 31, 2001.<sup>13</sup>

COORDINATES OF SDI'S PROPOSED SURVEY AREA

26° 36' 02.386" N	96° 06' 01.137" W
26° 56' 51.298" N	96° 06' 35.139" W
27° 19' 37.781" N	96° 33' 25.894" W
27° 18' 57.199" N	96° 58' 29.740" W
26° 34' 46.639" N	96° 56' 56.906" W

5. We placed SDI's waiver request on public notice,<sup>14</sup> and no comments were filed. For the reasons discussed below, we grant SDI's petition for waiver, subject to conditions.

<sup>7</sup> These satellites are located at 41° W.L., 47° W.L., 171° W.L., and 174° W.L. *SDI Order*, 16 FCC Rcd at 9266-67 (para. 3).

<sup>8</sup> *SDI Order*, 16 FCC Rcd at 9273 (para. 22), *citing* 47 C.F.R. § 303(c).

<sup>9</sup> *SDI Order*, 16 FCC Rcd at 9274 (para. 26).

<sup>10</sup> The Western Patriot is owned by Western GECO, a joint venture of Baker Hughes, Inc. and Schlumberger Limited. Letter from Laura B. Sherman, Counsel for SDI, to Thomas S. Tycz, Chief, Satellite and Radiocommunication Division, International Bureau (dated Sept. 6, 2001) (SDI Petition) at 1.

<sup>11</sup> SDI Petition at 1.

<sup>12</sup> SDI Petition at Exh. 1. SDI originally reported that the Western Patriot's survey area is 52 miles from land at its closest point. SDI Petition at 2. SDI later explained that it made a calculation error, and the correct distance is 32.5 km, or 20.31 miles. Letter from Laura B. Sherman, Counsel for SDI, to Thomas S. Tycz, Chief, Satellite and Radiocommunication Division, International Bureau (dated Sept. 6, 2001) (*September 14 Letter*) at 1.

<sup>13</sup> SDI Petition at 3.

<sup>14</sup> *See* Satellite Policy Branch Information, Report No. SAT-00084 (released Sept. 14, 2001) (establishing pleading cycle for waiver request); Satellite Policy Branch Information, Report No. SAT-00085 (released Sept. 19, 2001) (notifying public of correction to distance from shore, and extending due date for comments to September 24, 2001, and replies to October 1, 2001).

**III. DISCUSSION**

6. Rules may be waived if there is "good cause" to do so.<sup>15</sup> Waiver is appropriate if special circumstances warrant a deviation from the general rule and such deviation would better serve the public interest than would strict adherence to the general rule.<sup>16</sup> Circumstances that would justify a waiver include "considerations of hardship, equity, or more effective implementation of overall policy."<sup>17</sup> Also, if the Commission grants waivers, it must identify and articulate reasonable standards that are predictable, workable, and not susceptible to discriminatory application.<sup>18</sup> Generally, the Commission may grant a waiver of its rules in a particular case if the relief requested would not undermine the policy objective of the rule in question, and would otherwise serve the public interest.<sup>19</sup>

7. We find that granting SDI's waiver request would not undermine our policy objective, provided that we condition the waiver as set forth below. We adopted the condition prohibiting use of TDRSS satellites to transmit or to receive from earth stations on any vessel when located less than 100 km from any coastline, together with several other conditions, to help ensure that SDI's operations do not cause harmful interference into U.S. Government operations.<sup>20</sup> Granting SDI a conditional waiver should not cause a risk of harmful interference into U.S. Government operations. First, although the area SDI wants to survey is 32.5 km from shore at its closest point,<sup>21</sup> the shoreline in question is South Padre Island. This is an unpopulated strip of land off the Southern Texas coast. Therefore, the Western Patriot will remain much more than 32.5 km away from any population center or government facility. We also note that SDI limits its waiver request to transmissions to or from one ship, and only for a limited time, until the end of 2001.<sup>22</sup>

8. As a condition on the waiver, we will permit SDI to communicate with the earth station on the Western Patriot only with the TDRSS satellites located at 41° W.L. and 47° W.L. while the Western Patriot is in the area described in the table above. The other two TDRSS satellites with which SDI is authorized to operate are located over the Pacific Ocean at 171° W.L. and 174° W.L. An earth station in the area described in the table above would have to operate at an

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<sup>15</sup> See Section 1.3 of the Commission's Rules, 47 C.F.R. § 1.3. See also *WAIT Radio v. FCC*, 418 F.2d 1153 (D.C. Cir. 1969) (*WAIT Radio*); *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1166 (D.C. Cir. 1990) (*Northeast Cellular*).

<sup>16</sup> *Northeast Cellular*, 897 F.2d at 1166. See also *Comsat Corporation, Petition for Partial Relief from the Current Regulatory Treatment of Comsat World Systems' Switched Voice, Private Line, and Video and Audio Services*, Order, 11 FCC Rcd 9622, 9625 (para. 10) (1996); *Petition of General Communications, Inc. for a Partial Waiver of the Bush Earth Station Policy*, Memorandum Opinion and Order, 11 FCC Rcd 2535, 2536 (para. 4) (Int'l Bur. 1996).

<sup>17</sup> *WAIT Radio*, 418 F.2d at 1159.

<sup>18</sup> *Northeast Cellular*, 897 F.2d at 1166.

<sup>19</sup> *WAIT Radio*, 418 F.2d at 1157; *Dominion Video Satellite, Inc., Order and Authorization*, 14 FCC Rcd 8182, 8185 (para. 5) (Int'l Bur., 1999) (*Dominion Video*).

<sup>20</sup> *SDI Order*, 16 FCC Rcd at 9272 (para. 19).

<sup>21</sup> SDI Petition at 2.

<sup>22</sup> SDI Petition at 3.

exceedingly low angle of elevation to communicate with those two satellites, and the earth station's antenna would be directed toward land. Such operations could create a risk of harmful interference to U.S. Government terrestrial operations. Therefore, to avoid that risk, the waiver we grant here is limited to SDI's operation of the TDRSS satellites located at 41° W.L. and 47° W.L.

9. We also conclude that granting SDI a waiver of the 100-km condition would serve the public interest. In its original license application, SDI requested a waiver of the Table of Frequency Allocations.<sup>23</sup> We determined in the *SDI Order* that granting SDI that waiver request was in the public interest because it would enable SDI to facilitate oil and gas companies' efforts to develop new energy resources.<sup>24</sup> For the same reason, we conclude that granting SDI a limited waiver of the 100-km condition, as SDI requests here, would further the public interest.

10. Accordingly, we grant SDI a limited waiver of the 100-km condition we placed on SDI's license in the *SDI Order*. Under this waiver, SDI may operate the TDRSS satellites located at 41° W.L. and 47° W.L. to transmit to and receive from its earth station on the vessel Western Patriot while that vessel is within the area described in the table above, until December 31, 2001.<sup>25</sup> All the other conditions placed on SDI's license shall remain in force, including the condition "Based on non-conformance with the U.S. Table of Frequency Allocations, the operations will be on an unprotected, non-harmful interference basis to all present and future U.S. Government stations."<sup>26</sup>

**IV. ORDERING CLAUSES**

11. Accordingly, IT IS ORDERED, pursuant to Section 1.3 of the Commission's rules, 47 C.F.R. § 1.3, that SpaceData International, LLC IS GRANTED a waiver of condition (g), imposed in its license in paragraph 26 of Application of SpaceData International LLC For Authority to Operate on a Time-Share Basis NASA's Tracking and Data Relay Satellite System, *Order and Authorization*, 16 FCC Rcd 9266, 9274 (para. 26) (Int'l Bur., 2001) (*SDI Order*). This waiver is limited to transmissions to and from the vessel Western Patriot, owned by Western GECCO, while that vessel is in the area described above, until December 31, 2001.

12. IT IS FURTHER ORDERED, that this waiver is subject to the following conditions:

- (a) SDI is prohibited from communicating with the earth station on the Western Patriot while that vessel is in the area described in the area above after December 31, 2001.
- (b) SDI is authorized to use only the two TDRSS satellites located at 41° W.L. and 47° W.L. to communicate with the earth station on the Western Patriot, and only while that vessel is in the area described in the table above.
- (c) With the exception of the above, all the conditions contained in SDI's license remain in force, including but not limited to the following: "Based on non-conformance with the U.S. Table of Frequency Allocations, the operations will be on an unprotected, non-harmful interference basis to all present and future U.S. Government stations."

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<sup>23</sup> See *SDI Order*, 16 FCC Rcd at 9270 (para. 13).

<sup>24</sup> *SDI Order*, 16 FCC Rcd at 9271 (para. 16).

<sup>25</sup> SDI filed its waiver petition on September 6, 2001, and requested a waiver until December 31, 2001. This is a period of approximately 120 days.

<sup>26</sup> *SDI Order*, 16 FCC Rcd at 9274 (para. 26).

13. 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