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

In the Matter of	)	
	)	
LORAL SPACECOM CORPORATION	)	
	)	
Petition for Declaratory Ruling to Add Telstar 13 to the Permitted Space Station List	)	File No. SAT-PDR-20020315-00025

ORDER

Adopted: August 8, 2003 **Released:** August 8, 2003

By the Chief, Satellite Division, International Bureau:

I. INTRODUCTION

1. In this Order, we add Telstar 13, a satellite to be operated by Loral SpaceCom Corp. ("Loral") in the conventional C-band, to the "Permitted Space Station List" with certain conditions. Loral will operate Telstar 13 at the 121° W.L. orbital location pursuant to an authorization by Papua New Guinea. The Permitted Space Station List lists all satellites with which U.S. earth stations, with "routinely" authorized technical parameters and operating in the conventional C- or Ku-bands,[1] are permitted to communicate, without additional Commission action, provided that those communications fall within the technical parameters and conditions established in the earth stations' licenses. As a result of this action, "routine" earth stations will be able to communicate with Telstar 13 at the 121° W.L. orbit location in the conventional C-band.

II. BACKGROUND

2. In the *DISCO II Order*,[2] the Commission implemented the satellite services market-opening commitments made by the United States in the World Trade Organization Agreement on Basic Telecommunications Services ("WTO Basic Telecom Agreement"). It also established a framework under which it would consider access by foreign satellites not covered by the WTO Basic Telecom Agreement. By allowing non-U.S. licensed satellites to serve the U.S. market, this action provides U.S. consumers more alternatives in choosing communications providers and services, thus advancing the growth of satellite services in the United States and around the globe. Among other things, the *DISCO II Order* 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] This procedure requires a U.S. earth station operator seeking to communicate with a non-U.S. satellite to file an earth station application

[1] For purposes of this Order, the "conventional C-band" denotes the 3700-4200 MHz and 5925-6425 MHz frequency bands. The "conventional Ku-band" denotes the 11.7-12.2 GHz and 14.0-14.5 GHz frequency bands.

[2] *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, IB Docket No. 96-111, 12 FCC Rcd 24094 (1997) ("*DISCO II"* or "*DISCO II Order")*.

[3] *DISCO II*, 12 FCC Rcd at 24174 (para. 186).

for an initial license or for a modification of its existing earth station license, listing the foreign satellite as a point of communication.[4]

3. In the *DISCO II First Reconsideration Order*, the Commission streamlined the process by allowing the 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] Under this process, the Commission conducts the analysis established in the *DISCO II Order* for a particular non-U.S.-licensed space station and a particular satellite service. If the satellite granted access operates in the conventional C- and Ku-bands, the satellite operator may also request authority to be added to the "Permitted List."[6] The Permitted List is maintained on our website, and is also available via fax or e-mail.[7]

4. In March 2002, Loral petitioned to add Telstar 13 to the Permitted Space Station List.[8] Telstar 13 is the C-band payload on a hybrid Ka-/Ku-/C-band satellite to be operated at the 121º W.L. orbital location. EchoStar Communications Corp. ("EchoStar") plans to operate the Ka- and Ku-band payload of this satellite under the name "EchoStar 9."[9] Loral plans to operate the Telstar 13 payload pursuant to an authorization from Papua New Guinea.[10] New Skies Satellite N.V. ("New Skies") submitted comments on Loral's petition,[11] to which Loral filed a reply.[12] PanAmSat Corporation ("PanAmSat") submitted comments after the comment period, and requests the Commission accept its filing as late-filed comments or as informal comments.[13] In addition, both Loral and New Skies filed *ex parte* communications with Commission staff regarding the Telstar 13 petition.[14] EchoStar and the Papua

[4] When an earth station has been granted authority to communicate with a specific satellite or group of satellites, those satellites are referred to in the earth station license as "points of communication."

[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*, First Order on Reconsideration, IB Docket No. 96-111, 15 FCC Rcd at 7207, 7212 (para. 10) (1999) ("*DISCO II First Reconsideration Order")*.

[6] *Id*. at 7212-13 (paras. 10-11).

[7] *Id*. This web site address is http://www.fcc.gov/ib/sd/se/permitted.html.

[8] Loral SpaceCom Corp., Petition for Declaratory Ruling to Add Loral Skynet's Telstar 13 C-Band Payloard to the Permitted Space Station List, File No. SAT-PDR-20020315-00025, filed March 15, 2002 ("Loral Petition").

[9] We have authorized EchoStar to operate its EchoStar 9 satellite in separate order. *See EchoStar Satellite Corp.*, Order and Authorization, DA 03-2559 (Sat. Div. rel. August 1, 2003); *EchoStar Satellite Corp.*, Order and Authorization, DA 03-2560 (Sat. Div. rel. August 1, 2003).

[10] Loral Petition at 2.

[11] Comments of New Skies Satellites N.V. (filed April 22, 2002) ("New Skies Comments").

[12] Reply Comments of Loral SpaceCom Corp. (filed May 2, 2002) ("Loral Reply").

[13] Comments of PanAmSat Corp (filed July 30, 2002), amended by Erratum on September 3, 2002 ("PanAmSat Comments"). Because no party has shown that it would be prejudiced by acceptance of PanAmSat's filing, we accept PanAmSat's filing as informal comments.

[14] *See, e.g.,* Letter from Scott Blake Harris, Counsel for New Skies Satellites N.V., to William F. Caton, Acting Secretary, FCC, dated March 26, 2002; Letter from William Wiltshire, Counsel for New Skies Satellites N.V., to (continued….)

New Guinea Radiocommunications and Telecommunications Technical Authority ("PANGTEL") have also filed *ex parte* communications supporting the grant of Loral's petition.[15]

III. DISCUSSION

A. Permitted List Request

1. General Framework

5. In the DISCO II Order, 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,[16] eligibility and operating (e.g., technical) requirements,[17] spectrum availability,[18] and national security, law enforcement, foreign policy, and trade concerns.[19] We evaluate Loral's request under this framework.

2. Competition Considerations

6. In *DISCO II*, the Commission established a rebuttable presumption that entry by non-U.S. satellites licensed by WTO Members to provide services covered by the U.S. commitments under the WTO Basic Telecom Agreement will further competition in the United States.[20] These commitments include fixed-satellite service, but specifically exclude direct-to-home ("DTH") services, Direct Broadcast Satellite Service ("DBS"), and Digital Audio Radio Service ("DARS").[21] This means that we will presume that WTO-member licensed satellites providing WTO-covered services satisfy the competition component of the public interest analysis. The Commission concluded that the market access commitments made 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.[22] In this case, the presumption in favor of entry applies to Telstar 13, which is licensed by Papua New Guinea, a WTO Member,[23] and

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Marlene H. Dortch, Secretary, FCC, date May 8, 2002; Letter from William Wiltshire, Counsel for New Skies Satellites N.V., to Marlene H. Dortch, Secretary, FCC, dated October 2, 2002.

[15] *See* Letter from Pantelis Michalopoulos, Counsel for EchoStar Satellite Corp., to Marlene H. Dortch, Secretary, FCC, dated April 4, 2003; Letter from Charles S. Punaha, Director General, PANGTEL, to Thomas S. Tycz, Chief, Satellite Division, FCC, dated March 19, 2003.

[16] *DISCO II*, 12 FCC Rcd at 24107-56 (paras. 30-145).

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

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

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

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

[21] *DISCO II*, 12 FCC Rcd at 24104 (para. 25).

[22] *DISCO II*, 12 FCC Rcd at 24112 (para. 39); 24157 (para. 143).

[23] *See* http://www.wto.org/english/thewto_e/whatis_e/tif_e/org6_e.htm (a list of WTO members). *See also* http://www.wto.org/english/tratop_e/serv_e/telecom_e/telecom_commit_exempt_list_e.htm (a list of WTO members that made market-access commitments, with links to each member's schedule of commitments and Article II exemptions).

which will be used to provide non-DTH fixed-satellite services to customers in the United States.

7. New Skies states that it intends to serve the U.S. market using the C-band via its proposed NSS-11 satellite, which would operate pursuant to a Dutch authorization at the 120.8° W.L. orbital position.[24] New Skies argues that it has only two-thirds as many operating satellites capable of serving the United States as does Loral.[25] In addition, New Skies states that none of its satellites can provide full-CONUS service, while five of Loral's satellites can do so. Accordingly, New Skies asserts that grant of unconditional market access to Loral from the Papua New Guinea slot would be inconsistent with the Commission's "competitive entry" policy, which favors making full-CONUS orbital locations available to operators that do not already have them rather than to operators with many such slots.[26] New Skies also claims that an unconditional grant of market access to Loral from the Papua New Guinea slot would erect an unnecessary hurdle for New Skies to become a robust competitor in the U.S. satellite services market.[27]

8. New Skies does not demonstrate that allowing Telstar 13 to access the U.S. market from the 121º W.L. orbital location constitutes a very high risk to competition that prohibits the grant of Loral's petition under the *DISCO II* framework. Indeed, New Skies explicitly states that it does not object to Loral serving the U.S. market via Telstar 13, provided that any such authorization is conditioned so as to preserve New Skies' future ability to serve the U.S. market from an adjacent orbital location.[28] Therefore, we will address New Skies' arguments below as part of our spectrum availability analysis.

9. Accordingly, we conclude that Telstar 13's proposed entry for purposes of offering fixed-satellite services, excluding DTH, will enhance competition for these services in the U.S. market. As a condition on Telstar 13's placement on the Permitted List, however, we prohibit U.S. earth stations from accessing Telstar 13 for DTH, DBS, or DARS.

3. Spectrum Availability

10. 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. 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. Thus, in *DISCO II*, we stated that when grant of access would create interference with U.S.-licensed systems, we may impose technical constraints on the foreign system's operations in the United States or, when conditions cannot remedy the interference, deny access.

11. Telstar 13 will provide service to the United States from the 121º W.L. orbital location.

[24] New Skies Comments at 2.

[25] *Id.* at 5.

[26] *Id.* (citing *Assignment of Orbital Locations to Space Stations in the Domestic Fixed-Satellite Service*, Memorandum Opinion and Order, 5 FCC Rcd 179, 180 (1990)).

[27] *Id.*

[28] New Skies Comments at 2.

No U.S. operator is licensed to use this orbital location for C-band operations, and the Trilateral Agreement between Canada, Mexico, and the United States does not contemplate a U.S. C-band satellite authorization at this position.[29] The only non-Loral U.S.-licensed satellite operating in the C-band at or within two degrees of this location is PanAmSat's Galaxy 10R satellite at 123º W.L. Loral states that it has completed coordination of Telstar 13 with PanAmSat, and PanAmSat states in its comments that it has no objection to adding Telstar 13 to the Permitted Space Station List.[30] In addition to PanAmSat, there is a Canadian satellite, ANIK E1, which operates within two degrees of Telstar 13 at 119º W.L., and a Mexican satellite, SatMex 5, which operates at 116.8º W.L. The Commission has previously authorized both ANIK E1 and SatMex 5 to provide service to the United States in the C-band.[31] Loral states that it has coordinated Telstar 13 with Telesat Canada, and that this agreement has been signed and executed by the administrations of Canada and Papua New Guinea.[32] Loral represents that coordination between Mexico and Papua New Guinea is expected to be completed in the near future.[33] Therefore, allowing Telstar 13 to serve the United States market from the 121º W.L. orbit location will not affect operations of any existing satellites authorized to serve the U.S. market.

12. New Skies opposes Loral's application, arguing that an unconditional grant of Loral's petition would impede New Skies' future access to the U.S. market.[34] New Skies states that the Netherlands has filed a request for coordination of its NSS-11 C-band satellite at the 120.8° W.L. orbital location with the ITU. According to New Skies, the Netherlands has ITU date priority because it filed its ITU coordination request before Papua New Guinea filed its ITU coordination request for the 121º W.L. orbital location.[35] New Skies observes that Papua New Guinea and Loral have not completed coordination with the Netherlands and New Skies, and that coordination of co-coverage, co-frequency satellites is unlikely given the 0.2º spacing between the orbital locations.[36]

13. New Skies does not object, however, to allowing Loral to serve the U.S. market from the 121º W.L. orbital location until New Skies implements a satellite at 120.8º W.L., provided that Loral's operation of Telsat 13 is conditioned as follows: (1) Telstar 13 shall cease operations at least thirty days before New Skies brings a satellite into use at 120.8º W.L.; (2) Loral shall inform all customers that

[29] *Trilateral Agreement Regarding the Use of the Geostationary Orbit by Canada, Mexico, and the United States*, Public Notice, Mimeo No. 4406 (Sept. 2, 1998) (*"Trilateral Agreement"*).

[30] PanAmSat Comments at 1.

[31] *See Telesat Canada, Request for Declaratory Ruling or Petition for Waiver of Earth Stations' Use of Anik E1 and Anik E2 Satellite Capacity to Provide Basic Telecommunications Service in the United States*, Order, DA 99-2752, 15 FCC Rcd 3649 (Int'l Bur. 1999); Satelites Mexicanos, S.A. de C.V., *Petition for Declaratory Ruling*, Order, DA 00-1793, 15 FCC Rcd 19311 (Sat. and Rad. Div. 2000).

[32] Loral Petition at 3.

[33] *Id.* Loral indicated to Commission staff in response to a staff inquiry that it has signed a coordination agreement with the Mexican operator, Satelites Mexicanos, S.A. de C.V., and is awaiting approval of this agreement from the Mexican regulator, Federal Telecommunications Commission of Mexico ("COFETEL").

[34] New Skies Comments at 4.

[35] *Id.* at 2, 4.

[36] *Id.* at 3.

service from 121º W.L. is being provided pursuant to a grant of temporary authority; (3) Loral shall notify all its customers, within seven days of receiving notification from New Skies of the date it plans to bring a satellite into use at 120.8º W.L., that service from 121º W.L. will terminate thirty days before that date; and (4) the Permitted Space Station List shall clearly indicate all of these conditions and limitations.[37] New Skies argues that such additional conditions are supported by prior decisions by the International Bureau ("Bureau") in *PanAmSat* and *Columbia Communications*, which imposed similar restrictions upon satellites operating at orbital locations where other operators had superior rights.[38]

14. Loral replies that the conditions suggested by New Skies are unnecessarily onerous.[39] If any conditions are necessary, Loral proposes we require simply that it "comply with its applicable current and future operational requirements as a result of coordination agreements with other satellite systems."[40] Loral states that such language has been found sufficient previously,[41] and would allow Loral to use the 121º W.L. orbital location immediately without diminishing the ITU filing status of the Netherlands and New Skies at 120.8º W.L. Loral also argues that the *PanAmSat* and *Columbia Communications* decisions cited by New Skies are not determinative, since they do not involve access to the U.S. market through the Commission's *DISCO II* framework.[42] PanAmSat supports the grant of Loral's petition, stressing that the Commission need not adjudicate ITU precedence between two foreign licensees who want to serve the United States.[43] Instead, PanAmSat urges the Commission to assess the eligibility of each operator under the *DISCO II* framework and let precedence be resolved through the ITU coordination process.[44]

15. As an initial matter, we affirm that the absence of international coordination between Papua New Guinea and the Netherlands does not preclude the addition of Telstar 13 to the Permitted Space Station List. The Commission has held that it is not necessary to complete international coordination before a satellite system can be authorized to provide service in the United States.[45] It is

[37] *Id.* at 2, 9-10.

[38] *Id.* at 7-9 (citing *PanAmSat Corp., Request for Special Temporary Authority to Operate a Space Station at 60º W.L.*, Order and Authorization, DA 99-2220, 15 FCC Rcd 21802 (Int'l Bur. 1999); *Columbia Communications Corp., Application for Modification of Authorization to Permit Operation of Ku-band Satellite Capacity on the Columbia 515 Satellite Located at 37.7º W.L.*, Memorandum Opinion and Order, DA 01-1426, 16 FCC Rcd 12480 (Int'l Bur. 2001)).

[39] Loral Reply at 3-4 (citing *DISCO II*, 12 FCC Rcd at 24174 (para. 186)).

[40] *Id.* at 8.

[41] *Id.* (citing *Telesat Canada, Petition for Declaratory Ruling to Inclusion of ANIK F1 on the Permitted Space Station List*, Order, DA 00-2835, 15 FCC Rcd 24828, 24836 (para. 21) (Sat. and Rad. Div. 2000) (*"ANIK F1 Order"*)).

[42] *Id.* at 7-8.

[43] PanAmSat Comments at 3-4.

[44] *Id.* at 4.

[45] *DISCO II*, 12 FCC Rcd at 24174 (para. 186). *See also ANIK F1 Order*, 15 FCC Rcd at 24834 (para. 14). New Skies concedes that Commission policy is not to withhold U.S. market access pending completion of international coordination. *See* New Skies Comments at 1.

sufficient for purposes of the *DISCO II* framework that coordination has been initiated, and the record indicates that coordination discussions have commenced.[46] Thus, Loral's access to the U.S. market need not be delayed pending completion of coordination.

16. Nonetheless, we must take into account the impact that the ITU coordination process will have on Loral's ability to provide service to U.S.-licensed earth stations in the United States from the 121º W.L. orbital location. According to the record in this proceeding, the Netherlands' ITU coordination request filing at 120.8º W.L. was filed before Papua New Guinea's ITU coordination request filing at 121º W.L. Thus, under the ITU's international Radio Regulations, the Netherlands' satellite network is "affected" by the Papua New Guinea network, but not the other way around, and it is the responsibility of Administrations with lower ITU priority (*i.e.*, Papua New Guinea) to coordinate their networks with the networks of Administrations with higher priority (*i.e.*, the Netherlands). As the Commission has recently affirmed, a lower ITU priority network may be permitted to access the U.S. market if a higher ITU priority satellite has not been launched, but in such a case the lower ITU priority network is subject to proof of coordination with the higher ITU priority satellite.[47] Absent such demonstration, the lower ITU priority satellite must cease service to the U.S. market immediately upon launch and operation of the higher ITU priority satellite, or be subject to further conditions designed to address potential harmful interference to a satellite with ITU date precedence.[48] We condition Loral's authorization accordingly. In addition, absent proof of coordination with affected Administrations, earth station licensees communicating with Telstar 13 must terminate immediately any operations that cause harmful interference. We also condition Loral's authority to serve the U.S. on its compliance with applicable current and future operational requirements as a result of coordination agreements reached with other satellite systems, including the Netherlands's NSS-11 system at 120.8° W.L.[49] We remind Loral and New Skies that the Commission is not responsible for the result of such coordination.

17. We find that the additional conditions proposed by New Skies are unnecessary.[50] Although additional conditions were imposed in the *PanAmSat* and *Columbia Communications* decisions cited by New Skies, in those decisions – as well as our recent decision in *SES Americom*[51] – the applicants sought authority to operate using frequencies and/or orbital locations that were not regularly assigned to them, but were unused at the time by their regularly assigned operators.[52] Unlike the applicants in these

[46] *See* Loral Reply Comments at 4; New Skies Comments at 2-3.

[47] *See Amendment of the Commission's Space Station Licensing Rules and Policies*, First Report and Order and Further Notice of Proposed Rulemaking, FCC 03-102, 18 FCC Rcd 10760, 10870-71 (para. 296) (rel. May 19, 2003) (*"Space Station Reform First Report and Order"*).

[48] *See id.*

[49] *See ANIK FI Order*, 15 FCC Rcd at 24836.

[50] *See supra*, note 37 and accompanying text.

[51] *SES Americom, Inc.*, *Application for Special Temporary Authority to Operate AMC-2 at 105° W.L.*, Order and Authorization, DA 03-2197 (Sat. Div. rel. July 7, 2003) (*"SES Americom"*).

[52] In *PanAmSat*, a U.S.-licensed operator sought temporary authority to operate at an orbital location at which the U.S. had not licensed a satellite system and at which the U.S. filing had been cancelled by the ITU. *See PanAmSat*, 15 FCC Rcd at 21803-04. In *Columbia Communications*, a U.S. licensee sought to operate at an orbital location at which an existing U.S. operator had an expectation to operate a replacement satellite. *See* (continued….)

decisions, Loral is seeking to access the U.S. market via an orbital location and frequencies which it has been regularly assigned to use by Papua New Guinea. We observe that New Skies did not submit any evidence, nor does the record otherwise show, that construction of a higher-priority satellite is at an advanced stage, or that launch of such a satellite is imminent. Particularly under these circumstances, and since both Loral and New Skies plan to operate at regularly assigned non-U.S.-licensed orbital locations, we believe that any disputes regarding the operations of their respective systems are best handled at this time through the ITU coordination process rather than through additional conditions on Loral's authority to serve the U.S. market.

18. We stress that our action declining to adopt the additional conditions proposed by New Skies does not relieve Loral of the need to inform customers of the terms and conditions of its authorization to serve the U.S. market via the Telstar 13 satellite, including the condition that Loral cease operations to and from the U.S. via Telstar 13 in the event that a network with higher ITU priority, such as NSS-11, brings into use its satellite. Any service restrictions or operating conditions for a particular satellite are already routinely noted as part of the Permitted Space Station List. As previously stated by the Commission, an operator of a satellite placed on the Permitted Space Station List must inform its customers, whether service suppliers or end-users, that use of its space segment capacity is subject to the conditions and technical requirements specified on the Permitted Space Station List.[53]

4. Eligibility Requirements

19. The Commission's *DISCO II Order* requires that space station operators not licensed by the Commission meet the same legal, financial, and technical qualifications required of U.S.-licensed space station operators. Nothing in the record raises concerns about Loral's legal qualifications to provide satellite services in the United States. Accordingly, we focus our review on Loral's financial and technical qualifications.

a. Financial Qualifications

20. In the *DISCO II Order*, the Commission exempted in-orbit, non-U.S. space station systems from financial qualification requirements, reasoning that "where the foreign satellite is already in-orbit, there is no concern about whether the prospective entrant is financially capable of building and launching its system."[54] Although Telstar 13 was not in orbit at the time of Loral's filing, Loral asserts that the reasoning behind the exemption for in-orbit satellites is also applicable to Telstar 13. Specifically, Loral argues that there is no risk that Telstar 13 C-band payload on the EchoStar 9 satellite will not be constructed or launched because construction of the EchoStar 9/Telstar 13 satellite is complete, a launch reservation has been obtained, and Loral is authorized by Papua New Guinea to use the ITU C-band filing at the 121º W.L. orbital location.[55]

(Continued from previous page)
Columbia Communications, 16 FCC Rcd at 12483, 12485-86. In *SES Americom*, a U.S.-licensed operator sought to operate telemetry, tracking, and control functions in the C-band on a temporary basis at an orbital location at which the U.S. operator had no existing C-band authority and at which a non-U.S.-licensed operator had filed a valid prior ITU coordination request. *See SES Americom* at para. 4.

[53] *See DISCO II First Reconsideration Order*, 15 FCC Rcd at 7215.

[54] *DISCO II Order*, 12 FCC Rcd at 24176 (para. 191).

[55] Loral Petition at 3-4.

21. We will treat Loral's petition as a request for waiver of the financial demonstration requirement in Sections 25.114(c)(13) and (17), 25.137(b), and 25.140 of the Commission's rules. Commission rules may be waived if there is "good cause" to do so.[56] 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.[57]

22. We conclude that there is good cause to grant Loral a waiver of the financial qualification requirement in this case with respect to its Permitted List petition. The Commission's financial qualifications requirements are designed to prevent warehousing by requiring applicants to show that they have the means to proceed with their business plans by launching and operating a satellite. Loral states that construction of the Telstar 13 payload is complete and that the launch of the satellite has occurred.[58] Consequently, granting a waiver of our financial demonstration requirement in this case satisfies stated policy objectives and serves the public interest. We also note that the Commission has decided to eliminate this requirement, effective upon publication of the order adopting its decision in the Federal Register.[59] We will also condition our action upon successful launch and placement into the assigned 121° W.L. orbital location of the Telstar 13/EchoStar 9 satellite by September 30, 2003.

b. Technical Qualifications

23. The Commission's satellite licensing policy is predicated upon two-degree orbital spacing between geostationary satellites.[60] This policy permits the maximum use of the geostationary satellite orbit.[61] Applicants must demonstrate that they comply with the Commission's technical requirements, designed to permit two-degree orbital spacing, before being authorized to provide service in the United States. We have allowed satellites that are not two-degree compliant to serve the United States, but only when the applicants can demonstrate that their operations will cause no harmful interference to existing compliant satellite operations or where the adjacent satellite operators have reached a coordination agreement. Further, we require satellites that are not two-degree compliant to operate on a non-harmful interference basis relative to any future satellite networks serving the United States that are two-degree

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[56] *See* 47 C.F.R. § 1.3 (2001). *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*").

[57] *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).

[58] Loral Petition at 4. Loral has released a press statement that Telstar 13 was successfully launched on August 7, 2003. *See* Press Release: "Loral-Built EchoStar IX/Telstar 13 Multi-band Satellite Successfully Launched," available at http://www.loral.com/inthenews/030808.html.

[59] *See Space Station Reform First Report and Order,* 18 FCC Rcd at 10824 (para. 164).

[60] 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).

[61] *See Assignment of Orbital Locations to Space Stations in the Domestic Fixed-Satellite Service,* Order and Authorization, 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 enabled satellite operators to place their space stations two degrees apart, the Commission was able to accommodate more geostationary satellites.

compliant. [62]

24. Based on our review of the technical information in Loral's petition for declaratory ruling, we conclude that Telstar 13 complies with all applicable rules for operating in the C-band, except Section 25.210(a)(3). Section 25.210(a)(3) requires that C-band payloads on space stations be capable of switching polarity upon ground command.[63] The Commission's rules require polarity-switching capability for two reasons: to permit U.S.-licensed satellites the flexibility to be assigned to different U.S. orbital positions, and to mitigate potential interference between adjacent fixed-satellite systems transmitting analog TV signals.[64]

25. Although there is no evidence in Loral's petition that Loral is capable of switching polarity on Telstar 13 upon ground command, we grant Loral a waiver of Section 25.210(a)(3). We conclude that waiving Section 25.210(a)(3) will not undermine the policies underlying the Commission's adoption of this rule, provided that we place appropriate conditions on this waiver. First, this waiver will remain in effect only as long as Telstar 13 remains at the 121º W.L. orbital location. Second, Loral represents that it has reached coordination agreements with nearby satellite systems operating in the C-band and providing service to the U.S. market.[65] Accordingly, we condition this waiver on Loral operating Telstar 13 in accordance with the coordination agreements it has reached with operators of satellites that have been authorized to provide service to the U.S. market, and any future coordination agreements. These conditions will be included on the Permitted Space Station List with respect to Telstar 13.

26. The EchoStar 9 satellite, on which Loral's C-band payload will operate, will perform telemetry, tracking and control ("TT&C") functions primarily in the Ku-band, although Telstar 13 will include tracking beacons in the C-band.[66] We have already authorized EchoStar to operate the Ku-band payload of this satellite.[67]

c. Other Issues

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

28. Finally, pursuant to the Bureau's Public Notice of December 17, 1999, placing a satellite

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

[63] 47 C.F.R. § 25.210(a)(3) (2001).

[64] *See ANIK F1 Order*, 15 FCC Rcd at 24835; *see also* Empresa Brasileira de Telecomicaçöes S.A., *Petition for Declaratory Ruling on Access to Brasilsat A2 Satellite via U.S. Earth Stations*, Order, 16 FCC Rcd 655 (Sat. and Rad. Div. 2001).

[65] We note that the polarization sense at this location is the same as that of the neighboring Canadian satellite two degrees away.

[66] *See* Loral Petition, Appendix A at A-23.

[67] *See EchoStar Satellite Corp.*, Order and Authorization, DA 03-2560 (Sat. Div. rel. August 1, 2003).

on the Permitted Space Station 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.[68] We find that it is in the public interest to allow common carriers with global international Section 214 authorizations to communicate with Telstar 13.

IV. CONCLUSION

29. We have performed a *DISCO II* analysis in this Order, and have determined that the conventional C-band operations of Telstar 13 are two-degree spacing compliant. Consequently, we add Telstar 13 to the Commission's Permitted List, subject to the other conditions set forth in this Order. This will allow U.S.-licensed earth stations with "ALSAT" designations to communicate with Telstar 13 without modifying their licenses. We emphasize, however, that Telstar 13 is not permitted to provide DTH, DBS, or DARS to users in the United States, and its inclusion on the Permitted List is so conditioned.

V. ORDERING CLAUSES

30. 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) and 25.137(c), Loral SpaceCom Corp.'s Petition for Declaratory Ruling to Add Telstar 13 to the Commission's Permitted Space Station List, File No. SAT-PDR-20020315-00025, IS GRANTED.

31. IT IS FURTHER ORDERED that any earth station in the United States with "ALSAT" designated as a point of communication, IS GRANTED authority to provide Fixed Satellite Services (FSS), to, from, or within the United States, by accessing the Telstar 13 satellite, at the 121° W.L. orbit location, subject to the conditions set forth in each earth station license and the following conditions:

(a) ALSAT-designated earth stations are only authorized to communicate with Telstar 13 in the 3700-4200 MHz and 5925-6425 MHz frequency bands, consistent with the technical parameters contained in the earth station authorization.

(b) Loral SpaceCom Corp.'s operation of Telstar 13 shall be in compliance with applicable current and future operational requirements as a result of coordination agreements reached with other satellite systems.

(c) In the absence of a coordination agreement with a satellite network with higher ITU priority, Telstar 13 must cease service to the U.S. market immediately upon launch and operation of the higher ITU priority satellite, or be subject to further conditions designed to address potential harmful interference to a satellite with ITU date precedence.

(d) In the absence of a coordination agreement with a satellite network with higher ITU priority, earth station licensees communicating with Telstar 13 must terminate immediately any operations that cause harmful interference.

(e) ALSAT-designated earth stations are not authorized to use Telstar 13 to provide

[68] *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 (rel. December 17, 1999).

any Direct-to-Home ("DTH") service, Direct Broadcast Satellite ("DBS") service, or Digital Audio Radio Service ("DARS") to, from, or within the United States.

32. IT IS FURTHER ORDERED that, pursuant to Section 1.3 of the Commission's rules, 47 C.F.R. § 1.3 (2001), ALSAT designated earth stations ARE GRANTED a waiver of Sections 25.114(c)(13) and (17), 25.137(b), 25.140, and 25.210(a)(3) of the Commission's rules, 47 C.F.R. §§ 25.114(c)(13) and (17), 25.137(b), 25.140, and 25.210(a)(3) (2001), subject to the conditions set forth in this Order.

33. IT IS FURTHER ORDERED that the Telstar 13 satellite, together with the conditions set forth in this Order IS PLACED on the "Permitted Space Station List," conditioned upon successful launch of the Telstar 13 satellite no later than September 30, 2003.

34. 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 Division
International Bureau