

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

In the Matter of)	
)	
HORIZONS SATELLITE LLC)	
)	SAT-PDR-20030210-00015
)	
Petition for Declaratory)	
Ruling to Add Horizons I to the)	
Permitted Space Station List)	
)	

ORDER

Adopted: November 21, 2003

Released: November 24, 2003

By the Chief, Satellite Division, International Bureau:

I. INTRODUCTION

1. In this Order, we add the Horizons Satellite LLC’s Horizons I , licensed by Japan and operating at the 127° W.L. orbit location, to the Commission’s Permitted Space Station List (“Permitted List”), with conditions. As a result of this action, U.S. earth stations with “routine” technical parameters will be able to access Horizons I immediately in Ku-band frequencies.¹ Placing Horizons I on the Permitted List should stimulate competition in the United States, provide consumers more alternatives in choosing communications providers and services, reduce prices, and facilitate technological innovation.

II. BACKGROUND

2. In the DISCO II Order², the Commission implemented the satellite market-opening commitments made by the United States in the World Trade Organization Agreement on Basic Telecommunications Services (WTO Basic Telecom Agreement).³ It also established a framework under which it would consider access by

¹ The term “Ku-band,” as used in this Order, refers to frequencies in the 11.7-12.2 GHz (space-to-earth) and 14.0-14.5 GHz (Earth-to-space) bands.

² 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 or DISCO II Order).

³ The WTO came into being on January 1, 1995, pursuant to the Marrakesh Agreement Establishing the World Trade Organization (The Marrakesh Agreement). 33 I.L.M. 1125 (1994). The Marrakesh

foreign satellites not covered by the WTO Basic Telecom Agreement. 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.⁴ This procedure requires a U.S. earth station operator seeking to communicate with a non-U.S. satellite to file an earth station application for an initial license or for a modification of its existing earth station license, listing the foreign satellite as a point of communication.

3. In the *DISCO II First Reconsideration Order*, the Commission streamlined this 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- or Ku-bands, the satellite operator may also request authority to be added to the "Permitted List." This list identifies all satellites and services with which U.S. earth stations with routinely-authorized technical parameters (known as "ALSAT" earth stations) are permitted to communicate without additional Commission action, provided that those communications fall within the same technical parameters and conditions established in the earth stations' original licenses.⁶ The Permitted Space Station List is maintained on our website, and is also available via fax or e-mail.⁷

4. On February 25, 2003, Horizons LLC filed a petition for declaratory ruling requesting that the Commission add Horizons-1 to the Permitted Space Station List. Horizons I is the Ku-band payload on a hybrid C- and Ku-band satellite to be operated at the 127° W.L. orbital location. PanAmSat Licensee Corp. (PanAmSat) plans to operate the C-band payload of this satellite under the name Galaxy XIII.⁸ Horizons

Agreement includes multilateral agreements on trade in goods, services, intellectual property, and dispute settlement. The General Agreement on Trade in Services (GATS) is Annex 1B of the Marrakesh Agreement. 33 I.L.M. 1167 (1994). The WTO Telecom Agreement was incorporated into the GATS by the Fourth Protocol to the GATS (April 30, 1996), 36 I.L.M. 354 (1997) (Fourth Protocol to the GATS).

⁴ *DISCO II*, 12 FCC Rcd at 24174 (para. 186).

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 7207, 7212 (para. 10) (1999) (*DISCO II First Reconsideration Order*).

⁶ *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, an earth station operator providing fixed-satellite service in the conventional C- (3700-4200 MHz and 5925-6425 MHz) and Ku- (14.0-14.5 GHz and 11.7-12.2 GHz) bands could access any U.S. satellite without additional Commission action, provided that those communications fall within the same technical parameters and conditions established in the earth stations' licenses.

⁷ *DISCO II First Reconsideration Order*, 15 FCC Rcd at 7215-16 (para. 19).

⁸ We have separately authorized Galaxy XIII to operate at the 127° W.L. orbital location. *Panamsat Licensee Corp.*, DA 03-3005 (released September 30, 2003).

plans to operate the Horizons I payload pursuant to an authorization from Japan's Ministry of Public Management, Home Affairs, Posts and Telecommunications (MPHPT). New Skies Satellites N.V. (New Skies) filed a petition to deny, defer or condition the Horizons' petition for declaratory ruling and Horizons filed an opposition.

III. DISCUSSION

A. General Framework

5. 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,⁹ spectrum availability,¹⁰ eligibility and operating (*e.g.*, technical) requirements,¹¹ and national security, law enforcement, foreign policy, and trade concerns.¹² We evaluate Horizons's request under this framework.

B. 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.¹³ 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).¹⁴ 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.¹⁵

⁹ *DISCO II*, 12 FCC Rcd at 24107-56 (paras. 30-145).

¹⁰ *DISCO II*, 12 FCC Rcd at 24157-59 (paras. 146-50).

¹¹ *DISCO II*, 12 FCC Rcd at 24159-69 (paras. 151-74).

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

¹³ *DISCO II*, 12 FCC Rcd at 24112 (para. 39).

¹⁴ *DISCO II*, 12 FCC Rcd at 24112 (para. 25).

¹⁵ *DISCO II*, 12 FCC Rcd at 24112 (para. 39); 24157 (para. 143).

7. In this case, the presumption in favor of entry applies to Horizons I, which is licensed by Japan, a WTO Member,¹⁶ and which will provide non-DTH fixed-satellite service to customers in the United States. Although New Skies filed a petition to deny, defer or condition Horizons's petition, it provided no evidence to rebut the proposition that Horizons I's entry into the U.S. market is pro-competitive. Indeed, New Skies does not object to Horizons I being added to the Permitted Space Station List as long as conditions are imposed that would preserve its future ability to serve the U.S. market from the 127° W.L. orbital location.

8. Accordingly, we conclude that Horizons I'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 Horizons I's placement on the Permitted List, however, we prohibit U.S. earth stations from accessing Horizons I for DTH, DBS, or DARS.

C. Spectrum Availability

9. In *DISCO II*, the Commission determined that, given the scarcity of geostationary satellite orbit locations and spectrum resources, it would consider spectrum availability as a factor in determining whether to allow a foreign satellite to serve the United States.¹⁷ This is consistent with the Chairman's Note to the 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.

10. Allowing Horizons to serve the United States from the 127° W.L. orbit location in the Ku-band will neither affect operations of any U.S.-licensed satellites nor contravene the Commission's spectrum/frequency management policies. Moreover, Horizons states that it has completed coordination with all affected U.S.-licensed satellites.¹⁸

11. New Skies is concerned about the future availability of spectrum for its proposed Ku-band operations at 127° W.L. in light of Horizons's petition.¹⁹ New Skies

¹⁶ 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_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 exceptions.).

¹⁷ *DISCO II*, 12 FCC Rcd at 24159 (para. 150).

¹⁸ Horizons Petition at 2.

¹⁹ New Skies Petition at 2.

alleges that the Netherlands enjoys ITU date priority over Japan in the 11.7-12.2 GHz band at this location and that its filing is entitled to protection.²⁰ New Skies further states that it intends to make use of its right to deploy a Ku-band satellite in the 127° W.L. orbit location, making international coordination of Japanese and Dutch systems at that location technically impossible. As evidence of this fact, New Skies notes that the provisional license issued by MPHPT authorizes Horizons to operate specified carriers in the 11.7-12.2 GHz band only on a non-interference basis. New Skies asks that the Commission grant Horizon's petition subject to appropriate conditions that would protect its rights and the rights of consumers. According to New Skies, any grant in this proceeding should include the following conditions: 1) Horizons must terminate its operations in the 11.7-12.2 GHz band at least thirty days before a satellite bringing the NSS-7 satellite network into use at the 127° W.L. orbital locations is launched or relocated; 2) Horizons must inform its customers, in writing, that service from the 127° W.L. orbital location is being provided pursuant to a grant of temporary and conditional authority and Horizons is responsible for ensuring that all end-users, including those served by resellers that access capacity on the satellite, receive this notification; and 3) within seven days of receiving notification from New Skies of the date it will bring the NSS-7 network into use, Horizons must inform its customers that service from 127° W.L. will terminate thirty days before the bring into use (BIU) date.²¹

12. Horizons states that its authorization should be immediate and unconditional. According to Horizons, it is not the Commission's role to address international coordination issues involving satellite systems licensed elsewhere.²² Horizons notes that the Commission's rules already provide that a satellite network is not protected from harmful interference until coordination is complete and references standard language in Commission authorizations to that effect.²³

13. We note that the 2003 World Radiocommunication Conference at its 13th Plenary Meeting adopted language with respect to frequency assignments which were formerly subject to RR S5.488.²⁴ The language, set forth in Annex A to the Minutes of the 13th Plenary Meeting, provides that ITU filings of the type submitted by the Netherlands and Japan for Ku-band operations at the 127° W.L. orbital location are

²⁰ *Id.* at 4.

²¹ *Id.* at 12.

²² *Id.* at 8.

²³ *Id.* at 10.

²⁴ This regulation indicated, that, in Region 2, i.e. the geographic areas that Horizons I would serve, use of the band 11.7-12.2 GHz by the fixed satellite service is "limited to national and subregional systems" and "is subject to previous agreement between the administrations concerned" and those administrations having services, operating in accordance with the ITU Table of Frequency Allocations, that might be affected. The regulation was substantially modified to remove these requirements at WRC-2000. *See* Final Acts of the World Radiocommunication Conference (Istanbul, 2000).

considered as having been received on the same date.²⁵ It appears that there may be a dispute as to the applicability of this decision to the 127° W.L. orbital location.²⁶ We are not in a position to resolve this dispute. We note that our current streamlined processes for permitting use of foreign licensed satellites by U.S. licensed earth stations depend in part on foreign licensed space station operators, and the administrations which authorize them, exercising the utmost in good will and cooperation in addressing and resolving coordination issues, and we urge the parties to bear this in mind as they proceed.

14. Under these circumstances, we find that the additional conditions proposed by New Skies are not appropriate at this time. The conditions proposed by New Skies have been imposed by the Commission in the past in authorizing PanAmSat and Columbia Communications to occupy unused orbital locations for temporary uses for which the U.S. was not seeking ITU registration.²⁷ Unlike the applicants in these decisions, Horizons is seeking to access the U.S. market via an orbital location and frequencies which it has been regularly assigned to use by Japan's MPHPT to an ITU filing. We observe that New Skies did not submit any evidence, nor does the record otherwise show, that construction of its satellite is at an advanced stage, or that launch of such a satellite is imminent. Under these circumstances, and since both Horizons and New Skies plan to operate in the Ku-band at a regularly assigned orbital location, 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 Horizons's authority to serve the U.S. market. We retain the discretion to modify this ruling and to adopt any additional conditions that may be required as the ITU coordination process for Horizons I progresses.

15. We note that our action declining to adopt the additional conditions proposed by New Skies does not relieve Horizons of the need to inform customers of the terms and conditions of its listing on the Permitted Space Station List. An operator of a space station 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.²⁸

D. Eligibility Requirements

²⁵ See Minutes of the 13th Plenary Meeting, World Radiocommunication Conference, Geneva 2003, Annex A, 1(c) (i).

²⁶ See Submission from the Administration of the Netherlands Concerning Nos. 5.488 and 5.491 of the Radio Regulations, ITU Document RRB03-3/9-E (13 November 2003); Submission from the Administration of Japan Concerning Nos. 5.488 and 5.491 of the Radio Regulations, ITU Document RRB03-3/1-E (17 October 2003).

²⁷ See *PanAmSat*, 15 FCC Rcd 21802, 03 (Int'l Bur. 1999)3-04; *Columbia Communications*, 16 FCC Rcd 12480, 12483, 12485-86 (Int'l Bur. 2001).

²⁸ *DISCO II Order*, 12 FCC Rcd at 24176 (para. 191).

16. 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.²⁹ In its *Space Station Licensing Rules Order*,³⁰ the Commission eliminated its financial qualification requirement in favor of a bond requirement. Because the satellite which houses the Horizons I Ku-band payload has already been constructed and launched, that requirement would not be applicable. After review of its request, we conclude that Horizons I also complies with our technical qualifications requirements.

E. Other Issues

17. As described above, under *DISCO II*, national security, law enforcement, foreign policy, and trade concerns are included in the public interest analysis.³¹ Nothing in the record before us raises any such concerns. We note, however, that New Skies questions the sufficiency of the license issued by MPHPT. We address this issue below.

18. Adequacy of Licensing by MPHPT. New Skies asserts that (1) there are significant questions about the sufficiency of the authorization issued by Japan for the Ku-band payload at 127° W.L According to New Skies, the Japan administration granted Horizons a provisional Type I Telecommunications Business license, which New Skies argues is similar to a Section 214 authorization in that it authorizes the carrier to provide facilities-based services.³² However, New Skies states that there has been no public announcement confirming that Horizons Satellite LLC has been issued a corresponding radio license. New Skies argues that the Commission has a policy against issuing an earth station license to communicate with a space station that has not been fully licensed by a foreign administration.³³

19. In response to New Skies's questions regarding the adequacy of the license granted by MPHPT, Horizons attached a copy of the radio license issued by the MPHPT. According to Horizons, the license gives Horizons exclusive authority to launch and operate Horizons I. Horizons states that the provisional license will be converted into a final license when Horizons I is launched and makes its first successful communications.³⁴ Horizons points to other instances where the Commission has added

²⁹ *DISCO II*, 12 FCC Rcd at 24161-63 (paras. 154-59).

³⁰ *Amendment of the Commission's Space Station Licensing Rules*, 18 FCC Rcd 10760 (2003)(*Space Station Licensing Rules Order*).

³¹ *DISCO II*, 12 FCC Rcd at 24170-72 (paras. 178-82).

³² New Skies Petition, p. 6.

³³ *Id.* at 7.

³⁴ Horizons Opposition, p. 5.

a non-U.S.-licensed satellite to the Permitted Space Station List based on a "provisional license".³⁵ Moreover, Horizons argues that if it is to be held to the standards set forth by New Skies, New Skies should be held accountable to those same standards in order to invoke the Commission's processes. In this regard, Horizons notes that New Skies has not filed a license from the Netherlands, provisional or otherwise, and, if it has a license, has not demonstrated the degree of finality attached to the license.³⁶

20. We find no basis to deny or defer action on Horizons' petition based on New Skies' concerns about the sufficiency of the license issued by the Japanese administration. Horizons has explained that the provisional license is sufficient to allow it to launch the Ku-band payload on the satellite. Horizons states that the license will become final once the satellite is launched and makes its first successful communications.³⁷ However, in order to ensure that there is no doubt concerning this matter, we will require that Horizons submit a copy of its final license within 15 days following the first successful communications from Horizons I at the 127° W.L. orbital location.

21. Milestone requirements. In its *Space Station Licensing Rules Order*, the Commission adopted generic milestone requirements covering various stages in the satellite procurement/licensing process from contract execution to launch and operation.³⁸ The Commission stated that these guidelines would also be applicable to non-U.S.-licensed satellites seeking access to the U.S. market. In this case, the satellite that houses the Horizons I Ku-band payload has been constructed and has been successfully launched. In light of these considerations, we do not impose a milestone requirement.

IV. ORDERING CLAUSES

22. 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 0.261 and 25.137(c) of the Commission's rules, 47 C.F.R. §§ 0.261, 25.137(c), each earth station with "ALSAT" designated as a point of communication, IS GRANTED authority to provide Fixed Satellite Services (FSS) in the 11.7-12.2 GHz and 14.0-14.5 GHz frequency bands, to, from, or within the United States, by accessing Horizons I at the 127° W.L. orbital location, subject to the conditions set forth in its earth station license and in this Order below.

³⁵ See *In the Matter of Telesat Canada Petition for Declaratory Ruling for Inclusion of Anik F2 on the Permitted Space Station List*, Order, DA 02-3490, at 2 & n. 14 (Dec. 18, 2002).

³⁶ Horizons Opp., p. 6.

³⁷ See also *Panamsat Licensee Corp.*, DA 03-3005 (released September 30, 2003), at Appendix A (letter exchange signed by MPHPT stating that Japan will be the licensing administration for Horizons at the 127° W.L. orbital location).

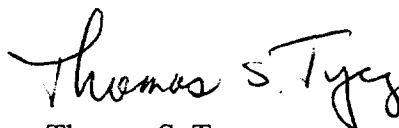
³⁸ *Space Station Licensing Rules Order* at para 174.

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

- a) ALSAT-designated earth stations are only authorized to communicate with Horizons I in the 11.7-12.2 GHz and 14.0-14.5 GHz, consistent with the technical parameters contained in the earth station authorization.
- b) Horizons's operation of Horizons I 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 future, should the Commission authorize access to the U.S. market by a U.S.-licensed or non-U.S.-licensed satellite that is providing services to the U.S. that are two-degree-compliant, and is located two degrees or more from Horizons I, Horizons would be expected to coordinate in good faith with the licensee of that satellite.
- d) ALSAT-designated earth stations are not authorized to use Horizons I 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.
- e) Horizons shall submit a copy of its final radio authorization, issued by MPHPT, within 15 days following the first successful communications from Horizons I at the 127° W.L. orbital location.

24. This Order 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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