

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

In the Matter of)	
)	File Nos.
Loral Skynet do Brasil)	SAT-PDR-20021010-00196
)	SAT-WAV-20031202-00352
Petition for Declaratory Ruling to Add)	S2474
Estrela do Sul 1, a Ku-band Satellite,)	
to the Permitted Space Station List)	

ORDER

Adopted: December 23, 2003

Released: December 23, 2003

By the Deputy Chief, Satellite Division, International Bureau:

I. INTRODUCTION

1. In this Order, we add the Estrela do Sul 1 satellite, licensed by Brazil, to be located at the 63° W.L. orbit location, to the "Permitted Space Station List," with conditions. The Permitted Space Station List denotes all satellites with which U.S. earth stations with "routinely" authorized technical parameters are permitted to communicate without additional Commission action, provided that those communications fall within the same technical parameters and conditions established in the earth stations' licenses. As a result of this action, routine earth stations will be able to communicate with Estrela do Sul 1 in the conventional Ku-band.¹ Placing Estrela do Sul 1 on the Permitted List should stimulate competition in the United States by providing consumers more alternatives in choosing communications providers and services.

II. BACKGROUND

2. In the DISCO II Order², the Commission, among other things, implemented the satellite market-opening commitments made by the United States in the

¹ For purposes of this Order, 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 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*).

World Trade Organization Agreement on Basic Telecommunications Services (WTO Basic Telecom Agreement).³ Subsequently, in the *DISCO II First Reconsideration Order*, the Commission adopted a new procedure by which the operators of in-orbit non-U.S. satellites could request to serve the U.S. market. Previously, this request could be made only by an earth station operator. The *First Reconsideration Order* also created the "Permitted Space Station" list to facilitate access to these authorized non-U.S. satellites.⁴ 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 is 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.⁵ The Permitted Space Station List is maintained on our website, and is also available via fax or e-mail.⁶

3. On October 10, 2002, Loral Skynet do Brazil (LSdB), which holds the license for Estrela do Sul 1, filed a petition for declaratory ruling requesting us to add Estrela do Sul 1 to the Permitted List.⁷ No comments were received. We grant this request with conditions.

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 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 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, 7209-10 (para. 10) (1999) (*DISCO II First Reconsideration Order*).

⁵ *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- and Ku-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.

⁶The website is www.fcc.gov/ib/sd/se/permitted.html.

⁷ LSdB is licensed by the Brazilian government to operate the Estrela do Sul 1 satellite at the 63° W.L. orbit location.

III. DISCUSSION

A. General Framework

4. 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,⁸ spectrum availability,⁹ eligibility and operating (*e.g.*, technical) requirements,¹⁰ and national security, law enforcement, foreign policy, and trade concerns.¹¹ We evaluate Loral's request under this framework.

B. Competition Considerations

5. 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.¹² 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).¹³ This means that we will presume that WTO-member licensed satellite 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.¹⁴

6. In this case, the presumption in favor of entry applies to Estrela do Sul 1, which is licensed by Brazil, a WTO Member,¹⁵ and which will provide non-DTH fixed-

⁸ *DISCO II*, 12 FCC Rcd at 24107-56 (paras. 30-145).

⁹ *DISCO II*, 12 FCC Rcd at 24157-59 (paras. 146-50).

¹⁰ *DISCO II*, 12 FCC Rcd at 24159-69 (paras. 151-74).

¹¹ *DISCO II*, 12 FCC Rcd at 24169-72 (paras. 175-82).

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

¹³ *DISCO II*, 12 FCC Rcd at 24112 (para. 25).

¹⁴ *DISCO II*, 12 FCC Rcd at 24112 (para. 39); 24157 (para. 143).

¹⁵ 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.).

satellite service to customers in the United States. There is no evidence to rebut the proposition that Estrela do Sul 1's entry into the U.S. market is pro-competitive. Therefore, we conclude that Estrela do Sul 1'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 Estrela do Sul 1's placement on the Permitted List, however, we prohibit U.S. earth stations from accessing Estrela do Sul 1 for DTH, DBS, or DARS.

C. Spectrum Availability

7. In *DISCO II*, the Commission determined that, given the scarcity of geostationary 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.¹⁶ 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.

8. Estrela do Sul 1 will provide service to the United States from the 63° W.L. orbit location. Brazil has filed coordination information with the International Telecommunication Union (ITU) for a Ku-band satellite at the 63° W.L. orbital location. LSdB states that it is authorized by Brazil to operate under this ITU filing. LSdB also states that it has already coordinated the Estrela do Sul 1 satellite with U.S.-licensed satellites within the +/- 9° coordination arc.¹⁷ Therefore, allowing Loral to serve the United States from this orbit location will not affect operations of any U.S.-licensed satellites nor contravene the Commission's spectrum/frequency management policies.

D. Eligibility Requirements

a. Legal Requirements

9. 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.¹⁸ Nothing in the record suggests that LSdB is not legally qualified to provide service to the United States using its Estrela do Sol 1 satellite.

¹⁶ *DISCO II*, 12 FCC Rcd at 24159 (para. 150).

¹⁷ Petition at 2.

¹⁸ *DISCO II*, 12 FCC Rcd at 24161-63 (paras. 154-59).

b. Technical Requirements

10. The Commission's satellite licensing policy is predicated upon two-degree orbital spacing between geostationary satellites.¹⁹ This policy permits the maximum use of the geostationary satellite orbit.²⁰ 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. The Commission may license satellites that are not two-degree compliant (or earth stations seeking to access such), but only when the applicants can demonstrate that their operations will cause no harmful interference to existing compliant satellite operations. Further, non-conforming operations are authorized conditioned upon a licensee accommodating future satellite networks serving the United States that are two-degree compliant.²¹

11. Loral has submitted the technical information specified in Sections 25.114 and 25.210 of the Commission's rules. Upon review of this information, we find that Estrela do Sul 1 complies with the Commission's Part 25 requirements.²²

12. We also observe that Estrela do Sul 1 utilizes both standard and extended Ku-band frequencies. The Commission has consistently held that, because of interference concerns with other services, the Permitted List allows transmissions without further approval only in the conventional C and Ku-bands.²³ Consequently, we limit the Estrela do Sul 1's Permitted Space Station List operations to the conventional Ku-band (11.7-12.2 GHz, 14.0-14.5 GHz). Any earth station wishing to communicate with Estrela do Sul 1 using extended Ku-band frequencies must file a separate application with the Commission which will be considered on a case-by-case basis.²⁴

¹⁹ 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).

²⁰ *Assignment of Orbital Locations to Space Stations in the Domestic Fixed-Satellite Service*, 11 FCC Rcd 13788, 13790 (para. 6) (1996). Prior to the Commission's adoption of the two-degree spacing policy, satellites in the geostationary satellite orbit were usually spaced three or four degrees apart. By adopting rules that enabled satellite operators to place their space stations two degrees apart, the Commission was able to accommodate more geostationary satellites.

²¹ See, e.g., *Systematics General Corporation*, Order and Authorization, 2 FCC Rcd 7550, 7550-51 (para. 9) (Com. Car. Bur. 1987); *New Skies Satellites, N.V.*, Order and Authorization, 14 FCC Rcd 13003, 13038 (para. 78) (1999).

²² 47 C.F.R. §§ 25.114 and 25.210.

²³ *DISCO II First Reconsideration Order*, 15 FCC Rcd at 7210. See also *In the Matter of European Telecommunication Satellite Organization*, Petition for Declaratory Ruling, File No. SAT-PDR-20000214-0059, 15 FCC Rcd 23486, 23487-8 (2000).

²⁴ 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 that are two-degree-compliant, and is located two degrees or more from Estrela do Sul 1, Loral would be expected to coordinate in good faith with the licensee of that satellite.

c. Financial Requirements

13. In its *First Space Station Licensing Reform Order*, the Commission eliminated the financial requirements then in place and replaced them with a bond requirement.²⁵ Under this new financial requirement, any entity awarded a license for a GSO satellite must execute a \$5 million performance bond, payable to the U.S. Treasury, within 30 days of the date of the license grant. The bond is payable upon failure to meet any implementation milestone in the license, where adequate justification for extending that milestone is not provided.²⁶ Licensees may reduce the amount of the bond upon meeting each milestone.²⁷ This requirement applies both to U.S.-licensed satellites and satellites licensed by other countries that seek to serve the U.S. market.²⁸

14. LSdB requests a waiver of the bond requirement citing the completion of construction of the Estrela do Sul 1 satellite and its scheduled launch on January 9, 2004.²⁹ While we conclude that a reduction in the bond amount is appropriate given the construction status of Estrela do Sul 1, LSdB has not convinced us that a waiver of the bond requirement for the remaining launch milestone is warranted. The bond requirement is intended to ensure that satellites are timely launched and service is provided to customers. Estrela do Sul 1's scheduled launch does not guarantee when—or even if—the satellite will actually be placed into orbit. Because LSdB has met three of the four standard implementation milestones, we reduce the bond requirement by 75% and require that LSdB post a \$1.25 million bond within 30 days of this order. If LSdB does not submit this bond by the required date, we will remove Estrela do Sul 1 from the Permitted List. If the satellite is launched before the bond is due, the requirement becomes unnecessary and a bond will not be due.

d. Other Requirements

15. As described above, under *DISCO II*, national security, law enforcement, foreign policy, and trade concerns are included in the public interest analysis.³⁰ Nothing in the record before us raises any such concerns.

²⁵ Para. 170.

²⁶ *Id.*

²⁷ *Id.* at para. 167.

²⁸ *Id.* at para. 309.

²⁹ Letter from John Stern, Esq., Counsel for LSdB to Tom Tycz, Chief, Satellite Division, International Bureau (December 2, 2003). LSdB notes that it requested a waiver of the Commission's financial qualification requirement before the new rules took effect and requests that its pending waiver request be treated a request for waiver of the new bond and milestone requirements in Sections 25.137 and 25.149 of the Commission's rules.

³⁰ *DISCO II*, 12 FCC Rcd at 24170-72 (paras. 178-82).

E. Milestones

16. In its *First Space Station Licensing Reform Order*, the Commission adopted generic milestone requirements covering various stages in the satellite procurement/licensing process from contract execution to launch and operation.³¹ Because of Estrela do Sul 1's construction status, we will impose only a launch milestone. As codified in Section 25.164(a), the launch milestone for GSO licensees follows the previous milestone—construction commenced--by two years. Consequently we will require LSdB to launch Estrela do Sul 1 by January 2006. We will remove the satellite from the Permitted List if it is not successfully launched by this date.

IV. ORDERING CLAUSES

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 0.261 and 25.137(c) of the Commission's rules, 47 C.F.R. §§ 0.261, 25.137(c), the Petition for Declaratory Ruling filed by Loral Skynet do Brasil (File No. SAT-PDR-20021010-00196) is GRANTED in part and DENIED in part and each U.S.-licensed 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 the Estrela do Sul 1 satellite (S2474) at the 63° W.L. orbit location, subject to the conditions set forth in its earth station license and in this Order below.

18. IT IS FURTHER ORDERED that the Estrela do Sul 1 satellite, S2474, IS PLACED on the Permitted Space Station List, subject to the following conditions:

- a) ALSAT-designated earth stations are only authorized to communicate with Estrela do Sul 1 in the 11.7-12.2 GHz and 14.0-14.5 GHz bands, consistent with the technical parameters contained in the earth station authorization.
- b) Operation of Estrela do Sul 1 shall be in compliance with applicable current and future operational requirements as a result of coordination agreements reached with other satellite systems.
- c) Estrela do Sul 1 is not authorized to provide any Direct-to-Home (DTH) service, Direct Broadcast Satellite (DBS) service, or Digital Audio Radio Service (DARS) to, from, or within the United States; and
- d) Communications between ALSAT-designated routine earth stations and the Estrela do Sul 1 satellite shall be in compliance with the satellite coordination agreements reached between Brazil and other administrations.

³¹ *First Space Station Licensing Reform Rules Order* at para 174.

19. IT IS FURTHER ORDERED that, unless extended by the Commission for good cause shown, Estrela do Sul 1 shall be removed from the Permitted Space Station List in the event the space station is not successfully placed into operation in accordance with the technical parameters in its Petition for Declaratory Ruling and terms and conditions of this Order by January 31, 2006

20. IT IS FURTHER ORDERED that Application File No. SAT-WAV-20031202-00352 IS DENIED and Loral Skynet do Brasil must file a bond with the Commission in the amount of \$1.25 million, pursuant to the procedures set forth in International Bureau Explains Procedure for Filing Bonds Pursuant to New Satellite Licensing Procedure, Public Notice, 18 FCC Rcd 16283 (2003). Should Loral fail to file this bond within 30 days of the release date of this Order, Estrela do Sul 1 shall be removed from the Permitted Space Station List. This condition will not apply, however, if Estrela do Sul 1 is launched before the bond is due.

21. 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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