

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

In the Matter of	)	
	)	
<b>HORIZONS SATELLITE LLC</b>	)	File No. SAT-PPL-20040112-00004
	)	Call Sign S2475
	)	
Application for modification of	)	
Permitted List Authorization	)	

**ORDER AND AUTHORIZATION**

**Adopted: May 27, 2004**

**Released: May 27, 2004**

By the Chief, Satellite Division, International Bureau:

**I. Introduction**

1. In this Order, we modify Horizons Satellite LLC's (Horizons) authorization to provide Fixed-satellite service (FSS) to the United States using the Horizons I space station at 127° W.L. to include one-way Direct-to-Home (DTH) service.<sup>1</sup> Grant of Horizons' application will enhance competition in the U.S. DTH market by providing U.S. DTH providers with additional capacity and consumers with increased service options.

**II. Background**

2. In an Order released November 23, 2003, we granted Horizons' petition for a declaratory ruling and added its Horizons I space station, licensed by Japan and operating at the 127° W.L. orbit location, to the Commission's Permitted Space Station List ("Permitted List") for the provision of FSS, with conditions.<sup>2</sup> The addition of Horizons I to the Permitted List allows U.S. earth stations with "routine" technical parameters to access Horizons I immediately in Ku-band frequencies.<sup>3</sup> We did not authorize U.S. earth stations to access Horizons I to provide any Direct-to-Home (DTH) service, Direct Broadcast Satellite (DBS) service, or Digital Audio Radio Service (DARS) to, from, or

<sup>1</sup> Horizons LLC is jointly owned on a 50/50 basis by PanAmSat and JSAT International, Inc., a Delaware corporation.

<sup>2</sup> *In re Horizons Satellite LLC*, 18 FCC 24745 (Int. Bur. 2003).

<sup>3</sup> 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.

within the United States. These services were not part of the United States' commitment to market access under the World Trade Organization (WTO) Agreement on Basic Telecommunications Services (WTO Basic Telecom Agreement).

3. Horizons seeks to modify its Permitted List authorization to include the provision of one-way DTH services, including high definition television (HDTV) and local-into-local services to the United States. According to Horizons, it has determined that there is a demand in the U.S. to use the Horizons I space station to provide one-way DTH service.<sup>4</sup> Horizons states that permitting the provision of one-way DTH service via its Horizons I space station will serve the public interest by providing U.S. consumers with increased service options. No comments were received in response to Horizons' application.

### III. Discussion

4. In its *DISCO II Report and Order*,<sup>5</sup> the Commission said it would apply the effective competitive opportunities (ECO-Sat) test where an applicant seeks to provide a non-WTO-covered service via a non-U.S. licensed satellite.<sup>6</sup> The purpose of the ECO-Sat test is to ensure that entry by a foreign-licensed satellite does not distort competition in the U.S. market. Under this test, we examine whether there are effective competitive opportunities for U.S.-licensed satellites to serve the home market of the non-U.S. satellite seeking access to the United States. We examine in particular whether there are *de jure* or *de facto* barriers to entry for the provision of analogous services, and whether any such barriers would cause competitive distortions in the United States.

5. In this case, the home market we examine for ECO-Sat purposes is Japan, which licensed the Horizons I space station. According to Horizons, there are no *de jure* or *de facto* barriers to entry preventing the use of U.S.-licensed satellite to provide DTH service in Japan.<sup>7</sup> In support of this assertion, Horizons appended declarations from Yoshihiro Tanaka, an expert in Japanese satellite regulation, and Naoshi Suzuki, an advisor to JSAT Corporation, a company headquartered in Tokyo, Japan which operates communications satellites licensed by the Government of Japan.<sup>8</sup> According to Mr.

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<sup>4</sup> Form 312, Exhibit 1 page 2.

<sup>5</sup> *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*).

<sup>6</sup> In adding Horizons I to the Permitted List, we found that Horizons I satisfied the public interest factors set forth in the *DISCO II Report and Order*, including effect on competition in the U.S., spectrum availability, eligibility and operating requirements, national security, law enforcement, foreign policy and trade concerns. Our ECO-Sat analysis with respect to one-way DTH service does not affect these other public interest factors.

<sup>7</sup> Form 312, Exhibit 1, p. 3.

<sup>8</sup> Mr. Suzuki is also Chief Telecommunications Engineer of the Horizons satellite joint venture.

Tanaka, there are no *de facto* or *de jure* barriers preventing U.S.-licensed satellite operators from obtaining Type-I telecommunications business licenses in Japan.<sup>9</sup> Mr. Tanaka notes that of the seven Type-I licensees that are satellite operators, one is held by a PanAmSat subsidiary and another by Horizons, a joint venture between PanAmSat and Horizons.<sup>10</sup> The declaration of Mr. Suzuki is in accord, stating that there are “no restrictions under Japanese law that limit or restrict in any way the ability of a foreign-owned [i.e. non-Japanese-owned] and/or foreign-licensed satellite from leasing capacity to other parties to provide DTH services in Japan.”<sup>11</sup> According to Mr. Suzuki, under Japanese law, foreign-owned and foreign-licensed satellite operators “may lease or sell transponder capacity to a DTH content provider pursuant to a ‘Type-I’ telecommunications services license issued by the Japan Ministry of Public Management, Home Affairs, Posts and Telecommunications (MPHPT).”<sup>12</sup>

6. Horizons states that at least one U.S.-licensed satellite already has been used to provide DTH service in the Japanese market.<sup>13</sup> Horizons notes that, until recently, PanAmSat made capacity available on its PAS-8 satellite to a Japanese-owned company based in Nagoya, Japan, which used the capacity to provide a DTH service in Japan under the name Les Amis de TV (Les Amis).<sup>14</sup> According to Horizons, the service concentrated on non-Japanese programming from France, the Australia Broadcasting Corporation, and the Deutsche Welle.<sup>15</sup> Horizons states that PanAmSat was able to provide DTH capacity to Les Amis because the regulatory structure in Japan establishes an “open market” for U.S.-licensed satellite systems.<sup>16</sup>

7. Based on the record, we find that there are no *de jure* or *de facto* barriers to the use of a foreign satellite in Japan to provide capacity to be used for the provision of DTH services. In addition, we find that a grant of Horizons' application will not result in competitive distortions in the U.S. DTH market. There is no indication in the record that such distortions will occur as a result of a grant of Horizons' application and the Commission has previously found that making additional satellite capacity available to provide DTH services in the United States will result in public interest benefits by

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<sup>9</sup> Tanaka declaration ¶ 5. Type-I is a designation for a telecommunications license issued by the Japan Ministry of Public Management, Home Affairs, Posts and Telecommunications. To qualify as a Type I carrier, a company must have a representative office in Japan and employ a licensed Type I engineer.

<sup>10</sup> Tanaka declaration at ¶ 6.

<sup>11</sup> Suzuki declaration at ¶ 4.

<sup>12</sup> Suzuki declaration at ¶ 5.

<sup>13</sup> FCC Form 312, Exhibit 1, p. 3.

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

enabling incumbent DTH providers to expand and improve their services.<sup>17</sup> Horizons also notes that a grant of DTH authority will enable it to compete with U.S. FSS systems which are free to sell capacity to DTH service providers.

#### IV. Ordering Clauses

8. Accordingly, IT IS ORDERED, that Horizons' application (File No. SAT-PPL-20040112-0004) to modify its existing authorization to provide satellite service in the United States via its Horizons I space station from the 127° W.L. orbit location IS GRANTED and Horizons may provide DTH service to the United States via Horizons I, provided that:

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' operation of its Horizons I space station shall be in compliance with applicable current and future operational requirements as a result of coordination agreements reached with other satellite systems;

c. Provision of DTH service is limited to one-way DTH.

9. 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

Thomas S. Tycz  
Chief, Satellite Division  
International Bureau

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<sup>17</sup> See *In re Digital Broadband Applications Corp.*, 18 FCC Rcd 9455, para. 18 (Int'l Bur. 2003); *SES Americom, Inc. and Columbia Communications Corporation*, 18 FCC Rcd 16589 (2003).