

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

In the Matter of)		
)		
EchoStar Satellite, LLC)	File Nos.	SES-LFS-20040831-01253
)		SES-AMD-20051118-01599
For Blanket Authorization to operate 1,000,000)		
Receive-Only Earth Stations to provide)		SES-LIC-20050621-00799
Direct-to-Home Fixed Satellite Service)		SES-AMD-20051118-01601
in the United States using the Canadian-authorized)		
ANIK F3 Satellite at the 118.7° W.L. Orbital Location)		
)	Call Signs:	E040344, E050181
For authority to operate two 9.0 Meter antennas)		
in the Ku-band in Cheyenne, Wyoming)		

ORDER AND AUTHORIZATION

Adopted: December 20, 2005

Released: December 20, 2005

By the Chief, International Bureau:

I. INTRODUCTION

1. In this Order, we grant EchoStar Satellite LLC's ("EchoStar") request for a blanket¹ authorization for one million receive-only earth stations, located in the United States, to receive Direct-to-Home ("DTH") Fixed Satellite Service ("FSS") programming from Ku-band capacity² on Telesat Canada's ("Telesat") ANIK F3 -- a Canadian-licensed satellite to be located at the 118.7° W.L. orbital location. In addition, we grant, in part, EchoStar's application to operate two nine-meter Ku-band antennas at its earth station facility in Cheyenne, Wyoming to communicate with the ANIK F3 satellite and all "ALSAT" space stations.³ Our action here will improve the choice of service to consumers in the U.S. multichannel video programming distribution ("MVPD") market.

¹ Rather than individually licensing each technically identical antenna operating as a network, the Commission often issues blanket licenses covering a specified number of remote earth stations/terminals.

² For purposes of this Order, "Ku-band capacity" denotes the 11.7-12.2 GHz, (downlink)/14.0-14.5 GHz, (uplink) frequency bands.

³ Under an ALSAT earth station license, an earth station operator providing FSS in the conventional C- and Ku-bands is permitted to access any U.S.-licensed space station and any space station on the Commission's Permitted Space Station List ("Permitted List"), without additional Commission action, provided that those communications are in accordance with the same technical parameters and conditions established in the earth stations' licenses and also in accordance with any conditions imposed on operation of the space station.

II. BACKGROUND

2. The Commission's *DISCO II Order*⁴ implemented the satellite market-opening commitments made by the United States in the World Trade Organization ("WTO") Agreement on Basic Telecommunications Services.⁵ In evaluating requests by U.S. earth station operators to access a non-U.S.-licensed space station, the Commission adopted a public interest framework that considers the effect on competition in the United States,⁶ spectrum availability,⁷ eligibility and operating (*e.g.*, technical) requirements,⁸ and national security, law enforcement, foreign policy, and trade concerns.⁹ As part of the competition analysis, the Commission adopted a presumption that entry by WTO Members to provide WTO-covered services would further competition in the United States. The United States did not make market access commitments for DTH, Direct Broadcast Satellite Service ("DBS"), and Satellite Digital Audio Radio Service ("SDARs"), and took an exemption from most-favored nation treatment for these services as well.¹⁰ In cases where such services are at issue, the Commission applies the "effective competitive opportunities for satellites" ("ECO-Sat") analysis, which requires parties to demonstrate that U.S.-licensed satellite systems have effective competitive opportunities to provide analogous services in the non-U.S.-licensed space station's "home market" and, in certain cases, the non-U.S.-licensed space station's "route markets."¹¹

3. Because the Commission does not issue duplicative U.S. licenses for space stations licensed by another administration,¹² a U.S. earth station application often represents our first opportunity to evaluate whether the non-U.S. licensed space station complies with the Commission's legal, financial, and technical requirements. The first earth station seeking to communicate with a particular non-U.S. licensed space station must therefore include the same detailed information about the space station and its operations that the Commission requires from U.S. space station applicants.¹³

⁴ See Amendment of the Commission's Regulatory Policies to Allow Non-U.S. Licensed Satellites Providing Domestic and International Service in the U.S., *Report and Order*, IB Docket No. 96-111, 12 FCC Rcd 24094 (1997) ("*DISCO II*").

⁵ 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).

⁶ *DISCO II*, 12 FCC Rcd at 24107-56 (paras. 30-145).

⁷ *DISCO II*, 12 FCC Rcd at 24157-59 (paras. 146-50).

⁸ *DISCO II*, 12 FCC Rcd at 24159-69 (paras. 151-74).

⁹ *DISCO II*, 12 FCC Rcd at 24169-72 (paras. 175-82).

¹⁰ See Fourth Protocol to the GATS, 36 I.L.M. at 359. Generally, GATS requires WTO member countries to afford most-favored nation (MFN) treatment to all other WTO member nations. "With respect to any measure covered by this Agreement, each Member shall accord immediately and unconditionally to services and service suppliers of any other Member treatment no less favorable than that it accords to like services and service suppliers of any other country." GATS Article II, paragraph 1. Member nations are permitted to take "MFN exemptions," however, under certain circumstances specified in an annex to GATS. See GATS Annex on Article II Exemptions.

¹¹ See *DISCO II*, 12 FCC Rcd at 24127-37 (paras. 72-101); 47 C.F.R. § 25.137(a). The Commission decided to continue applying the ECO-Sat analysis to non-U.S. space stations licensed by non-WTO countries.

¹² *DISCO II*, 12 FCC Rcd at 24174 (para 188).

¹³ All earth station applications must include an exhibit containing the information required by Section 25.114 of the Commission's rules, 47 C.F.R. § 25.114, with respect to the proposed non-U.S. licensed space station. *DISCO II*, 12 (continued....)

4. In June 2001, Industry Canada awarded Telesat a license to operate a hybrid C/Ku/Ka-band FSS satellite, ANIK F3, at the 118.7° W.L. orbital location.¹⁴ Telesat plans to deploy ANIK F3 in the second half of 2006¹⁵ under that license. In February 2004, Telesat's board of directors approved the "Whole RF Channel Service Agreement" between Telesat and EchoStar.¹⁶ The agreement authorizes EchoStar, as a United States licensee, to access Ku-band capacity on ANIK F3 as soon as it is operational to provide DTH-FSS programming throughout the United States.¹⁷ EchoStar states that its purpose for entering the agreement is to augment the spectrum currently used for MVPD services, including expanded local-into-local,¹⁸ international, high definition television and other programming.¹⁹

5. On August 31, 2004, EchoStar filed its request for a blanket earth station authorization.²⁰ In its application, EchoStar seeks authority to operate one million receive-only earth stations in the 11.7-12.2 GHz band in the United States to receive DTH FSS from ANIK F3. Specifically, EchoStar seeks to use the Ku-band downlink capacity on ANIK F3 to provide DTH programming to U.S. remote terminals with 66-centimeter equivalent antennas, *e.g.*, the home terminal.²¹ EchoStar also requests a waiver of Section 25.133(a) of the Commission's rules, which requires earth station licensees to complete construction and begin operations within 12 months of a license grant.²² In addition, EchoStar seeks a waiver of Section 25.137(d)(4) of the Commission's rules, which requires certain satellite licensees to post a performance bond within 30 days of a license grant.²³ The application was placed on public notice on November 3, 2004.²⁴ No comments were filed.

6. On June 21, 2005, EchoStar filed an application requesting authority to operate two new nine-meter Ku-band antennas at its earth station facility located in Cheyenne, Wyoming ("hub earth

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FCC Rcd at 24175 (para. 190); 47 C.F.R. § 25.137(b). Section 25.137(b) refers to Section 25.114, which sets forth information requirements for U.S. space station operators.

¹⁴ See *Information Bulletin, Industry Canada Awards Satellite Licence* (June 21, 2001). <<http://www.ic.gc.ca> (last visited on June 28, 2005).

¹⁵ According to Telesat Canada's website: "Telesat's 17th satellite, Anik F3, is now under construction and is slated for service in the second half of 2006. ANIK F3 will provide a wide range of telecommunications, broadcasting, business communications and Internet-based services to users across North America." <<http://www.telesat.ca/satellites/index.htm>> (last visited on June 28, 2005).

¹⁶ See EchoStar Satellite, LLC, Application for Authority to Operate U.S. Earth Stations with the Canadian-Licensed ANIK F3 Satellite to Offer Direct-to-Home Fixed Satellite Service Throughout the U.S., IBFS File No. SES-LFS-20040831-01253 (August 31, 2004) (EchoStar Blanket Earth Station Application).

¹⁷ *Id.*

¹⁸ The term "local-into-local," as used in this Order, refers to provision via satellite retransmission of local broadcast channels to subscribers who reside in the local TV station's market, which is defined as a Designated Market Area, or "DMA." See 17 U.S.C. §122 (j)(2)(A).

¹⁹ See EchoStar Blanket Earth Station Application, Narrative at 1.

²⁰ See EchoStar Blanket Earth Station Application.

²¹ See EchoStar Blanket Earth Station Application, Technical Annex, A.11.

²² 47 C.F.R. § 25.133(a).

²³ 47 C.F.R. § 25.137(d)(4).

²⁴ Satellite Radio Applications Accepted For Filing, Satellite Communications Services, *Public Notice*, Report No. SES-00656 (rel. November 3, 2004).

station”).²⁵ EchoStar states that the hub earth station is to be used to transmit programming to provide various two-way communications with Ku-band space stations, including the ANIK F3 space station. In addition to authority to communicate with ANIK F3, EchoStar seeks Ku-band ALSAT authority and authority to communicate with the AMC-16 satellite when it is relocated to the 118.75° W.L. orbital location.²⁶ The application was accepted for filing and placed on public notice on August 31, 2005.²⁷ No comments were filed.

7. On June 24, 2005, EchoStar filed an amendment to its blanket earth station authorization,²⁸ requesting authority to add the AMC-16 satellite at the 118.75° W.L. orbital location as a point of communication. Because issues relating to AMC-16’s proposed move raise a variety of issues outside the scope of EchoStar’s prior application to access ANIK F3, we will not address those issues here. Rather, we will address both the SES Americom and EchoStar applications relating to AMC-16 in separate orders.

III. DISCUSSION

A. ANIK F3 Access Request

1. Introduction

8. 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, eligibility and operating requirements, spectrum availability, and national security, law enforcement, foreign policy, and trade concerns. We discuss these with respect to the ANIK F3 satellite below.

2. Effect on Competition

9. As a part of the *DISCO II* framework, we established a rebuttable presumption that entry by non-U.S. licensed space stations 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.²⁹ These commitments include FSS, but specifically exclude DTH services such as those involved in this case.³⁰ For non-WTO-covered services, we apply the ECO-Sat analysis to determine whether there are effective competitive opportunities for U.S.-licensed satellites to serve the home market of the non-U.S.-licensed space stations seeking access to the United States.³¹ We examine in particular whether there are

²⁵ EchoStar Satellite, LLC, Application for Authority to Operate Two 9.0 Meter Ku-band Earth Stations in Cheyenne, Wyoming, IBFS File No. SES-LIC-20050621-00799 (“EchoStar 9 Meter Hub Earth Station Application”).

²⁶ *Id.* SES Americom has filed a modification application to relocate the AMC-16 satellite from 85° W.L. to 118.75° W.L. and related earth station applications to provide service from that location pending the launch of ANIK F3. See IBFS File Nos. SAT-MOD-20050621-00132, SES-MFS-20050622-00803, SES-MFS-20050622-00804, SES-AFS-20050713-00909, SES-AFS-20050713-00910, and SES-AFS-20050624-00813.

²⁷ Satellite Radio Applications Accepted For Filing, Satellite Communications Services, *Public Notice*, SES-00744, (rel. Aug. 31, 2005).

²⁸ See IBFS File No. SES-AFS-20050624-00813.

²⁹ *DISCO II*, 12 FCC Rcd at 24112 (para. 39).

³⁰ *DISCO II*, 12 FCC Rcd at 24104 (para. 25).

³¹ *DISCO II*, 12 FCC Rcd at 24127 (para. 72).

de jure or *de facto* barriers to entry for the provision of analogous service, and whether any such barriers would cause competitive distortions in the United States.³² These factors are considered together with other public interest considerations to determine whether grant of the application would serve the public interest.

10. The Commission has in the past determined that current Canadian regulations prohibit the use of U.S.-licensed space stations to offer one-way subscription video programming service to the Canadian public.³³ Specifically, Annex C of Industry Canada's Policy Framework for the Provision of FSS states that a Canadian entity "should make use of Canadian satellite facilities to carry all Canadian programming services..." and "under no circumstances should an undertaking use exclusively foreign satellites for the distribution of its services to Canadians."³⁴ Under this framework, Industry Canada likely would deny access to a U.S.-licensed space station proposing entry to Canada³⁵ in a manner analogous to that proposed by EchoStar for ANIK F3. In other words, a Canadian entity proposing to use a U.S.-licensed space station to deliver Canadian video programming to Canadians only would be denied access. Thus, a *de jure* barrier exists in Canada for any U.S. - licensed space station seeking to offer ANIK F3-analogous service in Canada.

11. When the ECO-Sat test is not satisfied, the Commission will "prohibit a satellite system...from serving the U.S. market, *unless there is a compelling public interest reason to do otherwise.*"³⁶ We will "consider whether any additional countervailing public interest factors weigh in favor of a result different from the one we would reach under the ECO-Sat analysis alone."³⁷ In the past, we have granted requests, similar to EchoStar's request, to access a Canadian licensed space station because of compelling public interest reasons. Specifically, in applications for earth station blanket licenses by Digital Broadband Applications Corp. ("DBAC"),³⁸ Pegasus Development Corporation ("Pegasus"),³⁹ and DIRECTV Enterprises, LLC ("DIRECTV"),⁴⁰ among others, the Commission granted

³² *Id.*

³³ Digital Broadband Applications Corp., *Order*, 18 FCC Rcd 9455, 9461 (para. 14) (2003) (authorizing DBAC to provide two-way broadband data and video service in the United States using two Canadian-licensed DBS satellites, Nimiq 1 and Nimiq 2, located at the 91° W.L. and 82° W.L. orbital locations; one U.S.-licensed satellite Galaxy XI at the 91° W.L. orbital location; and one hub Earth Station) ("*DBAC Order*"). The Nimiq 1 and 2 satellites, originally authorized as points of communication, are no longer authorized points of communication for DBAC's authorization. See Satellite Communications Services Information, Actions Taken, *Public Notice*, Report Number: SES-00663 (rel. November 24, 2004).

³⁴ Annex C, Policy Framework for the Provision of Fixed Satellite Service, Industry Canada, RP-008, December 1998, <<http://strategis.ic.gc.ca/epic/internet/insmt-gst.nsf/en/sf08264e.html#8>> (Last visited on Jun. 28, 2005).

³⁵ Just as Canada obtained approval from the ITU to modify the ITU Region 2 Band Plan to expand coverage, the U.S. also would have to obtain approval to modify the ITU Region 2 Band Plan in order for a U.S. satellite to provide service in Canada.

³⁶ See Amendment of the Commission's Regulatory Practices to Allow Non-U.S. Licensed Space Stations to Provide Domestic and International Satellite Service in the U.S., *Notice of Proposed Rulemaking*, 11 FCC Rcd 18178, 18192 (para. 38) (emphasis added) (1996) ("*DISCO II NPRM*").

³⁷ *DISCO II NPRM*, 11 FCC Rcd at 18185 (para. 12); see also *DISCO II*, 12 FCC Rcd at 24098, 24016 (paras. 7, 29); see also Market Entry and Regulation of Foreign-affiliated Entities, IB Docket No. 95-22, *Report and Order*, 11 FCC Rcd 3873, 3896-97 (1995) (describing the ECO test that was the precedent for the similar ECO-Sat test).

³⁸ *DBAC Order*, 18 FCC Rcd at 9461.

³⁹ Pegasus Development Corporation, *Order*, 19 FCC Rcd 6080 (2004) (authorizing Pegasus to provide DBS service in the U.S. using two Canadian-licensed DBS satellites, Nimiq 1 and Nimiq 2, located at 91° and 82° W.L. orbital locations respectively, one U.S. transmit/receive hub Earth Station, and one million receive-only home terminals) ("*Pegasus Order*"). To date, Pegasus has not brought its blanket authorization into use.

Canadian licensed space stations access to the U.S. market despite the existence of analogous *de jure* barriers to U.S. - licensed space stations in the Canadian market for public interest reasons explained below.⁴¹

12. In granting requests to use Canadian-licensed space station to access the U.S. market, the Commission determined that competitive distortions in the U.S. market would only be likely to result if a number of conditions were satisfied. Among those conditions would be that: (1) through the use of Canadian licensed space stations, the U.S. earth station licensee would have access to cost savings, subsidies, or quality-enhancing assets not available to other U.S. service providers; (2) those cost savings, subsidies or quality-enhancing assets would be sufficiently large to enable the earth station licensee to offer prices and quality of service that would cause some or all of the incumbent U.S. DTH/DBS providers to exit the market; (3) following the exit of some or all of the domestic DTH/DBS providers, earth station licensee would be able to raise the price of service to U.S. customers; and (4) entry barriers exist such that neither the incumbent U.S. DTH/DBS providers nor new U.S. DTH/DBS providers could enter the market, thereby defeating the price increase.⁴² Where the Commission has found there is no risk of competitive distortions to the market, the Commission then considered whether there was a “compelling public interest justification for authorizing service.”

13. In the *2004 DIRECTV 5 Order*, which followed the *DBAC* precedent and presents similar circumstances to those in EchoStar’s application, DIRECTV, an incumbent service provider, requested a blanket authorization for one million receive-only earth stations to provide DBS in the United States using the Canadian-authorized DIRECTV 5 satellite at the 72.5° W.L. location.⁴³ Applying the competition analysis set forth above, the Commission looked for conditions that would result in competitive distortion in the U.S. market. The Commission determined that while authorization would provide DIRECTV with access to quality-enhancing assets, *i.e.*, satellite capacity for the provision of local-into-local services in 24 markets in which DIRECTV did not currently provide service, there was no evidence to suggest the access would create a competitive distortion by allowing DIRECTV to carry out a predatory strategy.⁴⁴ The Commission then considered whether there was a compelling public interest justification for authorizing service and found that because authorization would facilitate DIRECTV’s

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⁴⁰ Application of DIRECTV Enterprises, LLC Request for Special Temporary Authority for the DIRECTV 5 Satellite, Application of DIRECTV Enterprises, LLC Request for Blanket Authorization for 1,000,000 Receive Only Earth Stations to Provide Direct Broadcast Satellite Service in the United States using the Canadian Authorized DIRECTV 5 Satellite at the 72.5° W.L. Broadcast Satellite Service Location, *Order and Authorization*, 19 FCC Rcd 15529 (2004) (granting DIRECTV blanket-authorization for one million receive-only home terminals to provide DBS service in the United States using the DIRECTV 5 satellite – licensed by Canada upon the spacecraft’s arrival at the 72.5° W.L. orbital location) (“*2004 DIRECTV 5 Order*”). Subsequently, the DIRECTV 5 satellite was returned to U.S.-licensing and the DIRECTV 1 satellite was moved to the 72.5° orbital location. Applications of DIRECTV Enterprises, LLC, *Order and Authorization*, DA 05-1890 (rel. July 14, 2005) (“*DIRECTV 1 Order*”); and DIRECTV Enterprises, LLC, Application for Authorization to Operate DIRECTV 5, a Direct Broadcast Satellite, at the 109.8° W.L. Orbital Location Request for Special Temporary Authority to Conduct Telemetry, Tracking and Control During the Relocation of DIRECTV 6 to the 109.7° W.L. and 109.5° W.L. Orbital Locations, *Order and Authorization*, DA 05-2654 (rel. Oct. 5, 2005) (providing DIRECTV 5 operating authority at 109.8° W.L.).

⁴¹ See *DBAC Order*, 18 FCC Rcd 9455; *Pegasus Order*, 19 FCC Rcd 6080; *2004 DIRECTV 5 Order*, 19 FCC Rcd 15529; and EchoStar Satellite LLC, Request For Special Temporary Authority for the EchoStar 5 Satellite, Request for Blanket Authority to Operate 1,000,000 Earth Stations to receive DBS programming from the Canadian BSS orbital slot at 129° W.L., *Order and Authorization*, DA 05-1888 (rel. June 30, 2005).

⁴² *DBAC Order*, 18 FCC Rcd at 9462-63 (para. 16).

⁴³ *2004 DIRECTV 5 Order*, 19 FCC Rcd at 15529 (para. 1).

⁴⁴ *2004 DIRECTV 5 Order*, 19 FCC Rcd at 15533 (para. 11).

efforts to provide local broadcast channel service in additional designated market areas, DIRECTV's request was consistent with the Commission's goal to facilitate the increase in provision of local broadcast channel service. Thus, we concluded the proposal presented compelling public interest considerations that warranted approval.⁴⁵

14. EchoStar's application presents similar circumstances to past grants, in particular the *2004 DIRECTV 5 Order*. As in that case, while grant of EchoStar's application will allow access to quality enhancing assets, *i.e.*, satellite capacity for the provision of expanded local-into-local, high definition television, and other programming, there is nothing in the record to suggest that grant of authority to EchoStar would create a competitive distortion in the U.S. market for DTH services or allow EchoStar to carry out a predatory strategy. Our conclusion that grant of the application will not create competitive distortion is bolstered by the fact that pursuant to *DISCO II Order*, EchoStar is prohibited from providing programming to U.S. customers that it obtains through exclusive agreements entered into with Canadian space station operators, program suppliers, and/or program distributors. The Commission prohibits exclusive service arrangements made by both U.S. and non U.S.-licensed space station operators providing any services in the United States.⁴⁶ In the *DISCO II Order*, the Commission explained that prohibiting exclusive arrangements "is consistent with our national treatment and MFN obligations under the GATS because we will be treating non-U.S. satellites the same as U.S. satellites, and will treat all non-U.S. satellites similarly." Thus, if EchoStar were to have access to Canadian programming not available to other DTH providers, exclusive access to that content might provide EchoStar with an advantage that could create a competitive distortion, *i.e.*, if that content proves so popular that it places other DTH providers at a significant competitive disadvantage. While such a competitive distortion is unlikely, we nevertheless condition EchoStar's authority to prohibit it from obtaining exclusive agreements to provide Canadian programming. Having concluded that no competitive distortion will result, we then turn to the public interest benefits of grant in this instance. Specifically, we find that there are public interest benefits to facilitating EchoStar's ability to provide coverage to Alaska and Hawaii in that grant of EchoStar's application may promote competition for enhanced programming in those states.⁴⁷ Thus, we conclude that grant of EchoStar's application is in the public interest despite the existence of *de jure* barriers to U.S.-licensed space stations in the Canadian market.

3. Eligibility Requirements – Legal, Financial, and Technical Qualifications

15. In the *DISCO II Order*, the Commission stated that it would require non-U.S. space station operators to meet the same legal, financial, and technical qualifications that U.S. licensed space station operators must meet to obtain a license.⁴⁸

16. *Legal Qualifications.* EchoStar states that Canada has authorized Telesat to launch and operate ANIK F3.⁴⁹ We have previously granted U.S. market access to Telesat for other FSS space stations and have found Telesat is legally qualified to provide satellite services in the United States.⁵⁰ Furthermore, nothing in the record raises concerns about Telesat's legal qualifications to provide satellite services in the United States. Thus, we find that Telesat is legally qualified to provide DTH-FSS in the

⁴⁵ *2004 DIRECTV 5 Order*, 19 FCC Rcd at 15533-34 (para. 11-12).

⁴⁶ *DISCO II*, 12 FCC Rcd at 24166 (paras. 161-67).

⁴⁷ EchoStar Blanket Earth Station Application, Narrative at 6-9.

⁴⁸ *DISCO II*, 12 FCC Rcd at 24161-63 (paras. 154-59).

⁴⁹ See EchoStar Blanket Earth Station Application, Narrative, pages 4-5.

⁵⁰ See TeleSat Canada, Request for Declaratory Ruling or Waiver of Earth Station's use of ANIK E1 and ANIK E2 Satellite Capacity to Provide Basic Telecommunications Services in the United States, *Order*, DA 99-2752 (Int'l Bur., rel. Dec. 9, 1999); modified by, SAT-PPL-20030808-00142 (granted on September 16, 2003).

United States.

17. *Financial Qualifications and the Bond Requirement.* In the *First Space Station Reform Order*, the Commission eliminated the financial requirements then in place and replaced them with a bond requirement. The bond requirement is intended to ensure that licensees are financially able and committed to implementing their licensed systems in a timely manner. Under this requirement, any entity awarded a satellite license must execute a payment bond, payable to the U.S. Treasury, within 30 days of the license grant.⁵¹ The bond is payable upon failure to meet any implementation milestone in the license, where adequate justification for extending that milestone is not provided.⁵² Licensees may reduce the amount of the bond upon meeting each milestone.⁵³

18. The bond requirement also applies to earth station licensees requesting access to non-U.S.-licensed space stations not yet in orbit and seeking to serve the U.S. market.⁵⁴ The bond requirement does not apply to replacement satellites.⁵⁵ In its application, EchoStar asserts that the ANIK F3 is a replacement satellite for the Canadian-licensed ANIK E2 satellite, which was operating at 118.7° W.L. when EchoStar filed the ANIK F3 blanket earth station application. In the alternative, EchoStar requests a waiver of the bond requirement in the event that we conclude ANIK F3 is not a replacement satellite.⁵⁶

19. Section 25.165(a) of the Commission's rules exempt replacement satellites from the bond requirement.⁵⁷ Subpart (e) of the rule defines a replacement satellite as one that is: (1) authorized to be operated at the same orbital location, in the same frequency bands, and with the same coverage area as one of the licensee's existing satellites, and (2) is scheduled to be launched so that it will be brought into use at approximately the same time as, but no later than, the existing satellite is retired.⁵⁸ Thus, "replacement" satellites provide customers with a seamless transition between generations of satellites with no gap in service.

20. Applying this analysis to ANIK F3, we note that EchoStar states that ANIK F3 will "replace a C/Ku-band satellite" operated by Telesat at 118.7° W.L. pursuant to authority granted by Industry Canada.⁵⁹ According to EchoStar, Telesat has operated several satellites at the 118.7° W.L. orbital location, including the ANIK E1 and ANIK E2 satellites, which were authorized by the Commission to provide service in the United States.⁶⁰ ANIK E1, a C/Ku-band satellite was deorbited in January of

⁵¹ Amendment of the Commission's Space Station Licensing Rules and Policies, *First Report and Order*, IB Docket No. 02-34, 18 FCC Rcd 10760, 10826 (2003) (*First Space Station Reform Order*); see also 47 C.F.R. § 25.165.

⁵² *First Space Station Reform Order*, 18 FCC Rcd at 10826 (para. 170).

⁵³ *First Space Station Reform Order*, 18 FCC Rcd at 10826-27 (para. 172).

⁵⁴ 47 C.F.R. § 25.137(d)(4) (requiring that a bond be posted for all non-U.S.-licensed space stations that are not in orbit and operating).

⁵⁵ 47 C.F.R. § 25.165; see also *First Space Station Reform Order*, 18 FCC Rcd at 10825 (para. 167).

⁵⁶ EchoStar Blanket Earth Station Application, Narrative at 15-18 (arguing that the unique circumstances presented by the application to access ANIK F3 do not implicate spectrum warehousing or speculation concerns that would be raised a similar request by any U.S. licensed space station &/or foreign licensed space station seeking similar relief).

⁵⁷ 47 C.F.R. § 25.165(a).

⁵⁸ 47 C.F.R. § 25.165(e).

⁵⁹ EchoStar Blanket Earth Station Application, Narrative at 16.

⁶⁰ See EchoStar Blanket Earth Station Application, Narrative at 16.

2005.⁶¹ ANIK E2, was relocated to 118.7° W.L. in July of 2003, but was moved out of that location in the Spring of 2005.⁶² Thus, at this time, there is no Canadian satellite operating at the 118.7° W.L. orbital location. Because of the gap in service, ANIK F3 does not meet the definition of a replacement satellite.

21. As noted above, EchoStar also requests a waiver of the bond requirement,⁶³ in the event that we conclude that ANIK F3 is not a replacement satellite.⁶⁴ Under our rules, earth station operators seeking access to a non-U.S. licensed space station that is not yet in-orbit, such as ANIK F3, are required to post a bond.⁶⁵ In these cases, the bond requirement serves the same purpose as it does for U.S.-licensed space stations, namely, to demonstrate financial ability to construct and launch the satellite, and to discourage speculative filings.⁶⁶ EchoStar asserts that there is good cause for a waiver because ANIK F3's proposed operations at 118.7° W.L. do not implicate warehousing or speculation concerns due to the existence of the *1988 Trilateral Arrangement*,⁶⁷ pursuant to which the orbit location is reserved to Canada.⁶⁸ EchoStar contends that because the United States has agreed to refrain from permanently authorizing a U.S. space station at 118.7° W.L. location, this case is distinguishable from other circumstances where a reservation of spectrum by a foreign licensed satellite could preclude the use of the spectrum by another operator.

22. The Commission's rules may be waived when good cause is demonstrated.⁶⁹ The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest.⁷⁰ In doing so, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.⁷¹ Commission rules are presumed valid, however, and an applicant for waiver bears a heavy burden.⁷² Waiver of the Commission's rules is therefore appropriate only if special circumstances warrant a deviation from the general rule, and such a deviation will serve the public interest.⁷³

⁶¹ ANIK E1 was originally located at 111.1° W.L. but was moved to 118.7° in 2003. See Telesat Canada, *Order*, DA 99-2752 (Int'l Bur., rel. Dec. 9, 1999), as modified by IBFS File No. SAT-PPL-20030808-00142 (granted on September 16, 2003).

⁶² See SAT-PPL-20030808-00142, Int'l Bur. Sat. and Rad. Div. Auth. By Grant Stamp w/ Conditions, (re. Sept. 16, 2003).

⁶³ See 47 C.F.R. §§ 25.165; 25.137(d)(4).

⁶⁴ EchoStar Blanket Earth Station Application, Narrative at 17.

⁶⁵ See 47 C.F.R. § 25.137(d)(4).

⁶⁶ See 47 C.F.R. § 25.137(d)(4), see also Amendment of the Commission's Space Station Licensing Rules and Policies, *First Order on Reconsideration and Fifth Report and Order*, IB Docket No. 02-34, 19 FCC Rcd 12637 (para.64) (2004) (*Space Station Reform First Reconsideration Order*).

⁶⁷ See Trilateral Arrangement Regarding Use of the Geostationary Orbit Reached by Canada, Mexico, and the United States, *Public Notice* (Sept. 2, 1988) ("*1988 Trilateral Arrangement*") (addresses FSS C-band and Ku-band operations at specific GSO orbital locations).

⁶⁸ *Id.*

⁶⁹ 47 C.F.R. § 1.3; see also *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969), *cert. denied*, 409 U.S. 1027 (1972) (*WAIT Radio*).

⁷⁰ *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (*Northeast Cellular*).

⁷¹ *WAIT Radio*, 418 F.2d at 1159; *Northeast Cellular*, 897 F.2d at 1166.

⁷² *WAIT Radio*, 418 F.2d at 1157.

⁷³ *Id.* at 1159.

23. We conclude that EchoStar has not shown good cause for a waiver. We disagree with EchoStar's assessment that *1988 Trilateral Arrangement*, standing alone, eliminates warehousing concerns in this instance. Although the Trilateral Arrangement can be read to preclude the United States and Mexico from licensing a space station at this location in the Ku-band, it does not preclude other countries from licensing a space station to operate at that location; including those seeking access to the U.S. market. Thus, EchoStar has failed to demonstrate adequate grounds for a waiver.

24. *Technical Qualifications.* The Commission's satellite licensing policy is predicated upon two-degree orbital spacing between geostationary satellites.⁷⁴ This policy permits the maximum use of the geostationary satellite orbit.⁷⁵ All space stations, including non-U.S. satellites seeking to serve the U.S. market, must comply with the Commission's technical requirements designed to permit two-degree orbital spacing before being authorized to provide service in the United States.⁷⁶ Based on our review of the technical information EchoStar submitted, we conclude that the ANIK F3 space station complies with all applicable technical rules.

4. Spectrum Availability

25. 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 non-U.S. licensed space station to serve the United States.⁷⁷ This is consistent with the Chairman's note to the WTO Basic Telecomm Agreement, which states that WTO members may exercise their domestic policy spectrum/frequency management policies when considering foreign entry.

26. The proposed orbital location for ANIK F3 is 118.7° W.L., which location has been assigned to Canada under the *1988 Trilateral Arrangement*.⁷⁸ The neighboring Ku-band satellites are Mexico's SatMex-5 satellite at 116.8° W.L. and the EchoStar IX satellite at 121°W.L.⁷⁹ EchoStar states that Telesat has concluded a coordination agreement with Mexico regarding the operation of ANIK F3 at 118.7° W.L. and will operate the satellite in accordance with that agreement.⁸⁰ EchoStar further states that while Telesat has not yet concluded a similar agreement with satellite operators in the United States, EchoStar is the operator of the EchoStar IX satellite, and is confident that coordination will be

⁷⁴ See 47 C.F.R. § 25.140; Licensing of Space Stations in the Domestic Fixed-Satellite Service and Related Revisions of Part 25 of the Rules and Regulations, *Report and Order*, CC Docket No. 81-704, FCC 83-184, 54 Rad. Reg. 2d 577 (1983); *summary printed in* Licensing Space Stations in the Domestic Fixed-Satellite Service, 48 F.R. 40233 (1983).

⁷⁵ 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.

⁷⁶ See Amendment of the Commission's Space Station Licensing Rules and Policies, *First Report and Order and Further Notice of Proposed Rulemaking*, 18 FCC Rcd 10760, para 300 (2003).

⁷⁷ *DISCO II*, 12 FCC Rcd at 24159 (para. 150).

⁷⁸ See *1998 Trilateral Arrangement*.

⁷⁹ EchoStar Blanket Earth Station Application, Narrative at 10.

⁸⁰ EchoStar Blanket Earth Station Application, Narrative at 11, stating that ("Telesat has concluded a coordination agreement with Mexico regarding the operation of ANIK F3 at 118.7 W.L. and will operate the satellite in accordance with that coordination agreement.")

successful.⁸¹ As noted above, we have determined that EchoStar's proposed operations are consistent with our two-degree spacing requirements and other applicable Commission rules. Further, no other entities have filed requests to serve the United States from space stations that would be technically incompatible with ANIK F3's proposed Ku-band operations. Thus, we find that operations of ANIK F3 in the Ku-band at 118.7° W.L. to provide FSS DTH presents no spectrum availability issues that would preclude granting this request.

5. Other Licensing 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 before us raises any such concerns.

6. Milestone Requirements

28. We also require EchoStar to demonstrate that ANIK F3 meets the milestone requirements adopted in the *First Space Station Licensing Reform Order*. In that Order, the Commission adopted generic milestone requirements covering various stages in the space station procurement/licensing process from contract execution to launch and operation.⁸² In its application, EchoStar, states that the implementation schedule for ANIK F3 complies fully with the Commission's milestone requirements. EchoStar has not provided any evidence of such compliance or otherwise demonstrated the ANIK F3 has met any of these milestones, however. Nor has EchoStar requested a waiver of the milestone requirements. Consequently, we impose the full set of milestones as follows: Contract execution: December 20, 2006; CDR: December 20, 2007; Commence physical construction: December 20, 2008; Launch: December 20, 2010. The blanket authorization to receive DTH FSS programming from the Ku-band payload on the ANIK F3 will be void on its own terms if the space station is not constructed, launched, and successfully placed into operation in accordance with these dates.

B. Earth Station Applications - Technical Review and Build Out Requirements

1. Technical Review

29. Having completed the *DISCO II* analysis for the ANIK F3 satellite, we now review the technical aspects of EchoStar's earth station applications. The first application seeks authority to operate one million Ku-band receive-only earth stations in the United States using 66 centimeter equivalent antennas to receive DTH-FSS from ANIK F3.⁸³ We find that these receive-only remote terminals present no technical issues and grant EchoStar a license to operate these terminals.

30. The second application seeks authority to operate two new nine-meter Ku-band antennas at EchoStar's earth station located in Cheyenne, Wyoming.⁸⁴ EchoStar states that this hub earth station will be used to transmit programming and to provide two-way communications with authorized Ku-band space stations⁸⁵ using the 14-14.5 GHz and 11.7-12.2 GHz bands to transmit and receive, respectively. Based upon our review of the application, we find that the proposed FSS antennas comply with our

⁸¹ EchoStar Blanket Earth Station Application, Narrative at 11.

⁸² *First Space Station Licensing Reform Order* at 10828 (para 175); 47 C.F.R. § 25.164(a), 25.137(d)(1).

⁸³ See EchoStar Application, IBFS File No. SES-LFS-20040831-01253, Technical Annex, A.11.

⁸⁴ Echostar 9 Meter Hub Earth Station Application, IBFS File No. SES-LIC-20050621-00799.

⁸⁵ *Id.*

technical rules including the two-degree spacing technical standards.⁸⁶ Accordingly, we grant EchoStar's application for the proposed hub earth station and authorize the antennas to access "ALSAT" and ANIK F3 as points of communication.

2. Build-Out Requirements

31. In its Blanket Earth Station Application, EchoStar seeks a waiver of Section 25.133(a) of the Commission's rules, which requires earth station licensees to complete construction and begin operations of their licensed earth stations within 12 months of a license grant.⁸⁷ EchoStar interprets Section 25.133 as requiring the operation of all one million receive-only remote terminals within one year of grant. After EchoStar filed its application, the Commission revised Section 25.133.⁸⁸ As revised, Section 25.133 requires only that blanket licensees bring their "network" of earth stations into operation within a year, without specifying the number of stations required to be operational. Thus, EchoStar need not bring all one million home terminals authorized under the blanket license into operation within one year. Rather, it need only complete the construction of the hub earth stations at its Cheyenne, Wyoming facility and bring some number of home terminals into operation within the year. In light of the revised requirements of Section 25.133, we dismiss EchoStar's request for waiver as moot.

IV. CONCLUSION

32. Based on the foregoing, we find that grant of EchoStar's two applications for earth stations that will access Canada's ANIK F3 satellite will improve the quality of service to U.S. consumers by stimulating competition in the U.S. DTH and FSS markets and providing consumers more alternatives in choosing multichannel video programming distribution (MVPD) providers and services.

V. ORDERING CLAUSES

33. IT IS ORDERED that, pursuant to Section 25.237(c) of the Commission's rules, the application of EchoStar LLC, IBFS, File No. SES-LFS-20040831-01253, as amended by SES-AMD-20051118-01599, IS GRANTED.⁸⁹ Accordingly, EchoStar, LLC is authorized to operate receive-only earth stations in 11.7-12.2 GHz band in the United States to receive Direct-To-Home Fixed Satellite Service from the Canadian-licensed ANIK F3 satellite, which will be located at the 118.7° W.L. consistent with the technical parameters specified in its application, and subject to the following conditions:

- A. EchoStar is not authorized to provide programming to U.S. customers that it obtains through exclusive agreements entered into with Canadian licensed space station operators, program suppliers, and/or program distributors.

⁸⁶ See 47 C.F.R. §§ 25.134, 25.209, 25.211, and 25.212.

⁸⁷ 47 C.F.R. § 23.133(a).

⁸⁸ 2000 Biennial Regulatory Review -- Streamlining and Other Revisions of Part 25 of the Commission's Rules Governing the Licensing of, and Spectrum Usage by, Satellite Network Earth Stations and Space Stations and Amendment of Part 25 of the Commission's Rules and Regulations to Reduce Alien Carrier Interference Between Fixed-Satellites at Reduced Orbital Spacings and to Revise Application Procedures for Satellite Communication Services, *Fifth Report and Order in IB Docket No. 00-248, and Third Report and Order in CC Docket No. 86-496*, FCC 05-63, (paras 114-118) (rel. March 15, 2005).

⁸⁹ Consistent with Satellite Division practice, contemporaneously with the release of this order, the Systems Analysis Branch will issue an authorization with respect to IBFS File No. SAT-LFS-20040831-01253 incorporating this order by reference and listing the standard conditions that would apply to the operations under the blanket license.

- B. EchoStar must comply with all rules applicable to other Commission licensees (*e.g.*, the public interest obligations of DTH/FSS providers in the Ku-band, 47 C.F.R. § 25.701).

34. IT IS FURTHER ORDERED that EchoStar's request to waive Section 25.133 of the Commission's rules, 47 C.F.R. § 25.133, is DISMISSED as moot.

35. IT IS FURTHER ORDERED that, unless extended by the Commission for good cause shown, EchoStar's authority to receive DTH FSS from ANIK F3 shall be null and void by its own terms in the event the space station is not constructed, launched, and successfully placed into operation in accordance with the technical parameters in EchoStar's application and the terms and conditions of this Order, by the following dates:

- A. Execute a contract for construction: December 20, 2006;
- B. Complete Critical Design Review: December 20, 2007;
- C. Commence Physical Construction: December 20, 2008; and
- D. Launch: December 20, 2010.
- E. EchoStar is required to file a bond within 30 days of the date of this order in the amount of \$3 million, pursuant to the procedures set forth in Public Notice, DA 03-2602, 18 FCC Rcd 16283 (2003).

36. IT IS FURTHER ORDERED that, the EchoStar's Application, IBFS File No, SES-LIC-20050621-00799, as amended by SES-AMD-20051118-01601, IS DEFERED IN PART, and GRANTED IN PART.⁹⁰ The application is DEFERED to the extent it requests access to the AMC-16 space station to be located at the 118.7° W.L. orbital location. The Application is GRANTED to the extent EchoStar is authorized to operate two 9.0 meter Ku-band (11.7-12.2 GHz/14.0-14.5 GHz) transmit and receive antenna earth stations at its facility in Cheyenne, Wyoming with ALSAT authority and authority to communicate with ANIK F3 at 118.7° W.L orbital location subject to the following condition:

Communications between the Cheyenne, Wyoming earth station(s) and the ANIK F3 shall be in compliance with the satellite coordination agreements reached between Canada and other administrations.

⁹⁰ Consistent with Satellite Division practice, contemporaneously with the release of this Order, the Systems Analysis Branch will issue an authorization on IBFS File No. SES-LIC-20050621-00799 incorporating this order by reference and listing the standard conditions that would apply to the operations of this facility.

37. EchoStar LLC is afforded thirty days to decline these authorizations as conditioned. Failure to respond within this period will constitute formal acceptance of the authorization as conditioned.

38. This Order is issued pursuant to Section 0.261 of the Commission's rules, 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.

FEDERAL COMMUNICATIONS COMMISSION

Donald Abelson
Chief, International Bureau