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

In the Matter of	)	
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	)	IB Docket No. 96-111

SECOND ORDER ON RECONSIDERATION

Adopted: October 31, 2001 Released: November 5, 2001

By the Commission:

I. INTRODUCTION

1. In this Order, we deny four petitions for reconsideration of the *DISCO II Order*.[1] The petitioners have not persuaded us that we should modify the framework we established in our *DISCO II Order* to evaluate requests by foreign-licensed satellite systems to serve the United States. That framework is designed to stimulate fair competition in the United States, providing consumers with more alternatives in choosing communications providers and services, reducing prices, and facilitating technological innovation.

II. BACKGROUND

2. *WTO Telecom Agreement*. The World Trade Organization (WTO) Agreement on Basic Telecommunications Services (WTO Telecom Agreement),[2] which took effect on February 5, 1998, was the culmination of the efforts of the United States and 68 other countries to bring competition to global markets for telecommunications services, including certain satellite services. The markets of the

[1] 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 (1997) (*DISCO II* or *DISCO II Order*). ABC, Inc., formerly known as the American Broadcasting Company, also filed a petition for reconsideration, but later withdrew its petition. *See* Withdrawal of Partial Petition for Reconsideration of ABC, Inc., filed Oct. 25, 2001.

[2] 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).

participants accounted for more than 91 percent of global telecommunications revenues.[3] Under the terms of the WTO Telecom Agreement, 49 WTO Members, including the United States, made binding commitments to open their markets to foreign competition in satellite services.[4] The United States made market access commitments for fixed and mobile satellite services. It did not make market access commitments for Direct-to-Home (DTH) Service, Direct Broadcast Satellite Service (DBS), and Digital Audio Radio Service (DARS), and took an exemption from most-favored nation (MFN) treatment for these services as well.[5]

3. *DISCO II Order*. In the *DISCO II Order*, the Commission adopted rules consistent with the U.S. commitments under the WTO Telecom Agreement. The Commission also adopted a framework under which it would consider requests for access to the U.S. market for satellite services that are not covered by its commitments in the WTO Telecom Agreement. In evaluating requests by foreign-licensed satellites to serve the U.S. market, 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 in favor of entry by WTO Members for WTO-covered services. In other cases, the Commission stated it would apply the ECO-Sat analysis, which requires parties to demonstrate that U.S.-licensed satellite systems have effective competitive opportunities in the markets of the foreign countries licensing satellites seeking access to the U.S. market.[10] The Commission concluded that providing opportunities for non-U.S.-licensed satellites to deliver services in

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[3] WTO Web Page, *Telecommunications Agreement* <http://www.wto.org/wto/services/tel01.htm> ("WTO Telecom Web Page").

[4] Fourth Protocol to the GATS, 36 I.L.M. at 363. *See also DISCO II Order*, 12 FCC Rcd at 24102 (para. 19).

[5] *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 favourable 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.

[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 DISCO II*, 12 FCC Rcd at 24112-13 (para. 40); 47 C.F.R. § 25.137(a). The Commission decided to continue applying the ECO-Sat analysis to non-U.S. satellites licensed by non-WTO countries. *DISCO II*, 12 FCC Rcd at 24127 (para. 72).

the United States would bring U.S. consumers the benefits of enhanced competition.[11] This policy also promotes greater opportunities for U.S. companies to enter previously closed foreign markets, thereby stimulating a more competitive global satellite services market.[12]

4. *Petitions for Reconsideration*. In large part, the petitions for reconsideration request modifications to the *DISCO II* analysis, or criticize the application of *DISCO II* rules to intergovernmental organizations (IGOs) and IGO affiliates.[13] In addition, PanAmSat raises an issue regarding the INTELSAT K satellite and Intelnet I services.

III. DISCUSSION

A. General *DISCO II* Framework

1. Presumption in Favor of Entry

5. *Background*. The *DISCO II Order* established a "presumption in favor of entry" by WTO members to provide WTO-covered fixed-satellite services (excluding DTH) and mobile-satellite services. In other words, the Commission presumes that allowing non-U.S. satellites licensed by WTO Member nations to enter the U.S. market to provide WTO-covered services will promote a competitive satellite services market in the United States.[14] Parties may rebut the presumption in favor of entry by showing that allowing entry would pose a "very high risk to competition."[15]

6. *Discussion*. According to ICO, the "very high risk to competition" standard should be limited to conduct that would violate U.S. antitrust laws.[16] Motorola and Boeing argue that a variety of factors are relevant in determining whether a particular satellite operator's entry into the U.S. market poses a very high risk to competition, and oppose limiting that determination to antitrust violations.[17]

7. ICO also made this proposal in response to the *Further Notice*, where we initially proposed this standard.[18] The Commission did not adopt ICO's suggestion in the *DISCO II Order*, and we see no reason

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[11] *DISCO II Order*, 12 FCC Rcd at 24097 (para. 4).

[12] *DISCO II Order*, 12 FCC Rcd at 24099 (para. 10).

[13] We list the parties filing pleadings and the abbreviation by which we refer to them in this Order in Appendix A.

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

[15] *DISCO II Order*, 12 FCC Rcd at 24113-15 (paras. 41-45).

[16] ICO Petition at 6-9; ICO Reply at 7.

[17] Motorola Opposition at 5-6; Boeing Opposition at 7-8.

[18] *See DISCO II Order*, 12 FCC Rcd at 24110 (para. 37) and n.58.

to adopt it now. Although conduct inconsistent with U.S. antitrust laws would generally pose a "very high risk to competition," it is not clear at this time that no other activities would pose such a risk. Thus, limiting our analysis to compliance with U.S. antitrust laws may not cover all instances where, absent conditions, entry by a foreign-licensed satellite operator would cause competitive harm in the U.S. market or where conditions on that entry are warranted. Thus, adopting ICO's recommendation could undercut the policy goals of the *DISCO II Order*.[19]

2. Information Requirements

8. *Background*. The Commission determined that, in order to determine whether to permit a foreign-licensed satellite to serve the United States, it needed the same detailed legal, technical, and financial information regarding non-U.S.-licensed satellites and their operators as U.S.-licensed satellite applicants are required to submit before receiving an authorization to provide service in the United States.[20] Without this information, the Commission would not be able to determine whether service by a non-U.S. satellite in the United States would cause interference into the operations of systems authorized to serve the United States and would otherwise be in the public interest.[21] Because it would be unnecessary to do so, however, the Commission does not require financial information if the non-U.S.-licensed satellite is in orbit, and it does not require technical data if the international coordination process has been completed.[22]

9. ICO maintains that requiring the same legal, financial, and technical information of non-U.S.-licensed satellite operators is a redundant licensing requirement. ICO argues that we should presume that anyone that has obtained a non-U.S. license is also qualified to operate a satellite in the United States, unless that presumption is rebutted.[23] ICO argues that foreign administrations also review licensees' technical, legal, and financial qualifications, and that the Commission is in effect presuming that those procedures are inadequate by requiring the same information for U.S. market access.[24] Boeing and Motorola contend that ICO's proposed procedure would be difficult for the Commission to apply because it would have be required to develop and maintain record on licensing requirements of every WTO Member country that authorizes satellites.[25] ICO asserts that its proposal would not be substantially more burdensome than the *DISCO II* procedure, because the Commission would have to determine the adequacy of a foreign nation's licensing process only when an opposition to an application challenges those rules. ICO claims further that commenters would bear the burden of proving that a foreign nation's licensing

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19 *DISCO II Order*, 12 FCC Rcd at 24113 (para. 40).

20 *DISCO II Order*, 12 FCC Rcd at 24175 (para. 190).

21 *DISCO II Order*, 12 FCC Rcd at 24175 (para. 190).

22 *DISCO II Order*, 12 FCC Rcd at 24175-76 (para. 191).

23 ICO Petition at 2-4. *See also* Skybridge Opposition at 3-5.

24 ICO Reply at 3.

25 Boeing Opposition at 6; Motorola Opposition at 3.

process is or is not sufficient.[26]

10. Although ICO criticizes the technical information requirements of the *DISCO II* framework as redundant, it is not opposed to providing some technical information. ICO agrees that non-U.S.-licensed mobile-satellite service (MSS) systems should provide some technical information to facilitate domestic and international frequency coordination. ICO requests, however, that we do not require any frequency coordination of MSS operators beyond that required by the 1995 World Radiocommunication Conference (WRC-95) Resolution 46.[27] Motorola opposes an explicit link between the *DISCO II* framework and international coordination negotiations. Motorola asserts that resolving issues regarding non-U.S.-licensed satellite operators' access to the U.S. market in the context of international coordination negotiations would cause unnecessary delay.[28] In response to Motorola, ICO explains that it requests the Commission only to confirm that it will seek to avoid duplicative frequency coordination requirements.[29]

11. *Discussion*. The *DISCO II* framework is not a redundant licensing requirement, as ICO contends. Rather, as the Commission stated in the *DISCO II Order*, the framework requires no more than the minimum information necessary to ensure that granting access to the U.S. market by a non-U.S.-licensed satellite will not be inconsistent with the Commission's spectrum management policies.[30] No financial information is required if the foreign satellite is in orbit, and that no technical information is required if international coordination with the United States has taken place.[31]

12. We conclude further that ICO's proposal would be more burdensome than the *DISCO II* framework, and would likely create considerable delay in acting on requests for foreign satellites to serve the U.S. market. In administering the *DISCO II* framework over the last few years, we have found it to be simple and straightforward. Under this framework, we have authorized non-U.S.-satellites to provide a variety of services to U.S. customers.[32] As Boeing notes, it is particularly easy for non-U.S. operators to

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[26] ICO Reply at 4.

[27] ICO Petition at 5-6. *See also* Skybridge Opposition at 5-6. Resolution 46 sets forth coordination requirements for MSS operations in the 455-456 MHz and 459-460 MHz bands, and invites all administrations concerned with NGSO MSS systems to cooperate in the application of those coordination requirements. *See Final Acts of the World Radiocommunication Conference (WRC-95) Geneva, 1995* (ITU 1996) at 127, 620; ITU Radio Regulations, Art. S9.11A; 47 C.F.R. § 2.106, footnote S5.286A; Amendment of Part 2 of the Commission's Rules to Allocate the Commission's Rules to Allocate the 455-456 MHz and 459-460 MHz bands to the Mobile-Satellite Service, *Notice of Proposed Rulemaking*, ET Docket No. 97-214, 13 FCC Rcd 3428, 3430 n.5 (1997).

[28] Motorola Opposition at 4.

[29] ICO Reply at 7-8.

[30] *DISCO II Order*, 12 FCC Rcd at 24175 (para. 189). *See also* Loral Opposition at 6.

[31] 47 C.F.R. § 25.137(b); *DISCO II Order*, 12 FCC Rcd at 24175-76 (para. 191). *See also* Loral Opposition at 5-6, 8; Skybridge Reply at 2-3.

[32] *See, e.g.*, Applications of BT North America Inc., CBS Broadcasting, Inc., *Order*, 15 FCC Rcd 15603 (Int'l. Bur., 2000) (allowing EUTELSAT to enter the U.S. market under *DISCO II* procedure); Williams Communications, Inc. Application for Modification of Earth Station License, *Order*, 15 FCC Rcd 5836 (Int'l. Bur.,

provide the information required when they have already compiled it for another administration.[33] Indeed, Loral observes that other countries require U.S. operators to submit information similar to what we require, and that it is not considered burdensome.[34] On the other hand, it would be difficult and extraordinarily time-consuming to compare how a particular country's satellite licensing requirements differ from the U.S. requirements of Section 25.114, and then judge whether those differences are so great as to rebut ICO's suggested presumption.

13. In addition, Boeing argues that selectively applying the *DISCO II* rules, as ICO recommends, might violate the WTO requirements of national treatment and MFN.[35] ICO contends that the principles of national treatment and MFN do not require the Commission to treat everyone identically, as long as the non-U.S. company is not placed at a competitive disadvantage.[36] Although ICO is correct as a general proposition, Boeing's argument has merit. It is not clear that applying different information requirements to operators of satellites licensed by different countries in this case would be consistent with the U.S. commitments to the WTO. Thus, adopting ICO's proposal could put the United States in the position of violating its WTO Telecom Agreement commitments. Because the *DISCO II* framework is less administratively burdensome than ICO's recommendation, and avoids potentially complex WTO issues, we will retain the *DISCO II* framework.

14. Finally, we assure ICO that the *DISCO II Order* does not require duplicative frequency coordination. Rather, we require non-U.S.-licensed satellite operators only to provide the same technical information that U.S.-licensed satellite operators are required to provide under Part 25 of the Commission's rules.[37] Furthermore, to avoid duplicative information requirements, non-U.S.-licensed satellite operators need not include the technical information specified in Sections 25.114(c)(5) through (11) and (c)(14) if the international coordination process for the non-U.S. licensed space station has been completed. Thus, the *DISCO II Order* as it was adopted adequately addresses ICO's concern.

B. IGOs and IGO Affiliates

1. Standard for IGO Market Entry

15. At the time the Commission issued the *DISCO II Order*, INTELSAT and Inmarsat were IGOs -- intergovernmental organizations created by international treaties to ensure the availability of worldwide satellite communications.[38] Anyone seeking access to INTELSAT and Inmarsat satellites from the United

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Sat. and Rad. Div., 2000) (allowing the Nahuel C satellite to enter the U.S. market under *DISCO II* procedure).

[33] Boeing Opposition at 6.

[34] Loral Opposition at 7-8.

[35] Boeing Opposition at 3-6.

[36] ICO Reply at 4-5.

[37] *See* 47 C.F.R. § 25.137(b).

[38] *See* Amendment of the Commission's Regulatory Policies to Allow Non-U.S. Licensed Satellites

States was required to purchase capacity through Comsat Corporation (Comsat).[39] Comsat was created by the Communications Satellite Act of 1962 (Satellite Act),[40] and is the U.S. Signatory to INTELSAT and Inmarsat.[41]

16. In the *DISCO II Order*, the Commission determined that IGOs raise certain analytical issues within the *DISCO II* framework, in part because they do not have a single home market.[42] The Commission also noted that the IGOs' treaty status gave them immunity from antitrust lawsuits, and that this immunity could enable them to distort competition.[43] After reviewing those analytical issues, the Commission determined that it could not apply the ECO-Sat analysis to IGO provision of domestic service within the United States.[44] Instead, the Commission required Comsat to waive its immunity from suit, including antitrust actions, before the Commission would consider an application for IGO access to the domestic satellite market.[45] In addition, Comsat was required to show that direct IGO entry to the U.S. market will promote competition and is not otherwise contrary to the public interest.[46]

17. Since the Commission adopted the *DISCO II Order*, Inmarsat has become a privatized company. It is incorporated in the United Kingdom and is subject to the laws and regulations of the United Kingdom administration for satellite licensing purposes. INTELSAT became privatized on July 18, 2001. INTELSAT has become a U.S. licensee with respect to its C-band and Ku-band operations.[47] In addition, Congress has adopted the Open-Market Reorganization for the Betterment of International

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Providing Domestic and International Service in the United States, *Notice of Proposed Rulemaking*, IB Docket No. 96-111, 11 FCC Rcd 18178, 18199 (para. 62) (1996) (*DISCO II Notice*).

[39] *See* Direct Access to the INTELSAT System, *Report and Order*, IB Docket No. 98-192, 15 FCC Rcd 15703, 15706-07 (para. 5) (1999) (*Direct Access Order*).

[40] 47 U.S.C. § 701 *et seq*.

[41] *Direct Access Order*, 15 FCC Rcd at 15706-07 (para. 5).

[42] *DISCO II Order*, 12 FCC Rcd at 24141 (para. 108).

[43] *DISCO II Order*, 12 FCC Rcd at 24148 (para. 125).

[44] *DISCO II Order*, 12 FCC Rcd at 24146-48 (paras. 121-23).

[45] *DISCO II Order*, 12 FCC Rcd at 24148-49 (paras. 125-26).

[46] *DISCO II Order*, 12 FCC Rcd at 24149 (para. 126).

[47] Applications of Intelsat LLC for Authority to Operate, and to Further Construct, Launch and Operate C-band and Ku-band Satellites that Form a Global Communications System in Geostationary Orbit, *Memorandum Opinion Order and Authorization*, 15 FCC Rcd 15460 (2000)(*Intelsat LLC Licensing Order*), *recon. denied* Applications of Intelsat LLC for Authority to Operate, and to Further Construct, Launch and Operate C-band and Ku-band Satellites that Form a Global Communications System in Geostationary Orbit, *Order on Reconsideration*, 15 FCC Rcd 25234 (2000) (*Intelsat LLC Licensing Reconsideration Order*).

Telecommunications Act (ORBIT Act),[48] which establishes criteria for determining whether INTELSAT and Inmarsat have been privatized in a way that will not harm competition if those companies are allowed to enter the U.S. market. We have determined that INTELSAT's planned privatization will be consistent with the ORBIT Act criteria.[49] As a privatized company, INTELSAT will not retain privileges and immunities.[50] As for Inmarsat, we recently granted several applications to use Inmarsat in the United States.[51] In the context of reviewing those applications, we found that Inmarsat had taken sufficient actions to bring it into compliance with ORBIT Act privatization criteria.[52] We also note that, as part of its privatization in 1999, Inmarsat relinquished the privileges and immunities that it formerly held as an IGO.[53] Finally, Comsat is no longer the exclusive means of access to INTELSAT or Inmarsat satellites from the United States.[54]

18. In summary, Inmarsat and INTELSAT have become privatized companies subject to the laws of the countries in which they are incorporated.[55] As a result of these actions, the *DISCO II Order* IGO standards are no longer applicable to these companies.[56] Rather, to the extent that these companies are

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[48] Open-Market Reorganization for the Betterment of International Telecommunications Act, Pub. L. No. 106-180, 114 Stat. 48 (2000), *to be codified at* 47 U.S.C. § 761 *et seq.* The ORBIT Act adds Title VI to the Satellite Act, entitled "Communications Competition and Privatization."

[49] *See* Applications of Intelsat LLC for Authority to Operate, and to Further Construct, Launch and Operate C-band and Ku-band Satellites that Form a Global Communications System in Geostationary Orbit, *Memorandum Opinion Order and Authorization*, FCC 00-183 (released May 29, 2001) (*Intelsat LLC ORBIT Act Compliance Order*).

[50] *Intelsat LLC ORBIT Act Compliance Order* at para. 29.

[51] Comsat Corporation, d/b/a/ Comsat Mobile Communications, *Memorandum Opinion, Order, and Authorization*, FCC 01-272 (released Oct. 9, 2001) (*Inmarsat ORBIT Act Compliance Order*).

[52] *Inmarsat ORBIT Act Compliance Order* at paras. 58-60.

[53] *See* Report of the Twelfth Session of the Inmarsat Assembly of Parties, Assembly/12/Report (May 8, 1998); Report of the Thirteenth (Extraordinary) Session of the Assembly of Parties, Assembly/13/Report (October 8, 1998).

[54] *Direct Access Order*, 15 FCC Rcd 15703.

[55] *Intelsat LLC ORBIT Act Compliance Order* at para. 30; *Inmarsat ORBIT Act Compliance Order* at para. 50.

[56] A small residual IGO will remain in place after the privatization of INTELSAT. This small residual IGO does not affect our conclusion that the IGO-related issues raised in petitions for reconsideration of the *DISCO II Order* are moot because it will have no operational or commercial role. This small residual IGO is to be known as the International Telecommunications Satellite Organization (ITSO), and will monitor the performance of the privatized company's public service obligations to customers in poor or underserved countries that have a high degree of dependence on INTELSAT. *See* FCC Report to Congress as Required by the ORBIT Act, FCC 01-190 (released June 15, 2001) at 10.

licensed in other countries,[57] we will review their requests for access to the U.S. market under the same *DISCO II* criteria that we use for any other non-U.S.-licensed satellite operator. Thus, the issues raised in this proceeding regarding the *DISCO II Order* procedures for IGO access to the U.S. market are moot. We do not need to address issues regarding whether it was premature to establish an IGO market access standard in the *DISCO II Order*,[58] whether we provided adequate notice and opportunity for comment for that standard,[59] or whether we should have adopted additional safeguards for IGO entry.[60]

19. In *DISCO II*, the Commission concentrated on INTELSAT and Inmarsat because they were treaty-based IGOs designed to ensure worldwide satellite communications.[61] As a result, INTELSAT and Inmarsat were more likely to distort competition with their privileges and immunities than a regional IGO, such as EUTELSAT. Therefore, we have treated regional IGOs as individual non-U.S.-licensed satellite operators for purposes of considering requests for access to the U.S. market rather than apply the *DISCO II* framework designed for INTELSAT and Inmarsat.[62]

2. Standard for IGO Affiliate Market Entry

20. *Background*. In the *DISCO II Order*, the Commission also decided to treat IGO affiliate satellites licensed by WTO Member countries the same as other satellites licensed by WTO Member countries, including the extension of the presumption in favor of entry to those affiliate operators.[63] The Commission also stated that it would consider attaching conditions to an authorization granted to an IGO affiliate if its entry would pose a very high risk to competition in the United States.[64] In particular, the Commission found that market entry by an IGO affiliate could distort competition if the affiliate was not sufficiently separated from the IGO.[65]

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[57] Privatized INTELSAT will be licensed by the United Kingdom for any future operations in the Ka-band, V-band, or BSS bands.

[58] GE Americom Petition at 3-5; GE Americom Reply at 2-4.

[59] PanAmSat Petition at 3-5.

[60] PanAmSat Petition at 7-10; GE Americom Petition at 6-7; Columbia Reply at 2-5; GE Americom Reply at 4-5; PanAmSat Reply at 4-10.

[61] *DISCO II Order*, 12 FCC Rcd at 24138 (para. 102).

[62] *See* Applications of BT North America Inc., CBS Broadcasting, Inc., *Order*, 15 FCC Rcd 15603 (Int'l. Bur., 2000) (authorizing earth stations to communicate with a EUTELSAT satellite). *See also* European Telecommunication Satellite Organization, Petition for Declaratory Ruling, *Order*, 15 FCC Rcd 23486 (Sat. and Rad. Div., 2000) (adding a EUTELSAT satellite to the Permitted Space Station List).

[63] *DISCO II Order*, 12 FCC Rcd at 24154 (para. 136).

[64] *DISCO II Order*, 12 FCC Rcd at 24154 (para. 136).

[65] *DISCO II Order*, 12 FCC Rcd at 24154-55 (para. 136).

21. *Discussion*. ICO, a company spun off from Inmarsat, contends that it should not be considered an IGO affiliate.[66] Based on the ORBIT Act, which was adopted after the *DISCO II Order* was released, we agree. The ORBIT Act specifically excludes ICO from the definition of a "separated entity."[67] The ORBIT Act also requires entities "separated" from INTELSAT and Inmarsat and applying for or renewing a license to demonstrate that granting the application will not harm competition in the United States.[68] The ORBIT Act also sets forth requirements for that demonstration, including requirements that separated entities demonstrate that they have achieved independence from INTELSAT or Inmarsat.[69] By excluding ICO from the definition of a "separated entity," Congress has decided not to require ICO to demonstrate independence from Inmarsat. If we considered ICO as a company "affiliated" with Inmarsat for purposes of the *DISCO II* analysis, and found that it was in the public interest to apply any conditions to ICO's U.S. market entry, we might undercut Congress's decision to exclude ICO from the definition of a "separated entity."

22. Several parties argue that we should not treat IGO affiliates like other non-U.S.-licensed satellite operators, and recommend that we specify conditions to apply to IGO affiliates' entry into the U.S. market before those affiliates seek such entry.[70] Subsequently, the only IGO affiliate, New Skies, has requested access to the U.S. market, and we already have determined what conditions we need to place on New Skies' operations in the United States.[71] Accordingly, these issues are now moot, and we need not address them further here.

3. Inmarsat Access

23. *Background*. In the context of developing the standard for reviewing applications from IGO affiliates in the *DISCO II Order*, the Commission stated that Comsat was "the sole provider of INTELSAT and Inmarsat capacity in the United States" at that time.[72] IDB Mobile Communications, Inc. (IDB) argues

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[66] ICO Petition at 6-7; ICO Reply at 6-7.

[67] The ORBIT Act defines "separated entity" as "a privatized entity to whom a portion of the assets owned by INTELSAT or Inmarsat are transferred prior to full privatization of INTELSAT or Inmarsat, including in particular the entity whose structure was under discussion by INTELSAT as of March 25, 1998, *but excluding ICO*." Section 681(a)(8) of the Satellite Act, as amended by the ORBIT Act, 47 U.S.C. § 769(a)(8) (*emphasis added*).

[68] Section 601 of the Satellite Act, as amended by the ORBIT Act, 47 U.S.C. § 761.

[69] Sections 621(2) and 621(5) of the Satellite Act, as amended by the ORBIT Act, 47 U.S.C. §§ 763(2), (5).

[70] Comsat Opposition at 13-14; PanAmSat Reply at 7, 11-13; GE Americom Reply at 5-6.

[71] New Skies Satellites, N.V., *Order and Authorization*, 14 FCC Rcd 13003 (1999) (*New Skies Market Access Order*); New Skies Satellites, N.V., Request for Unconditional Authority to Access the U.S. Market, *Memorandum Opinion and Order*, 16 FCC Rcd 7482 (2001) (*New Skies ORBIT Act Compliance Order*).

[72] *DISCO II Order*, 12 FCC Rcd at 24146 (para. 118).

that, to the contrary, it was authorized to offer Inmarsat services in the United States.[73] Comsat notes that IDB is providing Inmarsat service through a foreign Inmarsat signatory, and that Comsat had filed a suit against IDB alleging breach of a contract between IDB and Comsat.[74] According to Comsat, therefore, IDB is trying to raise an issue that is relevant only to the contract litigation pending at the time IDB filed its petition for reconsideration.[75] Comsat contends further that this issue is outside the scope of the *DISCO II Order*.[76]

24. *Discussion*. We agree with IDB that it is authorized to provide Inmarsat service in the United States.[77] We also agree with Comsat, however, that this issue is not relevant to this proceeding, because IDB does not question the standard for reviewing applications from IGO affiliates adopted in the *DISCO II Order*, nor does it seek any changes in any substantive or procedural requirement adopted in that Order.

C. INTELSAT Service and Receive-Only Earth Stations

25. *Background*. Although the Commission started to relax the licensing requirements for receive-only earth stations associated with U.S.-licensed satellites as early as 1979,[78] it has generally retained a licensing requirement for receive-only earth stations associated with foreign-licensed satellites. The Commission has adopted two specific exceptions to this policy. The Commission adopted a declaratory ruling in 1986, concluding that receive-only earth stations used to receive INTELNET I service need not be licensed because such receive-only earth stations are not "satellite terminal stations" within the meaning of Section 201(c)(7) of the Satellite Act.[79] The Commission codified this ruling in 1991.[80] Later, in the *1992*

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[73] IDB Petition at 2-7; IDB Reply at 2-3.

[74] Comsat Opposition at 15-16.

[75] Comsat Opposition at 15-16.

[76] Comsat Opposition at 15-16.

[77] We note that IDB prevailed in the suit Comsat brought against IDB. *See* Comsat Corp. v. IDB Mobile Communications Inc., No. AW 98-281 (D. Md., Apr. 30, 1998); *aff'd sub nom.* Comsat Corp. v. IDB Mobile Communications Inc., No. 98-2525 (4th Cir., May 21, 1999). Comsat also filed a complain with the Commission under Section 208 of the Communications Act, 47 U.S.C. § 208, alleging that IDB violated the International Maritime Satellite Telecommunications Act, 47 U.S.C. §§ 751-757. Comsat based its complaint on the same facts as those presented to the court. The Commission dismissed Comsat's complaint under the doctrine of *res judicata* after the court decided in favor of IDB. Comsat Corp. v. IDB Mobile Communications Inc., *Memorandum Opinion and Order*, 15 FCC Rcd 7906 (Enf. Bur., 2000), *aff'd* 15 FCC Rcd 14697 (2000).

[78] Regulation of Domestic Receive-Only Satellite Earth Stations, *First Report and Order*, CC Docket No. 78-374, 74 FCC 2d 205 (1979).

[79] 47 U.S.C. § 721(c)(7). Deregulation of Receive-Only Satellite Earth Stations Operating with the INTELSAT Global Communications Satellite System, *Declaratory Ruling*, RM No. 4845, FCC 86-214, 1986 WL 291745 (F.C.C.) (released May 19, 1986) (*Equatorial Order*).

[80] Amendment of Part 25 of the Commission's Rules and Regulations to Reduce Alien Carrier

Waiver Order, the Common Carrier Bureau granted a waiver to Comsat to permit receive-only earth stations to receive signals from the INTELSAT K satellite without a license, because the INTELSAT K satellite is similar to INTELNET I service.[81]

26. *Discussion*. PanAmSat supports licensing requirements for receive-only earth stations operating with non-U.S.-licensed satellites, and argues that this requirement is also necessary for the INTELSAT K satellite and INTELNET I services.[82] We do not adopt PanAmSat's proposal with respect to INTELNET I services. These INTELSAT services have been exempted from licensing requirements for several years, and PanAmSat provides no persuasive reason to remove the exemption at this time.

27. With respect to the INTELSAT K satellite, we conclude that PanAmSat's proposal is moot because the waiver is no longer in effect. Subsequent to the *DISCO II Order*, the INTELSAT K satellite was transferred to New Skies Satellites, N.V. (New Skies), a satellite company spun off from INTELSAT and incorporated in the Netherlands, and has been renamed "New Skies K."[83] New Skies has also been granted access to the U.S. market under the *DISCO II* framework.[84] None of the Orders allowing New Skies access to the U.S. market indicates that New Skies would be able to use the New Skies K satellite to transmit to unlicensed receive-only earth stations in the United States. Furthermore, those Orders state specifically that New Skies will not be allowed to provide direct-to-home (DTH) services in the United States.[85] Because Comsat was granted a waiver of the receive-only earth station licensing requirement only for purposes of using the INTELSAT K satellite to provide DTH services,[86] it could not have been extended to New Skies.

VI. ORDERING CLAUSE

28. Accordingly, IT IS ORDERED, that pursuant to Sections 4(i), 301, 302, 303(r), 308, 309,

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Interference Between Fixed-Satellites at Reduced Orbital Spacing and to Revise Application Processing Procedures for Satellite Communications Services, *First Report and Order*, CC Docket No. 86-496, 6 FCC Rcd 2806, 2807-08 (para. 11) (1991) (*Part 25 Order*); 47 C.F.R. § 25.131(j).

[81] Communications Satellite Corporation, *Memorandum Opinion and Order*, 7 FCC Rcd 6028, 6029 (paras. 9-10) (Com. Car. Bur. 1992) (*1992 Waiver Order*).

[82] PanAmSat Petition at 10-11; PanAmSat Reply at 10-11.

[83] *New Skies Market Access Order*, 14 FCC Rcd at 13006 (para. 7).

[84] *See New Skies Market Access Order*, 13 FCC Rcd 13003; New Skies Satellites N.V., Petition for Declaratory Ruling, *Order*, 16 FCC Rcd 6740 (Int'l Bur., Sat. and Rad. Div., 2001) (*New Skies Permitted List Order*).

[85] *New Skies Market Access Order*, 13 FCC Rcd at 13039 (para. 85); *New Skies Permitted List Order*, 16 FCC Rcd at 6740 (para. 20).

[86] *See 1992 Waiver Order*, 7 FCC Rcd at 6028 (para. 3) (INTELSAT K was designed to provide "high-quality, encrypted international video and audio signals directly to user premises"); 6029 (para. 10) (waiver was limited to stand-alone, direct-to-user video and audio transmissions).

and 310 of the Communications Act, 47 U.S.C. §§ 154(i), 301, 302, 303(r), 308, 309, 310, and Section 1.429 of the Commission's rules, 47 C.F.R. § 1.429, the petitions for reconsideration listed in Appendix A to this Order ARE DENIED.

29. This Order is effective upon release.

FEDERAL COMMUNICATIONS COMMISSION

Magalie Roman Salas
Secretary

APPENDIX A

List of Commenters

I. Petitions for Reconsideration

1. GE American Communications, Inc. (GE Americom)
2. ICO Global Communications (ICO)
3. IDB Mobile Communications, Inc. (IDB)
4. PanAmSat Corporation (PanAmSat)

II. Comments and Oppositions

1. Boeing Company (Boeing)
2. Columbia Communications Corporation (Columbia)
3. COMSAT Corporation (Comsat)
4. Loral Space & Communications Ltd. and Globalstar, L.P. (together, Loral)
5. Motorola, Inc., and Iridium Operating LLC (together, Motorola)
6. PanAmSat
7. Skybridge L.L.C. (Skybridge)

III. Reply Comments

1. Columbia
2. GE Americom
3. ICO
4. IDB
5. PanAmSat
6. Skybridge