

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

In the Matter of

Satelites Mexicanos, S.A. de C.V.

Petition for Declaratory Ruling

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File No. SAT-PDR-19991214-00131

ORDER

Adopted: October 2, 2000

Released: October 3, 2000

By the Chief, Satellite and Radiocommunication Division, International Bureau:

I. INTRODUCTION

1. In this Order, we add Satelites Mexicanos, S.A. de C.V.'s (SatMex's) Solidaridad 2 and Satmex 5 satellites, located at 113.0° W.L. and 116.8° W.L. orbit locations, respectively, to the "Permitted Space Station List." The Permitted Space Station List denotes all satellites with which U.S. earth stations with "routinely" authorized technical parameters are permitted to communicate without additional Commission action, provided that those communications fall within the same technical parameters and conditions established in the earth stations' licenses. This list is intended to streamline the process by which foreign-licensed satellites can access the U.S. market, and as a result, stimulate competition in the United States, provide consumers more alternatives in choosing communications providers and services, reduce prices, and facilitate technological innovation.

II. BACKGROUND

2. The Commission's DISCO II Order adopted a framework under which the Commission would consider requests for non-U.S. satellite systems to serve the United States. To implement this framework, the Commission, among other things, established a procedure by which a service provider in the United States could request immediate access to a foreign in-orbit satellite that would serve the U.S. market. In the DISCO II First Reconsideration Order, the Commission streamlined this process by allowing the operators of in-orbit non-U.S. satellites offering fixed-satellite service to request authority to provide space segment capacity service to licensed earth stations in the United States. Under DISCO II, this request could be made only by an earth station operator. Further, once a non-U.S. space station is

1 The Commission established the Permitted Space Station List in the DISCO II First Reconsideration Order. 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, Order, IB Docket No. 96-111, 15 FCC Rcd 7207 (1999) (DISCO II First Reconsideration Order).

2 Amendment of the Commission's Regulatory Policies to Allow Non-U.S. Licensed Satellites Providing Domestic and International Service in the United States. Report and Order, IB Docket No. 96-111, 12 FCC Rcd 24094, 24174 (para. 186) (1997) (DISCO II). For a more detailed summary of the DISCO II framework, see DISCO II First Reconsideration Order, 15 FCC Rcd at 7209-10 (paras. 4-5).

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² Amendment of the Commission's Regulatory Policies to Allow Non-U.S. Licensed Satellites Providing Domestic and International Service in the United States, Report and Order, IB Docket No. 96-111, 12 FCC Rcd 24094, 24174 (para. 186) (1997) (*DISCO II*). For a more detailed summary of the *DISCO II* framework, see *DISCO II First Reconsideration Order*, 15 FCC Rcd at 7209-10 (paras. 4-5).

permitted to access the U.S. market pursuant to a complete *DISCO II* analysis, it is placed on the Permitted Space Station List upon the applicant's request. This list includes all satellites with which U.S. earth stations with routinely-authorized technical parameters are permitted to communicate without additional Commission action, provided that those communications fall within the same technical parameters and conditions established in the earth stations' original licenses.³ The Permitted Space Station List is maintained on our website, and is also available via fax or e-mail.⁴

3. On December 14, 1999, SatMex requested us to add Solidaridad 2 and Satmex 5 to the Permitted List.⁵ GE American Communications, Inc. (GE Americom) filed comments on January 24, 2000.⁶ SatMex filed a reply on February 8, 2000.⁷

III. DISCUSSION

A. General Framework

4. In *DISCO II*, the Commission set forth the public interest analysis applicable in evaluating applications to use non-U.S. licensed space stations to provide satellite service in the United States. This analysis considers the effect on competition in the United States,⁸ spectrum availability,⁹ eligibility and operating (*e.g.*, technical) requirements,¹⁰ and national security, law enforcement, foreign policy, and trade concerns.¹¹ We evaluate SatMex's request under this framework.

³ *DISCO II First Reconsideration Order*, 15 FCC Rcd at 7214-16 (paras. 16-20).

⁴ *DISCO II First Reconsideration Order*, 15 FCC Rcd at 7215-16 (para. 19).

⁵ Letter from Carmen Ochoa, General Counsel, Satelites Mexicanos, S.A. de C.V., to Thomas S. Tycz, Chief, Satellite and Radiocommunication Division, International Bureau, Federal Communications Commission (dated Dec. 14, 1999) (SatMex Petition). SatMex originally included Solidaridad 1, located at 109.2° W.L., in its petition, but later withdrew its request for that satellite because it has ceased operation and was irretrievably lost. Letter from Carmen Ochoa, General Counsel, Satelites Mexicanos, S.A. de C.V., to Thomas S. Tycz, Chief, Satellite and Radiocommunication Division, International Bureau, Federal Communications Commission (dated Sept. 18, 2000).

⁶ Telesat Canada also opposed SatMex's Permitted List request, but later withdrew its opposition. Letter from Carl R. Frank, Counsel for Telesat Canada, to Magalie Roman Salas, Secretary, Federal Communications Commission (dated June 7, 2000) (*June 7 Letter*).

⁷ Replies were scheduled to be filed on February 3, 2000, 10 days after comments were due. SatMex received Telesat's comments by mail. Section 1.4(h) of the Commission's rules, 47 C.F.R. § 1.4(h) permits parties to take three additional business days to file pleadings when the notice period is 10 days or less and the party is served by mail.

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

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

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

B. Competition Considerations

5. In *DISCO II*, the Commission established a rebuttable presumption in favor of entry by non-U.S. satellites licensed by World Trade Organization (WTO) Members to provide services covered by the U.S. commitments under the WTO Agreement on Basic Telecommunications Services (WTO Basic Telecom Agreement).¹² These commitments included fixed-satellite service, except for direct-to-home (DTH) service. The Commission concluded that the market access commitments made by WTO Members under the WTO Basic Telecom Agreement will help ensure the presence and advancement of competition in the satellite services market and yield the benefits of a competitive marketplace to consumers in the United States and other countries.¹³ In this case, the presumption in favor of entry is applicable to SatMex, because Mexico is a WTO Member and a signatory to the WTO Basic Telecom Agreement.¹⁴

6. No commenter in this proceeding has presented any arguments to rebut this presumption. GE Americom, however, notes that it recently launched a hybrid C/Ku-band satellite to the 101° W.L. orbit location, and plans to provide service to Mexico, Central America, and South America.¹⁵ GE Americom does not recommend any specific condition on the placement of SatMex's satellites on the Permitted List. Rather, GE Americom requests that "the Commission preserve its ability to redress any competitive issues that arise" if Mexico chooses to place any regulatory barriers to foreign entry to the Mexican satellite market.¹⁶

7. GE Americom's assertions do not address, let alone rebut, the presumption in favor of entry adopted by the Commission in *DISCO II*. The Commission adopted that presumption in lieu of the "Effective Competitive Opportunities for Satellites" test (ECO-Sat test) it had originally proposed in the *DISCO II Notice of Proposed Rulemaking*.¹⁷ The ECO-Sat test requires parties to demonstrate that U.S.-licensed satellite systems have effective competitive opportunities in foreign markets.¹⁸ The

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

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

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

¹⁴ See <www.wto.org/wto/services/tel01.htm> at n.2 for a list of all signatories to the WTO Basic Telecom Agreement. See <www.wto.org/wto/about/organs6.htm> for a list of all WTO Members.

¹⁵ GE Americom Comments at 2-3.

¹⁶ GE Americom Comments at 3.

¹⁷ 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, Notice of Proposed Rulemaking, IB Docket No. 96-111, 11 FCC Rcd 13178, 18180 (para. 2) (1996) (*DISCO II Notice of Proposed Rulemaking*).

¹⁸ *DISCO II*, 12 FCC Rcd at 24112-13 (para. 40); 47 C.F.R. § 25.137(a).

Commission adopted a presumption in favor of entry for WTO-Member satellites providing WTO-covered services, after concluding that market access commitments made by WTO Members under the WTO Basic Telecom Agreement and the general procompetitive obligations of WTO Members under the General Agreement on Trade in Services (GATS) would enhance competition in the U.S. satellite services market.¹⁹ GE Americom is, in effect, requesting us to reopen this proceeding periodically to conduct an ECO-Sat test, and to ignore the presumption in favor of entry adopted by the Commission in *DISCO II*. The Bureau rejected a similar proposal by GE Americom in the *Telesat Order*.²⁰ We reject GE Americom's proposal in this proceeding as well.

8. Mexico and the United States have reached a bilateral agreement that allows Mexican satellites to offer fixed-satellite services in the United States, including Direct-to-Home (DTH) service, Direct Broadcast Satellite (DBS) service, and Digital Audio Radio Service (DARS), after those satellites have been coordinated with the United States for these services.²¹ Accordingly, we conclude that permitting ALSAT-designated earth stations to access SatMex's two satellites for purposes of offering fixed-satellite services, including DTH, will enhance competition for these services.

C. Spectrum Availability

9. 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 foreign satellite to serve the United States.²² This is consistent with the Chairman's Note to the WTO Basic Telecom Agreement, which states that WTO Members may exercise their domestic spectrum/frequency management policies when considering foreign entry.

10. In this case, the Solidaridad 2 and Satmex 5 satellites are located at orbital positions in accordance with a trilateral agreement for C- and Ku-band frequencies among the United States, Mexico, and Canada.²³ Consequently, the Commission has not licensed satellites in these frequency bands at these locations. Allowing the Solidaridad 2 and Satmex 5 satellites to serve the United States from their

¹⁹ *DISCO II*, 12 FCC Rcd at 24112-13 (paras. 39-40).

²⁰ Telesat Canada Request for Declaratory Ruling or Petition for Waiver on Earth Stations' Use of ANIK E1 and ANIK E2 Satellite Capacity to Provide Basic Telecommunications Service in the United States, Order, 15 FCC Rcd 3649 (Int'l Bur., 1999) (*Telesat Order*).

²¹ See Protocol Concerning the Transmission and Reception of Signals from Satellites for the Provision of Direct-to-Home Satellite Television Services in the United States of America and the United Mexican States, November 8, 1996; Agreement Between the Government of the United States of America and the United Mexican States Concerning the Use of the 2310-2360 MHz Band, July 24, 2000. See also Televisa International, LLC, Order and Authorization, 13 FCC Rcd 10074, 10075-76 (para. 5) (Int'l Bur. 1997) (*Televisa Order*) (discussing DTH Protocol).

²² *DISCO II*, 12 FCC Rcd at 24159 (para. 150).

²³ Trilateral Arrangement Regarding Use of the Geostationary Orbit by Canada, Mexico, and the United States, Public Notice, Mimeo No. 4406 (Sept. 2, 1988).

Based on the information exchanged with Mexico during the coordination, we can determine that the Solidaridad 2 and SatMex 5 satellites will not cause harmful interference to U.S.-licensed satellites, the nearest of which is more than two degrees away. The Bureau determined in 1997 that Solidaridad 2 is not two-degree-compliant.³¹ SatMex has not provided any new information that would justify a different conclusion here. Furthermore, we cannot determine on the basis of the record in this proceeding whether SatMex 5 can operate interference-free in a two-degree spacing environment. SatMex cites three U.S. earth stations that we have authorized to communicate with SatMex satellites, but those earth station applications did not provide, and were not required to provide, all the detailed technical information specified in Section 25.114.³² Although SatMex asserts that "several" earth station operators have submitted Section 25.114 information on SatMex 5 in earth station modification applications, SatMex does not identify any of those applications in its petition for declaratory ruling.³³ As a result, there is nothing in the record before us in this proceeding that would enable us to conclude that SatMex's two satellites are two-degree compliant. Accordingly, consistent with our treatment of U.S.-licensed systems, and with our treatment of Canada's ANIK E1 and E2,³⁴ we permit ALSAT-designated earth stations to communicate with the Solidaridad 2 and SatMex 5 satellites to provide service in the United States on a non-harmful interference basis relative to satellite systems that have satellite services currently in operation compliant with two-degree spacing requirements and authorized to serve the United States.

14. Further, the Solidaridad 2 and SatMex 5 satellites are located at orbital positions subject to a trilateral agreement among the United States, Canada, and Mexico.³⁵ In addition, SatMex and Telesat Canada have coordinated all their satellites covered by the Trilateral Agreement.³⁶ Based on that agreement, we do not expect these satellites to cause harmful interference to any U.S. or foreign licensed satellite network now serving the United States. In addition, consistent with the Trilateral Agreement, we do not anticipate assigning any U.S.-licensed facilities within two degrees of these orbital locations. In the future, however, should the Commission authorize access to the U.S. market by a non-U.S.-licensed satellite that is providing services that are two-degree-compliant, and is located within two degrees of Solidaridad 2 or SatMex 5, SatMex would be expected to coordinate in good faith with the licensee of that satellite. If a coordination agreement is not reached, the operation of U.S. non-routine earth stations communicating with the Solidaridad 2 or SatMex 5 satellites must be on a non-harmful interference basis relative to routinely-licensed U.S. services provided by the compliant satellite.

submit technical information for satellites for which international coordination has been completed).

³¹ *Televisa Order*, 13 FCC Rcd at 10077-78 (para. 10).

³² The earth station applications cited by SatMex are File Nos. SES-MOD-19990401-00537; SES-MOD-19990401-00539; and SES-MOD-19990401-00544. SatMex Petition at 1 n.3.

³³ SatMex Reply at 2-3.

³⁴ *Telesat Order*, 15 FCC Rcd at 3654-55 (paras. 15-16).

³⁵ See Public Notice, Trilateral Arrangement Regarding Use of the Geostationary Orbit Reached by Canada, Mexico, and the United States (Sept. 2, 1988).

³⁶ *June 7 Letter*.

15. Finally, we note that one earth station operator, Tachyon, Inc., has been authorized to communicate with SatMex 5 on a non-harmful-interference basis to adjacent satellite systems using a 0.95-meter antenna.³⁷ Section 25.212(c) establishes a minimum antenna diameter of 1.2 meters for routine licensing of Ku-band earth stations operating within certain power density requirements.³⁸ Similarly, Section 25.212(d) establishes a minimum antenna diameter of 4.5 meters for routine licensing of C-band earth stations operating within certain power density requirements.³⁹ Because only routinely licensed earth stations are permitted to access space stations on the Permitted List,⁴⁰ earth stations with antennas that do not comply with Section 25.212 cannot automatically access SatMex 5 without further Commission action. To ensure that there is no confusion in this regard, we will include conditions in the Permitted List entries for the two SatMex satellites that require earth stations accessing those satellites to comply with Sections 25.212(c) and (d), including the minimum antenna size standards.⁴¹

E. Other Issues

16. As described above, under *DISCO II*, national security, law enforcement, foreign policy, and trade concerns are included in the public interest analysis.⁴² Nothing in the record before us raises any such concerns.

17. Finally, pursuant to the Bureau's Public Notice of December 17, 1999, placing a satellite on the Permitted List will permit international common carriers holding appropriate global international Section 214 authorizations to provide international telecommunications services using the satellite without the need to obtain additional Section 214 authority.⁴³ We find that it is in the public interest to allow common carriers with global international Section 214 authorizations to communicate with the two SatMex satellites addressed in this Order.

³⁷ Application No. SES-MOD-20000510-00754, granted July 14, 2000.

³⁸ 47 C.F.R. § 25.212(c).

³⁹ 47 C.F.R. § 25.212(d).

⁴⁰ See *DISCO II First Reconsideration Order*, 15 FCC Rcd at 7214 (para. 16) (all future routinely licensed earth stations will be allowed to access any satellite on the Permitted Space Station list); 7214-15 (para. 17) (existing ALSAT-designated earth stations that are not two-degree compliant, *i.e.* are not "routinely licensed," must show that operation of that earth station will not cause more interference than would be caused by a two-degree-compliant earth station or must be individually coordinated with all adjacent satellite operations).

⁴¹ The Bureau placed a similar condition on ANIK E1's entry on the Permitted List. *Telesat Order*, 15 FCC Rcd at 3655 (para. 17).

⁴² *DISCO II*, 12 FCC Rcd at 24170-72 (paras. 178-82).

⁴³ See International Bureau Announced Process for Providing Service Under Global International Section 214 Authorizations Using Approved Non-U.S.-Licensed Satellite Systems Listed on the Permitted Space Station List, Public Notice, DA 99-2844 (released Dec. 17, 1999).

IV. CONCLUSION AND ORDERING CLAUSES

18. We have performed a complete *DISCO II* analysis in this Order, and have determined that certain conditions necessary to preclude communications with the two SatMex satellites addressed in this Order from causing harmful interference with other U.S.-licensed services. Accordingly, we hereby place the SatMex satellites on the Permitted Space Station List, subject to the conditions set forth in this Order.⁴⁴

19. Accordingly, IT IS ORDERED that, pursuant to Sections 303(r), 308, 309, and 310 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 303(r), 308, 309, 310, and Sections 25.121(a) and 25.137(c) of the Commission's rules, 47 C.F.R. §§ 25.121(a), 25.137(c), each earth station with "ALSAT" designated as a point of communication, IS GRANTED authority to provide Fixed Satellite Services (FSS), excluding FSS Direct-to-Home services, to, from, or within the United States, by accessing the Solidaridad 2 and SatMex 5 satellites, located at the 113.0° W.L. and 116.8° W.L. orbit locations, respectively, subject to the conditions set forth in its earth station license and in this Order.

20. IT IS FURTHER ORDERED that the Solidaridad 2 and SatMex 5 satellites, together with the conditions set forth in this Order, ARE PLACED on the "Permitted Space Station List" with the following conditions.

21. IT IS FURTHER ORDERED that access to the Solidaridad 2, and SatMex 5 satellite networks SHALL BE in compliance with the satellite coordination agreements reached between the United States and Mexico, and any future modifications to such agreements.

22. IT IS FURTHER ORDERED that access to the Solidaridad 2 and SatMex 5 satellite networks SHALL BE in compliance with the satellite coordination agreement between the SatMex of Mexico, Telesat Canada, and Industry Canada, signed in Istanbul on May 31, 2000, and any future modifications to which the parties agree.

23. IT IS FURTHER ORDERED that operations over the Solidaridad 2 and SatMex 5 satellite networks shall not cause harmful interference to, nor shall operators accessing these satellite networks claim protection from, U.S. services provided over U.S.-authorized satellite networks that are compliant with the Commission's two-degree spacing rules.

24. IT IS FURTHER ORDERED that operations over the Solidaridad 2 and SatMex 5 satellite networks shall not cause harmful interference to, nor shall operators accessing these satellite networks claim protection from, U.S.-authorized services provided over non-U.S.-authorized satellite networks that are providing service to the United States and are compliant with the Commission's two-degree spacing rules.

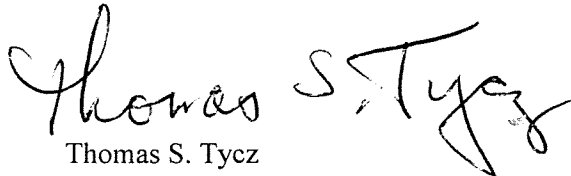
⁴⁴ The Permitted Space Station List on the International Bureau's web site will be updated shortly to reflect this addition. This web site address is <www.fcc.gov/ib/srd/se/permitted.html>. In addition, pursuant to the Bureau's Public Notice of December 17, 1999, these two satellites now fall within the scope of global international Section 214 authorizations. See International Bureau Announced Process for Providing Service Under Global International Section 214 Authorizations Using Approved Non-U.S.-Licensed Satellite Systems Listed on the Permitted Space Station List, Public Notice, DA 99-2844 (released Dec. 17, 1999).

25. ALSAT-designated earth stations communicating with the Solidaridad2 or SatMex 5 satellite networks must meet the requirements of Section 25.212 of the Commission's rules, 47 C.F.R. § 25.212.

26. IT IS FURTHER ORDERED that operations over and access to the Solidaridad2 and SatMex 5 satellite networks shall cease immediately upon notification of harmful interference. Complaints of all radio interference shall be forwarded to the Commission in writing.

27. This Order is issued pursuant to Section 0.261 of the Commission's rules on delegated authority, 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. (*See* 47 C.F.R. § 1.4(b)(2).)

FEDERAL COMMUNICATIONS COMMISSION



Thomas S. Tycz
Chief, Satellite and Radiocommunication Division
International Bureau