

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

In the Matter of)	
)	
New Skies Satellites N.V.)	File No. SAT-PDR-19991227-00130
)	
Petition for Declaratory Ruling)	

ORDER

Adopted: March 27, 2001

Released: March 29, 2001

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

I. INTRODUCTION

1. In this Order, we add four satellites currently operated by New Skies Satellites, N.V. (New Skies) to the "Permitted Space Station List."¹ The Permitted Space Station List denotes all satellites with which U.S. earth stations with "routinely" authorized technical parameters are permitted to communicate without additional Commission action, provided that those communications fall within the same technical parameters and conditions established in the earth stations' licenses. As a result of this action, "routine" earth stations will be able to communicate with any or all of these four New Skies satellites. This should 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.² 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.³ In the *DISCO II First Reconsideration Order*, the Commission streamlined this process by doing two things. First, it allowed the *operators* of in-orbit non-U.S. satellites offering fixed-satellite service to request

¹ These satellites are (1) NSS-513, located at 183° E.L.; (2) NSS-803, located at 338.5° E.L.; (3) NSS-806, located at 319.5° E.L.; and (4) NSS-K, located at 338.5° E.L. New Skies requested us to add a fifth satellite, NSS-703 located at 57° E.L., to the Permitted List. We will not do so at this time, for reasons discussed below. In a separate Order we will adopt in the near future, we will address issues raised by placing another New Skies satellite, NSS-7, on the Permitted List.

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 (1997) (*DISCO II* or *DISCO II Order*).

³ *DISCO II*, 12 FCC Rcd at 24174 (para. 186). For a more detailed summary of the *DISCO II* framework, see Amendment of the Commission's Regulatory Policies to Allow Non-U.S.-Licensed Space Stations to Provide Domestic and International Satellite Service in the United States, First Order on Reconsideration, IB Docket No. 96-111, 15 FCC Rcd 7207, 7209-10 (paras. 4-5) (1999) (*DISCO II First Reconsideration Order*).

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. Second, it created the Permitted Space Station List to facilitate access by the foreign satellite. Once a non-U.S. space station is 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 (known as "ALSAT" earth stations) are permitted to communicate without additional Commission action, provided that those communications fall within the same technical parameters and conditions established in the earth stations' original licenses.⁴ The Permitted Space Station List is maintained on our website, and is also available via fax or e-mail.⁵

3. New Skies is a satellite company spun off from the International Telecommunications Satellite Organization (INTELSAT), an intergovernmental organization with 143 member governments.⁶ New Skies is incorporated in the Netherlands.⁷ In 1999, the Commission adopted the *New Skies Market Access Order*, which granted authority to 136 earth stations to communicate with one or more of the New Skies satellites addressed in this Order, subject to several conditions, for three years after the release date of that Order.⁸ The Commission also announced that it would extend the authorizations to full ten-year terms if and when New Skies demonstrates that it has achieved independence from INTELSAT.⁹ In connection with this demonstration, the Commission directed New Skies to provide information on (1) the results of a planned initial public offering (IPO) and any additional plans to increase its non-INTELSAT Signatory ownership; (2) termination of certain remaining service agreements between INTELSAT and New Skies; and (3) novation of contracts between New Skies and its customers, and termination of leaseback agreements under which INTELSAT leases capacity from New Skies on the satellites it transferred to New Skies.¹⁰

⁴ *DISCO II First Reconsideration Order*, 15 FCC Rcd at 7214-16 (paras. 16-20). "ALSAT" means "all U.S.-licensed space stations." Originally, under an ALSAT earth station license, an earth station operator providing fixed-satellite service in the conventional C- and Ku-bands could access any U.S. satellite without additional Commission action, provided that those communications fall within the same technical parameters and conditions established in the earth stations' licenses. See *DISCO II First Reconsideration Order*, 15 FCC Rcd at 7210-11 (para. 6). The *DISCO II First Reconsideration Order* expanded ALSAT earth station licenses to permit access to any satellite on the Permitted List. *DISCO II First Reconsideration Order*, 15 FCC Rcd at 7215-16 (para. 19).

⁵ *DISCO II First Reconsideration Order*, 15 FCC Rcd at 7215-16 (para. 19). This web site address is <www.fcc.gov/ib/srd/se/permitted.html>.

⁶ New Skies Satellites, N.V., Order and Authorization, 14 FCC Rcd 13003, 13005-06 (paras. 3-4) (1999) (*New Skies Market Access Order*).

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

⁸ *New Skies Market Access Order*, 14 FCC Rcd at 13039-41 (paras. 82-94). Thus, the earth station authorizations granted in the *New Skies Market Access Order* were originally scheduled to expire on August 6, 2002.

⁹ *New Skies Market Access Order*, 14 FCC Rcd at 13034-35 (para. 70).

¹⁰ *New Skies Market Access Order*, 14 FCC Rcd at 13035 (para. 71).

4. In granting the three-year earth station licenses, the Commission also found that all but one of the New Skies satellites did not comply with the Commission's two-degree orbital spacing requirements.¹¹ The Commission recognized, however, that no U.S.-licensed satellites were operating two degrees away from any New Skies satellites. Consequently, the Commission granted New Skies conditional waivers of several technical requirements. The conditions provided that earth stations operating with New Skies satellites must do so on a non-harmful interference basis to any future two-degree-spacing compliant satellites authorized to serve the United States in the event that New Skies and the adjacent satellite operator are unable to reach a coordination agreement.¹²

5. On November 15, 1999, New Skies requested us to add its five in-orbit satellites to the Permitted List.¹³ GE American Communications, Inc. (GE Americom) and PanAmSat Corporation (PanAmSat) advocate that we place the same conditions on New Skies's Permitted List entry that the Commission established in the *New Skies Market Access Order*.¹⁴ In its reply, New Skies opposed placing a three-year limitation on the Permitted List, but did not state any opposition to any other condition.¹⁵

6. Subsequent to the Commission's adoption of the *New Skies Market Access Order*, Congress adopted the Open-Market Reorganization for the Betterment of International Telecommunications Act (ORBIT Act).¹⁶ The ORBIT Act established legislative criteria for Commission review of applications to serve the U.S. market by privatized intergovernmental organizations (IGOs) such as INTELSAT, and spin-offs such as New Skies.¹⁷ In an Order released today, the Commission determined that New Skies has met

¹¹ The Commission concluded that none of the New Skies satellites operating in the C-band meet all of the Commission's technical requirements. *New Skies Market Access Order*, 14 FCC Rcd at 13037-38 (para. 76). NSS-K, which does not operate in the C-band, is the only satellite that complies with all applicable technical requirements. The Commission clarifies the technical waivers granted in the *New Skies Market Access Order* in its *New Skies ORBIT Act Compliance Order*, adopted concurrently with this Order. New Skies Satellites, N.V., Request for Unconditional Authority to Access the U.S. Market, Memorandum Opinion and Order, FCC 01-107 (released March 29, 2001) (*New Skies ORBIT Act Compliance Order*).

¹² *New Skies Market Access Order*, 14 FCC Rcd at 13038 (paras. 77-78).

¹³ See Letter from Stephen L. Goodman, Counsel for New Skies Satellites N.V., to Donald Abelson, Chief, International Bureau, Federal Communications Commission (dated Nov. 15, 1999) (New Skies Petition) at 1.

¹⁴ GE Americom and PanAmSat filed their comments on January 24, 2000.

¹⁵ New Skies filed its reply on February 3, 2000.

¹⁶ Open-Market Reorganization for the Betterment of International Telecommunications Act, Pub. L. No. 106-180, 114 Stat. 48 (2000), *codified at* 47 U.S.C. § 761 *et seq.* The ORBIT Act adds Title VI to the Communications Satellite Act of 1962, 47 U.S.C. §§ 701 *et seq.* (Satellite Act), entitled "Communications Competition and Privatization."

¹⁷ Under these legislative criteria, New Skies is required to demonstrate the following: (1) independence from INTELSAT through an initial public offering (IPO) that achieves substantial dilution of the

the criteria established in the ORBIT Act, and that, therefore, allowing New Skies to provide service in the U.S. telecommunications market will not harm competition in that market. Accordingly, in that Order, the Commission removed the three-year limitation on the earth station authorizations granted in the *New Skies Market Access Order*.¹⁸ It also granted a conditional waiver of the non-harmful interference condition it had previously imposed on earth stations operating with New Skies satellites.¹⁹

III. DISCUSSION

A. General Framework

7. 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,²⁰ spectrum availability,²¹ eligibility and operating (*e.g.*, technical) requirements,²² and national security, law enforcement, foreign policy, and trade concerns.²³

8. In the *New Skies Market Access Order*, pursuant to this framework, we granted authority to 136 earth stations in the United States to communicate with one or more of four New Skies satellites under the conditions previously noted. New Skies now requests us to add these four satellites, plus the NSS-703, which is located at 57° E.L., to the Permitted List.²⁴ We note, however, that NSS-703 is not visible to the United States or any of its territories from the 57° E.L. orbit location. Because NSS-703 is therefore not

aggregate ownership of Signatories or former Signatories of INTELSAT; (2) termination of privileges and immunities; (3) incorporation in a country that is a Signatory to the World Trade Organization (WTO) Agreement with effective laws and regulations that secure competition in telecommunications services; and (4) strict limitations on interlocking officers, directors, or employees shared with any intergovernmental organization or any Signatory or former Signatory of INTELSAT. Sections 621 and 623 of the Satellite Act, as amended by the ORBIT Act, 47 U.S.C. §§ 763, 763b.

¹⁸ *New Skies ORBIT Act Compliance Order* at paras. 46-47.

¹⁹ *New Skies ORBIT Act Compliance Order* at paras. 77-78.

²⁰ *DISCO II*, 12 FCC Rcd at 24107-56 (paras. 30-145).

²¹ *DISCO II*, 12 FCC Rcd at 24157-59 (paras. 146-50).

²² *DISCO II*, 12 FCC Rcd at 24159-69 (paras. 151-74).

²³ *DISCO II*, 12 FCC Rcd at 24169-72 (paras. 175-82).

²⁴ One of the 136 applications granted in the *New Skies Market Access Order* authorized Communications Satellite Systems, Inc., to communicate with NSS-703 at 57° E.L. Subsequently, this earth station operator informed us that, in practice, it does not communicate with NSS-703. Letter from Dori Schmitz, General Manager, Satellite Communications Systems, Inc., to Steven Spaeth, Attorney-Advisor, FCC, dated February 20, 2001. Accordingly, the Commission determined that New Skies' request to extend the license term to ten years is moot with respect to NSS-703. *New Skies ORBIT Act Compliance Order* at para. 60.

capable of serving customers in the United States, it is not appropriate to consider it for inclusion on the Permitted List.²⁵ Thus, we consider here only New Skies's request with respect to the four other satellites. We revisit our *DISCO II* analysis for these four satellites to the extent necessary in light of the *New Skies ORBIT Act Compliance Order*. Specifically, we address competition considerations and eligibility requirements.

B. Competition Considerations

9. 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).²⁶ These commitments include 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.²⁷ The *DISCO II* framework allows parties to rebut this presumption, however, by showing that the grant would cause anticompetitive harm in the United States. Where necessary to constrain the potential for anticompetitive harm in the U.S. market for satellite services, the Commission reserved the right to attach additional conditions to a grant of authority, or, in the exceptional case in which grant would pose a very high risk to competition, to deny the application.²⁸

10. GE Americom and PanAmSat request us to apply the same conditions on the placement of New Skies's satellites on the Permitted List that the Commission found necessary to protect competition in the *New Skies Market Access Order*, especially the three-year license term limitation.²⁹ In view of today's Commission decision in the *New Skies ORBIT Act Compliance Order*, we find that this is not necessary. The Commission has concluded that New Skies has achieved sufficient independence from INTELSAT to meet the ORBIT Act's requirements.³⁰ Indeed, in the *New Skies ORBIT Act Compliance Order*, the Commission removed these conditions from the earth station licensed it granted in the *New Skies Market Access Order*.³¹ We conclude that New Skies's actions to come into compliance with the ORBIT Act,³²

²⁵ It is conceivable, however, that a U.S.-registered oil drilling or research platform could request authority to operate an earth station within the service area of NSS-703. If such an earth station requested ALSAT authority, we would consider a New Skies request to place NSS-703 on the Permitted List at that time.

²⁶ *DISCO II*, 12 FCC Rcd at 24112 (para. 39).

²⁷ *DISCO II*, 12 FCC Rcd at 24112 (para. 39).

²⁸ *DISCO II*, 12 FCC Rcd at 24113 (para. 41).

²⁹ GE Americom Comments at 2-3; PanAmSat Comments at 1-3.

³⁰ *New Skies ORBIT Act Compliance Order* at paras. 46-47.

³¹ *New Skies ORBIT Act Compliance Order* at para. 47.

³² For a summary of New Skies's actions to come into compliance with the ORBIT Act, see *New*

undertaken after comments were filed in this proceeding, are sufficient to address the concerns raised by GE Americom and PanAmSat. There is no basis for including any condition on the Permitted List that the Commission has removed from the earth station authorizations granted in the *New Skies Market Access Order*.

11. Nevertheless, as is the case with all other satellites that serve the United States, both U.S.-licensed and non-U.S.-licensed, New Skies is prohibited from entering into any exclusive arrangement with any country.³³ Further, the United States made market access commitments for fixed and mobile satellite services before the WTO, but did not make market access commitments for Direct to Home (DTH) service, Direct Broadcast Satellite (DBS) service, and Digital Audio Radio Service (DARS), and took a most-favored-nation (MFN) exemption for these services as well.³⁴ Accordingly, as another condition on placement of New Skies's satellites on the Permitted List, we prohibit U.S.-licensed earth stations from accessing those satellites for DTH, DBS, and DARS. We note that we routinely place this condition on other entries on the Permitted List.

C. Eligibility Requirements

1. Legal and Financial Qualifications

12. In *DISCO II*, the Commission stated it would require non-U.S. space station operators to meet the same technical, legal, and financial qualifications that U.S.-licensed space station operators must meet to obtain a license.³⁵ In this case, we need not, however, require New Skies to demonstrate that it is financially qualified to construct and launch a satellite, because its five satellites are already in orbit.³⁶ Based on the Commission's findings in the *New Skies ORBIT Act Compliance Order*,³⁷ we also find that New Skies is legally qualified to provide satellite service in the United States.

Skies ORBIT Act Compliance Order at para. 46.

³³ Section 648 of the Satellite Act, as amended by the ORBIT Act, 47 U.S.C. § 765g; *New Skies ORBIT Act Compliance Order* at para. 45; *DISCO II*, 12 FCC Rcd at 24166 (para. 167). The rule against exclusive arrangements prohibits licensees from entering arrangements with foreign countries to be the exclusive provider of a particular satellite service in that country.

³⁴ 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.

³⁵ *DISCO II*, 12 FCC Rcd at 24161-63 (paras. 154-59).

³⁶ *DISCO II*, 12 FCC Rcd at 24176 (para. 191) (financial qualification showing is not required for in-orbit satellite).

³⁷ *New Skies ORBIT Act Compliance Order* at paras. 46-47.

2. Technical Qualifications

13. We must also address New Skies's technical qualifications. The Commission's satellite licensing policy is predicated upon two-degree orbital spacing between geostationary satellites.³⁸ This policy permits the maximum use of the geostationary satellite orbit.³⁹ In *DISCO II*, we emphasized that applicants seeking to use non-U.S. satellites to serve the United States must demonstrate that the system complies with the Commission's two-degree orbital spacing technical requirements before we will authorize service in the United States. Nevertheless, the Commission may license satellites that are not two-degree compliant (or earth stations seeking to access such), when the applicants can demonstrate that their operations will not cause harmful interference to existing compliant satellite operations. The Commission generally includes a condition in the license authorizing the non-conforming operations that requires the non-compliant satellite system to operate on a non-harmful interference basis to any future satellite networks serving the United States that are two-degree compliant.⁴⁰

14. Three of the satellites New Skies seeks to add to the Permitted List are C-band/Ku-band hybrid satellites; the fourth is a Ku-band satellite only. The Commission found in the *New Skies Market Access Order* that the Ku-band operations on three of the four satellites, all but NSS-513, comply with the Commission's Part 25 technical requirements. In that Order, the Commission also determined that the C-band operations of the three hybrid New Skies satellites do not.⁴¹ These satellites do not meet the Commission's polarization requirements or FM/TV frequency plan requirement for the C-band.⁴² Also, none of these satellites operate on permitted tracking, telemetry, and telecommand frequencies.⁴³ Further, NSS-513 does not comply with rules governing saturation flux density⁴⁴ and stationkeeping⁴⁵ in the C-band

³⁸ For more information regarding the Commission's two-degree spacing policy, see Licensing Space Stations in the Domestic Fixed-Satellite Service, 48 F.R. 40233 (Sept. 6, 1983).

³⁹ See, e.g., Assignment of Orbital Locations to Space Stations in the Domestic Fixed-Satellite Service, 11 FCC Rcd 13788, 13790 (para. 6) (1996). Prior to the Commission's adoption of the two-degree spacing policy, satellites in the geostationary satellite orbit were usually spaced three or four degrees apart. By adopting rules that enabled satellite operators to place their space stations two degrees apart, the Commission was able to accommodate more geostationary satellites.

⁴⁰ See, e.g., Systematics General Corporation, Order and Authorization, 2 FCC Rcd 7550, 7550-51 (para. 9) (Com. Car. Bur. 1987); *New Skies Market Access Order*, 14 FCC Rcd at 13038 (para. 78).

⁴¹ *New Skies Market Access Order*, 14 FCC Rcd at 13037-38 (paras. 75-76).

⁴² *New Skies Market Access Order*, 14 FCC Rcd at 13037 (para. 76), citing Sections 25.210(a)(1), (3) and 25.211(a) of the Commission's rules, 47 C.F.R. §§ 25.210(a)(1), (3), 25.211(a).

⁴³ *New Skies Market Access Order*, 14 FCC Rcd at 13037 (para. 76), citing Section 25.202(g) of the Commission's rules, 47 C.F.R. § 25.202(g).

⁴⁴ *New Skies Market Access Order*, 14 FCC Rcd at 13037-38 (para. 76), citing Section 25.202(c) of the Commission's rules, 47 C.F.R. § 25.202(c). Section 25.202(c) requires that the saturation flux density be switchable in steps no greater than 4 dB over a range of at least 12 dB. NSS-513 has a minimum step of 5 dB in the Ku-band and 7.5 dB in the C-band. *New Skies Market Access Order*, 14 FCC Rcd at 13038 n.201.

and Ku-band, nor does it comply with polarization isolation requirements for the C-band.⁴⁶

15. Nevertheless, the Commission waived the two-degree orbital spacing requirement for the three non-compliant C-band satellites in the *New Skies Market Access Order*. The Commission found that no U.S. or foreign-licensed satellites serving the United States are located as close as two degrees away from any of the three New Skies satellites. Further, it noted that the New Skies satellites are coordinated internationally with all satellites that could be affected by New Skies's operations.⁴⁷ Consequently, the Commission found that allowing the three non-compliant satellites to provide service in the United States would not adversely impact any *existing* satellite operations. It did, however, recognize that the three New Skies satellites could potentially interfere with *future* two-degree-compliant operations. Thus, as a condition on the waivers, the *New Skies Market Access Order* requires New Skies to coordinate in good faith with any future U.S.-licensed satellite that complies with the Part 25 technical requirements and is located as close as two degrees away from a New Skies satellite.⁴⁸ If a coordination agreement could not be reached, New Skies was required to operate on a non-harmful interference basis relative to the compliant U.S.-licensed satellite.⁴⁹

16. In the *New Skies ORBIT Act Compliance Order*, the Commission has determined that it could waive this non-harmful interference condition, but only if New Skies undertakes the following commitments: (1) two-degree-compliant U.S. services over current and future U.S.-licensed or non-U.S.-licensed satellites serving the U.S. market spaced two degrees or more from the New Skies satellites are assumed to be fully coordinated, and (2) non-compliant U.S. services over current or future U.S.-licensed or non-U.S.-licensed satellites serving the U.S. market spaced two degrees or more from the New Skies satellites will be coordinated on an equal basis irrespective of the relative dates of receipt of the coordination.⁵⁰ The Commission also recognized that any such commitment from New Skies would need the concurrence of the Netherlands Administration, and that the Netherlands Administration is under no

⁴⁵ *New Skies Market Access Order*, 14 FCC Rcd at 13037-38 (para. 76), citing Section 25.210(i) of the Commission's rules, 47 C.F.R. § 25.210(i). Section 25.202(j)(1) requires that space stations operating in the geosynchronous orbit be designed to maintain their orbital longitude within 0.05° of their assigned location. NSS-513 was designed to maintain its orbital longitude within 0.1° of its assigned location. *New Skies Market Access Order*, 14 FCC Rcd at 13038 n.202.

⁴⁶ *New Skies Market Access Order*, 14 FCC Rcd at 13037-38 (para. 76), citing Section 25.202(i) of the Commission's rules, 47 C.F.R. § 25.202(i). Section 25.202(i) requires that space station antennas be designed to provide a cross-polarization isolation such that the ratio of on-axis co-polar gain to cross-polar gain is 30 dB. The C-band antennas on NSS-513 were designed to provide 27 dB of isolation. *New Skies Market Access Order*, 14 FCC Rcd at 13038 n.203.

⁴⁷ *New Skies Market Access Order*, 14 FCC Rcd at 13038 (para. 77).

⁴⁸ *New Skies Market Access Order*, 14 FCC Rcd at 13038 (paras. 78-79).

⁴⁹ *New Skies Market Access Order*, 14 FCC Rcd at 13038 (paras. 78-79).

⁵⁰ *New Skies ORBIT Act Compliance Order* at para. 78.

obligation to give its concurrence.⁵¹ Accordingly, in adding the four New Skies satellites to the Permitted List, we include the same non-harmful interference conditions on its access to the United States that the Commission adopted in the *New Skies ORBIT Act Compliance Order*.⁵² We will remove these conditions if New Skies meets the two commitments specified above.

IV. ORDERING CLAUSES

17. Accordingly, IT IS ORDERED that, pursuant to Sections 303(r), 308, 309, and 310 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 303(r), 308, 309, 310, and Sections 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 NSS-513, NSS- 803, NSS-806, and NSS-K, subject to the conditions set forth in its earth station license and in this Order.

18. IT IS FURTHER ORDERED that the NSS-513, NSS- 803, NSS-806, and NSS-K satellites, together with the conditions set forth in this Order, ARE PLACED on the "Permitted Space Station List."

19. IT IS FURTHER ORDERED that New Skies Satellites, N.V. petition for declaratory ruling is DISMISSED without prejudice, to the extent that it seeks placement of NSS-703 at 57° E.L. on the "Permitted Space Station List."

20. IT IS FURTHER ORDERED that this authorization does not authorize New Skies Satellites, N.V., to provide any Direct-to-Home (DTH) service, Direct Broadcast Satellite (DBS) service, or Digital Audio Radio Service (DARS) to, from, or within the United States.

21. IT IS FURTHER ORDERED that, pursuant to Section 648 of the Satellite Act of 1962, as amended by the ORBIT Act, 47 U.S.C. § 765g, New Skies Satellites, N.V., SHALL NOT acquire or enjoy the exclusive right of handling telecommunications to or from the United States, its territories or possessions, and any other country or territory, by reason of any concession, contract, understanding or working arrangement to which the satellite operator or any persons or companies controlling or controlled by the operator or parties.

22. IT IS FURTHER ORDERED that, pursuant to Section 1.3 of the Commission's rules, each earth station with "ALSAT" designated as a point of communication, IS GRANTED a waiver of Sections 25.202(g), 25.210(a)(1), 25.210(a)(3), and 25.211(a) of the Commission's rules, 47 C.F.R. §§ 25.202(g), 25.210(a)(1), 25.210(a)(3), 25.211(a), for the limited purpose of communicating with NSS-513, NSS- 803, or NSS-806 subject to the conditions set forth in its earth station license and in this Order.

⁵¹ *New Skies ORBIT Act Compliance Order* at para. 78.

⁵² The Permitted Space Station list on the International Bureau's web site will be updated shortly to include these satellites. In addition, pursuant to the Bureau's Public Notice of December 17, 1999, these 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).

23. IT IS FURTHER ORDERED that, pursuant to Section 1.3 of the Commission's rules, each earth station with "ALSAT" designated as a point of communication, IS GRANTED a waiver of Sections 25.210(c), 25.210(i), and 25.210(j)(1) of the Commission's rules, 47 C.F.R. §§ 25.210(c), 25.210(i), 25.210(j)(1), for the limited purpose of communicating with NSS-513, subject to the conditions set forth in its earth station license and in this Order.

24. IT IS FURTHER ORDERED that access to the New Skies satellite networks SHALL BE in compliance with the satellite coordination agreements reached between the United States and INTELSAT regarding NSS-513, NSS-803, NSS-806, and NSS-K.

25. IT IS FURTHER ORDERED that each earth station with "ALSAT" designated as a point of communication may communicate with NSS-513 in the conventional C-band or conventional Ku-band, and with NSS-803 or NSS-806 in the conventional C-band, only under the following conditions, unless New Skies Satellites, N.V., undertakes the commitments set forth in paragraph 26, and the Administration of the Netherlands gives its concurrence, in writing, to those commitments.

- (a) In the future, should the Commission authorize access to the U.S. market by a satellite that is two-degree spacing compliant, and is located as close as two-degrees from a New Skies satellite, New Skies would be expected to coordinate, in good faith, with the licensee of this satellite.
- (b) If a coordination agreement is not reached, New Skies's operation of NSS-513, and its operation of NSS-803 and NSS-806 in the conventional C-band, must be on a non-harmful interference basis relative to U.S. services being provided by the compliant satellite.
- (c) If a coordination agreement is not reached, these 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, and/or U.S.-authorized services provided over non-U.S.-authorized satellite networks that are providing service to the United States that are compliant with the Commission's two-degree spacing rules.
- (d) In addition, operation of NSS-513, and operation of NSS-803 and NSS-806 in the conventional C-band, shall cease immediately upon notification of harmful interference. Complaints of all radio interference shall be forwarded to the Commission in writing.

26. IT IS FURTHER ORDERED that the conditions set forth in paragraph 25 shall not apply to any earth station with "ALSAT" designated as a point of communication communicating with NSS-513 in the conventional C-band or conventional Ku-band, and with NSS-803 or NSS-806 in the conventional C-band, if New Skies Satellites, N.V., undertakes the following commitments, and the Administration of the Netherlands gives its concurrence, in writing, to these commitments.

- (a) Compliant U.S. services over U.S.-licensed or non-U.S.-licensed satellites serving the U.S. market spaced two degrees or more from the satellites of the Netherlands are assumed to be fully coordinated; and

- (b) Non-compliant U.S. services over U.S.-licensed or non-U.S.-licensed satellites serving the U.S. market spaced two degrees or more from the satellites of the Netherlands will be coordinated on an equal basis, irrespective of the relative dates of receipt of the coordination requests at the ITU for the relevant satellite networks.

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,
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