

ORIGINAL

Wiley, Rein & Fielding

1776 K Street, N.W.
Washington, D.C. 20006
(202) 719-7000

October 6, 2000

EX PARTE OR LATE FILED

Fax: (202) 719-7049
www.wrf.com

Writer's Direct Dial
(202) 719-4975

RECEIVED

OCT 6 2000

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

VIA HAND DELIVERY

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

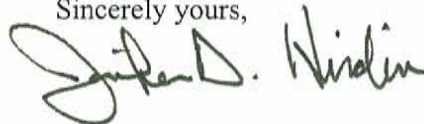
**Re: Ex Parte Presentation in File No. SAT-PDR-20000420-00083 Petition of Telesat Canada
for Inclusion of Anik F1 on the Permitted Space Station List**

Dear Ms. Salas:

Pursuant to Sections 1.2000 and 1.2006 of the FCC's Rules, Telesat Canada ("Telesat") files the attached draft order in the above-referenced proceeding, in which Telesat seeks inclusion of Anik F1 at 107.3 degrees W.L. on the FCC's Permitted Space Station List.¹ This draft order is being submitted in order to expedite grant of Telesat's pending petition in light of the upcoming launch of Anik F1. The draft order also takes into account the Commission's recent conclusion in the context of adopting service rules for the 2GHz band that international coordination should *not* be a pre-requisite to U.S. market entry, which resolves the sole outstanding issue in this proceeding. Accordingly, Telesat respectfully urges the International Bureau to add promptly Anik F1 to the Permitted Space Station List.

Should you have any questions, please do not hesitate to contact the undersigned counsel for Telesat Canada.

Sincerely yours,



Bert W. Rein
Carl R. Frank
Jennifer D. Hindin

cc: Tom Tycz
Cassandra Thomas
Fern Jarmulnek
Steven Spaeth

No. of Copies rec'd 0+2
List ABCDE

¹ This proceeding is treated as "permit-but-disclose." Satellite Policy Branch Information, Applications Accepted for Filing, Report No. SAT-00043 (May 24, 2000) (Public Notice).

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

RECEIVED

OCT 6 2000

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Telesat Canada)
)
Petition for Declaratory Ruling for Inclusion of)
ANIK F1 on the Permitted Space Station List)

File No. SAT-PDR-20000420-0083

ORDER

Adopted: _____, 2000

Released: _____, 2000

By the Chief, Satellite and Radiocommunication Division, International Bureau

I. INTRODUCTION

1. In this Order, we add Telesat Canada's (Telesat's) ANIK F1 satellite, located at the 107.3° W.L. orbit location, to the "Permitted Space Station List." 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. As a result of this action, most U.S. earth station operators will be able to transmit to the ANIK F1 satellite in the C- and Ku-Bands without modifying their licenses.

II. BACKGROUND

2. The Commission created the Permitted Space Station List in the *DISCO II First Reconsideration Order*,¹ to streamline the framework adopted in the *DISCO II Order* to evaluate earth station applications to use non-U.S. licensed space stations to provide satellite service in the United States.² The Permitted Space Station List includes all U.S.-licensed satellites, and all

¹ Amendment of the Commission's Regulatory Policies to Allow Non-U.S. Licensed Satellites Providing Domestic and International Service in the United States, First Order on Reconsideration, 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
(Continued...)

non-U.S. licensed satellites with which ALSAT earth stations³ are permitted to communicate without additional Commission action. We evaluate requests to place non-U.S. licensed satellites on the Permitted List under the *DISCO II* framework.

3. We act on Telesat's petition to place ANIK F1 on the Permitted List in this Order. On April 20, 2000, Telesat filed its Petition for Declaratory Ruling requesting inclusion of ANIK F1 on the Permitted Space Station List. We placed Telesat's request on public notice on May 24, 2000. New Skies Satellites N.V. ("New Skies") filed comments urging that the Commission not grant the petition until ANIK F1 has been brought into compliance with the Commission's two-degree spacing rule with respect to planned C-band operation in the United States. Telesat filed a reply to New Skies' comments and Telesat and New Skies subsequently submitted *ex parte* filings. Telesat also supplemented its petition to notify the Commission that coordination of ANIK F1 with Mexico had been completed.

III. DISCUSSION

A. General Framework

4. The Commission in *DISCO II* 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, spectrum availability, eligibility and operating (*e.g.*, technical) requirements, and national security, law enforcement, foreign policy, and trade concerns.⁴

B. Competitive 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

(...Continued)

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 Order* or *DISCO II*).

³ "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 fell 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. *Id.* at 7215-16 (para. 19).

⁴ *DISCO II Order*, 12 FCC Rcd at 24107-72 (paras. 30-182).

Telecommunications Services (WTO Basic Telecom Agreement).⁵ 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.⁶ In this case, the presumption in favor of entry is applicable to Telesat because Canada⁷ is a WTO Member,⁸ and Telesat will use ANIK F1 to provide fixed-satellite services, excluding DTH services, in the conventional C- and Ku-bands.⁹

C. Spectrum Availability

6. In *DISCO II*, the Commission determined that, given the scarcity of orbital and spectrum resources, it would consider spectrum availability as a factor in determining whether to allow a foreign satellite to serve the United States.¹⁰ 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.

7. In this case, the ANIK F1 satellite is located at an orbital position agreed to in a trilateral agreement among the United States, Canada, and Mexico. Consequently, the Commission has not licensed satellites at this location. Allowing the ANIK F1 satellite to serve the United States from its orbital location will not affect operations of any U.S.-licensed satellites nor contravene the Commission's spectrum/frequency management policies.

⁵ *Id.* at 24112 (para. 39).

⁶ *Id.*

⁷ Although the ANIK F1 satellite is not currently licensed, Telesat has received approval in principle from Industry Canada for this satellite and, consistent with Canadian policy, will receive a license immediately prior to or upon launch of the satellite. *See* Telesat Petition at 5. Accordingly, we will treat it as Canadian-licensed for this purpose.

⁸ The Commission previously found Telesat entitled to this presumption in authorizing the addition of Telesat's ANIK E1 and E2 satellites to the Permitted List. Telesat Canada, Request for Declaratory Ruling or Petition for Waiver on U.S. Earth Stations' Use of ANIK E1 and ANIK E2 Satellite Capacity to Provide Basic Telecommunications Service in the United States, File No. 116-SAT-STA-98, DA 99-2752 at para. 7 (Dec. 9, 1999).

⁹ Telesat FCC Form 312, item 24 (attached to Telesat Petition).

¹⁰ *DISCO II Order*, 12 FCC Rcd at 24159 (para. 150).

D. Eligibility Requirements

1. Legal and Financial Qualifications

8. In *DISCO II*, the Commission stated that it would require non-U.S. licensed 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.¹¹ The Commission also created exemptions to this general policy. For example, financial information is not required if the non-U.S. licensed satellite is in-orbit.¹²

9. With respect to legal qualifications, Telesat states that it will abide by the Commission's rules and policies regarding the provision of satellite services in the United States.¹³ Nothing in the record questions this representation. Accordingly, we conclude that Telesat has adequately demonstrated its legal qualifications.

10. With respect to financial qualifications, Telesat requests a waiver of the requirement to provide the detailed financial information required by Sections 25.114(c)(13) and (17) and 25.140.¹⁴ In the *DISCO II Order*, the Commission exempted in-orbit, non-U.S. space station systems from these financial qualification requirements, reasoning that "where the foreign satellite is already in-orbit, there is no concern about whether the prospective entrant is financially capable of building and launching its system."¹⁵ Although ANIK F1 is not yet in orbit, Telesat asserts that the reasoning behind the exemption for in-orbit satellites is also applicable to ANIK F1. Specifically, Telesat argues that there is no risk that ANIK F1 will not be constructed or launched because construction of the satellite is almost complete, a launch reservation has been obtained, and all steps necessary to obtain Canadian licensing immediately prior to or upon launch have been concluded.¹⁶ Telesat also notes that there is no danger of spectrum warehousing because Telesat has secured the right to use the Canadian orbital position at 107.3° W.L. to the exclusion of all other providers and currently operates a satellite in that

¹¹ *Id.* at 24161-63 (paras. 154-59).

¹² *Id.* at 24175-76 (para. 191).

¹³ Telesat Petition at Exhibit 1.

¹⁴ 47 C.F.R. §§ 25.114(c)(13), (17), 25.140.

¹⁵ *DISCO II Order*, 12 FCC Rcd at 24176 (para. 191).

¹⁶ Telesat Petition at 4.

orbital location.¹⁷ Finally, Telesat submits that it is an established Canadian satellite provider with undeniable financial resources.¹⁸

11. The Commission has the authority to waive any of its rules “if good cause therefor is shown.”¹⁹ In this case, we find that Telesat has demonstrated the requisite good cause for waiver of the financial qualification requirements for its ANIK F1 satellite. Given that construction of ANIK F1 is virtually complete, that steps to secure Canadian licensing have been concluded, and that Telesat is an established satellite provider with a long history of satellite operations and two satellites currently providing commercial services in the U.S. and Canada, we have no doubt that Telesat is financially capable of completing and launching the ANIK F1 satellite.²⁰ Because the policy supporting exemption from our financial demonstration requirements for in-orbit satellites is satisfied here, we find it appropriate to treat Telesat’s ANIK F1 satellite similar to an in-orbit satellite for this purpose.

2. Technical Qualifications

12. The Commission’s satellite policy is predicated upon two-degree orbital spacing between geostationary satellites.²¹ This policy permits the maximum use of the geostationary satellite orbit.²² Applicants must demonstrate that they comply with the Commission’s technical requirements designed to permit two-degree orbital spacing, before being authorized to provide service in the United States. The Commission may license satellites that are not two-degree compliant (or earth stations seeking to access such), but only when the applicants can demonstrate that their operations will cause no harmful interference to existing compliant satellite operations. Further, non-conforming operations are authorized conditioned upon a

¹⁷ *Id.*

¹⁸ *Id.* at 5.

¹⁹ 47 C.F.R. § 1.3.

²⁰ *See, e.g.,* New Skies Satellites N.V., Order and Authorization, 14 FCC Rcd 13003, 13038 (para. 78) (1999); Systematics General Corporation, Order and Authorization, 2 FCC Rcd 7550, 7550-51 (para. 9) (Com. Car. Bur. 1987).

²¹ 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).

²² 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.

licensee accommodating future satellite networks serving the United States that are two-degree compliant.

13. Canada states that it has completed coordination of ANIK F1 with the only potentially affected satellite operator from the United States,²³ and concluded the international coordination process with Mexico.²⁴ Telesat argues that the status of international coordination obviates the need for additional interference analysis.

14. In its comments, New Skies urges the Commission to defer action on Telesat's petition until ANIK F1 has been brought into compliance with the agency's two degree spacing rule.²⁵ New Skies argues that ANIK F1's high equivalent isotropically radiated power (EIRP) could potentially threaten the operation of its new satellite proposed to operate at the 105° W.L. orbital location.

15. Based upon the technical showings contained in the application, we can determine that the ANIK F1 satellite conforms to the Commission's two-degree spacing policy. Through its coordination with U.S. satellite operators, Telesat has demonstrated that ANIK F1 will not cause harmful interference to U.S. licensed satellites. Further, the ANIK F1 satellite is located at an orbital position subject to a trilateral arrangement among the United States, Canada and Mexico.²⁶ Based on that arrangement, we do not expect satellites positioned in accordance with the arrangement to cause harmful interference to any U.S. or foreign licensed satellite network now serving the United States.

16. We find no reason to postpone including ANIK F1 on the Permitted Space Station List as requested by New Skies. Having found that ANIK F1 will not cause harmful interference to satellites currently authorized to provide service in the United States, we decline to condition access to the U.S. market on the successful conclusion of the coordination involving Telesat and New Skies, which has just recently been initiated. Such international coordination is a matter between the Governments of the Netherlands and Canada, not the United States.²⁷ The

²³ On April 19, 2000, Telesat reached coordination agreement with GE Americom. Telesat Petition at 2, n. 3.

²⁴ On May 29, 2000, Telesat reached coordination agreement with Mexico and on May 31, 2000 a "Non-Confidential Notice" was signed to confirm that Mexican and Canadian satellite operators reached a satellite coordination agreement covering the Mexican and Canadian orbital positions falling within the Canada/Mexico/USA C-Band and Ku-Band Trilateral Arrangement. Telesat Supplement at 2 (June 7, 2000).

²⁵ New Skies Comments at 1.

²⁶ See Public Notice, Trilateral Arrangement Regarding Use of the Geostationary Orbit Reached by Canada, Mexico and the United States (Sept. 2, 1988).

²⁷ Our decision not to intervene in the international coordination negotiations between the
(Continued...)

Commission recently took a similar position in the context of adopting service rules for 2 GHz mobile satellite service (“MSS”) systems concluding that “it is neither necessary nor appropriate to condition non-U.S. licensed systems’ access to U.S. spectrum on cooperation in international coordination process.”²⁸ We find no reason to depart from that precedent here. Finally, nothing in the record indicates that Canada and the Netherlands will not negotiate in good faith as required by the International Telecommunication Union Radio Regulations.

E. Other Issues

17. As described above, under *DISCO II*, national security, law enforcement, foreign policy, and trade concerns are included in the public interest analysis.²⁹ No party objected to the authorization we grant today on these grounds.

IV. ORDERING CLAUSES

18. 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 from the United States, by accessing the ANIK F1 satellite, located at the 107.3 W.L. orbit location, subject to the conditions set forth in its earth station license and in this Order.

19. IT IS FURTHER ORDERED that the ANIK F1 satellite, together with the conditions set forth in this Order, IS PLACED on the “Permitted Space Station List.”

20. IT IS FURTHER ORDERED that this authorization does not authorize ANIK F1 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.

(...Continued)

Governments of the Netherlands and Canada conforms to our prior decision not to issue duplicative U.S. licenses for non-U.S. space stations because doing so “would raise issues of national comity, as well as issues regarding international coordination for the space station.” *DISCO II Order*, 12 FCC Rcd at 24174 (para. 188).

²⁸ The Establishment of Policies and Service Rules for the Mobile Satellite Service in the 2 GHz Band, FCC 00-302, IB Docket No. 99-81, ¶ 147 (Aug. 25, 2000) (Report and Order) (“2 GHz Service Rules Order”).

²⁹ *DISCO II Order*, at 24170-72 (paras. 178-82).

21. IT IS FURTHER ORDERED that access to the ANIK F1 satellite network SHALL BE in compliance with the satellite coordination arrangements reached between the United States and Canada.

22. This Order is issued pursuant to Sections 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 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