

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

In the Matter of

TELESAT CANADA

Petition for Declaratory Ruling For
Inclusion of Anik F-1 on the
Permitted Space Station List

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Satellite Policy Branch
International Bureau

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COMMENTS OF NEW SKIES SATELLITES N.V.

New Skies Satellites N.V. ("New Skies") hereby comments on the petition for declaratory ruling filed by Telesat Canada ("Telesat") requesting that the Commission place the planned Anik F-1 satellite at 107.3° W.L. on the Permitted Space Station List (the "List") created by the Commission in the *DISCO II Reconsideration Order*.¹ New Skies believes that the Commission should not grant that request until Anik F-1 has been brought into compliance with the Commission's two-degree spacing rule with respect to planned C-band operation in the United States. Such an approach will ensure that valuable spectrum and orbital resources are used efficiently and competitively to serve the public interest.

¹ 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*, 18 Comm. Reg. (P&F) 471 (1999).

Statement of Interest

As the Commission is aware, New Skies has been authorized by the government of the Netherlands to construct, launch, and operate a C-band and Ku-band² satellite at the 105° W.L. orbital location. We intend to launch a satellite and, together with the Netherlands government, have initiated the process of coordinating the use of that satellite with the administrations and operators of satellites licensed to use nearby slots, including Canada/Telesat at 107.3° W.L. and the U.S./GE Americom at the 103° W.L. orbital location. That process has not yet been completed. Under the United States' WTO commitments and the Commission's market access policies,³ New Skies expects to provide service in the United States from its 105° W.L. satellite.

Given the proximity of the satellites proposed by New Skies and Telesat and their mutual intent to provide service in the United States and other co-coverage areas, we have a strong interest in ensuring that the operational characteristics of Anik F-1 do not preclude the use of orbital slots located two-degrees or more away. As currently configured, Anik F-1's operations would threaten that interest because of the inordinately high power proposed for its C-band downlink. As stated in the technical exhibit to Telesat's petition,⁴ the Anik F-1 satellite has a peak equivalent isotropically radiated power ("EIRP") of 46.3 dBW within the United States – far higher than any other C-band satellite operating in this part of the geostationary arc. For example, the Anik E-1

² New Skies believes that certain Ku-band use can be successfully coordinated with the operational U.S. Ku-band satellite located at the 105° W.L. orbital location.

³ *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*, 12 FCC Rcd. 24094 (1997) (establishing a presumption of entry for operators from WTO Member countries).

⁴ *See Telesat Petition for Declaratory Ruling at Exhibit 1, Table 11.*

satellite which Telesat is currently operating from the 107.3° W.L. slot has a peak EIRP of 38 dBW. The GE Americom satellites at 103° W.L. and 101° W.L. have a peak EIRP of 41 dBW, and the satellite that New Skies intends to locate at 105° W.L. will have a comparable peak EIRP level in order to ensure two-degree compatibility.

Discussion

The Commission's satellite licensing policy is predicated upon two-degree orbital spacing between geostationary satellites.⁵ In its *DISCO II Reconsideration Order*, the Commission reaffirmed the importance of its two-degree spacing policy, confirmed that this policy would be applied to non-U.S. licensed satellites seeking access to the U.S. market, and made clear that it would impose operating conditions on any non-compliant foreign satellite.⁶ The Commission consistently has required non-U.S. licensed satellites to comply with the two degree spacing policy as a condition of U.S. market access. For example, when the Commission added Telesat's Anik E-1 and E-2 satellites to the List last year, it explicitly provided that operations over those satellite networks shall not cause harmful interference to, nor shall operators accessing these satellite networks claim protection from, authorized services over U.S.- and non-U.S.-authorized satellite networks that are compliant with the Commission's two-degree spacing rules.⁷ The Commission has included a similar condition in the decisions granting U.S. market access to New Skies.⁸

⁵ *Telesat Canada*, 15 FCC Rcd. 3649, 3654 (Int'l Bur. 1999).

⁶ *DISCO II Reconsideration Order* at ¶ 18.

⁷ *Telesat Canada*, 15 FCC Rcd. at 3656.

⁸ *See New Skies Satellites N.V.*, 14 FCC Rcd. 13003 (Int'l Bur. 1999). *See also Williams Communications, Inc.*, DA 00-663 at ¶ 13 (Int'l Bur. 2000) (placing a similar condition on market access for Nahuelsat).

The two-degree orbital spacing policy is designed to maximize the efficient use of orbital and spectrum resources within the constraints of satellite technology, thereby increasing the number of potential competitors that can be accommodated in the geostationary arc. By applying consistent technical standards, it has the added benefit of ensuring that no system capable of serving the U.S. market is unnecessarily precluded from enjoying the benefits of the United States' WTO market access commitments. This helps achieve a degree of regulatory parity for all those operators – both between and among U.S. and non-U.S. licensees – who seek to serve the U.S. market.

In implementing and enforcing its two-degree spacing policy for C-band satellites, the Commission has refrained from adopting a rigid EIRP or similar limit. Rather, the Commission has applied the rule in a manner that recognizes operational differences among C-band satellites.⁹ That said, the Commission consistently has applied the two-degree requirement in a way that forces these satellites to meet a fundamental objective: they must be designed and operated so as to cause no unacceptable interference to satellites spaced two degrees or more away.

Whatever else the Commission's two-degree spacing policy means in the C-band context, at a minimum it must mean that satellites do not operate at power levels so far above the norm that they cause great difficulty in coordinating with satellites two or more degrees away. Thus, before the Anik F-1 satellite can be placed on the List, its operational characteristics – specifically including its peak downlink EIRP – must be made more compatible with satellites in adjacent orbital locations – particularly the 105°

⁹ See *Licensing of Space Stations in the Domestic Fixed-Satellite Service and Related Revisions*, 48 Fed. Reg. 40233 at ¶¶ 34-36 (Sept. 6, 1983) (“we believe that inhomogeneities can be maintained

W.L. orbital location.¹⁰ This requirement will ensure that the entire orbital arc is available for the efficient and competitive use of all operators, to the benefit of U.S. consumers.

New Skies believes that intersystem coordination can be completed in a timely manner, and before the planned start of service for Anik F-1, in such a way that the 105° W.L. orbital location can be used to provide a competitive option for commercial C-band service to U.S. consumers. New Skies is prepared to complete this process and stands ready to work immediately, and in good faith, with Telesat and Industry Canada, as appropriate, to address the issue. Upon completion of successful coordination, New Skies would be in a position to endorse Telesat's proposed addition to List. However, as a matter of clear Commission policy, and in the interest of orbital/spectrum efficiency, competition, and regulatory parity, the Commission should refrain from adding Anik F-1 to the List until coordination of the 105° W.L, 107.3° W.L., and 103° W.L. orbital slots has been completed.


within reasonable limits with advance planning and careful coordination, and we will require this to be done").

¹⁰ In practice, the coordination process will be eased by the fact that New Skies' planned satellite will actually operate 2.3 degrees away from Anik F-1.

Accordingly, New Skies requests that the Commission defer any action on Telesat's petition.

Respectfully submitted,

NEW SKIES SATELLITES N.V.

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CERTIFICATE OF SERVICE

I hereby certify that on this 9th day of June, 2000, a copy of the foregoing
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