

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

In the Matter of )
New Skies Satellites N.V. ) File Nos. SAT-PDR-20010309-00020
Petition for Declaratory Ruling ) SAT-PDR-20011016-00137

ORDER

Adopted: May 24, 2002

Released: May 28, 2002

By the Chief, Satellite Division, International Bureau:

I. INTRODUCTION

1. In this Order, we add NSS-7, a satellite launched and operated by New Skies Satellites, N.V. ("New Skies"), to the "Permitted Space Station List" at the 21.5° W.L. (338.5° E.L.) orbital location. We also update the Permitted Space Station List to reflect New Skies's retirement of NSS-513 from 177° W.L. (183° E.L.) and the relocation of NSS-803 from the 21.5° W.L. orbital location to the 177° W.L. orbital location. The Permitted Space Station List denotes all satellites with which U.S. earth stations with "routinely" authorized technical parameters and operating in the conventional C- and Ku-bands, 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 immediately with NSS-7 at the 21.5° W.L. orbit location and NSS-803 at the 177° W.L. orbital location in the conventional C- and Ku-bands. This should stimulate competition in the United States, provide consumers more alternatives in choosing communications providers and services, reduce prices, and facilitate technological innovation. Earth station operators seeking to communicate with NSS-7 in frequency bands other than the conventional C-and Ku-bands or with non-routinely licensed earth stations operating in the conventional C-and Ku-band must file license applications or license modification applications specifying the NSS-7 as a point of communications.

II. BACKGROUND

A. DISCO II Framework

2. The Commission's DISCO II Order adopted a framework under which the Commission

1 See New Skies' NSS-7 Atlantic Ocean Region Satellite Successfully Launched Into Orbit (press release April 17, 2002). NSS-7 was successfully launched on April 16, 2002.

2 For purposes of this Order, the "conventional C-band" denotes the 3700-4200 MHz and 5925-6425 MHz frequency bands. The "conventional Ku-band" denotes the 11.7-12.2 GHz and 14.0-14.5 GHz frequency bands.

would consider requests for non-U.S. licensed satellite systems to serve the United States.<sup>3</sup> 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.<sup>4</sup> In the *DISCO II First Reconsideration Order*, the Commission streamlined this process by allowing the operators of in-orbit non-U.S. licensed 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. The Commission also created the Permitted Space Station List to facilitate access by the foreign licensed 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) and operating in the conventional C-and Ku-bands 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.<sup>5</sup> The Permitted Space Station List is maintained on our website, and is also available via fax or e-mail.<sup>6</sup>

## B. Previous New Skies *DISCO II* Showings

3. New Skies is a satellite company spun off from the former International Telecommunications Satellite Organization (INTELSAT), an intergovernmental organization with 143 member governments at the time New Skies was spun off.<sup>7</sup> New Skies is incorporated in the

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<sup>3</sup> See *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*").

<sup>4</sup> See *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*").

<sup>5</sup> *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).

<sup>6</sup> *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](http://www.fcc.gov/ib/srd/se/permitted.html)>.

<sup>7</sup> *New Skies Satellites, N.V.*, Order and Authorization, 14 FCC Rcd 13003, 13005-06 (paras. 3-4) (1999) ("*New Skies Market Access Order*"). As part of its decision to privatize INTELSAT, the Assembly of Parties retained a residual intergovernmental organization known as ITSO, an acronym for the International Telecommunications Satellite Organization, presently with 146 member governments. ITSO, through a "Public Services Agreement" with Intelsat LLC (Intelsat), the privatized company, monitors the performance of the company's public service obligations to: maintain global connectivity and global coverage, provide non-

Netherlands.<sup>8</sup> In 1999, the Commission adopted the *New Skies Market Access Order*, which granted authority under the *DISCO II* framework to 136 earth stations to communicate with one or more of the New Skies satellites currently in operation.<sup>9</sup> The Commission initially authorized these earth stations to communicate with New Skies satellites for three years after the release date of that Order, but announced that it would extend the authorizations to full ten-year terms if New Skies could demonstrate that it had achieved independence from INTELSAT.<sup>10</sup>

4. The Commission also found that the New Skies satellites did not meet many of the Part 25 technical requirements applicable to satellites, but waived those requirements.<sup>11</sup> As a condition of these waivers, the *New Skies Market Access Order* requires New Skies to coordinate in good faith with U.S. services over any future U.S. licensed or non-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.<sup>12</sup> If a coordination agreement cannot be reached, New Skies is required to operate on a non-harmful interference basis relative to the U.S. services over compliant satellites.<sup>13</sup>

5. On October 31, 2000, New Skies requested that the Commission extend the 136 earth station authorizations to full ten-year terms, and to waive the non-harmful interference condition placed on those earth station authorizations with respect to future two-degree compliant satellites. In March 2001, the Commission granted New Skies' request to extend the earth station authorizations to full ten-year terms.<sup>14</sup> The Commission also stated that it would waive the non-harmful interference condition if New Skies and the Netherlands Administration agreed to make certain commitments.<sup>15</sup> In a separate Order, we placed four of New Skies's in-orbit satellites on the Permitted Space Station List.<sup>16</sup>

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discriminatory access to the system, and honor the lifeline connectivity obligation (LCO) to certain customers (those customers in poor or underserved countries that have a high degree of dependence on Intelsat Under these commitments, Intelsat LLC keeps capacity available to lifeline users at fixed pre-privatization costs for approximately 12 years, while the lifeline users are only committed for its capacity on a year-to-year basis at their option. ITSO has no operational or commercial role.

<sup>8</sup> *New Skies Market Access Order*, 14 FCC Rcd at 13006 (para. 7). LLC).

<sup>9</sup> *New Skies Market Access Order*, 14 FCC Rcd at 13039 (para. 82).

<sup>10</sup> *New Skies Market Access Order*, 14 FCC Rcd at 13034-35 (para. 70).

<sup>11</sup> *New Skies Market Access Order*, 14 FCC Rcd at 13037-38 (paras. 75-77).

<sup>12</sup> *New Skies Market Access Order*, 14 FCC Rcd at 13038 (paras. 78-79).

<sup>13</sup> *New Skies Market Access Order*, 14 FCC Rcd at 13038 (paras. 78-79).

<sup>14</sup> *New Skies Satellites, N.V., Request for Unconditional Authority to Access the U.S. Market*, Memorandum Opinion and Order, 16 FCC Rcd 7482, 7496 at (para. 47)(2001) (“*New Skies ORBIT Act Compliance Order*”).

<sup>15</sup> *New Skies ORBIT Act Compliance Order*, 16 FCC Rcd at 7507-08 (para. 78).

<sup>16</sup> *New Skies Satellites N.V., Petition for Declaratory Ruling*, Order, 16 FCC Rcd 6740 (Int. Bureau 2001) (“*New Skies Permitted List Order*”). These satellites are (1) NSS-513, located at 183° E.L.; (2) NSS-803, located at

### C. Current Proceeding

6. While its request to extend the three-year earth station license terms was pending, New Skies reported that it was planning to launch NSS-7 to the 21.5° W.L. orbit location in 2002.<sup>17</sup> New Skies stated that two of its satellites, NSS-803 and NSS-K, which were then located at the 21.5° W.L. orbit location would be replaced by NSS-7.<sup>18</sup> New Skies further explained that when it launched NSS-7, it planned to retire its NSS-513 satellite that was then operating at the 177° W.L. orbit location and to relocate NSS-803 to 177° W.L.<sup>19</sup>

7. On March 9, 2001, New Skies submitted the information necessary to support a request to use NSS-7, which operates in a variety of frequency bands -- including the conventional C-and Ku-bands, to provide service to the United States.<sup>20</sup> On October 16, 2001, New Skies requested that entry of NSS-803 on the Permitted Space Station List be modified to reflect its new orbital location at 177° W.L. orbit location.<sup>21</sup> We placed both of New Skies' requests on public notice,<sup>22</sup> and no comments or replies were filed. In March 2002, New Skies informed the Commission that it agreed on operational arrangements with the adjacent U.S. operator, Intelsat, which is operating a number of satellites in the 24.5° W.L. to 18° W.L. range of orbit locations.

8. In this Order, we place NSS-7 on the Permitted Space Station List, with conditions, for the reasons set forth below. We also place NSS-803 on the Permitted Space Station List at the 177° W.L. orbit location.

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21.5° W.L (338.5° E.L.); (3) NSS-806, located at 40.5° W.L (319.5° E.L.); and (4) NSS-K, located at 21.5° W.L (338.5° E.L.)

<sup>17</sup> Letter from William M. Wiltshire, Counsel for New Skies, to Magalie Roman Salas, Secretary, FCC (dated January 22, 2001) ("*January 22 Letter*") at 2.

<sup>18</sup> *January 22 Letter* at 2.

<sup>19</sup> *January 22 Letter* at 2; New Skies Petition, Part II at 2.

<sup>20</sup> Letter from William M. Wiltshire, Counsel for New Skies, to Magalie Roman Salas, Secretary, FCC (dated March 9, 2001) ("*New Skies Petition*"). Section 25.137 of the Commission's rules, adopted in *DISCO II*, sets forth the information requirements required of non-U.S.-licensed satellite operators seeking access to the U.S. market. 47 C.F.R. § 25.137. See also *DISCO II*, 12 FCC Rcd at 24175-76 (paras. 189-91). Non-U.S.-licensed satellite operators must provide all the information required of U.S.-licensed satellite operators under Section 25.114, except that the financial information set forth in Sections 25.114(c)(17) and (18) is not required if the satellite is already in orbit, and the technical information set forth in Sections 25.114(c)(5) through (11) and (14) is not required if the satellite has been coordinated.

<sup>21</sup> Letter from Andrew R. D' Uva, Vice President and Associate General Counsel, to Magalie Roman Salas, Secretary, FCC (dated October 16, 2001) ("*October 2001 Letter*").

<sup>22</sup> Satellite Policy Branch Information, Report No. SAT-00067, *Public Notice* (released Mar. 26, 2001) and Satellite Policy Branch Information, Report No. SAT-00096, *Public Notice* (released January 8, 2002).

### III. DISCUSSION

#### A. General Framework

9. 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,<sup>23</sup> spectrum availability,<sup>24</sup> eligibility and operating (*e.g.*, technical) requirements,<sup>25</sup> and national security, law enforcement, foreign policy, and trade concerns.<sup>26</sup> We have already conducted a *DISCO II* analysis for the New Skies satellites now operating at 21.5° W.L. and, as a result, have granted those satellites access to the U.S. market in the conventional C-band and Ku-band by placing them on the Permitted Space Station List.<sup>27</sup> Accordingly, in this Order, we address only those aspects of the *DISCO II* analysis unique to NSS-7. These are competition considerations and eligibility requirements. We also determine whether any of our findings supporting the placement of NSS-803 on the Space Station List are affected by relocating the satellite from 21.5° W.L. to 177° W.L.

#### B. NSS-7

##### 1. Competition Concerns

10. New Skies proposes to provide fixed-satellite service over NSS-7. In *DISCO II*, the Commission said it would consider that the provision of World Trade Organization (WTO) covered services by WTO Member countries would be presumed to be competitive. Specifically, in *DISCO II*, the Commission established a rebuttable presumption in favor of entry by non-U.S. satellites licensed by WTO Members to provide services covered by the U.S. commitments under the WTO Agreement on Basic Telecommunications Services (WTO Basic Telecom Agreement).<sup>28</sup> 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.<sup>29</sup>

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<sup>23</sup> *DISCO II*, 12 FCC Rcd at 24107-56 (paras. 30-145).

<sup>24</sup> *DISCO II*, 12 FCC Rcd at 24157-59 (paras. 146-50).

<sup>25</sup> *DISCO II*, 12 FCC Rcd at 24159-69 (paras. 151-74).

<sup>26</sup> *DISCO II*, 12 FCC Rcd at 24169-72 (paras. 175-82).

<sup>27</sup> *See DISCO II; DISCO II First Reconsideration Order; New Skies Market Access Order New Skies ORBIT Act Compliance Order.*

<sup>28</sup> *DISCO II*, 12 FCC Rcd at 24112 (para. 39).

<sup>29</sup> *DISCO II*, 12 FCC Rcd at 24112 (para. 39).

11. New Skies proposes to provide FSS, a covered service, using NSS-7, a satellite licensed by the Netherlands, which is a WTO-member. Thus, we presume that allowing NSS-7 to provide FSS (excluding DTH) in the United States will enhance competition. Further, the Commission found in the *New Skies ORBIT Act Compliance Order*, that New Skies has achieved sufficient independence from INTELSAT to meet the ORBIT Act's requirements.<sup>30</sup> 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. In addition, 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.<sup>31</sup> Accordingly, we prohibit U.S.-licensed earth stations from accessing NSS-7 for DTH, DBS, and DARS. We note that we routinely place this condition on other entries on the Permitted Space Station List.

## 2. Eligibility Requirements

### a. Legal 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.<sup>32</sup> Based on the Commission's findings in the *New Skies ORBIT Act Compliance Order*,<sup>33</sup> we find that New Skies is legally qualified to provide satellite service in the United States.

### b. Financial Qualifications

13. In *DISCO II*, the Commission stated that when a foreign satellite is in-orbit, there is no concern about whether the prospective entrant is financially capable of building and launching its system and therefore financial information is unnecessary in that instance.<sup>34</sup> NSS-7 was successfully launched in April 2002. Consequently, we need not examine New Skies's financial qualifications.

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<sup>30</sup> *New Skies ORBIT Act Compliance Order*, 16 FCC Rcd 7482 (paras. 46-47).

<sup>31</sup> Generally, General Agreement on Tariffs and Trade (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 favorable 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.

<sup>32</sup> *DISCO II*, 12 FCC Rcd at 24161-63 (paras. 154-59).

<sup>33</sup> *New Skies ORBIT Act Compliance Order*, 16 FCC Rcd 7482 (paras. 46-47).

<sup>34</sup> *DISCO II*, 12 FCC Rcd at 24176 (para. 191) (financial qualification is required unless the satellite at issue is in-orbit).

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**c. Technical Qualifications**

14. The Commission's satellite licensing policy is predicated upon two-degree orbital spacing between geostationary satellites.<sup>35</sup> This policy permits the maximum use of the geostationary satellite orbit.<sup>36</sup> 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. We have allowed satellites that are not two-degree compliant to serve the United States, but only when the applicants can demonstrate that their operations will cause no harmful interference to existing compliant satellite operations or where the adjacent satellite operators have reached a coordination agreement. Further, we require satellites that are not two-degree compliant to operate on a non-harmful interference basis relative to any future satellite networks serving the United States that are two-degree compliant.<sup>37</sup>

15. New Skies acknowledges that NSS-7 does not meet certain two-degree spacing requirements (Sections 25.210(a) (orthogonal linear polarization), 25.210(i) (cross polarization isolation), and 25.211(a)(center frequencies for downlink analog video transmissions) of the Commission's rules).<sup>38</sup> New Skies also acknowledges that a satellite licensed to Intelsat is licensed at 20° W.L., less than two-degrees away from the 21.5° W.L. orbit location. New Skies requests waivers of these rules and the Commission's two-degree spacing framework.<sup>39</sup>

16. Rules may be waived if there is "good cause" to do so.<sup>40</sup> Waiver is appropriate if special circumstances warrant a deviation from the general rule and such deviation would better serve the public interest than would strict adherence to the general rule.<sup>41</sup> Circumstances that would justify a waiver

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<sup>35</sup> 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).

<sup>36</sup> See *Assignment of Orbital Locations to Space Stations in the Domestic Fixed-Satellite Service, Order and Authorization*, 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.

<sup>37</sup> 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).

<sup>38</sup> *New Skies Petition* at 2. 47 C.F.R. §§ 25.210(i) and 25.211(a).

<sup>39</sup> 47 C.F.R. § 25.140(b).

<sup>40</sup> 47 C.F.R. § 1.3 ("Any provision of the rules may be waived by the Commission on its own motion or on petition if good cause therefor is shown"). *WAIT Radio v. FCC*, 418 F.2d 1153 (D.C. Cir. 1969).

<sup>41</sup> *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1166 (D.C. Cir. 1990) ("Northeast Cellular"); *WAIT Radio*, 418 F. 2d at 1157. See also *Comsat Corporation, Petition for Partial Relief from the Current Regulatory Treatment of Comsat World Systems' Switched Voice, Private Line, and Video and Audio Services*, Order, 11 FCC Rcd 9622, 9625 (para. 10)(1996); *Petition of General Communications, Inc. for a Partial Waiver of the Bush Earth Station Policy*, Memorandum Opinion and Order, 11 FCC Rcd 2535, 2536 (para. 4)(Int'l Bur. 1996); *Dominion Video Satellite, Inc., Order and Authorization*, 14 FCC Rcd 8182, 8185 (para. 5)(Int'l Bur., 1999) ("Dominion Video").

include considerations of hardship, equity, or more effective implementation of overall policy.” Also, if the Commission grants waivers, it must identify and articulate reasonable standards that are predictable, workable, and not susceptible to discriminatory application.<sup>42</sup> Generally, the Commission may grant a waiver of its rules in a particular case if the relief requested would not undermine the policy objective of the rule in question, and would otherwise serve the public interest.<sup>43</sup>

17. In the *New Skies ORBIT Act Compliance Order*, the Commission indicated it would not consider waiving any technical rules with respect to NSS-7 until New Skies had reached a coordination agreement with Intelsat. In March 2002, New Skies informed the Commission that it had agreed to a coordination arrangement with Intelsat concerning operations between the NSS-7 satellite at 21.5° W.L. and the Intelsat satellite at 20° W.L. The United States and the Netherlands subsequently approved the arrangement. Consequently, we will consider New Skies’s request for waivers of particular technical rules.

18. We grant New Skies's request for waivers of Sections 25.210(a) and 25.211(a). We have previously granted New Skies a waiver of these rules. In the *New Skies Market Access Order*, we noted that the New Skies satellites are coordinated internationally with all satellites that could be affected by New Skies's operations.<sup>44</sup> Consequently, the Commission found that allowing the non-compliant satellites to provide service in the United States would not adversely impact any *existing* satellite operations. New Skies states that the technical characteristics of NSS-7 are consistent with the satellites currently at that location,<sup>45</sup> and are coordinated internationally with all satellites that could be affected by New Skies's operations.<sup>46</sup> Therefore, allowing NSS-7 to provide service in the United States from the 21.5° W.L. orbit location would not adversely impact any *existing* satellite operations.

19. We also grant New Skies's request for waiver of the Commission’s C-band polarization isolation requirements contained in Section 25.210(i) of the Commission’s rules.<sup>47</sup> All space station antennas in the Fixed- Satellite Service must be designed to provide a cross polarization isolation such that the ratio of the axis co-polar gain to the cross polar gain of the antenna in the assigned frequency band be at least 30 dB within its primary coverage area.<sup>48</sup> New Skies states that not all of the beams of NSS-7 achieve that level over the entire coverage area. It further states that the ratio in limited areas of coverage is in the

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<sup>42</sup> See *WAIT Radio v. FCC*, 418 F.2d 1153 (D.C. Cir. 1969).

<sup>43</sup> See *Dominion Video Satellite, Inc.*, Order and Authorization, 14 FCC Rcd 8182, 8185 (Int'l Bur., 1999)

<sup>44</sup> *New Skies Market Access Order*, 14 FCC Rcd at 13038 (para. 77).

<sup>45</sup> New Skies Petition, Part II at 2-3.

<sup>46</sup> *New Skies Permitted List Order*, 16 FCC Rcd 6740 at (para. 15); *New Skies Market Access Order*, 14 FCC Rcd at 13038 (para. 77).

<sup>47</sup> 47 C.F.R. § 25.210(i).

<sup>48</sup> 47 C.F.R. § 25.210(i).



25-30 dB range, with typical ratios better than 27 dB.<sup>49</sup> New Skies states that this design is the product of the international origins and historical design of the INTELSAT system.<sup>50</sup> We agree with New Skies that “the impact on a neighboring satellite system would be negligible” and the only party that will suffer an increase in interference would be New Skies.<sup>51</sup> Accordingly, we conclude that New Skies has shown “good cause” for a waiver of Section 25.210(i).

20. As noted, we generally require non-compliant non-U.S. licensed satellites reach coordination agreement or to operate on a non-interference basis with respect to *future* satellites that are two-degree spacing compliant. New Skies asks that we not include this condition in any grant of U.S. market access for NSS-7. In the *New Skies ORBIT Act Compliance Order*, the Commission determined that it would eliminate this condition with respect to other New Skies satellites, 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.<sup>52</sup> 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 obligation to give its concurrence.<sup>53</sup> In the *New Skies Permitted List Order*, we stated that we would remove these conditions from earth stations communicating with the four New Skies satellites currently on the Permitted Space Station List if New Skies undertakes the two commitments specified above.<sup>54</sup> New Skies has not undertaken these commitments with respect to any of its satellites, including NSS-7.

21. Consequently, we will impose the same conditions on earth stations communicating with NSS-7 as we imposed on earth stations communicating with other New Skies’s satellites. Specifically, New Skies is required to coordinate in good faith with any *future* U.S.-licensed services over U.S. licensed or non-licensed satellite that complies with the Part 25 technical requirements and is located as close as two-degrees away from a New Skies satellite.<sup>55</sup> If a coordination agreement cannot be reached, New Skies is required to operate on a non-harmful interference basis relative to the compliant U.S.-

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<sup>49</sup> New Skies Petition, Part I.

<sup>50</sup> *Id.*

<sup>51</sup> *See Intelsat LLC*, 15 FCC Rcd at 15503. Where the Commission recognized that “the impact on a neighboring satellite system would be negligible.”

<sup>52</sup> *New Skies ORBIT Act Compliance Order* at para. 78.

<sup>53</sup> *New Skies ORBIT Act Compliance Order* at para. 78.

<sup>54</sup> *New Skies Permitted List Order*, 16 FCC Rcd 6740 at (para. 16).

<sup>55</sup> *New Skies Permitted List Order*, 16 FCC Rcd 6740 at (para. 15); *New Skies Market Access Order*, 14 FCC Rcd at 13038 (paras. 78-79).

licensed services.<sup>56</sup> We will remove these conditions from earth stations communicating with NSS-7 if New Skies undertakes the same two commitments with respect to coordination with future two-degree compliant satellites we imposed in the *New Skies ORBIT Act Compliance Order*.

22. Accordingly, we grant New Skies a conditional waiver of Sections 25.140(b)(2), 25.210(a), 25.211(a), 25.210(i). We place NSS-7 on the Permitted Space Station List. Thus, routinely licensed earth stations, that is, those designated to communicate with “ALSAT,” or all U.S.-licensed satellites, may communicate with NSS-7 in the conventional C-and Ku-bands at 3700-4200/5925-6425 MHz and 11.7-12.2/14.0-14.5 GHz without further Commission action, to provide fixed-satellite service (except for direct-to-home service) pursuant to conditions in their earth station licenses and the conditions set forth below. Non-ALSAT earth stations must be granted modification to their licenses to add NSS-7 at 21.5° W.L. as a point of communications before they may begin to communicate with NSS-7 at 21.5° W.L. All earth station operators regardless of their “ALSAT” designation must receive authority to communicate with NSS-7 in any bands outside of the conventional C-and Ku-bands before doing so.<sup>57</sup>

### C. NSS-803

23. The International Bureau placed NSS-803 on the Permitted Space Station List in March 2001.<sup>58</sup> At that time, NSS-803 was located at the 21.5° W.L. orbital location.<sup>59</sup> On January 22, 2001, New Skies informed the Commission that planned to relocate NSS-803 from the 21.5° W.L. orbital location to the 177° W.L. orbital location when it retired the NSS-513 satellite from that location.<sup>60</sup> New Skies indicates that it has completed coordinating NSS-803 at the 177° W.L. orbital location with operators of adjacent satellites that also provide U.S. service, including Intelsat at 180° W.L. and Columbia at 174.3° W.L. We placed New Skies’s *October 16 Letter* on public notice on January 8, 2001, and received no comments.

24. Because New Skies has completed coordination of the NSS-803 with adjacent satellites, we will modify its entry on the Permitted Space Station List to reflect its new orbit location at 177° W.L. All other terms of its placement on the Permitted Space Station List remain in effect. Thus, routinely

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<sup>56</sup> *New Skies Permitted List Order*, 16 FCC Rcd 6740 at (para. 15); *New Skies Market Access Order*, 14 FCC Rcd at 13038 (paras. 78-79).

<sup>57</sup> We note that earth stations communicating with NSS-K and NSS-503 satellites were authorized to operate in “non-conventional” portions of the C-and Ku-bands. We are amenable to allowing those earth stations to continue to operate in those bands provided that the operating parameters remain the same.

<sup>58</sup> *See New Skies Permitted List Order*, 16 FCC Rcd 6740 (Int. Bureau 2001). The Permitted Space Station list on the International Bureau’s web site will be updated shortly to include NSS-7. In addition, pursuant to the Bureau’s Public Notice of December 17, 1999, this satellite falls within the scope of 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 December 17, 1999).

<sup>59</sup> *See New Skies Permitted List Order* at fn. 1.

<sup>60</sup> *January 22 Letter* at 2.

licensed earth stations, that is, those designated to communicate with "ALSAT," or all U.S.-licensed satellites, may communicate with NSS-803 in conventional C-and Ku-bands at 3700-4200/5925-6425 MHz and 11.7-12.2/14.0-14.5 GHz without further Commission action, to provide fixed-satellite service (except for direct-to-home service) pursuant to conditions in their earth station licenses and the conditions set forth below. Non-ALSAT earth stations must be granted modifications to their licenses to add NSS-803 at 177° W.L. as a point of communication before they may begin to communicate with NSS-803 at 177° W.L. All earth station operators regardless of their "ALSAT" designation must receive authority to communicate with NSS-803 in any bands outside the conventional C-and Ku-bands before doing so.

25. Further, consistent with the *New Skies Permitted List Order*, ALSAT-designated earth stations communicating with NSS-803 may continue to do so only in a manner consistent with international coordination agreements relative to two-degree-compliant satellite systems currently in operation.<sup>61</sup> If a two-degree compliant satellite is authorized in the future and a coordination agreement is not reached, U.S. earth stations must communicate with the NSS-803 satellite on a non-harmful interference basis relative to compliant U.S. services. We will eliminate this non-interference condition if New Skies makes the commitments discussed above and in the *New Skies Compliance Order*.

## VI. ORDERING CLAUSES

26. 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), the Petitions for Declaratory Ruling, File Nos. SAT-PDR-20010309-00020 and SAT-PDR-20011016-00137 IS GRANTED and 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-7 satellite to be located at the 21.5° W.L. orbital location in the 3700-4200/5925-6425 MHz and the 11.7-12.2/14.0-14.5 GHz frequency bands, subject to the conditions set forth in this Order.

27. IT IS FURTHER ORDERED that the NSS-7 satellite with the conditions set forth in this Order, IS PLACED on the "Permitted Space Station List" for operation at the 21.5° W.L. orbital location.

28. IT IS FURTHER ORDERED that this authorization does not authorize New Skies Satellites, N.V., to provide any Direct-to-Home service, Direct Broadcast Satellite service, or Digital Audio Radio Service to, from, or within the United States using the NSS-7 satellite.

29. 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), 25.210(i) 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), and 25.210(i) for the limited purpose of communicating with NSS-7 in the conventional C-and Ku-bands, subject to the conditions set forth in its earth station license and in this Order.

30. IT IS FURTHER ORDERED that access to the New Skies satellite networks SHALL BE in compliance with all applicable international satellite coordination agreements.

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<sup>61</sup> See *New Skies Permitted List Order*, 16 FCC Rcd 6740 at (para. 25).

31. IT IS FURTHER ORDERED that each earth station with "ALSAT" designated as a point of communication may communicate with NSS-7, only under the following conditions, unless New Skies Satellites, N.V., undertakes the commitments set forth in paragraph 22, 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-7 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-7 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.

32. IT IS FURTHER ORDERED that the conditions set forth in paragraph 20 shall not apply to any earth station with "ALSAT" designated as a point of communication communicating with NSS-7 in the conventional C-band or conventional Ku-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.

33. IT IS FURTHER ORDERED that the "Permitted Space Station List" entry for the NSS-803 satellite WILL BE MODIFIED to reflect its relocation to the 177° W.L. orbital location pursuant to paragraph 34. All the conditions on communication with NSS-803 adopted in the *New Skies Permitted List Order* shall remain in force unless and until the Administration of the Netherlands undertakes the commitments set forth in that Order. None of the waivers adopted in the *New Skies Permitted List Order* associated with NSS-803 are affected by this Order.

34. IT IS FURTHER ORDERED that New Skies Satellites, N.V. is REQUIRED to inform the Commission in writing, within 30 days, after NSS-803 is successfully relocated to the 177° W.L. orbital location.

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35. IT IS FURTHER ORDERED that New Skies Satellites, N.V. must notify the Commission, in writing, within 30 days, after replacement of the NSS-K and NSS-513 satellites. Once we receive this confirmation, the NSS-513 and NSS-K satellites SHALL BE REMOVED from the Permitted Space Station List.

36. 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 Division  
International Bureau