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

In the Matter of	)	
	)	
Hispasat S.A.	)	
	)	
Petition for Declaratory Ruling	)	File No. SAT-PDR-20020208-00016
For Inclusion of Hispasat-1B on the	)	
Permitted Space Station List	)	

ORDER

Adopted: March 5, 2003 **Released:** March 6, 2003

By the Chief, Satellite Division, International Bureau:

I. INTRODUCTION

1. In this Order, we add Hispasat S.A.'s (Hispasat's) Hispasat-1B satellite, located at 30° W.L., to the Commission's Permitted Space Station List (Permitted List), with certain conditions. As a result of this action, U.S. earth stations with "routine" technical parameters will be able to communicate with Hispasat-1B immediately, in certain conventional Ku-band frequencies.[1] This should stimulate competition in the United States, provide consumers another alternative in choosing communications providers and services, reduce prices, and facilitate technological innovation.

II. BACKGROUND

2. In the *DISCO II Order*,[2] the Commission implemented the satellite services market-opening commitments made by the United States in the World Trade Organization Agreement on Basic Telecommunications Services (WTO Basic Telecom Agreement). It also established a framework under which it would consider access by foreign satellites not covered by the WTO Basic Telecom Agreement. By allowing non-U.S. licensed satellites to serve the U.S. market, this action provides U.S. consumers more alternatives in choosing communications providers and services, thus advancing the growth of satellite services in the United States and around the globe. Among other things, the *DISCO II Order* 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] This procedure requires a U.S. earth station operator seeking to communicate with a non-U.S. satellite to file an earth station application for an initial license or for a modification of its existing earth station license, listing the foreign satellite as a

[1] The conventional Ku-band refers to frequencies in the 11.7-12.2 GHz (Earth-to-space) and 14.0-14.5 GHz (space-to-Earth) frequency bands. Hispasat proposes to use Hispasat 1-B to communicate with U.S. earth stations only in the 14.281-14.353 GHz, 14.441-14.495 GHz, and 11.997-12.033 GHz frequency bands.

[2] *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*, 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).

point of communication.[4]

3. In the *DISCO II First Reconsideration Order*, the Commission streamlined the process by allowing the operators of in-orbit non-U.S. satellites offering fixed satellite service to request authority to provide space segment capacity service to licensed earth stations in the United States.[5] Under this process, the Commission conducts the analysis established in the *DISCO II Order* for a particular non-U.S.-licensed space station and a particular satellite service. If the satellite granted access operates in the conventional C- and Ku-bands, the satellite operator may also request authority to be added to the "Permitted List."[6] This list identifies all satellites and services with which U.S.-licensed earth stations with routinely authorized technical parameters are permitted to communicate without additional Commission action, provided that those communications fall within the same technical parameters and conditions established in the earth stations' original licenses.[7] The Permitted List is maintained on our website, and is also available via fax or e-mail.[8]

4. On February 8, 2002, Hispasat, a Spanish satellite services provider, filed a Petition for Declaratory Ruling to add its Hispasat-1B communications satellite to the Permitted List.[9] Hispasat seeks authorization to provide digital communications services, including video and Internet applications, in the 14.281-14.353 GHz, 14.441-14.495 GHz, and 11.997-12.033 GHz frequency bands. It seeks permission to provide these Ku-band services to, from, and within the east coast of the United States.[10] Hispasat-1B is licensed by Spain. No parties filed oppositions to this petition.

III. DISCUSSION

A. Permitted List Request

1. General Framework

5. In the DISCO II Order, 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,[11] eligibility and operating (e.g., technical) requirements,[12] spectrum availability,[13] and national security, law enforcement, foreign

[4] When an earth station has been granted authority to communicate with a specific satellite or group of satellites, those satellites are referred to in the earth station license as "points of communication."

[5] *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 at 7207, 7212 (para. 10) (1999) (*DISCO II First Reconsideration Order)*.

[6] *Id*. at 7212-13 (paras. 10-11). This request is to be in the form of a Petition for Declaratory Ruling.

[7] *Id*. at 7215-16 (para. 19).

[8] *Id*. This web site address is http://www.fcc.gov/ib/sd/se/permitted.html.

[9] Hispasat S.A. Petition for Declaratory Ruling for Inclusion of Hispasat-1B on the Permitted Space Station List, filed February 8, 2002 (Hispasat Permitted List Petition).

[10] Hispasat Permitted List Petition, Attachment A, at 5 (unnumbered).

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

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

policy, and trade concerns.[14] We evaluate Hispasat's Ku-band request under this framework.

2. Competition Considerations

6. In *DISCO II*, the Commission established a rebuttable presumption that entry by non-U.S. satellites licensed by WTO Members to provide services covered by the U.S. commitments under the WTO Basic Telecom Agreement will further competition in the United States.[15] These commitments include fixed-satellite service, but specifically exclude direct-to-home (DTH) services, Direct Broadcast Satellite Service (DBS), and Digital Audio Radio Service (DARS).[16] This means that we will presume that WTO-member licensed satellites providing WTO-covered services satisfy the competition component of the public interest analysis. The Commission concluded that the market access commitments made 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.[17]

7. In this case, the presumption in favor of entry applies to Hispasat-1B, which is licensed by Spain, a WTO Member,[18] and which will be used to provide non-DTH fixed-satellite services to customers in the United States. No comments were filed to rebut the presumption that Hispasat-1B's entry into the U.S. market is pro-competitive. Therefore, we conclude that Hispasat's proposed entry for purposes of offering fixed-satellite services, excluding DTH, will enhance competition for these services in the U.S. market. As a condition on Hispasat-1B's placement on the Permitted List, however, we prohibit U.S. earth stations from accessing Hispasat-1B for DTH, DBS, or DARS.

3. Spectrum Availability

8. In *DISCO II*, the Commission determined that, given the scarcity of orbit and spectrum resources, it would consider spectrum availability as a factor in determining whether to allow a foreign satellite to serve the United States. 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. Thus, in *DISCO II*, we stated that when grant of access would create interference with U.S.-licensed systems, we may impose technical constraints on the foreign system's operations in the United States or, when conditions cannot remedy the interference, deny access.

9. In this case, Hispasat-1B is operating in portions of the Ku-band at the 30° W.L. orbital position. Two U.S.-licensed satellites, Intelsat-511 and Intelsat-801, also operate in portions of the Ku-band at the 29.5° W.L. and 31.5° W.L. orbital locations, respectively. Hispasat has successfully

(Continued from previous page)

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

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

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

[16] *DISCO II*, 12 FCC Rcd at 24104 (para. 25).

[17] *DISCO II*, 12 FCC Rcd at 24112 (para. 39); 24157 (para. 143).

[18] *See* http://www.wto.org/english/thewto_e/whatis_e/tif_e/org6_e.htm (a list of WTO members). *See also* http://www.wto.org/english/tratop_e/serv_e/telecom_e/telecom_commit_exempt_list_e.htm (a list of WTO members that made market-access commitments, with links to each member's schedule of commitments and Article II exemptions).

coordinated its operation with Intelsat's operations, by, among other things, agreeing to operate Hispasat 1B only in the 11.997-12.033 GHz band for its downlinks and 14.281-14.353 GHz and 14.441-14.495 GHz bands for its uplinks, when accessing the Americas. Allowing Hispasat-1B to serve the United States from the 30° W.L. orbit location in the frequency bands coordinated with Intelsat, by itself, will not affect operations of any U.S.-licensed satellites nor contravene the Commission's spectrum/frequency management policies, provided that Hispasat operates its Hispasat-1B satellite within the parameters of its coordination agreement. Accordingly, Hispasat is required to operate Hispasat-1B in accordance with the coordination agreements it has reached with operators of satellites that have been authorized to provide service to the U.S. market, and any future coordination agreements. These conditions will be included on the Permitted List with respect to Hispasat-1B.

4. Eligibility Requirements

10. The Commission's *DISCO II Order* requires that space station operators not licensed by the Commission meet the same legal, financial, and technical qualifications required of U.S.-licensed space station operators. Nothing in the record raises concerns about Hispasat's legal qualifications to provide satellite services in the United States.

a. Financial Qualifications

11. In the *DISCO II Order*, the Commission exempted in-orbit, non-U.S. space station systems from 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."[19] As the Hispasat-1B satellite is already in orbit, we need not address Hispasat's financial qualification requirements.

b. Technical Qualifications

12. We must, however, review Hispasat-1B's technical qualifications. The Commission's satellite licensing policy is predicated upon two-degree orbital spacing between geostationary satellites. This policy permits the maximum use of the geostationary satellite orbit. Applicants must demonstrate that they comply with the Commission's technical requirements, designed to permit two-degree orbital spacing, to be 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 not cause harmful interference to existing two-degree compliant satellite operations. Further, non-conforming operations are authorized conditioned upon a licensee accommodating future satellite networks serving the United States that are two-degree compliant.[20]

13. Based on our review of the technical information in Hispasat's petition for declaratory ruling, we conclude that Hispasat-1B complies with all applicable Commission rules, except Sections 25.210(e) and (g).[21] Sections 25.210(e) and (g) require that all space stations in the Fixed-Satellite Service (FSS) be designed to derive the maximum capacity feasible from the assigned orbital location by

[19] *DISCO II Order*, 12 FCC Rcd at 24176 (para. 191).

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

[21] 47 C.F.R. §25.210(e) and (g).

employing state-of-the-art full-frequency reuse using both horizontal and vertical polarization.[22] Hispasat has requested a waiver of these sections.[23] We find that a waiver is warranted.

14. Commission rules may be waived if there is "good cause" to do so.[24] 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.[25] Circumstances that would justify a waiver include "considerations of hardship, equity, or more effective implementation of overall policy."[26] 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.[27]

15. The full-frequency reuse requirements were designed to ensure that satellites maximized the use of their transponder capacity to the benefit of the public.[28] The Commission has waived these requirements where doing so would allow satellite capacity that would otherwise lay dormant to be used to provide service as long as such use does not preclude a state-of-the-art satellite from operating at this location.[29] Hispasat 1-B will operate from the 30° W.L. orbit location regardless of whether we permit it

[22] 47 C.F.R. §25.210(e). Section 25.210(g) defines full-frequency reuse for international FSS satellite service as follows: (1) Satellites must employ polarization discrimination so that, through the use of dual polarization, they shall be able to reuse both the uplink and downlink frequency band assignments; and (2) Satellites must be configured so that all assigned frequencies (in both polarizations) could be reused in beams serving widely separate areas. 47 C.F.R. §§25.210(g)(1) and (g)(2).

[23] *See* Letter from Donald M. Jansky, Counsel for Hispasat, S.A., to Magalie Roman Salas, Secretary, Federal Communications Commission (dated January 30, 2003). This letter is characterized as a clarification of the Hispasat Permitted List Petition, but we treat it as a request for waiver of the Commission's full-frequency reuse requirements. In its request, Hispasat states that the majority of the power of the Hispasat 1-B satellite is used to provide European coverage, thus leaving insufficient power to employ full-frequency reuse in Hispasat 1-B's coverage of the United States.

[24] *See* 47 C.F.R. § 1.3 (2001). *See also* WAIT Radio v. FCC, 418 F.2d 1153 (D.C. Cir. 1969) (*WAIT Radio)*; Northeast Cellular Telephone Co. v. FCC, 897 F.2d 1166 (D.C. Cir. 1990) (*Northeast Cellular*).

[25] *Northeast Cellular*, 897 F.2d at 1166. *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).

[26] *WAIT Radio*, 418 F.2d at 1159.

[27] *WAIT Radio*, 418 F.2d at 1157; *Dominion Video Satellite, Inc.*, Order and Authorization, 14 FCC Rcd 8182, 8185 (para. 5) (Int'l Bur. 1999) (*Dominion Video)*.

[28] *Licensing of Space Stations in the Domestic Fixed-Satellite Service and Related Revisions of Part 25 of the Rules and Regulations*, Report and Order, CC Docket No. 81-704, 54 RR 2d 577, 598 (para. 70) (1983) (*Two-Degree Spacing Order*). *See also Systematics General Corporation*, Memorandum Opinion and Order, 103 FCC 2d 879, 881 (para. 6) (1985) (*1985 Systematics Order*).

[29] *See, e.g., 1987 Systematics Order*, 2 FCC Rcd 7550 (authorizing the TDRS-1 and TDRS-3 satellites, which did not meeting the full frequency reuse requirement, to provide service from the 41° W.L. and 62° W.L. orbit locations until those locations were ready to be occupied by compliant satellites). *See also Columbia Communications Corporation*, Memorandum Opinion, Order, and Authorization, 7 FCC Rcd 122, 123 (para. 15) (1991) (*Columbia Full Frequency Reuse Waiver Order*).

to provide service in the United States. No other country plans to launch a Ku-band compliant satellite into 30° W.L. Thus, preventing Hispasat 1-B from offering its capacity in the United States will preclude the provision of Ku-band service from this orbit location altogether. To allow the public to receive service from an additional competitor, we grant Hispasat 1-B a waiver of these full-frequency reuse requirements. We conclude that waiving Sections 25.210(e) and (g) will not undercut the policies underlying the Commission's adoption of this rule, provided that we place the appropriate conditions on this waiver. Should the Commission find that another satellite facility operating at the frequencies on which Hispasat plans to operate in the United States would be able to meet its full-frequency reuse requirements, and that such satellite or earth station operation would be incompatible with the operation of Hispasat-1B at 30° W.L., U.S. earth stations communicating with Hispasat-1B at 30° W.L. will be required to cease those operations. This is consistent with conditions the Commission has placed on full-frequency reuse waivers in the past.[30]

16. In addition, Hispasat proposes to use the 14496.7 MHz and 2060.0 MHz (emergency) frequencies for Hispasat-1B's command functions and the 12749.0 MHz and 2237.104 MHz (emergency) frequencies for its telemetry.[31] Additionally, Hispasat proposes to operate a beacon at 11954 MHz.[32] Section 25.202(g) requires U.S.-licensed satellite operators to perform telemetry, tracking and control (TT&C) functions within the communication band at the edges of the band.[33] Hispasat's plans to perform TT&C functions at 12749.0 MHz do not comply with this rule. Moreover, the Table of Frequency Allocations places restrictions on many operations in 2025-2110 MHz and 2200-2290 MHz bands.[34] Because Hispasat's control center will be located in Spain rather than the United States, however, we find that these requirements do not apply to U.S. earth stations' communication with Hispasat-1B.

5. 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. Nothing in the record before us raises any such concerns.

18. Finally, pursuant to the Bureau's Public Notice of December 17, 1999, placing a satellite on the Permitted Space Station List will permit international common carriers holding appropriate global international Section 214 authorizations to provide international telecommunications services using the satellite without the need to obtain additional Section 214 authority.[35] We find that it is in the public interest to allow common carriers with global international Section 214 authorizations to communicate with Hispasat-1B.

---

[30] *Columbia Full-Frequency Reuse Waiver Order*, 7 FCC Rcd at 124 (para. 17).

[31] Hispasat Permitted List Petition, Attachment A, at 2 (unnumbered).

[32] *Id*.

[33] 47 C.F.R. §25.202(g).

[34] *See* 47 C.F.R. §2.106.

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

IV. CONCLUSION

19. We have performed a *DISCO II* analysis in this Order, and have determined that the conventional Ku-band operations of Hispasat-1B are two-degree spacing compliant, but for the ability to employ full frequency reuse. We grant a conditional waiver of this requirement. As conditioned, Hispasat's Ku-band operations of Hispasat-1B should not cause unacceptable interference to any other U.S. satellite system or to any non-U.S. satellite system authorized to serve the United States that is two-degree spacing compliant. Consequently, we add Hispasat-1B to the Commission's Permitted List, subject to the conditions set forth in this Order, thus allowing U.S.-licensed earth stations with "ALSAT" designations to access Hispasat-1B without modifying their licenses. We emphasize, however, that Hispasat-1B is not permitted to provide DTH, DBS, or DARS to users in the United States, and its inclusion on the Permitted List is so conditioned.

V. ORDERING CLAUSES

20. 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) and 25.137(c), each earth station with "ALSAT" designated as a point of communication, IS GRANTED authority to provide Fixed Satellite Services (FSS), to, from, or within the United States, by accessing the Hispasat-1B satellite, at the 30° W.L. orbit location, subject to the conditions set forth in each earth station license and the following conditions:

(a) ALSAT-designated earth stations are not authorized to use Hispasat-1B 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.

(b) Hispasat S.A.'s operation of Hispasat-1B must comply with its applicable current and future operational requirements as a result of coordination agreements with other satellite systems.

(c) ALSAT-designated earth stations are authorized to communicate with Hispasat-1B only in the 14.281-14.353 GHz, 14.441-14.495 GHz, and 11.997-12.033 GHz frequency bands.

21. IT IS FURTHER ORDERED that the Hispasat-1B satellite, together with the conditions set forth in this Order, IS PLACED on the "Permitted Space Station List."

22. IT IS FURTHER ORDERED that Hispasat S.A. IS GRANTED a waiver of Sections 25.210(e) and (g) of the Commission's rules, 47 C.F.R. §§25.210(e) and (g), for the purpose of communicating with Hispasat-1B in the conventional Ku-band. ALSAT-designated earth stations communicating with Hispasat-1B at 30° W.L. shall be required to cease those operations if the Commission finds that operators of another satellite facility complying with all the two-degree orbital spacing requirements would be incompatible with communications with Hispasat-1B at 30° W.L. in the frequencies listed above. Additionally, Hispasat is required to operate Hispasat-1B in accordance with the coordination agreements it has reached with operators of satellites that have been authorized to provide service to the U.S. market, and any future coordination agreements.

23. 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