

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

|   |   |                                 |
|---|---|---------------------------------|
| In the Matter of                                | ) |                                 |
|   | ) |                                 |
| Telesat Canada                                  | ) | File No. SAT-PDR-20020321-00027 |
|   | ) |                                 |
| Petition for Declaratory Ruling to Serve the US | ) |                                 |
| Market Using Ka-Band Capacity on Anik F2        | ) |                                 |

**ORDER ON RECONSIDERATION**

**Adopted:** March 30, 2005

**Released:** March 30, 2005

By the Chief, Satellite Division, International Bureau:

**I. INTRODUCTION**

1. In this Order, we dismiss as untimely Microcom's Petition for Reconsideration of the Commission's *Anik F2 Order*.<sup>1</sup> In that Order, the Commission added a Canadian satellite, Anik F2, located at 111.1° W.L., to the Commission's Permitted Space Station List ("Permitted List")<sup>2</sup> and also granted Telesat Canada ("Telesat") authority to use Anik F2's Ka-band<sup>3</sup> capacity to provide two-way broadband communications services in the United States.

<sup>1</sup> *Telesat Canada, Petition for Declaratory Ruling For Inclusion of Anik F2 on the Permitted Space Station List*, Order, DA 02-3490, 17 FCC Rcd. 25,287 (Sat. Div., 2002) (*Anik F2 Order*). We note that in footnotes 1 and 2 to that Order, the terms "space-to-Earth" and "Earth-to-space" are erroneously reversed. *See also Telesat Canada, Petition for Declaratory Ruling to be Added to the Permitted List*, Grant of Authority, SAT-PPL-20041004-00194, Call Sign S2646, granted with conditions, January 19, 2005, FCC Public Notice, Policy Branch Information, Actions Taken, DA No. 05-241, Report No. SAT-00268, January 28, 2005 (removing certain conditions imposed by the *Anik F2 Order* and declaring that Anik F2, which is licensed by Canada, is authorized to access the U.S. market from the 111.1° W.L. orbital location).

<sup>2</sup> This list identifies all satellites and services with which U.S.-licensed earth stations with routinely authorized technical parameters and operating in the conventional C- and Ku-bands ("ALSAT" earth stations) are permitted to communicate without additional Commission action, provided that those communications fall within the same technical parameters and conditions established in the earth stations' original licenses. 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 (1999) (*DISCO II First Reconsideration Order*), at 7213, para. 13. The "conventional C-band" refers to frequencies in the 3700-4200 MHz (space-to-Earth) and 5925-6425 MHz (Earth-to-space) bands. The "conventional Ku-band" refers to frequencies in the 11.7-12.2 GHz (space-to-Earth) and 14.0-14.5 GHz (Earth-to-space) frequency bands.

<sup>3</sup> The term "Ka-band" refers to frequencies in the 17.7-20.2 GHz (Earth-to space) and 27.5-30.0 GHz (space-to-Earth) bands.

## II. BACKGROUND

2. On December 18, 2002, the International Bureau released the *Anik F2 Order* adding Telesat's Anik F2 satellite to the Permitted List. Pursuant to the *Anik F2 Order*, U.S. earth stations with "routine" technical parameters are able to communicate with Anik F2, in the conventional C- and Ku-band frequencies.<sup>4</sup> The order also provided that Earth station operators seeking to access Anik F2 to provide Ka-band services may do so only after obtaining an earth station license that includes Anik F2 as an authorized point of communication or after modifying an existing license to add Anik F2 as a point of communication.

3. Two weeks after the deadline for filing Petitions for Reconsideration, Microcom, a distributor of direct broadcast satellite ("DBS") and broadband satellite services from StarBand Communications, Inc. ("StarBand"), filed a Petition for Reconsideration of the *Anik F2 Order*. In its petition, Microcom alleges that grant of the application will provide a competitive injury to Starband.<sup>5</sup> Accordingly, Microcom requests that certain geographic service requirements be placed on Anik F2's operation to prevent loss of consumer satellite broadband access in Alaska and Hawaii.<sup>6</sup>

4. Telesat filed a response to Microcom's Petition, alleging that it is procedurally defective, that Microcom lacks standing to file a petition for reconsideration, and that reconsideration of the *Anik F2 Order* would not be in the public interest.<sup>7</sup> Telesat also argues that Commission policy favors the provision of broadband service by multiple competitors and that there is a particularly compelling need for such service in rural areas such as Alaska and Hawaii. According to Telesat, the alleged harm to StarBand is a "non-cognizable loss of a private interest" that does not affect the public interest.<sup>8</sup> Furthermore, Telesat asserts that the Commission has licensed, without the conditions requested by Microcom, other Ka-band satellites that will provide service to Alaska and Hawaii.<sup>9</sup>

5. Microcom filed a response to the Telesat's Petition to Dismiss, reiterating that the public interest would be best served by imposing geographic coverage requirements on Telesat. Microcom also notes that Telesat might only provide service to profitable portions of its footprint. Microcom asserts this

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<sup>4</sup> *DISCO II First Reconsideration Order*, 15 FCC Rcd at 7213, para. 13.

<sup>5</sup> Microcom Petition at unnumbered 2. Specifically, Microcom alleges that Telesat and another company (Wildblue) plan to use Anik F2's Ka-band capacity to provide higher access speeds for less than the monthly cost of existing StarBand service to a small portion of the customers in Alaska. Microcom also alleges that the faster cheaper service will be made possible by the frequency reuse of Ka-band spectrum. According to Microcom, the market pressure that could result from such service could put StarBand out of business in both Alaska and Hawaii. *Id.*

<sup>6</sup> Microcom Petition at unnumbered 2. Microcom asserts that the Commission should place additional conditions on the use of the Anik F2 satellite such that service to the U.S. cannot begin unless provisions are made to prevent loss of consumer satellite broadband access to Alaska and Hawaii.

<sup>7</sup> Telesat Canada Petition to Dismiss and Opposition to Microcom Petition for Reconsideration (filed February 27, 2003) (Telesat Canada Petition to Dismiss).

<sup>8</sup> Telesat Canada Petition to Dismiss at 3. Telesat claims that Microcom's arguments are reminiscent of the "Carroll doctrine," wherein the Commission considered the detrimental effect of a new broadcast station on an existing station. See *Carroll Broadcasting Co. v. FCC*, 258 F.2d 440 (D.C. Cir. 1958). Telesat notes that this doctrine was properly abolished because "the purpose of anti-trust law is to protect 'competition, not competitors'." Telesat Canada Petition to Dismiss at 4.

<sup>9</sup> *Id.*

would put StarBand at a competitive disadvantage, cause its demise, and result in the loss of service to the 1000 StarBand subscribers.<sup>10</sup>

### III. DISCUSSION

6. By statute, Congress limited the Commission's jurisdiction to review petitions for reconsideration to those filed within a specific time period.<sup>11</sup> Section 1.106(f) of the Commission's rules implements this statutory mandate requiring a petition for reconsideration to be filed within thirty days from the date of public notice of the Commission's action.<sup>12</sup> Thus, the deadline for filing petitions to the Anik F2 Order was January 17, 2003. Microcom filed its Petition on February 3, 2003. Microcom acknowledges that "it may not have filed the petition in a procedurally correct manner."<sup>13</sup> Microcom, however, does not allege any "extraordinary circumstances" that would excuse its failure to timely file the petition for reconsideration.<sup>14</sup> Instead, Microcom simply asserts that "procedural correctness should not stand in the way of pointing out harm to the public interest."<sup>15</sup> A mere allegation of a public interest concern does not satisfy the "extraordinary circumstance" standard required for the consideration of untimely petitions for reconsideration. Accordingly, we dismiss Microcom's petition for reconsideration as untimely.<sup>16</sup>

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<sup>10</sup> Microcom response to Telesat Comments on Petition for Reconsideration, dated March 21, 2003 (Microcom Response) at unnumbered 1-3.

<sup>11</sup> 47 U.S.C. § 405(a).

<sup>12</sup> 47 C.F.R. § 1.106(f) ("The petition for reconsideration and any supplement thereto shall be filed within 30 days from the date of public notice of the final Commission action ..."); *San Francisco IVDS, Inc.*, Memorandum Opinion and Order on Reconsideration, 18 FCC Rcd. 724, 733 at n. 24 (2003) ("[W]e note that the courts have noted a strong policy in favor of administrative finality, and have held that proceedings that have become final will not be reopened unless there has been fraud on the agency's or court's processes, or unless the result is manifestly unconscionable. See, e.g., *Hazel-Atlas Co. v. Hartford Co.*, 322 U.S. 238, (1944); *Greater Boston Television Corporation v. FCC*, 463 F.2d 268 (D.C.Cir. 1971); *KIRO, Inc. v. FCC*, 438 F.2d 141 (D.C.Cir.1970); *Radio Para La Raza*, Memorandum Opinion and Order, 40 FCC 2d 1102, 1104 (1973)").

<sup>13</sup> Microcom Response at unnumbered 1.

<sup>14</sup> See *Reuters Limited v. FCC*, 781 F.2d 946, 951-52 (D.C.Cir. 1986) (narrowly construing the judicially created "extraordinary circumstances" exception to statutory time limit for filing petitions for reconsideration).

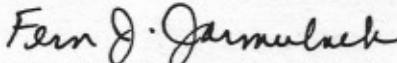
<sup>15</sup> *Id.* We note that Microcom's petition for reconsideration is premised upon the assumption that our Ka-band rules require U.S. licensees to provide service to Alaska and Hawaii, while we did not require Telesat to do so over Anik F2. This assumption is incorrect. Our rules do not require Ka-band licensees to serve Alaska and Hawaii. Moreover, consistent with Commission policy in all other satellite services, non-U.S. Ka-band operators are subject to the same rules as U.S. licensees, ensuring a level competitive playing field. 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*, Report and Order, IB Docket No. 96-111, 12 FCC Rcd 24094, 24168, para. 173 (1997).

<sup>16</sup> In light of our action, we need not address Telesat's argument that Microcom lacks standing to file a petition for reconsideration in this matter pursuant to Section 1.106(b)(1) of the Commission's rules.

**III. ORDERING CLAUSE**

7. Accordingly, IT IS ORDERED that, pursuant to Section 405 of the Communications Act of 1934, as amended, 47 U.S.C. § 405, and Section 1.106 of the Commission's rules, 47 C.F.R. § 1.106, the January 23, 2003 Microcom Petition for Reconsideration of the *Anik F2 Order* IS DISMISSED as untimely.

FEDERAL COMMUNICATIONS COMMISSION

*for*   
Thomas S. Tycz  
Chief, Satellite Division  
International Bureau