

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

In the Matter of	)	
	)	
HISPASAT S.A.	)	
	)	
Petition for Declaratory Ruling	)	File No. SAT-PDR-20030430-00090
To Add HISPASAT-1D Satellite at 30° W.L. to	)	
the Permitted Space Station List	)	
	)	
	)	

**ORDER**

**Adopted:** October 15, 2003

**Released:** October 15, 2003

By the Chief, Satellite Division, International Bureau:

**I. INTRODUCTION**

1. In this Order, we add HISPASAT S.A.'s ("HISPASAT's") HISPASAT-1D satellite, licensed by Spain and operating at the 30° W.L. orbit location, to the Commission's Permitted Space Station List (Permitted List). As a result of this action, U.S. earth stations with "routine" technical parameters will be able to communicate with HISPASAT-1D immediately, in conventional Ku-band frequencies.<sup>1</sup> This action should stimulate competition in the United States by providing consumers with another alternative in choosing communications providers.

**II. BACKGROUND**

2. In the *DISCO II Order*,<sup>2</sup> 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).<sup>3</sup> It also established a framework under which it would consider access by foreign satellites not covered by the WTO Basic Telecom Agreement.

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<sup>1</sup> 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. After July 31, 2004, earth stations in the United States will no longer be authorized to transmit to HISPASAT-1D in the 14.25-14.5 GHz band.

<sup>2</sup> *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*).

<sup>3</sup> The WTO came into being on January 1, 1995, pursuant to the Marrakesh Agreement Establishing the World Trade Organization (the Marrakesh Agreement). 33 I.L.M. 1125 (1994). The Marrakesh Agreement includes multilateral agreements on trade in goods, services, intellectual property, and dispute settlement. The General Agreement on Trade in Services (GATS) is Annex 1B of the Marrakesh Agreement. 33 I.L.M. 1167 (1994). The WTO Telecom Agreement was incorporated into the GATS by the Fourth Protocol to the GATS (April 30, 1996), 36 I.L.M. 354 (1997) (Fourth Protocol to the GATS).

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.<sup>4</sup> 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 point of communication.<sup>5</sup>

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.<sup>6</sup> 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- or Ku-bands, the satellite operator may also request authority to be added to the Permitted List.<sup>7</sup> This list identifies all satellites and services with which U.S.-licensed earth stations with routinely authorized technical parameters ("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.<sup>8</sup> The Permitted List is maintained on our website, and is also available via fax or e-mail.<sup>9</sup>

4. On April 30, 2003, HISPASAT, a Spanish satellite services provider, filed a Petition for Declaratory Ruling to add its in-orbit HISPASAT-1D communications satellite to the Permitted List.<sup>10</sup> HISPASAT seeks to provide digital communications services, including Internet applications, in the following frequency bands: 11.7-11.95 GHz (vertical polarization), 11.95-12.2 GHz (horizontal polarization), 14.0-14.25 GHz (horizontal polarization), and, until July 31, 2004 only, 14.25-14.5 GHz (vertical polarization).<sup>11</sup> It seeks permission to provide these Ku-band services to, from, and within the United States.<sup>12</sup> HISPASAT-1D is licensed by Spain. No parties filed oppositions to this petition.

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<sup>4</sup> *DISCO II*, 12 FCC Rcd at 24174 (para. 186).

<sup>5</sup> 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."

<sup>6</sup> *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, (1999) (*DISCO II First Reconsideration Order*), 15 FCC Rcd at 7207, 7212 (para. 10).

<sup>7</sup> *Id.* at 7212-13 (paras. 10-11).

<sup>8</sup> *Id.* at 7215-16 (para. 19).

<sup>9</sup> *Id.* This web site address is <http://www.fcc.gov/ib/sd/se/permitted.html>.

<sup>10</sup> HISPASAT S.A. Petition for Declaratory Ruling for Inclusion of HISPASAT-1D on the Permitted Space Station List, filed Apr. 30, 2003 (HISPASAT-1D Permitted List Petition).

<sup>11</sup> HISPASAT-1D Permitted List Petition, Exhibit 1, Attachment A, at (16). See also Letter from Donald M. Jansky to Marlene H. Dortch, Secretary, Federal Communications Commission, dated September 22, 2003. HISPASAT requests that the 14.25-14.5 GHz band frequencies be placed on the Permitted List only until July 2004, at which time operations to HISPASAT-1D on these frequencies will be terminated. *Id.*

<sup>12</sup> HISPASAT-1D Permitted List Petition, Attachment A at Table 1 and Figure 1.

### III. DISCUSSION

#### A. 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,<sup>13</sup> eligibility and operating (e.g., technical) requirements,<sup>14</sup> spectrum availability,<sup>15</sup> and national security, law enforcement, foreign policy, and trade concerns.<sup>16</sup> We evaluate HISPASAT's request under this framework.

#### B. 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.<sup>17</sup> 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).<sup>18</sup> 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.<sup>19</sup>

7. In this case, the presumption in favor of entry applies to HISPASAT-1D, which is licensed by Spain, a WTO member,<sup>20</sup> 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 proposition that HISPASAT's entry into the U.S. market is pro-competitive. Therefore, we conclude that HISPASAT-1D'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-1D's placement on the Permitted List, however, we prohibit U.S. earth stations from accessing HISPASAT-1D for DTH, DBS, or DARS.

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<sup>13</sup> *DISCO II*, 12 FCC Rcd at 24107-56 (paras. 30-145).

<sup>14</sup> *DISCO II*, 12 FCC Rcd at 24159-69 (paras. 151-74).

<sup>15</sup> *DISCO II*, 12 FCC Rcd at 24157-59 (paras. 146-50).

<sup>16</sup> *DISCO II*, 12 FCC Rcd at 24169-72 (paras. 175-82).

<sup>17</sup> *DISCO II*, 12 FCC Rcd at 24112 (para. 39).

<sup>18</sup> *DISCO II*, 12 FCC Rcd at 24104 (para. 25).

<sup>19</sup> *DISCO II*, 12 FCC Rcd at 24112 (para. 39); 24157 (para. 143).

<sup>20</sup> See [http://www.wto.org/english/thewto\\_e/whatis\\_e/tif\\_e/org6\\_e.htm](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](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).

### C. 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-1D is operating in portions of the Ku-band at the 30° W.L. orbital position. One U.S.-licensed satellite, Intelsat-801, also operates in portions of the Ku-band at the 31.5° W.L. orbital location. HISPASAT has successfully coordinated its operations with Intelsat's operations. Accordingly, HISPASAT is required to operate HISPASAT-1D in accordance with the coordination agreement that it has reached with Intelsat. Thus, allowing HISPASAT-1D to serve the United States from the 30° W.L. orbit location will not affect operations of any currently operating U.S.-licensed satellites, provided that HISPASAT operates its HISPASAT-1D satellite within the parameters of its coordination agreement. Additionally, HISPASAT-1D's operations are authorized conditioned upon it accommodating future satellite networks that are located two degrees or more from HISPASAT 1D, serve the United States, and are two-degree compliant.<sup>21</sup> These conditions will be included on the Permitted List with respect to HISPASAT-1D.

### D. Eligibility Requirements

10. The Commission's *DISCO II Order* requires that space station operators not licensed by the Commission meet the same legal and technical qualifications applied to 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. Further, we need not examine HISPASAT's financial qualifications to construct and launch satellites, because HISPASAT-1D is already in orbit.

11. We must, however, review HISPASAT-1D'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.<sup>22</sup> Based on our review of the technical information HISPASAT submitted, we conclude that HISPASAT-1D complies with all applicable Commission rules, except Sections 25.210(e) and (g).<sup>23</sup> 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 employing state-of-the-art full-frequency reuse using both horizontal and

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<sup>21</sup> See paras. 11-13, *infra*.

<sup>22</sup> See 47 CFR § 25.140(b)(2).

<sup>23</sup> 47 C.F.R. § 25.210(e) and (g).

vertical polarization.<sup>24</sup> HISPASAT 1D will only be operating in one sense of polarization on each of the four sub-bands as noted in paragraph 4 above. HISPASAT has requested a waiver of these sections.<sup>25</sup> We find that a waiver is warranted.

12. Commission rules may be waived if there is “good cause” to do so.<sup>26</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>27</sup> Circumstances that would justify a waiver include “considerations of hardship, equity, or more effective implementation of overall policy.”<sup>28</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>29</sup>

13. The full-frequency reuse requirements were designed to ensure that satellites maximize the use of their transponder capacity to the benefit of the public.<sup>30</sup> The Commission has waived these requirements where doing so would allow satellite capacity that would not otherwise be used to provide service as long as such use does not preclude a state-of-the-art satellite from operating.<sup>31</sup> HISPASAT-1D will operate from the 30° W.L. orbit location regardless of whether we permit it to provide service in the United States. No other country plans to launch a compliant Ku-band satellite into 30° W.L. Thus,

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<sup>24</sup> 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).

<sup>25</sup> See HISPASAT-1D Permitted List Petition at 2 (unnumbered). In its request, HISPASAT states that the majority of the power of the HISPASAT-1D satellite is used to provide European coverage, thus leaving insufficient power to employ full-frequency reuse in HISPASAT-1D’s coverage of the United States.

<sup>26</sup> See 47 C.F.R. § 1.3. 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*).

<sup>27</sup> *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).

<sup>28</sup> *WAIT Radio*, 418 F.2d at 1159.

<sup>29</sup> *Id.* at 1157; *Dominion Video Satellite, Inc.*, Order and Authorization, 14 FCC Rcd. 8182, 8185 (para. 5) (Int’l Bur. 1999) (*Dominion Video*).

<sup>30</sup> *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*).

<sup>31</sup> See, e.g., *1987 Systematics Order*, 2 FCC Rcd 7550 (authorizing the TDRS-1 and TDRS-3 satellites, which did not meet 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*).

preventing HISPASAT-1D from serving the United States will preclude the provision of Ku-band service in the United States from this orbit location altogether. To allow the public to receive service from an additional competitor, we grant HISPASAT-1D a waiver of these full-frequency reuse requirements. HISPASAT-1D's operations, however, are authorized conditioned upon it accommodating future satellite networks that are two degrees or more from HISPASAT-1D, serve the United States, and are two-degree compliant.

14. In addition, HISPASAT proposes to conduct its tracking, telemetry, and control (TT&C) functions from a control center located in Spain. Because no TT&C functions will be conducted from earth stations located in the United States, we need not consider whether HISPASAT's proposed TT&C operations comply with Part 25 of the Commission's rules.

#### **E. Other Issues**

15. 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.

16. We also note that the HISPASAT-1D satellite is already in orbit and operating. Because this authorization is issued prior to the effective date of certain requirements and rules adopted in our *Space Station Licensing Rules Order*, those requirements and rules will not be applicable to this authorization.<sup>32</sup>

17. 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.<sup>33</sup>

#### **IV. CONCLUSION**

18. We have performed a *DISCO II* analysis in this Order, and have determined, while HISPASAT-1D is not two-degree spacing compliant, its operations 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. Consequently, we add HISPASAT-1D 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-1D without modifying their licenses. We emphasize that HISPASAT-1D 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. Consequently, receive-only earth stations -- whether routine or non-routine -- may

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<sup>32</sup> See *Amendment of the Commission's Space Station Licensing Rules and Policies*, First Report and Order and Further Notice of Proposed Rulemaking, IB 02-34, 18 FCC Rcd. 10760,10825 (para. 167) (Int'l Bur. 2003).

<sup>33</sup> 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).

not receive transmissions from HISPASAT-1D unless they are licensed to do so.<sup>34</sup>

## V. ORDERING CLAUSES

19. Accordingly, IT IS ORDERED, 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), HISPASAT, S.A.'s Petition for Declaratory Ruling to Add HISPASAT-1D Satellite at 30° W.L. to the Commission's Permitted Space Stations List, File No. SAT-PDR-20030430-00090, IS GRANTED.

20. IT IS FURTHER ORDERED that any earth station in the United States 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-1D satellite, at the 30° W.L. orbit location in the 11.7-12.2 GHz/14.0-14.5 GHz frequency bands, subject to the conditions set forth in each earth station license and the following conditions:

(a) ALSAT-designated earth stations are not authorized to access HISPASAT-1D to receive or provide Direct-to-Home (DTH) service, Direct Broadcast Satellite (DBS) service, or Digital Audio Radio Service (DARS).

(b) HISPASAT S.A.'s operation of HISPASAT-1D must comply with its current operational requirements as a result of coordination agreements with other satellite systems.

(c) ALSAT-designated earth stations' authority to communicate with HISPASAT 1D in the 14.25-14.5 GHz band will cease on July 31, 2004.

(d) In the future, should the Commission authorize access to the U.S. market by a U.S.-licensed or non-U.S.-licensed satellite that is providing services to the U.S. that are two-degree-compliant, and is located two degrees or more from HISPASAT-1D, HISPASAT, S.A. would be expected to coordinate in good faith with the licensee of that satellite.

21. IT IS FURTHER ORDERED that HISPASAT S.A. IS GRANTED a waiver of §§25.210(e) and (g) of the Commission's rules, 47 C.F.R. §§ 25.210(e) and (g), for the purpose of operating HISPASAT-1D in the conventional Ku-band.

22. IT IS FURTHER ORDERED that the HISPASAT-1D satellite, together with the conditions set forth in this Order, BE PLACED on the "Permitted Space Station List." Access to the HISPASAT-1D satellite network SHALL BE in compliance with any satellite coordination agreements reached between the United States and Spain, and any future modifications to such agreements.

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<sup>34</sup> See 47 C.F.R. § 25.131(j). See also *Amendment of the Commission's Space Station Licensing Rules and Policies*; IB 96-111, IB 02-34, IB 00-248; 18 FCC Rcd 12507, 12514-12517 (paras. 15-23) (2003). When the rules adopted by this Order become effective, unlicensed receive-only earth stations will be permitted to access foreign-licensed satellites on the Permitted List, subject to certain conditions. *Id.* Even in this case, however, HISPASAT is still prohibited from using HISPASAT 1D to provide DTH, DBS, or DARS to, from or within the U.S.

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

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