

** RE-ISSUED ON 01/07/11 TO SPECIFY FREQUENCY BANDS **

** see also

SAT-PPL-20100506-00093
SAT-APL-20101209-00257

S2793 SAT-PPL-20100506-00093
HISPAMAR SATELLITES, S.A.
AMAZONAS-2

IB2010001445

Date & Time Filed: May 6 2010 2:44:47:900PM
File Number: SAT-PPL-20100506-00093
Callsign/Satellite ID: S2813



File # SAT-PPL-20100506-00093

Call Sign S2793 Grant Date 12/21/10
(or other identifier)

Term Dates From 12/21/10 To:

Approved by OMB
3060-0678

Approved: Stephen J. Duall
Stephen J. Duall
Chief, Satellite Policy Branch
*with conditions

APPLICATION FOR SATELLITE SPACE STATION AUTHORIZATIONS
FCC 312 MAIN FORM
FOR OFFICIAL USE ONLY

FCC Use Only

APPLICANT INFORMATION

Enter a description of this application to identify it on the main menu:
Petition nfor DTH Declaratory Ruling-Amazonas-2-61W

1-8. Legal Name of Applicant


Name:	HISPAMAR SATELLITE S.A.	Phone Number:	202-467-6400
DBA Name:		Fax Number:	202-296-6892
Street:	1120 19th St.,N.W.	E-Mail:	don@jansky-barmat.com
City:	Washington	State:	DC
Country:	USA	Zipcode:	20036 -3614
Attention:	Mr Donald M Jansky		

Attachment to Grant
IBFS File Nos. SAT-PPL-20100506-00093; SAT-APL-20101209-00257
Call Sign: S2793
December 21, 2010

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 0.261 and 25.137(c) of the Commission's rules, 47 C.F.R. §§ 0.261, 25.137(c), the application (File No. SAT-PPL-20100506-00093, as amended by SAT-APL-20101209-00257) filed by HISPAMAR SATÉLITES, S.A., to modify the conditions placed on the inclusion of the AMAZONAS-2 satellite (S2793) located at the 61° W.L. orbital location, which is licensed by Brazil, on the Federal Communications Commission's Permitted Space Station List ("Permitted List") IS GRANTED. Accordingly, the AMAZONAS-2 satellite is now authorized to provide Direct-to-Home (DTH) service to, from, or within the United States in the 14.0-14.5 GHz (Earth-to-space) and 11.7-12.2 GHz (space-to-Earth) frequency bands. The remaining conditions for inclusion of the AMAZONAS-2 satellite on the Permitted List remain in effect. Accordingly, the AMAZONAS-2 satellite must be operated in accordance with the technical parameters and terms and conditions of the original grant (IBFS File No. SAT-PPL-20090806-00081).¹ This authorization is subject to the following additional condition:

1. The applicant's request for waiver of Section 25.283(c) for the AMAZONAS-2 satellite is granted. Section 25.283(c) requires discharge of all stored energy sources when a space station is retired from service. AMAZONAS-2 is an EADS Astrium E3000 series satellite, which does not completely discharge all stored energy at end of life. At the completion of mission, upon disposal of the spacecraft, the chemical propulsion tanks will be depleted. A helium pressurant tank, however, will retain a total mass of 1.258 kg of helium with a volume of 0.18 cubic liters at end of life. AMAZONAS-2 was launched on October 1, 2009. Compliance with Section 25.283(c) is not achievable except through direct retrieval of the spacecraft. The information submitted is not sufficient to support a finding that the underlying purpose of Section 25.283(c) would be served by sealing the helium tank without completely venting it. However, we grant a partial waiver of the rule because undue hardship would result from requiring modification of the space station at this time. This action is without prejudice to possible future licensing decisions in connection with other spacecraft of the same manufacturing series.

RE-ISSUED ON 01/07/11 TO SPECIFY FREQUENCY BANDS

 GRANTED* International Bureau	SAT-PPL-20100506-00093
	File # <u>SAT-APL-20101209-00257</u>
	Call Sign <u>S2793</u> Grant Date <u>12/21/10</u>
	(or other identifier)
	Term Dates
From <u>12/21/10</u> To: _____	
Approved: _____	

*with conditions

Stephen J. Duall
Chief, Satellite Policy Branch

¹ Policy Branch Information, Actions Taken, *Public Notice*, Report Number SAT-00640 (rel. Octo. 16, 2009)

9-16. Name of Contact Representative

Name: Don Jansky Phone Number: 2024676400

Company: Jansky-Barnat Telecommunications Inc. Fax Number: 2022966892

Street: 1120 19th St. E-Mail: don@jansky-barnat.com

City: Washington State: DC

Country: USA Zipcode: 20036

Attention: Relationship:

CLASSIFICATION OF FILING

17. Choose the buttonnext to the classification that applies to thisfiling for both questions a. and b. Choose only one for 17a and only one for 17b.

a.

(N/A) a1. Earth Station

a2. Space Station

b.

b1. Application for License of New Station

(N/A) b2. Application for Registration of New Domestic Receive-Only Station

(N/A) b3. Amendment to a Pending Application

(N/A) b4. Modification of License or Registration

(N/A) b5. Assignment of License or Registration

(N/A) b6. Transfer of Control of License or Registration

(N/A) b7. Notification of Minor Modification

(N/A) b8. Application for License of New Receive-Only Station Using Non-U.S. Licensed Satellite

b9. Letter of Intent to Use Non-U.S. Licensed Satellite to Provide Service in the United States

b10. Replacement Satellite Application - no new frequency bands

b11. Replacement Satellite Application - new frequency bands (Not eligible for streamlined processing)

b12. Petition for Declaratory Ruling to be Added to the Permitted List

(N/A) b13. Other (Please specify)

<p>17c. Is a fee submitted with this application? <input checked="" type="radio"/> If Yes, complete and attach FCC Form 159. If No, indicate reason for fee exemption (see 47 C.F.R. Section 1.1114). <input type="radio"/> Governmental Entity <input type="radio"/> Noncommercial educational licensee <input checked="" type="radio"/> Other (please explain): Petition for Declaratory Ruling</p>
<p>17c. Fee Classification BNY – Space Station (Geostationary)</p>
<p>18. If this filing is in reference to an existing station, enter: (a) Call sign of station: Not Applicable</p>
<p>19. If this filing is an amendment to a pending application enter: (a) Date pending application was filed: Not Applicable (b) File number of pending application: Not Applicable</p>

TYPE OF SERVICE

20. NATURE OF SERVICE: This filing is for an authorization to provide or use the following type(s) of service(s): Select all that apply:

- a. Fixed Satellite
- b. Mobile Satellite
- c. Radiodetermination Satellite
- d. Earth Exploration Satellite
- e. Direct to Home Fixed Satellite
- f. Digital Audio Radio Service
- g. Other (please specify)

21. STATUS: Choose the button next to the applicable status. Choose only one.

- Common Carrier
- Non-Common Carrier

22. If earth station applicant, check all that apply.
Not Applicable

23. If applicant is providing INTERNATIONAL COMMON CARRIER service, see instructions regarding Sec. 214 filings. Choose one. Are these facilities:

- Connected to a Public Switched Network
- Not connected to a Public Switched Network
- N/A

24. FREQUENCY BAND(S): Place an "X" in the box(es) next to all applicable frequency band(s).

- a. C-Band (4/6 GHz)
- b. Ku-Band (12/14 GHz)
- c. Other (Please specify upper and lower frequencies in MHz.)

Frequency Lower: _____ Frequency Upper: _____ (Please specify additional frequencies in an attachment)

TYPE OF STATION

25. CLASS OF STATION: Choose the button next to the class of station that applies. Choose only one.

- (N/A) a. Fixed Earth Station
- (N/A) b. Temporary-Fixed Earth Station
- (N/A) c. 12/14 GHz VSAT Network
- (N/A) d. Mobile Earth Station
- e. Geostationary Space Station.
- f. Non-Geostationary Space Station
- g. Other (please specify)

26. TYPE OF EARTH STATION FACILITY: Not Applicable

PURPOSE OF MODIFICATION

27. The purpose of this proposed modification is to: (Place an "X" in the box(es) next to all that apply.) Not Applicable

ENVIRONMENTAL POLICY

28. Would a Commission grant of any proposal in this application or amendment have a significant environmental impact as defined by 47 CFR 1.1307? If YES, submit the statement as required by Sections 1.1308 and 1.1311 of the Commission's rules, 47 C.F.R. §§ 1.1308 and 1.1311, as an exhibit to this application. A Radiation Hazard Study must accompany all applications for new transmitting facilities, major modifications, or major amendments.

Yes No

ALIEN OWNERSHIP

Earth station applicants not proposing to provide broadcast, common carrier, aeronautical en route or aeronautical fixed radio station services are not required to respond to Items 30-34.

<p>29. Is the applicant a foreign government or the representative of any foreign government?</p>	<p><input type="radio"/> Yes <input checked="" type="radio"/> No</p>
<p>30. Is the applicant an alien or the representative of an alien?</p>	<p><input checked="" type="radio"/> Yes <input type="radio"/> No <input type="radio"/> N/A</p>
<p>31. Is the applicant a corporation organized under the laws of any foreign government?</p>	<p><input checked="" type="radio"/> Yes <input type="radio"/> No <input type="radio"/> N/A</p>
<p>32. Is the applicant a corporation of which more than one-fifth of the capital stock is owned of record or voted by aliens or their representatives or by a foreign government or representative thereof or by any corporation organized under the laws of a foreign country?</p>	<p><input checked="" type="radio"/> Yes <input type="radio"/> No <input type="radio"/> N/A</p>
<p>33. Is the applicant a corporation directly or indirectly controlled by any other corporation of which more than one-fourth of the capital stock is owned of record or voted by aliens, their representatives, or by a foreign government or representative thereof or by any corporation organized under the laws of a foreign country?</p>	<p><input checked="" type="radio"/> Yes <input type="radio"/> No <input type="radio"/> N/A</p>
<p>34. If any answer to questions 29, 30, 31, 32 and/or 33 is Yes, attach as an exhibit an identification of the aliens or foreign entities, their nationality, their relationship to the applicant, and the percentage of stock they own or vote.</p>	

BASIC QUALIFICATIONS

<p>35. Does the Applicant request any waivers or exemptions from any of the Commission's Rules? If Yes, attach as an exhibit, copies of the requests for waivers or exceptions with supporting documents.</p>	<p><input type="radio"/> Yes <input checked="" type="radio"/> No</p>
<p>36. Has the applicant or any party to this application or amendment had any FCC station authorization or license revoked or had any application for an initial, modification or renewal of FCC station authorization, license, or construction permit denied by the Commission? If Yes, attach as an exhibit, an explanation of circumstances.</p>	<p><input type="radio"/> Yes <input checked="" type="radio"/> No</p>
<p>37. Has the applicant, or any party to this application or amendment, or any party directly or indirectly controlling the applicant ever been convicted of a felony by any state or federal court? If Yes, attach as an exhibit, an explanation of circumstances.</p>	<p><input type="radio"/> Yes <input checked="" type="radio"/> No</p>
<p>38. Has any court finally adjudged the applicant, or any person directly or indirectly controlling the applicant, guilty of unlawfully monopolizing or attempting unlawfully to monopolize radio communication, directly or indirectly, through control of manufacture or sale of radio apparatus, exclusive traffic arrangement or any other means or unfair methods of competition? If Yes, attach as an exhibit, an explanation of circumstances</p>	<p><input type="radio"/> Yes <input checked="" type="radio"/> No</p>
<p>39. Is the applicant, or any person directly or indirectly controlling the applicant, currently a party in any pending matter referred to in the preceding two items? If yes, attach as an exhibit, an explanation of the circumstances.</p>	<p><input type="radio"/> Yes <input checked="" type="radio"/> No</p>

<p>40. If the applicant is a corporation and is applying for a space station license, attach as an exhibit the names, address, and citizenship of those stockholders owning a record and/or voting 10 percent or more of the Filer's voting stock and the percentages so held. In the case of fiduciary control, indicate the beneficiary(ies) or class of beneficiaries. Also list the names and addresses of the officers and directors of the Filer.</p>
<p>41. By checking Yes, the undersigned certifies, that neither applicant nor any other party to the application is subject to a denial of Federal benefits that includes FCC benefits pursuant to Section 5301 of the Anti-Drug Act of 1988, 21 U.S.C. Section 862, because of a conviction for possession or distribution of a controlled substance. See 47 CFR 1.2002(b) for the meaning of "party to the application" for these purposes.</p> <p style="text-align: right;"> <input checked="" type="radio"/> Yes <input type="radio"/> No </p>
<p>42a. Does the applicant intend to use a non-U.S. licensed satellite to provide service in the United States? If Yes, answer 42b and attach an exhibit providing the information specified in 47 C.F.R. 25.137, as appropriate. If No, proceed to question 43.</p> <p style="text-align: right;"> <input checked="" type="radio"/> Yes <input type="radio"/> No </p>
<p>42b. What administration has licensed or is in the process of licensing the space station? If no license will be issued, what administration has coordinated or is in the process of coordinating the space station? Brazil</p>

43. Description. (Summarize the nature of the application and the services to be provided). (If the complete description does not appear in this box, please go to the end of the form to view it in its entirety.)

This is a Petition for a Declaratory Ruling for Amazonas-2 a geostationary satellite network on the Permitted List to provide Direct to the Home Broadcasting service.

Petition for Declare

43a. Geographic Service Rule Certification

By selecting A, the undersigned certifies that the applicant is not subject to the geographic service or geographic coverage requirements specified in 47 C.F.R. Part 25.

A

By selecting B, the undersigned certifies that the applicant is subject to the geographic service or geographic coverage requirements specified in 47 C.F.R. Part 25 and will comply with such requirements.

B

By selecting C, the undersigned certifies that the applicant is subject to the geographic service or geographic coverage requirements specified in 47 C.F.R. Part 25 and will not comply with such requirements because it is not feasible as a technical matter to do so, or that, while technically feasible, such services would require so many compromises in satellite design and operation as to make it economically unreasonable. A narrative description and technical analysis demonstrating this claim are attached.

C

CERTIFICATION

The Applicant waives any claim to the use of any particular frequency or of the electromagnetic spectrum as against the regulatory power of the United States because of the previous use of the same, whether by license or otherwise, and requests an authorization in accordance with this application. The applicant certifies that grant of this application would not cause the applicant to be in violation of the spectrum aggregation limit in 47 CFR Part 20. All statements made in exhibits are a material part hereof and are incorporated herein as if set out in full in this application. The undersigned, individually and for the applicant, hereby certifies that all statements made in this application and in all attached exhibits are true, complete and correct to the best of his or her knowledge and belief, and are made in good faith.

<p>44. Applicant is a (an): (Choose the button next to applicable response.)</p> <p> <input type="radio"/> Individual <input type="radio"/> Unincorporated Association <input type="radio"/> Partnership <input checked="" type="radio"/> Corporation <input type="radio"/> Governmental Entity <input type="radio"/> Other (please specify) </p>	
<p>45. Name of Person Signing Vicent Rubio Carreton</p>	<p>46. Title of Person Signing Director, Regulatory Affairs</p>
<p>47. Please supply any need attachments.</p> <p>1:</p> <p>2:</p> <p>3:</p>	
<p>WILLFUL FALSE STATEMENTS MADE ON THIS FORM ARE PUNISHABLE BY FINE AND / OR IMPRISONMENT (U.S. Code, Title 18, Section 1001), AND/OR REVOCATION OF ANY STATION AUTHORIZATION (U.S. Code, Title 47, Section 312(a)(1)), AND/OR FORFEITURE (U.S. Code, Title 47, Section 503).</p>	

FCC NOTICE REQUIRED BY THE PAPERWORK REDUCTION ACT

The public reporting for this collection of information is estimated to average 0.25 – 24 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the required data, and completing and reviewing the collection of information. If you have any comments on this burden estimate, or how we can improve the collection and reduce the burden it causes you, please write to the Federal Communications Commission, AMD-PERM, Paperwork Reduction Project (3060-0678), Washington, DC 20554. We will also accept your comments regarding the Paperwork Reduction Act aspects of this collection via the Internet if you send them to PRA@fcc.gov. PLEASE DO NOT SEND COMPLETED FORMS TO THIS ADDRESS.

Remember – You are not required to respond to a collection of information sponsored by the Federal government, and the government may not conduct or sponsor this collection, unless it displays a currently valid OMB control number or if we fail to provide you with this notice. This collection has been assigned an OMB control number of 3060-0678.

THE FOREGOING NOTICE IS REQUIRED BY THE PAPERWORK REDUCTION ACT OF 1995, PUBLIC LAW 104-13, OCTOBER 1, 1995, 44 U.S.C. SECTION 3507.

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

In the Matter of)
)
HISPAMAR SATÉLITES, S.A.) File No. SAT-PPL-_____
)
Petition for Declaratory Ruling to Add)
AMAZONAS-2 at 61° W.L. to the)
Commission's Space Station List for the)
Provision of Subscription Direct-to-Home)
Video Service)

PETITION FOR DECLARATORY RULING

Introduction

HISPAMAR SATÉLITES, S.A., ("HISPAMAR")¹ hereby requests that the Commission add the AMAZONAS-2 satellite, located at 61° W.L., to the Commission's Permitted Space Stations List for the provision of Direct to Home (DTH) subscription video services. This satellite is licensed by the Government of Brazil for operation in the Fixed Satellite Service (FSS) in the 11/12/14 GHz band and is already located at its orbital position. In addition to providing coverage of all of Brazil and other countries of South America, this satellite will provide full-CONUS coverage with capacity operating in the conventional down-link Ku band (10.95-11.20 GHz and 11.70-12.20 GHz), and up-linked in the conventional and extended Ku band (13.75-14.50 GHz).²

Grant of this application will serve the public interest by increasing competition in the Multichannel Video Program Distribution ("MVPD") market. The proposed

¹ On October 15, 2009, HISPAMAR was granted permission to add AMAZONAS-2 to the FCC's Permitted Space Station list for the provision of Fixed Satellite Services in the conventional C and Ku-band frequencies. (See File No. SAT-PPL-20090806-00081) with conditions.

² The use of this band is based on the existing FCC rules.

application will allow HISPAMAR to offer an additional source of capacity to new entrants and existing providers in the MVPD market. As the Commission has recognized, increasing competition in the MVPD market is an important public interest benefit.³

I. AMAZONAS-2 Meets the Requirements for Inclusion on the Permitted Space Stations List for Provision of DTH Services⁴

Sections 25.137(a) and (b) of the Commission's rules set forth the requirements for applicants and petitioners seeking authority to operate in the United States with non-U.S. licensed space stations.

A. Section 25.137(a) Information

Section 25.137(a) requires that petitioners seeking to operate with a non-U.S. licensed space station submit as an exhibit to their Form 312 applications a showing demonstrating that U.S.-licensed satellite systems have effective competitive opportunities to provide analogous services in the country in which the non-U.S. licensed space station is licensed, and all countries in which communications with the U.S. earth station will originate and terminate.⁵

In *DISCO II*,⁶ the Commission established a rebuttable presumption in favor of entry by non-U.S. satellites licensed by World Trade Organization ("WTO") Members to provide services covered by the U.S. commitments under the WTO Agreement on Basic Telecommunications Services ("WTO Basic Telecom Agreement"). These commitments

³ See, e.g., Pegasus Development Corporation, Consolidated Application for Authority to Operate one U.S. Transmit/Receive Fixed Earth Station (Call Sign E010320) and 1,000,000 Receive-Only Earth Stations (Call Sign E020022) with the Canadian-Licensed Nimiq 1 and Nimiq 2 Satellites to Offer Direct Broadcast Satellite Service Throughout the United States, *Order*, DA 04-909, released March 31, 2004.

⁴ On August 24, 2004 HISPAMAR was granted permission to AMAZONAS-1 to provide Direct-to-Home(DTH) service to, from, or within the United States (See File Number: SAT-MOD-20040628-00 124)

⁵ It does not apply. See § 25.137 (a) last paragraph. Brazil is a WTO member.

⁶ *In re 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 Red 24094 (1997)(*"DISCO II"*)

include fixed-satellite services, except for direct-to-home (“DTH”) services.⁷ The United States also did not make market access commitments for the DBS service.⁸ In *DISCO II*, the Commission indicated that it would apply the effective competitive opportunities test (“ECO-Sat”) to requests involving provision of non-WTO covered services such as DTH and DBS by non-U.S. satellites to ensure that entry by the foreign satellite does not distort competition in the U.S. market.⁹ Under this test, the Commission examines effective competitive opportunities for U.S.-licensed satellites to serve the home market of the non-U.S. satellite seeking access to the United States. The Commission examines in particular *de jure* and *de facto* barriers to entry for the provision of analogous services, and whether any such barrier would cause competitive distortions in the United States.

AMAZONAS-2 is licensed by the government of Brazil, which also serves as the notifying administration for purposes of international satellite coordination pursuant to the relevant provisions of the International Telecommunications Union (ITU) Radio Regulations. Brazil is a WTO-Member Country.

Clearly, Brazil does provide Effective Competitive Opportunities for U.S.-licensed satellites to provide DTH services. First, Brazil does not maintain any *de jure* barriers to entry. In its Schedule of Commitments under the General Agreement on Trade in Services, Brazil specifically stated that it would allow foreign-licensed satellites to provide service in Brazil.¹⁰ Moreover, Brazil’s General Telecommunications Law also

⁷ DTH satellite service is provided in bands internationally allocated to the fixed-satellite service (“FSS”), using FSS satellites.

⁸ DBS operates in the 12.2-12.7 GHz frequency bands (space-to-earth), allocated for the Broadcasting Satellite Service (“BSS”).

⁹ *DISCO II*, 12 FCC Red at 24136.

¹⁰ Brazil’s schedule of commitments includes a headnote that reads in pertinent part “Commitments undertaken in this schedule are subject to the following general conditions: ... (iv) The supply of space segment facilities of satellites that occupy orbital positions notified by foreign countries is allowed whenever they offer better technical, operational or commercial conditions. Otherwise, satellites that

provides that foreign-licensed satellites may be permitted to provide service in Brazil and describes the requirements for authorization.¹¹

Second, although Brazil's law and WTO schedule reflect a policy in favor of making maximum use of Brazil's orbital and spectrum resources, this policy is neither a *de jure* nor a *de facto* barrier to entry. Indeed, the best evidence that U.S. satellite operators do not face barriers to entry into the Brazilian satellite market is the fact that most of the leading U.S. satellite operators are providing services in Brazil and have been for a number of years. Of particular importance to this application is the fact that two of the major Brazilian DTH providers – DirecTV Latin America and Sky Brasil – use U.S. licensed satellites to provide their services.¹²

Thus, the Brazilian market is not only legally open to U.S.-licensed satellite providers, in fact U.S.-licensed satellites today are the facilities that provide the majority of DTH service in Brazil.¹³ Indeed, the Commission suggested that just this kind of evidence would be relevant to a determination whether *de facto* barriers to entry by U.S. providers of DTH capacity exist in a given market. In its *DISCO II Order*, the Commission explained that

occupy positions notified by Brazil must be used. Regulatory decisions on this regard will be based on a transparent, objective and non-discriminatory process.”

¹¹ See Lei Geral das Telecomunicações Brasileiras, Lei No. 9,427, July 16, 1997, Art. 170-172. The text of the law, in Portuguese, may be found at http://www.planalto.gov.br/ccivil_03/leis/19472.htm

¹² DirecTV Latin America uses the Galaxy 3C satellite located at 95.0° W.L. DirecTV Latin America is a subsidiary of Hughes Electronics, a US company, and Galaxy 3C is licensed by the FCC and operated by PanAmSat, a US company. Sky Brasil transmits its DTH services to customers in Brazil via PAS 6 at 43.0° W.L. PAS 6 is, of course, also licensed by the FCC and operated by PanAmSat.

¹³ Moreover, although it is not directly relevant to the question whether Brazil provide Effective Competitive Opportunities to U.S. satellite operators, it is interesting to note that a substantial number of the channels listed on both of these services are either U.S. cable channels or Brazilian channels owned by major U.S. content providers. While some governments, notably Canada, maintain restrictions on the provision of foreign content, Brazil clearly does not.

de facto barriers would constitute barriers that are not *per se* prohibitions, nor not necessarily formally adopted by the country's government, but that exist and, in practice, act as impediments to entry. For example, a country may permit U.S. entities to provide DTH service, but may impose more stringent technical or programming requirements or higher fees on U.S. providers than on its own providers. By discriminating against U.S. providers, any such *de facto* barriers would severely curtail, if not wholly eliminate, the ability of U.S. satellite entities to do business in the foreign market. As a result, the companies in the home market of the foreign-licensed satellite would be able to serve a market closed, in whole or in part, to U.S. companies. Denying competitive opportunities to U.S. entities in the foreign market, while allowing them for the country's own companies, would give the foreign-licensed satellite a competitive advantage over U.S. entities, causing competitive distortions.¹⁴

It is worth quoting the FCC's description of potential *de facto* barriers to entry at length both because it clarifies the legitimate concerns that led the Commission to adopt the ECO-Sat test and because it underscores how completely the Brazilian market lacks *de fact* barriers to entry. Granting this application will not create a competitive distortion in the U.S. DTH market because U.S. companies have full access to the Brazilian market. In fact, at present U.S. companies provide DTH satellite capacity for the provision of vast majority of subscription video services in Brazil. In contrast, if the FCC were to deny HISPAMAR's request to access the Brazilian-licensed AMAZONAS-2 satellite to provide DTH service in the United States, it might well lead to a competitive distortion in the Brazilian satellite telecommunications market by denying AMAZONAS-2 effective competitive opportunities in the United States. That, surely, cannot be the result the FCC would want both because U.S. satellite operators do not need such government protection from competition, but also because such protectionism would not only harm AMAZONAS-2 but the overall U.S. public interest, which the FCC is required to serve.

¹⁴ *DISCO II*, 12 FCC Rcd at 24137.

Overall, Brazil has authorized 59 geostationary satellites that provide a range of FSS and DTH services, nearly all of which are owned in whole or in part by foreign companies. In fact, only 13 of those are satellites utilizing frequencies notified by the Brazilian Administration. Among these companies are familiar operators of U.S.-licensed satellites, including Loral, Hughes/Galaxy, Intelsat, and SES Americom.¹⁵ Based on the foregoing, it is beyond dispute that U.S.-licensed satellite operators have effective competitive opportunities not only in the Brazilian DTH market but in all other segments of the Brazilian satellite market as well.¹⁶

As we noted at the outset, grant of the instant application will serve the U.S. public interest by allowing AMAZONAS-2 to increase the channel capacity available for the provision of DTH service in the United States and thereby increase competition in the MVPD market. The International Bureau granted a similar application to provide DBS service using a Canadian satellite.¹⁷ Based on the record before it, the Bureau concluded that

rather than creating a competitive distortion, entry by DBAC into the U.S. market can increase competition in DBS services and in MVPD services generally. The markets for delivery of video programming to households are highly concentrated. In the vast majority of local markets, the primary providers of MVPD services are two DBS providers, EchoStar and DirectTV, and cable operators, and for the vast majority of those markets where cable service is available, there is a single, franchised cable provider. Future provision of DBS services in these markets as proposed

¹⁵ A listing of the satellites that Brazil has licensed may be found on the web site of Brazil's telecom regulator, Agência Nacional de Telecomunicações (Anatel) at <http://www.anatel.gov.br/Portal/verificaDocumentos/documento.asp?numeroPublicacao=236536&assuntoPublicacao=RELAÇÃO%20DE%20SATÉLITES%20AUTORIZADOS%20A%20OPERAR%20NO%20BRASIL&caminhoRel=Cidadao-Satélite-Satélites%20autorizados&filtro=1&documentoPath=236536.pdf> (visited on January 12, 2010).

¹⁶ While it is not directly relevant to this application, Brazil has also authorized Brazilian affiliates of four U.S. non-geostationary satellite operators – Iridium, Globalstar, Constellation, and Teledesic – to provide services in Brazil.

¹⁷ *Digital Broadband Applications Corp.*, DA 03-1526 (Int'l Bur. May 7, 2003) (*DBAC Order*).

by DBAC, with Canadian satellites, will not create a competitive distortion, and could increase competition in MVPD services.¹⁸

This conclusion, , is included, *mutatis mutandi*, in the FCC's Thirteenth Annual Report on the status of competition in the MVPD market.¹⁹ The Commission noted that "large numbers of consumers continue to subscribe to cable service, which approximately 68 percent of all MVPD households purchase." service.²⁰

Thus, while the U.S. MVPD market remains highly concentrated, AMAZONAS-2 can make the market more competitive if it is permitted to make capacity available to new and current service providers in that market. Brazil, which licensed AMAZONAS-2, not only provides effective competitive opportunities to U.S. providers of DTH service, but U.S. operators dominate the Brazilian DTH market. Under these circumstances, the Commission can only conclude that grant of this application poses no threat of competitive distortion in the U.S. DTH market, but will serve the public interest. For these reasons, the Commission should grant this application expeditiously.²¹

B. Section 25.137(b) Information

DISCO II also requires that foreign-licensed satellites meet the same legal, financial, and technical requirements that U.S. space station applicants must meet. As noted above, on August 21, 2009, HISPAMAR filed a petition with the FCC for the inclusion of the AMAZONAS-2 satellite on the Commission's Permitted Space Stations

¹⁸ *Id.* at para. 18 (footnotes omitted).

¹⁹ See 13th Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming, MB Docket No. 06-189. Released January 16, 2009

²⁰ *Id.* at Summary paragraph 6

²¹ In *DISCO II* the Commission noted that it will "accord deference to the expertise of Executive Branch agencies in identifying and interpreting issues of concern related to national security, law enforcement and foreign policy that are relevant to an application pending before us." 12 FCC Rcd at 24171. Obviously, the Executive Branch will have an opportunity to raise any such concerns it may have, but it does not appear that this application should present any concerns with respect to national security, foreign policy or law enforcement. Rainbow looks forward to working with the Commission to resolve any such concerns that may arise.

List for the provision of Fixed Satellite Services using the conventional Ku-band. (See FCC File No. SAT-PPL-200400402-00073.) In that application, HISPAMAR provided a complete set of legal and technical information required under Sections 25.137(b), 25.114(c) and 25.140 of the Commission's rules.. Also in its *First Space Station Reform Order*, the Commission stated that applicants seeking Permitted List satellite modifications would be required to provide the same information as required in a new space station application, but only need submit those items of information that need to be changed, provided the applicant certifies that the remaining information has not changed.²²

Conclusion

For the foregoing reasons, the Commission should act expeditiously to grant the instant petition. Grant of this petition will allow HISPAMAR, by means of its satellite AMAZONAS-2, to significantly expand the capacity currently available to competitive MVPD service providers throughout the continental United States. This will further the Commission's long-term objective of increasing competition in the MVPD market and, as is demonstrated above, poses no threat of competitive distortion in the U.S. market because Brazil, the home market of AMAZONAS, is fully open to U.S. providers of DTH service (and of all FSS services).

Respectfully submitted,

HISPAMAR SATÉLITES, S.A.

By: Donald M. Jansky

²² *Id.* at ¶ 317.

DRAFT