Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
Satélites Mexicanos, S.A. de C.V.	)	File No.
	)	Call Sign 2589
Petition for Declaratory Ruling	)	
To Add Satmex 5 to the	)	
Permitted Space Station List	)	

PETITION FOR DECLARATORY RULING

Satélites Mexicanos, S.A. de C.V. ("Satmex"), a Mexican corporation, respectfully files this Petition for a Declaratory Ruling pursuant to Commission rule § 25.137(c) of the Commission's Rules, 47 C.F.R. § 25.137(c), to add Satmex 5 to the Permitted Space Station List ("Permitted List") in a new orbital location at 114.9°W in the C- and Ku-bands and to authorize Fixed Satellite Services ("FSS") and FSS Direct-to-Home ("DTH") service within the United States and between the United States and other parts of the Americas. Grant of the requested authority is consistent with Commission rules and precedent and will serve the public interest by allowing Satmex to continue to provide service using Satmex 5 from 114.9°W and to respond to customer demand for FSS and DTH capacity.

I. BACKGROUND

The Commission, on October 2, 2000, adopted an Order that placed the Satmex satellites Solidaridad 2 and Satmex 5, located at 113.0°W and 116.8°W orbital locations, respectively, on

the Permitted Space Station List.[1] Since that date, Satmex 5 has been providing services to and from the United States and other parts of the Americas. Satmex has recently prepared a successor satellite, Satmex 8, which will replace Satmex 5 in the 116.8°W orbital location. On August 23, 2012, Satmex submitted a Petition for Declaratory Ruling to add Satmex 8 to the Permitted Space Station List at 116.8°W.[2] The Commission granted approval on December 6, 2012.[3] After launch and positioning, Satmex 8 will assume 116.8°W and take over service from Satmex 5, which will then be moved to 114.9°W. The instant application seeks to add Satmex 5 to the Permitted Space Station List at its future orbital location, 114.9°W.

A completed FCC Form 312 is attached, including a complete Schedule S and associated satellite information, and Satmex provides updated beam coverage maps (*see* Technical Appendix, Attachment A, Annex 1 at A-1 – A-10) to reflect coverage once Satmex 5 assumes its new orbital location at 114.9°W.

II. COMPLIANCE WITH REQUIREMENTS OF SECTIONS 25.114 AND 25.137 OF THE COMMISSION'S RULES

The Commission allows non-U.S. licensed satellites to be included on the Permitted Space Station List upon demonstrating compliance with Sections 25.114 and 25.137 of the Commission's Rules, 47 C.F.R. §§ 25.114, 25.137, and demonstrating the public interest will be served by such inclusion. The instant application, including the FCC Form 312 and accompanying technical information, demonstrates that Satmex 5 at the 114.9°W orbital location

[1] Satélites Mexicanos, S.A. de C.V. Petition for Declaratory Ruling, File No. SAT-PDR-19991214-00131, Order, DA 00-1793 (Oct. 3, 2000) ("*Satmex 5 Order*").

[2] *See* Satélites Mexicanos, S.A. de C.V. Petition for Declaratory Ruling to Add Satmex 8 to the Permitted Space Station List, File No. SAT-PPL-20120823-00140 (filed Aug. 23, 2012).

[3] *Policy Branch Information, Actions Taken*, Public Notice, DA 12-1970 (Dec. 7, 2012).

satisfies the requirements of Sections 25.114 and 25.137 of the Commission's Rules and the public interest would be served by adding the satellite to the Permitted Space Station List.

A. Orbital Location Change

The Satmex 5 satellite is licensed by Mexico at the current 116.8°W orbital location. As the Commission is aware, the proposed 114.9ºW orbital location is also covered under the trilateral agreement for C- and Ku-band frequencies among Canada, Mexico and the United States. As agreed between Canada and Mexico, the 114.9°W orbital location is assigned to Mexico. In accordance with the trilateral agreement, the Commission cannot license U.S. satellites in these frequency bands at this orbital location.

Mexico is a member country of the WTO. In addition, Mexico and the United States have reached a bilateral agreement that allows Mexican satellites to offer DTH service and Direct Broadcast Satellite ("DBS") service in the United States, after those satellites have been coordinated with the United States for these services.[4] The relevant filing information for Satmex 5 at the 114.9°W location has been submitted to the International Telecommunications Union ("ITU"). The Satmex 5 satellite will operate pursuant to the MEXSAT-114.9 C-KU ITU network. This network has been notified under Article 11 of the ITU Radio Regulations and has been recorded in the ITU's Master Register. All traffic on Satmex 5 will be in accordance with Satmex's coordination agreements at the 114.9°W orbital location.

As is currently the case for Satmex 5 at its present location at 116.8°W, Satmex is requesting to provide FSS services covered by the WTO Telecom Agreement and FSS DTH

[4] *See* Protocol Concerning the Transmission and Reception of Signals from Satellites for the Provision of Direct-to-Home Satellite Television Services in the United States of America and the United Mexican States, November 8, 1996; *See also Televisa Internaional, LLC*, Order and Authorization, 13 FCC Rcd 100074, 10075-76, ¶ 5 (Int'l Bur. 1997 ("*Televisa Order*") (discussing DTH Protocol).

services covered by the U.S. and Mexican Bilateral Agreement from the Satmex 5 satellite at the 114.9°W orbital location. These operations have been adequately coordinated at the 114.9°W orbital location. In addition, given Mexico's membership in the WTO and the existing Bilateral Agreement with the United States, Satmex is not required to make the effective competitive opportunities showing set out in Section 25.137.[5]

Satmex 5 is already in-orbit and operating and, therefore, detailed financial information is not required for the Commission to determine that Satmex is financially capable of building, launching and operating this satellite.[6]

B. Orbital Debris Mitigation and End-of Life Disposal (47 C.F.R. §§ 25.114(d)(14)(i-iv), 25.283)

In addition, Satmex 5 complies with the orbital debris mitigation requirements of Section 25.114(d)(14) of the Commission's Rules, 47 C.F.R. §25.114(d)(14). (*See* Technical Appendix, Attachment A at 9.1-9.9) Regarding end-of-life disposal, the minimum perigee requirements of Section §25.283(a) of the Commission's Rules, 47 C.F.R. § 25.283(a), do not apply because

[5] *See* 47 C.F.R. § 25.137(a)(2); *see also Amendment of the Commission's Regulatory Policies to Allow Non-U.S. Licensed satellites Providing Domestic and International Service in the United States,* Report and Order, IB Docket No. 96-111, 12 FCC Rcd 24094, ¶ 39 (1997) ("We adopt our proposal to apply a presumption in favor of entry in considering applications to access non-U.S. satellites licensed by WTO members to provide services covered by the U.S. commitments under the WTO Basic Telecom Agreement."); *Id.*, ¶ 64 ("[W]e will not evaluate the effective competitive opportunities in the route market for non-U.S. satellites licensed by a WTO Member providing WTO covered services. Thus, we will not perform an ECO-Sat test on any route, whether a WTO route market or a non-WTO route market.").

[6] *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, ¶ 191 (1997) ("*DISCO II Order*") (explaining that an in-orbit satellite satisfies concerns about an operator's capabilities of building and operating a satellite).

Satmex 5 was launched before March 18, 2002.[7] Nonetheless, Satmex confirms that the post-mission disposal perigee is greater than 150 km above GSO.[8]

III. REQUESTS FOR WAIVER OF THE COMMISSION'S RULES

A. Section 25.210(a)(3) Waiver

Satmex requests a waiver of Section 25.210(a)(3) of the Commission's Rules, 47 C.F.R. §25.210(a)(3), which requires that the C-band payload on the space station providing service to the United States be capable of switching polarity upon ground command. The Satmex 5 C-band transmission polarization sense is not switchable from the ground. The Commission has previously waived this rule in several cases for good cause for Satmex and other non-U.S. licensed FSS operators requesting to add space stations to the Permitted Space Station List.

Section 1.3 of the Commission's Rules, 47 C.F.R. § 1.3, provides that the Commission may waive any of its rules if the petitioner shows "good cause," for example, circumstances in which waiver would better serve the public interest than would application of the rule.[9] As previously stated, the Satmex 5 satellite will operate at the 114.9ºW Mexican orbital location in accordance with the Trilateral Agreement. Additionally, Satmex has completed coordination with operators of adjacent satellites and will operate in accordance with those agreements, which take into account the fixed polarization of its C-band transmissions.

The Commission has granted this same waiver to Satmex and several other non-U.S. satellite operators that have applied to be on the Permitted Space Station List under similar

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[7] See 47 C.F.R. § 25.283(d).

[8] *See* Technical Appendix, Attachment A at 9.4 (Post Mission Disposal Plan providing a final disposal orbit with a minimum perigee of 300 km above GSO).

[9] 47 C.F.R. § 1.3; *WAIT Radio v. FCC*, 418 F.2d 1153 (D.C. Cir. 1969); *appeal after remand*, 459 F.2d 1203 (D.C. Cir. 1972), *cert. denied*, 409 U.S. 1027 (1972); *Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1164 (D.C. Cir. 1990).

circumstances.[10] In these Orders, the Commission concluded that waiving Section 25.210(a)(3) will not undercut the policies underlying the Commission's adoption of the rule, and the Commission placed appropriate conditions on the waiver.[11] Consistent with relevant precedent, granting the requested waiver of section 25.210(a)(3) of the Commission's Rules is appropriate and would serve the public interest.

B. Section 25.210(j) Waiver

Satmex also requests a waiver of Section 25.210(j) of the Commission's Rules, 47 C.F.R. 25.210(j), which requires that space stations in the geostationary orbit must be maintained within 0.05° of their assigned orbital location in the East/West direction. Satmex seeks to operate Satmex 5 with an East/West station-keeping tolerance of 0.1° for the remainder of its license term.

Satmex confirms that the proposed change in station-keeping will not result in harmful interference to adjacent satellites. The satellite's maximum power levels at the 114.9°W orbital location will account for the potential decreased orbital separation due to the increased East/West station-keeping tolerance and, therefore, grant will have a negligible impact on the interference environment for adjacent satellites.[12] Furthermore, grant of the waiver will not increase the possibility of in-orbit collision. The adjacent satellites are Satmex 6 (adjacent at 113°W), and ViaSat 1 (adjacent at 115.1°W). Solidaridad 2, currently located at 114.9°W, will be deorbited

[10] *See Telesat Canada, Petition for Declaratory Ruling*, Order, DA 00-2835**,** 15 FCC Rcd 24828, ¶¶ 16-17 (2000) ("*Telesat Canada Order*"). Satmex also asked for a waiver of Section 25.210(a)(3) for the Satmex 6 satellite, which the Commission granted, with conditions. *See* SAT-PPL-20060329-00030 and SAT-AMD-20060724-00080 (2006).

[11] *See Telesat Canada Order*, ¶ 17.

[12] Technical Appendix, Attachment A at 7.1.

before Satmex 5 arrives at the 114.9°W orbital location. Thus, there is no possibility of overlap in the station-keeping boxes of Satmex 5 and any adjacent satellites.

Moreover, grant of the requested waiver of Section 25.210(j) will serve the public interest. Operation of Satmex 5 with a 0.1° East/West station-keeping tolerance will allow Satmex to conserve fuel during the remaining lifetime of the satellite. These fuel savings will extend the useful life of Satmex 5, permitting continuity of service at the 114.9ºW.L. orbital location. Conserving fuel on Satmex 5 will also allow Satmex to maximize the distance above the geostationary arc to which Satmex 5 can be de-orbited at its retirement. There is ample Commission precedent for granting such a waiver, and the Commission should do so here as well.[13]

III. ADDING SATMEX 5 TO THE PERMITTED SPACE STATION LIST IS CONSISTENT WITH COMMISSION POLICIES AND THE PUBLIC INTEREST

The Commission previously found that adding Satmex 5 to the Permitted Space Station List was in the public interest.[14] Nothing associated with Satmex 5's proposed new orbital location should alter this conclusion. Allowing Satmex 5 satellite to offer FSS services in the United States, including DTH, from the 114.9°W orbital location will further enhance

[13] *See, e.g.*, SES Satellites (Gibraltar) Limited Petition For Declaratory Ruling to Add the NSS-703 Satellite at 47.05º W.L. to the Commission's Permitted Space Station List, File No. SAT-PPL-20101103-00230 (filed Nov. 3, 2010) (granted SES Satellites (Gibraltar) Limited Petition For Declaratory Ruling to Add the NSS-703 Satellite at 47.05º W.L. to the Commission's Permitted Space Station List, File No. SAT-PPL-20101103-00230, Call Sign S2818 (Oct. 13, 2011)); SES Americom Application for Modification of Satcom SN-4 Fixed Satellite Space Station License, File No. SAT-MOD-20050325-00075 (filed Mar. 25, 2005) (granted SES Americom Application for Modification of Satcom SN-4 Fixed Satellite Space Station License, File No. SAT-MOD-20050325-00075, Application for Special Temporary Authorization to provide Ku-band service Over Water Areas of International Telecommunication Union Region 1, Call Sign: KS49, File No. SAT-STA-20050531-00112, Order and Authorization, DA 05-1812 (Jun. 28, 2005).

[14] *Satmex 5 Order*, ¶ 17.

competition in these services, and so provide public interest benefits. Thus, adding Satmex 5 to the Permitted Space Station List at 114.9°W is in the public interest.

IV. CONCLUSION

For the foregoing reasons, Satmex respectfully requests that Satmex 5 be added to the Permitted Space Station List at its new orbital location at 114.9°W.