

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

In the Matter of	)	
	)	
<b>Loral Skynet Network Services, Inc.</b>	)	File Nos.: SES-MFS-20050831-01198
	)	SES-AMD-20051118-01593
Application for Authority to Add	)	
the Extended C-Band Frequencies	)	Call Sign: E980250
and to Add Kazakhstan as a Destination	)	
Point for Loral's Fixed Earth Station	)	
in Kapolei, Hawaii	)	

**ORDER AND AUTHORIZATION**

**Adopted: February 09, 2006**

**Released: February 09, 2006**

By the Chief, Satellite Division, International Bureau:

**I. INTRODUCTION**

1. By this Order, we grant authority to Loral Skynet Network Services, Inc. (Debtor-in-Possession) (Loral)<sup>1</sup> to expand the range of C-band frequencies on which its 13-meter earth station in Kapolei, Hawaii (Kapolei earth station) may access the Kingdom of Tonga's Telstar 18 satellite. Specifically, we authorize the earth station to transmit to Telstar 18 in the 6425-6650 MHz band ("extended C-band"). Further, we grant Loral's request to authorize the earth station to provide service to Kazakhstan via the Telstar 18 satellite.<sup>2</sup> Grant of this application represents

<sup>1</sup> LSNS (Debtor-in-Possession), a U.S. corporation, is a wholly-owned subsidiary of Loral Space & Communications Corporation (Debtor-in-Possession), also a U.S. corporation. Loral Space & Communications Corporation is wholly-owned and controlled by Loral Space & Communications, Ltd. (Debtor-in-Possession) (Loral Ltd. DIP), a Bermuda company. Loral Ltd. DIP's home market is the United States. Loral Application at Attachment D. On September 30, 2005, the International Bureau (Bureau) granted the applications of Loral Space & Communications Ltd. (Debtor-in-Possession (DIP)) for the transfer of control of space and earth station licenses held by its subsidiaries Loral Orion, Inc. (DIP), Loral SpaceCom Corporation (DIP), and Loral Skynet Network Services, Inc. (DIP) to Loral Space & Communications Inc. See Authorizations Granted, *Public Notice*, IB Docket No. 05-233, DA 05-2639 (rel. Sept. 30, 2005). On October 31, 2005, Phillip Ivaldy, acting on behalf of the Loral Shareholder Protective Committee, filed a petition for reconsideration of the Bureau's decision to grant Loral's transfer of control applications.

<sup>2</sup> On June 22, 2004, the Commission granted Loral's request to provide Tracking, Telemetry, and Command ("TT&C") operations for the Telstar 18 satellite via the Kapolei, Hawaii earth station. See *Satellite Communications Information Re: Actions Taken, Public Notice*, Report No. SES-00616 (rel. June 23, 2004) (granting IBFS File No. SES-MOD-20040115-00131, as amended by IBFS File No. SES-AMD-20040510-00662). On June 13, 2005, the Commission granted Loral's request for special temporary authority to operate the Kapolei earth station using the 6425-6650 MHz frequency band. See *Satellite Communications Services Information, Public* (Continued....)

another step in implementing U.S. market-opening commitments to satellites licensed by other countries and will enable Loral to expand the reach of its service.

## II. BACKGROUND

2. The Commission's *DISCO II Order*<sup>3</sup> implemented the market-opening commitments made by the United States in the World Trade Organization ("WTO") Agreement on Basic Telecommunications Service ("WTO Basic Telecom Agreement"). These commitments allow new entrants and technologies into the U.S. market, thus advancing the growth of satellite services around the globe. In particular, the *DISCO II Order* established a framework under which the Commission will consider requests for non-U.S.-licensed space stations to serve the United States. To implement this framework, the Commission, among other things, established a procedure by which a service provider in the United States could request immediate access to a foreign in-orbit space station that would serve the U.S. market.<sup>4</sup> This procedure allows a U.S. earth station operator seeking to communicate with a non-U.S.-licensed space station to file an earth station application for an initial license or for a modification of its existing earth station license, listing the foreign-licensed space station as a permitted point of communication.

3. Because the Commission does not issue duplicative U.S. licenses for space stations licensed by other countries,<sup>5</sup> a U.S. earth station application often represents the Commission's first opportunity to evaluate whether the foreign-licensed space station complies with the Commission's technical, legal, and financial qualification requirements. The first earth station application seeking to communicate with a particular foreign-licensed space station must therefore include the same detailed information about the space station and its operations that the Commission requires from U.S. space station applicants.<sup>6</sup>

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*Notice*, Report No. SES-00722 (rel. June 15, 2005) (granting IBFS File No. SES-STA-20050412-00430). On July 1, 2005, the Bureau granted Loral's application for authority to communicate with the Telstar 18 satellite using the conventional C-band frequencies. See Loral Skynet Network Services, Inc., Application for Authority to Provide Communication Services via the Telstar 18 Satellite from Loral's Fixed Earth Station in Kapolei, Hawaii Using the Conventional C-band Frequencies, *Order and Authorization*, 20 FCC Rcd 11856 (rel. July 1, 2005). ("*Loral Telstar 18 Order*"). On August 17, 2005, the Commission granted Loral's request for special temporary authority to provide services to Kazakhstan via the Telstar 18 satellite and the Kapolei earth station. See Satellite Communications Services Information, *Public Notice*, Report No. SES-00743 (rel. Aug. 24, 2005) (granting IBFS File Nos. SES-STA-20050815-01103, SES-STA-20050819-01118, and SES-STA-20051101-01499). Finally, on October 4, 2005, the Commission granted Loral's request for an extension of its existing special temporary authority to operate the Kapolei earth station using the 6425-6650 MHz frequency band. See Satellite Communications Services Information, *Public Notice*, Report No. SES-00755 (rel. Oct. 5, 2005) (granting IBFS File No. SES-STA-20050915-01259).

<sup>3</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*, 12 FCC Rcd 24094 (1997) ("*DISCO II Order*").

<sup>4</sup> *DISCO II Order* at 24174, para. 186.

<sup>5</sup> *Id.* at 24174, para. 188.

<sup>6</sup> See 47 C.F.R. § 25.137.

4. In July 2005, the International Bureau (Bureau) granted Loral's application to add the Telstar 18 satellite,<sup>7</sup> which is located at the 138° E.L. location and licensed by the Kingdom of Tonga, as a point of communication for its Kapolei earth station using the conventional C-band frequencies to provide fixed-satellite services (FSS) (excluding direct-to-home (DTH) service).<sup>8</sup> In granting the application, the Bureau found that the Telstar 18 satellite complies with the Commission's technical, legal, and financial qualification requirements. The Bureau also found that Tonga provides "effective competitive opportunities" for U.S.-licensed space stations to provide FSS in Tonga. On August 31, 2005, Loral filed an application to modify the earth station to allow it to transmit to Telstar 18 in the extended C-band frequencies and to add Kazakhstan as a destination point of communications from the earth station via the Telstar 18 satellite.<sup>9</sup> We placed the application on public notice on September 14, 2005.<sup>10</sup> No comments were filed.

### III. DISCUSSION

#### A. General Framework

5. In *DISCO II*, 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>11</sup> eligibility and operating requirements,<sup>12</sup> spectrum availability,<sup>13</sup> and national security, law enforcement, foreign policy, and trade concerns.<sup>14</sup> We evaluate the Loral request to transmit to Telstar 18 in the extended C-band and to provide FSS to Kazakhstan under this framework.

#### B. Competition Considerations

6. In the *DISCO II Order*, the Commission adopted two different frameworks under

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<sup>7</sup> In total, the spacecraft contains 38 C-band transponders (24 of which operate in the conventional C-band and 14 of which operate in the extended C-band) and 16 Ku-band transponders. The conventional and extended C-band frequencies on the spacecraft are licensed by the Kingdom of Tonga under the name "Tongasat C/KU-3." The Ku-band frequencies on the spacecraft are licensed by the People's Republic of China under the name of "Apstar V." Loral refers to the spacecraft with all its payloads as "Telstar 18." For ease of reference, in this Order "Telstar 18" refers only to the conventional and extended C-band frequencies.

<sup>8</sup> See *Loral Telstar 18 Order*, 20 FCC Rcd at 11856. The "conventional" C-band refers to frequencies in the 3700-4200 MHz (downlink) and 5925-6425 MHz (uplink) bands.

<sup>9</sup> IBFS File No. SES-MFS-20050831-01198. In addition, on November 15, 2005, Loral filed an amendment to its application seeking to add the 3625-3700 MHz (downlink) and 5850-5925 MHz (uplink) frequencies to its Kapolei earth station authorization. IBFS File No. SES-AMD-20051115-01573. The amendment was placed on public notice on December 28, 2005. See *Satellite Communications Services, Public Notice*, Report No. SES-00779 (rel. Dec. 28, 2005). The requests submitted in this amendment will be addressed in a separate action subsequent to the release of this order.

<sup>10</sup> See *Satellite Communications Services, Public Notice*, Report No. SES-00749 (rel. Sept. 14, 2005).

<sup>11</sup> *DISCO II Order*, 12 FCC Rcd at 24107-56, paras. 30-145.

<sup>12</sup> *Id.* at 24159-69, paras. 151-74.

<sup>13</sup> *Id.* at 24157-59, paras. 146-50.

<sup>14</sup> *Id.* at 24169-72, paras. 175-82.

which it would evaluate the foreign entrant's effect on competition in the U.S. satellite market. First, in cases where the non-U.S.-licensed space station is licensed by a country that is a member of the WTO and will provide services covered by the U.S. commitments under the WTO Basic Telecom Agreement, the Commission established a presumption that entry will further competition in the United States. The U.S. commitments include FSS, but specifically exclude direct-to-home (DTH) services, Direct Broadcast Satellite Service (DBS), and Digital Audio Radio Service (DARS).<sup>15</sup> This means that we will presume that WTO-Member-licensed space stations 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>16</sup> In contrast, the Commission conducts an "ECO-Sat" analysis for non-U.S.-licensed space stations licensed by countries that are not WTO members. Under this analysis, applicants seeking to access a foreign space station must demonstrate that U.S.-licensed space stations have effective competitive opportunities to provide analogous services in the country in which the space station is licensed ("home" market) and in all countries in which communications with the U.S. earth station will originate or terminate ("route" markets).<sup>17</sup>

7. The Bureau has previously found that the Kingdom of Tonga, which is not a WTO member, provides effective competitive opportunities for U.S.-licensed space stations to provide FSS in Tonga.<sup>18</sup> We also found that all the proposed route markets were WTO-member countries and therefore entitled to the presumption that service to these countries would promote competition.<sup>19</sup> Consequently, we find that allowing the Kapolei earth station to transmit to Telstar 18 in the extended C-band FSS band to provide service to previously authorized route markets will promote competition in the United States.

8. We must, however, conduct an ECO-Sat analysis with respect to Loral's request to add Kazakhstan, a non-WTO member nation, as a "route" market, in accordance with Section 25.137(a) of the Commission's rules.<sup>20</sup> Loral states that Kazakhstan maintains an "open skies" policy<sup>21</sup> under which it has authorized U.S.-licensed FSS space stations to provide service to Kazakhstan.<sup>22</sup> Specifically, Loral states that Kazakhstan has authorized space stations in the

<sup>15</sup> *DISCO II Order*, 12 FCC Rcd at 24104, para. 25.

<sup>16</sup> *Id.* at 24112, para. 39.

<sup>17</sup> 47 C.F.R. § 25.137(a).

<sup>18</sup> See *Loral Telstar 18 Order*, 20 FCC Rcd at 11859, para. 9.

<sup>19</sup> If the satellite is licensed by a non-WTO member, we must conduct an ECO-Sat analysis for each "route" market that is not a WTO-member nation. 47 C.F.R. § 25.137(a).

<sup>20</sup> 47 C.F.R. § 25.137(a).

<sup>21</sup> The phrase "open skies" policy generally refers to a policy in which a country attempts to accommodate the maximum number of systems possible to provide a particular service in order to maximize entry and competition in its satellite service market. See 2002 International Bureau Biennial Review Staff Report, 18 FCC Rcd 4196, 4199 para. 6 (2002).

<sup>22</sup> Loral Application at Attachment A.



Intelsat fleet and Loral's Telstar 12 satellite to provide FSS to Kazakhstan.<sup>23</sup> Moreover, according to Loral, Kazakhstan adopted new telecommunications legislation in 2004 which is intended to provide communications service providers with equal access to the country's telecommunications network, and which, among other things, introduced universal services to conform the country's practices to those in other countries, and abolished the exclusive authority of the country's state-owned telecommunications company, Kazakhtelecom.<sup>24</sup> No commenters refuted these assertions.

9. We conclude that Loral has demonstrated that U.S.-licensed space stations have effective competitive opportunities to provide FSS in Kazakhstan. Accordingly, we find that allowing Loral to add Kazakhstan as a route market for FSS, excluding DTH, from its Kapolei earth station via the Telstar 18 satellite will enhance competition for these services in the U.S. market, including the U.S. Pacific Territories.

### C. Eligibility Requirements

#### a. Legal Qualifications

10. In the *DISCO II Order*, the Commission stated that it would require non-U.S. space station operators to meet the same technical, legal, and financial qualifications that U.S.-licensed space station operators must meet to obtain a license.<sup>25</sup> In the *Loral Telstar 18 Order*, we found Loral legally qualified to provide service in the United States. Nothing in the record here suggests that we change this conclusion.

#### b. Technical Qualifications

11. The Commission's satellite licensing policy is predicated upon two-degree orbital spacing between geostationary satellites.<sup>26</sup> This policy permits the maximum use of the geostationary satellite orbit.<sup>27</sup> All space stations, including non-U.S. satellites seeking to serve the U.S. market, must comply with the Commission's technical requirements designed to permit two-degree orbital spacing before being authorized to provide service in the United States.<sup>28</sup> The Commission may license satellites that are not two-degree compliant (or earth stations seeking to

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<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

<sup>25</sup> *Id.* at 24161-63, paras. 154-59.

<sup>26</sup> See 47 C.F.R. § 25.140; 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, FCC 83-184, 54 Rad. Reg. 2d 577 (1983); *summary printed in* Licensing Space Stations in the Domestic Fixed-Satellite Service, 48 F.R. 40233 (1983).

<sup>27</sup> See Assignment of Orbital Locations to Space Stations in the Domestic Fixed-Satellite Service, *Order and Authorization*, 11 FCC Rcd 13788, 13790, para 6 (1996). Prior to the Commission's adoption of the two-degree spacing policy, satellites in the geostationary satellite orbit were usually spaced three or four degrees apart. By adopting rules that enabled satellite operators to place their space stations two degrees apart, the Commission was able to accommodate more geostationary satellites.

<sup>28</sup> See Amendment of the Commission's Space Station Licensing Rules and Policies, *First Report and Order and Further Notice of Proposed Rulemaking*, 18 FCC Rcd 10760, para 300 (2003).

access such), but only when the applicants can demonstrate that their operations will not cause harmful interference to existing 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.

12. Based on our review of the technical information Loral submitted, we conclude that the Telstar 18 extended C-band operations comply with all applicable technical rules.

c. **Financial Qualifications**

13. In the *First Space Station Reform Order*, the Commission eliminated the financial requirements then in place and replaced them with a bond requirement.<sup>29</sup> In accordance with this requirement, any entity awarded a license for a satellite must execute a payment bond, payable to the U.S. Treasury, within 30 days of the date of the license grant.<sup>30</sup> This requirement is intended to ensure that licensees are financially able and committed to implementing their systems in a timely manner. The bond is payable upon failure to meet any of the implementation milestones included in every license. Once the licensee meets the last milestone, that is, it launches the satellite, it no longer has any bond obligation. This requirement applies to both U.S.-licensed space stations and space stations licensed by other countries that seek to serve the U.S. market.<sup>31</sup> Because Telstar 18 is in-orbit and operating, Loral is not required to post a bond.

**D. Spectrum Availability**

14. In the *DISCO II Order*, the Commission determined that, given the scarcity of geostationary-satellite orbit locations and spectrum resources, it would consider spectrum availability as a factor in determining whether to allow a foreign satellite to serve the United States.<sup>32</sup> Specifically, the Commission stated that when grant of access would create interference with U.S.-licensed systems, the Commission may impose technical constraints on the foreign space station's operations in the United States or, when the interference cannot be remedied, deny access.<sup>33</sup>

15. The Telstar 18 satellite currently provides service to the United States from the 138° E.L. orbital location in the conventional C-band.<sup>34</sup> In its modification request, Loral seeks authority to provide service to the United States via the Telstar 18 satellite using the extended C-band frequencies.<sup>35</sup> There are no other space stations authorized to serve the United States

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<sup>29</sup> See Amendment of the Commission's Space Station Licensing Rules and Policies, *First Report and Order and Further Notice of Proposed Rulemaking*, 18 FCC Rcd 10760, 10826, Para. 170 (2003) ("*First Space Station Reform Order*").

<sup>30</sup> See 47 C.F.R. § 25.165.

<sup>31</sup> *First Space Station Reform Order* at 10875, para. 309.

<sup>32</sup> *DISCO II Order* at 24159, para. 150.

<sup>33</sup> *Id.*

<sup>34</sup> See *Loral Telstar 18 Order*.

<sup>35</sup> Loral Application at 10.

operating in the extended C-band that are located within two degrees of the Telstar 18 satellite. Loral has supplied an interference analysis demonstrating that the Telstar 18 satellite is compatible with the Commission's two-degree spacing environment in the extended C-band.<sup>36</sup> Consequently, allowing the Telstar 18 satellite to serve the United States from the 138° E.L. orbital location in the extended C-bands will not affect operations of any U.S.-licensed space stations in the extended C-band or contravene the Commission's spectrum management policies. In addition, as in all other orders permitting non-U.S.-licensed space stations to serve the United States, we require all communications between earth stations in the United States and Telstar 18 in the extended C-bands to comply with all satellite coordinations reached by Tonga, Kazakhstan, and other administrations.

#### E. Other Requirements

16. As described above, in accordance with the *DISCO II Order*, national security, law enforcement, foreign policy, and trade concerns are included in the public interest analysis.<sup>37</sup> There is nothing in Loral's application that raises any such concerns.

17. **Orbital Debris Mitigation.** We note that, on November 18, 2005, Loral filed an amendment to provide an Orbital Debris Mitigation Plan for Telstar 18.<sup>38</sup> We conclude that the plan presented by Loral for the Telstar 18 spacecraft demonstrates that its operation raises no public interest concerns related to orbital debris.<sup>39</sup>

#### IV. CONCLUSION

18. Based on the foregoing analysis, we conclude that Loral's proposed communications with the Telstar 18 satellite will be consistent with the Commission's rules and policies regarding U.S. access to space stations licensed by foreign administrations. We also conclude that Loral has demonstrated that U.S.-licensed space stations have effective competitive opportunities to provide FSS in Kazakhstan. We therefore grant Loral's application, subject to the conditions set forth in this Order, finding such grant to be in the public interest.

#### V. ORDERING CLAUSES

19. Accordingly, IT IS ORDERED that, pursuant to Sections 303(r), 308, 309, and 310 of the Communications Act of 1934, as amended, 47 C.F.R. §§ 303(r), 308, 309, 310, and Sections 25.115 and 25.121 (a) of the Commission's rules, 47 C.F.R. §§ 25.115 and 25.121 (a), the Application for Authority to Add Extended C-band Frequencies and to Add Kazakhstan as Destination Point of Communications for Transmissions from Loral's Fixed Earth Station in

<sup>36</sup> Loral Application at Attachment C.

<sup>37</sup> *DISCO II Order* at 24170-72, paras. 178-82.

<sup>38</sup> IBFS File No. SES-AMD-20051118-01593.

<sup>39</sup> All applications that were pending as of October 19, 2005 and were subject to the information requirements of Section 25.114 of the Commission's rules were required to file an Orbital Debris Mitigation Disclosure Plan by November 18, 2005. See International Bureau Satellite Division Information, Disclosure of Orbital Debris Mitigation Plans, Including Amendment of Pending Applications, *Public Notice*, DA 05-2698 (rel. Oct. 13, 2005).

Kapolei, Hawaii, File No. SES-MFS-20050831-01198, IS GRANTED.<sup>40</sup>

20. Accordingly, the license for Earth Station Call Sign E980250 IS MODIFIED to permit Loral Skynet Network Services, Inc. (Debtor-in-Possession) to provide fixed-satellite services using the Telstar 18 satellite located at the 138° E.L. orbital location in the extended C-bands (6425-6650 MHz) and to provide fixed-satellite services to Kazakhstan via the Telstar 18 satellite, subject to the following conditions:

- a. Loral is prohibited from sending or receiving any Direct-to-Home service, Direct Broadcast Satellite service, and Digital Audio Radio service to or from Telstar 18.
- b. Loral is only authorized to provide communication services to points in Tonga, Kazakhstan, or WTO-Member countries within Telstar 18's footprint.
- c. Loral is prohibited from sending or receiving analog video services or any FM video television services to or from Telstar 18.
- d. With reference to Article 18 of the ITU Radio Regulations, the United States is not the "government of the country to which" the space station "is subject," and is not acting on behalf of any other government. Operations of Earth Station Call Sign E980250 are expressly conditioned upon Telstar 18 having been licensed, within the meaning of Article 18, by the Kingdom of Tonga.
- e. Loral is afforded 30 days from the date of release of this grant and authorization to decline this authorization, as conditioned. Failure to respond within this period will constitute formal acceptance of the authorization, as conditioned.
- f. All other terms and conditions of the license for Earth Station Call Sign E980250 remain in effect.

FEDERAL COMMUNICATIONS COMMISSION



Robert G. Nelson  
Chief, Satellite Division  
International Bureau

<sup>40</sup> Consistent with Satellite Division (Division) practice, contemporaneously with the release of this Order, the Division's Systems Analysis Branch will issue an authorization on IBFS File No. SES-MFS-20050831-01198, incorporating this Order by reference and listing the standard conditions that will apply to operation of this facility.