

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of

Amendment of the Commission's Space
Station Licensing Rules and Policies

IB Docket No. 02-34

2000 Biennial Regulatory Review –
Streamlining and Other Revisions
of Part 25 of the Commission's Rules
Governing the Licensing of, and
Spectrum Usage by, Satellite Network
Earth Stations and Space Stations

IB Docket No. 00-248

COMMENTS OF TELESAT CANADA

Telesat Canada ("Telesat") is pleased to submit its comments in the above-captioned Notice of Proposed Rulemaking ("NPRM")¹. Telesat, as the owner and operator of Canadian-licensed fixed satellite service ("FSS") facilities, currently has three spacecraft on the Commission's Permitted Space Station List and has two pending applications before the Commission regarding authorization of Anik F2 for service to U.S. customers.² Consequently,

¹ *Amendment of the Commission's Space Station Licensing Rules and Policies; 2000 Biennial Regulatory Review – Streamlining and Other Provisions of Part 25 of the Commission's Rules Governing the Licensing of, and Spectrum Usage by, Satellite Network Earth Stations and Space Stations*, FCC 02-45, 17 FCC Rcd 3847 (2002) (Notice of Proposed Rulemaking and First Report and Order).

² *Request to Eliminate Conditions on Anik E1 and E2's Inclusion on the Permitted Space Station List*, DA 01-2051 16 FCC Rcd 15979 (Int'l Bureau, 2001) (Order); *Anik F1 Permitted Space Station List Order*, DA 00-2835, (Int'l Bureau, 2000); *Petition for Declaratory Ruling to Add Anik F2 to the Permitted Space Station List*, File No. SAT-PDR-20010906-00082 (filed Sept. 6, 2001); *In the Matter of Telesat Canada- Petition for Declaratory Ruling to Serve the U.S. Market Using Ka-band Capacity on Anik F2*, File No. SAT-PDR-20020321-00027 (filed March 21, 2002).

Telesat has a keen interest in the outcome of this proceeding and hopes its comments will be helpful to the Commission in its deliberations.

The NPRM correctly notes (at ¶12) that delays in licensing impose real costs on consumers and service suppliers. Telesat agrees that the Commission should seize this opportunity to reduce redundant and unnecessary information filings where there are other mechanisms available to achieve the same objectives. Specifically, satellite operators routinely seek out and negotiate coordination agreements with adjacent satellite operators and rarely require the intervention of national administrations and regulatory agencies to determine solutions. The Commission has the opportunity to reduce the administrative burden of analyzing such information where it involves a non-U.S.-licensed satellite, particularly in light of the parallel international process conducted by the International Telecommunications Union (“ITU”).

In what follows, Telesat will address this and other issues raised by the Commission in the Notice that have particular relevance to our company.

I. The two licensing procedure options proposed in the Notice are not relevant to GSO FSS operators of non-U.S.-licensed satellites.

With respect to GSO FSS satellites, the licensing options proposed in the Notice- first come, first served and the filing window- are correctly applicable to operators (both U.S. and non-U.S.) seeking space station licensing by the Commission. However, where operators of foreign-licensed GSO fixed satellites seek entry to the U.S. market, spectrum and orbital slot allocation issues will have been previously dealt with in accordance with international procedures under the ITU *Radio Regulations*.

II. The Commission should continue to recognize that different procedures may be appropriate for different satellite services and technologies.

The Commission's policy-making proposals should take into account the differences between satellite services and technologies and set rules that are appropriate to each one, rather than a 'one size fits all' approach.

Telesat does not have a preference between the first come, first served process and the filing window proposal as they relate to GSO FSS. However, applying the first come, first served principle to services where the broad beamwidth of earth terminals minimizes the ability to reuse spectrum across the GSO arc, may prevent other similar operators from access to those bands, even though the amount of spectrum may be adequate for more than one operator. This is the case in certain MSS bands, and in the future could conceivably impact some FSS operators as well. In this case, it would not serve the public interest to grant the entire available spectrum to the first applicant, and therefore the filing window system proposed in the Notice is more appropriate. The Commission successfully followed this process in the allocation of 2 GHz authorizations.³

III. Comments regarding non-U.S. satellite operators

Telesat believes that the Commission should consider its proposals concerning non-U.S.-licensed satellites with a view to distinguishing its role in licensing domestic space stations operators versus its role in ensuring that the rules are equitable for U.S. and non-U.S. licensees. The Commission should take the opportunity to streamline the process by eliminating the duplication of activity that the satellite-licensing administration must carry out under the ITU framework. Telesat's comments regarding ¶¶121 to 138 are made in this light.

³ *Establishment of Policies and Service Rules for the Mobile Satellite Service in the 2 GHz Band*, FCC 00-302, 15 FCC Rcd 16127 (2000)(Report and Order).

As previously mentioned for broad-beamwidth services such as some MSS bands, Telesat supports the concept that a Letter of Intent from a foreign operator should be treated in a similar manner as an application from a U.S. space station applicant (§126), as to do otherwise would violate the National Treatment provisions of the GATS. However, in the case of current GSO FSS services, the use of a Letter of Intent would virtually disappear, because a foreign operator wishing to be licensed by the FCC in a U.S. orbital position must file a space station application- which, if granted, would necessarily exclude other U.S. or non-U.S. applicants from acquiring a U.S. license for that position. On the other hand, Telesat believes that the Letter of Intent would serve little purpose where foreign-licensed GSO FSS satellites are concerned since U.S. applicants in a first-come, first-served environment will, of necessity, have to consider foreign systems. Such U.S. applicants will be aware that orbital positions are coordinated, notified and registered in accordance with international protocols under ITU auspices. Indeed, U.S. licensing, however accomplished, does not supercede the ITU date priority process, as recently acknowledged in the *Second Round Ka-band Licensing Order*.⁴

Conversely, in the case of MSS operators, the Commission's proposal to treat Letters of Intent from foreign operators in a similar fashion to applications for U.S.-licensed space stations retains value in providing a mechanism for signaling to interested parties that provisions for sharing and coordination of spectrum are necessary. The status and priority of Letters of Intent from non-U.S. operators would be treated equally as applicants for U.S.-licensed satellites. For example, in the case of 2 GHz band MSS satellites serving North America, Letters of Intent were

⁴ *Second Round Assignment of Geostationary Satellite Orbit Locations to Fixed Satellite Service Space Stations in the Ka-band*, DA 01-1693, 16 FCC Rcd 14389, ¶ 6 (Int'l Bureau, 2001) (Order) (" This includes those orbit locations where the United States was not the first country or administration to file coordination information at that particular orbit location. In these cases, U.S. licensees at such orbit locations must operate on an unprotected non-harmful interference basis with respect to an operating satellite with date priority at the location. ...").

received from two non-U.S. entities in order to not be excluded from access to spectrum to serve markets including the U.S.

Based on the foregoing, to the extent that a Letter of Intent applies, Telesat does not oppose the Commission's proposal to expand the informational requirement for non-U.S. operators filing a Letter of Intent (§127, referring to §§84-97), provided that, if it is feasible, the requirements and format coincide with those required under the ITU *Radio Regulations* (e.g. filing of antenna patterns in .gxt format as proposed in §90).

To the extent a Letter of Intent would apply, Telesat supports a mandated electronic filing requirement (§128). It would be desirable for the FCC to make publicly available "Validation Software" to potential applicants, as the ITU has done. Such software would check that all mandatory fields are completed within allowable ranges. In this way, inadvertent errors can be caught prior to filing, with subsequent time-saving by both the applicant and the FCC. Telesat supports the use of a uniform standard that all operators should be able to meet. Telesat's experience in reviewing filings of other operators is that there is a wide variability in the level of Part 25 information supplied by applicants, and the adoption of a more uniform format will help to address this issue.

Regarding §129, Telesat supports the elimination of financial qualifications for operators of non-U.S.-licensed satellites. Milestone requirements should be consistently applied to U.S. and non-U.S. applicants seeking a U.S. space station license. However, the milestones which govern non-U.S.-licensed satellites should be those imposed by the licensing administration, which are bounded in any event by the ITU time limits.

Telesat opposes the proposal that all non-U.S.-licensed operators seeking inclusion on the Permitted List submit all satellite-related technical information specified in Part 25, regardless of coordination status (§131). In our view, with respect to technical information, the FCC needs to determine only that the non-U.S.-licensed space station:

1. has a valid authorization from the licensing administration;
2. is fully compliant with the ITU *Radio Regulations*; and
3. has been fully coordinated with licensed U.S. networks, provided that they have ITU filing priority.

Requiring any additional information literally would serve no purpose. Filing requirements therefore would be limited to:

1. Evidence of an authorization from the relevant administration;
2. The applicable coordination or notification ITU filing(s); and
3. A listing of the relevant coordination agreements.

With respect to future U.S. or non-U.S. networks, coordination must be undertaken in accordance with the ITU *Radio Regulations*, including respecting the filing priorities. Given compliance with the above conditions, there is no need for the FCC to make any further technical determination or require the additional technical information. Telesat submits that the proposed requirements should only be applied in the case where a foreign operator is applying for a U.S. space station license. To require this information from operators of foreign-licensed satellites duplicates the process that is necessary in the licensing country. This would subvert the

Declaratory Ruling/Letter of Intent process towards duplicative licensing, a prospect the FCC has long sought to avoid.⁵

Moreover, the Commission should consider the extent to which the information will be used to verify coordination with adjacent satellites, or whether, as a practical matter, the Commission will continue to rely on the affected operators to carry out the detailed analysis needed to reach coordination agreements. This proposal, far from achieving the laudable goal of streamlining, would only add to the level of effort required of both the Commission and applicants, with limited benefits.

Telesat opposes the FCC proposal that when a non-U.S. satellite operator plans to modify its operations the non-U.S. operator should be required to file with the FCC the relevant changes in technical information (§134). To the extent that such a modification would be carried out in accordance with the appropriate coordination process with adjacent operators, the Commission should only require that the application to amend the authorization be accompanied by an attestation that this process has been successfully completed.

Telesat supports streamlining the procedures for replacement satellites (§135). Specifically, we support the objective of a “grant-stamp” approach for replacement satellite applications - namely to eliminate redundant informational requirements. Telesat notes, however, that given the continuous technical improvements in satellite design, it is rare that replacement

⁵ In *Disco II*, the Commission indicated that it “did not intend to issue separate (and duplicative) U.S. licenses for those space stations under the jurisdiction of another licensing or coordinating administration.” See *Amendment of the Commission’s Regulatory Policies to Allow Non-U.S. Licensed Space Stations to Provide Domestic and International Satellite Service in the United States*, 12 FCC Rcd 24094, 24173 (1997) (Report and Order) (“*DISCO IP*”), recon. 15 FCC Rcd 7207 (1999) (“*DISCO II First Reconsideration Order*”), recon. denied, 16 FCC Rcd 19794 (2001) (“*DISCO II Second Reconsideration Order*”).

satellites “will have the same technical characteristics as the currently-operating satellite.” (§135). Indeed, the FCC acknowledges this fact in footnote 160 of the NPRM. The grant-stamp approach should therefore be applied whenever the non-U.S. satellite meets the three criteria listed in our comments on §131, whether or not the technical characteristics differ from those of the satellite being replaced. In addition, the Commission should effect this grant once it can be reasonably established that the replacement satellite is under construction, that the non-U.S. operator has clear rights in its home country to the continued use of the orbital position, and that there are no other obvious factors which would cast doubt that the satellite will be placed into service as planned. In other words, placing the replacement satellite on the Permitted List need not wait until the satellite is in orbit. Such a requirement would increase uncertainty in the marketplace and among existing users and would place non-U.S. satellite operators at a disadvantage vis-à-vis U.S.-licensed operators of replacement satellites.

Telesat supports a simplified procedure for assessing transfers of control for non-U.S.-licensed satellites (§136), which would rely on the same three criteria proposed in our §131 comments above.

Telesat supports the proposal that amendments to Letters of Intent be treated in the same way as amendments filed by a U.S. applicant (§137). Such amendments should be consistent with, and contingent upon, modifications of the relevant ITU filing. It should be noted, however, that a modification to an ITU filing may not affect service offered in the United States and therefore may not always result in an amendment to the U.S.-filed Letter of Intent.

IV. CONCLUSION

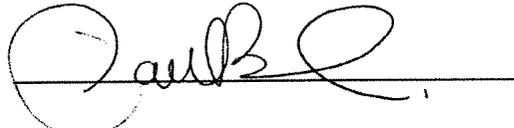
Telesat agrees with the Commission that streamlining can produce benefits both for consumers and operators through reduced time required to process applications. One area where such an opportunity exists is that which involves foreign-licensed GSO FSS satellites seeking to serve customers in the United States . Less, not more, technical information should be required, and this would not lessen the obligation on these operators to comply with ITU coordination and spectrum rules. For the Commission to continue to rely on coordination agreements between the operators of adjacent satellites rather than requiring increased levels of information would facilitate the application and analysis process, and divert effort by all parties away from activities which ultimately fall to the operators.

Telesat thanks the Commission for the opportunity to participate in this proceeding.

Respectfully submitted,

TELESAT CANADA

By:

A handwritten signature in black ink, appearing to read "Paul D. Bush", is written over a horizontal line.

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June 3, 2002