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Dated: March 8, 2011.

Sandra K. Knight,

*Deputy Federal Insurance and Mitigation
Administrator, Mitigation.*

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 25

[IB Docket No. 06-123; FCC 10-188]

The Establishment of Policies and Service Rules for the Broadcasting- Satellite Service

AGENCY: Federal Communications
Commission.

ACTION: Final rule.

SUMMARY: In this document, the Federal Communications Commission denies two petitions for reconsideration filed by Telesat Canada (Telesat) challenging certain aspects of the processing and technical rules adopted for the 17/24 GHz Broadcasting-Satellite Service (BSS). Specifically, we decline to adopt Telesat's proposal that the Federal Communications Commission (Commission) impose additional blanket international coordination licensing conditions on U.S.-licensed 17/24 GHz BSS space stations. Finally, we are not persuaded by Telesat's argument that the Commission's technical and procedural rules concerning assignment of orbital locations and frequencies are inapplicable to requests filed by non-U.S.-licensed 17/24 GHz BSS space stations operators seeking to access the market in the United States.

DATES: Effective April 15, 2011.

FOR FURTHER INFORMATION CONTACT:

Andrea Kelly, Satellite Division,
International Bureau, at 202-418-7877
or via e-mail at Andrea.Kelly@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the Second Order on Reconsideration in IB Docket No. 06-123, FCC 10-188, adopted October 29, 2010 and released November 1, 2010. The full text of the Second Order on Reconsideration is available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY-A257, Washington, DC 20554. This document may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., Portals II, 445 12th Street, SW., Room CY-B402,

Washington, DC 20554, telephone 202-488-5300, facsimile 202-488-5563, or via e-mail FCC@BCPIWEB.com. When ordering documents from BCPI please provide the appropriate FCC document number (for example, FCC 07-174, Order on Reconsideration). The full text may also be downloaded at: <http://www.fcc.gov>. Alternative formats are available to persons with disabilities by sending an e-mail to fcc504@fcc.gov or call the Consider & Governmental Affairs Bureau at 202-418-0530 (voice), or 202-418-0432 (tty).

Synopsis

The Commission denied two petitions for reconsideration filed by Telesat Canada (Telesat) challenging certain aspects of the processing and technical rules adopted for the 17/24 GHz Broadcasting-Satellite Service (BSS). Specifically, we decline to adopt Telesat's proposal that the Commission impose additional blanket international coordination licensing conditions on U.S.-licensed 17/24 GHz BSS space stations. Commission provisions for imposing additional coordination requirements already exist and can be invoked, if needed, on a case-by-case basis. While we reject Telesat's petition for reconsideration on this point, we will continue to follow the applicable coordination procedures set out in the International Telecommunication Union's (ITU) Radio Regulations for the particular band segment being coordinated. Finally, we are not persuaded by Telesat's argument that the Commission's technical and procedural rules concerning assignment of orbital locations and frequencies are inapplicable to requests filed by non-U.S.-licensed 17/24 GHz BSS space stations operators seeking to access the market in the United States. These rules apply to both U.S.- and non-U.S.-licensed operators.

In May 2007, the Commission released a Report and Order and Further Notice of Proposed Rulemaking, 72 FR 46939, August 22, 2007. In the *17/24 GHz BSS R&O*, the Commission decided to apply the first-come, first-served licensing process to applications for geostationary satellite orbit (GSO)-like space stations in this service. At the same time, the Commission also adopted technical rules, including a framework in which 17/24 GHz BSS space stations would operate at orbital locations spaced at four degree intervals, as set forth in *17/24 GHz BSS R&O* Appendix F (known as Appendix F locations). In adopting this four-

degree spacing framework, the Commission recognized that rigid application of the spacing plan would not serve the public interest because at some Appendix F locations there might be undesirable operational constraints required to coordinate physical operations with co-located satellites, or because there might be a co-primary Direct Broadcast Satellite (DBS) or other ITU Region 2 BSS satellite receiving feeder-link signals in the 17.3-17.8 GHz band at or very near that location. As a result, the Commission also provided the flexibility to operate at locations offset from the Appendix F locations with accompanying reductions in power and interference protection. In addition, the Commission adopted limits for uplink and downlink power levels to minimize the possibility of harmful interference, stipulated criteria to facilitate sharing in the 24.75-25.25 GHz and 17.3-17.8 GHz bands, adopted a minimum antenna diameter, and adopted antenna performance standards. The Commission also adopted its proposal to apply the *DISCO II* framework to requests by non-U.S.-licensed 17/24 GHz BSS space stations operators to serve the market in the United States. In addition, the Commission adopted geographic service rules to require space station licensees to provide service to Alaska and Hawaii. At the same time, the Commission issued a Further Notice of Proposed Rulemaking seeking comment on coordination parameters relating to space-path and ground-path interference between 17/24 GHz BSS systems and DBS service systems operating in the 17.3-17.8 GHz band.

On September 28, 2007, the Commission, *sua sponte*, released an Order on Reconsideration, 72 FR 60272, October 24, 2007 to provide space station operators additional flexibility to operate full-power space stations at orbital locations offset by up to one degree from an Appendix F location, in instances where there are no licensed or prior-filed applications for 17/24 GHz BSS space stations less than four degrees away from the proposed offset space station. In response to the *17/24 GHz BSS Sua Sponte Recon*, Telesat filed a second petition for reconsideration arguing that the additional flexibility did not resolve issues it raised in its original petition for reconsideration. Telesat reiterates its requests that we impose specific additional conditions on each U.S.-licensed 17/24 GHz BSS space station relating to international coordination. In

particular, Telesat asks us to impose a condition on each U.S. license that allows us to modify the assigned orbital location by more than one degree from an Appendix F location if necessary to facilitate coordination with a non-U.S.-licensed 17/24 GHz BSS space station operator.

Licensing. At the time the Commission issued its *17/24 GHz BSS Report and Order*, there were a number of pending applications for 17/24 GHz BSS space station authorizations. To implement its decisions, the Commission directed the International Bureau to release a public notice after the rules became effective, establishing a deadline for applicants to amend pending applications to conform to the newly adopted rules. The 17/24 GHz BSS rules, as modified by the *17/24 GHz BSS Sua Sponte Recon*, became effective on November 23, 2007. In December 2007, the Bureau released a public notice with instructions for filing conforming amendments. The amended applications that were acceptable for filing were placed on public notice and comments were filed by various parties, not including Telesat. The Bureau subsequently completed processing of all of the applications pending at the time the *17/24 GHz BSS R&O* was released. As of the date of this order, the Bureau has authorized nine space stations in this service.

The *17/24 GHz BSS Report and Order* also adopted a freeze on filing new applications and delegated authority to the Bureau to lift the freeze after, among other things, the newly adopted processing and service rules became effective and the pending applications were amended to conform to the new rules. The Bureau lifted the freeze on new 17/24 GHz BSS applications and requests for market access by non-U.S.-licensed space stations in September 2008. Since that date, a number of entities have filed new applications, including requests for access to the market in the United States, with the Commission. While Telesat has not yet filed a request to access the U.S. market from a Canadian licensed 17/24 GHz BSS space station, one of Telesat's wholly owned subsidiaries, Skynet Satellite Corporation (Skynet), has filed an application to be a U.S.-licensed 17/24 GHz BSS space station operator.

Telesat proposes that the Commission adopt additional blanket ITU coordination conditions for the 17/24 GHz BSS service. For the reasons stated below, we deny Telesat's request as unnecessary.

Telesat's argument concerns the international coordination obligations of U.S.-licensed 17/24 GHz BSS space

station operators. Telesat argues that there "may be confusion" among 17/24 GHz BSS applicants regarding their international coordination obligations with non-U.S.-licensed 17/24 GHz BSS operators that have ITU date priority. To mitigate any such confusion, Telesat requests that the Commission attach conditions to any 17/24 GHz BSS authorization requiring U.S. licensees to coordinate with non-U.S.-licensed satellite operators that have ITU date priority. In light of our existing ITU coordination rule and our prior statements on this issue, we find Telesat's contention that there "may be confusion" regarding ITU coordination obligations to be unsupported. Thus, we find that any further condition requiring ITU coordination, as proposed by Telesat, is redundant and is otherwise unnecessary as a general matter.

Similarly, Telesat's second proposed condition—that 17/24 GHz BSS space station authorizations are subject to modification to an off-grid location to facilitate coordination with a foreign-licensed satellite operators with ITU priority—is also unnecessary. Section 25.111(b) of the Commission's rules already explicitly provides that "[a]ny radio station authorization for which coordination has not been completed may be subject to additional terms and conditions as required to effect coordination of the frequency assignments with other Administrations." Thus, specifically listing only one theoretical solution to a coordination issue is unnecessary. Further, such a condition might prejudice the Commission's position in a future international coordination. Thus, we concur with Intelsat that such a condition, in addition to being unnecessary, might inject additional uncertainty into the four-degree spacing framework.

While we decline to adopt the additional blanket coordination conditions proposed, Telesat, like any other interested party, may propose conditions relevant to the unique circumstances presented by any specific application. The Commission takes such comments into consideration when reviewing any application and may adjust licensing conditions if circumstances warrant. A party proposing further international coordination conditions—in addition to the standard condition drawn from § 25.111(b) of the Commission's rules—bears the burden of establishing that its proposed condition is required by the facts presented in the particular application at issue. Finally, although we reject Telesat's petition for reconsideration on this point, in

coordinating U.S.-licensed satellite networks with satellite networks of other Administrations, we will follow the applicable coordination procedures set out in the ITU Radio Regulations for the particular band segment being coordinated.

The Commission's *DISCO II Order*, 12 FCC Rcd 24094, 62 FR 64167, November 26, 1997, implemented the market-opening commitments made by the United States in the World Trade Organization's (WTO) Agreement on Basic Telecommunications Service (WTO Basic Telecom Agreement). In particular, the *DISCO II Order* established a framework under which the Commission considers requests by operators of non-U.S.-licensed space stations to serve the United States. The Commission's analysis considers the effect on competition in the United States; eligibility and operating requirements; spectrum availability; and national security, law enforcement, foreign policy, and trade concerns.

Consequently, we reject Telesat's contention that our technical and licensing rules do not apply to non-U.S.-licensed 17/24 GHz BSS satellite operators seeking access to the market in the United States. The Commission's space station licensing policy for the 17/24 GHz BSS is predicated upon four-degree orbital spacing between geostationary space stations. The 17/24 GHz BSS service rules allow space station operators to operate full-power space stations at orbital locations offset by up to one degree from an Appendix F location in cases where there are no licensed or previously filed applications for 17/24 GHz BSS space stations less than four degrees away from the proposed offset space station. This four-degree orbital spacing framework and accompanying offset rules are technical rules equally applicable to non-U.S.-licensed space stations seeking to access the market in the United States. Telesat apparently seeks to exempt non-U.S.-licensed space stations from our technical rules if ITU filings made by the licensing Administration on behalf of these networks precede those made by the United States at nearby orbital locations.

We note, however, our decision here does not preclude non-U.S.-licensed operators from seeking a waiver of any technical rules based on the facts presented in a particular market access request. Further, while our technical rules apply to an application filed before the Commission for access to the market in the United States, our technical rules do not constrain another licensing Administration in the context of ITU coordination with the United

States. In that context, the ITU Radio Regulations govern. Thus, our decision here is limited to the determination that when applying for market access in the United States, non-U.S.-licensed operators must meet the same legal and technical rules as U.S. licensees, and where departures from those rules are sought, the same waiver standards apply.

Ordering Clauses

Accordingly, *it is ordered* that, pursuant to the authority contained in sections 1, 4(i), 4(j), 7(a), 301, 303(c), 303(f), 303(g), 303(r), 303(y), and 308 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), 157(a), 301, 303(c), 303(f), 303(g), 303(r), 303(y), 308, this Order on Reconsideration *is adopted*.

It is further ordered that Telesat Canada's Petition for Reconsideration filed on September 28, 2007 *is denied*.

It is further ordered that Telesat Canada's Petition for Reconsideration filed on November 21, 2007 *is denied*.

It is further ordered that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center shall send a copy of this *Order on Reconsideration*, including the final regulatory flexibility act certification, to the Chief Counsel for Advocacy of the Small Business Administration, in accordance with section 603(a) of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* (1981).

It is further ordered that the Commission shall send a copy of this *Order on Reconsideration* in a report to be sent to Congress and the General Accountability Office pursuant to the Congressional Review Act, see 5 U.S.C. 801(a)(1)(A).

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 2011-6145 Filed 3-15-11; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 224

[Docket No. 110223163-1180-01]

RIN 0648-XA231

Listing Endangered and Threatened Species: Correction To Codify in the Code of Federal Regulations Endangered Status for Southern Resident Killer Whales

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule; correcting amendment.

SUMMARY: We, NMFS, announce a correcting amendment to the Code of Federal Regulations to identify the Southern Resident killer whale (*Orcinus orca*) distinct population segment (DPS) as an endangered species under the Endangered Species Act of 1973 (ESA).

DATES: Effective March 16, 2011.

FOR FURTHER INFORMATION CONTACT: For further information regarding this correcting amendment contact Steve Stone, NMFS, Northwest Region, 503-231-2317; or Marta Nammack, NMFS, Office of Protected Resources, 301-713-1401.

SUPPLEMENTARY INFORMATION:

Background and Correcting Amendment

We listed the Southern Resident killer whale DPS as an endangered species under the ESA on November 18, 2005 (70 FR 69903). That final rule became effective on February 16, 2006, and the species was included in the enumeration of endangered species at 50 CFR 224.101(b). In separate and unrelated rulemaking, we published a final rule on March 6, 2008 (73 FR 12024), to list the North Pacific right whale (*Eubalaena japonica*) and North Atlantic right whale (*E. glacialis*) as separate endangered species under the ESA. In that more recent rule the Southern Resident killer whale DPS was inadvertently dropped from the enumeration of endangered species at 50 CFR 224.101(b). This correcting amendment remedies that oversight.

Classification

The Assistant Administrator (AA) finds good cause under 5 U.S.C. 553(b)(B) to waive prior notice and opportunity for public comment because it is impracticable, unnecessary,

and contrary to the public interest. We fully intended the Southern Resident killer whale DPS to be listed as an endangered species under the ESA and expressly stated this intent in the November 2005 final rule (70 FR 69903; November 18, 2005). We also previously provided public notice in the **Federal Register** and considered public comments on the 2004 proposed rule (69 FR 76673; December 22, 2004). Further, this DPS was correctly included in the October 2006 and 2007 issues of the CFR. However, due to a clerical error in unrelated rulemaking on March 6, 2008 (73 FR 12024), the DPS was omitted from the list of endangered species published at 50 CFR 224.101 in the October 2008 and subsequent issues of the CFR. In order to avoid regulatory confusion and ensure continuous protections and enforcement capability for the Southern Resident killer whale, the AA waives the requirement for prior notice and opportunity for public comment.

For the same reasons above, the AA finds good cause under 5 U.S.C. 553(d)(3) to waive the 30-day delay in effectiveness and makes this rule effective immediately upon publication.

Because notice and opportunity for comment are not required pursuant to 5 U.S.C. 553 or any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are inapplicable. Therefore, a regulatory flexibility analysis is not required and has not been prepared.

It has been determined that this rule is not significant for purposes of Executive Order 12866.

References

Copies of previous **Federal Register** notices and related reference materials are available on the Internet at <http://www.nwr.noaa.gov>, or upon request (*see FOR FURTHER INFORMATION CONTACT* section above).

List of Subjects in 50 CFR Part 224

Endangered marine and anadromous species.

Dated: March 10, 2011.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set forth in the preamble, 50 CFR part 224 is corrected by making the following correcting amendment:

PART 224—ENDANGERED MARINE AND ANADROMOUS SPECIES

■ 1. The authority citation for part 224 continues to read as follows: