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April 20, 1992

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Donna Searcy, Secretary
Federal Communications Commission
1919 M Street, N.W.
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Washington, D.C. 20554

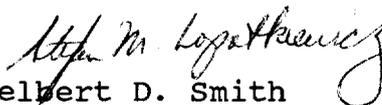
Federal Communications Commission
Office of the Secretary

Re: RM-7931
For Repeal of Section 25.131(j)(1)

Dear Ms. Searcy:

Attached for filing in rulemaking request RM-7931 is the supporting comment of Brightstar Communications Ltd. ("Brightstar"). The attached comment was originally filed in ISP-92-004 in response to the waiver portion of petitioner Comsat's requests for waiver and rulemaking in this matter. Brightstar hereby requests that these same comments be accepted in response to the rulemaking portion of Comsat's request, as well.

Sincerely yours,



Delbert D. Smith
Stefan M. Lopatkiewicz

For SCHNADER, HARRISON, SEGAL & LEWIS

Attachment

cc: Keith Fagan, Esq.
Communications Satellite Corp.

No. of Copies rec'd 045
List A B C D E

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

In re Petition of)	
)	
COMMUNICATIONS SATELLITE CORPORATION)	
)	
For repeal of Section 25.131(j)(1))	File No. ISP-92-004
of the Commission's Rules and, in the)	
interim, for waiver of that Section)	
as it applies to services provided)	
via the INTELSAT K satellite)	

COMMENT IN SUPPORT OF PETITION

Brightstar Communications, Ltd. ("Brightstar"), by its undersigned counsel, hereby comments in support of the Petition of Communications Satellite Corporation ("Comsat") for repeal of Section 25.131(j)(1) of the Commission's Rules and, in the interim, for waiver of that section of the Rules as it applies to services provided via the Intelsat K satellite, which is scheduled for launch shortly (hereinafter, "the Petition").

Brightstar is an English corporation providing international commercial television transmission services via satellite. Since its founding in 1983, it has utilized Intelsat space segment capacity, as a customer of Comsat, in the provision of its services between the United States and Europe. It has reserved through Comsat 108 MHz of capacity on the Intelsat K satellite, which is scheduled for launch in May of this year and will be dedicated to the provision of video services among North America, South America and Europe.

Brightstar currently operates a transmit-and-receive earth station facility in London, as the European "gateway" for

its service. As a result of the growth in demand for its trans-Atlantic services, Brightstar's business plan now calls for the establishment of a U.S.-based earth station, as well. For this purpose, it has filed with the Commission a request for declaratory ruling that its planned U.S. teleport be classified as a private, non-common carrier facility.¹ That request is currently pending before the Commission. The deregulation of receive-only earth stations operating by means of Intelsat space stations is, in this regard, of importance to Brightstar as a potential operator in the United States of receive-only earth stations providing video services via Intelsat K.

DISCUSSION

Brightstar submits that Comsat has in its Petition convincingly demonstrated the legal and policy justifications for

¹ File No. ISP-92-002. In its Comment in support of Brightstar's Request for Declaratory Ruling, Comsat requested in part (at 5-7) that the Commission extend its 1986 Equatorial Communications ruling, eliminating the requirement for licensing of receive-only earth stations used to provide INTELNET I services, to apply to receive-only earth stations utilized for international video services, as well. Deregulation of Receive-Only Satellite Earth Stations Operating with the INTELSAT Global Communications Satellite System, FCC 86-214, Declaratory Ruling, released May 19, 1986 (hereinafter "Equatorial"). Comsat subsequently determined that it was more appropriate to pursue this request through a separate proceeding, rather than as part of Brightstar's Declaratory Ruling request, and for that reason filed the instant Petition. Brightstar supports the initiation of this separate proceeding and requests that the Commission not delay resolution of Brightstar's Declaratory Ruling request due to its consideration of the merits of the present Petition, since Comsat is no longer pursuing those merits as part of Brightstar's request for Declaratory Ruling.

the Commission's repeal of Section 25.131(j)(1) of the Rules. In support of the Petition, Brightstar offers the following reinforcing and complementary arguments.

A. The Commission Has Statutory Authority to Grant the Petition

As early as 1986, the Commission determined that it has the statutory authority to eliminate the section 309 licensing requirement, 47 U.S.C. § 309, as it applies to international receive-only earth stations.² The Commission in that proceeding concluded that the 1962 Satellite Communications Act, 47 U.S.C. §§ 701 et seq., imposed no relevant strictures on the exercise of its Title III licensing authority as applied to international earth stations. The Commission stated:

"The Satellite Act does not establish a program for licensing earth stations, but states that such licensing is controlled by Title III of the Communications Act."³

Because the "primary purpose" of Title III licensing is to conserve spectrum and to prevent harmful interference with other users of radio frequencies, the Commission went on to rule that it could forebear from requiring the licensing of receive-only earth stations which have no transmission capability and thus, for Title III purposes, are "passive devices."⁴ The Commission's ruling in Equatorial was technically restricted to receive-only earth stations providing INTELNET I services,

² Equatorial, at 7-11.

³ Id., at 10-11.

⁴ Id., at 11.

largely due to the fact that the applicant in that matter sought authority only for INTELNET purposes. As will be shown below, that restriction has little doctrinal relevance today.

In its recent First Report and Order concerning amendment of Part 25 application procedures for satellite communications facilities,⁵ the Commission considered the prospect for extending the Equatorial ruling to apply generally to receive-only earth stations operating via Intelsat and Inmarsat. It concluded that the record before it was insufficient to determine whether relaxation of current licensing requirements for receive-only earth stations would be inconsistent with the United States' international obligations to the two satellite treaty organizations.⁶ In so concluding, however, the Commission, consistent with its holding in Equatorial, raised no statutory concern regarding its ability to deregulate the Title III licensing of such facilities.

B. The Commission's Deregulatory Policies Regarding Licensing of Receive-Only Earth Stations is Legally Applicable to Facilities Providing International Television Service

Brightstar submits that the Commission now has a sufficient record upon which to extend its Equatorial ruling to

⁵ Amendment of Part 25 of the Commission's Rules and Regulations to Reduce Alien Carrier Interference Between Fixed-Satellites at Reduced Orbital Spacings and to Revise Application Processing Procedures for Satellite Communications Services, 6 FCC Rcd 2806 (1991) ("1991 Part 25 Order").

⁶ Id., at 2808.

encompass other receive-only international earth stations, particularly those providing international television service. Comsat, in its Petition (at 3-4), speaking in its capacity as the United States' signatory to Intelsat, convincingly argues that repeal and interim waiver of the Commission's current licensing requirements for receive-only international earth stations could have no adverse impact on the United States' obligations to Intelsat.

The limitation of the Commission's 1986 Equatorial ruling to INTELNET I receive-only facilities makes little sense in the light of technological innovations impacting the earth station industry over the past several years. Earth stations in general -- not just those employed for data services -- have grown smaller in size and are financially available to an ever larger body of commercial end users. These technological and financial achievements have, in fact, been recognized by the Commission in its rulings governing the regulation of international earth stations employed for television purposes. As early as 1976, the Commission created a special regulatory status for international television services via satellite by granting television networks and other television service consumers authority to deal directly with Comsat for space and earth segment services.⁷ In 1984, as part of its liberalization of international earth station ownership policies in the United

⁷ Spanish International Network, 70 FCC 2d 2127 (1978); Communications Satellite Corp., 76 FCC 2d 5 (1980); Communications Satellite Corp., 79 FCC 2d 562 (1980).

States, the Commission acknowledged that the proliferation of small, privately owned television earth stations, like INTELNET facilities, would effect no adverse technical impact on Intelsat.⁸

Indeed, at the same time that it deferred extending its Equatorial ruling on licensing requirements to other receive-only international earth stations in its 1991 Part 25 Order, the Commission decided that its construction permit requirement should be eliminated for international receive facilities operating via Intelsat and Inmarsat, as well as domestically. The Commission reasoned, at 2809:

"The dissolution of the ESOCs, the reduction in size of the antennas for multipurpose earth stations and INTELSAT's encouragement of the construction of more multipurpose earth stations closer to traffic centers has led to a proliferation of multipurpose earth stations that do not differ significantly from their domestic counterparts. Therefore, we find that there is no longer a reason to treat multipurpose earth stations operating with INTELSAT space stations differently from earth stations operating with domestic satellites..." (emphasis added).

As a result, the Commission eliminated the requirement for construction permits for such earth stations, just as it had for domestic earth stations.

Brightstar submits that the Commission's reasoning supporting elimination of the necessity for construction permits

⁸ Modification of Policy on Ownership and Operation of U.S. Earth Stations That Operate With the INTELSAT Global Communications Satellite system, 100 FCC 2d 250, 266-70 (1984).

applies equally to its requirement for licensing of receive-only international earth stations in general.

C. Repeal or Waiver of Section 25.131(j)(1)
Would Advance the Public Interest

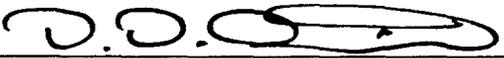
The Commission's exercise of its statutory authority to repeal section 25.131(j)(1) of the Rules is not only doctrinally consistent with established Commission policy, but it would advance the public interest. The proposed rule change would eliminate a burdensome licensing process which will encourage the proliferation of small, receive-only facilities serving international end users needs in the United States. In this manner, the technological advantages offered by smaller, less expensive earth stations could be realized by a broader range of industry users than data users alone. In addition, the elimination of this extraneous licensing requirement would permit entry into the U.S. marketplace of foreign earth station service providers, such as Brightstar, who are presently blocked by section 310(b) of the Communications Act from being able to operate such facilities. In this manner, competition in this growing sector of the economy would be encouraged.

CONCLUSION

For the foregoing legal and policy reasons, Brightstar submits that Comsat's Petition for repeal of section 25.131(j)(1) of the Commission's Rules should be granted. Pending the Commission's consideration of this request, Brightstar further supports Comsat's proposal that the rule be waived as it applies

to television services via the planned Intelsat K satellite.
Finally, in light of the imminence of the launch of Intelsat K,
Brightstar joins Comsat's request for expedited consideration of
at least the waiver portion of Comsat's Petition.

Respectfully submitted,
BRIGHTSTAR COMMUNICATIONS, LTD.

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Its attorneys

March 27, 1992

CERTIFICATE OF SERVICE

I, Brigitte L. Adams, hereby certify that on this 20th day of April, 1992, copies of the foregoing COMMENT IN SUPPORT OF PETITION FOR RULEMAKING were served on the following by hand delivery:

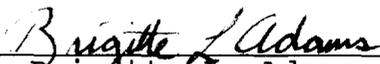
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