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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)
)
)
Amendment to the Commission's)
Regulatory Policies Governing)
Domestic Fixed Satellites and)
Separate International Satellite)
Systems)
_____)

IB Docket No. 95-41

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SUMMARY

Hughes Communications Galaxy, Inc. ("HCG") supports the Commission's proposal to treat all U.S.-licensed FSS satellites under a single regulatory regime in which they can provide a full range of domestic and international services anywhere within their coverage areas without the need to obtain additional authorizations from the Commission. Particularly as other countries and organizations increasingly expand their own satellite systems, removing the existing regulatory distinctions will give FSS operators much-needed flexibility to respond quickly to their customers' satellite communications needs, and thus will promote global competition. In contrast, HCG has been unable to compete internationally because its application to modify its Galaxy III(H) domestic satellite to allow the temporary provision of competitive Latin American service has been pending before the Commission for over a year, even though it fully complies with existing policy.

The Commission's existing transborder and separate systems policies are based on the need to ensure compliance with U.S. obligations under the Intelsat Agreement, including requirements to avoid economic harm to the Intelsat system. But as Intelsat gradually has relaxed its restrictions against competitive separate systems, these Commission policies have become outdated, and increasingly have impeded U.S. FSS licensees' ability to expand their services to compete both with Intelsat and with other countries' separate satellite systems. The transborder authorization process now is a routine procedural requirement that the Commission should abolish.

Since Intelsat largely has abolished its restrictions, there similarly is no basis for the decade-old regulatory distinctions between domestic and separate international FSS

satellite systems. In particular, the Commission should streamline its existing policy under which domestic operators must apply for an additional authorization to provide international service, and separate system operators must apply for an additional authorization to provide domestic service. This two-step procedure no longer is necessary to satisfy U.S. obligations under the Intelsat Agreement, and in fact unduly delays U.S. FSS licensees' ability to serve new markets on a timely basis, and to compete as their business judgments may dictate.

HCG also supports the Commission's proposals to reconcile certain differences in the current treatment of domestic and separate system satellites. First, because Intelsat has relaxed substantially the restrictions that previously hindered separate system operators' ability to raise financing prior to completing the Intelsat consultation process, and in order to avoid the warehousing of orbital locations, the Commission should eliminate the current two-stage financial showing for separate system operators and require all FSS applicants to demonstrate that they have full financing at the outset. Second, since Intelsat is in the process of eliminating its restrictions against providing services that are interconnected with the public switched network, and to allow FSS operators much-needed flexibility, the Commission should allow all operators to select whether to provide service on a common carrier or non-common carrier basis. Third, HCG agrees with the Commission's tentative conclusion that, if U.S. FSS licensees may offer both domestic and international service, there is no reason to retain a distinction between domestic and international earth stations using U.S.-licensed space segment. Finally, HCG suggests that the Commission codify its existing policies that allow operators that intend to serve widely separated regions of the world to apply for two initial and one expansion orbital location per band per region of the world.

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Latin American region over the longer term.^{2/} Although HCG believes that the Commission's existing policies require the Commission to grant both the Galaxy III(H) and VIII(I) applications apart from and in advance of its resolution of this rulemaking proceeding, HCG is vitally interested in ensuring that the Commission adopt streamlined procedures in this proceeding that will enhance competition in the provision of domestic and international FSS services.

HCG therefore fully supports the Commission's proposal to treat all U.S.-licensed FSS satellites under a single regulatory regime in which they can provide a full range of domestic and international services anywhere within their coverage areas without the need to obtain additional authorizations from the Commission. The distinctions in existing Commission policy between domestic and separate international FSS systems artificially and unnecessarily restrict FSS operators' activities. Although the Commission designed these distinctions in part to ensure compliance with obligations under the Intelsat Agreement, the distinctions no longer serve any useful purpose. In fact, today these distinctions actually impede competition. In proposing to streamline or eliminate its current policies, the Commission would give satellite operators the flexibility that they need to respond to changing customer needs and market conditions, both domestically and internationally, and thus to compete more effectively on a global scale.

^{2/} See Hughes Communications Galaxy, Inc., FCC File Nos. 47-DSS-P/LA-94, CSS-94-018 (filed July 15, 1994).

I. THE COMMISSION'S PROPOSAL TO ELIMINATE THE DISTINCTION BETWEEN DOMESTIC AND SEPARATE SYSTEM SATELLITES IS PROCOMPETITIVE.

Adopting the Commission's proposal to remove existing regulatory distinctions between U.S. domestic and international FSS satellites, and to allow all U.S.-licensed FSS satellite operators to provide service anywhere within their coverage areas (subject, of course, to the approval of the other countries concerned), would give those operators the flexibility that they currently lack to respond quickly to their customers' satellite communications needs. As the Commission properly recognizes (Notice ¶ 21), permitting operators to provide the widest range of service offerings available to satisfy customer needs facilitates the creation of a competitive "global information infrastructure." By enhancing U.S. satellite operators' opportunities to compete, the Commission's proposal clearly will serve the public interest.

To promote competition, it is essential that U.S. FSS operators have the flexibility to provide either domestic or international service, or both, as their own business judgments may dictate, without the need to seek additional Commission authorization. There can be no serious dispute that the existence of artificial distinctions and unnecessary regulatory burdens hinders the ability of U.S. licensees to respond to their customers' satellite communications requirements and to changing market conditions, and complicates their entry into new markets at home and abroad. Moreover, affording operators flexibility to make business judgments about the areas that either lack adequate satellite services or would benefit from the introduction of additional, competitive services makes better use of

already scarce orbital resources, since operators necessarily will direct their resources to the most efficient uses.

Giving satellite operators every opportunity to compete is particularly important as other countries and organizations increasingly expand their own satellite systems. Foreign governments already use or have sought to register frequencies for their satellites at a number of orbital locations that also are suitable for U.S. domestic coverage. For example, of Latin American countries alone, the ITU Space Network List reveals that Argentina already has laid claim to frequencies at the 85°, 80°, 76°, 72°, and 59° W.L. locations; Mexico has laid claim at the 138° W.L. location; Cuba has laid claim at 97° and 83° W.L.; Colombia has laid claim at 75.4° and 75° W.L.; and Brazil has laid claim at 92°, 87°, 70°, 68°, 65°, and 61° W.L. Indeed, some of these countries, such as Argentina with its soon-to-be-launched Nahuel C satellite at 72° W.L., have specific plans to operate satellites in the near future that will provide coverage of the United States and numerous other countries. If artificial regulatory distinctions impede U.S. licensees' ability to respond promptly by offering competitive service to a particular area of the world, U.S. FSS operators effectively may be precluded from competing globally.

In fact, the Commission's current regulatory policy already is hindering U.S. FSS operators' ability to compete abroad, particularly in Latin America. As the domestic satellite industry has matured and U.S. customers increasingly have begun to operate on an international scale, it became apparent that the Latin American region is a market whose satellite communications needs -- particularly for direct-to-home ("DTH") video services -- presently are inadequately met. Latin America therefore presents unique competitive

opportunities in the near term. Indeed, regional satellite operators have announced plans to begin providing Latin American DTH service very shortly, as have Intelsat, PanAmSat, and HCG.

HCG applied over one year ago to modify its previously authorized Galaxy III(H) domestic FSS satellite to provide temporary switchable coverage of Latin America using the satellite's Ku band transponders. Under the two-step procedure that the Commission established in 1985, HCG first obtained authorization for its domestic Galaxy III(H) satellite, and later applied to modify that authorization so that it could provide international service as well. HCG's modification application, which remains pending, is fully consistent with existing Commission policy, but HCG has been unable to implement plans to provide competitive service while it awaits the outcome of Commission action on its application.^{3/}

Plainly, it is critical to the competitiveness of American satellite operators that the Commission grant them the flexibility that they need to meet their customers' requirements for both domestic and international service. In order for HCG and other U.S. domestic FSS operators to be in a position to provide competitive services in Latin America, they need to be able to enter that market as soon as possible. Although existing Commission policy provides a mechanism for U.S. FSS operators to expand their service areas, the

^{3/} Separate systems operators have faced similar problems in seeking to provide U.S. domestic service. Orion Atlantic, L.P. ("Orion") and Columbia Communications Corporation ("Columbia"), both of which are authorized to provide international FSS services, have applied for authority to provide U.S. domestic service, and have had to follow an application procedure similar to HCG's. See International Private Satellite Partners, L.P., FCC File No. CSS-95-001 (filed Oct. 11, 1994); Columbia Communications Corporation, FCC File No. CSS-94-020 (filed July 15, 1994).

Commission's proposal would facilitate their ability to do so, and thus to respond to competitive opportunities at home and abroad.

II. THE COMMISSION SHOULD ADOPT ITS PROPOSALS BECAUSE EXISTING POLICIES HAMPER U.S. SATELLITE OPERATORS' EFFORTS TO COMPETE GLOBALLY.

The Commission's existing transborder and separate systems policies are based on the need to ensure compliance with U.S. obligations under the Intelsat Agreement, including requirements to avoid economic harm to the Intelsat system. But as Intelsat gradually has accepted as inevitable the development of competition from other satellite systems and has relaxed its restrictions against competitive separate systems, these Commission policies have become outdated, and the administrative burdens and delays inherent in existing policy increasingly have impeded U.S. FSS licensees' ability to expand their services to compete both with Intelsat and with other countries' separate satellite systems. The Commission's proposal to eliminate these unnecessary regulatory restrictions on FSS satellite authorizations will remove these substantial obstacles to competition, and will enhance U.S. operators' ability to compete.

A. The Commission Should Abolish the Transborder Policy.

HCG supports the Commission's proposal to abolish the transborder policy, which governs the use of domestic U.S. FSS satellites to transmit and receive signals to and from foreign countries on an incidental basis within their existing footprints.^{4/} Applying for authority to provide transborder satellite services has become an additional, unnecessary

^{4/} Communications Satellite Corp. v. FCC, 836 F.2d 623, 626 (D.C. Cir. 1988).

administrative burden that potentially delays the initiation of competition, and the Commission therefore should eliminate the policy.

The history of the transborder policy amply demonstrates why that policy has become unnecessary. The Commission based the transborder policy on Article XIV(d) of the Intelsat Agreement, which requires any party or signatory that intends to establish, acquire, or utilize non-domestic space segment facilities separate from Intelsat to consult with Intelsat to ensure that the proposed use will be technically compatible with the Intelsat space segment and will not cause economic harm to the Intelsat system. In interpreting U.S. obligations under Article XIV(d), the State Department concluded in the 1981 Buckley Letter that members of Intelsat may use non-Intelsat space segment facilities for international service under certain circumstances.^{5/} The Commission thus determined in the transborder policy that U.S. domestic FSS satellites may provide international services within their existing

^{5/} The Buckley Letter stated that:

Certain exceptional circumstances may exist where it would be in the public interest of the United States to use domestic satellites for public international telecommunications with nearby countries. One such case would be where the global system could not provide the service required. Another case would be where the service planned would be clearly uneconomical or impractical using the Intelsat system.

Letter from James L. Buckley, Under Secretary of State for Security Assistance, Science and Technology, to FCC Chairman Mark Fowler (July 23, 1981) (reprinted in Appendix to Transborder Satellite Video Services, 88 F.C.C.2d 258, 287 (1981)). The Buckley Letter also specified that all international operations using domestic satellites must be coordinated pursuant to Article XIV(d) of the Intelsat Agreement.

coverage beams, provided that (i) Intelsat cannot provide the service, or (ii) it would be clearly uneconomical or impractical to use Intelsat facilities.^{6/}

Although initially many applications for transborder authority were requests to use limited amounts of capacity to provide service to specified locations for discrete services, and although Comsat vigorously contested many of those applications, Intelsat gradually has been abandoning its concerns that competing satellite systems might cause it economic harm. In fact, Intelsat has determined that it would not suffer any economic harm from the provision by other satellite systems of any services that are not connected to the public switched network ("PSN").^{7/} Intelsat also has determined that the interconnection of up to 8,000 64-kbps equivalent switched circuits via each separate satellite would not cause economic harm to the Intelsat system. Furthermore, Intelsat has announced its objective to eliminate the PSN interconnection restrictions completely by January 1997.

While Intelsat has relaxed its concerns regarding economic harm, and Comsat accordingly has dropped its opposition to applications for transborder authorization, the transborder policy has remained in effect, and domestic FSS licensees still have been required to seek authority to extend coverage offshore. Moreover, without those Intelsat restrictions, the Commission's review of transborder requests has become pro forma in nature. The Commission now has granted countless requests for transborder authority as a matter of course, and those requests routinely have covered the fullest range of services and

^{6/} See Transborder Satellite Video Services, 88 F.C.C.2d 258 (1981).

^{7/} See Intelsat Assembly of Parties Record of Decisions of the Eighteenth Meeting, Agenda Item No. 9(b) (AP-18-3E FINAL 5/11/92 Nov. 4, 1992).

locations permitted under the existing Intelsat consultation for the subject satellite. Indeed, the only limitation on the Commission's grant of transborder authority is the requirement that U.S. licensees complete the Intelsat consultation process, a process that Intelsat has streamlined even further by abolishing its prior requirement that each country separately "associate" with an existing consultation before being authorized to use another country's satellite system.

The transborder authorization process has become nothing more than an extra procedural step that not only imposes unnecessary administrative burdens on the Commission, but also hinders operators' entry into new markets and thus reduces their ability to compete. There clearly is no justification presently for maintaining the transborder policy. HCG therefore supports the Commission's proposal to eliminate the transborder policy.^{8/}

B. The Commission Should Eliminate the Regulatory Distinctions Between Domestic and Separate International FSS Satellite Systems.

The same Intelsat restrictions that formed the basis for the transborder policy justified the existing decade-old regulatory distinctions between domestic and separate FSS satellite systems. Because the Commission's proposed elimination of those distinctions would simplify the regulatory structure and promote competition among FSS satellite operators, HCG supports the proposed reforms.

Like the history of the transborder policy, the history of the Separate Systems policy clearly demonstrates why reform is necessary. The Commission only tells part of that

^{8/} To the extent that the United States and other countries have negotiated bilateral or multilateral agreements restricting the types of services that each country's satellite systems may provide to another country, those restrictions would continue to remain in effect, as the Commission's rules appropriately would continue to recognize. See 47 C.F.R. § 25.130(d).

history in the Notice, however. As the Commission correctly notes (Notice ¶¶ 10-13), the Commission's 1985 adoption of the Separate Systems policy followed a Presidential determination that systems separate from Intelsat that provide service between the U.S. and international points serve the public interest.^{9/} The President had based that determination on the conclusion of the Executive Branch that the Commission could authorize separate systems consistent with the Intelsat Agreement, provided that (i) the system is restricted to providing services through the sale or long-term lease of capacity for communications not interconnected with the PSN, and (ii) the system obtains approval from the foreign country with which it seeks to establish links and completes the Article XIV(d) economic harm consultation procedures.^{10/}

The Commission does not explain in the Notice, however, that certain policies that it adopted as part of the Separate Systems order are the precursors to the policy reforms that the Commission now proposes. Specifically, in subjecting separate system satellites to different regulatory restrictions than apply to domestic satellites, the Commission also determined that a separate systems operator could not provide domestic service on more than an ancillary basis unless it also fully complied with the requirements for licensing a domestic satellite.^{11/} In the Separate Systems reconsideration order, the Commission reviewed a separate system licensee's request to expand the definition of "ancillary" services that it

^{9/} See Establishment of Satellite Systems Providing International Communications, 101 F.C.C.2d 1046, 1053 (1985) ("Separate Systems"), reconsideration, 61 R.R.2d 649 (1986), further reconsideration, 1 FCC Rcd 439 (1986).

^{10/} See id. at 1053-56.

^{11/} See id. at 1172 n.162.

could provide under its separate system license. Rather than allowing an expansion of the operator's existing authority, the Commission reiterated that a separate system operator could apply for a separate, additional authorization to provide dedicated U.S. domestic communications over the same satellite.^{12/} Thus, current Commission policy clearly allows separate system operators to apply for authority to use their capacity to provide domestic U.S. service.

Similarly, the Commission established a procedure to allow domestic satellite operators to provide international service from the same satellite. In RCA American Communications,^{13/} which the Commission decided simultaneously with the Separate Systems order, the Commission granted RCA authority to modify an already-authorized domestic satellite to provide international coverage of Europe and Africa from 67° W.L. on a number of transponders that would be switchable at will from domestic to international service. As the Commission explained in granting RCA's proposal:

We believe that authorization of RCA Americom's proposed separate system will provide . . . currently unavailable service enhancements to users with special communications needs, stimulate technology and service development, and reduce user-costs. In addition, RCA Americom's proposed system will offer to customers alternative suppliers to fulfill their special needs. We further believe that applying competitive pressure to INTELSAT . . . will result in the further development of this market and encourage service innovation.^{14/}

Thus, domestic operators that wish also to provide international service are able to apply separately to modify their domestic authorization to allow them to do so.

^{12/} Separate Systems (Reconsideration), 61 Rad. Reg. 2d (P&F) at 667.

^{13/} 101 F.C.C.2d 1342 (1985).

^{14/} Id. at 1356.

Both domestic and separate system operators have applied under these procedures to expand their service.^{15/} But while this two-step process does not preclude FSS operators from seeking to expand their service, it does add an extra procedural step that operators must take before they are authorized to compete in the provision of service to additional geographical areas. Indeed, in HCG's case, its application to modify the Galaxy III(H) satellite has been pending for more than a year, and in the meantime Intelsat, regional Latin American systems, and PanAmSat have announced plans to deploy, or already have deployed, satellites to provide DTH service to the Latin American region. While HCG's application remains pending, HCG obviously is unable to compete in the implementation of a new service in a new market.

There is no reason to continue to require an FSS operator to comply with this two-step procedure under which it first applies to provide domestic service and then applies to provide international service (or vice versa), instead of allowing that operator to apply for authorization at the outset to provide service anywhere within its coverage area that it chooses to serve. First of all, these procedures are no longer needed to satisfy U.S. obligations under the Intelsat Agreement, since Intelsat -- which (like the ITU) never has distinguished between domestic and international satellite systems in any event -- gradually has relaxed its restrictions against the services that systems separate from it may provide. As noted above, over the last decade since the Commission established the Separate Systems

^{15/} Grant of the pending applications of HCG, Orion, and Columbia therefore clearly would not result in "ad hoc expansions" of the Commission's policy. (Notice ¶ 16.) Rather, these applications are fully consistent with existing Commission policy, which allows an operator first to apply to provide domestic service, and then to apply subsequently to provide international service (or vice versa).

policy, Intelsat has substantially relaxed its concerns regarding economic harm, facilitating the deployment of numerous separate systems. Furthermore, all separate system operators have completed the Intelsat consultation process successfully, demonstrating that the Intelsat process is not an impediment to the establishment of separate systems.

Moreover, the Commission's existing procedures unduly delay U.S. FSS licensees' ability to serve new markets on a timely basis, because a two-step process necessarily entails additional administrative burdens and associated delays that a one-step, initial authorization to provide both domestic and international service does not. Abolishing the distinctions between domestic and international satellites, and allowing all U.S. FSS licensees to be authorized to provide service anywhere in their coverage areas, would eliminate these unnecessary burdens and streamline the authorization process, thereby allowing U.S. licensees the flexibility that they need to react in a timely manner to changes in market conditions, and to compete as their business judgments may dictate. In fact, by streamlining and simplifying the existing authorization process, the Commission's proposal represents the natural progression of regulatory policy towards a policy that enhances the competitive opportunities of U.S. FSS licensees.^{16/}

In short, Intelsat has abandoned its previous concerns regarding economic harm that restricted FSS systems' provision of non-switched services, and it soon will abandon its remaining such restrictions on FSS systems' provision of switched services.

^{16/} Cf. Western Union Telegraph Co., 91 F.C.C.2d 1051 (1982) (allowing Western Union to extend its domestic service to overseas points); International Record Carriers' Scope of Operations, 76 F.C.C.2d 115 (1980), aff'd sub nom. Western Union Telegraph Co. v. FCC, 665 F.2d 1126 (D.C. Cir. 1981) (permitting international record carriers to provide domestic service).

There therefore is no basis for the Commission to continue using procedures based on those restrictions that impede the ability of U.S. FSS licensees to compete in the provision of domestic and international satellite services.^{17/}

C. The Commission Has Proposed Appropriate Ways To Reconcile Certain Differences in the Current Regulatory Treatment of Domestic and Separate International Systems.

With the establishment of a single policy to regulate FSS operators that provide either domestic or international service, or both, the Commission also will need to reconcile certain differences in its current treatment of domestic and separate system satellites. In the Notice, the Commission has discussed three of those differences in particular: financial qualifications, regulatory classifications, and earth station licensing.

^{17/} The Commission's proposal also is fully consistent with the Commission's current orbital assignment policies. The Commission never has reserved a portion of the orbital arc for domestic satellites. As the Commission correctly notes (Notice ¶ 22), domestic and international satellites today are located in the portions of the orbital arc that provide the best coverage for their respective services. Thus, while domestic satellites have tended to be located in the 64° to 105° W.L. and 121° to 143° W.L. ranges, that is because the earth station angles that these locations provide make them especially suitable for U.S. domestic coverage. Similarly, international satellites have tended to be located east and west of these portions of the arc, because of the earth station angles that those locations provide to Europe and the Pacific Rim. Similarly, the arc from 55° to 95° W.L. is particularly well suited for Latin American coverage, and, as noted above, many Latin American governments are operating, or plan to operate, satellites in the same portion of the arc where many U.S. domestic satellites now are located. In fact, in 1985 the Commission authorized RCA to provide switchable international services from 67° W.L. Moreover, in its order imposing the freeze on assignments in the Atlantic Ocean Region, the Commission clearly contemplated that both domestic and international satellites could be authorized in the 30° to 60° W.L. range. See Processing of Pending Applications for Space Stations To Provide International Communications Service, FCC 85-296, at ¶ 3 (released June 6, 1985) (freezing "acceptance of any newly filed applications for space stations, in any service (including the domestic fixed-satellite service), which request orbital positions between 30 degrees West Longitude and 60 degrees West Longitude in the conventionally used fixed-satellite service frequency bands.")

HCG agrees with the Commission's proposals with respect to each of these matters, and addresses certain other general questions raised by the Notice below.

1. Financial Qualifications.

There no longer is any reason to subject domestic and separate system FSS satellite operators to different financial qualification standards. As the Commission correctly notes (Notice ¶ 29), Intelsat has relaxed substantially, if not altogether eliminated, the restrictions that previously hindered separate system operators' ability to raise sufficient financing prior to completion of the Intelsat consultation process. HCG accordingly supports the proposed elimination of the current two-stage process under which separate system operators first obtain a construction permit based on a preliminary financial showing, and then receive a final authorization following completion of the Intelsat Article XIV(d) process and the demonstration of full financing otherwise required of domestic FSS satellites. (Notice ¶ 29.)

As the Commission refines its regulatory scheme for FSS satellites, it is important that the Commission continue to apply its strict financial qualification rules to prevent the "warehousing" of orbital locations by speculative applicants in the FSS service. In the past, the Commission has experienced situations in which underfinanced applicants that were unsuccessful in attempting to obtain financing have tied up orbital locations and impeded the development of other systems.^{18/} When the Commission adopted its current domestic satellite rules in 1985, its express goal therefore was to ensure that satellite

^{18/} See, e.g., United States Satellite Systems, Inc., 103 F.C.C.2d 888 (1985); Rainbow Satellite, Inc., 103 F.C.C.2d 848 (1985); Advanced Business Communications, Inc., File Nos. 805-DSS-MP-84, 2187-DSS-MP/ML-84 (released Aug. 29, 1985).

operators provide service to the public in an efficient and timely manner, and the Commission consequently required applicants to demonstrate in their applications their financial ability to proceed immediately to construction.^{19/} Noting that assignable orbital locations were becoming less available, the Commission explained that adopting a lower standard would improperly allow "some permittees to tie up orbital locations for several years while attempting to bring their financing plans to fruition," and "would prevent qualified applicants from implementing their plans to provide service to the public."^{20/}

The Commission established a two-step financial showing for separate system operators in 1985 to address a unique difficulty that international FSS satellite systems initially faced in obtaining financing for their satellite purposes. The Commission allowed separate system operators initially to satisfy a lower standard solely because of the uncertainty caused by the Intelsat Article XIV(d) consultation process.^{21/} The experiences over the past decade of PanAmSat, Orion, and Columbia, all of which successfully have completed the Article XIV(d) process on numerous occasions, show that the past uncertainty now is gone, and that there therefore is no reason to continue to risk granting authorizations to applicants before they demonstrate their financial qualifications.

If applicants are allowed to tie up orbital locations that are needed by others while they seek financing for their proposals, there is a serious risk that service will be

^{19/} In re Licensing Space Stations in the Domestic Fixed-Satellite Service, 58 Rad. Reg. 2d 1267, 1268 (P&F) (1985).

^{20/} Id. at 1270.

^{21/} See Separate Systems, 101 F.C.C.2d at 1165 n.152 ("The only reason for our two-stage approach here is the uncertainty caused by the INTELSAT Article XIV(d) consultation process.").

delayed. Particularly as the orbital arc increasingly becomes occupied by foreign satellites capable of broad coverage, it is critical that the Commission adopt a policy that will not delay or prevent U.S. FSS licensees that are prepared to compete from occupying those locations and frequencies. HCG therefore supports the Commission's proposal with respect to financial qualifications standards.^{22/}

2. **Regulatory Classification.**

HCG supports the Commission's proposal to allow all satellite operators to elect to provide service on either a common carrier or a non-common carrier basis. (Notice ¶ 33.) There no longer is any reason to require separate system operators to provide service on a non-common carrier basis, or to require domestic operators to obtain Commission authorization to provide service on that basis.

First of all, the Commission's current requirement to provide separate system service on a non-common carrier basis is based on Intelsat restrictions that Intelsat since has abolished. When the Commission adopted its Separate Systems policy in 1985, it relied on the Executive Branch's conclusion that, due to Intelsat restrictions, a separate system could not provide common carrier service; rather, a separate system satellite could provide services only through the sale or long-term lease of capacity for communications not interconnected

^{22/} The Commission should limit strict application of this standard to FSS satellite applications in the conventional FSS bands. Id. at 1270. The Commission recently adopted a strict financial requirement for Big LEO systems. See Amendment of the Commission's Rules To Establish Rules and Policies Pertaining to a Mobile Satellite Service in the 1610-1626.5/2483.5-2500 MHz Frequency Bands, 9 FCC Rcd 5936, 5948-54 (1994). As the Commission properly has recognized, in undeveloped bands, such as the Ka band, greater flexibility may be needed to implement new systems, and that accepting a lower financial showing may be appropriate in that context. See Norris Satellite Communications, Inc., 7 FCC Rcd 4289, 4290 (1992), reconsideration, 9 FCC Rcd 7370 (1993).

with the PSN.^{23/} But Intelsat now is in the process of eliminating its restrictions against providing services that are interconnected with the PSN. Moreover, since this change, separate system operators have been able to structure their operations to allow a wholly owned subsidiary to provide switched services.

Adopting the Commission's proposal to permit satellite operators to decide the basis on which they will provide service would have several benefits. First of all, it would streamline existing procedures, which now are mere formalities. Domestic operators routinely request authority to provide non-common carrier service under the Commission's transponder sales policy,^{24/} and the Commission never has denied such a request.

Further, allowing operators to select whether to provide service on a common carrier or non-common carrier basis will give operators the flexibility that they need in pursuing their business plans to provide competitive service without unnecessary regulatory restrictions. In fact, such flexibility was precisely one of the Commission's reasons for allowing domestic applicants to request authority to provide non-common carrier services in the first place. As the Commission noted in approving transponder sales for domestic satellites in 1982, "a flexible regulatory policy would stimulate the efficient and economic development of domestic satellite technology and allow applicants, not the Commission, to shape the direction of the domsat operations."^{25/} The Commission went on to explain that

^{23/} See Separate Systems, 101 F.C.C.2d at 1102-07.

^{24/} See Domestic Fixed-Satellite Transponder Sales, 90 F.C.C.2d 1238 (1982), affirmed, Wold Communications, Inc. v. FCC, 735 F.2d 1465 (D.C. Cir. 1984).

^{25/} Id. at 1247.

"these policies would encourage the development of competitive domsat systems in order to actively stimulate technical, service, and market innovation."^{26/}

In light of the increasing numbers of countries with satellite systems of their own, U.S. licensees need to have more flexibility than ever before in order to meet their competitors and foster increased global competition. Since the Intelsat restrictions on which the Commission's current policies are based no longer remain, or soon will be eliminated, and since those policies have become essentially perfunctory in any event, the Commission should remove the existing constraints and afford U.S.-licensed FSS operators the opportunity to elect whether to provide service on either a common carrier basis or a non-common carrier basis.

3. **Earth Station Licensing.**

HCG also agrees with the Commission's tentative conclusion that, if U.S.-licensed FSS operators may offer both domestic and international service, there is no reason to retain a distinction between domestic and international earth stations using U.S.-licensed space segment. (Notice ¶ 36.) The Commission should adopt its proposal to allow all U.S.-licensed earth stations to communicate with all U.S.-licensed satellites, and to use the designation "ALSAT" to identify all of those satellites.^{27/}

^{26/} **Id.**

^{27/} In 1993, the Commission released a notice of proposed rulemaking proposing to eliminate the licensing requirement for most international receive-only earth stations. See Amendment of § 25.131 of the Commission's Rules and Regulations To Eliminate the Licensing Requirement for Certain International Receive-Only Earth Stations, Notice of Proposed Rulemaking, 8 FCC Rcd 1720 (1993). That proceeding remains pending, and the Commission should resolve it.

The Commission's proposal is sensible because it offers a way to streamline existing earth station licensing policy, which already reflects the incremental breaking down of artificial regulatory distinctions. Currently, the Commission licenses an earth station to communicate with either domestic or international satellites, or both. As a result, the Commission is faced with a large number of earth station applications that it grants on almost a routine basis. Allowing all U.S.-licensed earth stations to communicate with all U.S.-licensed FSS satellites will reduce an unnecessary administrative burden on the Commission. The Commission's proposal also will enhance competition in FSS services by allowing earth station operators a broader choice of satellites with which to communicate.

4. Other Regulatory Changes.

In the Notice, the Commission also asks for comments on a variety of other issues, and requests that commenters discuss any additional issues that the Notice may raise. HCG offers the following comments on these other issues.

One issue that the Commission's proposed rules do not adequately address is the difference between the Commission's current policies for authorizing domestic and international expansion satellites. Under the Commission's current rules for domestic satellites, the Commission initially may assign each qualified applicant up to two orbital locations in each frequency band, and thereafter the Commission may assign an applicant no more than one additional expansion orbital location at a time in each frequency band.^{28/} The Separate Systems order limits applicants initially to two orbital locations in a frequency

^{28/} 47 C.F.R. § 25.140(g).

band and no more than one expansion location at a time in that band.^{29/} But the Separate Systems order also provides that where an applicant proposes to provide international service to more than one region of the world, and where those regions are so widely separated that the operator must use more than one orbital location to provide service, the Commission initially will authorize that applicant to construct and launch two satellites in each region of the world.^{30/}

The Commission should continue its existing policies that allow the development of global satellite systems. In its proposed rules, however, the Commission inadvertently would retain the current domestic limitation on the number of expansion satellites and apply that limitation to both domestic and international satellites.^{31/} Limiting existing satellite operators to two initial and one expansion satellite per band would unduly hinder the development of global FSS systems.

HCG therefore suggests that the Commission codify its existing policies in the rules by allowing each operator to apply initially for two orbital locations per band in each widely separated region of the world, and thereafter to apply for one expansion location per band per region. This approach is fully consistent with, and would further, the Commission's existing policies and would continue to promote global competitiveness.

As to the Commission's specific questions about the impact of its proposal in various areas (Notice ¶ 40), HCG does not believe that the proposed reforms will affect the

^{29/} Separate Systems, 101 F.C.C.2d at 1174.

^{30/} Id.

^{31/} See proposed Section 25.140.