Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20544

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In the Matter of	IB Docket No. 96-111
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	
and	
Amendment of Section 25.131 of the Commission's Rules and Regulations to Eliminate the Licensing Requirement for Certain International Receive-Only Earth Stations	CC Docket No. 93-23
and	
COMMUNICATIONS SATELLITE CORPORATION Request for Waiver of Section 25.131(j)(1) of the Commission's Rules As It Applies to Services Provided via the Intelsat K Satellite	File No. ISP-92-007

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COMMENTS OF JAPAN SATELLITE SYSTEMS, INC.

Japan Satellite Systems, Inc. ("JSAT") hereby submits the following Comments in response to the Commission's Notice of Proposed Rulemaking ("Notice") in the above-captioned proceeding.

I. INTRODUCTION

JSAT is one of Japan's preeminent satellite operators.[1] As a Type I Telecommunications Carrier in Japan, JSAT currently provides video and data services in and among Japan, Thailand, and China via its JCSAT-1, JCSAT-2, and JCSAT-3 FSS satellites. A

[1] JSAT is owned by the four major Japanese trading houses: Itochu Corp.; Mitsui & Co.; Sumitomo Corp. and Nissho Iwai Corp.

fourth JSAT satellite, JCSAT-4, is scheduled for launch in January 1997, and will provide additional service capabilities and capacity, with coverage of all of Asia, Japan, Australia, New Zealand and Hawaii.

In the *Notice* the Commission has proposed a uniform framework for evaluating applications by users in the United States to access satellites licensed by other countries. Under this framework, the Commission proposes that non-U.S. licensed satellite systems (such as JSAT) "will generally be able to provide satellite services to from or within the United States to the extent that foreign markets allow effective competitive opportunities for U.S. systems to provide analogous services."[2] To enforce this objective the Commission specifically has proposed to undertake an inquiry called the effective competitive opportunities for satellites ("ECO-Sat") test, which will examine both legal and other barriers to effective competition by U.S. satellite providers in foreign markets.

JSAT supports the Commission goal of fostering a global competitive communications environment. But as set forth below the Commission's proposal raises several concerns that require clarification of the proposed ECO-Sat analysis.

II. DISCUSSION

A. Clarification of the Proposed ECO-Sat Test

The Commission proposes a basic ECO-Sat framework that focuses on effective competitive opportunities for U.S. satellites in (1) the "home market" of each non-U.S. satellite; and (2) some or all of the "route markets" that the non-U.S. satellite seeks to serve from earth stations in the United States. The Commission will in performing its ECO-Sat analysis, examine both *de jure* and *de facto* barriers to effective competition in such markets.[3]

First, JSAT notes that the examination of "*de jure* and *de facto*" barriers to competition proposed in the *Notice* appears to be quite broad. JSAT believes that to the extent that the Commission has proposed to formalize its public interest inquiry into an ECO-Sat test, the Commission should provide more definitive and specific guidance as to how the test will be

[2] *Notice* at ¶ 1.

[3] *Id.*

applied, or perhaps channel the analysis through more specific standards or criteria. For example, the Commission should be mindful to limit the applicability of the ECO-Sat analysis to *communications*-oriented laws and policies; if the Commission falls into an overly broad and rigid "reciprocity" approach, the Commission's inquiry risks involving the Commission in non-communications related disputes, such as complex trade and foreign policy issues, that are more appropriately addressed in other forums.

Second, JSAT urges that, on occasions when the Commission conducts the ECO-Sat analysis, the Commission do so according to a definitive, pre-specified time frame. In *Vision Accomplished*, 11 FCC Rcd 3716 (1995), for example, Vision Accomplished, a U.S. carrier, applied for a modification of its earth station license to communicate with the JCSAT-1 and JCSAT-2 satellites to provide Hawaii-Japan service. The application was filed on April 18, 1995. The license modification was not granted until November 3, 1995 -- some six and 1/2 months later -- upon public interest findings by the Commission that U.S. satellite operators do not lack access to the Japanese satellite market, and are treated "no differently from their Japanese counterparts."[4] While JSAT supports the Commission's careful and correct analysis in the *Vision Accomplished* case, such long timeframes for resolving an ECO-Sat inquiry can jeopardize or eliminate business opportunities for both U.S. and the non-U.S. providers. Because such regulatory delay does not serve the Commission's goals of promoting effective global competition, JSAT strongly urges the Commission to cabin the ECO-Sat inquiry within reasonable, expeditious time deadlines, both for filing and resolving petitions to deny and for rendering a final decision.

B. Treatment of Japanese Satellites

JSAT requests the Commission to confirm that the formalization of the public interest inquiry with respect to non-U.S.-licensed satellites into an ECO-Sat test will not affect or undo the previous effective competitive opportunity public interest determinations that the Commission has made in prior cases.[5]

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[4] *Vision Accomplished*, 10 FCC Rcd 3716, 3718 (1995).

[5] See *Notice* at ¶ 20.

Specifically, last year, the Commission found that effective competitive opportunities for U.S. and Japanese satellite providers in fact exist with respect to the FSS satellite service market. Although the ECO-Sat test was not yet codified in the manner proposed, the Commission carefully analyzed the question of whether U.S.-licensed satellite systems have access to the Japanese satellite service market according to the ECO-Sat principle that the global competitive satellite environment "should provide U.S. satellite providers with access to a foreign market and the satellite systems of foreign markets access to the U.S. market."[6] The Commission concluded that U.S. providers have access to the Japanese satellite service market, and that U.S. providers are treated on a non-discriminatory basis.[7]

The proposed ECO-Sat test, which will codify the precise type of analysis that the Commission performed on an *ad hoc* basis in the *Vision Accomplished* case, should not disturb this public interest finding. In Japan today, non-Japanese satellite service providers such as PanAmSat and Hutchison Century Corporate Access ("HCCA") have been licensed as Type I Telecommunications carriers, have obtained earth station radio licenses, and have begun providing international services to and from Japan. These are precisely the types of competitive opportunities that the ECO-Sat analysis is intended to confirm or promote, and which the Commission has in fact confirmed to exist in Japan. JSAT therefore respectfully requests that the Commission continue to recognize pre-*Notice* public interest determinations of effective competitive opportunities.

C. Foreign Ownership

Some aspects of U.S. law are more restrictive than Japanese law with respect to the regulation of foreign-licensed satellite providers. Since 1994, for example, Japan has removed all restrictions with respect to non-Japanese ownership of Type-I international satellite licensees -- a non-Japanese entity can own 100% of the equity in a Type-I carrier. By contrast, Section 310(b) of the Communications Act bars JSAT from obtaining a common carrier earth station license in the United States, which is the U.S. equivalent of a Japanese Type I

[6] *Id.* at ¶ 5.

[7] *Id.* at ¶¶ 5-6.

Telecommunications Carrier authorization.[8]

The *Notice* suggests that because the non-U.S. licensed satellite providers can obtain access to the U.S. market by operating in conjunction with U.S. licensed earth station operators, Section 310 does not "require us to address issues of foreign ownership regarding non-U.S. space stations that seek access to the U.S. markets."[9] While this may be true, if the Commission has determined that effective competitive opportunities exist with respect to the United States and a foreign country, such as Japan, it would be unfair and inconsistent with the ECO-Sat policy to continue to rigidly apply the Section 310(b) alien ownership restrictions to the extent that the Commission has statutory authority to waive them.

Section 310(b)(4) of the Communications Act establishes a 25 percent benchmark applicable to foreign investment in and ownership of the parent company of a common carrier, broadcast, aeronautical fixed, or aeronautical en route licensee, but gives the Commission the discretion to allow higher levels of foreign ownership as long as the Commission determines that such ownership is in the public interest. The Commission has already determined that with respect to common carrier licenses, a finding of effective competitive opportunities is appropriate to include as an "important element in our public interest determination under Section 310(b)(4) for foreign investments in U.S. common carrier licensees," and that by adopting a clear and explicit effective competitive opportunities public interest criterion, additional opportunities will be created for the Commission "to find that foreign investments in excess of the Section 310(b)(4) benchmark are consistent with the public interest."[10] The Commission should adopt the same approach with respect to its ECO-Sat analysis in the context of evaluating foreign ownership of common carrier earth station licensees.

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[8] The Commission acknowledges that no Section 214 authority under the Act is required for the provision of non-common carrier services. The Commission also has expressly found that Section 310(b) is not a bar to foreign ownership of radio facilities by non-common carriers. See *Brightstar Communications Limited*, 8 FCC Rcd 1387, 1388 n.6, 1390 (1993).

[9] *Notice* at ¶ 59.

[10] *In the Matter of Market Entry and Regulation of Foreign-affiliated Entities*, 11 FCC Rcd 3873, 3943, ¶¶ 182-183.

D. Treatment of IGO-Affiliated Companies

The Commission has requested comment with respect to the U.S. regulatory treatment of the affiliates of the world-wide, treaty-based intergovernmental organizations ("IGOs") Intelsat and Inmarsat.[11] Both Intelsat and Inmarsat are studying various restructuring proposals to streamline the organizations and permit them to better able to respond to competitive pressures. Thus, there may well appear on the scene several IGO subsidiaries or affiliates for which the Commission will need to determine the proper ECO-Sat analysis.

In this regard, JSAT agrees with the Commission that genuinely procompetitive privatization should result in a commensurate reduction in the burdens that attend IGO status, but that privatization that is only a matter of form should not.[12] JSAT supports the Commission's tentative conclusion that IGO-affiliated companies "should be treated just like any other non-U.S. systems that seek access to the U.S. market" in terms of ECO-Sat analysis.

III. CONCLUSION

JSAT respectfully requests that the Commission clarify its ECO-Sat inquiry in accordance with the foregoing Comments.

[11] *Notice* at ¶¶ 71-74.

[12] *Id.* at ¶ 73.

Respectfully submitted,

Japan Satellite Systems Inc.
5th Floor Tranomon 17 Mori Building
1-26-5 Tranomon Minato-ku Tokyo
105 Japan

By: 岩島康春
Yasuharu Iwashima
Executive Vice President
Japan Satellite Systems Inc.

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