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

In the Matter of	
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	IB Docket No. 96-111
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 RM-7931
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

COMMENTS OF COMSAT CORPORATION

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COMMENTS OF COMSAT CORPORATION

COMSAT Corporation ("COMSAT"), by its COMSAT International Communications division, hereby submits its comments in response to the Commission's *Notice of Proposed Rulemaking* in the above-captioned proceedings.[1]

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[1] *In the Matter of 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, et al.*, IB Docket No. 96-111, CC Docket No. 93-23,
(continued...)

INTRODUCTION AND SUMMARY

In the *DISCO-II Notice*, the Commission asks parties to comment on the possible use of various alternative versions of an "ECO-Sat" test for determining whether to permit non-U.S. licensed satellite systems to provide communications services that originate and/or terminate in the United States. As a general matter, under the proposed ECO-Sat test, non-U.S satellite systems could be utilized for such services only if: (1) the "home market" of the non-U.S. service provider allows comparable "competitive opportunities" to U.S. satellite service providers, and (2) similarly comparable competitive opportunities for U.S. service providers are available in various "route markets" to which the non-U.S provider offers service for U.S. based customers.

In the near term, at least, use of such a test would not foster competition because it would restrict entry of new satellite service providers into U.S. communications markets. The FCC expresses a belief, however, that in the long term this situation will turn around -- because, it is hoped, foreign administrations will be induced to open their own markets, thereby increasing competition both internationally and in U.S. and foreign domestic markets.

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[1](...continued)
RM-7931, File No. ISP-92-007, FCC 96-210 (released May 14, 1996), *summary published* 61 Fed. Reg. 32,399 (June 24, 1996) ("*DISCO-II Notice*").

COMSAT will focus its comments in this proceeding on questions involving potential application of an ECO-Sat test to communications services provided via the INTELSAT and Inmarsat satellite systems.[2] As an initial matter, the Commission is entirely correct in its tentative conclusion that application of an ECO-Sat test to COMSAT's *international* communications via the INTELSAT and Inmarsat systems would not serve the public interest -- and, in any event, would likely contravene the United States' binding obligations to other nations participating in these international organizations. As the FCC has recognized, any policy that undermined INTELSAT service, particularly to developing countries, would clearly be inconsistent with the foreign policy interests of the United States and with the needs of U.S. communications customers seeking links to international points. Similarly, any policy that undercuts services utilizing the Inmarsat system would, among other things, jeopardize the safety of life and property at sea.

Regarding COMSAT's use of the INTELSAT and Inmarsat systems for U.S. *domestic* services, the Commission has recognized that the basic two-part ("home market"/"route market") ECO-Sat test is unworkable. But instead of abandoning such an approach altogether, as it proposes to do for international services utilizing these satellite systems, the *DISCO-II Notice* sets forth three alternative regulatory approaches that might be applied to COMSAT's provision of U.S. domestic services via these

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[2] In the parlance of the *DISCO-II Notice*, the INTELSAT and Inmarsat organizations are "Intergovernmental organizations" or "IGOs."

systems. The first two approaches are derived from the ECO-Sat approach and focus on the opening of foreign markets in all or most INTELSAT/Inmarsat member countries. The third focuses solely on the competitive effect of COMSAT entry into the U.S. domestic communications marketplace.

COMSAT submits that adoption of either of the two ECO-Sat derivative policies would predictably lead to consequences that are purely anticompetitive and would harm the interests of U.S. consumers. In contrast to the situation that might exist with *foreign-licensed* satellite systems, the Commission could not reasonably conclude that a continued ban on COMSAT's provision of U.S. domestic service via the INTELSAT and Inmarsat systems[3] would put sufficient pressure on individual foreign administrations to induce them to open their communications markets to U.S. satellite service providers. Simply put, foreign administrations would have little incentive to do so.

Denying U.S. domestic consumers access to services provided by COMSAT over INTELSAT or Inmarsat cannot be expected to persuade or influence foreign nations to change their domestic laws or policies This is true because: (1) the INTELSAT and Inmarsat satellite capacity available to serve CONUS is only a relatively small part of overall capacity and is not very large in absolute terms; and (2) the indirect financial benefit to any foreign administration from COMSAT's provision

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[3] The current ban applies to the use of the INTELSAT and Inmarsat systems for domestic services other than maritime mobile satellite services, and other incidental services authorized on a case-by-case basis

of domestic services is relatively trivial. Even if all of this unused capacity were devoted to U.S. domestic service, the resulting impact on overall system utilization -- and thus revenues -- would be insignificant. Any financial benefits to members of INTELSAT and Inmarsat would also be further minimized by virtue of the minor ownership interest that most individual administrations hold in these international satellite organizations. In short, any continued restriction on COMSAT's ability to serve the U.S. domestic market through the INTELSAT and Inmarsat systems is unlikely, in and of itself, to produce the foreign policy results sought by the FCC, but would serve only to restrict the choices available to U.S. customers and limit domestic competition.

Moreover, under the ECO-Sat derivative policies outlined in the *DISCO-II Notice*, no single foreign nation by its own unilateral act would be able to alter U.S. policy relating to use of the INTELSAT/Inmarsat systems for domestic use in this country. Such a change in U.S. policy would occur, if at all, only following favorable actions by a large number of individual foreign administrations. In these circumstances, there is no reasonable basis for concluding that application of an ECO-Sat-type test would give these foreign countries an incentive to alter their own domestic communications laws and policies. As a result, the *only* predictable result of such a test would be the continued indefinite bar to COMSAT's offering of INTELSAT and Inmarsat space segment services to the domestic U.S. marketplace, thus diminishing competition to the detriment of U.S. consumers.

The third alternative test suggested by the *DISCO-II Notice* (*i.e.*, the competitive effect of COMSAT's entry into the U.S. domestic market) is clearly the most deregulatory and appropriate test to apply in the circumstances. Indeed, the pertinent facts involved in application of such a test are so clear as to warrant final resolution of the question of COMSAT's entry in this proceeding. As demonstrated herein, the amount of INTELSAT and Inmarsat capacity available for U.S. domestic use represents such a modest percentage of total satellite capacity serving this country now and in the future as to make clear beyond any reasonable doubt that COMSAT would have no ability to raise prices or restrict output -- *i.e.*, to exercise market power -- in the provision of space segment services.[4] Indeed, the obvious reason why COMSAT's rivals oppose its entry is that such a development would serve *to increase output and put downward pressure on prices*.

The *DISCO-II Notice* also invites comment on the appropriate regulatory approach to services provided via affiliates, subsidiaries, and successors of INTELSAT and Inmarsat. Consistent with the restructuring proposals of the United States Government, the Commission should make clear that any Title II and III authorizations held by COMSAT or its customers with respect to services provided via the existing INTELSAT and Inmarsat systems will apply fully and automatically to services using the same facilities of the proposed "privatized" spin-offs of these international

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[4] The market for the provision of earth station services is already competitive for both INTELSAT and Inmarsat services.

organizations. Any other approach would jeopardize established service arrangements and severely impede prospects for adoption and implementation of the INTELSAT restructuring plan now endorsed by the U.S. Government and COMSAT, as well as longer term restructuring of Inmarsat. COMSAT cannot emphasize this reality enough. *If the other nations involved in the INTELSAT and Inmarsat restructuring process believe that the FCC plans to adopt regulations that threaten the viability of the restructured entities, the U.S. Government's privatization initiatives will suffer irreparable damage or failure.*

Nor is there any need for the Commission to adopt yet another test that might apply to global non-geostationary mobile satellite services licensed by nations other than the U.S. Rather than adopting cumbersome regulations such as a vague "critical mass" test to such systems, the Commission should simply examine the public interest benefits that would arise from the entry of an additional facilities-based competitor into the U.S. market.

In addition, COMSAT's Comments address several matters of more general applicability raised in the *DISCO-II Notice*. Specifically, COMSAT urges that:

- Rather than focusing on earth station licenses as the sole "procedural vehicle" for regulating the entry of non-U.S. satellite systems into the domestic marketplace, the Commission should also offer the option of allowing the space segment provider to make an appropriate showing (but the Commission should certainly not require anything approaching a second "licensing" requirement for such satellites).

- The Commission should not, and need not, attempt to impose U.S. technical requirements on non-U.S. satellite systems.

- The Commission should not, and need not, attempt to impose U.S. financial requirements on non-U.S. satellite systems.
- The Commission need not adopt any licensing requirement for receive-only earth stations.

I. THE COMMISSION HAS CORRECTLY DETERMINED THAT THE PUBLIC INTEREST WOULD NOT BE SERVED BY APPLYING THE ECO-SAT TEST TO ANY INTERNATIONAL SERVICES OFFERED BY COMSAT VIA THE INTELSAT AND INMARSAT SYSTEMS

In the *DISCO-II Notice*, the Commission recognized that application of the ECO-Sat test to international communications provided via the INTELSAT and Inmarsat systems is unlikely to comport with United States' international obligations and -- in any case -- would not serve the public interest.[5] COMSAT agrees and thus supports the FCC's tentative decision to continue to apply current regulatory policies regarding international services provided via INTELSAT or Inmarsat.

To do otherwise by imposing an ECO-Sat analytical framework on COMSAT's provision of international services would effectively disrupt important communications links between the United States and foreign nations. Further, it would defeat the very purpose for which the United States helped develop, and has supported, the two global multinational systems: "to establish . . . a commercial communications satellite system . . . which will be responsive to public needs and national objectives, which will serve the communication needs of the United States and other countries, and which will

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[5] *DISCO-II Notice* at ¶ 70.

contribute to world peace and understanding."[6] Similarly, the Commission appreciates the need not to jeopardize the services provided via Inmarsat, including the U.S. commitment to support the global maritime distress and safety system.[7]

Common sense and the interest of U.S. consumers also support the current regulatory treatment of COMSAT's international services. Adopting the ECO-Sat regulatory scheme for those services would deprive Americans of international communications services they already enjoy. Such a result is hardly consistent with the FCC's goal of *expanding* the service options available to the public. U.S. consumers should not lose access to services provided via the INTELSAT or Inmarsat systems based on the Commission's desire to send a message to foreign nations about the desirability of opening their markets to U.S. satellite service providers -- particularly

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[6] 47 U.S.C. § 701(a). As noted above, the United States has historically played the leading role in both multinational satellite organizations. The Kennedy Administration and Congress took the initial steps that led to the creation of the first global satellite network, which became the International Telecommunications Satellite Organization ("INTELSAT"), while the Ford and Carter Administrations and later Congresses did the same for the International Maritime Satellite Organization ("Inmarsat"), later renamed the International Mobile Satellite Organization. *See* Communications Satellite Act of 1962, 47 U.S.C. § 701 (1988) ("Satellite Act") (Congressional finding that "improved global communications network" would "contribute to world peace and understanding"); *Interim Arrangements for a Global Commercial Communications Satellite System*, Aug. 20, 1964, 15 U.S.T. 1705 ("1964 Agreement"); *International Telecommunications Satellite Organization*, Aug. 20, 1971, 23 U.S.T. 3813 ("INTELSAT Agreement"); International Maritime Satellite Telecommunications Act, 47 U.S.C. § 751 (1988) ("Inmarsat Act"); *Convention on the International Maritime Satellite Organization and Operating Agreement on the International Maritime Satellite Organization*, Sept. 3, 1976, 31 U.S.T. 1 ("Inmarsat Convention").

[7] *DISCO-II Notice* at ¶ 70.

where, as explained below, the message is bound to be ineffective in persuading foreign countries to change their own domestic policies.[8]

II. THE COMMISSION SHOULD IMMEDIATELY PROMOTE COMPETITION IN THE U.S. DOMESTIC MARKETPLACE BY AUTHORIZING COMSAT TO PROVIDE DOMESTIC SERVICE USING INTELSAT AND INMARSAT FACILITIES

In considering whether to authorize COMSAT's provision of *domestic* services -- currently forbidden in most instances[9] -- via the satellites of international governmental organizations ("IGOs"), the Commission has never suggested that the additional capacity that INTELSAT or Inmarsat could supply would be of sufficient magnitude to diminish competition domestically. Nevertheless, two of the three regulatory approaches proposed in the *DISCO-II Notice* would likely harm U.S. consumers by denying them the competitive benefits to be gained from COMSAT's making available that additional capacity -- a result that the agency has admitted.[10]

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[8] *See infra* at 20-25.

[9] COMSAT has received authorization to provide limited domestic services via INTELSAT on a case-by-case basis. COMSAT has authority to provide domestic maritime services via Inmarsat, and its application to provide domestic land and aeronautical Inmarsat services is the subject of a separate proceeding predating this one. *See* File No. ITC 95-341. COMSAT's provision of the domestic leg of international AMSS is the subject of still another pending proceeding. *See Provision of Aeronautical Services via the Inmarsat System*, 61 *Fed. Reg.* 39,579, 30,583 (June 17, 1996).

[10] *DISCO-II Notice* at ¶¶ 65-66 (noting that insisting on the openness of "all the

(continued...)

Such an anticompetitive -- and anti-consumer -- outcome cannot be justified unless the Commission's regulatory approach could provide a countervailing benefit that would outweigh the direct and obvious harm that would be imposed on U.S. consumers. As demonstrated below, neither the "all routes market test" nor the "most routes market test" would achieve the FCC's stated objectives.[11] These two derivatives of the ECO-Sat test will not "encourage foreign governments to open their satellite communications markets, thereby enhancing competition in the global market for satellite services."[12] To the contrary, either proposal would simply deprive U.S. consumers of additional service choices via COMSAT in the domestic market -- while also constituting a substantial disincentive for foreign administrations to support the U.S. Government's INTELSAT privatization proposal

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[10](...continued)
various route markets" served by an IGO could "unduly and perhaps unfairly restrict service from INTELSAT, Inmarsat, or another IGO on the basis of market barriers in what may be a small number of nations").

[11] *Id.* at ¶¶ 66-67. By the term "all routes market test," COMSAT refers to the proposal to "base access to the U.S. domestic market on the openness of all the various route markets served by the intergovernmental organization -- or at least all of the markets of the organization's members." *Id.* at ¶ 66. The term "most routes market test" refers to the alternative proposal to condition entry on "some minimum level of concurrence that is required for any official action of the organization." *Id.* at ¶ 67.

[12] *Id.* at ¶ 1.

A. COMSAT's Provision Of Domestic Service Using the INTELSAT And Inmarsat Systems Would Immediately Benefit Consumers Without Harming Competition in the U.S. Marketplace

The public interest would be best served by the Commission's adoption of the third alternative proposed in the *DISCO-II Notice* "a less structured standard that focuses directly on the competitive consequences of an IGO providing domestic service in the United States."[13] Only the application of this "effect on competition" test in the domestic market would increase the service options available to U.S. consumers while also addressing the Commission's concerns for ensuring fair competition in the domestic satellite market.

While the "effect on competition" test is the most appropriate approach in this context, the *DISCO-II Notice* reflects an apparent misunderstanding of how COMSAT provides service via the INTELSAT and Inmarsat systems. As envisioned in the *DISCO-II Notice*, under the effect on competition test, the agency would "ask whether the IGO, in light of its intergovernmental status and dominance, would be in a position to diminish effective competition in the United States."[14] COMSAT respectfully

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[13] *Id.* at ¶ 68. In addition, this "competitive effects" test offers the benefit of avoiding questions regarding this Commission's dubious legal authority to establish a trade reciprocity standard such as the ECO-Sat test, a matter entrusted to the Executive Branch. *See* Telecommunications Trade Act of 1988, *codified at* 19 U.S.C. § 3101 *et seq.* (1994); Trade Act of 1974, *codified at* 19 U.S.C. § 2101 *et seq.* (1994); *see also, e.g., Citizenship Requirements for Operation of Cable Television Systems*, 77 F.C.C. 2d 73 (1980) (deferring to Executive Branch on foreign reciprocity proposal).

[14] *DISCO-II Notice* at ¶ 68.

submits that such a question reflects a fundamentally erroneous understanding of COMSAT's role in the INTELSAT and Inmarsat systems.

In particular, it is *COMSAT* that provides space segment service to U.S. customers -- *not* the IGOs.[15] COMSAT, as U.S. Signatory, is investor,[16] service provider,[17] and owner of space segment of the INTELSAT and Inmarsat systems that it uses.[18] COMSAT has no "intergovernmental" status or immunity when providing service in its role as a common carrier, and is subject to U.S. antitrust and tax laws in that capacity just as any other company.[19] And, obviously, COMSAT is a U.S. corporation regulated far more heavily by this Commission than any of its satellite

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[15] COMSAT also provides land earth station services to U.S. and foreign customers for Inmarsat-based services in competition with IDB (in the U.S. and elsewhere) and with other Inmarsat land earth station operators around the world.

[16] Congress deliberately decided that the U.S. would participate in these organizations through a private corporation. Accordingly, it is COMSAT through its private U.S. shareholders) that has made the enormous American financial investment in the INTELSAT and Inmarsat systems over the years, not U.S. taxpayers.

[17] COMSAT holds a number of authorizations pursuant to Section 214 to provide common carrier services via the INTELSAT and Inmarsat systems.

[18] Like other Signatories, COMSAT owns the system capacity it uses to provide services to its customers, and its ownership interest is readjusted annually based on its usage during the previous year. COMSAT currently owns approximately 19 percent of INTELSAT and about 23 percent of Inmarsat. That COMSAT's ownership of INTELSAT and Inmarsat capacity derives from international agreements and Acts of Congress, rather than licenses issued by the Commission, does not warrant more restrictive regulatory treatment of COMSAT in comparison to its rivals.

[19] *See generally Alpha Lyracom Space Comm., Inc. v. Communications Satellite Corp.*, 946 F.2d 168, 170 (2d Cir. 1991), *cert. denied*, 502 U.S. 1096 (1992).

competitors,[20] many of which, as non-common carriers, are subject to no Title II regulation whatever.[21] Thus, there is no "intergovernmental status and dominance" to affect competition in the U.S. domestic market by virtue of COMSAT's entry into the provision of services via INTELSAT and Inmarsat.

Most importantly for the interests of U.S. consumers, the effect on competition test will direct the Commission's attention to the real question: whether COMSAT's use of INTELSAT and Inmarsat facilities for domestic services would somehow have a negative impact on the competitiveness of the U.S. communications marketplace that would warrant depriving American customers of the benefits flowing from an additional facilities-based competitor.[22] COMSAT submits that the answer to the question is

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[20] COMSAT is currently regulated as a dominant carrier subject to rate of return regulation, full tariffing requirements, and structural separation regulation.

[21] Domestic fixed satellite operators, after *DISCO-I*, may elect common carrier or non-common carrier status. *Amendment to the Commission's Regulatory Policies Governing Domestic Fixed Satellites and Separate International Satellite Systems*, 11 FCC Rcd. 2429, 2436, (1996) ("*DISCO-I Order*"). The separate international systems, such as PanAmSat and Orion, have been classified as non-common carriers. AMSC is regulated as a non-dominant common carrier. Even AT&T, by far the largest international service provider (using both satellite capacity and its vast undersea cable facilities), was recently reclassified as nondominant in international services. *Motion of AT&T Corp. to be Declared Non-Dominant for International Service*, FCC 96-209 (released May 14, 1996). Most recently, IDB, which is affiliated with the Canadian Inmarsat Signatory, applied to be reclassified as a nondominant carrier for services to points other than Canada. *Commission Seeks Comment on IDB Mobile, Inc. Application for Modification of Regulatory Status*, Report No. I-8187 (released July 3, 1996) (Public Notice).

[22] The *DISCO-II Notice* itself identified the customer benefits of increased competition. *Id.* at ¶¶ 8-9. *Accord COMSAT Corporation Structural Separation*

(continued...)

clearly "no." Furthermore, the FCC has ample legal authority to decide in *this proceeding* that COMSAT should be permitted to offer domestic services via its INTELSAT and Inmarsat space segment capacity[23] -- just as it did with respect to domsat and separate international systems in the *DISCO-I Order* -- as well as sufficient facts to justify that public interest determination.[24]

The facts reveal that competition can only thrive once COMSAT provides domestic service via INTELSAT and Inmarsat. The incumbent fixed satellite providers currently have captured nearly all of the market, and most of them are far larger than COMSAT. Moreover, the satellite providers already in the market occupy most of the

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[22](...continued)
Requirements, DA 96-74 at ¶ 19 (May 13, 1996) ("*COMSAT Corp. Structural Separation Waiver*") (citing the customer benefits of one-stop shopping in international services to users of land mobile and aeronautical services provided by COMSAT).

[23] Both the Satellite Act and the INTELSAT Agreement unquestionably provide the Commission with the legal authority to allow COMSAT to provide INTELSAT capacity for service to domestic points. *See* 47 U.S.C. § 701(d) (Congress does not intend to "preclude the use" of INTELSAT "for domestic communications services where consistent with the provisions of this Act"); INTELSAT Agreement, art. III(c) ("INTELSAT space segment established to meet the prime objective [*i.e.*, international service] shall also be made available for other domestic public telecommunications service on a non-discriminatory basis to the extent that the ability of INTELSAT to achieve its prime objective is not impaired"). Pursuant to this authority, COMSAT offered U.S. domestic service via INTELSAT for almost ten years before U.S. domestic satellites were launched. The Commission itself also recognizes that "the Inmarsat Convention does not limit use of the Inmarsat system to only communications that are international in character." *Provision of Aeronautical Services via the Inmarsat System*, 4 FCC Rcd. 6072, 6090 n.26 (1989). The Commission has issued numerous temporary authorizations to COMSAT to provide Inmarsat services domestically.

[24] *DISCO-I Order*, 11 FCC Rcd. at 2430-32.

desirable orbital slots, and the limited amount of INTELSAT capacity potentially available to serve the U.S. domestic market would in no way enable COMSAT ever to dominate that market. In addition, given the spectrum limitations at L-band, and the fact that the Inmarsat system operates on a demand-assigned basis, there is no basis for a conclusion that COMSAT's provision of additional domestic mobile services would give it market power. Thus, as explained in the four points below, there is simply no reasonable basis for a belief that COMSAT would have any ability to impede competition in the highly competitive U.S. domestic market.

First, as the *DISCO-II Notice* aptly states, "artificial entry barriers that exclude potential competitors from the U.S. satellite service market could very well result in less competition both here and abroad, making both U.S. users and U.S. satellite operators worse off than they would be under conditions of effective competition."[25] After the *DISCO-I Order*, the most prominent "artificial entry barrier" now in effect in the United States is that which prohibits COMSAT from generally offering domestic services via the INTELSAT and Inmarsat systems.

Second, it is obvious that the fixed domsats already have rights to -- and occupy -- the optimal orbital slots for domestic services.[26] And, of course, these companies currently carry nearly *all* of the U.S. domestic satellite traffic. Based on public data available as of November 1995, COMSAT estimates that the domsats collectively

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[25] *DISCO-II Notice* at ¶ 9.

[26] *See* FCC In-Orbit Satellite List (dated Mar. 15, 1996).

provide approximately 550 transponders (at 36 MHz each) for U S. domestic service. Against that total, COMSAT estimates that it would be able to offer only about 14.5 transponders for domestic services through the INTELSAT system.[27] Thus, authorizing COMSAT to provide domestic services via INTELSAT would increase available capacity in the domestic marketplace by only about 2.6 percent. COMSAT, as a new entrant, would begin with a domestic market share of virtually zero,[28] and would be incapable of ever posing an anticompetitive threat.

As for Inmarsat capacity, Inmarsat and other users of the L-band have limited spectrum in which to operate.[29] Multi-lateral coordination between Inmarsat and the North American L-band operators limits Inmarsat to a fraction of this spectrum and thereby further reduces its capacity potentially available to serve the U.S. market.[30] Although spectrum sharing limitations have, in the past, hindered COMSAT's ability to

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[27] Total INTELSAT capacity worldwide currently stands at approximately 1,396 transponders (at 36 MHz each). Of those transponders, only about 29 are currently available to serve the U.S. domestic market, and even fewer would offer full CONUS coverage. Moreover, COMSAT's ability to devote even this small amount of capacity to the U.S. domestic market is constrained by the needs of other Signatories seeking capacity on these same satellites for their use; it therefore is reasonable to estimate that only about half of the INTELSAT capacity -- 14 5 transponders -- could actually be used to provide U.S. domestic services.

[28] COMSAT has received certain domestic authorizations to use INTELSAT and Inmarsat capacity on an incidental, case-by-case basis, so it currently has a small market presence. There has been no suggestion by any party, however, nor could there be, that COMSAT possesses any market power in these instances.

[29] The entire commercial L-band consists of only 33 MHz.

[30] AMSC has its own spectrum assignment within the L-band, which the Commission has recently proposed to expand.

offer expanded domestic service, the Commission recently endorsed an important international agreement on geostationary mobile satellite systems that should help alleviate this spectrum concern.[31] In addition, because the Inmarsat system operates on a demand-assigned basis, COMSAT cannot direct additional space segment capacity to the domestic market. In view of these spectrum considerations and system design characteristics, it would be most unreasonable to conclude that COMSAT, via Inmarsat, could exercise market power in the U.S. domestic marketplace.

Third, this conclusion draws still further support from the fact that, although the domestic mobile services market offers numerous options -- including cellular, paging, and personal communications services[32] - AMSC currently is the sole geostationary MSS licensee serving the domestic market.[33] COMSAT's provision of ancillary Inmarsat domestic services would therefore expand consumer options. Furthermore, AMSC recently received authorization to use its domestic MSS system to provide international maritime MSS services,[34] and AT&T provides both domestic and international service through its cable, wireline, satellite and HF radio services.

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[31] *See* "FCC Hails Historic Agreement on International Satellite Coordination," Report No. IN 96-16 (June 25, 1996); *see also Mobile Satellite Service in the Upper and Lower L-band*, FCC 96-259 (released June 18, 1996) (Notice of Proposed Rulemaking).

[32] *See COMSAT Corp. Structural Separation Waiver* at ¶ 198 n.29.

[33] In addition, three well-financed "Big LEO" systems have received authorization to serve the U.S. market. *See Constellation Communications, Inc., et al.*, FCC 96-279 (released June 24, 1996) (Memorandum Opinion and Order).

[34] *AMSC Order* at ¶ 5

Affording COMSAT the opportunity to compete with these and other firms in the provision of *both* domestic and international space segment services will result in better service and increased consumer choices (including convenient "one-stop shopping"), while also exerting downward pressure on prices

Fourth, the additional capacity that COMSAT could bring to the U.S. domestic market, via the INTELSAT and Inmarsat systems, while providing consumers with additional service options, in no event would be sizeable enough to confer on COMSAT any ability to raise prices or restrict output -- the Commission's definition of market power.[35] Put simply, the additional capacity that COMSAT would bring would *increase* output and tend to lower prices This is the obvious reason why incumbent satellite operators fiercely object to COMSAT's entry into their closely-held market.

Indeed, a particular benefit of immediate COMSAT entry into the domestic fixed services market via INTELSAT would be to increase the amount of capacity available for domestic, as well as international, uses As the Commission has recognized, customers are increasingly attracted by the desirable characteristics of wideband transmissions, particularly for services such as video.[36] At the same time as customer demand is growing, the amount of available capacity -- particularly at C-band

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[35] *See Competitive Carrier Proceeding*, 85 F.C.C.2d 1, 20-21 (1980) (First Report and Order); *accord United States v. Western Electric Co.*, 900 F.2d 283, 296 (D.C. Cir. 1990).

[36] *DISCO-I Order*, 11 FCC Rcd. at 2430, 2433

-- has been squeezed both by the aging of currently operating satellites and recent launch failures. While this state of affairs may serve the private interests of incumbent satellite operators, the *public* interest suffers from the needless denial of COMSAT's capacity to the U.S. market.

Thus, there is simply no reason to maintain the current highly regulatory restrictions that deprive U.S. customers of the domestic services that COMSAT can provide via INTELSAT or Inmarsat. Of all U S companies capable of providing domestic service via their own satellite facilities, *only COMSAT* has been precluded from the regulatory relief accorded *all of its U.S competitors* -- which after *DISCO-I* now includes the former "separate systems" (PanAmSat, Orion, and Columbia), domsats (GE Americom, Hughes, and AT&T), and AMSC. This inequitable treatment undermines the ability of COMSAT to compete fairly against its U.S. rivals in both the domestic and international marketplaces, and should be rectified without further delay.

B. Imposing Needless Regulatory Constraints On The Use Of INTELSAT Or Inmarsat For U.S. Domestic Services Will Not Provide Incentives For Foreign Nations To Open Their Domestic Satellite Markets To U.S. Service Providers

The two other proposals outlined in the *DISCO-II Notice* for regulating COMSAT's provision of domestic services via INTELSAT or Inmarsat (*i.e.*, the two ECO-Sat proposals) clearly would deprive consumers of the benefits of additional facilities-based competition in the U.S. market. Consequently, both the "all routes"

market test and the "most routes" market test should be deemed presumptively anticompetitive -- and neither could be justified unless it provided a countervailing public interest benefit.

The Commission has stated quite clearly the policy goals that underlie its ECO-Sat framework. In addition to providing U.S.-based consumers with greater service choices, the FCC hopes that adoption of the ECO-Sat test will entice or encourage other nations to open their domestic markets to U.S. satellite service providers.[37] COMSAT submits, however, that whatever the merits of this "leveraging" or reciprocity theory in general,[38] applying it to COMSAT's ability to offer domestic service via INTELSAT and Inmarsat in the hope that foreign administrations will change their domestic policies is simply far-fetched. In fact, there is a distinct possibility of a "backlash" reaction from foreign administrations if the FCC imposes onerous burdens on U.S. customers wanting to use these international systems -- *i.e.*, they simply will respond in kind by making it more difficult for U.S.-licensed satellite systems to access their markets. That, of course, is precisely the result the FCC wants to avoid.

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[37] *DISCO-II Notice* at ¶¶ 1, 9, 11-12, 32, 36, 81.

[38] Frankly, given the few available open FSS slots over the United States, it is by no means evident that there is sufficient opportunity for foreign-licensed systems to serve the U.S. domestic market so as to entice any nation to abandon its own protective domestic policies.

In the context of the INTELSAT and Inmarsat systems, neither the "all routes" markets nor the "most routes" markets derivatives of the ECO-Sat test proposed for IGOs would be useful tools for cracking open those foreign markets that are not yet open to U.S. satellite service providers.[39] This is true for two reasons:

- Neither COMSAT, INTELSAT nor Inmarsat has the power to change the domestic laws or policies of foreign countries directly;[40] and

- The indirect financial benefit to any foreign administration from COMSAT's provision of U.S. domestic service via INTELSAT or Inmarsat space segment is inconsequential, due to the financial structure of those systems and the relatively small amount of INTELSAT/Inmarsat capacity available for full-CONUS coverage.

Neither COMSAT, INTELSAT nor Inmarsat has any sway over the domestic policies of foreign nations that, through their own signatories, also use the two

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[39] The proposals in the *DISCO-II Notice* fail to reflect that fact that most of the major markets are open to U.S. service providers. For example, PanAmSat serves approximately 110 countries already.

[40] As the Commission itself stated, INTELSAT and Inmarsat already support service to virtually every country from the U.S. and were, in fact, designed and created (largely under U.S. leadership) to provide the world with such ubiquitous service. *DISCO-II Notice* at ¶ 62. Thus, the proposed "all routes" markets approach would require that the domestic laws and policies of the nearly 140 member nations of INTELSAT and nearly 80 member nations of Inmarsat meet the agency's definition of reciprocity before COMSAT could offer domestic services -- a standard that the agency itself recognizes could "unduly" and "perhaps unfairly" restrict service based on the practices of "what may be a small number of nations." *Id.* at ¶ 66. The proposed "most routes" markets approach, while only vaguely defined, does not differ significantly because, under the agency's own example, it would still allow "a small number of nations" to effectively deny U.S. consumers the ability to choose COMSAT from among the options open in the vigorously competitive U.S. domestic market. *Id.* at ¶ 67.