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 in the vigorously competitive U.S. domestic market. *Id.* at ¶ 67.

systems' facilities. Obviously COMSAT, the U.S. Signatory, has no such power. Furthermore, INTELSAT and Inmarsat -- as cooperative entities with powers defined by international agreement -- have no authority over the domestic laws or policies of their member nations, protectionist or otherwise. The most they can do is be flexible enough to accommodate different domestic regulatory regimes. Thus, imposing onerous regulatory barriers on COMSAT's use of INTELSAT or Inmarsat facilities for domestic services does not carry any direct incentive for foreign administrations to modify restrictions that may shield their own domestic satellite markets.

Nor would such onerous barriers create any indirect leverage. First, even if the limited unused capacity (or spectrum) available over the United States via the INTELSAT or Inmarsat systems were fully committed to U.S. domestic services, it would constitute only a relatively small proportion of the overall capacity available to serve the U.S. market. As noted above, only about 29 of the total 1,396 transponders that constitute INTELSAT's global capacity are available to offer U.S. domestic services.[41] And of that 29, it is probable that only about half -- or approximately 1 percent of total INTELSAT capacity -- would actually be used by COMSAT to for to domestic services. In addition, due to the L-band spectrum sharing arrangements and system design factors mentioned above, the spectrum that would be usable by the Inmarsat system is reduced.

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[41] *See supra* at 16-17 & n.27.

Second, the limited INTELSAT and Inmarsat capacity available would not provide foreign participants in INTELSAT or Inmarsat with sufficient financial incentives to change their domestic laws or policies.[42] For example, COMSAT estimates that the incremental financial benefit that would flow to INTELSAT from COMSAT's provision of U.S. domestic services over that system would be approximately $8 million.[43] Against INTELSAT's total projected revenue for 1996 -- $877 million -- it is obvious that the nearly 140 Signatories would split a financial benefit amounting to less than 1 percent of the entire budget. Furthermore, because the division of ownership rights among signatories is far from even, the vast majority of participants in INTELSAT would individually realize marginal "benefit" from less than 1 percent of the incremental revenue derived from COMSAT's provision of U.S. domestic services via INTELSAT.[44]

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[42] In the case of Inmarsat, the U.S. domestic market in all likelihood is similarly not large enough to influence foreign administrations to change their policies, given the many competitive, low-cost mobile services available to U.S. consumers.

[43] Other Signatories would "benefit" only to the extent that the incremental usage of the systems would slightly broaden the customer base over which costs are recovered. Because it cannot be assumed that the 14.5 transponders that might be devoted to U.S. domestic services would otherwise lie dormant, COMSAT has estimated that about half -- or 7.25 transponders -- would generate revenue for INTELSAT through other usages.

[44] For example, a Signatory with approximately a 2 percent investment share (which would rank in within the top ten shareholders) would derive only around $160,000, while other Signatories with roughly a 1 percent investment share would derive about $80,000.

Against this token benefit, a foreign nation with protectionist laws or policies would have to weigh the risks that would befall any domestic service provider facing new competition. Particularly for those nations with the most protectionist views, it would seem irrational to subject their domestic service providers to falling market shares simply for the promise of a minute gain in INTELSAT or Inmarsat revenues.

Given these facts, the Commission should recognize that neither the "all routes" markets test nor the "most routes" markets test proposed for regulating COMSAT's use of INTELSAT or Inmarsat facilities domestically would serve either of the Commission's stated goals for this proceeding. Such regulation would not open foreign nations' domestic markets to U.S. satellite systems, and would only continue to deny U.S. consumers use of INTELSAT and Inmarsat facilities for domestic service, thereby reducing consumer welfare. It could also very well result in the "backlash" effect discussed above. In short, because either ECO-Sat approach would discriminate against COMSAT vis-a-vis its competitors to no purpose, adoption of either alternative would constitute arbitrary and capricious action under the Administrative Procedure Act.

C. Alternatively, If The Commission Adopts A "Home Market" Analysis, It Should Treat The United States As COMSAT's Home Market

As mentioned above, COMSAT is a U.S. corporation, owned by U.S. shareholders, that provides service in the United States subject to more regulation by

this Commission than any other service provider Thus, even if the Commission elects to invoke a "home market" analysis for purposes of domestic entry, it should recognize that COMSAT's home market is, in fact, the United States.

Any U.S. domestic service that COMSAT would provide using INTELSAT capacity would both originate and terminate in the United States; COMSAT thus would be the service provider for both links. Similarly a purely domestic mobile communication carried by COMSAT via Inmarsat would be subject to the jurisdiction of the Commission.[45] There is simply no "foreign" provider or administration relevant to a "home market" analysis for COMSAT

Second, insofar as COMSAT would provide incidental "reverse transborder" service to the United States, its rates for such services would be subject to Commission regulation. Commission policy currently allows other U.S. satellite companies to provide what formerly was denominated "transborder" service regardless of any reciprocity arrangements in the landing country; given this, there is no reason to continue to prohibit COMSAT from providing "reverse transborder" service to United States customers.

An approach based on such an appraisal of COMSAT's home market would be far more realistic than the current formalistic regime, by which the Commission relies

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[45] This would be true whether COMSAT were regarded as dominant in its provision of services, as its international services are currently classified, or as nondominant, as it would be domestically. Nondominant carrier rates are ultimately subject to Commission jurisdiction, even if that jurisdiction is seldom exercised.

on the identity of the country issuing a license for a separate satellite system as the key to the national "identity" of the satellite service provider, regardless of the actual citizenship of its owners.[46] Thus, the PanAmSat Orion, Globalstar,[47] and Iridium systems are deemed U.S. systems, despite the presence of significant foreign ownership, while INTELSAT and Inmarsat are deemed non-U.S. systems despite the presence of significant U.S. ownership. It would be far preferable to treat COMSAT's home market as the United States -- a clarification that reflects its origins, ownership, headquarters, and principal region of service.

III. THE COMMISSION SHOULD APPLY THE SAME PUBLIC INTEREST "EFFECT ON COMPETITION" TEST TO FOREIGN LICENSED GLOBAL NON-GEOSTATIONARY MOBILE SATELLITE SYSTEMS, RATHER THAN A CUMBERSOME AND UNNECESSARY "CRITICAL MASS" ANALYSIS

In the *DISCO-II Notice*, the Commission proposes to apply a "critical mass" test to non-U.S.-licensed global, non-geostationary, MSS systems.[48] COMSAT respectfully submits that such a test (however defined) is unnecessary and would suffer

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[46] *DISCO-I Order*, 11 FCC Rcd. 2429 (*passim*); *DISCO-II Notice* at ¶¶ 13-14, 19, 22-24.

[47] Globalstar is now organized under the laws of Bermuda.

[48] *Id.* at ¶¶ 44-47.

from essentially the same anticompetitive flaws as the "most markets routes" test proposed for regulating the use of INTELSAT and Inmarsat facilities.[49]

First, the evidence to date suggests that few of the major foreign markets are in fact closed to U.S.-licensed MSS providers. For example, Globalstar's Annual Report for 1995 indicates that it has already signed "exclusive service provider" agreements in 91 countries. Similarly, Iridium has signed gateway operators/investors in, *inter alia,* the Middle East, China, Africa, India, South America, Russia and the Pacific.[50] Thus, the assumption underlying the *DISCO-II Notice* that market entry for MSS systems is an immediate and serious problem requiring exertion of U.S. pressure by the FCC does not appear to be supported by emerging evidence. Moreover, given the trends shown by this data, the need for an entirely new FCC regulatory scheme for market access seems questionable.

Second, the proposal arbitrarily discriminates among similarly situated MSS providers. There is no relevant distinction between ICO Global Communications ("ICO") and the other three MSS operators in existence today. While Globalstar, Iridium, and Odyssey will use U.S.-licensed space segment facilities and ICO will not, the four otherwise face the similar challenges in securing authorizations and service agreements around the globe and confront the same enormous capital investment needs

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[49] *Id.* at ¶ 47.

[50] *See* Iridium, Inc., Securities and Exchange Commission Form S-1 at 29-32 (filed July 17, 1995).

-- factors which contribute to the significant foreign investments in all four MSS providers.[51] Moreover, because many of the investors and service providers also offer domestic telecommunications services in their home countries, all four entities can be deemed to have knowledge of, and potential influence with, foreign governments.

Instead of adopting a separate test for global MSS systems, the Commission should, once again, simply adopt the same public interest "effect on competition" in the U.S. domestic market test for these systems as it should adopt for geostationary satellite systems. This would promote consistency in Commission analysis, provide clear and understandable signals to the rest of the world, and benefit U.S. customers by facilitating competitive entry into the U.S. market. Moreover, as shown above, given that the clear trend and actual experience of U.S.-licensed MSS operators is seemingly positive in gaining foreign market access over time, the FCC's interest in fair competition and access to the U.S. market by foreign MSS systems can be squarely and better addressed by the effect on competition test.

[51] Non-U.S. investors own the majority of Iridium, for example, and the non-U.S. ownership stake is likely to increase as Motorola progresses toward its goal of reducing its ownership to 15 percent.

IV. THE PUBLIC INTEREST WOULD BE SERVED BY APPLICATION OF THE SAME "EFFECT ON COMPETITION" TEST TO RESTRUCTURED OR PRIVATIZED INTELSAT AND INMARSAT AFFILIATES FOR THE PROVISION OF DOMESTIC SERVICES

The *DISCO-II Notice* recognizes that serious efforts are underway to restructure or potentially privatize INTELSAT and Inmarsat operations.[52] These are the most important U.S. Government policy objectives regarding the INTELSAT and Inmarsat systems. There exists a specific, formal U.S. proposal for the restructuring of INTELSAT, endorsed by both the U.S. Government (including this Commission) and COMSAT. Intense discussions are also underway regarding a possible restructuring of Inmarsat. Given these efforts and the genuine U.S. interest in the final outcome of these proposals, the Commission should not now adopt a regulatory scheme applicable to IGO affiliates, subsidiaries, or successors that could generate opposition among other nations or cause to the U.S. restructuring initiatives to be rejected.[53]

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[52] *Id.* at ¶¶ 71-74.

[53] The *DISCO-II Notice* appears to treat ICO as a direct subsidiary or wholly owned affiliate of Inmarsat. Such treatment is inappropriate; ICO is a private, autonomous company that is not, under any reasonable definition, an IGO affiliate. Indeed, Inmarsat holds only a slightly more than 10 percent ownership interest in ICO, and approximately 50 other entities are investors in ICO as well. Nor is ICO an Inmarsat affiliate under the test adopted by this Commission only last November to define affiliates of foreign carriers. *See Market Entry and Regulation of Foreign-affiliated Entities*, 11 FCC Rcd. 3873, ¶ 78 (1995). Accordingly, COMSAT's discussion here of the appropriate approach to regulation of IGO affiliates, subsidiaries, or successors does not encompass ICO.

Unfortunately, the specific regulatory approach proposed in the *DISCO-II Notice* for treatment of any INTELSAT and Inmarsat affiliates doing business in the United States threatens to undermine the substantial progress already made to date to advance the U.S. restructuring initiatives. Two aspects of the *DISCO-II Notice* are particularly problematic. These are:

- the Commission's suggestion that existing authorizations to use INTELSAT and Inmarsat services may not transfer automatically to INTELSAT and Inmarsat affiliates; and
- the proposal to impose an additional burdensome layer of FCC review into the details of the relationship between the privatized "affiliate" and INTELSAT and Inmarsat.

For the reasons set forth below, these proposals will have a harmful effect on the U.S. restructuring initiatives. Accordingly, the Commission should make clear that existing authorizations for use of the INTELSAT and Inmarsat systems will be unaffected by the restructuring of the IGO systems, and that the "effect on competition test" in the U.S. market is the only test that would apply to future services to be offered via the facilities of restructured affiliates.

First, paragraph 74 of the *DISCO-II Notice* states the Commission's tentative belief that existing authorizations to use INTELSAT and Inmarsat should not "automatically transfer to these organizations' subsidiaries, affiliates, or successors." COMSAT respectfully submits that *this proposal would seriously damage the ability of the United States to shepherd its preferred restructuring plans successfully through these international organizations*. Put simply, if members of the international

community -- particularly the INTELSAT and Inmarsat Signatories and Member States -- have any reason to believe that the existing authorizations from this Commission will not convey to INTELSAT or Inmarsat affiliates or successors, and the respective affiliates' ability to do business in the U.S. is threatened, then the entire rationale for agreeing to the U.S. restructuring initiatives would evaporate. The FCC should abandon this proposal without further ado, and affirmatively state that the United States will fully honor and transfer existing authorizations and agreements currently applicable to use of the INTELSAT and Inmarsat systems to be provided in the future via affiliates of those systems.

Second, the *DISCO-II Notice* proposes that an IGO affiliate or subsidiary would first have to satisfy "the normal ECO-Sat test to both the home and route markets of the affiliate" for each proposed "service segment" -- and then *also* satisfy an additional public interest review, which would include an analysis of (1) the affiliate or subsidiary's "independence from any IGO or its Signatories"; (2) "the extent to which the affiliates' structure is consistent with U S. policy"; and (3) the "undoubted[ ] ... other factors that should be considered in any particular case."[54] As a preliminary matter, and as discussed in Section III *supra*, the Commission should not apply any form of the "home market" or "routes" test at all, but simply a public interest effect on competition test. Moreover, the overlay of a highly-intrusive Commission review of the IGO affiliate's corporate relationship to the IGO would actually work to hamper the

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[54] *DISCO-II Notice* at ¶ 73.

restructured affiliates by subjecting them to an additional layer of regulation compared with currently unregulated competing separate satellite systems. Such a proposal would unnecessarily skew competition in favor of U.S. licensed systems and create powerful disincentives for foreign countries to support restructuring.

This is the wrong time and place to adopt an ECO-Sat scheme prospectively applicable to INTELSAT or Inmarsat affiliates that currently do not exist, especially when weighed against the prospect that by doing so, the Commission could seriously damage the ultimate outcome of the U.S. IGO restructuring initiatives now underway. The more prudent course, and the one most likely to balance both foreign policy and competition concerns, is to proceed with the "effect on competition" test.

V. THE COMMISSION SHOULD ALLOW SPACE SEGMENT PROVIDERS THE OPTION OF MAKING THE APPROPRIATE ENTRY SHOWING, RATHER THAN LIMITING THAT PREROGATIVE TO EARTH STATION OPERATORS

The *DISCO-II Notice* proposes that the Commission use U.S. earth station licenses as the "procedural vehicle" for regulating the entry of non-U.S. satellite systems into the domestic services marketplace.[55] COMSAT respectfully suggests that this approach is unnecessary with respect to authorizing the use of COMSAT's

[55] *Id.* at ¶ 15.

INTELSAT and Inmarsat capacity for domestic services, which is a matter that, as demonstrated above, can be decided within this proceeding.[56]

If, however, the Commission concludes that additional steps are necessary following this proceeding to review the use of IGO satellites as well as other non-U.S. satellites, it should not adopt the earth station licensing approach as the agency's only procedural option.[57] The public interest would be better served if, as an alternative, the Commission afforded space segment providers -- and in lieu of the earth station operator's showing -- the option of making the necessary "effect on competition" showing for entry into the U.S. market. This voluntary alternative procedure would better accommodate the range of factual considerations that may arise with respect to various types of services -- and thus promote speedier delivery of those services to customers.

Relying on earth station licensing as the exclusive regulatory nexus between the Commission and non-U.S. satellite systems suffers from several deficiencies. The procedure obviously would be both complex and indirect; it would place a potentially significant burden (especially under any form of an ECO-Sat analysis) on a party (the

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[56] *See supra* notes 23-24 and accompanying text. The Commission proposes no change with respect to international services provided via those systems.

[57] The *DISCO-II Notice* is silent with respect to the regulatory treatment of mobile earth stations used for such services as MSS, presumably because the FCC recognizes that licensing such terminals would be wildly impractical. COMSAT agrees that licensing mobile earth terminals would be a cumbersome and onerous "regulatory vehicle" that might well stifle the growth of new mobile services.

earth station applicant) who may have little access to relevant facts.[58] As such, the approach proposed in the *DISCO-II Notice* may be counter-productive. The prospect of dozens, if not hundreds, of earth station operators having to amass extensive documentation to support an FCC application to use non-U.S.-licensed systems would likely deter many, if not most, earth station operators from making the effort to use competitive non-U.S. systems at all. This would be interpreted as U.S. protectionism at its finest, and would clearly undermine the FCC's primary goal of encouraging open foreign market access.

Instead, the Commission should, as an alternative, allow the space segment provider voluntarily to make the "effect on competition" showing. This would *not* constitute a second U.S. licensing procedure. As the *Notice* recognizes, redundant licensing would serve no useful purpose.[59] Rather, such a procedure would simply provide a more efficient and effective method for ensuring that use of the space segment for domestic services in the United States would meet the test adopted in this proceeding and verify that the space segment would comport with U.S. spectrum management concerns. This modification will expedite the implementation of FCC open market access policies significantly.

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[58] The Commission should not assume that earth stations are operated by the satellite operators. COMSAT, for example, does not operate INTELSAT earth stations.

[59] *DISCO-II Notice* at ¶ 14.

VI. THE COMMISSION SHOULD NOT, AND NEED NOT, ATTEMPT TO IMPOSE U.S. TECHNICAL STANDARDS ON NON-U.S. SYSTEMS

Whatever procedural vehicle is used for Commission oversight of non-U.S. systems that provide domestic services, the agency should not require that non-U.S. systems meet the technical standards imposed on satellites licensed by the United States.[60] Such regulation would be both pointless from an engineering standpoint and needlessly provocative from a foreign-relations one.

The only justification stated in the *DISCO-II Notice* for this burden is protection of the Commission's two-degree spacing policy. Moreover, there is no practical need for the rule. First, anyone who operates an earth station in the United States today (whether an American or foreign entity) that communicates with a satellite in geostationary orbit in the C- and Ku-bands is already governed by current FCC transmission requirements that are tailored to the two-degree spacing rule. Furthermore, INTELSAT is currently implementing two-degree spacing in the Indian Ocean Region and is studying this for other ocean regions as well.[61] But any attempt by the Commission to force an immediate transition to two-degree spacing worldwide would actually harm the public interest because it would force INTELSAT and other

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[60] *Id.* at ¶ 54.

[61] Two-degree spacing is impractical and not required for mobile satellites at L-band. No showing has been made that compliance with the two-degree policy is necessary or even attainable in L-band.

satellite systems to sacrifice the frequency re-use levels they now achieve -- a level approximately twice as efficient as that achieved by current domsat technology.[62] There is no technical justification for FCC requirements that would create a major waste of precious frequency spectrum. Yet even if this unnecessary burden were adopted with respect to as-yet unlaunched non-U.S. satellites, the *DISCO-II Notice* provides no rationale for failing to grandfather non-U.S. satellites already in operation, just as the Commission did for U.S. satellites after the change in spacing policy.[63]

Furthermore, requiring that non-U.S. systems (including those already operating) meet American technical standards would likely strike foreign nations as an undesirable example of U.S. overreaching. The Commission already recognizes that outright attempts to mandate U.S. licensing of non-U.S. systems would likely offend foreign administrations, who "understandably expect the U.S. to accept the sufficiency of satellite licensing procedures abroad -- as we expect them to accept the sufficiency of our procedures."[64] The proposal for imposing U.S. technical standards is no different. It might well provoke some nations to impose their own conflicting technical

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[62] Unlike the domsats' use of linear polarization techniques, INTELSAT (and Arabsat) satellites employ circular polarization, which allow for delivery of four to six times the number of circuits from the same frequency allocation. By contrast, the domsat polarization scheme, as a practical matter, limits frequency re-use to perhaps only two to three times. Domsats use the less-efficient techniques because it is believed that the earth stations used with linear polarization are less costly, and many domsats do not require the large number of circuits that INTELSAT needs.

[63] *DISCO-II Notice* at ¶ 55.

[64] *Id.* at ¶ 14.

standards on U.S. systems seeking to offer services to such countries. The ITU coordination process already resolves the fundamental issues of avoiding interference; the Commission should not -- contrary to its stated goal in this proceeding -- erect a new barrier to "foreign" entry in the form of U.S.-specific technical standards.

VII. THE COMMISSION SHOULD NOT, AND NEED NOT, ATTEMPT TO IMPOSE U.S. FINANCIAL REQUIREMENTS ON NON-U.S. SYSTEMS

The *DISCO-II Notice* also proposes -- with even less justification -- to require that non-U.S. satellite systems demonstrate compliance with the Commission's "financial" standards for the service offered.[65] The logic behind this proposal is confusing. The only rationale advanced is to ensure that service is provided "in a timely manner and without interference to U.S. satellite systems."[66]

Such a rule, however, would serve no apparent purpose with respect to non-U.S satellite facilities that are *already* operating.[67] In such cases, the satellite is either technically capable of providing the service or it is not, and its financial state is irrelevant. Nor does the proposed financial demonstration have any nexus with the

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[65] *Id.* at ¶ 61.

[66] *Id.*

[67] Furthermore, with respect to new INTELSAT and Inmarsat satellites, such a requirement would be redundant. The Commission already has a voice in reviewing the finances of INTELSAT and Inmarsat procurement through its authorization of COMSAT investments in, and participation in launches of, new satellites. Moreover, no question has been raised as to the financial soundness of either IGO system.

Commission's legitimate interference concerns, which are addressed through other rules. Finally, mandating compliance with unnecessary financial rules would likely prove to be as provocative as mandating compliance with unnecessary technical rules. Foreign nations might well deem the rule an invitation to impose their own conflicting financial rules on U.S. systems seeking to offer services within the foreign nation's domestic market.

VIII. THE COMMISSION NEED NOT ADOPT ANY LICENSING REQUIREMENT FOR RECEIVE-ONLY EARTH STATIONS

In 1993, the Commission proposed to eliminate licensing requirements for receive-only international earth stations.[68] In that proceeding, the FCC recognized that receive-only ("r/o") earth stations are "passive devices" that "do not cause problems with respect to spectrum conservation or harmful interference."[69] The agency also noted the existence of compelling policy reasons warranting the deregulation of international receive-only earth stations operating with the INTELSAT system,[70] and that deregulation would also conserve scarce Commission resources.

Notwithstanding the FCC's 1993 proposal, paragraphs 75-80 of the *DISCO-II Notice* propose to require licensing of r/o earth stations receiving signals from non-

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[68] *Elimination of Licensing Requirement for Certain International Receive-Only Earth Stations*, 8 FCC Rcd. 1720 (1993).

[69] *Id.* at 1722.

[70] *Id.*

U.S. licensed systems, including INTELSAT. The Commission states only that, in the absence of licensing, that it would have "no way to ensure that these radio communications, conducted within the United States, are consistent with U.S. policy concerning competition and spectrum management."[71] These policy concerns, however, are not explained further in the *DISCO-II Notice*. Moreover, it is difficult to see how reversing the FCC's proposal of a scant three years ago would advance any U.S. interests.

First, a licensing regime for r/o earth stations would have no meaningful effect on "radio communications" or spectrum management. R/o earth stations are, by definition, "passive devices." Simply put, a satellite's signals will fall anywhere within the satellite's footprint. This physical fact holds true whether the agency licenses r/o earth stations or not. Regulating r/o earth stations by licensing would have no effect on the use of spectrum in the United States, and will have no effect whatsoever on interference coordination efforts. Spectrum coordination is accomplished through the ITU process.

Second, the *DISCO-II Notice* does not identify what "competition" issues it would attempt to address through licensing r/o earth stations. If anything, licensing r/o earth stations *impedes* competition by creating a regulatory hurdle for the introduction of new and competitive services, and by giving incumbent firms an opportunity to block new entrants. It is difficult to see how requiring the licensing of "passive" r/o

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[71] *DISCO-II Notice* at ¶ 77.

devices would achieve any pro-competitive objective. In any event, receive-only earth station operators have even less reason or ability than transmit earth station operators to influence non-U.S. system operators or the foreign nations that license them.

Indeed, even the present United States policy towards r/o earth stations is more regulatory than the policies of many other nations. As the Commission noted in 1993, "a number of foreign countries, including members of the European Community," already permit unlicensed r/o earth stations to receive INTELSAT transmissions.[72] COMSAT submits that the FCC should continue to pursue the deregulatory course proposed in 1993, and eliminate any licensing requirement for r/o earth stations.

Finally, even if the agency were to require licensing of r/o earth stations, it should retain the existing policy for r/o earth stations that operate with the INTELSAT K satellite or receive INTELNET I services without a license.[73] As the Commission has stated previously, a licensing scheme for the small earth stations made feasible by the high power and large coverage area of satellites such as the INTELSAT K would "be burdensome and possibly hinder the rapid introduction of these new services."[74] Nor is there any reason for the FCC to disturb its decision of more than a decade ago that r/o INTELNET I earth stations are not subject to the licensing requirements.[75]

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[72] 8 FCC Rcd. at 1721.

[73] *See DISCO-II Notice* at ¶ 79.

[74] 8 FCC Rcd. at 1721.

[75] *Id.*

The *DISCO-II Notice* does not suggest that the unlicensed operation of such earth stations have created any problems over the past 12 years, and there is simply no justification shown for reregulating such earth stations at present. Furthermore, in view of the superior technical precision of new INTELSAT satellites, which are even more advanced than the INTELSAT K, there should be no basis for a concern that the current series of INTELSAT satellites present any interference problems that would require licensing of r/o stations to promote U.S. spacing policies. Thus, for these reasons, the Commission should adopt its 1993 proposal and eliminate the licensing requirement for all international receive-only earth stations.

CONCLUSION

For the foregoing reasons, COMSAT respectfully urges the Commission to promote competition in U.S. markets by granting it immediate authority to provide domestic services via the INTELSAT and Inmarsat systems, to adopt policies that will

advance -- rather than hinder -- the important U S initiatives to restructure INTELSAT and Inmarsat, and to take other actions consistent with these comments.

Respectfully submitted,

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