

systems in multiple countries, it would be nearly impossible for U.S. operators to predict or meet all the necessary requirements.

The Commission should, therefore, restrict its rules and policies regarding authorizations for earth stations accessing foreign satellites to consideration of the impact of grant on existing U.S. systems and markets. Consistent with current licensing processes, the Commission should consider: (1) the legal qualifications of the earth station applicant; (2) potential interference to or technical restrictions on existing or proposed U.S. systems as a result of grant of the application(s); (3) public interest considerations implicated by allowing the foreign satellite system to serve the U.S. market, including the impact on competition and the availability of spectrum for licensing U.S. systems; and (4) the status and likely result of the ITU coordination process for the non-U.S. satellite system.

F. Harmful Interference to U.S. Systems Should Be Avoided.

The Commission is justifiably concerned that any regime for authorizing service by foreign satellite systems should provide a means to regulate the potential for interference into U.S.-licensed satellite systems within the U.S. NPRM, ¶ 61. In this regard, the Commission concedes that "we lack the power to order a non-U.S. space station to cease operating or otherwise remedy harmful interference." NPRM, ¶ 49.

The Commission can address this concern by requiring the earth station applicant to submit an interference analysis which demonstrates the absence of

the potential for interference into existing or proposed U.S. systems. For example, such analyses may be required to demonstrate, in the alternative:

- There will be no interference to existing or proposed U.S. satellite systems; or,
- The existing or proposed U.S. satellite systems with which the non-U.S. system might interfere have consented to grant of the application.

Both these procedures are used by the Commission to resolve interference issues in existing rules and services. An interference analysis can be reviewed objectively and, if necessary, procedures to avoid demonstrated interference can be implemented. On the other hand, if the potentially affected U.S. systems make a business decision not to object to entry and/or to negotiate an interference agreement, the Commission has reasonable assurance that protection for existing U.S. systems has been achieved.

G. Market Entry Should Be Evaluated as a Public Interest Consideration.

The Commission should consider competitive opportunities in the home and route markets of the non-U.S. system as one public interest factor that may warrant denial of an otherwise technically-qualified application. Loral Space and LQL agree that consideration of such competition issues are likely to provide an incentive to foreign administrations to open their markets to U.S.-licensed systems.

The Commission proposes that the earth station applicant would have the burden of establishing that there are no *de jure* barriers to entry in the home/route markets of the non-U.S. system, and that an opponent would have the burden of establishing that there are *de facto* barriers. NPRM, ¶¶ 39, 42. This distribution of burdens may be useful; but, as in the Commission's rules for domestic applicants, opponents of the application should be permitted to raise any and all technical and public interest objections.

The opponents of an application are likely to raise relevant facts for the Commission's review regarding both legal and *de facto* barriers. In this regard, the Commission should eliminate its proposal to require U.S. satellite systems to provide annual reports on their progress in obtaining access to foreign markets. See NPRM, ¶ 39. Such reports would be less useful than information provided by an opponent to a specific application, because objecting parties are more likely provide current information on the status of a market. Furthermore, with the case-by-case analysis proposal herein, it would not be necessary to impose a new, burdensome collection requirement on the U.S. satellite industry.

H. Different Analyses Should Be Applied for Each Satellite Service.

The NPRM proposes to authorize foreign-licensed satellites in the Fixed-Satellite Services (FSS), Mobile-Satellite Services (MSS) and Direct-to-Home Satellite Services (DTH) to access the United States provided that the foreign licensing markets offer U.S. satellites effectively competitive opportunities. Loral

Space and LQL agree that the Commission's proposed framework to regulate entry should be applied "on the specific service that the non-U.S. system seeks to provide to, from, or within the United States." NPRM, ¶ 33. FSS, MSS and DTH differ significantly and need to be evaluated on a service-by-service basis.

However, Loral Space and LQL are not persuaded that a uniform policy should be applied to all three services. Over the years, the Commission has adopted independent licensing policies for these different satellite services.²⁶ These different sets of rules arose because of fundamentally different policy and technical concerns involving the various satellite services. For example, issues such as whether the service is content-based or not, whether limited geostationary orbital positions would prohibit multiple entry, or whether to evaluate the applicant's financial qualifications were considered by the Commission in devising varying rules for the different satellite services.

Similarly, the impact that foreign satellite entry will have on these services varies among the different satellite services. Given that these satellite services will be affected differently by non-U.S.-satellite systems, a uniform entry framework is unjustified. Rather than adopting a uniform framework, the Commission should oversee foreign entry into each satellite service independently, considering each service's unique characteristics and policy concerns.

For example, the Commission's proposal to use the ECO-Sat test in the DTH context is inconsistent with its recent decision to use a competitive bidding

²⁶ See, e.g., 47 C.F.R. §§ 25.140, 25.141, 25.142, 25.143, and 100.1 et seq.

process for DTH orbital positions. If an ECO-Sat test were adopted, U.S. satellite systems would be encouraged to "shop around" the globe for the cheapest DTH orbital slots to serve the U.S. Such a result would jeopardize the newly-adopted competitive bidding rules and affect the value of DTH slots recently auctioned, as well as any future competitive bids.

In addition, the Commission's DTH rules need to be reconciled with its proposal in this NPRM to permit non-U.S. satellites, and presumably foreign-owned satellites, to provide DTH service to the United States. Under the Commission's current rules, foreign investment in U.S.-licensed DTH is restricted²⁷ beyond the restrictions contained in Section 310 of the Act. The Commission should not prohibit U.S.-licensed DTH systems from foreign investment while permitting foreign investors to enter the U.S. DTH market directly. Therefore, the Commission should revise its current foreign ownership regulations of U.S.-licensed DTH systems in harmony with the rules adopted in this proceeding.

IV. THE COMMISSION MUST ENSURE THAT AUTHORIZING ACCESS TO SATELLITE SYSTEMS OPERATED BY INTERGOVERNMENTAL SATELLITE ORGANIZATIONS DOES NOT DISTORT COMPETITION.

The Commission points out that application of its ECO-Sat test is problematic in the context of applications to access satellite systems operated by intergovernmental satellite organizations (ISOs). NPRM, ¶ 64. ISOs have no

²⁷ See 47 C.F.R. section 100.11.

single "home" market, and, it may not be appropriate to treat the coordinating administration as the home country. The Commission expresses concern that authorizing service by a non-U.S. system with more routes than U.S. systems will distort competition because they can offer customers broader service. NPRM, ¶ 26. On the other hand, the Commission also claims that it is not appropriate to impose the market barriers of every country on the ISO because it may unduly and unfairly restrict service from the ISOs.

The difficulty of applying the ECO-Sat test to what would be very significant competitors to U.S. systems reveals the shortcomings of the model as much as the unique nature of ISOs. The Commission should adopt an "even-handed" approach to authorizing non-U.S. satellites that does not give a preference to ISOs based simply on their ownership.

With respect to affiliates of ISOs, the Commission notes that ISOs are creating private, commercial affiliates, and that these successors should not be permitted to leverage the benefits of ISOs to unfairly distort competition. NPRM, ¶ 73. The Commission proposes that successors to ISOs should be treated like other non-U.S. systems and be subject to the ECO-Sat test, for both home and route, and that it would consider public interest factors including the successor's independence from the ISO. This proposal does not appear to resolve the Commission's concerns about affiliates of ISOs. In order to address market distortions, the Commission should consider not just the "independence" of the affiliate, but also whether it enjoys the benefits of its predecessor which could

have distorted the satellite service market. If it does enjoy such benefits, then it is in the same position to diminish competition, whether independent or not, and the same analysis applied to the parent ISO should be applied to the affiliate.

V. CONCLUSION

Loral Space and LQL recommend that the policies proposed in the NPRM be modified as described above.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, William D. Wallace, hereby certify that I have on this 15th day of July 1996, caused copies of the foregoing Comments of L/Q Licensee, Inc. and Loral Space & Communications Ltd. to be delivered via hand delivery (indicated with *) or by U.S. mail, postage prepaid, to the following:

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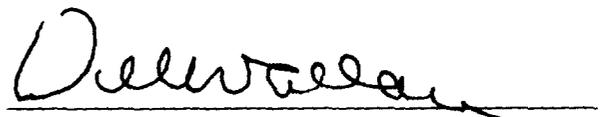
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