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BEFORE THE

Federal Communications Commission

WASHINGTON, D.C. 20554

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In the Matter of	)	
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Amendment of the Commission's Regulatory Policies to Allow Non-U.S.-Licensed Space Stations to Provide Domestic and International Satellite Services 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

To: The Commission

COMMENTS OF TRW INC.

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SUMMARY

TRW strongly supports the Commission's proposal, in its NPRM in this proceeding, to condition access for non-U.S.-licensed space station operators to the U.S. market on market access for U.S.-licensed space station operators abroad. TRW also supports the Commission's tentative decision to regulate non-U.S.-licensed space station access to the U.S. market primarily through the licensing of Earth stations that communicate with those space stations.

The Commission must not, under any circumstances, require the re-licensing in the United States of space stations that have been or will be coordinated, licensed or notified to the International Telecommunication Union ("ITU") by foreign administrations. Such a requirement would surely provoke foreign administrations to establish similar requirements of their own, thereby delaying or possibly preventing foreign market entry by U.S.-licensed space stations including TRW's non-geostationary Mobile Satellite Service ("MSS") system.

For the same reason, the Commission should not require U.S. Earth station applicants or the non-U.S.-licensed space stations with which they seek to communicate to file the legal, financial and other information regarding those space stations that it requires from U.S. licensees providing particular services. The Commission should obtain the technical information that it needs in order to determine whether communications between U.S. Earth stations and non-U.S.-licensed satellite systems will comply with U.S. and ITU operational standards by requiring that Earth station applicants include it in their applications.

The Commission is correct in its tentative conclusion that the prospect of non-U.S.-licensed satellite systems providing MSS in the U.S. market raises unique regulatory concerns that cannot be addressed adequately by the Commission's proposed basic Effective Competitive Opportunities test for satellites (the "ECO-Sat" test). TRW therefore urges the Commission to apply a "home markets"/"critical mass" test (instead of the "home market"/"route market" test that it proposes to apply to other services) to applications by U.S. Earth station operators and users seeking to gain access to non-U.S.-licensed MSS systems. Thus, the Commission should require: (1) that the "home markets" of a non-U.S.-licensed MSS system — i.e., the markets of the nations coordinating and/or licensing the system — be open to U.S.-licensed MSS systems before it grants the non-U.S.-licensed MSS system access to the U.S. market; and, in addition, (2) not permit a non-U.S.-licensed MSS system to serve the U.S. market until a "critical mass" of the national markets of foreign investors with direct and indirect financial interests in the satellite system is opened to all U.S.-licensed MSS systems.

In order to take account of the treaty-based heritage of subsidiaries, affiliates and successors (together, "Spin-Offs") of Intergovernmental Organizations ("IGOs") and the ongoing ties between certain IGOs and their Spin-Offs, the Commission should apply a more stringent "critical mass" test to applications for authority to communicate with the MSS systems of IGO Spin-Offs than to applications to access the MSS systems of historically private, unaffiliated entities. More specifically, Earth station applicants should be permitted to access the MSS system of a non-U.S.-licensed, historically private, unaffiliated entity only once 80 percent of the total population of the national markets of the system's investors can be served by U.S.-licensed MSS

systems. In contrast, the Commission should permit a U.S. Earth station to communicate with the MSS system of an IGO Spin-Off only once:

- U.S. -licensed MSS systems have access to 80 percent of the total population of all nations represented by entities investing directly or indirectly in the IGO Spin-Off's MSS system; and
- U.S.-licensed MSS systems have access to the top 10 markets (ranked by population) represented by nations or other entities investing directly or indirectly in the IGO Spin-Off's MSS system.

So as to reduce the lingering anticompetitive effects of previous ties between IGOs and their Spin-Offs, the Commission should apply this more stringent "critical mass" test to Earth station applications seeking authority to access the MSS system of an IGO Spin-Off for five years from the date that all formal ties between the IGO and its Spin-Off are severed. Once those five years have elapsed, the Commission should make Earth station applications for authority to communicate with that system subject to the "critical mass" test for communicating with non-U.S.-licensed, historically private MSS systems.

TRW concurs with the Commission's proposal to focus its ECO-Sat test on the specific services that a non-U.S.-licensed space station or satellite system would provide in the United States via a proposed Earth station. The Commission must be careful, however, to apply any service categories that it adopts in a flexible manner as it examines the state of competition in foreign markets for comparable services, and must make its decisions on Earth station applications based on the service distinctions drawn by the particular foreign market in question.

As the Commission proposes, it should examine both de jure and de facto barriers to foreign market entry by U.S. satellite operators in the relevant foreign countries in applying the ECO-Sat test to Earth station applications. The Commission should not, however, require U.S.-

licensed satellite operators to inform it in writing of all foreign destinations where they are permitted to provide service and the services they are permitted to provide there as a means of examining de jure entry barriers in foreign markets. Instead, the Commission should maintain its own objective list of countries whose markets are open to U.S.-licensed satellite operators for certain services or service combinations, based on its own previous findings and decisions. The Commission should make use of this list with the recognition that a foreign nation's grant of market access to a single U.S. satellite operator to provide a particular service cannot reasonably be considered prima facie evidence that no de jure barriers exist to entry by other U.S. satellite operators, whether for that service or other satellite services.

TRW supports the Commission's proposal to place on Earth station applicants the burden of demonstrating that no de jure barriers exist to market entry by U.S. satellite operators in the foreign nations to be examined under the applicable ECO-Sat test. The Commission should also place on such applicants the burden of demonstrating that no de facto market entry barriers identified by the Commission or by opponents of the application exist in those nations. Earth station licensees communicating with non-U.S.-licensed space stations should be required to keep the Commission apprised of any changes in the de jure or de facto restrictions on access by U.S.-licensed space stations to the relevant foreign markets, and should revisit the authorization of any Earth station upon learning of the establishment of any such market entry barriers.

The Commission should not accept Earth station applications seeking authority to access a non-U.S.-licensed MSS system until that system has reached the point of development at which it can be evaluated using the "home markets"/"critical mass" test, or any other ECO-Sat test that the Commission chooses to employ in evaluating such applications. Therefore, the

Commission should only accept such applications once the non-U.S.-licensed MSS system is operational, or based upon the applicant's certification that the system will be operational within one year from the date that the application is filed.

After the Commission applies its ECO-Sat test, it should, as it proposes in the NPRM, examine other factors that bear on whether grant of an Earth station application seeking to access a non-U.S.-licensed space station is in the public interest, convenience and necessity. TRW supports the Commission's tentative conclusion that it should devote particular attention to examining such factors in evaluating Earth station applications for authority to communicate with the satellite systems of IGO Spin-Offs. In particular, the Commission should focus this inquiry on the extent to which a Spin-Off is truly independent of the IGO that created it, and of the IGO's Signatories.

Lastly, TRW agrees that the Commission should expand the "no special concessions" condition that it currently imposes on U.S. space station licensees so as to include concessions that unfairly disadvantage any competing satellite operator, whether that competitor is licensed by the United States or a foreign administration. The Commission should not impose this additional obligation on U S. space station licensees, however, unless it also makes Earth station authorizations for communications with non-U.S.-licensed space stations subject to compliance by the non-U.S.-licensed satellite operator with the same "no special concessions" conditions.

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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

To: The Commission

COMMENTS OF TRW INC.

TRW Inc. ("TRW"),[1] by its attorneys and pursuant to Sections 1.415 and 1.419 of the Commission's rules, hereby comments on the Commission's Notice of Proposed Rule Making in

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[1] TRW has been authorized to construct, launch and operate a satellite system in the Mobile Satellite Service Above 1 GHz (the "MSS Above 1 GHz"). See TRW Inc. (Order and Authorization), File Nos. 20-DSS-P-91(12), CSS-91-015, 17-SAT-LA-95, 18-SAT-AMEND-95 (DA 95-130), 10 FCC Rcd 2263 (1995); Erratum, 10 FCC Rcd 3924 (1995); recon. denied (FCC 96-279), slip op. (released June 27, 1996).

the above-captioned proceeding.[2] TRW applauds the Commission's proposal to condition access for non-U.S.-licensed space station operators to the U.S. market on market access for U.S.-licensed space station operators abroad, and supports its tentative determination to regulate non-U.S.-licensed space station access to the U.S. market primarily through the licensing of Earth stations that communicate with such space stations.[3] Under no circumstances should the Commission require the re-licensing in the United States of space stations or satellite systems[4] that have been or will be coordinated, licensed or notified to the International Telecommunication Union ("ITU") by foreign administrations. Foreign administrations are certain to respond to any such requirement by establishing re-licensing measures of their own that would inevitably delay or prevent foreign market entry by U.S.-licensed space stations such as TRW's Odyssey™ system.[5]

TRW also supports the Commission's tentative finding that the prospect of non-U.S.-licensed satellite systems providing Mobile Satellite Service ("MSS") in the U.S. market raises unique regulatory concerns that cannot be addressed adequately by the Commission's proposed

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2 IB Docket No. 96-111, CC Docket No. 93-23, RM-7931, File No. ISP-92-007 (FCC 96-210), slip op. (released May 14, 1996) ("NPRM").

3 Id. at ¶¶ 14-15

4 The use of the term "satellite systems" herein refers to constellations of satellites that collectively provide a service or set of services, and not to the Earth stations with which such satellite constellations operate.

5 Odyssey is a trademark of TRW Inc. Odyssey is a satellite telecommunications system which is to be comprised of a constellation of 12 satellites in medium Earth orbit.

basic Effective Competitive Opportunities test for satellites (the "ECO-Sat" test).[6] The Commission should therefore employ a "home markets"/"critical mass" ECO-Sat test — rather than the "home market"/"route market" test that it proposes to apply to other services — to applications by U.S. Earth station operators and users seeking to gain access to non-U.S.-licensed MSS satellite systems. Under the "home markets" portion of that test, the Commission should require that the market(s) of the nation(s) coordinating and/or licensing a non-U.S.-licensed MSS satellite system be open to U.S.-licensed MSS satellite systems before it grants the non-U.S.-licensed MSS system access to the U.S. market. In addition, the Commission should permit a non-U.S.-licensed MSS satellite system to serve the U.S. market only once a "critical mass" of the national markets of foreign investors with direct or indirect financial interests in the satellite system is opened to all licensed U.S. MSS systems.

TRW urges the Commission to take account of the treaty-based heritage of subsidiaries, affiliates and successors (together, "Spin-Offs") of Intergovernmental Organizations ("IGOs") — and, where applicable, the ongoing ties between IGOs and their Spin-Offs — by applying a more stringent "critical mass" test to applications for authority to communicate with the MSS systems of IGO Spin-Offs than that which it applies to applications seeking access to the MSS systems of historically private, unaffiliated entities. So as to acknowledge the intangible benefits that will continue to accrue to IGO Spin-Offs even after they have severed formal ties with the IGOs that created them, the Commission should continue to apply this "critical mass" test to Earth station applications for authority to communicate with the MSS systems of IGO Spin-Offs for five years

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[6] NPRM, FCC 96-210, slip op. at ¶¶ 44-47.

from the date that all formal ties between an IGO and its Spin-Off are severed.

TRW supports the Commission's proposal to focus its ECO-Sat test on the specific service or services that a non-U S.-licensed space station or satellite system would provide in the United States via a proposed Earth station.[7] The Commission should be careful, however, to apply any service categories that it adopts in a flexible and cautious manner when examining competition in foreign markets for comparable services, and make its decisions on Earth station applications based on the service distinctions drawn by the particular foreign market under examination.

TRW supports the Commission's proposal to examine both de jure and de facto barriers to foreign market entry by U.S. satellite operators in the relevant foreign nations in applying the ECO-Sat tests to Earth station applications. Instead, however, of relying on U.S.-licensed satellite operators to inform the Commission in writing of all foreign destinations where they are permitted to provide service and the services they are permitted to provide as a means of examining de jure entry barriers in foreign markets, the Commission should maintain its own objective list of countries whose markets are open to U.S.-licensed satellite operators for particular services or service combinations, based on its own previous findings and decisions. In employing this list, the Commission must recognize that a foreign nation's grant of market access to a single U.S. satellite operator to provide a particular service cannot logically be considered prima facie evidence that no de jure barriers exist to entry by other U.S. satellite operators — whether for that service or other satellite services.

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[7] See id. at ¶ 33.

The Commission is correct in proposing to place on Earth station applicants the burden of demonstrating that no de jure barriers exist to market entry by U.S. satellite operators in the foreign nations to be examined under the ECO-Sat test,[8] and it should also place on such applicants the burden of demonstrating that no de facto market entry barriers identified by the Commission or by opponents of the application exist in those nations. The Commission should also require Earth station licensees communicating with non-U.S.-licensed space stations to keep the Commission apprised of any changes in the de jure or de facto restrictions on accessibility of the relevant foreign markets to U.S.-licensed space station operators, and should revisit the authorization of any Earth station upon learning of the establishment of any such barriers to entry.

The Commission should not accept Earth station applications for authority to communicate with a non-U.S.-licensed MSS system until that system has been developed to the point that the application can be evaluated using the "home markets"/"critical mass" test (or any other ECO-Sat test that the Commission chooses to apply to such applications). TRW recommends that the Commission only accept such applications (a) once the non-U.S.-licensed MSS system is operational, or (b) based on a certification by the applicant that the system will be operational within one year from the date of filing of the application.

TRW supports the Commission's proposal to examine, after applying its ECO-Sat test, other factors that bear on whether grant of an Earth station application for authority to communicate with a non-U.S.-licensed space station or satellite system is in the public interest,

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[8] Id. at ¶ 39.

convenience and necessity.[9] The Commission is correct that it should devote particular attention to examining such factors in considering Earth station applications for authority to communicate with the satellite systems of IGO Spin-Offs.[10]

Finally, TRW supports the Commission's proposal to expand the "no special concessions" condition that it currently imposes on U.S. space station licensees to include concessions that unfairly disadvantage any competing satellite operator, be that competitor licensed by the United States or by a foreign administration. TRW can only support this proposal, however, if the Commission also makes Earth station authorizations for communications with non-U.S.-licensed space stations or satellite systems subject to compliance by the non-U.S.-licensed satellite operator with the same condition.

I. The Commission Should Use The Earth Station Licensing Process To Condition Access By Non-U.S.-Licensed Satellite Operators To The U.S. Market On Market Access For U.S.-Licensed Satellite Operators Abroad.

A. The Commission Should Only Permit Non-U.S.-Licensed Space Stations To Serve The U.S. Market If The Relevant Foreign Markets Permit Comparable Access To U.S.-Licensed Space Stations.

TRW supports the broad outlines of the Commission's proposal for the future regulation of access to the U.S. market by non-U.S.-licensed space stations. The Commission should expand on the equitable approach embodied in the policies and rules that it adopted in its

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[9] See id. at ¶ 48.

[10] See id. at ¶ 73.

proceeding on Market Entry and Regulation of Foreign-Affiliated Entities[11] by conditioning U.S. market access by non-U.S.-licensed satellite operators on market access for U.S. satellite operators in relevant markets abroad.

The Commission is correct that offering unrestricted domestic access to non-U.S.-licensed space stations could adversely affect competition in the United States by making it possible for the operators of such space stations to provide service in the U.S. market on routes that are closed to competition from U.S. space stations.[12] The policies now being adopted by other countries regarding the provision of service by foreign space stations within their borders evince similar concerns.[13] The Commission's proposed policy is therefore likely to find favor abroad, and will encourage competition in foreign markets for international satellite services while simultaneously fostering competition in the U.S. market for those services consistent with the public interest.

B. The Commission Should Regulate Entry To The U.S. Market By Non-U.S.-Licensed Space Stations By Means Of The Earth Station Licensing Process.

TRW supports the Commission's proposal to regulate future access to the U.S. market by

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[11] See Market Entry and Regulation of Foreign-Affiliated Entities, IB Docket No. 95-22, RM-8355, RM-8392 (FCC 95-475), slip op. at ¶¶ 19 et seq. ("Foreign Carrier Entry Order") (establishing a test for examining whether effective competitive opportunities exist for U.S. carriers in the destination markets of foreign carriers seeking to enter the U.S. international services market through affiliation with a new or existing U.S. carrier).

[12] See NPRM, FCC 96-210, slip op. at ¶ 11.

[13] See, e.g., Federal Telecommunications Law (Ley Federal De Telecomunicacions), Article 30, Diario Oficial, June 7, 1995 (Mexico).

non-U.S.-licensed space stations and satellite systems through the licensing of Earth stations that seek to communicate with such facilities from the United States.[14] As the Commission's rules already require parties seeking to communicate with non-U.S.-licensed space stations to obtain FCC authorization, the Commission need only incorporate in its procedures for evaluating Earth station applications the means of determining the accessibility of the appropriate foreign markets to U.S.-licensed space station operators in order to put the policies proposed in the NPRM into effect. Thus, the regulation of U.S. market access for non-U.S.-licensed space stations via the Earth station licensing process would not only be an administratively efficient use of the Commission's resources, but would also be familiar and readily comprehensible to foreign administrations and operators of non-U.S.-licensed space stations. Such a regulatory approach also would not expose the Commission to accusations of interference with the sovereign rights of the foreign nations with which non-U.S.-licensed space stations are associated, as there can be no question of the Commission's jurisdiction to license Earth stations operating from U.S. soil.

II. Under No Circumstances Should The Commission Attempt To Re-License Space Stations That Have Been Or Will Be Coordinated or Licensed By A Foreign Administration.

A. Re-Licensing Of Foreign-Coordinated or Licensed Space Stations Would Be Inefficient And Would Provoke Retaliatory Measures By Foreign Administrations.

TRW strongly supports the Commission's tentative conclusion that the public interest would not be served by requiring space stations that have already been coordinated outside the United States to obtain space station licenses from the Commission before serving the U.S.

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[14] See NPRM, FCC 96-210, slip op. at ¶¶ 14-15.

market.[15] As the Commission observes, such "re-licensing" would be redundant in that ITU procedures require each satellite to be registered and coordinated internationally by only one administration, and that administration generally will license the satellite in question as well.[16] Given the amount of time involved in the process of evaluating space station applications, such re-licensing would also be extremely wasteful of the Commission's resources.

Of far greater concern, however, is the response that any move to re-license foreign-coordinated or licensed space stations would engender from foreign administrations. The Commission notes that foreign administrations "would understandably expect the United States to accept the sufficiency of satellite licensing procedures abroad — as we expect them to accept the sufficiency of our procedures."[17] Were the Commission to disregard foreign licensing procedures by insisting on re-licensing foreign-coordinated or licensed space stations — or by requiring such space stations to participate in U.S. space station or satellite system processing rounds in order to obtain access to spectrum — foreign administrations would be certain to respond by establishing re-licensing procedures of their own.[18] Indeed, the Commission of the European Communities has been contemplating the establishment of a "comparative bidding process" by which it would select the satellite systems that it would permit to provide "satellite

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15 Id. at ¶ 14.

16 See id. But see n.27, infra.

17 NPRM, FCC 96-210, slip op. at ¶ 14.

18 Naturally, operators of foreign-coordinated or licensed satellite systems should remain free to participate in U.S. space station processing rounds should they for some reason wish to obtain an FCC authorization.

PCS services" (i.e., MSS) in the European Community.[19] Were TRW and other U.S. MSS system licensees required to obtain a separate space segment authorization from every nation or region to be served by their global MSS systems, such service would inevitably be greatly delayed and quite possibly denied in many parts of the world. Moreover, the cost of prosecuting applications before the administrations of the many foreign nations and/or regions to be served would place an enormous and possibly crippling financial burden on U.S. MSS system licensees. It is therefore vital to the U.S. MSS industry that the Commission set an example for the rest of the world by adhering to its proposal to regulate entry by non-U.S.-licensed satellite systems to the U.S. market by means of the Earth station licensing process instead.

TRW wishes to emphasize that the Commission has no need to assign spectrum to foreign-coordinated or licensed MSS systems by means of a U.S. processing round. The spectrum needs of such MSS systems that seek to provide service in the United States, and of U.S. MSS systems seeking to provide service abroad, can and should be addressed through the international coordination process pursuant to the ITU's Radio Regulations (including Resolution 46).[20]

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19 See Proposal for a European Parliament and Council Decision on an Action at the Union Level in the Field of Satellite Personal Communications Services in the European Union, COM(95)529 (Brussels, Nov. 8, 1995) at 6, 29, 30, 34-35.

20 It remains important, however, for the Commission to consider the need for a separate evaluation of the terms on which equitable access will be provided for MSS systems within the United States, and of the specific conditions that may be imposed on Earth station licensees for the provision of particular services in this respect.

B. The Commission Should Require Earth Station Applicants To File Only That Information Which It Needs In Order To Enforce Compliance With U.S. and ITU Operational Standards And Evaluate The Openness Of The Relevant Foreign Markets.

TRW also strongly urges the Commission not to attempt to seek from foreign-licensed space stations or satellite systems the various legal, financial and other information that it requires from U.S. licensees providing particular services.[21] The Commission simply has no need for this information. The imposition of any such filing requirements with respect to foreign satellite operators — even if such information is required to be supplied by the U.S. Earth station applicant — would be tantamount to the re-licensing of foreign-coordinated space stations or satellite systems, and would therefore likely result in the imposition of similarly burdensome requirements by foreign administrations. The negative effect of these requirements on the U.S. MSS industry would be the same as if U.S-licensed MSS system operators were obligated to obtain licenses from those administrations.

To be sure, the Commission does need certain technical information about non-U.S.-licensed space stations and satellite systems in order to determine the extent to which the operations of such facilities may interfere with those of U.S.-licensed satellites, Earth stations or other communications facilities, and to ensure that such interference can be prevented or remedied by effective means.[22] More generally, the Commission needs to be able to determine and enforce compliance by non-U.S.-licensed satellite operators serving the U.S. market with all

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21 See NPRM, FCC 96-210, slip op. at ¶¶ 2, 10, 60-61.

22 See id. at ¶ 10, 52-61.

U.S. and ITU operational standards.[23] The Commission can, however, obtain any necessary technical information by requiring that U.S. Earth station applicants include it in their applications. U.S. Earth station applicants should not be required to file any information regarding the non-U.S.-licensed satellite systems with which they wish to communicate beyond that which the Commission needs to prevent unacceptable interference and ensure compliance with U.S. and ITU operational standards, and that which it needs to make its analysis of the accessibility of the relevant foreign markets to operators of U.S.-licensed space stations and satellite systems.

III. The Commission Should Evaluate Earth Station Applications For Authority To Communicate With Non-U.S.-Licensed MSS Systems By Means Of A "Home Markets/"Critical Mass" ECO-Sat Test.

The Commission proposes in the NPRM to evaluate Earth station applications for authority to communicate with a non-U.S.-licensed space station or satellite system using a basic ECO-Sat test that focuses first on the "home market" for each non-U.S.-licensed satellite, and then on some or all of the "route markets" that the non-U.S.-licensed satellite seeks to serve from Earth stations in the United States.[24] As the Commission acknowledges, however — and as discussed further in this Section — the regulation of non-U.S.-licensed MSS systems seeking to provide MSS in the U.S. market involves issues that the Commission's basic ECO-Sat test cannot

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23 See id. at ¶¶ 52-57.

24 See id. at ¶ 18.

adequately address.[25] For this reason, TRW urges the Commission to evaluate Earth station applications to communicate with such systems using a "home markets"/"critical mass" test.

A. Non-U.S.-Licensed MSS Systems Should Not Be Permitted To Serve The U.S. Market Unless Their "Home Markets" Grant Access To All Licensed U.S. MSS Systems.

In the NPRM, the Commission tentatively concludes that, in applying its ECO-Sat standard to an Earth station application to communicate with a non-U.S.-licensed space station, it will generally look first at whether there are effective competitive opportunities for U.S. satellites in the country responsible for licensing and coordinating that space station.[26] The Commission dubs this country the space station's "home market."[27] The Commission offers three justifications for treating this country as the space station's "home market:" (1) In most cases, the licensing administration will lie within the footprint of the space station; (2) it is almost always true that the licensing administration has the most direct economic ties to the system in question; and (3) the licensing administration will be important in discussions to coordinate the space station internationally.[28] TRW agrees with the Commission's analysis in these respects; it is imperative that the Commission examine the national market of a non-U.S.-licensed satellite system's licensing and coordinating administration(s) as part of its ECO-Sat test, as that or those

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25 See id. at ¶¶ 44-47.

26 Id. at ¶ 22.

27 Id. In most instances, the same country will be responsible for both "licensing" (i.e., authorizing) and coordinating the space station. To the extent that two or more countries share these responsibilities, all should be considered "home markets" for purposes of the ECO-Sat test.

28 Id. at ¶¶ 23-25.

administration(s) will surely derive some economic benefit from the system's operations and will almost certainly grant that system market access.

In short, TRW urges the Commission to consider the national market of the administration that coordinates an MSS system and/or licenses that system as the system's "home market." Where the system is licensed by an administration that is different from the coordinating administration, as may be the case with certain MSS systems, the Commission should treat both countries as "home markets" of the satellite system. The Commission should not permit a non-U.S.-licensed MSS system to serve the U.S. market until all "home markets" of the system are open to U.S.-licensed MSS systems.

B. The Commission Should Permit U.S. Market Entry By Non-U.S.-Licensed MSS Systems Only Once A "Critical Mass" Of Their Investors' National Markets Are Opened To U.S. MSS Systems.

Under the "route market" portion of its proposed ECO-Sat test, the Commission proposes to examine the openness to U.S.-licensed satellite operators of the countries to and from which a non-U.S.-licensed satellite system would provide service in the United States. Where a particular country served by the satellite system does not offer market access to U.S.-licensed space stations to provide the same service, the Commission would deny the Earth station applicant the authority to provide service to or from that country in the United States. While the "route market" portion of the Commission's basic ECO-Sat test may be a useful tool for evaluating applications to communicate with non-U.S.-licensed space stations providing certain kinds of services, the Commission itself acknowledges that it is an inappropriate means of

regulating U.S. market entry by non-U.S.-licensed MSS systems.[29]

As the Commission observes, a voice transmission over an MSS system may travel to or from the United States via landlines before any radio communication takes place between an Earth station and an MSS space station.[30] Thus, the Commission's Earth station licensing process would be powerless to prevent such a transmission from travelling via a non-U.S.-licensed MSS system between the United States and a country that denies access to U.S. MSS systems. The Commission also notes that it may be unable to detect or prevent traffic that travels via any non-U.S.-licensed space station and lands in a country which offers market entry to U.S.-licensed space stations from travelling onward via landlines to countries whose markets are closed to U.S.-licensed space stations.[31]

TRW therefore urges the Commission to require not only that a non-U.S.-licensed MSS system's "home markets" be open to all licensed U.S. MSS systems, but that a "critical mass" of the national markets of foreign investors with any level of direct or indirect financial interests in the system be open to such U.S. satellite systems before the system can provide any service in the United States.[32] Because the size and scope of the undertaking involved in establishing a global MSS system generally requires financing from diverse international sources, the use of an investor-based "critical mass" test to evaluate U.S. Earth station applications to communicate

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29 Id. at ¶¶ 44-47.

30 Id. at ¶ 45.

31 Id. at ¶ 28.

32 Id. at ¶ 47. Indeed, the Commission may find a "critical mass" test appropriate as a means of evaluating Earth station applications for authority to communicate with non-U.S.-licensed space stations providing any ubiquitous service.

with non-U.S.-licensed MSS systems would promote the Commission's stated objective of encouraging the establishment of a U.S. MSS industry that provides truly global, ubiquitous service.[33] The use of such a test would also justly protect U.S. economic interests by ensuring that a non-U.S.-licensed MSS system cannot offer service between the lucrative U.S. market and the national markets of parties that have invested in the system — markets to which that system will almost certainly have ready access — until U.S. MSS systems are permitted to compete on an equal footing in those same foreign markets.

The Commission should base its MSS "critical mass" test (as further defined in Section IV, infra) on the link between the financial interests of investors in non-U.S.-licensed MSS systems and the benefits that their national markets will undoubtedly derive from those investments so as to ensure that the operators of non-U.S.-licensed MSS systems have both the incentive and the means to pressure those foreign administrations to remove any barriers to entry by U.S. MSS systems. As such, the MSS "critical mass" test would be readily defensible against any claim that it might be "arbitrary" or "capricious." The test would also be enforceable through an examination of competitive conditions in the national markets of an MSS system's investors, thus freeing the Commission from any obligation to police the routing of transmissions via landlines and/or third countries to and from foreign markets that are closed to U.S. MSS systems.

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[33] See Amendment of the Commission's Rules to Establish Rules and Policies Pertaining to a Mobile Satellite Service in the 1610-1626.5/2483.5-2500 MHz Frequency Bands, 9 FCC Rcd 5936, 5947-48 (1994).