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Before the
COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

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)
)
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)

IB Docket No. 96-11 |

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CC Docket No. 93-23
RM-7931

REPLY COMMENTS OF CHARTER

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REPLY COMMENTS OF CHARTER

Charter Communications International, Inc. ("Charter"), an FCC common carrier licensee under both Title II and III of the Communications Act, submits these reply comments pursuant to the Commission's Notice of Proposed Rulemaking released May 14, 1996, in the above-captioned matter ("NPRM").

I. SUMMARY

The opening round of comments, for the most part, cautioned the Commission against the adoption of rules, ECO-Sat or otherwise at this time, other than deregulation of receive-only U.S. earth stations receiving signals from foreign satellites. In the event, nevertheless, that the FCC were determined to adopt the ECO-Sat test, many of the opening comments urged major carve-outs of specified services or major modifications of the NPRM's proposals. Thus, the opening

round confirmed Charter's "go-slow" recommendations, and provided additional reasons that support Charter's position herein.

In its opening comments, Charter submitted that it would be premature for the Commission to adopt rules at this stage, given the complexity of the issues, the paucity of specific proposals in the NPRM, and the absence of any findings showing a need for any rules. Charter noted that the NPRM did not make the necessary findings to support the proposed rules; did not set forth the actual ills that the rules were supposed to cure; and did not even identify the foreign satellites or their actual or expected volumes of U.S. international traffic, except for specific mention of the intergovernmental organization ("IGO") satellites.

Charter also showed that the enforcement of the ECO-Sat test (with its extraterritorial impact on foreign satellites directly, or indirectly through U.S. earth station operators) could engender international discord in the regulation of global telecommunications, provoke retaliatory actions by the impacted countries, and retard rather than promote the Commission's laudable objective of exporting U.S.-style competition.

Charter recommended in its opening comments that it would be more prudent for the Commission to use this proceeding for fact and idea gathering purposes, to be followed-up, if deemed necessary, by a further NPRM with more definitive proposed rules. Charter concluded that no rules, ECO-Sat or otherwise, should be promulgated pursuant to the NPRM, other than an across-the-board deregulation of receive-only earth stations, irrespective of whether they operate with domestic or foreign satellites.

Charter will show below how the record to date in this proceeding warrants deferral of the ECO-Sat test pending the completion of ongoing international negotiations. If the FCC deems further action necessary after the completion of such negotiations, the record should be supplemented by the issuance of a further more explicit and updated NPRM. In the event that the Commission is determined to prescribe rules, notwithstanding the foregoing suggestions, the ECO-Sat test should be modified to permit the provision of necessary services via foreign satellites if they were the only available practical and economical means. In no event, however, should any exclusionary rules be applied to the Mexican Solidaridad Satellites, which are governed by U.S.-Mexican agreements.

II. FCC SHOULD AWAIT COMPLETION OF WORLD TRADE ORGANIZATION NEGOTIATIONS

The record in this proceeding does not support the unilateral adoption of ECO-Sat at this time, particularly since the U.S. is engaged in relevant multilateral negotiations, scheduled for completion in February 1997, under the framework of the World Trade Organization ("WTO").^{1/}

GE American Communications has made the following cogent points:

"[T]here are ongoing WTO negotiations concerning basic telecommunications services. Those talks, which have been extended through February 15, 1997, are focused on developing a broad multilateral agreement regarding the terms of market access for telecommunications.

"We believe that the best course for the Commission at this point is to defer this proceeding pending completion of the current round of WTO negotiations. The Commission can then act on a more complete record once the WTO process has been concluded.

^{1/} "Trade negotiators from USTR, FCC, Commerce and State Depts. travel to Geneva in Sept. [1996] for next round of talks in World Trade Organization (WTO) Group on Basic Telecom (GBT)." Communications Daily, Aug. 9, 1996, 3-4.

* * * * *

"In addition, the WTO process involves numerous bilateral and multilateral discussions with other members of the organization. As a result, the U.S. will have the opportunity to describe its objectives and respond to the concerns of other members. This process -- rather than a unilateral declaration of policy -- presents a greater likelihood that the U.S. can avoid misunderstandings of its policy goals. As a result, the possibility of backlash on the part of foreign administrations is reduced.

* * * * *

"Our point, however, is that given the relevance of the WTO talks to the goals of the [DISCO II] rulemaking, the most prudent and efficient course of action is to defer this proceeding for seven months. By doing so, the Commission can also avoid any unintended suggestion that the U.S. has prejudged the outcome of the WTO negotiations. Such a perception on the part of the part of the other administrations could undercut the effectiveness of the U.S. negotiators."^{2/}

Hughes agrees:

". . . [T]he Commission must carefully coordinate the proposed ECO-Sat test with United States' obligations under the 1993 General Agreement on Trade in Services ("GATS"), which imposes on signatories national treatment and most favored nation obligations with respect to covered services. As the Commission has noted elsewhere, GATS currently contains no obligations with respect to basic telecommunications services provided over FSS and MSS satellites, because no country has scheduled any commitments in basic telecommunications. The United States has offered proposals for open market access in basic telecommunications in the Negotiating Group on Basic Telecommunications ("NGBT"), which is scheduled . . . in February 1997. If the U.S. proposals are adopted at that time, the Commission's [DISCO II] foreign satellite entry policy must conform to the agreement that ultimately is reached."^{3/}

^{2/} Comments of GE American Communications, Inc., 5-7 (emphasis added).

^{3/} Consolidated Comments of Direct TV, Inc., Direct TV International, Inc., and Hughes Communications Galaxy, Inc. (collectively "Hughes"), 9 (fn. omitted, emphasis added).

Motorola agrees that the WTO/GBT talks in February 1997 may well obviate the need for a unilateral ECO-Sat test:

"Motorola and Iridium are optimistic that there will be enough improved offers to form a critical mass of WTO members by February 15, 1997, which will form a basis for a GBT agreement. Such a broad agreement would provide important market-opening benefits in the MSS/GMPCS market (as well as in a variety of other telecommunications sectors) for those countries that choose to open their national markets to these services. The agreement would also achieve the essential goal of market access in a critical mass of countries without dependence on implementation of a new U.S. [ECO-Sat] entry standard for non-U.S.-licensed satellite systems."^{4/}

AirTouch urges the Commission not to adopt the ECO-Sat test "at least until the completion of the multilateral trade talks currently underway."^{5/} Lockheed Martin suggest that "it is vitally important" that "the Commission and the rest of the Government should pursue an effective multilateral understanding concerning satellite services in the basic telecommunications negotiations currently underway under the auspices" of the WTO, and at the ITU Policy Forum "scheduled for this October."^{6/}

Accordingly, the unilateral adoption of the ECO-Sat test by the Commission prior to completion of the WTO process would be inadvisable.

^{4/} Comments of Motorola Satellite Communications, Inc. and Iridium, Inc. (collectively "Motorola"), 14 (emphasis added).

^{5/} Comments of AirTouch Communications, 12.

^{6/} Comments of Lockheed Martin Corporation, 3-4.

III. IF ANY ECO-SAT TEST IS ADOPTED, MAJOR CARVE-OUTS OR MODIFICATIONS ARE WARRANTED

A. Certain Foreign Satellites Should Be Exempt

Charter has shown in its opening comments, 5-6, that the Mexican Solidaridad Satellite System should be excluded from the ECO-Sat test because of the recently-signed U.S.-Mexican agreement permitting the domestic satellites of each country to serve the other's market.

Other parties have presented strong cases supporting the exemption of other foreign satellites from the ECO-Sat test. Transworld has shown that Russian satellites should be excluded because of the unique arrangements between the U.S. and Russia for space exploration and satellite communications.^{7/} Japan Satellite Systems, Inc. ("JSAT") has shown that the Commission has already made the necessary public interest findings for the use of Japan's JCSAT satellites by U.S. earth stations.^{8/}

B. Certain Services Should Be Exempt

The broadcast networks have shown that "it would not be appropriate to apply the ECO-Sat test to prohibit the use of a non-U.S. satellite for international video transmissions because that satellite might constitute the only suitable transmission capacity available, or at least the only one reasonably available."^{9/} Charter agrees. By the same token, non-broadcast video

^{7/} Comments of Transworld Communications (U.S.A.), Inc., 5. Both Transworld and WorldCom, Inc., 2, state that they have been using Russian satellites to and from the U.S.

^{8/} Comments of JSAT, 3.

^{9/} Comments of Capital Cities/ABC, Inc., CBS, Inc., NBC, Inc., and Turner Broadcasting System, Inc. ("broadcast networks"), 13.

transmissions, such as for humanitarian telemedicine or vital teleconferencing, should not be prohibited because the only reasonably available transmission means -- a non-U.S. satellite -- might not pass the ECO-Sat test.^{10/} As will be shown below, the ECO-Sat test should be modified so as to permit vital voice and data, as well as video, transmissions when the only practical method of transmission is via non-U.S. satellites.

C. Practical Modifications To ECO-Sat Are Necessary

The overarching policy governing U.S. usage of international satellites, both foreign and domestic, has previously been promulgated by the FCC:

"The foundation of a U.S. international satellite policy is the establishment of a global competitive communications environment that provides customers with increased satellite service options, improved quality, and lower rates."^{11/}

Any test for the usage of foreign satellites by U.S. customers that might ultimately be adopted as a result of the instant NPRM, should implement the above-quoted FCC policy -- not conflict with it. Appropriate modifications to the ECO-Sat test are necessary, we respectfully submit, to achieve this result.

^{10/} Other commenters have presented their cases for exemption of certain services from ECO-Sat. See Comments of: (1) AirTouch Communications, 12 (Big LEO satellites should not be covered because of their unique international status); (2) TMI Communications and Company, 7-8 (link between twin TMI Canadian and AMSC U.S. MSS satellites should not be disrupted); and (3) Western Tele-Communications, Inc., 6-7 (Canadian DBS satellites should not be procluded because of shortage of U.S. orbital slots).

^{11/} Vision Accomplished, 10 FCC Rcd 3716, 3718 (1995) (authorizing the connection of a U.S. earth station with a Japanese satellite).

Several of the commenters have suggested such modifications to ECO-Sat. As noted above, the broadcast networks have suggested a "reasonably available" modification that would permit the use of foreign satellites if U.S. satellite capacity was not reasonably available.^{12/} Another commenter has advanced the "insufficient U.S. capacity" modification, which means that the usage of foreign satellites would not be prohibited when "U.S. licensed satellite capacity is either insufficient, economically impractical or unavailable."^{13/}

Several commenters also suggested that the proposed "route" country aspect of ECO-Sat should not be used to deprive U.S. customers of satellite access to developing countries whose only practical access is via a satellite system of a foreign country which might not satisfy the "critical mass" of "route" countries required by ECO-Sat.^{14/}

Charter endorses the foregoing suggested modifications to the ECO-Sat test. Charter has found specific incidents in developing Latin American countries where their only practical access to the U.S. is via the Mexican Solidaridad satellites. These incidents involved, in several countries, the existence of only Solidaridad-equipped earth stations at the required service location

^{12/} Broadcast networks, supra at n.9. There is no reason to limit this modified test to broadcast video only, when there are other equally deserving non-broadcast video, voice and data services.

^{13/} Joint Comments of Newcomb Communications, Inc. and Mobil Datacom Corporation, 5-6. See also, Comments of General Instrument Corporation, 8 ("Non-U.S. satellite resources should be permitted to deliver services to U.S. consumers when resources are not available from domestic satellites to meet consumers' needs").

^{14/} Comments of WorldCom, Inc., 5 (ECO-Sat test should "not be applied to route markets below the top 50 countries as measured by . . . 'IMTS' traffic"); Comments of Kokusai Denshin Denwa Co., Ltd. ("a specific route market, particularly to or from certain developing countries, might have been developed through the initiative and investment of a non-U.S. satellite system").

and the lack of suitable domestic terrestrial lines to a distant in-country Intelsat station. Other incidents have involved U.S. customers needing to transmit the same data to multiple Latin American countries, most of which have practical access only to Solidaridad stations and a few of which have access to Intelsat stations. It would have been economically prohibitive for the U.S. customers to use a combination of Intelsat and Solidaridad equipped stations in the U.S. with Intelsat stations in a minority, and Solidaridad stations in a majority, of such Latin American countries for broadcast-like transmission of data to them from the U.S.

Charter's experience dictates against the hard and fast application of the ECO-Sat test, particularly to developing countries. Indeed, it would be imprudent to adopt any arbitrary test, such as IMTS volumes, to classify countries as "developing." In the words of Teledesic: "A simple, one-step, bottom-line test of whether competition would be distorted will permit the Commission to consider all the facts and circumstances necessary to make an informed, pro-competitive decision."^{15/}

As will be shown in the next section, any competitive distortion of the U.S. international satellite market by U.S. usage of the limited number of foreign satellites, is extremely unlikely. Therefore, U.S. earth station authorizations to use foreign satellites are best adjudicated on a case-by-case basis. In the event that the Commission, nevertheless, is determined to adopt an ECO-Sat test, the modifications proposed above should be adopted so that the ECO-Sat test becomes a flexible aid to the implementation of the FCC's pro-competitive, pro-consumer policy -- not an inflexible rule that could detract from that policy.

^{15/} Comments of Teledesic Corporation, 9.

IV. FOREIGN SATELLITES DO NOT THREATEN ANY MEASURABLE ADVERSE IMPACT UPON THE U.S. MARKET: ECO-SAT COULD BE COUNTERPRODUCTIVE

The opening round of comments confirms Charter's previously expressed view that the need for ECO-Sat or any other foreign satellite entry rules is "problematic":

"The NPRM does not identify the foreign satellites that it proposes to regulate [other than those of Intergovernmental Organizations ("IGOs")]. Nor does the NPRM provide any examples of foreign entry barriers that would or could be surmounted by the enforcement of the ECO-Sat test. We believe that there are a limited number of foreign satellite systems. We also believe that, aside from the home countries, the traffic volumes between the U.S. and the various route countries would be insubstantial." (Charter Comments, 4).

None of the opening comments identified any non-IGO foreign-owned satellites providing Fixed Satellite Services ("FSS"), the prime service area of interest to Charter, which pose a threat to the U.S. international satellite market. Thus, the record deficiencies in this proceeding remain. There still is no record support for the adoption of any foreign satellite exclusionary rules with respect to the non-IGO FSS sector.

Other commenters echoed Charter's view that "the FCC's proposed extraterritorial enforcement would open the regulation of global telecommunications to international discord"; and that "ECO-Sat might retard rather than promote the Commission's laudable objective of exporting U.S.-style competition" (Charter Comments, 3). One commenter, for example, showed how ECO-Sat might be counterproductive:

"Since many countries do not have satellite systems which would seek U.S. landing rights, such countries may, condition access for U.S. satellite systems on another commodity, e.g., content restrictions on U.S.-transmitted video services, provision of a certain level of satellite services, or access to U.S. markets for

telecommunications services or unrelated commodities. To achieve the benefits of open markets for U.S. consumers, the Commission should not adopt policies for authorizing access to non-U.S. satellites which suggest that grant of landing rights to a satellite system is a 'trade' issue."^{16/}

By the same token, commenters offer cogent arguments against the NPRM's proposal to require U.S. earth station applicants to show that their proposed interconnecting foreign satellites meet FCC technical, financial and legal requirements.

- Such requirements pay "only lip service to the foreign licensing scheme by simply moving the entry barrier to another position in the regulatory process, and it invites foreign administrations to do the same to U.S.-licensed operators."^{17/}
- [R]equiring a demonstration that non-U.S. licensed space stations meet all U.S. legal, technical and financial qualifications is tantamount to relicensing the system. And, it is not practical to require such compliance because, by the time the earth station application is filed, the non-U.S. system may already be licensed, under construction and/or launched."^{18/}
- "These proposals are unnecessary, and complying with them would be extremely burdensome for [U.S.] earth station operators, many of which are relatively small companies."^{19/}

The record herein contains some basis for FCC regulation of IGO (Intelsat, Inmarsat and their progeny) satellite entry into the U.S. market.^{20/} Orion "urges the Commission to take up the

^{16/} Comments of L/Q Licensee, Inc. and Loral Space & Communications Ltd. ("Loral"), 12-13. See also, (1) Comments of GE American Communications, Inc., 4 ("adoption of a reciprocity standard might lead to a backlash . . . [and] impede rather than enhance U.S. providers' efforts to gain access to markets abroad"); and (2) Comments of AirTouch Communications, 12 (FCC should "avoid the potential negative backlash that could occur if the United States was perceived as closing the U.S. market").

^{17/} Comments of Orion Network Systems, Inc., 5. Accord, TMI, 17-18.

^{18/} Comments of Loral, 21.

^{19/} Comments of WorldCom, 9.

^{20/} See Comments of AT&T Corp., 14-17; Columbia Communications Corporation, 21-25;

Footnote continued on next page

question of liberalized U.S. market access for ISOs [IGOs] in a separate rule making devoted exclusively to resolving the many issues raised by such a proposal."^{21/} Charter takes no position herein regarding IGOs other than to urge that unique IGO issues do not warrant the adoption of any FCC rules regulating U.S. earth station access to non-IGO foreign satellites.

**V. PROPOSED RULES SHOULD NOT BE IMPLEMENTED
UNLESS OR UNTIL THEY ARE FINALLY ADOPTED:
RETROACTIVITY SHOULD BE ESCHEWED**

In its opening comments, Charter noted that the effect on future applications to use non-U.S. satellites "could be devastating" to important service requirements if the non-final ECO-Sat test were applied to applications filed subsequent to the NPRM but prior to the final adoption of any proposed rules (Charter, 4).

The record supports a lengthy delay in the adoption of any final rules if, indeed, any are to be adopted. See the earlier section of these comments entitled, "FCC Should Await Completion Of World Trade Organization Negotiations" until February 1997. The need for, and scope of, any ECO-Sat-type rules is problematic, as demonstrated by the record to date. Accordingly, future applications by U.S. earth station operators to use foreign satellites should be processed promptly on a case-by-case basis based on existing Commission rules and precedents.

Footnote continued from previous page

Home Box Office, 20-21 (a "separate ECO-Sat test should be applied to IGOs"); Lockheed Martin, 13-14; PanAmSat Corporation, 5-6; and Orbital Communications Corporation, 5-8. See also, Bureau of National Affairs, Aug. 7, 1996, A-14 (General Accounting Office report recommends that competitive concerns be addressed in the restructuring of Intelsat and Inmarsat.)

^{21/} Orion, 13 (emphasis added).

In order to promote the prompt authorization of needed services without prejudice to the ultimate adoption of any new rules, WorldCom made the following constructive proposal:

"[T]hat the Commission implement interim measures to ensure that operators can provide important new services pending adoption of [any of] the new rules. Specifically, WorldCom suggest[ed] that the Commission grant special temporary authorizations ('STAs') to newly-filed applications that comply with the existing rules. The grant of an STA would be without prejudice to Commission action on the underlying application."^{22/}

Charter agrees with the foregoing STA proposal, provided that action on the underlying applications is not interminably delayed pending the adoption of rules that might never be finalized.

VI. RECEIVE-ONLY EARTH STATIONS SHOULD BE DEREGULATED

The record supports Charter's position that there be no further licensing requirements for receive-only earth stations, irrespective of whether they operate with U.S. or foreign satellites, including Intelsat. Most reasoned comments addressing this issue, agreed.^{23/}

Keystone Communications Corporation presented a persuasive case for deregulation of international receive-only earth stations:

"The Commission should once and for all exclude international receive-only earth stations from licensing regulation. Receive-only earth stations, whether domestic or international, are passive devices having no transmit capability, and therefore, they cannot possible create interference with any satellites or other users of radio frequencies. Any licensing requirement for such facilities is

^{22/} WorldCom, 4.

^{23/} See Comments of (1) Comsat Corporation, 39-42; (2) TMI, 21 ("forbearance is clearly required under Section 401 of the Telecommunications Act of 1996"); and (3) Western Tele-Communications, Inc., 14-17.

unnecessary, unduly burdens applicants and the Commission, and delays the introduction of service.

". . . Keystone urges the Commission now to adopt the regulatory policy that all international receive-only earth stations not subject to any international treaty restrictions are free to operate without a license and are eligible for registration." (Keystone, 6-7).

VII. CONCLUSION

For the reasons set forth in Charter's opening and reply comments, no rules should be promulgated as a direct result of the NPRM, other than an across-the-board deregulation of receive-only earth stations.

Respectfully submitted,



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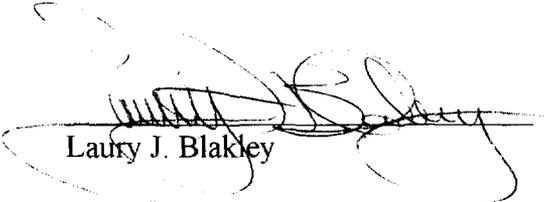
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I hereby certify that I have served copies of the foregoing Reply Comments in IB Docket No. 96-111 upon each of those listed on the attached Service List by first class mail, postage prepaid.


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