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

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In the Matter of	
Amendment of the Commission's Regulatory Policies to Allow Non-U.S.-Licensed Space Stations to Provide Domestic and International Satellite Service in the United States	IB Docket No. 96-111
and	
Amendment of Section 25.131 of the Commission's Rules and Regulations to Eliminate the Licensing Requirement for Certain International Receive-Only Earth Stations	CC Docket No. 93-23 RM-7931
and	
COMMUNICATIONS SATELLITE CORPORATION Request for Waiver of Section 25.131(j)(1) of the Commission's Rules As It Applies to Services Provided via the Intelsat K Satellite	File No. ISP-92-007

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REPLY COMMENTS OF AT&T CORP.

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SUMMARY

The comments strongly support the Commission's proposal to allow "non-U.S.-licensed satellite systems . . . to provide satellite services to, from, or within the United States to the extent that foreign markets allow effective competitive opportunities for U.S. satellite systems to provide analogous services." Notice ¶ 1. As the Commission correctly observes, "[f]air, vigorous competition among multiple providers leads to lower prices, better service, and more innovative service offerings for satellite communications users in the United States" -- whether such competition comes from U.S.-licensed satellites or systems licensed outside the United States. Notice ¶¶ 8-9. At the same time, as the commenters confirm, unrestricted access to non-U.S. satellite systems could adversely affect competition in the United States. Thus, the Commission's proposal to allow non-U.S. satellites to serve the United States based on competitive and regulatory parity, as determined by an ECO-Sat test, is critical to ensure that satellite competition in the United States will be enhanced rather than detrimentally affected.

Contrary to ICO's claim, the proposed ECO-Sat test is well within the Commission's authority to promote effective competition and prevent anticompetitive conduct in the provision of satellite services to U.S. consumers and would not contravene any U.S. trade obligations. Moreover, as MCI (at 9) notes, the "ECO-Sat test is pro-competitive

because it creates the incentive for companies that wish to compete in the United States to encourage their governments to remove barriers in their own countries." Accordingly, to ensure maximum effectiveness of this policy, the Commission should apply the ECO-Sat analysis for all pending applications that seek to serve the U.S. market via a non-U.S. satellite.

As shown in Part I.A, the Commission should adopt its two-prong ECO-Sat test to determine whether U.S. systems face *de jure* or *de facto* barriers to entry in: (1) the "home market" of the non-U.S. satellite, and (2) the various "route markets" to which service from a U.S. earth station is proposed. By contrast, as several commenters note, the Commission should not adopt its alternative "critical mass" analysis, because by examining only a portion of the markets served to decide the entry question, this test provides no assurance whatsoever that the Commission would not in fact be allowing service by non-U.S. providers to markets closed to U.S. operators, with all of its attendant anticompetitive effects on U.S. satellite operators.

As shown in Part I.B, there is broad consensus among the commenters that the U.S. earth station licensing process should be used to implement the ECO-Sat test. At the same time, as some parties note, the Commission could ease the burden on U.S. earth station operators by allowing the non-U.S. satellite operator to supply directly to the FCC the ECO-Sat compliance information for services it

wishes to provide via its satellites within the U.S. or between the U.S. and other countries. Allowing the non-U.S. satellite operator to make such an ECO-Sat showing, in the earth station licensing process, rather than requiring each individual U.S. earth station with which the non-U.S. satellite would interface to do so, would enhance efficiency and enable routine licensing of additional U.S. earth stations to operate with the non-U.S. satellite, in the same way as they do with U.S.-licensed systems, once the ECO-Sat showing has been made. The Commission should specify that the applicant seeking to access a non-U.S. satellite has the burden of showing that no *de jure or de facto* entry barriers exist in the relevant markets.

There is overwhelming agreement among the parties that the Commission should <u>not</u> adopt its proposal to consider non-U.S.-licensed satellites in a processing round, because relicensing would be inefficient and could provoke retaliatory measures by foreign governments. Accordingly, it would disserve the Commission's objectives.

Part I.C shows that, in addition to the ECO-Sat test, it is appropriate for the Commission to consider other factors that bear on whether the application is in the public interest, convenience and necessity, including the general impact of the proposed entry on competition in the U.S. and global markets. For example, public interest factors could override the need for an ECO-Sat showing and allow use of a non-U.S. satellite for temporary network

television feeds or when domestic satellite resources are unavailable. Many commenters also support the Commission's proposal to require all non-U.S.-licensed satellite operators seeking to provide international or domestic service in the U.S. market to meet the technical requirements in Part 25 of the FCC's rules and implementing orders applicable to U.S. satellite licensees, so as to reduce inter-satellite interference and maximize orbital and spectral efficiency.

Part II shows that the comments confirm that the Commission should not permit intergovernmental organizations ("IGOs"), such as COMSAT using INTELSAT or INMARSAT capacity, to serve the U.S. domestic market on a primary basis until substantial structural reform of these organizations takes place, because their participation in that market would be detrimental to fair competition. At the same time, it is appropriate to treat an IGO subsidiary or affiliate like any other non-U.S. system that seeks access to the U.S. market with public interest factors -- most importantly, the affiliate's independence from the IGO and its signatories -- playing a highly significant role.

Part III demonstrates that commenters generally agree that in order to implement the ECO-Sat test the Commission should continue to require a license for the use of receive-only earth stations to receive signals from non-U.S.-licensed FSS satellites, including INTELSAT. However, as the Commission recognizes and many parties concur, to

eliminate unnecessary regulation and speed processing, it would be appropriate "to allow anyone wishing to operate a receive-only earth station with . . . a non-U.S. satellite to request blanket authority to operate multiple technically identical receive-only earth stations in a particular service." Notice ¶ 80.

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REPLY COMMENTS OF AT&T CORP.

Pursuant to the Commission's Notice of Proposed Rulemaking, FCC 96-210, released May 14, 1996 in the above-captioned dockets ("Notice"), AT&T Corp. ("AT&T") hereby replies to other parties' comments on the Commission's proposal to establish a uniform framework for evaluating

applications by users in the United States for authority to access satellites licensed by other countries.[1]

I. THE COMMISSION SHOULD ADOPT ITS PROPOSAL TO ALLOW NON-U.S.-LICENSED SATELLITE SYSTEMS TO SERVE U.S. MARKETS BASED ON AN ECO-SAT DETERMINATION AND COMPLIANCE WITH U.S. STANDARDS OF TECHNICAL OPERATION.

The comments strongly support the Commission's proposal to allow "non-U.S.-licensed satellite systems . . . to provide satellite services to, from, or within the United States to the extent that foreign markets allow effective competitive opportunities for U.S. satellite systems to provide analogous services." Notice ¶ 1. As the Commission correctly observes, "[f]air, vigorous competition among multiple providers leads to lower prices, better service, and more innovative service offerings for satellite communications users in the United States" -- whether such competition comes from U.S.-licensed satellites or systems licensed outside the United States.[2] Notice ¶¶ 8-9. At the same time, as the commenters confirm, unrestricted access to non-U.S. satellite systems could adversely affect competition in the United States. This would occur, for example, if the non-U.S. satellite were able to provide

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[1] A list of the parties submitting comments and the abbreviations used to identify them is attached as Appendix A.

[2] See also AT&T at 1-2; Columbia at 6; MCI at 3; PanAmSat at 1.

service on international routes that cannot be served by a U.S. satellite, because then the non-U.S. satellite would have a competitive advantage over its U.S. counterparts on all routes, as it would be able to offer its customers a broader range of communications capabilities.[3] Notice ¶ 11. Thus, the Commission's proposal to allow non-U.S. satellites to serve the United States based on competitive and regulatory parity is critical to ensure that satellite competition in the United States will be enhanced rather than detrimentally affected.

ICO (at 10-21) asserts, however, that the proposed ECO-Sat test exceeds Commission authority, and its adoption would "usurp" Executive Branch trade policy functions and breach U.S. multilateral trade obligations. The Commission correctly rejected these claims when they were raised in the Foreign Carrier Entry proceeding[4] and should do so here. A requirement that non-U.S. satellite systems may obtain access to the U.S. market to the extent that U.S. satellite systems are afforded effective competitive opportunities in foreign markets would not involve the Commission in trade negotiations or constitute the imposition of reciprocity requirements on foreign governments. Rather, such an

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[3] AT&T at 4; Columbia at 13; MCI at 4, 7; Orion at 9-10; PanAmSat at 3.

[4] See Market Entry and Regulation of Foreign-Affiliated Entities, 11 FCC Rcd. 3873, 3956-66 (1995) ("Foreign Carrier Entry Order").

approach promotes effective competition and prevents anticompetitive conduct in the provision of satellite services to U.S. consumers that is well within the Commission's statutory mandate under Sections 151, 214 and 310(b) of the Communications Act.[5] As Teledesic observes (at 5, emphasis in original), "the Commission carefully avoids any preoccupation with trade policy and focuses instead on the competitive consequences of differential market access." ICO also ignores the fact that the Commission's decision in the Foreign Carrier Entry Order to apply an effective competitive opportunities test was taken with the full support of the Executive Branch.[6] Contrary to ICO's further claims (at 16-18), NTIA made clear that such

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[5] ICO (at 15) incorrectly suggests that the Second Cable decision undermines the Commission's ability to consider effective competitive opportunities. The Commission held in that decision that "keeping open foreign markets for investments by United States companies" was not within its responsibilities. See Amendment of Parts 76 and 78 of the Commission's Rules, 77 F.C.C.2d 73, 78-79 (1980)("Second Cable"). At issue here, however, is not encouraging investments abroad, but promoting competition for United States consumers, a separate goal that the Commission held was "clearly within" its responsibilities. Id. at 79-80 (emphasis added).

[6] See Market Entry and Regulation of Foreign-affiliated Entities, IB Docket No. 95-22, Comments and Reply Comments of the National Telecommunications and Information Administration ("NTIA"), filed April 11, 1995 and May 12, 1995, on behalf of the Executive Branch and reflecting the views of the Departments of Commerce, Defense, Justice, State, Treasury, and the Office of the U.S. Trade Representative.

action by the Commission would not contravene U.S. international trade obligations.[7]

AT&T agrees with Lockheed Martin (at 4) that the ECO-Sat test is one tool that the Commission can use in encouraging effective competitive opportunities in foreign markets but that it "cannot be equated, particularly over the longer term, with a satisfactory multilateral arrangement for securing open market access." Accordingly, the United States should also continue to pursue an effective multilateral understanding concerning satellite services during World Trade Organization ("WTO") negotiations. Contrary to GE Americom's suggestion (at 1-2, 4-5), the Commission should not prohibit non-U.S. satellite entry pending completion of WTO negotiations, as this would clearly be regarded by other countries as exclusionary and protectionist on the part of the United States, and it would therefore undermine rather than advance the Commission's goal of promoting market entry opportunities for U.S. systems in foreign markets.

As MCI (at 9) indicates, the "ECO-Sat test is pro-competitive because it creates the incentive for companies

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[7] NTIA noted that "[t]he standstill provision [under the Ministerial Decision on Negotiations in Basic Telecommunications] would seem to cover measures that are applied solely to create barriers to increase leverage in the negotiations." NTIA Reply Comments at 8. The Commission's intent in this proceeding is rather to promote competition in U.S. satellite services.

that wish to compete in the United States to encourage their governments to remove barriers in their own countries." As Hughes (at 5-10) points out, the Commission's ECO-Sat proposal could be viewed as a codification of its longstanding "open skies" policy, and it provides the correct signals for foreign administrations. Even if the test were to deny non-U.S. satellite entry in the near term, as Columbia (at 6) observes, "it should promote global satellite competition in the long run."

Accordingly, because the ECO-Sat test appropriately ensures that competition in the United States will be enhanced through non-U.S. satellite entry and encourages the opening of foreign markets to U.S. operators, it should be applied to all pending applications regardless of when they were filed.[8] The Commission should reject the suggestion of some parties that the ECO-Sat test should apply only to applications filed after the rules are formally adopted,[9] because this would only create a flurry of filings now and permit circumvention of a sound policy. Moreover, as MCI (at 5) notes, the ECO-Sat test is similar to the review that the Commission has previously conducted before allowing non-U.S. satellites to serve the U.S.

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[8] AlphaStar at 2-4; Hughes at 19; Columbia at 9-10 (at least those applications filed after initial DISCO I NPRM released).

[9] NATSAT at 2-3; WorldCom at 3.

market; therefore, pending applications would not be unfairly burdened if reviewed under the ECO-Sat test.

A. The Commission Should Adopt a Two-Prong ECO-Sat Test.

As the comments show, the Commission should adopt its two-prong ECO-Sat test to determine whether U.S. systems face *de jure* or *de facto* barriers to entry in: (1) the "home market" of the non-U.S. satellite, and (2) the various "route markets" to which service from a U.S. earth station is proposed.[10] By contrast, as several commenters note, the Commission should not adopt its alternative "critical mass" analysis, because by examining only a portion of the markets served to decide the entry question, this test provides no assurance whatsoever that the Commission would not in fact be allowing service by non-U.S. providers to markets closed to U.S. operators, with all of its attendant anticompetitive effects on U.S. satellite operators.[11]

Because each satellite is coordinated by a single country with the International Telecommunication Union

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[10] AT&T at 5-6; Columbia at 12-13 (home and all route markets); GE Americom at 4; Lockheed Martin at 9-10 (generally supports home and route market approach but with flexible analysis which would apply test as guidelines rather than as rigid rules); MCI at 4; ORBCOM at 3; Orion at 6-7; PanAmSat at 3-4.

[11] AT&T at 6-7; Hughes at 13-14 (a "critical mass test could only produce anticompetitive results").

("ITU"), it is appropriate for the Commission to inquire whether there are effective competitive opportunities for U.S. satellites in the coordinating administration's "home market." Notice ¶ 22. At the same time, it is equally important for the Commission to inquire into the openness of all of a non-U.S. satellite's "route markets" -- those in which a transmission originates or terminates -- that the non-U.S. satellite proposes to serve from the U.S. earth stations that the Commission is asked to license. As MCI (at 7) notes, "[t]o avoid the competitive distortion that is likely to result when only the foreign satellite system is able to offer services to two countries from a single uplink . . . all route markets served by the foreign satellite must be examined."[12]

In applying the ECO-Sat test, the Commission proposes to focus on the specific service that the non-U.S. system seeks to provide to, from, or within the United States and determine whether U.S. satellite systems would be permitted to provide the same type of service to, from, or within the foreign country. As several commenters note, this service-by-service approach will serve the public interest, as it would promote fair competition in each

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[12] See also AT&T at 5-6; PanAmSat at 2 (route market analysis needed to discourage forum shopping by non-U.S. operators and to mitigate anticompetitive impact if non-U.S. satellites have access in the foreigner's home market, but not its route market); Columbia at 12-13 (all route markets should be examined).

submarket for satellite services, and would tend to expand competition in the United States as soon as other countries open the corresponding segment of their markets.[13] Notice ¶ 36.

B. The Commission Should Use The Earth Station Licensing Process To Implement The ECO-Sat Test.

There is also broad consensus among the commenters that the Commission should use the U.S. earth station licensing process to determine whether *de jure* or *de facto* barriers to entry exist in the countries that the earth station intends to serve from the United States via a non-U.S. satellite.[14] Notice ¶ 39. As AT&T (at 8) and COMSAT (at 7), however, point out, the Commission could substantially ease the burden on U.S. earth station operators by allowing the non-U.S. satellite operator to supply directly to the FCC, in the context of the earth station licensing process, the ECO-Sat compliance

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[13] AT&T at 7; Columbia at 13; Orion at 9 (supports two-prong ECO-Sat test rooted in principle of service-by-service reciprocity).

[14] AT&T at 8; Columbia at 6-7 (discrete issues of entry in home and route market and compliance with technical parameters make earth station licensing an appropriate process for application of the ECO-Sat analysis); Hughes at 5-10; HBO at 9-11 (earth station licensing best mechanism to prevent competitive distortions in U.S. market); Lockheed Martin at 4-7; MCI at 4; Orion at 4 (earth station licensing best mechanism for regulating access to U.S. market); TRW at 6; COMSAT at 7.

information for services it wishes to provide via its satellite within the U.S. or between the U.S. and other countries.

There is overwhelming agreement among the parties that the Commission should not adopt its proposal (Notice ¶¶ 16-17, 51) to consider non-U.S.-licensed satellites in a processing round contemporaneously with U.S. satellite applications or allocate frequency spectrum to non-U.S.-licensed systems.[15] As AT&T explained (at 10), the purpose of a processing round is to determine which applicants will be granted U.S. satellite system licenses and to make orbital and spectrum assignments to those granted licenses by the Commission. Because, by definition, non-U.S.-licensed satellites would not be seeking an FCC license, there is no reason for them to participate in a processing round before the Commission. Moreover, as Columbia (at 8) indicates:

> "Globally, relicensing would be counterproductive to the goal of relaxing foreign entry barriers to U.S. satellite systems. . . . The proliferation of such requirements around the world could substantially and unnecessarily raise the costs of doing business for satellite system operators, and result in increased prices for space segment users. The United States should set an example for the rest of the world to follow by eschewing the imposition of unneeded licensing burdens on

[15] AT&T at 10; Columbia at 6-7 (full relicensing unnecessary); HBO at 11-12 (relicensing would be redundant); Lockheed Martin at 4-7; TRW at 8-9 (relicensing would be inefficient and would provoke retaliatory measures by foreign governments); Orion at 4 (relicensing would be inefficient and duplicative).

non-U.S. system operators seeking access to this market."

Contrary to its proposal (Notice ¶ 42), the comments show that the Commission should place the burden of proof on the U.S. earth station operator to demonstrate the absence of *de facto* barriers to entry.[16] *De facto* entry barriers can be as preclusive to U.S. satellite operators seeking to serve a foreign market as *de jure* ones, and the U.S. earth station applicant (along with information provided by the non-U.S. satellite operator during the earth station licensing process) is in the best position to comment on the absence of the types of possible *de facto* barriers enumerated in the Notice (¶ 41). Also, because of the importance of the ECO-Sat analysis to ensuring fair competition, the Commission should reject Keystone's suggestion (at 2-3, 4-5) that the U.S. earth station operator should not have to make an ECO-Sat showing unless challenged.

The Commission correctly notes that inquiring into content restrictions may be relevant for some services, as they can constitute entry barriers. Notice ¶ 41. As MCI (at 14, 18) confirms, if foreign countries restrict content for DBS services, U.S. operators would not be able to achieve the same economies of scope as non-U.S. operators

[16] AT&T at 11-12; Columbia at 15-16; HBO at 17; Lockheed Martin at 7-9; MCI at 14; TRW at 27, 31-32.

because the U.S. firm would be precluded from using a single set of programs to serve both the U.S. and the foreign market.

A number of parties object to the Commission's proposal to require all U.S.-licensed satellite operators to inform the Commission in writing of all foreign destinations where they are permitted to provide service annually and whenever an operator obtains access to an additional foreign market so as to enable the FCC International Bureau to compile and release this information in aggregate form.[17] Nonetheless, AT&T continues to believe that such reporting will assist in determining whether effective competitive opportunities exist or continue to exist in particular foreign markets and will place minimal burdens on U.S. operators. Notice ¶ 39.

C. The Commission Should Consider Additional Public Interest Factors, As Well As Other Technical and Legal Requirements.

In addition to the ECO-Sat test, it is appropriate for the Commission to consider other factors that bear on whether the application is in the public interest,

[17] Columbia at 17 (because burden of proof of showing absence of foreign entry barriers would be on the earth station applicant, such reporting by U.S. licensees would be unnecessary); Orion at 10 (intrusive burden that may be unnecessary); PanAmSat at 3 (reporting unnecessary and burdensome and requires disclosure of proprietary information).

convenience and necessity under Section 303(r) of the Communications Act, including the general impact of the proposed entry on competition in the U.S. and global markets; and issues of national security, foreign policy and trade (with due deference to views of the Executive Branch). For example, public interest factors could override the need for an ECO-Sat showing and allow use of a non-U.S. satellite for temporary television network feeds or when domestic satellite resources are unavailable.[18]

The Commission should adopt its proposal to require all non-U.S. satellite operators seeking to provide international and domestic service in the U.S. market to meet the technical requirements in Part 25 of the Commission's rules[19] and implementing orders applicable to U.S. satellite licensees. These rules are needed to implement the Commission's two-degree spacing policy, to reduce interference between satellites, and maximize orbital and spectral efficiency and thus avoid higher costs that would result from less available capacity. Notice ¶¶ 52-56.

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[18] Networks at 18; GI at 8; Newcomb at 6-7; Western at 3, 5-6, 7 (Commission should retain its policy of permitting use of non-U.S. satellites to provide U.S. services where domestic capacity is unavailable to satisfy demand. At a minimum, the Commission should create strong presumption in ECO-Sat analysis that public interest would be best served by permitting use of non-U.S. satellites when domestic capacity is unavailable.)

[19] AT&T at 13; HBO at 17-19; MCI at 25; Loral at 22 (harmful interference to U.S. systems should be avoided).

II. THE COMMISSION SHOULD NOT PERMIT INTERGOVERNMENTAL ORGANIZATIONS ("IGOS") TO SERVE THE U.S. DOMESTIC MARKET UNTIL THESE ENTITIES HAVE BEEN SUBSTANTIALLY REFORMED.

There is broad consensus among the commenters that COMSAT, a U.S. licensee and a worldwide provider, should not be permitted to participate in the U.S. domestic market using INTELSAT and INMARSAT capacity to any greater extent than it already does, until substantial structural reform of these organizations takes place.[20] As Columbia (at 22) points out, in the absence of a final decision on privatization of these IGOs, it would be inappropriate to permit use of INTELSAT or INMARSAT facilities for U.S. domestic service. Moreover, as Orion (at 14) notes, "to the extent that the [IGOs], and their participating members, continue to clutch the advantages associated with their special status, they should be permitted to do so only for the services that they now provide."[21]

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[20] AT&T at 14-16; GE Americom at 2, 9-11 (should prohibit U.S. domestic service by COMSAT or any other affiliate, subsidiary or successor to IGO); Loral at 26-28 (FCC must ensure IGOs do not distort competition); PanAmSat at 6 (INTELSAT capacity should not be used for domestic service until special privileges and immunities revoked; with a monopoly the possibility of cross-subsidy is too great).

[21] Nonetheless, because there are still many nations that are connected to the United States only by satellite, and any policy that makes it more difficult to reach these points would unduly constrain limited service, AT&T supports the Commission's proposal to continue licensing U.S. carrier provision of <u>international</u> communications over the INTELSAT and INMARSAT systems without

(footnote continued on following page)

Contrary to COMSAT's (at 12-13) and INTELSAT's position (at 7), the Commission should not use an unstructured "effect on competition" standard as the sole basis for determining whether to allow an IGO to serve the U.S. market, as this analysis is much less rigorous than the ECO-Sat test and would unreasonably discriminate in favor of INTELSAT and INMARSAT as compared to individual country systems. AT&T believes that, once these organizations are reformed, the Commission should base U.S. domestic market access for these systems on the openness of all of the various route markets served by the intergovernmental organization. Notice ¶¶ 65-66. This test best ensures that the IGO does not distort domestic competition in the United States, furthers broader access by U.S. satellite systems to foreign markets, encourages global competition, and avoids the inherent shortcomings of any "critical mass" test that

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(footnote continued from previous page)

application of the ECO-Sat test. Notice ¶ 70. Moreover, the ECO-Sat test should not preclude any other non-U.S. multinational treaty-based organizations in competition with COMSAT/INTELSAT and INMARSAT (e.g., Intersputnik) from continuing to provide capacity to U.S. carriers for U.S. international services. COMSAT would also remain free to apply on a case-by-case basis for authority to provide incidental U.S. domestic services using INTELSAT or INMARSAT capacity. As AT&T indicated (at 15-16 n.9) and BT (at 4-5) concurs, it would be appropriate, for example, to allow COMSAT to provide U.S. domestic aeronautical mobile satellite service ("AMSS") using INMARSAT space segment to aircraft on domestic segments of international flights. This would allow aircraft to avoid engaging in cumbersome hand-off procedures between AMSC and INMARSAT space segment.

could allow access to the U.S. market by satellite systems serving closed markets.

AT&T believes that it is appropriate for the Commission to treat an IGO subsidiary or affiliate like any other non-U.S. system that seeks access to the U.S. market, with public interest factors playing a highly significant role. Thus, the normal "home" and "route" market analyses of the ECO-Sat test could apply for each proposed service segment.[22] And the affiliate's independence from the IGO and its signatories should be closely scrutinized as part of the public interest analysis. Transfer of space segment from an IGO to an affiliate should require the earth station operator to request a license modification to reflect the transfer. Notice ¶¶ 73-74.

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[22] AT&T at 16; JSAT at 6 (supports same test for IGO affiliates as for other non-U.S. systems); Lockheed Martin at 13-14 (FCC should apply its proposed market access policies to both IGOs and their spin-offs. Not only the IGO spin-offs' treaty heritage and some continued government affiliation, but also the likely formal and informal business relationships and intangible competitive advances, such as goodwill acquired by INTELSAT/INMARSAT, are passed on and create a competitive advantage). See also Columbia at 23 (Because any company created under the auspices of an IGO or specifically assigned IGO assets will benefit to a significant extent from its past privileged status, as well as the substantial international dominance of INTELSAT and INMARSAT, the Commission should use a stringent critical mass test).

III. IN ORDER TO IMPLEMENT THE ECO-SAT TEST THE COMMISSION SHOULD CONTINUE TO REQUIRE A LICENSE FOR THE USE OF RECEIVE-ONLY EARTH STATIONS TO RECEIVE SIGNALS FROM NON-U.S.-LICENSED FSS SATELLITES, INCLUDING INTELSAT.

The comments confirm that the Commission correctly proposes to continue to require a license for the use of receive-only earth stations to receive signals from non-U.S.-licensed FSS satellites, including INTELSAT. Requiring an earth station license for such communications is necessary for the Commission to be able to ensure that these radio communications are consistent with U.S. policy concerning competition and spectrum management.[23] Notice ¶ 77. However, as the Commission recognizes and the commenters agree, to eliminate unnecessary regulation and speed processing, it would be appropriate "to allow anyone wishing to operate a receive-only earth station with . . . a non-U.S. satellite to request blanket authority to operate multiple technically identical receive-only earth stations in a particular service.[24] A few commenters' assertions

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[23] AT&T at 17-19; AlphaStar at 7; Hughes at 22-25; HBO at 19-20. At the same time, the Commission should adopt its proposal to eliminate the licensing requirement for receive-only earth stations operating with U.S.-licensed FSS satellite systems for the reception of signals from other countries, because the Commission can take technical issues into consideration when licensing the U.S. space station. Notice ¶ 78; AT&T at 18 n.10; AlphaStar at 7; PanAmSat at 9.

[24] AT&T at 18 (citation omitted); AlphaStar at 8; MCI at 26 (blanket licensing of receive-only earth stations receiving signals from non-U.S. satellite is necessary and appropriate); PanAmSat at 9 (would license earth stations receiving INTELSAT K and INTELNET I signals prospectively).

notwithstanding,[25] elimination of the licensing of all receive-only earth stations would not preserve the Commission's ability to apply the ECO-Sat test to reception of signals from non-U.S. satellites.

CONCLUSION

For the reasons stated above and in AT&T's Comments, the Commission should: (i) allow non-U.S.-licensed satellite systems to serve U.S. markets based on a two-prong ECO-Sat test; (ii) apply the ECO-Sat test to all pending and future applications to use non-U.S.-licensed systems; (iii) use the earth station licensing process, with input from the non-U.S. satellite operator, to implement the ECO-Sat test; (iv) require non-U.S. satellites seeking to serve the U.S. market to comply with U.S. technical

[25] COMSAT at 36-42; Charter at 2, 5-6; Keystone at 6-7.