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

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 ICO GLOBAL COMMUNICATIONS

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REPLY COMMENTS OF ICO GLOBAL COMMUNICATIONS

ICO Global Communications ("ICO") hereby submits these Reply Comments in response to comments filed in the above captioned proceeding.

INTRODUCTION AND SUMMARY

The comments show broad support for the Commission's view that increased competition in domestic and international satellite services, from both foreign and domestic licensees, will benefit U.S. consumers. The comments acknowledge that in order to effectuate increased competition, global mobile satellite services ("MSS") systems, by virtue of their unique international nature, require regulators to adopt a global perspective when developing policies and regulations for these innovative services. The three Big LEO commenters, TRW

Inc. ("TRW"), Motorola Satellite Communications, Inc. and Iridium, Inc. ("Motorola"), and L/Q Licensee, Inc. and Loral Space & Communications Ltd. ("Loral") also recognize that decisions concerning MSS will have global impact.[1]

The comments also show, however, that the Commission's proposed ECO-Sat test focuses too narrowly on trade issues, which are best addressed in multilateral fora. As Loral correctly points out, the Commission should focus instead on spectrum management issues.

The comments further show that the ECO-Sat test will not achieve -- and in fact may undermine -- the goal of increased competition. Some commenters -- specifically Motorola and TRW -- urge the Commission to adopt variations of a "critical mass" test that effectively would prohibit non-U.S.-licensed global MSS competition in the United States.

Because ICO believes that such a test would disserve the public interest by decreasing rather than increasing competition for MSS, ICO replies herein to the proposals set forth by Motorola and TRW in their comments. In addition, ICO responds to additional issues raised by other parties.

I. THE COMMISSION'S PROPOSED "CRITICAL MASS" TEST TOO NARROWLY FOCUSES ON ISSUES BEST ADDRESSED IN MULTILATERAL FORA

As several commenters point out, the Commission must consider a number of factors in determining whether the public interest will be served by provision of satellite services over non-U.S.-licensed systems.[2] As the comments also show, the proposed ECO-Sat test does not begin to take all of the relevant public interest considerations into account.[3] Instead, the ECO-

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[1] *See* TRW Comments at 8-10; Motorola Comments at 13-14; Loral Comments at 9-12.

[2] Loral Comments at 3-4; AirTouch Comments at 6; *see also* AMSC Comments at 3.

[3] *Id.*

Sat test focuses too narrowly on trade issues that are more appropriately addressed by the Executive Branch in other fora, and ignores the more important spectrum management issues that the FCC is uniquely empowered to address.

A. The FCC Should Treat Access To Satellites Licensed By Other Countries As Spectrum Management And Coordination Questions

The FCC, as the primary spectrum manager for the United States, is appropriately concerned with spectrum availability and coordination issues for satellite systems.[4] Indeed, the Commission recognizes that "it is important that foreign licensing administrations coordinate spectrum with [the FCC] to serve the U.S. and other markets throughout the world in good faith."[5] Despite this paramount concern, the Commission has proposed a market entry test for non-U.S.-licensed satellite systems that provides no guidance in furtherance of this goal and in fact may unwittingly serve to hinder it.

As Loral, a principal in one of the U.S.-licensed MSS systems, correctly points out, the public interest consequences of the licensing decisions at issue in this proceeding cannot be ascertained from any one-dimensional test, *i.e.*, the present treatment afforded U.S. carriers in particular foreign markets.[6] To the contrary, the public interest will be served -- or disserved -- according to the impact of the decisions on domestic spectrum management, international spectrum management and the efforts of the Executive Branch to secure open markets in telecommunications services. As Loral also points out, adoption of a threshold

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[4] *See 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,* Notice of Proposed Rule Making, IB Docket No. 96-111, FCC 96-210 (May 14, 1996) at ¶¶ 10, 48-51 ("NPRM").

[5] *Id.* at ¶ 49.

[6] Loral Comments at 6. *Accord* AirTouch Comments at 6.

reciprocal market entry standard, rather than facilitating the FCC's efforts to ascertain the public interest, actually deprives the Commission of the flexibility needed to make the complex analysis that its spectrum management mandate requires.[7]

The ECO-Sat test will not, for example, enhance the Commission's ability to consider the effect of a proposed non-U.S.-licensed system's use on the availability of sufficient spectrum for competitive U.S. systems. As Loral correctly recognizes, the ECO-Sat test's ability to "gauge the effective competitive opportunities for U.S. satellite systems in the home and route markets of the non-U.S. system [does nothing to] preserve sufficient flexibility for the Commission to exercise its critical role as spectrum manager to regulate market distortions which may arise from allocations of limited spectrum resources."[8] Likewise, as AirTouch Communications ("AirTouch") aptly points out, "Big LEOs present difficult, and in many ways unique, technical problems [for coordination and thus] do not fit neatly within the regulatory framework [*i.e.*, ECO-Sat test] proposed for other satellite services."[9]

ICO agrees with Loral that the Commission could more effectively achieve its goal of ensuring that foreign markets are open to U.S. systems by "encouraging foreign administrations to adopt spectrum management policies which promote effective competitive opportunities in non-U.S. markets."[10] To this end, ICO concurs with Loral's recommendation that the Commission pursue global policies regarding band sharing, frequency coordination and equipment compatibility.[11]

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[7] Loral Comments at 5.

[8] *Id.*

[9] AirTouch Comments at 6.

[10] Loral Comments at 5.

[11] *Id.* at 6-8.

Perhaps more fundamentally, the ECO-Sat test, with its narrow emphasis on legal barriers, may impede the Commission's efforts to remove technical barriers to U.S. satellite systems, by goading foreign administrations into adopting reciprocal barriers against U.S.-licensed systems, or at very least making these administrations "less willing to work toward mutual solutions for allocation and assignment of spectrum."[12] The Commission itself acknowledges that "it is essential that [the Commission] have a working relationship of trust with the coordinating administration of each non-U.S. space station to which [the Commission] grant[s] access."[13] Rather than promote this "working relationship," the ECO-Sat standard, with its "market-for-market access test,"[14] may prompt foreign administrations to adopt their own access tests detrimental to the United States.

For all of these reasons, any standard that the FCC adopts must be consistent with the Commission's spectrum management responsibilities. And as the next section shows, reciprocity between the United States and its trading partners should not be an element of the FCC's analysis, but, rather, should be addressed by the Executive Branch in more appropriate fora.

B. Market Access Issues For Global MSS Systems Are Best Addressed In Multilateral Fora Such As The GBT

Motorola, Loral, AirTouch and others such as GE American Communications, Inc. endorse the World Trade Organization's ("WTO") ongoing Group on Basic Telecommunications ("GBT") negotiations as the best means for securing open market access

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[12] *Id.* at 7.

[13] NPRM at ¶ 49.

[14] Loral Comments at 12.

for satellite services.[15] ICO agrees with those commenters that the inherently global nature of MSS renders inappropriate a bilateral regulatory approach such as the Commission's proposed "critical mass" test.[16] As AirTouch correctly states, "[s]uch a 'bilateral' analysis would make no sense when applied to the global Big LEO systems."[17]

ICO further agrees with those commenters that the Commission's proposed bilateral approach is not only inappropriate, but it is also unnecessary -- or at least premature -- given the ongoing GBT negotiations. As Loral points out, "it may be premature, redundant and/or inconsistent for the Commission to adopt the proposals in DISCO II," given the efforts of the Executive Branch through the GBT.[18] Likewise, AirTouch accurately states, "[i]t makes little sense for the Commission to develop a different or inconsistent 'critical mass' test in this proceeding if it will have to be altered in the near future to conform to the U.S. policies developed in multilateral trade discussions."[19]

Clearly, an order adopting the Commission's proposals would be premature at this time. Even some commenters who support the Commission's "critical mass" test agree that the GBT's efforts, if successful, would eliminate the need for not only the Commission's proposed "critical mass" test, but any Commission-administered market entry test. For example, Motorola states that "[a GBT] agreement also would achieve the essential goal of

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[15] *See* Motorola Comments at 13-14; Loral Comments at 9-11, n.21; GE American Communications Comments at 7; AirTouch Comments at 9-10.

[16] In its comments, ICO explained why the Commission's proposed bilateral approach is inappropriate for MSS. *See* ICO Comments at 18-20.

[17] AirTouch Comments at 4.

[18] Loral Comments at 11.

[19] AirTouch Comments at 10.

market access in a 'critical mass' of countries without dependence on implementation of a new U.S. entry standard for non-U.S.-licensed satellite systems."[20]

More importantly, Commission adoption of a "critical mass" test would be inconsistent with the open, non-discriminatory market access principles that the United States is championing in the GBT negotiations. The United States has been urging a multilateral agreement to open markets to MSS in those negotiations. The Commission's proposed "critical mass" test, by contrast, is a bilateral reciprocal approach to market access. For the United States to take this latter approach could, as AirTouch correctly notes, "potentially . . . limit the success of [the GBT's] efforts."[21] As the government of Japan notes, the FCC's proposal "might be taken as a signal that the U.S. has no serious intention to negotiate the liberalization of satellite services through the WTO process."[22] Additionally, as Loral states, "foreign administrations may adopt a retaliatory stance."[23] To the extent that such retaliation involves other countries adopting their own version of a "critical mass" test, the open market efforts of the GBT will have been for naught. There simply is no need for the Commission to take a position with respect to MSS that is inconsistent with that previously taken by the United States and thereby potentially hinder the efforts of the GBT specifically and market opening efforts in general.

Accordingly, the Commission should defer issuing a final decision on its market access proposals until after the conclusion of the GBT negotiations when the Executive Branch

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[20] Motorola Comments at 14.

[21] AirTouch Comments at 9.

[22] Japanese Comments at 2.

[23] Loral Comments at 12.

hopefully will have established global trade agreements for telecommunications.[24] After the conclusion of the GBT, and prior to issuing a decision in this proceeding, the Commission should solicit additional comments concerning the extent to which, given the outcome of the GBT negotiations, *any* bilateral reciprocity test is even prudent or necessary. In no event, however, should the Commission adopt its proposed "critical mass" test because, as explained in ICO's comments, that test will decrease rather than increase competition for MSS.

In the meantime, the United States should continue its efforts to reach an agreement with respect to access for MSS at the GBT talks. Specifically, as ICO advocated in its comments, the United States should seek an agreement on the "no special concessions" condition that would be applied by "home" countries for global MSS space segment operators seeking to serve the United States.[25] This multilateral "no special concessions" approach would level the playing field for all MSS operators -- U.S.-licensed and non-U.S.-licensed -- and thereby achieve the Commission's goal of "enhancing competition in the global market for satellite services."[26] In addition, this approach properly would avoid placing greater regulatory burdens on non-U.S.-licensed MSS operators, which are no different from U.S.-licensed operators in terms of their international characteristics.

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[24] As the Commission is aware, the GBT negotiations are scheduled to conclude on February 15, 1997.

[25] *See* ICO Comments at 37-41.

[26] There is no reason to assume, as critics of ICO's proposal might, that other countries would not strictly enforce a no special concessions condition on their MSS operators. Indeed, in ICO's case, the United Kingdom is as deeply committed as the United States to a competitive telecommunications market.

II. ANY FORM OF "CRITICAL MASS" TEST, INCLUDING THOSE PROPOSED BY MOTOROLA AND TRW, WOULD DISSERVE THE PUBLIC INTEREST BY ENSURING THAT NON-U.S.-LICENSED SYSTEMS ARE UNABLE TO SERVE THE UNITED STATES

The initial comments in this proceeding show that even U.S.-licensed MSS operators, which presumably will benefit from application of the proposed "critical mass" test to foreign licensees, recognize that the test ignores the realities of the global MSS industry, threatens retaliation from U.S. trading partners and complicates the efforts of global MSS partnerships to secure access to foreign markets. As Loral's comments point out:

> The Commission's stringent market-for-market access standard -- despite treating U.S. and non-U.S. systems even-handedly in many respects -- potentially undermines [global MSS] partnerships because it categorizes satellite systems as either U.S. or non-U.S. This may have the effect of diminishing the benefits of global partnerships and may complicate the process of obtaining landing rights in foreign countries. By incorporating more flexibility into its licensing procedures, the Commission may be able to take advantage of the principles used by private, global partnerships in obtaining access to foreign markets.[27]

In spite of these concerns, TRW and Motorola not only support the "critical mass" test, but propose versions of the test that are so burdensome as effectively to guarantee the inability of non-U.S. licensees to secure entry into the U.S. market. Because such a result is contrary to the Commission's stated goal of increasing competition, the Commission should reject the TRW and Motorola proposals.

[27] Loral Comments at 14. *See also* Motorola Comments at 20.

A. The 80 Percent Standard Will Prevent Beneficial Competition In The U.S. Market

Motorola and TRW portray their 80 percent tests as "clear"[28] and "reasonable,"[29] but in fact their proposals are complex and burdensome in ways that have nothing to do with the public interest, and have everything to do with erecting artificial barriers to participation by non-U.S.-licensed operators in the U.S. market. In other words, Motorola and TRW are proposing that the FCC erect a trade barrier with respect to MSS.

Both proposals start by requiring an earth station applicant seeking to communicate with a non-U.S.-licensed system to demonstrate that 80 percent of the total population of the non-U.S.-licensed system's direct and indirect owners can be served by U.S.-licensed MSS systems. To this test, Motorola and TRW each add additional requirements that make the 80 percent standard more complex, arbitrary and severe.

TRW, for example, offers a requirement that licensees continue to meet the 80 percent standard after their licenses are awarded. TRW also proposes special rules applicable only to "IGO spin-off" operators -- a category of which ICO currently is the only member. Where an IGO has invested in the "spin-off" entity, TRW would treat all of the IGO's member nations as investors in the separate entity and, in addition to applying the 80 percent standard discussed above, would add the additional requirement that the operator demonstrate U.S.-licensed satellite "access to the top 10 markets (ranked by population) represented by entities investing

[28] *See* Motorola Comments at 34.

[29] *See* TRW Comments at 19.

directly or indirectly in the IGO Spin-Off's system."[30] These dual requirements would apply to IGO spin-offs for five years from the date the operator severs all ties with the IGO.[31]

Motorola's embellishments of the "critical mass" test are, if anything, more severe than TRW's.[32] Motorola proposes that even where an entity has met the arduous challenge of the "80-percent-of-population" test, it must go on to demonstrate that 80 percent of the home market countries of the system's owners are open to competition from U.S.-licensed operators. And if the non-U.S.-licensed operator meets these requirements, Motorola proposes a further list of vague "relevant factors" under which the non-U.S. licensee's application still can be defeated.[33]

Taken singly or together, the Motorola-TRW proposals make sense only when viewed as transparent attempts to limit MSS competition in the U.S. market. First, and perhaps most fundamentally, the proposals impose burdens on non-U.S.-licensed systems that their U.S.-licensed competitors do not share, even though the investor profiles of all MSS systems are similarly global and diverse. This approach does not protect the competitive process; it only

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[30] TRW Comments at 23.

[31] *Id.*

[32] Motorola relies on "network effects" theory to bolster its version of the 80 percent test -- a reliance that is entirely misplaced. *See* Motorola Comments at 25-27. In the absence of actual, operating MSS systems, it is impossible to tell whether particular MSS systems will enjoy positive network externalities at all -- *i.e.*, whether the costs imposed by the size of a provider's network will outweigh, or be outweighed by, the value that network size adds to the service. Similarly, it is impossible to identify, in advance and in the abstract, the complex relationships among consumer preferences, prices, network size and the nature of the markets served that must be analyzed in order to determine whether one system enjoys greater network externalities than another. (For example, an MSS system that offers access to a small number of important markets may be more valuable to customers than another system that offers access to many, less important markets -- especially if the system with more selective coverage also has incurred fewer costs and therefore can offer its service at lower rates.) Motorola's 80 percent test does not deny these complexities: it simply ignores them in favor of an arbitrary, numerical threshold for which Motorola offers no support at all.

[33] Motorola Comments at 33.

ensures that some operators will be excluded from the process, or, at a minimum, will labor under disabilities not imposed on others. Whereas U.S.-licensed MSS operators are allowed to operate unless and until a complainant successfully proves that the operator has engaged in anticompetitive conduct, non-U.S.-licensed MSS operators must prove they are not operating anticompetitively *before* they can obtain a license -- *i.e.*, are guilty until they prove themselves innocent.

Second, the arbitrary inclusion in the relevant investor group of *any* level of investment, direct or indirect, captures small investors whose ability and incentive to direct the enterprise may be minimal or nonexistent. Indeed, in the case of ICO, it would capture Inmarsat signatory countries that have no direct investment in ICO, but do have direct investment in *competing* MSS systems. For example, Teleglobe is an investor in Odyssey. Cable & Wireless, which is treated as an Inmarsat signatory, is an investor in Iridium. France Telecom is an investor in Globalstar. The inclusion of any level of investment, no matter how small or indirect, serves no competitive purpose, but does increase the likelihood that the 80 percent test will not be satisfied.

Finally, the 80 percent test will produce utterly irrational results in practice. Consider, for example, the case of a non-U.S.-licensed operator that has -- as ICO has -- at least one Chinese direct investor. Unless this operator can establish the openness of the Chinese market, with its 1.2 billion people, it is unlikely to satisfy the 80 percent test *even if every other country in which it has investors is open to U.S.-licensed operators.*[34] Since China has no MSS rules,

[34] In ICO's case, compliance with the 80 percent test would be literally impossible in this situation. The total population of the 43 countries with direct ICO investors is 3,761,741,654, of whom 1,203,097,268, or 31 percent, are Chinese. Thus, if all ICO direct investor countries except China -- including such key markets as Germany and Japan -- were open to U.S. operators, ICO could not pass the 80 percent test.

and in fact no well-defined regime for telecommunications regulation at all, the necessary showing of openness may be impossible to make. Application of the 80 percent test in such a case, therefore, will be arbitrary and anticompetitive.[35]

To similar effect is TRW's proposal to ban an application to access a non-U.S.-licensed system until the system is operational or one year from operation, and its requirement that non-U.S. licensees continue to meet the 80 percent test after licensing. These rules serve no purpose except to delay further non-U.S.-licensed operators' entry into -- and facilitate their exit from -- the U.S. market. In a similar vein, TRW's test for IGO affiliates would discriminate needlessly against commercial, private companies that pose no anticompetitive threat to U.S.-licensed MSS operators.

Finally, inclusion in the "critical mass" test of the other "relevant factors" proposed by Motorola will introduce an added element of uncertainty and arbitrariness into the MSS licensing process. This additional hurdle will further increase the likelihood -- indeed, will virtually ensure -- that non-U.S.-licensed MSS operators will be unable to serve the United States.

In short, Motorola's and TRW's tests are contrary to the public interest in that they would deny U.S. consumers the benefits of competition from non-U.S licensees, such as ICO, who wish to offer MSS services. In addition, the tests would harm the U.S. economy by

[35] Examples of the potential, perverse results of the 80 percent test can be multiplied at random, because the flaws in the test are fundamental. Besides the arbitrariness of the 80 percent number, the test disregards all non-population factors that might make one market more competitively significant than another, and assumes that all countries have established rules from which their "open" or "closed" character can be determined. A rule based on such flawed premises cannot be cured merely by setting the threshold at a different, but equally arbitrary, numerical level. Instead, the Commission should abandon "critical mass" or other "ECO-Sat"-type approaches in favor of the spectrum management approach recommended by ICO and other commenters.

denying U.S. companies such as Comsat and Hughes and as yet unidentified U.S. companies the opportunity to provide services to ICO.

B. The Motorola-TRW Proposals Will Reduce Competition In World Markets

The anticompetitive potential of the Commission's "critical mass" proposal in general and the Motorola-TRW proposals in particular goes well beyond the exclusion of ICO and other non-U.S. licensees from the U.S. market. They also are likely to trigger a chain reaction of protectionist countermeasures from other countries, which in turn will result in an "Alphonse and Gaston" scenario wherein each administration awaits market opening measures by other administrations. The effect of this type of protectionist backlash would be to reduce the number of competitors serving markets around the world.[36] This is the opposite of the Commission's intention, and ultimately will harm even those who, for their own short-term benefit, advocate a stringent "critical mass" test today.

III. THE COMMISSION SHOULD AVOID DUPLICATIVE REQUIREMENTS FOR MSS SYSTEMS WHOSE SPACE SEGMENT IS LICENSED ABROAD

ICO supports the well-reasoned position of commenters in this proceeding who oppose the imposition on non-U.S.-licensed space station operators of all legal, technical and financial standards applicable to U.S.-licensed operators.[37] Not only would such licensing impose duplicative and burdensome requirements upon non-U.S.-licensed MSS operators, but such requirements might very well be adopted by foreign administrations, thereby hindering a fully competitive global MSS market. ICO agrees, therefore, with the position taken by Loral,

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[36] *See, e.g.,* Loral Comments at 14.

[37] Loral Comments at 21-22; TRW Comments at 11-12; Columbia Communications Comments at 21; COMSAT Comments at 36-38; DIRECTV Comments at 20-22.

which urges the Commission to restrict its rules concerning authorizations for earth stations accessing foreign satellites to "consideration of the impact of grant on existing U.S. systems and markets."[38]

A. Such Licensing Would Be Redundant And Burdensome

As the Commission itself recognizes, because "ITU procedures call for each satellite to be registered and coordinated internationally by only one administration," duplicative licensing of satellite space stations by the Commission "would be time-consuming and wasteful."[39] Loral concludes that "requiring [as the Commission proposes] a demonstration that non-U.S. licensed space stations meet all U.S. legal, technical and financial qualifications is tantamount to relicensing the system."[40] ICO agrees with this conclusion and thus opposes the Commission's proposal to require U.S. satellite earth station licensees to demonstrate that non-U.S.-licensed satellite systems meet the same legal, technical and financial qualifications as U.S.-licensed satellite systems. The virtual re-licensing of satellite systems proposed by the Commission flies in the face of the Commission's presumption that "many 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."[41] If the Commission wants other countries to accept its licensing procedures, it should accord those countries' procedures similar respect and should reject its proposal to require non-U.S.-licensed MSS operators to meet all legal, technical and financial qualifications imposed on U.S.-licensed operators.

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[38] Loral Comments at 22.

[39] NPRM at ¶ 14.

[40] Loral Comments at 21. *Accord* TRW Comments at 11.

[41] NPRM at ¶ 14.

The Commission's rationale for these redundant and burdensome requirements is "to ensure that the non-U.S. satellite will be able to provide service in a timely manner and without interference to U.S. satellite systems."[42] It is wholly unclear how the provision of the requested financial, technical and legal information will ensure timely service. Moreover, with respect to interference concerns, ICO agrees with those commenters that recognize that technical compatibility and interference issues are more appropriately addressed in the context of the ITU's coordination process.[43] As COMSAT aptly recognizes, "[t]he ITU coordination process already resolves the fundamental issues of avoiding interference."[44] The Commission thus provides no sound basis for imposition of such redundant licensing requirements.

B. Such Licensing Would Risk Motivating Other Countries To Impose Similarly Unnecessary Requirements On MSS Operators

Moreover, just as the Commission's attempts to impose a "critical mass" test upon U.S. market entry of non-U.S. licensed MSS service providers likely will encourage retaliatory measures on the part of foreign administrations, so too will the imposition of superfluous licensing requirements. Many commenters, even those that support a "critical mass" test, concur with this conclusion. As TRW, one of the most vigorous proponents of the "critical mass" test concludes, "[t]he imposition of any such filing requirements with respect to foreign satellite operators . . . would . . . likely result in the imposition of similarly burdensome requirements by foreign administrations."[45] The fear of retaliatory measures from foreign administrations and the negative impact such measures will have on the competitive

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[42] *Id.* at ¶ 61.

[43] COMSAT Comments at 38; Columbia Communications Comments at 21.

[44] COMSAT Comments at 38.

[45] TRW Comments at 11.

environment for satellite services is shared by many commenters in this proceeding.[46] Absent valid reasons for imposing such onerous requirements, of which there appear to be none, the Commission should not require non-U.S.-licensed satellite operators to comply with the same legal, technical and financial requirements as U.S.-licensed satellite operators.

IV. ICO DOES NOT ENJOY ANY ADVANTAGE RESULTING FROM CEPT SPECTRUM ALLOCATIONS

Motorola's comments refer to the allocation by the European Conference of Postal and Telecommunications Administrations ("CEPT"), on a preliminary basis, of 60 MHz of spectrum (30 MHz uplink and 30 MHz downlink) to MSS.[47] This is a reflection of the decisions taken at WRC'95 and confirmation of the common position of the CEPT members on this matter.

Motorola's comments suggest that 30 MHz of spectrum has been preliminarily designated to ICO by CEPT, and that this assignment will act as a barrier to market access by U.S. MSS operators.[48] In fact, CEPT has no authority to allocate radio frequency spectrum among services or to assign spectrum to particular users. As to allocations, CEPT merely makes recommendations, which may or may not be adopted by national administrations and EU authorities. As to assignments, the regulatory authorities of individual countries retain the power to license particular users of spectrum. No spectrum assignment has yet been made to ICO, or indeed to any other MSS system in the 1.6-2.4 GHz spectrum or the 2 GHz MSS band. Furthermore, CEPT decisions at 2 GHz concerning ICO and other proposed 2 GHz

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[46] *See id.*; COMSAT Comments at 38-39; DIRECTV Comments at 22; Columbia Communications Comments at 21; Loral Comments at 21-22.

[47] Motorola Comments at 12 and 35-37.

[48] *Id.*

systems will be decoupled from decisions in the 1.6-2.4 GHz bands where the U.S.-licensed MSS operators plan to operate. Motorola's assertion that CEPT actions will constitute a barrier to market entry by U.S.-licensed systems, therefore, is patently unfounded.

The approach currently under consideration by CEPT is based on assuring a "level playing field" for so-called SPCS MSS systems, irrespective of their origin in Europe, the United States or elsewhere. Insofar as practicable, MSS systems intending to provide service in Europe will be considered at the "starting block" on an equivalent basis in the process. However, each MSS system operator will be required to demonstrate and validate, as part of an ongoing review process, that the particular MSS system is real and will provide commercial service within a notifying timetable.

The CEPT process does not consider whether MSS systems licensed in Europe have been afforded market access rights in third-party countries. ICO, therefore, supports the open market approach taken so far in CEPT discussions, which have focused predominantly on spectrum management concerns -- an approach that contrasts with the measures proposed in this proceeding.

V. ICO IS STRUCTURALLY AND COMMERCIALLY SEPARATE FROM INMARSAT

Motorola also states, on the strength of a 1994 request from the Inmarsat Assembly of Parties ("Assembly") for a report on the long-term relationship between ICO and Inmarsat, that "Inmarsat and I-CO Global have expressed a long term interest in merging I-CO Global with a successor of Inmarsat."[49] As indicated in ICO's comments, Inmarsat's role in ICO is that of an investor. ICO is commercially separate from Inmarsat and has fully complied with

[49] *Id.* at 40 and n. 22 at 11.

the "principles of structural separation" as required by the United States as a condition for its agreement to the formation of ICO.

In any event, this issue is a "red herring." The central issue in this proceeding is whether the United States will adopt rules that discriminate in favor of U.S. licensees, to the detriment of U.S. consumers. Speculation about the future of either ICO or Inmarsat adds nothing to this discussion.

Moreover, there are no discussions underway between ICO and Inmarsat regarding a potential merger. ICO is not a party to, and has no role in, the ongoing discussions within the Inmarsat Assembly regarding the future structure of Inmarsat. Thus, ICO has no ability to influence the decisions of the Assembly. The United States, by contrast, through its Inmarsat signatory, Comsat, is a party to -- and presumably can influence -- these internal Inmarsat discussions.

CONCLUSION

For the foregoing reasons, the Commission should refuse to adopt a "critical mass" test generally and the "critical mass" tests proposed by TRW and Motorola specifically. These tests -- and any similar reciprocity test -- would decrease rather than increase competition for MSS, to the detriment of American consumers. In addition, ICO urges the Commission to defer a decision in this proceeding until there has been a resolution of the GBT negotiations

and the Commission has solicited further comment on the continued need for a market access test such as its proposed "critical mass" test.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Kimberly E. Thomas, do hereby certify that the foregoing **Reply Comments of ICO Global Communications** was hand delivered on this 16th day of August, 1996 to the following:

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