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Before The
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 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

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REPLY COMMENTS OF L/Q LICENSEE, INC. and
LORAL SPACE & COMMUNICATIONS LTD.

Pursuant to Section 1.415 of the Commission's Rules, L/Q Licensee, Inc. (LQL) and Loral Space & Communications Ltd. (Loral Space) hereby submit their joint reply to the comments filed on the Commission's proposals in this proceeding.[1] As outlined in their initial comments, LQL and Loral Space have significant interests in the United States satellite industry, including authorizations to construct, launch and operate a global, low-earth orbit Mobile-Satellite Service (MSS) system,[2] several Fixed-Satellite Service (FSS) geostationary space stations,[3] and a Direct Broadcast Satellite (DBS) system (File

[1] See Notice of Proposed Rule Making, FCC 96-210 (released May 14, 1996) (NPRM).

[2] See Loral/QUALCOMM Partnership, L.P., 10 FCC Rcd 2333 (Int'l Bur. 1995), aff'd, FCC 96-279 (released June 27, 1996).

[3] Assignment of Orbital Locations to Space Stations in the Ka-Band, DA 96-705 (released May 6, 1996); Assignment of Orbital Locations to Space Stations in the Domestic Fixed-Satellite Service, DA 96-713 (released May 7, 1996).

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No. DBS 87-01). Accordingly, LQL and Loral Space have substantial interests in the rules and policies adopted in this proceeding.

INTRODUCTION

In the NPRM, the Commission proposes to consider applications for earth stations seeking authority to access non-U.S. satellites based on a threshold reciprocal market entry standard, the "ECO-Sat" test, which would gauge the effective competitive opportunities for U.S. satellite systems in the home and route markets of the non-U.S. system. NPRM, ¶ 18. The goals of this proposal are to create an opportunity for more competition in U.S. satellite services markets from non-U.S. systems and to provide an incentive for foreign administrations to open their satellite markets to U.S. systems. NPRM, ¶¶ 7-12.

In their initial comments, Loral Space and LQL agreed in principle with the Commission's conclusion that U.S. consumers of both domestic and international satellite services would benefit from increased competition resulting from the availability of greater access to non-U.S. satellite systems. Loral Space and LQL also agreed that reviewing competitive opportunities for U.S. systems in foreign markets would be useful in evaluating what the competitive impact would be of granting access to a non-U.S. system and whether the public interest would be served by authorizing service.

However, LQL and Loral Space disagreed with the Commission's proposal to elevate international trade considerations over principles of spectrum management

in the regulatory process. The Commission has a unique responsibility for spectrum management issues, which should remain central to its exercise of authority over interstate and foreign communications. In exercising this role as spectrum manager, the Commission may, of course, consider the effect of competitive disparities and distortions in markets. Ultimately, however, it must base its decisions on the critical issue of how the proposed use of satellite service spectrum will impact the availability of sufficient spectrum to ensure competitive U.S. satellite systems. See NPRM, ¶¶ 50-51. For the Commission to propose a threshold test for access to U.S. space segment based on the state of another country's regulatory procedures appears to misdirect the Commission's spectrum oversight duties as defined in its authorizing statute. See 47 U.S.C. § 303. Accordingly, LQL and Loral Space recommended that the Commission modify the policy proposed in the NPRM in two ways. First, orient its analyses of applications to access non-U.S. satellites toward sound spectrum management and away from broader international trade considerations, and, second, approach regulation on a flexible, *ad hoc* basis.

Other commenters expressed similar concerns.[4] Given the importance of the principles outlined in the NPRM to the development of competitive satellite services, it is critical that the Commission adopt rules and policies that would be effective in achieving its goals. To that end, LQL and Loral Space urge the

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[4] See AMSC Comments, at 2-4; Consolidated Comments of DIRECTV, DIRECTV International & Hughes Communications Galaxy, at 5-10; Home Box Office Comments, at 5-9.

Commission to review the recommendations in their initial comments. In these reply comments, LQL and Loral Space highlight additional concerns raised by the comments of other parties regarding the ultimate effectiveness of the ECO-Sat test.

I. STRICT APPLICATION OF THE PROPOSED ECO-SAT TEST MAY NOT ACCOMPLISH THE COMMISSION'S GOAL OF OPENING FOREIGN SATELLITE MARKETS TO UNITED STATES SATELLITES.

One of the principal goals of this proceeding is to encourage foreign administrations to open their satellite services markets to U.S. systems. NPRM, ¶ 1. The Commission expects the ECO-Sat test to further this goal because entry into U.S. satellite services markets by non-U.S. systems would generally be conditioned on the availability of equivalent opportunities in the system's home and route markets. Thus, a fundamental premise of the ECO-Sat test is that the opportunity to enter the U.S. market is a strong incentive for foreign administrations to open their satellite markets to U.S. companies.

However, this premise is not necessarily accurate. Many countries that U.S. satellite systems may be eager to serve simply do not provide satellite services which could serve the United States.[5] The ECO-Sat test provides little or no incentive to these countries to grant "landing rights" to U.S. systems.

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[5] See Consolidated Comments of DIRECTV, DIRECTV International & Hughes Communications Galaxy, at 9-10; GE Americom Comments, at 6; PanAmSat Comments, at 7.

The effectiveness of the ECO-Sat test as an incentive should also be viewed in light of the difficulty encountered by the United States at the World Trade Organization (WTO) negotiations on basic telecommunications services. Within these talks, the United States has offered to open its telecommunications markets if other nations open their markets. Yet, by the originally scheduled date for conclusion of these talks in April 1996, the United States found that not enough administrations were willing to make offers which matched the U.S. offer.[6]

Even though the WTO has not yet achieved an "open skies" policy, implementing agreements to open satellite markets is more likely to be successful through such multilateral discussions than through an FCC-administered ECO-Sat test.[7] As one commenter cogently noted:

> The carrot at issue in those talks is access to the entire market for basic telecommunications services in the U.S. Many countries without their own satellite industries still will have an interest in the ability of their domestic telecommunications providers to access the U.S. market. Thus, the incentive of foreign administrations to commit to liberalization of their own markets will be greater.[8]

In any event, if the WTO negotiations succeed, the Commission's ECO-Sat test would be unnecessary because U.S. satellite systems will have the benefit of commitments by foreign administrations to open foreign satellite markets.

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[6] See Statement of Amb. Charlene Barshefsky, "Basic Telecom Negotiations" (Apr. 30, 1996).

[7] See AirTouch Comments, at 8-10; GE Americom Comments, at 6-8; Comments of Motorola Satellite Communications & IRIDIUM, at 13-14.

[8] GE Americom Comments, at 6-7.

There is a similar concern regarding the impact of the ECO-Sat test on those countries that have licensed satellite systems which could serve the U.S. market. U.S. satellite markets may be lucrative, but they are only a fraction of the available global markets. Moreover, foreign satellite systems providing global, mobile personal communications are unlikely to be barred from connecting calls to the United States through the PSTN. See NPRM, ¶¶ 44-47. Even if foreign satellite systems do not receive access to the U.S. market as a result of the ECO-Sat test, U.S. "roamers" could subscribe to a foreign satellite system outside the U.S., and still make calls to other markets and the U.S.[9] If foreign countries are willing to forgo the use of transceivers *within the U.S.*, U.S. systems may lose subscribers to such foreign systems, and, there would be no pressure to open the home and route markets of the system to U.S. satellite systems.

Moreover, strict application of the ECO-Sat test would be perceived as erecting a barrier to entry to the U.S. market, which could have the "reciprocal" effect of closing foreign markets to U.S. satellite systems.[10] For example, some commenters pointed out that the ECO-Sat test would be difficult to apply.[11] For any single earth station application, there are several definitional issues which

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[9] Cf. Comments of Motorola Satellite Communications & IRIDIUM, at 21 (75% of the projected U.S. subscribers to IRIDIUM MSS system would be "roamers," *i.e.*, persons who would use the system while on travel outside the U.S.).

[10] See ICO Global Communications Comments, at 36-37.

[11] See Japan Satellite Systems Comments, at 2-3; Transworld Comments, at 2-3.

must be resolved before the test can even be applied. The Commission would have to identify the applicant's "home market[s]" and "route market[s]," a potentially difficult task in today's world of global telecommunications entities.

Motorola/IRIDIUM and TRW have offered definitions for the proposed "critical mass" test for non-U.S. MSS systems.[12] NPRM, ¶ 47. These proposals serve only to make the ECO-Sat test more complex and difficult to apply if the Commission adopts it. Adoption of an overly vague and/or complex test not only will make it difficult for foreign satellite systems to obtain authority to serve U.S. markets, but also will send the message to foreign administrations that the United States has imposed a new and stringent barrier to entry.

While Loral Space and LQL support the Commission's efforts to achieve a global "open skies" policy, adoption of the ECO-Sat test does not necessarily provide the correct incentive for foreign administrations to grant landing rights to U.S. systems. As DIRECTV, DIRECTV International and Hughes Communications Galaxy stated, the Commission's current policy may have sufficient flexibility so that it would ultimately be more effective at opening foreign markets:

> Rather than "go backwards" and establish a strict reciprocity policy as the Notice may appear to suggest, the Commission's policy should remain a model to other countries of the advantages of maintaining

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[12] See Comments of Motorola Satellite Communications & IRIDIUM, at 32-35; TRW Comments, at 19-20.

markets that are open to other countries' satellites and thereby enhancing global competition.[13]

II. ALTERNATIVES TO THE ECO-SAT TEST PROPOSED BY PARTIES WITH INTERESTS IN INTERGOVERNMENTAL ORGANIZATIONS WOULD NOT BE EFFECTIVE.

Parties with interests in satellite systems owned by Inmarsat and INTELSAT and ICO Global Communications suggested that the policies proposed in the NPRM would not be effective as to IGOs or their successors.[14] Although, as discussed above, the ECO-Sat test may not provide the proper incentives to foreign administrations, the alternative proposals of these parties also do not appear to accomplish the goals of this proceeding.

COMSAT and INTELSAT suggest, *inter alia*, that use of a "critical mass" test for MSS systems would be ineffective because IGOs do not have the power to control the regulatory policies of their sovereign members.[15] They suggest that the Commission consider applications for U.S. services by satellite systems owned by

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[13] Consolidated Comments of DIRECTV, DIRECTV International & Hughes Communications Galaxy, at 8.

[14] See COMSAT Comments, at 20-25; Consolidated Comments of DIRECTV, DIRECTV International & Hughes Communications Galaxy, at 13-14; ICO Global Communications Comments, at 22-28; INTELSAT Comments, at 6-7. ICO claimed that it should be treated the same as the U.S. MSS Above 1 GHz systems Iridium and Globalstar™ because, like ICO, the U.S. systems have foreign investors and contracts with foreign service providers in many foreign countries. ICO Global Communications Comments, at 28-32. Obviously, a contract with a foreign service provider is not equivalent to grant of "landing rights" from a foreign administration, nor are foreign investors necessarily equivalent to an ownership relationship with a foreign licensing administration.

[15] See COMSAT Comments, at 22-24; INTELSAT Comments, at 9.

IGOs under an "effect on competition" test.[16] See NPRM, ¶ 68. While Loral Space and LQL agree that applying the ECO-Sat test to IGOs is problematic,[17] it is not at all clear that the "effect on competition" test is an improvement because the Commission would certainly consider the same facts under both tests. Thus, more importantly, the "effect on competition" test may lack the same incentives discussed above as the ECO-Sat test. In any event, regardless of whether IGOs have the power to influence the regulatory policies of their members, the Commission's goal must remain to adopt policies which encourage those administrations which would benefit through financial or other means from the success of a non-U.S. system to open their markets to U.S. systems.

ICO recommends that, instead of the ECO-Sat test, the Commission adopt a policy of encouraging foreign administrations to impose a "no special concessions" condition on their licensed MSS systems similar to that imposed upon MSS Above 1 GHz licensees.[18] See 47 C.F.R. § 25.143(h). While Loral Space and LQL certainly concur that this objective is desirable, such a "policy" is unlikely to be effective in achieving the Commission's goals. ICO's recommended condition imposes a restriction on the actions of satellite system operators that may be impossible to police. Moreover, it is far from apparent that the policy would act as

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[16] See COMSAT Comments, at 12-15, 30-33; INTELSAT Comments, at 7.

[17] See Loral Space & LQL Comments, at 26-28.

[18] ICO Global Communications Comments, at 37-41.

an incentive to foreign licensing administrations to grant landing rights to U.S. systems, which is, after all, a primary objective of U.S. government policy.

III. CONCLUSION

Loral Space and LQL recommend that the policies proposed in the NPRM be modified as described in their initial and reply comments.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Jacqueline E. Hand, hereby certify that I have on this 16th day of August 1996, caused copies of the foregoing Reply Comments of L/Q Licensee, Inc. and Loral Space & Communications Ltd. to be delivered via hand delivery (indicated with *) or by U.S. mail, postage prepaid, to the following:

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