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

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)

Assessment and Collection of)
Regulatory Fees for Fiscal)
Year 1997)

MD Docket No. 96-186

Petition for Reconsideration of ORBCOMM

Orbital Communications Corporation ("ORBCOMM"), pursuant to Section 1.429 of the Commission's Rules, hereby seeks reconsideration of the decision to impose an annual regulatory fee of \$135,675 on low-Earth orbit ("LEO") satellite system licensees for the upcoming year.^{1/} ORBCOMM believes that the fee is excessive, based on the information presented in the *Fee Order* with regard to the Commission's cost of regulating LEO satellite systems. ORBCOMM thus requests that the Commission reduce that fee to a level that is commensurate with the costs incurred in regulating those services.

Under the provisions enacted by Congress establishing the Commission's authority to collect the annual regulatory fees, the amount collected is supposed to be designed to recover the costs of regulating the activities.^{2/} In addition, Congress directed the Commission to develop an accounting system in order

1/ Assessment and Collection of Regulatory Fees for Fiscal Year 1997, MD Docket No. 96-186, FCC 97-215, released June 26, 1997 (published in the Federal Register on July 11, 1997 at p. 37408) (hereafter cited as "*Fee Order*").

2/ 47 U.S.C. §§ 159(a)(1) and 159(b)(1)(A).

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to track whether the annual regulatory fees are cost-based.^{3/} That accounting system has been implemented, and apparently forms the basis for the calculation of the regulatory fees.^{4/}

Based on the information included in the *Fees Order*, the annual fee of \$135,675 for LEO satellite systems appears to exceed the Commission's cost of regulating low-Earth orbit satellite systems. First, to the extent the International Bureau is incurring costs in processing the currently pending applications or engaging in international coordination of the licensed systems, those costs presumably are already being recovered through the significant application filing fees for low-Earth orbit satellite systems -- currently set at \$255,080.^{5/} Given that there is only one active system providing only initial services, presumably most of the International Bureau employee's time has been spent on the processing of the applications (rather than policy and rulemaking, enforcement or public information). Including those application processing costs in determining the amount to be recovered through the annual regulatory fees results in a double recovery of the costs.

In addition, ORBCOMM observes that according to the Commission's own calculations of its costs of regulating different services (as required by Section 9(i) of the Communications Act and as set forth in Attachment D to the *Fees Order*), the actual FY 1996 regulatory costs for low-Earth orbit

^{3/} 47 U.S.C. § 159(i).

^{4/} *Fee Order* at ¶¶ 12-20.

^{5/} 47 C.F.R. § 1.1107(10).

satellites (including overhead and other indirect costs pro-rated) as determined by the Commission's cost allocation system was \$6,194. Even when those costs were pro-rated to meet the \$152 million target set by Congress for the Commission as a whole, the total costs for low-Earth orbit satellite regulation were only \$6,571.

The Attachment, however, reflects an "Adjusted Pro-Rated Costs" for low-Earth orbit satellites of \$2,412,035, including only a cryptic footnote referring to adjustments because certain accounting codes associated with international activities were utilized for only a small portion of FY 1996. The \$2.4 million adjusted cost is some 367 times the pro-rated cost of \$6,571, or 389 times the actual cost of \$6,194.

Unless the "small portion" of time the accounting codes for low-Earth orbit satellites were in effect was less than one day (which does not seem plausible since presumably the codes would have to be in effect for at least a two week pay period), then the adjusted cost must be calculated on some other basis.^{6/} In the *Fees Order*, the Commission indicates that additional adjustments were made because many employees working on activities related to LEOs were unaware of the new code for that service, and so had allocated their time to the existing fee categories (i.e., space stations, earth stations, international

^{6/} Even assuming the codes were in effect for the minimum time of a two week pay period, then the total low-Earth orbit adjusted costs would be \$170,846 (26 x \$6,571), significantly below the \$2.4 million figure appearing in Attachment D.

public fixed radio, international HF radio stations and international bearer circuits).^{7/}

The Commission's cryptic explanation does not appear to justify the significant costs assigned to the LEO satellite service. Attachment D of the *Fees Order* reflects the various unadjusted and adjusted costs assigned to the categories. Assuming that the employees were assigning time spent on LEOs to the previous categories, presumably that time would have been allocated to Earth stations or space stations (because the other international categories are not related to satellite services). Attachment D, however, indicates that the adjustments reflect: (i) a significant increase to Earth stations (from \$260,074 to \$1,415,445); (ii) a significant decrease to GEO space stations (from \$6,784,142 to \$3,928,584); and (iii) significant increases to LEOs (from \$6,571 to \$2,412,035) and Signatory (from \$10,985 to \$1,097,692). Thus, the adjustments appear to involve more than merely reallocating employee time because the Signatory and LEO codes were not used properly by the employees, insofar as the Earth station category was increased, and the total increases for Earth Stations, LEOs and Signatory exceeded by a significant amount the decrease for GEO space stations.^{8/}

In sum, compared to the other adjustments to the international regulatory fees, the adjustment for low-Earth orbit

^{7/} *Fees Order* at n. 7. ORBCOMM presumes that any such misallocation of time would be associated with the space station or Earth station categories, since the other categories appear to be wholly unrelated to any LEO regulatory activities.

^{8/} Indeed, the seemingly unrelated category of International Circuits was significantly reduced from \$7,036,649 to \$3,928,584.

satellites appears to be materially skewed. ORBCOMM thus believes that reconsideration is appropriate here because the new annual regulatory fees significantly overstate the Commission's costs of regulating low-Earth orbit satellites. Moreover, in re-determining the fees, the Commission must be sure to exclude from the calculation the costs it incurs in processing the applications, because such costs are designed to be recovered through application fees. Double counting of the costs for both application fee and annual regulatory fee purposes would unfairly burden the LEO satellite system licensees.

Respectfully submitted,

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