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Nixon, Hargrave, Devans & Doyle LLP
Attorneys and Counselors at Law

ONE KEYCORP PLAZA
ALBANY, NEW YORK 12207
(518) 427-2650

1600 MAIN PLACE TOWER
BUFFALO, NEW YORK 14202
(716) 853-8100

990 STEWART AVENUE
GARDEN CITY, NEW YORK 11530
(516) 832-7500

SUITE 700
ONE THOMAS CIRCLE
WASHINGTON, D.C. 20005-5802
(202) 457-5300
FAX: (202) 457-5355

WRITER'S DIRECT DIAL NUMBER: (202) 457-5518

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY
CITYPLACE
185 ASYLUM STREET
HARTFORD, CONNECTICUT 06103
(860) 275-6820

437 MADISON AVENUE
NEW YORK, NEW YORK 10022
(212) 940-3000

CLINTON SQUARE
POST OFFICE BOX 1051
ROCHESTER, NEW YORK 14603
(716) 263-1000

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August 21, 1997

Mr. William F. Caton
Secretary
Federal Communications Commission
1919 M Street, N.W. - Room 222
Washington, D.C. 20554

RE: 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,
ID Docket No. 96-111

Dear Mr. Caton:

Enclosed for filing are an original and four copies of Comments of
Qualcomm Incorporated in the above-captioned proceeding.

Sincerely,



J. Breck Blalock

Enclosures

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

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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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)
)
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)
)
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)
)
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IB Docket No. 96-111

CC Docket No. 93-23
RM-7931

File No. ISP-92-007

COMMENTS OF QUALCOMM INCORPORATED

QUALCOMM Incorporated ("QUALCOMM"), by its attorneys and pursuant to Sections 1.415 and 1.419 of the Commission's Rules, hereby comments in response to the Commission's Further Notice of Proposed Rulemaking in the above captioned proceeding.¹ The FNPRM solicits comment relating to the effect of the World Trade

¹ 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 ("DISCO II"), Further Notice of Proposed Rulemaking, IB Docket No. 96-111, CC Docket No. 93-23, RM-7931, File

Organization Agreement on Basic Telecom Services ("WTO Basic Telecom Agreement") on issues raised in the first Notice of Proposed Rulemaking in the DISCO II proceeding, which was issued on May 14, 1996.²

QUALCOMM is a leading provider of digital wireless communications products, technologies, and services. QUALCOMM designs, develops, manufactures, licenses, and operates advanced wireless communications systems used in a variety of terrestrial, airborne, and satellite-based products. QUALCOMM is the operator of OmniTRACS and BoaTRACS, which are satellite-based, two-way mobile communications and tracking systems in use in over 30 countries around the world. OmniTRACS and BoaTRACS provide messaging, position reporting, and other services to transportation companies and other mobile and fixed-site customers. QUALCOMM has sold over 175,000 OmniTRACS and BoaTRACS terminals worldwide.

The Commission Should Not Apply the ECO-Sat Test to WTO-covered Services and Countries

QUALCOMM supports the Commission's proposal not to apply the ECO-Sat Test to WTO member satellite systems wishing to provide services covered by the U.S. Schedule of Commitments to the WTO Basic Telecom Agreement within the

No. ISP-92-007, FCC 97-252 (released July 18, 1997) ("FNPRM").

² 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 ("DISCO II"). Notice of Proposed Rulemaking, 11 FCC Rcd 18178 (1996).

U.S. or between the U.S. and other WTO member countries.³ The broad market access commitments made by WTO members under the WTO Basic Telecom Agreement justify the presumption that the provision of covered services within the U.S. or between the U.S. and other WTO members will foster competition in the U.S. and thus satisfy the Commission's competition concerns. Enforcement mechanisms available under the General Agreement on Trade in Services ("GATS") are more than sufficient to ensure that WTO member countries who participated the WTO Basic Telecom Agreement comply with their commitments.⁴ Moreover, QUALCOMM concurs with the Commission that the general competitive obligations of the GATS are sufficient to permit the Commission to presume that the provision of covered services within the U.S. or between the U.S. and other WTO members will foster competition even among those WTO members who did not make specific satellite commitments or participate in the WTO Basic Telecom Agreement.⁵

QUALCOMM also supports the Commission's proposal to apply streamlined review to requests to provide covered services within the U.S. using WTO member satellite systems and to require parties opposing grant of such requests to bear the burden of demonstrating that grant of such authorizations would pose a very high risk

³ FNPRM at ¶ 18.

⁴ Id. at ¶ 12.

⁵ Id. at ¶ 17.

to competition in the U.S. satellite market that could not be cured by conditions placed on the license.⁶

**The Commission Should Not Place Restrictions On Service To
Non-WTO Member Markets By WTO Member Satellites
Beyond Those Currently Placed On U.S. Satellites**

The FCC should give WTO satellites the same flexibility as it currently gives U.S. satellites to serve non-WTO route markets.⁷ Under the WTO Basic Telecom Agreement, the U.S. has committed to national treatment for WTO member satellites. QUALCOMM shares the Commission's concern that the most favored nation obligations might require the Commission to limit the flexibility afforded U.S.-licensed satellites under DISCO I to serve any country without further Commission authorization if the Commission decides to apply an ECO-Sat Test to non-WTO route markets.⁸ Such a retreat from the flexibility afforded by DISCO I would be detrimental to the U.S satellite industry and would result in unnecessary regulatory burdens and delay in the provision of innovative international satellite services.

The Commission could satisfy its competition concerns relating to non-WTO route markets through its proposal to prohibit non-U.S.-licensed satellites from entering into exclusionary arrangements with the country in which they wish to

⁶ Id. at ¶ 19.

⁷ Amendment to the Commission's Regulatory Policies Governing Domestic Fixed-Satellite and Separate International Satellite Systems, 11 FCC Rcd 2429 (1996).

⁸ See FNPRM at ¶ 26.

operate, as the FCC currently does with U.S.-licensed systems.⁹ This license condition would provide the Commission with a mechanism to counter anticompetitive behavior without overburdening U.S. satellite service providers.

The Commission Should Apply The ECO-Sat Test To Non-WTO Member Satellite Home Markets

The FCC proposes to apply an ECO-Sat Test with respect to the home markets of satellites licensed by non-WTO member countries regardless of whether the route is to a WTO or non-WTO member.¹⁰ Further, the FCC proposes to apply a separate ECO-Sat Test to the route market when the route market is a different non-WTO member.¹¹ QUALCOMM agrees in principle with this proposal. Application of the ECO-Sat Test to non-WTO member countries will encourage them to open their markets to U.S. satellites. However, the ECO-Sat Test should not be applied or should be satisfied where satisfactory access to the route market may not be available via U.S. or WTO member satellites. Where effective competitive opportunities for U.S.-licensed or other WTO member satellites cannot effectively exist, application of the ECO-Sat Test would only delay the implementation of innovative satellite services and inhibit the ability of U.S. companies to provide services in the route market.

⁹ Id. at ¶ 27.

¹⁰ Id. at ¶ 23.

¹¹ Id.

The Commission should not apply an ECO-Sat Test to route markets for mobile satellite services served by non-WTO member geostationary satellites. The incentive to satisfy the Commission's ECO-Sat Test, and thus gain access to the U.S. market, is primarily an incentive to countries that have financial and other interests in the facilities at issue. In almost all instances, these countries will be the licensing or home markets of the geostationary satellite facilities. Accordingly, it makes little sense to apply the ECO-Sat Test to route market countries that have little incentive to meet the test. Instead, the Commission should treat non-WTO member satellites the same as it treats U.S. satellites by prohibiting non-WTO member satellites whose home markets meet the ECO-Sat Test from entering into exclusionary arrangements with route market countries. This prohibition should inhibit anticompetitive behavior while allowing U.S. based mobile service providers to provide seamless services over multiple jurisdictions using geostationary satellite facilities.

**The Commission Should Not Apply the ECO-Sat Test
When Bilateral Agreements Are In Place**

The FCC proposes not to apply the ECO-Sat Test as part of its analysis of applications covered by bilateral service agreements.¹² QUALCOMM agrees with the Commission's proposal. The Commission has already made it clear that the purpose of such bilateral agreements is the enhancement of competition and that it expects that a basic precondition to such agreements would be national treatment of U.S.

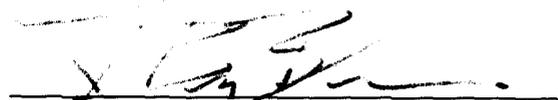
¹² Id. at ¶ 30.

providers.¹³ Under such circumstances, application of an ECO-Sat Test would be redundant.

**The Commission Should Permit Operators Seeking Access to
Non-U.S. Satellites to File an Earth Station Application Independent
from A Satellite Processing Pound**

QUALCOMM recognizes that some non-U.S.-licensed satellite systems may wish to be eligible to participate in a processing round for space stations in the U.S. and believes that the Commission's proposals relating to such participation are acceptable. However, QUALCOMM urges the Commission to adopt its proposed alternative to permit operators seeking access to a non-U.S. satellite to file an earth station application that could be considered independent from a processing round. Such processing is essential when the non-U.S. satellite is already launched and international coordination for that satellite has been initiated or completed.¹⁴

Respectfully submitted,



Veronica M. Ahern
J. Breck Blalock
Nixon, Hargrave, Devans & Doyle LLP
One Thomas Circle, N.W.
Suite 700
Washington, DC 20005
(202) 457-5300

August 21, 1997

Counsel to QUALCOMM Incorporated

¹³ Id. at ¶ 29.

¹⁴ Id. at ¶ 55.

CERTIFICATE OF SERVICE

I, Susanne M. Gyldenvand, do hereby certify that a copy of the foregoing Comments of Qualcomm Incorporated was sent by first class United States mail, postage prepaid, or by hand delivery or facsimile where indicated by an asterisk (*), this 21st day of August, 1997, to the following:

*Chairman Reed E. Hundt
Federal Communications Commission
1919 M Street, N.W. - Room 814
Washington, D.C. 20554

*Commissioner James H. Quello
Federal Communications Commission
1919 M Street, N.W. - Room 802
Washington, D.C. 20554

*Commissioner Susan Ness
Federal Communications Commission
1919 M Street, N.W. - Room 832
Washington, D.C. 20554

*Commissioner Rachelle B. Chong
Federal Communications Commission
1919 M Street, N.W. - Room 844
Washington, D.C. 20554

*William E. Kennard, Esq.
General Counsel
Federal Communications Commission
1919 M Street, N.W. - Room 614
Washington, D.C. 20554

*Peter Cowhey, Esq.
Chief, International Bureau
Federal Communications Commission
2000 M Street, N.W. - Room 830
Washington, D.C. 20554

*John Stern, Esq.
International Bureau
Federal Communications Commission
2000 M Street, N.W. - Room 800
Washington, D.C. 20554

*Thomas S. Tycz
Division Chief
Satellite & Radiocommunication Division
International Bureau
Federal Communications Commission
2000 M Street, N.W. - Room 520
Washington, D.C. 20054

*Cecily C. Holiday, Esq.
International Bureau
Federal Communications Commission
2000 M Street, N.W. - Room 520
Washington, D.C. 20554

*Fern J. Jarmulnek, Esq.
International Bureau
Federal Communications Commission
2000 M Street, N.W. - Room 518
Washington, D.C. 20554

*Karl Kensinger, Esq.
International Bureau
Federal Communications Commission
2000 M Street, N.W. - Room 521
Washington, D.C. 20554

*Mr. William F. Caton
Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

*Beverly Bendekgey
General Accounting Office
441 G Street, N.W. - Room 2Y10
Washington, D.C. 20548

Jill Abeshouse Stern, Esq.
Shaw, Pittman, Potts & Trowbridge
2300 N Street, N.W.
Washington, D.C. 20037
Counsel for Mobile Communications Holdings, Inc.

Mr. Gerald Helman
Mobile Communications Holdings, Inc.
1120 19th Street, N.W. - Suite 480
Washington, D.C. 20036

Robert A. Mazer, Esq.
Vinson & Elkins, L.L.P.
1455 Pennsylvania Avenue, N.W. - Suite 700
Washington, D.C. 20004
Counsel for Constellation Communications, Inc.

Stephen L. Goodman, Esq.
Halprin, Temple, Goodman & Sugrue
Suite 650 East Tower
1100 New York Avenue, N.W.
Washington, D.C. 20005
Counsel for AirTouch Communications

Michael J. Lehmkuhl, Esq.
Pepper & Corazzini, L.L.P.
1776 K Street, N.W. - Suite 200
Washington, D.C. 20006
Counsel for AlphaStar Television Network Inc.

Bruce D. Jacobs, Esq.
Glenn S. Richards, Esq.
Robert L. Galbreath, Esq.
Fisher, Wayland, Cooper, Leader & Zaragoza L.L.P.
2001 Pennsylvania Avenue, N.W. - Suite 400
Washington, D.C. 20006
Counsel for AMSC Subsidiary Corp.

Mr. Lon C. Levin
Vice President
American Mobile Satellite Corp.
10802 Parkridge Boulevard
Reston, VA 22091

Mark C. Rosenblum, Esq.
Peter H. Jacoby, Esq.
Judy Sello, Esq.
295 North Maple Avenue - Room 3244J1
Basking Ridge, NJ 07920
Counsel for AT&T Corp.

Joel S. Winnik, Esq.
K. Michele Walters, Esq.
Hogan & Hartson L.L.P.
555 Thirteenth Street, N.W.
Washington, D.C. 20004-1109
Counsel for BT North America Inc.

Randolph J. May, Esq.
Timothy J. Cooney, Esq.
Sutherland, Asbill & Brennan
1275 Pennsylvania Avenue, N.W.
Washington, D.C. 20004-2404
Counsel for Capital Cities/ABC, Inc. et al.

Robert E. Conn, Esq.
Shaw, Pittman, Potts & Trowbridge
2300 N Street, N.W.
Washington, D.C. 20037-1128
Counsel for Charter Communications International, Inc.
Counsel for Transworld Communications (U.S.A.), Inc.

Richard E. Wiley, Esq.
Lawrence W. Secret, III, Esq.
William B. Baker, Esq.
Rosemary C. Harold, Esq.
Wiley, Rein & Fielding
1776 K Street, N.W.
Washington, D.C. 20006
Counsel for Comsat Corporation

Howard D. Polsky, Esq.
Keith H. Fagan, Esq.
Neal T. Kilminster, Esq.
Nancy J. Thompson, Esq.
6560 Rock Spring Drive
Bethesda, MD 20817
Counsel for Comsat Corporation

Gary M. Epstein, Esq.
John P. Janka, Esq.
Teresa D. Baer, Esq.
Latham & Watkins
1001 Pennsylvania Ave., N.W.
Washington, D.C. 20004-2505
Counsel for DIRECTV, INC. et al.

Peter A. Rohrbach, Esq.
Karis A. Hastings, Esq.
Hogan & Hartson L.L.P.
555 Thirteenth Street, N.W.
Washington, D.C. 20004
Counsel for GE American Communications, Inc.

Christine G. Crafton, Ph.D.
Director, Industry Affairs
General Instrument Corporation
1133 21st Street, N.W. - Suite 405
Washington, D.C. 20036

Benjamin J. Griffin, Esq.
Kathleen A. Kirby, Esq.
Reed, Smith, Shaw & McClay
Suite 1100 East Tower
1301 K Street, N.W.
Washington, D.C. 20005
Counsel for Home Box Office

Cheryl A. Tritt, Esq.
Susan H. Crandall, Esq.
Stephen J. Kim, Esq.
Morrison & Foerster, L.L.P.
2000 Pennsylvania Avenue, N.W. - Suite 5500
Washington, D.C. 20006
Counsel for ICO Global Communications

Henry M. Rivera, Esq.
Darren L. Nunn, Esq.
Ginsburg, Feldman & Bress, Chartered
1250 Connecticut Avenue, N.W.
Washington, D.C. 20036
Counsel for Intelsat

Mr. Yasuharu Iwashima
Executive Vice President
Japan Satellite Systems, Inc.
5th Floor Tranomon 17 Mori Building
1-26-5 Tranomon Minato-ku Tokyo
105 JAPAN

James T. Roche, Esq.
Regulatory Counsel
Keystone Communications Corporation
400 N. Capitol Street, N.W. - Suite 880
Washington, D.C. 20001

Kazunori Inagaki
Director, KDD Washington Liaison Office
Kokusai Denshin Denwa Co. Ltd.
3400 International Drive, N.W. - #3K-02
Washington, D.C. 20008-3098

Gerald Musarra
Senior Director, Commercial Programs
Space & Strategic Missiles Sector
Lockheed Martin Corporation
1725 Jefferson Davis Highway
Arlington, VA 22202-4127

Debra A. Smilley-Weiner, Esq.
Deputy General Counsel
Lockheed Martin Astro Space Commercial
P.O. Box 800
Princeton, NJ 08543-0800

William D. Wallace, Esq.
Crowell & Moring
1001 Pennsylvania Ave., N.W.
Washington, D.C. 20004
Counsel for L/Q Licensee, Inc. and Loral Space & Communications Ltd.

Leslie A. Taylor, Esq.
Guy T. Christiansen, Esq.
6800 Carlynn Court
Bethesda, MD 20817
Counsel for L/Q Licensee, Inc. and Loral Space & Communications Ltd.

Philip L. Verveer, Esq.
Michele Pistone, Esq.
Willkie, Farr & Gallagher
1155 21st Street, N.W. - Suite 600
Washington, D.C. 20036
Counsel for L/Q Licensee, Inc. and Loral Space & Communications Ltd.

Carol R. Schultz
Larry A. Blosser
MCI Telecommunications Corp.
1801 Pennsylvania Avenue, N.W.
Washington, D.C. 20006

Philip L. Malet, Esq.
Alfred M. Mamlet, Esq.
Maury D. Shenk, Esq.
Steptoe & Johnson, L.L.P.
1330 Connecticut Avenue, N.W.
Washington, D.C. 20036
Counsel for Motorola Satellite Communications, Inc. and Iridium, Inc.

Jack E. Robinson
President
National Telecom Satellite Communications, Inc.
Clearwater House
2187 Atlantic Street
Stamford, CT 06902

Terri B. Natoli, Esq.
Fleischman & Walsh, L.L.P.
1400 Sixteenth Street, N.W. - Suite 600
Washington, D.C. 20036
Counsel for Newcomb Communications, Inc. and Mobile Datacom Corporation

Albert Halprin, Esq.
Halprin, Temple, Goodman & Sugrue
Suite 650 East Tower
1100 New York Avenue, N.W.
Washington, D.C. 20005
Counsel for Orbital Communications Corp.

Thomas J. Keller, Esq.
Eric T. Werner, Esq.
901 15th Street, N.W. - Suite 700
Washington, D.C. 20005-2301
Counsel for Orion Network Systems, Inc.

Henry Goldberg, Esq.
Joseph A. Godles, Esq.
Daniel S. Goldberg, Esq.
Goldberg, Godles, Weiner & Wright
1229 Nineteenth Street, N.W.
Washington, D.C. 20036
Counsel for PanAmSat Corporation

Norman P. Leventhal, Esq.
Raul R. Rodriguez, Esq.
Stephen D. Baruch, Esq.
Walter P. Jacob, Esq.
Leventhal, Senter & Lerman
2000 K Street, N.W. - Suite 600
Washington, D.C. 20006
Counsel for TRW Inc.

Scott B. Harris, Esq.
Mark A. Grannis, Esq.
Gibson, Dunn & Crutcher L.L.P.
1050 Connecticut Avenue, N.W.
Washington, D.C. 20036
Counsel for Teledesic Corporation

Alan Y. Naftalin, Esq.
Gregory C. Staple, Esq.
Koteen & Naftalin, L.L.P.
1150 Connecticut Avenue, N.W. - Suite 1000
Washington, D.C. 20036
Counsel for TMI Communications and Company, Limited Partnership

Richard E. Wiley, Esq.
John C. Quale, Esq.
Stacy R. Robinson, Esq.
Bruce A. Olcott, Esq.
Wiley, Rein & Fielding
1776 K Street, N.W.
Washington, D.C. 20006
Counsel for Western Tele-Communications, Inc.

Robert S. Koppel, Esq.
Tally Frenkel, Esq.
15245 Shady Grove Road - Suite 460
Rockville, MD 20850
Counsel for Worldcom, Inc.


Susanne M. Gyldenvand
Susanne M. Gyldenvand

*** BY HAND DELIVERY OR FACSIMILE**