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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

COMMENTS OF AMSC SUBSIDIARY CORPORATION

AMSC Subsidiary Corporation ("AMSC") hereby submits its comments on the Further Notice of Proposed Rulemaking in the above-referenced proceeding.[1] As with the earlier round of comments on the Commission's initial proposal, AMSC's focus is on the importance of the Commission retaining the discretion to consider spectrum management issues, including spectrum availability, in any decision on the licensing of foreign space stations. The initial

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[1] FCC 97-252 (July 18, 1997). AMSC incorporates by reference its comments and reply comments on the initial *Notice of Proposed Rulemaking* in this proceeding. Comments of AMSC Subsidiary Corporation, dated July 15, 1996; Reply Comments of AMSC Subsidiary Corporation, dated August 16, 1996.

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Notice of Proposed Rulemaking in this proceeding discussed the importance of the Commission retaining this discretion and the *Further NPRM* states that the existence of such discretion is consistent with the U.S. commitment in the Basic Telecom Agreement to accord national treatment to foreign service suppliers. AMSC strongly supports this view. The Commission retains the right (and the obligation) to consider and reject requests by foreign-licensed satellite systems if it determines that those requests are inconsistent with its spectrum management policies. The application of this principle to consideration of the authorization of foreign-licensed space stations is entirely consistent with the obligation under the GATS.

Another key aspect of spectrum management is the establishment of technical requirements, such as the provision of priority for safety communications. AMSC supports the Commission's proposal, stated in both the initial notice and the *Further NPRM,* to require all systems to comply with key U.S. technical requirements. Such a requirement is consistent with GATS obligations and will help ensure that U.S. and foreign-licensed systems operate in accordance with the same rules.

AMSC encourages the Commission to adopt procedures for processing applications for access by foreign-licensed satellite systems that provide interested parties with notice and an opportunity to comment. The Commission proposes to establish important criteria for review of such requests; interested parties will play a key role in creating a complete record for determining whether those criteria are met.

Background

AMSC is the entity licensed by the Commission to provide Mobile Satellite Service ("MSS") in a small and very congested amount of spectrum in the L-band.[2] The Commission's initial decision to license only one entity to provide service in this band was a result of there being insufficient spectrum for more than one operator to serve the U.S. market.[3] Since the Commission made that decision, the MSS L-band has become even more congested; there are now systems licensed by five different countries operating a total of at least eight space stations in the North American region in the MSS L-band.[4] At the most recent annual meeting of the

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[2] Memorandum Opinion, Order and Authorization, 4 FCC Rcd 6041 (1989); Final Decision on Remand, 7 FCC Rcd 266 (1992); *aff'd sub nom.* Aeronautical Radio, Inc. v. FCC, 983, F.2d 275 (D.C. Cir. 1993).

[3] Second Report and Order, 2 FCC Rcd 485, 486 (1987), clarified, 2 FCC Rcd 2417 (1987), *recon. denied*, 4 FCC Rcd 6029 (1989). *rev'd and remanded on other grounds sub nom.*, Aeronautical Radio, Inc. v. FCC, 928 F.2d 428 (D.C. Cir. 1991), Tentative Decision on Remand, 6 FCC Rcd 4900 (1991), Final Decision on Remand, 7 FCC Rcd 266 (1992), *aff'd sub nom.*, Aeronautical Radio, Inc. v. FCC, 983 F.2d 275 (D.C. Cir. 1993).

[4] In a recent order regarding provision of domestic aeronautical MSS, the Commission noted that

> [t]he spectrum in which the MSS systems will operate is limited and appears insufficient to meet the stated spectrum requirements for the North American coverage area for AMSC, Inmarsat and three other countries developing MSS systems - Canada, Mexico, and Russia. ... We want competition in the U.S., but the first step is to ensure sufficient spectrum for the U.S. domestic MSS system to become an effective competitor. This will require successful completion of the current coordination process.

Order on Reconsideration and Further Notice of Proposed Rulemaking CC Docket No. 87-75, FCC 96-161 (May 9, 1996), paras. 18-19. *See also* In the Matter of Establishing Rules and Policies for the Use of Spectrum for Mobile Satellite Service in the Upper and Lower L-band, IB Docket No. 96-132, para. 9 (June 18, 1996) (stating that it had become clear that the U.S. will not be able to secure sufficient spectrum in the upper L-band for

(continued...)

private operators to attempt to coordinate the spectrum, stated demand for spectrum exceeded the available supply.[5] It was only with a good deal of compromise by all the parties that any agreement was reached. If any of the foreign-licensed systems had been able to base their projected demand on operation in the U.S., it would have made the coordination process much more difficult, if not impossible.

As a condition of its license, AMSC is required to meet certain technical requirements, including establishing its ability to provide priority and preemptive access to aeronautical safety communications in the upper part of the band and to maritime safety communications in the lower part of the band. 47 C.F.R. Section 2.106 footnotes US 308, US315, and 730C. As a result of this obligation to provide priority and preemptive access to safety communications, AMSC has designed its network operations capability to permit the transfer of virtually all of its capacity to safety communications within seconds.

Discussion

Spectrum Availability. The U.S. commitment to the Basic Telecom Agreement is completely consistent with spectrum availability as a key criterion in any review of an application by a foreign-licensed system.[6] The agreement simply requires that the Commission

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[4] (...continued)
AMSC).

[5] The parties are to base their demand for spectrum on their existing usage and reasonable projections of future need. No party other than AMSC is permitted to calculate its demand based on actual or projected service to the U.S. market.

[6] Until near the end of the negotiations, the U.S. offer contained an express limitation on market access that it was "subject to spectrum availability." That limitation was removed in light of the fundamental nature of the sovereign right to manage spectrum. The text of the clarifying note is attached hereto as Appendix A.

not discriminate against an application from an entity licensed by a WTO member. In other words, if there is enough spectrum for one or more new systems to be licensed, the Commission must treat all applicants alike if they are from any WTO member country, including the United States. This commitment does not require the Commission to make a determination that spectrum is always available when a foreign-licensed system submits a request, any more than the Commission is required to do so now when a U.S. entity submits an application. Thus, for instance, the Commission would be permitted under the Basic Telecom Agreement to reject a proposal by a foreign cellular service provider to offer cellular service in the United States in the same block of frequencies that the Commission has already used to license two cellular operators.

The right to manage spectrum, which includes among other things the right to determine how many licenses can be awarded in a given amount of spectrum, is fundamental to national sovereignty and is fully consistent with GATS principles as long as it is exercised in a manner that is consistent with national treatment. The Constitution of the International Telecommunications Union ("ITU"), for example, opens with a clear recognition of the sovereign right to regulate domestic telecommunications. Constitution and Convention of the ITU, Preamble, Final Acts of the Additional Plenipotentiary Conference (Geneva, 1992). Similarly, at the World Telecommunications Policy Forum, which met in Geneva in October 1997 to discuss Global Mobile Personal Communications by Satellite ("GMPCS"), the delegates agreed that the introduction of GMPCS must remain subject to the sovereign right of each nation to regulate its telecommunications and "the limits of spectrum availability." *E.g.*, Chairman's Report, Opinion No. 2; Principle 3, pp. 6, 7 (October 24, 1996).

Thus, in the context of the MSS L-band, the Commission retains full discretion, consistent with the implementation of the Basic Telecom Agreement, to continue to determine that there is only sufficient spectrum available for a single system to provide U.S. domestic service. Indeed, given the spectrum congestion that has developed since the Commission made its initial licensing decision concerning the band, the Commission would have no basis for deciding that there is now enough spectrum for more than one system to provide such service. Moreover, if the Commission were to decide that there is sufficient spectrum for more than one system, it presumably would have to make licensing opportunities available to all potential applicants, including those proposing to construct and launch new systems.

Compliance with technical requirements. AMSC agrees with the Commission's conclusion in the *Further NPRM* that the Basic Telecom Agreement does not affect the Commission's proposal to require all applications to use foreign systems to demonstrate that they can meet relevant domestic technical and service rules. Such a showing is consistent with commitments to national treatment and is important to ensuring that foreign-licensed systems are not permitted to compete unfairly against U.S.-licensed systems. The Commission says that this is "critical," since "[o]therwise market entry by non-U.S. systems would distort our competitive policies, disadvantage U.S. satellite operators and service providers, and jeopardize our spectrum management policies." Id.

Such concerns are important to any consideration of the domestic operation of foreign systems in the MSS L-band. In AMSC's case, it is most concerned that any foreign-licensed system be able to comply with the Commission's requirement on AMSC that it provide priority and preemptive access to aviation safety and maritime safety communications. AMSC is also

concerned that the Commission maintain consistent requirements on unwanted emission levels to protect radionavigation systems.[7]

Application process. The Commission proposes to create new processes for reviewing requests for access by foreign-licensed satellite operators. As the Commission recognizes, the requirement for filing certain information and having it reviewed and acted on by the Commission is consistent with the Commission's GATS obligation and is needed, among other things, in order to perform spectrum management functions and review legal qualifications. *Further NPRM*, para 60.

AMSC strongly supports the establishment of an on-the-record process for the consideration of requests to access the U.S. market. The Commission's deliberations should be subject to standard Administrative Procedure Act requirements, including providing interested parties with notice and an opportunity to comment. If, for instance, the Commission accepts for filing an application to use the MSS L-band, AMSC should be entitled to notice and an opportunity to comment on any requests by foreign-licensed satellites that might impact AMSC's access to spectrum.[8] As discussed above, AMSC has an important perspective on issues such as spectrum availability and technical compliance that are critical to the Commission's review process.

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[7] *See, e.g.*, Order & Authorization, File No. 681-DSE-MP/L-95, DA 95-1701, at para. 28 (August 1, 1995), citing Memorandum of Understanding Between The Federal Communications Commission, National Telecommunications and Information Administration, and Federal Aviation Administration (November 18, 1994).

[8] Pursuant to the Commission's established spectrum management policies in the MSS L-band, the Commission should dismiss such an application without even accepting it for filing.

Conclusion

Therefore, for the above-stated reasons, AMSC urges the Commission to apply a spectrum availability test to all applications by foreign-licensed satellite systems, require a showing by such systems that they comply with Commission technical and service rules, and establish an on-the-record review process that provides interested parties with notice and an opportunity to comment.

Respectfully submitted,

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APPENDIX A

WORLD TRADE ORGANIZATION

S/GBT/W/3
3 February 1997

(97-0415)

Group on Basic Telecommunications

Original: English

CHAIRMAN'S NOTE

Market Access Limitations on Spectrum Availability

Many Members have entries in the market access column of their schedules indicating that commitments are "subject to availability of spectrum/frequency" or similar wording. In light of the physical nature of spectrum and the constraints inherent in its use, it is understandable that Members may have sought to rely on these words to adequately protect legitimate spectrum management policies. There is, however, doubt that words such as "subject to availability of spectrum/frequency" as listed in the market access column of many Members' schedules achieve that objective.

Spectrum/frequency management is not, *per se*, a measure which needs to be listed under Article XVI. Furthermore under the GATS each Member has the right to exercise spectrum/frequency management, which may affect the number of service suppliers, provided that this is done in accordance with Article VI and other relevant provisions of the GATS. This includes the ability to allocate frequency bands taking into account existing and future needs. Also, Members which have made additional commitment in line with the Reference Paper on regulatory principles are bound by its paragraph 6.

Therefore, words such as "subject to availability of spectrum/frequency" are unnecessary and should be deleted from Members' schedules.