COMSAT CORPORATION

Bruce A. Henoch
General Attorney

DOCKET FILE COPY ORIGINAL

6560 Rock Spring Drive
Bethesda, MD 20817
Telephone 301 214 3347
Fax 301 214 7145
Telex 197800
Internet bruce.henoch@comsat.com

September 5, 1997

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

By Hand

William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, DC 20554

Re: In the Matter 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, *et al.*, IB Docket No. 96-111, CC Docket No. 93-23, RM-7931, File No. ISP-92-007

Dear Mr. Caton,

COMSAT Corporation files herewith an original and nine copies of its reply comments in response to the Further Notice of Proposed Rulemaking in the above-captioned proceedings.

Please direct any questions to the undersigned.

Yours truly,

Bruce A. Henoch
General Attorney

Enclosures

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

In the Matter of	)	
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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

REPLY COMMENTS OF COMSAT CORPORATION

Neal T. Kilminster
Bruce A. Henoch

COMSAT Corporation
6560 Rock Spring Drive
Bethesda, Maryland 20817
(301) 214-3000

September 5, 1997

Table of Contents

I. Introduction and Summary.....2

II. Parties Support Elimination of the ECO-Sat Test for Use of Satellites Licensed by WTO-Member Countries.....3

III. An ECO-Sat Test for non-WTO-Member Satellites Should be Used with Caution.....5

IV. There is No Legitimate Reason for Denying COMSAT the Ability to Use INTELSAT and Inmarsat Space Segment to Provide U.S. Service.....7

A. COMSAT's Ability to Use INTELSAT and Inmarsat to Provide U.S. Domestic Services is Appropriately Addressed in This Proceeding.....9

B. Of the 69 Countries Submitting Offers Upon Which the basic Telecom Agreement was Successfully Concluded, the Overwhelming Majority are Members of INTELSAT an/or Inmarsat.....10

C. The WTO Agreement Requires that Suppliers of a WTO Country Be Able to Choose Facilities to Provide Covered Services Unless a Country Specifies Such Limitation in its Schedule.....12

D. COMSAT Does Not Enjoy Any Special Privileges or Immunities in its Role as a Common Carrier.....13

V. Any IGO Affiliate Satellite Licensed by a WTO-Member Country Should be Subject to the Same Entry Policy as Any Other Satellite Licensed by a WTO-Member Country.....15

VI. The FCC's Ability to Manage Spectrum Should Not be a Disguised Method of Discriminating Against Non-U.S. Licensed Systems.....18

VII. Conclusion.....18

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FEDERAL COMMUNICATIONS COMMISSION
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In the Matter of	)	
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REPLY COMMENTS OF COMSAT CORPORATION

COMSAT Corporation ("COMSAT"), by its attorneys, hereby submits its reply comments in response to the *Further Notice of Proposed Rulemaking* in the above-captioned proceedings.[1]

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[1] *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, et al. ("DISCO II")*, Further Notice of Proposed Rulemaking, FCC 97-252, IB Docket No. 96-111, CC Docket No. 93-23, RM-7931, File No. ISP-92-007 (released July 18, 1997) ("FNPRM").

I. Introduction and Summary

Most of the parties filing comments in this proceeding, including COMSAT, agree with the Commission's proposal in the FNPRM that satellite operators licensed by WTO-member nations should be permitted access to the U.S. market unless an oppposing party demonstrates a "very high risk" to competition in the U.S. satellite market and that such risk cannot be addressed through the impostion of conditions on access by the Commission.[2] Most parties also agree that an ECO-Sat test should not be applied when a service provider seeks to provide service between the United States and a non-WTO-member nation using satellite facilities licensed by a WTO-member nation.[3]

Most parties also recognize that the WTO Agreement on Basic Telecommunications Services ("WTO Agreement") will help open telecommunications markets worldwide and will dramatically improve competition in satellite service.[4] Nonetheless, several domestic satellite

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[2] *See, e.g.,* Comments of Lockheed Martin Corp., filed Aug. 21, 1997, at 4 ("Lockheed"); Supplemental Comments of Telesat Canada, filed Aug. 21, 1997, at 4 ("Telesat Canada"); Comments of Hughes Electronics Corp., filed Aug. 21, 1997, at 6 ("Hughes"); Comments of Orion Network Systems, Inc., filed Aug. 21, 1997, at 3 ("Orion"); Comments of Skybridge L.L.C., filed Aug. 21, 1997, at 3 ("Skybridge"); Comments of PanAmSat Corp., filed Aug. 21, 1997, at 2 ("PanAmSat"); Comments of GE American Communications, Inc., filed Aug. 21, 1997, at 3 ("GE Americom"); Further Comments of Motorola Satellite Communications, Inc. and Iridium LLC, filed Aug. 21, 1997, at 2 ("Motorola").

[3] *See, e.g.,* Motorola at 5; Further Comments of ICO Global Communications, filed Aug. 21, 1997, at 12 ("ICO"); Comments of Qualcomm, Inc., filed Aug. 21, 1997, at 4 ("Qualcomm"); Furthe Comments of Teledesic Corp., filed Aug. 21, 1997, at 3 ("Teledesic"); PanAmSat at 5.

[4] *See, e.g.,* Joint Comments of Loral Space & Communications Ltd. and L/Q Licensee, Inc., filed Aug. 21, 1997, at 3 ("Loral"); Motorola at 2; Hughes at 6; Comments of ABC, Inc., CBS, Inc., National Broadcasting Co., Inc., and Turner Broadcasting System, Inc., filed Aug. 21, 1997, at 5 ("Networks"); Orion at 3-4; GE Americom at 2.

service providers, intoning phrases such as "privileges and immunities" like a tired mantra, trot out in their comments the same shopworn arguments they have made many times before against allowing COMSAT to provide domestic service using the INTELSAT and Inmarsat satellite systems. While these parties -- as usual -- pay lip service to the benefits of additional competition in the U.S. domestic market and of having all systems operate on a level playing field, they plainly hope to protect their hold on the U.S. market for as long as possible, and they refuse to acknowledge the obvious: that the markets of virtually all major INTELSAT and Inmarsat members will be open to U.S.-licensed systems under the WTO agreement; that service using the INTELSAT and Inmarsat systems is provided not by those organizations but by operators that are licensed and regulated in their home countries, most of which are WTO members; and that the provision by COMSAT of domestic service using the INTELSAT and Inmarsat systems can only have a positive effect on competition in the U.S. domestic market.

II. The Parties Support Elimination of the ECO-Sat Test for Use of Satellites Licensed by WTO Member Countries.

Virtually all of the 25 parties filing comments support eliminating the ECO-Sat test for operators seeking to serve the U.S. market using satellites licensed by WTO-member countries.[5] Most concur with COMSAT in supporting the Commission's proposed streamlined review, with a presumption in favor of access for such operators unless an opposing party demonstrates that grant of the application would pose a "very high risk" to competition in the U.S. satellite market that cannot be addressed through the imposition of conditions. As we stated in our comments,

[5] TRW takes no position in its Comments about the benefits of the WTO or about application of the ECO-Sat test in view of U.S. WTO obligations.

many countries, as they begin developing their own rules to implement the WTO agreement, will be looking closely at the rules and procedures adopted by the Commission in this proceeding to determine whether the United States will provide effective market access consistent with the U.S. offer. Because many countries do not yet have satellite licensing procedures in place, this is a great opportunity for the Commission to lead by example, and the Commission's proposals for streamlined review for use of satellites licensed by WTO-member nations are an excellent beginning. Several commenting parties recognized this, including Hughes, which cautioned the FCC to "tread lightly to ensure that it fulfills both the letter and the spirit of the WTO Agreement." Hughes advised the Commission that it should "never deny or condition authorization to a satellite licensed by a WTO member country offering covered services, except in the rare cases where a high risk to competition is demonstrated."[6]

In response to the Commission's request for comment on whether satellite operators from WTO-member countries should be subject to an ECO-Sat test for service between the United States and non-WTO-member countries, most parties, including COMSAT, agreed that an ECO-Sat test should not be imposed for services on these routes. As Qualcomm noted in its comments, the national treatment obligations imposed on the United States by the WTO agreement would require the Commission to impose an ECO-Sat test on U.S.-licensed operators seeking to serve a non-WTO-member country if it sought to impose such a test for systems licensed by WTO-member countries.[7] Imposing such an obligation on U.S. systems would run counter to the

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[6] Hughes at 11.

[7] Qualcomm at 4.

Commission's DISCO I order, would result in few if any market access gains, and would almost certainly hinder the ability of new systems (such as MSS) to serve multiple markets.[8] As PanAmSat correctly notes, the Commission can always revisit this issue if competitive disparities arise in the future.[9] Several other parties suggest that the Commission's concerns regarding market access in non-WTO countries can be addressed by prohibiting satellite operators (both U.S.- and foreign-licensed) from entering into exclusionary arrangements with route market countries or dominant earth station operators within those countries.[10] COMSAT supports these views.

III. An ECO-Sat Test for Non-WTO-Member Satellites Should Be Used with Caution.

With regard to access to the U.S. market for satellites licensed by non-WTO-member countries, commenting parties generally support continuation of some form of ECO-Sat test.[11] Orion, for example, urges application of such a test in order to allow the Commission to preserve its ability to "wield the stick against non-WTO countries. . . ."[12] Several parties, however, observe that application of an ECO-Sat test could potentially backfire on U.S. operators or be ineffective. PanAmSat, for example, states: "Given that only a handful of non-WTO member

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[8] Qualcomm at 4; Motorola at 5, Skybridge at 5; Teledesic at 3.

[9] PanAmSat at 5.

[10] Hughes at 9; Motorola at 5.

[11] Motorola at 5; Qualcomm at 5; GE Americom at 5; PanAmSat at 3; Orion at 5; Hughes at 11; Lockheed at 3.

[12] Orion at i.

satellite systems desire access to the U.S. market and, further, that a number of U.S.-licensed systems are aggressively seeking access to foreign markets, the ECO-Sat test provides little incentive to, and little recourse against, a non-WTO member intent on closing its market to U.S. operators."[13] COMSAT agrees -- there are clearly more U.S. operators seeking entry to foreign markets than there are foreign operators seeking entry to the U.S. market.

Further, as Hughes states,

> Reciprocity tests, such as the ECO-Sat test as it was originally proposed, hold the potential to result in a tit-for-tat policy that may harm primarily U.S. carriers who seek to provide service in foreign markets. . . . The Commission should ensure that such procedures are WTO-consistent and do not, by imposing overly burdensome requirements, provide a justification to foreign licensing administrations to impose equally burdensome requirements on U.S.-licensed satellites.[14]

Hughes later notes that "..... a rigid reciprocity test can foreclose -- and already has foreclosed -- competitive entry by U.S.-licensed satellite seeking to serve foreign markets."[15]

COMSAT shares these concerns. It is worth noting that the Resolution adopted by Argentina earlier this year, which resulted in the exclusion of fixed satellite services from Argentina's offer in the Basic Telecom Agreement, references the FCC's ECO policy. Argentina justified its exclusion of U.S. satellites and required use of its domestic operator, Nahuelsat (in

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[13] PanAmSat at 4.

[14] Hughes at 5.

[15] Hughes at 12.

which GE Americom owns roughly 17 percent), in part based on the FCC's ECO-Sat test.[16] This example provides a good indication of how other countries would likely respond to imposition of any type of reciprocity-based test.

IV. There is No Legitimate Reason for Denying COMSAT the Ability to Use INTELSAT and Inmarsat Space Segment to Provide U.S. Service.

Of the 24 other parties submitting comments, 11 address the use of INTELSAT and Inmarsat satellites for domestic service.[17] Orion and GE Americom argue that the entry of INTELSAT and Inmarsat into the U.S. market raises special concerns that would be better addressed in a separate proceeding.[18] GE Americom claims that it is not possible to adequately shape appropriate access policies for either the intergovernmental satellite organizations ("IGOs") or their affiliates until after the IGOs are restructured and their affiliates are fully developed and spun off. GE Americom also states that, because the United States has no obligations with regard to INTELSAT or Inmarsat under the WTO -- and is therefore not facing a January 1, 1998, deadline for implementing rules for these entities as it is for rules governing entry by WTO members -- there is no reason for the Commission to address INTELSAT and Inmarsat issues at

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[16] Argentine Resolution 14 SC/97, enacted Jan. 31, 1997, *as amended by* Resolution 242 SC/97, Feb. 25, 1997. Space Business News reported in its January 22, 1997, issue that GE Americom now owns 17.25 percent of Nahuelsat.

[17] See comments of BT North America, Columbia, GE Americom, Hughes, Lockheed, Loral,Orion, PanAmSat, Motorola, ICO, and the Networks.

[18] GE Americom at 5; Orion at 8.

this time.[19] Orion "applauds" the FCC's recognition that IGOs are not covered by the WTO and that market access, national treatment, and MFN obligations therefore do not apply to them, and also argues -- like GE Americom -- that use of INTELSAT and Inmarsat satellites for domestic service should be addressed in a separate proceeding.[20]

As COMSAT demonstrates below, not only is it entirely appropriate here and now -- in a proceeding initiated to address access arrangements for non-U.S. licensed satellites -- for the Commission to consider its policy on allowing COMSAT to provide domestic service using INTELSAT and Inmarsat, but it is also clear that any examination of the U.S. market will show that there is no legitimate reason for denying COMSAT, as well as U.S. customers, such an opportunity. COMSAT welcomes the opportunity to address the "concerns" raised by GE Americom, Orion, and several other U.S. satellite operators whose singular goal is to deny U.S.

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[19] GE Americom at i, 6. GE Americom, citing COMSAT's comments in the earlier round of this proceeding, states that "even COMSAT agreed that prospectively adopting a regulatory framework for IGO affiliates that do not yet exist would be inappropriate." GE Americom at 6-7. It is crystal clear from reading COMSAT's earlier comments that GE Americom has here grossly misrepresented COMSAT's statements. COMSAT in its earlier comments stated that "[t]his is the wrong time and place to adopt an ECO-Sat scheme prospectively applicable to INTELSAT or Inmarsat affiliates that currently do not exist . . . . The more prudent course . . . is to proceed with the effect on competition test." COMSAT NPRM Comments, at 33 (emphasis added). In this statement, COMSAT was simply repeating what it had argued throughout its initial comments: that the ECO-Sat test was inappropriate with regard to INTELSAT and Inmarsat as well as their nascent affiliates and that the Commission should instead use the "effect on competition" analysis.

[20] Orion at 8. GE Americom also states that when the Commission does adopt market access rules for IGOs, it should use a pending bill, H.R. 1872, as a blueprint. H.R. 1872 is proposed legislation and as such can have no bearing whatsoever on the FCC's actions in this proceeding. Any legislation can (and indeed will) control the Commission's policy determinations if and only if it is enacted into law.

consumers additional service options in order to keep additional competition out of the U.S. market for as long as possible.

A. COMSAT's Ability to Use INTELSAT and Inmarsat to Provide U.S. Domestic Services is Appropriately Addressed in This Proceeding

COMSAT agrees that INTELSAT, Inmarsat, and other IGOs are not formally covered by the WTO Agreement, and that neither the U.S. nor any other WTO member country has any direct obligations under the WTO agreement to grant market access, national treatment, or MFN privileges to the IGOs since they are not licensed by any one WTO country. However, this proceeding was not established for the limited purpose of developing rules for allowing only satellites licensed by WTO-member countries into the U.S. market. Rather, as the FCC states in the FNPRM, this proceeding was commenced to consider entry "by non-U.S. satellites into the United States."[21] A "non-U.S. satellite" is one that "does not hold a commercial space station license from the Federal Communications Commission."[22] Because IGO satellites are not licensed by the Commission, they without doubt fall within the ambit of this proceeding. The Commission also emphasizes in the FNPRM its goal of increasing competition and consumer choice in the U.S. satellite service market, and inclusion of INTELSAT and Inmarsat in this proceeding is directly related to achieving these goals.

Furthermore, because the majority of INTELSAT and Inmarsat members are also

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[21] FNPRM at ¶ 2 (emphasis added).

[22] FNPRM at ¶ 2, n.5.

members of the WTO, and most INTELSAT and Inmarsat WTO members have made market access commitments for satellite services, access to the U.S. market for service providers licensed by WTO member countries and access for COMSAT's INTELSAT and Inmarsat services are inextricably bound together. For these reasons, any arbitrary attempt to exclude INTELSAT and Inmarsat from consideration in this proceeding would leave a gaping hole in the regulatory structure developed herein. In view of these facts, the FNPRM specifically asks commenters to address issues related to the use of IGO satellites to provide U.S. domestic satellite services. The use of Inmarsat and INTELSAT satellites is thus a proper part of this proceeding and should be addressed now.

B. Of the 69 Countries Submitting Offers Upon Which the Basic Telecom Agreement Was Successfully Concluded, the Overwhelming Majority Are Members of INTELSAT and/or Inmarsat.

PanAmSat, among others, claims that COMSAT should not be permitted to provide service using INTELSAT or Inmarsat because most countries that are members of INTELSAT and Inmarsat have markets closed to U.S. systems.[23] This claim is simply incorrect.

The United States concluded the negotiations on basic telecommunications in February 1997 based on offers submitted by 69 countries. These offers cover 95 percent of telecommunications revenues worldwide.[24] Most of the parties filing comments in this proceeding applaud the benefits of market access provided by these offers, and virtually all of these countries

[23] PanAmSat at 6-7.

[24] FNPRM at ¶ 10.

that made commitments are members of INTELSAT or Inmarsat or both. As we stated in our comments, there is nothing about being a member of INTELSAT or Inmarsat that leads a country to close its markets.

We observed in our comments that the WTO Basic Telecom Agreement will result in a critical mass of open markets among Inmarsat and INTELSAT member countries and that this is sufficient to permit COMSAT to make available INTELSAT and Inmarsat space segment in the United States.[25] As we discussed, for example, 64 of Inmarsat's 81 members (79 percent) also are members of the WTO and are thus subject to the terms of the General Agreement on Trade in Service ("GATS"), and 80 percent of Inmarsat WTO member countries submitted offers.[26] Approximately 82 percent of those submitting offers included market access for mobile satellites and 98 percent committed to all or portions of the Reference Paper. (For a complete listing, see Attachment A.) With regard to INTELSAT, 107 of its 141 members (76 percent) are also members of the WTO and 64 (60 percent) submitted offers. Of these, 79 percent made some commitment to market access for fixed satellites and approximately 97 percent adopted all or portions of the Reference Paper. (See Attachment B.) Moreover, operators from the INTELSAT and Inmarsat member countries submitting offers carry the vast majority of the traffic over those systems.

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[25] We note that there are other IGOs in existence, such as Intersputnik and Arabsat, but COMSAT's comments in this proceeding are limited solely to INTELSAT and Inmarsat, the organizations to which it is a Signatory.

[26] We stated in our comments that 63 of Inmarsat's 81 members are also members of the WTO. We inadvertantly omitted the Slovak Republic from this number; thus, the correct number is 64.

As these numbers show, the facts simply do not support any argument that the markets of INTELSAT and Inmarsat member countries will be closed to U.S.-licensed satellites. Because the overwhelming majority of INTELSAT and Inmarsat member countries are WTO members, have submitted offers to open their satellite markets, and/or have agreed to abide by the principles set forth in the Reference Paper, the reality is that almost all of these markets will be open to U.S. operators.

C. The WTO Agreement Requires that Suppliers of a WTO Country Be Able to Choose Facilities to Provide Covered Services Unless a Country Specifies Such Limitation in its Schedule.

While it is true that the U.S. has no obligations to IGOs such as INTELSAT or Inmarsat under the WTO agreement, the U.S. does have the obligation to permit suppliers from WTO-member countries to provide services for which the United States has committed in its schedule. As discussed by BT North America in its comments, the U.S. offer opens the U.S. market to foreign entry for the provision of domestic and international satellite services. "Nothing in the US Schedule of Specific Commitments suggests that this commitment to market access is limited by the particular satellite facilities that the WTO Member country employs to provide its services."[27] Suppliers of WTO member countries thus have the right to choose which satellite operator to use to provide covered services, including INTELSAT and Inmarsat satellites. If the United States had not envisioned such use by WTO-member countries of INTELSAT and Inmarsat satellites, it would not have listed COMSAT's exclusive rights to links with INTELSAT and Inmarsat as a

[27] BT North America at 3.

limitation to the U.S. offer.

D. COMSAT Does Not Enjoy Any Special Privileges and Immunities in its Role as a Common Carrier.

A number of domestic satellite operators, including PanAmSat and GE Americom, maintain that INTELSAT and Inmarsat should not be permitted access to the U.S. market because -- as IGOs -- they have treaty-based "privileges and immunities" that afford them competitive advantages.[28] What these domsats fail to mention is that it is actually COMSAT that would provide service in the U.S. market, not INTELSAT or Inmarsat, and COMSAT is licensed and regulated by the FCC.[29] COMSAT does not have, and has never claimed, *any immunity whatsoever* in its role as a common carrier, and would enjoy no special advantages over other providers of satellite service in the United States.[30] Furthermore, in spite of the "advantages" our competitors claim we have, the fact is that COMSAT continues to lose market share in the provision of most of its services.[31] As the Commission recently concluded, the "special benefits" COMSAT allegedly enjoys from its role as the U.S. Signatory to INTELSAT "have not insulated

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[28] PanAmSat at 6; GE Americom at 6; Columbia at 2.

[29] Pursuant to the Communications Satellite Act of 1962 and the International Maritime Satellite Telecommunications Act of 1978, COMSAT, as the U.S. Signatory to INTELSAT and Inmarsat, respectively, has an exclusive right to provide INTELSAT and Inmarsat space segment to U.S. users.

[30] *See* Alpha Lyracom Space Comm., Inc. v. Communications Satellite Corp., 946 F.2d 168, 174-75 (2d Cir. 1991), cert. denied, 502 U.S. 1096 (1992).

[31] *See, e.g., In the Matter of COMSAT Corp., Petition for Partial Relief From the Current Regulatory Treatment of COMSAT World Systems' Switched Voice, Private Line, and Video and Audio Services,* 11 FCC Rcd 9622, 9628 (1996).

Comsat from a diminution of its market power in the full-time video services market," which the Commission found to be subject to substantial competition.[32]

As we showed in our comments, the simple fact is that COMSAT's use of INTELSAT and Inmarsat capacity to provide service in the U.S. market will not negatively impact the U.S. satellite services market; to the contrary, COMSAT's provision of such services will increase options for customers and tend to lower prices.[33] In this regard, it is notable that the Networks in their comments fully support the use of INTELSAT for domestic service and oppose the application of any ECO-Sat test for video transmissions.[34] The Networks point to the "shortage of domestic satellite capacity" that has caused rates for occasional-use video to double in little more than two years.[35]

The allegations of the U.S. satellite operators in this proceeding thus must be understood

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[32] *In the Matter of COMSAT Corp., Petition for Partial Relief from the Current Regulatory Treatment of Comsat World Systems' Video and Audio Services*, File No. 14-SAT-ISP-97, released Aug. 14, 1997, at ¶ 36.

[33] Of course, in the entirely hypothetical event that a party were able to demonstrate that COMSAT's use of INTELSAT and Inmarsat capacity for provision of U.S. domestic service would pose a very high risk to competition in the U.S. satellite market, the Commission would retain the ability to place conditions on COMSAT's license to address these concerns. For example, the Commission could, if it were shown to be necessary, place a cap on the number of INTELSAT transponders that COMSAT could make available for domestic service. (However, as discussed in COMSAT's comments, there should be no limitation on COMSAT's ability to provide its customers with domestic capacity that is incidental to the customer's international service.)

[34] Networks at 8.

[35] Networks at 8.

for what they are: self-serving assertions unsupported by any factual data designed not to further competition but to limit it, restricting the facilities options available to U.S. customers and keeping prices artificially high.

V. Any IGO Affiliate Satellite Licensed by a WTO-Member Country Should Be Subject to the Same Entry Policy as Any Other Satellite Licensed by a WTO-Member Country.

A number of parties argue in their comments that future affiliates of INTELSAT and Inmarsat should be subject to rigorous scrutiny not required of other companies before being permitted into the US market, even if they are providing WTO-covered services and are licensed by a WTO-member country.[36] TRW and Loral go even further, arguing that ICO, an existing privately-owned company that is based in and licensed by the U.K., should not be accorded similar treatment to other companies based in the U.K.

The simple answer to these contentions is that they fly in the face of U.S. obligations under the WTO accord. If these satellites are licensed by WTO members, then the U.S. is required to apply to them the same rules it applies to U.S. and other WTO-licensed satellites. Period. TRW's and Loral's contentions (re ICO) are nothing more than yet another effort by U.S. satellite operators to shut the U.S. market to legitimate competition, even from operators licensed by WTO countries. The only prospective non-U.S.-licensed global provider of handheld mobile services to date is ICO. ICO's U.S. competitors seek to prevent ICO's entry into the U.S. market on the ground that competitive advantages and immunities flow from its affiliation with

[36] TRW at 3; Loral at 6; GE Americom at 6; PanAmSat at 7; Orion at 8; Columbia at 3.

Inmarsat. This simply is not true. ICO is a privately-owned and managed company based in the U.K. -- a WTO-member country -- and has no privileges or immunities whatsoever. Furthermore, the procompetitive principles adopted by the Inmarsat Assembly and incorporated into ICO's organizing documents provide solid assurance that it will receive no untoward benefits from its affiliation with Inmarsat.

With regard to future IGO affiliates, the position of U.S. satellite operators seems to be that making the INTELSAT system smaller by spinning off a number of satellites into a fully separate, private, publicly traded company based in the Netherlands is somehow anticompetitive. This makes little sense. The domsats have argued for years that INTELSAT is too big and that they are unable to compete effectively with it because of its intergovernmental status; now they seem to be arguing that they will not be able to compete with a smaller privatized INC. It bears repeating: as private companies, ICO does not have, and INC will not have, *any* treaty-based privileges or immunities. Further, ICO is based, and INC will be based, in the home market of a WTO-member country that has made full commitments to open its markets to U.S.-licensed satellites.[37] There are simply no grounds for treating affiliates or spin-offs of INTELSAT or Inmarsat that are companies of WTO member countries any differently than other WTO-based operators. Doing so would be a clear violation of the most favored nation (MFN) obligation in the GATS framework.

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[37] ICO is, as mentioned previously, a U.K. company. INC is slated to be headquartered in and licensed by the Netherlands.

Orion argues that a February 12, 1997, letter from the U.S. Trade Representative, Ambassador Barshefsky, to Mr. Neil Bauer supports Orion's view that affiliates of INTELSAT or Inmarsat need not be permitted access to the U.S. market. This is misleading. What the letter does is make clear that the standard applicable to all entrants includes such affiliates and therefore is sufficient to address Orion's concerns. The letter does not impose any additional standard for access by affiliates of INTELSAT or Inmarsat. The letter also reiterates that, in all circumstances, "[e]xisting U.S. communications and antitrust law, regulation, policy and practice and will continue to apply to license applicants if a GBT deal goes into effect."[38] COMSAT has never argued that U.S. antitrust law or competitive policy should not be applied. As we noted in our comments, there is nothing in the WTO Agreement that abrogates the ability of the U.S. to apply U.S. law or policy to IGO affiliates or to anyone else, as long as those laws and policies are facially neutral and are applied evenhandedly to service providers from the U.S. and other WTO-member nations. COMSAT contends only that the same standards must be applied across the board, and that this scrutiny will be more than sufficient to detect any anticompetitive relationships between the IGOs and their affiliates.[39] As mentioned above, in the unlikely event that valid competitive concerns can be demonstrated, the Commission retains the right to address such concerns through the application of conditions, just as it does for any use of foreign satellites

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[38] Letter from Charlene Barshefsky, United States Trade Representative - Designate, to Neil Bauer, Orion Network Systems, Inc., Feb. 12, 1997, at 2.

[39] COMSAT notes that it is working closely with the U.S. government to ensure that INC is structured in a pro-competitive manner and that it operates at arms-length from INTELSAT. "Restructuring INTELSAT to Create an Affiliate (INC)," Contribution of the Party and Signatory of the United States to the Twenty First Assembly of Parties, 14 April, 1997.

from WTO countries where a party demonstrates a very high risk of competitive harm.[40]

VI. The FCC's Ability to Manage Spectrum Should Not Be a Disguised Method of Discriminating Against Non-U.S. Licensed Systems

COMSAT fully agrees with the commenting parties, such as AMSC, that remind the Commission of its rights under the WTO Agreement to manage the radio spectrum. There is no question that this is true: as AMSC points out, the ability to exercise spectrum and frequency management is a fundamental right of WTO members under the GATS. What is important to remember, however, is that the right to "manage spectrum" cannot be used as a disguise for discriminating against non-U.S. licensed systems. For example, any decision by the Commission that there is sufficient spectrum for only one system in a particular band must be reasonably and objectively based. Thus, if the amount of spectrum in the L-band assigned to AMSC continues to fall far short of what has been allocated, a continuing decision by the Commission to exclude other licensees, including non-U.S. licensed systems, could be viewed by other WTO members as protectionist and discriminatory.

VII. Conclusion

For the reasons stated herein and in our comments, COMSAT respectfully urges the Commission to ignore the arguments of the domestic satellite operators that seek to keep

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[40] In the case of a dispute settlement and loss by the US, COMSAT appreciates the right retained by the United States (cited by Ambassador Barshefsky in her letter) to deny U.S. market access despite a WTO finding. As the Commission states in the FNPRM, "[t]he remedies available if the plaintiff prevails do not require specific performance (i.e., a requirement that the defendant fulfill its trade commitment). Rather, the plaintiff may take trade retaliation against the defendant in any goods or services sector." FNPRM at ¶ 12

additional competition out of the U.S. market for as long as possible, and to permit COMSAT to provide domestic services utilizing INTELSAT and Inmarsat satellites under the same policy the Commission adopts for satellite services provided by companies licensed by WTO-member countries.

Respectfully submitted,

By: _____

Neal T. Kilminster
Bruce A. Henoch

COMSAT Corporation
6560 Rock Spring Drive
Bethesda, Maryland 20817
(301) 214-3000

September 5, 1997

Attachment A

INMARSAT WTO MEMBERS: Offers, Inclusion of Satellites, Adoption of Reference Paper

The 64 countries listed are those members of Inmarsat who also are members of the WTO 8/97

INMARSAT	MADE WTO OFFER 2/97	INCLUDE ACCESS FOR MOBILE SATELLITE (Based on summaries issued by USTR)	ADOPT ALL OR SOME OF REFERENCE PAPER
Argentina	YES	YES	YES - ALL
Australia	YES	YES	YES - ALL
Bahrain	*NO*		
Bangladesh	YES	*NO*	YES - ALL
Belgium	YES	YES	YES - ALL
Brunei	YES	YES	YES - ALL
Brazil	YES	YES	YES - ALL
Bulgaria	YES	YES	YES - ALL
Cameroon	*NO*		
Canada	YES	YES	YES - ALL
Chile	YES	YES	YES - ALL
Colombia	YES	*NO*	YES - ALL
Costa Rica	*NO*		
Cuba	*NO*		
Cyprus	*NO*		
Czech Rep.	YES	YES	YES - ALL
Denmark	YES	YES	YES - ALL
Egypt	*NO*		

INMARSAT % rep. March '97 investment shares	MADE WTO OFFER 2/97	INCLUDE ACCESS FOR MOBILE SATELLITES	ADOPT ALL OR SOME OF REFERENCE PAPER
Finland	**YES**	**YES**	**YES - ALL**
France	**YES**	**YES**	**YES - ALL**
Gabon	***NO***		
Greece	**YES**	**YES**	**YES - ALL**
Hong Kong(UK)*	**YES**	**YES**	**YES - ALL**
Hungary	**YES**	**YES**	**YES - ALL**
Iceland	**YES**	**YES**	**YES - ALL**
India	**YES**	***NO***	**YES - PORTIONS**
Indonesia	**YES**	***NO***	**YES - ALL**
Israel	**YES**	**YES**	**YES - ALL**
Italy	**YES**	**YES**	**YES - ALL**
Japan	**YES**	**YES**	**YES - ALL**
Korea	**YES**	**YES**	**YES - ALL**
Kuwait	***NO***		
Malaysia	**YES**	**YES**	**YES - ALL**
Malta	***NO***		
Mauritius	**YES**	**YES**	**YES - ALL**
Mexico	**YES**	**YES**	**YES - ALL**
Mozambique	***NO***		
Netherlands	**YES**	**YES**	**YES - ALL**
New Zealand	**YES**	**YES**	**YES - ALL**
Nigeria	***NO***		
Norway	**YES**	**YES**	**YES - ALL**
Pakistan	**YES**	***NO***	**YES - PORTIONS**
Peru	**YES**	**YES**	**YES - ALL**

INMARSAT % reg. March 97 investment shares	MADE WTO OFFER 2/97	INCLUDE ACCESS FOR MOBILE SATELLITES	ADOPT ALL OR SOME OF REFERENCE PAPER
Philippines	**YES**	***NO***	**YES - PORTIONS**
Poland	**YES**	**YES**	**YES - ALL**
Qatar	***NO***		
Romania	**YES**	**YES**	**YES - ALL**
Senegal	**YES**	***NO***	**YES - ALL**
Singapore	**YES**	**YES**	**YES - ALL**
Slovak Rep.	**YES**	**YES**	**YES - ALL**
South Africa	**YES**	**YES**	**YES - ALL**
Spain	**YES**	**YES**	**YES - ALL**
Sri Lanka	**YES**	***NO***	**YES - ALL**
Sweden	**YES**	**YES**	**YES - ALL**
Switzerland	**YES**	**YES**	**YES - ALL**
Thailand	**YES**	**YES**	**YES - ALL**
Tunisia	**YES**	***NO***	***NO***
Turkey	**YES**	**YES**	**YES - ALL**
UAE	***NO***		
US	**YES**	**YES**	**YES - ALL**
UK	**YES**	**YES**	**YES - ALL**
TOTALS - 64	***51 made offers***	***42 include some access for MSS***	***50 adopted all or part***

Inmarsat has 81 members,* 64 of which are WTO members. Of those that are members of the WTO, 51 countries or 80% submitted offers on Feb. 15, 1997. Of the 51 countries submitting offers, 42 (82%) have offers making some commitments for mobile satellite services based on USTR summaries. These numbers include Hong Kong, a member country of the WTO, which submitted an offer including satellites. Hong Kong is a member of Inmarsat which has participated through the UK and will participate through China. In addition, 50 countries made commitments to all or parts of the Reference Paper including pro-competitive regulatory measures. Although the agreement is effective Jan. 1, 1998, a number of the commitments made do not become effective until post-1998.
*82 if Hong Kong is counted separately