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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

REPLY COMMENTS OF GE AMERICAN COMMUNICATIONS, INC.

GE American Communications, Inc. ("GE Americom") hereby submits its reply to the comments of other parties in response to the Further Notice of Proposed Rule Making in the above-captioned proceeding, FCC 97-252 (released July 18, 1997) ("*Further Notice*").

GE Americom's position is consistent with the broad consensus of commenting parties. Specifically, the comments overwhelmingly endorse the Commission's proposed regulatory framework: streamlined treatment of

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applications involving WTO members or countries with which the U.S. has a bilateral agreement and use of the ECO-Sat test to evaluate all other applications. However, there is broad agreement that intergovernmental satellite organizations ("IGOs") and their affiliates present unique competitive issues requiring special scrutiny. For this reason, commenters (other than the IGOs and their affiliates) generally support deferring action on IGOs to a separate proceeding. Finally, the record demonstrates substantial support for the adoption of procedural rules that treat both U.S. satellite licensees and their foreign-licensed counterparts on equal terms.

I. COMMENTERS STRONGLY SUPPORT THE FCC'S PROPOSED FRAMEWORK FOR EVALUATING NON-IGO APPLICATIONS

In its initial comments, GE Americom generally recommended that the Commission adopt its proposals for evaluating applications for access to the U.S. market by non-IGO entities. There is widespread agreement among other commenters that this course of action is appropriate.

A. The FCC Should Adopt Streamlined Processing for Applications Involving WTO Members or Services Covered by a Bilateral Agreement

First, parties strongly support the Commission's plan to adopt streamlined processing, without requiring an ECO-Sat showing, for applications involving licensees of WTO member countries or countries with which the U.S. has a bilateral agreement.[1] Such applications should be granted unless an opponent

[1] *See* GE Americom Comments at 3-5; GlobeCast Comments at 2; Hughes Electronics Comments at 6-8 & 15-16; Lockheed Martin Comments at 4-5; Loral

demonstrates that grant would result in a serious risk to competition in the U.S. market.[2] In addition, the Commission is justified in considering other public interest factors, including national security issues and violations of U.S. law.[3]

The comments generally endorse the Commission's tentative finding that these proposals are consistent with the obligations undertaken by the U.S. as part of the WTO agreement on basic telecommunications.[4] However, a number of parties question whether it would be appropriate for the Commission to consider trade concerns in evaluating applications involving WTO members, as the Commission has proposed to do.[5] These commenters argue that such an action might be viewed as inconsistent with the U.S. commitments to the WTO agreement

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Comments at 3-4; Motorola Comments at 3-4; Orion Comments at 3-5; PanAmSat Comments at 2; QUALCOMM Comments at 2-3 & 6-7; Skybridge Comments at 3; Telesat Comments at 4.

[2] *See* GE Americom Comments at 3; Lockheed Martin Comments at 7; Orion Comments at 4-5; PanAmSat Comments at 3.

[3] *See* GE Americom Comments at 3; Hughes Electronics Comments at 10-11; Lockheed Martin Comments at 6; Orion Comments at 11-12; PanAmSat Comments at 3.

[4] Columbia suggests that there should be an exception to the general treatment of WTO member country licensees for U.S.-based companies that receive satellite licenses abroad. Columbia Comments at 6-7. Columbia provides no rationale for treating foreign-licensed carriers based in the U.S. differently from foreign-licensed carriers headquartered abroad. Instead, Columbia merely alleges that seeking foreign licenses would somehow permit these entities to "avoid" FCC regulatory requirements. In reality, the parity that GE Americom and other commenters have urged adequately assures that foreign-licensed carriers, whether they be U.S. entities or otherwise, will be treated no more favorably than U.S. entities seeking U.S. licenses to provide carriage over the U.S.

[5] *See* Lockheed Martin Comments at 6; Skybridge Comments at 4.

and to WTO dispute resolution procedures and could lead to imposition of similar conditions on U.S. licensees seeking market access abroad.

GE Americom agrees that the Commission should clarify that it does not propose to consider trade policy issues in evaluating applications to use satellites licensed by WTO member countries. This clarification will prevent any misunderstanding of the FCC's intentions with respect to adherence to the WTO agreement.

In addition, there is broad support for the Commission's proposal not to place limits on the ability of WTO member licensees to serve non-member route markets. Instead, GE Americom and most other parties endorse the Commission's suggestion that competitive issues with respect to such applications can be addressed through extending the prohibition on exclusionary arrangements to all satellite operators authorized to serve the U.S. market.[6]

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[6] *See, e.g.,* GE Americom Comments at 4; Hughes Electronics Comments at 8-9; Loral Comments at 4-6; Motorola Comments at 4-5; PanAmSat Comments at 8-9; QUALCOMM Comments at 4-5.

Orion expresses some doubt as to whether the Commission has the authority to impose a prohibition on exclusionary arrangements on providers licensed by WTO member countries. *See* Orion Comments at 14-15. However, because the Commission would simply be extending to non-U.S. licensees a requirement that it applies to U.S. licensees, the Commission's proposal is fully consistent with the national treatment and MFN obligations of the U.S. under the WTO agreement. *See Further Notice* at ¶¶ 41-42.

B. The ECO-Sat Test Should Be Used to Evaluate Applications Involving WTO Non-Member Countries

There is similar broad support for applying the Commission's proposed ECO-Sat test when licensees of WTO non-member countries seek access to the U.S. market.[7] Employing the ECO-Sat analysis in these instances is necessary to ensure that the Commission's pro-competitive objectives are advanced. Accordingly, the Commission should adopt the ECO-Sat test for evaluating market access issues involving systems licensed to WTO non-members.

II. COMPETITIVE CONCERNS REGARDING THE IGOS AND THEIR AFFILIATES REQUIRE SPECIAL SCRUTINY

The record here demonstrates that market access questions involving the IGOs and their affiliates raise unique concerns. As the Commission itself has observed, the IGOs are outside the scope of the WTO agreement.[8] In addition, the U.S. Trade Representative has recognized the competitive problems raised by potential spin-offs from the IGOs and has made clear that market access by such future IGO affiliates will not be permitted if it would likely produce anticompetitive results. *Id.* at ¶ 35.

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[7] *See, e.g.,* GE Americom Comments at 5; Lockheed Martin Comments at 3-4; Orion Comments at 5; PanAmSat Comments at 3-4.

[8] *Further Notice* at ¶ 32. *See also* Loral Comments at 6; Orion Comments at 7-8

GE Americom and other commenters have highlighted the potential for market distortion in the U.S. from the entry of IGO entities.[9] Because the Commission is not required to deal with IGO issues prior to the January 1998 implementation date for the WTO, and because the IGOs present unique competitive issues, GE Americom has urged the Commission to defer to a separate proceeding the development of market access policies for IGOs and their affiliates. In particular, GE Americom noted, deferral was appropriate given the pending IGO restructuring proposals, which make it impossible for the Commission to predict the likely structure of the IGO entities to which its policies will be applied. GE Americom Comments at 6-7.

A number of parties agree that IGO issues should be dealt with separately. Orion, for example, renews the recommendation it made earlier in this proceeding that the Commission establish a proceeding to review IGO issues. Orion Comments at 8. Loral demonstrates that further comment is needed to build a complete record regarding the factors that should influence the Commission's market access determinations with respect to IGO affiliates. Loral Comments at 12. Loral states that the Commission should invite comment on a range of such issues, including the impact of IGO or government ownership on affiliate independence, the terms of assignment of assets from an IGO to its affiliates, and opportunities for cross-subsidization and non-arm's length transactions. *Id.* at 11-

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[9] *See, e.g.,* GE Americom Comments at 6-7; Loral Comments at 7-9; Orion Comments at 9-10

12. GE Americom agrees that these questions are critical to further analysis of market access by IGOs and their spin-offs.

Thus, the record provides strong justifications for isolating issues regarding IGOs and their affiliates and addressing them in a separate proceeding. However, if the Commission does go forward with the development of rules for IGOs here, it should model those rules on H.R. 1872. That legislation provides a comprehensive blueprint for addressing IGO market access issues. GE Americom Comments at 7.

Until new policies are adopted, the Commission must not permit significant expansion of the IGOs' services in the U.S. market. Thus, for example, the Commission must reject the self-serving request of COMSAT for immediate authority to provide U.S. domestic services using Intelsat and Inmarsat capacity. COMSAT Comments at 12-13. The competitive conditions underlying the restrictions on COMSAT's domestic operations have not changed. COMSAT's market power would allow it to disrupt competition in U.S. satellite services.[10]

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[10] PanAmSat, for example, has noted that:

> Intelsat's special governmental privileges and immunities give it enormous competitive advantages over U.S. satellite licensees. These advantages are compounded by the fact that the members of Intelsat are the primary (if not exclusive) providers of FSS and MSS services in most major markets.

PanAmSat Comments at 6.

The arguments of the television networks in support of COMSAT's quest for domestic authority are similarly misplaced. The networks claim that there is an ongoing shortage of domestic C-band capacity and that COMSAT service is needed to address that shortage. *See* Comments of ABC, Inc., *et al.* at 9. In fact, however, GE Americom will shortly create additional capacity amounting to a total of approximately 25 C-band transponders. That capacity will be available once GE-3, which was successfully launched earlier this week, is fully operational later this month and GE Americom's Satcom SN-3 spacecraft (which GE-3 replaces) is then permitted to occupy an open position. Thus, customers' requirements for C-band capacity can be met without introducing the market distortions that would result from COMSAT provision of domestic service.

III. COMMENTERS AGREE THAT FAIR PROCEDURAL RULES ARE CRITICAL TO PROMOTING COMPETITION

In its initial comments, GE Americom also recommended a number of procedural provisions that are needed to ensure that U.S.-licensed and non-U.S.-licensed satellite operators compete on a level playing field. Other parties agree that such measures are necessary.

First, GE Americom suggested that the Commission needs to provide for ongoing monitoring of competitive issues. GE Americom Comments at 8. Because competitive conditions are not static, the Commission must be able to respond flexibly to changing policies and circumstances. Other commenters express similar views. PanAmSat, for example, emphasizes that the Commission may need

to revisit market access policies for WTO member licensees serving non-member routes if competitive disparities arise in the future. PanAmSat Comments at 5.

Second, GE Americom recommended that the Commission apply its technical, legal and financial qualifications standards and impose construction and launch milestones on entities that seek to participate in U.S. processing rounds. GE Americom Comments at 9-10. These requirements are needed to protect the Commission's interests in preventing warehousing of spectrum and promoting efficient use of the orbital arc. Loral agrees that "[t]he Commission should not tolerate warehousing of spectrum by non-U.S. operators any more than by U.S.-licensed operators." Loral Comments at 25. Accordingly, Loral supports imposition of milestone requirements on non-U.S. licensees. *Id.*

Finally, GE Americom demonstrated that fees and contribution requirements must be equitably assessed against all satellite operators serving the U.S. market. GE Americom Comments at 10-12. Loral concurs, advocating the collection of regulatory fees for services provided by non-U.S. satellite licensees. Loral also requests revision of policies regarding required universal service contributions to ensure that providers of satellite services in the U.S. market are treated uniformly and fairly. Loral Comments at 25-27.

CONCLUSION

The record before the Commission establishes a strong basis for adopting the basic regulatory framework proposed in the *Further Notice*. However, the Commission should defer to a separate proceeding issues involving market

access by the IGOs and their affiliates. Finally, the Commission should adopt GE Americom's recommendations for procedural safeguards.

Respectfully submitted,

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September 5, 1997

CERTIFICATE OF SERVICE

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