

BEFORE THE

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# Federal Communications Commission

WASHINGTON, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of	)	
	)	
	)	IB Docket No. 96-111
Amendment of the Commission's	)	
Regulatory Policies to Allow	)	CC Docket No. 93-23
Non-U.S.-Licensed Space Stations	)	RM-7931
To Provide Domestic and	)	
International Satellite Service	)	File No. ISP-92-007
In the United States	)	
	)	

## PARTIAL PETITION FOR RECONSIDERATION OF ABC, INC.

ABC, Inc. ("ABC"), by its attorneys and pursuant to Section 1.429 of the Commission's rules, hereby files this partial petition for reconsideration of the Commission's Report and Order, released November 26, 1997, in the so-called DISCO II rulemaking proceeding.<sup>1/</sup> ABC seeks reconsideration only of that part of the Report and Order which requires the application of the ECO-Sat test to occasional television service transmissions proposed to be carried by non-WTO member licensed satellites.<sup>2/</sup>

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<sup>1/</sup> 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, 62 Fed. Reg. 64167, December 4, 1997.

<sup>2/</sup> In their previously-filed comments, ABC, along with CBS, Inc., National Broadcasting Company, Inc., and Turner Broadcasting System, Inc. (collectively, "the Networks") did not specifically distinguish between full-time and occasional video services for purposes of their request that video service transmissions be excluded from application of the ECO-Sat test, although they emphasized the important role played by occasional services in terms of satisfying program needs on an immediate and ubiquitous basis. In the context of recently determining that the Networks lack sufficient competitive alternatives for occasional television service, the

I. **BACKGROUND**

In the three rounds of comments they have submitted in this proceeding, ABC and the other Networks commended the Commission (and the Administration) for the leadership role the U.S. Government has played in achieving the WTO Agreement. They stated that they anticipate that implementation of the WTO Agreement will expedite the introduction of a more competitive marketplace environment in many countries around the world to the benefit of major users of telecommunications services, including the Networks.

In their earlier comments, however, the Networks explained that to meet their overseas video transmission requirements, they rely almost exclusively on satellite technology because fiber optic cables do not constitute a meaningful competitive alternative to satellites for cost, connectivity and operational reasons.<sup>3/</sup> They also emphasized that, in order to fulfill their international newsgathering and programming missions, they require the ability to transmit video and associated audio programming from anywhere to anywhere on short notice, using whatever

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Commission stated: "Occasional-use video service is typically ordered in one-minute increments (after a minimum period of service has been paid for, e.g., 10 minutes) and can originate and terminate from different geographic organization and termination points from one day to the next." COMSAT Corporation, File No. 14-SAT-ISP-97, August 14, 1997, at page 2, note 6. ABC is limiting its request for reconsideration of the application of the ECO-Sat test to occasional and short-term television services only, as defined in the COMSAT order.

<sup>3/</sup> See Comments of Networks, IB Docket No. 96-111, July 15, 1996, at 12; Reply Comments of Networks, IB Docket 96-111, August 16, 1996, at 2; Comments of Networks, IB Docket No. 96-111, August 21, 1997, at 3. The International Bureau has recently agreed that fiber optic cables do not constitute a meaningful alternative to satellites for video transmission. COMSAT Corporation, File No. 14-SAT-ISP-97, August 14, 1997, at para. 33.

transmission capacity is reasonably available at the time.<sup>4/</sup> The Networks explained that, as a practical matter, timely coverage of fast-breaking news and special events may be impeded or discouraged if, as the Commission had proposed, they are first required to compile the legal and other information necessary to satisfy the ECO-Sat competitive test for a particular non-U.S. licensed satellite and then wait for Commission's consideration of the application.

In their August 21, 1997 comments on the Further Notice in which the Commission inquired concerning the effect of the execution of the WTO Agreement on its earlier ECO-Sat proposals,<sup>5/</sup> the Networks acknowledged that the Commission's revised proposal not to apply the ECO-Sat test to the satellites licensed by WTO member countries would substantially mitigate the potential adverse impact on the Networks as compared to the broader application of the ECO-Sat test initially proposed.<sup>6/</sup> Nevertheless, in light of the Networks' continued reliance on the availability of ubiquitous satellite facilities for newsgathering and special events program transmission purposes, and the often immediate nature of the program requirements, they urged the Commission in any event not to apply the ECO-Sat test to fixed satellite international video service transmissions. Out of all the parties filing comments, only one objected to the Networks' request.<sup>7/</sup>

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<sup>4/</sup> July 15, 1996 Networks Comments, at 6-7; August 16, 1996 Networks Reply Comments, at 2; August 21, 1997 Networks Comments, at 3.

<sup>5/</sup> Further Notice of Proposed Rulemaking, Amendment of 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, released July 18, 1997.

<sup>6/</sup> See August 21, 1997 Networks Comments.

<sup>7/</sup> Columbia Communications Corporation "acknowledge[d] the significant importance of facilitating newsgathering" but said it believed that the need expressed by the Networks could be

## II. DISCUSSION

In its order, the Commission generally adopted its Further Notice proposal to apply the ECO-Sat test to non-U.S. satellites licensed by non-WTO member countries, while not applying the test to satellites licensed to WTO member countries.<sup>8/</sup> With regard to the Networks' position, the Commission recognized "the Networks' concern that our policy could inhibit the coverage of fast-breaking news or other special events."<sup>9/</sup> The Commission stated that it would not apply an ECO-Sat test "in the vast majority of cases where the Networks will be receiving foreign video transmissions."<sup>10/</sup> The Commission stated it would apply the ECO-Sat test, however, where the satellite is licensed by a non-WTO country:

In these cases, an ECO-Sat test is a minimal burden compared to the market distorting impact and competitive harm in the United States that may result if a U.S.-licensed system is denied access in the relevant foreign market. Further, the Networks may apply for an earth station license to communicate with specified non-WTO satellites. In considering whether to grant that application, we could consider, regardless of the outcome of the ECO-Sat analysis, whether other satellites are available to provide this transmission capacity. An earth station license carries a ten-

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met by considering the lack of alternatives as part of a public interest inquiry in conjunction with the ECO-Sat test. Columbia Reply Comments, September 5, 1997, at 5-6. The Commission only recently determined that the Networks lack alternatives for occasional video service. In any event, as explained below, at least with regard to occasional service, the burden in terms of time and resources of having to engage in a public interest inquiry to consider the lack of alternatives greatly outweighs the potential benefits of such inquiry.

<sup>8/</sup> Report and Order, para. 72.

<sup>9/</sup> Id., at para. 74.

<sup>10/</sup> Id. The Commission pointed out the test would not apply when the satellite desired to be utilized is licensed to a WTO member or is operated by an IGO affiliate satellite or an IGO satellite providing international service. Id.

year license term; no further applications will be necessary for the Networks to access that non-WTO satellite once a license is granted. <sup>11/</sup>

ABC understands that, as a result of the WTO agreement, the Commission will not be applying the ECO-Sat test to the vast majority of cases where ABC will be receiving foreign video transmissions. ABC appreciates that fact and also the Commission's sensitivity to its concerns that application of the ECO-Sat test could inhibit coverage of fast-breaking news or other special events.

In ABC's view, however, the costs associated with applying the ECO-Sat test to occasional video service transmissions relayed by non-WTO country satellites outweighs the potential benefits that could be realized from imposition of such a requirement. ABC shares the Commission's concern that U.S. operators not be denied access in foreign markets (it too wants to see U.S. operators competing in overseas markets), and it understands that the reciprocity inherent in the ECO-Sat test sometimes may be a useful lever in helping to pry open foreign markets. With regard to occasional television service, however, it believes that the revenues involved are so small compared to the revenues involved from most other services that denial of entry to the U.S. market for this particular service is unlikely to affect the competition policies of foreign administrations. And, the occasions when broadcasters wish to utilize a foreign-licensed satellite for occasional service may not generate sufficient revenues to induce the foreign operator or the broadcaster to undergo the burden and expense of preparing and litigating an ECO-Sat showing.

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<sup>11/</sup> Id.

Although the Commission characterizes the ECO-Sat test as “a minimal burden” in addressing the Networks’ concern, ABC takes issue with this characterization, at least in the context of occasional service. In discussing the benefits of not applying the ECO-Sat test to WTO members, the Commission said, “it will avoid **detailed, fact-intensive** ECO-Sat analyses by the applicant and the Commission, thereby expediting the entry process.”<sup>12/</sup> However this burden of presenting a “detailed, fact-intensive” analysis may be characterized with regard to other services, with respect to occasional television service, the burden is quite likely to outweigh the perceived benefits of the undertaking in order to facilitate what are likely to be sporadic transmissions.

For example, ABC sometimes uses the Russian satellite system to meet occasional service needs, depending on the availability and coverage of other satellites at the particular time programming needs to be relayed. While the Commission refers to the fact that an earth station license carries a ten year license term and that no further applications will be necessary once an ECO-Sat analysis has been satisfactorily completed,<sup>13/</sup> the burden of undertaking such a “detailed, fact-intensive” analysis to be able to utilize a satellite that may be contemplated to be used only infrequently may well outweigh the perceived benefit to the user. This is especially so when the outcome of such analysis is likely to be uncertain, and in any event subject to considerable delay. A decision may be made simply to forego the potential program

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<sup>12/</sup> Report and Order, at para. 40. Emphasis added.

<sup>13/</sup> Id., at para. 74.

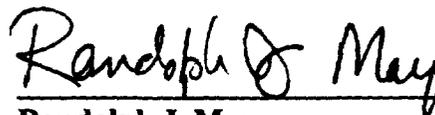
transmission.<sup>14/</sup> The same scenario could occur with regard to the satellites of other non-WTO member countries that have not been cleared through the ECO-Sat process.

### **III. CONCLUSION**

In short, while ABC is cognizant of the Commission's views in general about the role the ECO-Sat test might play in achieving reciprocal competitive treatment for U.S. operators in foreign markets -- and has modified its original request so that it no longer is asking that full time video services be excluded -- with regard to occasional and short-term television services, the costs of applying the ECO-Sat test simply far outweigh any potential benefits. Therefore, the Commission should determine that the ECO-Sat test should not be applied to occasional television services.

**Respectfully submitted,**

**ABC, INC.**



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**January 5, 1997**

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<sup>14/</sup> ABC recognizes that the calculus of the benefit/burden analysis shifts somewhat with regard to full-time video service, so that, for example, the Commission's reference to the ten year license term of the earth station is more meaningful in that context. As stated earlier, in order to narrowly focus its request for reconsideration to take into account the Commission's views about the value of reciprocity while focusing on the relief which is most important to it, ABC is requesting reconsideration only with regard to application of the ECO-Sat test to occasional services.

## CERTIFICATE OF SERVICE

I, Teresa A. Pumphrey, do hereby certify that true and correct copies of the foregoing, "**PARTIAL PETITION FOR RECONSIDERATION OF ABC, INC.,**" were served by hand or first-class U.S. mail, postage prepaid, this 5th day of January, 1997, on the following:

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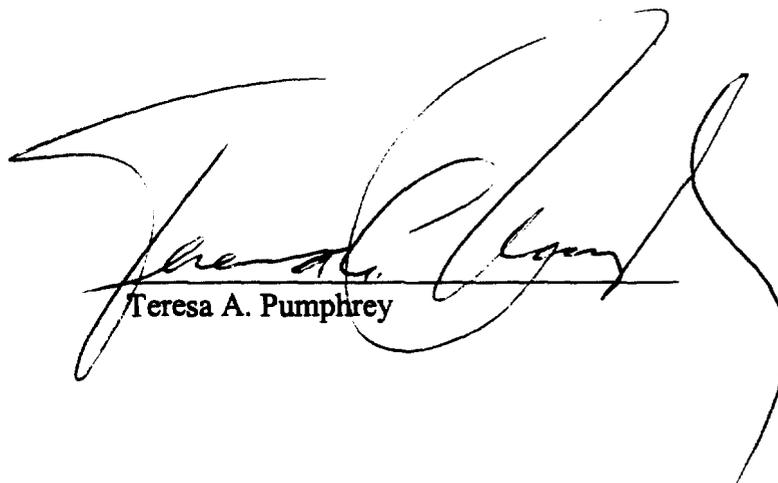
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