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BEFORE THE

Federal Communications Commission

WASHINGTON, D.C.

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	)	IB Docket 96-111
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	)	CC Docket No. 93-23 RM-7931
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

JOINT OPPOSITION TO PETITION FOR RECONSIDERATION OF LORAL SPACE & COMMUNICATIONS LTD. and GLOBALSTAR, L.P.

Loral and Globalstar hereby submit their joint Opposition to aspects of the Petition for Clarification and Reconsideration ("Petition") which ICO Global Communications (ICO) filed in connection with the Commission's recently adopted *Report and Order* in the above-captioned proceeding.[1]

Loral and Globalstar urge the Commission to reject ICO's request that the Commission reconsider two aspects of its *Report and Order*: (1) the determination by the

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1 *Amendment of the Commission's Regulatory Policies to Allow Non-U.S. Licensed Space Stations to Provide Domestic and International Satellite Services in the United States*, IB Docket No. 96-111, FCC 97-399 (rel. November 26, 1997)("*Report and Order*").

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Commission that ICO is an IGO affiliate[2]; and (2) the requirement that non-U.S. licensees, seeking access to the U.S. market, furnish legal, financial and technical information to the Commission.[3] ICO's Petition lacks merit. The Commission should reaffirm its decisions in the *Report and Order* and deny the Petition.

I. The Commission Correctly Classified ICO as an IGO Affiliate

In the *DISCO II* proceeding, the Commission considered procedures for U.S. implementation of the WTO Basic Telecom Agreement.[4] Although IGOs do not benefit from the WTO Agreement, the Commission decided to accord IGO affiliate satellites licensed by WTO members the same treatment as any satellite system of a WTO member seeking access to the U.S. market, that is, the Commission will "apply the presumption in favor of entry to an IGO affiliate licensed by a WTO member," rather than invoke the ECO-Sat test.[5]

However, the Commission reserved the right to "attach conditions to the grant of authority or, in the exceptional case in which an applicant would pose a very high risk to competition in the U.S. satellite market, to deny the application."[6] In reviewing IGO affiliates' requests to serve the U.S. market, the Commission said it would "consider any potential anticompetitive or market distorting consequences of continued relationships or connections between an IGO and its affiliate."[7] This approach affords the benefits of the WTO Agreement to

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2 Petition at 6-7. *See Report and Order* at fn. 283.

3 Petition at 2-4.

4 Fourth Protocol to the General Agreement on Trade in Services (GATS), 36 I.L.M. 336 (1997).

5 *Report and Order* at ¶ 136.

6 *Id.*

7 *Id.*

WTO member country IGO affiliates, yet prudently provides for Commission review of the structure and activities of the affiliate to assess legitimate competitive concerns. Among the concerns the Commission has identified are the possibilities of collusive behavior, cross-subsidies, denial of market access, and whether the IGO affiliate can directly or indirectly benefit from IGO privileges and immunities.[8]

The *Report and Order* classifies ICO as an IGO affiliate.[9] ICO argues that the Commission erred, claiming that "the fact that an entity was created by an IGO presents no competitive issue if the entity is legally and factually independent of the IGO."[10] ICO requests that the Commission revise its definition of "IGO affiliate" to eliminate ownership interests as a factor and substitute a vague legal and factual independence test.[11] The Commission should decline this invitation, especially since to ignore ownership interests in determining affiliation would turn the inquiry on its head. Moreover, the Commission decision to consider ownership

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8 *Id. See Amendment of the Commission's Regulatory Policies to Allow Non-U.S.-Licensed Space Stations to Provide Domestic and International Satellite Services in the United States,* 12 FCC Rcd 14220 (1997) at ¶ 36. *See generally* United States General Accounting Office, Report to the Chairman, Committee on Commerce, House of Representatives, *Telecommunications - Competitive Impact of Restructuring the International Satellite Organizations*, GAO/RCED-96-204 (July 1996) ("GAO Report").

9 The Commission specifically noted that ICO would be classified as an IGO affiliate, noting "[f]or the purpose of this *Report and Order*, an IGO affiliate is an entity created by an IGO, in which an IGO and IGO signatories maintain ownership interests. ICO falls within our definition of an IGO affiliate." *Report and Order* at fn. 283.

10 Petition at 6.

11 *Id.*

interests in making affiliation determinations is consistent with, if not mandated by, the Communications Act.[12]

ICO was created by an IGO, Inmarsat, and its investors currently include Inmarsat and IGO signatories.[13] These investments preclude a finding that ICO, or any similarly-situated entity, is not an affiliate of its IGO creator. Investments by the IGO and certain of its signatories in the affiliate create economic incentives for IGO signatories to favor the IGO affiliate, over competitive providers, in which they do not hold investments. ICO's suggestion that its IGO signatory investors "participate in ICO outside of their signatory roles and have independently chosen their levels of investment and investment vehicles"[14] is specious. The risk of anticompetitive behavior arises from the fact that the IGO and its signatories have made investments in ICO, and is not mitigated by the fact that signatory investments were made "outside" their formal signatory roles.

Accordingly, the Commission should rightly remain concerned about the competitive effects of investments by IGOs and their signatories in commercial service providers and the potential for market distorting effect. The advantages that IGO affiliates may enjoy include privileged access to member countries' markets, financial benefits, cross-subsidization and transfers from the IGO of valuable resources, including scarce orbital slots, experienced personnel

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12 47 U.S.C.S. § 153(1), *viz.* "The term 'affiliate' means a person that (directly or indirectly) owns or controls, is owned or controlled by, or is under common ownership or control with, another person. For purposes of this paragraph the term 'own' means to own an equity interest (or the equivalent thereof) of more than 10 percent."

13 ICO recently reported to the Commission that Inmarsat's voting investment in ICO is 15%. *See* ICO FCC Form 312, Exhibit C, FCC File No. 188-SAT-LOI-97.

14 Petition at 7 and fn. 10.

and a valued customer base.[15] The General Accounting Office echoed these concerns, noting that IGOs and their signatories "have both the incentives and the ability to provide ICO with market advantages over its potential competitors."[16] Classifying ICO as an IGO affiliate ensures that the Commission will, at the time of ICO's request to serve the U.S. market, consider any potential anticompetitive or market distorting effects of ICO's connection with Inmarsat and its signatories. ICO must not be permitted to foreclose this essential inquiry merely by asserting that it is not an IGO affiliate. The facts demonstrate that it is an IGO affiliate under current law.

II. The Information Requirements for Non-U.S. Satellite Applicants Are Consistent with the Commission's Spectrum Management Policies and Review of Such Applications Under the Public Interest Standard

The Commission decided to require applicants seeking to provide services over non-U.S. satellites "to provide detailed information about the non-U.S. space station and its operator."[17] The Commission reasoned that such information is "necessary to ensure compliance with each of the Commission requirements that . . . will apply to non-U.S. satellites."[18] According to the Commission, "[w]e can only determine whether service by a non-U.S. satellite in the United States is in the public interest if we have before us all the information we require U.S. applicants to provide."[19] The Commission recognized, however, that, in certain circumstances, less information would be sufficient. For example, financial information is not required for in-

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15 *See generally* GAO Report. *See also* Joint Comments of Loral Space & Communications Ltd. and L/Q Licensee, Inc. (August 21, 1997) at pp. 7-9 and pp. 14-17.

16 GAO Report at 10.

17 *Report and Order* at ¶ 189.

18 *Id.* at ¶ 190.

19 *Id.*

orbit systems and technical data is not required if international coordination has already taken place.[20]

ICO "disagrees" with the Commission's decision, claiming that these information requirements impose "redundant licensing requirements."[21] Although not articulated by the Commission, ICO claims that the basis for the rules is "the Commission's belief that *some* foreign countries' licensing requirements may be less rigorous than those of the FCC."[22] ICO believes that the Commission's requirement that applicants seeking to serve the U.S. market using non-U.S. licensed satellites must provide certain technical, financial and legal requirements is "unnecessary and likely to hinder, rather than advance, competition in satellite markets."[23] ICO clearly misapprehends the policies underlying the information requirements, and, therefore, its objections are misplaced and should be rejected. ICO has exaggerated the scope of the Commission's reporting requirements. The Commission's policies are reasonable and narrowly tailored to accomplish the review required under Act's public interest standard.

The Commission has a legitimate need for legal, financial and technical information in carrying out its spectrum management responsibilities. Essentially, the Commission has adopted policies that require applicants to furnish information necessary for the Commission to determine whether spectrum should be reserved for non-U.S. applicants in the context of assigning spectrum in an application processing round or when earth station applications are filed.

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20 *Id.* at ¶¶ 191-192.

21 Petition at 2.

22 *Id.* at 3 (emphasis in original).

23 *Id.* at 2.

ICO warns that unless the Commission's information collections are curtailed, there is a "risk that foreign nations will respond to those requirements by establishing relicensing requirements for U.S.-licensed service providers."[24] However, foreign administrations already routinely and appropriately require information from U.S.-licensed service providers, including MSS licensees, that in some cases differs in form or content from that required by the FCC. For example, Globalstar is subject to the requirements of the European Milestone Review Committee ("MRC") as a precondition to access to L and S-band MSS spectrum necessary for Globalstar to provide service in Europe.[25] Just as the Commission requires information to ensure that spectrum being reserved for use by a potential operator will be used efficiently, CEPT has imposed similar—but not identical—reporting requirements on MSS operators, including Globalstar.[26] Globalstar, of course, complies with the MRC reporting requirements.

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24 *Id.* at 4 (footnote omitted).

25 Globalstar passed 5 of the MRC's 8 milestones as of January, 1998. On February 14, 1998 Globalstar successfully launched the first satellites in its constellation and soon anticipates compliance with the 6th milestone.

26 The MRC milestones are: (1) submission of ITU Advance Publication and Coordination documents; (2) submission of clear evidence of a satellite manufacturing contract; (3) completion of the spacecraft Critical Design Review; (4) submission of clear evidence of a satellite launch contract; (5) submission of clear evidence of a binding agreement for the construction and installation of gateway earth stations that will be used to provide service within the CEPT; (6) submission of documents confirming the successful launch and in-orbit deployment of the first satellite; (7) submission of documents relating to the successful frequency coordination of the system pursuant to the International Radio Regulations; and (8) notification to the MRC that the network operator has launched, and has made available for service, the number of satellites previously identified as necessary to provide continuous commercial service and that it shall be providing commercial service within the CEPT using the identified frequency bands. European Radiocommunications Committee Decision as of 30 June 1997 on the Harmonized Use of Spectrum for Satellite Personal Communication Services (S-PCS) operating within the bands 1610-1626.5 MHz, 2483.5-2500 MHz, 1980-2010 MHz and 2170-2200 MHz, Annex 2, *available in* <http://www.ero.dk/DOC/HTML/Dec9703e.htm>.

ICO's argument is also totally unsupported by the facts. The Commission has not indicated that it will use the information collected from foreign satellite proponents to "relicense" their systems, just as complying with the European MRC requirements does not constitute relicensing of Globalstar and Iridium. Rather, submission of this information ensures that the Commission has access to the data necessary to resolve what may be complex issues of spectrum access by multiple parties.

Moreover, the Commission's information requirements vary across a continuum depending on the status of the system when the non-U.S. applicant seeks to enter the U.S. market. In the case of a system that has been launched and coordinated internationally, the applicant need not provide financial information or detailed technical information.[27] In the case of a system that has been licensed, launched and coordinated internationally, the Commission requires only technical information to ensure that the earth station (whether traditional FSS or mobile earth terminals used for MSS systems) will not interfere with other systems.[28] Importantly, the Commission's information requirements for non-U.S. proponents using the letter of intent process *never* places a higher burden on non-U.S. proponents than faced by U.S. applicants. Indeed, less information may be required from non-U.S. proponents than from U.S. applicants.

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27 47 C.F.R. § 25.137(b).

28 *See Report and Order* at ¶ 156. ICO agrees that "MSS earth stations operating in the U.S. with a non-U.S. licensed MSS system must comply with U.S. technical requirements for domestic frequency coordination." Petition at fn. 6.

The Commission adopted a moderated information reporting approach that requires only information sufficient to assess whether spectrum should be reserved for a non-U.S. applicant seeking to enter the U.S. market. The Commission requires this information to fulfill its frequency management responsibilities. Accordingly, the Commission should reject ICO's request that it modify this aspect of the *Report and Order*.

III. Conclusion

For the reasons outlined above the Commission should reaffirm the decisions in its *Report and Order* and deny ICO's Petition for Reconsideration.

Respectfully submitted,

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February 17, 1998

CERTIFICATE OF SERVICE

I, Tonia R. Gilchrist, hereby certify that a copy of the foregoing JOINT OPPOSITION TO PETITION FOR RECONSIDERATION OF LORAL SPACE & COMMUNICATIONS LTD. and GLOBALSTAR, L.P. was filed with the Commission and sent via hand delivery on this 17th day of February, 1998, to each of the following:

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