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FILED ELECTRONICALLY

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: Notice of Oral *Ex Parte* Presentations – Procedures for Assessment and Collection of Regulatory Fees; Assessment and Collection of Regulatory Fees for Fiscal Year 2008, MD Docket Nos. 12-201 & 08-65

Dear Ms. Dortch:

On March 5 and March 7, 2013, several satellite company representatives met with Commission staff to discuss the above-referenced rulemaking proceeding regarding reform of the Commission's regulatory fees.¹ The March 5 meeting was with Troy Tanner of the International Bureau and Fern Jarmulnek, Stephen Duall, and Cindy Spiers of the Satellite Division. The March 7 meeting was with Mika Savir of the Enforcement Bureau and Roland Helvajian and Thomas Buckley of the Office of Managing Director. The satellite company representatives at the meetings were Daniel Mah of SES, Karis Hastings, outside counsel for SES, Diane Cornell of Inmarsat and George Wazeter of Telesat (who attended the March 5 meeting in person and participated by telephone in the March 7 meeting).

The satellite company representatives began the March 5 meeting by summarizing the objections set forth in the comments and reply comments of the Satellite Industry Association ("SIA") to the reform proposals in the Notice. In particular, the satellite companies discussed SIA's opposition to using the relative number of full-time equivalent employees ("FTEs") in the four core licensing bureaus to allocate regulatory fee responsibility, as suggested in the Notice. The companies argued that this approach would result in an unfair fee structure because it fails to take into account the significant number of Commission personnel outside the four core bureaus whose work is solely or primarily focused on a specific group of fee payers.

The satellite company representatives argued that the FTEs associated with such personnel must be attributed as direct costs to the licensees who benefit from that work. Thus, for example, the costs of employees in the Enforcement Bureau who focus on broadcast indecency complaints, pole attachment disputes, complaints against common carriers, and slamming should be allocated directly in each case to the groups of regulatory fee payers whose operations are regulated and monitored by those personnel. The satellite companies also

¹ *Procedures for Assessment and Collection of Regulatory Fees and Assessment and Collection of Regulatory Fees for Fiscal Year 2008*, Notice of Proposed Rulemaking, MD Docket Nos. 12-201 & 08-65, FCC 12-77 (rel. July 17, 2012) (the "Notice").

observed that the International Bureau represents a special case because it combines licensing functions for satellite networks and international telecommunications carriers with work on spectrum matters, cross-border coordination, foreign ownership and other issues that benefit services licensed by the three other bureaus.

In both the March 5 and the March 7 meetings, the satellite company representatives also responded to the arguments made by Intelsat in this proceeding suggesting that the Commission should “consider requiring non-U.S.-licensed satellite operators serving the U.S. market to pay regulatory and application fees just like U.S.-licensed satellite operators.”² The satellite companies noted that Intelsat’s reference to the application fee issue is beyond the scope of the instant proceeding. With respect to regulatory fees, SES, Inmarsat and Telesat argued that Intelsat’s suggestion is wrong on the facts and wrong on the law.

First, Intelsat’s claim that foreign-licensed satellite operators serving the U.S. “use’ nearly the same Commission resources” as Intelsat and other U.S.-licensed space station operators³ is simply not true. Specifically, those satellites do not obtain Title III licenses or receive the benefits that come with grant of a U.S. space station license.⁴ Unlike for U.S. licensees, the FCC does not assume responsibility for foreign satellites’ compliance with the ITU Radio Regulations, or even have the limited role of helping with international coordination of foreign satellite networks. If the FCC is involved in such coordination discussions at all, it is on behalf of the U.S. licensees, like Intelsat, not the foreign operators at the table.

The distinction in treatment between U.S. and foreign-authorized satellites dates back to the late 1990’s, when the Commission opened up the U.S. satellite market to international competition following the signing of the World Trade Organization (“WTO”) Agreement on Basic Telecommunications. The Commission expressly decided not to subject foreign-licensed satellites to a re-licensing procedure in order to serve U.S. customers, finding that such a procedure “would raise issues of national comity as well as issues regarding international coordination responsibilities for the space station.”⁵

Because no Title III license is issued to a foreign satellite seeking to serve the U.S. market, there is no legal basis for imposing annual regulatory fees under Section 9 of the Communications Act. As the Commission explained in the order adopting regulatory fees for Fiscal Year 1999:

² See Letter of Jennifer D. Hindin, Counsel for Intelsat, to Marlene Dortch, Secretary, FCC, MD Docket Nos. 12-201 & 08-65 (filed Feb. 22, 2013) at 2-3.

³ See *id.* at 2.

⁴ The D.C. Circuit has confirmed that foreign-licensed satellites do not impose material regulatory costs on the Commission. In a decision upholding the imposition of a regulatory fee on COMSAT, the court observed that “[u]nlike other foreign-licensed satellites, COMSAT clearly generates significant regulatory costs through its signatory activities.” *COMSAT Corp. v. FCC*, 283 F.3d 344, 347 (D.C.Cir. 2002).

⁵ *Amendment of the Commission’s Regulatory Policies to Allow Non-U.S. Licensed Satellites Providing Domestic and International Service in the United States*, Report and Order, IB Docket No. 96-111, 12 FCC Rcd 24094, 24174 (1997).

It has also been suggested that non-U.S. licensed satellite service providers who operate in the U.S. should be assessed regulatory fees. Clearly, legislative history provides that only space stations licensed under Title III may be subject to regulatory fees. Although non-U.S.-licensed satellite operators do compete with U.S.-licensed satellite operators, they are not licensed under Title III. Therefore, we cannot include operators of non-U.S.-licensed satellite space stations among regulatory fee payers.⁶

The FCC's decision reflects Congress's declaration that Section 9 regulatory fees can only:

be assessed on operators of U.S. facilities, consistent with FCC jurisdiction. Therefore, these fees will apply only to space stations directly licensed by the Commission under Title III of the Communications Act.⁷

The satellite company representatives argued that this result is consistent with fundamental fairness and makes good policy sense. We emphasized again that foreign-licensed spacecraft, once granted U.S. market access, do not impose significant burdens on Commission resources for functions that regulatory fees were intended to cover. Exemption of foreign-licensed satellites from regulatory fees is also consistent with the Commission's decision not to require the "re-licensing" of foreign-licensed satellites.

Furthermore, the Commission's long-standing policy of imposing regulatory fees only on its own space station licensees conforms to the practice in the vast majority of other countries. For example, Telesat Canada pays significant annual fees but the dozens of satellites licensed by the U.S. and other countries that have been authorized to serve Canada⁸ do not. Inmarsat's space stations are licensed by the United Kingdom, and Inmarsat pays fees in connection with those facilities. The United Kingdom does not charge the same fee to other satellites, including those licensed by the U.S., that are permitted to serve the U.K. Thus, Intelsat's allegation of unfair treatment is completely unfounded – the Commission is treating foreign-licensed satellites with U.S. market access the same way other licensing jurisdictions typically treat Intelsat spacecraft that serve their territories.

The satellite company representatives expressed concern that if the Commission were to reverse its policy, the effects would be felt around the world and would seriously impact the economic viability of global satellite operations. U.S. regulatory policy sets an important

⁶ *Assessment and Collection of Regulatory Fees for Fiscal Year 1999*, Report and Order, 14 FCC Rcd 9868, 9883 (1999).

⁷ HR. Rep. No. 207. 102d Cong., 1st Sess. 26 (1991), incorporated by reference in Conf. Rep. No. 213, 103d Cong., 1st Sess. 449 (1993).

⁸ A list of non-Canadian-licensed satellites authorized to provide services in Canada is available at: <http://www.ic.gc.ca/eic/site/smt-gst.nsf/eng/sf02104.html>.

example for other administrations, and therefore a change in U.S. fee structure could lead to the proliferation of multiple “market access” fees worldwide. Because the satellite industry is inherently international in scope, the additional costs stemming from such a domino effect on fees would severely affect the economics of the industry, harming all our companies and Intelsat as well.

Please contact the undersigned if you have any questions.

Respectfully submitted,

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