

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

In the Matter of	)	
	)	
Assessment and Collection of Regulatory Fees for Fiscal Year 2013	)	MD Docket No. 13-140
	)	
Procedures for Assessment and Collection of Regulatory Fees	)	MD Docket No. 12-201
	)	
Assessment and Collection of Regulatory Fees for Fiscal Year 2008	)	MD Docket No. 08-65
	)	

**COMMENTS OF SES AMERICOM, INC., INMARSAT, INC. AND TELESAT CANADA**

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## SUMMARY

SES, Inmarsat, and Telesat (the “Satellite Parties”) oppose imposition of a regulatory fee on foreign-licensed satellites that are authorized to serve the U.S. Such a fee is unsupported by the facts, impermissible as a matter of law, and would have damaging international consequences for all satellite operators, including U.S. licensees. The Commission should use an alternative approach if it decides to pursue a means of collecting any modest regulatory costs associated with foreign-licensed satellites’ market entry.

Regulatory fees are intended to recover the costs of ongoing oversight of providers of communications services, and foreign-licensed satellites are not subject to such regulation by the Commission. A foreign satellite’s licensing administration decides whether to authorize the satellite and has responsibility for the spacecraft’s international coordination and compliance with ITU rules. In contrast, the Commission’s role with respect to foreign-licensed satellites derives from its jurisdiction over U.S. earth station licensees – the Commission determines whether or not those earth stations can communicate with the foreign-licensed satellite. The Commission’s international, rulemaking, enforcement, and user information efforts relating to satellites all focus on U.S. licensees, and any benefits foreign-licensed satellites receive are ancillary. The fact that Commission staff review and pass on requests for U.S. market access by foreign satellites also does not justify a new annual regulatory fee because that is a one-time application process, rather than an ongoing activity contemplated by annual regulatory fees.

Moreover, because they do not receive a Title III license, foreign satellite operators cannot legally be subjected to Commission regulatory fees. The legislative history of the regulatory fee statute makes clear that Congress intended that regulatory fees would apply

only to space stations directly licensed under Title III. The Commission has no authority to ignore that legislative history here.

Even if the Commission could legally impose a regulatory fee on foreign satellite licensees, there are strong public policy reasons why it should not do so. The Commission's current approach is similar to those of most other countries, who impose significant annual financial requirements only on their own satellite licensees and not in the context of market access for foreign-licensed satellites. A reversal of the Commission's position is likely to lead to a global domino effect with market access fees proliferating around the world, causing a significant adverse economic impact on all satellite operators, including U.S. licensees.

To the extent the Commission feels it necessary to revise its approach to the costs associated with processing market access requests by foreign-licensed satellites, the Satellite Parties suggest two options. First, the Commission could assign the costs to overhead, which would be consistent with the way processing costs for experimental license applications and Section 214 authorization requests are treated. Second, the Commission could include the costs in earth station regulatory fees in recognition that participation of foreign-licensed satellites in the U.S. market enhances competition, benefiting all domestic satellite service users.

TABLE OF CONTENTS

SUMMARY.....i

I. INTRODUCTION..... 1

II. FOREIGN-LICENSED SATELLITES DO NOT IMPOSE SIGNIFICANT REGULATORY COSTS ON THE COMMISSION..... 2

III. THE COMMISSION LACKS LEGAL AUTHORITY TO IMPOSE REGULATORY FEES ON FOREIGN-LICENSED SATELLITES ..... 8

IV. IMPOSING A MARKET ACCESS FEE WOULD SET A DANGEROUS INTERNATIONAL PRECEDENT..... 9

V. ANY COSTS ASSOCIATED WITH MARKET ACCESS FOR FOREIGN SATELLITES SHOULD BE RECOVERED AS OVERHEAD OR INCLUDED IN EARTH STATION FEES ..... 11

VI. CONCLUSION ..... 13

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**COMMENTS OF SES AMERICOM, INC., INMARSAT, INC. AND TELESAT CANADA**

SES Americom, Inc. (“SES”), Inmarsat, Inc. (“Inmarsat”), and Telesat Canada (“Telesat,” and with SES and Inmarsat, the “Satellite Parties”)<sup>1</sup> pursuant to Sections 1.415 and 1.419 of the Commission’s Rules (47 C.F.R. §§ 1.415 & 1.419), hereby comment on the Further Notice of Proposed Rulemaking in the above-captioned proceeding (the “Further Notice”).<sup>2</sup> For the reasons discussed below, the Satellite Parties oppose adoption of a regulatory fee for foreign-licensed satellite operators authorized to serve the U.S.

**I. INTRODUCTION**

SES, Inmarsat, and Telesat are global satellite operators, and each has both facilities licensed by the U.S. and facilities authorized by other jurisdictions. The Satellite Parties are members of the Satellite Industry Association (“SIA”), and we fully support the

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<sup>1</sup> References herein to SES, Inmarsat, Telesat, or the Satellite Parties include entities affiliated with the companies.

<sup>2</sup> *Assessment and Collection of Regulatory Fees for Fiscal Year 2013, Procedures for Assessment and Collection of Regulatory Fees, and Assessment and Collection of Regulatory Fees for Fiscal Year 2008*, Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking, MD Docket Nos. 13-140, 12-201 & 08-65, FCC 13-74 (rel. May 23, 2013).

comments being submitted by SIA in this proceeding. Specifically, we agree that the Commission should adopt its proposal to set regulatory fees for International Bureau licensees based only on the full time equivalent employees (“FTEs”) of the International Bureau personnel involved in regulating those entities. We also join SIA in advocating further efforts to refine the assignment of direct and indirect FTEs and in opposing any shift to use of revenues, rather than licenses, to set satellite industry regulatory fees.

The Satellite Parties are commenting separately here to address the request in the Further Notice for input on whether foreign-licensed satellites serving the U.S. should be subject to U.S. regulatory fees.<sup>3</sup> The Satellite Parties strongly oppose such a change, which would conflict with the principles of international comity embodied in U.S. market access policies. The Commission lacks authority to impose a regulatory fee on foreign satellites, which do not receive Title III licenses. Finally, a U.S. decision to adopt a fee for market access could lead to a proliferation of fees around the world that would have a serious impact on the economics of global satellite services. If the Commission concludes that it needs to change the way it recovers the costs of processing U.S. market access requests for foreign-licensed satellites, it should either include the costs in overhead or incorporate them into U.S. earth station regulatory fees.

**II. FOREIGN LICENSED SATELLITES DO NOT IMPOSE SIGNIFICANT REGULATORY COSTS ON THE COMMISSION**

As a threshold matter, the Further Notice significantly overstates the Commission’s regulatory role with respect to foreign-licensed satellites. These satellites do not obtain Title III licenses or receive the benefits that come with grant of a U.S. space station license. Instead, such satellites are authorized by and subject to the direct regulatory authority of their licensing jurisdictions and can operate without any Commission approval or oversight. The

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<sup>3</sup> Further Notice at ¶ 49.

foreign satellite’s licensing administration, not the U.S., has responsibility for making the relevant filings with the International Telecommunication Union (“ITU”) and pursuing international coordination of the satellite network as well as ensuring operations comply with the terms of the ITU rules.

The Commission’s authority with respect to foreign-licensed satellites is strictly limited and derives from its ability to regulate the operation of U.S.-licensed earth stations. Specifically, the Commission’s sole prerogative in this context is to determine whether to allow U.S. earth stations to communicate with foreign satellites. As the Further Notice recognizes, that determination can be made at the request of an earth station licensee without the satellite operator even participating in the proceeding.<sup>4</sup>

A grant of U.S. market access does not subject a foreign-licensed satellite to the full range of Commission authority. For example, it does not give the Commission the right to require the foreign satellite to cease operating or to move to a different position. Instead, the market access grant simply sets the terms pursuant to which U.S.-licensed earth stations are permitted to communicate with the satellite, and the Commission’s only recourse if those terms are not met is to require the U.S. earth stations to stop such communications.

The Further Notice asserts that the “Commission’s policies, regulations, international, user information, and enforcement activities all benefit non-U.S. licensed satellite operators that access the U.S. market,”<sup>5</sup> but to the extent such benefits exist, they are incidental. For example, the Further Notice does not explain in what manner foreign-licensed satellites gain any benefit from Commission international activities. As discussed above, unlike for U.S.

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<sup>4</sup> *Id.*

<sup>5</sup> *Id.* at ¶ 48.

licensees, the Commission 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 Commission staff members are involved in such coordination discussions at all, it is on behalf of U.S. licensees, not the foreign operators at the table. To the extent there may be incidental benefits from general international work at the ITU or elsewhere that flow to non-U.S. as well as U.S.-licensed satellite operators, the same can also be said for international work done by the administrations of non-U.S. licensed operators.

Similarly, no evidence is presented to buttress the claim that foreign satellite operators benefit from the Commission's enforcement activities. The Further Notice states that satellite operators serving the U.S. under a foreign license "are subject to Commission enforcement action" if the conditions placed on the market access grant are not met.<sup>6</sup> No support is cited for this claim, which is inconsistent with the express scope of the Commission's authority. The rules contemplate initiation of enforcement proceedings only against entities that hold Commission licenses or authorizations,<sup>7</sup> a group that does not include foreign-licensed satellite operators. The Commission does not explain its belief that a grant of market access – which as discussed above may be issued at the request of an earth station licensee and without any participation by the satellite operator – could subject the foreign satellite operator to a Commission enforcement action. Instead, if the terms of market access are violated, the Commission's sole recourse is to require U.S.-licensed earth stations to cease communicating with the foreign satellite.

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<sup>6</sup> *Id.*

<sup>7</sup> *See, e.g.,* 47 C.F.R. § 1.89(a) (if "any person who holds a license, permit or other authorization" appears to have committed a violation, a written notice requesting a statement concerning the matter must be sent prior to the initiation of revocation, suspension or other proceedings).

The Further Notice's claim that foreign satellite licensees benefit from the Commission's user information activities is also unsupported. The Satellite Parties are not aware of any past or current user information efforts that focus on foreign-licensed satellites.

Foreign-licensed satellite operators do derive some benefit from Commission rulemaking proceedings, but matters relating to foreign satellites are an insignificant part of these efforts. The Commission states that rulemaking proceedings establishing rules for new satellite services "apply both to U.S. licensed satellites and non-U.S. licensed satellites providing service in the United States."<sup>8</sup> While that is true, the primary objective of such proceedings is to develop a framework for U.S.-licensed systems, with treatment of foreign-licensed satellites an ancillary matter. Furthermore, the benefit of such rulemakings is limited with respect to foreign-licensed satellites.

For example, the decision cited by the Further Notice on rules for broadcasting-satellite service in the 17/24 GHz bands<sup>9</sup> does set forth the market access procedures for foreign-licensed satellites in those bands. However, this issue is addressed in seven paragraphs, one small section of a 209-paragraph order. Clearly, deciding how to address foreign-licensed satellites was not a significant portion of the Commission's analysis in the 17/24 GHz proceeding. Moreover, allowing foreign-licensed satellites to seek access to the U.S. market for new services in the 17/24 GHz frequency bands by definition creates an opportunity available only to a satellite operator whose licensing jurisdiction has also taken steps to authorize satellite

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<sup>8</sup> Further Notice at ¶ 48.

<sup>9</sup> *Id.* at ¶ 48 & n.83, citing *Establishment of Policies and Service Rules for the Broadcasting-Satellite Service at the 17.3-17.8 GHz Frequency Band and at the 17.7-17.8 GHz Frequency Band Internationally, and at the 24.75-25.25 GHz Frequency Band for Fixed Satellite Services Providing Feeder Links to the Broadcasting-Satellite Service for the Satellite Services Operating Bi-Directionally in the 17.3-17.8 GHz Frequency Band*, IB 06-123, Report and Order and Further Notice of Proposed Rulemaking, 22 FCC Rcd 8842 (2007) ("17/24 GHz Order").

networks to use these bands. The effect of the Commission’s action is limited to opening up possible access to one market – the U.S. – for satellites otherwise authorized to operate in this spectrum as a result of actions taken by their licensing jurisdictions.

Thus, the fact that the Commission allows foreign-licensed satellites to serve the U.S. has a negligible impact on the Commission’s workload in the areas of activity intended to be covered by regulatory fees.<sup>10</sup> The D.C. Circuit has expressly confirmed that foreign-licensed satellites do not impose material regulatory costs on the Commission. In a decision upholding 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.”<sup>11</sup>

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 pursuant to U.S. obligations under 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.”<sup>12</sup>

The staff of the International Bureau does perform a one-time review when a request is filed to use a foreign-licensed satellite to serve the U.S., but that review does not itself justify imposition of regulatory fees. Despite its decision not to require re-licensing of satellites

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<sup>10</sup> See 47 U.S.C. § 159(a)(1) (regulatory fees shall be collected to recover the costs of the Commission’s “enforcement activities, policy and rulemaking activities, user information services, and international activities”).

<sup>11</sup> *COMSAT Corp. v. FCC*, 283 F.3d 344, 347 (D.C.Cir. 2002) (emphasis added).

<sup>12</sup> *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) (“DISCO II”).

that have already been authorized by a foreign jurisdiction, the Commission has chosen to require foreign-licensed satellites to submit the same extensive technical information that must be filed in support of a U.S. space station license application.<sup>13</sup> Although it is beyond the scope of the instant proceeding, the Commission should separately re-evaluate its requirements for foreign-licensed satellites seeking U.S. market access, which go far beyond what other jurisdictions impose on U.S.-licensed satellites seeking market access.<sup>14</sup> In any event, it is important to emphasize again that the Commission's review is limited to assessing whether allowing U.S.-licensed earth stations to communicate with the foreign satellite is in the public interest, and grant of the request does not make the foreign-licensed satellite otherwise subject to U.S. regulatory jurisdiction. Thus, these processing costs would more appropriately be recovered through an application fee, not an annual regulatory fee.

In any event, the regulatory fee framework does not provide for collection of costs in all cases where an application is submitted for Commission review. For example, Commission resources are also expended in the processing of applications for Title III experimental licenses and for international telecommunications authorizations under Section 214

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<sup>13</sup> Further Notice at ¶ 48. The Further Notice also states that Commission staff monitors the compliance of foreign-licensed satellites with implementation milestones and operational requirements. *Id.* However, most requests for U.S. market access involve foreign-licensed satellites that are already operational or will be operational by the time the Commission acts on the request. In these instances, no monitoring of implementation milestones is required.

<sup>14</sup> For example, a U.S.-licensed satellite operator requesting authority to provide service to Canada need submit only very basic information (typically just 2-3 pages), including the satellite operator's identity, the frequencies of operation, the satellite's life expectancy, identification of the underlying ITU filings, the orbital location and coverage pattern over Canada, and typical earth station parameters. *See* CPC-2-6-01 – Procedure for the Submission of Applications to License Fixed Earth Stations and to Approve the Use of Foreign Fixed-Satellite Service (FSS) Satellites in Canada, Annex IV – Information Required to Obtain Approval to Use a Foreign Space Station in the Fixed-Satellite Service, available at: <http://www.ic.gc.ca/eic/site/smt-gst.nsf/eng/sf09286.html#appro> (last visited June 17, 2013) (“Canadian Market Access Procedure”).

of the Communications Act. Yet the framework initially adopted by Congress did not impose regulatory fees with respect to these authorizations, nor has the Commission proposed to implement such fees. The costs of reviewing and acting on these applications are instead treated as overhead and are recovered from all regulatory fee payers under the Commission's framework. The same treatment is justified with respect to the costs associated with processing foreign satellite market access requests, which result in neither a grant of Title II or Title III authority.

In short, there is no factual basis for extending regulatory fees to foreign-licensed satellites authorized to serve U.S. earth stations given the strictly limited scope of the Commission's activities and jurisdiction with respect to such operations.

### **III. THE COMMISSION LACKS LEGAL AUTHORITY TO IMPOSE REGULATORY FEES ON FOREIGN-LICENSED SATELLITES**

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:

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.*<sup>15</sup>

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<sup>15</sup> *Assessment and Collection of Regulatory Fees for Fiscal Year 1999*, Report and Order, 14 FCC Rcd 9868, 9883 (1999) ("1999 Fees Order") (emphasis added).

The Commission's decision in the 1999 proceeding reflects Congress's specific statement regarding the proper scope of regulatory fee liability. Specifically, Congress made clear 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.<sup>16</sup>

The Further Notice seeks comment on whether the Commission should "revisit" its determination in the 1999 Fees Order regarding application of space station regulatory fees.<sup>17</sup> However, the Commission does not explain on what basis it could decide to "revisit" a decision premised on the legislative history of the enabling statute. Given the express language of Congress, the Commission must again conclude that any attempt to subject foreign-licensed satellites serving the U.S. to regulatory fees would be invalid.

#### **IV. IMPOSING A MARKET ACCESS FEE WOULD SET A DANGEROUS INTERNATIONAL PRECEDENT**

Even if the Commission could legally extend regulatory fees to foreign-licensed satellite operators, there are strong policy reasons why it should not do so. Adoption of such a fee would set the U.S. apart from most other countries and could lead to a global domino effect with significant economic consequences for the satellite industry.

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 jurisdictions. For example, under Canadian regulations Telesat pays significant annual fees, but the dozens of

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<sup>16</sup> HR. Rep. No. 207, 102d Cong., 1st Sess. 26 (1991), incorporated by reference in Conf. Rep. No. 213, 103d Cong., 1st Sess. 449 (1993).

<sup>17</sup> Further Notice at ¶ 49.

satellites licensed by the U.S. and other countries that have been authorized to serve Canada<sup>18</sup> do not. Nor is there a fee associated with the filing of a request for authority to use a non-Canadian licensed satellite to serve the Canadian market.<sup>19</sup> Inmarsat's space stations are licensed by the United Kingdom. As a U.K. licensee, Inmarsat is subject to specific financial obligations that do not apply to other satellites, including those licensed by the U.S., that are permitted to serve the U.K.<sup>20</sup> Analogously, the Gibraltar Regulatory Authority charges annual licensing fees for the SES spacecraft authorized by Gibraltar, an overseas territory of the U.K.

As a result, the concerns expressed in the Further Notice about a possible competitive disadvantage to U.S. satellite licensees from the Commission's regulatory fee approach<sup>21</sup> are unfounded. Although satellites serving the U.S. pay regulatory fees today only if they are licensed by the Commission, the foreign-licensed satellites are subject to fees in their licensing jurisdictions that do not apply to U.S.-licensed satellites. In some jurisdictions, these fees are higher than those imposed in the U.S.<sup>22</sup>

Thus, the Commission is currently treating foreign-licensed satellites that have been granted U.S. market access the same way other licensing jurisdictions typically treat U.S.-licensed spacecraft that serve their territories. Direct licensing authority and the assessment of

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<sup>18</sup> 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>.

<sup>19</sup> The Canadian Market Access Procedure states that no fee is charged for submitting the information necessary to add a satellite to the list of approved foreign satellites.

<sup>20</sup> Specifically, Inmarsat is required to maintain liability insurance at a significant annual cost.

<sup>21</sup> Further Notice at ¶ 48.

<sup>22</sup> See Industry Canada, Consultation on the Licensing Framework for Fixed-Satellite Service (FSS) and Broadcasting-Satellite Service (BSS) in Canada, March 2012 at 9 (presenting results of a study indicating that annual fees on satellite licensees in both Canada and Mexico are higher per MHz than those in the U.S.). The consultation is available at: <http://www.ic.gc.ca/eic/site/smt-gst.nsf/eng/sf10291.html> (last visited June 18, 2013).

associated fees or other financial obligations go hand in hand. Very few countries depart from this approach, with Brazil being the largest market to impose a market access fee on satellites licensed by the U.S. and other countries. In submissions to the Commission, SIA has highlighted the “excessive fees” charged by Brazil, and specifically noted that Brazilian satellite operators are not required to pay any fees in order to seek authority to serve the U.S.<sup>23</sup>

If the Commission were to reverse course and apply a market access fee, the effects would be felt around the world and would seriously and inappropriately impact the economic viability of global satellite operations, including U.S.-licensed operators. Unlike most telecommunications providers, typically international satellite operators’ footprints serve multiple countries, and satellite operators rely on broad geographic coverage in order to obtain a sufficient user base to recover the large up-front capital costs of satellite deployment. While a small number of countries today impose significant market access fees, many more would do so if the U.S. were to establish such fees.

Given the international scope of the satellite industry, an operator’s ability to access multiple markets may be essential to the economic viability of its network. The additional costs stemming from a domino effect on fees would severely affect the economics of the industry. This result would harm all satellite operators, including U.S. licensees serving other parts of the world, impairing their ability to provide essential services to their user communities.

**V. ANY COSTS ASSOCIATED WITH MARKET ACCESS FOR FOREIGN SATELLITES SHOULD BE RECOVERED AS OVERHEAD OR INCLUDED IN EARTH STATION FEES**

For the reasons discussed above, imposing a new regulatory fee on foreign-licensed satellites is unjustified, unlawful, and contrary to the long-term interests of both U.S.-

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<sup>23</sup> See Comments of the Satellite Industry Association, IB Dkt No. 06-67, filed Apr. 19, 2006, Attachment 1 at 5.

licensed and foreign-licensed satellite operators. If the Commission wants to exclude any costs associated with foreign-licensed satellites from U.S. space station regulatory fee amounts and can develop a rational means for separating out such costs, then there are two viable options for recovering the costs.

As discussed above, the Satellite Parties believe that the most reasonable approach would be to include these costs in overhead. This is consistent with the Commission's treatment of costs relating to experimental licensees and holders of international Section 214 authority. Neither of these categories is subject to regulatory fees to recover the costs of Commission resources associated with processing their applications or their ongoing regulation. Instead, these costs are spread across all regulatory fee categories.

Alternatively, the Commission could include costs relating to foreign-licensed satellites in the calculation of earth station regulatory fees. In the DISCO II decision, the Commission expressly found that permitting foreign-licensed satellites to serve the U.S. would:

facilitate greater competition in the U.S. satellite services market. Enhanced competition in the U.S. market, in turn, will provide users more alternatives in choosing communications providers and services, as well as reduce prices and facilitate technological innovation.<sup>24</sup>

Thus, participation of foreign-licensed satellites in the U.S. market benefits all U.S. users of satellite services. By spreading the costs associated with foreign-licensed satellites that serve the U.S. across all earth station licensees, the Commission would be assigning those costs to the parties that reap the benefit of added satellite competition.

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<sup>24</sup> DISCO II, 12 FCC Rcd 24097.

**VI. CONCLUSION**

A regulatory fee for foreign-licensed satellites that serve the U.S. is unsupported by the facts, contrary to the law, and inconsistent with the Commission’s policy objectives. Accordingly, the Commission should not pursue such a fee. Any costs associated with foreign-licensed satellites’ market access should instead be treated as overhead or included in earth station regulatory fees.

Respectfully submitted,

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