

**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
)	

**REPLY 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”)¹ hereby reply to the comments of other parties in response to the Further Notice of Proposed Rulemaking in the above-captioned proceeding (the “Further Notice”).² The Satellite Parties urge the Commission to conclusively reject the idea of adopting a regulatory fee applicable to foreign-licensed satellite operators authorized to serve the U.S.

The Satellite Parties’ initial comments demonstrate that subjecting foreign-licensed satellites to a U.S. regulatory fee is not supported by the facts, is beyond the Commission’s statutory authority, and would adversely affect global satellite operations,

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

² *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).

including those by U.S.-licensed providers.³ In their comments, EchoStar, Hughes Network Systems, and DISH similarly oppose such a fee as unjustified, contrary to the Commission’s legal obligations, and inconsistent with the long term interests of both U.S. satellite service customers and the satellite industry as a whole.⁴ Only Intelsat, which initially proposed introduction of a new regulatory fee for foreign satellites,⁵ endorses the idea here.⁶ However, as discussed below, Intelsat’s supporting arguments are baseless.

I. THE COMMISSION’S SATELLITE REGULATORY EFFORTS FOCUS ON U.S.-LICENSED SPACECRAFT

The Joint Satellite Comments explain that the Commission plays a limited role with respect to foreign-licensed satellites proposing to serve the U.S., and that role is tied to the Commission’s authority over U.S.-licensed earth stations.⁷ The filing emphasizes that the Commission does not have responsibility for foreign satellites’ international coordination or compliance with International Telecommunication Union (“ITU”) regulations, does not have jurisdiction to undertake an enforcement action based on operation of the satellites, and does not perform significant user information activities relating to these spacecraft.⁸ The Satellite Parties

³ Comments of SES Americom, Inc., Inmarsat, Inc., and Telesat Canada, MD Docket Nos. 13-140, 12-201 & 08-65, filed June 19, 2013 (the “Joint Satellite Comments”). Telesat also filed separate comments on this point. Comments of Telesat Canada, MD Docket Nos. 13-140, 12-201 & 08-65, filed June 19, 2013 (“Telesat Comments”).

⁴ Comments of EchoStar Satellite Operating Company, Hughes Network Systems, LLC, and DISH Network L.L.C., MD Docket Nos. 13-140, 12-201 & 08-65, filed June 19, 2013 (“EchoStar and DISH Comments”) at 14-18.

⁵ Reply Comments of Intelsat License LLC, MD Docket Nos. 12-201 & 08-65, filed Oct. 24, 2012.

⁶ Comments of Intelsat License LLC, MD Docket Nos. 13-140, 12-201 & 08-65, filed June 19, 2013 (“Intelsat Comments”).

⁷ Joint Satellite Comments at 2-8.

⁸ *Id.* at 3-5.

acknowledge that Commission satellite rulemaking proceedings do cover foreign-licensed satellites, but those proceedings are driven by issues affecting U.S. licensees and any benefit to foreign satellites is ancillary.⁹ The only Commission efforts that are solely focused on foreign satellites involve processing requests for market access, a one-time expenditure of resources that does not justify a recurring regulatory fee.¹⁰

EchoStar and DISH make similar observations regarding the restricted scope of the Commission’s jurisdiction with respect to foreign spacecraft. EchoStar and DISH argue that “[a]n administration cannot reasonably claim an operator as a regulatee benefitting from the administration’s international activities before the ITU, when that administration does not act on that operator’s behalf either before the ITU or in the context of inter-governmental system coordination.”¹¹ They go on to note that imposing a fee on entities it does not regulate could violate the Commission’s obligations under multilateral trade agreements.¹²

Intelsat claims that foreign-licensed satellites benefit from Commission activities in a number of ways, but it fails to demonstrate any significant, ongoing Commission regulation of foreign-licensed satellites. For example, Intelsat points to two Commission rulemaking proceedings, one from 1997 and one from 2008, that related specifically to the terms of market access for foreign satellites.¹³ However, the Commission expressly based those decisions on benefits to U.S. satellite service customers, not foreign satellite operators, and on the efficiencies

⁹ *Id.* at 5-6.

¹⁰ *Id.* at 6-8.

¹¹ EchoStar and DISH Comments at 16.

¹² *Id.* at 15-17.

¹³ Intelsat Comments at 4 & n.17 (citing the 1997 DISCO II decision that established the framework for U.S. market access by foreign-licensed satellites and a 2008 decision streamlining the process for earth stations to access the Inmarsat fleet).

of streamlining Commission processes by eliminating duplicative earth station filings.¹⁴

Similarly, Intelsat's claim that all satellite operators benefit from Commission activities to ensure that multiple satellites can operate without harmful interference¹⁵ is true as far as it goes, but clearly the Commission's intention in adopting such rules was to protect the service provided to U.S. satellite customers. Thus, any benefit to foreign-licensed satellites is incidental.

The only current rulemaking that Intelsat cites is the Part 25 review, and Intelsat's assertions regarding this proceeding are simply false. Specifically, Intelsat states that "almost all of the satellite operators that submitted comments" in the Part 25 proceeding operate foreign-licensed satellites with U.S. market access.¹⁶ In fact, a review of the docket list shows that most of the satellite operators who filed comments are licensed by the U.S.¹⁷ A handful of operators on the list, including Intelsat itself, have foreign-licensed satellites authorized to serve the U.S. but typically also hold Commission space station or earth station licenses.¹⁸ Moreover, issues

¹⁴ See *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, 24097 (1997) ("DISCO II") (finding that U.S. market access policies for foreign-licensed satellites would enhance competition in the U.S. market, providing users with more alternatives, reducing prices, and facilitating innovation); *Inmarsat, Inc. Request to Streamline Licensing of L-band Mobile-Satellite Service Terminals Using Inmarsat Satellites as Points of Communication*, 23 FCC Rcd 15268, 15270 (Sat. Div. 2008) ("We find that adopting the alternative designation of points of communications will reduce the burden on applicants seeking authority to communicate with Inmarsat satellites by eliminating the need for repetitive and duplicative filings and will encourage the rapid deployment of services to U.S. consumers without unnecessary regulatory delay.").

¹⁵ Intelsat Comments at 4.

¹⁶ *Id.* at 5 & n.18 (citing the joint reply comments of SES Americom, Inc., New Skies Satellites B.V. and O3b Limited and the reply comments of Inmarsat).

¹⁷ Satellite operator comments were filed by DIRECTV, EchoStar, Globalstar, Inmarsat, Intelsat, Iridium, LightSquared, ORBCOMM, and jointly by SES Americom, New Skies, and O3b (although O3b was not yet a satellite operator at the time the Part 25 comments were filed).

¹⁸ The second generation Globalstar fleet, which is French-licensed and is intended to provide follow-on capacity to the Commission-licensed first generation constellation, has been authorized to serve the U.S. As discussed in the Joint Satellite Comments, Inmarsat's fleet is

relating to U.S. market access for foreign-licensed satellites are not a significant element of the Part 25 proceeding. The Notice seeks comment on a laundry list of more than 35 of Part 25's rules, but Section 25.137, which codifies the Commission's market access policies for foreign-licensed satellites, is not among them.¹⁹ Clearly, then, the suggestion that foreign satellite operators are materially contributing to the Commission's current rulemaking workload is baseless.

Intelsat also cites to the Satellite Division's work to evaluate petitions for U.S. market access, listing the number of foreign spacecraft that have been approved to serve the U.S. through petitions for declaratory ruling.²⁰ As the Satellite Parties have shown, this work does not constitute ongoing regulation, and any associated costs would more appropriately be recovered through an application fee, not regulatory fees.²¹ In any event, satellites approved for U.S. service have already been through this review, and cannot be made subject to a recurring annual fee to recover costs for one-time processing that occurred in prior years.

licensed by the U.K. and is authorized to communicate with U.S. earth stations. *See* Joint Satellite Comments at 10. Intelsat's Galaxy 23 satellite (formerly known as Intelsat Americas 13) is on the Commission's Permitted Space Station List. New Skies has several Netherlands-licensed satellites authorized to serve the U.S. SES Americom's satellites are all U.S.-licensed, although a wholly-owned subsidiary holds authority issued by Gibraltar for spacecraft permitted to serve the U.S.

¹⁹ *See Comprehensive Review of Licensing and Operating Rules for Satellite Services*, Notice of Proposed Rulemaking, IB Docket No. 12-267, 27 FCC Rcd 11619 (2012). Some commenters did suggest improvements to the Commission's market access procedures to streamline and combine the permitted space station lists in order to make it easier for U.S. earth station operators to know what foreign-licensed satellites have been approved for use. *See, e.g.*, Joint Reply Comments of SES Americom, Inc., New Skies Satellites B.V., and O3b Limited, IB Docket No. 12-267, filed Feb. 13, 2013, at 3-6; Comments of EchoStar Corporation, IB Docket No. 12-267, filed Jan. 14, 2013, at 4-5.

²⁰ Intelsat Comments at 5-6.

²¹ Joint Satellite Comments at 7.

In short, the record demonstrates that foreign-licensed satellites do not impose material ongoing regulatory burdens on Commission resources. If the Commission were to decide tomorrow to violate its obligations under the WTO agreement and no longer allow foreign-licensed satellites to serve the U.S., the rulemaking, enforcement, user information, and international activities performed by the Commission relating to satellite operations would all continue, and would not be significantly decreased. As a result, the facts do not justify adoption of a regulatory fee for foreign-licensed satellites serving the U.S.

II. IMPOSING REGULATORY FEES ON FOREIGN-LICENSED SATELLITES IS BARRED BY LAW

The Commission clearly lacks the legal authority to adopt a regulatory fee for foreign satellites. As the Joint Satellite Comments explain, the Commission has considered and rejected such a fee before, relying on the explicit legislative history providing that only satellites licensed by the Commission under Title III are subject to regulatory fees.²²

Intelsat's attempt to suggest that Congress has sanctioned the extension of regulatory fees to foreign-licensed satellites flies in the face of this precedent and relies on a fundamental misreading of the law. Intelsat claims that Congress has "granted the FCC authority to impose similar regulatory fees on 'entities providing similar services.'"²³ The statute cited by Intelsat says no such thing, however. Instead it provides in full that:

Notwithstanding any other law or executive agreement, the Commission shall have the authority to impose similar

²² Joint Satellite Comments at 8-9, *citing Assessment and Collection of Regulatory Fees for Fiscal Year 1999*, Report and Order, 14 FCC Rcd 9868, 9883 (1999) and HR. Rep. No. 207, 102d Cong., 1st Sess. 26 (1991), incorporated by reference in Conf. Rep. No. 213, 103d Cong., 1st Sess. 449 (1993).

²³ Intelsat Comments at 6, *quoting* 47 U.S.C. § 765a (c).

regulatory fees *on the United States signatory* which it imposes on other entities providing similar services.²⁴

The scope of this provision is strictly limited and authorizes imposing new regulatory fees on only one entity – COMSAT, which at the time of enactment served as the signatory to the INTELSAT intergovernmental organization. The “entities providing similar services” to which the statute refers are companies already paying regulatory fees, whose fees are intended to be the basis for the new signatory fee. Yet Intelsat attempts to reverse the plain meaning of the sentence, suggesting that the Commission is empowered by this provision to impose new regulatory fees on any entity based on a perceived similarity of services without regard to the regulatory fee statute. This interpretation cannot possibly be squared with the actual statutory language.

Contrary to Intelsat’s claim, Section 765a (c) has absolutely no relevance here. Given the privatization of the intergovernmental satellite organizations, the signatory concept is now obsolete. Furthermore, the authority granted by the Commission to impose a signatory fee was unnecessary, as the D.C. Circuit determined that even without the express statutory language, the Commission had authority to impose regulatory fees on COMSAT.²⁵ That decision noted that COMSAT was required to seek authority under Title III as part of its signatory function and expressly held that “[u]nlike other foreign-licensed satellites, COMSAT clearly generates significant regulatory costs through its signatory activities.”²⁶ Thus, Section 765a (c) certainly does not authorize the Commission to depart from its precedent and the

²⁴ 47 U.S.C. § 765a (c) (emphasis added).

²⁵ *COMSAT Corp. v. FCC*, 283 F.3d 344 (D.C.Cir. 2002).

²⁶ *Id.* at 347 (emphasis added). Intelsat refers to this same decision, but ignores the critical phrase distinguishing the costs generated by COMSAT from those generated by foreign-licensed satellites. See Intelsat Comments at 7 n.24.

legislative history establishing that satellite regulatory fees can be imposed only upon the Commission's Title III licensees.

III. A MARKET ACCESS FEE WOULD DAMAGE COMPETITION AND HARM THE SATELLITE INDUSTRY

The record also demonstrates that adoption of a fee for foreign-licensed satellites to serve the U.S. could have disastrous consequences for the satellite industry and its customers.²⁷ Today, most countries take the same approach as the U.S. and impose significant annual financial obligations only on their own licensees, not on foreign satellites authorized to provide service, but this situation could quickly change if the Commission changes course. A proliferation of fees on foreign-licensed satellites would hurt all satellite operators, including those licensed by the U.S., and would undermine robust competition in satellite service markets.

For example, Telesat explains that it currently pays significant annual regulatory fees through Canada that are not charged to the dozens of U.S.-licensed satellites authorized to provide Canadian services.²⁸ If the Commission were to impose an annual fee on Telesat for its participation in the U.S. market, that double fee burden would place Telesat at a competitive disadvantage with respect to U.S.-licensees, undermining the pro-competitive goals underlying the Commission's market access framework.²⁹ Furthermore, Telesat predicts that if the Commission imposes fees on foreign satellites, other countries would follow suit, which could deter market entry and reduce competition around the world.³⁰

²⁷ See Joint Satellite Comments at 9-11; Telesat Comments at 3-4.

²⁸ Telesat Comments at 3.

²⁹ *Id.* at 3-4.

³⁰ *Id.* at 4.

These policy concerns – which are not even discussed by Intelsat – present an independent justification for rejecting a U.S. regulatory fee for foreign-licensed satellites. To avoid these concerns, if the Commission concludes that it should pursue a means of recovering the modest costs associated with foreign-licensed satellites, it should include the costs in overhead or incorporate them into the basis for earth station regulatory fees.³¹

IV. CONCLUSION

For the reasons discussed herein and those presented in the Satellite Parties' previous filings, the Commission should not impose a regulatory fee on foreign-licensed satellites.

Respectfully submitted,

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³¹ Joint Satellite Comments at 11-12.