

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

In the Matter of)	
)	
Assessment and Collection of Regulatory Fees for Fiscal Year 2014)	MD Docket No. 14-92
)	
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
)	

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 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 Notice of Proposed Rulemaking and Second Further Notice of Proposed Rulemaking in the above-captioned proceeding (the “Notice”).² 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 each of which operates facilities licensed by the U.S. as well as facilities authorized by other jurisdictions. As members

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 2014, Assessment and Collection of Regulatory Fees for Fiscal Year 2013, and Procedures for Assessment and Collection of Regulatory Fees*, Notice of Proposed Rulemaking, Second Further Notice of Proposed Rulemaking, and Order, MD Docket Nos. 14-92, 13-140, & 12-201, FCC 14-88 (rel. June 13, 2014).

of the Satellite Industry Association (“SIA”), the Satellite Parties strongly support the comments being submitted by SIA in this proceeding. Specifically, we agree that the Commission should assign FTEs outside the core licensing bureaus directly where feasible based on a cost analysis and should rebalance the fee burden between space and earth station licensees. We concur with SIA that the record does not support a proposal to reclassify DBS for regulatory fee purposes. The Satellite Parties also support the measures for further improvement in the regulatory fee framework suggested by SIA, including a fairer allocation of indirect costs, consideration of ongoing streamlining efforts in the Part 25 proceeding in setting future space and earth station regulatory fees, Commission pursuit of refund authority for fee over-collections, and increased transparency regarding regulatory fee data.

The Satellite Parties comment separately here to address the request in the Notice for additional input on whether foreign-licensed satellites serving the U.S. should be subject to U.S. regulatory fees.³ The Satellite Parties continue to strongly oppose such a change,⁴ as do most commenters that have addressed the issue.⁵ Adoption of a fee for non-U.S.-licensed satellites is not supported by the facts, is barred by the applicable law, and is contrary to public policy. If the Commission decides it should recover the modest costs associated with processing

³ Notice at ¶¶ 47-50.

⁴ See Comments of SES Americom, Inmarsat, and Telesat Canada, MD Docket Nos. 13-140, 12-201, & 08-65 (filed June 19, 2013) (“Satellite Parties 2013 Comments”); Comments of Telesat Canada, MD Docket Nos. 13-140, 12-201, & 08-65 (filed June 19, 2013) (“Telesat 2013 Comments”); Reply Comments of SES Americom, Inmarsat, and Telesat Canada, MD Docket Nos. 13-140, 12-201, & 08-65 (filed June 26, 2013) (“Satellite Parties 2013 Reply Comments”). See also Notice of Oral *Ex Parte* Presentations, MD Docket Nos. 12-201 & 08-65 (filed March 8, 2013) (“Satellite Parties March 2013 Ex Parte”); Notice of Oral *Ex Parte* Presentation, MD Docket Nos. 13-140, 12-201 & 08-65 (filed Dec. 13, 2013) (“Satellite Parties December 2013 Ex Parte”).

⁵ See Notice at ¶ 47.

market access requests for foreign satellites, it should assign the costs to the earth station regulatory fee category.

II. THERE IS NO FACTUAL BASIS FOR IMPOSING A RECURRING FEE ON SATELLITES NOT LICENSED BY THE U.S.

Simply stated, applying *regulatory* fees to foreign-licensed satellites granted U.S. market is inappropriate because the Commission does not conduct material *regulatory* activities with respect to those satellites. Instead, the statutorily-defined functions for which regulatory fees are recoverable – international, enforcement, rulemaking and user information activities⁶ – focus on and overwhelmingly benefit holders of Title III space station licenses. The only expenditure of Commission resources that is specific to foreign-licensed satellites involves processing market access applications, a one-time event that cannot justify annual fee assessment.

Commission policies clearly establish that the grant of U.S. market access is not equivalent to a U.S. space station authorization. To the contrary, when it developed its U.S. market access policies for foreign-licensed satellites, the Commission considered and expressly rejected the idea of awarding foreign satellite operators a U.S. license, and for good reason:

We will not issue a separate, and duplicative, U.S. license for a non-U.S. space station. Issuing a U.S. license would raise issues of national comity, as well as issues regarding international coordination responsibilities for the space station.⁷

Under DISCO II, then, foreign-licensed satellite operators do not receive a Title III Commission license and the benefits that come with it. For example, any coordination negotiations

⁶ 47 U.S.C. § 159(a)(1).

⁷ *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”).

undertaken by the Commission are on behalf of U.S. licensees. Foreign-licensed satellite operators rely on their own national administrations to handle international coordination and related International Telecommunication Union compliance matters on the operators' behalf.

The only activity discussed in the Notice that focuses on foreign-licensed satellites is processing applications for U.S. market access.⁸ But these are one-time efforts that do not involve ongoing oversight and therefore cannot be used as the basis for imposing a recurring annual regulatory fee on non-U.S.-licensed satellite operators. In other instances the Commission does not impose a regulatory fee in cases where Commission resources are expended primarily to process applications. For example, Commission review of requests for Title III experimental licenses and international telecommunications authorizations under Section 214 of the Communications Act both generate costs, but there is no regulatory fee assessed on holders of these authorizations, nor has the Commission proposed to implement such fees. Given that no regulatory fees apply to those entities, it would be perverse if the Commission were to adopt a fee for foreign-licensed satellite operators granted market access, which receive neither a Title II nor a Title III authorization.⁹

Furthermore, as recognized in the Notice, in some cases U.S. market access is requested not by the foreign-licensed satellite operator but by a U.S. earth station licensee.¹⁰ Of course, in these instances a mechanism is already in place to recover the associated processing costs because the earth station licensee is subject to both application and regulatory fees.

⁸ Notice at ¶ 50.

⁹ It would also raise precisely the kinds of international comity concerns and practical complications that the Commission was trying to avoid in DISCO II when it decided not to issue duplicate licenses as part of the market access process. For example, if the Commission imposed a regulatory fee on operators of foreign-licensed satellites, would it then assume responsibility for international coordination of those networks?

¹⁰ Notice at ¶ 49.

Moreover, the availability of this market access approach highlights the fact that the Commission's market access framework for satellite services was not developed to promote the interests of foreign satellite operators. Instead, the Commission determined that opening its market would benefit U.S. satellite service customers and U.S.-licensed satellite operators.¹¹

The Satellite Parties' contention that foreign-licensed satellites do not impose material regulatory costs on the Commission is also consistent with the findings of the D.C. Circuit. In 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.”¹² In other words, the Commission does not engage in meaningful ongoing regulatory activity for the benefit of foreign-licensed satellite operators that would justify application of an annual regulatory fee.

III. BY LAW, ONLY TITLE III LICENSEES ARE SUBJECT TO SATELLITE REGULATORY FEES

In any event, the Commission lacks the legal authority to impose regulatory fees on foreign-licensed satellites. The Commission expressly ruled in 1999 that the fee statute's “legislative history provides that only space stations licensed under Title III may be subject to regulatory fees.”¹³ As a result, the Commission determined that it could not “include operators

¹¹ *See, e.g.*, DISCO II, 12 FCC Rcd at 24099 (“[p]roviding opportunities for foreign-licensed satellites to deliver services in this country should bring U.S. consumers the benefits of enhanced competition and afford greater opportunities for U.S. companies to enter previously closed foreign markets”).

¹² *COMSAT Corp. v. FCC*, 283 F.3d 344, 347 (D.C.Cir. 2002) (emphasis added).

¹³ *Assessment and Collection of Regulatory Fees for Fiscal Year 1999*, Report and Order, 14 FCC Rcd 9868, 9883 (1999) (“1999 Fees Order”).

of non-U.S.-licensed satellite space stations among regulatory fee payers.”¹⁴ This holding reflects an express Congressional 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.¹⁵

The Notice acknowledges this holding and asks whether the Commission should “revisit” the 1999 conclusion.¹⁶ 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, which has not changed. 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 ADVERSELY AFFECT COMPETITION AND THE SATELLITE INDUSTRY

The Commission’s current policy of applying recurring regulatory fees only to its own licensees is consistent with the approach in the significant majority of other countries, and a reversal of that position could have far-reaching negative consequences. In particular, because the Commission’s actions often serve as a model for other administrations, a decision to impose FCC regulatory fees on foreign-licensed satellites could lead to a proliferation of fees around the globe that would adversely affect U.S.-licensed satellites that serve other countries.

¹⁴ *Id.*

¹⁵ HR. Rep. No. 207. 102d Cong., 1st Sess. 26 (1991), incorporated by reference in Conf. Rep. No. 213, 103d Cong., 1st Sess. 449 (1993).

¹⁶ Notice at ¶ 48. The Commission asked the same question in last year’s fee proceeding. *See 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, 28 FCC Rcd 7790, 7809 (2013).

For example, Telesat has explained that it pays significant annual fees to Canada, its licensing administration, but Canada does not impose such fees on satellites that have been granted Canadian market access.¹⁷ Canada maintains this approach even though the vast majority of satellites authorized to serve Canada are not Canadian-licensed, but are licensed by the U.S. or other administrations.¹⁸ 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.¹⁹ Analogously, the Gibraltar Regulatory Authority charges annual licensing fees for the SES spacecraft authorized by Gibraltar, an overseas territory of the U.K.

Clearly it would not be in the interests of U.S.-licensed satellite operators if the Commission began imposing regulatory fees on foreign-licensed satellites and Canada, the U.K., and other countries followed suit – especially as in some jurisdictions, the fees on domestic satellite operators are higher than those imposed in the U.S.²⁰ Although a few outlier administrations (such as Brazil) do charge a market access fee today, a shift in U.S. policy could open the floodgates. U.S. licensees would then be obligated to pay a multitude of fees around the world. Because an operator's ability to access multiple markets may be essential to the economic viability of its network, the additional costs stemming from a proliferation of market access fees would severely and detrimentally affect the economics of the industry. All satellite

¹⁷ Telesat 2013 Comments at 3-4.

¹⁸ 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>.

¹⁹ Specifically, Inmarsat is required to maintain liability insurance at a significant annual cost.

²⁰ 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 July 1, 2014).

operators, including U.S. licensees serving other parts of the world, would be harmed by this shift, which could impede operators' ability to provide essential services to their user communities.

Imposing a market access fee would also deter foreign-licensed satellite operators from seeking to enter the U.S. market, compromising the pro-competitive goals established in the DISCO II proceeding. Particularly for satellites with limited U.S. coverage, the added costs of paying Commission regulatory fees may tip the balance and lead an operator not to seek U.S. market access. If that occurs, U.S. satellite service consumers will suffer due to the diminished competitive options for capacity.

V. ANY MODEST COSTS FOR PROCESSING MARKET ACCESS REQUESTS CAN BE RECOVERED THROUGH EARTH STATION REGULATORY 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.-licensed and foreign-licensed satellite operators. To the extent the Commission concludes that it needs a mechanism to recover the FTE costs associated with reviewing and ruling on requests for U.S. market access, it should assign the FTEs to the earth station regulatory fee category. As the Satellite Operators have previously observed, such an allocation is consistent with the statutory mandate that fees reflect the benefits received from Commission activity because all users of satellite capacity enjoy the fruits of robust satellite competition.²¹

This does not mean that earth stations authorized to communicate with foreign-licensed satellites should pay a higher fee than those that communicate with domestic-licensed satellites. To the contrary, such a differential would be inconsistent with the United States'

²¹ Satellite Parties 2013 Comments at 12; Satellite Parties December 2013 Ex Parte at 2.

treaty obligations under the WTO basic telecom agreement, which prohibits any discrimination that would put foreign suppliers at a competitive disadvantage relative to domestic sources.²² It would also conflict with the Commission's established policy. The Commission found in DISCO II that opening up market access would "facilitate greater competition in the U.S. satellite services market," which in turn would "provide users more alternatives in choosing communications providers and services, as well as reduce prices and facilitate technological innovation."²³ These benefits flow from enhanced competition in the U.S. satellite services market and are not dependent on whether an individual earth station licensee is communicating with U.S.-licensed satellites, foreign-licensed satellites, or both.

The Notice requests comment on whether FTEs associated with processing market access requests should be treated as indirect FTEs that are included in overhead, and the Satellite Parties have previously indicated that such an approach would be acceptable²⁴ However, we believe that assessing these costs as part of earth station regulatory fees may be a better (albeit imperfect) method of capturing these costs, consistent with the principle that costs should assigned to the parties that benefit from the Commission activity of approving market access. As noted above, the Satellite Parties support the proposed recalculation of Satellite Division FTE assignments between the space station and earth station licensees that has been proposed by SIA. That recalculation provides an opportunity for the Commission to make the

²² Satellite Parties December 2013 Ex Parte at 2. Moreover, it would be impossible to administer such an approach because many U.S. earth station licensees have "ALSAT" status that allows them to communicate both with U.S.-licensed satellites and with foreign-licensed satellites on the Permitted Space Station List. *See id.*

²³ DISCO II, 12 FCC Rcd at 24097.

²⁴ Satellite Parties 2013 Comments at 12; Satellite Parties 2013 Reply Comments at 9.

cost calculations necessary to reassign FTEs associated with processing foreign-licensed satellites' market access requests to the earth station fee category.

VI. 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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