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

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 Notice of Proposed Rulemaking and Second Further Notice of Proposed Rulemaking in the above-captioned proceeding (the "Notice").[2] The record conclusively demonstrates that imposing annual regulatory fees on foreign-licensed satellite operators who serve the U.S. would be unjustified, beyond the Commission's authority, and contrary to public policy. If the Commission determines it needs a mechanism to recover the modest costs of processing U.S. market access requests for foreign satellites, it should do so through earth station regulatory fees.

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[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).

As in last year's fee proceeding, the majority of "commenters addressing this issue do not support assessing regulatory fees on non-U.S.-licensed satellites."[3] Specifically, the Satellite Parties have shown that there are no material recurring regulatory costs associated with foreign-licensed satellites' service to the U.S. that would warrant an annual fee.[4] Even if a fee could somehow be justified, Congress has made clear that only Title III licensees are subject to satellite regulatory fees.[5] Finally, a Commission decision to adopt a fee could lead to a proliferation of fees around the world that would harm operators of U.S.-licensed satellites that serve other countries.[6] In their comments, EchoStar, Hughes Network Systems, and DISH also reiterate their opposition to a fee for U.S. market access, noting that it would be outside the scope of the Commission's lawful authority and inconsistent with both established multilateral trade agreements and the interests of U.S. satellite service customers.[7]

Intelsat remains the sole dissenting voice arguing in favor of a new fee for foreign-licensed satellites.[8] However, Intelsat's supporting arguments are baseless:

Intelsat improperly relies on application processing costs to support an annual regulatory fee. Intelsat recognizes that "the Commission's annual regulatory fees structure is based upon cost recovery,"[9] but the only significant costs Intelsat cites in support of its request

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[3] *See* Notice at ¶ 47.

[4] Comments of SES Americom, Inc., Inmarsat, Inc., and Telesat Canada, MD Docket Nos. 14-92, 13-140, & 12-201, filed July 7, 2014 (the "Joint Satellite Comments") at 3-5.

[5] *Id.* at 5-6.

[6] *Id.* at 6-8.

[7] Comments of EchoStar Satellite Operating Company, Hughes Network Systems, LLC, and DISH Network L.L.C., MD Docket Nos. 14-92, 13-140, & 12-201, filed July 7, 2014 ("EchoStar and DISH Comments") at 6-9.

[8] Comments of Intelsat License LLC, MD Docket Nos. 14-92, 13-140, & 12-201, filed July 7, 2014 ("Intelsat Comments").

[9] *Id.* at 4.

for a new fee are those relating to review of petitions for market access.[10] As the Satellite Industry Association (of which Intelsat is a member) has previously observed, under the express language of the fees statute, "application processing [is] not one of the activities for which regulatory fees are to be collected."[11] Furthermore, the one-time costs of processing a market access request cannot logically support imposing a recurring annual fee on foreign-licensed satellites.[12]

Intelsat does attempt to show that foreign-licensed satellites generate regulatory costs, but its allegations are unfounded. For example, Intelsat observes that both SES and Inmarsat participate in the U.S. process preparing for the World Radio Conference.[13] But this is not at all surprising as both companies are Commission licensees – SES holds U.S. licenses for more than a dozen satellites (and pays millions of dollars in associated regulatory fees), and Inmarsat holds a number of U.S. earth station licenses, including for user terminals and a gateway station for which it pays all associated regulatory fees.

Similarly, Intelsat's claim that non-U.S.-licensed satellite operators "require the Commission to expend resources on evaluation, oversight, and rulemaking"[14] is hyperbole. The operations of foreign-licensed satellites are not subject to the Commission's regulatory jurisdiction and therefore need not be evaluated or overseen by Commission staff,[15] and the last

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[10] *Id.* (arguing that the same resources must be expended to review a market access petition as to consider an application for a U.S. satellite license).

[11] Comments of the Satellite Industry Association, MD Docket Nos. 12-201 & 08-65, filed Sept. 17, 2012 at ii.

[12] Joint Satellite Comments at 3-4.

[13] Intelsat Comments at 4 n.9.

[14] *Id.* at 2.

[15] *See* Comments of SES Americom, Inc., Inmarsat, Inc., and Telesat Canada, MD Docket Nos. 13-140, 12-201, & 08-65, filed June 19, 2013 at 3-6.

significant rulemaking that focused on foreign-licensed satellites was the DISCO II proceeding, which was concluded before the turn of the century.[16] In short, there is no evidence that the Commission expends substantial resources on regulating the post-market access activities of foreign-licensed satellites that would warrant imposition of an annual regulatory fee.

Intelsat's claims of competitive disadvantage are both irrelevant and false. Intelsat argues that the fact that foreign-licensed satellites do not have to pay U.S. regulatory fees puts U.S.-licensed satellite operators at a competitive disadvantage because it inhibits their ability to price competitively.[17] But as SIA has observed, the regulatory fee structure is designed to recover the costs of regulatory activities, and competitive issues are irrelevant to that analysis.[18] In any event, there is no competitive imbalance here because the U.S. practice of charging regulatory fees only to its licensees is consistent with that in most countries.[19] Thus, for example, Intelsat cannot complain that it is disadvantaged vis-à-vis Telesat with respect to regulatory costs – Intelsat and Telesat compete for customers in both the U.S. and Canada, and each company's prices must be set to cover the costs of regulatory fees in its home jurisdiction, which the other company does not have to pay. If anything, it is Telesat that is at a disadvantage because the fees it pays to Canada are higher per MHz of capacity than those in the U.S.[20]

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[16] *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"); First Order on Reconsideration, 15 FCC Rcd 7207 (1999).

[17] Intelsat Comments at 4-5.

[18] Comments of the Satellite Industry Association, MD Docket Nos. 14-92, 13-140, & 12-201, filed July 7, 2014, at 7-8.

[19] Joint Satellite Comments at 7-8.

[20] *Id.* at 7 n.20. *See also* Comments of Telesat Canada, MD Docket Nos. 13-140, 12-201, & 08-65, filed June 19, 2013 ("Telesat 2013 Comments") at 2:

Intelsat's assertion that the regulatory fee structure may cause operators to forego U.S. licensing in favor of other jurisdictions[21] is also unsupported. Intelsat mentions only one case in which an operator that had been U.S.-licensed sought foreign authority for its follow-on satellites, and even there, Intelsat adduces no evidence that regulatory fees had anything to do with the operator's choice of licensing administration.[22] To the contrary, regulatory fees are unlikely to be a major factor when determining where to pursue authority. The Commission's fees have certainly not deterred Intelsat from continuing to use the United States as a satellite licensing administration. A satellite operator's choice of licensing administrations is typically the product of its history rather than the level of regulatory fees.

Intelsat's suggestion that a regulatory fee for foreign-licensed satellites is consistent with the intent of Congress is contradicted by the legislative history. Intelsat acknowledges that the satellite regulatory fee rule by its terms applies only to licensees, but argues that the Commission should interpret its statutory authority to permit imposing a fee on foreign-licensed satellites in order to avoid frustrating the intent of Congress.[23] Intelsat, however, studiously avoids addressing the explicit statement by Congress of its views on this

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> far from putting foreign-licensed satellite operators on equal footing with U.S. licensees, imposing [regulatory] fees on foreign satellite licensees who (like Telesat) also pay comparable regulatory fees and more to their own non-U.S. regulatory bodies who are responsible for the international coordination of their satellites and regulatory enforcement, would put such foreign licensed satellite operators at a competitive disadvantage vis-à-vis U.S.-licensed satellite operators who generally are not required to pay such fees when providing satellite services or capacity for use in other countries like Canada.

[21] Intelsat Comments at 5.

[22] *Id*. at 5 & n.13.

[23] *Id*. at 7-8.

very subject: that satellite regulatory "fees will apply only to space stations directly licensed by the Commission under Title III of the Communications Act."[24] Although Intelsat apparently prefers to ignore the explicit expression of Congressional intent, the Commission cannot do so. Instead, given the clear legislative history, the Commission must determine that it does not have authority to adopt a new regulatory fee for foreign-licensed satellites.[25]

Intelsat disregards the real risk of a proliferation of market access fees around the world. Intelsat downplays the Joint Satellite Parties' concern that adoption of a market access fee by the Commission would cause other administrations to follow suit, leading to a cascade of new fees for global satellite operators.[26] Intelsat suggests that because there are some countries where market access fees are already imposed, the Satellite Parties' fear is unfounded.[27] But the fact that actions by a handful of jurisdictions such as Brazil have not been replicated elsewhere does not mean that a Commission decision to impose a market access fee would not have significant repercussions, given the high visibility and leadership role of the U.S. in satellite

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

[25] *See* EchoStar and DISH Comments at 7 ("absent an act of Congress, the Commission is without authority to impose regulatory fees on non-U.S. licensed satellites").

Intelsat's suggestion that Section 765a(c) of the Act authorizes extension of regulatory fees to foreign-licensed satellites, *id*. at 7 n.19, is also unavailing. As the Satellite Parties have explained, that provision's narrow purpose was to resolve the controversy about whether COMSAT, which was then the U.S. signatory to the INTELSAT intergovernmental organization, was subject to space station regulatory fees. Reply Comments of SES Americom, Inc., Inmarsat, Inc., and Telesat Canada, MD Docket Nos. 13-140, 12-201, & 08-65, filed June 26, 2013, at 6-8. If anything, the narrow scope of Section 765a(c) further undermines Intelsat's argument for implying an authorization to extend fees to foreign-licensed satellite operators. At the time Congress adopted Section 765a(c), it was well aware that the Commission was not imposing regulatory fees on foreign-licensed satellites but chose only to address fees for COMSAT in this provision.

[26] Intelsat Comments at 6.

[27] *Id*.

regulation.[28] A ripple effect of market access fees could lead to "substantial new financial burdens for U.S. companies seeking access to non-U.S. markets."[29] Ultimately, both U.S. satellite operators and their customers would suffer if that occurs.

For the foregoing reasons and those set forth in our prior filings, the Joint Satellite Parties urge the Commission not to attempt to impose regulatory fees on foreign-licensed satellite operators.

Respectfully submitted,

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[28] *See* Telesat 2013 Comments at 4 (if the U.S. adopted a regulatory fee for market access "it is natural to assume that many other countries would follow suit").

[29] EchoStar and DISH Comments at 8.