

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC**

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

Intelsat License LLC¹ and its affiliated entities (collectively, “Intelsat”), through its attorneys, hereby file these Reply Comments in the above-captioned proceeding. In these Reply Comments, Intelsat responds to the Comments of EchoStar Satellite Operating Company and Hughes Network Systems, LLC, and DISH Network L.L.C. (“EchoStar and DISH”)² and the Comments of SES Americom, Inc., Inmarsat, Inc., and Telesat Canada (“SES, Inmarsat, and Telesat”)³ regarding the Commission’s proposal to impose regulatory fees on non-United States licensed satellite operators.⁴ Contrary to the assertions of EchoStar and DISH and SES, Inmarsat, and Telesat, the Commission’s proposal in no way conflicts with the obligations and

¹ Intelsat License LLC holds all of Intelsat’s U.S. space station licenses.

² Comments of EchoStar Satellite Operation 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 Comments”).

³ Comments of SES Americom, Inc., Inmarsat, Inc., and Telesat Canada, MD Docket Nos. 14-92, 13-140, 12-201 (filed July 7, 2014) (“SES, Inmarsat, and Telesat Comments”).

⁴ *Assessment and Collection of Regulatory Fees for Fiscal Year 2014 et al.*, Notice of Proposed Rulemaking, Second Further Notice of Proposed Rulemaking, and Order, MD Docket Nos. 14-92, 13-140, 12-201, FCC 14-88 at ¶ 48 (rel. June 13, 2014) (“Notice”).

authority of the Federal Communications Commission (“FCC” or “Commission”) under the Communications Act, multilateral trade agreements, or any other law. Instead, the proposal is a reasonable solution for the Commission to fulfill its mandate to recover costs from all entities that benefit from the agency’s regulatory activities.⁵

SES, Inmarsat, and Telesat suggest that the only work performed by the FCC on behalf of non-U.S.-licensees is the initial market access petition.⁶ This is simply wrong as a matter of fact. In many instances, the Commission must—post grant of U.S. market access—address the milestone compliance of non-U.S.-licensed satellites.⁷ Moreover, as Intelsat has explained, internationally-licensed satellite operators benefit from a wide range of International Bureau regulatory activities beyond just evaluation of a market access request. For instance, non-U.S. licensed satellite operators granted access to the U.S. market benefit from, and often participate in, the International Bureau’s work on spectrum allocation, interference protections, general oversight, rulemaking, and various other regulatory activities—yet the burden of funding these necessary activities falls solely on U.S. licensees.⁸ Non-U.S.-licensees have been active, and continue to be, in various International Bureau regulatory proceedings, including the recent Part 25 rulemaking to update and streamline the technical information sought in satellite

⁵ See 47 U.S.C. § 159 (setting forth the Commission’s cost recovery mandate).

⁶ Comments of SES, Inmarsat, and Telesat at 3.

⁷ See, e.g., *Policy Branch Information, Actions Taken*, Public Notice, Report No. SAT-00929, 28 FCC Rcd 1093 (2013) (noting milestone compliance for the Brazil-licensed Star One C3 satellite); *Policy Branch Information, Actions Taken*, Public Notice, Report No. SAT-00861, 27 FCC Rcd 4149 (2012) (noting milestone compliance for the Netherlands-licensed SES-4 satellite); see also 47 C.F.R. § 25.137(d) (requiring non-U.S. licensed satellite operators seeking market access to demonstrate milestone compliance).

⁸ In fact, one need look no further than the present proceeding to see non-feeable satellite operators, with satellites that enjoy U.S. market access, participating in the rulemaking process—thus drawing from Commission resources without sharing in the costs associated with expending such resources.

applications,⁹ proceedings related to the Commission’s Ancillary Terrestrial Component (“ATC”) rules,¹⁰ and numerous others,¹¹ despite being exempted from regulatory fees for their non-U.S.-licensed satellites that have been granted U.S. market access. The result of this approach is that U.S. licensed operators are left to subsidize their competitors—putting U.S. licensees at a distinct competitive disadvantage.¹²

As Intelsat explained in its initial comments, the Commission has ample legal authority to collect regulatory fees from non-U.S.-licensees.¹³ Although Echostar and Hughes incorrectly assert that the FCC can only apply regulatory fees to space stations licensed under Title III,¹⁴ the FCC repeatedly has collected regulatory fees from non-Title III licensed operators.¹⁵ For example, in the *FY 2013 Regulatory Fee Order*, the Commission created a new regulatory fee category to cover cable television systems and Internet Protocol TV service providers, despite neither holding Title III licenses.¹⁶ Nothing in the language of Section 9 of the Communications

⁹ See, e.g., Reply Comments of SES Americom, Inc., New Skies Satellites B.V. and O3b Limited, IB Docket No. 12-267, 3 (filed Feb. 14, 2013); Reply Comments of Inmarsat, IB Docket No. 12-267, 3 (filed Feb. 14, 2013).

¹⁰ See, e.g., Comments of Globalstar, Inc., IB Docket No. 13-213 (filed May 7, 2014).

¹¹ See, e.g., Comments of Inmarsat PLC, IB Docket No. 14-13 (filed March 7, 2014).

¹² As the number of non-U.S. licensed operators with U.S. market access continues to grow, so does the burden they impose on FCC resources. See Notice, ¶ 48 (projecting the number of “non-feeable” satellites operating in the U.S. to total 69 in 2014, compared to 100 “feeable” satellites); *id.* ¶ 50 (observing that “over half of the space station applications and notifications during [the most recent] three year period pertained to non-U.S.-licensed space stations”).

¹³ Comments of Intelsat License LLC, MD Docket Nos. 14-92, 13-140, 12-201 at 6-7 (filed July 7, 2014) (“Intelsat Comments”).

¹⁴ EchoStar Comments at 6.

¹⁵ See, e.g., *Assessment and Collection of Regulatory Fees for Fiscal Year 2000*, Report and Order, 15 FCC Rcd 14478, ¶ 24 (2000) (requiring COMSAT to pay a “proportionate share” of applicable fees).

¹⁶ *Assessment and Collection of Regulatory Fees for Fiscal Year 2013*, Report and Order, 28 FCC Rcd 12351, ¶¶ 32-33 (2013).

Act¹⁷ prohibits the Commission from requiring non-U.S.-licensed entities that benefit from the Commission’s regulatory activities to share in the costs associated with such activities. While EchoStar and DISH point to the Commission’s prior reliance on legislative history in determining that the agency does not have the authority to assess regulatory fees on non-U.S. satellite license holders,¹⁸ the D.C. Circuit held otherwise in 1999. The Court held that the agency incorrectly relied on the legislative history because the text of Section 9 was clear.¹⁹ The Court stated that “the statute plainly does not require—and may not permit—Comsat’s exemption from space station regulatory fees.”²⁰ As such, the Commission both has ample authority to,²¹ and should, assess regulatory fees on non-U.S.-licensed satellite operators.

EchoStar and DISH make much of the fact that the Commission has avoided inserting itself as a second licensing agency for international satellite operators.²² This point is entirely irrelevant because relicensing is not at issue in this proceeding. Rather, this proceeding is solely focused on the Commission’s statutory mandate to recover costs for regulatory activities.²³ Charging a cost recovery fee does not equate to imposing a license.²⁴

¹⁷ 47 U.S.C. § 159.

¹⁸ EchoStar Comments at 6.

¹⁹ *PanAmSat Corp. v. F.C.C.*, 198 F.3d 890, 895 (D.C. Cir. 1999) (noting that “the plain terms of 9 ... clearly do not require an exemption for Comsat, and there is no obvious hook in the language on which to hang an exemption”).

²⁰ *Id.*

²¹ *COMSAT Corp. v. F.C.C.*, 114 F.3d 223, 227-28 (D.C. Cir. 1997) (noting that while the agency did not have the authority to assess a “signatory fee” on Comsat, it did have the authority to impose a regulatory fee pursuant to a rulemaking proceeding).

²² EchoStar Comments at 7.

²³ FCC rules clearly distinguish between application fees and regulatory fees. Application fees cover the actual licensing process. For instance, the current application fee for authorization to launch and operate a licensed geostationary satellite is \$129,645, *see Amendment of the Schedule of Application Fees Set Forth in Sections 1.1102 Through 1.1109 of the Commission's*

EchoStar and DISH also argue that it would be inappropriate for the FCC to collect fees from satellite operators represented by other administrations for coordination activities at the International Telecommunication Union (“ITU”).²⁵ While the FCC does not act on behalf of non-U.S.-licensees at the ITU, this does not negate the substantial costs incurred by the agency for other regulatory activities that benefit non-U.S.-licensed satellite operators that enjoy U.S. market access. To the extent the regulatory burdens imposed by these non-U.S.-licensed operators are different from those related to U.S. licensees, this can be reflected in the number of FTEs attributed to the non-U.S.-licensees, consistent with the Commission’s cost recovery mandate. As Intelsat previously suggested, the FCC could decide to charge non-U.S.-licensed operators with U.S. market access a proportional, lower regulatory fee than U.S. licensees are charged.²⁶ The point is that *every* licensee should bear its fair share of the costs they create—no more and no less.

Moreover, EchoStar’s and DISH’s contention that the FCC’s assessment of regulatory fees on non-U.S.-licensed satellite operators violates the World Trade Organization’s (“WTO”) most-favored nation (“MFN”) and national treatment principles reflects a fundamental

Rules, GEN Docket No. 86-285, Order, 29 FCC Rcd 3276 (2014), whereas there is no fee associated with a market access petition. The proposal at issue in the Notice does not seek to impose such licensure fees on non-U.S. operators.

²⁴ Although, as explained herein, application fees are not at issue in the current Notice, Intelsat disagrees with EchoStar’s and DISH’s assertion that the information collected in a market access petition is substantially less than in an application for U.S. space station authorization. EchoStar Comments at 7. In reality, the requirements for a request for market access by a non-U.S.-licensed satellite are substantially the same as for a U.S. space station operation, including filing of FCC Form 312, supplying legal and technical information (including submitting a Schedule S), explaining the public interest benefits of the application, and committing to the Commission’s satellite deployment milestones. *See* 47 C.F.R. § 25.137.

²⁵ EchoStar Comments at 7.

²⁶ Intelsat Comments at 6.

misunderstanding of these principles.²⁷ Pursuant to the WTO's Agreement on Basic Telecommunications Services, "each Member shall accord immediately and unconditionally to services and service suppliers of any other Member treatment no less favorable than that it accords to like services and service suppliers of any other country"—the MFN principle.²⁸ In other words, WTO members are prohibited from discriminating among their trading partners, and if they grant one member a special favor (*e.g.*, lower customs duty rate for a particular product), they must do so for all other members.²⁹ The Agreement also requires adherence to the national treatment principle, which requires that imported and domestic services be accorded equal treatment in the U.S. market.³⁰ This principle similarly reflects the WTO's goal of promoting non-discrimination.

The FCC's proposed assessment of regulatory fees on non-U.S. licensed satellite operators is entirely consistent with both the MFN and national treatment principles. As discussed above and in Intelsat's comments,³¹ while the FCC currently collects regulatory fees from U.S.-licensed satellite operators that benefit from the Commission's regulatory services, it does not do so for non-U.S.-licensed operators that benefit from these same services. This policy puts U.S.-licensed operators at a significant competitive disadvantage to their non-U.S.-licensed

²⁷ EchoStar Comments at 7-8.

²⁸ See Agreement Establishing the World Trade Organization at Annex 1B, General Agreement on Trade in Services (1994) ("General Agreement on Trade in Services"); Agreement on Basic Telecommunications Services, April 30, 1996, Annexed to Fourth Protocol to the General Agreement on Trade in Services, WTO Doc. S/L/20, 36 I.L.M. 354 (1997) ("Agreement on Basic Telecommunications Services").

²⁹ See WTO's Principles of the Trading System.

³⁰ See General Agreement on Trade in Services; Agreement on Basic Telecommunications Services.

³¹ Intelsat Comments at 4-5.

counterparts. Nowhere does the WTO's Agreement on Basic Telecommunications Services, or any other WTO agreement for that matter, mandate that the FCC provide more favorable treatment to non-U.S.-licensed entities. Far from discriminating against non-U.S.-licensees or according disparate treatment to their satellite services in the United States, the assessment of regulatory fees on non-U.S.-licensed operators would subject U.S. and non-licensed operators to the same treatment, thereby promoting fair competition.³² Specifically, it ensures that, regardless of national origin, all licensed satellite operators benefitting from the *same* types of regulatory services are subject to the *same* types of regulatory fees.³³

In fact, one arguably could conclude that the Commission's proposal is required under the WTO agreements, given that the primary purpose for the WTO's establishment is to "eliminat[e] . . . discriminatory treatment in international trade relations."³⁴ Under the current regulatory regime, satellite operators from *every other* nation that seek U.S. market access receive more favorable treatment than U.S. operators. As such, the policy of exempting non-U.S.-licensed satellite operators from regulatory fees is discriminatory *against* U.S. licensees. In order to ensure that U.S.-licensed and non-U.S.-licensed satellite operators enjoy the same access to the U.S. market, non-U.S.-licensed operators *must* be subject to the same types of regulatory fees as their U.S. counterparts. For these reasons, the Commission's proposal to assess regulatory fees on non-U.S. licensed satellite operators is entirely consistent with the United

³² See General Agreement on Trade in Services.

³³ As indicated in Intelsat's Initial comments, even if the Commission elects not to impose fees equal to those paid by U.S.-licensees, non-U.S.-licensed satellite operators that access the U.S. market should be assessed a fee proportional to the regulatory resources they utilize, consistent with the cost recovery purpose of the fee. See Intelsat Comments at 6.

³⁴ See General Agreement on Trade in Services.

States' WTO obligations. Any contentions otherwise should be flatly rejected by the Commission.

As Intelsat explained in its initial Comments, the Commission's proposal to collect regulatory fees for non-U.S.-licensed satellites that have been granted U.S. market access is fair, pro-competitive, and consistent with the Commission's statutory cost recovery mandate. The Commission should dismiss the self-serving arguments of non-U.S.-licensed operators to the contrary. In particular, there is no merit to the suggestion that collecting fees from internationally-licensed satellite operators consistent with the regulatory costs attributable to the International Bureau's action in support of these operators is inconsistent with any international trade obligations. As such, the Commission should adopt the proposal in the Notice.

Respectfully submitted,

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