

**VIA COURIER**

March 28, 2005

Marlene H. Dortch, Secretary  
Federal Communications Commission  
Office of the Secretary  
c/o Natek, Inc.  
236 Massachusetts Avenue, N.E.  
Suite 110  
Washington, DC 20002

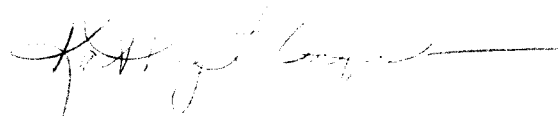
Re: SES-MFS-20041206-01790 and SES-AFS-20050114-00050; Reply to Opposition  
of Intelsat Holdings, Inc.

Dear Ms. Dortch:

Enclosed for filing are an original and four (4) copies of NewCom International, Inc.'s  
Reply to Opposition of Intelsat Holdings, Inc. in the above-referenced proceedings.

Please date stamp the enclosed extra copy of this filing. Should you have any questions,  
please do not hesitate to contact us at (202) 424-7500.

Respectfully submitted,



Kathy L. Cooper  
Troy F. Tanner  
Danielle C. Burt

Counsel for NewCom International, Inc.

cc: Service List  
Jaime Dickinson, NewCom  
Vin Bepler, NewCom

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554**

\_\_\_\_\_ )  
In the Matter of )  
NewCom International, Inc. )  
Application for Modification of Earth )  
Station E040267 to Provide Services )  
Between the United States and Cuba Using )  
Express 3A Satellite )  
\_\_\_\_\_ )

File Nos. SES-MFS-20041206-01790  
SES-AFS-20050114-00050

**REPLY TO OPPOSITION OF INTELSAT HOLDINGS, LTD.**

NewCom International, Inc. (“NewCom”), through its undersigned counsel and pursuant to Section 25.154(c) of the Commission’s Rules,<sup>1</sup> submits its reply to the opposition filed by Intelsat Holdings, Inc. (“Intelsat”)<sup>2</sup> to NewCom’s modification application to provide fixed satellite (“FSS”) data services between the United States and Cuba using the Russian-licensed Express 3A satellite in the above-captioned proceeding.<sup>3</sup> Contrary to Intelsat’s claims, NewCom has fully demonstrated in its application that its proposed service to Cuba via the Express 3A is consistent with the Commissions’ rules and is in the public interest. Accordingly, NewCom’s application should be granted.

<sup>1</sup> 47 C.F.R. § 25.154(c).  
<sup>2</sup> *Opposition of Intelsat Holdings, Ltd.*, at 2 (filed March 18, 2005).  
<sup>3</sup> Intelsat also seeks, in the alternative to a denial, that NewCom’s application be held in abeyance as requested by the U.S. Trade Representative. It is NewCom’s preference that its application be granted. If, however, the Commission should decide to hold NewCom’s application in abeyance, then NewCom requests, for the public interest reasons set forth herein, that the Commission extend the grant of NewCom’s request for special temporary authority to the extent necessary.

## **I. NEWCOM'S PROPOSED SERVICE MEETS THE ECO-SAT TEST**

In its application, NewCom has demonstrated that its proposed service to Cuba via the Express 3A Russian satellite meets the standards of the Commission's ECO-Sat test.<sup>4</sup> Specifically, NewCom has demonstrated that neither *de jure* nor *de facto* barriers to entry exist on the Russian route market for the provision of Internet connectivity services.<sup>5</sup> Moreover, NewCom points to other factors, such as spectrum availability and technical qualifications in support of its position. NewCom Mod. Appl. Ex. 42b at 4-5. NewCom also has clearly demonstrated that its application is in the public interest.

## **II. INTELSAT FAILS TO SUFFICIENTLY REBUT NEWCOM'S SHOWING**

In its opposition, Intelsat fails to establish that effective competitive opportunities do not exist on the Russian route market in rebuttal to NewCom's demonstration of the ECO-Sat test, and, therefore, Intelsat's arguments fail to justify a denial of NewCom's application.

First, Intelsat argues that there is discrimination in VSAT licensing on the Russian route market. Intelsat Opp. at 3. NewCom is not, however, providing VSAT services to Cuba. Rather, it is providing Internet connectivity services. The ECO-Sat test is applied on a satellite-service specific basis, and, thus, Intelsat's argument regarding VSAT licensing is irrelevant to the factors to be considered in NewCom's application. *Disco II* at para. 92. Nonetheless, the differences in application fees and processing time between VSAT licensees using a Russian satellite and

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<sup>4</sup> Amendment of the Commission's Regulatory Policies to Allow Non-U.S. Licensed Space Stations to Provide Domestic and International Satellite Service in the United States and Amendment of Section 25.131 of the Commission's rules and Regulations to Eliminate the Licensing Requirement for Certain International Receive-Only Earth Stations, *Report and Order*, 12 FCC Rcd. 24094 (1997) ("*Disco II*").

<sup>5</sup> As indicated in NewCom's application, Cuba is a World Trade Organization ("WTO") member country and there is no evidence contrary to the pro-competitive nature of the Cuban route market. Thus, it is unnecessary to apply the ECO-Sat test to Cuba. NewCom Mod. Appl. Ex. 42b at 2; *See also* Intelsat Opp. at 3 n.7.

VSAT licensees using non-Russian satellites do not amount to a *de jure* barrier to entry, nor a *de facto* barrier to entry because, in fact, foreign satellites are being used to provide VSAT services in Russia. *See* NewCom Mod. Appl. Ex. 42b at 3. Moreover, differences in licensing costs and process timing are not barriers to entry *per se*. The United States itself has different licensing requirements, including longer processing times for satellite licenses involving foreign ownership and foreign satellites because of the need for a national security review.<sup>6</sup>

Second, Intelsat's argument regarding a proposed preference for Russian satellites in the provision of switched services is just that—merely a proposal—and is irrelevant to the Commission's consideration of NewCom's application.

Third, Intelsat argues that Russia's frequency coordination requirement is a *de facto* barrier to entry. Intelsat Opp. at 3. But, once again as demonstrated in NewCom's application, Russia has licensed foreign satellites. NewCom Mod. Appl. Ex. 42b at 3. In addition, each

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<sup>6</sup> *See* Applications of SatCom Systems, Inc.; For Blanket Authorization to operate up to 25,000 mobile satellite earth terminals (METs) through Canadian-licensed satellite MSAT-1 at 106.5 degrees W.L., in frequency bands 1631.5-1660.5 MHz (transmit) and 1530-1559 MHz (receive) throughout the Continental United States, United States territories, Alaska, and Hawaii; TMI Communications and Company, L.P.; For Blanket Authorization to operate up to 100,000 mobile satellite earth terminals (METs) through Canadian-licensed satellite MSAT-1 at 106.5 degrees W.L. in frequency bands 1631.5-1660.5 MHz (transmit) and 1530-1559 MHz (receive) throughout the Continental United States, United States territories, Alaska, and Hawaii; SatCom Systems, Inc.; For Special Temporary Authority to Provide Mobile Satellite Service Through The Canadian-Licensed MSAT-1 Satellite, 18 CR 1164, 14 FCC Rcd 20798, 1999 FCC LEXIS 6089 (November 30, 1999) (Separate Statement of Commissioner Harold Furchtgott-Roth, which expresses concern with the length of time it took to grant these applications involving use of foreign satellites, stating "I urge my fellow Commissioners, the FBI and the Department of Justice to move swiftly to remedy this ad hoc and arduous "process" for national security review by the Administration. To the extent that national security concerns warrant broadly applicable rules, I will readily support efforts to create such regulations. However, we should not continue to develop these rules "as we go along" without any of the procedural and legal protections traditionally afforded parties impacted by rulemakings. The current process does not serve the parties or the American people well.").

country is allowed to establish how the frequency coordination should be accomplished and both Russia and the United States require frequency coordination for such licensing. The fact that Russia requires frequency coordination prior to grant of an application, and that the United States requires frequency coordination after the grant of an application does not amount to a *de facto* barrier to entry.

Fourth, Intelsat argues that Russian laws governing the regulation of satellite services in Russia are transparent. Intelsat Opp. at 4. Because Intelsat provides no information or evidence in support of this argument, it is unclear how this claim applies to NewCom's application. Therefore, this argument should be disregarded by the Commission. It has been demonstrated, however, that Russia has licensed foreign satellites, including Intelsat satellites, which means that the regulations must be sufficiently clear for foreign carriers to abide by them and to obtain the necessary licenses.

Finally, Intelsat argues that U.S. satellite operators providing international services to Russia are "handicapped" by restrictions placed on their provision of domestic services to Russia. Intelsat Opp. at 4. Once again, this argument is irrelevant to the factors that should be considered for NewCom's application. The ECO-Sat test is applied on a satellite-service specific basis and NewCom is only providing international services, not domestic services, via the Express 3A. *Disco II* at para. 92. Regardless, Russia's restrictions with respect to domestic services provided by non-Russian satellites are no different from the United States policies that favor U.S. earth stations providing domestic services within the United States.<sup>7</sup>

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<sup>7</sup> See AIRTOUCH COMMUNICATIONS, INC. Transferor, AND VODAFONE GROUP, PLC. Transferee, For Consent to Transfer of Control of Licenses and Authorizations 14 FCC Rcd 9430, 16 CR 425, 1999 FCC LEXIS 3007 (1999). Specifically, Section 5.1 of the National Security Agreement made part of this transaction states (emphasis added):

Thus, as demonstrated in its application and its response herein, NewCom has provided the requisite showing to meet the standards of the ECO-Sat test in support of its provision of Internet data connectivity services to Cuba via the Express 3A. Intelsat has failed to adequately rebut this showing. Accordingly, the Commission should grant NewCom's application.

### III. NEWCOM'S PROPOSED SERVICE IS IN THE PUBLIC INTEREST

If the Commission should, however, disagree with NewCom's position with respect to the ECO-Sat test, NewCom respectfully submits that other public interest considerations warrant a grant of its application. In its *Disco II* decision, the Commission states that "[i]n considering whether to grant [an] application, we could consider, regardless of the outcome of the ECO-Sat analysis, whether other satellites are available to provide this transmission capacity." *Disco II* at para. 74. As part of its operations, NewCom plans to provide Internet access to Empresa de Telecomunicaciones de Cuba SA ("ETECSA") using the Express 3A space station satellite. ETECSA is the sole provider of Internet access and services in Cuba. As such, ETECSA is responsible for ensuring that vital facilities such as humanitarian organizations, hospitals,

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“(a) AirTouch's facilities (except for satellites) that are part of or are used to direct, Control, supervise, or manage all or any part of the Domestic Telecommunications Infrastructure owned, managed, or Controlled by AirTouch, or that are both capable of and specifically configured as a primary, backup, or alternate facility for such direction, Control, supervision, or management, shall at all times be located within the United States. Control of the Domestic Telecommunications Infrastructure, and Control over monitoring and diagnosis of problems arising in the Domestic Telecommunications Infrastructure, shall be performed in the United States. *Any satellites Controlled by Affiliates and used to provide Domestic Telecommunications Services shall be operated exclusively from a facility located in the United States. Affiliates shall in good faith endeavor to ensure that the satellite segment of Globalstar shall continue to be operated exclusively from a facility located in the United States. If any Affiliate becomes aware of any proposal or plan to relocate the command and control facilities for Globalstar to a location outside the United States, the Affiliate, or AirTouch, will promptly notify the DoD, the DoJ and the FBI.* The requirements of this provision shall apply unless the DoD, the DoJ and the FBI both agree, in writing, and in their sole discretion, to exempt a facility in whole or in part from its requirements.

schools, industries, and banks have access to the Internet for their many needs. Due to a number of factors, ETECSA has limited earth station resources for Internet connectivity services, and they are devoted solely to access of the Express 3A satellite. Thus, any carrier providing Internet connectivity services to ETECSA, including NewCom, must use the Express 3A because of ETECSA's existing network and earth stations.

Moreover, as explained in NewCom's request for special temporary authority,<sup>8</sup> ETECSA's previous carrier can no longer provide Internet access services to ETECSA, thereby prompting ETECSA to approach NewCom to provide these services.<sup>9</sup> If NewCom's application is denied, there is the distinct possibility that Internet access services to Cuba will be severely impacted, with loss of over half of the Internet connections in that country. ETECSA currently does not have an alternate supplier that can provide the necessary Internet connections on such short notice. Therefore, it is essential that ETECSA be able to gain Internet access through NewCom. If NewCom is not able to provide Internet access to ETECSA, it will likely result in the loss of many critical Internet services relied upon by humanitarian efforts, hospitals, schools, industries, and banks in Cuba.

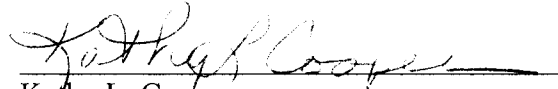
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<sup>8</sup> NewCom International, Inc.'s Request for Special Temporary Authority ("STA"), File No. SES-STA-20050112-00038 (filed Jan. 12, 2005).

<sup>9</sup> NewCom STA at 1-2. NewCom has obtained the necessary licenses from the U.S. Treasury Department's Office of Foreign Assets Control ("OFAC") to do business with ETECSA in Cuba. Due to the U.S. Government's keen interest in ensuring that Cuban's continue to have access to the Internet and the freedom it provides, OFAC quickly approved NewCom's application. *Id.* at 2.

For the foregoing reasons, NewCom respectfully submits that its application is in the public interest and, therefore, should be granted.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Kathy L. Cooper", written over a horizontal line.

Kathy L. Cooper

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Counsel for NewCom International, Inc.

Dated: March 28, 2005



**CERTIFICATE OF SERVICE**

I do hereby certify that on this 28th day of March, 2005, the following parties to this action were served by email, except as otherwise indicated, with a copy of the foregoing Reply to the Opposition of Intelsat Holdings, Ltd:

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