

ORIGINAL

Before the
Federal Communications Commission
Washington, DC 20554

RECEIVED

MAR 18 2005

Federal Communications Commission
Office of Secretary

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

OPPOSITION OF INTELSAT HOLDINGS, LTD.

Intelsat Holdings, Ltd. ("Intelsat"), by its attorneys and pursuant to Section 25.154(a) of the Commission's Rules,¹ submits this opposition to the above-captioned application of NewCom International, Inc. ("NewCom") to provide fixed-satellite ("FSS") data services between the United States and Cuba using the Russian-licensed Express 3A satellite.² Intelsat

¹ 47 C.F.R. § 25.154(a).

² See *Satellite Communications Services; RE: Satellite Radio Applications Accepted for Filing*, Rept. No. SES-00686, File No. SES-AFS-20050114-00050 (rel. Feb. 16, 2005); *Satellite Communications Services; RE: Satellite Radio Applications Accepted for Filing*, Rept. No. SES-00684, File No. SES-MFS-20041206-01790 (rel. Feb. 9, 2005). The 30-day period for filing comments to the public notice announcing the Commission's receipt of NewCom's amendment expires on March 18, 2005. Should the Commission deem it necessary, Intelsat respectfully requests a waiver of the filing deadline to permit consideration of this opposition. The Commission has accepted late-filed comments in order to compile a full and adequate record upon which to base a decision in a given proceeding, where such comments neither prejudice any of the parties to the proceeding nor delay resolution. See, e.g. Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations (Kimberly Idaho), 15 FCC Rcd 10298, n. 1 (2000) (considering late-filed comments in order to obtain a more complete record). Additionally, Commission policy favors resolution based upon an adequate, correct record after full participation by all parties affected. See *Implementation of Sections 255 and 251(a)(2) of the Communications Act of 1934*, 15 FCC Rcd 4948, ¶ 4, n. 7 (2000) (accepting late-filed comments in the interest of ensuring full and fair participation of interested parties). In this instance, consideration of this opposition will permit the Commission to make an informed decision that takes current industry viewpoints into full consideration in a matter that involves important U.S. trade policy objectives.

currently provides limited FSS services to the Russian market using U.S.-licensed satellites,³ and would welcome a fair opportunity to compete in the provision of additional international and domestic FSS services to this market. At this time, however, the Russian Federation does not provide effective competitive opportunities for U.S.-licensed satellite operators. Therefore, NewCom's modification application must be denied, or in the alternative, held in abeyance as requested by the U.S. Trade Representative ("USTR"), because the Express 3A satellite fails to meet the Commission's standard for entry into the U.S. market under the *DISCO II* Order.

An earth station licensee must obtain prior FCC approval before communicating with a space station licensed outside the United States. When the space station is licensed by a country that is not a member of the World Trade Organization ("WTO"), such as Russia, the applicant must show that the country in which the non-U.S. satellite is licensed provides effective competitive opportunities for U.S.-licensed satellites to serve the foreign market.⁴ In particular, the Commission examines whether there are any *de jure* or *de facto* barriers to entry for the provision of analogous services in the non-U.S. satellite's home market.⁵ The relevant foreign markets are (1) the market of the authority licensing the satellite and (2) the markets in which communications with the U.S. earth stations will originate or terminate.⁶ In this case, FSS providers utilizing U.S.-licensed satellites to provide service to the Russian Federation face barriers to entry that are not imposed upon foreign-licensed satellite operators seeking to enter

³ Intelsat Holdings, Ltd. is the ultimate indirect parent of two U.S. satellite licensees: Intelsat LLC and Intelsat North America LLC.

⁴ See *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*, Report and Order, 12 FCC Rcd 24094, 24128-129 (¶ 75) (1997) ("*DISCO II Order*").

⁵ *Id.* at 24137 (¶ 99)

⁶ *Id.* at 24129-133 (¶¶ 76-88).

the U.S. market.⁷ Accordingly, NewCom's application fails to satisfy the ECO-Sat test and should be denied.

Numerous barriers to entry exist in Russia for entities proposing to use a U.S.-licensed satellite to deliver FSS services. Even as to the international services that NewCom proposes to provide, the Russian regime includes the following existing barriers to entry for foreign satellite operators:

- **Discrimination in VSAT Licensing:** VSAT licensees in Russia are subject to a registration requirement. If a VSAT licensee takes service from a Russian satellite, it can take advantage of a "simplified" registration process, which takes only 2-3 weeks and costs \$200-300 per VSAT earth station. VSAT licensees taking service from non-Russian satellites, even if their operating parameters are otherwise identical to licensees using Russian satellites, are subject to the "regular" registration process, which takes 5-6 months with a fee of \$2,000-3,000 per VSAT earth station.
- **Proposed Preference for Russian Satellites in the Provision of Switched Services, Including Internet:** The Ministry of Communications is currently considering a requirement that public switched traffic – which in Russia includes Internet traffic – between nodes located in Russia be routed over a cable wholly located within Russian territory, or a satellite that is controlled from the territory of the Russian Federation. (No U.S.-licensed satellite is so controlled, to Intelsat's knowledge.) In effect, this regulation precludes efficient routing of Russian domestic and international voice, data, and Internet traffic by foreign-licensed satellites. Instead, were this proposal adopted, the domestic portion of the traffic generated by a Russian customer would have to be routed over a duplicative, Russian-controlled connection. Such a requirement would further undermine the ability of non-Russian-licensed satellites efficiently to provide services to that market.
- **Frequency Coordination:** Russian law requires that foreign satellite operators satisfactorily complete coordination of their satellites with the Russian Federation Telecommunications Administration as a prerequisite to entering the Russian market. The FCC does not require an applicant to complete international coordination before granting that applicant's satellite system authorization to provide service in the United States. Rather, authorizations are conditioned with a requirement to undertake ITU coordination. Some U.S.-licensed operators have been prevented from serving Russia because Russian satellite operators have refused to complete coordination agreements with them, despite the fact that the satellites were already operating with coverage of Russia and had caused no interference to Russian satellites. In addition,

⁷ Because Cuba is a WTO Member country, access to the Cuban route market is presumed to be procompetitive.

there have been cases in which Russian operators have refused to reach coordination agreements with respect to certain frequencies for which they have ITU filings but which they have never utilized. Market entry should not be denied if the often lengthy coordination process has not been completed.

- Transparency: Russian satellite regulation is not transparent. The legal requirements and administrative responsibilities associated with the provision of satellite services in Russia are not clearly defined.⁸

In addition to these direct restrictions on international services, the ability of U.S. operators to provide international communications services to Russia is also handicapped by restrictions placed upon the use of non-Russian satellites for domestic services. Such satellites may be used for domestic communications services in Russia only when “it is not possible to use similar Russian systems” for such purposes.⁹ Apart from any authorization of the Russian telecommunications regulator, applications for domestic Russian service via a foreign space station (including U.S.-licensed systems) must obtain a favorable recommendation from the State Commission for Radio Frequencies of the Russian Ministry of Communications and Informatization, and a separate sign-off from an interdepartmental commission comprised of member representatives from the Russian Federation’s Ministry for Issues of the Press, Television and Radio Broadcasting and Mass Media, the Federal Security Service of the Russian Federation, the Federal Agency for Governmental Communication and Information under the President of the Russian Federation, the State Technological Commission under the President of the Russian Federation, the Ministry of Defense of the Russian Federation, and the Russian Aviation and Space Agency.¹⁰

⁸ See *USTR 2004 National Trade Estimate Report on Foreign Trade Barriers*, p. 412, at http://www.ustr.gov/Document_Library/Reports_Publications/2004/2004_National_Trade_Estimate/2004_NTE_Report/asset_upload_file202_4794.pdf.

⁹ See Letter from Bruce Olcott, Counsel for WorldCom, Inc. to Marlene H. Dortch, Secretary, FCC, at 4 & n.15, File No. SES-MOD-20021125-02060 (filed Aug. 20, 2003) (“WorldCom Letter”).

¹⁰ See *id.* at n.13.

This limitation substantially prejudices U.S.-licensed satellites in not only the market for domestic communications services in Russia, but also in the market for international communications services. The inability to offer an integrated package of services that includes both global *and* domestic connectivity seriously hampers the ability of U.S.-licensed operators to compete effectively in the Russian market for international communication services. Furthermore, because a substantial portion of the coverage area of any satellite capable of providing international services to Russia will be in Russian territory, a U.S. operator will not be able to fully utilize the capacity on the satellite unless the operator also provides domestic communication services within Russia. Therefore, an operator seeking to provide international services to Russia via a U.S.-licensed satellite will be forced to choose between undergoing a licensing process that is considerably more cumbersome than that afforded to Russian satellites, or forgoing the ability to offer potential customers one-stop shopping at cost-efficient fill ratios. For these reasons, NewCom cannot satisfy the ECO-Sat test for use of the Express 3A satellite in the provision of U.S.-international services until the Russian Federation removes the above-described barriers to entry, as requested by USTR.

The Commission's public interest analysis under the *DISCO II* Order specifically includes consideration of "trade policy concerns," on which the Commission accords deference to the expertise of Executive Branch agencies.¹¹ At present Russia is seeking admission to the WTO, but its proposed schedule of commitments for accession would preserve discriminatory preferences in favor of Russian operators, including a first right of refusal for the Russian Satellite Communications Company ("RSCC") on the sale of satellite capacity in Russia, and a requirement to sell satellite capacity only through the RSCC. Addressing just such trade policy

¹¹ *DISCO II Order* at 24170-24172 (¶¶ 178-182).

issues, USTR has confirmed that existing law allows “the Russian Federation to discriminate against foreign satellite operators seeking to serve the Russian market, particularly U.S. satellite operators.”¹² Furthermore, USTR warned that granting NewCom’s application could prejudice on-going WTO negotiations by, in effect, giving Russia a free-trade “head start” without any reciprocal concession. As a result, USTR requested that the Commission delay authorization for the NewCom modification until the Russian Federation adequately cures its discrimination against U.S. and other foreign satellite operators. Intelsat agrees that grant of the NewCom modification would prejudice the current WTO negotiations, and hinder USTR’s efforts to advance American trade policy objectives.¹³

In sum, NewCom’s application cannot be granted while the Russian Federation maintains significant barriers to entry for operators using U.S. and other foreign-licensed satellite systems. Because NewCom cannot satisfy the agency’s *DISCO II* standard, its application should be denied or held in abeyance as requested by USTR.

Respectfully submitted,



Phillip L. Spector
Executive Vice President and General Counsel
INTELSAT HOLDINGS, LTD.
Wellesley House North
90 Pitts Bay Road
Pembroke, HM 08
Bermuda

Bert W. Rein
Carl R. Frank
WILEY REIN & FIELDING LLP
1776 K Street NW
Washington, DC 20006

Counsel for Intelsat Holdings, Ltd.

March 18, 2005

¹² See Letter from Meredith Broadbent, USTR, to Marlene H. Dortch, Secretary, FCC, at 1, File Nos. SES-MOD-20021125-02060, SES-AFS-20050114-00050, SES-MFS-20041206-01790 (Feb. 15, 2005).

¹³ *Id.*

CERTIFICATE OF SERVICE

I, Barbara Lampich, do hereby certify that on this 18th day of March, 2005, the following parties to this action were served with a copy of the foregoing Opposition:

Mr. Jaime Dickinson
NewCom International, Inc.
15590 NW 15th Avenue
Miami, FL 33169
(via first class mail)

Marlene Dortch, Secretary
Federal Communications Commission
445 - 12th Street, S.W.
Washington, DC 20554
(via hand delivery)

Kathy L. Cooper
Swidler Berlin, LLP
3000 K Street, N.W.
Washington, DC 20007
klcooper@swidlaw.com
(via e-mail)

Qualex International
qualexint@aol.com
(via e-mail)


Barbara Lampich