

EXHIBIT B – ECO-SAT ANALYSIS

1.0 - Overview

NewCom International, Inc. (“NewCom”) expects to obtain capacity on the Express AM44 (“AM44”) satellite to enable communications with a number of international points in the Caribbean and Africa identified below. Given that the AM44 is a non-U.S.-licensed satellite, coordinated and licensed by the Russian Federation to the Russian Satellite Communications Company (“RSCC”), NewCom submits this analysis to demonstrate that the Russian market provides effective competitive opportunities for U.S.-licensed satellites to serve Russia, and to demonstrate that NewCom’s proposed service using the AM44 is in the public interest and supported by the Commission’s regulations.

2.0 - The ECO-Sat Test

In the Domestic-International Satellite Consolidation (“*DISCO I*”) proceeding,¹ the Commission developed a two-tiered market entry framework for non-U.S. licensed satellite networks.² Specifically, it established a presumption that U.S. market entry by non-U.S. licensed satellite networks based in WTO member countries would promote competition.³ In addition, the Commission adopted a separate test, called the ECO-Sat test, for non-U.S. satellite networks based in non-WTO member countries. The ECO-Sat test focuses on whether a network’s home market provides effective competitive opportunities for U.S.-licensed satellites to serve the foreign market by examining both *de jure* and *de facto* barriers to entry.⁴ The test also examines whether effective competitive opportunities exist on each of the route markets that involve non-WTO member countries.⁵ Furthermore, the Commission can consider other factors, such as spectrum availability and legal, financial, and technical qualifications, operating requirements and national security, law enforcement, foreign policy and trade concerns.⁶

3.0 - NewCom AM44 Route Markets

The ECO-Sat test is not applicable to the route markets NewCom seeks authority to communicate with under the instant application. Pursuant to *DISCO II*, the ECO-Sat test is generally applied to proposed route markets that will serve as remote points of communication for a non-U.S.-licensed satellite. However, *DISCO II* also established a policy that the FCC will not apply the test to World Trade Organization (“WTO”) member route markets served by

¹ *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, 12 FCC Rcd 24094 (1997) (“*DISCO I*”).

² *Id.*, ¶¶ 10-12.

³ *Id.*, ¶ 11.

⁴ *Id.*, ¶ 75.

⁵ *Id.*, ¶ 82.

⁶ *Id.*, ¶ 15.

foreign satellites licensed by non-WTO countries.⁷ NewCom's underlying application seeks authority to serve only WTO member routes. Specifically, NewCom seeks authority to serve the route markets of Burkina Faso, Cuba, Ghana, Guinea, Guinea-Bissau, Mali, Niger, Nigeria, Senegal and Sierra Leone. Given that these markets are exclusively WTO members, utilizing the AM44 satellite to serve these markets is presumed to be procompetitive, pursuant to the Commission's *DISCO II* market entry analysis.⁸ Furthermore, no evidence exists that potentially places into question the procompetitive nature of the proposed telecommunications routes. Thus, it is unnecessary to apply the ECO-Sat test to the above-referenced countries.

4.0 - Application of ECO-Sat Test to Russia

Use of the AM44 for access to the Russian route market is appropriate because Russia provides effective competitive opportunities for U.S.-licensed fixed satellite services ("FSS") that provide identical services. However, given that Russia has Observer Government status before the WTO but is not yet a WTO member, it is appropriate to apply an ECO-Sat test to Russia. Pursuant to the Commission's ECO-Sat test, NewCom demonstrates below that its proposed use of the AM44 satellite is appropriate.

The ECO-Sat test requires NewCom to demonstrate whether any *de jure* or *de facto* barriers exist to the use of a U.S.-licensed FSS satellite to provide international data services between the U.S. and Russia. NewCom submits that no *de jure* barriers exist. Russian law enables non-Russian satellite operators to provide communication services in Russia after securing approval from the State Commission for Radio Frequencies of the Russian Ministry of Communications and Information ("State Commission").⁹ With regard to market entry, the State Commission may approve foreign commercial satellite systems without consulting other branches of the government so long as the relevant foreign satellite has completed international coordination through the International Telecommunications Union ("ITU").¹⁰ Russian law also permits non-Russian entities to provide telecommunications and data services to Russian end users and allows service providers to be 100% owned and controlled by non-Russian entities.¹¹

NewCom also submits that Russia does not maintain any material *de facto* restrictions on the use of U.S.-licensed FSS satellites to provide international data services in Russia. While, there does not appear to be a public database that shows which countries are being served by particular satellite operators, anecdotal evidence of U.S. and other non-Russian satellite operators demonstrate the absence of *de facto* restrictions on foreign market entry. For example, in recent

⁷ *Id.*, ¶ 82.

⁸ See http://www.wto.org/english/thewto_e/whatis_e/tif_e/org6_e.htm. (indicating that Burkina Faso joined the WTO on June 3, 1995; Cuba on April 20, 1995; Ghana on January 1, 1995; Guinea on October 25, 1995; Guinea-Bissau on May 31, 1995; Mali on May 31, 1995; Niger on December 13, 1996; Nigeria on January 1, 1995; Senegal on January 1, 1995; and Sierra Leone on July 23, 1995).

⁹ *Regulations on the State Control of the Admission and Use of Foreign Systems of Satellite Communication and Broadcasting in the Information (Telecommunication) Space of the Russian Federation* (Approved by Decision of the Government of the Russian Federation, No. 88, § 6 (Feb. 1, 2000)).

¹⁰ *Id.*; see also, *Basic Provisions of the State Policy in Distribution, Use and Security of the Orbital Frequency Resources of the Russian Federation* (Approved by Decision of the Government of the Russian Federation, No. 88 (Feb. 1, 2000)).

¹¹ *Federal Law No. 15-FZ "On Communications,"* Article 17 (dated 16 Feb., 1995, as amended).

years multiple foreign geostationary satellites have begun to serve the Russian market, including the Asian Broadcast Satellite 1 and the U.S. licensed Intelsat 904.¹² Multiple Russian VSAT service providers have also applied for authority to begin communicating with various additional satellites in the Intelsat fleet.¹³ A dramatic increase in VSAT activity also speaks to the increasingly open and competitive Russian satellite market. Active VSAT terminals in Russia were expected to grow from 10,000 operational antennas in 2007 tenfold to 100,000 operational antennas by 2010.¹⁴ With regard to non-geostationary satellite services, Iridium Communications, Inc., the U.S.-licensed operator of a constellation of low-earth orbit satellites, announced that it was seeking authority to serve the Russian market earlier this year.¹⁵

Accordingly, the Commission should grant NewCom's application to add the AM44 satellite based on the absence of *de jure* or *de facto* restrictions on the use of U.S.-licensed satellites to provide international FSS data services to Russia.

5.0 - Additional Factors for U.S. Market Entry

In addition to the ECO-Sat test, the Commission concluded that it will consider other factors in determining whether to permit U.S. market access by non-U.S. licensed satellites. These additional factors support NewCom's application to add the AM44 satellite for international services between the U.S. and the remote international points discussed above.

Spectrum Availability

The AM44 satellite has already been coordinated through the ITU. In addition, NewCom's earth station has been coordinated to transmit earth-to-space to the AM44.¹⁶ Thus, spectrum is available to permit the AM44 satellite to serve the U.S. through NewCom's earth station.

Legal Qualifications

The RSCC is presumably legally qualified to provide satellite service to the United States. NewCom is unaware of any violations of U.S. laws or Commission rules by the RSCC. The RSCC has foreign government ownership, but this fact is irrelevant as long as the RSCC does not seek its own authorization to provide common carrier or broadcast services.

Financial Qualifications

¹² See Press Release, Intelsat, Ltd., Intelsat Distributes Interactive HD TV Programming to Russia, Jun. 5, 2008, available at <http://www.intelsat.com/press/news-releases/2008/20080605-2.asp>; see also Press Release, Asia Broadcast Satellite, GT Satellite Systems and Asia Broadcast Satellite Sign Multiple Transponder Deal for Russian DTH Platform, Sep. 25, 2009, available at http://www.absatellite.net/_download/news_25Sep2009.pdf.

¹³ See *VSAT Operators Look To Foreign Satellites*, Telecom Russia, Aug. 25, 2009, available at <http://telecomru.ru/article/?id=5474>.

¹⁴ See Peter B. de Selding, *Russian Satellite Communications*, Space News, Oct. 8, 2007.

¹⁵ See Tucker Echols, *Iridium Seeks Russian Satellite Services Market*, Washington Business Journal, May 11, 2009.

¹⁶ See Exhibit F.

The Commission's *DISCO II* decision does not require a showing of financial qualifications for a satellite that is already launched and operating.¹⁷ Thus, this factor is irrelevant because the AM44 satellite was launched on February 11, 2009, and is operational from its coordinated orbital position at 11.0 degrees west longitude.

Technical Qualifications

The Commission requires applicants to provide technical qualifications for a non-U.S. licensed satellite through the Schedule S Form.¹⁸ NewCom has completed and attached a Schedule S Form to the underlying application.

Other Public Interest Factors

The Commission stated that it would consider other public interest factors in deciding whether to permit market entry by a non-U.S. satellite. NewCom submits that the grant of its application will contribute to the expansion of competition. Atlantic ocean region satellites capable of supporting intercontinental communications in C-band frequencies are operating at or near 100% utilization.¹⁹ The introduction of the AM44 into the U.S. market would offer U.S. carriers with a reasonably priced alternative C-band platform to reach developing countries in Africa, the Caribbean, the Near-East and the Mid-East, where circular polarized C-band FSS communications are still in many locations the primary means of establishing international communications. Moreover, NewCom respectfully submits that grant of this application is in the U.S. national interest because it permits NewCom to provide Internet access between the U.S. and Cuba, thereby increasing the flow of information between the two countries. Providing the Cuban people with access to worldwide information will help serve as a catalyst for democracy.

In conclusion, the Commission should grant NewCom's earth station application and approve Newcom's use of the Express AM44 satellite. Access to the proposed routes is presumed to be procompetitive and no evidence places into question this procompetitive nature. Additionally, pursuant to the Commission's ECO-Sat test, Russia provides effective competitive opportunities for U.S. licensed FSS satellites and does not maintain *de jure* or *de facto* restrictions against market entry. Moreover, as demonstrated herein, a grant of NewCom's application is in the public interest.

¹⁷ *DISCO II*, ¶ 191.

¹⁸ *Amendment of the Commission's Space Station Licensing Rules and Policies*, IB Docket No. 02-34, FCC 03-154, ¶¶ 46-49 (rel. July 8, 2003).

¹⁹ *See, e.g.*, Peter B. de Selding, *Fleet Operators Deny Satellite Capacity Price Gouging*, Space News, Sep. 28, 2009 (noting that Intelsat and Eutelsat executives have "agreed that [the] current shortage of capacity in Africa" has frustrated operators seeking to serve the region).