

SQUIRE, SANDERS & DEMPSEY L.L.P.

**SQUIRE
SANDERS** | LEGAL
COUNSEL
WORLDWIDE

RECEIVED

1201 Pennsylvania Avenue, N.W.
P.O. Box 407
Washington, DC 20044-0407

Office: +1.202.626.6600
Fax: +1.202.626.6780

Received

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Direct Dial: +1.202.626.6615
bolcott@ssd.com

Satellite Engineering Branch
International Bureau

July 21, 2003

BY HAND DELIVERY

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street S.W.
Washington, D.C. 20554

Int'l Bureau

JUL 24 2003

Front Office

Re: WorldCom, Inc.
Call Sign E000700
FCC File No. SES-MOD-20021125-02060
Application to Modify Satellite Earth Station
Permitted Written *Ex Parte* Communication

Dear Ms. Dortch:

On November 20, 2002, WorldCom, Inc. (debtor-in-possession) ("WorldCom") requested Commission authority to add an additional point of communications to its earth station license in Andover, Maine (Call Sign E000700). WorldCom sought authority for the addition of the Express-3A satellite as a permanent point of communications for the provision of voice and data services between the United States and Russia, Azerbaijan, and Cuba.¹

The Express-3A satellite is licensed by Russia to the Intersputnik International Organization of Space Communications ("Intersputnik"). Intersputnik is an intergovernmental organization ("IGO") comprised of 24 members, including such important U.S. trading partners Germany, Poland, Hungary, India and the Czech Republic.² Membership in Intersputnik is open to the government of any country.³

¹ WorldCom currently holds FCC authorization to communicate with Intersputnik's Express-3A satellite pursuant to Special Temporary Authority ("STA"), which was originally granted in October 2001 and has subsequently been renewed.

² The remaining Intersputnik member countries include: Afghanistan, Bulgaria, Belarus, Vietnam, Georgia, Yemen, Korea, Kazakhstan, Kyrgyzstan, Cuba, Laos, Mongolia, Nicaragua, Romania, Russia, Syria, Tajikistan, Turkmenistan, and Ukraine.

³ See <http://www.intersputnik.com/company.shtml> (last visited July 17, 2003).

Thirteen Intersputnik member countries are also members of the World Trade Organization ("WTO"), and a number of other members have WTO applications pending.

The Commission's rules and policies clearly require the grant of WorldCom's modification application. Pursuant to the Commission's market entry test for non-U.S. licensed satellite networks, access to the U.S. market by smaller IGOs such as Intersputnik is presumed to be procompetitive.⁴ No evidence exists that would place into question the procompetitive nature of U.S. market access by Intersputnik. Furthermore, compelling public interest factors provide additional support for the grant of WorldCom's application.

The Commission developed market entry requirements for non-U.S. licensed satellite networks such as Intersputnik during the second phase of its Domestic-International Satellite Consolidation ("*DISCO I*") proceeding.⁵ During the pendency of the proceeding, the WTO adopted its Fourth Protocol on Basic Telecommunications Services ("WTO Agreement"). As a result of the adoption of the WTO Agreement, the Commission established a two-tiered market entry framework for non-U.S. licensed satellites.⁶ The two-tier entry framework established a presumption that U.S. market entry by non-U.S. licensed satellite networks based in WTO member countries would promote competition. The framework also considered other factors that would be used by the Commission to determine whether to permit U.S. market access, such as spectrum availability and legal, financial, and technical requirements.

The Commission adopted a more invasive test for non-U.S. satellite networks based in non-WTO member countries. The examination, referred to as the ECO-Sat test, focused on whether the network's home market provided comparable market entry opportunities for U.S. licensed satellite networks. The examination also focused on whether comparable market entry opportunities existed on each of the route markets in question.

Throughout the *DISCO II* proceeding, the Commission deliberated on the question of the appropriate treatment that should be provided to IGOs seeking U.S. market entry. The Commission observed that IGOs, as treaty-based organizations, are not members of the WTO and do not have a legal right to enjoy the market access commitments that were made by the U.S. and other countries.⁷ In its *Further Notice*, the Commission raised a number of questions about the possible application of the ECO-Sat test to Intelsat and Inmarsat. The Commission also repeatedly requested "that commenters address

⁴ See 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, ¶ 128 (1997) ("*DISCO II Order*").

⁵ During the initial phase of the Domestic-International Satellite Consolidation ("*DISCO I*") proceeding, the Commission eliminated its distinction between U.S. licensed satellites providing domestic and international (separate systems) service, permitting all U.S. licensees to potentially provide both types of services. See Amendment to the Commission's Regulatory Policies Governing Domestic Fixed Satellites and Separate International Satellite Systems, 11 FCC Rcd 2429 (1996) ("*DISCO I Order*").

⁶ See *DISCO II Order*, ¶¶ 10-12.

⁷ See *id.*, ¶ 119; 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, Further Notice of Proposed Rulemaking, FCC 97-252, ¶ 32 (July 18, 1997) ("*Further Notice*").

what our policy should be toward intergovernmental satellite organizations other than Intelsat and Inmarsat.”⁸

The Commission concluded at the initial stages of the *DISCO II* proceeding that it would not be in the public interest to apply the ECO-Sat test to IGO provision of *international* services (such as those provided by WorldCom using the Express-3A satellite) in the United States.⁹ The Commission considered several possible approaches for regulating *domestic* market entry by IGOs under its ECO-Sat test, but concluded that each would be impractical. For example, the Commission observed that IGOs have no home market¹⁰ and often serve so many different route markets that an examination of their reciprocal market entry opportunities would be impractical.¹¹

The Commission concluded that it would forego an ECO-Sat analysis for both international and domestic market entry by IGOs and instead perform a broad examination of the overall competitive effect of IGO entry.¹² With respect to Intelsat and Inmarsat, this examination involved a variety of complex factors. The Commission concluded, however, that with respect “to other IGOs, such as Eutelsat or Palapsat, that seek to serve the U.S. market” the Commission would “presume that entry by these entities is procompetitive.”¹³ The Commission observed that smaller IGOs do not have the same global coverage, market power, or breadth of membership as Intelsat and Inmarsat.¹⁴ As a result, any risk to competition in the domestic market could normally be addressed through the imposition of conditions on the authorization.¹⁵

The Commission reaffirmed these conclusions in subsequent decisions. The Commission noted in its *Second Order on Reconsideration* that “we have treated regional IGOs as individual non-U.S.-licensed satellite operators for purposes of considering requests for access to the U.S. market rather than apply the *DISCO II* framework designed for INTELSAT and Inmarsat.”¹⁶ For example, the Commission used its procompetitive presumption in order to permit Eutelsat to serve the U.S. market.¹⁷ In its Eutelsat

⁸ *Further Notice*, ¶ 33; see also 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, Notice of Proposed Rulemaking, 11 FCC Rcd 18178, ¶ 70 (1996) (“*Notice*”).

⁹ See *Notice*, ¶ 70.

¹⁰ See *DISCO II Order*, ¶ 121; *Notice*, ¶ 65.

¹¹ See *DISCO II Order*, ¶ 122.

¹² See *id.*, ¶ 124.

¹³ *Id.*, ¶ 128.

¹⁴ See *id.*

¹⁵ See *id.*

¹⁶ 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, Second Order on Reconsideration, FCC 01-322, ¶ 19 (Nov. 5, 2001) (“*Second Order on Reconsideration*”).

¹⁷ See Applications of BT North America Inc., CBS Broadcasting, Inc., Order, 15 FCC Rcd 15603 (Int’l. Bur., 2000) (authorizing earth stations to communicate with an EUTELSAT satellite) (“*First Eutelsat Order*”); see also European Telecommunication Satellite Organization, Petition for Declaratory Ruling, Order, 15 FCC Rcd 23486 (Int’l Bur., 2000) (adding an EUTELSAT satellite to the Permitted Space Station List).

decision, the Commission observed that since no party had presented evidence rebutting the pro-competitive presumption, Eutelsat's proposed market entry should be reviewed based on (1) spectrum availability; (2) Eutelsat's legal qualifications; (3) its financial qualifications; (4) its technical qualifications; and (5) other public interest factors, such as national security, law enforcement, foreign policy and trade policy.¹⁸

These same considerations should be applied to WorldCom's use of Intersputnik's Express-3A satellite for the provision of international services involving the United States. The Commission should employ a presumption that U.S. market entry by Intersputnik is procompetitive. The Commission should also consider the following factors when assessing WorldCom's application to include the Express-3A satellite as an international point of communication:

Spectrum Availability

Intersputnik has already coordinated its Express-3A satellite through the International Telecommunication Union ("ITU"). In addition, WorldCom's Andover earth station has been coordinated for the satellite arc and frequencies of the Express-3A satellite through Comsearch. Furthermore, WorldCom and Intersputnik have been using satellites with comparable coverage and spectrum use characteristics as Express-3A to provide service to the United States for more than a decade.¹⁹ Thus, spectrum is clearly available to permit Intersputnik's Express-3A satellite to serve the United States through WorldCom's Andover earth station.

Legal Qualifications

Intersputnik is presumably legally qualified to provide satellite service to the United States. WorldCom is unaware of any violations of U.S. laws or Commission rules by Intersputnik. Although foreign governments own Intersputnik, this fact is not relevant as long as Intersputnik does not seek its own authorization to provide common carrier or broadcast services.

Financial Qualifications

The Commission's *DISCO II* decision does not require a showing of financial qualifications for a satellite that is already launched and operating.²⁰ Thus, this factor is irrelevant with respect to WorldCom's request for access to Intersputnik's Express-3A satellite.

¹⁸ See *First Eutelsat Order*, ¶¶ 5-13.

¹⁹ WorldCom was previously authorized by the Commission to route traffic over Intersputnik's Statsionar-11 (Gorizont-26) at an orbital position of 11° West Longitude. On August 22, 2000, Intersputnik shut down the aging Statsionar-11 satellite and replaced it with the Express-3A satellite at the same orbital position.

²⁰ See *DISCO II Order*, ¶¶ 189-191.

Technical Qualifications

The Commission's *DISCO II* decision does not require a showing of technical qualifications for a satellite that is fully coordinated through the ITU.²¹ In light of the fact that Express-3A has been fully coordinated, this factor is also irrelevant to this analysis.

Other Public Interest Factors

The Commission indicated in its *DISCO II Order* that it would consider other public interest factors in deciding whether to permit market entry by a non-U.S. satellite. As WorldCom has indicated in previous filings in this proceeding, significant public interest factors exist that further support the grant of WorldCom's application. As noted above, WorldCom has been carrying traffic via Intersputnik since 1991 (originally as IDB Communications Group).

WorldCom routes highly sensitive traffic via the Express-3A space station, some of which has an impact on national security. WorldCom's customers include key governmental and private entities.²² The Commission recognized the importance of critical government traffic in its *DISCO II Order*, noting the need to consider such factors as "national security, law enforcement, foreign policy and trade policy concerns."²³ Grant of WorldCom's application is critical to its continued provision of these important services without disruption.

Conclusion

The Commission's rules and policies clearly require the grant of WorldCom's application to add Intersputnik's Express-3A satellite as a permanent point of communication for its Andover earth station. Pursuant to the Commission's *DISCO II* market entry analysis, access to the U.S. market by Intersputnik's Express-3A satellite is presumed to be procompetitive. No evidence exists that potentially places into question the procompetitive nature of U.S. market access by Intersputnik. Furthermore, compelling public interest factors provide additional support for the grant of WorldCom's application. Considered together, the Commission should conclude overwhelmingly that grant of WorldCom's application would serve the public interest.

²¹ *See id.*, ¶ 191.

²² Because of the sensitive nature of the traffic and national security implications, WorldCom refrains from listing herein the government entities using this system. WorldCom can supply this information under seal upon request.


²³ *DISCO II Order*, ¶ 15.

Marlene H. Dortch
July 21, 2003
Page 6

SQUIRE, SANDERS & DEMPSEY L.L.P.

Thank you for your attention to this matter. Please let us know if you have any questions.

Sincerely,

/s/ Bruce Olcott  (lmp)
Bruce Olcott
Counsel for WorldCom, Inc.

Cc: Fern Jarmulnek, FCC Satellite Division
Cassandra Thomas, FCC Satellite Division
David Ward, FCC Satellite Division
Julie Kearney, WorldCom, Inc.
Dennis Guard, WorldCom, Inc.