

August 20, 2003

VIA HAND DELIVERY

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

RECEIVED

AUG 20 2003

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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 two-way voice and data Fixed Satellite Service ("FSS") between the United States and Russia, Azerbaijan, and Cuba.¹

Capacity on the Express-3A satellite is provided to WorldCom by the Intersputnik International Organization of Space Communications ("Intersputnik"), an intergovernmental organization ("IGO") the membership of which is open to the government of any country.² The license for the Express-3A satellite, however, was issued by the Russian Federation to the Russian Satellite Communications Company ("RSCC"). Therefore, WorldCom is requesting Commission authority to continue to provide international communications services between the

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

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United States and Russia, Azerbaijan and Cuba using a satellite licensed by the Russian government.

The Commission's rules and policies clearly support the grant of WorldCom's earth station application. Pursuant to the Commission's ECO-Sat test, WorldCom's use of the Express-3A satellite is appropriate because both Russia and Azerbaijan provide effective competitive opportunities for U.S. licensed FSS satellites providing identical services into those countries. In addition, as a WTO member country, access to the Cuban route market by the Express-3A satellite is presumed to be procompetitive pursuant to the Commission's *DISCO II* market entry analysis. No evidence exists that potentially places into question the procompetitive nature of the Cuban telecommunications route. Important public interest factors also support the grant of WorldCom's application. WorldCom is using the Express-3A satellite to provide international communications services for U.S. government and commercial customers, including communications services involving issues of national security. In light of these factors, the Commission should conclude that grant of WorldCom's earth station application would serve the public interest.

The Commission's Market Entry Tests

The Commission developed market entry requirements for non-U.S. licensed satellite networks during the second phase of its Domestic-International Satellite Consolidation ("*DISCO II*") proceeding.³ During the pendency of the proceeding, the World Trade Organization ("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.⁴ 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.⁵

The Commission adopted a separate test for non-U.S. satellite networks based in non-WTO member countries. The examination, referred to as 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.⁶ In determining whether effective competitive opportunities exist,

³ 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*").

⁴ See *DISCO II Order*, ¶¶ 10-12.

⁵ See *id.* ¶ 11.

⁶ See *id.* ¶ 75

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the Commission examines both *de jure* and *de facto* barriers to entry.⁷ The examination also focuses on whether effective competitive opportunities exist on each of the route markets that involve non-WTO member countries.⁸ The Commission concluded, however, that it would not apply its ECO-Sat test to WTO Member route markets served by satellites licensed by non-WTO Member countries.⁹

In addition to the above examinations, the Commission concluded that, in considering applications for market access by non-U.S. licensed satellites, the Commission would 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.¹⁰

The Appropriate Tests in this Case

As noted above, WorldCom is requesting Commission authority to continue to provide international FSS transmissions between the United States and Russia, Azerbaijan and Cuba using a satellite licensed by the Russian Federation. Cuba is a WTO Member country,¹¹ while Russia and Azerbaijan still have Observer Government status before the WTO and are pursuing full WTO Membership through the application process.¹² Accordingly, it is appropriate under the Commission's rules to apply an ECO-Sat analysis to Russia and Azerbaijan, while employing a presumption that market access to the Cuban market will promote competition. No evidence exists in the record potentially questioning the presumption of pro-competitive impact that would result from access to the Cuban route market. Furthermore, as discussed in later sections, important public interest considerations weigh in favor of permitting market access.

Application of ECO-Sat Test to Russia

WorldCom is using the Express-3A satellite to provide international FSS voice and data services on behalf of commercial and non-Russian government entities. Therefore, in applying the Commission's ECO-Sat test to Russia, consideration must be given to whether any *de jure* or *de facto* barriers exist to the use of a U.S.-licensed FSS satellite to provide international voice

⁷ See *id.*, ¶ 75.

⁸ See *id.*, ¶ 82.

⁹ See *id.*

¹⁰ See *id.*, ¶ 15.

¹¹ See http://www.wto.org/english/thewto_e/whatis_e/tif_e/org6_e.htm (last visited August 15, 2003) (indicating that Cuba joined the WTO on April 20, 1995).

¹² See *id.*

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and data services for commercial and non-Russian government customers between the United States and Russia.

No *de jure* barriers exist to the provision of international FSS traffic for commercial and non-Russian government customers by a U.S.-licensed FSS network. Russian law permits the use of non-Russian licensed satellites to provide communication services in Russia "to satisfy the needs of commercial structures and in exclusive cases – the needs of state structures by agreement with the appropriate federal executive authorities."¹³ Non-Russian satellite operators that seek to provide communication services in Russia must secure approval from the State Commission for Radio Frequencies of the Russian Ministry of Communications and Informatization.¹⁴ The State Commission may approve market entry by foreign satellite systems for the provision of *international* communications services for non-governmental purposes without consultation with any other Russian government agency.¹⁵ The only stipulation included in the regulations on market entry by a non-Russian satellite network for the provision of international services is that such systems must have completed international coordination through the International Telecommunication Union ("ITU").¹⁶

Another issue indirectly related to this examination is that Russian law also permits non-Russian entities to provide telecommunications services to end users in Russia. Unlike the United States, Russia issues licenses to "service providers" rather than operators of telecommunications facilities. Thus, an entity providing satellite-delivered international voice and data services in Russia would require a license, rather than the operator of the satellite facility. Pursuant to Article 17 of the Russian Federal Law "On Communications,"

¹³ *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) (unofficial translation by Squire, Sanders & Dempsey L.L.P. ("SS&D"))).

¹⁴ *See id.*

¹⁵ *See id.* In contrast, non-Russian satellites may be used for *domestic* communication services in Russia only when "it is not possible to use similar Russian systems" for such purposes and subject to the approval of the Russian Government based on the recommendation of the State Commission and also based on a report from an interdepartmental commission comprising member representatives of 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. *Id.*

¹⁶ *See 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)) (authorizing the State Commission to approve the use of non-Russian satellites in Russia when those satellites have been coordinated with those of the Russian Federation's administration for communication).

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telecommunications service providers and network operators may be 100% owned and controlled by non-Russian entities.¹⁷

Russia also does not maintain any *de facto* restrictions on the use of U.S.-licensed FSS satellites to provide international voice and data services to Russia. The absence of *de facto* restrictions on foreign market entry can be demonstrated by anecdotal evidence of U.S. and other non-Russian satellite operators that are serving the Russian market.¹⁸ For example, SES Americom is reportedly using portions of its satellite fleet to provide FSS into Russia.¹⁹ In addition, Intelsat is reportedly using its Intelsat 704 satellite to support 1100 VSAT terminals operated by the Central Bank in Russia and is using its Intelsat 604 satellite to support a VSAT network operated by LUKoil, Russia's largest oil company.²⁰ Furthermore, New Skies, which, while not a U.S. satellite operator, is a non-Russian satellite operator, reportedly uses its NSS 7 and NSS 703 satellites to provide services in Russia.²¹

In light of the absence of *de jure* or *de facto* restrictions on the use of U.S.-licensed satellites to provide international FSS into Russia, combined with the compelling public interest factors discussed below, the Commission should grant WorldCom's application to add the Express-3A satellite as a permanent point of the communications for FSS transmissions between the United States and Russia.

Application of ECO-Sat Test to Azerbaijan

Azerbaijan is still in the process of liberalizing its telecommunications industry. Azerbaijan has largely opened its domestic telecommunications market to competition. For example, Azerbaijan has licensed three competing wireless operators, Bakcell-Motorola, Azercell and Azeurotel, which by 2002 had generated wireless penetration levels of 9%, the

¹⁷ See *Federal Law No. 15-FZ "On Communications"*, Article 17 (dated 16 Feb., 1995, as amended). In contrast, Russia enforces a 50% foreign ownership limit on television broadcasting applicable to television programs and broadcasting companies that reach more than 50% of the population. See *id.*, Article 19.1, as amended 4 Aug. 2002.

¹⁸ No public database exists of the countries that are being served by particular satellite operators. Accordingly, WorldCom has relied on trade reports in order to identify examples of non-Russian satellite operators providing services into Russia.

¹⁹ See, e.g., *UK Dog Tracks To Intro Mobile Betting Tablets*, Newsbytes – Post-Newsweek Business Information, Inc. (June 23, 2000) (reporting that U.K.-based on-line betting company, Data Tote, is using a SES Americom satellite to transmit around 20,000 horse and greyhound races from the UK into Russia in order to support betting terminals in "hundreds of bars, restaurants, cafes, railway stations and shops across Russia").

²⁰ See Peter J. Brown, *Russia: Making Plans and Making Progress*, Via Satellite, at 20 (Nov. 1, 2002).

²¹ See *id.* (indicating that New Skies has a "serious presence" in Russia with a number of contracts to provide large amounts of satellite capacity to customers in Russia); see also *Communications Daily* (July 10, 2001) (indicating that New Skies signed a 5-year contract with Russian Telecom provider Ugra-Telecom for Ku-band satellite capacity to be used for data and broadcasting in Siberia).

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highest in the Commonwealth of Independent States. Azerbaijan has also made significant efforts to reduce regulatory restrictions on the provision of telecommunications services. For example, the government recently eliminated licensing requirements for a number of activities in the telecommunications industry, reducing the number of services requiring licenses from 270 to just 30.²² Despite these advances, Azerbaijan's national telecommunications operator, Aztelecom, remains the exclusive provider of fixed long distance and international calls in the country.²³ In 2001, the government announced plans to privatize Aztelecom,²⁴ but the plans are unclear at this time.

Although Azerbaijan remains in a state of transition, the country maintains no *de jure* or *de facto* restrictions on the use of U.S.-licensed satellites to provide international services into the country. Azerbaijan does not maintain any satellite networks of its own. The country is therefore dependent on access to foreign satellites to provide the vast majority of its international voice and data services. Currently, Intelsat, Turksat, Eutelsat and Intersputnik are reportedly providing international FSS traffic to Azerbaijan.²⁵ In addition, Hughes Network Systems, in partnership with Delta Telecom, Ltd., is operating a Hub facility in Baku, Azerbaijan in order to provide VSAT services to the International Bank of Azerbaijan and the State Customs Committee.²⁶

In light of the lack of any *de jure* or *de facto* barriers to the use of U.S. licensed satellites to provide international FSS voice and data services into Azerbaijan, the Commission should permit WorldCom to add the Express-3A satellite as a permanent point of communications for transmissions between the United States and Azerbaijan. Commission approval is further warranted by the additional public interest factors discussed below.

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, such as spectrum availability and legal, financial, and technical qualifications, operating requirements

²² See Presidential Decree, "*Activities Requiring Special Permission (Licenses)*," (dated Sept. 2002).

²³ See E-mail from Bakhtiyar I. Mamedov, BISNIS, U.S. Department of Commerce Representative, U.S. Embassy, Baku, Azerbaijan, to Bruce Olcott, Counsel to WorldCom, Inc. (dated Aug. 8, 2003) (*text available from SS&D*).

²⁴ See Presidential Instructive Order, "*On the Privatization of Certain Enterprises and Facilities of the Ministry of Communications of the Republic of Azerbaijan*" (dated March 29, 2001).

²⁵ See *Global VSAT Forum, Regulatory Database* (available to GVF members at <http://www.gvf.org/Databse/regulatorydb/index.cfm#Space Segment>, last visited Aug. 15, 2003) (*a copy of the relevant section is also maintained by SS&D*).

²⁶ See *Hughes Network Systems in Russia and the Newly Independent States*, Hughes Network Systems (available at http://www.hns.com/default.asp?CurrentPath=pdfs/Russian_Eng_LR.pdf) (last visited Aug. 18, 2003).

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and national security, law enforcement, foreign policy and trade concerns.²⁷ As explained below, these additional factors provide further support for WorldCom's application to add the Express-3A satellite as a permanent point of communications for international services between the United States and Russia, Azerbaijan and Cuba.

Spectrum Availability

The Express-3A satellite has already been fully coordinated through the 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 the RSCC 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.²⁸ Thus, spectrum is clearly available to permit the Express-3A satellite to serve the United States through WorldCom's Andover earth station.

Legal Qualifications

The RSCC 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 the RSCC. Although the RSCC has foreign government ownership, this fact is not relevant as long as the RSCC 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.²⁹ Thus, this factor is irrelevant with respect to WorldCom's request for access to the Express-3A satellite.

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.³⁰ In light of the fact that Express-3A has been fully coordinated, this factor is also irrelevant to this analysis.

²⁷ See *DISCO II Order*, ¶ 15.

²⁸ WorldCom was previously authorized by the Commission to route traffic over the Stasionar-11 (Gorizont-26) at an orbital position of 11° West Longitude. On August 22, 2000, the aging Stasionar-11 satellite was shut down and replaced with the Express-3A satellite at the same orbital position.

²⁹ See *DISCO II Order*, ¶¶ 189-191.

³⁰ See *id.*, ¶ 191.

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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 satellites 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.³¹ 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."³² 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 support the grant of WorldCom's application to add the Express-3A satellite as a permanent point of communication for its Andover earth station for the provision of voice and data services to Russia, Azerbaijan and Cuba. Pursuant to the Commission's *DISCO II* market entry analysis, access to the Cuban route market by the Express-3A satellite is presumed to be procompetitive. No evidence exists that potentially places into question the procompetitive nature of this telecommunications route.

Pursuant to the Commission's ECO-Sat test, the Commission should also approved WorldCom's use of the Express-3A satellite to access the Russian market, along with the Azerbaijan route market. Both Russia and Azerbaijan provide effective competitive opportunities for U.S. licensed FSS satellites seeking to provide international voice and data services to customers in those countries. Neither country maintains *de jure* nor *de facto* restrictions against such market entry by U.S. licensed satellite operators. Accordingly, the Commission should determine that WorldCom's use of the Express-3A satellite to provide international voice and data services to Russia, Azerbaijan and Cuba would be appropriate.

Finally, additional compelling public interest factors support the grant of WorldCom's earth station application. WorldCom is using the Express-3A satellite to provide important communications services for commercial and government customers, including communications

³¹ 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.

³² *DISCO II Order*, ¶ 15.

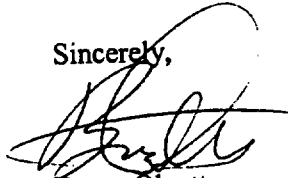
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services involving issues of national security. Considered together, the Commission should conclude overwhelmingly that grant of WorldCom's application would serve the public interest.

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

Sincerely,

A handwritten signature in black ink, appearing to read "Bruce Olcott", written over a horizontal line.

Bruce Olcott
Counsel for WorldCom, Inc.