



October 30, 2002

Mr. Laurence Green  
Radiocommunications Agency  
11B/20C Wyndham House  
189 Marsh Wall  
London E14 9SX

Re: Comments on "Introducing Recognised Spectrum Access,"  
Radiocommunications Agency Consultation Document dated July 2002.

Dear Mr. Green:

We offer these comments on behalf of the Satellite Industry Association (SIA) in response to the Consultation Document published in July 2002 by the UK Radiocommunications Agency (the "Agency") regarding Recognised Spectrum Access (RSA).

The SIA is a U.S.-based, national trade association representing the leading U.S. satellite manufacturers, service providers, and launch service companies. SIA serves as an advocate for the U.S. commercial satellite industry on regulatory and policy issues common to its members. With member service companies providing a broad range of manufactured products and services, SIA represents the unified voice of the U.S. commercial satellite industry. SIA's Executive Members are: The Boeing Company; Globalstar, L.P.; Hughes Electronics Corp.; ICO Global Communications; Intelsat; Lockheed Martin Corp.; Loral Space & Communications Ltd.; Mobile Satellite Ventures; PanAmSat Corporation; SES Americom, Inc.; Teledesic Corporation; and TRW Inc. Inmarsat participates in SIA as a non-voting Associate Member.

While SIA members are concerned about a number of issues raised in the Consultation Document, the SIA recognizes that various individual satellite operators and other satellite trade associations may submit their own responses individually or in concert. Thus, the SIA limits this response to one specific issue: the Agency's discussion of the "International Experience" in paragraphs 5.3 – 5.5 of the Consultation Document. SIA is concerned that those paragraphs appear misplaced in their reliance on certain U.S. regulatory actions as precedent for the Agency's RSA proposal.

The Consultation Document states that "charging for access to spectrum for satellite reception would not be unique to the UK." In support of this conclusion the Document asserts, *inter alia*, that (i) "in 1996, the USA auctioned licenses for direct broadcasting satellite (DBS) services," and that (ii) "the USA [has] introduced spectrum fees for satellite services to [its] territor[y]." The first of these predicates does not acknowledge subsequently-enacted legislation that greatly curtails the ability of the U.S. to auction satellite licenses. And, in any event, this provides no support for the Agency's proposal to charge for the use of satellite downlink frequencies. The second of these predicates is not accurate: the U.S. does not charge for the use of satellite spectrum. We address each of these matters in greater detail below.

## I. U.S. SATELLITE AUCTIONS

In the over thirty years in which the United States has licensed the operation of literally hundreds of commercial satellites, it has assigned only four satellite licenses by auction. And not one of those auctions has occurred in the past five years, or since the 2000 passage of U.S. legislation which greatly curtailed the ability to do so again. Even before that legislation, U.S. law allowed auctions only where two or more applicants were mutually exclusive in their proposed uses. Nothing in the U.S. law that then permitted satellite auctions relieved the U.S. Federal Communications Commission (FCC) of its public interest obligations to apply licensee qualification rules, and employ engineering solutions, negotiations and other means to prevent mutual exclusivity from arising in the first place.<sup>1</sup> Consistent with its long-standing policies to accommodate all qualified satellite applicants to the maximum extent possible, the FCC generally has been able to avoid mutual exclusivity among applicants for satellite licenses through spectrum sharing arrangements, negotiated solutions, and other means.<sup>2</sup>

Notwithstanding these policies, the FCC was twice unable to find a means in the public interest to award satellite licenses to all applicants. In January 1996 the FCC awarded by auction two licenses to construct, launch and operate satellites in the Broadcasting Satellite Service (BSS), which is known in the US as the Direct Broadcast Satellite Service (DBS).<sup>3</sup> Likewise in 1997 the FCC auctioned a pair of licenses to provide satellite-based Digital Audio Radio Services (DARS).<sup>4</sup> The U.S. has never auctioned a license in the Fixed Satellite Service (FSS) or the Mobile Satellite Service (MSS). Thus, satellite auctions in the U.S. have been a rare exception to the FCC's typical satellite licensing practices and policies.

These limited U.S. auctions for satellite licenses differ materially from the Agency's proposal to apply a downlink spectrum fee on those satellite systems that seek to serve the U.K. using a downlink band that reliably will be available in the U.K. over the useful life of a satellite.<sup>5</sup> First, the U.S. used auctions as an assignment mechanism among competing applicants for a U.S.-issued space station license authorizing the construction, launch and

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<sup>1</sup> See 47 U.S.C. §309(j)(6)(E).

<sup>2</sup> See Amendment of Parts 2 and 25 of the Commissions Rules to Permit Operation of NGSO FSS Systems, *Memorandum Opinion and Order and Second Report and Order*, 2002 FCC LEXIS 2634 ¶ 240 (May 23, 2002) ("the Commission must continue to consider alternative procedures that avoid or reduce the likelihood of mutual exclusivity").

<sup>3</sup> See Revision of Rules and Policies for the Direct Broadcast Satellite Service, *Report and Order*, 11 FCC Rcd 9712 (1995).

<sup>4</sup> See Establishment of Rules and Policies for the Digital Audio Radio Satellite Service in the 2310-2360 MHz Frequency Band, *Report and Order, Memorandum Opinion and Order and Further Notice of Proposed Rulemaking*, 12 FCC Rcd 5754 (1997).

<sup>5</sup> The Agency describes RSA as "optional." As a practical matter, however, the failure to obtain RSA could preclude the ability to serve the U.K. in a given downlink band if another user obtained RSA in that band for another, incompatible, use.

operation of a satellite system at a given orbital location. In the few cases where the FCC has auctioned a satellite license, the prospective licensee knew *ex ante* the price of its decision to participate in the licensing process, and could rationally determine whether to go forward with the design, construction and launch of its proposed satellite system. In contrast, the RSA proposal would apparently seek to apply downlink spectrum fees *ex post*, charging those with satellites already in orbit or under construction for the right to provide service within the U.K. In doing so, the U.K. proposal therefore could alter the basis on which existing satellite operators have built their business plans.

Moreover, the BSS and DARS auctions held by the U.S., and the corresponding payment obligations, expressly applied by their terms only to U.S.-licensed satellites. The U.S. has determined not to separately re-license the satellite systems of other Administrations, and instead has provided them the ability to obtain access to the U.S. market through one of a number of means.<sup>6</sup> None of those includes the payment of money in return for the use of spectrum. Indeed, non-U.S.-licensed satellite systems have never been subject to auctions or similar payment schemes for their provision of service within the U.S. To the contrary, the FCC has granted access to the U.S. market, on a non-payment basis, to satellites licensed by the U.K.<sup>7</sup> Were individual nations to begin charging for downlink spectrum access (or if auctions for satellite licenses themselves became generally used), a wild and unwieldy global patchwork of fees would inevitably arise, which inevitably would compromise the efficient and competitive provision of satellite-based communication services around the world.

More importantly, since the BSS and DARS auctions, the U.S. adopted into law the Open-Market Reorganization for the Betterment of International Telecommunications Act (the "ORBIT Act"), which provides that the FCC "shall not have the authority" to assign by auction "orbital locations or spectrum used for the provision of international or global satellite communications services."<sup>8</sup> As the FCC itself has recognized, "the ORBIT Act now prevents the

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<sup>6</sup> 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, 12 FCC Rcd 14220 (1997), *on reconsideration*, 15 FCC Rcd 7207 (1999). These means include: (i) filing an application for earth stations to be located in the U.S., (ii) filing a "Letter of Intent" to operate a non-U.S.-licensed spacecraft to serve the U.S., and (iii) filing a request for a "declaratory ruling" that a non-U.S.-licensed spacecraft may serve the U.S.

<sup>7</sup> See, e.g., ICO Services Limited Letter of Intent to Mobile – Satellite Services in the 2 GHz Band, *Order*, 16 FCC Rcd 13762 (2001); Pacific Century Group Letter of Intent as a Foreign Satellite Operator to Provide Fixed Satellite Services, *Order*, 16 FCC Rcd 14356 (2001); Comsat et al. Application for Authority, *Memorandum Opinion, Order and Authorization*, 16 FCC Rcd 21661 (2001) (authorization for Inmarsat).

<sup>8</sup> 47 U.S.C. § 765f.

[FCC] from assigning licenses for international or global satellite services by competitive bidding.”<sup>9</sup>

It is clear today that BSS and DARS are international services,<sup>10</sup> and the coverage patterns of all other types of satellite systems---such as FSS and MSS---are multi-national as well. Thus, as a practical matter, the ORBIT Act now precludes the further auction of any satellite license by the U.S. In short, while the United States might once have auctioned BSS and DARS licenses, it no longer does so, and it has never auctioned an FSS or an MSS license. In this regard, the licensing regime used by the United States simply does not provide a precedent for the Agency’s proposal to charge for the use of satellite downlink spectrum within the U.K.

## II. U.S. APPLICATION AND REGULATORY FEES

The FCC imposes fees on satellite operators in two limited instances. By statute, the FCC is required to collect application fees and annual regulatory fees. The first is self-explanatory: nearly every applicant before the FCC must pay a fee along with its application, including those who seek a license for a transmit-receive earth station and those who seek authority to launch and operate a space station.<sup>11</sup> These fees apply by their terms only to applicants for U.S. licenses or authorizations. And these one-time fees are intended only to help offset the costs of processing those applications, and therefore cannot reasonably be seen as “spectrum fees” as described in the Consultation Document.

In addition, the FCC imposes annual regulatory fees on nearly all FCC licensees, including U.S.-licensed satellite operators. These regulatory fees are designed to “recover the costs” of regulating.<sup>12</sup> Every year the FCC seeks to recover its ongoing “operating costs” and more particularly the costs associated with the various “regulatory ‘services’ it provides.”<sup>13</sup> These include costs of “enforcement activities, policy and rulemaking activities, user information services,” and the like. The FCC attempts to equitably allocate the costs associated with a particular service among the licensees in that service, and imposes annual regulatory fees accordingly. But again, these are not “spectrum fees.” On the contrary, the FCC has expressly

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<sup>9</sup> See, e.g., Amendment of Parts 2 and 25 of the Commissions Rules to Permit Operation of NGSO FSS Systems Co-Frequency with GSO and Terrestrial Systems, *Memorandum Opinion and Order and Second Report and Order*, FCC 02-116, ET Dkt. No. 98-206, 2002 FCC LEXIS 2634, ¶ 248 (rel. May 23, 2002).

<sup>10</sup> See, e.g., Policy and Rules for the Direct Broadcast Satellite Service, *Report and Order*, FCC 02-110, IB Dkt No 98-21, 2002 FCC LEXIS 2880, ¶ 20 (rel. June 13 2002) (affirming that DBS licensees “could use their satellites to provide both domestic and international service”).

<sup>11</sup> See 47 U.S.C. § 158.

<sup>12</sup> 47 U.S.C. § 159(a).

<sup>13</sup> *Comsat Corp. v. FCC*, 283, F.3d 344 (D.C. Cir. 2002).

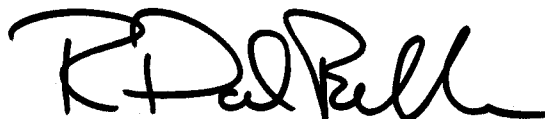
rejected suggestions that it charge satellite operators on a frequency-based formula such as based on the number of transponders used on a satellite.<sup>14</sup>

Like application fees, the FCC's annual regulatory fees apply only to U.S. licensees. There is no fee for the passive receipt of satellite signals within the U.S. from a satellite system licensed by another Administration. Indeed, "there is no regulatory fee for receive-only earth stations," regardless of whether those receive-only stations are registered or otherwise authorized, and regardless whether they communicate with U.S.-licensed or non-US-licensed satellites.<sup>15</sup> Clearly, these fees are based only on the cost of regulating an entity who holds an FCC license, and cannot reasonably be seen as payment or compensation for "spectrum access."

In sum, SIA urges the Agency to reexamine carefully the international experience before it seeks to use that experience to justify the imposition of spectrum user fees. The United States does not auction international satellite licenses or spectrum, nor does it impose spectrum fees on users of satellite spectrum. In fact, the U.S. regime for regulating satellite users provides no precedent for those aspects of the RSA proposal that would charge for access to satellite downlink spectrum in the U.K.

Very truly yours,

SATELLITE INDUSTRY ASSOCIATION



By: \_\_\_\_\_  
Richard DalBello  
President

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<sup>14</sup> *Id.* at 348 (citing Assessment and Collection of Regulatory Fees for Fiscal Year 1995, *Report and Order*, 10 FCC Rcd 13,512 ¶ 111 (1995)).

<sup>15</sup> Assessment and Collection of Regulatory Fees for Fiscal Year 2000, *Report and Order*, 15 FCC Rcd 6533 ¶ 32 (2000).