FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D. C. 20554

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PUBLIC NOTICE -C

July 21, 1966

FCC ISSUES FORMAL OPINION IN MATTER
OF COMSAT "AUTHORIZED USER" SERVICES

The Commission has adopted a Memorandum Opinion and Statement of Policy in its inquiry into legal and policy questions concerning authorization relating to the provision of satellite communications services by ComSat directly to non-carriers. (Docket No. 16058) As stated in an advance announcement (Public Notice of June 23, 1966, FCC 66-563), the Commission has concluded that: (a) ComSat may, as a matter of law, be authorized to provide service directly to non-carrier entities; (b) ComSat is to be primarily a carrier's carrier and in ordinary circumstances users of satellite facilities should be served by the terrestrial carriers; and (c) in unique and exceptional circumstances ComSat may be authorized to provide services directly to non-carrier users, therefore, the authorization to ComSat to provide services directly is dependent upon the nature of the service, i.e., unique or exceptional, rather than the identity of the user. The policy recognizes that the United States Government has a special position, because of its unique or national interest requirements and that ComSat therefore may be authorized to provide service directly to the Government, if such service is required to meet unique governmental needs or if otherwise required in the national interest, in circumstances where the Government's needs cannot be effectively met under the carrier's carrier approach. The Memorandum Opinion also indicated the nature of the procedures to be followed by ComSat seeking authority to provide service to non-carriers.

These conclusions are based upon Commission determinations that the terrestrial carriers cannot under existing law themselves be licensed to operate the international space segment and therefore cannot compete effectively with ComSat in furnishing satellite service to the public. ComSat is not and does not propose to be a full service carrier meeting directly the needs of the vast majority of users of international services for all classes of communication services. If ComSat were to be permitted to provide leased channel services directly to users, other than in unique or exceptional circumstances, the basic purposes of Congress in enacting the Satellite Act -- reflection of the benefits of the new technology in both quality of service and charges therefor -- would be frustrated. A requirement that, except in unique and extraordinary circumstances, users take service from the terrestrial carriers, should not have adverse effects upon either ComSat or the users

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but instead should make it possible to reduce rates for all classes of users.

The Commission also announced that, in furtherance of the aforementioned statutory policy with respect to rates, it expects the common carriers promptly to give further review to their current rate schedules and file revisions which fully reflect the economies made available through the leasing of circuits in the satellite system. Failure of the carriers to do so promptly and effectively, the Commission stated, will require the Commission to take such actions as are appropriate.

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

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In the Matter of	)	
	)	
Authorized entities and authorized users under the Communications Satellite Act of 1962	)	Docket No. 16058

MEMORANDUM OPINION
AND STATEMENT OF POLICY

By the Commission: Commissioner Johnson not participating.

Preliminary Statement

1. During April, May and June, 1965, the Commission received requests from several concerns (including press wire services, a newspaper, a television network, and an airline) for information regarding procedures to be followed in order that such concerns might be authorized to obtain satellite telecommunication services directly from the Communications Satellite Corporation (ComSat). On May 28, 1965, ComSat forwarded to the Commission its initial tariff, offering channels of communication via satellite to communications common carriers only. In an accompanying letter of transmittal, the Corporation stated that in the event that any other entities, foreign or domestic, were to be authorized to obtain channels directly from ComSat, it would expect to supplement its tariff to provide for the offering of such channels.

2. On June 16, 1965, the Commission issued a Notice of Inquiry stating that the foregoing developments presented issues concerning the extent to which, as a matter of law, entities in the United States other than communications common carriers can be authorized, under the Communications Satellite Act of 1962 (Satellite Act), to obtain telecommunication services directly from ComSat; the extent to which, as a matter of policy, such entities should be authorized to obtain services; the nature and scope of such services; the type of entities which may be deemed eligible to obtain the services; the nature and extent of the authorization required; and the policies and procedures which the Commission should establish to govern applications for such authorization.

3. Legal briefs and comments were received on or before November 1, 1965, from Aeronautical Radio, Inc. (ARINC) and the Air Transport Association of America (ATAA), filing jointly; the American Telephone and Telegraph Company (AT&T); the Columbia Broadcasting System, Inc. (CBS); the Communications Satellite Corporation (ComSat); the Administrator of General Services (GSA); the GT&E Service Corporation (GT&E); the Hawaiian Telephone Company (Hawaiian); the International Business Machines Corporation (IBM); the International Educational Broadcasting Corporation (IEBC); ITT World Communications, Inc. (ITT); Merrill Lynch, Pierce, Fenner & Smith, Inc.; the Communications Committee of the National Association of Manufacturers (NAM); United Press International, Inc. (UPI); the United States Independent Telephone Association (USITA); Western Union International, Inc. (WUI); and the Western Union Telegraph Company (WU).

4. In addition to the briefs and comments received from the above listed parties, general comments or statements were received from American Broadcasting Companies, Inc. (ABC); the American Communications Association (ACA); the American Newspaper Publishers Association (ANPA); the American Petroleum Institute (API); the American Trucking Association (ATA); the Associated Press (AP); the Communications Workers of America AFL-CIO (CWA); Dow Jones & Company, Inc.; Eastern Airlines, Inc.; RCA Communications, Inc. (RCAC); and the Washington Post Company (the Post).

5. On or before January 3, 1966, reply comments were received from ARINC and ATAA filing jointly; AT&T; the Association of American Railroads (AAR); ComSat; GSA; Hawaiian; IBM; ITT Worldcom; RCAC; WUI; and WU.

6. An analysis of the briefs, comments and reply comments indicates that the filing parties have focused primarily on the initial question of the Notice of Inquiry, i.e., the extent to which, as a matter of law, entities in the United States other than communications common carriers may be granted access to the facilities and services of ComSat. The second point to which attention was given is the question of policy relating to non-carrier access to the satellite system directly through ComSat. Relatively few parties addressed themselves to the questions of the nature of authorized entities, the nature and scope of authorized services, and the policies and procedures to be adopted by the Commission for handling and disposing of applications for authorization of direct access to the satellite system.

7. We shall discuss first the basic legal questions raised and then the policy issues. However, the two are interrelated and aspects of policy are necessarily developed in the ensuing discussion of the legal issues.

Basic Legal Issues

8. The critical question is the extent to which the Satellite Act contemplates, permits or requires that ComSat be authorized to provide service directly to entities other than carriers. In general, respondents to our Notice took one of the following positions:

(a) The terrestrial carriers allege that the Satellite Act does not contemplate or permit ComSat to be authorized to provide service to any non-carrier entity, with the possible exception of the Government;

(b) The non-carrier entities allege that the Act contemplates that ComSat should be permitted to provide service to them and that the Commission should issue authorizations upon appropriate findings that the particular service sought would be in the public interest;

(c) The Administrator of General Services (GSA) alleges that ComSat is authorized by the Satellite Act to provide service directly to the Government without restriction or limitation whenever the Government desires to take such service;

(d) ComSat alleges that it should provide service to non-carriers when (i) the carriers fail to provide a requested service via satellite although capacity is available; (ii) there is a need for development of technology or provision of new satellite services and then only during the early developmental stage; and (iii) in which and any other case there is a finding that the public interest would be served by the authorization. ComSat also took the position that it is authorized by the Satellite Act to provide service directly to the Government in any instance when the Government requests service.

9. We note that the term "authorized users" appears twice in the Satellite Act. The first time is in the section setting forth the policy and purpose of the Act where, among other things, it is declared that "It is the intent of Congress that all authorized users shall have nondiscriminatory access to the system ..." (Section 102(c)). The second time is among the powers and purposes of ComSat when it is stated that ComSat is authorized "to contract with authorized users, including the United States Government, for the services of the communications satellite system ..." (Section 305(b)(4)). Reference is also made to another term "authorized entities" in Section 305(a)(2), which states that ComSat may "furnish, for hire, channels of communication to United States communications common carriers and to other authorized entities, foreign and domestic..." Neither the term "authorized user" nor "authorized entity" is defined in the Satellite Act, nor is the use of the different terms, "channels of communications" in 305(a)(2) and"service of the communications satellite system" in Section 305 (b)(4), explained in the Act or the legislative history. In addition to those terms the Satellite Act makes reference to "authorized carriers," particularly in Section 201(c)(2) and (c)(7). This term is defined in Section 103(7) as part of the definition of "communications common carrier". 1/

1/ Communications Satellite Act of 1962, Section 103(7):

> As used in this Act, and unless the context otherwise requires -- the term "communications common carrier" has the same meaning as the term 'common carrier' has when used in the Communications Act of 1934, as amended, and in addition includes, but only for purposes of Sections 303 and 304, any individual, partnership, association, joint-stock company, trust, corporation, or other entity which owns or controls, directly or indirectly, or is under direct or indirect common control with any such carrier; and the term 'authorized carrier', except as otherwise provided for purposes of section 304 by section 304(b)(1), means a communications common carrier which has been authorized by the Federal Communications Commission under the Communications Act of 1934, as amended, to provide services by means of communications satellites.

The Contention That "Users" and "Entities" Are "Carriers".

10. AT&T contends that because there are different possible categories of "carriers" it was necessary "to recognize in the language of Section 305 that ComSat could deal with foreign entities authorized by the Commission to act as carriers here in the United States." (AT&T brief, Nov. 1, 1965, p. 13). AT&T also claims "it must be recognized that there are United States telecommunications entities which operate offices abroad, such as RCA Communications, Inc. and Globe Wireless, Ltd." (Ibid.) It is not explained why both classes of entities are not reasonably to be considered as included in the term "carriers", but AT&T concludes that because of the non-domestic status of these "carriers" they had to be referred to as "entities" or "users" in the Act. This contention completely ignores the language of Section 305(a)(2) and (b)(4) and the broad language of Section 102(c).

11. In particular, Section 305(a)(2) refers to "United States communications common carriers and to other authorized entities, foreign and domestic." In Section 305(b)(4) the Act provides that ComSat is authorized "to contract with authorized users, including the United States Government. .." In these provisions it is clear that Congress contemplated that ComSat could be authorized to provide service directly to entities other than common carriers. We note that that finding is further supported by the declaration in Section 102(c) that, "It is the intent of Congress that all authorized users shall have nondiscriminatory access to the system ...." Since "authorized users" may include the United States Government, a non-carrier (Section 305(b)(4)), and since under the Act ComSat may be authorized to furnish channels for hire to carriers and "other authorized entities, foreign and domestic", the terms "authorized users" and "authorized entities" must include more than only "communications common carriers." We therefore reject the contention that the terms "carriers", "entities" and "users", as used in the Satellite Act, are synonymous, and must be read as synonymous.

12. ITT Worldcom contends that in view of the necessity for any "authorized user" to utilize earth terminal station facilities for access to the satellite system, and in view of the specific language of the Act, particularly Section 201(c)(7), limiting authorized construction and operation of satellite earth terminal stations to ComSat and "authorized carriers":

> "the term 'authorized users' in Section 305(b)(4) can thus include only those authorized to use the satellite system to create telecommunications channels pursuant to authority to operate a satellite terminal. No one else: neither television networks, news wire services, nor other users of leased channels are or can be within the scope of the term." (Brief, October 29, 1965, pp. 7-8)

ITT is confusing authorized operation with access. Authority to operate satellite terminal stations is limited as ITT alleges. However, Congress differentiated between the two matters by its statement in Section 102(c) that: "... it is the intent of Congress that all authorized users shall have nondiscriminatory access to the system" (emphasis supplied). In view of this statement of intent and in the absence of any provision excluding any entity not an operator from access to the system, we reject ITT's contention that to be a user of the system one must be eligible to construct and operate a satellite terminal facility.

The Contention That the Commission is Empowered Only To Authorize Carrier Access to the Satellite System.

13. AT&T, RCAC and others point out that, as a matter of law, the Commission may exercise only those powers expressly delegated to it by Congress. All concur that the Satellite Act empowers the Commission to authorize "carriers" to use and have access to the facilities of the satellite system. However, RCAC, after citing selected provisions of Section 201(c), contends that "these are the only provisions of the Satellite Act which grant the Commission the power to authorize use of the satellite system and, as is evident, they are limited to carriers." (Statement of RCAC, November 1, 1965, p. 4).

14. We agree that the provisions of Section 201(c) of the Satellite Act delegate to the Commission positive power to assure equitable and nondiscriminatory access to the satellite system by communications common carriers. We believe, however, that this provision was inserted because of the fact that ComSat was to serve primarily as a carrier's carrier. Heretofore, under the Communications Act of 1934, as amended, the rendering of service by a carrier to a carrier has not been considered a common carrier function subject to regulation in the same way as service to the public. Instead, such control as the Commission found essential has been exercised by the imposition of conditions in instruments of authorization. Congress was

fully aware of this situation and made both general and specific provisions to assure that the Commission had ample direct legislative authority to deal with the matter. In Section 401 of the Satellite Act it made the services rendered by one carrier to another a regulated service, and in Section 201(c)(2) specifically spelled out how this requirement was to be implemented in the case of access to earth terminals.

15. A similar situation does not obtain with respect to any possible service ComSat may be authorized to provide to non-carrier entities. The Satellite Act provides specifically (Section 401) that ComSat is deemed a common carrier within the definition of that term in the Communications Act and is fully subject to the provisions of Titles II and III of the Communications Act not inconsistent with the Satellite Act. Thus, any non-carrier entity whom ComSat might be authorized to serve is already guaranteed just and reasonable charges by Section 201(b) of the Communications Act and protected against unjust or unreasonable discrimination in charges, practices, classification, regulations, facilities or services by Section 202 of that Act. These provisions are further implemented by detailed requirements for tariff filing and powers given the Commission to prescribe charges and practices. Under these circumstances no additional provisions were necessary to protect the rights of non-carrier entities. The carriers would have us read Section 201(c)(2) of the Satellite Act as a directive to exclude all non-carrier entities from access to the system. The above discussion makes it clear that the carriers are attempting to convert a shield included by Congress to protect them against possible improper acts into a sword to strike down others who might seek to be given such access under other provisions of law. This is not what Congress meant by this provision. The Satellite Act must be read as a whole and administered to give effect to its general purposes. We therefore reject this contention of the carriers.

The Contention That the Commission Is Without Guidelines Or Criteria To Authorize Non-Carrier Access.

16. The carriers contend that the Satellite Act contains no standards pursuant to which the Commission might authorize access to the system by any entity other than a communications common carrier. The Satellite Act and the expressly incorporated Communications Act provide for necessary determinations of this kind by the Commission. The Communications Act directs that the Commission, acting in accordance with the standard of public convenience, interest, or necessity, grant radio licenses (Section 307(a)); "prescribe the nature of the service to be rendered by each class of licensed stations and each station within any class" (Section 303(b)); study new uses for radio and generally encourage the larger and more effective use of radio in the public interest (Section 303(g)); and make such rules and regulations and prescribe such restrictions and conditions, not inconsistent with law, as may be necessary to carry out the provisions of the Act. (Section 303(r)).[2] Complementing these provisions, which are expressly incorporated into the Satellite Act (Section 401 of that Act), the Satellite Act itself contains the declaration that "It is the intent of Congress that all authorized users shall have nondiscriminatory access to the system; . . . [and] that the Corporation created under this Act be so organized and operated as to maintain and strengthen competition in the provision of communications services to the public. . ."(Section 102(c)). To implement this intent, the Commission is directed to "make rules and regulations to carry out the provisions of this Act." (Satellite Act, Section 201(c)(11)).

17. Congress thus specified the necessary broad standards or guidelines to be followed by the Commission in making requisite judgments. NBC v. U.S., 319 U.S. 190 (1943). It did not establish rigid or detailed criteria for regulation of new and dynamic techniques of communication. See Philadelphia Television Broadcasting Co. v. FCC, _____U.S. App. D.C. _____, 359 F.2d 282, decided March 28, 1966. Rather, Congress left to the informed discretion of the Commission the establishment of the methods, procedures, and particular criteria for authorization of provision of services by communications common carriers to other carriers and the general public. The Commission is to make its judgment based upon an evaluation of the often changing situation and the Congressional concern with the public interest in (1) encouraging wider and more effective use of radio techniques; (2) assuring that competition is maintained and strengthened in the provision of communication services to the public; (3) assuring that

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[2] Further, Section 201(b) provides that communications by wire or radio subject to this Act may be classified into such ". . . classes as the Commission may decide to be just and reasonable. . .".

access to the satellite system shall be available to all authorized users on a nondiscriminatory and equitable basis; and (4) assuring that the benefits of new technology shall be reflected in service made available to the public through both improvements in the quality of service and the realization of all possible economies. The standards established by the Communications Act for authorizing carriers to provide service to the public are applicable to satellite services as well as to other telecommunication services. The contention that the Commission cannot authorize ComSat to provide non-carrier users direct access to the satellite system because there are no guidelines or standards for such authorization is, therefore, without merit.

The Contention that the Legislative History Of the Act Indicates Congressional Intent to Limit Access Exclusively to Carriers.

18. We think that the Act clearly empowers the Commission to authorize ComSat to provide service to entities other than carriers. The legislative history of the Satellite Act further supports this conclusion. ComSat was intended by Congress to serve primarily as a carrier's carrier, that is, ComSat is to use its licensed facilities primarily to provide satellite capacity to other carriers which in turn will utilize such capacity, together with all of their other facilities (e.g., cable, HF radio, scatter systems), to furnish service to the using public. But the legislative history of the Act indicates Congressional intent that entities other than communications common carriers could be authorized direct access to the satellite system under appropriate circumstances. In a speech made on the floor of the Senate immediately prior to Senate passage of the Satellite Act (108 Cong. Rec. 16920), Senator John O. Pastore explained that ". . . the satellite corporation under H.R. 11040 will serve mainly the carriers" (emphasis added). Significantly, he did not say that ComSat would serve exclusively as a carrier's carrier.

19. On February 7, 1962, President Kennedy submitted a proposal to the Congress calling for establishment of a privately owned communications satellite corporation in which carriers were to have a share of ownership. The President's letter of transmittal states that the administration's proposed bill sets forth "purposes and powers of the new corporation (which) would include furnishing for hire channels of communication to authorized users, including the U.S. Government." In the course of subsequent hearings, testimony was heard from all Government agencies concerned with the legislation, several Senators, communications common carriers, and other interested persons. The comprehensive and detailed Committee Report on the bill, delivered by Senator Pastore from the Senate Committee on Commerce on June 11, 1962, states:

> It will be the purpose of the Corporation to plan, initiate, construct, own, manage and operate, in conjunction with foreign governments and business entities, a commercial communications satellite system, including satellite terminal stations when

> licensed therefor by the Federal Communications Commission. It will also be its purpose to furnish for hire channels of communication to United States communications common carriers who, in turn, will use such channels in furnishing their common carrier communications services to the public. Provision is also made whereby the corporation may furnish such channels for hire to other authorized entities, foreign and domestic. (pp. 10-11) (Emphasis added).

Thus, both the President's message transmitting the bill to Congress, and the Report of the Senate Commerce Committee recognized that the Corporation could be authorized to render telecommunication services to entities other than communications common carriers. We conclude that it was the intent of Congress that the Commission could authorize ComSat to afford access to the satellite system by non-carrier entities upon a proper finding that such access would serve the public interest and comport with the purposes and policies of the Satellite Act.

Authorization of Non-Carriers to Deal With ComSat Must Be Regulated by the Commission and Be On A Specified Basis.

20. ComSat can thus be authorized to serve non-carriers directly. But it does not follow, as some of the non-carriers appear to contend, that such authorization is to be left unregulated -- that ComSat and the non-carriers are free to contract as they wish. Were that the case, ComSat could readily become, to a very substantial extent, a common carrier dealing directly with the public. But as stated (par. 18), and indeed acknowledged by all parties, ComSat was and is to serve primarily as a common carrier's common carrier. 3/ Further, under unrestricted dealings between ComSat and non-carriers, large users might tend to contract directly with ComSat, while members of the general public are left to deal with the carriers. In such circumstances, it would be clearly impossible for the Commission to carry out its responsibility under Section 201(c)(5) to ". . .insure that any economies made possible by a communications satellite system are appropriately reflected in rates for public communication service." We also note here our responsibility under the Communications Act to conduct our regulatory activities in such fashion,

> ". . .as to make available, so far as possible, to all the people of the United States a rapid, efficient, Nation-wide, and world-wide wire and radio communication service with adequate facilities at reasonable charges. . ."

3/ Senate Committee on Commerce, Report No. 1584, June 11, 1962, pp. 18, 28-29; see also remarks by Senator Pastore on the floor of the Senate, 108 Cong. Rec. 16920.

There is another basic tenet of the Satellite Act which would be violated by unrestricted dealings between ComSat and non-carriers. At least insofar as international common carrier communications services are concerned, ComSat is given a virtual statutory monopoly position with respect to the operation of the space segment of the commercial communications satellite system. See Sections 102(d) and 305(a)(1) of the Act. The Commission is not given authority to license any other United States carrier to operate the space segment of a satellite system to provide international communication service; instead, such carriers must procure the space segment facilities from ComSat. Clearly, if there were to be unrestricted dealings of ComSat with the public, it would mean that ComSat would be using its monopoly position to the detriment of the other carriers and, indeed, to deprive them of the opportunity to serve segments of the public under fair and equitable conditions.

21. Direct access by non-carriers to the satellite system must therefore be regulated in such manner as to insure consistency with the Acts' purposes and with ComSat's primary role as a common carrier's common carrier. There is no question but that such regulation is a function which the Commission must discharge. This follows from the provisions of the Communications Act and the Satellite Act cited in par. 16. Just as the Commission is to authorize the communications common carrier, so also it is the agency to specify the "other authorized" domestic entities referred to in Section 305(a)(2) (and see 305(b)(4)); indeed, the user must be "authorized" and no one can seriously argue, in light of the statutory scheme, that such authorization can stem from other than this agency. 4 / For, under Section 401 of the Satellite Act, ComSat is designated as a communications common carrier subject to the provisions of Titles II and III of the Communications Act. In the process of issuing authorizations to ComSat as a common carrier and reviewing its tariffs, the Commission is required, under the public interest standard, to take into account and specify the conditions under which ComSat can depart from its primary role as a common carrier's carrier and provide service directly to the public. 5/ Further, it is the Commission's

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4 / Significantly, the "authorized user" provision in Section 305 is in the section setting forth "the purposes and powers of the corporation"; the corporation, in turn, is subject to the regulation of the Commission ("the FCC shall be responsible for the regulation of the corporation", Sen. Rept. 1584, 87th Cong., 2d Sess., p. 12).

5 / There is nothing unusual about the concept of a special purpose carrier. The Commission has, since its inception, licensed Press Wireless, Inc., except in unique circumstances, to handle only press traffic. The contention of ARINC and ATAA that "there would appear to be no need for the Commission additionally to undertake the unprecedented action of regulating users of ComSat" (Comments of ARINC and ATAA, November 1, 1965 p. 12), is thus based upon a misconception of the Commission's role.

responsibility to issue regulations or policy statements to insure that authorized users have nondiscriminatory access to the system. See Sections 102(c); 201(c) (11) of the Satellite Act. Finally, we note here that the intent of Congress was stated by then Deputy Attorney General Katzenbach in response to questions from Senator Kefauver regarding use of the services of ComSat for various purposes, including weather reporting:

> "You have to have an agency [the Federal Communications Commission] which is going to control these users, which is going to act in the governmental interest . . ."6/

The Government's Position As Authorized User - GSA's Contentions.

22. We turn now to consideration of the Government's position as an authorized user. There is no question but that the Government is to be included in the category of "authorized user". See Section 305 (b) (4). We disagree, however, with GSA's assertion that ComSat may provide direct satellite communications service to the Government, without any limitation or restriction. Rather, the Satellite Act makes clear that ComSat's direct dealings with the Government must be of such a nature as to be consistent with the Act's purposes and objectives. Thus, ComSat is authorized in Section 305 to furnish channels of communication " . . . to other authorized entities . . ." ((a) (2)) and "to contract with authorized users, including the United States Government . . .", in "order to achieve the objectives and to carry out the purposes of the Act" (emphasis supplied). These provisions must therefore be read in terms of the objectives and purposes of the Act. Section 102 (c) sets forth the following pertinent purposes:

> " . . . It is the intent of Congress that all authorized users shall have nondiscriminatory access to the system; that . . . the corporation created under this Act be so . . . operated as to maintain and strengthen competition in the provision of communications services to the public . . ."

6/ Hearings before the Subcommittee on Antitrust and Monopoly of the Senate Committee on the Judiciary, 87th Cong., 2d Sess., pp. 55-56 (1962).

23. Some further brief comment upon the last listed statutory purpose is appropriate. Were ComSat to be operated as GSA urges -- unrestricted direct dealings with the Government -- the result, as we develop with specific figures (see par.), would not be to maintain or strengthen competition in the provision of communications services to the public. Rather, it would seriously weaken the competitive forces. Section 201 (a) (6) lends added support to the Congressional intent to maintain or strengthen competition in the provision of communications services to the public. The main thrust of that section is to insure that satellite facilities provided by ComSat will be utilized for general governmental purposes except where a separate system is required in the national interest. See Senate Report No. 1319, 87th Cong. 2d Sess., p. 4; 7/ Senate Report No. 1584, 87th Cong., 2d Sess., p. 15.

24. The foregoing considerations are thus consistent with the general concept pervading the Satellite Act of ComSat as a monopoly (insofar as the space segment of international communications is concerned) and as primarily a carrier's carrier, created to provide at least the space segment of international communications as part of an improved global communications network consisting of all means of providing such communications services, so that lower rates should be possible to all the using public. There is, we believe, every indication in the statute that the nature and extent of direct dealings between ComSat and GSA or any other government agency, in its role as a user, must be considered in the light of the effect of such dealings upon the statutory scheme, the rights of the other carriers in the face of ComSat's monopoly, the total global network of services, which includes cables, HF radio and other media as well as satellite facilities, and the quality of services or charges to the general using public.

7/ The Committee, which originated the provision essentially in the form in which it now stands, described the provision in the following terms: that the President is to ["t]ake necessary steps to insure utilization of the commercial system for general governmental purposes whenever there is no requirement for a separate communications system to meet unique governmental needs". Senate Report No. 1319, p. 4.

25. This does not mean that the Government does not have a special status under the Satellite Act. As shown by the provision in Section 305 (b) (4), it clearly does. We believe that the explicit specification of the Government as an authorized user stemmed from Congressional recognition of the special or unique nature of the communications needs that may arise in the Government's case, precisely because of the special or unique functions of the Government. We believe that the standard for direct dealings between ComSat and the Government is thus embodied in the Act in the sections dealing with the somewhat related question of a separate Government system -- namely, if such dealing "is required to meet unique governmental needs, or is otherwise required in the national interest" (Section 201(a) (6); Section 102 (d)). Clearly, if resort can be had to a separate governmental system in order to meet unique Government needs or if otherwise required in the national interest, a fortiori, such circumstances warrant departure from the carrier's carrier approach if that approach would not effectively meet the Government's unique needs or the national interest. In short, we stress our full recognition that in the Government's case, unique or national interest circumstances can and do arise where the needs of the Government cannot be effectively met under the carrier's carrier approach. The authorization to ComSat to meet the needs of NASA's Apollo project through a specially designed system is a current example of such unique circumstances. See also Bendix Aviation Corp. v. United States, 106 U.S. App. D.C. 304, 272 F 2d 533, cert. den., 361 U.S. 965. We emphasize that in all cases where such national interest circumstances exist, we shall act promptly to authorize ComSat to provide service directly to the Government at just and reasonable rates.

Basic Policy Issues

26. In reaching our basic policy determinations we are aware that in this instance we are not confronted by a normal competitive situation, namely, one where one entity through its initiative, ability or inventiveness produces a cheaper or better means of providing service and thus captures a market. Instead, we have a situation where there is an artifical restraint upon the terrestrial carriers. They cannot ordinarily be licensed to provide the essential space segment of the international satellite circuits and thus compete with ComSat on equal terms, but must rely on ComSat which was created to provide these facilities to them. Sound policy indicates that, absent a statutory requirement to the contrary, that they should not be required to depend solely on ComSat for satellite circuits while ComSat is simultaneously allowed to siphon the most profitable part of the business from them. Neither ComSat nor anyone else proposes that ComSat meet the needs of all users, i.e. message, TELEX, and all other switched services. Thus, this is not a situation where a proposed competitor would meet all or even a major portion of the essential public needs should it supplant the other carriers.

27. No lengthy discussion of the policy considerations is needed since we have already covered a number of these considerations in the foregoing treatment of Sections such as 102(c) and 201(c)(5) of the Satellite Act. In light of those considerations and the Act's basic concept of Comsat as primarily a carrier's carrier, we believe that it would be in derogation of the policy of the Act to permit Comsat to compete with the conventional carriers in furnishing to users those communication services and channels which customarily and conventionally are or can be furnished by such carriers within the framework of their general tariff offerings. In other words, Comsat would be authorized to deal directly with the users in only those instances where the requirement for satellite service is of such an exceptional or unique nature that the service must be tailored to the peculiar needs of the customer and therefore cannot be provided within the terms and conditions of a general public tariff offering. In this connection, a current example is the satellite service which Comsat has been authorized to furnish to NASA for support of the Apollo program. Of course, Comsat should also be permitted to furnish a satellite service or channel to a user in any case where the conventional carriers fail or refuse to meet reasonable demand therefor, although they are or would be otherwise capable of doing so in accordance with general tariff offerings.

28. The wisdom of this policy is evident from the serious adverse consequences that would result if Comsat were permitted without limitation to furnish service in competition with their principal customers for satellite services and channels - the conventional carriers. In this connection, we have reviewed the nature of the proposals before us from entities which seek to be "authorized users" and take service directly from ComSat. It is clear from the filings herein that the services sought are primarily leased channel services, i.e. service which customarily and conventionally are provided by common carriers within the framework of their general tariff offerings. ComSat does not

propose to, nor does anyone seek to have ComSat, provide message telegraph, message telephone, or any other exchange type of service. Yet these exchange-type services provide the bulk of the international or transoceanic services offered the public. In 1965 there were 24.2 million overseas telegrams which originated in, terminated in, or transited the United States. In the same year there were 7.9 million telephone calls between the United States and foreign or overseas points or transiting the United States between foreign points. Insofar as TELEX is concerned, in 1965 there were 3.9 million messages originating in, terminating in or transiting the United States.9/ On the other hand, in 1965 there were a total of about 200 voice-grade circuits (179 to U.S. Government agencies) and 400 telegraph-grade circuits (68 to U.S. Government agencies) leased between the United States and overseas points. Essentially, therefore, only a very small part of the using public using international communications facilities had sufficient traffic to justify or require leased circuit facilities.

29. When we turn to the revenue side of the picture, we find that revenues from leased circuits provide an important, if not indispensable, part of the carriers' total receipts. Thus, in 1965 all overseas carriers, voice and record, other than ComSat, reported that leased circuits provided about 16 per cent of total overseas revenues or some $34,900,000 ($25,300,000 from leases to U.S. Government agencies) out of a total of $22,700,000. The importance of revenues from leased circuit traffic becomes manifest when such revenues are compared with the international record carriers' net operating revenues before federal income taxes. Reports to the Commission show that in 1965 these carriers, as a whole, had net operating revenues, before federal income taxes, of about $20,300,000. Their revenues from leased circuit services for the same year were $20,200,000 ($11,083,000 from leases to U.S. Government agencies). Because of the relatively low non-fixed or variable costs associated with this service, the loss of such business could come close to wiping out completely the record carriers' earnings, unless the facilities could be immediately used for other services and produce substantial revenues, which appears unlikely.

30. Separate figures regarding net revenues or earnings of telephone carriers from overseas communication services are not readily available. However, data filed with the Commission indicate that total revenues for such services in 1965 were about $116 million. Leased circuit services provided about $14.7 million or 12.7 percent of these revenues. In the case of Hawaiian Telephone Company, the ratio of its leased circuit to total revenues is much greater, accounting for about one-third of its total gross overseas revenues.

9/ All figures exclude U.S.-Canada and U.S.-Mexico traffic.

31. The danger of the loss by the terrestrial carriers of existing or additional leased circuit business to satellite facilities is not merely theoretical.10/ A recent complaint filed by ITT World Com, and a press release issued by Comsat in response thereto, indicate that ComSat would propose to charge both authorized users and carriers approximately the same amount for leased circuits and that the amount is substantially below current or recently proposed charges for leased cable circuits. Accordingly, the terrestrial carriers could reasonably be expected to lose a substantial share of their leased circuit revenues to ComSat. Under these conditions and in light of the data set forth above, it could very well be necessary to permit these carriers to increase rates charged other users in order to enable them to earn a fair return. Certainly such detriment to the vast majority of users for the apparent benefit of a few large users would be in derogation of the objectives of the Act.11/ The fact is that the Satellite Act requires the opposite result, namely, that the benefits of these lower rates be made available to all users.

10/ The situation here is not unlike that facing the international telegraph carriers when AT&T laid its trans-Atlantic high capacity cables which made voice-grade leased circuits feasible. During 1960 the government cancelled leases for circuits to Europe with Commercial Cable and Western Union's cable system resulting in a loss of revenues in that year of about $0.5 million for each of the carriers as compared with 1959. The full annual effect of these cancellations was much greater. They could not compete effectively with AT&T because the latter proposed to lease voice-grade circuits to them at the same price as it leased these circuits to the ultimate users. The problems raised by this development were finally resolved in our TAT IV decision, American Telephone and Telegraph Company, 37 FCC 1151 (1964), wherein we required that the necessary cable facilities be owned jointly and excluded AT&T from all participation in future international voice-data leased business. This was done because of the effects that provision of such service could have on the ability of the international record carriers to provide efficient and economical record services to the public as well as the fact that the carriers could not be expected to obtain a meaningful share of the business in competition with AT&T.

11/ We say "apparent benefit" because we will show hereinafter that even most large scale users would probably suffer no economic detriment by a requirement that they take service from the carriers rather than directly from ComSat.

32. In light of GSA's contentions, we believe it appropriate to consider the revenue effects of ComSat providing service on an unlimited basis to the Government. We have analyzed above the potential effect of a loss of leased circuit revenues upon the terrestrial carriers. The Government as a user provided over 70% of total leased circuit revenues. In the case of voice-grade circuits which provide the bulk of such revenues, the Government is an even more important factor as it accounted for 90% of the total number of circuits leased by all users. The importance of revenues from Government leases to the international telegraph carriers and to the Hawaiian Telephone Company is shown by the table below:

Year 1965
(Thousands of dollars)

Carrier	Total Revenues	Net Revenues Before F.I.T.	Total Leased Circuit Revenues	U.S. Gov't Leased Circuit Revenues a/
ITT World Com	$29,808	$ 4,546	$ 5,952	$ 3,200
RCAC	51,054	11,512	11,438	6,433
WUI	18,124	2,543	1,924	1,407
Hawaiian b/	14,280	N.A.	4,741	4,606

N.A. - Not available.
a/ Partly estimated.
b/ Data are for overseas services only.

For each carrier, revenues from services to the Government are essential to a fair rate of return and provide a sizeable part of its total profit margin. Thus the loss of a substantial proportion of government leased circuit revenues could have serious adverse effect upon the carriers. Instead of being able to reduce rates to reflect the lower costs of satellite circuits, they would probably have to seek substantial rate increases.

33. It might be argued that in our discussion thus far we have ignored the interests of ComSat in our concern about the potential effects of direct service by ComSat to "authorized users." This is not so. It will be recalled that ComSat has a virtual monopoly in the provision of at least the space segment for international common carrier service. Thus, to the extent that any United States user desires to lease satellite circuits or to the extent that ComSat, by selling activities, induces users to demand such circuits, the carriers must come to ComSat for at least the space segment of the facilities. Since, as noted above, ComSat's proposed charges to the carriers and other users would be substantially the same, it should realize substantially the same revenues whether the carriers or others lease the circuits from it.

34. We now address ourselves to the question of the effect upon prospective users of any refusal to permit ComSat to lease circuits directly

to them. It appears to us that in general these users would also benefit from such a policy. We are mindful of the injunction in Section 204(c) of the Satellite Act that the Commission shall:

> "insure that any economies made possible by a communications satellite system are appropriately reflected in rates for public communication services;"

Satellite circuits now becoming available should enable the carriers to secure facilities at lower costs in relation to terrestrial facilities and thereby permit them to reduce rates to reflect such cost reductions. We therefore expect the common carriers promptly to give further review to their current rate schedules and file revisions which fully reflect the economies made available through the leasing of circuits in the satellite system. Failure of the carriers to do so promptly and effectively will require the Commission to take such actions as are appropriate. Even though satellite circuits are not now and will not for some time be available to all points to which users presently lease circuits from terrestrial carriers, implementation of this policy by the carriers should also reduce charges to many points to which satellite circuits are not now available. Furthermore, major users, require redundancy and diversity in their facilities and thus would normally be expected to use a combination of terrestrial and satellite facilities to the same points to provide such redundancy. These users may very well find that the average charge per circuit will be less if the terrestrial carriers supply all their needs than if ComSat were to be permitted to lease satellite circuits to them at lower rates, while the other carriers meet their needs for diversity and redundancy at rates reflecting the higher cable costs associated with conventional facilities such as cable and high frequency radio.

35. Aside from the foregoing considerations we note that entities which have sufficient traffic to require the lease of circuits are also large users of other international services such as message telephone, message telegraph and TELEX. To the extent that loss of leased circuit revenues might require upward adjustments or prevent contemplated reductions in rates for other services, such large users could very well find their total international communications bills increased if ComSat were to be permitted to provide leased service directly to them without limitation.

36. We therefore conclude that only in unique or exceptional circumstances should non-carrier entities deal directly with ComSat. We believe that the ascertainment of such circumstances must be left to a case-by-case approach, since it is dependent upon the nature of the particular service requested. We can state, however, that refusal or failure of the terrestrial carriers to provide, upon reasonable demand, satellite leased circuit facilities, otherwise available, would, in absence of a valid explanation, constitute exceptional circumstances. Similarly, we believe it our duty to encourage development of new uses of satellite facilities and will, upon application, issue authorizations which are best designed to further such ends. Finally, as already set forth more fully in paragraph 26, we again stress the special position of the Government, and specifically, that in the Government's case, unique or national interest circumstances can and do arise where the needs of the Government cannot be met under the carrier's carrier approach.

CONCLUSIONS

37. We have reached the following policy conclusions:

(a) The terrestrial carriers cannot under existing law themselves be licensed to operate the space segment of the international system and therefore cannot compete effectively in furnishing satellite service to the public.

(b) ComSat is not and does not propose to be a full service carrier meeting directly the needs of the vast majority of users of international services for all classes of communication services.

(c) If ComSat were to be permitted to provide leased channel services directly to users, other than in unique or exceptional circumstances, the basic purposes of Congress in enacting the Satellite Act -- reflection of the benefits of the new technology in both quality of service and charges therefor -- would be frustrated.

(d) A requirement that, except in unique and extraordinary circumstances, users take service from the terrestrial carriers should not have adverse effects upon either ComSat or the users but instead should make it possible to reduce rates for all classes of users.

38. Our ultimate conclusions are:

(a) ComSat may as a matter of law be authorized to provide service directly to non-carrier entities;

(b) ComSat is to be primarily a carrier's carrier and in ordinary circumstances users of satellite facilities should be served by the terrestrial carriers;

(c) In unique and exceptional circumstances ComSat may be authorized to provide services directly to non-carrier users; therefore, the authorization to ComSat to provide services is dependent upon the nature of the service, i.e., unique or exceptional, rather than the identity of the user. The United States Government has a special position because of its unique or national interest requirements; ComSat may be authorized to provide service directly to the Government, whenever such service is required to meet unique governmental needs or is otherwise required in the national interest, in circumstances where the Government's needs cannot be effectively met under the carrier's carrier approach.

39. We do not now propose to set forth specific procedures. However, any request by ComSat for authorization to provide service directly to any user desiring to take such service in particular circumstances should include showings by ComSat as to:

(i) Whether the proposed service via satellite is available from terrestrial carriers, including evidence of request made therefor and the response of the carriers;

(ii) Whether the facilities to provide this service are available, and, if not, a description of the new or expanded facilities required as well as the cost thereof;

(iii) A statement showing why the circumstances involved are so unique and exceptional as to require service directly from ComSat or what the national interest requirements are that indicate that service cannot be provided under the carrier's carrier approach.

(iv) Any other facts which would indicate that the public interest would be served by a grant.

The above required information shall be set forth in support of the applications for modification of the applicable earth station and/or satellite station licenses as well as for authorization to acquire units of satellite utilization which ComSat shall file in each case in which it is requested to provide a particular service directly to any non-carrier users. Unless and until such authorizations are granted, ComSat shall not provide services to any non-carrier entity. In addition ComSat, of course, must also have an effective tariff on file before it can provide service directly to any non-carrier entity it may be authorized to serve.

40. This inquiry was instituted under authority set forth in Section 403 of the Communications Act of 1934, as amended; the policies and procedures set forth herein are adopted pursuant to authority contained in Sections 4(i), 4(j), 201(b), 303 and 307 of the Communications Act of 1934, as amended, and Sections 102(c), 201(c)(11), 305(a), 305(b) and 401 of the Communications Satellite Act of 1962.

41. Accordingly, IT IS ORDERED, This 20th day of July, 1966, That the Statement of Policy set forth in this Memorandum Opinion and Order IS ADOPTED and that the proceeding IS TERMINATED.

FEDERAL COMMUNICATIONS COMMISSION

Ben F. Waple
Secretary

Released: July 21, 1966