Tuesday 8/3/71

8:25 p.m. Dr. Mansur called. Read him the telegram. Only comment: Would be better sent to Mansur, Rein, and Shaffer from Flanigan. If this troubles Mr. Whitehead, would be helpful if Mr. Whitehead signed it -- up to him.

8:30 Told Mr. Whitehead. Asked to talk with Jon Rose. White House operator will connect the call. Jon was out but will call the switchboard.

9:00 Mr. Whitehead called. Has not heard from Jon. Forget the call.

Tuesday 8/3/71

7:10 Mr. Doyle said he has no objection to the telegram to Dr. Mansur.

OTP, 72-21

OFFICE OF TELECOMMUNICATIONS POLICY
WASHINGTON

August 4, 1971

To: Marge

From: Judy

This cable went out last night to Dr. George Mansur at the aerosat conference in Madrid.

Mr. Whitehead wanted Mr. Flanigan to have a copy. In case Tom did not give Jon a copy of it at his meeting this morning, have attached an extra for him.

~~CONFIDENTIAL~~

August 3, 1971

TELEGRAM FOR DR. MANSUR

It is most unfortunate that negotiations have gotten this far with such unsatisfactory understanding within the U.S. Delegation as to objectives and negotiating limits.

It must be understood thoroughly that departure from ICB or U.S. lease from private sector is contrary to policy at the highest level. It must also be understood that while a joint program is encouraged, any joint program must not be tied to joint ownership or joint management of satellite procurement and operation. It must also be realized that opportunity for U.S. industry to offer these services on commercial basis in a timely way takes priority if need be over achievement of a formal joint program agreement with Europeans. It is also important that the opportunity -- repeat opportunity -- for U.S. industry to offer other mobile services at their own risk not -- repeat not -- be negotiated away at this point in time. (However, this objective should fall naturally from any arrangement compatible with proceeding objectives.) Finally, timeliness is important due to reasons going beyond the scope of this negotiation.

It is my understanding that these objectives are not incompatible with FAA objectives. It is my understanding that while these objectives may be incompatible with State Department objectives, they are not unacceptable to the State Department. It is my understanding that these objectives have received due and thorough attention within the Executive Office and the White House and that the implications and consequences are well understood.

Should the negotiations now under way conclude with tentative agreements incompatible with these objectives, it should be understood that the agreement is incompatible with the policy, intention, and desires of the Executive Office and in all probability is not acceptable even as fait accompli.

If the U.S. Delegation cannot find agreement compatible with these objectives, suggest return home without agreement as least embarrassing and disruptive course of action.

Please convey this to the Chairman of the Delegation. If any serious question arises, suggest cable or call to Whitehead or Flanigan.

/s/ Clay T. Whitehead

~~CONFIDENTIAL~~

WH

OFFICE OF TELECOMMUNICATIONS POLICY
EXECUTIVE OFFICE OF THE PRESIDENT
WASHINGTON, D.C. 20504

June 7, 1973

DIRECTOR

MEMORANDUM FOR MR. FLANIGAN

Subject: Status of International Telecommunication Issues

1. Aerosat

a. Secretary Brinegar has instructed ranking Department of Transportation officials and the Administrator of FAA to initiate high level discussions with U.S. airline presidents in an effort to overcome the airlines' opposition to Aerosat--the developmental program aimed at improving oceanic air traffic control by using satellite communications. Discussions will also be held with appropriate Congressional committees whose support is necessary prior to FAA signing a memorandum covering the proposed joint program with European aeronautical authorities acting through the European Space Research Organization (ESRO). Secretary Brinegar will request White House assistance if the approaches to the airline presidents and to the Congress do not succeed in unblocking the program.

b. FAA Administrator Butterfield has told ESRO officials that the Nixon Administration strongly supports the Aerosat program as modified and is seeking to clear away domestic hurdles in order to be able to sign the FAA-ESRO Agreement spelling out the development of satellite communications in the Atlantic in anticipation of an operational aeronautical system required by the 1980's.

c. Meanwhile, ESRO is negotiating with U.S. communications companies and will shortly choose either COMSAT or RCA-Globcom as the U.S. co-owner of the satellite system which will provide the communications service required for the FAA-ESRO oceanic air traffic control program.

2. "Gapsat" - Conditions laid down by the FCC have been accepted by COMSAT which will now become part of a consortium of communication entities owning and operating a 2-ocean satellite system providing the U.S. Navy with satellite military communications for a limited period of time. Capacity of the

system not needed by the Navy will be leased to merchant ships. WUI, ITT, and RCA-Globcom are expected to join the consortium. COMSAT will have majority control (about 80%), thus ensuring that it will be the manager-operator of the system. COMSAT has contracted with Hughes to build the three satellites for the system which is scheduled to be operational within 18 months.

3. Maritime Satellite - U.S. representatives have broken the solid front of foreign representatives to the International Maritime Consultative Organization who were determined to create a new international organization which would own and operate a maritime satellite system. At the next IMCO experts meeting this fall, we plan to introduce several alternative ways for the shipowners to get the satellite communications they need without creating a new governmental organization. The opposition, led by the USSR, will continue to try to force us into an arrangement which would have the effect of taking satellite maritime communications out of the private sector.

4. Pacific Basin Submarine Cable - FCC is poised to authorize construction of a new Pacific Basin submarine cable (California-Hawaii-Guam-Okinawa). Our effort to get a U.S. Government decision on long-term communications facility planning in the Pacific Basin has encountered FCC's desire to clear the docket by deciding now on a specific cable which the carriers want, especially AT&T. The case illustrates how ad hoc decisions, pushed by domestic and foreign communications entities, get in the way of long range planning efforts aimed at benefiting the rate payer.

5. International Communications Industry Structure - We are studying the reactions of Executive Branch departments to the draft legislative proposals covering the structure of the international communications industry which we put forward recently. Upon completion of our study, we will consult with the FCC. We are several months away from a decision on what, if any, legislative proposals we would recommend be sent to the Congress. Senator Pastore has not been pushing us since we gave him our international communications policy statement early this year.

6. Direct Broadcast Satellites - The Soviet draft convention to control direct satellite broadcasting will be debated next week in New York when the UN Working Group reconvenes. Canada and Sweden have submitted a watered down draft which is still unacceptable to the U.S. An up-hill battle is being fought by the U.S. in an attempt to prevent a UN imposed regime of world-wide TV censorship. The State Department reports that

Secretary Brezhnev is expected to raise the subject with the President later this month.

7. International Telecommunication Union - U.S. policy positions to be taken during the ITU Plenipotentiary Conference this September are nearing completion. The U.S. Delegation comprising representatives from State, OTP, FCC, and U.S. industry will be in place by August to complete policy preparations. The Conference is not expected to make major changes in the structure or functions of the Union. However, numerous political issues will be raised, thus complicating the telecommunications work of the Conference.

Clay T. Whitehead

President's trip

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF TELECOMMUNICATIONS POLICY
WASHINGTON, D.C. 20504

DIRECTOR

May 18, 1972

MEMORANDUM FOR MR. FLANIGAN

I had anticipated that we would be able to get together before you leave for Russia, but since we can't make that, I wanted to cover four points with you as you leave:

1. The Electronic Industries Association and the Commerce Department indicate that they may jointly ask that I head a U. S. trade mission to the USSR, Poland, and Czechoslovakia in mid-September discussing the sale of U. S. electronic and communications equipment. I thought you should have that information in case it comes up on your current trip.

2. Hughes is awaiting guidance regarding the sale of a U.S.-launched domestic communication satellite system for the PRC. I assume Jon Rose, Al Haig, and I can handle that in your absence.

3. Painful as it is, I have been trying to find a negotiating plan for Aerosat that will be acceptable to DOT. We have delayed much too long in getting back to the Europeans, but until now I have felt that the chances and the benefits of getting DOT agreement were worth the delay. I hope we can reach agreement with DOT next week. However, if that is not possible, we will have to proceed much on the course I laid out in my last memorandum to you and Henry Kissinger, and I will deal with Jon and Al Haig at that time.

4. As you know, all work of the Cabinet committee on cable television has been suspended for three months to avoid even a minute risk of unsettling the compromise agreement. Now that the rules are firmly in effect and the copyright issue has been settled, we simply have to proceed with the work of the committee. This will be rather time-consuming and deliberate work, and will give us ample opportunity to review the timing of the report vis-a-vis the election. I would like to discuss the politics and timing of this with you when you return.

Clay T. Whitehead

P.S. CPB Board as discussed w/ Bob McD

cc: Mr. Whitehead, Eva CTWhitehead:jm

Presidential trips

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF TELECOMMUNICATIONS POLICY
WASHINGTON, D.C. 20504

DIRECTOR

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Clay T. Whitehead

P.S. CPB Board as discussed w/ Bob M^cD.

cc: Mr. Whitehead, Eva CTWhitehead:jm

Aerosat

OFFICE OF TELECOMMUNICATIONS POLICY
EXECUTIVE OFFICE OF THE PRESIDENT
WASHINGTON, D.C. 20504

OFFICE OF THE DIRECTOR

December 20, 1971

INFORMATION MEMORANDUM FOR THE DIRECTOR

From: Bromley Smith BKS

Subject: Status of Aerosat Paper

The Aerosat review paper is en route to General Haig who understands that the next move is to discuss the issue with Mr. Flanigan and you to see whether a solution can be worked out short of the President.

The "package" now contains memos to the President from Secretaries Rogers and Volpe which contain no new or unrebutted material.

Secretary Roger's memo (as summarized by John Walsh) recommends signing the MOU because:

1. European cooperation in this area is necessary.
2. ICAO problems require signature now.
3. Additional negotiations would be difficult and a new start now would be unwise.
4. We should take what we have and go ahead.

Secretary Volpe's memo recommends signature of the MOU because:

1. We need to start now on obtaining satellite communications for an air traffic control system.
2. FAA negotiated in good faith in accordance with its guidance and we should support their efforts.

Original Wh Ltr Dup

MEMORANDUM

THE WHITE HOUSE

WASHINGTON

ACTION

MEMORANDUM FOR: THE PRESIDENT

FROM: HENRY A. KISSINGER
PETER M. FLANIGAN

SUBJECT: Satellite for Aeronautical Telecommunications (AEROSAT)

Following the promulgation of guidance by the Office of Telecommunications Policy (OTP), State and the FAA have negotiated with the European Space Research Organization a tentative agreement for a joint program to provide a preoperational system to provide satellite communications with trans-oceanic aircraft. [It is termed "preoperational" because although the satellite is not experimental, the operational procedures are; an "operational" system is one whose use by aircraft is mandatory.] FAA wants funds and approval to initiate the program and is strongly supported by State. OTP holds that the agreement is not in accordance with policy guidance, and should be rejected.

~~Although the agreement might accord with a narrow interpretation of the letter of policy, OTP's objections are fundamental.~~ Under the proposed arrangement Europe would pay half and be guaranteed about one-third the work. OTP objects to the guarantee and wants work to be bid competitively (which the U. S. would surely win). It also wants the service to be provided by private enterprise on a lease basis. This is proposed not only on general grounds but in order to help get started a free-enterprise satellite communication service to mobile users, which OTP envisions as an activity grossing $1 billion this decade.

As OTP states in their letter to you (Tab E/Study, Tab F) the alternatives are: Sign the agreement or reopen negotiations in a different forum.

Approve the MOU which

~~Signing the agreement will initiate a needed program,~~ will further ~~your objectives of~~ international cooperation in space and will provide a real accomplishment in an area wherein accomplishments have been ~~few, as well as~~ head off mounting European criticism of our apparent indecisiveness in our cooperation. However, it features government ownership of the preoperational system, might set a pattern which would preclude private sector ownership of the operational system, and includes guaranteed work sharing.

Successful Renegotiation will

Renegotiation, if successful, ~~would~~ eliminate guaranteed work sharing, ~~would~~ lead to private sector ownership, and ~~would~~ do so through a system which would provide the impetus for a maritime (and other mobile) communication services industry.

Secretaries Rogers and Volpe urge that the agreement be signed (Tabs C and D) the former taking a strong personal position ~~in terms of his personal credibility~~ noting that the agreement was negotiated in good faith following the original guidance, and the latter for these reasons as well as the international relations impact of not signing and the great difficulties, both domestic and international, of attempting to reopen negotiations. (Rogers has repeated these views in subsequent correspondence.)

OTP believes that the agreement should be renegotiated in order to fully achieve your policy objectives. In this they are supported by the Assistant to the President for International Economic Affairs.

Mr. Shultz believes that the agreement should be rejected, for essentially the same reasons as OTP, as well as a desire to defer the need for funds to FY75 (Tab B).

We are being approached regularly by European representatives who point out the importance with which this program is regarded in Europe and the adverse impact of rejecting the agreement (~~Tab A~~).

It is clear that the resolution of this matter requires a balancing between domestic and international considerations. We have carefully considered this matter and conclude that, while the effects on domestic matters are fairly clear, and serious, the effects on international relations are much less obvious. The stream of communications from Europe may be partially motivated by their eagerness to solidify an arrangement which is particularly attractive to them. Thus, the consequences of rejecting the present draft agreement, while significant, are not likely to be dire. The principal real concern is that Europe, out of pique, may attempt to frustrate us in the International Civil Aviation Organization (ICAO).

Having examined the matter, we recommend on balance that, despite the strong views of Secretaries Rogers and Volpe, the Aerosat negotiations be reopened. Moreover, to provide assurance that these subsequent negotiations lead to an agreement which accords with your policy objectives, we recommend that the negotiations should be led by your Director of Telecommunications policy.

If you accept these recommendations, we will so advise the Secretaries of State and Transportation.

Reopen negotiations (Our recommendation) _____

FAA sign agreement (OMB must amend budget to fund) _____

Other _____

Aviation Chron Book

Adams 71-108

THE SECRETARY OF STATE

WASHINGTON

17 DEC 1971

INFORMATION: Mr. Israel, EM-1
INFO CC: Gen. Lundquist, ED-1
Mr. Darden, AV-1
Mr. Pulling, PL-1
Mr. Cary, IA-1
12/23/71

MEMORANDUM FOR THE PRESIDENT

Subject: Aeronautical Satellite Program

The Department of State believes that the proposed international, experimental aeronautical satellite program would contribute significantly to our civil aviation and international relations objectives. The joint and equal U.S.-European partnership, with added participation by Australia, Canada and Japan, would be a concrete realization of your announced objective to promote international cooperation in the exploration of the peaceful uses of space. Working together, the major aviation states could accelerate ICAO acceptance of standards for satellite communications for international air traffic control (as well as reform underlying treaty agreements on traffic control responsibilities to capitalize on the cost-saving potential of advanced communications) and pave the way for a follow-on global commercial capability serving all air and sea carrier communications needs.

Rejecting the proposed program and attempting to obtain a revised arrangement such as a worldwide commercial agreement before proceeding with experimental work in air traffic control would have a number of serious, adverse consequences. This program has been designated Europe's number one communications and space research priority and European disappointment would be intense thus hampering other cooperative space and technological research projects. Also, it is most likely that rejection would cause Europe and Canada to pursue their own experimental aeronautical satellite program over the main North Atlantic air routes which they control under the Chicago Convention, and thus undercut the possibility of a global commercial capability. The Europeans have the funds, plus the

technology in hand or under development, and we have publicly assured them a launch. At the very least, since global commercial arrangements will require lengthy and difficult domestic debate involving the Federal Communications Commission, the courts and the Congress, as well as extended international discussions, rejection of this program would frustrate the Administration's published objective of obtaining international clearance for operational satellite-based traffic control as soon as possible.

I recommend that you endorse the proposed program, and authorize the Secretary of Transportation to seek appropriate funding.

William P. Rogers

Routing Slip

Office of Telecommunications Policy

Date: DEC 17 1971

From:

To:

✓	Whitehead, C. T.	Original
	Mansur, G. F.	
	Babcock, C.	
	Buss, L.	
	Carruthers, B.	
	Cooke, A.	
	Culpepper, C.	
	Dean, W.	
	Doyle, S.	
	Enslow, P.	
	Goldberg, H.	
	Hailey, L.	
	Hall, D.	
	Hinchman, W.	
	Jansky, D.	
	Johnston, B.	
	Joyce, C.	
	Lamb, B.	
	Lasher, S.	
	Lyons, W.	
	McCrudden, M.	
	Nelson, R.	
	Owen, B.	
	Raish, L.	
	Robinson, K.	
	Scalia, A.	
	Smith, L.	
	Thornell, J.	✓
	Urbany, F.	
	Ward, D.	

Remarks:

5/12/17

COMSAT

COMMUNICATIONS SATELLITE CORPORATION

JOSEPH V. CHARYK
President

December 16, 1971

Honorable Clay T. Whitehead
Director
Office of Telecommunications Policy
1800 G Street, N.W.
Washington, D.C. 20504

Dear Tom:

I felt that you would be interested in having a copy of a proposal that Comsat has made to the Administrator of the FAA concerning the establishment of an aeronautical satellite program. The letter spells out the principles that we feel should govern the establishment of such a program.

Sincerely,

Joseph V. Charyk

Enclosure

COMMUNICATIONS SATELLITE CORPORATION

JOSEPH V. CHARYK
President

December 16, 1971

Honorable John H. Shaffer
Administrator
Federal Aviation Administration
800 Independence Avenue, S.W.
Washington, D.C.

Dear Mr. Shaffer:

This letter presents a Comsat proposal for an alternative approach to the establishment of a "pre-operational" aeronautical satellite program. We are aware that this subject is presently under review within the Government, and realize that further action is dependent upon the outcome of this review. Our proposal is submitted on the assumption that this review will not result in a reversal of the presently established U.S. policy of utilizing privately furnished communications services when available, rather than creating government-owned systems. We are convinced that our alternative could be implemented if the U.S. Government would support it, and we hope that it will receive a full and fair consideration by you and other officials who will participate in the final decision.

Before describing Comsat's proposed alternative approach, I want to comment on two particular questions which still seem to cloud the essential issues: the possible relationship between a pre-operational aeronautical satellite program and INTELSAT, and the question of whether Comsat is a "chosen instrument" with regard to aeronautical satellites.

While we do not suggest that INTELSAT should be involved at the outset, we do believe that INTELSAT should be

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afforded, at the right time, the opportunity to determine whether the satellites for the follow-on operational aeronautical program should be provided by INTELSAT.* Despite the provisions of the proposed FAA/ESRO Memorandum of Understanding to the effect that different arrangements in the operational phase are not foreclosed, it is unrealistic, particularly with respect to the jointly owned space segment, to assume that the initial structure will not have a profound effect on the final arrangements and the transition to these arrangements. The presently proposed FAA/ESRO arrangements, we feel, almost certainly would insure that the INTELSAT option for provision of the satellites for the operational program would be very difficult if not impossible to achieve.

With regard to the "chosen instrument" issue, the important point at the present time is that the designation of Comsat as the U.S. entity in the establishment of an international aeronautical satellite program is not dependent upon an answer to the question of whether Comsat is by statute a "chosen instrument" for this purpose. Regardless of whether Comsat is the "chosen instrument" in an exclusive sense, which we believe we are, Comsat unquestionably does have adequate authority under the 1962 Act to plan, initiate, construct, own, manage and operate a commercial communications satellite system, itself or in conjunction with foreign governments or business entities. During Congressional consideration of the 1962 Act, aeronautical service was cited specifically as an example of services that Comsat might provide.** No other United States entity has such explicit statutory authorization.

Our concern about the serious shortcomings of the proposed FAA/ESRO approach has been pointed out in previous

---

*The INTELSAT Definitive Arrangements provide for consideration of the provision of satellites for specialized telecommunications services such as aeronautical communications relating to the safety or flight control of aircraft and radio navigation.

**Hearings on S. Res. 258 before the Committee on Antitrust and Monopoly of the Committee on the Judiciary, 87th Cong., 2nd Sess. at 22 et seq (1962).

correspondence and discussions. As a constructive alternative, Comsat proposes the following U.S. approach to the establishment of the pre-operational aeronautical satellite program. We urge that it be adopted instead of proceeding under the FAA/ESRO plan:

1. The program should be premised on the U.S. obtaining aeronautical satellite communications services on an end-to-end basis from a private U.S. entity, rather than through government investment and ownership.

2. The program should be established on the basis of a Memorandum of Understanding (MOU) between entities designated by their governments, each of which should be an investor in the joint enterprise.

3. The U.S. entity should be selected and designated by the U.S. Government, and this selection should not be incident to, or a by-product of, a competition among hardware manufacturers.

4. In the negotiations of the provisions of the Memorandum of Understanding with the appropriate interested international parties, the U.S. participant should be the designated U.S. entity, who will consult with the State Department in regard to appropriate foreign policy considerations.

5. The initial pre-operational program should be the minimum size which can accomplish the pre-operational tasks. From the public explanation of the pre-operational requirements which has been given in FAA briefings to U.S. industry, and the public comments made by the U.S. airlines, it would seem that these requirements could be met with a pre-operational program providing service in a single ocean area.

6. The MOU should provide explicitly for the transition to a follow-on operational program, which would function on the principle of investment

related to use and voice related to investment. It should specify that INTELSAT will be given the timely opportunity to provide the satellites for the follow-on operational program and to acquire residual pre-operational space segment resources on a fair and equitable basis. The MOU also should provide for a structure which will facilitate transition to a follow-on operational aeronautical service, and which will include provision for obtaining satellites in the event that INTELSAT does not take up the option referred to above.

7. The MOU should provide that all jointly owned hardware will be procured on the basis of bona fide international competition, with no directed proportion to any geographic area. It should specify that procurement rules essentially similar to those prescribed in the INTELSAT Definitive Arrangements will be adopted for the aeronautical satellite program.

8. The MOU should provide for inclusion of a minimal pre-operational capability for maritime communications, if desired by any of the pre-operational investment partners, on a basis which will not impair accomplishment of the pre-operational aeronautical objectives.

9. The MOU should provide for inviting appropriate consultative participation by the International Civil Aviation Organization (ICAO) and the International Air Transport Association (IATA), through representatives accredited to the program management structure of the joint investment partners.

We believe that Comsat should be selected and designated as the U.S. entity to implement the above proposal. Comsat is the only private entity with experience in establishing and operating successfully an international communications satellite system in collaboration with foreign governmental and private associates. We have repeatedly stated our willingness to meet the requirements

of the U.S. Government and other users. We have expended time, energy and financial resources to insure that we are in a position to provide aeronautical satellite communications services, in expectation that the government will adhere to its published policy of leasing such services from the private sector rather than establishing a government-owned system. We are prepared to make the necessary capital investment, assume the risks of the venture and offer the desired service on a guaranteed and fixed-price basis, regardless of the way the service is used or whether the government chooses to call the program "experimental," "pre-operational," or otherwise. We have complete confidence that, given the responsibility, we can evolve the necessary arrangements for pre-operational international participation in a fashion that will permit a smooth transition into follow-on operational arrangements under which INTELSAT would provide the required satellite capacity. We believe that this can be accomplished on a schedule which will allow the pre-operational program objectives to be met fully within the time period which has been allocated for this purpose by the FAA and ESRO. We can also insure that equipment for the system will be obtained on an internationally competitive basis to provide the highest confidence at the best price.

Although the above proposal is presented in condensed form, it is based on extensive consideration which Comsat has given to this entire problem. We stand ready to amplify in detail all of the elements of this concept. We remain strongly convinced that this approach will better achieve the objectives of the aeronautical satellite program and the national interests of the U.S. than either the particular "lease" approach previously considered by the FAA, or the government system ownership approach which the FAA is advocating at the present time.

We hope that our proposed alternative course of action will be explored thoroughly before a final decision is reached, and we would be happy to assist in such an exploration.

Sincerely,

Joseph V. Charyk

Tuesday Dec 28

Tom,

Since the attached memo to Peter Flanigan is an FYI, I don't see that any action is required.

Jack

Office of Telecommunications Policy

Date: DEC 22 1971

From:

To:

	Whitehead, C. T.	
✓	Mansur, G. F.	✓
	Babcock, C.	
	Buss, L.	
	Carruthers, B.	
	Cooke, A.	
	Culpepper, C.	
	Dean, W.	
	Doyle, S.	
	Enslow, P.	
	Goldberg, H.	
	Hailey, L.	
	Hall, D.	
	Hinchman, W.	
	Jansky, D.	
	Johnston, B.	
	Joyce, C.	
	Lamb, B.	
	Lasher, S.	
	Lyons, W.	
	McCrudden, M.	
	Nelson, R.	
	Owen, B.	
	Raish, L.	
	Robinson, K.	
	Scalia, A.	
	Smith, L.	
	Thornell, J.	✓O
	Urbany, F.	
	Ward, D.	

Remarks:

No reply

THE WHITE HOUSE
WASHINGTON

Date 12/21/71

To: Tom Whitehead

From: Peter Flanigan

_____ FYI

XX For appropriate action

_____ Per your request


RECEIVED
DEC 22 1971

1/12/29

69f

TW for Handling

COMSAT

COMMUNICATIONS SATELLITE CORPORATION

JOSEPH V. CHARYK
President

December 16, 1971

Mr. Peter M. Flanigan
Assistant to the President
The White House
Washington, D.C. 20500

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afforded, at the right time, the opportunity to determine whether the satellites for the follow-on operational aeronautical program should be provided by INTELSAT.* Despite the provisions of the proposed FAA/ESRO Memorandum of Understanding to the effect that different arrangements in the operational phase are not foreclosed, it is unrealistic, particularly with respect to the jointly owned space segment, to assume that the initial structure will not have a profound effect on the final arrangements and the transition to these arrangements. The presently proposed FAA/ESRO arrangements, we feel, almost certainly would insure that the INTELSAT option for provision of the satellites for the operational program would be very difficult if not impossible to achieve.

With regard to the "chosen instrument" issue, the important point at the present time is that the designation of Comsat as the U.S. entity in the establishment of an international aeronautical satellite program is not dependent upon an answer to the question of whether Comsat is by statute a "chosen instrument" for this purpose. Regardless of whether Comsat is the "chosen instrument" in an exclusive sense, which we believe we are, Comsat unquestionably does have adequate authority under the 1962 Act to plan, initiate, construct, own, manage and operate a commercial communications satellite system, itself or in conjunction with foreign governments or business entities. During Congressional consideration of the 1962 Act, aeronautical service was cited specifically as an example of services that Comsat might provide.** No other United States entity has such explicit statutory authorization.

Our concern about the serious shortcomings of the proposed FAA/ESRO approach has been pointed out in previous

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*The INTELSAT Definitive Arrangements provide for consideration of the provision of satellites for specialized telecommunications services such as aeronautical communications relating to the safety or flight control of aircraft and radio navigation.

**Hearings on S. Res. 258 before the Committee on Antitrust and Monopoly of the Committee on the Judiciary, 87th Cong., 2nd Sess. at 22 et seq (1962).

correspondence and discussions. As a constructive alternative, Comsat proposes the following U.S. approach to the establishment of the pre-operational aeronautical satellite program. We urge that it be adopted instead of proceeding under the FAA/ESRO plan:

1. The program should be premised on the U.S. obtaining aeronautical satellite communications services on an end-to-end basis from a private U.S. entity, rather than through government investment and ownership.

2. The program should be established on the basis of a Memorandum of Understanding (MOU) between entities designated by their governments, each of which should be an investor in the joint enterprise.

3. The U.S. entity should be selected and designated by the U.S. Government, and this selection should not be incident to, or a by-product of, a competition among hardware manufacturers.

4. In the negotiations of the provisions of the Memorandum of Understanding with the appropriate interested international parties, the U.S. participant should be the designated U.S. entity, who will consult with the State Department in regard to appropriate foreign policy considerations.

5. The initial pre-operational program should be the minimum size which can accomplish the pre-operational tasks. From the public explanation of the pre-operational requirements which has been given in FAA briefings to U.S. industry, and the public comments made by the U.S. airlines, it would seem that these requirements could be met with a pre-operational program providing service in a single ocean area.

6. The MOU should provide explicitly for the transition to a follow-on operational program, which would function on the principle of investment

related to use and voice related to investment. It should specify that INTELSAT will be given the timely opportunity to provide the satellites for the follow-on operational program and to acquire residual pre-operational space segment resources on a fair and equitable basis. The MOU also should provide for a structure which will facilitate transition to a follow-on operational aeronautical service, and which will include provision for obtaining satellites in the event that INTELSAT does not take up the option referred to above.

7. The MOU should provide that all jointly owned hardware will be procured on the basis of bona fide international competition, with no directed proportion to any geographic area. It should specify that procurement rules essentially similar to those prescribed in the INTELSAT Definitive Arrangements will be adopted for the aeronautical satellite program.

8. The MOU should provide for inclusion of a minimal pre-operational capability for maritime communications, if desired by any of the pre-operational investment partners, on a basis which will not impair accomplishment of the pre-operational aeronautical objectives.

9. The MOU should provide for inviting appropriate consultative participation by the International Civil Aviation Organization (ICAO) and the International Air Transport Association (IATA), through representatives accredited to the program management structure of the joint investment partners.

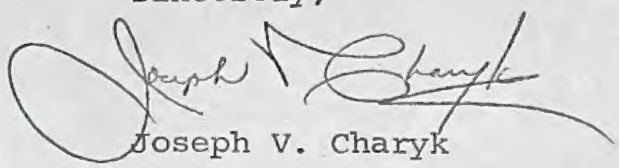
We believe that Comsat should be selected and designated as the U.S. entity to implement the above proposal. Comsat is the only private entity with experience in establishing and operating successfully an international communications satellite system in collaboration with foreign governmental and private associates. We have repeatedly stated our willingness to meet the requirements

of the U.S. Government and other users. We have expended time, energy and financial resources to insure that we are in a position to provide aeronautical satellite communications services, in expectation that the government will adhere to its published policy of leasing such services from the private sector rather than establishing a government-owned system. We are prepared to make the necessary capital investment, assume the risks of the venture and offer the desired service on a guaranteed and fixed-price basis, regardless of the way the service is used or whether the government chooses to call the program "experimental," "pre-operational," or otherwise. We have complete confidence that, given the responsibility, we can evolve the necessary arrangements for pre-operational international participation in a fashion that will permit a smooth transition into follow-on operational arrangements under which INTELSAT would provide the required satellite capacity. We believe that this can be accomplished on a schedule which will allow the pre-operational program objectives to be met fully within the time period which has been allocated for this purpose by the FAA and ESRO. We can also insure that equipment for the system will be obtained on an internationally competitive basis to provide the highest confidence at the best price.

Although the above proposal is presented in condensed form, it is based on extensive consideration which Comsat has given to this entire problem. We stand ready to amplify in detail all of the elements of this concept. We remain strongly convinced that this approach will better achieve the objectives of the aeronautical satellite program and the national interests of the U.S. than either the particular "lease" approach previously considered by the FAA, or the government system ownership approach which the FAA is advocating at the present time.

We hope that our proposed alternative course of action will be explored thoroughly before a final decision is reached, and we would be happy to assist in such an exploration.

Sincerely,



Joseph V. Charyk

M. Whitehead

THE UNDER SECRETARY OF TRANSPORTATION
WASHINGTON, D.C. 20590

December 15, 1971

Mr. Clay T. Whitehead
Director, Office of
Telecommunications Policy
Executive Office of the President
Washington, D.C. 20504

Dear Mr. Whitehead:

As you know, over the past several weeks our respective staffs, together with representatives from the Department of State, have worked to prepare a paper outlining the arguments for and against approving the ad referendum Memorandum of Understanding for a Joint Aeronautical Satellite Program with the Europeans. I should like to take this opportunity to make these broad comments on the results of their efforts, the enclosed paper dated December 11, which I understand you intend to forward through appropriate channels to the President.

First, it was my understanding that this paper was intended to define the issues and the options and to set forth the respective views of the Department of Transportation and Department of State, who favor proceeding with the program, and of your office which is in opposition to this course of action. While this concept is quite agreeable to me, I am concerned that the paper as it stands might inadvertently be taken by the uninformed reader to be an unbiased account. By its nature, it is an adversary document and it should be treated as such. For this reason, I believe this should be made clear on the final document.

Second, and of greatest concern to me, is your proposed inclusion of a Section V entitled "Recommendations," which includes the views of parties who did not participate in the preparation of the paper; namely, the Assistant to the President for International Economic Affairs and the Office of Management and Budget. Their views clearly do not belong in a document intended to reflect the beliefs on the aeronautical satellite program held by OTP on one hand, and DOS and DOT on the other.

I might add at this point my belief that, just as these offices have not participated in the many discussions which DOT/FAA, DOS, and OTP have had on the advantages and disadvantages of the program, they have not had the opportunity to receive briefings on all facets of the program, and in particular from DOT and DOS. Therefore, I do not believe that the elements of their recommendations are based upon complete knowledge of the information available. Consequently, I have

asked my staff to contact these offices to provide them with complete and detailed briefings, to answer any questions they might have, and to provide them with whatever factual material they may require.

My third point is that I believe other revisions to the paper are necessary. For example, in Section I entitled "Background," I note that a "policy guidance" letter you sent to Federal Aviation Administrator Shaffer is quoted in context with your January 7 Policy Statement. I consider this inappropriate because by so doing, a publicly issued statement of Administration policy is, by implication, given equal stature with a letter sent more than a half year later. I also note that you make a number of assertions with regard to foreign affairs, and that you argue that Administration endorsement should be withheld because of possible embarrassment in the event that Congress did not approve funds for the program. I will defer to the Department of State as regards the former matter. However, concerning our relationship with Congress, I believe that we in the Administration normally establish our position before seeking Congressional action, and see no reason to change this process in this case.

In spite of the foregoing comments, I would be agreeable to your sending the paper forward provided you include this letter in the package. I would appreciate being advised as to the course of action you plan to follow.

Sincerely,

James M. Beggs

Enclosure

Routing Slip
Office of Telecommunications Policy

Date: DEC 15 1971

From:
To:

	Whitehead, C. T.	C
	Mansur, G. F.	C
	Babcock, C.	
	Buss, L.	
	Carruthers, B.	
	Cooke, A.	
	Culpepper, C.	
	Dean, W.	
	Doyle, S.	
	Enslow, P.	
	Goldberg, H.	
	Hailey, L.	
	Hall, D.	
	Hinchman, W.	
	Jansky, D.	
	Johnston, B.	
	Joyce, C.	
	Lamb, B.	
	Lasher, S.	
	Lyons, W.	
	McCrudden, M.	
	Nelson, R.	
	Owen, B.	
	Raish, L.	
	Robinson, K.	
	Scalia, A.	
✓	Smith, L.	
	Thornell, J.	
	Urbany, F.	
	Ward, D.	

Remarks:

DEPARTMENT OF STATE

Washington, D.C. 20520

December 14, 1971

Dear Mr. Whitehead:

In accordance with your request for comments on the draft aeronautical satellite options paper, we have reviewed the matter carefully and believe the following observations should be taken into account and accompany the paper when it goes forward to the President.

(a) The background section, as now drafted, does not adequately reflect the sense of urgency in commencing air traffic control experimentation which was evident in the January 7 policy statement and your letter of July 12. As you will recall, one of OTP's principal arguments for a unilateral U.S. program (the alternative suggested in the July 12 letter) was the need to avoid lengthy negotiations. If your views on this matter have been modified, I believe you should reflect the reasons for that modification under Option 2.

(b) Paragraph a on pages 8 and 9 should also point out that the "fair and reasonable distribution of work" formula is a step forward from the no transfer of funds provisions which were proposed for the post-Apollo program. The "fair and reasonable" formula allows both deviation from a strict 50-50 formula and a favorable U.S. balance of payments inflow arising from European purchase of U.S. parts necessary to fulfill European contract responsibilities.

The Honorable
Clay T. Whitehead,
Director of Telecommunications
Policy,
Executive Office of the
President.

(c) With respect to paragraph d on page 9, we are aware of ComSat's reservations on the ad referendum MOU and we understand that Hughes has indicated some private concern. We are not aware of other carrier or aerospace opposition (certainly none has been expressed publicly) and we note that ATA has publicly stated that it would not oppose the program although it favors a NASA (government-owned) experiment. In any event, U.S. mainland-Hawaii routes traverse international air space and are separated from domestic air routes (as Overseas Air Transportation) under the Federal Aviation Act.

(d) Paragraph e on page 10 should point out that the INTELSAT procurement arrangements are settled and that we were able to eliminate the strong production-sharing aspect of the Interim Agreement in the Definitive Agreement when a large group of non-producing states became involved.

(e) Paragraph f on page 10 is disputed by the Department's Office of the Legal Adviser who feels that Section 414 munitions control requirements are satisfied.

(f) Paragraph h on page 10 mistakes the intent of Option 1 which is the formulation of an Administration position. Certainly, no assurance of U.S. participation can be given without Congressional funding approval. However, Congress can make no decision until the Administration proposes the program.

(g) Paragraph a(2) on page 11 should acknowledge the ongoing work of the ICAO ASTRA panel which will have a powerful influence on future ICAO action and in which we have already experienced difficulties.

(h) Paragraph a(3) on page 11 ignores the fact that the Ministerial Council of the European Space Research Organization supports the Aerosat program as now proposed. This means a governmental commitment by the participating countries in Europe. In these circumstances, it is not accurate to state that governments have few strong fundamental views concerning the MOU.

(i) Paragraph b on page 12 fails to reflect the fact that the issue of mobile services was discussed at great length during the INTELSAT negotiations and extensively explored in the negotiation of the MOU. U.S. views on the broader issues were not well received by the Europeans and a favorable resolution of these issues will require extensive and broad based negotiations in order to involve smaller countries more inclined to U.S. views. It is clear that the Europeans would not view Option 2 as a first move to negotiate on a new foundation, but rather as a refusal to engage in any short-term, limited, joint experimental activity without a concession on longer term issues.

Representatives of the Department would be glad to discuss these issues with you at your convenience, and we would appreciate being informed of the consequential adjustments in the draft paper.

Sincerely yours,

Julius L. Katz
Acting Assistant Secretary
for Economic Affairs

DEPARTMENT OF STATE

Washington, D.C. 20520

13
12/15

December 14, 1971

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Director of Telecommunications
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Executive Office of the
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Representatives of the Department would be glad to discuss these issues with you at your convenience, and we would appreciate being informed of the consequential adjustments in the draft paper.

Sincerely yours,

Julius L. Katz
Acting Assistant Secretary
for Economic Affairs

Mr. Whitehead

OFFICE OF TELECOMMUNICATIONS POLICY
EXECUTIVE OFFICE OF THE PRESIDENT
WASHINGTON, D.C. 20504

December 13, 1971

DIRECTOR

MEMORANDUM FOR

Brigadier General Haig
The White House

Enclosed is the memorandum to the President summarizing the issues, options, and agency views regarding the aeronautical satellite program. Attached to that memorandum is a staff paper resulting from the interagency working group which we established last week. I am also enclosing, for your convenience, copies of letters from the Congress expressing their interest and concern.

The interagency staff paper is of doubtful usefulness. In order to reach agreement in the working group, we tolerated many inconsistencies in the paper. Its principal usefulness is that it highlights the perspectives and recommendations of the agencies involved.

The aerosat service does not fall into the category of space projects amenable to the kind of international cooperation Henry and the President presumably have in mind. (The program was, in fact, pulled away from NASA for just that reason.) However, you and Henry may wish to use this occasion to call attention to the need for a systematic development of cooperative space and other science projects that are consistent with other U. S. objectives. NSSM 72 failed, but I believe an Executive Office working group could provide what you need.

Clay T. Whitehead

Attachments

cc: Mr. Peter Flanigan

DEC 13 1971

MEMORANDUM FOR THE PRESIDENT

FROM: Clay T. Whitehead SIGNED

SUBJECT: Aeronautical Communication Satellite Service

The Federal Aviation Administration is asking for approval of a draft Memorandum of Understanding (MOU) establishing a satellite communication service for civil aviation use in the Atlantic and Pacific, to be jointly owned and managed by the United States and European governments. The MOU is the result of discussions between the FAA and the European Space Research Organization (ESRO) and is now before the concerned governments for approval.

There is a growing need for maritime and aeronautical communications over the oceans that is best met by satellites. The INTELSAT system is expected to gross $3 billion over the next decade, and aeronautical and maritime communications services could produce commercial revenues of $500 million to $1 billion over the first decade of service. The United States made major concessions to Europe in the recent INTELSAT negotiations in the direction of more political control at the cost of commercial interests and principles. These same issues are now at stake in the proposed FAA-ESRO arrangement.

The proposed MOU is not consistent with stated and published Administration policy (summary at Tab A) in that it provides for (1) ownership and operation by the government rather than the private sector; (2) political agreement to share production between Europe and the United States in equal proportion; (3) European veto over all program management decisions; and (4) exclusion of maritime interests. Together with INTELSAT, this arrangement would stand as a persuasive precedent for the long-run future of international communications contrary to U.S. interests. It also requires FY73 funding of about $60 million not now included in OMB planning.

The provisions of the MOU are favorable to European interests in (1) gaining access to U.S. technology and know-how; (2) assuring more production for their aerospace industry; and (3) furthering the principle of government-to-government control of international communications as opposed to private sector commercial development.

The Departments of State and Transportation favor the draft MOU in spite of its inconsistency with stated policy because of the European desire for government ownership of communications and mandatory production sharing. The provisions of the MOU are opposed by OTP, OMB, and the Assistant to the President for International Economic Policy because of the major undercutting of U.S. objectives and the likelihood that the management arrangements will be productive of more international contention than harmony in the future. The program is opposed by U.S. and foreign international air carriers, by U.S. communications carriers, and by several aerospace manufacturing firms. There is significant bi-partisan Congressional opposition and hearings have been announced.

The fundamental issue for your decision is the choice between two basic options:

1. Approve the MOU with its significant harm to U.S. economic and communications policy objectives in order to avert adverse European reaction.

2. Direct that the MOU not be approved and that cooperative arrangements more consistent with fundamental U.S. objectives be sought through negotiations at higher levels of government on a broader basis.

Attached at Tab B is a summary of the pros and cons of the two options; at Tab C is an interagency staff paper. I strongly recommend that you approve the second option so that this and other international communications matters can be put on a more solid basis in cooperation with European and Asian communications authorities.

Approve Option 1 _____

Approve Option 2 _____

Other _____

CTWhitehead:lmc 12/13/71

cc:
DO Records
DO Chron
Mr. Whitehead-2
Dr. Mansur
Mr. Smith

Administration Policy

The Administration policy for aeronautical communications services is stated in the Policy of 7 January 1971 and subsequent letters to the FAA of 19 March and 12 July.

The principal features of this Policy are:

a. The responsibility to implement the Policy is placed in the FAA.

b. The Government (FAA) should lease its communications services from the private sector.

c. Institutional arrangements should not foreclose establishment of communications to serve a broad range of users including both maritime and aeronautical communities.

d. Services and equipment needed by the Government shall be procured by competitive bid.

e. The Government shall utilize the UHF frequency band near 1000 megahertz.

f. International cooperation should be encouraged in ways consistent with other objectives.

TAB B

Arguments for Renegotiation
Of the Proposed Memorandum of Understanding

- It calls for U.S. Government ownership and operation of the AEROSAT communications service in a 50/50 management and ownership program to 1980. Together with the precedent of INTELSAT, this arrangement would effectively foreclose any possibility of keeping international satellite communications in the private sector. Communications for aviation and merchant shipping could be a new communications service industry with revenues up to $1 billion over the first decade.

- It gives significant encouragement to the concept of sharing production by political agreement and will, as a U.S. Government commitment, stand as a persuasive precedent in the future contrary to U.S. interests.

- Institutional arrangements for a maritime system will be discussed early next year. Maritime communications will be several times larger in volume than aviation, and AEROSAT is being closely watched as a precedent.

- The terms of the draft MOU are inconsistent with U.S. positions in other international forums; i.e., INTELSAT and NATO. The Secretary of Defense has formally expressed strong opposition to similar proposals for divided management and production sharing for the proposed NATO Integrated Communications System (NICS).

- The management-by-consensus arrangements, with the implicit European veto, practically guarantee program delays and cost overruns. It is likely to bring about more differences and contention than cooperation with Europe and other nations.

- The international (including European) and U.S. airlines oppose the agreement as do communications service companies (and several aerospace firms). They oppose government ownership and object to the higher cost of the FAA/ESRO program ($125 M-$140 M) over a private sector service ($75).

- It excludes major Pacific powers with aviation and communications interests from a significant role. This imbalance follows our recent special concession to Europe on launch assurances.

- It will avoid short-term unhappiness on the part of the French, Germans, and British. State contends that any delay or renegotiations would cause Europe to build their own system for the Atlantic; however, ESRO is a faltering organization, and we doubt they have the resources or resolve to do so. State also contends the Europeans might vote against us in ICAO, but no ICAO action is to be taken until the middle of the decade.

- The draft MOU is not consistent with the Mutual Security Act of 1954, Section 414. The MOU commits the U.S. to provide access to technology (that is likely to be classified) prior to the review by the Munitions Control Board that the Act requires.

- Firm defense of the MOU by all elements of the Administration will be necessary to sell the program to Congress during budget hearings and other hearings that may be called. This will be difficult, if not impossible, to do in the face of the high cost of the FAA program, the commercial nature of the service, industry criticism, negotiations that will be underway on international maritime communications, and the acknowledgement that the MOU is contrary to established U.S. policy. It could be quite embarrassing to the Administration in 1972.

Arguments for Signing Draft MOU

- The draft MOU is the outcome of FAA/ESRO negotiations, subject to approval by governments. To reopen negotiations now would be considered by the European negotiators as upsetting a deal reached by compromises on both sides.

- Reopening the negotiations would cause the Europeans to conclude that the U.S. is favoring U.S. industry in this program because of its lead in space technology.

- Attempts to renegotiate may cause the Europeans to threaten a unilateral program in the Atlantic with no cooperation.

December 11, 1971

JOINT AERONAUTICAL SATELLITE PROGRAM

I Background

II Ad Referendum Memorandum of Understanding

III Options

IV A. Approve the Ad Referendum MOU and Fund the Program

1. Arguments for this option

2. Arguments against this option

B. Renegotiate After Disapproval of the Ad Referendum MOU

1. Arguments for this option

2. Arguments against this option

V Recommendations

Joint Aeronautical Satellite Program

I. Background

During the past several years, the Administration has been actively encouraging the application of satellite technology to improve the safety and efficiency of international civil aviation.

a. Telecommunication Policy Objective

Consistent with the Administration's policy of lessening the Federal Government's role in activities which more appropriately can be undertaken in the private sector, the Office of Telecommunications Policy supports the development of the satellite communications services required for air traffic control by private, non-Government entities. Its objective is an international arrangement providing oceanic satellite communication services from a commercial organization.

b. Air Traffic Control Objective

All interested agencies favor the immediate development of an air traffic control program utilizing satellite communications in order to establish by 1980 internationally approved operational satellites and procedures. Under treaty, operational activation of satellite telecommunications for air traffic control requires International Civil Aviation Organization (ICAO) approval of technical specifications and international regional understanding on operating procedures.

c. Policy of January 7, 1971

On January 7, 1971, the Office of Telecommunications Policy issued a policy statement to encourage expeditious action on a pre-operational/experimental program in air traffic control utilizing satellite communications with the following objectives:

"1. Assure the safety, efficiency, and economic viability of international civil aviation.

"2. Promote the timely and useful application of technological advances to assure adequate, reliable, and economic telecommunications for air traffic control, operational control, and search and rescue.

"3. Assure that program institutional arrangements are responsive to the requirements of the users, compatible with the evolving National Aviation System, and consistent with the foreign policy objectives and commitments of the United States.

"4. Encourage international cooperation in research, development, and applications programs within an institutional framework which assures effective utilization of resources.

"5. Facilitate early deployment of advanced applications such as independent surveillance and navigation.

"6. Minimize duplication of Federal facilities and programs and encourage the use of facilities available from the private sector."

The 7 January policy and subsequent letters to the FAA and DOS of 12 July directed that:

1. "The Department of Transportation . . . is to be the lead management agency, and to assume responsibility for defining requirements, program budgeting, and management of pre-operational and operational systems activity. Through the Department of State, the Department of Transportation . . . should seek international utilization of the pre-operational system, and should initiate cooperative activity with other nations to establish an operational system in the Atlantic and Pacific oceanic areas by 1980." (January 7 policy)

2. "The Government shall utilize commercial telecommunications facilities to the maximum extent feasible." (7 January policy)

"The policy of the U. S. is ownership of communications systems in the private sector; accordingly, the ownership of the U. S. portion of both the pre-operational and operational systems must be in the private sector.

Although our foreign counterparts typically provide communications with government-owned systems, we should encourage the Europeans to adopt a private ownership approach for the aeronautical satellite program . . .. All procurements within a joint international aeronautical satellite program shall be international competitive bid." (Letter to FAA Administrator 12 July 1971)

3. "It is possible that a single system combining the functions of communications and position fixing to support both maritime and aviation services would permit economic benefits in a worldwide operational system." (7 January policy)

"Since the pre-operational aeronautical satellite program is the first step toward the establishment of such a system and could establish many precedents, the institutional, technical and financial arrangements of a joint pre-operational international aerosat program should be consistent with this longer term goal. The possibility of a multiple user system in the pre-operational system should not be precluded until such time as it would cause significant delay in the aerosat program." (12 July letter to FAA Administrator)

II. Memorandum of Understanding

The FAA (with assistance from DOT and DOS) began discussions in June 1971 with a European group for aeronautical satellites, headed by the Spanish Air Minister, consisting of working representatives from nine member countries of the European Space Conference, and four other countries (Australia, Canada, Japan, and the Philippines). These discussions were in accordance with OMB guidance to consider a cooperative international program.

The understandings reached are contained in an ad referendum Memorandum of Understanding (MOU) which creates an experimental, pre-operational program for test and evaluation of satellite communication for air traffic control which is a necessary step to establish international agreement on technical operational standards and operating procedures by 1980.

The ad referendum MOU is now before the governments concerned for approval. The essential features are:

a. Provision of joint US/European procurement of satellites, control stations, and test avionics sufficient to place two satellites, each over the Atlantic and Pacific by 1977 at a cost ranging between $125 and $142 million;

b. Provision for separate but coordinated procurement of ground stations and pre-production aircraft avionics;

c. Provision for use without charge of satellite capability by the major partners and other nations wishing to join in the coordinated aeronautical experimentation;

d. Partnership management arrangements for the U. S. and Europe including:

(1) joint and equal funding;

(2) joint and equal management requiring unanimous US/European agreement through an Acrosat Council on which the U. S. and the Europeans (as a group) would each have one vote. This is equivalent to a veto by either party and provides each party with essential control over all aspects of the program beyond the basic provisions of the MOU;

(3) joint and equal ownership of two communication satellites over both the Atlantic and Pacific oceans;

(4) a fair and reasonable distribution of the work in recognition of the joint funding among member states of the ESRO states participating in the joint program and the U.S. The FAA and ESRO agree that this will result in approximately equal distribution of contract responsibilities through subcontract between U.S. and Europe.

e. Participation on a non-partnership, advisory basis by Australia, Canada, and most probably Japan, each contributing $4 million and engaging actively in the testing and evaluation effort but on a non-production basis.

f. The MOU terminates on or before 1 January 1980, without prejudice to follow-on arrangements.

III. Options

The courses of action open to the U. S. Government are:

Option One - Approve signing of the ad referendum MOU and fund the program as defined.

Option Two - Renegotiate after disapproval of the ad referendum MOU by proposing to the Europeans, as well as the Japanese, Canadians, and Australians, further discussions with government communications officials as to how best to meet broad communications needs for the 1970's, including aeronautical satellite. (Such discussions would not be with the European Space Research Organization (ESRO).)

IV. Discussion on Options

A. Approve the Ad Referendum MOU and Fund the Program (Option One)

1. Arguments for this Option

a. The U. S. should sign the MOU and fund the program since it represents a highly satisfactory arrangement with significant benefits for international aviation, international relations, the U. S. Government and U. S. industry.

b. This pre-operational/experimental program offers the only prospect for adoption of an ICAO standard and an internationally accepted implementation plan by 1980.

c. Since this is an experimental program in air traffic control (although not in satellite communications technology), only governments are willing to defray the air traffic control expenses and all existing offers are premised on major government support by investment or guaranteed lease payments. Equal participation by Europe and financial contributions by Canada, Australia, and Japan will lessen the load on the U. S. taxpayer and create a sound precedent for other experimental space programs in which the Administration has sought to enlist European cooperation.

d. International participation will produce a balance of payments inflow of at least $30 million in this program while satisfying strong foreign demands for a responsible role in space exploration. In view of the contributions from Australia, Canada, and Japan, the expected cost to the partners is $56 million each, assuming an estimated total space segment cost of $125 million. The expected return to U. S. industry is in excess of $85 million.

e. Government investment will be limited to the pre-operational/experimental phase which is consistent with the nature of the program. The program arrangements will thus preclude any precedent for Government involvement in commercial operations.

f. The U. S. will insist that the subsequent operational system will be organized on a private lease basis.

g. A joint program will create an atmosphere conducive to the establishment of satisfactory commercial arrangements for an operational capability useful not only to aeronautical authorities but to other mobile service users who, by or before 1980, may develop requirements.

h. Government investment, which is consistent with our operation of other experimental programs, will minimize costs to the U. S. taxpayer by utilizing existing management capability, reducing administrative complexity, especially in the U. S. -European interface (the Europeans have rejected participation on a lease basis and insist on investing). Government investment to minimize costs and reduce administrative complexity is supported by U. S. manufacturing industry.

i. The proposed partnership arrangement entails European sharing of responsibilities for management and production in return for full sharing of costs. Production sharing has been used in NATO and INTELSAT and is still being considered in NATO negotiations. It is an essential part of the partnership arrangement of this program.

2. Arguments Against this Option

a. This program can, if properly structured with the Europeans, provide the seed for development of a new mobile communications industry. Since the satellites for this program are designed for 5-7 years, there is concern that we are now

structuring the institutions for aeronautical communications, and, more generally perhaps, a mobile communications industry for the next decade and beyond. The American Institute for Merchant Shipping has asked that the Policy of 7 January be augmented to assure full maritime participation. The Maritime Administration even now has a program underway leading to a maritime satellite system. If allowed to develop, this industry may gross from $500M to $1 billion in the first decade. It can provide work in excess of $150 million to our aerospace and electronic industries in the next five years. For this reason, the central thrust of policy should be to permit a fair and equal competition by U. S. and European industries without governmental guarantees. In the tentative agreement, competition is restricted by providing for sharing of production, and the management and ownership arrangements practically foreclose private sector venture investment.

b. The proposed FAA/ESRO program may establish a precedent of joint government management and ownership which would be difficult to reverse in 1980 when the pre-operational project concludes.

c. The MOU includes a program of satellite development using technology generally available from prior U. S. aerospace efforts and, in effect, may subsidize European aerospace industry.

d. The proposed management, production sharing, and ownership arrangements contravene private sector incentives for investment of venture capital and, as a result, the joint FAA/ESRO program is opposed by U. S. communications carriers and several aerospace firms. The international air carriers, both U. S. and foreign, are also opposed because of expected increased costs. The Air Transport Association is concerned because of implications of government ownership

and European influence of the satellite communications serving our domestic air carrier routes between the U.S. Mainland and Hawaii.

c. The production arrangements encourage the concept of sharing production by political agreement and will, as a U.S. Government commitment, stand as a persuasive precedent in the future, which is contrary to U.S. interests. In this respect, the draft MOU is inconsistent with U.S. positions in other international forums, i.e., INTELSAT and NATO. The Secretary of Defense has formally expressed strong opposition to divided management and production sharing for the new NATO Integrated Communications System. An agreement for production sharing for this program would seriously undermine credibility of the U.S. in NATO negotiations.

f. Finally, the draft MOU is inconsistent with the Mutual Security Act of 1954, Section 414. The MOU commits the U.S. to provide access to technology prior to the review by the Munitions Control Board that the Act requires.

g. It is doubtful that the Europeans have the will to carry out any threat to go forward alone in producing an air control traffic system using satellite communications if we do not accept the present agreement.

h. Approval of this program prior to Congressional action authorizing U.S. funds for the programs is unwise because legislative approval cannot be guaranteed, especially in the light of publicly expressed Congressional opposition and industry attitudes toward the program. Embarrassment to the U.S. among the Europeans would follow signature of the MOU now if Congress were later to refuse funds for the program.

B. Renegotiate After Disapproval of the Ad Referendum MOU (Option Two)

1. Arguments for this Option

a. Concern has been expressed that unilateral U. S. alteration to the proposed Memorandum of Understanding would be harmful to our foreign relations and has suggested that ICAO would block approval of the operational system. These fears are not well founded for several reasons:

(1) The FAA, including its Administrator, has continually made it clear that the discussions were exploratory and that a review of the tentative agreements by the respective governments, both U. S. and European, would be necessary.

(2) No essential ICAO action is necessary until the middle of the decade, and it is difficult to believe that present differences will have discernible effects on a world body of 122 nations in 1980.

(3) The French and German space communities have provided the principal motivation and guidance for the evolution of the European views. In assessing the impact of renegotiation, it must be understood that there is a clear distinction between the aviation ministries, the international air carriers, and the French and the German space communities. While the French and German aviation ministries, and to a lesser extent the British aviation ministry, tend to be influenced by the views of their respective space communities, other European aviation ministries and governments are believed to have few strong fundamental views concerning the specific arrangements embodied in the proposed MOU.

b. The fundamental focus of current concern should not be the draft MOU, but the central issue, which is: Can a cooperative program be structured which is consistent with Administration policy, and can such a program now be negotiated without unacceptable effects on foreign relations.

The answer to this question can never be known unless further negotiation is at least attempted. There are reasons to believe it may succeed. While proposals to alter the program will definitely cause adverse reaction from the French and German space communities, we believe that the overall reaction of governments can be minimized by firm and tactful negotiation. The Europeans are uncertain about the outcome, and it is proposed, therefore, to use this uncertainty to negotiate arrangements consistent with broader United States objectives.

c. The U. S. should accept the temporary political cost of disapproving the draft MOU while discussing with the communications officials of the European and other governments the real problem of providing satellite communications to all who cross the seas.

The U. S. should deal with the whole oceanic satellite communications problem, not merely a limited system directed to air traffic control, and discussions with all interested states should be lifted out of the space-aviation area and concentrated among those foreign officials responsible for communication problems. In this different environment, the need to have an oceanic satellite communications system could be presented along with other programs the U. S. is prepared to undertake. Starting anew on a broader base, the U. S. can be consistent in pursuing its objective of maintaining communications in the private sector and allowing industry to enter fairly and competitively.

2. Arguments Against this Option

a. Disapproval of the MOU in anticipation of broader discussions and negotiations in the future is both unnecessary and undesirable.

b. It is premature to attempt to discuss "the whole oceanic satellite communications problem" because mobile service requirements, other than air traffic, cannot be defined at this time. Furthermore, efforts to broaden the program could be interpreted as a U.S. step toward undermining the INTELSAT Agreement.

c. The expected capability (consistent with economic constraints) of the pre-operational/experimental satellite system (two satellites over each ocean) is needed to meet the aeronautical test and evaluation goals. Hence, it is not essential to consider now the broader issue of multiple-users, except on an experimental basis which is provided for in the MOU, and the aeronautical satellite can be isolated for separate and immediate consideration.

d. The discussions leading to the MOU were conducted with the representatives of the governments involved selected by those governments. It is unreasonable to expect that negotiations with foreign government communications officials would be possible or would result in a more favorable agreement for the U.S. on the immediately needed aeronautical satellite program than the present MOU. Further, given the complexity of the overall oceanic communications problem and the need to reconsider the Communications Act of 1962 under this option, the time necessary to attempt to negotiate a more general agreement will delay even further the consummation of any agreement in an area where immediate action is needed and render impossible the goal of a 1980 operational system.

e. Disapproval would greatly disturb the Europeans (as well as Canada, Australia, and Japan) and cast strong doubts on our credibility with regard to proceeding on any joint aeronautical or space venture. It might also endanger ratification of the recently-negotiated definitive arrangements for INTELSAT. This option is in fact self-defeating since the best way to establish a cooperative framework for a future program would be to first establish a short-run cooperative relationship on the proposed joint program as defined in the MOU.

f. It will "sour" the ICAO outlook with respect to U.S. views on aeronautical satellites and other issues of international civil aviation and would result in a clear diminution of U.S. influence and leadership in ICAO.

g. It would lead to an independent European/Canadian action in the Atlantic (since they have the technology, the funds, and the assurance of a U.S. launch) which would put the U.S. Government and industry at a clear disadvantage with respect to an operational system and create vested interests effectively precluding a broad-based approach to oceanic mobile communications in the future. It also would provide an "opening" for seeking eventually to recover their costs for such a program by "user" charges on international traffic in the Atlantic where two-thirds of the passengers are U.S. citizens.

V. Recommendations

a. The DOT/FAA and DOS strongly recommend that the Administration approve the MOU and fund the program (Option One). The discussions leading to the MOU were conducted in accordance with OTP guidance; the stated OTP objectives of 7 January have been met, and the program represents a highly satisfactory arrangement with significant benefits for international aviation, international relations, the U.S. Government, and U.S. industry.

b. The Assistant to the President for International Economic Affairs recommends renegotiations (Option Two) to seek an agreement more consistent with the Administration's international economic objectives.

c. The OMB recommends renegotiation on the basis that the proposed MOU:

1. Is contrary to U.S. commercial and balance of trade interests;

2. Is likely to lead to management and budgeting differences with the European partners that will soon undermine the good will created by going ahead at this time;

3. Is contrary to published Administration policy to an extent that will be difficult and potentially embarrassing to justify to Congress and to industry (Senate Commerce Committee has scheduled hearings which it feels should precede signing of the MOU);

4. Adds $60 million unnecessarily to the FAA budget that is not included in current planning (House and Senate Appropriations Committees have indicated opposition and concern).

d. The Office of Telecommunications Policy recommends renegotiation (Option Two). The United States should seek a cooperative program consistent with the fundamental policies and objectives of this Administration. A successful program cannot be based on management-by-consensus proposed in the MOU, with the implicit European veto which practically guarantees program delays and cost over-runs. It is likely to bring about more contention than cooperation with Europe and other nations. Renegotiation offers the prospect of a cooperative program consistent with investment incentives for the private sector rather than government ownership as proposed.

Date: ~~DEC 21 1971~~

From:

To:

Whitehead, C. T.	
Mansur, G. F.	
Babcock, C.	
Buss, L.	
Carruthers, B.	
Cooke, A.	
Culpepper, C.	
Dean, W.	
Doyle, S.	
Enslow, P.	
Goldberg, H.	
Hailey, L.	
Hall, D.	
Hinchman, W.	
Jansky, D.	
Johnston, B.	
Joyce, C.	
Lamb, B.	
Lasher, S.	
Lyons, W.	
McCrudden, M.	
Nelson, R.	
Owen, B.	
Raish, L.	
Robinson, K.	
Scalia, A.	
Smith, L.	
✓ Thornell, J.	
Urbany, F.	
Ward, D.	

Remarks:

Jim and Dick
LET THIS DIE
NO Response

THE WHITE HOUSE
WASHINGTON

12-15-71
(Date)

TO: Clay T. Whitehead

FROM: PETER FLANIGAN

ACTION: DUE DATE: _____

X Prepare draft reply for Mr. Flanigan's signature

_____ Direct reply

_____ Comments/recommendations

_____ Please handle

_____ Information

_____ File

REMARKS:


RECEIVED
DEC 21 1971

999c

Aeronat

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m
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AMERICAN INSTITUTE OF MERCHANT SHIPPING

1120 Connecticut Avenue, N.W., Suite 930, Washington, D. C. 20036
Phone: 202/833-2710

Pacific Regional Office
P.O. Box 7861, San Francisco, California 94120
Phone: 415/362-7986

December 13, 1971

Mr. Peter Flannigan
Assistant to the President
White House
Washington, D. C.

Dear Mr. Flannigan:

SATELLITE COMMUNICATIONS

It is our understanding that policy decisions are currently coming to a head with respect to the government funded Aerosat programs, and that there is considerable uncertainty whether any provision is to be made for maritime participation within these programs.

This letter is to advise you that our members are acutely aware of the benefits to be derived from the future use of space telecommunication services and have directed us in their behalf to strongly support all programs which will further this development for the maritime industry. Earlier this year prior to the World Administrative Radio Conference on Space Communications a resolution, originating within our Telecommunications Committee and unanimously adopted, included the following request:

> "strongly urge the U. S. Government to take appropriate action to insure that the Statement of the Office of Telecommunications Policy on Aeronautical Satellites, dated 7 January 1971 be augmented to provide for full Maritime participation and that the Department of Transportation, in implementing said Policy Statement, make suitable provision for the inclusion of both commercial and government maritime services."

We thought you should be aware of this interest by the maritime community, and respectfully request your support for authorizing maritime participation in the Aerosat program.

Sincerely,

James J. Reynolds

James J. Reynolds
President

cc: Dr. C. T. Whitehead

OFFICE OF TELECOMMUNICATIONS POLICY
EXECUTIVE OFFICE OF THE PRESIDENT
WASHINGTON, D.C. 20504

December 13, 1971

DIRECTOR

MEMORANDUM FOR

Brigadier General Haig
The White House

Enclosed is the memorandum to the President summarizing the issues, options, and agency views regarding the aeronautical satellite program. Attached to that memorandum is a staff paper resulting from the interagency working group which we established last week. I am also enclosing, for your convenience, copies of letters from the Congress expressing their interest and concern.

The interagency staff paper is of doubtful usefulness. In order to reach agreement in the working group, we tolerated many inconsistencies in the paper. Its principal usefulness is that it highlights the perspectives and recommendations of the agencies involved.

The aerosat service does not fall into the category of space projects amenable to the kind of international cooperation Henry and the President presumably have in mind. (The program was, in fact, pulled away from NASA for just that reason.) However, you and Henry may wish to use this occasion to call attention to the need for a systematic development of cooperative space and other science projects that are consistent with other U. S. objectives. NSSM 72 failed, but I believe an Executive Office working group could provide what you need.

Clay T. Whitehead

Attachments

cc: Mr. Peter Flanigan

DEC 13 1971

MEMORANDUM FOR THE PRESIDENT

FROM: Clay T. Whitehead SIGNED

SUBJECT: Aeronautical Communication Satellite Service

The Federal Aviation Administration is asking for approval of a draft Memorandum of Understanding (MOU) establishing a satellite communication service for civil aviation use in the Atlantic and Pacific, to be jointly owned and managed by the United States and European governments. The MOU is the result of discussions between the FAA and the European Space Research Organization (ESRO) and is now before the concerned governments for approval.

There is a growing need for maritime and aeronautical communications over the oceans that is best met by satellites. The INTELSAT system is expected to gross $3 billion over the next decade, and aeronautical and maritime communications services could produce commercial revenues of $500 million to $1 billion over the first decade of service. The United States made major concessions to Europe in the recent INTELSAT negotiations in the direction of more political control at the cost of commercial interests and principles. These same issues are now at stake in the proposed FAA-ESRO arrangement.

The proposed MOU is not consistent with stated and published Administration policy (summary at Tab A) in that it provides for (1) ownership and operation by the government rather than the private sector; (2) political agreement to share production between Europe and the United States in equal proportion; (3) European veto over all program management decisions; and (4) exclusion of maritime interests. Together with INTELSAT, this arrangement would stand as a persuasive precedent for the long-run future of international communications contrary to U.S. interests. It also requires FY73 funding of about $60 million not now included in OMB planning.

The provisions of the MOU are favorable to European interests in (1) gaining access to U.S. technology and know-how; (2) assuring more production for their aerospace industry; and (3) furthering the principle of government-to-government control of international communications as opposed to private sector commercial development.

The Departments of State and Transportation favor the draft MOU in spite of its inconsistency with stated policy because of the European desire for government ownership of communications and mandatory production sharing. The provisions of the MOU are opposed by OTP, OMB, and the Assistant to the President for International Economic Policy because of the major undercutting of U.S. objectives and the likelihood that the management arrangements will be productive of more international contention than harmony in the future. The program is opposed by U.S. and foreign international air carriers, by U.S. communications carriers, and by several aerospace manufacturing firms. There is significant bi-partisan Congressional opposition and hearings have been announced.

The fundamental issue for your decision is the choice between two basic options:

1. Approve the MOU with its significant harm to U.S. economic and communications policy objectives in order to avert adverse European reaction.

2. Direct that the MOU not be approved and that cooperative arrangements more consistent with fundamental U.S. objectives be sought through negotiations at higher levels of government on a broader basis.

Attached at Tab B is a summary of the pros and cons of the two options; at Tab C is an interagency staff paper. I strongly recommend that you approve the second option so that this and other international communications matters can be put on a more solid basis in cooperation with European and Asian communications authorities.

Approve Option 1 _____

Approve Option 2 _____

Other _____

CTWhitehead:lmc 12/13/71

cc:
DO Records
DO Chron
Mr. Whitehead-2
Dr. Mansur
Mr. Smith

Administration Policy

The Administration policy for aeronautical communications services is stated in the Policy of 7 January 1971 and subsequent letters to the FAA of 19 March and 12 July.

The principal features of this Policy are:

a. The responsibility to implement the Policy is placed in the FAA.

b. The Government (FAA) should lease its communications services from the private sector.

c. Institutional arrangements should not foreclose establishment of communications to serve a broad range of users including both maritime and aeronautical communities.

d. Services and equipment needed by the Government shall be procured by competitive bid.

e. The Government shall utilize the UHF frequency band near 1000 megahertz.

f. International cooperation should be encouraged in ways consistent with other objectives.

TAB B

Arguments for Renegotiation Of the Proposed Memorandum of Understanding

- It calls for U.S. Government ownership and operation of the AEROSAT communications service in a 50/50 management and ownership program to 1980. Together with the precedent of INTELSAT, this arrangement would effectively foreclose any possibility of keeping international satellite communications in the private sector. Communications for aviation and merchant shipping could be a new communications service industry with revenues up to $1 billion over the first decade.

- It gives significant encouragement to the concept of sharing production by political agreement and will, as a U.S. Government commitment, stand as a persuasive precedent in the future contrary to U.S. interests.

- Institutional arrangements for a maritime system will be discussed early next year. Maritime communications will be several times larger in volume than aviation, and AEROSAT is being closely watched as a precedent.

- The terms of the draft MOU are inconsistent with U.S. positions in other international forums; i.e., INTELSAT and NATO. The Secretary of Defense has formally expressed strong opposition to similar proposals for divided management and production sharing for the proposed NATO Integrated Communications System (NICS).

- The management-by-consensus arrangements, with the implicit European veto, practically guarantee program delays and cost overruns. It is likely to bring about more differences and contention than cooperation with Europe and other nations.

- The international (including European) and U.S. airlines oppose the agreement as do communications service companies (and several aerospace firms). They oppose government ownership and object to the higher cost of the FAA/ESRO program ($125 M-$140 M) over a private sector service ($75).

- It excludes major Pacific powers with aviation and communications interests from a significant role. This imbalance follows our recent special concession to Europe on launch assurances.

- It will avoid short-term unhappiness on the part of the French, Germans, and British. State contends that any delay or renegotiations would cause Europe to build their own system for the Atlantic; however, ESRO is a faltering organization, and we doubt they have the resources or resolve to do so. State also contends the Europeans might vote against us in ICAO, but no ICAO action is to be taken until the middle of the decade.

- The draft MOU is not consistent with the Mutual Security Act of 1954, Section 414. The MOU commits the U. S. to provide access to technology (that is likely to be classified) prior to the review by the Munitions Control Board that the Act requires.

- Firm defense of the MOU by all elements of the Administration will be necessary to sell the program to Congress during budget hearings and other hearings that may be called. This will be difficult, if not impossible, to do in the face of the high cost of the FAA program, the commercial nature of the service, industry criticism, negotiations that will be underway on international maritime communications, and the acknowledgement that the MOU is contrary to established U. S. policy. It could be quite embarrassing to the Administration in 1972.

Arguments for Signing Draft MOU

- The draft MOU is the outcome of FAA/ESRO negotiations, subject to approval by governments. To reopen negotiations now would be considered by the European negotiators as upsetting a deal reached by compromises on both sides.

- Reopening the negotiations would cause the Europeans to conclude that the U.S. is favoring U.S. industry in this program because of its lead in space technology.

- Attempts to renegotiate may cause the Europeans to threaten a unilateral program in the Atlantic with no cooperation.

December 11, 1971

JOINT AERONAUTICAL SATELLITE PROGRAM

I Background

II Ad Referendum Memorandum of Understanding

III Options

IV A. Approve the Ad Referendum MOU and Fund the Program

1. Arguments for this option

2. Arguments against this option

B. Renegotiate After Disapproval of the Ad Referendum MOU

1. Arguments for this option

2. Arguments against this option

V Recommendations

Joint Aeronautical Satellite Program

I. Background

During the past several years, the Administration has been actively encouraging the application of satellite technology to improve the safety and efficiency of international civil aviation.

a. Telecommunication Policy Objective

Consistent with the Administration's policy of lessening the Federal Government's role in activities which more appropriately can be undertaken in the private sector, the Office of Telecommunications Policy supports the development of the satellite communications services required for air traffic control by private, non-Government entities. Its objective is an international arrangement providing oceanic satellite communication services from a commercial organization.

b. Air Traffic Control Objective

All interested agencies favor the immediate development of an air traffic control program utilizing satellite communications in order to establish by 1980 internationally approved operational satellites and procedures. Under treaty, operational activation of satellite telecommunications for air traffic control requires International Civil Aviation Organization (ICAO) approval of technical specifications and international regional understanding on operating procedures.

c. Policy of January 7, 1971

On January 7, 1971, the Office of Telecommunications Policy issued a policy statement to encourage expeditious action on a pre-operational/experimental program in air traffic control utilizing satellite communications with the following objectives:

"1. Assure the safety, efficiency, and economic viability of international civil aviation.

"2. Promote the timely and useful application of technological advances to assure adequate, reliable, and economic telecommunications for air traffic control, operational control, and search and rescue.

"3. Assure that program institutional arrangements are responsive to the requirements of the users, compatible with the evolving National Aviation System, and consistent with the foreign policy objectives and commitments of the United States.

"4. Encourage international cooperation in research, development, and applications programs within an institutional framework which assures effective utilization of resources.

"5. Facilitate early deployment of advanced applications such as independent surveillance and navigation.

"6. Minimize duplication of Federal facilities and programs and encourage the use of facilities available from the private sector."

The 7 January policy and subsequent letters to the FAA and DOS of 12 July directed that:

1. "The Department of Transportation . . . is to be the lead management agency, and to assume responsibility for defining requirements, program budgeting, and management of pre-operational and operational systems activity. Through the Department of State, the Department of Transportation . . . should seek international utilization of the pre-operational system, and should initiate cooperative activity with other nations to establish an operational system in the Atlantic and Pacific oceanic areas by 1980." (January 7 policy)

2. "The Government shall utilize commercial telecommunications facilities to the maximum extent feasible." (7 January policy)

"The policy of the U. S. is ownership of communications systems in the private sector; accordingly, the ownership of the U. S. portion of both the pre-operational and operational systems must be in the private sector.

Although our foreign counterparts typically provide communications with government-owned systems, we should encourage the Europeans to adopt a private ownership approach for the aeronautical satellite program . . . . All procurements within a joint international aeronautical satellite program shall be international competitive bid." (Letter to FAA Administrator 12 July 1971)

3. "It is possible that a single system combining the functions of communications and position fixing to support both maritime and aviation services would permit economic benefits in a worldwide operational system." (7 January policy)

"Since the pre-operational aeronautical satellite program is the first step toward the establishment of such a system and could establish many precedents, the institutional, technical and financial arrangements of a joint pre-operational international aerosat program should be consistent with this longer term goal. The possibility of a multiple user system in the pre-operational system should not be precluded until such time as it would cause significant delay in the aerosat program." (12 July letter to FAA Administrator)

II. Memorandum of Understanding

The FAA (with assistance from DOT and DOS) began discussions in June 1971 with a European group for aeronautical satellites, headed by the Spanish Air Minister, consisting of working representatives from nine member countries of the European Space Conference, and four other countries (Australia, Canada, Japan, and the Philippines). These discussions were in accordance with OMB guidance to consider a cooperative international program.

The understandings reached are contained in an ad referendum Memorandum of Understanding (MOU) which creates an experimental, pre-operational program for test and evaluation of satellite communication for air traffic control which is a necessary step to establish international agreement on technical operational standards and operating procedures by 1980.

The ad referendum MOU is now before the governments concerned for approval. The essential features are:

a. Provision of joint US/European procurement of satellites, control stations, and test avionics sufficient to place two satellites, each over the Atlantic and Pacific by 1977 at a cost ranging between $125 and $142 million;

b. Provision for separate but coordinated procurement of ground stations and pre-production aircraft avionics;

c. Provision for use without charge of satellite capability by the major partners and other nations wishing to join in the coordinated aeronautical experimentation;

d. Partnership management arrangements for the U. S. and Europe including:

(1) joint and equal funding;

(2) joint and equal management requiring unanimous US/European agreement through an Aerosat Council on which the U. S. and the Europeans (as a group) would each have one vote. This is equivalent to a veto by either party and provides each party with essential control over all aspects of the program beyond the basic provisions of the MOU;

(3) joint and equal ownership of two communication satellites over both the Atlantic and Pacific oceans;

(4) a fair and reasonable distribution of the work in recognition of the joint funding among member states of the ESRO states participating in the joint program and the U.S. The FAA and ESRO agree that this will result in approximately equal distribution of contract responsibilities through subcontract between U.S. and Europe.

e. Participation on a non-partnership, advisory basis by Australia, Canada, and most probably Japan, each contributing $4 million and engaging actively in the testing and evaluation effort but on a non-production basis.

f. The MOU terminates on or before 1 January 1980, without prejudice to follow-on arrangements.

III. Options

The courses of action open to the U. S. Government are:

Option One - Approve signing of the ad referendum MOU and fund the program as defined.

Option Two - Renegotiate after disapproval of the ad referendum MOU by proposing to the Europeans, as well as the Japanese, Canadians, and Australians, further discussions with government communications officials as to how best to meet broad communications needs for the 1970's, including aeronautical satellite. (Such discussions would not be with the European Space Research Organization (ESRO).)

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d. International participation will produce a balance of payments inflow of at least $30 million in this program while satisfying strong foreign demands for a responsible role in space exploration. In view of the contributions from Australia, Canada, and Japan, the expected cost to the partners is $56 million each, assuming an estimated total space segment cost of $125 million. The expected return to U. S. industry is in excess of $85 million.

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h. Government investment, which is consistent with our operation of other experimental programs, will minimize costs to the U. S. taxpayer by utilizing existing management capability, reducing administrative complexity, especially in the U. S.-European interface (the Europeans have rejected participation on a lease basis and insist on investing). Government investment to minimize costs and reduce administrative complexity is supported by U. S. manufacturing industry.

i. The proposed partnership arrangement entails European sharing of responsibilities for management and production in return for full sharing of costs. Production sharing has been used in NATO and INTELSAT and is still being considered in NATO negotiations. It is an essential part of the partnership arrangement of this program.

2. Arguments Against this Option

a. This program can, if properly structured with the Europeans, provide the seed for development of a new mobile communications industry. Since the satellites for this program are designed for 5-7 years, there is concern that we are now

structuring the institutions for aeronautical communications, and, more generally perhaps, a mobile communications industry for the next decade and beyond. The American Institute for Merchant Shipping has asked that the Policy of 7 January be augmented to assure full maritime participation. The Maritime Administration even now has a program underway leading to a maritime satellite system. If allowed to develop, this industry may gross from $500M to $1 billion in the first decade. It can provide work in excess of $150 million to our aerospace and electronic industries in the next five years. For this reason, the central thrust of policy should be to permit a fair and equal competition by U. S. and European industries without governmental guarantees. In the tentative agreement, competition is restricted by providing for sharing of production, and the management and ownership arrangements practically foreclose private sector venture investment.

b. The proposed FAA/ESRO program may establish a precedent of joint government management and ownership which would be difficult to reverse in 1980 when the pre-operational project concludes.

c. The MOU includes a program of satellite development using technology generally available from prior U. S. aerospace efforts and, in effect, may subsidize European aerospace industry.

d. The proposed management, production sharing, and ownership arrangements contravene private sector incentives for investment of venture capital and, as a result, the joint FAA/ESRO program is opposed by U. S. communications carriers and several aerospace firms. The international air carriers, both U. S. and foreign, are also opposed because of expected increased costs. The Air Transport Association is concerned because of implications of government ownership

and European influence of the satellite communications serving our domestic air carrier routes between the U. S. Mainland and Hawaii.

c. The production arrangements encourage the concept of sharing production by political agreement and will, as a U. S. Government commitment, stand as a persuasive precedent in the future, which is contrary to U. S. interests. In this respect, the draft MOU is inconsistent with U. S. positions in other international forums, i. e., INTELSAT and NATO. The Secretary of Defense has formally expressed strong opposition to divided management and production sharing for the new NATO Integrated Communications System. An agreement for production sharing for this program would seriously undermine credibility of the U. S. in NATO negotiations.

f. Finally, the draft MOU is inconsistent with the Mutual Security Act of 1954, Section 414. The MOU commits the U. S. to provide access to technology prior to the review by the Munitions Control Board that the Act requires.

g. It is doubtful that the Europeans have the will to carry out any threat to go forward alone in producing an air control traffic system using satellite communications if we do not accept the present agreement.

h. Approval of this program prior to Congressional action authorizing U. S. funds for the programs is unwise because legislative approval cannot be guaranteed, especially in the light of publicly expressed Congressional opposition and industry attitudes toward the program. Embarrassment to the U. S. among the Europeans would follow signature of the MOU now if Congress were later to refuse funds for the program.

B. Renegotiate After Disapproval of the Ad Referendum MOU (Option Two)

1. Arguments for this Option

a. Concern has been expressed that unilateral U. S. alteration to the proposed Memorandum of Understanding would be harmful to our foreign relations and has suggested that ICAO would block approval of the operational system. These fears are not well founded for several reasons:

(1) The FAA, including its Administrator, has continually made it clear that the discussions were exploratory and that a review of the tentative agreements by the respective governments, both U. S. and European, would be necessary.

(2) No essential ICAO action is necessary until the middle of the decade, and it is difficult to believe that present differences will have discernible effects on a world body of 122 nations in 1980.

(3) The French and German space communities have provided the principal motivation and guidance for the evolution of the European views. In assessing the impact of renegotiation, it must be understood that there is a clear distinction between the aviation ministries, the international air carriers, and the French and the German space communities. While the French and German aviation ministries, and to a lesser extent the British aviation ministry, tend to be influenced by the views of their respective space communities, other European aviation ministries and governments are believed to have few strong fundamental views concerning the specific arrangements embodied in the proposed MOU.

b. The fundamental focus of current concern should not be the draft MOU, but the central issue, which is: Can a cooperative program be structured which is consistent with Administration policy, and can such a program now be negotiated without unacceptable effects on foreign relations.

The answer to this question can never be known unless further negotiation is at least attempted. There are reasons to believe it may succeed. While proposals to alter the program will definitely cause adverse reaction from the French and German space communities, we believe that the overall reaction of governments can be minimized by firm and tactful negotiation. The Europeans are uncertain about the outcome, and it is proposed, therefore, to use this uncertainty to negotiate arrangements consistent with broader United States objectives.

c. The U.S. should accept the temporary political cost of disapproving the draft MOU while discussing with the communications officials of the European and other governments the real problem of providing satellite communications to all who cross the seas.

The U.S. should deal with the whole oceanic satellite communications problem, not merely a limited system directed to air traffic control, and discussions with all interested states should be lifted out of the space-aviation area and concentrated among those foreign officials responsible for communication problems. In this different environment, the need to have an oceanic satellite communications system could be presented along with other programs the U.S. is prepared to undertake. Starting anew on a broader base, the U.S. can be consistent in pursuing its objective of maintaining communications in the private sector and allowing industry to enter fairly and competitively.

2. Arguments Against this Option

a. Disapproval of the MOU in anticipation of broader discussions and negotiations in the future is both unnecessary and undesirable.

b. It is premature to attempt to discuss "the whole oceanic satellite communications problem" because mobile service requirements, other than air traffic, cannot be defined at this time. Furthermore, efforts to broaden the program could be interpreted as a U. S. step toward undermining the INTELSAT Agreement.

c. The expected capability (consistent with economic constraints) of the pre-operational/experimental satellite system (two satellites over each ocean) is needed to meet the aeronautical test and evaluation goals. Hence, it is not essential to consider now the broader issue of multiple-users, except on an experimental basis which is provided for in the MOU, and the aeronautical satellite can be isolated for separate and immediate consideration.

d. The discussions leading to the MOU were conducted with the representatives of the governments involved selected by those governments. It is unreasonable to expect that negotiations with foreign government communications officials would be possible or would result in a more favorable agreement for the U. S. on the immediately needed aeronautical satellite program than the present MOU. Further, given the complexity of the overall oceanic communications problem and the need to reconsider the Communications Act of 1962 under this option, the time necessary to attempt to negotiate a more general agreement will delay even further the consummation of any agreement in an area where immediate action is needed and render impossible the goal of a 1980 operational system.

e. Disapproval would greatly disturb the Europeans (as well as Canada, Australia, and Japan) and cast strong doubts on our credibility with regard to proceeding on any joint aeronautical or space venture. It might also endanger ratification of the recently-negotiated definitive arrangements for INTELSAT. This option is in fact self-defeating since the best way to establish a cooperative framework for a future program would be to first establish a short-run cooperative relationship on the proposed joint program as defined in the MOU.

f. It will "sour" the ICAO outlook with respect to U.S. views on aeronautical satellites and other issues of international civil aviation and would result in a clear diminution of U.S. influence and leadership in ICAO.

g. It would lead to an independent European/Canadian action in the Atlantic (since they have the technology, the funds, and the assurance of a U.S. launch) which would put the U.S. Government and industry at a clear disadvantage with respect to an operational system and create vested interests effectively precluding a broad-based approach to oceanic mobile communications in the future. It also would provide an "opening" for seeking eventually to recover their costs for such a program by "user" charges on international traffic in the Atlantic where two-thirds of the passengers are U.S. citizens.

V. Recommendations

a. The DOT/FAA and DOS strongly recommend that the Administration approve the MOU and fund the program (Option One). The discussions leading to the MOU were conducted in accordance with OTP guidance; the stated OTP objectives of 7 January have been met, and the program represents a highly satisfactory arrangement with significant benefits for international aviation, international relations, the U.S. Government, and U.S. industry.

b. The Assistant to the President for International Economic Affairs recommends renegotiations (Option Two) to seek an agreement more consistent with the Administration's international economic objectives.

c. The OMB recommends renegotiation on the basis that the proposed MOU:

1. Is contrary to U.S. commercial and balance of trade interests;

2. Is likely to lead to management and budgeting differences with the European partners that will soon undermine the good will created by going ahead at this time;

3. Is contrary to published Administration policy to an extent that will be difficult and potentially embarrassing to justify to Congress and to industry (Senate Commerce Committee has scheduled hearings which it feels should precede signing of the MOU);

4. Adds $60 million unnecessarily to the FAA budget that is not included in current planning (House and Senate Appropriations Committees have indicated opposition and concern).

d. The Office of Telecommunications Policy recommends renegotiation (Option Two). The United States should seek a cooperative program consistent with the fundamental policies and objectives of this Administration. A successful program cannot be based on management-by-consensus proposed in the MOU, with the implicit European veto which practically guarantees program delays and cost over-runs. It is likely to bring about more contention than cooperation with Europe and other nations. Renegotiation offers the prospect of a cooperative program consistent with investment incentives for the private sector rather than government ownership as proposed.

United States Senate
COMMITTEE ON APPROPRIATIONS
WASHINGTON, D.C. 20510

October 26, 1971

Mr. Clay T. Whitehead, Director
Office of Telecommunications Policy
1800 G Street
Washington, D. C. 20504

Dear Mr. Whitehead:

I am transmitting herewith a copy of a letter dated October 14 from Mr. Stuart G. Tipton, President of the Air Transport Association, and a copy of my letter to the Honorable John A. Volpe, Secretary of Transportation. The correspondence relates to a proposed agreement for a joint international program of preoperational trials of satellites for civil aviation.

It would be helpful for the Subcommittee to have your comments on the points raised by Mr. Tipton, with particular reference to the review of this matter within the Executive Branch. Your early response is requested.

With kind regards.

Sincerely,

Robert Byrd

Robert C. Byrd
Chairman
Subcommittee on the
Department of Transportation
and Related Agencies

RCB:Wk

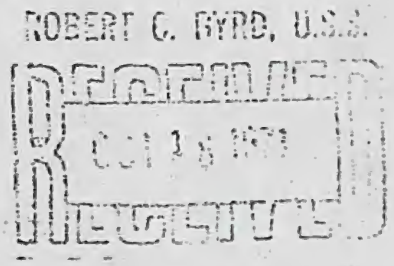
AIR TRANSPORT ASSOCIATION

OFFICE OF THE PRESIDENT
STUART G. TIPTON

1000 CONNECTICUT AVENUE, N.W.
WASHINGTON, D. C. 20036

October 14, 1971

Honorable Robert C. Byrd
Chairman
Subcommittee on Transportation
Committee on Appropriations
U. S. Senate
Washington, D. C. 20510



Dear Mr. Chairman:

The Federal Aviation Administration has been meeting with representatives of foreign governments primarily European to discuss a joint program of preoperational trials of satellites for civil aviation. Subject to the approval of the Office of Management and Budget, the present plan is to sign an agreement with these governments on November 3, 1971. If this agreement is signed, the plan is to set up an administrative organization which will issue a request for proposals for Atlantic and Pacific satellites which will cost initially in the neighborhood of $140 million. The U. S. share of this program would be approximately $70 million. If the preoperational trials are successful, they would lead to an operational program, the objective of which would be to provide aeronautical service which would become mandatory for civil aircraft, primarily airlines, in the Atlantic and Pacific areas. Further, the governments will expect the airlines, and other users, to pay the full expense of providing such operational satellite service. Thus the airlines are highly concerned that the government's proposed program is too extensive and unnecessarily complex and expensive.

The airlines to be served by such a program have repeatedly expressed strong opposition individually and through our Association and the International Air Transport Association. The airlines believe that a program of this magnitude and cost is completely unjustified at this time and therefore urge that there be no tentative approval for the funds which will be required. Although it is clear that

aeronautical satellites will be needed in the future for communicating with aircraft in the Atlantic and Pacific areas, more research is needed before preoperational trials should be undertaken. It is the recommendation of the airlines that this research and development be accomplished by utilizing already planned and funded NASA research satellites such as the so-called ATS-F. Our preliminary investigation of utilizing ATS-F indicates that this is a distinct possibility, but if further detailed exploration indicates that ATS-F can't fully provide the research capability required for civil aviation, there are strong indications that the alternative of programming a single U. S. research satellite for these specific purposes of developing aeronautical communications could be accomplished at a cost to the U. S. of approximately $25 - $30 million. In either case the U. S. would retain full control of the development at a substantially lower cost.

Without belaboring all of the technical and operational issues, which are numerous and substantive, to proceed with the FAA/European program is unquestionably to impose an unnecessary and wasteful threefold drain on the economy of the United States consisting of:

1. The initial outlay of some $70 million for the U. S. 50 percent portion of the space segment of the program; and this amounts to little more than a down-payment in a program that is already envisaged to range from $500 million to $1 billion.

2. A $30 - $50 million outlay for avionics to equip new and retrofit current aircraft; actually, the upper limit is indeterminable because the system design is embryonic at best.

3. The concomitant handing over of 50 percent of the space hardware job to non-U. S. electronic/space firms.

Perhaps most objectionable, or at least most uniquely objectionable, is that the program gratuitously extends to the European group a direct voice in the policies, operations, and cost recovery methods of the communications system that is to serve aircraft operating between the state of Hawaii and the other states of this nation.

It is our understanding that the Office of Telecommunications Policy will shortly conduct a review within the executive branch of this entire matter. We urge that any formal or informal approval of the FAA program be withheld until this matter receives further consideration.

Cordially,

S. G. Tipton

cc: All Members of Transportation Subcommittee
Honorable Milton R. Young
Honorable Clifford P. Case

October 26, 1971

Honorable John A. Volpe
Secretary of Transportation
Washington, D. C. 20590

Dear Mr. Secretary:

There is enclosed herewith a copy of a letter dated October 14 from Mr. Stuart G. Tipton of the Air Transport Association expressing strong opposition and raising pertinent questions with regard to the signing of an agreement for a joint international program of preoperational trials of satellites for civil aviation.

It would be most helpful for the Subcommittee to have your comments on the points raised in Mr. Tipton's letter. An early response will be appreciated.

With kind regards.

Sincerely,

Robert C. Byrd
Chairman
Subcommittee on the
Department of Transportation
and Related Agencies

RCB:Wk

Enclosure

United States Senate
COMMITTEE ON APPROPRIATIONS
WASHINGTON, D.C. 20510

October 29, 1971

Mr. Clay T. Whitehead, Director
Office of Telecommunications Policy
1800 "G" Street
Washington, D. C. 20504

Dear Mr. Whitehead:

Forwarded herewith is a copy of a letter I have received from Mr. Stuart G. Tipton, President, Air Transport Association.

You will note that in the last paragraph of his letter Mr. Tipton indicates that it is his understanding your office will be reviewing the Federal Aviation Administration proposed program for the use of satellites in civil aviation. The letter is very articulate and succinctly sets out strong arguments against such a program.

I would appreciate any information which you can provide to me at this time as well as a report on any findings which may be developed by your office.

Best regards.

Sincerely yours,

Gordon Allott

Gordon Allott
United States Senator

GA:jet

1 Enclosure a/s

OCT 16 1971

Bob Clark
Held for Committee

AIR TRANSPORT ASSOCIATION

OFFICE OF THE PRESIDENT
STUART G. TIPTON

1000 CONNECTICUT AVENUE, N.W.
WASHINGTON, D. C. 20036

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October 14, 1971

Honorable Robert C. Byrd
Chairman
Subcommittee on Transportation
Committee on Appropriations
U. S. Senate
Washington, D. C. 20510

Dear Mr. Chairman:

The Federal Aviation Administration has been meeting with representatives of foreign governments primarily European to discuss a joint program of preoperational trials of satellites for civil aviation. Subject to the approval of the Office of Management and Budget, the present plan is to sign an agreement with these governments on November 3, 1971. If this agreement is signed, the plan is to set up an administrative organization which will issue a request for proposals for Atlantic and Pacific satellites which will cost initially in the neighborhood of $140 million. The U. S. share of this program would be approximately $70 million. If the preoperational trials are successful, they would lead to an operational program, the objective of which would be to provide aeronautical service which would become mandatory for civil aircraft, primarily airlines, in the Atlantic and Pacific areas. Further, the governments will expect the airlines, and other users, to pay the full expense of providing such operational satellite service. Thus the airlines are highly concerned that the government's proposed program is too extensive and unnecessarily complex and expensive.

The airlines to be served by such a program have repeatedly expressed strong opposition individually and through our Association and the International Air Transport Association. The airlines believe that a program of this magnitude and cost is completely unjustified at this time and therefore urge that there be no tentative approval for the funds which will be required. Although it is clear that

aeronautical satellites will be needed in the future for communicating with aircraft in the Atlantic and Pacific areas, more research is needed before preoperational trials should be undertaken. It is the recommendation of the airlines that this research and development be accomplished by utilizing already planned and funded NASA research satellites such as the so-called ATS-F. Our preliminary investigation of utilizing ATS-F indicates that this is a distinct possibility, but if further detailed exploration indicates that ATS-F can't fully provide the research capability required for civil aviation, there are strong indications that the alternative of programming a single U. S. research satellite for these specific purposes of developing aeronautical communications could be accomplished at a cost to the U. S. of approximately $25 - $30 million. In either case the U. S. would retain full control of the development at a substantially lower cost.

Without belaboring all of the technical and operational issues, which are numerous and substantive, to proceed with the FAA/European program is unquestionably to impose an unnecessary and wasteful threefold drain on the economy of the United States consisting of:

1. The initial outlay of some $70 million for the U. S. 50 percent portion of the space segment of the program; and this amounts to little more than a down-payment in a program that is already envisaged to range from $500 million to $1 billion.

2. A $30 - $50 million outlay for avionics to equip new and retrofit current aircraft; actually, the upper limit is indeterminable because the system design is embryonic at best.

3. The concomitant handing over of 50 percent of the space hardware job to non-U. S. electronic/space firms.

Perhaps most objectionable, or at least most uniquely objectionable, is that the program gratuitously extends to the European group a direct voice in the policies, operations, and cost recovery methods of the communications system that is to serve aircraft operating between the state of Hawaii and the other states of this nation.

It is our understanding that the Office of Telecommunications Policy will shortly conduct a review within the executive branch of this entire matter. We urge that any formal or informal approval of the FAA program be withheld until this matter receives further consideration.

Cordially,

S. G. Tipton

cc: All Members of Transportation Subcommittee
Honorable Milton R. Young
Honorable Clifford P. Case

United States Senate
COMMITTEE ON
AERONAUTICAL AND SPACE SCIENCES
WASHINGTON, D.C. 20510

October 30, 1971

The Honorable Spiro T. Agnew, Chairman
National Aeronautics and Space Council
Washington, D. C.

Dear Mr. Chairman:

This Committee has consistently supported the directing of satellites and space technology towards applications to meet the needs of the people. The outstanding success of meteorological and communications satellites has proved the worth of this emphasis.

One area with which the Committee has been concerned is the so-called navigation satellite which later became a navigation/communication/traffic control satellite and has subsequently evolved into what is now known as the aeronautical satellite.

This promising application, which would allow position fixing and communications with over-water aircraft which are not now possible, was presented to this Committee as part of NASA's last year's (FY 1971) budget request and approved unanimously. Subsequently, however, this project was removed from NASA; by a directive from the Office of Telecommunications Policy, and assigned to the FAA. NASA was relegated to an advisory role.

As you are probably aware, there is substantial difference of opinion within the Executive Branch as to how this project should now proceed. Moreover, under this policy, it appears that there would have to be created in the FAA a capability to develop the aeronautical satellites. This capability already exists in NASA and in the past NASA has been the sole civilian agency to undertake such civil developments for the government as in the case of the meteorological and the earth resources survey test satellites. Of course, there could be no objection to FAA being the lead agency as they will be the operational user; however, it is not clear that it is necessary that FAA should therefore undertake the development of the space segment of that air traffic control system without a more precise delineation of the responsibilities of NASA.

In view of the fact that this problem directly affects at least three statutory members of the National Aeronautics and Space Council, it would seem appropriate that the Council would review this matter in an effort to resolve the dispute.

The nation has spent billions of dollars in building up our space technology and in developing the competence of NASA which has become one of the most successful federal agencies in history. I am certain that, as directed by the OTP, they stand ready to assist in the development of this new aeronautical satellite system. It would be a shame if this project should die or be substantially delayed because of the inability of our institutions to make a positive decision to get started and move ahead.

I would appreciate it if you could advise me of your views on this matter at an early date.

Sincerely yours,

Clinton P. Anderson
Chairman

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12-Y

United States Senate

COMMITTEE ON APPROPRIATIONS

WASHINGTON, D.C. 20510

December 2, 1971

BT

The President
The White House
Washington, D. C.

Dear Mr. President:

I have been informed that the Administration is currently reviewing a proposed Memorandum of Understanding which has been negotiated by the Federal Aviation Administration with the European space community for a Government-owned satellite system, to provide communications for international aviation. It is my understanding that this program is opposed by Comsat and the United States aerospace and aviation industries. In addition, the proposed agreement appears to be inconsistent with the Administration policy enunciated by the President's Office of Telecommunications Policy in January 1971.

I am concerned that this proposed agreement will establish precedents which are detrimental to U. S. industry and Government. More specifically, I am concerned about the following matters:

(1) The potential extensive financial commitment involved.

(2) The apparent lack of effort expended in exploring alternatives such as private financing or the utilization of existing systems.

(3) The veto power possessed by the European group over policy affecting the United States.

Because of the existing opposition in private industry and because I understand that there is some opposition to this plan by certain members of Congress, it would appear prudent that it be

GORDON ALLOTT
COLORADO

the subject of extensive review by appropriate Congressional Committees prior to your making a final decision on this matter. Therefore, it is my hope that you will defer any irreversible decision in this regard until such a review has been made.

Best regards.

Sincerely yours,

Gordon Allott

Gordon Allott
United States Senator

GA:jet

United States Senate
COMMITTEE ON COMMERCE
WASHINGTON, D.C. 20510

December 3, 1971

Honorable John A. Volpe
Secretary
Department of Transportation
Washington, D. C. 20590

Dear Mr. Secretary:

The Committee on Commerce has recently become acquainted with the program sponsored by the Department of Transportation's Federal Aviation Administration and the European Space Consortium, ESRO, to jointly and cooperatively develop and own a pre-operational aeronautical communications satellite system.

On Tuesday, November 30, the Subcommittee on Aviation was provided a briefing on this matter by Mr. John Shaffer and Mr. David Israel of the FAA. The briefing was requested by Senator Cannon because of reports that the U. S. was about to enter into an agreement of understanding with the European Consortium.

During the briefing many questions arose regarding the details and ramifications of the proposed agreement. Indeed, the questions were so fundamentally significant and far-reaching that it appears the Committee has the responsibility to conduct a full hearing into this matter to establish a record which might help Congress make a judgment as to the wisdom of entering into the agreement.

Senator Cannon and Senator Pastore, Chairman of the Communications Subcommittee of this Committee have asked me to schedule hearings on this matter which I have done. At that time, the Committee will invite testimony not only from the Government but from other interested parties as well. Senator Cannon will preside.

I am sending a letter to the Chairman of the Senate Appropriations Committee asking that that Committee defer any possible decisions regarding funding for this project until the Commerce Committee has had an opportunity to complete its inquiry. Because this matter is of such

great national and international importance I hope we can further examine the situation before any final resolution.

While I am cognizant that the undertaking of proposed action is probably authorized by provisions of the Federal Aviation Act, it seems possible that Congress might wish to consider more specific authorizations for a venture of this magnitude.

The Committee appreciates your cooperation with our request and will look forward to a full exploration of all facets of this situation during the public hearings.

Best wishes.

Sincerely yours,

Warren G. Magnuson

WARREN G. MAGNUSON
Chairman

WGM/rgr

December 11, 1971

JOINT AERONAUTICAL SATELLITE PROGRAM

I Background

II Ad Referendum Memorandum of Understanding

III Options

IV A. Approve the Ad Referendum MOU and Fund the Program

1. Arguments for this option

2. Arguments against this option

B. Renegotiate After Disapproval of the Ad Referendum MOU

1. Arguments for this option

2. Arguments against this option

V. Recommendations

Joint Aeronautical Satellite Program

I. Background

During the past several years, the Administration has been actively encouraging the application of satellite technology to improve the safety and efficiency of international civil aviation.

a. Telecommunication Policy Objective

Consistent with the Administration's policy of lessening the Federal Government's role in activities which more appropriately can be undertaken in the private sector, the Office of Telecommunications Policy supports the development of the satellite communications services required for air traffic control by private, non-Government entities. Its objective is an international arrangement providing oceanic satellite communication services from a commercial organization.

b. Air Traffic Control Objective

All interested agencies favor the immediate development of an air traffic control program utilizing satellite communications in order to establish by 1980 internationally approved operational satellites and procedures. Under treaty, operational activation of satellite telecommunications for air traffic control requires International Civil Aviation Organization (ICAO) approval of technical specifications and international regional understanding on operating procedures.

c. Policy of January 7, 1971

On January 7, 1971, the Office of Telecommunications Policy issued a policy statement to encourage expeditious action on a pre-operational/experimental program in air traffic control utilizing satellite communications with the following objectives:

"1. Assure the safety, efficiency, and economic viability of international civil aviation.

"2. Promote the timely and useful application of technological advances to assure adequate, reliable, and economic telecommunications for air traffic control, operational control, and search and rescue.

"3. Assure that program institutional arrangements are responsive to the requirements of the users, compatible with the evolving National Aviation System, and consistent with the foreign policy objectives and commitments of the United States.

"4. Encourage international cooperation in research, development, and applications programs within an institutional framework which assures effective utilization of resources.

"5. Facilitate early deployment of advanced applications such as independent surveillance and navigation.

"6. Minimize duplication of Federal facilities and programs and encourage the use of facilities available from the private sector."

The 7 January policy and subsequent letters to the FAA and DOS of 12 July directed that:

1. "The Department of Transportation . . . is to be the lead management agency, and to assume responsibility for defining requirements, program budgeting, and management of pre-operational and operational systems activity. Through the Department of State, the Department of Transportation . . . should seek international utilization of the pre-operational system, and should initiate cooperative activity with other nations to establish an operational system in the Atlantic and Pacific oceanic areas by 1980." (January 7 policy)

2. "The Government shall utilize commercial telecommunications facilities to the maximum extent feasible." (7 January policy)

"The policy of the U. S. is ownership of communications systems in the private sector; accordingly, the ownership of the U. S. portion of both the pre-operational and operational systems must be in the private sector.

Jointly prepared

Although our foreign counterparts typically provide communications with government-owned systems, we should encourage the Europeans to adopt a private ownership approach for the aeronautical satellite program . . . . All procurements within a joint international aeronautical satellite program shall be international competitive bid." (Letter to FAA Administrator 12 July 1971)

3. "It is possible that a single system combining the functions of communications and position fixing to support both maritime and aviation services would permit economic benefits in a worldwide operational system." (7 January policy)

"Since the pre-operational aeronautical satellite program is the first step toward the establishment of such a system and could establish many precedents, the institutional, technical and financial arrangements of a joint pre-operational international aerosat program should be consistent with this longer term goal. The possibility of a multiple user system in the pre-operational system should not be precluded until such time as it would cause significant delay in the aerosat program." (12 July letter to FAA Administrator)

II. Memorandum of Understanding

The FAA (with assistance from DOT and DOS) began discussions in June 1971 with a European group for aeronautical satellites, headed by the Spanish Air Minister, consisting of working representatives from nine member countries of the European Space Conference, and four other countries (Australia, Canada, Japan, and the Philippines). These discussions were in accordance with OMB guidance to consider a cooperative international program.

The understandings reached are contained in an ad referendum Memorandum of Understanding (MOU) which creates an experimental, pre-operational program for test and evaluation of satellite communication for air traffic control which is a necessary step to establish international agreement on technical operational standards and operating procedures by 1980.

The ad referendum MOU is now before the governments concerned for approval. The essential features are:

a. Provision of joint US/European procurement of satellites, control stations, and test avionics sufficient to place two satellites, each over the Atlantic and Pacific by 1977 at a cost ranging between $125 and $142 million;

b. Provision for separate but coordinated procurement of ground stations and pre-production aircraft avionics;

c. Provision for use without charge of satellite capability by the major partners and other nations wishing to join in the coordinated aeronautical experimentation;

d. Partnership management arrangements for the U. S. and Europe including:

(1) joint and equal funding;

(2) joint and equal management requiring unanimous US/European agreement through an Aerosat Council on which the U. S. and the Europeans (as a group) would each have one vote. This is equivalent to a veto by either party and provides each party with essential control over all aspects of the program beyond the basic provisions of the MOU;

jointly prepared

(3) joint and equal ownership of two communication satellites over both the Atlantic and Pacific oceans;

(4) a fair and reasonable distribution of the work in recognition of the joint funding among member states of the ESRO states participating in the joint program and the U.S. The FAA and ESRO agree that this will result in approximately equal distribution of contract responsibilities through subcontract between U.S. and Europe.

e. Participation on a non-partnership, advisory basis by Australia, Canada, and most probably Japan, each contributing $4 million and engaging actively in the testing and evaluation effort but on a non-production basis.

f. The MOU terminates on or before 1 January 1980, without prejudice to follow-on arrangements.

family prepared

III. Options

The courses of action open to the U. S. Government are:

Option One - Approve signing of the ad referendum MOU and fund the program as defined.

Option Two - Renegotiate after disapproval of the ad referendum MOU by proposing to the Europeans, as well as the Japanese, Canadians, and Australians, further discussions with government communications officials as to how best to meet broad communications needs for the 1970's, including aeronautical satellite. (Such discussions would not be with the European Space Research Organization (ESRO).)

IV. Discussion on Options

A. Approve the Ad Referendum MOU and Fund the Program (Option One)

1. Arguments for this Option

a. The U. S. should sign the MOU and fund the program since it represents a highly satisfactory arrangement with significant benefits for international aviation, international relations, the U. S. Government and U. S. industry.

b. This pre-operational/experimental program offers the only prospect for adoption of an ICAO standard and an internationally accepted implementation plan by 1980.

c. Since this is an experimental program in air traffic control (although not in satellite communications technology), only governments are willing to defray the air traffic control expenses and all existing offers are premised on major government support by investment or guaranteed lease payments. Equal participation by Europe and financial contributions by Canada, Australia, and Japan will lessen the load on the U. S. taxpayer and create a sound precedent for other experimental space programs in which the Administration has sought to enlist European cooperation.

d. International participation will produce a balance of payments inflow of at least $30 million in this program while satisfying strong foreign demands for a responsible role in space exploration. In view of the contributions from Australia, Canada, and Japan, the expected cost to the partners is $56 million each, assuming an estimated total space segment cost of $125 million. The expected return to U. S. industry is in excess of $85 million.

State

e. Government investment will be limited to the pre-operational/experimental phase which is consistent with the nature of the program. The program arrangements will thus preclude any precedent for Government involvement in commercial operations.

f. The U. S. will insist that the subsequent operational system will be organized on a private lease basis.

g. A joint program will create an atmosphere conducive to the establishment of satisfactory commercial arrangements for an operational capability useful not only to aeronautical authorities but to other mobile service users who, by or before 1980, may develop requirements.

h. Government investment, which is consistent with our operation of other experimental programs, will minimize costs to the U. S. taxpayer by utilizing existing management capability, reducing administrative complexity, especially in the U. S. -European interface (the Europeans have rejected participation on a lease basis and insist on investing). Government investment to minimize costs and reduce administrative complexity is supported by U. S. manufacturing industry.

i. The proposed partnership arrangement entails European sharing of responsibilities for management and production in return for full sharing of costs. Production sharing has been used in NATO and INTELSAT and is still being considered in NATO negotiations. It is an essential part of the partnership arrangement of this program.

2. Arguments Against this Option

a. This program can, if properly structured with the Europeans, provide the seed for development of a new mobile communications industry. Since the satellites for this program are designed for 5-7 years, there is concern that we are now

structuring the institutions for aeronautical communications, and, more generally perhaps, a mobile communications industry for the next decade and beyond. The American Institute for Merchant Shipping has asked that the Policy of 7 January be augmented to assure full maritime participation. The Maritime Administration even now has a program underway leading to a maritime satellite system. If allowed to develop, this industry may gross from $500M to $1 billion in the first decade. It can provide work in excess of $150 million to our aerospace and electronic industries in the next five years. For this reason, the central thrust of policy should be to permit a fair and equal competition by U.S. and European industries without governmental guarantees. In the tentative agreement, competition is restricted by providing for sharing of production, and the management and ownership arrangements practically foreclose private sector venture investment.

OTP/OMB

b. The proposed FAA/ESRO program may establish a precedent of joint government management and ownership which would be difficult to reverse in 1980 when the pre-operational project concludes.

c. The MOU includes a program of satellite development using technology generally available from prior U.S. aerospace efforts and, in effect, may subsidize European aerospace industry.

d. The proposed management, production sharing, and ownership arrangements contravene private sector incentives for investment of venture capital and, as a result, the joint FAA/ESRO program is opposed by U.S. communications carriers and several aerospace firms. The international air carriers, both U.S. and foreign, are also opposed because of expected increased costs. The Air Transport Association is concerned because of implications of government ownership

and European influence of the satellite communications serving our domestic air carrier routes between the U.S. Mainland and Hawaii.

c. The production arrangements encourage the concept of sharing production by political agreement and will, as a U.S. Government commitment, stand as a persuasive precedent in the future, which is contrary to U.S. interests. In this respect, the draft MOU is inconsistent with U.S. positions in other international forums, i.e., INTELSAT and NATO. The Secretary of Defense has formally expressed strong opposition to divided management and production sharing for the new NATO Integrated Communications System. An agreement for production sharing for this program would seriously undermine credibility of the U.S. in NATO negotiations.

f. Finally, the draft MOU is inconsistent with the Mutual Security Act of 1954, Section 414. The MOU commits the U.S. to provide access to technology prior to the review by the Munitions Control Board that the Act requires.

g. It is doubtful that the Europeans have the will to carry out any threat to go forward alone in producing an air control traffic system using satellite communications if we do not accept the present agreement.

h. Approval of this program prior to Congressional action authorizing U.S. funds for the programs is unwise because legislative approval cannot be guaranteed, especially in the light of publicly expressed Congressional opposition and industry attitudes toward the program. Embarrassment to the U.S. among the Europeans would follow signature of the MOU now if Congress were later to refuse funds for the program.

OTP/0413

B. Renegotiate After Disapproval of the Ad Referendum MOU (Option Two)

1. Arguments for this Option

a. Concern has been expressed that unilateral U. S. alteration to the proposed Memorandum of Understanding would be harmful to our foreign relations and has suggested that ICAO would block approval of the operational system. These fears are not well founded for several reasons:

(1) The FAA, including its Administrator, has continually made it clear that the discussions were exploratory and that a review of the tentative agreements by the respective governments, both U. S. and European, would be necessary.

(2) No essential ICAO action is necessary until the middle of the decade, and it is difficult to believe that present differences will have discernible effects on a world body of 122 nations in 1980.

(3) The French and German space communities have provided the principal motivation and guidance for the evolution of the European views. In assessing the impact of renegotiation, it must be understood that there is a clear distinction between the aviation ministries, the international air carriers, and the French and the German space communities. While the French and German aviation ministries, and to a lesser extent the British aviation ministry, tend to be influenced by the views of their respective space communities, other European aviation ministries and governments are believed to have few strong fundamental views concerning the specific arrangements embodied in the proposed MOU.

OTP/OMB

b. The fundamental focus of current concern should not be the draft MOU, but the central issue, which is: Can a cooperative program be structured which is consistent with Administration policy, and can such a program now be negotiated without unacceptable effects on foreign relations.

The answer to this question can never be known unless further negotiation is at least attempted. There are reasons to believe it may succeed. While proposals to alter the program will definitely cause adverse reaction from the French and German space communities, we believe that the overall reaction of governments can be minimized by firm and tactful negotiation. The Europeans are uncertain about the outcome, and it is proposed, therefore, to use this uncertainty to negotiate arrangements consistent with broader United States objectives.

OTP/OMB

c. The U.S. should accept the temporary political cost of disapproving the draft MOU while discussing with the communications officials of the European and other governments the real problem of providing satellite communications to all who cross the seas.

The U.S. should deal with the whole oceanic satellite communications problem, not merely a limited system directed to air traffic control, and discussions with all interested states should be lifted out of the space-aviation area and concentrated among those foreign officials responsible for communication problems. In this different environment, the need to have an oceanic satellite communications system could be presented along with other programs the U.S. is prepared to undertake. Starting anew on a broader base, the U.S. can be consistent in pursuing its objective of maintaining communications in the private sector and allowing industry to enter fairly and competitively.

2. Arguments Against this Option

a. Disapproval of the MOU in anticipation of broader discussions and negotiations in the future is both unnecessary and undesirable.

b. It is premature to attempt to discuss "the whole oceanic satellite communications problem" because mobile service requirements, other than air traffic, cannot be defined at this time. Furthermore, efforts to broaden the program could be interpreted as a U. S. step toward undermining the INTELSAT Agreement.

c. The expected capability (consistent with economic constraints) of the pre-operational/experimental satellite system (two satellites over each ocean) is needed to meet the aeronautical test and evaluation goals. Hence, it is not essential to consider now the broader issue of multiple-users, except on an experimental basis which is provided for in the MOU, and the aeronautical satellite can be isolated for separate and immediate consideration.

State/FAA

d. The discussions leading to the MOU were conducted with the representatives of the governments involved selected by those governments. It is unreasonable to expect that negotiations with foreign government communications officials would be possible or would result in a more favorable agreement for the U. S. on the immediately needed aeronautical satellite program than the present MOU. Further, given the complexity of the overall oceanic communications problem and the need to reconsider the Communications Act of 1962 under this option, the time necessary to attempt to negotiate a more general agreement will delay even further the consummation of any agreement in an area where immediate action is needed and render impossible the goal of a 1980 operational system.

e. Disapproval would greatly disturb the Europeans (as well as Canada, Australia, and Japan) and cast strong doubts on our credibility with regard to proceeding on any joint aeronautical or space venture. It might also endanger ratification of the recently-negotiated definitive arrangements for INTELSAT. This option is in fact self-defeating since the best way to establish a cooperative framework for a future program would be to first establish a short-run cooperative relationship on the proposed joint program as defined in the MOU.

f. It will "sour" the ICAO outlook with respect to U.S. views on aeronautical satellites and other issues of international civil aviation and would result in a clear diminution of U.S. influence and leadership in ICAO.

g. It would lead to an independent European/Canadian action in the Atlantic (since they have the technology, the funds, and the assurance of a U.S. launch) which would put the U.S. Government and industry at a clear disadvantage with respect to an operational system and create vested interests effectively precluding a broad-based approach to oceanic mobile communications in the future. It also would provide an "opening" for seeking eventually to recover their costs for such a program by "user" charges on international traffic in the Atlantic where two-thirds of the passengers are U.S. citizens.

V. Recommendations

a. The DOT/FAA and DOS strongly recommend that the Administration approve the MOU and fund the program (Option One). The discussions leading to the MOU were conducted in accordance with OTP guidance; the stated OTP objectives of 7 January have been met, and the program represents a highly satisfactory arrangement with significant benefits for international aviation, international relations, the U.S. Government, and U.S. industry.

b. The Assistant to the President for International Economic Affairs recommends renegotiations (Option Two) to seek an agreement more consistent with the Administration's international economic objectives.

c. The OMB recommends renegotiation on the basis that the proposed MOU:

1. Is contrary to U.S. commercial and balance of trade interests;

2. Is likely to lead to management and budgeting differences with the European partners that will soon undermine the good will created by going ahead at this time;

3. Is contrary to published Administration policy to an extent that will be difficult and potentially embarrassing to justify to Congress and to industry (Senate Commerce Committee has scheduled hearings which it feels should precede signing of the MOU);

4. Adds $60 million unnecessarily to the FAA budget that is not included in current planning (House and Senate Appropriations Committees have indicated opposition and concern).

d. The Office of Telecommunications Policy recommends renegotiation (Option Two). The United States should seek a cooperative program consistent with the fundamental policies and objectives of this Administration. A successful program cannot be based on management-by-consensus proposed in the MOU, with the implicit European veto which practically guarantees program delays and cost over-runs. It is likely to bring about more contention than cooperation with Europe and other nations. Renegotiation offers the prospect of a cooperative program consistent with investment incentives for the private sector rather than government ownership as proposed.

Answer

DRAFT/GFMansur/3252

December 10, 1971

Mr. Joseph H. McConnell
Chairman of the Board
Communications Satellite Corporation
950 L'Enfant Plaza, S.W.
Washington, D.C. 20024

Dear Joe:

Thank you for your candid and useful letter of November 18 concerning the proposed U.S.-European Aeronautical Satellite Program. The Administration is currently reviewing the provisions of the draft Memorandum of Understanding, and your views help to frame the fundamental issues.

You know that we are committed to full reliance on private business in communications wherever it is feasible. However, this program involves important foreign relations issues as well as domestic and economic considerations. Our review, therefore, must weigh all factors carefully to assure that our private sector and national interests are preserved.

I have asked Tom Whitehead to keep you fully informed of developments as they occur.

Sincerely,

Peter Flanigan

DO Chron
DO Records
cc: Mr. Whitehead (2)
Dr. Mansur

GFMansur/tw/Dec 10, 1971

8/1219

THE WHITE HOUSE

WASHINGTON

November 30, 1971

MEMORANDUM FOR: TOM WHITEHEAD

FROM: JONATHAN ROSE

Could you please have someone on your staff prepare a draft reply for this?

TW 704e

COMMUNICATIONS SATELLITE CORPORATION

JOSEPH H. McCONNELL
Chairman of the Board

November 18, 1971

Mr. Peter Flanigan
Assistant to the President
The White House
Washington, D. C. 20500

Dear Peter:

I know that you have been closely aware of Comsat's interest in seeking to provide aeronautical communications services to meet the growing need and requirements for such services. Comsat's interest and investment in all aspects of an initial commercial aeronautical communications satellite system have now extended over a number of years. We are, therefore, greatly disturbed at the apparent conclusion of the FAA that it is now planning to proceed on the basis of a government ownership of the satellites and that it is seeking budgetary approvals for such a system.

As you know, Comsat, although a one hundred percent private stock company, is limited specifically by statute to the field of satellite communications. Since our establishment we have vigorously pursued the economic development of reliable commercial services including satellite communication services to aircraft in trans-oceanic flight. We have invested considerable resources over the last several years in the development of aeronautical services and have submitted four proposals to provide this service to the U. S. government and commercial airlines. These proposals were based on extensive prior discussion of requirements with officials of the government concerned with aeronautical communications. We have offered to provide the desired services on a commercial lease basis where we provide all investment and guarantee the service;

the customer(s) would pay only when the leased services are available, and for the time that they are available, for the duration of the lease period.

In making the corporate investment on which these prior proposals were based, we have been guided by the established government policy to utilize commercial communications services when available rather than investing in government owned and operated equipment. We were encouraged when the Office of Telecommunications Policy, after reviewing the aeronautical satellite question, restated on January 7, 1971 that it is the government policy to proceed with the program and lease services rather than buy and operate equipment. We have, therefore, continued to expend our resources since this reaffirmation of policy, and believe the reversal of such a decision now would not be in the public interest and would be grossly unfair to our stockholders.

I am aware that the terms and details of a proposed U.S.-European Agreement which is being constructed tends to cloud the essential issues, and I wish to emphasize several fundamental points for your consideration:

Comsat is willing to provide any aeronautical service(s) presently being contemplated for the proposed aeronautical satellite program, in any of the frequency ranges being considered, on a fixed-price leased-services contract(s), for a guaranteed service, without the necessity of government investment. The only limitation on the quantity or quality of service to be provided is the technical state-of-the-art, which is unrelated to a lease or buy decision. The only research and development involved lies in the way the communitions links through the earth stations and satellites would be used and not in the satellite technology.

While the terms of the proposed U.S.-European Agreement obviously present serious impediments to a U.S. government lease of aeronautical services, it must be emphasized that

these impediments are the direct consequence of the particularly bizarre management arrangements provided by the proposed Agreement. They are not at all necessary consequences of a leased-services approach. We would be quite willing to invest in a partnership in which the partners have equal voice in the selection of subcontractors and vendors, the technical designs, adequacy of acceptance tests, etc., where the decision and direction is in equitable proportion to investment risk. Obviously we could not accept technical direction from a third party over these matters affecting our investment.

Regardless of the scope of the initial program, the total investment required and the realizable satellite lifetime clearly supports the expectation that additional customers could make use of these services, including some airlines. We can, therefore, see no conceivable reason why the initial program should not be based on a common carrier approach. In this manner, not only could additional customers easily be accommodated but the cost to the government minimized, since the depreciation of ground equipment would extend over more than the lifetime of the initial satellites.

In summary, we have invested our resources on the basis of published and reaffirmed U.S. government policy of leased services, rather than government investment and ownership. If the service is available commercially on a fixed-price, guaranteed basis, how can it be justified on a research and development basis, or on a government-ownership basis? Is consideration of leased-service to be dismissed on the basis of one particularly complex approach to a lease arrangement, without even considering letting the investment partners make the partnership arrangements on the basis of their investment? And finally, when it is obvious that a successful aeronautical satellite program can provide services to a number of users, including commercial airlines, within the reasonable lifetime of the first generation of aeronautical satellites, how can any approach except that of a common carrier be justified?

I have not wished to impose on your time at this stage by including in this letter a point-by-point analysis of the many and substantial respects in which we believe the arrangements proposed by FAA are impractical, and we believe contrary to the public interest. We would be glad to provide such an analysis in writing or orally, if you believe it would assist the decision-making process.

Finally, an important point should be emphasized. Our discussions with FAA and the airlines that have ensued over a number of years up to these recent proposals have required us to perform substantial planning and development work for the offering of aeronautical communications services. In the course of this work we have incurred system development costs in excess of one million dollars ($1,176,000 as of September 30, 1971), which now stand on our books. These costs must be written off in a single year, if the Government proceeds in the fashion proposed by the FAA. We think it is a discouraging commentary on the seriousness of purpose with which the Government views the mission of this Government-sponsored corporation, that, as a result of actions of the Government itself, we should be required to write off the costs of our efforts to develop an aeronautical communications system which would benefit private and Government users alike.

Sincerely,

Joseph H. McConnell

cc: Mr. C. T. Whitehead

Tom. Whitehead 5 12/9

THE WHITE HOUSE

WASHINGTON

December 8, 1971

MEMORANDUM FOR

Dr. Clay T. Whitehead
Director
Office of Telecommunications Policy

SUBJECT: Aerosat

This memorandum responds to yours of November 29, and also my discussion of December 2 with your Deputy, Dr. Mansur.

The discussion of the Aerosat program has become so complex, and involves such a diversity of interests, that a clear development and exposition of the alternatives is needed before raising the level of the Aerosat negotiations. To this end I suggest that you convene an ad hoc intragovernmental committee on which the principal views are represented: your own, FAA's, State's, OMB's, etc. This group could prepare a report presenting all the feasible alternatives as well as the positions of the participants. As you suggest, some of the alternatives should "package" other international space issues with Aerosat, particularly to ameliorate the impact of alternatives in which we would withdraw from the draft Memorandum of Understanding. This report could then be forwarded through the NSC to the President, with your recommendations, for his decision, thereby concluding the matter with finality.

Inasmuch as a significant delay is, in itself, a decision, I urge that this review be conducted expeditiously, in order that the matter can be brought up within a week for Presidential decision.

Alexander M. Haig, Jr.
Brigadier General, U.S.A.
Deputy Assistant to the President
for National Security Affairs

AEROSAT

TABLE OF EVENTS

DATE	SUBJECT
7 January 1971	Administration Aeronautical Satellite Policy Statement.
19 March 1971	Letter, Mansur to Shaffer, providing program guidelines.
12 July 1971	Letter, Whitehead to Shaffer, reaffirming policy guidelines following Flanigan, Whitehead, Rein meeting.
12 August 1971	Letters, Whitehead to Johnson, Beggs, and Shaffer, restating Administration policies and requesting confirmation that arrangements were in accord with Administration policy.
23 August 1971	Letter, Shaffer to Whitehead, providing assurance that "the specific arrangements will conform to the policy positions expressed in the OTP statement, 7 Jan., with clarifications provided in your letter of 12 July."
17 September 1971	Letter, Whitehead to Shaffer, requesting postponement of further discussions with the Europeans.
22 September 1971	Letter, Shaffer to Whitehead, indicating FAA plan to proceed with discussions, but conditions U. S. participation "upon additional internal review and final approval."
24 September 1971	Letter, Mansur to Shaffer, stating that discussions would be subject to additional internal review by the U. S.
29 September 1971	Letter, Shaffer to Mansur, stating that the FAA would "make it clear . . . that the proposed arrangements are subject to further review."

DATE	SUBJECT
7 October 1971	Letter, Beggs to Rice, requesting program approval.
13 October 1971	Memorandum, Whitehead to Flanigan, requesting White House disapproval of the proposed MOU.
26 October 1971	Letter from Senator Byrd to Whitehead, the first of several Congressional inquiries requesting Executive Branch views.
17 November 1971	Memorandum, Mansur to Rose, discussing issues and options.
29 November 1971	Memorandum, Whitehead to Haig, discussing issues and options.
2 December 1971	Memorandum, Whitehead to Flanigan and Haig, discussing Congressional interest.
8 December 1971	Memorandum, Haig to Whitehead, requesting that OTP convene an intragovernmental committee to develop staff paper.
13 December 1971	Memorandum, Whitehead to Haig, with attached Memo to the President and staff paper.
16 December 1971	Memorandum, Volpe to the President.
17 December 1971	Memorandum, Rogers to the President.

CONGRESSIONAL INTEREST

26 October 1971	Letter, Senator Robert C. Byrd, Chairman Subcommittee on Department of Transportation and Related Agencies, to Whitehead

CONGRESSIONAL INTEREST

29 October 1971	Letter, Senator Gordon Allott, Committee on Appropriations, to Whitehead
30 October 1971	Letter, Senator Clinton P. Anderson, Chairman, Aeronautical and Space Sciences Committee to Vice President Agnew (info cy).
3 December 1971	Letter, Senator Warren G. Magnuson, Chairman, Committee on Commerce, to Secy Volpe (info cy).

FOREIGN OFFICIALS

Great Britain

J. F. Montgomerie, Director of Telecommunications, Board of Trade, Civil Aviation Dept.

J. J. Robinson, Deputy Director of Telecommunications, Board of Trade, Civil Aviation Dept.

D. O. Fraser, Assistant Manager, British Aircraft Corp., Ltd. Space & Instrumentation Group

R. G. F. Munday, Manager, Electronic and Space Systems, British Aircraft Corp., Ltd.

France

J. Villier, French Aviation Ministry
Vladimir A. Altovsky, Director of Space Activities, Thomson-CSF
Jacques Chaumeron, Director, Department of Space, Division AVS, Thomson-CSF
Mr. Schermann, Assistant Director, Department of Space, Division AVS, Thomson-CSF

Australia

Keith Toakley, Civil Air Attache (Embassy)
Alan Foxcraft, Chief of Plans, Department of Civil Aviation

Spain

General Salvador, Minister, Spanish Air Ministry

Germany

Ambassador Rolf Pauls, German Embassy
Dr. Hans Pausch, Vice Chairman, German PTT
D. Heilsher, German Aviation Ministry

Belgium

Dr. G. Boudrin, Belgium PTT Administrator
Amb. Walter Loridan, Belgium Embassy
Herman Dehannin, Economic Minister

FRANCE

Mr. C.H. Cotten, French PTT (Deputy Minister)

Canada

Mr. Stanbury, Min. of Communications
Alan Gottlieb, Deputy Minister

ESRO

Mr. J.A. Dinkespiler, Director of Programs and Planning

Aeronet

OFFICE OF TELECOMMUNICATIONS POLICY
EXECUTIVE OFFICE OF THE PRESIDENT
WASHINGTON, D.C. 20504

DIRECTOR

December 3, 1971

MEMORANDUM FOR

Honorable U. Alexis Johnson
Under Secretary for Political Affairs, DoS

Honorable James Beggs
Under Secretary for Transportation, DoT

Honorable John Shaffer
Administrator, FAA

Dr. Donald Rice
Assistant Director, Science and Technology, OMB

Brigadier General Alexander Haig
Deputy Assistant to the President
for National Security Affairs

Subject: Aeronautical Satellite Program for International Civil Aviation

Higher authority has directed the preparation of a summary of the views of the interested departments and agencies concerning the FAA-ESRO draft Memorandum of Understanding providing for an aeronautical satellite communications system.

Because of the pressure of time, I would like to convene a meeting with you or your representative at 5:00 p.m. on December 6 at OTP, room 770, 1800 G Street, NW. The purpose of the meeting will be to review the important features of the draft memorandum and possible courses of action available to the Administration.

G. F. Mansur for
Clay T. Whitehead

Dr. Marsan has Copy

United States Senate
COMMITTEE ON COMMERCE
WASHINGTON, D.C. 20510

Aeronat

December 3, 1971

Honorable John A. Volpe
Secretary
Department of Transportation
Washington, D. C. 20590

Dear Mr. Secretary:

The Committee on Commerce has recently become acquainted with the program sponsored by the Department of Transportation's Federal Aviation Administration and the European Space Consortium, ESRO, to jointly and cooperatively develop and own a pre-operational aeronautical communications satellite system.

On Tuesday, November 30, the Subcommittee on Aviation was provided a briefing on this matter by Mr. John Shaffer and Mr. David Israel of the FAA. The briefing was requested by Senator Cannon because of reports that the U. S. was about to enter into an agreement of understanding with the European Consortium.

During the briefing many questions arose regarding the details and ramifications of the proposed agreement. Indeed, the questions were so fundamentally significant and far-reaching that it appears the Committee has the responsibility to conduct a full hearing into this matter to establish a record which might help Congress make a judgment as to the wisdom of entering into the agreement.

Senator Cannon and Senator Pastore, Chairman of the Communications Subcommittee of this Committee have asked me to schedule hearings on this matter which I have done. At that time, the Committee will invite testimony not only from the Government but from other interested parties as well. Senator Cannon will preside.

I am sending a letter to the Chairman of the Senate Appropriations Committee asking that that Committee defer any possible decisions regarding funding for this project until the Commerce Committee has had an opportunity to complete its inquiry. Because this matter is of such

great national and international importance I hope we can further examine the situation before any final resolution.

While I am cognizant that the undertaking of proposed action is probably authorized by provisions of the Federal Aviation Act, it seems possible that Congress might wish to consider more specific authorizations for a venture of this magnitude.

The Committee appreciates your cooperation with our request and will look forward to a full exploration of all facets of this situation during the public hearings.

Best wishes.

Sincerely yours,

Warren G. Magnuson

WARREN G. MAGNUSON
Chairman

WGM/rgr

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF TELECOMMUNICATIONS POLICY
WASHINGTON, D.C. 20504

January 7, 1971

PRESS RELEASE

NIXON ADMINISTRATION ANNOUNCES POLICY ON AERONAUTICAL SATELLITE COMMUNICATIONS

Clay T. Whitehead, Director of Telecommunications Policy, announced today the release of a "Statement of Government Policy on Satellite Telecommunications for International Civil Aviation Operations." The policy provides the framework for the development of aeronautical satellite programs during the 1970's.

This policy was established by the Director after a study conducted within the Executive Office of the President with participation by interested agencies in the Executive Branch. The Deputy Director, OTP, George F. Mansur, chaired the study group and coordinated the OTP policy formulation.

The highlights of the policy statement are:

- Due to the limitations of existing communications and the projected increase in air traffic in the oceanic areas, the United States promotes pre-operational deployment of satellite communications in the Pacific in 1973 and Atlantic in 1975.

- The Department of Transportation/Federal Aviation Administration, which has the statutory responsibility for air traffic control, assumes program management responsibility within the government for pre-operational and operational systems and services.

- The Department of State, in conjunction with the Department of Transportation, will seek international utilization of the pre-operational system and initiate cooperative efforts with other nations to establish an operational system by 1980.

- The Government will utilize commercial communications facilities and services to the maximum extent feasible.

- The Government will utilize the UHF frequency band near 1600 MHz in both pre-operational and operational satellite air traffic control communications.

- Experimental evaluation of independent surveillance by satellite should begin with initial system deployment in the Pacific and should be followed by pre-operational evaluation in an air traffic control environment sometime after 1975.

- A unified program to satisfy both Government and airline requirements in the Pacific and Atlantic Ocean areas should be adopted to provide the economic benefits of a single program.

The United States has primary responsibility for air traffic control in the Pacific basin and other oceanic routes through agreements with the International Civil Aviation Organization. Because of the rapid increase in aircraft density on international routes and the limitations of existing communications systems, improved communications services must be employed to assure aircraft safety and to efficiently control air traffic.

Although satellite systems offer the most promising method to meet these communications requirements, there have been extended delays in reaching the decisions necessary to initiate an appropriate program. The policy statement resolves the major issues that have been responsible for the delays and establishes guidelines that will ensure orderly progress of a national program. Periodic program reviews will be established to evaluate the progress being made to meet the objectives of the policy statement.

Government use of commercial communication facilities and services helps to lower costs and agrees with the Administration's policy of encouraging the vitality of the private sector in developing and providing communication services. This policy envisages that the FAA will contract for services on a lease basis in contrast to government procurement and ownership of systems.

The President, in his statement on space of March 7, 1970 stated:

- "We should hasten and expand the practical applications of space technology...."
- "We should encourage greater international cooperation in space....".

This policy furthers those objectives by bringing about the timely and useful applications of American space technology for an important purpose in a way that will benefit all nations.

# # # # # #

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF TELECOMMUNICATIONS POLICY
WASHINGTON, D.C. 20504

STATEMENT OF GOVERNMENT POLICY ON SATELLITE TELECOMMUNICATIONS FOR INTERNATIONAL CIVIL AVIATION OPERATIONS

January 7, 1971

The rapid increase in aircraft traffic densities, the introduction of larger passenger aircraft on international overseas routes, and the limitations of existing communications channels make it increasingly clear that improved telecommunications will be required for air traffic control to speed the flow of traffic and to assure aircraft safety.

The Federal Aviation Administration (FAA) has defined and stated the general quantity and quality of the telecommunication services that will be needed to support expected future air traffic control operations. Specific requirements have been established for voice and data communications and for automatic reporting of aircraft position information over both the Atlantic and Pacific Oceans in the early 1970's. The FAA also anticipates an operational requirement for independent surveillance in the late 1970's or early 1980's.

It is clear that the provision of these services is in the public and national interest. There is broad consensus in both government and the private sector that satellites offer technically and economically the most practicable method to meet the requirements in a reliable way. This policy statement is provided to establish guidelines that will permit the effective, efficient, and orderly progress of a national program to provide the needed services.

OBJECTIVES

The objectives of this policy are to:

1. Assure the safety, efficiency, and economic viability of international civil aviation.

2. Promote the timely and useful application of technological advances to assure adequate, reliable, and economic telecommunications for air traffic control, operational control, and search and rescue.

3. Assure that program institutional arrangements are responsive to the requirements of the users, compatible with the evolving National Aviation System, and consistent with the foreign policy objectives and commitments of the United States.

4. Encourage international cooperation in research, development, and applications programs within an institutional framework which assures effective utilization of resources.

5. Facilitate early deployment of advanced applications such as independent surveillance and navigation.

6. Minimize duplication of Federal facilities and programs and encourage the use of facilities available from the private sector.

TECHNICAL AND OPERATIONAL ARRANGEMENTS

Pre-operational use and evaluation of voice communications should be implemented in the Pacific in 1973 and Atlantic in 1975. Pre-operational deployment of data link communications and automatic reporting of aircraft position will be promoted in the Atlantic and Pacific in 1975. Feasibility demonstration of independent surveillance in an Air Traffic Control environment will be promoted in the Pacific in 1973, with subsequent transition to a pre-operational evaluation in the Pacific and Atlantic in the post-1975 time period.

It is the Government's policy to promote use of the UHF frequency band near 1600 MHz in the operational system. This will alleviate serious spectrum congestion at VHF frequencies, permit early achievement of the benefits of independent surveillance, and accords with foreign Administration preferences. Use of UHF rather than VHF in the pre-operational system will avoid economic, technical, and operational difficulties -- both domestic and international -- which would result from a later transition from a VHF system to the UHF band. In support of this objective, the Government will utilize UHF for air traffic control purposes in the pre-operational system.

To assure orderly growth and efficient deployment of aeronautical satellite systems, implementation of initial systems should be compatible with long-term objectives. Communications in the wide sense and reliable knowledge of aircraft position will continue to be essential parameters in the air traffic control system. The Federal Aviation Administration's National Aviation System Ten-Year Plan (1971-1980) and studies recently completed by the President's Science Advisory Committee suggest that the long-term role of communications in air traffic control will involve automatic data collection, data processing, control, and display utilizing digital data links and digital processing techniques. Pre-operational satellite communication and surveillance systems in the Pacific and Atlantic oceanic areas should be

designed and phased in coordination with the domestic plan to assure interoperability between the international and domestic systems with the consequent economies and operational advantages.

MANAGEMENT ARRANGEMENTS

Development of an effective national program requires unambiguous leadership. Accordingly, the Department of Transportation (DOT), as the Federal agency with statutory operational obligations, is to be the lead management agency and to assume responsibility for defining requirements, program budgeting, and management of pre-operational and operational systems activity.

In order to assure that the broad spectrum of space activities supported by the Government is effectively utilized and not duplicated, the National Aeronautics and Space Administration (NASA) is expected to conduct independent research and development on technologies which have broad application and, under the management and budget of the Department of Transportation, to provide other technical support unique to transportation applications. Both the DOT and NASA should give consideration to the desirability of conducting fundamental research on competing technologies in order to assure that continuing system development is making full and economic utilization of technological possibilities.

Because the program heavily involves the international community and must be conducted in accord with treaty obligations and other pertinent inter-governmental agreements, the Department of State will exercise its responsibility to assure effective and timely coordination with foreign Administrations and international organizations. Through the Department of State, the Department of Transportation as the management agency should seek international utilization of the pre-operational system and should initiate cooperative activity with other nations to establish an operational system in the Atlantic and Pacific oceanic areas by 1980.

It is possible that a single system combining the functions of communications and position fixing to support both maritime and aviation services would permit economic benefits in a worldwide operational system. The DOT should work with appropriate government agencies to explore the feasibility and desirability of such an approach.

ECONOMIC ARRANGEMENTS

The two broad classes of potential users of an aeronautical satellite system are the aviation administrations responsible for air traffic control in the various International Civil Aviation Organization world regions and the airlines flying international oceanic air routes. Substantial economic resources are required to develop and deploy an aeronautical satellite system, and there are economic benefits to be derived from combining government and airline requirements in both the Atlantic and Pacific ocean areas into a single program. The DOT should actively encourage arrangements for use of a common system by all segments of the aviation community which distributes financial responsibilities equitably among users.

The Government shall utilize commercial telecommunications facilities and services to the maximum extent feasible in both pre-operational and operational systems.

DEFINITIONS

Telecommunication

The term telecommunication means any transmission, emission or reception of signs, signals, writings, images, and sounds or intelligence of any nature by wire, radio, optical, or other electromagnetic systems.

Aeronautical Telecommunication Services

The provision of voice and data communication, surveillance and/or navigation functions in ground-air-ground networks using radio transmission including relay via an active earth satellite.

Automated Air Traffic Control

The acquisition, transfer and display of flight information and, eventually, command and control guidance in an air traffic control environment by means of automatic data processing and other telecommunication techniques.

Independent Surveillance

Independent Surveilance by satellites means computation of a position fix utilizing equipment which is remote from the vehicle and is based on range measurements from two or more satellites. Usually a cooperative vehicle is inferred but it is not implicit in the term.

Navigation

Navigation by satellites means computation of a position fix utilizing equipment which is self-contained within the vehicle and is based upon the time of arrival of signals from two or more satellites whose ephermerides are known.

The terms used to define various aeronautical satellite systems are taken from the ICAO ASTRA Panel Second Meeting and include the following:

"Experimental Systems. These relate to experimental work on space techniques in general. Insofar as the interests of ASTRA are concerned, they would place

emphasis on, but not necessarily be limited to, the solution of problems that would assist in the development of characteristics for aeronautical satellite systems. Examples would be the NASA Application Technology Satellites (ATS).

NOTE: In some States, participation by airlines could be expected provided it was not identified as experimental on their part.

Pre-Operational Systems. These would be primarily aeronautical systems with emphasis on performing operational as well as technical evaluations. For the purpose of their evaluation they would need to operate in parallel with conventional communication and/or radio-determination systems serving Air Traffic Control. It is understood that carriage of the airborne elements of such systems would be on a voluntary basis. It is also understood that while such systems might often be designed as potential operational systems, they might also provide only some of the functions that would be required ultimately in an operational system.

Operational Systems. These would be systems capable of being used on a primary basis to satisfy the aeronautical operational requirements established at a given time in a given area."

WEST JACKSON BOULEVARD, CHICAGO, ILLINOIS 60604 • TELEPHONE: 312/922-2435

elephony
BLISHING CORP.

May 19, 1971
(dictated May 18, 1971)

Mr. Clay Whitehead
Office of Telecommunications Policy
604 17th Street, N. W.
Washington, D. C. 20504

Dear Mr. Whitehead:

I am planning to attend TELECOM 71, International Telecommunication Union's exhibition in Geneva, Switzerland, June 17-27. I will be reporting the show for TELEPHONY.

I was wondering whether, while I am there, I can do any particular good for OTP; for example, whether there is anybody in particular you would like me to see and ask any specific questions. This could either be done with the person's knowledge that I am reporting back to you, or I could be prospecting for ideas with no necessary thought of a report to U. S. government authorities. On the other hand, I can see that the foregoing may be of no interest to OTP. (Incidentally, I am also contacting the Department of State's Office of Telecommunications' Mr. Stephen E. Doyle, Foreign Affairs Officer.)

Aside from those ideas, do you have any current written OTP policy regarding international telecommunications which I could read before I go?

Sincerely,

Dan S. Fargo

Dan S. Fargo
Publisher

DSF/dj

cc: Mr. Stephen E. Doyle

It is my understanding that logistics prevent signature of the MOU till January, in any event. If you concur, I would like to begin immediately to plan how we can best proceed. So that we can maintain more effective control and liaison than we have had in the past, I would propose to keep you informed more frequently and directly via memorandum.

Tom

Clay T. Whitehead

OFFICE OF TELECOMMUNICATIONS POLICY
EXECUTIVE OFFICE OF THE PRESIDENT
WASHINGTON, D.C. 20504

DIRECTOR

December 2, 1971

MEMORANDUM FOR

Peter Flanigan
Brigadier General Alexander Haig

There have been a number of recent events concerning Aerosat with which you should be aware. On October 19, the House Appropriations Subcommittee on Transportation held a closed hearing, to be briefed on the program, and yesterday the Senate Commerce Subcommittee on Aviation held a similar review. I have learned today that Senator Cannon, Chairman of the Aviation Committee, expects to hold formal hearings in early January. In addition, Senators Anderson, Byrd and Allott, acting independently, have asked for clarification of the program from the Executive Branch.

It is becoming clear that Congress is taking a serious view of the tentative Memorandum of Understanding, and there is some indication that funds for the program may be delayed or withheld. In any event, the Appropriations Subcommittee has advised FAA that the MOU should not be executed before budget clearance has been obtained from the committee.

This Congressional delay almost forces the U.S. to defer signing of the MOU and provides the time we sought for the Administration to renegotiate the terms that are most objectionable.

I have had tentative discussions with Comsat, AT&T, and FCC regarding items we might usefully give the Europeans in the communications area. The agenda is more than ample to justify a trip such as I described in my last memorandum, and probably would provide the best vehicle for renegotiating Aerosat. AT&T has agreed to postpone certain agreements that they would otherwise make with the Europeans to permit us to be more forthcoming in gaining the credit for certain decisions important to the Europeans.

November 29, 1971

MEMORANDUM FOR

Brigadier General Haig
The White House

Following our conversation on Friday, I have thought more about moving the Aerosat negotiations to a higher level and broadening the context to include other communications issues important to the Europeans. Attached at Tab A is a list of such issues of current concern to us and the Europeans; at Tab B is a list of the points Don Rice and I made about the tentative Aerosat Memorandum.

The Europeans are unhappy with many things in international communications, and recent FCC actions have caused them great consternation. There are many concessions we can make to the Europeans in the communications field that are of far more value to them than the Aerosat program, and the psychological value of a visit by me to the various communications ministers to make some of these trades would be very beneficial.

Since I have been considering a trip to Europe to discuss some of these matters in any event, I could be prepared to undertake the broader mission in reasonably short order. With the appropriate combination of tact, pomp, and plain old horse trading, we could take care of most of our problems with Aerosat and leave the Europeans feeling very good indeed as far as cooperation in communications is concerned.

If it is agreed that a trip of this sort would be useful in the near future, the President could offer to Pompidou, Brandt, and Heath to send his Director of Telecommunications to meet with their Ministers of Communication to work out some of the problems that he knows are causing concern in Europe.

Clay T. Whitehead

Attachments

CTWhitehead/GFMansur/BKSmith:lmc
cc: Mr. Whitehead
Dr. Mansur
Mr. Thornell
Mr. Smith
DO Records
DO Chron

- The landing site for a new 4000 circuit transatlantic cable (TAT-6). Selection of France would mean $100 million in revenues for the French from transit charges over the first ten years.

- Production arrangements for TAT-6 which will determine distribution of $40 million in manufacturing.

- Ways to improve international communications coordination concerning construction and investment in new facilities. This is of great concern to the Europeans since current U. S. Government procedures practically force their governments to appear before the FCC.

- Procedures for deciding which cable and satellite circuits will be used. There are sensible alternatives to current FCC procedures which in effect dictate to the Europeans how they will use circuits in which they have capital investment.

- Exploration of the role of regional satellite systems in a worldwide communications network. This is of great interest to France particularly and there is likely to be a mutual interest in an agreement now that the Intelsat arrangements have been adopted.

- Restructuring of the International Telecommunications Union and related international frequency allocation methods.

- Expanded European participation in the NASA ATS-6 experimental communications satellite and support of European development of a new technology communications satellite program. This could lead to a cooperative program for satellite-to-satellite relay.

Arguments for Renegotiation

- It calls for U.S. Government ownership and operation of the aerosat communications service in a 50/50 management and ownership program to 1980. Together with the precedent of Intelsat, this arrangement would effectively foreclose any possibility of keeping international satellite communications in the private sector. This could be a new communications service industry with revenues up to $1 billion over this decade. It seems clearly contrary to the President's intent in such areas.

- It gives significant encouragement to the concept of sharing production by political agreement and will, as a U.S. Government commitment, stand as a persuasive precedent in the future contrary to U.S. interests.

- Institutional arrangements for a maritime system will be discussed early next year. Maritime communications will be at least ten times larger in volume than aviation, and aerosat is being closely watched as a precedent.

- The terms of the draft MOU are inconsistent with U.S. positions in other international forums; i.e., Intelsat and NATO. The Secretary of Defense has formally expressed strong opposition to divided management and production sharing for the proposed NATO Integrated Communications System (NICS), and will be out on a limb if the MOU is signed.

- The management-by-consensus arrangements, with the implicit European veto, practically guarantee program delays and cost overruns. It is likely to bring about more differences and contentions than cooperation with Europe and other nations. This is a far worse case than the Space Shuttle "cooperation" that the President agreed to turn off.

- The international (including European) and U.S. airlines oppose the agreement as do U.S. aerospace and communications service companies. They oppose Government ownership and object to the higher cost of the FAA/ESRO program ($125 M - $140 M) over a private sector service ($75).

- It excludes major Pacific powers with aviation and communications interests from a significant role. This imbalance follows our recent special concession to Europe on launch assurances.

- It will avoid short-term unhappiness on the part of the French, Germans, and British. State contends that any delay or renegotiations would cause Europe to build their own system for the Atlantic; however, ESRO is a faltering organization, and we doubt they have the resources or resolve to do so. State also contends the Europeans might vote against us in ICAO, but no ICAO action is to be taken until the end of the decade.

- The draft MOU is not consistent with the Mutual Security Act of 1954, Section 414. The MOU commits the U.S. to provide access to technology (that is likely to be classified) prior to the review by the Munitions Control Board that the Act requires.

- Firm defense of the MOU by all elements of the Administration will be necessary to sell the program to Congress during budget hearings and other hearings that may be called. This will be difficult, if not impossible, to do in the face of the high cost of the FAA program, the commercial nature of the service, industry criticism, negotiations that will be underway on international maritime communications, and the acknowledgement that the MOU is contrary to established U.S. policy. It could be quite embarrassing to the Administration in 1972.

Arguments for Signing Current MOU

- The draft MOU is the outcome of FAA/ESRO negotiations, subject to approval by governments. To reopen negotiations now would be considered by the European negotiators as upsetting a deal reached by compromises on both sides.

- Reopening the negotiations would cause the Europeans to conclude that the U. S. is favoring U. S. industry in this program because of its lead in space technology.

- Attempts to renegotiate may cause the Europeans to threaten a unilateral program in the Atlantic with no cooperation.

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF TELECOMMUNICATIONS POLICY
WASHINGTON, D.C. 20504

November 29, 1971

DIRECTOR

MEMORANDUM FOR

Brigadier General Haig
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- Reopening the negotiations would cause the Europeans to conclude that the U. S. is favoring U. S. industry in this program because of its lead in space technology.

- Attempts to renegotiate may cause the Europeans to threaten a unilateral program in the Atlantic with no cooperation.

Tom, The Munitions Control view of the matter

COPY via telephone

Signed

November 26, 1971

MEMORANDUM TO: T. E. Nelson E/TD

FROM: John W. Sipes MC/PM

SUBJECT: Memorandum of Understanding on Joint Aeronautical Satellite

This is to confirm PM/MC's nonconcurrence in the draft MOU, dated November 17, 1971, with ESRO and other foreign entities on a joint aeronautical satellite program, a copy of which you routed to us for information.

The reason for my position is that Article 11 of the MOU is inconsistent with the International Traffic in Arms regulations (ITAR). As far as we are concerned, that Article promises more than we can or may be able to deliver. For example, we will not be able to license U.S. industry requests to export for the aeronautical satellite program technology whose release would be contrary to U.S. national security or any other similar considerations. It was for this reason that I recommended in my memorandum of Sep 21, 1971 that (a) a new paragraph be added to the effect that all commercial exports under Article 11 of the MOU will be subject to applicable laws and regulations (which to us meant the ITAR, promulgated pursuant to Section 414 of the Mutual Security Act of 1954, as amended) and (b) the meaning of the new paragraph be made clear to all concerned, particularly, the interested foreign parties, in order to avoid possible future misunderstandings or embarrassments.

The November 17 draft MOU does not incorporate the substance of my recommendation. Paragraph 5 of Article 11 is not adequate from the standpoint of the requirements of the ITAR.

Comsat Actsat

cc: FILE
Gauf ✓
Wild

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NOV 24 1971

ltr 11/24

Honorable Clay T. Whitehead
Director
Office of Telecommunications Policy
Executive Office of the President
Washington, D. C. 20504

Dear Mr. Whitehead:

This is in response to your October 29, 1971 request for our opinion concerning Comsat's right to exclusive ownership and operation of a new communications satellite system designed to improve international air traffic control.

In an October 15, 1971, letter to your General Counsel, we outlined several legal arguments to support the position of your Office that neither the Communications Satellite Act of 1962 nor the various INTELSAT agreements entitled Comsat to exclusive ownership and operation of the proposed system. Because of the limited time then available and because we were not appraised of Comsat's competing arguments, however, we were reluctant to conclude that those arguments conclusively permitted the new system to be adopted independently of Comsat.

Although we have still not been given Comsat's legal position, we feel after further reflection and research that the arguments in our earlier letter are sufficiently meritorious to preclude substantial legal doubts as to the soundness of the proposed system.

Sincerely,

Leon Ulman
Deputy Assistant Attorney General
Office of Legal Counsel

Comsat

WHR:RWW:jh OCT 15 1971 cc--Files
Gauf
Wild

Q ack by Messenger
3 pm, 10-15-71

Honorable Antonin Scalia
General Counsel
Office of Telecommunications Policy
Executive Office of the President
Washington, D.C. 20504

Dear Mr. Scalia:

This is in response to your October 1, 1971, request for our views as to whether any entity other than the Communications Satellite Corporation (Comsat) can lawfully own and operate a new communications satellite system designed to improve international air traffic control. An Administration policy apparently calls for the new system to be developed and owned by the private sector. In addition to air traffic control the new system may serve other functions such as maritime navigation services and services to permit passengers on aircraft and ships to place and receive telephone calls in transit.

Your letter mentions that the Communications Satellite Act of 1962 and various agreements entered into by the United States as a participant in the International Telecommunications Satellite Consortium (INTELSAT) have been cited as forbidding control of the proposed system by any entity other than Comsat.

Since we have not been informed of the legal arguments upon which it is asserted that Comsat has been given a monopoly to operate all new satellite communications systems, including the proposed one, we are hesitant to conclude that that position is wholly untenable. In the limited time available we have developed significant arguments against the position. These are set forth in the sections which follow.

I

Communications Satellite Act of 1962

Title III of the Communications Satellite Act of 1967, 47 U.S.C. § § 701-44 (1970), establishes Comsat as a single entity to own and operate the communications system envisioned by the Act. Two provisions of the Act clearly indicate that Congress foresaw the eventual creation of additional satellite systems at some future time, but no express provision vests Comsat with the authority to own and control these new systems. Indeed, the Act and its legislative history infer that the creation of another entity is not precluded by the Act.

The savings provision in the preamble to the Act sets forth the policy of Congress regarding the establishment of additional systems:

> It is not the policy of Congress by this chapter . . . to preclude the creation of additional communications satellite systems, if required to meet unique governmental needs or if otherwise required in the national interest. 47 U.S.C. § 701(d)(1970).

In the operative provisions, section 201(a)(6) expressly recognizes that other systems were contemplated for it declares that the government may utilize other systems under conditions parallel to the savings provisions of the above-quoted section. Section 201(a)(6) states:

> the President shall
>
> . . . .
>
> take all necessary steps to insure the availability and appropriate utilization of the communications satellite system for general governmental purposes except where a separate

> communications satellite system is required to meet unique governmental needs, or is otherwise required in the national interest. 47 U.S.C. § 721(a)(6)(1970)(emphasis added).

Presumably, if the new system, as a factual matter, can be justified as in the national interest or required to meet unique governmental needs the 1962 Act expressly permits it.

Section 305(a) grants to Comsat the authority to "(1) plan, initiate, construct, own, manage, and operate . . . . a commercial communications satellite system . . . ." 47 U.S.C. § 735(a)(1)(1970). As first introduced, this section referred to systems. (H.R. 11040) This was changed to the singular by the Senate. This deliberate action and the Act's consistent use of the term system in lieu of systems is, in our opinion, an indication that the Act only intended that Comsat be given control over the single system then contemplated. Since the Act did foresee the eventual creation of additional systems but did not vest their control solely in Comsat, the subsequent creation of new controlling entities cannot be said to have been precluded by the Act.

Although we have not had the time to read all of the extensive legislative history of this Act, we believe that the record sufficiently reinforces this conclusion. It is true that the legislative history is replete with statements to the effect that the Act creates a private monopoly. These statements, however, clearly reflect the de facto, not the de jure consequences of the Act. For example, in House hearings FCC Chairman Minnow stated the universal assumption concerning why a monopoly was being created:

> [I]t is generally accepted that for the foreseeable future only one commercial space communications system will be technically and economically feasible. Hearings Before the House Committee on Interstate and Foreign Commerce on H.R. 10115, 87th Cong.,2d Sess., pt 2, at 400 (1962).

Although recognizing that at the time other systems were not technically or economically feasible, there is clear evidence of legislative intent that complementary or competing systems be legally permissible. Congressman Harris, the floor manager of the bill, stated the intent of section 102(d)(47 U.S.C. § 701(d), supra), as understood by members of the House Committee on Interstate and Foreign Commerce which reported the bill:

> [I]t was agreed that it was not the intent of the Congress by this Act to preclude the creation of an additional communications system or systems . . . . 108 Cong. Rec. 7523 (May 2, 1962)1/

1/ The complete statement of Congressman Harris came on an amendment to section 102(d) which he described as follows:

> Mr. HARRIS. Mr. Chairman, this is an amendment suggested by our distinguished Speaker of the House with whom I conferred on this legislation concerning two or three matters that we thought would strengthen it. I have not had an opportunity to discuss it with the committee, but paragraph (d) in the committee bill is a provision that was included at the outset and had to do with reserving the right to the Government to provide an additional system should it be determined in the public interest. But as the Clerk read a moment ago, it is approached in a negative way. In other words, as originally proposed, I assume at the council level in the administration, or somewhere along the line, I am not sure just where, this was a provision in various proposals and the committee did not disturb it. But it was agreed that it was not the intent of the Congress by this act to preclude the creation of an additional communication satellite system or systems, and so forth. I thought the suggestion made by our distinguished Speaker was very good, that we should take a positive rather than a negative approach.
>
> The amendment, therefore, is that that Congress reserve to itself the right to provide an additional communications satellite system if required to meet unique governmental needs or if otherwise required in the national interest.

More significantly, perhaps, are the remarks of Senator Church concerning his successful amendment of section 201(a)(6). As originally introduced this provision allowed government use of another satellite system only if a unique governmental interest so required. Section 102(d) on the other hand stated in addition to this reason, the Congressional intent to allow additional systems if the national interest so required. Senator Church's amendment was clearly intended to make the sections uniform. In explaining the need for his amendment, Senator Church made the following significant statement concerning the purposes and policies of these sections:

> Mr. CHURCH. Mr. President, the purpose of this amendment is to make the operative language of the bill itself conform with one of its most important declared purposes. Under the declaration of policy and purpose of the bill, section 102(d) reads:
>
> > (d) It is not the intent of Congress by this Act to preclude the use of the communications satellite system for domestic communication services where consistent with the provisions of this Act nor to preclude the creation of additional communications satellite systems, if required to meet uniques governmental needs or if otherwise required in the national interest.
>
> The wisdom of the last clause "or if otherwise required in the national interest" is perfectly apparent. We cannot now foretell howwell the corporate instrumentality established by this act will serve the needs of our people. If it should develop that the rates charged are too high, or the service too limited, so that the system is failing to extend to the American people the maximum benefits of the new technology, or if the Government's use of the system for Voice of America broadcasts to certain other parts of the world proves to be excessively expensive for our taxpayers, then certainly this enabling

> legislation should not preclude the establishment of alternative systems, whether under private or public management. And just as certainly is that gateway meant to be kept open, just in case we should ever have to use it, by the language to be found in the bill's declaration of policy and purpose to which I have referred. 108 Cong. Rec. at 15362 (August 13, 1962)

So far as we have been able to determine there were no dissents to this analysis.

One argument that Comsat may be able to assert in its favor is a section 102(d) implication that only systems which are required to meet "unique governmental needs" or required in the "national interest" can be owned and operated by other organizations. Since we understand from your memorandum that the air traffic control system can be justified factually as in the national interest, this section should not be a bar to the new system in any event.

Even if the new system were not required in the national interest, however, several arguments can be made to the effect that section 102(d) was not intended to be exhaustive but merely illustrative of reasons why a new, non-Comsat system is possible. For example, if the two savings provisions were intended to be exhaustive, Congress would be likely to use the word "solely" to clarify the scope of exceptions. In addition the legislative history which we have already cited, particularly Senator Church's statement, indicates that other independent systems are possible for the broadest of reasons.

A third argument in this regard is a rule of statutory construction holding that statutes be construed as furthering public policy rather than derogating from it. 2 J. Sutherland, Statutes and Statutory Construction § 5901 (1943). In this connection, section 102(c) states that activities of Comsat "shall be consistent with the Federal antitrust laws." 47 U.S.C. § 701(c)(1970). The legislative history also indicates

that antitrust policies were not overridden by this Act. Since the Congress has repeatedly, in this statute and elsewhere, indicated a public policy against monopoly situations, we believe that Comsat has a heavy burden to prove that section 102(d) implies an intent to preclude the establishment of an independent air traffic control system.

II
INTELSAT AGREEMENTS

As we understand it, Comsat has been designated as the United States operating entity for the International Telecommunication Satellite Consortium, INTELSAT. Since 1964, this organization has been governed by the Agreement Establishing Interim Arrangements for a Global Commercial Communications Satellite System, 15 U.S.T. 1705, T.I.A.S. No. 5646 (August 20, 1964).

In examining this and subsequent executive agreements, we have not discovered any express provision that would grant Comsat an exclusive monopoly over the proposed air traffic control system. Although we do not have the advantage of the extensive legislative history that was available regarding the 1962 Act, other extrinsic evidence reinforces the conclusion that Comsat was not intended to have a monopoly by the terms of the Interim Agreement.

The Interim Agreement was signed at the initiative of the United States, two years after the 1962 Act. It is clear that INTELSAT is the outgrowth of the Act's directive to the President to "insure that timely arrangements are made under which there can be foreign participation in the establishment and use of a communications satellite system." 47 U.S.C. § 721(c)(5)(1970). The INTELSAT provisions mesh completely with those of the earlier Act. For example, the preamble states the desire to establish "a single global commercial communications satellite system." 15 U.S.T. at 1706. The use of the singular is, significantly, the same as in the 1962 Act.

In such circumstances, a rule of statutory construction requires statutes in pari materia be construed together.2/ This permits the reasonable assumption that the intentions of both the Act and the Agreements are the same. Since we have concluded that the Act does not preclude additional systems, the Agreement should not preclude them either.

Another rule of statutory construction requires that the practical interpretation of persons working pursuant to the terms of a particular provision be given consideration. In this connection it is significant that to date INTELSAT has never provided navigation or public communication services to ships or aircraft.

As noted, the Interim Agreement went into effect in 1964. A permanent agreement to supersede that Agreement was approved by INTELSAT members on May 21, 1971, and has been signed by the United States. It will probably have the requisite number of signatures by early 1972. This permanent agreement, together with statements by the United States interpreting INTELSAT as not encompassing the air traffic control system can serve to indicate the intended construction of the executive agreements.

Article III(a) of the new Agreement states that the prime objective of the organization is in "international public telecommunications services." Other provisions of this Article permit INTELSAT to include domestic-public telecommunications and specialized communications only if they do not impair the ability of INTELSAT to achieve its prime objective. Thus, the Agreement clearly indicates that no monopoly on telecommunications systems was intended, at least in these other areas.

Even if we assume that INTELSAT does have a monopoly for "international public telecommunications services," an assumption not warranted by express provisions of the Agree-

2/ See 2 J. Sutherland, Statutes and Statutory Construction § § 5201-11 (1643).

ment, there arises a factual question of whether the air traffic control system constitutes such a service. Article 1(k) indicates that the proposed system is not such a service:

> "Public telecommunications services" means fixed or mobile telecommunications services which can be provided by satellite and which are available for use by the public, such as telephony, telegraphy, telex, facsimile, data transmission, transmission of radio and television programs between approved earth stations having access to the INTELSAT space segment for further transmission to the public, and leased circuits for any of these purposes; but excluding those mobile services of a type not provided under the Interim Agreement and the Special Agreement prior to the opening for signature of this Agreement, which are provided through mobile stations operating directly to a satellite which is designed, in whole or in part, to aviation or maritime radio navigation." (Emphasis added).

The clear impact of this provision is two-fold: (1) the New Agreement expressly excludes an air traffic control system and (2) the Interim Agreement, as interpreted in this provision did not cover the proposed system.

In conclusion, our research indicates that substantial arguments can be made for the proposition that neither the 1962 Act nor the INTELSAT Agreements were intended to grant Comsat a completely monopoly over all future telecommunications satellite systems. We would caution that this dispute will likely arise at a later time when the Federal Communications Commission will be required to make a separate legal inquiry in connection with any licensing proceedings for the new system. By that time Comsat and any other interested organization presumably will have developed complete legal arguments in support of a contrary conclusion.

Sincerely,

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REMEMBER

1) In any rerun question--don't lead off with, and in any event, minimize discussion of the employment problem.

2) You didn't invent the problem of network dominance--[redacted] strong language about them goes back to 1941 and FCC's chain broadcasting rules; continues to late 50's when formal network inquiries initiated--including Congressional oversight--this led to FCC's Office of Network Study and eventually to Westinghouse's 50-50 proposal and to the PTAR.

3) Don't refer to any OLC letter on [redacted]'s authority to make (recess) appointments to CPB Board--give as our opinion that he has this implied authority from Public Broadcasting Act of 1967, +, if pushed, from the Const.

4) In any area, like newspersons privileges, that isn't particularly in our area -→ demur to this effect and give a brief answer; they probably won't push into details after this.

5) Why don't we file like others?

a) Golly Senator--it always struck me as a bit unsemmly to have the President line up with other petitioners and claimants before a regulatory agency; and

b) In any event, FCC never expressed any need for OTP to do so.