

OFFICE OF TELECOMMUNICATIONS POLICY

Domestic
3-627

Log In No. _____

June 26, 1972

INFORMATION MEMORANDUM

To: Mr. Whitehead (FYI)

From: Walter Hinchman

Brief Summary of the Material:

Dissent on Domestic Satellites

~~WHXXXXXXWXXXXXXWXXXXXXWXXXXXXWXXXXXX~~

John Eger, Chairman's office (FCC), said they don't know yet what the dissent will be. Their first reaction was to have a strong one, but they are inclined to reconsider and feel they should be tactful and not knock the majority. His feeling is that it will be a milder dissent.

However, they are still toying with the idea of what to say. They don't like "forced restructuring of the communications industry" and he thinks that will be the theme -- however, it doesn't write well.

They are concerned how their statement would look against OTP's statement. At one time, they thought they might not make a statement.

The Chairman has had several alternatives given to him and Eger expects to hear from him today. Should have something or nothing. ?

Walt

Walter Hinchman

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Washington, D.C. 20554
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Report No. 7824

ACTION IN DOCKET CASE

June 16, 1972 - G

MULTIPLE ENTRY DOMESTIC SATELLITE POLICY ADOPTED BY FCC

A domestic satellite policy which would permit all qualified applicants to provide communication satellite service has been adopted by the FCC (Docket 16495).

The Commission said it would be "unwise to attempt to select or prescribe one system . . . or choose one or more systems through comparative hearings." Accordingly, it did not adopt the Common Carrier Bureau staff proposal that would have required applicants with similar technology to combine their efforts.

The Commission emphasized that "multiple entry" does not mean "unlimited or unrestricted open entry." It said that applicants would have to demonstrate that they are financially and technically qualified to provide domestic satellite service and that a finding would have to be made that the service would be in the public interest.

Common carriers now providing "essential communications services" will be required to demonstrate that the revenue requirements for the satellite service will not be a "burden or detriment" to customers for their other services.

There are presently eight applications before the Commission for authority to provide domestic satellite service and five applications for earth stations.

Specific conditions were set by the Commission for participation by the American Telephone and Telegraph Co. (AT&T) and the Communications Satellite Corporation (Comsat) in domestic satellite service. Within the contiguous 48 States, it limited AT&T's initial use of satellites to its regular and wide area telephone services (MTT and WATS), and to AUTOVON, a private line service provided for the Department of Defense, as well as restoration of all services in case of facility outages. It said it would consider AT&T's requests for additional services when others had had the opportunity to establish reasonable use and fill of satellites for specialized services, but in any event not later than three years after AT&T began satellite operations.

A joint AT&T/Comsat proposal under which Comsat would provide service solely for AT&T was rejected by the Commission. It said AT&T could apply for its own satellite or lease facilities from Comsat or any other carrier which chooses to provide service exclusively for other carriers.

(over)

If Comsat chooses to provide service for AT&T, it will be required to operate as a carrier's carrier only, the Commission said. It will have to lease facilities to AT&T on the same terms applying to other carriers, and permit access to the leased facilities through the leasees' own earth stations. Comsat would also have to comply with a formula to be specified in a later order by the Commission setting a maximum percentage of the satellite system capacity that may be leased to any one carrier.

In the event that Comsat chooses to serve groups other than AT&T, it may deal directly with the users providing a wide range of services, the Commission said.

Whether it operates as a multi-purpose system or as a wholesale supplier of satellite facilities, Comsat will be required to form a separate corporate subsidiary to provide domestic satellite services, the Commission said. If it does not operate as a carrier's carrier, it will be prohibited from owning or operating domestic satellite facilities at any overseas points served by INTELSAT (international satellite) facilities.

Discussing the Hughes Aircraft Co./GTE Service Corp. proposal, for interstate telephone service via satellite facilities, the Commission said it had the advantage of introducing another voice, on a limited scale, into the planning and operation of the interstate telephone network. It pointed out that the GTE service could "provide a basis for regulatory comparison of the relative efficiencies and cost advantages of somewhat different technologies." The Commission noted that the GTE service "could also tend to lessen AT&T's dominance and economic influence in the domestic communications field."

Before it could authorize the GTE portion of the proposed Hughes/GTE service however, the Commission said that GTE would have to demonstrate potential benefits that would result from the service, provide economic justification, and report on other economic and technical aspects involved in rate making, emergency service and contractual arrangements with AT&T.

GTE would be required, as in the case of Comsat, to form a special company to provide domestic satellite service and it would be limited to message telephone operations initially.

All carriers offering wholesale and retail services will be required to keep separate accounts for each service to insure, the Commission said, that "other carriers leasing transponder or satellite system facilities are not burdened with any portion of the revenue requirements applicable to the supplying carrier's retail offerings.

Any satellite equipment supplier will be required to form a separate corporation to engage in satellite operations. Any authorization to Hughes, the Commission said, will require the company to permit its cable TV customers to own receive-only earth stations. (Hughes is a major manufacturer of communications satellites. Its domestic satellite application proposes extensive CATV program distribution service.) Arrangements will also be required to permit access to the earth stations by other cable TV program distributors "on an equitable and non-discriminatory basis . . .," the Commission said.

While its "broad policy objective" was a "flexible ground environment which would permit a variety of earth station ownership patterns," the Commission said it was "premature" at this time to set "definitive standards" in this area. It said it would be in a better position to make specific judgments when it knows what satellite systems are going to be operating and when it has applications for specific ground stations.

The establishment of domestic satellite service would require submission of proposals for the integration of Alaska, Hawaii and Puerto Rico into the "established rate scheme for communications applicable to the mainland," the Commission said. It pointed out that "one of the principle virtues of the satellite technology applied to domestic communications is its characteristic of deemphasizing distance as a cost factor in rate making," and stated it would condition authorizations for satellite service to Hawaii, Alaska, and Puerto Rico to require carriers to submit revised rates reflecting this no later than six months after the authorization date. It selected AT&T as the applicant to provide telephone service to Alaska, and Puerto Rico, and left open the question of whether AT&T or GTE would provide this service to Hawaii.

The satellite operators will also be expected to provide facilities for services to Alaska, Hawaii and Puerto Rico by the international record carriers, the Commission said. They will be required to submit proposals for integration of the charges for the various specialized record services to these points into the domestic rate pattern within six months of the date of authorization of satellite service.

Taking into consideration the special needs of Alaska for intrastate service, the Commission set requirements for Alaskan earth station applicants to submit plans for such service, and provided for reserved capacity in satellites serving Alaska for intrastate facilities.

The Commission began the domestic satellite proceeding with a Notice of Inquiry, released March 2, 1966 (31 F.R. 3507). Following studies by two special White House Committees in 1967 and 1969, the Commission invited applications for domestic satellite service in a First Report and Order (22FCC 2d 86, 35 F.R. 5356), released March 24, 1970. A Recommended Decision by the Common Carrier Bureau was released March 15, 1972. Oral argument in the proceeding was held by the Commission May 1 and 2, 1972.

Action by the Commission June 16, 1972, by Second Report and Order. Commissioners Bartley, Robert E. Lee and H. Rex Lee, with Commissioner Johnson concurring and issuing a statement, and Chairman Burch dissenting and issuing a statement in which Commissioners Reid and Wiley joined.

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

FCC 72-531
79456

In the Matter of)
)
Establishment of Domestic) Docket No. 16495
Communications-Satellite)
Facilities by Non-govern-)
mental Entities.)

SECOND REPORT AND ORDER

Adopted: June 16, 1972 ; Released: June 16, 1972

By the Commission: Chairman Burch dissenting and issuing a statement
in which Commissioners Reid and Wiley join;
Commissioner Johnson concurring and issuing a statement.

I. PROCEEDINGS BEFORE THE COMMISSION

1. This proceeding was instituted by the Commission on March 2, 1966 (Notice of Inquiry, 31 F.R. 3507; Supplemental Notice of Inquiry, October 20, 1966, 31 F.R. 13763) to explore various legal, technical and policy questions associated with the possible authorization of domestic communications satellite facilities to nongovernmental entities. On March 24, 1970, the Commission issued a first Report and Order (1970 Report) inviting the submission of applications to assist our determinations (22 FCC 2d 86, 35 F.R. 5356), and consolidated a concurrently issued Notice of Proposed Rule Making (22 FCC 2d 810). In response to the 1970 Report, system applications were filed by the following:

The Western Union Telegraph Company (Western Union)
Hughes Aircraft Company and various telephone
operating companies of GTE Service Corporation
(Hughes/GTE)
Western Tele-Communications, Inc. (WTCI)
RCA Global Communications Inc. and RCA Alaska
Communications, Inc. (RCA Globcom/RCA Alascom or
"the RCA applicants")
Communications Satellite Corporation and American
Telephone and Telegraph Company (Comsat/AT&T)
Comsat
MCI Lockheed Satellite Corporation (MCI Lockheed)
Fairchild Industries, Inc. (Fairchild)

In addition, applications for earth stations only were filed by:

Hawaiian Telephone Company
Twin County Trans-Video, Inc.
TelePrompter Corporation
LVO Cable, Inc., and United Video, Inc.
Phoenix Satellite Corporation

2. Comments and reply comments on the applications and rule making issues were received from the applicants and other interested parties. By a Memorandum Opinion and Order issued on March 17, 1972 (34 FCC 2d 1), the Commission afforded the parties an opportunity to file written comments and to be heard orally on a proposed Second Report and Order (34 FCC 2d 9) recommended by the Chief of the Common Carrier Bureau (staff recommendation). Written comments were received and oral argument before the Commission en banc was held on May 1-2, 1972. 1/

3. Upon consideration of the entire record, we are of the view that the staff recommendation adequately describes the background of this proceeding, the general nature of the pending applications, and the previously filed comments and reply comments of the parties on the applications and rule making issues. Accordingly, we will adopt the descriptive portions of the staff recommendation without reiterating such material here. However, as stated in the Memorandum Opinion and Order of March 17, 1972, our action in designating the staff recommendation for written and oral comment was taken "before reaching any determinations in this matter" and "therefore does not reflect any predisposition by the Commission with respect to the resolution of the issues involved" (34 FCC 2d at 2). The Commission's determinations, which are set forth below, incorporate the staff's reasoning and conclusions on the issues only as expressly indicated herein or to the extent that they are clearly consistent with our statements of policy and conclusions.

1/ Two entities who had not previously participated in this proceeding were granted leave to be heard orally: the Department of Defense and the Network Project (FCC 72-314). The motions of various parties to correct the transcript of oral argument are hereby granted. Some applicants have submitted statements, without leave from the Commission, purportedly in further response to questions from individual Commissioners at the oral argument. While such statements have been placed in the record, we do not rely on them.

II. INTRODUCTORY POLICY STATEMENT

4. As the Commission recognized in the 1970 Report (22 FCC 2d at 88, 95-96), and as confirmed by the applications and responses filed pursuant to that Report, the satellite technology has the potential of making significant contributions to the nation's domestic communications structure by providing a better means of serving certain of the existing markets and developing new markets not now being served. There are concrete proposals before us for the use of communications satellites to augment the long-haul terrestrial facilities of existing carriers for point-to-point switched transmissions services, and to connect off-shore distant domestic points (i.e., Alaska, Hawaii, Puerto Rico) to the contiguous states. There are also proposals for the use of satellites as a means of providing point-to-multipoint services, such as program transmission, although plans for such use are now most tentative and uncertain. Other proposals reflect the view that the most important value of domestic satellites at the present time lies in their potential for developing new markets and for expanding existing markets for specialized communications services.

5. Notwithstanding the specific proposals that have been submitted, the true extent and nature of the public benefit that satellites may produce in the domestic field remains to be demonstrated. The United States has a well-developed and rapidly expanding complex of terrestrial facilities, and advances in terrestrial technology and operations can be expected to continue the present trend toward reduced transmission costs and more efficient services. Although pointing to some increased operational flexibility in the routing of its traffic, the predominant terrestrial carrier, AT&T, disclaims that the satellite technology presently offers any cost savings or other marked advantages over terrestrial facilities in the provision of the switched services that constitute the bulk of its traffic, message toll telephone (MTT) and wide area telephone service (WATS). At the same time, there is an uncertainty, that can only be resolved by actual operating experience, as to whether the time delay inherent in voice communications via synchronous satellites will provide an acceptable quality of service to the general public when domestic telephone traffic is routed indiscriminately and on a large scale basis via satellite and terrestrial facilities.

6. Although the satellite technology appears to have great promise of immediate public benefit in the specialized communications market, here too there are uncertainties as to how effectively and readily satellite services can develop or penetrate that market. Thus, in the area of point-to-multipoint transmission, the commercial broadcast networks are as yet undecided as to whether to use this technology in whole or in part. We do have a concrete proposal for a CATV network from Hughes, expressions of interest by public broadcasting and other educational entities, and the possibility of interest by independent suppliers of program material to CATV and broadcast outlets. Moreover, several system applicants, in addition to seeking to attract program transmission business, have premised their proposals on the sale of other specialized services--in part as a complement to existing or proposed terrestrial offerings, but in the main with the expectation of expanding existing special service markets and developing new markets. To be sure, the applications generally do not identify specific services that are new or innovative. However, in our judgment, the uncertainties as to the nature and scope of the special markets and innovative services that might be stimulated will only be resolved by experience with operational facilities.

7. Under the circumstances, we will be guided by the following objectives in formulating the policies to govern our licensing and regulation of the construction and use of satellite systems for domestic communications purposes, namely:

- (a) to maximize the opportunities for the early acquisition of technical, operational, and marketing data and experience in the use of this technology as a new communications resource for all types of services;
- (b) to afford a reasonable opportunity for multiple entities to demonstrate how any operational and economic characteristics peculiar to the satellite technology can be used to provide existing and new specialized services more economically and efficiently than can be done by terrestrial facilities;
- (c) to facilitate the efficient development of this new resource by removing or neutralizing existing institutional restraints or inhibitions; and

- (d) to retain leeway and flexibility in our policy making with respect to the use of satellite technology for domestic communications so as to make such adjustments therein as future experience and circumstances may dictate.

8. We are further of the view that multiple entry is most likely to produce a fruitful demonstration of the extent to which the satellite technology may be used to provide existing and new specialized services more economically and efficiently than can be done by terrestrial facilities. Though specialized services constitute a relatively small percentage of AT&T's total traffic, it is presently the predominant terrestrial supplier of specialized services. There is some existing and potential competition from Western Union and any new specialized carriers authorized pursuant to the Commission's decision in Specialized Common Carrier Services (29 FCC 2d 870). But the capacity of their terrestrial facilities is small compared to those of AT&T or the high capacity facilities proposed by the satellite system applicants. ^{2/} The presence of competitive sources of supply of specialized services, both among satellite system licensees and between satellite and terrestrial systems, should encourage service and technical innovation and provide an impetus for efforts to minimize costs and charges to the public.

9. Of course, the incentive for competitive entry by financially responsible satellite system entrepreneurs to develop specialized markets must be meaningful and not just token. This requires that we take appropriate measures toward the end that a reasonable opportunity for effective entry is not defeated or weakened by AT&T, either directly or through its existing or future relationships with Comsat. In this regard, we cannot ignore the effects upon achievement of our objectives that might result from AT&T's existing economic strength and dominance stemming from its multi-billion dollar terrestrial investments and operations and its permeating presence and influence in all domestic communications markets. Nor can we ignore the ability of AT&T--an ability not possessed by other applicants--to load a high capacity satellite system with MTT and WATS traffic and thereby control the cost of specialized services furnished via that system. Other applicants, lacking a similar initial traffic nucleus, would be operating--at least initially--with lightly loaded, costly facilities until such time as they might succeed in reducing their unit costs by a substantial specialized traffic fill.

^{2/} The Commission has also authorized terrestrial facilities to various miscellaneous carriers providing program transmission service to CATV systems and broadcasters.

10. In addition, where AT&T combines its monopoly and competitive services on the same facilities, it is difficult to identify AT&T's relevant costs associated with specialized services to insure that revenues from the monopoly services are not being used to subsidize any part of its competitive services. Thus, if AT&T were permitted unrestricted use of satellites for both monopoly and specialized services, this might obscure any meaningful comparison of operating costs between satellite and terrestrial facilities for the provision of specialized services as well as curtail any realistic opportunity for entry by others to serve the specialized markets via satellite.

11. We recognize that the problem of cross-subsidy now exists with respect to the establishment of rates and identification of relevant costs for specialized services furnished by AT&T terrestrially. However, this longstanding problem would be exacerbated by permitting the troublesome monopoly and competitive service combinations to be carried over into this new arena. Moreover, the cross-subsidy aspect is only part of the deterrent to a reasonable opportunity for competitive satellite entry in the specialized field and, even if resolved, would not overcome AT&T's unique advantage of being able to control satellite circuit costs by the extent to which it chooses to load the high capacity satellite facilities with telephone traffic while the specialized field is being developed. 2a/

12. All of the foregoing factors and concerns with respect to AT&T, in our judgment, might well result in discouraging or deterring others from attempting to penetrate the markets for specialized services. As a further consequence, AT&T's dominance in the communications field would be extended rather than lessened in the domestic area. This would derogate from our policy of seeking to promote an environment in which new suppliers of communications services would have a bona fide opportunity for competitive entry. This policy was the basis for our decision in the Specialized Common Carrier Services proceeding (29 FCC 2d 870). While this policy explicitly accommodates an opportunity for AT&T and other existing carriers to compete "fully and fairly" with new entrants, it does not preclude the Commission from taking reasonable measures to assure that competitive entry would be a meaningful reality in the high capacity satellite field. Paragraph 104 of the Specialized Carrier decision states:

2a/ We recognize that AT&T, in its offerings of specialized services, may not, for rate purposes, distinguish between specialized services provided via satellite on the one hand, and terrestrial facilities on the other hand, and thus somewhat alleviate the competitive problem. However, we believe that it will from a regulatory standpoint complicate a definitive comparison between the relative cost and other advantages of satellite and terrestrial facilities in serving the competitive market for specialized services.

"We further stress that our policy determination as to new specialized carrier entry terrestrially, does not afford any measure of protection against domestic communications satellite entry or otherwise prejudice our determination in Docket No. 16495 as to what course would best serve the public interest in the domestic satellite field" (29 FCC 2d at 920).

13. The same considerations lead us to conclude that the achievement of our objectives would be prejudiced by authorizing the Comsat/AT&T proposal based on their contractual arrangement. First, since AT&T is a principal source of the domestic service revenue that Comsat would seek to obtain, it is not realistic to expect Comsat to compete vigorously in the provision of specialized services on an end-to-end or "retail" basis and thereby challenge AT&T's terrestrial domination in this field. Secondly, if Comsat should proceed in the dual capacities proposed in its two pending system applications, the revenues that would be guaranteed to Comsat from the AT&T contractual arrangement would give it an extraordinary advantage and head start over all other potential domestic satellite entrants seeking to develop specialized services in competition with Comsat as well as with AT&T's terrestrial services. If Comsat were given the option of serving AT&T solely and accepted it, such a course would unnecessarily deprive others of the benefit of Comsat's expertise in the communications satellite field. If Comsat were to elect to serve only entities other than AT&T, its expertise and facilities would be available to the public and carriers other than AT&T. But if Comsat is to be authorized to provide satellite services to AT&T, it should operate exclusively as a carrier's carrier--not engaged in retailing communications services to the public-- and provide such service under a tariff offering which would afford an opportunity for other carriers to have non-discriminatory access to the same system.

14. Finally, our consideration of the conditions under which AT&T and Comsat should be permitted to enter the domestic satellite field is necessarily affected by AT&T's ownership of 29 percent of Comsat's stock and its ability to elect three of the 15 Comsat directors. Such ownership was contemplated and encouraged by the Congress in enacting the Communications Satellite Act of 1962 (see Section 394 (b)(2)). Thus, this is not a matter over which Comsat has any control. However, that Act, which was formulated to meet the nation's policies and objectives with respect to the earliest possible establishment of a global communications satellite system, does not preclude authorized carriers from voluntarily disposing of their shares of Comsat stock. 3/ All of

3/ Indeed, in 1969 Congress amended the 1962 Act to provide for fewer common carrier elected directors in proportion to their decrease in stock ownership in Comsat (47 U.S.C. 733). This schedule contemplates that the percentage of common carrier stock ownership may fall below eight percent, in which event there would be no directors elected by common carriers.

the major carriers who originally owned Comsat stock, except AT&T, have since divested their interests. While the participation of experienced carriers had a useful function when Comsat was newly organized and gaining communications experience, this relationship warrants reassessment in light of current conditions.

15. Aside from the foregoing basic considerations of fairness and equity we reaffirm the staff recommendation in favor of multiple entry. In this connection it is important also to take cognizance of the fact that the initial implementation of domestic satellites does not confront us with a normal or routine situation. Some departures from conventional standards may be required if the public is to realize the potential benefits of this high capacity technology and we are to pursue our objective of competitive entry. This is true not only in the case of AT&T, but also for other applicants because of different factors. For example, as the staff points out, the capacity proposed by most system applicants substantially exceeds the traffic under their control or firm customer commitments. They are relying primarily on speculative business which they hope will materialize after the facilities become operational. We must, of course, make the requisite statutory findings as to an applicant's financial qualification and ability to implement its proposal, and we can require a reasonable showing that there will be no adverse impact on rates or services to customers of carrier applicants now engaged in providing essential communications services to the public. But if we adhere too strictly to conventional standards in this unconventional situation, such as requiring a persuasive showing by new entrants that competition is reasonably feasible and that the anticipated market can economically support its proposed facilities, most such new applicants may in effect be denied any opportunity to demonstrate the merits of their proposals at their own risk and without potential dangers to existing services--thereby depriving the public of the potential benefits to be derived from diverse approaches by multiple entrants. It is our judgment that the potential benefits to the public warrant the application of rules and policies which will afford a reasonable opportunity for domestic satellite facilities to be established initially on a competitive basis. It is also necessary to retain flexibility to alter our initial determinations in the light of evolving circumstances.

III. DETERMINATIONS ON THE ISSUES

A. Number of systems to be authorized initially

16. In light of the foregoing policy objectives, we have concluded that the public interest would be best served at this initial stage by affording a reasonable opportunity for entry by qualified applicants, both pending and new, subject to the showings and conditions described below which we believe to be necessary to implement our objectives and to protect the public. We have reached this decision after consideration of the various alternatives discussed in the staff recommendation (paragraphs 45-78) and the views expressed by the parties.

17. Like the staff and most parties, we think it unwise to attempt to select or prescribe one system (either a consortium of all the applicants or selection of one applicant) or to choose one or more systems through comparative hearings. In addition to the reasons given by the staff (staff recommendation, paragraphs 50-61), which we adopt, such a course would not promote our policy objectives discussed above. However, we are not accepting the alternative recommended by the staff (paragraphs 71-78) of requiring or encouraging consolidations of applicants along guidelines prescribed by the Commission. While we recognize that there may well be advantages to and need for voluntary consolidations or sharing arrangements (such as "launch risk pools") undertaken at the applicants' initiative as a matter of prudent business judgment, we do not deem it advisable to structure the architecture of any joint space segment operations. Rather, we will permit and encourage such arrangements so long as they are consistent with the policy conditions set forth herein. Accordingly, we will accord the system applicants a 30-day period within which to apprise the Commission as to whether they intend to pursue their pending applications, as modified to achieve compliance with this Second Report and Order, or whether they desire further time to reframe their proposals.

18. Our decision in favor of multiple entry does not mean that we have opted for a policy of "unlimited or unrestricted open entry." Our aim, as outlined above, is to afford qualified applicants a reasonable opportunity to demonstrate the public advantages in use of the satellite technology as a means of communications. But such entry cannot be "open" in the sense that it is without any restrictions or limitations. Pursuant to statute we must require showings of financial, technical and other qualification and make the requisite finding that a grant of the particular proposal will serve the public interest, convenience and necessity. Although, as discussed in

paragraph 15 above, it is our intention to make such determinations with due regard for the unique circumstances involved here, each applicant must make a sufficient showing of potential public benefit to justify the assignment of orbital locations and frequencies. Moreover, we believe it necessary to impose certain conditions to protect the public from possible detriment and to further the implementation of our policy objectives. In addition to the conditions discussed below, we will require a reasonable showing by any common carrier applicant now engaged in providing essential communications services that revenue requirements related to the proposed domestic satellite venture will not be a burden or detriment to customers for such essential services.

B. Conditions on system applicants on policy grounds

19. Insofar as the staff recommends that none of the pending applicants should be disqualified on the basis of the information now before us, we are generally in agreement with the staff's position and much of its reasoning (staff recommendation, paragraphs 82-119). ^{4/} However, we will address the question of what policy conditions and/or further showings will be required in the case of particular applicants.

20. As indicated above, realization of our policy objectives herein requires that we take appropriate measures toward the end that those objectives are not frustrated by any applicant, particularly in the critical threshold stage when others are attempting to become established. Because of the complexities and uncertainties associated with this matter, the question of what kind of measures to adopt confronts us with some difficult decisions. We have examined a number of alternatives and permutations. While none appears completely satisfactory in all respects to the entire Commission and there are conflicting considerations, it is our best collective judgment that the following course of action constitutes the most reasonable and appropriate accommodation we can achieve in the present circumstances.

1. AT&T and Comsat

21. In essence, we have concluded that AT&T should be afforded access to the satellite technology to determine its feasibility as an efficient and economic means of providing AT&T's basic switched telephone services, as well as to explore potential use of the 18 and 30 GHz frequencies. Because of the concerns expressed in our policy

^{4/} We will defer resolution of what domestic satellite services Western Union may provide in Hawaii under Section 222 of the Act pending a determination on the pending "Application for Review" of the staff's action in rejecting Western Union's application for authority to lease facilities to provide Mailgram service between Hawaii and the mainland. A Commission decision on that application for review will be forthcoming shortly.

statement (paragraphs 9-13 above), we will limit AT&T's initial use of domestic satellites to MTT, WATS, AUTOVON, emergency restoration in the event of terrestrial outage (pursuant to a restoral plan proposed to and approved by the Commission, and regardless of the services involved), and--if found necessary in light of the considerations discussed in paragraphs 35-41 below--any other services in the case of Alaska, Hawaii and Puerto Rico-Virgin Islands. However, the Commission will entertain a petition by AT&T for authority to provide additional services within the contiguous states at the earliest of the following occurrences: (a) when domestic satellite licensees authorized to offer specialized common carrier services have achieved substantial utilization of their satellite capacity; or (b) in any event, three years after the commencement of domestic satellite operations by AT&T. Upon such petition, we will re-examine this initial limitation to determine whether it is still warranted or should be modified or deleted in light of the circumstances then pertaining, including such relevant factors as the impact on the current competitive situation and any resolution of the cross-subsidy problem.

22. We have further concluded that it would be contrary to the public interest and the realization of our policy objectives to authorize the Comsat/AT&T proposals based on their contractual arrangement, in light of the considerations set forth in our policy statement (paragraphs 13-14 above). For those services it is authorized to provide via domestic satellite (see paragraph 21 above), AT&T will have the option of applying for authority to own and operate satellite facilities or of leasing transponders under tariff from Comsat or any other carrier who elects to proceed solely as a carrier's carrier under the same conditions specified below as to Comsat. 5/

23. If Comsat elects to serve AT&T, then it will be required: (a) to operate solely as a carrier's carrier; (b) to lease transponders to AT&T under the same tariff terms applicable to other carriers leasing transponders; (c) to permit AT&T and other carriers to have access to their leased transponders through their own earth stations, where desired and authorized by the Commission; and (d) to comply with a formula, to be prescribed by further order of the Commission, concerning the maximum percentage of system capacity that can be leased

5/ Since we decline to authorize facilities to implement the Comsat/AT&T contractual arrangement, we will not require AT&T to show that the costs of leasing satellite capacity from Comsat under tariff are no greater than obtaining equivalent facilities by other available means, such as ownership or leasing under tariff from another satellite carrier (see staff recommendation, paragraph 79).

to any one carrier (see paragraph 25 below). Such operation as a carrier's carrier may include the provision of earth station facilities by Comsat where desired by carriers leasing transponders and warranted by the existing or potential volume of their traffic. If, on the other hand, Comsat elects to serve only entities other than AT&T, then Comsat may, pursuant tariffs, offer end-to-end service, lease transponders to carriers other than AT&T, and offer other services as proposed in its application for a multi-purpose system (staff recommendation, paragraph 22).

24. We see no compelling reason of public policy for precluding AT&T from leasing satellite transponders under tariff from a carrier's carrier for its authorized domestic satellite services so long as the wholesale carrier retains adequate capacity to meet the requirements of other carriers desiring to lease transponders. Since the wholesale carrier would not be engaged in retailing specialized communications services to the public, the lease of transponders to AT&T would not deter competitive entry by others to serve the specialized markets. Moreover, such an arrangement would afford an opportunity for access to the satellite technology by retail carriers who lack sufficient existing or potential traffic to warrant the investment required for ownership of space segment facilities. Further, a wholesale carrier commencing operations under the incentive of AT&T's available business would have an opportunity to develop business from other carriers, and to that extent would be less affected if AT&T should elect in the future to apply for authority to own and operate space segment facilities.

25. While we believe it necessary to limit the percentage of the space segment capacity of the wholesale carrier that could be pre-empted by AT&T under tariff in order to reserve adequate capacity for use by other carriers, we are not now in a position to devise a formula. On the one hand, there is the consideration that AT&T initially has the ability to occupy a large number of transponders and thereby could pre-empt much of the capacity of any system, whereas the capacity available for other carriers may be utilized in gradually increasing amounts. On the other hand, in view of the relatively short life of the satellites, the wholesale carrier should not be saddled with substantial idle capacity which AT&T might otherwise lease, particularly after other carriers have had a reasonable time to take advantage of the wholesale tariff offering. Accordingly, if AT&T elects to lease transponders under tariff from Comsat (or any other wholesale carrier) and the latter elects to proceed solely as a carrier's carrier by serving AT&T's requirements, we will require that such wholesale carrier submit, for Commission review, an appropriate

formula by which it will allocate its space segment capacity for AT&T's use and the use of other carriers. Upon consideration of such allocation, the Commission will approve or prescribe a formula prior to the authorization of facilities. 6/

26. Comsat will be required to form a separate corporate subsidiary to engage in any domestic satellite venture, whether it elects to pursue its multi-purpose system proposal or to operate solely as a wholesale supplier of satellite facilities to AT&T and other carriers. While Comsat's comments filed on April 19, 1972 do not object to paragraph 116 of the staff recommendation, we will not impose any prior constraints as to how such domestic subsidiary is to be structured or financed. This is an appropriate area for the exercise of Comsat's own judgment in the first instance, subject to ultimate Commission approval of its proposal. In the event that Comsat elects to proceed other than as a carrier's carrier, it will be prohibited from owning or operating domestic satellite facilities at any overseas point served by INTELSAT facilities (staff recommendation, paragraph 114).

2. GTE

27. The staff has expressed various concerns about GTE's proposal to provide interstate MTT service via satellite facilities for which it seeks authorization (staff recommendation, paragraphs 97-99). In encouraging multiple entry and the development of competition in the supply of domestic communications, we have maintained a distinction between the so-called monopoly switched telephone services now being furnished by AT&T and all other classes of existing and potential specialized services. We have made this distinction not for the purpose of protecting any established position that AT&T occupies in the MTT field. Rather, it has been our purpose and concern to protect the public in the availability of efficient and economic switched MTT services--an interest that might well be adversely affected by unnecessarily fragmenting responsibility for the planning and provision of the facilities required for this integrated service. On the other hand, we should not reject any proposal that might prove feasible and beneficial to the public simply because it represents some departure from the established scheme. This is particularly true when the proposal comes from an entity, such as GTE, which already is a significant participant in the furnishing of MTT facilities and services, although essentially as a carrier which originates, terminates, and switches large volumes of MTT traffic rather than in the provision of long lines transmission facilities.

6/ Of course, as AT&T from time to time proposes to take up additional capacity pursuant to that approved formula, AT&T will be required to obtain appropriate authorization therefor pursuant to Section 214 of the Communications Act.

28. At least potentially, GTE's proposal offers several advantages. It would introduce more directly, although on a limited scale, the perspective and experience of another responsible entity into the planning and operation of the interstate MTT network, which heretofore has been the sole responsibility of AT&T. It could provide a basis for regulatory comparison of the relative efficiencies and cost advantages of somewhat different technologies represented by AT&T's proposal and GTE's proposal. It could also tend to lessen AT&T's dominance and economic influence in the domestic communications field.

29. Notwithstanding these potential public benefits, there are a number of uncertainties, not dispelled by the information contained in the record before us, that must be resolved before we can make the required statutory finding that GTE's proposal will serve the public interest. Accordingly, before determining whether this portion of the Hughes/GTE applications should be authorized, we will require a showing of the nature described by the staff (paragraphs 98-99) concerning: what potential benefits might be achieved by affording GTE access to the satellite technology for this purpose; whether its proposal is economically justified from the standpoint of the public in terms of costs and prospective fill; the effect on GTE's present contracts for settlement with AT&T; GTE's plans for handling traffic in case of temporary outages or catastrophic failure of its satellite system facilities; how the costs of such facilities would be treated for rate-making and accounting purposes; and the kinds of data it will gather and report to the Commission to assist our evaluation of the efficiency and economy of any authorized operations compared to continued exclusive reliance on the interstate switched telephone facilities of AT&T.

30. In the event that we determine after consideration of such showings that the proposal, on balance, would serve the public interest, any authorization to GTE would be limited initially, as in the case of AT&T, to the provision of MTT service (plus other services, if found necessary, in the case of Hawaii only in the event that GTE is authorized to serve that State (see paragraphs 39-40 below)). GTE would also be required to form a separate corporate subsidiary to engage in such operations.

3. Other system applicants

31. We will further require that any other terrestrial common carrier, who is authorized a domestic satellite system, shall offer its services in accordance with tariff schedules filed pursuant to Section 203 of the Communications Act and the Commission's applicable rules and regulations. Where the terrestrial carrier seeks to provide services and facilities to other carriers (i.e., as a carrier's carrier), the offering of such wholesale services--whether for transponder access alone or for satellite system service including earth station access--shall be pursuant to a tariff setting forth all terms and conditions relating to each class of offering. 7/ If, in addition, the carrier intends to provide end-to-end services, the retail offering shall be covered by appropriate tariffs. In order to assure the minimum intermingling of costs and revenues between the wholesale and retail operations, we will require the carrier to maintain its accounts in such a fashion as to identify clearly the costs and revenues related to each. The prescription of specific accounting rules by the Commission will be given consideration when we have a clearer picture of the structure of this industry and its operation. We consider these measures to be essential, as a minimum, to insure that other carriers leasing transponder or satellite system facilities are not burdened with any portion of the revenue requirements applicable to the supplying carrier's retail offerings.

32. Finally, we adopt the staff's proposal that any authorization to a satellite equipment supplier shall be conditioned upon a requirement for the existence or creation of a separate corporate entity to engage in the satellite communications operation (staff recommendation, paragraph 86). Any authorization to Hughes will be upon the further condition that it afford its CATV customers the option of owning receive-only earth stations to obtain the Hughes program offering and that of any other CATV program distributor offered by means of the Hughes system facilities. Hughes will also be required to submit, for Commission approval prior to the issuance of any authorization to it, a plan whereby other CATV program distributors will be afforded reasonable access to receive-only earth stations associated with its system on an equitable and non-discriminatory basis, including--if necessary therefor--by means of access to the Hughes transmit-receive earth stations and space segment facilities.

7/ As in the case of any domestic satellite carrier operating exclusively as a wholesale carrier, we will require any domestic satellite system licensee operating in part as a wholesale carrier to permit carrier customers to have access to transponders through their own earth stations, where desired and authorized by the Commission.

C. Earth station ownership, access, and interconnection

33. Our broad policy objective is to aim toward a flexible ground environment which would permit a variety of earth station ownership patterns and afford diversified access to space segments except where this is impractical. Thus, in general, we are in favor of according special purpose users (such as commercial and non-commercial local broadcasters, other educational users, cable systems, or local carriers) the option of owning receive-only earth stations. Moreover, we do not foreclose the possibility that transmit-receive earth stations could be owned by users or independent carriers in appropriate circumstances. However, we think it premature to attempt to specify definitive standards here as to the particular circumstances and terms and conditions under which such user or independent carrier ownership of earth stations might be authorized, except to the extent indicated in Section B above. We cannot now foresee all possible situations that might arise or all relevant public interest factors. We will be in a better position to make such determinations after we know what domestic satellite systems will actually be established and in the context of considering concrete applications for particular earth stations. Thus, while we agree with the over-all thrust of the staff discussion on earth station ownership (staff recommendation, paragraphs 120-132), we do not bind ourselves to the specific conditions proposed by the staff (particularly paragraphs 125 and 131). 8/

34. To the extent consistent with our policy determinations and conclusions herein, we are also in accord with the goals set forth in the staff discussion of access to earth stations and interconnection (staff recommendation, paragraphs 133-142). Here again, however, we think it advisable to retain greater flexibility. While we will require existing terrestrial carriers seeking domestic satellite authorizations to submit for Commission approval, prior to action on their applications, a description of the kinds of interconnection arrangements they will make available to other satellite systems and/or earth station licensees, we do not expect such descriptions to anticipate all conceivable situations. Moreover, we will not restrict AT&T to proposing the specific bases for interconnection charges set forth in paragraph 141 of the staff recommendation. If the standard there suggested poses difficulties, AT&T may propose some other standard with similar specificity, which would accomplish our objective of assuring that all carriers providing retail interstate satellite services (whether or not affiliated with Bell System companies) have access at non-discriminatory terms and conditions to local loop and interexchange facilities as necessary for the purpose of originating and terminating such interstate services to their customers. The governing standards will be established, so far as practicable, prior to the authorization of domestic satellite facilities rather than left primarily to subsequent negotiations between the entities involved.

8/ As in the case of space segments, we decline to structure any arrangements for sharing ownership of earth stations, but will encourage and consider voluntary proposals of the applicants' own devising.

D. Alaska, Hawaii and Puerto Rico

35. We endorse fully the staff recommendation that the advent of service via domestic satellite facilities should be accompanied by an integration of services, and more particularly the charges for such services, between Alaska, Hawaii and Puerto Rico and the contiguous 48 states into the domestic rate pattern. Heretofore considerations of distance, cost and traffic volumes have all combined to indicate that foreign rather than domestic rate and service patterns should be applicable. The relatively high level of charges resulting from these physical factors and cost considerations has inhibited the free flow of communications between the contiguous states and these points to the disadvantage of all of our citizens. It is our considered view that the public interest requires that the distinctions, particularly with respect to level of charges and rate patterns, should be eliminated. As set forth below, the advent of domestic satellite communications with their distance insensitive features provides a sound economic basis for such conclusion.

36. One of the principal virtues of the satellite technology applied to domestic communications is its characteristic of deemphasizing distance as a cost factor in rate-making. With the availability of domestic satellites for communications between the mainland and Alaska, Hawaii and Puerto Rico, distance should dramatically diminish as an excuse or justification for the historic high-rate treatment that has been accorded to these services. We are now able to look forward to minimizing any distinctions in communications to such points compared to communications among the contiguous states. Thus, with the inauguration of satellite systems to serve the domestic communications requirements of all of the United States, there will be justification for integrating Alaska, Hawaii, and Puerto Rico into the established rate scheme for communications services applicable to the mainland.

37. Accordingly, it will be our policy to condition any domestic satellite authorization to carriers serving these points upon a requirement that, no later than six months from the issuance of the authorization, such carriers shall submit a specific proposal for revised rates for review and approval of the Commission prior to authorization for the commencement of service. In case of message telephone service (MTT), any such proposal shall give maximum effect to the elimination of overall distance as a major cost factor and should be designed, in specified time phases if necessary, to integrate these three United States points into the uniform mileage rate pattern that now obtains for the contiguous states, with all that such

approach implies in terms of nationwide cost averaging and equalizations for interstate rate-making purposes. ^{9/} We recognize that there may be extraordinary technical or economic factors, e.g., earth station costs and traffic loadings, that may warrant some deviation from this approach or justify a phased implementation of the integrated pattern. However, the carriers involved will be expected to demonstrate and document fully the need for such deviation or phasing in terms of conditions that are singularly relevant to the points involved compared to the contiguous states, and to present the full program with the timing of final implementation.

38. We recognize that in the case of record services, the problems are more complex in that different carriers provide "overseas" and "domestic services." We do not intend, at this point, to disturb this service pattern. However, we do require that the carriers now providing services submit within the timetable set forth above proposals for the integration of their charges for TELEX, private line and other specialized services into the domestic pattern within the same framework as set forth above, i.e., detailed explanations in economic and technical bases for any proposed deviation or phasing. Should the record carriers fail to do so, we will be required to reconsider our current policy regarding record services between the contiguous states and these three points so as to assure that the policies enunciated here will be implemented. To make implementation possible, we will expect space segment and earth station licensees authorized to serve these overseas points to afford appropriate access to such facilities to the relevant international record carriers for the provision of domestic services.

39. In light of the foregoing policy determinations, we are further of the view that AT&T should provide MTT services via domestic satellite to these three points, in conjunction with the appropriate local carrier (e.g., Hawaiian Telephone Company, RCA Alascom). If GTE's domestic satellite proposal is authorized and it is shown that the cost of using its facilities would be less than or approximately equivalent to the cost of utilizing AT&T facilities to provide such service between Hawaii and the contiguous states, then we do not foreclose the possibility that GTE might be the designated entity in the case of Hawaii. However, the nationwide cost averaging structure and uniform mileage rate pattern should not be burdened with costs that are greater than necessary in order to integrate these three points, or required to absorb the costs of domestic satellite system facilities proposed by an applicant which lacks the ability to achieve a substantial initial loading.

^{9/} For example, among other things, such carriers might explore the possibility of expanding the last mileage step (presently 1911-3000 miles) to include these points, or of adding an additional mileage step with an appropriate increment in rates.

40. Moreover, since our most important objective in this area is to minimize the distinctions that have heretofore existed in rates and services to these points as compared to communications among the contiguous states, we think that Alaska, Hawaii and Puerto Rico should have an opportunity to obtain other services via the same earth station antennas and satellites that are used for the provision of MTT services to these points. Thus, whether AT&T proceeds via its own domestic satellite facilities or through a wholesale carrier, we will require that the relevant licensees reserve adequate transponder and earth station capacity for lease to other carriers authorized to provide specialized services to these points in such manner as will not necessitate another earth station antenna in addition to those used for MTT service. The same requirement will pertain to GTE in the event that it is authorized to provide MTT service to Hawaii by means of domestic satellite facilities. If found necessary to achieve our objective of integrating these three points into domestic rate patterns for all services, we will permit AT&T and/or GTE to provide services other than MTT to one or more of these points. We do not preclude the offering of specialized services to such points by means of independent domestic satellite facilities authorized to other licensees, so long as the public in Alaska, Hawaii and Puerto Rico has the opportunity to take advantage of the potential cost savings in obtaining specialized services on the same satellite system facilities used for MTT.

41. Finally, we recognize that implementation of the foregoing policies, while of benefit to Alaska, would not satisfy that State's pressing need for improved intrastate communications. Though accommodation of that need is important and the satellite technology appears to offer special promise toward that end, it may prove impracticable for the Commission or the pending carrier applicants to do much to alleviate this problem, at least in the initial generation of satellites. We will require RCA Alascom and any other applicant proposing earth stations in Alaska to submit a detailed plan for intrastate service. We will also require AT&T, or any wholesale carrier serving AT&T, to afford access to its transponder capacity for the purpose of intra-Alaska service, if desired. We will further direct our staff to consult with representatives of the State of Alaska concerning any additional measures we may consider, and reasonably require of the applicants or any domestic satellite licensee, to assist in meeting its intrastate requirements.

42. With respect to the State of Alaska's request for a 6° separation at 4/6 GHz in that limited and valuable portion of the orbital arc where satellites capable of serving the 50 states can be located, in order to facilitate the use of small, inexpensive earth stations, we note that advances in earth station technology may shortly make it possible to meet the performance specifications needed for 3° separations with earth station antennas of smaller diameter than 30 feet. Moreover, we note the availability of 2 GHz frequencies specifically allocated by the 1971 WARC for educational and instructional television and for demand assigned telephone services in remote areas of the State. Finally, orbital locations for wider spaced 4/6 GHz satellites are available farther west of those than can view the 50 states, where there is less demand for such satellite locations. Thus, it is unnecessary to decide this matter definitively at this time. We stress, however, that we do not rule out the possibility of permitting a 6° separation, if later found necessary for the use of small, inexpensive earth stations in Alaska and in the public interest, all circumstances considered. Paragraph 152a of the staff recommendation concerning orbital arc location assignments is otherwise adopted.

E. Terms of access by public broadcasting and other educational interests

43. On this issue, we adopt the staff analysis and conclusions (staff recommendation, paragraphs 153-162). In other words, we recognize that there is a well-established national policy, incorporated in legislation, which encourages and makes it lawful for common carriers to provide free or reduced rate interconnection services to public broadcasting and other educational interests. These statutes make it possible for the Commission to prescribe preferential rates for educational entities covered by such legislation, as well as for carriers to file tariffs offering free or reduced rates to such entities on their own initiative. While we will entertain specific proposals by carriers or users for the prescription of preferential rate classifications, we presently lack sufficient information to initiate any requirement as to common carriers or to enunciate any general statement of policy. However, we will expect non-carrier applicants, who have offered free access to public broadcasting, to implement the proposals made in their applications.

F. Procurement

44. Finally, we adopt the staff position on the question of procurement (staff recommendation, paragraphs 163-167). Thus, assuming our authority to prescribe procurement rules requiring competitive bidding for domestic satellite facilities, we nevertheless conclude that it is not necessary or desirable to exercise such authority in the present circumstances under our multiple entry policy. 10/

10/ We further decline, at present, to make an exception in the case of AT&T in view of our decision not to authorize the Comsat/AT&T applications based on their contractual arrangement.

IV. ORDER

44. Authority for the policies and conditions adopted herein is contained in Sections 1, 2, 3, 4 (i) and (j), 201, 202, 203, 212, 213, 214, 218, 219, 220, 301, 303, 307-309, 310 (b), 319, 396, 403 and 605 of the Communications Act of 1934 and Sections 102 and 201 (c)(8) of the Communications Satellite Act of 1962.

45. Accordingly, IT IS ORDERED, That:

- a. The policies and conditions set forth herein, and such portions of the staff recommendation (34 FCC 2d 9) as are expressly approved or clearly consistent with the policies and conditions herein, ARE ADOPTED, effective July 25, 1972.
- b. Each of the applicants for domestic communications satellite systems named in paragraph 1 above SHALL APPRISE THE COMMISSION on or before July 25, 1972, as to whether it intends to pursue its pending system applications, in whole or in part, with such modifications as are required to achieve compliance with the policies and conditions specified in this Second Report and Order; or whether it desires additional time for the purpose of reframing its proposal consistently with such policies and conditions.11/
- c. The Commission retains full jurisdiction over all aspects of this proceeding.

FEDERAL COMMUNICATIONS COMMISSION*

Ben F. Waple
Secretary

11/ Upon consideration of such responses, the Commission will issue a public notice concerning the procedures we will follow in processing applications.

*See attached statement of Commissioner Johnson.

Statement of Chairman Burch in which Commissioners Reid and Wiley join to be released at a later date.

Up With Domsat

[In the Matter of Establishment of
Domestic Communications Satellite. . . Dkt. 16495]

Concurring Opinion of Commissioner Nicholas Johnson

The Commission now arrives at the denouement of this seven year old proceeding. An examination of the plot of this story, and its several acts, gives a revealing insight to the policymaking process at the FCC.

Domestic satellites became a policy question at the FCC, not because of Commission action, but with the filing of a proposal for domestic satellite television network interconnection by ABC in September 1965. To examine the important policy questions before taking definitive action, the Commission returned the ABC application and instituted an inquiry. 31 F. R. 3507 (March 2, 1966).

In response to the inquiry, the Ford Foundation filed a proposal in August 1966 linking the financing of public broadcasting to the institution of domestic satellite service. Under the Ford plan, the savings in interconnection costs would be used to finance public broadcasting as a "people's dividend" from the \$40 billion of public expenditures to develop the space technology that made the satellite system possible. This was a proposed alternative use of the savings--rather than flowing ~~them~~ through to networks' profits, or lower costs to users and their customers. J. Dirlan and A. Kahn, "The Merits of Reserving the Cost-Savings from

Domestic Communications Satellites for Support of Educational Television," 77 Yale L. J. 494(1968).

The FCC responded with a further notice of inquiry. 31 F. R. 13763 (October 20, 1966). In February 1967 President Lyndon Johnson proposed the legislation that later became the Public Broadcasting Act of 1967. And in April 1967 Comsat proposed a pilot domestic satellite system to demonstrate the potentialities and benefits of satellites, including their use for public broadcasting.

On August 14, 1967, President Johnson announced the formation of a Task Force to review a variety of telecommunications policy questions, including domestic satellites. This began what was to become a three year review by the Executive Branch of important policy questions before the FCC in this area. By late 1968 the Johnson Task Force had completed its work with a recommendation that a Comsat-directed pilot program be authorized. In early 1969 the FCC was prepared to authorize such a pilot program. A report and order had been drafted, and tentative expressions of the position of each Commissioner had been made.

Before issuing it, however, then-Chairman Hyde took the document to the White House to inform the White House staff of the action the Commission was to take. In the interim there had been a change in Administration, and the information-providing trip resulted in a request that the Commission hold any action while the White House once again examined the policy questions.

The White House recommendations, for an 'open-entry' policy, came in a January 1970 memorandum from Peter Flanigan to Chairman Dean Burch. In March 1970 an FCC Report and Order, 22 F. C. C. 2d 86, concluded that no decision could be made on the appropriate policy for domestic satellite entry and specific proposals from potential entrants were requested. The next Commission order, and the staff's recommended decision came in March 1972.

Today's action seems to signal the end. Open entry is adopted with certain modifications. The benefits to be realized by public broadcasting are, at this point, speculative.

There are several interesting conclusions to be drawn about the Commission's role in policymaking at least for domestic satellites.

(1) The Commission has relied heavily on the parties appearing before it for the analyses and proposals it has considered. Although there is no readily available way to make an exact calculation, I suspect that most of the important parties appearing before the Commission have invested significantly more resources, each, on these policy questions than has the Commission in total. This seems particularly true for the Executive Branch. The Commission has been a 'captive,' responding to and arbitrating between the variety of forces which have attempted to move it.

(2) The relative congruence between Commission action and White House recommendation, occurring over periods of significant shifts in policy, is striking. The ability of the Commission to move in variance with White House positions on important policy questions (regardless of who is President) is very questionable.

(3) The effects, benefits and costs, of both regulation and delay would be worthy of a detailed analysis. Suppose any entrant, including ABC, had been able to launch a satellite system in 1965 by merely 'purchasing' the needed resources, including spectrum. Suppose the Commission had gone ahead with a pilot program authorization in early 1969. What would have been the results of these--or other alternatives--on services, technology development, and so forth? Are we better off, or worse off today? Should the domestic satellite question have been handled differently, and if so, what can we learn about handling other policy questions before this and other governmental agencies that engage in an economic planning function?

(4) Over and over again the Commission meets the question of melding competitive and monopoly portions of the telecommunications common carrier industry. The issues were joined in the Telpak and other bulk offering and private line proceedings, and are still unresolved. They are met again in the relationships between monopoly landline telephone companies and miscellaneous carriers who offer a variety of land mobile

services in competition. They are met in the Carterfone-type issues of competition and monopoly in communications equipment and interconnection. They are met in the pricing questions surrounding the entry of specialized competitive carriers. And they are met here in the treatment, particularly of ATT and Comsat, of certain entrants for domestic satellite services. The issues remain unresolved.

Given these limitations, I believe the staff work and ultimate Commission position put forward today is much better than anyone had a right to expect. Accordingly, as a realist, I concur.

Because of the significance of the policy, however, perhaps a few more words regarding my own preferred approach to decision would be appropriate.

We are entering into a new area of communications. The next few years will be years of experimentation and gathering of experience. It's not that we don't know how to launch and operate a satellite. Comsat, NASA, the military, and numerous American companies have a great deal of expertise in this field.

But we have no experience with the non-technical aspects of this operation. Will the public tolerate the short delay, or echo effect, in voice communications by satellite? What new institutional (and possibly personal) uses of communications will evolve to use the peculiar qualities of satellite distribution systems (cheaper long-haul costs, possibility of multiple distribution points, and so forth)? What problems will arise in

joint operations of satellites, or of earth stations? What new rate-making or regulatory concepts and procedures will be needed?

(1) Accordingly, I still believe there is some merit to the idea of a pilot project at this stage. Rather than have it operated by a chosen company (Comsat, ATT, some other present company, or a new entity), however, I would have it operated by NASA or some other entity of government. This is not such a radical idea. It is the way every other nation in the world has dealt with the problem. And most have resolved the issue long before us. It is the way, in fact, that we run our space program. It is the way we evolve new technology in many areas of the economy. And, even as to space communications satellites, the military and NASA have already operated such systems.

All I would propose is that for the first generation of experience (three to seven years) a public entity undertake the operation of America's first domestic communications satellite system for the benefit of all potential users and operators. Every effort would be made to test, at cost, any reasonable proposal from any American company, institution, or individual. The results of all tests would be made fully open to any interested party. Training opportunities would be made available to as many interested persons as possible. This would save a tremendous amount of money for American business, as well as the public, and open up the possibility of a great deal more use (and competition--if that's what we're really interested in) when the system or systems are finally established on a commercial basis.

I have made this proposal throughout my six year term at the Commission. It has never received the support of the White House or a majority of the Commissioners. There is little doubt in my mind that we would be much further down the road today if it had been adopted in 1966.

(2) If there is not to be an experimental system, there is much to be said for a chosen instrument. A single system operator can insure economies of scale, fair and open access to all comers, the lowest possible rates, and the most geographically disbursed system (including, for example, the best service to Alaska, Hawaii and so forth).

My preference would be to create a new entity--a Domsat--for domestic satellite services only, that would have every incentive to compete fully with ATT. No carrier would be permitted to hold stock in the company or sit on the board (although, of course, individual shareholders could hold stock in ATT and Domsat).

Another alternative would be to give ATT a monopoly over domestic satellite service. ATT is now having some growing pains even keeping up with expanding service on earth. But ATT exclusive operation in space would have the advantage that all users--including the homeowner--would get some benefit from the new technology, which will now flow almost exclusively to large corporate users of satellites. If this were done, ATT should probably be required to provide such

service through a separate corporate entity for purposes of bookkeeping (as its current corporate practices would indicate it would probably want to do anyway).

Comsat could also be the chosen instrument. It does have the expertise. But it would not have the advantage just described that ATT would have--virtually monopoly control of all U. S. communications on the ground for purposes of rate averaging. Moreover, Comsat has additional problems as an international operative. At one time I urged that Intelsat be encouraged to become a truly international communications carrier, supplying domestic communications services for the world as well as internationally. It seemed to me an appropriate, and symbolic, peaceful venture for nations in need of one. But that idea never caught on either. So now, it seems, we are doomed to a world in which every nation must have not only its own airline, merchant marine, and steel mill, but its own domestic satellite system as well. Given such a world, however, it seems to me inappropriate for Comsat--already carrying the burdens of Big Brotherism into its international meetings--to have to confront its world partners with the potential conflicts of interest (and division of managerial energies) involved in operating the world's most lucrative domestic satellite system.

(3) If we are not to have an experimental system or a chosen instrument, because of a deistic reverence for competition, then we

ought to really have competition. I'm reminded of the children's riddle: "Where does an 800-pound gorilla sleep?" And the answer: "Any place he chooses." True competition is one of the most highly regulated states of economic operation possible. That's what the antitrust laws are all about--when they're enforced. You either keep the 800-pound gorilla (in this case the \$18 billion Bell) out of the canary cage entirely, or you tell him where to sleep.

If we're really serious about experimenting with the radical notion of free private enterprise, I'm all for it. But then there have to be some very meaningful restraints on ATT and Comsat--at the very least in the initial stages. Otherwise, we're just kidding ourselves--though very likely nobody else.

If we want a competitive arena I would keep out ATT and Comsat entirely. (ATT has never been consistently enthusiastic about using space anyway.) Let anyone else in who wants in. Let them experiment with equipment and the search for services and markets. Try to maintain some conditions of fair competition. If after a few years the Commission wants to reassess this decision, and let ATT into the business in ways consistent with maintaining this newly burgeoning industry, fine. But not until then.

(4) Finally, I cannot but bemoan our failure to provide expressly for--at least--free interconnection for the Public Broadcasting Corporation and other educational users. I always felt that the Ford Foundation had

made a fairly persuasive case that more was called for. The American people, having invested more than \$40 billion in the soaring growth stock called civilian space, are entitled, someday, to a little bit of a dividend. One has yet to be declared. Ford proposed that a proportion of the savings to the commercial networks from the use of space be passed on to the public in terms of a funding source for public broadcasting. It seemed to me a fair idea.

But all this is history. We're now in countdown. It's no time to dissent. I'm on board.

May 1, 1972

Mr. Syd Cassyd
West Coast Editor
6425 Hollywood Boulevard
Box 226
Hollywood, California 90028

Dear Mr. Cassyd:

Thank you for your letter of April 1 commenting on possible domestic applications of satellite technology.

I appreciate your pointing out to me the results of your examination of research materials. I have taken note of the information you have highlighted, and want to assure you that it will be taken into account in our further calculations.

Please let me know if you have any further thoughts on this, and again, my thanks for taking the time to make the fruits of your research available to me.

Sincerely,

Linda K. Smith
Special Assistant
to the Director

LKSmith:jem
Cc:
DO Records
DO Chron
Mr. Whitehead,
Mr. Hinchman
Eva
LKS Subject
LKS Chron

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1 April 1972

Linda K. Smith
Special Assistant to the Director
Office of Telecommunications Policy
Executive Office of the President
Washington, D.C. 20504

Dear Ms. Smith:

Your letter of February 28, written at the request of Mr. Whitehead, regarding potential domestic applications of satellite technology prompted me to examine some of my research material on costs of direct reception, home or school, receive systems. One of these, in a paper presented to the United Nations Conference on the Exploration and Peaceful Use of Outer Space, 14-27 August 1968, was delivered by Dr. Harold A. Rosen, Hughes Aircraft, titled "Satellite System for Educational Television."

The way I read the Rosen article and others prepared by experts, the figures projected and the "complicated" spectrum management activities you detailed are covered; it needs clarification.

I believe this problem which will be presented in written papers, and oral arguments, before the FCC, on April 19 and May 1st, respectively, will have a great bearing on the future of a viable domestic satellite system. To handle the public interest properly, I think you might ask Dr. Rosen for a copy of his article.

One other article is that of Daniel R. Wells, presented at the Society of Motion Picture and Television Engineers Technical Conference in Montreal, October 6, 1971, and carried in the Journal of the Society, March 1972.

Just a matter of terms; terrestrial segments under a direct to each home or school does not require any other earth-receive terminals, other than their 10 foot ground dish. (I have heard this is now cut to 5 feet, and the technology is pulling it down even smaller.)

Please keep me informed, if you will, as I am vitally interested as you can see from the attached copy of the Record.

Cordially,

Syd Cassyd, West Coast Editor
enc.



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No. 35

House of Representatives

SALUTE TO SYD CASSYD

HON. THOMAS M. REES

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, March 8, 1972

Mr. REES. Mr. Speaker, a quarter of a century ago, Syd Cassyd, a journalist who had produced his first television show in New York on May 7, 1945, saw the need for a group which would act as a central source of information on the arts and sciences of television, soon to become the world's most vital communications tool.

Becoming the fountainhead of this new group dedicated to the advancement of television, he called together a few men in borrowed quarters and spearheaded the formation of the Academy of Television Arts and Sciences. His peers at the meeting made him chairman pro tempore until the first president could be elected. He later became the president, after having declined the honor at the first few meetings.

In November 1949 the group changed its charter and Mr. Cassyd became president of the first National Academy of Television Arts and Sciences with its

base in Hollywood and with two branches, one in Washington, D.C., and the other in San Francisco. In 1955, when the charter was again revised, the organization added seven more chapters throughout the Nation.

Over the past 25 years, this professional society has functioned in many areas of education, government, and the television industry. It has set standards of performance and achievement which are recognized each year by the awarding of the famous Emmy Award. Many of the national prominent names in the television industry had their first contacts with leaders of the arts and the industry in the halls of the academy meetings.

Because of Mr. Cassyd's accomplishment and vision in foreseeing the necessity for a group which would embody the high ideals on which he based the structure of the Academy of Television Arts and Sciences, some time ago he was presented with an Honorary Emmy Award.

At this time, as the presentation of the 1972 Emmy Awards approaches, I would like to offer by salute to the founder and first national president of the Academy of Television Arts and Sciences, Mr. Syd Cassyd.

don't

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

OFFICE OF THE DIRECTOR

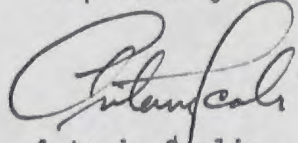
April 21, 1972

Honorable Dean Burch
Chairman
Federal Communications Commission
Washington, D. C.

Dear Mr. Chairman:

Submitted herewith are the comments of the Office of Telecommunications Policy in the Commission's domestic satellite proceeding (Docket No. 16495). Filing of these comments was regrettably delayed; request for late filing was made orally to the Chief of the Common Carrier Bureau on April 19, 1972, and approved by him on that date.

Respectfully submitted,



Antonin Scalia
General Counsel

cc: Mr. Bernard Strassburg

Before The

FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

In the Matter of Establishment)
of Domestic Communications) DOCKET NO. 16495
Satellite Facilities by Non-)
Governmental Entities)

COMMENTS OF THE
OFFICE OF TELECOMMUNICATIONS POLICY

The Office of Telecommunications Policy (OTP), and before its establishment the White House, previously advised the Commission of the Administration views on desirable arrangements for domestic satellite communications. Those views are contained in a memorandum and a letter to the Chairman dated, respectively, January 23, 1970, and October 28, 1971, with additional supporting data transmitted on February 11, 1972. The views contained in those earlier submissions remain unchanged, and the purpose of this filing is to comment upon the Second Report and Order (Attachment to Memorandum Opinion and Order in Docket No. 16495 (FCC 72-229), March 17, 1972) proposed by the Commission's staff insofar as it relates to those earlier recommendations.

INTRODUCTION AND SUMMARY

The present proceeding is of unusual importance to our national communications, not only because it deals with the establishment of an important new domestic communications medium, but also because, like the Specialized Carrier proceeding concluded by the Commission in Docket No. 18920, it raises the question of the fundamental regulatory approach which the Commission will choose to deal with the innovations and diversities that now appear with increasing frequency in the communications field. For this reason, and also because this Office can contribute to the Commission's deliberations the results of a number of studies relevant to this inquiry, we think it appropriate to add to the filings of the Justice Department (dealing with the competitive aspects of this proceeding) and the Department of Defense (dealing with its effect upon major Government procurement of communication services) a statement of the Administration's views from the standpoint of overall communications policy.

It should be stressed at the outset that OTP is in substantial agreement with the policy objectives and many of the factual conclusions expressed by the Commission staff in this Docket. We differ substantially, however, on the range of policy alternatives available to the Commission, and on the efficacy of various options in achieving the stated objectives. Principally, our disagreement pertains to the

nature and extent of the restrictions on competition necessary to protect the public interest.

The staff's principal reasons for proposing substantial limitations upon entry are the fear of excess capacity and the possibility of a fragmented market, with the resultant danger that some common carrier applicants might over-extend themselves to the detriment of their existing public services. The staff rightly concludes that these concerns would not justify a delay in the implementation of service in order to conduct extensive evidentiary proceedings. However, these concerns have led not only to the rejection of Option I (i. e., complete laissez-faire) but to the recommendation of Option II, an approach that would place severe restrictions on entry to and subsequent competitive operations in a domestic satellite industry. It is our view, however, that the objectives which we mutually desire and the concerns which we share argue rather for selection of an option that lies between the two extremes of totally unsupervised entry and severely restricted entry. The illusion of excess capacity results from the nature of the application process. It does not reflect genuine commercial intent and therefore does not call for enforced consolidation of potentially competitive entities into a space segment consortium. The restrictive

consortium approach is also not the most appropriate means of dealing with the concerns of market fragmentation and over-extension of carrier investment. We urge adoption of an approach that would allocate more of the burdens of market prediction and other economic decision-making to the private sector. Regulatory supervision would be exercised, but only where necessary to protect vital public interests. This would achieve the objectives not only of carrier stability but also of technological innovation and responsiveness to user needs.

By way of summary, OTP recommends the following specific modifications in the proposed Second Report and Order:

1. That no consolidation of proposed systems or earth station operations be required as a condition to the granting of Commission authorization, since any such consolidation should be left to the business judgment of the applicants themselves, subject to normal anti-trust restrictions and common carrier regulations.
2. That the Commission require as the sole economic criterion for authorization only that the applicant demonstrate its financial ability to proceed with the proposed system in a manner that does not jeopardize its ability to continue any monopoly services it may now be providing.

3. That common carriers be allowed as a matter of policy to use satellite technology for any monopoly services they are authorized to offer, and for any competitive services where they can establish the absence of cross-subsidization from their monopoly offerings.
4. That the Commission undertake as a separate proceeding of high priority an inquiry to determine the information carriers must provide to prove the absence of cross-subsidization for competitive services; and that until the completion of this inquiry carriers be permitted to provide private line voice bandwidth services via satellite even without the required showing of non-cross-subsidization.
5. That no additional limitations be imposed at this time on GT&E with respect to its proposed carriage of long-lines traffic or on COMSAT with respect to its provision of dedicated space segment services to other carriers in addition to any competitive services it may offer.
6. That arrangements be devised to assure that basic communication services between Alaska, Hawaii, Puerto Rico, and the contiguous 48 states be in line with comparable services within the contiguous states, as to both rates and availability.

I. LIMITATIONS UPON THE NUMBER AND NATURE
OF SYSTEMS TO BE AUTHORIZED

Three Basic Policy Options

The staff has concluded that policy options entailing further proceedings would not serve the public interest; that options involving the selection of a chosen instrument, limitation to two or three applicants, or the establishment of a commonly owned space segment would not be desirable; and that the best course would be "a policy of permitting any applicant a reasonable opportunity to employ the technology of his choice." (para. 61) We endorse each of these fundamental conclusions.

It is not the case, however, that only two realistic options are available to implement these conclusions. The Open Entry Options I and II described in the proposed Report and Order represent the two extremes, rather than a reasonable range of available alternatives. The former is a complete laissez-faire approach, rightly rejected as inappropriate for this regulated and highly complex industry. The latter, on the other hand, goes so far in the other direction that it compromises the fundamental objectives stated in the proposed Report. Succinctly stated, this "limited open entry" contains much more limitation than openness. Between these two extremes there is another course -- an Option III -- which avoids both the potential chaos of laissez-faire and the highly structured rigidity which is the practical effect of Option II.

Deficiencies of Option II

Before proceeding to a description of this third alternative, it might be well to set forth the reasons that Option II is an extreme compromise of open entry and competition. That it is extreme should be self-evident, since it will produce a division of the market largely determined by the Commission itself. This is contrary to the basic purpose of open entry, which is to enable the forces of the marketplace to determine insofar as possible the most efficient configuration.

The choice of this Option is justified essentially on the grounds that open entry will result in the launching of more satellites than can be supported by the available orbital locations with reasonable room to accommodate new technology or new applicants; and would result in a circuit capacity substantially in excess of present and foreseeable market demands (para. 63). The first part of this argument ignores the fact that the use of additional spectrum allocations currently available, greater sharing of allocations currently denied to commercial satellite use, and anticipated technological developments will accommodate in the future many times the number of satellites presently proposed. ^{1/} More fundamentally, the entire argument is based upon

^{1/} "A General Analysis of Domestic Satellite Orbit/Spectrum Utilization," Policy Support Division, Office of Telecommunications, U. S. Department of Commerce, Boulder, Colorado.

the illusion that the applications now before the Commission give some rough indication of the satellite transponder capacity which open entry in reality would produce. In fact, however, none of the applications now before the Commission, and none of the business judgments upon which those applications are based, was formulated with the knowledge that the proposed system would be expected to compete in the marketplace with all comers. It is abundantly clear that several applicants have in fact designed the capacity of their proposed systems in the expectation of an exclusive or near-exclusive authorization to serve the entire domestic market. The Commission did not solicit firm proposals for open market competition -- and it is unrealistic to regard the present applications as such for purposes of determining the regulatory approach which the Commission should now take. The proposed Report and Order does allude to the fact that some of the applicants "might decide to merge with others or drop out" (para. 63); but the continuing concern for inadequacy of orbital space (para. 50 and 63), for the necessity to "minimize the capacity of the initially authorized facilities" (para. 52) and for the danger of "fragmenting the market" (para. 69) can only spring from a failure to weigh adequately the fact that the numbers of satellites, the numbers

of transponders, and the numbers of earth stations which are the sum of the applications in this proceeding bear no necessary or predictable relationship to the reality which open entry would produce. There may indeed be some reason to prevent carriers from undertaking competitive risks of such magnitude as to endanger the integrity of their essential public services -- but, as will be suggested below, this may be achieved by requiring specific showings on the part of the carriers themselves. The raising of generalized barriers to entry, however, and the requirement of rigid system consolidation can only be justified by a fear of mass commercial irrationality that cannot be supported by the applications before the Commission and is not supported by the experience of free enterprise in other fields.

Finally, it is necessary to allude to the harmful effects of this unnecessary compromise of the open entry principle. There is little to indicate that an attempt to postulate in advance the most desirable structure for this new industry can be successful. The futility of the effort is suggested by the very choice of factors upon which Option II would rely as determinants of industry structure -- to wit, the only possible factors available at this embryonic stage: proposed technology and proposed type of service. But both of these factors will surely change over time, and to tie the industry structure to them is to chain

tomorrow's capabilities to today's constraints. There immediately comes to mind the example of the international industry structure, which was similarly based upon the once sharp difference between voice and record technology, and today finds itself organized about a distinction that no longer exists.^{2/}

Even if it were possible, without the benefit of operating experience, for the Commission to create a priori a more efficient structure than the marketplace itself can initially produce, it would not remain more efficient for long. Governmental establishment of industry structure inevitably -- and quite properly -- implies governmental protection of the substantial reliance interests that are thereby created. It also burdens the Commission with the substantial task of detailed oversight

^{2/} Even if technological distinctions were a suitable basis for structuring the industry, the technological distinctions suggested in the proposed Report and Order are inappropriate. The major distinction between the current generation satellites which have been proposed is one of size, not technology. Both 12 and 24 channel satellites are built by the same firm (Hughes); both employ similar spin-stabilized, despun antenna designs; both utilize the same 4 and 6 GHz spectrum bands; and both share many common electronic devices and techniques. But because of its larger size, one can accommodate more transponders and re-use the available spectrum allocations to produce a larger number of channels. Even the MCI/Lockheed and Fairchild satellites, although employing some technological advances, rely largely on increased size for their increased capacity.

of the technical and economic decisions of the system operators, and continual adjustment of the relationships among them. In short, Option II implies a system which is not only more rigid at the outset but also more burdensome and less capable of natural evolution in the future.

Option III - "Phased Open Entry"

A middle course between laissez-faire (Option I) and "limited option entry" (Option II) might be termed "phased open entry," since it would occur in two steps. It would meet the deficiencies of both Option I and Option II, by providing a framework of private decision-making augmented by regulatory intervention where necessary to protect essential public interests. Its operation would be as follows: In the first phase, the Commission would announce its intention to approve, without comparative hearings, all proposed systems which demonstrate basic financial responsibility and technical compatibility. Financial responsibility would be shown by either (a) presenting signed orders or contracts for some reasonable portion of the system's proposed capacity; or (b) showing sufficient financial resources or other arrangements (e.g., insurance) to insulate existing and prospective customers of any monopoly services offered by the applicant from service deterioration or appreciable cost increase resulting from

failure of the satellite venture. The Commission would also clearly enunciate in this first phase the conditions which it will impose upon the entry or operation of common carriers, users, and equipment suppliers.

The purpose and effect of this initial phase would be to enable applicants to reframe their proposals in accordance with the actual market and regulatory conditions which they can expect to exist. They will be constrained either to pin down a part of their initial market, or to augment and verify their financial resources, or to reduce or consolidate their systems so as to meet realistic user needs on the now certain assumption that they will be facing open competition. The artificial over-capacity which exists under the original applications would disappear. But this procedure would not deny any applicant the right or opportunity to proceed with any technology and under any legal partnership arrangements (including consortia) he may choose -- provided he has sufficient resources to prevent harm to any customer of any monopoly services he may provide.

The second phase would consist of a more or less routine application of the announced criteria to the resulting proposals, authorizing or denying proposed systems as appropriate. No other criteria or comparative hearings would be employed, although the

Commission would obviously continue to regulate common carrier-type operations and spectrum usage as necessary to serve the public interest.

The approach described above would enable the Commission to perform fully its important responsibility of assuring continuation of existing common carrier services on a sound basis; and it would at the same time give appropriate scope and weight to marketplace determinations regarding satellite technology and service offerings.

II. RESTRICTIONS UPON COMMON CARRIERS

The proposed Report and Order properly suggests that some limitations must be placed on common carriers to ensure that fair competition is possible and that important public interest considerations are not jeopardized. In several instances, however, the degree and extent of the proposed limitations are excessive.

In General

As a matter of policy, all common carriers should be allowed to use satellite technology for any service they are otherwise authorized to offer, provided they can establish that no cross-subsidization will occur between monopoly and competitive service offerings. The problem of determining the existence of such cross-subsidization is not an easy one, particularly with respect to services which are ancillary

to (i. e. , operationally intertwined with) message toll telephone service. This problem is of sufficient long-term importance to require a Commission proceeding for the establishment of reasonable guidelines. It would not serve the public interest, however, to await the outcome of that proceeding before permitting carriers to provide private line voice services via satellite. Prohibition of such carriage may impose significant additional costs on the provision of both private line and MTT services, as a result of the special network controls and routing arrangements that would be necessary. These common private line services, therefore, should be permitted to be offered by all authorized common carriers even absent a showing of non cross-subsidization, pending completion of the required proceeding.

Special Restrictions on COMSAT

As with other carriers of monopoly services, COMSAT should be required to establish in advance that no cross-subsidization will occur between its monopoly services (including space segment services provided to monopoly carriers) and any competitive services for which it seeks authorization. It should not, however, be excluded as a matter of policy from the provision of any satellite services, including dedicated space segment services for AT&T and other entities.

Special Restrictions on GT&E:

With respect to the GT&E application, the staff's primary concerns are (1) to protect its monopoly services from the potential adverse impact of a failure of its satellite venture, and (2) to protect the economic and operational integrity of the AT&T nationwide long-lines network from "cream-skimming."

Neither of these concerns is warranted. While the GT&E satellite undertaking represents a considerably larger percentage of its total investments than does the Bell proposal, it remains very small in comparison with GT&E's overall operations. The estimated annual costs for satellite operation are only \$17,000,000, against \$2,800,000,000 total annual operating costs, and \$604,000,000 total annual cash flow. It is difficult to see how failure of this venture would pose any significant threat to existing GT&E services. Similar arguments are applicable regarding the potential impact of the GT&E operation on the AT&T nationwide network. The value of traffic diverted will be miniscule when compared with the aggregate revenues of the AT&T long-lines network. Some additional network controls may be required to ensure proper routing and alternate-routing decisions, but this seems a small price for having the benefits of a significant and singular yardstick

against which to measure the performance and economics of AT&T's long lines network. Moreover, it is significant that AT&T itself has heretofore not seriously pressed this concern regarding potential "cream-skimming" by GT&E.

III. RESTRICTIONS UPON OWNERSHIP AND USE OF EARTH STATIONS

Non-Carrier Earth Stations

The staff recommendations concerning ownership of transmit-receive stations (para. 127) are based on too limited and static a concept of the technology and services that will be offered. They would require Hughes to make the earth stations it uses for CATV program distribution available to any common carrier sharing the same space segment for the carriage of competing CATV program services, and would require GT&E to carry these services via the Hughes facilities in the event no other carrier shares a common space segment with Hughes. The intent of these conditions is apparently to ensure that Hughes, through its control of transmission facilities, does not exercise monopoly control of the CATV programming service. This is a valid concern, but the conditions go beyond what is required to meet it.

The CATV programming venture contemplated by Hughes is an innovative commercial undertaking, more so even than the domestic satellite transmission business. If it is successful, the public will

benefit through increased CATV programming. There is no policy justification for burdening this venture with economic or operational constraints intended to prevent hypothetical future abuses, or for subjecting Hughes to the threat of competition from facilities for which Hughes itself has borne the initial high investment risk. There is reason to believe that others may soon enter the CATV interconnection and programming business, using various transmission technologies including satellites; thus, any de facto monopoly position is likely to be short-lived.

In lieu of the approach taken by the proposed Report and Order, the Commission could enunciate the principle that any entity which becomes in fact a monopoly supplier of transmission services of a particular nature in a given area will be subjected to appropriate common carrier obligations.

Common Carrier Earth Stations

The most important earth station issue by far is the staff recommendation that common carrier earth stations in a given area be required to function as a joint, cost-shared operation under cooperative management. If adopted, this approach would be a potential repetition, on even a larger scale, of an operating arrangement which has not

worked well in the case of jointly-owned earth stations for international satellite communications. Furthermore, the shared approach was suggested in order to avoid problems of excess capacity -- which, as we have noted, do not exist in market reality. If a true system of open entry is adopted, several of the duplicate earth station plans can be expected to be merged or dropped. In short, the same factors which should lead to rejection of a consortium approach for the space segment (see section I above) call for rejection of this approach for the ground segment.

IV. SERVICES TO NON-CONTIGUOUS STATES AND POSSESSIONS

Basic communication services between Alaska, Hawaii, Puerto Rico, and the contiguous 48 states should be brought into line with comparable services within the contiguous states, with respect to both rates and availability. At this time, domestic satellites appear to offer the best prospect of accomplishing this goal without unduly compromising the objective of keeping rates reasonably commensurate with costs. To do this, the delivery of basic interstate communications services (e. g., MTT, WATS, and related telephone-based services) should be treated on the same basis for Alaska, Hawaii, and Puerto Rico. This is difficult to accomplish in the case of Alaska due to the unusual status of RCA (i. e., the absence of other interstate MTT traffic with which to average

costs and rates), but denial of equal treatment for Alaska is hardly the appropriate remedy. In order to resolve this problem, it may be necessary to permit one or another of the major interstate carrier systems (e.g., AT&T or GT&E) to carry Alaska interstate traffic through appropriate arrangements with RCA Alascom and/or the State of Alaska.

CONCLUSION

The central issue in this proceeding is the extent to which competition will be permitted to control entry to and operations within the domestic satellite industry. There is no reasonable basis for the enforced merger of potentially competitive entities into a space segment consortium, under any circumstances. It is a poor way to avoid excess capacity or investment; it blunts the edge of competition; it does not fit with technological or operational distinctions, nor with likely user needs. More importantly, it threatens to force some of the more innovative and economically attractive proposals into an artificial environment in which they may not survive.

In an industry in such an embryonic stage as satellite communications, stimulation of innovation, both in technology and in the satisfaction of user needs, must be a primary goal of public

policy. We urge adoption of a phased open-entry approach that achieves this goal by allocating the substantial burdens of market prediction and other economic decision-making to the private sector, while retaining the degree of regulatory supervision necessary to protect vital public interests.

Respectfully submitted,
OFFICE OF TELECOMMUNICATIONS POLICY

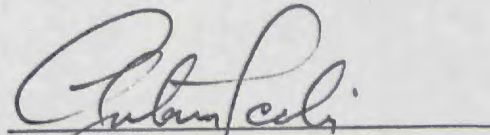
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By Antonin Scalia
Antonin Scalia
General Counsel

April 21, 1972

STATEMENT OF SERVICE

Copies of the foregoing comments of the Office of Telecommunications Policy have been sent this day, by mail, postage prepaid, to the parties of record in this proceeding.

A handwritten signature in dark ink, appearing to read "Antonin Scalia", is written over a horizontal line.

Antonin Scalia
General Counsel

April 21, 1972

Domosat

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

In the Matter of)	
)	
Establishment of Domestic)	
Communication - Satellite)	Docket No. 16495
Facilities by Non-governmental)	
Entities)	

COMMENTS OF
COMMUNICATIONS SATELLITE CORPORATION
ON PROPOSED SECOND REPORT AND ORDER

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April 19, 1972

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

In the Matter of)	
)	
Establishment of Domestic)	
Communication - Satellite)	Docket No. 16495
Facilities by Non-governmental)	
Entities)	

COMMENTS OF
COMMUNICATIONS SATELLITE CORPORATION
ON PROPOSED SECOND REPORT AND ORDER

Introduction

The Commission's Memorandum Opinion and Order of March 17, 1972 invited comments on the recommendations of the Chief of the Common Carrier Bureau for disposition of this proceeding.

In our earlier filings in this docket we took the position that the economies of scale inherent in communications satellite technology coupled with the

relatively small market demand for satellite communications in the foreseeable future argue for the initial authorization of a single multi-purpose system.^{1/} We also contended that Comsat should be the entity authorized to operate such an initial system. We pointed out that Comsat is unique in being thoroughly experienced in and solely dedicated to providing satellite service, and that Comsat alone is unencumbered by conflicting interests in satellite equipment suppliers, satellite communications users and terrestrial common carriers.^{2/}

While we believe there is considerable merit to the position Comsat has previously advanced, the Commission has admonished parties not to repeat earlier arguments, but rather to focus specifically, if not exclusively, on the concrete and comprehensive proposal recommended by the Staff.^{3/} In these Comments, we express our views with respect to the issues set forth in Paragraph 18 of the Commission's Order, including particularly the form of "open entry" which would best

^{1/} Comments of Communications Satellite Corporation in Docket No. 16495, dated May 12, 1971 (hereafter referred to as "Comments"), pp. 7-14.

^{2/} Comments, pp. 19-66.

^{3/} Memorandum Opinion and Order, FCC 72-229 (March 17, 1972), ¶ 19. The Staff's recommendation is presented in the form of a Proposed Second Report and Order, attached to the Commission's Order (hereafter referred to as "Staff proposal" or "proposal").

serve the public interest and the appropriateness of the Staff-proposed restrictions on the operations of various applicants.^{4/}

If open entry is to be the policy, we submit that it should be genuine open entry, not the limited entry, hedged with restrictions, that the Staff proposes.

The Staff proposal, whatever its appeal in theory, would not in practice facilitate the orderly implementation of economically viable systems. It would so limit the options available to applicants that competition -- the cornerstone of an open entry policy -- would be severely inhibited. If a principal objective is to encourage applicants to enter a competitive race to build and launch systems and to attract business for such systems, the race ought to be one in which quality, price and service will determine the winners. It ought not be a handicap in which some entrants are forced into arranged marriages while others are free to compete on their own, or in which special burdens and restrictions are placed on some of the contestants.

^{4/} With respect to issue (d), we have already expressed our view that the Commission should not at this time adopt definitive proposals as to preferential treatment for educational entities. See Letter to Ben F. Waple from Communications Satellite Corporation in Docket No. 16495, dated March 30, 1971. Since our view is consistent with the Staff's, no additional comment is required by Comsat at this time.

Accordingly, applicants should not be forced into or out of particular consortiums. Comsat should not be required to elect between pursuing its lease agreement with AT&T and offering service to the general public. And Comsat should not be restricted in its domestic satellite operations to the continental United States. Instead, Comsat, like all other applicants, should be free of constraints to proceed in the development of competing technologies, service offerings and rates, subject only to those conditions essential to ensure prompt and orderly development of reliable and efficient satellite communications service.

In our view there is but one such condition. In order to provide reasonable assurance that initial systems will be economically viable and that technological advances can be accommodated, licensing policy should assure that initial satellite capacity will be reasonably related to probable traffic. To these ends, the Commission could grant applications now, conditioning actual construction and launch of a system upon a showing that the initial proposed capacity is justified by traffic that is either committed or can reasonably be expected. Under such a system, some applicants may proceed with their initial proposals. Others may merge. Still others may prefer to wait on the sidelines and

observe market developments. If applicants are permitted the utmost flexibility in choosing the timing and the form of their entry, the options available to the public would be maximized and the risk of creating excessive capacity would be minimized.

- I. To the Extent the Staff's Fears of Unlimited Entry May Be Valid, There Is a More Effective and Less Discriminatory Way To Safeguard the Public Interest Than That Proposed.

The Staff bases its rejection of a policy of unlimited open entry on two apparently inconsistent assumptions. In one part of its proposal, the Staff assumes that if all applications were granted today each applicant would build and launch all or most of the satellite capacity for which it has applied.^{5/} This, the Staff believes, would adversely affect the public interest because all available satellite locations would be filled with 1971 technology of a capacity far in excess of any reasonable expectation of demand for the foreseeable future. The Staff argues that the development of new and improved satellite technology would be stifled, at least during the lifetimes of the initially constructed systems, and there would be a danger of fragmenting the market to the extent that

^{5/}

Proposal ¶ 63.

no system would come remotely close to covering its costs.^{6/}

In other parts of its proposal the Staff takes a more pessimistic view of applicant enthusiasm. It suggests that, faced with the prospect of excess capacity and fragmentation of the market, some, if not many, of the applicants would be deterred from entering the market for reasons unrelated to the potential competitive advantages of their proposed systems.^{7/} Under these circumstances, the Staff argues, there would be too few competing systems to yield the full benefits of diverse satellite technologies and service offerings.^{8/}

The Staff's proposal, however, offers no promise of solving the problems that arise under either assumption. All qualified applicants would be permitted to construct and launch all of the approved initial capacity without any showing whatsoever that such capacity is justified by reasonable traffic expectations.^{9/} Three applicants -- WTCI, MCI Lockheed and Fairchild -- would be permitted to proceed with their current proposals for two in-orbit satellites each.^{10/}

^{6/} Proposal ¶ 69.

^{7/} Proposal ¶ 69.

^{8/} Proposal ¶ 69.

^{9/} Proposal ¶¶ 75, 76.

^{10/} Proposal ¶ 75.

Three in-orbit satellites would be authorized for "Space Segment A" and two or three satellites for "Space Segment B."^{11/} In addition, RCA could either join "Space Segment A" or, if it opted for a different technology, proceed independently with a three satellite system.^{12/} That amounts to a total of fourteen or fifteen satellites with capacities ranging from twelve to 120 transponders each.^{13/}

Such a large number of in-orbit satellites is justified by the Staff as warranted for experimental or demonstration purposes.^{14/} The label of "experimental" or "demonstration" does not destroy economic realities. Satellites launched for experimental and demonstration purposes may well be wholly unjustified in terms of the traffic that may be reasonably anticipated.

In sum, the Staff would approve an initial capacity not appreciably less than that originally proposed by all of the applicants taken together.^{15/} It

^{11/} Proposal ¶ 77.

^{12/} Proposal ¶ 77.

^{13/} The only reductions in initial capacity are the elimination of two of the five satellites requested by Western Union and Hughes/GTE and three of the six requested by Comsat and AT&T. The latter reduction is particularly unrealistic since the Staff recognizes that AT&T is able to utilize all of the capacity of three satellites of 24 transponders. Proposal ¶ 51.

^{14/} Proposal ¶ 77.

^{15/} The applicants taken together had originally proposed 20 in-orbit satellites. The system applications are summarized at proposal ¶¶ 8-28.

would not eliminate potential excessive capacity. It would not prevent market fragmentation. It would not encourage initial entry by applicants who would be deterred by the prospect of such risks. Thus, the Staff's proposal fails to remove the hazards that the Staff finds fearsome in a genuine open-skies regime.

Comsat believes the Staff's fears to be exaggerated, and that any foreseeable lack of stability could be eliminated more easily and directly. All existing qualified applicants should be authorized to proceed with plans to develop and market their systems, but actual construction of a system should be conditioned upon a showing after receipt of the construction permit that the proposed capacity is justified by the traffic that can reasonably be anticipated or has already been committed to the system applicant. Such a showing need only indicate the reasonableness of the business judgment to launch and operate the contemplated capacity, with due regard to the fact that any system must have capacity for growth of traffic during the lifetime of its design.

If such reasonable regulation is applied to initial satellite capacity, new technology could be accommodated as additional capacity becomes warranted by increasing market demand. And by requiring that initial capacity be reasonably related to initial traffic

expectations, the Commission would be reasonably assured that initial systems would not be exposed to substantial and sustained losses that might jeopardize viability of domestic satellite service for years to come. In other words, the approach we suggest would solve the problems of unrestricted open entry perceived by the Staff and would encourage prompt inauguration of domestic satellite service. Yet it would avoid the complicated and burdensome network of restrictions suggested in the Staff's proposal. As we show below, such restrictions would in practice preclude effective competition.

II. While the Staff Extols the Benefits of Competition, It Would Impose Conditions that Limit the Ability of Applicants To Compete with One Another.

The Staff proposal is neither in the best interest of the public nor in the best interests of the applicants. The Staff rejected the concept of a single multi-purpose satellite system, claiming that such an arrangement would deprive the public of certain advantages which could only be obtained through competition.^{16/} Nonetheless, it rejected the concept of unlimited open entry -- a truly competitive market -- suggesting instead a confining labyrinth of restrictions on some or all of

^{16/} See, e.g., proposal ¶¶ 52, 53, 57-61.

the potential competitors. The basic fallacy of the Staff's proposal is that, while extolling the great benefits of competition, it in actuality places no faith in a free market to determine the number, nature, and size of domestic satellite systems on their respective competitive merits.

A. Forcing Some Applicants Into, and Others Out Of, Arbitrarily Arranged Consortiums Would Impede Competition and Discourage Innovation.

The applicants opposed, almost unanimously, the principle of a consortium to own and operate a single common space segment. The Staff in turn recognized that a consortium would be inconsistent in principle with the benefits of diversity of service and technology that could be provided by competition.^{17/} Nevertheless, the Staff's proposal as a practical matter requires certain applicants, if they are to enter the field at all, to join into consortiums.^{18/}

It should be readily apparent that the serious limitations of consortiums in general apply with equal

^{17/} Proposal ¶¶ 58, 59.

^{18/} Proposal ¶ 77. While not foreclosing independent entry by those applicants directed into the prearranged marriages, the Staff's proposal places such obstacles in the path of those applicants if they opt for independent systems as to inhibit significantly serious consideration of that option. See proposal ¶ 78.

force to the particular consortiums required by the Staff. For applicants forced into consortiums, the common technical constraints, common costs and necessity for compromise would limit their ability to compete effectively with other members of the same consortium and with other independent systems.^{19/} Moreover, the Staff proposal in this regard is highly inequitable because, while forcing some applicants into consortiums, it permits other applicants some opportunity to share or proceed independently at their option.^{20/}

We believe there is no sound reason for a requirement of wholesale system sharing for some but not for others, particularly where the standard is as capricious as the pure happenstance of the particular "technology" proposed in a 1971 application. The inappropriateness of this standard is accentuated when it is realized that there is no rational basis for distinguishing

^{19/} See proposal ¶ 59.

^{20/} Hughes, GT&E and Western Union have been directed to "Space Segment A" and Comsat and AT&T to "Space Segment B." The remaining applicants have been permitted some control over their destiny, but even for them the choice is limited. MCI Lockheed and Fairchild would be allowed to share ownership with other entities but presumably not with applicants grouped in A or B or with each other. Proposal ¶ 75. The limitations placed upon WTCI and RCA are even more capricious. Whether those applicants would be required to share in "Space Segment A" would depend on, and thus might well inappropriately bias, their choices as to technology. Proposal ¶¶ 75, 77.

between "Space Segment A" and "Space Segment B." The only difference between the two is that the former would consist of satellites of 12 transponders while the latter would consist of satellites of 24 transponders, a difference predicated on the applicants' cost and traffic ^{21/}projections and irrelevant to technological compatibility.

The difficulties created by grouping applicants according to technology are perhaps best exposed by asking what would happen if a particular applicant, subsequent to adoption of the Staff proposal, desired to amend its application to reflect a new and improved technology -- a very real possibility given the dynamic nature of ^{22/}satellite technology. Would the amending applicant have to make a new public interest showing because it would be departing from the Staff's preferred plan? If so, the Staff proposal has the obvious disadvantage of creating a presumption in favor of what may become obsolete technology. But if not, the proposal has the equally

^{21/} It may well be that use of 12 transponder satellites, while justified in the case of the individual applicants proceeding independently, is wholly inappropriate for the total capacity needs of a consortium, and that some greater capacity satellite would be more efficient for "Space Segment A." This observation is illustrative of the artificiality of the consortiums required by the Staff proposal.

^{22/} In another context the Staff specifically relied upon the dynamic nature of satellite technology and the desirability of permitting applicants "to make changes up to the latest practicable time." Proposal ¶ 56.

obvious disadvantage of providing little or no stability to the involuntary alliances arranged by the Staff.

The Staff attempts to justify its limited consortiums in terms of the cost savings available from sharing spare satellites, TT&C facilities, and transmit-^{23/}receive earth stations. But such savings may well be more than offset by higher costs of administering a system that must coordinate and accommodate the conflicting interests of joint owners who are also in competition with one another. Moreover, there is no reason why cost savings from sharing some system functions could not be achieved by the applicants on their own without requiring wholesale sharing of systems.

Rather than requiring some applicants to share systems, why not simply permit all to do so? Allowing maximum flexibility here, as elsewhere, would avoid forcing applicants into joint systems that may turn out to be economically and competitively less advantageous than some other alternative, and at the same time would permit applicants greater freedom to devise novel methods for reducing costs by sharing some system functions.

B. Requiring Comsat To Elect Between Leasing Satellites to AT&T and Offering Service to the General Public Is Unfair and Anti-Competitive.

Of those applicants whose options are limited by the Staff's proposal, Comsat seems to have been singled out, most unfairly, as the target for special constraints. Principal among these is that Comsat be required to elect between leasing satellites to AT&T and offering other types of specialized service to the general public.^{24/} The Staff apparently is concerned that Comsat's corporate and commercial relationships with AT&T would somehow restrain Comsat from competing vigorously and innovatively with AT&T's terrestrial specialized services.

As we discussed in some detail in our Reply Comments, the history of Comsat's opposition to AT&T in the international communications field on issues in which Comsat's own corporate interests were at stake demonstrates beyond any doubt that Comsat is fully capable of, and consistently takes, an independent stance.^{25/} Striking

^{24/} Proposal ¶ 79. This restriction appears particularly unfair in light of the Staff's observation that only Comsat and Fairchild among all the applicants have no terrestrial traffic of their own to transfer to a satellite system. Proposal ¶ 51.

^{25/} Reply Comments of Communications Satellite Corporation in Docket No. 16495, dated July 12, 1971 (hereafter referred to as "Reply Comments"), pp. 17-25.

examples include the earth station ownership issue^{26/} and the question of policies regarding new overseas cable facilities.^{27/} With reference to competition for traffic, Comsat's record is eloquent. Comsat made every effort to obtain authority to compete for Governmental traffic, only to be curbed by the Commission's rulings in the Authorized User^{28/} and related proceedings.^{29/} And more recently Comsat has pressed for the right to provide television service through INTELSAT directly to the networks and other program distributors, but the Commission has thus far not afforded us that right.^{30/} In the present proceeding the Staff has suggested that, if Comsat elects to operate its own system, it should be liberated from its carrier's carrier role and allowed to serve users directly.^{31/} With the authorized user

^{26/} See Reply Comments, pp. 18-19.

^{27/} See Reply Comments, pp. 21-23.

^{28/} Memorandum Opinion and Statement of Policy in Docket No. 16058, adopted July 20, 1966, 4 F.C.C.2d 421; Memorandum Opinion and Order on reconsideration, adopted February 1, 1967, 6 F.C.C.2d 593.

^{29/} Memorandum Opinion, Order and Certificate in File No. T-C-2032, adopted February 1, 1967, 6 F.C.C.2d 511.

^{30/} See Comments of Communications Satellite Corporation in Docket No. 18875, dated September 14, 1970, pp. I-6 - I-7.

^{31/} Proposal ¶ 113.

restraint removed Comsat will for the first time have the ability to compete vigorously with other carriers.

The Staff-proposed restraint may also reflect a baseless concern that Comsat's incentive to compete would be inhibited by the proposed lease arrangement with AT&T compared to the joint ownership arrangement proposed by the Staff under which Comsat would manage the system for a fee.^{32/} The Staff appears to recognize that there would be no anti-competitive effects resulting from a jointly owned AT&T-Comsat satellite system with AT&T restricted to message and wide-area services and Comsat providing other service offerings to the general public.^{33/} In other words, the Staff recognizes that there would be, in such a case, no sensitivity upon Comsat's part toward AT&T that would prevent Comsat from seeking traffic for its domestic satellite even if that resulted in taking terrestrial traffic away from AT&T, the co-owner of the satellite system.

^{32/} In this connection, it should be noted that the lease would be consistent with the Staff's emphasis on system sharing since the lease would provide most of the potential economic benefits of joint ownership: volume procurement, common TT&C facilities and joint development costs. Comsat Application To Construct a System of Domestic Satellite Facilities for Use by AT&T, Revised March 3, 1971, Annex I.

^{33/} The Staff proposes that Comsat may become "a supplier of satellite services to domestic entities other than AT&T pursuant to tariffs" and could in such circumstances "share ownership in one or more satellites with AT&T and act as the manager for the jointly owned system." Proposal ¶ 79.

There is no reason to believe that Comsat would be any less likely to compete with AT&T's terrestrial offerings to specialized service customers were it to be a lessor of satellites to AT&T instead of a joint owner. Comsat's revenues under the lease would be a fixed obligation of AT&T and would remain constant. While the lease would initially run only for seven years, any joint ownership arrangement would similarly terminate upon the expiration of the life of the particular satellite system (presumably a comparable period). As the owner of competitive communications facilities, Comsat would have full incentive to compete with AT&T for domestic specialized services traffic under either arrangement, in order to obtain as much business for itself as possible and to maximize its revenues.

Even if the proposed restriction on AT&T satellite traffic should in fact not be imposed, the competitive situation as between AT&T and Comsat would be intensified, not limited. Comsat would be in competition with AT&T's specialized service offerings, whether terrestrial or satellite. As lessor, Comsat's rental revenues would be unaffected by the volume of traffic in the AT&T satellite system. On the other hand, as the owner of competitive satellite facilities, Comsat would have every incentive to compete not only with AT&T's satellite services but with those of the rival domestic system or systems

the open entry policy is designed to encourage. To suggest that Comsat would be a timid or reluctant competitor under such circumstances requires a belief that Comsat would act entirely contrary to its self-interest.

The forced election by Comsat between a lease arrangement with AT&T and the opportunity to provide satellite services to the public would in fact dissipate, rather than increase, the advantages of competition hoped for under a policy of open entry. The need to elect would exclude Comsat from competing for a substantial portion of the domestic market. Should Comsat elect to continue with its contractual arrangement with AT&T under the lease agreement, competition would be lessened through exclusion of a major potential supplier of satellite service to the public. If Comsat makes the opposite election, competition would be substantially reduced in the market for supplying leased satellite capability to AT&T.

It makes no sense to deprive either public satellite service customers or AT&T of the benefits of competitive participation by the entity recognized even by the Staff as the most experienced among the applicants in the area of design, operation and maintenance of commercial communications satellites.^{34/} There is no reason to rig or restrict any market by denying to that market

^{34/}

Proposal ¶¶ 79, 108-110.

the significant competitive choice that the eligibility of Comsat would make available.

C. Limiting Comsat Geographically in Its Domestic Operations Prematurely Restricts Competition in the Domestic Market.

The Staff would also limit Comsat in its domestic satellite operations to the continental United States.^{35/} It should be obvious that such a limitation would impede Comsat's ability to offer fully integrated services to customers whose communications requirements extend not only throughout the continental United States but to Alaska, Hawaii and Puerto Rico as well. It is even more obvious that denying Comsat the opportunity to serve those markets would reduce competition among those domestic satellite systems willing or able to serve those markets.

The Staff's recommendation is based on the assumption of a potential conflict of interest if Comsat is authorized to provide domestic service to areas now receiving service via INTELSAT. The assumption is not well founded. It seems obvious that the Commission will be impelled to adopt a policy with respect to service of offshore points that will basically determine the type of service to be provided. For example, the Commission may well decide that service between the continental

United States and any of these three points should be rendered exclusively by INTELSAT, exclusively by domestic systems or divided between INTELSAT and domestic systems on a formula basis. Such a decision would in effect prescribe the role, if any, of each type of system rather than creating direct competition between systems. In short, depending upon the Commission's resolution of basic questions as to domestic versus international service, the theoretical possibility of conflict may be removed entirely.

III. The Staff's Proposal That Users Have an Almost Automatic Right To Own and Operate Earth Stations Could Jeopardize the Rapid Development of Reliable Domestic Satellite Communications.

The Staff appears to recognize the importance of end-to-end carrier ownership to provide complete service to customers.^{36/} When it comes to earth station ownership, however, the Staff urges a policy that is contrary to the prompt and orderly establishment of such service.^{37/} The Staff labors under the misconception that a ground environment in which users other than common carriers are encouraged to own receive-only (and in some cases transmit-receive^{38/}) earth stations will

^{36/} Proposal ¶¶ 113, 137, 140.

^{37/} Proposal ¶¶ 120-132

^{38/} Proposal ¶¶ 128, 132.

enhance the flexibility of satellite systems as a whole. Quite the opposite is true.

User ownership of earth stations will restrict the flexibility of the system operators in several ways. First, it will make it difficult or impossible for satellite operators to plan and construct an integrated system, since they could not effectively control the timetable by which earth station facilities would become available for use. Second, user ownership of earth stations will make it difficult or impossible for satellite operators to guarantee integrity of the total system, for they could not effectively monitor the quality of the product received by the ultimate user. Indeed, they may have the gravest difficulty in assuring that the user-owned earth stations meet technical standards in design, construction and maintenance.^{39/} Finally, as we discussed in our earlier comments,^{40/} there are substantial economies of scale to be achieved by the carriers through maximum use of multi-user earth stations, which might well have to be sacrificed

^{39/} As the Commission is aware, a satellite earth station is in a very different category technically from an ordinary broadcast or microwave radio receiver. It may be argued that if the customer gets poor reception as a result of operating his own earth station he is to blame and it is he who will suffer. But this is a simplistic view. For satellite service will be judged by the end result; the public is not interested in who is to blame. And the satellite customer may in some cases (such as a CATV customer) be retransmitting signals to his own customers.

^{40/} Comments, pp. 72-75; Reply Comments, pp. 53-58.

if substantial traffic is diverted to user-owned receive-only earth stations. This is so because construction of multi-user earth stations can be justified only if there is reasonable assurance of a sufficiently high degree of utilization. The Staff's proposal would effectively preclude accurate predictions as to potential use. In any event, the proliferation of user-owned earth stations encouraged by the Staff would cause under-utilization of multi-user earth stations. This would have the effect either of raising costs to the detriment of small, occasional users receiving service through the multi-user stations, or of compelling satellite operators to set the price of a lease of space-segment-only in such a way that the lessee would be paying a proportionate share of the common costs of the multi-user earth station even though he is not using it.^{41/}

The uncertainties as to earth station configuration resulting from the Staff proposal would also seriously impede the development and aggressive marketing of satellite services. The satellite operator can hardly price his services without knowledge of expected earth station

^{41/} This would be highly uneconomic for the space-segment-only user, but it would not be unfair. Since the satellite operator's multi-user earth station antenna is used in conjunction with a single satellite, to the extent that the satellite's capacity is filled with space-segment-only traffic, the traffic that can be handled by the multi-user earth station is proportionately curtailed. Yet, most of the costs of the earth station are fixed.

traffic for he will not know the number of users among whom the relatively fixed costs of operation may be divided. He has no way of knowing whether new customers will patronize his facilities, build their own or share private receive-only earth stations of other users.

The potential earth station user faces similar uncertainties. He will not know the cost to him of service through a carrier-owned, multi-user earth station. And he will not know the full cost of constructing and operating his own receive-only earth station. In addition to serving his own needs, he will be required to provide non-discriminatory access to other users^{42/} and may be required to afford such users the opportunity to become joint owners.^{43/}

If there is a legitimate concern that in some circumstances users might not be afforded adequate service at reasonable cost through satellite operator-owned earth stations, we suggest that the Commission handle such situations on a case-by-case basis on an appropriate showing of need. Thus, the general rule should be that an earth station will be licensed to the licensee of the satellite system with which it will operate, except where

^{42/} Proposal ¶ 125.

^{43/} Proposal ¶ 125, footnote 79.

it is established that the satellite operator is unable or unwilling to provide adequate earth station facilities on a reasonable basis.^{44/}

Conclusion

The Staff proposal for a restricted "open entry" system would, we believe, achieve neither economically viable satellite service nor effective competition, neither the benefits of traditional common carrier regulation nor those of open entry.

To the extent that the Staff proposal is based on encouraging applicants to build and launch systems for experimentation and demonstration purposes rather than for serving specific customer requirements, it encourages an excessive commitment of facilities without offering any assurance that the initial systems will be able to cover their costs. And to the extent that the Staff proposal is based on a complex and discriminatory network of

^{44/} The Staff proposal may rest on the assumption that user ownership of receive-only earth stations in the case of broadcasters or cable television systems will afford the owners access to more diverse programming sources. If so, it should be recognized that an earth station antenna cannot be shifted from one satellite to another easily and without cost. Moreover, such a switch will result in the loss of all signals to that earth station from the first satellite, so that where several users are receiving through the same earth station a switch from one satellite to another limits all the users to the programs transmitted by the second satellite.

restrictions on the flexibility of the applicants, it impedes rather than fosters competition.

The Staff assumes that if its recommendations are adopted the applicants will immediately proceed to construct and launch competing systems, while the public, including the networks, sits in the grandstands deferring any commitment until the systems are operational. Nothing could be further from reality. We believe that any responsible applicant would be unwilling to incur the large investments and high risks associated with satellite service without sufficient customer prospects to provide reasonable likelihood of economic viability. And such unwillingness to enter the market would be reinforced where, as here, the applicant would be required to operate under burdensome constraints.

In sum, Comsat believes that the Commission's first priority should be the rapid inauguration of the long-awaited domestic satellite system. To achieve this priority and to achieve the competitive environment upon which the Staff's proposal purports to be based, we urge that Commission-imposed restrictions on applicants be held to a minimum. In lieu of the Staff's complicated and repressive proposal, we have suggested a truly open-entry approach, subject only to a single and relatively

simple condition based on anticipated traffic. The approach we suggest not only will encourage reasonably prompt inauguration of domestic satellite service but will also create a reasonable likelihood that the public need for continuity and reliability of service over the long pull will be met.

Respectfully submitted,

COMMUNICATIONS SATELLITE CORPORATION

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April 19, 1972

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/s/ Francine Burns

Francine Burns

* Via Air Mail



April 11, 1972

Domest

To: Mr. Macpherson
Mr. Smith

From: Eve

In discussing the attached with
Mr. Smith, he suggested getting
an outline of where we are on
this particular problem --
what is the strategy?

Log In No. _____

INFORMATION MEMORANDUM

To: The Director

From: Michael J. McCrudden

Brief Summary of the Material: Thoughts on a Strategy for
a Meeting with the FCC on DOMSAT

Why it is worthwhile to read: To decide how to relate to the
Commission on this issue.

OFFICE OF TELECOMMUNICATIONS POLICY

EXECUTIVE OFFICE OF THE PRESIDENT

WASHINGTON, D.C. 20504

March 28, 1972

To: The Director

From: Michael McCrudden *MM*

Subject: Strategy for Meeting with the FCC on DOMSAT

It appears that to decide how we want to relate to the Commission on this issue, we should develop an overall strategy prior to making final decisions. What follows is a suggested strategy; to the extent that some of the issues can be eliminated, fine; on the other hand, contingency plans should be made for items which we may not wish to address at this time, but which could be forced upon us by the occurrence of events.

1. The first issue is whether or not we want to control and speak for all Executive Agencies. Walter points out that if we are going to win, there may be advantages to allowing other Executive Agencies (Justice, DOD) to appear separately and state contrary points of view, since by winning we would establish our power and enhance our position. (Ken Robinson advises the DOJ will not submit written comments but will participate orally and generally supports the FCC staff position.)

On the other hand, one advantage of our coordinating the Executive Agencies is that it will demonstrate to the Commission, the press, and the public that the Administration as a whole is united and committed to resolving this issue in a manner consistent with the posture which we have publicly taken during the last two years.

2. The second major item to be considered is the rebuttal of the staff paper. Preliminary meetings and discussions between OTP staff members and both the members of the FCC Bureau Staff and the staffs of the

individual Commissioners will be useful if we are to take full advantage of a subsequent meeting with the Commissioners. To the extent that the Commissioners are briefed by their own staffs and are aware that a sound rebuttal has been presented, your discussion can be more productive.

3. The third major item is the particular form of the meeting and the circumstances which surround the actual session with the Commissioners. It appears that we should not allow ourselves to assume the posture of appearing with, or in the same manner as "all other interested parties." While the opinions of the staff reflect the belief that a separate meeting with the Commissioners is somehow different from the "en banc" session before the Commission, I think a legal opinion on this point would be useful. Secondly, there might be value if the Commission as a group (or through the Chairman) requested a meeting with you to discuss the issue. The request would indicate that the initiative for the discussion came from the Commission, and that the meeting was to be apart from, and in addition to, the "en banc" hearings. It would be useful if the meeting with the Commissioners was held off the FCC premises, perhaps even in our Offices. We need to decide whether members of the press and/or members of the Common Carrier Bureau staff are to be present, or whether the meeting should be limited to Commissioners.

4. The fourth item is to consider future alternative courses of action. These alternatives include the following:

- a. Formal statements to the public after our meeting with the Commission but prior to its ruling.

- b. Further discussions with individual Commissioners or the Chairman after the formal meeting but prior to their final decision.

c. Intensive public rebuttal and/or criticism of the analysis performed by the Commission staff, before or after your meeting but before a final decision.

d. Developing public support for our position and promoting further criticism of the staff recommendation by other Administration agencies, such as Justice, DOD and Commerce. (Ken tells me Justice will probably not file but will argue orally; that they see no problem with the CFB position.)

e. Announcement of our proposed legislation.

5. The last item is the promotion and direction of "lobbying" efforts by members of industry and the public directed specifically at the Commissioners prior to the decision. This strategy was discussed several months ago and received your endorsement at that time. However, little has been done on this point to date. It may not be too late to consider the availability and utility of spokesmen making their views known to the Commission.

I personally have the following reactions to the discussion which took place in the Staff Meeting and some questions which I think need to be answered. First, there obviously may be some benefit to assuming an aggressive strategy vis a vis the Commission. If, in fact, as the press has tried to portray it, this is a confrontation between the Commission and ourselves, we need to decide if and to what extent we want to win. Also, how, and at what price. Even though there are benefits to be gained from crushing the opposition and of having our policy adopted, there are disadvantages in the way such a victory might be regarded. The first question is -- do we think we are going to win without doing anything? If not, what do we think we have to do in order to win? Walter gives the impression that the majority of the Commissioners are with us in spirit. Do we really think this is so? If yes, why is it that we have to mount such a mighty effort to assure that they follow through? Is it because we don't believe that the Commissioners have any intention of voting for our policy even though they believe in it.

Or is it that they don't understand our policy and, therefore, won't vote for it since they can't defend it? If this is the case, we need to educate the Commissioners. Then the question is -- how best do we educate them? Do we educate them directly, or their staffs? Do you do it? Does Walter do it?

If it is merely a case of explaining our rationale to the Commissioners, how about the option of you sitting down for a lengthy discussion with the Chairman and letting him relay that position to the Commissioners? It insulates you from the problems of how you appear, etc., and from being subject to direct questioning. The Commissioners, however, may feel slighted, or may feel that you really aren't as committed to the decision as you want them to believe you are.

I believe the essence of our dilemma in deciding which course of action to choose is magnified when we assess the probable "costs" of the two extreme outcomes. On the one hand, if the Commission adopts our policy without your appearing, we will reap not only the value of winning but also the value of not having had to appear with its related risks. On the other hand, if you appear and the Commission were not to support our policy, we would lose not only the value of the policy per se, but would (in all likelihood) incur a negative value as a result of your appearance. We have a classic strategy, one in which the individual events should be evaluated not only on their importance in achieving the overall strategy, but also on the positive or negative value associated with each individual action. Your meeting with the Commission has to be judged both for its strategic value (that is to what extent it is necessary to the success of our overall policy) and separately, and for its own sake, (that is will the appearance have a positive or negative effect for you, this Office, and our future relations with the FCC.)

If we could quantify our assessment of probable outcomes and the associated expected values, we could develop an interesting decision model. Since it is unlikely that this can become readily accomplished, we are faced with a process which will tax our collective wisdom. I think the exercise is worth some effort, however, not only because the particular decision is an important one, but also because it will tell us a lot about how we make strategic decisions.

James

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

March 24, 1972

To: Tom
From: Bruce
Subject: Meeting with the Commission on Domsat

Ten years from now this Office is going to be remembered, if at all, for its substantive accomplishments. No one is going to care how much face was saved, but only how many battles were won. If a meeting with the Commission stands a good chance of winning this battle, then that has got to be the right choice -- both for you and for the public interest. The Flanigan memorandum caused a considerable favorable impression in the backwaters of academia, where such things can count for a lot in the long run. No one outside Washington cares a fig for face-saving within the bureaucracy. And it is people outside Washington who really matter in the end.

B.

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

Domestic

February 11, 1972

MEMORANDUM FOR

Mr. Bernard Strassburg
Federal Communications Commission

As you know, we have a continuing interest in the development of appropriate policies and regulatory principles for the establishment and operation of domestic satellite communication systems. We have thus commissioned several independent studies of the technical, economic, and regulatory issues which have been raised during the lengthy debate on this matter. Enclosed for your consideration are the results of these studies (attachments 1-4).

The principal conclusions of the studies may be summarized as follows:

ECONOMIC

- The data presented in the FCC applications for the several systems proposed show no clear indication of substantial economies of scale that would suggest a tendency to natural monopoly. Indicated unit costs are comparable for large and small systems of the same type and there are apparent economies of specialization for several of the proposed services which would offset any claimed economies of scale. Systems of substantially different type differ in function, performance, and probability of successful deployment and thus are not directly comparable on an economic basis.
- The potential market for domestic satellite services in the near future, though substantial, will probably support several but not all of the proposed systems as presently envisioned. There is an apparent near-term market for 89-163 broadband satellite channels (transponders), whereas the total operational capacity of all proposed systems would be 336 transponders, with additional back-up capacity of 252 transponders.

- The total market includes several sectors that are relatively insulated from one another (e.g., public message telephone traffic, broadcast and cable video interconnection, and various leased-line services), each of which could be served economically by a different operator.
- More than one satellite operator may be expected to compete on a continuing basis for the leased line market, and to a more limited extent for the other market sectors.
- Under a policy of open entry at least two, and probably three or more, separate systems would likely be established, having a combined capacity in excess of 100 channels (transponders) plus 50 or more back-up transponders. Each of these systems would likely incorporate an independently viable basic service offering (e.g., PMTS, video interconnection, etc.) combined with competitive leased-line offerings.
- A policy of open entry can be expected to result in a viable competitive industry, with return on capital commensurate with risks. However, there is little solid evidence regarding the specific structure this industry would take, which will be affected by differences in technology, design concept and configuration, comparative market strategies, and consortia arrangements not readily apparent at this time.
- The economic effect of internal subsidization of one service by another is higher prices to consumers, lower output, and a deadweight loss to the economy which cannot be recaptured. The achievement of a "public dividend" through hidden subsidization of public broadcasting, education, etc., by other satellite services is thus a misconception: it achieves its purpose at greater cost to the economy than need be while introducing undesirable market and institutional distortions, and thus really creates a "public loss." Direct subsidization of such meritorious services from general tax revenues, which does not introduce these distortions, is thus preferable to internal subsidization.

TECHNICAL

- The average spacing of 3.7° required to accommodate all 23 of the initial U. S. and Canadian satellites in the relevant sector of the geostationary orbit (i. e. , 53° - 138° W) is not inconsistent with the spacings proposed and analyzed in the applications.
- A general analysis indicates that 23 satellites with characteristics typical of those proposed could be accommodated, although minor adjustments in some system parameters might be necessary in the unlikely event that all systems were fully deployed.
- The ultimate capacity of the available geostationary orbit using (and reusing) 2000 MHz of spectrum vastly exceeds the indicated initial demand; thus scarcity of this resource is not a compelling issue in policy determination.
- The siting of earth stations near large metropolitan areas in the manner proposed by the various applicants is feasible from an interference standpoint.
- Although the applicants did not coordinate specifically for off-path interference, this type of potential interference has been taken into account to some degree in the coordination for possible great-circle interference, since the terrestrial microwave facilities most likely to cause both types of interference are the same.
- For all cases of great-circle interference problems as represented by the applicants, there are viable techniques available for controlling the level of interference within acceptable limits.
- The installation of earth stations for several applicants in a certain area would not produce accumulative interference effects beyond those anticipated in the development of acceptable interference criteria by the CCIR. (See Multiple Interference Cases on Tables 4.3-4.6 Enclosure 3.)

These findings further support the Administration's view that multiple domestic satellite systems catering to both separate and overlapping markets can be economically viable on a competitive basis, and can be technically compatible among themselves and with existing and future terrestrial systems. The potential impact on the overall market structure of natural monopoly services (e.g., message telephone) not subject to competitive entry can be regulated through existing procedures with minimal pre-operational conditions. Further restrictions at this time on entry, market structure, or service and price competition will serve only to limit consumer choice for new, expanded, or lower cost services while imposing further delays and economic burdens on prospective suppliers of satellite services.

We hope that this information, and the more comprehensive analyses contained in the attachments, will be useful to you in resolving any remaining uncertainties regarding the feasibility and merit of a fully open entry policy, and that you will find the opportunity to bring this information to the attention of the Commission. If there is any way in which we can be of assistance in clarifying or elaborating on these studies and results, we will of course be pleased to do so.

Walter R. Hinchman
Assistant Director

Attachments

WRHINCHMAN:dc

DO Records

DO Chron

Mr. Whitehead -2

Dr. Mansur

Subj.

RF.

Attachments: SRI report, "Economic Viability of Proposed U.S. Communications Satellite Systems"

Ross Telecom report, "Analysis of Earth Station Siting for the Proposed Domestic Satellite Systems" Feb. 4, 1972

B. Cwen paper: Cross Subsidies in Common Carrier Facilities

D. Hatfield paper: "Domestic Satellite Orbit/Spectrum Util."

OFFICE OF TELECOMMUNICATIONS POLICY

EXECUTIVE OFFICE OF THE PRESIDENT

WASHINGTON, D.C. 20504

October 28, 1971

Domestic Satellite

DIRECTOR

Honorable Dean Burch
Chairman
Federal Communications Commission
Washington, D.C. 20554

Dear Dean:

The unrealized potential of satellite communication systems for U.S. domestic services continues to be a source of serious concern to the Administration. Prospective suppliers of these services have been delayed for more than six years while various parts of the Government have examined and reexamined the question of public policy guidelines.

In January 1970, the Administration recommended that domestic satellite communications be allowed to develop under a basic policy of open entry. Under this policy, any financially qualified entity which sought to establish a domestic satellite system, including common carriers, would be authorized to do so, subject only to antitrust considerations and essential technical coordination.

The Commission responded favorably to this approach, but chose to solicit applications and comments from all prospective satellite operators before proceeding further. The private sector has since responded to this initiative with seven proposals for full-service satellite systems and several proposals for partial service offerings -- all to be offered on a privately financed commercial basis.

The Office of Telecommunications Policy has carefully reviewed the major applications to determine whether they raise questions about any of the principles and premises set forth in the Administration's original

recommendation. We have examined questions of technical and economic feasibility, particularly those relating to spectrum and orbit utilization and to the existence of economies of scale or other natural monopoly conditions. We also have reviewed the several legal and procedural issues raised. In no area did we find evidence which would negate the Administration's previous policy recommendation.

Indeed, the opposite is true. There are customers waiting for satellite services and prospective suppliers with the capital and the will to offer them on a commercial basis. We see no reason for the government to continue keeping these groups apart. No further study, sifting of applications, or enforced commercial arrangements would be as constructive for the using public or for the industry as the prompt opening up of this new and exciting field.

As you know, the President recently established measures designed to alleviate the problems of our nation's economy. The prompt authorization of domestic satellite systems would aid substantially in this effort by stimulating up to \$450 million in investments, and associated employment, in the aerospace and electronic industries -- two segments of the economy which have been hit particularly hard by cutbacks in Federal spending. The authorization would also provide lower transmission costs and thereby help reduce upward pressure on common carrier rates.

I urge the Commission to examine carefully the enclosed recommendations and to adopt an open entry policy as promptly as possible.

I am available, as is my staff, to discuss this subject in whatever depth you may desire.

Sincerely,



Clay T. Whitehead

Enclosure

Domestic Satellite Communications

Summary OTP Findings and Policy Recommendations

The several applications from prospective domestic satellite operators now pending before the Federal Communication Commission indicate clearly that such facilities can play a significant and increasing role in enhancing the nation's communications capability and broadening the range of economic services.

The Administration recommended in January 1970, that domestic satellite operations be established under a basic public policy of open entry and competitive operation. Under this policy, any financially qualified entity which sought to establish a domestic satellite system for public or private use could do so, subject only to antitrust considerations and essential technical coordination.

The Office of Telecommunications Policy has examined the applications now before the FCC to determine whether the Administration's policy recommendation continues to be appropriate. This examination shows there are no technical, economic, or legal considerations which preclude the approval of any proposed system. Conversely, there is substantial evidence that a policy of open entry and competitive operation would produce benefits in terms of innovative systems and services, cost reductions, and economies of specialization for the communications user.

The available orbit space will readily accommodate all proposed U.S. and Canadian satellites using 4 and 6 GHz spectrum allocations without fear of harmful interference, even in the rather unlikely event that all proposed systems would be built. This can be achieved with an average satellite separation of about 3° , which is shown to be more than adequate by several applicants (Hughes, WTCI, COMSAT, and WU) and our own analysis, provided adjacent satellites are alternately polarized. Furthermore, there are numerous engineering and operating options which would allow additional systems to be built as this becomes necessary, even using existing technology and these spectrum bands.

It also appears that noninterfering sites can be found for all proposed earth stations under established coordination procedures. Sample calculations for the New York City area indicate there are many sites which, according to the ITU coordination criteria, qualify for detailed coordination with specific terrestrial relay stations, even in this congested area.

Further technological developments, such as the use of multiple satellite antenna beams, will permit the installation of additional satellites of increased capacity in coming years. In conjunction with the use of other frequency allocations of substantially greater extent than the 4 and 6 GHz bands, these developments will multiply both the number of satellites which can be established and the capacity of each severalfold, providing a substantial reserve capacity to meet future growth in demand.

There are no significant economies of scale in the proposed systems which would preclude the feasibility of multiple systems or result in substantial inefficiencies. The annual cost per in-orbit channel is virtually the same for the 12, 24, and 48 channel satellite configurations proposed, and the small differences which exist are well within the range of uncertainty of the cost estimates. There are some economies of scale for particular types of earth stations (e.g., multipurpose, multichannel), but these are rapidly overcome by economies of specialization for special-purpose systems; even when economies of scale appear, they are bounded due to the limited channel capacity available through a single earth station/satellite path.

There is no a priori evidence that multipurpose systems are more economic or more suited to user demands than single-purpose systems. There are substantial cost savings for some systems which provide specially tailored services (e.g., network TV distribution). Similarly, there may be economies in providing a given type of service at different quality levels. As in the case of the specialized common carriers, there is reason to believe that the marketplace

can best resolve the tradeoffs between service and cost, particularly in an era of dynamic technological development.

The demand for service identified in the applications will support several -- although probably not all -- of the proposed systems. There appears to be a near-term need for about 100 satellite channels (5-10 satellites, depending on capacity), whereas the applications encompass a total of 336 channels in 12 primary satellites plus another 264 channels in 8 spare/secondary satellites. Even so, there is no evidence to indicate that selection of the successful operator(s) by the government is either necessary or preferable on public interest grounds to a marketplace determination. The cost of these systems is great (typically in the \$50-200 million range), and investors will weigh their prospects carefully before making final commitments to systems without an adequate traffic base or competitive advantage.

The American people should and can receive a dividend from U.S. investments in space technology through domestic satellite services. However, a discriminatory tax on this mode of communications for any purpose, including support of public television, is an inefficient, inequitable, and largely counterproductive approach to the realization of that objective. By raising the cost and thus deterring the commercial use of satellite services, this tax would simply encourage less cost-effective technologies and stifle innovation in satellite technology. If a subsidy for worthwhile public services is required, it should be granted by the Congress and supported by a tax that does not burden a particular mode of communications.

Numerous legal and procedural questions have been raised in the applications and comments before the FCC. Our examination indicates that the Commission has adequate legal authority and precedents for adopting an open-entry policy, as urged by the Administration, without further administrative proceedings.

There are many measures consistent with existing rules and procedures which the Commission could adopt to expedite the authorization of domestic satellite communication systems and avoid unnecessary comparative hearings. The following is an illustrative example of one approach:

- (1) Issue a ruling, as in the case of specialized carriers, that arguments of economic exclusivity alone will not be considered grounds for comparative hearings in situations where competitive supply of services appears feasible.
- (2) Require all applicants to undertake prior coordination of satellite and earth station locations and frequency assignments to avoid possible interference situations -- again as in the specialized carrier procedures.
- (3) Require each applicant to specify the desired orbit location, frequency bands, antenna polarization, and expected implementation date for each proposed satellite, and to define a service arc within which the proposed service can be satisfactorily provided, as set forth in the regulations of the World Administrative Radio Conference.
- (4) Provide a 60-90 day period following issuance of a policy statement, within which applicants may revise their proposals and undertake the coordination of technical parameters as noted in (2).
- (5) Routinely approve all applications for which there is no basic conflict in orbit location and spectrum usage (i.e., no common-frequency satellite proposed by a different entity within 3° of the location requested), subject to relocation within the service arc at the discretion of the Commission in order to accommodate additional systems.
- (6) Set comparative hearings for all applications for specific orbit locations which are in conflict and which cannot be resolved through consultation with the FCC staff and affected parties. Such hearings would deal with matters

of both technical compatability and economic exclusivity, but would be limited to the particular satellites in conflict.

(7) Rule that the cost of relocating satellites (including associated earth station costs) within the stated service arc to accommodate additional systems shall be borne by the system operator until 120 days prior to satellite launch, after which all such costs shall be borne by the new entrant.

While some antitrust questions have been raised in the proceedings, in our view they should be resolved in favor of liberal entry and unrestricted initial operation. None of the proposed systems, including those contemplated by COMSAT, COMSAT/AT&T, and Hughes/GTE, appear to pose a serious anti-competitive threat at this time, either individually or in combination. (Nor do we see any legal reason for excluding COMSAT from either activity they have proposed). Any measures necessary to prevent anti-competitive behaviour can be taken if and when such practices appear; to establish them at the outset without firm assurance that they are necessary would have the effect of precluding rather than fostering competition in this new field.

Service to Alaska and Hawaii, as proposed by several applicants, poses a different and more complex set of legal issues, having to do both with the distinction between U.S. domestic and international carriers and services and with international agreements to which we are a signatory. We conclude that applications to provide service to these areas should be approved subject to appropriate consultation with INTELSAT as required in the definitive agreements. Similarly, we find no valid basis for denying traffic to a domestic satellite system which would otherwise be served by trans-oceanic cables, except to the extent such facilities offer lower costs or are more effective in meeting the specific requirement.

In conclusion, we find there are no unique circumstances or public interest considerations which require that domestic satellites be treated differently than any other new technological development. The Commission has established rules and procedures for dealing with private radio communication systems, specialized communications carriers, and common carriers which should be applicable to the domestic satellite proposals now before it, or likely to emerge in the near future. These rules and procedures, interpreted in the light of the Administration policy recommendations concerning entry and operation, and augmented by procedural arrangements such as those previously identified, should allow the prompt authorization of all proposed systems and an early development of this exciting new communications capability.

Domest

October 21, 1971

Honorable Daniel K. Inouye
United States Senate
Washington, D. C. 20510

Dear Senator Inouye:

My letter to you of October 13 regarding domestic communications satellites unfortunately contains one paragraph taken from an earlier, uncorrected draft of the letter.

Enclosed is the correct version. I would appreciate your replacing this version for the one mailed to you last week.

Sincerely,

Clay T. Whitehead

Enclosure

BKSmith/dgm/10-21-71

FILE CC: DO CHRON
DO RECORDS
Mr. Whitehead (2) ✓
Dr. Mansur
Mr. Hinchman
Mr. Lamb
Mr. Smith subject file
Mr. Smith chron file

13
October 11, 1971

Mr. Emilio Daniel E. Lopez
United States House
Washington, D. C. 20510

Dear Senator Lopez:

I want apology for the delay in responding to your letter of September 14. The fact is that the questions you raise were still under study by my office, which made it difficult to respond substantively at the time.

As you know, the final resolution of the domestic satellite proceeding (Hockett-1449) rests with the Federal Communications Commission. The Administration has previously made recommendations to the FCC concerning the policies which should be followed in regulating this industry, and will continue to urge their adoption.

Regarding your specific questions concerning the effect on Hawaii of inclusion in domestic satellite activities, I would offer the following views:

- Inclusion in one or more of the ~~satellite~~ systems (some may withdraw due to insufficient market strength) could offer Hawaii a greater choice of telecommunications facilities for communicating with the mainland. This should result in a competitive environment producing lower rates and improved service. Our review of the domestic satellite applications indicates that these facilities might offer substantially lower rates than those presently available through INTELSAT or the submarine cable.
- Practically speaking, it may be difficult for Hawaii to realize fully the benefits cited in these proposals. Much of the communications traffic between Hawaii and the mainland is transiting international traffic, passing to or from points beyond Hawaii. Hawaii-bound traffic is,

for the most part, carried by domestically owned cables and internationally owned satellite facilities. Furthermore, Hawaii-mainland traffic currently constitutes a significant portion of the INTELSAT traffic and revenues in the Pacific basin. Withdrawal of this traffic at present would seriously affect the economic viability of INTELSAT services in the Pacific basin.

--Notwithstanding the above, we do favor inclusion of Hawaii in one or more of the domestic satellite systems, as a means for increasing its cultural and economic ties to the mainland. The exact manner in which this can be achieved without serious jeopardy to INTELSAT is a matter still under review, but we are confident that we can achieve a workable solution which meets both these objectives.

I cannot respond substantively to your last two questions concerning the potential impact on international trade and tourism and Hawaii's political role in the Pacific. My general impression is that improved communication services, via whatever means, are likely to bring increased activity in all these areas.

I hope these comments will help you to assess the effect of domestic satellite developments on Hawaii. If I can be of further assistance in this regard, please let me know.

Sincerely,

Clay T. Whitehead

WHinchman/10-13-71/BKSmith/dgm/10-21-71

FILE CC: DO CHRON

DO RECORDS
Mr. Whitehead (2)
Dr. Mansur
Mr. Hinchman
Mr. Lamb
Mr. Smith Subject
Mr. Smith Chron

10/13/71

Honorable Daniel K. Inouye
United States Senate
Washington, D. C. 20510

Dear Senator Inouye:

I must apologize for the delay in responding to your letter of September 21. The fact is that the questions you raise were still under study by my office, which made it difficult to respond substantively at the time.

As you know, the final resolution of the domestic satellite proceeding (Docket 16495) rests with the Federal Communications Commission. The Administration has previously made recommendations to the FCC concerning the policies which should be followed in regulating this industry, and will continue to urge their adoption.

Regarding your specific questions concerning the effect on Hawaii of inclusion in domestic satellite activities, I would offer the following views:

- Inclusion in one or more of the successful systems (some may withdraw due to insufficient market strength) would offer Hawaii a greater choice of transmission facilities for communicating with the mainland. This should result in a competitive environment producing lower rates and improved service. Our review of the domestic satellite applications indicates that these facilities might offer substantially lower rates than those presently available through INTELSAT or the submarine cables.
- Practically speaking, it may be difficult for Hawaii to realize fully the benefits cited in these proposals. Much of the communications traffic between Hawaii and the mainland is international traffic passing to or from points beyond Hawaii. This traffic must for the most part be

carried by international cable and satellite facilities, under the terms of the INTELSAT agreements and other bilateral arrangements with our foreign partners. Furthermore, the Hawaii-mainland traffic currently constitutes a substantial portion of the INTELSAT traffic and revenues in the Pacific basin; under the INTELSAT agreements, domestic satellite systems may not seriously undermine the economic viability of the INTELSAT system without prior agreement among the INTELSAT members.

-- Notwithstanding the above, we do favor inclusion of Hawaii in one or more of the domestic satellite systems, as a means for increasing its cultural and economic ties to the mainland. The exact manner in which this can be achieved without serious jeopardy to INTELSAT is a matter still under review, but we are confident that we can achieve a workable solution which meets both these objectives.

I cannot respond substantively to your last two questions concerning the potential impact on international trade and tourism and Hawaii's political role in the Pacific. My general impression is that improved communication services, via whatever means, are likely to bring increased activity in all these areas.

I hope these comments will help you to assess the effect of domestic satellite developments on Hawaii. If I can be of further assistance in this regard, please let me know.

Sincerely,

cc:

✓ DO Chron
DO Records
Mr. Whitehead
Dr. Mansur
Mr. Hinchman
Mr. Lamb

Clay T. Whitehead

WHinchman:sbw 10/13/71

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

DRAFT

DIRECTOR

Don

Honorable Dean Burch
Chairman
Federal Communications Commission
Washington, D. C. 20554

Dear Dean:

The unrealized potential of satellite communication systems for U.S. domestic services should be a source of grave concern to all elements of the Federal Government. Prospective suppliers of these services have been delayed for more than six years while the Government has examined and re-examined the question of public policy guidelines.

In January 1970, the Administration recommended that domestic satellite communications be allowed to develop under a basic policy of "open entry." Under this policy, any financially qualified public or private entity which sought to establish a domestic satellite system for public or private use, including common carriers, would be authorized to do so, subject only to anti-trust considerations and essential technical coordination.

The Commission chose to solicit applications and comments from all prospective satellite operators before adopting any policy. The communications/electronics industry has since responded to this initiative with seven proposals for full-service satellite systems and several proposals for partial service offerings.

The Office of Telecommunications Policy has carefully reviewed the major applications to determine whether they invalidate any of the principles and premises set forth in the Administration's original recommendation. We have examined questions of technical and economic feasibility, particularly those relating both to spectrum and orbit utilization and to the existence of economies of scale or other natural monopoly conditions; and we have reviewed the several legal and procedural issues raised. In no area did we find evidence which would negate the Administration's previous policy recommendation. There are customers for satellite services and prospective suppliers with the capital and the will to offer them on a commercial basis. We see no reason for the government to continue keeping these groups apart. No further study, sifting of applications, or enforced commercial arrangements would be as constructive for the industry or for the using public as the prompt opening up of this new and exciting field.

As you know, the President recently established measures designed to alleviate the problems of our nation's economy. The prompt authorization of domestic satellite systems would aid substantially in this effort by stimulating up to \$450M in investments, and associated employment in the aerospace and electronic industries -- two segments of the economy which have been hit particularly hard by cutbacks in Federal spending. The authorization would also provide lower carrier costs and thereby help reduce upward pressure on prices in some areas.

I urge the Commission to examine carefully the enclosed recommendations, and to adopt the basic policy proposals without unnecessary delay.

I am available, as is my staff, to discuss this subject in whatever depth you may desire.

Sincerely,

Clay T. Whitehead

Enclosure

Domestic Satellite Communications

Summary OTP Findings and Policy Recommendations

The role of satellites in providing domestic communication services has been a subject of debate for nearly a decade. The several applications from prospective domestic satellite operators now pending before the Federal Communication Commission indicate that such facilities can play a significant and increasing role in serving domestic needs.

The Administration previously recommended, in January 1970, that domestic satellite operations be established under a basic public policy of open entry and competitive operation. Under this policy, any financially qualified public or private entity which sought to establish a domestic satellite system for public or private use, including common carriers, could do so, subject only to anti-trust considerations and essential technical coordination.

The Office of Telecommunications Policy has thoroughly examined the applications now before the FCC to determine their consistency with the Administration's previous policy recommendation, as well as its. This examination shows there are no technical, economic, or legal considerations which preclude the approval of any proposed system. Conversely, there is substantial evidence that a policy of open entry and competitive engagement would produce benefits in terms of innovative systems and services, cost reductions, and economies of specialization for the communications user.

The available orbit space will readily accommodate all proposed U. S. and Canadian satellites using the 4 and 6 GHz spectrum allocations without fear of harmful interference, should it be necessary. This accommodation would require an average separation of about 3° , which is shown to be more than adequate by several applicants (Hughes, WTCI, ComSat, and WU) and our own analysis, provided adjacent satellites are alternately polarized. Furthermore, there are numerous engineering and operating options which would permit closer spacing, should it become necessary.

With regard to earth stations, it appears that acceptable (noninterfering) sites can probably be found for all those proposed, under established coordination procedures. Sample calculations for the New York City area indicate there are many sites which qualify for detailed coordination with specific terrestrial relay stations even in a congested area.

Further technological developments, such as the use of multiple satellite antenna beams, will permit the installation of additional satellites of increased capacity in coming years. In conjunction with the use of other frequency allocations of substantially greater extent than the 4 and 6 GHz bands, these developments will multiply both the number of satellites which can be established and the capacity of each severalfold, providing a substantial reserve capacity to meet future growth in demand.

There are no significant economies of scale in the proposed systems which would preclude the feasibility of multiple systems or result in substantial inefficiencies. The annual cost per in-orbit channel is virtually the same for 12, 24, and 48 channel satellite configurations (\$1.1M, \$1.2M, and \$0.9M, respectively); and the differences which exist are well within the range of uncertainty of the comparative cost estimates. There are some economies of scale for particular types of earth stations (e.g., multi-purpose, multi-channel), but these are rapidly overcome by economies of specialization for special-purpose systems and by the limited channel capacity available through a single earth station/satellite path in all systems.

There are substantial cost savings for some systems which provide specially tailored services (e.g., network TV distribution). Similarly, there may be economies in providing a given type of service at different quality levels. There is no a priori evidence that multi-purpose systems are necessarily more economic or more suited to user demands than single-purpose systems. As in the case of the specialized common carriers, there is reason to believe that the marketplace can best resolve the tradeoffs between service and cost, particularly in an era of dynamic technological development.

The demand for service identified in the applications will support several -- although not all -- of the proposed systems. There appears to be a near-term need for about 100 satellite channels (5-10 satellites depending on capacity), whereas the applications contain a total of 336 channels in 12 primary satellites plus another 264 channels in 8 spare/secondary satellites. However, there is no evidence to indicate that selection of the successful operator(s) by the government is either necessary on public interest grounds or preferable to a marketplace determination. The cost of these systems is great (typically in the \$50-200M range), and investors will weigh their prospects carefully before making final commitments to systems without an adequate traffic base or competitive advantage.

The American people should and can receive a dividend from U.S. investments in space technology through domestic satellite services. However, a discriminatory tax on this mode of communications for any purpose, including support of public television, is an inefficient, inequitable, and largely counterproductive approach to the realization of that objective. By raising the cost and thus containing the demand for commercial satellite services, this tax would simply encourage less cost-effective technologies and stifle innovation in satellite technology. If a subsidy for worthwhile public services is required, it should be granted by the Congress and supported by a tax that does not burden a particular mode of communications.

Numerous legal and procedural questions have been raised in the applications and comments before the FCC. Our examination indicates that the Commission has adequate legal authority and precedents for adopting an open-entry policy, as urged by the Administration, without further administrative proceedings.

There are many measures which the Commission could adopt to expedite the authorization of domestic satellite communication systems and avoid unnecessary comparative hearings consistent with existing Commission rules and procedures. The following is an illustrative example of one approach we have considered:

(1) Issue a ruling, as in the case of specialized carriers, that arguments of economic exclusivity alone will not be considered grounds for comparative hearings in situations where competitive supply of services appears feasible.

(2) Require all applicants to undertake prior coordination of satellite and earth station locations and frequency assignments to avoid possible interference situations, as in the case of specialized carriers.

(3) Require each applicant to specify the desired orbit location, frequency bands, antenna polarization, and expected implementation date for each proposed satellite, and to define a service arc within which the proposed service can be satisfactorily provided, as set forth in the regulations of the World Administrative Radio Conference.

(4) Provide a 60-90 day period following issuance of a policy statement, within which applicants may revise their proposals and undertake the coordination of technical parameters as noted in (2).

(5) Routinely approve all applications for which there is no basic conflict in orbit location and spectrum usage (i. e., no common-frequency satellite proposed by a different entity within $\pm 3^\circ$ of the location requested), subject to relocation within the service arc, at the discretion of the Commission to accommodate additional systems.

(6) Set comparative hearings for all applications for specific orbit locations which are in conflict and which cannot be resolved through consultation with the FCC staff and affected parties. Such hearings would deal with matters of both technical compatibility and economic exclusivity, but would be limited to the particular satellites in conflict.

(7) Rule that the cost of relocating satellites (including associated earth station costs) within the stated service arc to accommodate additional systems shall be borne by the system operator until 120 days prior to satellite launch, after which all such costs shall be borne by the new entrant.

While some antitrust questions have been raised in the proceedings, in our view they should be resolved in favor of liberal entry and unrestricted initial operation. None of the proposed systems, including those contemplated by COMSAT, COMSAT/AT&T, and Hughes/GTE, appear to pose a serious anti-competitive threat at this time, either individually or collectively. Any special measures necessary to prevent anti-competitive behavior can be taken if and when such practices appear; to establish them at the outset without firm assurance that they are necessary would have the effect of eliminating rather than expanding competition in a new field.

Service to Alaska and Hawaii, as proposed by several applicants, poses a different and more complex set of legal issues, having to do both with the distinction between U. S. domestic and international carriers and services and with international agreements to which we are a signatory. We conclude that applications to provide service to these areas should be approved, subject to satisfactory arrangements with INTELSAT concerning the potential economic impact on that international system. However, we find no valid basis for denying traffic to a domestic satellite system which would otherwise be served by transoceanic cables, except to the extent such cables are either less costly or more effective in meeting the specific requirement in question.

In conclusion, we find there are no unique circumstances or public interest considerations which require that domestic satellites be treated differently than any other new technological development. The Commission has established adequate rules and procedures for dealing with private radio communication systems, specialized communications carriers, and common carriers to handle the domestic satellite proposals now before it, or likely to emerge in the near future. These rules and procedures, interpreted in the light of the Administration policy recommendations concerning entry and operation, and augmented by procedural arrangements such as those previously identified, should allow the Commission to proceed promptly in the authorization of all proposed systems.

Apr 21st

Tuesday 6/22/71

9:50 Professor Rathjens of MIT called again.

Mr. Whitehead spoke with him.

OFFICE OF TELECOMMUNICATIONS POLICY
WASHINGTON

June 21/4:50

Eva-

Professor Herrington and Professor Rathjens of MIT called. They wanted to speak with Mr. Whitehead and if he was not available Walt Hinchman. I delayed action by saying that Mr. Whitehead was away from his desk, but I would see if Mr. Hinchman was available. Walt had departed for Geneva. They are doing a Domestic Satellite Study for NASA and wishes to discuss that subject. Mr. Whitehead said he would speak to them or Dr. Mansur would -- they are to call back in the morning.

timmie

Office of Telecommunications Policy
Route Slip

14 MAY 1971

To

_____	Clay T. Whitehead	_____	<i>Info cy</i>
_____	George F. Mansur	_____	
_____	Nino Scalia	_____	<i>Info cy</i>
_____	Will Dean	_____	
_____	Walt Hinchman	_____	<i>Action</i>
_____	Charlie Joyce	_____	
_____	Jack Thornell	_____	
_____	Frank Urbany	_____	
_____	Steve Doyle	_____	
_____	Bill Lyons	_____	
_____	Brian Lamb	_____	
_____	Linda Smith	_____	
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_____	Eva Daughtrey	_____
_____	Timmie White	_____
_____	Judy Morton	_____
_____	Elaine Christoff	_____

SUSPENSE: COB _____

REMARKS:

*Comment requested by
Monday, May 17th*

*Don't
Set*



UNITED STATES DEPARTMENT OF JUSTICE

WASHINGTON, D.C. 20530

Address Reply to the
Division Indicated
and Refer to Initials and Number

May 12, 1971

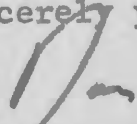
Honorable Clay T. Whitehead
Director
Office of Telecommunications
Policy
1800 G. Street, N. W.
Washington, D. C.

Dear Tom:

I enclose a copy of a draft brief on domestic satellites. This basically follows the various premises of the original White House memo and deals specifically with a variety of competitive questions raised by pending applications.

Given the background of this particular proceeding, I would very much like to have any views that you, Walt Hinchman or anyone else at OTP may have on this brief. As usual, we are a bit tardy on this one and therefore I would be particularly grateful if you can give me any thoughts by next Monday.

Sincerely yours,


DONALD I. BAKER
Acting Director of Policy Planning
Antitrust Division

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

In the Matter of

Establishment of Domestic
Communication Satellite
Facilities by Non-Governmental
Entities

DOCKET NO. 16495

COMMENTS OF THE UNITED STATES DEPARTMENT OF JUSTICE

The Commission has requested comments of interested parties concerning the policies which should guide the Commission in authorizing domestic satellite systems.

I. Competitive Development of Domestic Satellite Systems Is in the Public Interest. The Department of Justice reaffirms its belief that the development of domestic satellites should be controlled fundamentally by competition in a free market. After reviewing the applications, we continue to believe that the policy recommendations of the White House to the Commission are sound in this regard and provide an adequate basis for approving domestic satellite applications.

Competition is the basic rule of our national economic policy, and even in regulated industries it should be given the widest play consistent with the specific regulatory scheme. This reliance on competition stems from the belief that competition produces superior economic results. Competition encourages service and product innovation and it creates

cost control and economic rates. The importance of competition has, of course, now been widely recognized both by the Commission and the courts. 1/

The application of these principles to domestic satellites was explored in the White House Memorandum to the Commission (Jan. 23, 1970), and we concur in its conclusion that there are neither economic nor technical constraints which require the abandonment of our normal competitive principles in the development of economic satellites. Indeed, the diversity in terms of proposed services, technology, and costs of the applications now before the Commission attests to the potential benefits of permitting competition in the development of this new area.

Initially, only a few of the proposed systems can be expected to become operational -- the numbers reflecting the market's evaluation of existing commercial alternatives. But in a competitive framework in which the door to entry is left open, existing entrants will be under continued pressure from those waiting in the wings to innovate and reduce their costs. See Federal Trade Commission v. Proctor & Gamble, Co., 386 U.S. 568, 575 (1967). Even when an industry is otherwise regulated, as here, this principle applies. United States v. El Paso

1/ We have reviewed the decisions by the Commission, and the courts in this regard as well as the recommendations of government agencies and advisory groups in our responses to a number of proceedings before the Commission, most recently in our response to Docket No. 18920 (Oct. 10, 1970).

Natural Gas Co., 376 U.S. 651 (1964).

This is far different from limited entry achieved by regulation. Regulation would tend to inhibit technical innovation by those not already admitted and would reduce the incentives for innovation by the successful applicant. Even though opportunities for later entry might arise, those left out might well conclude that their chances of admission in the future would be no better and this in turn could lead them to devote their capital and technical resources to other areas of innovation and growth where regulatory barriers were lower.

Nevertheless, in light of the fact that only a few domestic systems are likely in the near future, including possibly a single-multi-purpose system, the Commission should consider the imposition of a number of requirements upon potential operators (especially AT&T) to promote both technological diversity and the long-run development of a competitive structure in the satellite markets. In particular, we urge:

(1) that AT&T not be permitted to invest in satellite services absent a demonstration that such services would be comparable in cost or cheaper than the provision of communication services by AT&T's terrestrial technology;

(2) that AT&T be permitted to contract for the construction of a satellite system or to obtain satellite services in other systems only through competitive procedures;

(3) that AT&T and any operator which it uses to construct or operate its system not be permitted to engage in the long term contractual carriage of television signals via domestic satellites during the initial period of development.

These procedures we believe will maximize the likelihood of independent entry into the satellite field and will insure that AT&T's use of satellites will not be subsidized at the expense of its rate payers.

II. Special Competitive Problems.

A. Restrictions on Access to Satellite Systems. Because only a few satellite systems are likely to exist under even a competitive system, each satellite system should be under the obligation to provide access to comparable classes of customers on non-discriminatory terms. 2/ This should be so whether or not the satellite operator is a common carrier. 3/

Antitrust law has long recognized that a group of competitors in control of a facility necessary to successful

2/ Any such obligation should reach not only the most obvious abuses such as discriminatory rates or restrictions on access, but also more discrete forms such as the special placement of facilities so as to be more advantageous to one group of customers than another or the provision of better service or other intangibles to favored customers.

3/ This does not mean that a common carrier should be prohibited from dedicating a system to its exclusive use. But see our proposed restrictions on the Comsat-AT&T application, Part III. A. 4., infra, at p. .

competition can be by excluding or discriminating against other competitors impair effective competition. See United States v. Terminal R.R. Ass'n of St. Louis, 224 U.S. 383 (1912); Associated Press v. United States, 326 U.S. 1 (1945); United States v. Lorain Journal Co., 342 U.S. 143 (1951). The same danger exists, of course, if an outside party is in control of the critical facility and chooses to discriminate between customers.

The problem is most likely to arise if one group of competitors, such as the networks, builds or leases a satellite system dedicated to its exclusive use. Fortunately, the networks have recognized their obligations in this regard indicating their concern that any system have capacity for the occasional and long term contractual needs of others for video transmission. Joint Statement by ABC, CBS, and NBC, (Mar. 30, 1971).

Nevertheless, we would recommend that if the Commission decides to authorize any joint venture satellite to be dedicated to the exclusive use of the participants, the Commission should make approval conditional upon other interested parties being given a chance to join and participate or alternatively to lease channel space on an equitable basis. Enough satellite capacity would have to be built by the joint venture to meet all firm commitments. Once the satellite is in place and all capacity is committed, existing users should not be required to reduce their use to make room for late comers, but with each increment in capacity, outsiders should be again given the right on equitable terms to become

members of the joint venture or to lease channels in the incremental units.

B. Restrictions on Interconnection. The competitive development and exploitation of the possibilities of domestic satellites requires that common carriers not inhibit the connection of customers with earth stations through arbitrary restrictions or tariffs. In particular we endorse paragraph 27 of the Commission's Report and Order which contemplates allowing applicants to develop those methods of customer connection which most suit their operations and indicates that the "authorized-user" concept applied in international communications should not be applied to domestic satellite systems.

We have indicated repeatedly before this Commission our view that common carriers must provide interconnection on non-discriminatory terms to both common carriers and private systems, and we emphasize again the power of the Commission to order such interconnection for common carriers under Section 201(a) of the Communications Act of 1934. 47 U.S.C. § 201(a) (1964). Although the Commission has sought clarifying legislation in this respect in the past, 4/ the statutory language fairly plainly indicates that such explicit authority already exists. See United States v. Southwestern Cable Co., 392 U.S. 157, 170-78 (1968); American Trucking Assoc. v. Atchison, Topeka & Santa Fe R.R. Co., 387 U.S. 397, 418

4/ See Senate Report No. 1584, 87th Cong., 2d Sess. 17 (1962).

(1967). And we note that the Commission itself has now abandoned its previous position and has made clear the carriers' obligations to provide interconnection. In particular, the Commission in its August 1969 Microwave Communications, Inc. decision, ordered interconnection through provision of facilities stating:

We have already concluded that a grant of MCI's proposal is in the public interest. We likewise conclude that, absent a showing that interconnection is not technically feasible, the issuance of an order requiring the existing carriers to provide loop service is in the public interest. In re Application Microwave Communications Inc.
18 FCC 2d 953, 965 (1969).

Nevertheless, we note that General Telephone in its comments urges the Commission to restrict access to "authorized users," 5/ and Comsat has indicated difficulty in obtaining commitments from General Telephone and AT&T for long term interconnection services at rates which would be provided common carriers. 6/

Under such circumstances it is important that the Commission reaffirm the principles tentatively outlined in paragraph 27. Further, the Commission should make it clear that authorized systems should be entitled to non-discriminatory rates, and such rates should not depend upon the applicant's status as a common carrier.

5/ Comments, General Telephone Co. at p. 3 (Dec. 17, 1970).

6/ Comsat Application, Vol. I at p. 1-11, (Mar. 1, 1971).

C. Competitive Procurement. The Commission has asked for comments concerning competitive procurement. Such procurement is, of course, already required by statute for Comsat, Section 201(c)(1) of the Communications Satellite Act of 1962, 27 U.S.C. § 721(c)(1) (1964), and where rate regulated carriers are involved, we think that this is in general sound policy. Because service costs may be capitalized and included in their rate base, such carriers may not have the same incentives to minimize costs as firms operating in fully competitive markets, and hence procurement regulation is appropriate.

In particular AT&T could prefer to contract with Comsat to provide satellite services even though others would be willing to supply those services more cheaply. AT&T may have such incentives because it has substantial equity interest in Comsat which reduces the effective cost to it of such services while potentially providing a higher rate base. More importantly, AT&T may prefer to invest in a higher cost satellite system such as Comsat's to avoid undermining its investment and commitment to terrestrial technology.

Under these circumstances, the Commission should consider requiring AT&T to fulfill its satellite needs through competitive bidding and should not authorize the construction of facilities pursuant to Section 214 unless the facilities are obtained pursuant to such bidding.

In doing so the Commission should recognize that unit costs will vary with the size of the expected load. If AT&T is allowed to arbitrarily set the level of its requirements for satellite services, it could preclude certain low-cost high-capacity systems. Thus it may be desirable for the Commission to require AT&T to supply it with future traffic projections for the routes which satellites could serve and the expected cost of servicing these routes through terrestrial lines. These standards would provide a yardstick against which proposals for satellite service could be measured.

Requirements of competitive procurement for operators not subject to rate regulation have less justification, and we recommend that no such requirement with its concomitant administrative burden be imposed. As private competitors in supplying satellite services, non-regulated operators have every incentive to minimize their costs and can be expected to use the least cost supplier. Satellite manufacturers may be a partial exception to this rule as they can be expected to use their own satellites. Such integrated systems may, of course, create competitive dangers, 7/ but these are not dangers which may be remedied by the imposition of competitive procurement, effective bidding being impossible either because of the use of fictional bids between affiliates or the manipulation of specifications.

7/ See Part IV, infra, at p. .

D. Comparative Economic Hearings. Because we believe that competition should guide policy in this area, we oppose holding comparative hearings on economic exclusivity. The viability of many of the applications before the Commission depends upon the same source of demand, the television networks, but with the reservations expressed more fully below concerning the carriage of network programming by AT&T ^{8/} we believe that the networks through free negotiation can determine which system will best meet their needs at least expense. There seems to be no public interest in binding the networks through regulation to any particular applicant chosen in advance by the Commission. ^{9/}

Such comparative hearings are time consuming and would further delay resolution of this matter, and the expense and uncertainty which they engender may increase significantly the cost of any ultimate system. Particularly, in an area such as this in which technology is rapidly developing, the time required by such hearings might render obsolete the plans upon which such hearings were based.

^{8/} See Part III. B., infra, at p. .

^{9/} The networks in their letter of March 30, 1970 indicated their continuing awareness of the need in any dedicated system to provide sufficient capacity for the contract and occasional needs of other video services, primarily the Public Broadcasting System. Whether or not the television networks should be required to subsidize the transmission of such services is a separate question from the choice of operators. Any such obligation should, of course, be clearly announced so that it may be accounted for in the negotiations between the networks and prospective operators.

In the absence of comparative hearings the Commission should make it clear that systems must succeed or fail on their commercial merit and that such systems may not count on public subsidy either through rate regulation or restrictions on competition. Under such circumstances a number of applications will undoubtedly be withdrawn. This, of course, should not be a bar to future entry when changes in costs or demand may make additional systems attractive.

E. Economies of Scale. We note that one applicant, Fairchild Hiller, has proposed a system which, if fully loaded, would provide satellite service for a small fraction of the cost of the other proposed systems. 10/ The system has a very large capacity and to realize the economies claimed would require substantial diversion of terrestrial phone traffic to satellites.

This prospect remains speculative, however, until Fairchild Hiller or some other large capacity satellite system is authorized to carry a substantial part of new long distance telephone traffic. As we indicate below, AT&T should be required to give such systems the opportunity to demonstrate their ability to provide AT&T with long distance service at costs below the alternative terrestrial investment, and to the extent of any such demonstration the Commission should refuse to issue 214 certificates for the higher cost investment. If pursuant to this procedure, a

10/ See Fairchild Hiller Application at p. (, 1971).

single system with substantial economies of scale (within the limits of demand) emerges, then domestic satellites could pass through a period of natural monopoly and additional rate and other regulation would be required.

III. AT&T's Role in the Development of Domestic Satellite Systems.

The role of AT&T in the development of domestic satellite systems poses a number of difficult problems. AT&T is the largest single source of satellite business, and because of its overwhelming size AT&T has the power if unrestricted to dominate any satellite system. At the same time AT&T's substantial investment and research commitment to terrestrial systems makes it the largest potential competitor with any satellite system. Obviously, under such circumstances AT&T's role must be subject to special scrutiny.

A. The Comsat-AT&T Agreement (1) Effect on Competition between Comsat and AT&T. The joint Comsat-AT&T application, unless carefully circumscribed, could pose a number of impediments to the establishment of fully competitive satellite systems. Both Comsat and AT&T are obvious potential entrants into the satellite field, and any agreement between the two which would constrain competition between them must be examined closely.

The agreement basically provides for Comsat to construct, maintain, and finance the space segment of a satellite system for AT&T. Although title in the satellites

remains with Comsat, AT&T maintains complete control of their use, 11/ and AT&T has assumed most of the risk in the venture by agreeing, except for certain extraordinary instances, to adjust all payments to the costs which Comsat actually incurs. 12/ Although Comsat is precluded from use of the system, the contract does provide Comsat a nearly risk-free return after taxes of eleven per cent and the contract insures Comsat some role in the space segment of the domestic industry even if it is unable to establish an independent system.

Comsat is already subject to an unhealthy degree of control by AT&T. AT&T controls 3 director out of 15 on Comsat's board; AT&T is the largest single share holder in Comsat; and AT&T is the largest customer for Comsat's international service. This interlocking stock and management are inconsistent with traditional regulatory policies restricting ownership and control of competing modes of business, 13/ and they are inconsistent with antitrust policy

11/ Agreement dated Feb. 19, 1971 between AT&T and Comsat, para. 14. In addition AT&T has the right of first refusal to residual capacity in any satellites launched subsequently to the four initially covered by the agreement. Para. 14(b).

12/ See id., paras. 7(b), 8, 9, 10(c), 12. Comsat bears a portion of the financial risk only if the number of unsuccessful launches is two or more out of the four possible or if the number of satisfactory transponders in any three of the successfully launched satellites is less than 16 out of the design capacity of 24. See paras. 7(a), 10(b).

13/ E.g., 49 U.S.C. §5(14) (1964); 47 U.S.C. §314 (1964).

as embodied in sections 7 and 8 of the Clayton Act. 14/ Against this background, any further extension of Comsat's dependence upon AT&T must be carefully examined from the standpoint of competitive policy.

Some of the most obvious competitive dangers are avoided. For instance, their application is not a true joint venture preventing independent entry by the partners. Such a joint venture between two leading potential entrants would, of course, constrain competition in a market with few competitors by diminishing the number of actual or potential competitors in the market. United States v. Penn-Olin Chemical Co., 378 U.S. 158 (1964). Comsat and AT&T have, however, been careful to state that the agreement should not preclude either party from owning or operating any other communication satellites, earth stations or satellite systems.

In spite of these assurances, the agreement may still act to dampen competition between Comsat and AT&T. To begin with the joint agreement itself makes the ability of Comsat to offer any communication services depend upon Comsat's power to generate enough business to support an entirely

14/ Minority ownership which results in anticompetitive consequences would violate section 7 of the Clayton Act. See United States v. E.I. duPont de Nemours & Co., 353 U.S. 586 (1957). And because of the "opportunity thereby afforded to . . . compel a relaxation of the full vigor of . . . competitive effort," the prohibition applies with equal force to directors appointed by such minority owner. Hamilton Watch Co. v. Benrus Watch Co., 114 F. Supp. 307, 317 (D. Conn. 1953), aff'd 206 F. 2d 378 (2d Cir. 1953). Under section 8 of the Clayton Act, interlocking directorates among competitors are per se violations. United States v. Sears, Roebuck & Co., 111 F. Supp. 614 (S.D.N.Y. 1953).

separate satellite system. The agreement need not have been so restrictive. It could easily have taken the form of the agreement between General Telephone and Hughes which provides for the leasing of channels in Hughes' system by General Telephone. Under that agreement, both Hughes and General Telephone will own and operate earth stations, and consequently both remain potential competitors in providing satellite services other than switched telephony.

Even if Comsat is successful in establishing an independent satellite system it may be reluctant to enter into full competition with its major customer and most important shareholder. Cf. United States v. Pan American World Airways, Inc., 193 F. Supp. 18 (S.D.N.Y. 1961), rev'd on other grounds, 371 U.S. 296 (1963). Since AT&T is not committed to meeting its additional requirements from Comsat or to renewing the agreement at the expiration of the initial seven year period, future contracts depend largely upon the continuation of mutual goodwill. Although these provisions leave open the door for others to compete with Comsat in providing services to Bell in the future, they also create substantial pressure on Comsat not to compete too vigorously with AT&T.

Under such circumstances Comsat might settle on a system primarily or exclusively directed towards servicing the needs of a single group of customers such as the networks and not compete at all with AT&T in providing other services,

especially when such services involve traditional point-to-point communication. Even in offering competitive services the full force of competition may well be constrained in light of their close corporate and commercial ties. Such restraint would be facilitated, of course, by the technological identity of their systems.

2. Effect on Competition with Other Satellite Systems.

The AT&T-Comsat agreement also has other unfortunate competitive consequences. By contracting with Comsat, AT&T has in advance automatically foreclosed others from competing to supply it with satellite services. Not only is this procedure detrimental to other competitors who might have been willing and able to supply AT&T with the same services at lower rates, but more importantly it may increase the cost of public message and other communication services generally. Public message is basically a "cost plus" service. To the extent that AT&T pays more for satellite services than it might have had to pay if these services had been obtained competitively, its earnings will be reduced; and in turn, these reduced earnings mean that rates will either have to be adjusted upwards or that reductions which might otherwise have taken place will have to be foregone.

3. Effect on Service and Technological Innovation.

In as much as the Comsat-AT&T agreement forecloses the development of independent systems, the pressures for rapid technological and service innovation will also be less. The

provision by Comsat of satellite services domestically to AT&T in addition to its role as the international carrier (and possibly a multi-use carrier domestically) would significantly reduce the number of different technologies being used in satellite communications systems. 15/

This is given added importance in light of AT&T's substantial investment and dominant position in terrestrial communications systems. AT&T's commitment to terrestrial technology cannot help but influence its decisions as to the pace at which satellite service should be introduced, and full commercial exploitation of satellite technology is more likely by a carrier not having the same substantial investment in ground facilities or less subject to AT&T's influence.

4. AT&T Should Be Required To Procure Satellite Service from Comsat or Others Only Through Competitive Procedures. In light of these competitive and regulatory problems we believe that the Commission should seriously consider requiring AT&T to fulfill its requirements for satellite service through some sort of competitive bidding procedure permitting a joint contract with Comsat only if Comsat is

15/ This problem is compounded by Comsat's reliance upon Hughes. Hughes is already the satellite supplier for Canada's system and is, of course, an applicant for a domestic system. The problems of Hughes' and other suppliers' participation is discussed more fully below at p. .

the lowest bidder. 16/ Such a bidding process if properly conducted would minimize the burden on rate payers and would prevent Comsat from receiving any undue advantage because of its close relationship to AT&T. Of course, no system at all should be authorized unless AT&T can show that the cost of service via satellites would be comparable or less expensive than service via ground lines. 17/

B. Further Restrictions on AT&T to Promote Service and Technological Competition. Restricting AT&T to competitive bidding might not alone insure the emergence of a fully independent competitor in the satellite field. It would still be possible for the system contractor for the telephone system were either Comsat or Hughes -- Comsat because of its monopoly in the international field and its close relationship with AT&T and Hughes because of its dominate role in manufacturing communication satellites.

Consequently, the Commission should consider imposing certain service restrictions on AT&T and any system operator its uses in order to enhance the likelihood of independent entry. We suggest that the Commission in this regard consider

16/ Specifications for any system would have to be reviewed to insure that they do not unduly favor one competitor over another. Furthermore, AT&T in evaluating Comsat's bid should not be permitted to take into account savings which might result from the passing through of a portion of Comsat's profit to AT&T as an equity holder.

17/ See Part III. C., infra, at p. . .

limiting the long-term contractual carriage by satellite of video transmission to applicants other than AT&T or its system contractor. Television transmission by the networks is the most important source of potential satellite business outside of the requirements of AT&T (and to a much lesser extent General Telephone). Without it the likelihood in the near future of any system other than the proposed AT&T system and possibly the Hughes system seems highly unlikely, and consequently, the imposition of this restriction would serve the public interest in these early stages of satellite development by greatly increasing the likelihood of early and substantial entry by a carrier independent of AT&T.

Such a limitation should not extend to the occasional provision of television services by satellite nor should it extend to the distribution of television signals by AT&T through its terrestrial system. The restriction could be lifted entirely in the future once several competitive systems have developed.

C. Service Cross Subsidization. Finally, the Commission must consider the problems of cross subsidization between AT&T's public telephone system and service offerings via satellites. Such cross subsidization could occur in two different ways. First, if the cost of telephone service via satellite is greater than the cost of service via terrestrial facilities, telephone users will be underwriting

AT&T's investment in satellites to the extent of the difference. 18/ To avoid this the Commission should, pursuant to section 214 refuse to authorize construction of satellite facilities for AT&T's use unless AT&T can demonstrate that satellite service would be cheaper or comparable in cost to the provision of similar service through other forms of investment. 19/ The same principle would, of course, apply to other common carriers.

On the other hand, if satellite service is competitive with terrestrial systems, the use of a satellite system without reductions to the extent of any savings in average telephone rates means that the telephone company could subsidize other service offerings. This is so whether or not such offerings are made via satellite as long as costs and revenues attributable to satellite service are not segregated. The latter problem does not differ in principle from the cross subsidization potential of any investment subject to joint use and may be dealt with independently of AT&T's entry into the satellite field. 20/

18/ That AT&T might invest in satellite systems even though ground technology is cheaper does not contradict our other contention that AT&T because of its commitment to terrestrial systems would develop satellite technology at a slower rate than others not equally tied to land-based systems.

19/ Cf. Office of Telecommunications Policy, International Facilities Study, Docket No. 18875.

20/ See Phase 1-B, Docket No. 16258, Docket Nos. 18128, 18684, and 18718.

It should be noted in considering these problems that AT&T's projected costs of service via satellites are somewhat greater than the cost of providing such service through equivalent terrestrial facilities although AT&T feels that the research benefits warrant the additional expenditures. 21/ Whether such cost differentials will persist if AT&T obtains satellite services through competitive procedures is unknown. Of course, if service costs via satellite are less expensive than service via terrestrial facilities AT&T should be required to invest in the cheaper form of transmission, i.e., satellites. 22/

IV. Vertically Integrated Systems Should Not Be Excluded from the Development of Domestic Satellite Systems at This Time.

A. System Ownership by Satellite Manufacturers. The Commission has received a number of applications from companies now building satellites for the use of others. 23/ If these applicants actually build systems they can be expected to use their own satellite equipment, and to this extent their success

21/ AT&T Application at p. 25 (Mar. 3, 1971).

22/ See Part II. C., supra, at p. for suggested reporting to the Commission by AT&T of its requirements and its expected costs of meeting such requirements.

23/ Hughes, Fairchild Hiller, Lockheed (MCI-Lockheed Application), and RCA.

will foreclose the market for other satellite suppliers. Given the market shares involved, a merger between an already established operator and a satellite manufacturer would be of substantial antitrust concern. 24/ But at this preliminary stage in satellite development we do not feel that the entry of satellite suppliers as system operators creates a substantial competitive danger; indeed, the prohibition of such entry could well have adverse competitive effects.

In evaluating the entry of suppliers it must be realized that unlike some markets each operator will be effectively committed to a single supplier during the system's life so that the maximum diversity of actual manufacturers is limited by the number of independent systems. A system which divorces operators from suppliers thus will not at this time increase the diversity of satellite technologies in use. In fact it may do the opposite by making it more likely that Comsat will be the sole domestic operator. If Comsat provides AT&T's requirements as well as operates a general purpose system -- systems with virtually identical technical requirements -- one would expect only a single supplier to furnish satellites for both. Indeed, diversity is likely to be further diminished in as much as the satellites

24/ Department of Justice, Merger Guidelines, paras. 11-13 (May 30, 1968).

which Comsat expects to use in its domestic systems draw heavily upon the technology already employed in its international system. This technological similarity gives Comsat's international supplier an inside position in supplying Comsat with satellites domestically even though Comsat nominally uses competitive procurement. Consequently, reservation of the domestic market to Comsat could give a single manufacturer virtual domination of the satellite market for civilian communication systems, both domestically and internationally.

Because Comsat's specifications are linked closely to spin stabilized satellites, a field dominated by Hughes, the best hope for a competing satellite supplier is to enter the market directly. Entry bypasses restrictions imposed by operators whose satellite specifications are tied to a different technology, and allows suppliers -- at their own risk -- to test the technology which they are promoting. Forward integration in these circumstances does increase the barriers to entry for competing suppliers, but at this early stage of development, it may be the only way to encourage the development of rival technologies.

Permitting entry by manufacturers also raises the possibility that an integrated supplier may be competing in the satellite communications market with a company which it supplies. In particular, Hughes which developed the technology incorporated in Comsat's proposal and which is the principle supplier to Comsat 25/ has submitted an application for a

25/ Hughes has supplied Comsat with the satellites for Intelsat I (Early Bird), Intelsat II, and Intelsat IV.

competing satellite system. If other satellite suppliers are unable to meet Comsat's requirements, Hughes would have the power to squeeze Comsat by raising the price of satellite services. Hughes' power in this regard is limited to the extent of effective competition among suppliers, 26/ but the Commission may wish to monitor this situation. If demonstrated abuses occur, the Commission could then consider requiring divestiture by Hughes of its satellite system.

B. System Ownership by Satellite Users. Provided that operators are willing to avoid discrimination against other users, there is at this time no reason to require complete separation of system operators and system users. Such integration does make discrimination harder to detect especially in its more subtle forms, and if the integrated user is willing to earn its profits at the transmission stage by charging higher rates to all users including its affiliated company, it may as in the case of backward integration be able to subject others to a profit squeeze.

Again the power to exercise such a squeeze depends largely upon the absence of competing systems, and consequently the existence of several multi-purpose systems or at least the potential for entry of new multi-purpose systems means that such price squeezes by forward-integrated operators are unlikely. Nevertheless, if only a single multi-purpose system is initially available and if such a system is user

26/ Hughes lost to TRW in the competition to supply Intelsat III.

controlled, the Commission may wish, as in the case of affiliated suppliers, to monitor relations between the system and its affiliated user to assure itself that no discrimination against others is taking place.

V. Conclusion

For the above reasons, the Department of Justice urges the Commission to approve the establishment of a domestic satellite system by any financially qualified public or private entity subject to appropriate conditions to prevent harmful interference and anticompetitive practices. We suggest, however, that AT&T not be allowed to invest in a satellite system absent a demonstration that such a system would be cheaper than equivalent terrestrial facilities, that any such system be obtained pursuant to competitive procedures, and finally that AT&T be prohibited initially from carrying network television signals via satellite on a long term contractual basis. Given these limitations on the dominant terrestrial carrier, we believe that competition in the provision of satellite services will best promote the public interest by spurring technological and commercial innovation and by providing in

the long run communication services to the public at the lowest possible rates.

Respectfully submitted,

RICHARD W. McLAREN
Assistant Attorney General
Antitrust Division

DONALD I. BAKER

JOSEPH C. BELL
Attorneys
Department of Justice
Washington, D. C. 20530

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

DomSAT

Date: April 16, 1971

Subject: Proposed DOMSAT Filings

To: Mr. Hinchman

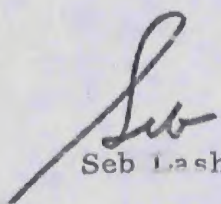
FOR INFORMATION

A conversation with Jack McCarthy, UU, revealed that United Utilities will probably file comments in DOMSAT Docket. The thrust of the comments will serve to apply DOMSAT facilities to Independent Common Carrier's rate bases as follows:

- (a) Will support a single multipurpose DOMSAT system;
- (b) Locations of earth stations determined by total national network rather than be arbitrarily located in Bell territory;
- (c) Common Carriers be allowed to share ownership of earth stations to the extent of the traffic they provide;
- (d) -Common Carriers be allowed to have equivalent ownership of space segment by buying indefeasible rights of user (IRUs) the same as the international record carriers now do on submarine cables.

Item (d) may arouse some discussion since it is a novel approach. However, it appears to offer incorrect incentives from a societal point of view. If rate of return regulation is a binding constraint, carriers will be encouraged to use the least efficient mode of operation (IRUs in DOMSAT vs. owned microwave facilities) as that will enable the largest application to their rate base. This would in turn encourage the satellite carrier to "overcharge" for the IRUs in order to gain advantages in other services in which he may face competition. If rate of return regulation is not binding, there is no advantage of IRUs as opposed to straight long-term leases.

Jack McCarthy also indicated that USIDA will probably issue a statement supporting a single DOMSAT carrier. Their concern centers around the fragmentation of markets which will divert revenues from Bell Long Lines resulting in an LD rate increase. This reasoning seems to omit some practicalities of the situation. An outside estimate of diverted revenue would be about only \$200 million/year. This is about 2.5 percent of Long Lines revenue for 1970. In a rapidly growing segment of the industry, this could be offset by deferring new construction for about one month.



Seb Lasher

cc: Mr. Whitehead ✓

Donat

March 23, 1971

Dear Mr. Hawkins:

Thank you for your letter of March 11th enclosing a summary on the domestic communication satellite system. I appreciate your thoughtfulness in sending it to me and can assure you that I found it of interest.

With warm regards,

Sincerely yours,

**Peter M. Flanagan
Assistant to the
President**

**Mr. Howard R. Hawkins
President
RCA Global Communications, Inc.
60 Broad Street
New York, N. Y. 10004**

bcc: Tom Whitehead w/incoming/FYI



139 A
TW

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



d R Hawkins

Dear Mr. Flanigan:

March 11, 1971

It is evident that communications satellite technology offers a variety of new opportunities, lower costs and innovative services for the United States Government and private users.

We have outlined some of the new capabilities in Applications filed today with the Federal Communications Commission for authority to establish a communications satellite system to serve the 50 States of the United States. It is our view that the interests of the Government and private users should be provided for in the domestic satellite system.

Attached is a summary of our Applications. We would welcome an opportunity to provide additional details, and please let us know if you desire further information with respect to services for the future.

Cordially,

A handwritten signature in dark ink, appearing to read "J. R. Hawkins". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Attachment

MAR 23 1971

Domestic Satellite

Mr. F. Randall Smith
Chairman, CPR, Inc.
1730 M Street, N. W.
Washington, D. C. 20036

Dear Randy:

Thanks for the copy of your recent report on Microwave Communications. I asked my staff to give it a thorough review, which is the reason for the long delay in responding. The reaction has been very favorable, everyone agreeing that you have done an excellent job of capturing the significant issues involved.

The only area which caused some concern occurs in the last paragraph on page 4, where you state that the spacing provision allows only 4 satellites (rather than 15) and that demand must be demonstrated before a company is permitted to launch. There is, in fact, far more room available than this suggests, plus flexibility in system parameters to create still more room. I have enclosed a memo from Walt Hinchman on this subject. The point regarding demonstrated demand is somewhat imprecise. FCC precedent might suggest that systems would not be authorized absent a priori proof of demand. If the Administration policy were fully adopted, however, such a showing would not be required.

Before closing, let me express my appreciation for the recent National Journal article on the Office. We have received many favorable comments. I would be interested to hear how CPR and National Journal are doing; perhaps we could have lunch one day.

Sincerely,

Clay T. Whitehead

Enclosure

cc:
Mr. Whitehead ✓
Mr. Hinchman Subject File
Mr. Hinchman Reading File

WHinchman:sbw 3/24/71

*Dr. Lyons has
Incoming*

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

Date: March 19, 1971

Subject: Spectrum/Orbit Capacity for Domestic Satellites

To: Tom Whitehead

The following information is in response to your query re the above subject:

1. Satellites placed anywhere within the 80° orbital sector from 60° to 140° W. longitude will be capable of serving the 48 contiguous states and Puerto Rico. Those within the western half of this sector, between 100° and 140° W. longitude, will also be capable of serving Alaska and Hawaii, provided the satellite antenna is designed with this objective.
2. If the 4 and 6 gigaHertz frequency allocations are used, in conjunction with 30-35 ft. diameter earth station antennas, these satellites can be spaced at intervals as small as $2-3^{\circ}$ without experiencing harmful radio interference. Using a more conservative figure of 5° spacing, for planning purposes, at least 17 such domestic satellites could be placed in this orbital sector, of which at least eight would be capable of serving Alaska and Hawaii, if needed.
3. Should additional satellites be required, they can be added within this same orbital sector through any one or a combination of the following design options:
 - use of larger earth station antennas to permit closer spacing of co-channel satellites;
 - use of alternate antenna polarization on adjacent co-channel satellites, which also substantially reduces the required spacing;
 - use of more sophisticated (e.g. digital) modulation systems;

- reallocation of thermal noise to interference ratios in the total allowable system noise;
- use of additional frequency bands already allocated to space services;
- allocation of new frequency bands.

Exploitation of all these options could increase the spectrum/orbit capacity severalfold; conservatively, at least three or four times the number of satellites previously noted could be accommodated using state-of-the-art technology, if required.

4. There is, of course, considerable orbit space on either side of the 60° - 140° sector which is capable of serving large segments of the contiguous and non-contiguous states. Satellites removed by as much as 30° (e.g. @ 30° W. or 170° W.) will still be capable of serving the eastern or western halves of the contiguous states, respectively. This should not be overlooked in relation to future prospects for specialized services for limited regions.

Walt

Walter R. Hinchman

OFFICE OF TELECOMMUNICATIONS POLICY
WASHINGTON

786
March 10, 1971

↓
To: Walt

From: ~~Tom~~

Rather than include this in the text of the letter, could you prepare a short memo (one-pager) to me which lays out this satellite spectrum in orbit flexibility a little more fully.

Then I could attach it to a letter to Smith.

Tom -
1 1/2 page memo
included. Will shorten if
essential.

~~Walt~~

To: CTW for signature

Office of Telecommunications Policy
Route Slip

		To
3 FEB 1971	Clay T. Whitehead	✓
	George F. Mansai	
	William Plummer	
	Wilfrid Dean	
	Steve Doyle	
	Walt Hinchman	✓
	Charles Joyce	
	William Lyons	

	Eva Daughtrey	
	Timmie White	
	Judy Morton	

REMARKS

*See memo
Walt - p. 4 ?*

*~~D~~
Copies - nino
- George
- Burt* *Done*

Prepare reply

February 1, 1971

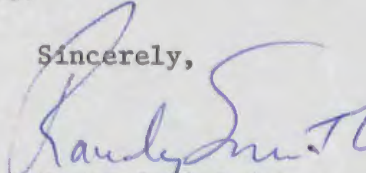
Mr. Clay T. Whitehead
Director
Office of Telecommunications Policy
Executive Office of the President
Washington, D. C. 20504

Dear Tom:

Our research operation has been retained by G. A. Saxton to provide their institutional clients with information on government policy developments relating to specific investment opportunities. The enclosed report is our initial effort and since you are actively involved in setting telecommunications policy, any comments you have would be of great value to us.

By the way, your importance is underscored by the fact that National Journal is preparing an article on your operation. Bruce Thorp is one of our better people, so I expect that it will be accurate and good. Particularly if he talked with you!

Sincerely,



F. Randall Smith
Chairman, CPR Inc.

FRS:jbh

SECRET
NOV 1971



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

*Domestic
Satellite*

Date: March 17, 1971

Subject: Domestic Satellite Policy

To: Will Dean

As you know, one of my responsibilities is to further develop and support the Administration's policy on domestic satellite communications. This includes, among other items, a thorough upgrading of the economic and technical analyses (including questions of orbit and spectrum utilization) which underlay this policy.

I recently learned that NASA has agreed to provide technical support to the FCC staff in its evaluation of domestic satellite applications. I also understand that the OTP frequency management staff has participated in the planning for this effort, and that the orbit/spectrum utilization program developed by GE for the OTP may be used in the analysis.

Mr. Whitehead expects the Administration -- and particularly the OTP -- to develop a unified, comprehensive approach to this issue, devoid of irrelevant considerations and unduly restrictive preconceptions -- and has directed me to ensure that result. This may require at some point a significant broadening of the study being conducted by NASA. Alternatively, it could (but hopefully will not) lead to our challenging the objectives, assumptions, methodology, and results of that study. In any event, the Administration's policy, and the OTP effort, could be seriously jeopardized by any conflicting and/or fragmented activities by different OTP staff elements.

To avoid this possibility, your staff should be informed that no further meetings on or discussions of this subject are to be held with the FCC, NASA, or other interested parties without first being cleared with me. I will in turn keep you advised of any significant activities or developments in this area which relate to frequency management.

Thanks.

cc: ✓ Mr. Whitehead
Dr. Mansur
Col. Lasher

Walt

Walt

DOMSAT

*Domestic
Satellite*

3/5 Type

3/8 Advance copies out

3/9 EIA speech

3/15 Contact, tell abt. update, ack. questions and general input

3/31 Update Domsat studies: complete

4/7 Send to FCC, privately to Congress

Letter urging prompt adoption

svs. mktg., pricing

Domestic Satellite

COMMUNICATIONS SATELLITE CORPORATION

March 1, 1971

LUCIUS D. BATTLE
Vice President for
Corporate Relations

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

Dear Tom.

Comsat has today filed with the Federal Communications Commission an application to establish a nationwide system consisting of three large capacity communications satellites in geostationary orbits and an initial network of 132 earth stations and associated terrestrial communications facilities throughout the United States, including stations in Alaska, Hawaii and Puerto Rico.

Comsat's proposal is for an integrated, large capacity, multi-purpose domestic satellite communications system. The public interest requirement for this type of system is firmly rooted in the economies of high capacity communication satellites.

By efficient utilization of a larger capacity, general purpose satellite system, rather than a proliferation of individual, smaller systems, the cost to the using public will be reduced.

Such efficient utilization can best be achieved by establishing an integrated, multi-service system, through which the known requirements of many users can be met simultaneously. This is the type of system which Comsat is proposing.

Certain additional and very real benefits accrue from this approach. Substantial savings result by sharing rather than duplicating expensive earth stations and other terrestrial facilities. Similar savings result by sharing and reducing the number of spare satellites in orbit which many separate systems would require. Precious frequency spectrum and limited orbital parking space is also conserved. And perhaps most importantly, the public consumer is assured of receiving equitable service at minimal cost.

For these reasons, the size of the system being applied for is based upon the total known requirements of the potential users, with provision for new markets as they develop. These requirements include those of the common carriers, the commercial television networks, the Public Broadcasting Service, and specialized communications entities.

This proposal includes applications to construct the space segment and a sufficiently large increment of the nationwide network of earth stations to enable the Commission to evaluate and determine what should be authorized in the public interest. It also provides for establishment of necessary associated terrestrial communications facilities. Comsat will submit by subsequent amendments additional applications in support of the overall system.

These initial applications include requests for authority to construct, own, and operate each type of earth station contemplated, including two large-capacity and three smaller capacity earth station complexes with the necessary terrestrial inter-connections. The application also requests authority to establish the space segment and associated facilities, and to provide communications services of all types to any customer by means of these facilities.

The space segment will consist of three large satellites of 24 transponders (radio repeaters) each in orbit for commercial use, with one satellite as an on-the-ground spare. Each satellite will be capable of providing approximately 14,400 two-way telephone circuits, or 1200 million bits per second of digital transmission, or 24 simultaneous television channels, or selected combinations of these.

The system will include two large-capacity dual-antenna transmit/receive earth stations with 97-foot antennas located in the vicinity of Los Angeles and New York City, which will be able to handle all classes of traffic. The Tracking, Telemetry and Control (TT&C) facilities co-located at these two major earth stations will serve both this system and that proposed by Comsat on October 19, 1970, to serve AT&T.

The initial increment also includes three smaller-capacity earth stations, two with 32-foot antennas near

March 1, 1971

Juneau and Prudhoe Bay, Alaska and one additional 42-foot antenna at Talkeetna, Alaska. They constitute an initial step in a comprehensive plan to bring new intrastate and interstate communications to Alaska.

In addition, as soon as suitable arrangements can be made, Comsat proposes to make supplementary applications for additional 42-foot receive-only antennas at the existing earth stations at Paumalu, Hawaii and Cayey, Puerto Rico. This will make possible for the first time simultaneous reception of domestic television transmissions throughout the United States and Puerto Rico.

In this proposal, Comsat plans to lease whole transponders to common carriers under long-term fixed price contracts, and to provide similar leasing arrangements for specialized services to non-carriers requiring wide-band and other services, such as nationwide broadcast distribution networks. Comsat also will offer similar services for shorter periods under appropriate tariffs. These services may be provided either on a customer-location-to-customer-location basis, or on an earth station-to-earth station basis.

Comsat was incorporated pursuant to an Act of Congress, the Communications Satellite Act of 1962. One of the purposes of that Act was to improve the quality and reduce the cost of telecommunications through utilization of satellite technology. Our proposal is offered toward this end. We believe all users will benefit substantially from the significant economies of scale made possible by an efficiently-loaded, large-capacity, multi-purpose domestic communications satellite system.

Should you wish to know more details of our current proposal, please get in touch with our Director of Governmental Relations, Robert E. Button, or me.

Best regards,

Sincerely,

Lucius D. Battle

Lucius D. Battle

18 FEB 1971

Just

Mr. R. C. Stover
MOQ 219, Dam Neck
Virginia Beach, Virginia 23461

Dear Mr. Stover:

As the President's principal adviser in telecommunications policy, I have been requested to reply to your letter of January 12.

I understand the concern you have expressed, and am pleased to be able to report that the newspaper clipping you sent was in error. President Nixon is not seeking AT&T sale of Comsat, and this Administration has not endorsed such a proposal. Following Senator Gravel's press release on this subject, I issued the enclosed press release to clarify the situation. I hope this answers your questions.

The President very much appreciates your support and the time you have taken to bring this matter to his attention.

Sincerely,

SIGNED

Clay T. Whitehead

Enclosure

cc: Mr. Whitehead
Mr. Doyle

SEDoyle/AScalia/ec/12Feb71

*See
A-10*

12 January 1971

R.C. Stover
MOQ 219, Dam Neck
Virginia Beach, Va. 23461

Nixon Seeks AT&T Sale Of Comsat

WASHINGTON (UPI) — The Nixon administration Thursday endorsed a proposal to force American Telephone & Telegraph Co. (AT&T) to give up all its financial interest in Communications Satellite Corp. (Comsat).

Sen. Mike Gravel, D-Alaska, has said he will introduce a bill early in the 92nd Congress that would require AT&T to sell all its Comsat stock, currently valued at \$140 million and making the giant telephone firm the largest Comsat share holder.

The legislation also would strip AT&T of its voice in the selection of three members on the board of directors of Comsat, which is a semipublic corporation set up to build communications satellites and ground transmission equipment.

The President
The White House
Washington, D.C. 20501

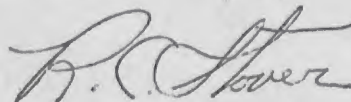
Dear Mr. President,

You probably will never see or know the contents of this letter but, because of my concern, I have decided to go to the top this time. If the above newspaper article is accurate, it strikes me as revolting and not indicative of a free enterprise system. AT&T is an enterprising, non-inflationary corporation and is a source of considerable tax revenue. Without their management and expertise, I seriously doubt that our satellite program would have been as successful. Now, after coming under fire by the FCC, AT&T must come under fire by the President and Congress. This is almost as absurd as is the game of political footsies and enduring honeymoon that exists

between the labor unions and the politicians who lack the intestinal fortitude to crack down on the organized promoters of strikes, greed, inflation and a poor balance of payments. Rather than be assaulted by Congress, AT&T should be consulted as to how to achieve balanced budgets. If AT&T or the people of this country were to manage their finances as exemplified by the government, there would not be a bank in this country from which they could receive credit or a loan. Incidentally, despite your reported optimism, I fail to see any evidence that inflation is under control or being arrested. I firmly believe that the day has already come and gone when some form of wage and price controls should have been implemented. You rationalize against resorting to wage and price controls yet there is no reluctance to intervene with AT&T or admonish the steel companies when they are forced to raise their prices in order to afford the high cost of labor and curtail dwindling profits.

In closing, I wish you success on your welfare reform plans. In certain salient respects, the present program can be compared to that of Social Security, i.e., both programs are federally sponsored, neither program can pay for itself, both have inequities, and they serve as incentives not to work or to save for a rainy day.

Respectfully yours,



R.C. STOVER

~~CONFIDENTIAL~~
CONFIDENTIAL

OFFICE OF TELECOMMUNICATIONS POLICY
EXECUTIVE OFFICE OF THE PRESIDENT
WASHINGTON, D.C. 20504
February 14, 1972

To: RECORD

From: W. Dean, Jr.

Subject: Possible Director Visit to USSR

Following up the program review results of February 4, 1972, the undersigned met with Abbott Washburn on February 14 on subject matter.

It was suggested that action be undertaken to arrange for a meeting between Ashot Badalov, Vice Minister of Communications USSR, and the Director of Telecommunications Policy. Suggested items for possible discussion were:

- a. INTELSAT/Inter-Sputnik considerations.
- b. AEROSAT/MARSAT matters.
- c. Fallout from DTP Asian trip.

It was agreed that the foregoing provided substance for further pursuit; the only question being one of timing in the light of DTP and possibly related Presidential activities.

W. Dean, Jr.
W. Dean, Jr.

cc: Tom Whitehead ✓
George Mansur
Abbott Washburn
Bromley Smith

Declassified
E.O. 13526, Sec. 3.3h

By MW, NARA, Date 11/29/2012

~~CONFIDENTIAL~~
CONFIDENTIAL

Justice

February 8, 1971

To: Peter Flanigan

From: Tom Whitehead

I think this clarifies the situation regarding the Justice Department's letter on Comsat pretty well, and as far as I know, it does not cause Justice any problems.

Attachment - Letter to Sen. Pastore dated 1/26/71 - incoming

cc: Mr. Whitehead

CTWhitehead:jm

Monday 2/1/71

ATC

2:00

STEVE

Mr. Zapple's office called to say they are releasing both their letter and ours to people upon request.

[Handwritten signature]

CRB

Wednesday 1/27/71

10:00 MR. SCALIA:

Tom asked if you would call Don Baker and tell him that we are hand delivering a copy of the Pastore letter to him this morning.

Asked that you ascertain that there is no strong ill-will on the part of the Antitrust Division and give Baker the feeling that we're not out to be their enemy.

cmj

January 26, 1971

To: Don Baker

From: Tom Whitehead

Per our conversation.

Copy of Pastore letter

ing

Tuesday 1/26/71

2:45 After talking with Mr. Zapple, Mr. Doyle said all mail to go to Sen. Pastore should be sent to Mr. Zapple first. Otherwise, it bypasses him completely.

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF TELECOMMUNICATIONS POLICY

WASHINGTON, D.C. 20504

DIRECTOR

January, 26, 1971

Honorable John O. Pastore
United States Senate
Washington, D. C. 20515

Dear Senator Pastore:

Thank you for your letter of January 14th. I shall try to answer in some detail the questions which it raises.

Your letter was prompted by a series of events initiated by the letter to Senator Gravel from the Antitrust Division of the Department of Justice. That letter stated that the Department would favor enactment of legislation to eliminate direct common carrier control or influence over Comsat, although pointing out that this step alone would not be likely to result in a significant increase of competition unless combined with other action. This was the response of one agency of the executive branch to a legislator's inquiry concerning one of the many possible effects of his proposed legislation -- namely, its effect upon the maintenance of healthy competition, which is the primary concern of the Antitrust Division.

It is most appropriate and desirable that the legislative branch be able to obtain from the executive branch such a narrowly focused response. I have not interpreted the OTP responsibility of coordinating the telecommunications activities of the executive branch as a commission to suppress the expression by the various executive branch agencies of their views with respect to the impact of communications matters upon their respective areas of peculiar competence. To provide another concrete illustration, I expect that the General Services Administration and the Department of Defense will continue to appear in State and Federal communications rate proceedings in their capacities as representatives of the government as consumer. Such narrowly focused expressions of view by the

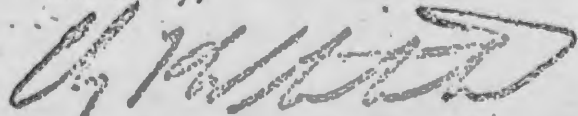
various agencies may or may not agree with the conclusions of this Office; it is our function to evaluate communications policy proposals not only from the standpoint of their effectiveness in furthering individuals objectives, but also on the basis of their net desirability when all aspects of national concern are taken into account.

This distinction between my Office's statement of the Administration's position on communications matters and the expression of views by other executive agencies is, I think, generally understood. In the case of the Antitrust Division's letter to Senator Gravel, however, I felt that the press accounts had presented the Division's views concerning antitrust effects as the Administration's position concerning overall desirability. It was for this reason that I issued my clarifying statement of January 7th.

Let me now turn to your specific request that I inform the Committee of the Administration's overall policy with respect to international communications. In implying that such a policy has already been formulated, the press report of January 7th was simply erroneous. The Office of Telecommunications Policy has established as one of its priority projects the entire question of international communications -- the optimum industry structure for the future, the role of Comsat, and the economic, operational, and political implications of such matters as you refer to in your letter. As you are aware, this is a particularly complex and important field, never before comprehensively addressed by the government as a whole. In spite of severe staff and budgetary limitations, we are well into the study. We will submit recommendations for consideration by your Committee as soon as possible -- hopefully by midyear. These recommendations will seek to take account of the views of all governmental agencies concerned, all segments of the industry, and the public.

I personally appreciate the concern which your letter demonstrates, that this Office realize the high hopes which Congress had in authorizing its creation -- that it serve as the vehicle for the formulation and development of a truly broad and coordinated national communications policy. I assure you and the other members of your Committee that we are bending every effort to that end.

Sincerely,



Clay T. Whitehead

A Synoptic View of Issues Concerning
the International Telecommunication Industry,

In the past 20 years, a variety of issues have been discussed relating to the structure, participants, and services of the international telecommunication industry within the United States. In hearings concerning the nominations of Messrs. Whitehead and Mansur, Senator Pastore revisited the old cry for a consistent and coherent U.S. policy in the international telecommunication field.

This paper has been prepared simply to outline some of the principal categories of issues of concern to the Congress, the industry, other agencies of government, and the public. It may be useful procedurally to categorize the issues below as: (1) legal, (2) policy, (3) economic, and (4) organizational.

Legal Issues

A variety of legal issues (purely legal issues) may be ferretted out of the general discussion of the international telecommunication industry. First among these is the fundamental question, "Do we need a consolidation and revision (up-date) of the United States laws relating to telecommunication?" This involves consideration of laws including the Kellogg Act of 1921 (cable landing licensing); the Communications Act of 1934 (establishing the FCC and a national regulatory structure); the Communications Satellite Act of 1962 (establishing Comsat and U.S. international communication satellite policy); Public Television Act of 1967 (an amendment to the 1934 Act providing for creation of the Corporation for Public Broadcasting); all of the federal regulations, Executive Orders and administrative rulings related to or issued pursuant to all this legislation; and consideration of the impact of new technology and new types of services and their requirement for new laws, e.g., domestic satellites, CATV, specialized carriers, and lasers.

A second legal issue, but one which would be produced only as a result of a policy decision, is, "Should the antitrust limitations upon common carrier mergers be eliminated?" There are, in the 1934 Act, provisions which forbid the combination of carriers to the detriment of competition. There is, however, a more recent policy, found in the Communications Satellite Act of 1962, which facilitates interlocking directorates among ostensibly competing entities. Over 150 telephone companies, including AT&T in substantial portion, own part of the stock of the Comsat Corporation. In recent years, several large carrier entities (ITT Worldcom, RCA Globcom, GT&E) have sold off sizeable blocks of Comsat stock and, thus, relinquished control of seats on the Comsat Board. AT&T has held fast to its power to elect 3 of the 15 Directors, but that position is now under attack by Senator Gravel and others.

A third essentially legal issue, which is again dependent upon certain policy premises, is, "How much regulation and what kind of regulation should be in our federal law concerning: (1) broadcasting services; (2) CATV and wired city services; (3) common carrier services; (4) satellite services; (5) safety and special services; and (6) the interaction and interdependence of various categories in the foregoing list?"

These are some of what may be termed the "legal" issues.

Policy Issues

The number of policy issues one can identify is limited only by the capability of one's imagination. Examples of some policy issues are:

(1) How much and what kind of services should the Government provide to itself and how much and what kind should it obtain from commercial sources?

(2) How diversified should ownership be for commonly used systems such as high capacity bulk trunks interconnecting major metropolitan areas, geographically separated portions of the country, or different countries?

(3) Do we want competition among joint-owner entities providing the same services, or discrete ownership of facilities; or, do we want competition among entities providing discrete services on commonly owned facilities; or, do we want no competition in some categories of service and intense competition in others; or, do we want exclusive ownership of facilities coupled with a monopoly control of services in inter-modal competition?

(4) Do we want to maintain present levels of government regulatory presence; or, stimulate more self-regulating or market-regulating mechanisms in the industry; or, eliminate governmental regulatory presence altogether?

(5) Should we look to "chosen instruments" in either ownership aspects, foreign relation aspects, or service rendering aspects of industry performance?

Again, these represent only examples of kinds of issues we could deal with as "policy issues."

Economic Issues

If long range telecommunication system and service planning is to become the product of (or substantially the product of) in-depth economic studies, with extensive consideration of market expansion, cost and pricing considerations, maximize efficiency, and so forth, then consideration should be given to the role of the

government in either: (1) conducting, (2) stimulating and encouraging, or (3) coordinating and directing economic studies evaluating the foregoing types of consideration. Some agreement would have to be reached on standardization of methods and techniques for the system analysis kind of studies which would be subject to any such an approach. Rather than considering communication services, the structure of the industry, and accounting and financing practices currently in use and expected to be used, one could project alternative ways of structuring, distributing ownership, and varying the governmental roles in order to stimulate, retard, or stabilize industry growth and service offering rates over time in the interest of achieving defined long term goals which will maximize economic efficiency, minimize user costs, and guarantee adequate capital returns to bring market money into the industry.

(An infrequently mentioned and possibly insufficiently considered element of previous interagency studies of industry organization and the Rostow Task Force Report is the impact on the labor market of various alternative structures for the industry and methods of constructing new facilities, expanding services, and maintaining the physical plant required for the rendition of services. The consideration of labor interests has been integral to almost every previous serious study of the international telecommunication industry, whether focused on composition, development, or modification.)

Organizational Issues

Under this category there are two possible subdivisions: (1) governmental organization, and (2) industrial organization.

One can consider whether or not the diversity of governmental responsibility that exists today serves the national interest from a variety of view points. For example, is the government efficiently organized? How many tax dollars are spent on purely governmental communication systems, their organization and management? How many tax dollars are spent on government supervision and regulation of private industry providing services to the government? Can these expenses to the tax payer be reduced by improved governmental organization, or by more efficient performance of existing government organizations?

In considering industry composition, we should evaluate the practicality, utility, and desirability of continuing or eliminating a monopoly role for AT&T Long Lines in international voice communications; we should evaluate the intercompany competition among the three principal record carriers providing international message and combined voice-message services; and we should consider the role of Comsat as a "chosen instrument" for international public telecommunication satellite services. In this kind of evaluative study, one could determine if one or another of these existing models provides a better basis for the rendition of all or certain segments of anticipated future services rendered by either terrestrial or space modes.

These are but some organizational questions which could be studied.

The Inevitable and Inexorable Interrelationship of Issues

With apologies for the alliteration, it should be pointed out that there is a certain inevitable and inexorable interrelationship of legal, policy, economic, and organizational implications of the structure and operation of our international telecommunication industry. It is highly questionable whether or not we can study legal issues such as those described above without reference to certain pre-set policy guidelines, and certain economic goals, and certain organizational requirements whether existing or desired. For practical reasons, it may be essential that the foregoing four categories of issues be always considered as a whole rather than as separable components in the development of a whole picture.

There is attached a copy of the 1965-66 interagency study done on "international telecommunications." While the report rendered to the Congress recommended specific legislative actions to be taken, the report did not contain proposed legislation, the enactment of which could result in implementation of the report.

It may be justifiably claimed that one of the principal reasons why prior studies done on the structure and nature of our international telecommunication industry have not been productive is that broad recommendations for action have rarely, if ever, been accompanied by specific draft legislative proposals which could be implemented without involving Committees of Congress, or an interagency group, or an industrial group, in the delicate and difficult business of drafting the implementing legislation.

Some Recommendations

Based upon the foregoing considerations, the following recommendations are offered for comment:

(1) Correspondence to Senator Pastore should be immediately prepared to "buy time" to study in greater depth all or some of the specific aspects described above.

(2) A preliminary staff study should be done identifying and reviewing the principal contract and government studies done on the international telecommunication industry since 1950. This project will take about one man month.

(3) A specific study program should be developed based upon the completion of (2) above with some decision as to the specific proposed study goals, i.e., draft legislation, or a White Paper, or a Policy Statement, or some combination of these.

- 5 -
(4) This study, to be effective, will require economic analysis, communication system operational analysis, legal work, and some technical study. An interdisciplinary team should be formed within the Office to pursue it.

(5) While the study is in process, other interested agencies and the industry should be invited to offer elements of required information or data as well as substantive commentary on alternatives under consideration. For in-house purposes, we should be prepared to devote 12 professional man months (4 people for 3 months, or 2 people for 6 months with the full time support of one secretary/research assistant) to accomplish this task.

If such manpower is devoted to the task in the near future, a useful work product should be available by the end of the calendar year.

THE SUNDAY STAR
Washington, D. C.
January 10, 1971

White House Denies Plan For Comsat

An administration official has denied reports that the White House is backing proposed legislation that would force major communications firms out of ownership and management of the Communications Satellite Corp.

In a prepared statement, Clay T. Whitehead, director of telecommunications policy within the executive office of the President, said:

"The Administration has formulated no specific views regarding this policy area and has no plans for the submission of legislation on this subject."

Whitehead's statement follows the earlier release of a Justice Department letter to Sen. Mike Gravel, D-Alaska, which recommended far-reaching legislation that would divorce American Telephone & Telegraph Co. and other communications giants from ownership and active participation in Comsat policies.

"The Justice Department letter was in response to Sen. Gravel's request for comments on specific draft legislation prepared by Sen. Gravel ... The letter, therefore should not be interpreted as an administration endorsement of Sen. Gravel's proposal," the Whitehead statement said.

Justice Department sources said earlier that if the White House had strongly objected to the department's recommendations it would not have allowed the letter to be released to Sen. Gravel.

Split AT&T From Comsat, Justice Asks

By STEPHEN M. AUG

Star Staff Writer

The Justice Department—presumably with White House backing—has called for legislation that would force American Telephone & Telegraph Co. and other major communications firms out of ownership and management of Communications Satellite Corp., it was learned today.

The department's far-reaching recommendations are expected to be opposed strongly not only by AT&T—which still owns 29 percent of Comsat stock—but also by such other giants of the communications industry as International Telephone & Telegraph Corp., Western Union, General Telephone & Electronics and RCA Global Communications Inc.

The department's recommendations also would have the effect of overturning several major Federal Communications Commission policy decisions. These include:

- The so-called "authorized user" decision under which the FCC ordered that, generally, Comsat may sell its services only to other communications firms—such as AT&T, ITT—and not directly to customers.
- The earth station ownership decision under which the FCC decided that Comsat should own only half of each earth station built, and that the communications firms should share ownership of the other half. Comsat

COMSAT

U.S. Seeking to End Ties to Major Firms

Continued From Page A-1
usually is the manager of these stations, which receive and transmit signals between the satellites and terrestrial equipment such as telephone lines.

The Justice Department's recommendations are contained in a letter sent two days ago to Sen. Mike Gravel, D-Alaska, who, it was understood, planned to make them public late today. Gravel asked some time ago that the department's antitrust division investigate the links between Comsat and the other communications firms. Justice's answer came from Assistant Atty. Gen. Richard W. McLaren, in charge of antitrust matters.

McLaren believes that the Communications Act of 1962, which set up Comsat, and later FCC decisions have resulted in activities that are contrary to long-standing antitrust law—principally those regulations that forbid a company from hav-

ing ownership and management interests over a competitor.

Gravel originally had asked the Justice Department to study AT&T ownership and its placement of company officials on the Comsat board. AT&T owns 2.9 million Comsat shares. Other communications firms own another 200,000. The second largest owner is ITT, with about 100,000 shares.

ITT and other firms have sold most of their Comsat shares. Under the 1962 act that set up the corporation, communications firms could own 50 percent of Comsat stock, and the public the remainder.

Under the original plan, there were 15 directors—six publicly elected, six from communications firms and three appointed by the President. At present, however, there are only four directors representing communications firms; three are from AT&T. The number of communications firm directors has declined as the firms have sold their Comsat stock.

Aside from selling its services to the other communications firms, Comsat competes with them. Thus there are continuing scraps at the FCC over whether international communications should be transmitted via cable—owned largely by AT&T—or by satellite.

The Justice Department believes that true competition between the competing modes of communication can be accomplished only by divorcing Comsat entirely from the other companies.

Although the Justice Department viewpoint is expressed in a letter signed by McLaren, informed observers suggested it would not have been sent had there been strenuous objections elsewhere in the administration.

AT&T purchased its 2.9 million shares of Comsat for \$58 million in 1963. At present market prices its holdings are worth about \$145 million.

Officials at AT&T had no immediate comment.

Comsat officials have maintained silence apparently because AT&T not only is a major owner and is represented on the board, but also is Comsat's biggest customer. Comsat has, however, urged the FCC to re-

THE EVENING STAR

Washington, D. C., Thursday, January 7, 1971

Friday 1/8/71

ATNT

4:00

Mr. John Morton, WUI, called to ask for a copy of the original letter from Sen. Gravel to the Justice Dept. in February. After checking with Mr. Doyle, I told him he would have to get a copy from the Senator's office.

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for
Cong Justice
Department
AT&T

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

January 7, 1971

PRESS RELEASE

Clay T. Whitehead, Director of Telecommunications Policy, when informed of a press release today by Senator Mike Gravel concerning correspondence with the Department of Justice on changes in ownership of the Communications Satellite Corporation, issued the following statement:

"The ownership and organization of U. S. communications carriers for the provision of international communications services to and from the U.S. is one of many-important policy areas for which the OTP has responsibility within the Executive Branch. The Administration has formulated no specific views regarding this policy area and has no plans for the submission of legislation on this subject.

"This is a particularly important and complex area of communications policy that goes beyond antitrust concerns alone. The OTP will take into account all pertinent considerations before deciding what, if any, policy recommendations and legislative proposals will best serve the national interests.

"The Justice Department letter was in response to Senator Gravel's request for comments on specific draft legislation prepared by Senator Gravel. While individual departments respond to queries from Members of Congress regarding particular legislative proposals in the ordinary discharge of their responsibilities, such department comments should not be interpreted as an Administration recommendation of such proposals.

"The Justice Department letter, therefore, should not be interpreted as an Administration endorsement of Senator Gravel's proposal. "

Cancel



NEWS

from U.S. Sen. MIKE GRAVEL, ALASKA

For Release Upon Receipt

Contact: Marty Wolf
(202) 225-6665

WASHINGTON, D. C. -- The Nixon Administration has endorsed Senator Mike Gravel's (D-Alaska) contention that communications carriers should be "eliminated" from the Board of Directors of the Communications Satellite Corporation (COMSAT).

Senator Gravel today released a White House-cleared letter from Assistant U.S. Attorney General Richard W. McLaren in which the antitrust chief said, "a good case can be made for eliminating the direct carrier influence over Comsat."

The Justice Department letter was in reply to a Gravel letter of February 12, 1970, requesting the Administration's views on the Senator's proposed legislation to remove carrier representatives from COMSAT's board and forcing the carriers to divest themselves of some \$140,000,000 of Comsat's stock.

Last February 12, Senator Gravel had written McLaren that "There is little doubt that directors gain access to inside information and to intimate cost factors of any organization of whose board they serve."

The Assistant Attorney General agreed. He wrote Gravel that the Communications Satellite Act of 1962 "ignored traditional policies that restrict common ownership and control" of competitors.

(Carriers own over 35% of COMSAT stock. AT&T alone has 29%.)

Senator Gravel has been critical of Comsat's inherent weaknesses ~~to provide needed~~ public services at low cost and lack of aggressive management against competitors.

Criticism of Comsat's weaknesses "has been reinforced by experience," said McLaren and he went on to cite several antitrust provisions against situations similar to those wherein the carriers obviously overpower Comsat management.

In a statement on the floor of the Senate last September 10, Senator Gravel had again attacked AT&T's role in Comsat's management while AT&T was announcing its intention to lay another underwater trans-Atlantic cable in competition to satellite communications.

At that time, Senator Gravel attacked influence over "Comsat's financial life-and-death" and said the whole communications issue was not one of free competition but a game played with "a set of loaded dice."

(continued)

"Since 1962 we have learned a great deal about satellite communications that we did not know during the debates preceding enactment of the COMSAT Act," said Senator Gravel. "I believe it will be far easier now to correct mistakes of the past," he added.

Senator Gravel said his new legislation would remove the carriers from Comsat's board by January 1, 1972, and force them to divest themselves of Comsat stock by January 1, 1973.

McLaren also informed Senator Gravel that changes might be required in past positions taken by the Federal Communications Commission. Senator Gravel agreed but added that, "The FCC has taken several encouraging new steps recently on this issue." ?

Senator Gravel added, "This is a complex subject and the position taken by the Justice Department is an important benchmark as regards a serious antitrust warning and a cry for corrective legislative action."

"The whole area of social and public applications and the improvement and quantity of all services, including educational television and public broadcasting, are very much involved," he said.

On September 18, 1969, Senator Gravel had introduced a bill to break the FCC earth station policy at that time of split ownership between Comsat and the carriers. The White House position paper on telecommunications on January 23, 1970, generally supported the Senator's thesis and the legislation was allowed to die in committee. Senator Gravel felt that the FCC under a new chairman should have time to adjust to the new White House guidelines.

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Department of Justice
Washington, D.C. 20530

JAN 5 1971

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OFFICE OF
SENATOR
MIKE GRAVEL

Honorable Mike Gravel
United States Senate
Washington, D. C. 20510

Dear Senator Gravel:

This is in response to your letter of February 12, 1970, requesting comments from the Antitrust Division on a proposed draft amendment to the Communications Satellite Act of 1962 as amended ("1962 Act"), 47 U.S.C. §§701-744. This draft amendment would, if enacted, eliminate direct control over the Communications Satellite Corporation ("Comsat") by the terrestrial communications common carriers ("carriers"). It would do so by (i) barring any representatives of the carriers from sitting on the Board of Directors of Comsat after January 1, 1971, and (ii) barring carriers from owning any shares of Comsat stock after January 1, 1972.

In general, we would favor enactment of legislation along these lines to eliminate direct carrier control or influence over Comsat. Such a step, combined hopefully with some modification of regulatory constraints on Comsat's activities (discussed below), would significantly enhance Comsat's competitive potential.

The 1962 Act was a compromise. It ignored traditional policies that restrict the common ownership and control of competing modes of regulated business (e.g., 49 U.S.C.A. §5(14); 49 U.S.C.A. §78; 47 U.S.C.A. §314). Instead the 1962 Act provided for extensive carrier ownership of Comsat stock and for six carrier nominees as directors of the corporation. As a result carriers controlled half the shares and more than a third of the directors. American Telephone & Telegraph Company (AT&T) alone is by far the largest Comsat stockholder, with 29 percent of the stock and 20 percent of the Board.

From the outset, this arrangement has been criticized as being inconsistent with the stated Congressional mandate "that the corporation created [i.e., Comsat] . . . be so organized and operated as to maintain and strengthen competition in the provision of communications services to the public"

(47 U.S.C.A. § 701(c)). (See, e.g., Legislation Note, The Comsat Act of 1962, 76 Harv. L. Rev. 388, 398 (1962)). This criticism has been reinforced by experience. (See, e.g., Schwarz, Comsat the Carriers, and the Earth Stations - Some Problems with "Melding Variegated Interests," 76 Yale L. J. 441 (1967); Report of the President's Task Force on Communication Policy (1968), Chap. 2, p. 15).

Moreover, the carriers' stockholding and directorship arrangements in Comsat are contrary to the normal antitrust prohibitions against anticompetitive stock acquisition and director interlocks contained in Clayton §§7, 8 (15 U.S.C. §§18, 19). The prohibition of Clayton §7 applies where minority ownership results in the probability of anticompetitive consequences, U.S. v. duPont, 353 U.S. 586, 592 (1957); and, because of the "opportunity thereby afforded to . . . compel a relaxation of the full vigor of . . . competitive effort," the prohibition applies with equal force to directors appointed by such minority owner. Hamilton Watch Co., v. Benrus Watch Co., 114 F. Supp. 307, 317 (D. Conn. 1952), aff'd 206 F. 2d 738 (2d Cir. 1953). Under §8 of the Clayton Act, interlocking directorates among competitors are per se violations. U.S. v. Sears, Roebuck & Co., 111 F. Supp. 614 (S.D. N.Y. 1953).

In these circumstances, we believe that a good case can be made for eliminating the direct carrier influence over Comsat flowing from their shareholding and directorships. This approach is consistent with the Department's original position in 1962 when the Attorney General emphasized that we "place great importance on competition because the communications industry is particularly susceptible to domination by one company -- AT&T." (Hearings on H.R. 10115 and H.R. 10138 Before the House Committee on Interstate and Foreign Commerce, 87th Cong., 2d Sess., pt. 2 at 565 (1962) (testimony of Attorney General Kennedy)). Moreover, it is consistent with the policy of this Administration of placing "more reliance on economic incentives and market mechanisms in regulated industries" so that "increased competition will eventually make it possible to let market forces assume more of the role of detailed regulation" in communications (Economic Report of the President 108-109 (1970)).

The problem is, however, only partially one of the Comsat corporate arrangements covered by the draft legislation. Regulatory decisions by the Federal Communications Commission have been at least as significant a factor in limiting Comsat's

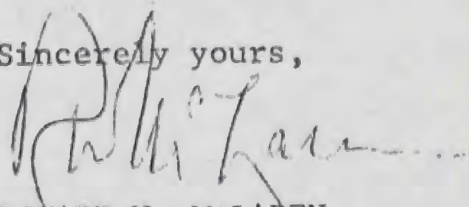
competitive potential vis-a-vis existing carriers.

Of particular significance is the FCC's Authorized User decision, 4 F.C.C. 2d 421 (1966), in which the Commission unanimously ruled that Comsat was to be only a "carriers' carrier," precluded from retailing its services direct to users (including the Government), except under "unique or exceptional circumstances" to be determined by the Commission. However, because the Commission declared that it would authorize direct Comsat service absent a reduction in the carriers' rates "fully to reflect the economies made available through the leasing of circuits in the satellite system," some potential competition remained and was reflected in some very substantial rate reductions made by the carriers.

This decision was followed the same year by the Commission's Earth Station decision further reducing Comsat's potential to compete vigorously with the carriers. 5 F.C.C. 2d 812, 816 (1966). Here the Commission decided (reversing an earlier decision, 38 F.C.C. 1104 (1965)) that Comsat had to share ownership of all earth stations with the carriers: 50 percent was to be owned by Comsat, with the balance apportioned among the other carriers on a use basis. The day-to-day management, and apparently, all equipment design and procurement of the earth stations are thus made by a joint operating committee made up of Comsat and the carriers.

To summarize, we favor generally some legislation along the lines of the proposed amendments, in order to eliminate direct carrier control or influence over Comsat. However, unless combined with at least some reversal of the FCC's decisions protecting existing carriers from satellite competition, such legislation is not likely to enhance significantly Comsat's competitive potential.

Sincerely yours,



RICHARD W. McLAREN
Assistant Attorney General
Antitrust Division