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WHITEHEAD ON DOMESTIC SATELLITES

I want to talk about some of the practical aspects of the President's domestic satellite proposals. When we initiated this project we did not think that it was necessary for us to attempt to fit our policies and our projections within some well defined legal niche. The administrative process should be flexible enough to meet this need. As to re-writing the code of Federal Regulations, I'll gladly leave that to those who profess greater expertise in the area. At the same time, we did propose a policy approach towards regulation of domestic satellite communications which, does meet the Commission's broad statutory mandate to "make available, so far as possible, to all people of the United States, a rapid, efficient, Nation-wide and world-wide wire and radio communications service, with adequate facilities at reasonable charges" (47 U.S.C. §151). Fundamentally, we view the role of the FCC in this area more as one of the spectrum allocator, rather than an a detailed economic supervisor as has been the case particularly in the telephone industry. This is an appropriate role, regardless of whether one looks to the 1962 Satellite Act or the 1934 Communications Act. Under both Acts, the

legal standards are pretty much equivalent. <u>1</u>/ The courts have stressed the FCC's general - and flexible - authority to regulate communications services. CATV is a clear case decision in point. The Supreme Court's <u>Southwestern Cable</u> strongly suggests that if in the over-all field of communications, the Commission can, if it has the will, find the legal means to regulate.

The President's proposal stresses competition - rather than the Commission - as the principle economic regulator in this field, so long as spectrum is available. This idea that competition should play such a role in communications is hardly novel. The Supreme Court made it in the 1958 <u>R.C.A.</u> case. The same view was proposed in the course of the 1962 Comsat legislation. Later, it reappeared in the Commission's own decision, such as <u>Microwave Communications</u>, Inc.

Accordingly, we hope the FCC would adopt a simple procedure here to deal with domestic satellite applications. An applicant (other than a carrier) should be allowed to file a complete description of his proposed system and the spectrum space that would be required. If the spectrum is available and is not needed for other immediate use,

^{1/} Section 102(d) of the 1962 Act just requires a showing that domestic communication satellite systems to demonstrate that their proposed services are "required in the national interest", (47 U.S.C. §701(d) while Section 303, the 1934 Act demands only a showing of "public convenience interest, or a necessity", (47 U.S.C. §303).

the Commission should grant the license. The private benefit to the applicant seems sufficient justification for such approval, provided no other potential user is being foreclosed from necessary spectrum (cf. 47 CFR §21.26). I would point out that licenses can be issued for a period of no more than five years (as with domestic microwave, 47 CFR §21.32).

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This simplified approach is made possible by the peculiar characteristics of domestic satellite systems. Such systems are expensive. They will not be built by "amateurs." It is highly unlikely that any person lacking substantial financial backing would ever apply for a system, let alone build it. And those willing to risk the substantial capital to embark on this system can be to make a fairly complete study of the benefits of such a system. In sum, it's highly unlikely that a mob of prospective applicants would flood the Commission with a wave of applications exceeding all spectrum and orbital space. Of course, if 25 asked for space and there were room for only 16, some revision might be needed; either the technical standards could be raised for **space** arth stations, or some rationing of spectrum would have to be undertaken.

However, I would stress that such a situation remains very unlikely so long as the cost of entry is in the \$100m. range.

The main point remains: the Commission should not embark on an evidentiary hearing minutely examining the potential impact of a satellite proposal upon common carrier revenues in this area. <u>MCI</u> dragged on for years, and so would individual satellite applications, if such a traditional approach were used. Let me stress that the common carriers themselves have conceded that revenues for television distribution the main immediate satellite service - represent only a very small part of their total picture.

The situation may have to be different when a common carrier applies for a satellite authorization. Carriers are subject to the comprehensive regulatory scheme under Section 201 of the 1934 Act (47 U.S.C. §201), barring discriminatory and other practices. Therefore, it may be necessary when a common carrier such as A.T.&T. applies for a license to launch a domestic satellite system, to have some sort of hearing to determine that the system is economic, rather then predatory, in nature and effect. Section 214 provides just such control over carrier construction. This simply reflects the fact that a communications common carrier is a special type of company, with a great opportunity to subsidize satellite or other services out of its basic rate base revenues.

Some hearing might be necessary to deal with the special competitive problems inherent in such a joint user arrangement proposal - for example, among television networks. Such a hearing would have a very

limited purpose - namely, to make sure that others in the business (e.g., CATV networks) had access to the system on the same terms as the original applicants.

At the same time, it would be highly undesirable for the entire licensing of domestic satellite systems to be stalled while the Commission, at its leisure, considered the special problems inherent in applications from common carriers or joint ventures. Other applications should be granted while these hearings go forward. As I stressed earlier, we visualize the initial role of the FCC in the domestic communications satellite field as a spectrum allocator rather than a detailed e conomic regulator.

Our general approach is consistent with the needs of a rapidly advancing art. In the first place, the type of decision-making we would require of the FCC would be much more rapid than traditional regulatory methods. Secondly, it would leave the door open to any potential innovator; he who is willing to risk his capital would be reasonably confident of getting FCC authorization. Unlike M.C.I., he would not be faced with a long, costly and uncertain legal effort to deter him from making the effort in the first place. Where frequency space is genuinely scarce, then some careful rationing may regrettably - be necessary. On the other hand, where spectrum space is available, new, imaginative and

innovative uses should be encouraged - free of bureaucratic fetters.

This is one reason why we proposed that our competitive approach towards domestic satellites be implemented only for a trial period of three to five years. During this time, we would allow those who, under liberalized licensing procedure had received licenses, to operate as free as possible from all regulatory restraints. At the end of this trial period, the results can be considered and any needed changes made in the light of then existing spectrum demands.

To conclude, let me stress that our immediate major concern is that a domestic satellite system be <u>launched</u> not just <u>considered</u> - as rapidly as possible. The lawyers and regulators have had their day - for five long years now let's let the satellite operators have theirs. We can all do without another five years of minute consideration of all the possible permutations and combinations made possible by traditional regulatory policy and procedures.

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FOR IMMEDIATE RELEASE

Office of the White House Press Secretary

THE WHITE HOUSE

MEMORANDUM FOR THE HONORABLE DEAN BURCH, CHAIRMAN OF THE FEDERAL COMMUNICATIONS COMMISSION

Federal policy on domestic satellite communications has been long delayed. The Administration is concerned that the delay not be prolonged and that the policies adopted reflect all important dimensions of the public interest, including the international aspects of geostationary orbital and radio resources. Based on our review of relevant technical, economic, and public interest considerations, the Administration offers the following comments and recommendations to the Commission;

Public Policy Objectives

In telecommunications, the government's responsibility to safeguard and promote the public interest involves primarily the encouragement of reliable communications services for public, business, and government use at reasonable rates and the assurance of a healthy environment for continuing innovations in services and technology. This general goal must, of course, be made more specific for particular policy issues. In our review of the domestic satellite issue, we have concentrated on the following objectives:

- -- assuring full and timely benefit to the public of the economic and service potential of satellite technology.
- -- insuring maximum learning about the possibilities for satellite services.
- -- minimizing unnecessary regulatory and administrative impediments to technological and market development by the private sector.
- encouraging more vigorous innovation and flexibility within the communications industry to meet a constantly changing spectrum of public and private communications requirements at reasonable rates.
- -- discouraging anticompetitive practices -- such as discriminatory pricing or interconnection practices and cross-subsidization between public monopoly and private service offerings -- that inhibit the growth of a healthy structure in communications and related industries.
- assuring that national security and emergency preparedness needs are met.

The Technical Framework

The establishment and operation of domestic satellite communications facilities is technically feasible within the present state of the art, and readily foreseeable technological advances will further enhance this capability. Technical considerations place no serious constraints on policies governing the ownership or mode of operation (specialized or multi-purpose) of domestic satellite communications facilities. These technical considerations, though of great importance in the detailed engineering, operations, and economics of specific systems, can be dealt with effectively under any reasonably foreseeable ownership arrangements. The issue of radio resource scarcity for satellite communications has been overstated to a significant degree. While the communications capacity of this resource is finite, the ability to accommodate additional radio services is greatly expandable through administrative, technological, and operational innovation. Both earth station and satellite design standards can be varied to assure adequate orbital capacity for both immediate requirements and likely near-term growth. Long-term growth can be accommodated through further refinement or additional frequency allocations, whichever is most economic.

Since some of the orbital locations and associated spectrum usage of interest for United States domestic satellites might also be potentially useful to other western hemisphere nations, a question of United States monopolization could conceivably arise. However, even 10 to 12 United States domestic satellites (a high estimate of likely early system development) would represent only a small fraction of the number which could be accommodated for western hemisphere use with the current state of the art. Therefore, orbital capacity is not expected to be a problem at this time. As demand for satellite communication expands, it may become necessary to evolve additional international coordinating mechanisms; but this would likely involve the establishment of appropriate technical standards rather than the rationing of orbital positions. This is expected to be a subject for discussion at the 1971 World Administrative Radio Conference.

The Economic Framework

The most immediate potential for domestic satellite communications seems to lie in long distance specialized transmission services -- such as one-way distribution of radio and television programs or two-way exchange of highspeed data or other wideband signals among thinly dispersed users. Common carriers have informed us that satellites do not appear economic at present for the routine transmission of public message traffic.

For the foreseeable future, satellite communications systems will require large initial investments, careful technical and economic planning, and complex technical management capabilities. The extensive, reliable, and low-cost terrestrial communications network already established in the United States makes domestic satellite systems competitive only where their unique capabilities offer significant advantages over terrestrial transmission. We therefore, expect the initial number of potential offerers of domestic satellite services to be small.

- In the absence of clear economies of scale and overriding public interest considerations to the contrary, the American economy has relied on competitive private enterprise rather than regulated monopoly to assure technical and market innovation, long-run optimum use of resources, and industry flexibility. These are all conditions this Nation has found to encourage higherquality, lower-cost services responsive to consumer demand.
- At this stage of domestic satellite planning, it is not possible to identify major economies of scale. Rather, it appears that a diversity of multiple satellite systems as well as multiple earth stations will be required to provide a full range of domestic services.
- Further, we find no public interest grounds for establishing a monopoly in domestic satellite communications. The general public is not a direct user of such services. The provision of specialized transmission services and the carriage of bulk message traffic are quite different in character from the provision of switched public message (telephone) service upon which much of our monopoly theory of telecommunications regulation is based. There is no reason to expect that competition here would do other than to encourage new or lower-cost services, the benefits of which would indirectly accrue to the public. Competition in the offering of satellite services appears to hold forth greater benefit to the economy and the public than would a single chosen instrument.

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Detailed regulation of service rates and commercial rates of return are similarly predicated on natural monopoly conditions that should not exist with domestic satellite communications in the immediate future. Not only is competitive entry possible, but terrestrial communications pricing would act as an upper limit on prices chargeable for most satellite services. In these circumstances, competitive pressure, rather than regulatory constraints, should be permitted to limit rates for specialized services via domestic satellites.

The historical development of telecommunications policy, regulation, and industry structure has resulted in a blurred distinction between public and private interests. A confusing patchwork of cross-subsidization between public message and specialized service offerings has become the norm rather than the exception. Therefore, it is possible that satellite services could, through cost-reducing innovation and competition, cause some existing services now surviving on a cross-subsidized basis to become unecomomic. Even if the benefits of such cross-subsidization accrue to the public users rather than to private service offerings, however, there seems to be no merit in protecting suppliers of such services from fair competition. The primary impact of such competition should be the provision of those services through lower-cost alternatives. Should such competition result in curtailment of some public services that are necessary as a matter of public policy, however, a direct public subsidy would in most cases be less costly to the public than forced cross-subsidization and restraint of competition.

Recommendation

Government policy should encourage and facilitate the development of commercial domestic satellite communications system to the extent that private enterprise finds them economically and operationally feasible. We find no reason to call for the immediate establishment of a domestic satellite system as a matter of public policy. Government should not seek to promote uneconomic systems or to dictate ownership arrangements; nor should coordinated planning or operation of such facilities be required except as essential to avoid harmful radio interference.

Subject to appropriate conditions to preclude harmful interference and anticompetitive practices, any financially qualified public or private entity, including Government corporations, should be permitted to establish and operate domestic satellite facilities for its own needs; join with related entities in common-user, cooperative facilities; establish facilities for lease to prospective users; or establish facilities to be used in providing specialized carrier services on a competitive basis. Within the constraints outlined below, common-carriers should be free to establish facilities for either switched public message or specialized services, or both.

The number or classes of potential offerers of satellite services should not be limited arbitrarily. Nor should there be any a priori ranking of potential types of systems (common-carrier vs. specialized carrier vs. private; or satellite vs. terrestrial). Only in the event that specific applications pose immediate and irreconcilable conflict in the use of radio and orbital resources would a priori public interest exclusion of proposals be warranted. In particular, the potential economic impact of private or common-user satellite systems on terrestrial common carriers or specialized carriers should not be a factor in the authorization of such systems.

All prospective entrants should be afforded equal opportunity to establish and operate domestic satellite communications facilities by adoption of the following guidelines:

(1) Facilities to be established by independent entities for their own private use should be required to demonstrate only the financial and technical qualifications to implement their system proposals. There is no valid public interest requirement in such cases to require a showing of economic viability or optimization, nor should the potential economic impact of such operations on common or specialized carriers be a factor in the authorization of such facilities.

(2) Facilities to be established as part of a common-user cooperative system should be authorized in accord with the same principles as for fully independent facilities. However, to avoid restraints on competition, the opportunity should be made available for all potential users of similar services to participate without discrimination in such cooperatives as a condition of their authorization.

(3) Facilities to be used by specialized carriers (i.e., carriers having no monopoly over switched public message services) should be authorized under essentially the same terms and conditions as private or common-user facilities. Furthermore, such specialized carriers should not be constrained to serve as a "carrier's carrier" nor to share ownership of space or earth station facilities with other carriers. We also urge the Commission to allow competition to limit the rates charged for specialized services via satellite. Specialized carriers should, however, be required to serve similar users at equal rates and on a non-discriminatory basis.

(4) Facilities to be used by common carriers solely for the transmission of switched public message services should be authorized under the same terms and conditions that apply for terrestrial radio facilities. However, facilities to be used by such carriers in the transmission of specialized message services should be authorized only after a determination by the Commission on each application, based on public evidentiary hearings, that no cross-subsidization between monopoly public message and specialized services would take place in the development, manufacture, installation, or operation of such facilities. This should not be interpreted, however, to preclude the legitimate economies of joint-use. facilities.

(5) The use of leased facilities (satellite and/or earth stations) should be authorized under the same terms and conditions as owned facilities, with the responsibility for adherence to these conditions resting with the lessee. Rateregulated carriers should be permitted to include a portion of the lease costs of such facilities in their rate base.

(6) Local communications common carriers should be required to provide leased interconnection services for user access to earth stations at reasonable rates and without discrimination.

(7) Potential harmful interference between satellite systems and terrestrial installations should be resolved by the Commission according to established procedures. Satellite operating entities should have equal status with terrestrial users in interferance problems and in access to the radio spectrum. To accommodate new systems or services, the Commission should affirm its authority to modify or rescind, where appropriate, the operating rights of established spectrum users (satellite or terrestrial) where this would not significantly impair the quality of service or impose undue economic burdens; we believe the Commission should require compensation of the established users to be paid by the new entrant in such situations.

(8) The Commission may wish to establish a minimum acceptable earth station diameter, such as 30 feet, in order to accommodate an adequate number of initial United States domestic satellites in the 4 and 6 GHz spectrum allocations without excessive use of orbital resources. Although it is very unlikely that the number of satellites proposed during the initial filing period will approach the limit such a standard would impose, the standard should in that event be raised. Conversely, if applications were well below this number, and a reasonable case were inade on economic and ÷

operationsl grounds, the standard could be relaxed in specific cases. To the extent possible within the state of the art, the satellite antenna radiation pattern should encompass only the specific land areas to be served.

In a time of rapid technological, economic, and social change, we would be illadvised to adopt a definitive policy without the flexibility for future review or to adopt an overly restrictive policy simply because of our inability to predict future developments. We therefore recommend that the above policies be adopted on an interim basis, such as three to five years, to permit vigorous exploration and development of satellite service possibilities. During this period, the Commission should monitor the industry structure, service offerings, and rates to determine if natural monopoly or other conditions are developing that suggest more restrictive entry conditions or warrant direct rate regulation for specialized satellite services. At the end of the interim period, a full review of the policy and industry structure should be made.

It is most important that the establishment and operation of domestic satellite communications facilities be consistent with our obligations and commitments to INTELSAT and the International Telecommunications Union, with other foreign policy considerations, and with national security communications requirements. With respect to INTELSAT, it is particularly important that domestic systems not threaten the operational integrity or economic viability of the global services provided through that system. It is also important that provision be made for use of domestic satellite services by national security and emergency preparedness agencies when appropriate. We are satisfied that domestic satellite communications facilities authorized in accordance with the preceding recommendations will meet all these conditions. We further see no reason why the Communications Satellite Corporation, established by Congress as the chosen instrument for United States participation in INTELSAT, should not be permitted to compete for domestic satellite service on an equal basis under the above guidelines.

> Peter Flanigan Assistant to the President

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FOR IMMEDIATE RELEASE

JANUARY 23, 1970

OFFICE OF THE WHITE HOUSE PRESS SECRETARY

THE WHITE HOUSE

PRESS CONFERENCE OF PETER M. FLANIGAN, ASSISTANT TO THE PRESIDENT, AND CLAY T. WHITEHEAD, STAFF ASSISTANT

AT 12:00 Noon, EST.

MR. ZIEGLER: I think you have had a minute to read over the statement in which the President announces the Administration's recommendation on the utilization of communication satellites for domestic telecommunications services.

Peter Flanigan, Assistant to the President, has been involved in the study group which led to this recommendation. Tom Whitehead, on Mr. Flanigan's staff, headed up the study group. They are here to discuss it with you.

I think Peter can take it from this point.

MR. FLANIGAN: Ladies and gentlemen, the issue of Federal policy regarding the use of satellites in domestic communications has been unresolved since 1965. When this Administration came into office, we determined that now was the time to resolve that as far as the Executive arm of Government policy is concerned.

Mr. Whitehead headed a working group that directed itself for several months to the economic and technological guestions involved, and on the basis of those studies we have worked to prepare a policy statement that was agreed upon by the agencies in the Federal Executive branch that are involved in these matters.

The proposals were sent today to the FCC, which will now consider, presumably, filings for the establishment of satellite systems. They will determine whether or not they agree with this policy statement.

It has, for your information, been discussed with Chairman Burch. It has not been put before the whole Commission. Chairman Burch has not committed himself. He said he sees no objection to it, but it would be improper to say that the FCC agrees with the complete policy.

The statement you have recognizes that a flexible policy is necessary if we are to stimulate to the most extent innovative effort by private industry. We encourage commercial systems to be put up as soon as they are economic. We don't attempt to direct private industry to put them up before they themselves believe they are economic. We very much stress the need to set up a domestic satellite system so that it will be competitive. We think that in this area, particularly with regard to special services, that competition can be the regulating factor with regard to rates.

We further recognize that this is an area in which technological change will be very fast. We will know a great deal more about it in a few years. The economics of it are still all prospective, at least as far as domestic communications satellites are concerned. We will know more about that in a few years and we recommend that after some experience in these areas are gained, they again be reviewed by the FCC. We are not trying to establish for all time what we think the appropriate policy should be.

Because the subject has been discussed over a period of time, I am sure some of you have some familiarity with it, and have a few questions you would like to ask. We will be happy to give you any answers we can.

Q When you speak of satellites for domestic use, domestic satellite systems, you are speaking of satellites for communications within the United States?

MR. FLANIGAN: That is correct.

As you know, we already have them abroad, run by INTELSAT, of which COMSAT is our member and is operating that system.

Q As for wanting this competitive, does this mean that your position is that somebody other than AT&T should be operating satellites? I mean, somebody as well as AT&T?

MR. FLANIGAN: We say they may operate satellites, not that they should. If they have an economic venture, they would like to engage in, they certainly should have the right to do so.

For instance, if somebody wanted to put up a special service satellite to carry television channels to be used for massive movement of data for computers, there is no reason on earth in our view that they should not have the right to establish such a system.

Q I use this only as an example, but if a network, for example, a broadcast network, T.V. and radio, wanted to put up its on satellites, it is this paper's position that they should be so allowed to do?

MR. FLANIGAN: That is correct.

 \mathbb{Q} . Would this also include ownership and operation of ground stations?

MR. FLANIGAN: Yes, it is a system.

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Q How many separate systems do you think can be accommodated?

MR. WHITEHEAD: We looked at that in quite a bit of depth and it depends on a lot of factors, such as standards for antenna diameters, locations of the systems, which parts of the United States you want to serve. We concluded with the current economic state of the art, and serving the contiguous 48 States, that on the order of 15 to 20 satellite systems could be accommodated.

Q Is that just satellites or satellite systems?

MR. WHITEHEAD: Satellites.

Q How many systems?

MR. WHITEHEAD: That depends on how many satellites you want in your system. One system might have one satellite serving the contiguous United States and maybe another reaching out into Hawaii and Alaska. When you start talking about Hawaii and Alaska, you open up new orbital uses.

Q Did you say could or should be accommodated?

MR. WHITEHEAD: Could.

Q You are saying that the highest number of satellites you could have feasible over the United States would be 20?

MR. WHITEHEAD: If you wanted to serve the entire contiguous 48 States with one satellite, 20.

MR. 2IEGLER: I don't think that is clear.

Q Let me make an example. If I have a satellite system and it requires 10 satellites to use this system and put it up, does that mean that there will be room for only another ten satellites? How does this work?

MR. WHITEHEAD: What I am saying is that there is room up there for 15 to 20 satellites that will each cover all 48 contiguous States. A system that exployed ten satellites would leave room only for ten more. However, it is important to realize that not every satellite has to cover the entire contiguous 48 States.

Q You mean there is only enough room up there for 20 satellites? There is a lot of space.

MR. WHITEHEAD: It depends on the antenna diameters, the power of the satellites. The 20 figure I gave you is for the current state of the art. We feel it is quite feasible to expand that with larger antenna sizes, with more powerful satellites, so that the resources could be expanded to cover 40 or 50 satellites. Q How about regional systems, like a system covering New England, would that add to that 20 or so?

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MR. WHITEHEAD: A system covering New England only would not have to use one of those 20 slots.

Q In other words, if you are willing to double your investment to cover the entire United States, you would have room outside of the space for the 20?

MR. WHITEHEAD: That is correct.

Q In the old days, they were saying these satellites would make possible ten cent calls all across the United States -- a call anywhere would cost ten cents, and you would almost eliminate the fixed rates. Is that sort of rate reduction in prospect now?

MR. WHITEHEAD: I truthfully don't know. It would depend on the economics of how the telephone companies used it in their system.

Q How radical an effect is this going to have on the cost and the convenience?

MR. WHITEHEAD: Based on our study, we are uncertain whether or not telephone companies will find satellites useful for their providing of telephone service. It is very likely, therefore, that this will have no impact.

Q What is the big impact, CATV?

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MR. WHITEHEAD: Distribution of television signals and high speed data.

Q Can you make a similar statement about television? How soon might a network put satellites up and what advantages might that bring to television?

MR. FLANIGAN: Let me bring up the fact that the 1965 date was the date that ABC suggested they wanted to put up their own system. That is an idea of the kind of enthusiasm.

Tom, why don't you follow that up.

MR. WHITEHEAD: The current estimates are that we could have a system in operation in two years.

Q Is it economically feasible that they might do that?

MR. WHITEHEAD: I don't know.

Q What advantages would that be to somebody's television reception?

MR. WHITEHEAD: Essentially, none.

MR. FLANIGAN: I would like to get back to telephone call rates. That is a question that ought to be directed to the FCC who controls those rates. They have been authorized to make a substantial investigation in the systems and that will continue to be in the telephone companies' rate basis for the determination of rates. Q What we are getting at is a question of logic. Does it not stand to reason that if a telephone company would employ a satellite for longline calls that the cost

- 5 -

Q Or the profit of the company go up?

MR. FLANIGAN: If the investment in the satellite provides them with an ability to service the calls cheaper with regard to their whole system. I would think on the rates of users, that is a problem that the FCC addresses itself to and it is not one in rate cases, as you gentlemen know well, that the White House should involve itself.

Q Could I ask you about one of the key sentences in this statement? It says it is concluded that the Government policy is that we should go ahead with this, but there is no reason to call for an immediate establishment of a domestic satellite system as a matter of public policy.

That leads me to infer that somebody was in favor of this public policy of a satellite system. Could you give us a little background on that?

MR. FLANIGAN: Admittedly that sentence was added later and it was added for the reason that we are trying to say here that what we are clearing up is the Federal policy with regard to the use of these things. We are anxious to say now that our policy should not be inhibitant to the establishment of such a system by private enterprise.

We are not trying to suggest that now is the time they must do it. They have to make up their own minds, based on the economic results to them of establishing a satellite system.

Q Was there a faction or a force in the communications community that said it ought to be done as public policy?

MR. FLANIGAN: Do you mean it ought to be done by the public?

Q Right.

of these calls should go down?

MR. FLANIGAN: Well, there was a point of view that one system only, strictly regulated, made available to all users, was a solution here. We thought that that was not as flexible, would not serve as well the public as the availability of the systems proposed here.

Q Wasn't that point of view advanced by COMSAT primarily and by AT&T at first?

MR. FLANIGAN: I think that is correct. They are aware of this, and perhaps are not universally enthusiastic.

Q They were briefed on this, I understand, yesterday. Were both COMSAT and AT&T briefed on this in advance?

MR. FLANIGAN: They have been informed. AT&T came in to see us and asked what was going on and we told them. It is interesting. This has not obviously be unknown in the communications industry that this problem was being considered. AT&T told us when they came in here and requested an opportunity to talk to us, that their own position had changed rather substantially by virtue of this study, and that they were not discouraged by the direction in which this study was going.

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Q Why should AT&T have any advance knowledge of the findings of this study?

MR. FLANIGAN: Because they called and asked about it.

Q If I called and asked, would I have gotten that advance knowledge?

MR. FLANIGAN: If another communications company called up and said they would like to express their opinion with regard to the study that was broadly reported to be underway, we would have said we would be glad to have your opinion.

Q But what you are saying is that you gave AT&T information about what was in your recommendation, which is different, I think.

MR. FLANIGAN: When they came in and said we believe that initially there ought to be one single system, we said, well, there is certainly an alternative to that. We think that you have to equally consider several systems with free entry, and they have continued to give us their opinion on this thing, and we have discussed the alternatives. We did not release to them, to my knowledge, the results of our policy discussions.

Q I thought that is what you were saying you did yesterday.

MR. FLANIGAN: I did not say that.

Q Didn't Mr. McCormack from COMSAT come over yesterday for a briefing?

MR. WHITEHEAD: We discussed it with him.

Q How about AT&T?

MR. WHITEHEAD: We discussed it with them.

Q Who is the AT&T representative?

MR. WHITEHEAD: Their Vice President for Government Relations.

Q What is his name?

MR. WHITEHEAD: Mr. Crossland.

Q How binding is this policy on the FCC?

MR. WHITEHEAD: It is not binding. The FCC is the regulatory agency, and this is our recommendation to them.

- 7 -

Q When will they decide on this?

MR. WHITEHEAD: The Chairman has indicated publicly that he puts this high on his agenda.

Q How high?

MR. WHITEHEAD: You will have to ask the Chairman.

Q Does he have to have a request from some specific agency before the FCC can act or can they issue a statement of public policy first, and then entertain requests to go ahead with the system?

MR. WHITEHEAD: I believe they can do it later.

Q You said a moment ago we can have a system in operation in two years. What do you mean by that, one domestic system?

MR. WHITEHEAD: I am saying that from my conversations with the communications companies they indicate that it is technologically feasible to have a system operating in two years. It takes a two-year lead-time.

Q How do you respond to the COMSAT position that it is the only one under law that is entitled to launch a commercial satellite under its charter through the Congress?

MR. WHITEHEAD: Well, COMSAT has never really taken that position formally. We considered it at first, in looking at the act, and we concluded to the contrary.

Q You say no legislation is needed for this?

MR. WHITEHEAD: That is correct.

Q How are people going to get satellites launched?

MR. WHITEHEAD: NASA would provide launches on a cost reimbursable basis.

Q Are they authorized to do that?

MR. WHITEHEAD: They believe they are.

MR. FLANIGAN: Didn't they do it for COMSAT?

MR. WHITEHEAD: Yes.

MR. FLANIGAN: There are others who requested it, and they believe they have the right to do it.

Q Could the networks combine to put up one system which all of them could use or would each network have to put up a system of its own?

MR. WHITEHEAD: Under this this policy, it would be their choice.

Q They could do either. But it is technically possible for all to use one system?

MR. WHITEHEAD: I believe it is.

Q Are there any anti-trust implications in that?

MR. WHITEHEAD: Yes, there are. In the memo to the Chairman, you will see a requirement that if a group of common users get together to set up a system, we believe there should be some policies that require them to allow some other similar user to come in.

Q Have they not indicated they want to do that as a threat to ATST?

MR. WHITEHEAD: I don't know about their motives, but I think they are considering whether or not they want to do it.

Q Would this see the reduction of use in coaxial cables, microwave and other systems in commercial television?

MR. WHITEHEAD: No, we did not get into that at all. We were talking about how people should be allowed to get into the satellite business.

Q What is the criterion for somebody who wants to file, economic or technological?

MR. WHITEHEAD: That is set out in detail in our memorandum.

Q Is there a domestic satellite available now?

MR. WHITEHEAD: NO.

Q They are all international?

MR. WHITEHEAD: Yes.

Q What is the possibility of the establishment of this for a public television network?

MR. WHITEHEAD: Well, I think if a system is set up for distributing television signals by COMSAT or AT&T or any other concern, I assume the public television network could buy space on that system. If the networks get together to set up their own jointly-owned system, then I think the corporation would consider joining with that.

Q What is the relationship of the domestic system to the INTELSAT system, as far as your policy is concerned?

MR. WHITEHEAD: There is really no necessary connection. It has to be technically compatible, of course.

Q Would the Ford Foundation subsidize public television with the network fees? Is there anything parallel to that in this?

MR. WHITEHEAD: As you know, the FCC is concerning itself with the question of rates for the corporation, and we view that as a separate matter. - 9 -

MR. FLANIGAN: It just is not touched here.

Q On the question of rates, could I get some clarification? In saying that economics should determine the rates, does this mean you are recommending the FCC should have no rate-making authority in the domestic satellite operation?

MR. FLANIGAN: That doesn't suggest it with regard to telephone companies and the like. We are saying if a satellite system is there, such as one that is set up to carry masses of information for computers, that should not be regulated.

Q But only the telephone aspect should come under rate regulations?

MR. FLANIGAN: That is right.

MR. WHITEHEAD: We are saying that they should allow competition to regulate until they see some reason to come in.

Q Don't all these have to go through the FCC first?

MR. WHITEHEAD: Yes.

more me.

Q And therefore, wouldn't they be in a position in the judging process to determine whether the rates are reasonable?

MR. WHITEHEAD: That is right, they would be. What we are saying is that on specialized systems, that should not be a consideration.

Q What are the advantages of the system if it doesn't include the TV and doesn't do anything to the telephone business?

MR. WHITEHEAD: It presumably would give some of the users of telecommunications system more flexibility and economic savings. We assume these economic 'savings would be passed in someway to the general public.

Q What makes you say that?

MR. FLANIGAN: Competition.

Q Mr. Flanigan, on the advantages, the theroretical advantages, would they include being fool-proof, as far as weather is concerned, do you know?

Let me go a step further, It is traditional in our country that during bad weather, snow and ice, in Washington and other parts of the country, that telephone service conks out, and families are stranded. Is it possible that our telephone systems could fall back on a satellite, for example? That is why I asked is it fool-proof.

MR. WHITEHEAD: It is not fool proof. Satellites have different weather problems than others.

So that is not what you have in mind? Q

MR. WHITEHEAD: No.

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How many circuits could one of these domestic Q satellites have, how many transmission costs operate out of it?

MR. WHITEHEAD: That is a pretty technical question depending on design, system parameters and so forth.

MR. FLANIGAN: What we have proposed to the FCC is the Executive branch's policy with regard to the use of domestic satellites. It is up to them now to determine whether they agree with this policy and to accept applications from users and for the users to determine whether it is in their best interest now to build one of these systems.

THE PRESS: Thank you.

END (AT 12:28 P.M. EST.)

rants issued without probable cause. The motion was denied, and defendant was convicted. The United States District Court for the District of Columbia, Edward A. Tamm, J., entered judgment, and defendant appealed. The Court of Appeals held that evidence sustained finding that there was probable cause.

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Judgment affirmed.

Criminal Law \$394

In prosecution for violations of the narcotics laws, wherein the defendant made a motion to suppress certain evidence, on ground that it was obtained by execution of arrest and search warrants issued without probable cause, evidence sustained finding that there was probable cause. 26 U.S.C.A. (I.R.C.1954) § 4704(a); Narcotic Drugs Import and Export Act, § 2(c) as amended 21 U.S. C.A. § 174.

Mr. T. Emmett McKenzie, Washington, D. C., for appellant.

Mr. Fred L. McIntyre, Asst. U. S. Atty., with whom Messrs. Oliver Gasch, U. S. Atty., and Frederick G. Smithson and Lewis Carroll, Asst. U. S. Attys., were on the brief, for appellee.

Mr. Arthur J. McLaughlin, Asst. U. S. Atty., also entered an appearance for appellee.

Before BAZELON, FAHY and BUR-GER, Circuit Judges.

PER CURIAM.

Appellant was convicted for violations of the narcotics laws, 26 U.S.C. § 4704 (a) and 21 U.S.C.A. § 174. As the sole basis for reversal he urges that the court below erroneously denied his motion to suppress certain evidence because it was obtained by execution of arrest and search warrants issued without probable cause. We find no basis for disturbing the conclusion of the court below that there was probable cause.

Affirmed.

HUSH-A-PHONE CORPORATION and Harry C. Tuttle, Petitioners,

UNITED STATES of America and Fed eral Communications Commission, Respondents,

American Telephone and Telegraph Company et al., and

United States Independent Telephone Association, Intervenors. No. 13175.

United States Court of Appeals District of Columbia Circuit. Argued Oct. 4, 1956. Decided Nov. 8, 1956.

Proceeding on petition for order requiring telephone companies to amend tariff provisions, forbidding attachment to telephone of any device not furnished by such companies, so as to permit use of device manufactured by petitioners for increasing privacy of conversations and excluding extraneous noises. The Commission dismissed the complaint, and the petitioners petitioned for review. The Court of Appeals, Bazelon, Circuit Judge, held that its findings would not support Commission's conclusion that petitioners' device impaired telephone service.

Order set aside and case remanded with directions.

Telecommunications @266

In proceeding on petition for order requiring telephone companies to amend tariff provisions, forbidding attachment to telephone of any device not furnished by such companies, so as to permit use of device manufactured by petitioners for increasing privacy of conversations and excluding extraneous noises, its findings would not support Commission's conclusion that petitioners' device impaired telephone service. Communications Act of 1934, §§ 201(b), 205(a) as amended 47 U.S.C.A. §§ 201(b), 205(a).

HUSH-A-PHONE CORPORATION v. UNITED STATES Clice as 238 F.2d 265

Mr. Herbert J. Miller, Jr., Washington, D. C., with whom Mr. Kelley E. Griffith, Washington, D. C., was on the brief, for petitioners.

Mr. Richard A. Solomon, Asst. Gen. Counsel, Federal Communications Commission, with whom Mr. Warren E. Baker, Gen. Counsel, Federal Communications Commission, was on the brief, for respondent Federal Communications Commission. Mr. J. Smith Henley, Asst. Gen. Counsel, Federal Communications Commission, entered an appearance for respondent Federal Communications Commission, and Mr. Daniel M. Friedman, Atty., Department of Justice, entered an appearance for respondent United States.

Mr. Hugh B. Cox, Washington, D. C., with whom Messrs. Burke Marshall, Washington, D. C., and Edmund S. Hawley, New York City, were on the brief, for intervenors American Tel. & Tel. Co. and others. Mr. Ernest Jennes also entered an appearance for intervenors American Tel. & Tel. Co. et al.

Mr. Bradford Ross, Washington, D. C., with whom Mr. Richard S. T. Marsh, Washington, D. C., was on the brief, for intervenor United States Independent Tel. Ass'n.

Before EDGERTON, Chief Judge, and WILBUR K. MILLER and BAZELON, Circuit Judges.

BAZELON, Circuit Judge.

This is a petition under § 402(a) of the Communications Act of 1934, as amended,¹ for review of a Federal Communications Commission order of December 21, 1955, dismissing the complaint which the petitioners had filed against the intervenors. The petitioners are the Hush-A-Phone Corporation and its president. The intervenors are the

1. 47 U.S.C.A. § 402(a).

 "It is designed to permit the speaker to confine his voice within the enclosure formed by the device so that it is not heard by persons in the speaker's vicinity, thereby providing privacy of conversation and office quiet. It is also deAmerican Telephone and Telegraph Company, the twenty-one associated companies of the Bell System, and the United States Independent Telephone Association.

Since 1921, Hush-A-Phone has manufactured and sold a cup-like device of the same name, which snaps on to a telephone instrument and makes for privacy of conversation, office quiet and a quiet telephone circuit.² Over the years, more than 125,000 Hush-A-Phones have gone into use.

Pursuant to § 203(a) of the Act,3 the intervenors have filed tariffs with the Commission showing not only charges for telephone service, but also "the classifications, practices, and regulations affecting such charges." These tariffs forbid attachment to the telephone of any device "not furnished by the telephone company" and, for violation of these "foreign attachment" provisions, the telephone companies claim the right to suspend or terminate service. The telephone companies have informed both vendors and users of Hush-A-Phones that the device may not be used under the tariffs. As a result, some of the petitioners' distributors have already given up selling Hush-A-Phones.

On December 22, 1948, petitioners filed a complaint with the Commission against the intervenors under § 208 of the Act,⁴ demanding that the Commission order intervenors (1) to discontinue the described interferences with Hush-A-Phone distribution and use; and (2) to amend the foreign attachment provisions of their tariffs to permit the use of Hush-A-Phones. The Commission held hearings on the complaint in January 1950 and, on February 16, 1951, released its initial decision looking toward dismissal of the complaint. Oral argument

signed to improve telephone reception in noisy locations by keeping surrounding noises out of the telephone transmitter and thus out of the telephone circuit." Commission's brief, p. 2.

3. 47 U.S.C.A. § 203(a).

4. Id., \$ 208.

on the exceptions to the initial decision was held on November 30, 1951, and the Commission took the case under advisement. In that status it remained for more than four years, until December 21, 1955, when the decision under review was made.

The Commission agrees that, if the use of Hush-A-Phones does not impair telephone service, a tariff provision barring use of the device would not be "just and reasonable" within the meaning of § 201(b) of the Act⁵ and the Commission, under the authority given it by § 205(a),⁶ would prescribe a provision which would be "just, fair, and reasonable". It argues, however, that it has concluded, on the basis of its findings, supported by evidence, that the use of Hush-A-Phones does impair telephone service, and that we should not disturb that conclusion.

Although the Commission found ⁷ that using a Hush-A-Phone does not physically impair any of the facilities of the telephone companies,⁸ it nevertheless concluded that the device is "deleterious to the telephone system and injures the service rendered by it." There seems in that conclusion a suggestion that the use of a Hush-A-Phone affects more than the conversation of the user—that its

- 5. Id., § 201(b).
- 6. Id., § 205(a).
- 7. In searching out the Commission's findings it has been necessary for us to refer partly to that section of its decision which it called "Conclusions". The section it called "Findings of Fact" consists in large measure of recitals of evidence and of the conflicting claims of the parties, rather than the Commission's determinations of fact.
- 8. The intervenors' only claim of physical effect was rejected by the Commission. They contended that the attachment of a Hush-A-Phone to a telephone would tend to produce a more frequent "off-hock" condition, because of the small clearances and the clumsiness and unbalance of the device. But the Commission, finding such objections "largely conjectural," declined to rest its decision upon them.

influence pervades, in some fashion, the whole "telephone system." The Commission repeats this suggestion in its conclusion that use of a Hush-A-Phone involves "public detriment." It is because we see no findings to support these conclusions of systemic or public injury that we reverse the Commission's decision.

The effects of using a Hush-A-Phone, the Commission found, are to give the user privacy against nearby eavesdroppers and to make for a quieter line by excluding extraneous noise. When not used for privacy, i. e., when not pressed against the face to seal in the mouth, the Hush-A-Phone produces only negligible loss of intelligibility. When the device is used for maximum privacy, there is a noticeable loss of intelligibility (up to 13 decibels), which means that the person to whom the Hush-A-Phone user is speaking hears a lower and somewhat distorted sound. This diminution of volume and clarity of the Hush-A-Phone user's voice, as heard by the party to whom he is speaking, rather than any effect upon the system generally, appears to be what the Commission means when it speaks of impairment of service. It weighs against Hush-A-Phone's "significant" ⁹ benefit of privacy the "public

9. The Commission also recognizes as an advantage of the Hush-A-Phone that it makes for a quiet line. But it excludes this advantage from consideration because "telephone users may obtain from the defendant companies 'push-to-listen' and 'push-to-talk' switches which may be used to exclude noise from circuits."

The mere fact that the telephone companies can provide a rival device would seem to be a poor reason for disregarding Hush-A-Phone's value in assuring a quiet line. The Commission's approach is well calculated to raise those very questions under the antitrust laws which petitioners seek here to raise, but which, in view of our decision, we do not reach. It also tends to raise another question which we do not reach, namely, the reasonableness of a tariff which places control over petitioners' business in the hands of intervenors in the first instance. A system whereby intervenors may market equipment until such time as the

Cite as 238 F.2d 266

detriment" involved in this loss of intelligibility ¹⁰ and concludes that it is not unjust and unreasonable to forbid the use of Hush-A-Phone.

The question, in the final analysis, is whether the Commission possesses enough control over the subscriber's use of his telephone to authorize the telephone company to prevent him from conversing in comparatively low and distorted tones. It would seem that, although the Commission has no such control in general, there is asserted a right to prevent the subscriber from achieving such tones by the aid of a device other than his own body. Thus, intervenors do not challenge the subscriber's right to seek privacy. They say only that he should achieve it by cupping his hand between the transmitter and his mouth and speaking in a low voice into this makeshift muffler. This substitute, we note, is not less likely to impair intelligibility than the Hush-A-Phone itself. for the Commission has found that "whenever an enclosure is placed around the mouth of a person an intensification of frequencies below approximately 500 cycles occurs, and if the intensification is too great, a distortion or blasting effect results in the transmitter." 11 In

Commission orders a halt, while petitioners may not market competitive equipment until the Commission gives them an authorization, seems inherently unfair. The unfairness is enhanced from time to time when the Commission's adjudicatory process bogs down. In this case, for example, more than four years elapsed between the oral argument of the exceptions to the Commission's initial decision and the final decision which left the initial decision essentially unchanged.

10. The "other adverse effects which • • result from the use of Hush-A-Phones" are "upon recognition and naturalness of the user's voice and receiving impairment." "Recognition" and "naturalness" are merely variations of intelligibility and, therefore, need receive no separate consideration. "Receiving impairment" is the term the Commission gives to the fact that the size and shape of some heads is such

both instances, the party at the other end of the line hears a comparatively muted and distorted tone because the subscriber has chosen to use his telephone in a way that minimizes the risk of being overheard. In neither case is anyone other than the two parties to the conversation affected. To say that a telephone subscriber may produce the result in question by cupping his hand and speaking into it, but may not do so by using a device which leaves his hand free to write or do whatever else he wishes, is neither just nor reasonable. The intervenors' tariffs, under the Commission's decision, are in unwarranted interference with the telephone subscriber's right reasonably to use his telephone in ways which are privately beneficial without being publicly detrimental. Prescribing what changes should be made in the tariffs to render them "just, fair, and reasonable" and determining what orders may be required to prohibit violation of subscribers' rights thereunder are functions entrusted to the Commission.12

Order set aside and case remanded to the Federal Communications Commission for further proceedings not inconsistent with this opinion.

that if a Hush-A-Phone is held sealed to the mouth, the receiver will not be "well seated on the ear," so that the user will not hear as well what is said by the other party. The Commission does not indicate why a Hush-A-Phone user would keep the phone glued to his lips when listening rather than speaking. Nor does it appear why the user may not, as a matter of his own choice, impair his ability to hear in order to attain privacy of speech. See text infra.

- 11. Indeed the cupped hand may distort more than the Hush-A-Phone, for "the Hush-A-Phone is provided with an acoustical filter and ducts which partially absorb the low frequencies; holes are also provided in the Hush-A-Phone through which the low frequencies are partially conveyed to the outside. The air blast effect is also reduced by releasing the air through the holes."
- 12. Supra note 6.

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Federal Communications Commission

70.

White House proposes commission permit satellite competition

The domestic satellite issue – a multimillion-dollar sleeper for the last four years – is on the verge of resolution.

The White House has recommended that any corporation or group with enough money be allowed to establish a domestic satellite system, with a minimum of regulation by the Federal Communications Commission (FCC).

The final decision on who will be allowed to operate a domestic satellite system rests with the seven FCC commissioners. The Communications Satellite Corp. (Comsat) and American Telephone and Telegraph Co. (AT&T), both subject to FCC regulation, have high stakes riding on the commission's decision. The television networks, airlines (which maintain a constantly changing list of reservations across the country) and computer sharing companies are major potential customers for or operators of a domestic satellite system. (See satellite box.)

Presidential study: On Jan. 26, the White House recommended that the FCC act immediately to open the field of domestic satellites to competition among private and governmental entities, rather than grant a monopoly to a single corporation. The recommendation is the result of a domestic satellite study begun last fall. (For make-up of study group, see box.) It came in a memorandum signed by Presidential assistant Peter M. Flanigan, which encouraged the FCC to minimize "unnecessary regulatory and administrative impediments" to satellite development and to foster "innovation and flexibility within the communications industry." The FCC, it asserted, should exercise its regulatory powers over satellite owners only to guard against anticor petitie practices such as discriminator parthe rule and what on the section system by privating highling makes over which the system evener has a monopoly-for example, telephone service.

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No mention was made in the memorandum of providing free satellite service to educational television.

Johnson task force: The recommendations of the Nixon White House are in striking contrast to an earlier task force report which suggested that Comsat alone be authorized to establish a pilot domestic satellite system. The report was ordered but never endorsed by President Johnson. The Johnson task force recommendation, however, is understood to be the same as the position informally adopted by the FCC and submitted to the White House in early 1969.

Satellite Parking Places

Communications satellites occupy space about 23,000 miles above the equator. There are now six commercial communications satellites in orbit around the earth for international use. Because of their position, they revolve in an orbit at the same speed as the earth revolves on its axis, and they therefore maintain a fixed location in relation to the earth's surface. Small jets affixed to each satellite can be triggered from earth to correct a wandering satellite's course.

The "parking space" for satellites above the equator is limited. FCC Chief Engineer William H. Watkins says that there are only 16 so-called "slots" from which a communications satellite can serve the 48 contiguous United States. Only the westernmost five can accommodate service to Alaska. Some of these 16 slots are considcred desirable by other countries for their own domestic use.

Watkins said that although there is a limit to the number of satellites which can be put up, shortage of space is not a drastic problem and should not be turned into an international "political football,"

Ground facilities called earth stations are used to send and receive satellite signals. Under ICC regulations, U.S. earth stations for international use are half-owned by Comsat and half-owned by common carriers in proportion to their use. FCC rules do not permit even partial ownership of catch stations by private users. A review of earth station ownership, however is now under may of the terminas one.

Comsat: Currently faced with a diminishing of power on the international front (see Comsat box), Comsat now confronts the spectre of unlimited competition on the domestic scene. A sharp drop in the value of Comsat stock-down 6.75 points after release of the White House statement and still falling the next week-reflects a blow to public confidence in the corporation. Comsat has invested an estimated \$100 million in technology for a domestic satellite.

By placing Comsat on an equal footing with other carriers and private corporations, however, the White House recommendation would absolve Comsat's domestic system from the rules set up by the FCC for its international systems. For example, it would allow Comsat to lease circuits directly to satellite users. Under present FCC rules, circuits may be leased only to other common carriers who release them at a profit.

Current rules on earth station ownership would also be subject to change. William L. Miller, director of domestic services at Comsat, told the National Journal that his organization thinks that Comsat should continue to own and operate earth facilities which have the capability to both receive and transmit signals. Comsat is relatively open, he said, to user ownership of receive-only stations.

Despite the White House memorandum, Comsat continues to contend that legislation would be needed for any other entity to enter the field of satellite communications. A Comsat official told the National Journal that the corporation will continue to press this position in filings to the FCC.

AT&T: H.I. Romnes, board chairman of AT&T, said Jan. 26 that his corporation welcomed the White House recommendation and plans to apply to the FCC for permission to use satellites to fill out its domestic communications network. On Dec. 18, before the House Science and Astronautics Subcommittee on Space Sciences and Applications, an AT&T vice president testified that the "economics of satellites for domestic uses are not attractive at present" because of a decline in the cost of land comnunications.

A spokesman for Af&T tole the Votional Journal that his corporation forsees no nativertifie or men is relati his from satellite use. He said that the high cost of satellites will offset increased profits from diminishing land-line costs.

In mid-October, AT&T adopted a corporate position on domestic satellites very similar to the White House recommendation. In 1966, AT&T had argued that only Comsat was authorized by law to own a satellite system and that only Comsat and common carriers could own the land stations which receive and transmit satellite signals.

An official in the FCC's common carrier bureau said that AT&T probably stopped supporting Comsat's lone role in satellite communications because of the growth in competition between the two corporations. Although AT&T was a pioneer in satellite communications with its Telstar satellites and currently owns 29 per cent of Comsat, the corporation is committed to cable for the bulk of its domestic common carrier service.

Television network: The three major broadcasting networks have welcomed the White House recommendation, which would allow them to set up their own system for television interconnection. The White House mem-

Study Group

President Nixon's domestic satellite study group was coordinated by Clay T. Whitehead, an electrical engineer, former consultant to the Rand Corp. and the Budget Bureau, now staff assistant to Peter M. Flanigan. Other White House staff working with the group were Flanigan, his administrative assistant Jonathan C. Rose and William E. Kriegsman, another staff assistant.

The following government agencies were represented at group meetings: Office of Science and Technology Council of Economic Advisers Budget Bureau Office of Telecommunications Management Federal Communications Commission Justice Department National Aeronautics and Space Administration Commerce Department Post Office Department

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Comsat: A Carrier's Carrier

The Communications Satellite Corp. (Comsat) is a corporation ex machina, created in 1962 by Act of Congress (PL 87-624) to handle the growth of commercial space-age communications for the United States on the international scene.

Sixty-three per cent of Comsat's 10,000,014 shares are held by public stockholders. The remaining 37 per cent of shares are owned by common carriers. The following are major common carrier stockholders in Comsat and their percentage of interest: American Telephone and Telegraph (AT&T)-29 per cent; General Telephone and Electronics Corp. -3.5 per cent; Radio Corp. of America World Communications Inc. -2.5 per cent; International Telephone and Telegraph World Communications Corp. -1 per cent.

Comsat began to show an operating profit in 1968, but stockholders have yet to receive a dividend.

Since 1964, Comsat has been both major owner and manager of the International Telecommunications Satellite Consortium (Intelsat). Intelsat is a profitmaking organization made up of 70 nations to develop a global communications network.

Present operating arrangements for Intelsat-under which Comsat, with 53 per cent interest in the system, has absolute veto power and as manager handles most construction contracts-have been challenged by other members of the consortium, including the United Kingdom, France and Canada. Comsat officials predict a diminishing ownership of Intelsat by Comsat and a corresponding loss of control over the system.

As a "carrier's carrier," Comsat is subject to strict control by the Federal Communications Commission (FCC), and the corporation has often complained of over-regulation. Comsat has not won widespread popularity at the FCC. A former FCC commissioner characterized Comsat as "uncooperative" in comparison with AT&T, a sentiment echoed by members of the FCC staff.

Comsat's biggest customer and most influential stockholder is AT&T. The common carrier stockholders of Comsat currently elect four members to the corporation's 15-member board of directors. Two of Comsat's present directors are top AT&T officials; one is Harold M. Botkin, an assistant vice president of AT&T, and the other is AT&T Vice President and General Counsel Horace P. Moulton. A third Comsat director is James E. Dingman, a former vice chairman of the board of AT&T. Speaking of AT&T's influence, one Comsat official said, "If they don't give us traffic, we'll go broke."

erandum, however, did refer to possible antitust problems which might arise should the networks join to own a domestic satellite system.

At present, the networks are retaining the firm of Page Communications Engineers Inc. to study the economics of a satellite system devoted to television use, a spokesman for the Columbia Breadcasting System told the National Journal.

A major consideration in the study will be the possibility of inexpensive construction of facilities to receive satellite signals. If each networkaffiliated station could afford its own recercion device, much of the cost of the common call a cost of the cost of were used, common carrier cable and microwave services would still constitute a major network expense.

Current dissatisfaction with their present network arrangements has contributed to the urgency with which the networks are seeking satellite relief. In October, AT&T raised its annual charges for network television interconnection by \$20 million. AT&T provides interconnection to the networks for only 14 to 18 hours per day.

The educational network, while receiving interconnection service from AT&T at a reduced rate by congressional decree, is also unsatisfied with the status quo. The special interconnection service offorded to education to the service of the cheets for the thing cise. If the networks operate their own satellite, they are expected to give the educational television network free access to the system.

Outlook: The FCC is now expected to depart from its earlier decision favoring Comsat, an FCC staff worker told the National Journal, and adopt a policy conforming substantially to the White House recommendation. A proposed decision is being drafted, he said, by Ruth Reel and Robert D. Greenburg-lawyers in the office of FCC General Counsel Henry Geller.

The final FCC decision will probably not be made along party lines. Among the strongest proponents of competition on the commission are Republican Chairman Dean Burch and Democratic commissioner Nicholas Johnson.

Elizabeth Shriver

FCC notes

• Commission announced proposed rulemaking covering cable television systems with less than 500 subscribers. Comments due on Feb. 2. Jan. 21 (35 Fed Reg 815). (For story on CATV legislation, see p. 15.)

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VOLUME THIRTY-SIX, NO. 11, March 16, 1970

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WHITEHEAD 'CLARIFIES' WHITE HOUSE COMESTIC SATELLITE POLICY STATEMENT IN ADDRESS TO EIA MEETING; 'USER' AND 'SUPPLIER' DISTINCTION STRESSED

In a "clarification" of the White House policy statement on domestic satellite communications service, Dr. Clay T. Whitehead last week emphasized a distinction between a "joint user" and a "joint supplier" of such a service.

Dr. Whitehead, who played a major role as a member of the White House staff in the development of the policy statement (TELECOMMUNICA-TIONS, Jan. 26), referred to the difference between a user and a supplier, in the view of the White House, in a luncheon address Tuesday, March 10, to the spring conference in Washington of the Electronic Industries Association.

Later, in response to some questions on the point, he said no problem could be seen in a number of users of communications services getting together and employing a specialized system. But, if two or more suppliers--for example, the American Telephone & Telegraph Co. and the Communications Satellite Corp.--joined in providing satellite services, then antitrust aspects could be raised that would come under the scrutiny of the Justic Department, he declared.

In a further explanation, he said that there would be no problem if AT&T, instead of putting up its own system, leased circuits from a system furnished by Comsat in order to provide public message telephone service. But, Dr. Whitehead stated, AT&T could not lease circuits from a Comsat system that would be used in furnishing the telephone company's private line services.

The policy outlined by the White House in its domestic satellite statement, Dr. Whitehead declared, seeks to avoid long, drawn-out evidentiary hearings before the Federal Communications Commission. In short, he stated, "you apply (for a satellite system) if you have the dollars and a good proposal, and you get approval. Under our proposal, there would be no such thing as competing applications."

The White House official emphasized that the statement does not recommend that common carriers be excluded from having a satellite system, but if a carrier proposed to offer a specialized service, then it would recommend an evidentiary hearing.

During last week's conference, Robert W. Galvin, Chairman of the Board of Motorola, was presented the EIA Medal of Honor for his "outstanding contribution to the advancement of the electronics industry." John L. Wheeler, of the Xerox Corp., was given a special citation for his leadership in the data transmission field. More than 500 electronic industry executives participated in the March 9-12 conference. -EndBefore the FEDERAL COMMUNICATIONS COMMISSION Washington, D.C. 20554 FCC 70-307 46002

In the Matter of	>		
Establishment of Domestic)	Docket No,	16495
Facilities by Non-governmental	Ś		

NOTICE OF PROPOSED RULE MAKING

Adopted: March 20, 1970 ; Released: March 24, 1970

By the Commission: Commissioners Robert E. Lee and Johnson concurring in the result; Commissioner Cox concurring in part and dissenting in part and issuing a statement which is attached to Report and Order (FCC70-306)issued simultaneously herewith.

1. Notice is hereby given of proposed rule making in the above-entitled matter.

2. On March 2, 1966, the Commission instituted an inquiry in Docket No. 16495 to explore various questions associated with the possible authorization of domestic communications satellite facilities to non-governmental entities. Notice of Inquiry, 31 Fed. Reg. 3507; Supplemental Notice of Inquiry, October 20, 1966, 31 Fed. Reg. 13763. In its Report and Order in Docket No. 16495 adopted on March 20 , 1970 (FCC 70-306), the Commission decided to entertain applications for the authorization of domestic systems. In order to facilitate expeditious action on the applications and prompt attainment of the potential benefits of the satellite technology in the domestic field, the Commission further decided to keep open the proceedings in Docket No. 16495 and to incorporate a notice of proposed rule making. The rule making concerns the policies to be followed in the event of technical or economic conflicts between applications (Report and Order, paragraphs 23-24), the appropriate initial role of AT&T in the domestic satellite field (paragraphs 25-26), procurement policies (paragraph 28), and access to earth stations (paragraph 27).

3. We discussed in general terms some of the possible areas of conflict, stating (paragraph 23 of the Report and Order):

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Technical conflicts may arise in such areas as proposed orbital locations and frequency usage. Moreover, in the course of coordinating earth stations with terrestrial systems it may prove impossible in some instances to accommodate earth stations at desired sites without some adjustment in the frequencies and routes of terrestrial systems or other measures to avoid interference. Also, arguments of economic incompatibility may be raised, posing questions as to the proper effectuation of the Commission's responsibility under Section 1 of the Communications Act to exercise its regulatory functions in such a manner as to make communications services "available, so far as possible, to all people of the United States * * *."

It is not practicable to specify now, in advance of the submission of applications, the precise aspects that may require policy determinations by rule. Some potential conflicts may be evident to applicants in the course of preparing applications. Others may not become apparent until all of the initial applications have been filed. The purpose of this Notice is to set forth the subject matter and issue to which parties are to focus--namely, the technical or economic conflicts, if any, which exist or may arise between applicants in this area, and what policies are called for in light of any claimed conflicts. In this way, the Commission will be in a position to adopt rules, reflecting its policy determinations, to resolve any such conflicts, if it appears that this procedure would be the one best conducing "to the proper dispatch of business and to the ends of justice" (Section 4 (j) of the Communications Act).

4. Comments are also requested on what initial role of AT&T in the domestic satellite field would be appropriate in order to achieve a market environment conducive to innovation and the vigorous exploration and development of the special communications service potentials of the satellite technology. The discussion of this matter at paragraphs 25-26 of the Report and Order may be summarized briefly as follows: A question has been raised by the Executive Branch as to whether AT&T might discourage or foreclose entry by others into its special service markets through a policy of inter-service subsidy. The memorandum of the Executive Branch recommended that facilities to be used by AT&T for specialized communications services "should be authorized only after a determination by the Commission on each application, based on public evidentiary hearings, that no cross-subsidization between monopoly public message and specialized services would take place in the development, manufacture, installation, or operation of such facilities." There are also the factors of whether innovative planning by AT&T would be inhibited by its existing terrestrial facilities and services, and whether the expansion of the dominant terrestrial carrier into the satellite field at this time would pose a substantial constraining factor for other potential common carrier entrants in deciding whether to develop system proposals, the kinds of systems that will be proposed, and the types of services and markets that can be developed. Applicants and other interested persons are requested to comment on the question of whether the public interest would be better served by authorizing domestic satellite facilities to AT&T without restriction as to the type of service, authorizing facilities limited to public message service, following the procedure recommended by the Executive Branch, or confining AT&T's participation, for an initial period, to leasing satellite channels in systems established by others.

5. Comments should also address the proposed policies relating to interconnection and access to earth stations (paragraph 27 of the Report and Order), and the question of procurement in the domestic communications satellite field (paragraph 28).

6. Applicants for domestic communications satellite systems are requested to submit comments on the foregoing matters in conjunction with their applications. As stated in the Report and Order (paragraph 30), the Commission will give public notice of a cut-off time for the filing of applications to be considered initially. When such cut-off date is established, the Commission will by further order specify a time for the filing of reply comments by applicants and comments by other interested persons. After consideration of such comments and reply comments, the Commission may request additional comments directed to particular issues. 7. Authority for the proposed rule making instituted herein is contained in Sections 1, 2, 3, 4 (i) and (j), 214, 301, 303, 307-309, and 403 of the Communications Act of 1934 and Section 102 (d) of the Communications Satellite Act of 1962.

8. In reaching its decision in this matter, the Commission may take into account any other relevant information before it, in addition to the comments invited by this Notice. In accordance with the provisions of Section 1.419 of the Commission's Rules and Regulations, an original and 14 copies of all comments, replies, pleadings, briefs, or other documents filed in this proceeding shall be furnished to the Commission.

FEDERAL COMMUNICATIONS COMMISSION

Ben F. Waple Secretary

MEMORANDUM FOR

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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:

ECCNCMIC

- 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 satellito 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 breadband satellite channels (transponders), whereas the total operational capacity of all proposed systems would be 336 transponders, with additional back-up capacity of 252 transpondars.

- 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 be 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.

SIGNED

Walter R. Hinchman Assistant Director

Attachments

WRHINCHMAN:dc DO Records DO Chron Mr. Whitehead -2 Dr. Mansur Subj.

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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. Gwen paper: Cross Subsidies in Common Carrier Faciliti
D. Hatfield paper: "Domestic Satellite Orbit/Spectrum Util."

Clay T. Whitehead

From:	Anderson, Courtney (DeMint) [Courtney_Anderson@demint.senate.gov]		
Sent:	Tuesday, September 13, 2005 8:18 PM		
To:	LSockett@aol.com		
Cc:	Clay T. Whitehead		
Subject:	RE: Paper Topic for Communications Policy and Law Class		
Attachments: Paper Proposal.doc			

PAPER PROPOSAL ON MULTICAST MUST CARRY – A NEW DIGITAL TV ERA, SAME OLD POLITICS?

In 1992, Congress passed the Cable Television Consumer Protection and Competition Act which required cable TV providers to transmit to their subscribers the local broadcasters' "primary" signal. The rationale for this regulation was that given cable's predominance in the marketplace, mandatory "must carry" privileges were necessary to sustain the viability and quality of local broadcasting.

The cable industry fought this regulation. They argued mainly that must carry was an unconstitutional "taking" under the 5th Amendment. After a five-year legal battle, a bare majority of the Court in *Turner Broadcasting System, Inc. v. FCC* upheld cable's first amendment protections under the law, but failed by a slim majority (5-4) to strike down the "must carry" mandate.

Meanwhile, the Telecommunications Act of 1996 gave each incumbent broadcaster 6 MHz of digital spectrum in a deal to transition to digital television. The rationale for this amount was to allow the broadcasters to do High Definition (HDTV) broadcasts, which required a full 6 MHz of spectrum. However, the broadcasters quickly discovered that the digital spectrum enabled them to broadcast up to 6 streams of content (6 channels). Now that Congress is moving forward with legislation to set a hard date for the return of the analog spectrum, the Broadcasters are asking Congress to expand the must carry regime to go beyond the mandatory carriage of just the "primary signal" and require cable operators to carry all six of the broadcasters' digital signals.

As Congress is poised to act on this request in the near future, my paper will explore how the politics and policy of the 1992 must carry law have affected the DTV transition and the development of video services in the United States. My paper will also attempt to address questions such as does broadcasting really depend on must-carry, or is asking for additional must carry rights just a way to establish a better template for future negotiations? Will multicast must-carry result in more quality local programming, as the broadcasters promise, or more home shopping networks, paid programming, reruns, and duplicative weather channels? Based on the rational of the 1992 Act and the Turner case, if the Turner case were decided in today's environment, would the court reach the same decision?

From: LSockett@aol.com [mailto:LSockett@aol.com]
Sent: Thursday, September 08, 2005 7:02 PM
To: eanders2@gmu.edu
Cc: tom@cwx.com
Subject: Paper Topic for Communications Policy and Law Class

Courtney -- We didn't receive a paragraph re your paper topic this week. I recall from my notes that you were thinking of doing something about rural telephone companies, perhaps a case study of the company that's bringing service to native villages in Alaska. Alternatively you were considering the topic of whether there should be must carry or multicasting rules in the digital broadcast era.

Have you thought about these topics any more and/or decided between them? I think either topic would make a good paper. The first topic may be more novel and would require more company-specific research. There is already a lot that has been written on the second topic, but that's fine -- you would learn a lot and you could come up with your own views.

Did you want to send an informal paragraph with your thoughts re those topics to Prof. Whitehead and myself so we can give you our comments before your 2-4 page paper proposal is due in class next Wednesday?

I'll wait to hear from you. I imagine you've been busy this week with your job. Take care.

Lisa Sockett 703-358-9255 70-NATIONAL JOURNAL 1/31/70 p. 228

Federal Communications Commission

White House proposes commission permit satellite competition

The domestic satellite issue – a multimillion-dollar sleeper for the last four years – is on the verge of resolution.

The White House has recommended that any corporation or group with enough money be allowed to establish a domestic satellite system, with a minimum of regulation by the Federal Communications Commission (FCC).

The final decision on who will be allowed to operate a domestic satellite system rests with the seven FCC commissioners. The Communications Satellite Corp. (Comsat) and American Telephone and Telegraph Co. (AT&T), both subject to FCC regulation, have high stakes riding on the commission's decision. The television networks, airlines (which maintain a constantly changing list of reservations across the country) and computer sharing companies are major potential customers for or operators of a domestic satellite system. (See satellite box.)

Presidential study: On Jan. 26, the White House recommended that the FCC act immediately to open the field of domestic satellites to competition among private and governmental entities, rather than grant a monopoly to a single corporation. The recommendation is the result of a domestic satellite study begun last fall. (For make-up of study group, see hox.) It came in a memorandum signed by Presidential assistant Peter M. Flanigan, which encouraged the FCC to minimize "unnecessary regulatory and administrative impediments" to satellite development and to foster "innovation and flexibility within the communications industry." The FCC, it asserted, should exercise its regulatory powers over satellite owners only to guard against antices julies prioti m sich as diser and the parts the state of a state of the state of the y ferral the proceeding from the market over which the system eviter has a monopoly-for example, telephone service.

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No mention was made in the memorandum of providing free satellite service to educational television.

Johnson task force: The recommendations of the Nixon White House are in striking contrast to an earlier task force report which suggested that Comsat alone be authorized to establish a pilot domestic satellite system. The report was ordered but never endorsed by President Johnson. The Johnson task force recommendation, however, is understood to be the same as the position informally adopted by the FCC and submitted to the White House in early 1969.

Satellite Parking Places

Communications satellites occupy space about 23,000 miles above the equator. There are now six commercial communications satellites in orbit around the earth for international use. Because of their position, they revolve in an orbit at the same speed as the earth revolves on its axis, and they therefore maintain a fixed location in relation to the earth's surface. Small jets affixed to each satellite can be triggered from earth to correct a wandering satellite's course.

The "parking space" for satellites above the equator is limited. FCC Chief Engineer William H. Watkins says that there are only 16 so-called "slots" from which a communications satellite can serve the 48 contiguous United States. Only the westernmost five can accommodate service to Alaska. Some of these 16 slots are considered desirable by other countries for their own domestic use.

Watkins said that although there is a limit to the number of satellites which can be put up, shortage of space is not a drastic problem and should not be turned into an international "political football."

Ground facilities called earth stations are used to send and receive satellite signals. Under FCC regulations, U.S. earth stations for international use are half-owned by Comsat and half-owned by common carriers in proportion to their use. FCC rules do not permit even partial ownership of curth stations by private esers. A rev. - A of earth Station UNINGS 10. BUNG. 28. 10 MIL. under any or the court orders.

Comsat: Currently faced with a diminishing of power on the international front (see Comsat box), Comsat now confronts the spectre of unlimited competition on the domestic scene. A sharp drop in the value of Comsat stock-down 6.75 points after release of the White House statement and still falling the next week-reflects a blow to public confidence in the corporation. Comsat has invested an estimated \$100 million in technology for a domestic satellite.

By placing Comsat on an equal footing with other carriers and private corporations, however, the White House recommendation would absolve Comsat's domestic system from the rules set up by the FCC for its international systems. For example, it would allow Comsat to lease circuits directly to satellite users. Under present FCC rules, circuits may be leased only to other common carriers who release them at a profit.

Current rules on earth station ownership would also be subject to change. William L. Miller, director of domestic services at Comsat, told the National Journal that his organization thinks that Comsat should continue to own and operate earth facilities which have the capability to both receive and transmit signals. Comsat is relatively open, he said, to user ownership of receive-only stations.

Despite the White House memorandum. Comsat continues to contend that legislation would be needed for any other entity to enter the field of satellite communications. A Comsat official told the National Journal that the corporation will continue to press this position in filings to the FCC

AT&T: H.I. Romnes, board chairman of AT&T, said Jan. 26 that his corporation welcomed the White House recommendation and plans to apply to the FCC for permission to use satellites to fill out its domestic communications network. On Dec. 18, before the House Science and Astronautics Subcommittee on Space Sciences and Applications, an AT&T vice president testified that the "economics of satellites for domestic uses are not attractive at present" because of a decline in the cost of land communications.

A spolesr an for AleT tole the Votional Journal that bla serper i in persues any half technic country is to be fits from satellite use. He said that the high cost of satellites will offset increased profits from diminishing land-line costs.

In mid-October, AT&T adopted a corporate position on domestic satellites very similar to the White House recommendation. In 1966, AT&T had argued that only Comsat was authorized by law to own a satellite system and that only Comsat and common carriers could own the land stations which receive and transmit satellite signals.

An official in the FCC's common carrier bureau said that AT&T probably stopped supporting Comsat's lone role in satellite communications because of the growth in competition between the two corporations. Although AT&T was a pioneer in satellite communications with its Telstar satellites and currently owns 29 per cent of Comsat, the corporation is committed to cable for the bulk of its domestic common carrier service.

Television network: The three major broadcasting networks have welcomed the White House recommendation, which would allow them to set up their own system for television interconnection. The White House mem-

Study Group

President Nixon's domestic satellite study group was coordinated by Clay T. Whitehead, an electrical engineer, former consultant to the Rand Corp. and the Budget Bureau, now staff assistant to Peter M. Flanigan. Other White House staff working with the group were Flanigan, his administrative assistant Jonathan C. Rose and William E. Kriegsman, another staff assistant.

The following government agencies were represented at group meetings: Office of Science and Technology Council of Economic Advisers Budget Bureau Office of Telecommunications Management Federal Communications Commission Justice Department National Aeronautics and Space Administration. Commerce Department Port Office Penarament for a second a superiment Superal for many and space .

Council

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Comsat: A Carrier's Carrier

The Communications Satellite Corp. (Comsat) is a corporation *ex* machina, created in 1962 by Act of Congress (PL 87-624) to handle the growth of commercial space-age communications for the United States on the international scene.

Sixty-three per cent of Comsat's 10,000,014 shares are held by public stockholders. The remaining 37 per cent of shares are owned by common carriers. The following are major common carrier stockholders in Comsat and their percentage of interest: American Telephone and Telegraph (AT&T)-29 per cent; General Telephone and Electronics Corp. - 3.5 per cent; Radio Corp. of America World Communications Inc. - 2.5 per cent; International Telephone and Telegraph World Communications Corp. - 1 per cent.

Comsat began to show an operating profit in 1968, but stockholders have yet to receive a dividend.

Since 1964, Comsat has been both major owner and manager of the International Telecommunications Satellite Consortium (Intelsat). Intelsat is a profitmaking organization made up of 70 nations to develop a global communications network.

Present operating arrangements for Intelsat-under which Comsat, with 53 per cent interest in the system, has absolute veto power and as manager handles most construction contracts-have been challenged by other members of the consortium, including the United Kingdom, France and Canada. Comsat officials predict a diminishing ownership of Intelsat by Comsat and a corresponding loss of control over the system.

As a "carrier's carrier," Comsat is subject to strict control by the Federal Communications Commission (FCC), and the corporation has often complained of over-regulation. Comsat has not won widespread popularity at the FCC. A former FCC commissioner characterized Comsat as "uncooperative" in comparison with AT&T, a sentiment echoed by members of the FCC staff.

Comsat's biggest customer and most influential stockholder is AT&T. The common carrier stockholders of Comsat currently elect four members to the corporation's 15-member board of directors. Two of Comsat's present directors are top AT&T officials; one is Harold M. Botkin, an assistant vice president of AT&T, and the other is AT&T Vice President and General Counsel Horace P. Moulton. A third Comsat director is James E. Dingman, a former vice chairman of the board of AT&T. Speaking of AT&T's influence, one Comsat official said, "If they don't give us traffic, we'll go broke."

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ECCNCMIC

- 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 satellito 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 breadband satellite channels (transponders), whereas the total operational capacity of all proposed systems would be 336 transponders, with additional back-up capacity of 252 transpondars.

- 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 be 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.

SIGNED

Walter R. Hinchman Assistant Director

Attachments

WRHINCHMAN:dc DO Records DO Chron Mr. Whitehead -2 Dr. Mansur Hubj.

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. Gwen paper: Cross Subsidies in Common Carrier Faciliti
D. Hatfield paper: "Domestic Satellite Orbit/Spectrum Util."



VOLUME THIRTY-SIX, NO. 11, March 16, 1970

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WHITEHEAD 'CLARIFIES' WHITE HOUSE DOMESTIC SATELLITE POLICY STATEMENT IN ADDRESS TO EIA MEETING; 'USER' AND 'SUPPLIER' DISTINCTION STRESSED

In a "clarification" of the White House policy statement on domestic satellite communications service, Dr. Clay T. Whitehead last week emphasized a distinction between a "joint user" and a "joint supplier" of such a service.

Dr. Whitehead, who played a major role as a member of the White House staff in the development of the policy statement (TELECOMMUNICA-TIONS, Jan. 26), referred to the difference between a user and a supplier, in the view of the White House, in a luncheon address Tuesday, March 10, to the spring conference in Washington of the Electronic Industries Association.

Later, in response to some questions on the point, he said no problem could be seen in a number of users of communications services getting together and employing a specialized system. But, if two or more suppliers--for example, the American Telephone & Telegraph Co. and the Communications Satellite Corp.--joined in providing satellite services, then antitrust aspects could be raised that would come under the scrutiny of the Justic Department, he declared.

In a further explanation, he said that there would be no problem if AT&T, instead of putting up its own system, leased circuits from a system furnished by Comsat in order to provide public message telephone service. But, Dr. Whitehead stated, AT&T could not lease circuits from a Comsat system that would be used in furnishing the telephone company's private line services.

The policy outlined by the White House in its domestic satellite statement, Dr. Whitehead declared, seeks to avoid long, drawn-out evidentiary hearings before the Federal Communications Commission. In short, he stated, "you apply (for a satellite system) if you have the dollars and a good proposal, and you get approval. Under our proposal, there would be no such thing as competing applications."

The White House official emphasized that the statement does not recommend that common carriers be excluded from having a satellite system, but if a carrier proposed to offer a specialized service, then it would recommend an evidentiary hearing.

During last week's conference, Robert W. Galvin, Chairman of the Board of Motorola, was presented the EIA Medal of Honor for his "outstanding contribution to the advancement of the electronics industry." John L. Wheeler, of the Xerox Corp., was given a special citation for his leadership in the data transmission field. More than 500 electronic industry executives participated in the March 9-12 conference. -EndBefore the FEDERAL COMMUNICATIONS COMMISSION Washington, D.C. 20554 FCC 70-307 46002

In the Matter of)		
Establishment of Domestic Communication-Satellite	~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~	Docket No.	16495
Facilities by Non-governmental Entities.	5		

NOTICE OF PROPOSED RULE MAKING

Adopted: March 20, 1970 ; Released: March 24, 1970

By the Commission: Commissioners Robert E. Lee and Johnson concurring in the result; Commissioner Cox concurring in part and dissenting in part and issuing a statement which is attached to Report and Order (FCC70-306)issued simultaneously herewith.

1. Notice is hereby given of proposed rule making in the above-entitled matter.

2. On March 2, 1966, the Commission instituted an inquiry in Docket No. 16495 to explore various questions associated with the possible authorization of domestic communications satellite facilities to non-governmental entities. Notice of Inquiry, 31 Fed. Reg. 3507; Supplemental Notice of Inquiry, October 20, 1966, 31 Fed. Reg. 13763. In its Report and Order in Docket No. 16495 adopted on March 20 , 1970 (FCC 70-306), the Commission decided to entertain applications for the authorization of domestic systems. In order to facilitate expeditious action on the applications and prompt attainment of the potential benefits of the satellite technology in the domestic field, the Commission further decided to keep open the proceedings in Docket No. 16495 and to incorporate a notice of proposed rule making. The rule making concerns the policies to be followed in the event of technical or economic conflicts between applications (Report and Order, paragraphs 23-24), the appropriate initial role of AT&T in the domestic satellite field (paragraphs 25-26), procurement policies (paragraph 28), and access to earth stations (paragraph 27).

3. We discussed in general terms some of the possible areas of conflict, stating (paragraph 23 of the Report and Order):

Technical conflicts may arise in such areas as proposed orbital locations and frequency usage. Moreover, in the course of coordinating earth stations with terrestrial systems it may prove impossible in some instances to accommodate earth stations at desired sites without some adjustment in the frequencies and routes of terrestrial systems or other measures to avoid interference. Also, arguments of economic incompatibility may be raised, posing questions as to the proper effectuation of the Commission's responsibility under Section 1 of the Communications Act to exercise its regulatory functions in such a manner as to make communications services "available, so far as possible, to all people of the United States * * * "

It is not practicable to specify now, in advance of the submission of applications, the precise aspects that may require policy determinations by rule. Some potential conflicts may be evident to applicants in the course of preparing applications. Others may not become apparent until all of the initial applications have been filed. The purpose of this Notice is to set forth the subject matter and issue to which parties are to focus--namely, the technical or economic conflicts, if any, which exist or may arise between applicants in this area, and what policies are called for in light of any claimed conflicts. In this way, the Commission will be in a position to adopt rules, reflecting its policy determinations, to resolve any such conflicts, if it appears that this procedure would be the one best conducing "to the proper dispatch of business and to the ends of justice" (Section 4 (j) of the Communications Act).

4. Comments are also requested on what initial role of AT&T in the domestic satellite field would be appropriate in order to achieve a market environment conducive to innovation and the vigorous exploration and development of the special communications service potentials of the satellite technology. The discussion of this matter at paragraphs 25-26 of the Report and Order may be summarized briefly as follows: A question has been raised by the Executive Branch as to whether AT&T might discourage or foreclose

entry by others into its special service markets through a policy of inter-service subsidy. The memorandum of the Executive Branch recommended that facilities to be used by AT&T for specialized communications services "should be authorized only after a determination by the Commission on each application, based on public evidentiary hearings, that no cross-subsidization between monopoly public message and specialized services would take place in the development, manufacture, installation, or operation of such facilities." There are also the factors of whether innovative planning by AT&T would be inhibited by its existing terrestrial facilities and services, and whether the expansion of the dominant terrestrial carrier into the satellite field at this time would pose a substantial constraining factor for other potential common carrier entrants in deciding whether to develop system proposals, the kinds of systems that will be proposed, and the types of services and markets that can be developed. Applicants and other interested persons are requested to comment on the question of whether the public interest would be better served by authorizing domestic satellite facilities to AT&T without restriction as to the type of service, authorizing facilities limited to public message service, following the procedure recommended by the Executive Branch, or confining AT&T's participation, for an initial period, to leasing satellite channels in systems established by others.

5. Comments should also address the proposed policies relating to interconnection and access to earth stations (paragraph 27 of the Report and Order), and the question of procurement in the domestic communications satellite field (paragraph 28).

6. Applicants for domestic communications satellite systems are requested to submit comments on the foregoing matters in conjunction with their applications. As stated in the Report and Order (paragraph 30), the Commission will give public notice of a cut-off time for the filing of applications to be considered initially. When such cut-off date is established, the Commission will by further order specify a time for the filing of reply comments by applicants and comments by other interested persons. After consideration of such comments and reply comments, the Commission may request additional comments directed to particular issues.

7. Authority for the proposed rule making instituted herein is contained in Sections 1, 2, 3, 4 (i) and (j), 214, 301, 303, 307-309, and 403 of the Communications Act of 1934 and Section 102 (d) of the Communications Satellite Act of 1962.

8. In reaching its decision in this matter, the Commission may take into account any other relevant information before it, in addition to the comments invited by this Notice. In accordance with the provisions of Section 1.419 of the Commission's Rules and Regulations, an original and 14 copies of all comments, replies, pleadings, briefs, or other documents filed in this proceeding shall be furnished to the Commission.

FEDERAL COMMUNICATIONS COMMISSION

Ben F. Waple Secretary

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WHITEHEAD ON DOMESTIC SATELLITES

I want to talk about some of the practical aspects of the President's domestic satellite proposals. When we initiated this project we did not think that it was necessary for us to attempt to fit our policies and our projections within some well defined legal niche. The administrative process should be flexible enough to meet this need. As to re-writing the code of Federal Regulations, I'll gladly leave that to those who profess greater expertise in the area. At the same time, we did propose a policy approach towards regulation of domestic satellite communications which, does meet the Commission's broad statutory mandate to "make available, so far as possible, to all people of the United States, a rapid, efficient, Nation-wide and world-wide wire and radio communications service, with adequate facilities at reasonable charges" (47 U.S.C. §151). Fundamentally, we view the role of the FCC in this area more as one of the spectrum allocator, rather than as a detailed economic supervisor as has been the case particularly in the telephone industry. This is an appropriate role, regardless of whether one looks to the 1962 Satellite Act or the 1934 Communications Act. Under both Acts, the

legal standards are pretty much equivalent. <u>1</u>/ The courts have stressed the FCC's general - and flexible - authority to regulate communications services. CATV is a clear case in point. The Supreme Court's <u>Southwestern Cable</u> strongly suggests that if in the over-all field of communications, the Commission can, if it has the will, find the legal means to regulate.

The President's proposal stresses competition - rather than the Commission - as the principle economic regulator in this field, so long as spectrum is available. This idea that competition should play such a role in communications is hardly novel. The Supreme Court made it in the 1958 <u>R.C.A.</u> case. The same view was proposed in the course of the 1962 Comsat legislation. Later, it reappeared in the Commission's own decision, such as <u>Microwave Communications</u>, Inc.

Accordingly, we hope the FCC would adopt a simple procedure here to deal with domestic satellite applications. An applicant (other than a carrier) should be allowed to file a complete description of his proposed system and the spectrum space that would be required. If the spectrum is available and is not needed for other immediate use,

^{1/} Section 102(d) of the 1962 Act just requires a showing that domestic communication satellite systems to demonstrate that their proposed services are "required in the national interest", (47 U.S.C. \$701(d) while Section 303, the 1934 Act demands only a showing of "public convenience interest, or a necessity", (47 U.S.C. \$303).

the Commission should grant the license. The private benefit to the applicant seems sufficient justification for such approval provided no other potential user is being foreclosed from necessary spectrum (cf. 47 CFR §21.26). I would point out that licenses can be issued for a period of no more than five years (as with domestic microwave, 47 CFR §21.32).

This simplified approach is made possible by the peculiar characteristics of domestic satellite systems. Such systems are expensive. They will not be built by "amateurs." It is highly unlikely that any person lacking substantial financial backing would ever apply for a system, let alone build it. And those willing to risk the substantial capital to embark on this system can be to make a fairly complete study of the benefits of such a system. In sum, it's highly unlikely that a mob of prospective applicants would flood the Commission with a wave of applications exceeding all spectrum and orbital space. Of course, if 25 asked for space and there were room for only 16, some revision might be needed; either the technical standards could be raised for **course** earth stations, or some rationing of spectrum would have to be undertaken.

However, I would stress that such a situation remains very unlikely so long as the cost of entry is in the \$100m. range.

The main point remains: the Commission should not embark on an evidentiary hearing minutely examining the potential impact of a satellite proposal upon common carrier revenues in this area. <u>MCI</u> dragged on for years, and so would individual satellite applications, if such a traditional approach were used. Let me stress that the common carriers themselves have conceded that revenues for television distribution the main immediate satellite service - represent only a very small part of their total picture.

The situation may have to be different when a common carrier applies for a satellite authorization. Carriers are subject to the comprehensive regulatory scheme under Section 201 of the 1934 Act (47 U.S.C. §201), barring discriminatory and other practices. Therefore, it may be necessary when a common carrier such as A.T.&T. applies for a license to launch a domestic satellite system, to have some sort of hearing to determine that the system is economic, rather than predatory, in nature and effect. Section 214 provides just such control over carrier construction. This simply reflects the fact that a communications common carrier is a special type of company, with a great opportunity to subsidize satellite or other services out of its basic rate base revenues.

Some hearing might be necessary to deal with the special competitive problems inherent in such a joint user arrangement proposal - for example, among television networks. Such a hearing would have a very

limited purpose - namely, to make sure that others in the business (e.g., CATV networks) had access to the system on the same terms as the original applicants.

At the same time, it would be highly undesirable for the entire licensing of domestic satellite systems to be stalled while the Commission, at its leisure, considered the special problems inherent in applications from common carriers or joint ventures. Other applications should be granted while these hearings go forward. As I stressed earlier, we visualize the initial role of the FCC in the domestic communications satellite field as a spectrum allocator rather than a detailed e conomic regulator.

Our general approach is consistent with the needs of a rapidly advancing art. In the first place, the type of decision-making we would require of the FCC would be much more rapid than traditional regulatory methods. Secondly, it would leave the door open to any potential innovator; he who is willing to risk his capital would be reasonably confident of getting FCC authorization. Unlike M.C.I., he would not be faced with a long, costly and uncertain legal effort to deter him from making the effort in the first place. Where frequency space is genuinely scarce, then some careful rationing may regrettably - be necessary. On the other hand, where spectrum space is available, new, imaginative and

innovative uses should be encouraged - free of bureaucratic fetters.

This is one reason why we proposed that our competitive approach towards domestic satellites be implemented only for a trial period of three to five years. During this time, we would allow those who, under liberalized licensing procedure had received licenses, to operate as free as possible from all regulatory restraints. At the end of this trial period, the results can be considered and any needed changes made in the light of then existing spectrum demands.

To conclude, let me stress that our immediate major concern is that a domestic satellite system be <u>launched</u> not just <u>considered</u> - as rapidly as possible. The lawyers and regulators have had their day - for five long years now let's let the satellite operators have theirs. We can all do without another five years of minute consideration of all the possible permutations and combinations made possible by traditional regulatory policy and procedures.