

ORIGINAL

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

**ORIGINAL
FILE**

In the Matter of a Request by)
)
COMMUNICATIONS SATELLITE CORP.)
)
For a Waiver to Provide Services)
Via the INTELSAT K Satellite)

File No. I-S-P-92-004
RM-7931

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MAR 27 1992

Federal Communications Commission
Office of the Secretary

OPPOSITION OF
GE AMERICAN COMMUNICATIONS, INC.

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March 27, 1992

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Summary of Position

GE American Communications, Inc. ("GE Americom") opposes the request by the Communications Satellite Corp. ("COMSAT") for a repeal and interim waiver of Section 25.131(J)(1) of the Commission's Rules in order to permit domestic unregulated receive-only antennas to receive signals from INTELSAT K.

The Commission only recently determined to continue its long-standing policy that the use of unregulated antennas as proposed by Comsat should not be permitted. COMSAT's request adds no new factors to modify the Commission's position. In addition, COMSAT has failed to carry its burden to demonstrate that a waiver would be in the public interest by reason of special circumstances. There are serious and far-reaching consequences to allowing unregulated antennas to receive signals from INTELSAT K. The special and complex issues which arise from such use should be considered in a notice-and-comment rulemaking. In the meantime, users of unregulated receive-only antennas can receive signals carried to the U.S. on INTELSAT K without the need for the waiver requested by COMSAT.

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In this matter, Communications Satellite Corporation ("COMSAT") has applied for repeal of Section 25.131(J)(1) of the Commission's rules, which provides that receive-only earth stations operating with INTELSAT satellites must be licensed under section 309 of the Communications Act.¹ Pending such

¹ Section 25.131 provides, in pertinent part:

(a) Except as provided as provided in paragraphs (b) and (j), applications for a license for a receive-only earth station shall be submitted on FCC Form 493, accompanied by any required exhibits.

. . . .

(J) Receive-only earth stations operating with:

- (1) INTELSAT space stations;
- (2) international space stations; or
- (3) U.S. domestic and non-U.S. space stations for reception of service from other countries

(footnote continued page 2)

rulemaking, COMSAT requests a waiver of such rules, which relief it contends is necessary for television receive-only (TVRO) antennas to receive services from INTELSAT K. GE Americom opposes such requests.

Comsat Has Failed to Justify Repeal of the Rule

COMSAT acknowledges that, in Revisions to Part 25², the Commission deferred the question of delicensing receive-only earth stations when they are used to receive transmissions from INTELSAT, Mexican and Canadian satellites, and satellites licensed under the Commission's Separate Systems policy.³ As the Commission stated: "The record before us is insufficient to decide whether and under what conditions current licensing requirements may be relaxed consistent with international obligations."⁴ It added "further review of this issue may be desirable in a separate rulemaking."⁵ COMSAT has added nothing

(footnote 1 continued)

shall file an FCC Form 493 requesting a license for such station. Receive-only earth stations used to receive INTELNET I services from INTELSAT space stations need not file for such licenses.

² Amendment of Part 25 of the Commission's Rules and Regulations, 6 FCC Rcd 2806 (1991).

³ Petition for Repeal and, In the Interim, for Waiver ("Petition") at 3.

⁴ 6 FCC Rcd at 2808 (footnote omitted).

⁵ Ibid.

more to the record on this issue than was before the Commission in Revisions to Part 25. Furthermore, GE Americom understands that Chairman Sikes has requested the staff to draw up plans on this subject, which request may culminate in a notice of proposed rulemaking.⁶ Thus there will likely be a full opportunity for COMSAT and other interested parties to cure the insufficiency in the record that was before the Commission in Revisions to Part 25.

COMSAT Has Failed to Make the Requisite Showing
for Obtaining a Waiver of the Rule

The Commission requires that an applicant seeking a waiver of a Commission rule must make a compelling public interest showing as to why it should not be subject to such a rule.⁷ Where, as here, an applicant "proposes a use inconsistent with an existing licensing scheme, the standard for a waiver is a high one"⁸ because the Commission has no means of control over foreign programmers except through its licensing authority. In this case, the existing regulatory scheme -- namely, that antennas used to receive INTELSAT signals must be licensed -- is hardly new but is firmly established, having been in place for

⁶ "Telecommunications Reports," Vol. 58, No. 11 at 41 (March 16, 1992).

⁷ Storer Broadcasting System, 49 FCC 2d 1011 (1974).

⁸ Arizona Western College, 6 FCC Rcd 7476, 7476 (Pr. Radio Bur. 1991).

more than ten years.⁹

The court of appeals described the function of a waiver as a "safety valve procedure for consideration of an application for exemption based on special circumstances"¹⁰ and cautioned that it did not contemplate that "an agency must or should tolerate the evisceration of a rule by waivers."¹¹ Even apart from a potential rulemaking on this issue, it is clear that COMSAT has not, and indeed can not, satisfy the burden of showing that the waiver requested is a necessary "safety valve" exemption "based upon special circumstances" rather than an "evisceration" of the rule at issue here.

In attempting to support such a waiver, COMSAT argues that to allow unlicensed receive-only antennas to receive transmissions from INTELSAT satellites would put such antennas on a parity with unlicensed antennas receiving signals from domestic satellites.¹² Beyond being a direct attack on the rule itself, this assertion overlooks a number of factors, not the least of which is that in many countries authorities restrict the use of TVROs exclusively to INTELSAT. For example, COMSAT states that

⁹ Such a restriction was first imposed in Reregulation of Receive-Only Domestic Earth Stations, 79 FCC 2d 205, 219 n. 27.

¹⁰ WAIT Radio v. FCC, 418 F. 2d 1153, 1157 (D.C. Cir. 1969).

¹¹ Ibid. at 1159.

¹² Petition at 5.

the European Economic Community already permits unlicensed receive-only earth stations to access INTELSAT¹³ but does not also mention that these same earth stations can not be used to access the television transmissions of U.S. satellites that might wish to compete with INTELSAT.

In net effect, therefore, the grant of the waiver requested by COMSAT would provide it the right to use INTELSAT facilities to compete against domestic satellite operators in the emerging U.S. direct-to-home market, at the same time that U.S. satellite operators are being denied the reciprocal opportunity to compete with INTELSAT in other countries. Even though COMSAT may lack the power to transform the international communications policies of other countries, this lack of reciprocity is a factor that must be weighed heavily against COMSAT's request to handle this question merely by waiver.

Beyond this, it is not clear COMSAT has restricted its waiver request to the use of unregulated antennas to receive programming uplinked to INTELSAT K from overseas. COMSAT may also be contemplating the use of this satellite to transmit programming to unregulated antennas uplinked by domestic programmers. Allowing INTELSAT to compete directly with U.S. carriers in this manner would radically transform the role of COMSAT from that of a supplier of INTELSAT space segment into a full-fledged competitor in the emerging U. S. direct-to-home

¹³ Petition at 4.

market and would permit it to use international government-supported facilities to unfairly subsidize this expansion into the U.S. market. Even if the latter use of INTELSAT K is not intended, COMSAT's request to use unregulated antennas to receive overseas programming in the U.S. through a simple waiver goes beyond a request for a "safety valve. . .exemption based upon special circumstances" but reflects COMSAT's fundamental disagreement with the Commission's policy, affirmed most recently by Revisions to Part 25, that unregulated antennas should not be allowed to receive international programming.

COMSAT's Request Involves Serious and Complex
Matters Which Cannot Properly be Resolved by the
Grant of a Waiver

The alteration of the respective roles of COMSAT and INTELSAT, implicit in COMSAT's request, raises a number of extremely serious and complex questions. If a waiver is granted, the consequences would be extremely difficult to undo in the event that the Commission, upon full consideration in a rulemaking, reaches a contrary conclusion. For example, it is not clear whether the Commission could terminate continued receipt of the programming through unlicensed antennas, since the absence of a registration program for such devices limits the Commission's means of notifying owners of receive-only antennas. Even if the Commission could prohibit unlicensed antennas from receiving INTELSAT K programming, this action would create serious disruption in the market. Users of unregistered antennas would find their programming abruptly terminated, without any

means of replacing it. It is not clear how, if at all, the Commission would remedy this situation. The grant of a waiver, therefore, would seriously prejudice the outcome of a rulemaking, where these issues would be fully examined.

Apart from the fact that the grant of a waiver here would be very difficult to undo, the far reaching questions raised by COMSAT's request are the very sort that require measured and deliberate consideration in a notice-and-comment rulemaking, even more so than the previous revisions to Part 25. Licensing requirements implicate a broad and complex range of communications policies, including U.S. treaty obligations (especially under Article XIV(d) of the INTELSAT Agreement); the effect on investment in domestic satellites now and in the future and, more fundamentally on expansion of the U.S. satellite industry; and COMSAT's special status as the U.S. provider of INTELSAT capacity. In addition, because some programming delivered by INTELSAT K may be uplinked in overseas countries beyond the Commission's jurisdiction, the Commission must determine how (if at all) it can fulfill its Title III mandate in a completely unregulated environment to police and correct violations of the Communications Act based upon the content of programming where such programming is uplinked from outside the United States.

Underlining the necessity for a rulemaking in this instance is the need for the Commission to evaluate the impact that the

relief sought by COMSAT would have on the use of receive-only antennas to receive signals from Canadian and Mexican satellites, as well as satellites operating pursuant to the Commission's Separate Systems policy.¹⁴ To allow deregulated receive-only antennas to receive signals from these satellites raises a separate and different host of issues that require equally deliberate and careful consideration. The use of a waiver in this situation would single out INTELSAT K for favorable treatment vis a vis other international satellites and would require the Commission to craft an environment where receive-only antennas were unregulated for the purposes of some international satellites but would be required to be licensed for the purpose of others. While a workable dual status for receive-only antennas might properly emerge as a result of the processes involved in a rulemaking,¹⁵ the issues are far too complex to be properly evaluated outside of that context.

Even if it is an appropriate decision as a matter of policy to permit COMSAT to engage in the direct-to-home distribution of domestic programs, the practical result of that decision must be carefully evaluated to prevent unwarranted economic discontinuities. To cite only one example, the implementation of that decision would almost certainly require that special

¹⁴ COMSAT acknowledges that these questions should also be considered. Petition at 3 n.7.

¹⁵ For example, television receive-only antennas can receive signals from domestic satellites but not from international satellites.

precautions be taken to ensure that domestic carriers, their employees and stockholders, are adequately protected against abuse of competition through the use of subsidized rates supported by COMSAT's monopoly operations and the involvement of foreign governments in INTELSAT.

The Deregulation of INTELNET 1 Antennas
Does Not Justify a Waiver Here

COMSAT's reliance upon the Commission's decision in Equatorial¹⁶ as justifying an extension of the exception created in that case is considerably misplaced. In the first place, the authority granted to Equatorial was not in the form of a waiver and, unlike the situation here, did not require the repeal of any regulations. In Equatorial, the Commission granted Equatorial a declaratory ruling that existing Commission law and regulations permitted it and other users to use unlicensed antennas in connection with INTELNET I data services. Equatorial did not involve broad authority to broadcast signals direct to the home. The Commission was careful to note in Equatorial that INTELNET I signals use technology that would turn on the addressed antenna for data intended for it and turn it off when another terminal was addressed, thereby limiting the use of the terminal to precisely authorized services. And the Commission made clear that it intended its holding in Equatorial to be limited to its

¹⁶ In the Matter of Deregulation of Receive-Only Satellite Earth Stations Operating with the INTELSAT Global Communications Satellite System, Order FCC 86-214 (released May 19, 1986).

particular facts. In footnote 24, it stated:

Our decision to dispense with individual licensing of INTELNET I receive-only stations does not permit anyone without permission to aim an earth station antenna at an INTELSAT satellite. . . . The INTELSAT satellites are not broadcast satellites. . . . Authority to use the INTELNET I receive-only earth stations is, therefore, limited to customers of INTELNET I.

The waiver requested by COMSAT would transform INTELSAT K into a broadcast satellite. The limited circumstances of the Equatorial decision do not require the Commission to decide by waiver the very serious question of whether INTELSAT K is to be permitted to operate as a provider of broadcast services.

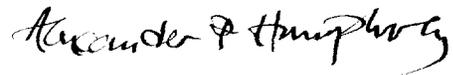
A Waiver is Not Necessary to Ensure
Provision of INTELSAT K Programming to the Public

Finally, COMSAT's claim that a waiver of the Commission's rules is the only way of allowing users to benefit immediately from INTELSAT K's direct-to-home video services¹⁷ is without merit. There is nothing in the Commission's regulations that would forbid an authorized entity from downlinking INTELSAT K signals through a properly licensed antenna and using a domestic satellite for retransmission of such signals to unlicensed TVROs. In such a fashion, domestic users of unregulated receive-only antennas can immediately obtain video programming carried on INTELSAT K without a waiver. In the interim, the Commission would have sufficient time to give due and proper consideration

¹⁷ Petition at 6.

in a notice-and-comment rulemaking to the complex and important issues raised by the instant request.

Respectfully submitted,

A handwritten signature in cursive script that reads "Alexander P. Humphrey".

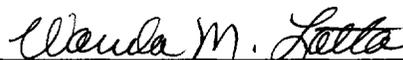
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March 27, 1992

CERTIFICATE OF SERVICE

I, Wanda M. Latta, do hereby certify that, on this 27th day of March, 1992, I have caused to be sent by first class United States Mail, postage prepaid, copies of the foregoing Opposition of GE American Communications, Inc., in the matter of a Request by Communications Satellite Corporation for a Waiver to Provide Services Via the INTELSAT K Satellite, File No. I-S-P-92-004, RM-7931, to the following:

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Wanda M. Latta