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Before the
FEDERAL COMMUNICATIONS COMMISSION 00 FCC 94-276
Washington, D.C. 20554

DISPATCHED BY

In the Matter of)
)
Review of the Pioneer's) ET Docket No. 93-266
Preference Rules)

MEMORANDUM OPINION AND ORDER

Adopted: October 24, 1994;

Released: November 3, 1994

By the Commission: Chairman Hundt and Commissioner Chong not participating.

INTRODUCTION

1. By this action, the Commission denies a petition for reconsideration of the First Report and Order (First R&O)¹ in this proceeding filed by CELSAT, Inc. (Celsat). In its petition, Celsat requests that its pending pioneer's preference request, PP-28, be considered in ET Docket No. 92-28.

BACKGROUND

2. In the Notice of Proposed Rule Making (Notice)² in this proceeding, we sought comment on whether and how the pioneer's preference rules could be amended to take into account competitive bidding and our experience administering them, or whether they should be repealed. In the First R&O, we determined that we would not apply amendments to our rules to the three proceedings in which Tentative Decisions had been issued. Celsat requests reconsideration or clarification³ of the First R&O insofar as that decision affects the inclusion or exclusion of Celsat's pioneer's preference request, PP-28, in Docket 92-28, which is one of the three proceedings in which a Tentative Decision had been issued and therefore, under the decision in the First R&O, would be considered under the existing pioneer's preference rules.

¹ 9 FCC Rcd 605 (1994).

² 8 FCC Rcd 7692 (1993).

³ See Petition for Reconsideration or, in the Alternative Request for Clarification, filed on February 15, 1994 (Petition for Reconsideration).

Celsat argues that its pioneer's preference request⁴ is pending in Docket 92-28 and therefore should be considered under the existing pioneer's preference rules.

DISCUSSION

3. The First R&O did not address whether Celsat's pioneer's preference request is being considered in Docket 92-28 and had no effect on the status of Celsat's request. However, because Celsat argues that it is uncertain as to the status of the request, we are taking this opportunity to clarify that the request has been, and remains, pending in RM-7927, the proceeding in which Celsat's companion petition for rulemaking remains under consideration.

4. Celsat states that the Commission issued a Public Notice on March 11, 1992 "in an apparent response to Celsat's [pioneer's preference] filing...[that] established April 10, 1992 as the final day for filing any additional pioneer's preference requests" in Docket 92-28.⁵ Celsat also argues that the Commission's Office of Engineering and Technology issued an Order⁶ consolidating Celsat's pioneer's preference request with five other pioneer's preference requests in Docket 92-28, and that the Commission made an initial ruling on Celsat's companion petition for rule making in the Notice of Proposed Rule Making and Tentative Decision (NPRM)⁷ in that docket.⁸

5. American Personal Communications (APC) and TRW Inc. (TRW) responded to Celsat's petition for reconsideration. APC states that Celsat's petition should either be considered in Celsat's pioneer's preference request proceeding or be treated as a request for

⁴ In the Matter of CELSAT, Inc. Request for a Pioneer's Preference Regarding its Petition for Rulemaking to Allocate Spectrum and to Establish Rules and Policies for a New Hybrid Personal Communications Network Service, filed on February 10, 1992. Celsat filed its petition for rule making (RM-7927) on February 6, 1992, and filed an amendment to its petition on July 21, 1993 and an amendment to its pioneer's preference request on December 22, 1993. A portion of Celsat's petition was dismissed in Docket 92-28; see para. 6, infra.

⁵ Petition for Reconsideration at 2.

⁶ See Order Denying an Extension of Time for Comments and Replies, ET Docket No. 92-28 and RM-7927, 7 FCC Rcd 2361 (1992).

⁷ 7 FCC Rcd 6414 (1992).

⁸ Petition for Reconsideration at note 11.

clarification and promptly acted upon, to permit judicial review of the First R&O to proceed.⁹ TRW opposes Celsat's petition, contending that Celsat's companion petition for rulemaking was dismissed in the NPRM in Docket 92-28 and that this dismissal was finalized in the Report and Order¹⁰ in that proceeding, rendering Celsat's pioneer's preference request moot.¹¹

6. Celsat's pioneer's preference request has been and remains pending in the RM-7927 proceeding that is addressing the portion of Celsat's petition for rule making not denied in Docket 92-28. Celsat's petition for rule making addressed a number of frequency bands. Several bands already were the subject of an ongoing proceeding and several were not. Those portions of Celsat's petition that addressed two bands being considered for low-Earth orbit satellite operations, 1610-1626.5 and 2483.5-2500 MHz, were considered in the proceeding initiated to address those bands, Docket 92-28. Because Celsat's petition as it related to those bands proposed a terrestrial component that was inconsistent with the international allocation of those bands, the portion of Celsat's petition that addressed those bands was dismissed.¹² Had Celsat's petition addressed only those bands, its request for pioneer's preference also would have been dismissed, inasmuch as a pioneer's preference request is tied to adoption of rules consistent with the request.¹³ However, since the portion of Celsat's petition addressing other bands remains pending in RM-7927, its companion pioneer's preference request also remains pending in that proceeding.

7. Celsat's arguments that its pioneer's preference request was associated with Docket 92-28, either in addition to or instead of RM-7927, are demonstrably incorrect. Celsat's request was placed on public notice on March 9, 1992. The public notice clearly stated on its face that the pioneer's preference request was filed in conjunction with Celsat's petition for rulemaking, RM-7927. Pioneer's preference requests pertaining to Docket 92-28 were separately placed on public notice and clearly marked with that docket number on the same day. There was no mention of Docket 92-28 in the Public Notice addressing Celsat's request, and no mention of RM-7927 in the Public Notice addressing Docket 92-28.

8. Additionally, an Order extending comment time periods cited by Celsat as consolidating the two proceedings clearly did not do so. While the Order denied an extension of time request that was filed with respect to the two separate proceedings, the request did not ask us to consolidate the two proceedings. Both the caption and text of the Order, as released

⁹ APC Comments at 1.

¹⁰ 9 FCC Rcd 536 (1994).

¹¹ TRW Opposition at 2.

¹² See NPRM, ET Docket No. 92-28, supra, at note 15; and Report and Order, ET Docket No. 92-28, supra, at paras. 36-37.

¹³ See 47 C.F.R. Section 1.402(a).

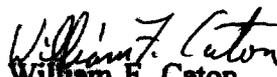
March 27, 1992, made clear that RM-7927 and Docket 92-28 are separate and distinct.¹⁴ The Order twice refers to the "proceedings," and paragraph 4 exclusively discusses Docket 92-28 while paragraph 5 separately discusses RM-7927. Not only would consolidation have been beyond the bounds of a routine ruling on an extension of time request that made no reference to consolidation, but the Order itself left no doubt that it did not address consolidation.

9. Finally, the NPRM and Report and Order in Docket 92-28 dismissed Celsat's petition for rulemaking only with respect to the 1610-1626.5 and 2483.5-2500 MHz bands. We explicitly stated therein that the surviving portion of Celsat's petition remained pending. Furthermore, Celsat's pioneer's preference request was not addressed in the Tentative Decision in Docket 92-28, and Celsat did not file comments nor request clarification of the status of its request despite its request not being addressed.

10. We do disagree with TRW that Celsat's pioneer's preference request is moot. Celsat's preference request must still be considered with respect to certain bands proposed by Celsat in its petition for rule making on which we have not ruled.

11. For the above reasons, we conclude that Celsat's pioneer's preference request remains pending before the Commission in RM-7927. Whether any changes to the pioneer's preference rules that may be adopted in the instant proceeding will apply to pending requests, such as Celsat's PP-28, is yet to be determined. Accordingly, IT IS ORDERED that the petition for reconsideration filed by CELSAT, Inc., IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION


William F. Caton
Acting Secretary

¹⁴ We note that the Order was printed in the FCC Record with an incorrectly-placed caption. As printed in the FCC Record, the caption "ET Docket No. 92-28" is centered in boldface above the non-boldfaced caption "RM-7927." See 7 FCC Rcd 2361 (1992).