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HOGAN & HARTSON
L.L.P.

COLUMBIA SQUARE
555 THIRTEENTH STREET NW
WASHINGTON DC 20004-1109
(202) 637-5600

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McLEAN, VA

PETER A. ROHRBACH
PARTNER
DIRECT DIAL (202) 637-8631

May 10, 1995

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

BY HAND

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

Re: Ex Parte Statement
MD Docket No. 95-3

Dear Mr. Caton:

On Monday, May 8, the following parties met with Rudolfo M. Baca, Legal Advisor to Commissioner James H. Quello, to discuss the regulatory fees for satellite services proposed in the above-referenced proceeding: David S. Keir on behalf of Columbia Communications Corporation; Robert A. Mansbach on behalf of Comsat Corporation; James F. Rogers on behalf of DirecTV, Inc., Hughes Communications Galaxy, Inc. and Hughes Network Systems, Inc.; Peter A. Rohrbach and Alexander P. Humphrey on behalf of GE American Communications, Inc.; Julian L. Shepard on behalf of Orion Network Systems, Inc.; and Joseph A. Godles on behalf of PanAmSat Corporation. The parties discussed the positions set forth in their comments in the proceeding and in the attached ex parte statement.

If any questions arise in connection with this matter, please contact the undersigned.

Sincerely,

Peter A. Rohrbach

cc: Rudolfo M. Baca

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List A B C D E

SATELLITE REGULATORY FEES

MD Docket No. 95-3

Columbia Communications Corporation
Comsat Corporation
DirecTV, Inc.
GE American Communications, Inc.
Hughes Communications Galaxy, Inc.
Hughes Network Systems, Inc.
Orion Network Systems, Inc.
PanAmSat Corporation

May 1, 1995

THE PROPOSED SATELLITE REGULATORY FEES ARE UNLAWFULLY HIGH

The satellite industry is being asked to pay disproportionately large fees that violate Section 159(b)(1)(A) because they are not "reasonably related to the benefits provided to the payor of the fee by the Commission's activities."

- The satellite industry therefore is cross-subsidizing other industries, including terrestrial telecommunications providers with whom we compete. The excessive fees are unfair, artificially increase costs to satellite users, and distort markets.

BACKGROUND: THE STATUTORY BASIS FOR REGULATORY FEES

A. Regulatory Fees Cover Only Limited Commission Activities.

The statute provides that regulatory fees are collected "to recover the costs of the following regulatory activities of the Commission: enforcement activities, policy and rulemaking activities, user information services, and international activities." 47 U.S.C. §159(a)(1) (emphasis added).

B. Regulatory Fees Must Be Adjusted to Reflect Benefits Received.

Fees are to be "adjusted to take into account factors that are reasonably related to the benefits provided to the payor of the fee by the Commission's activities." 47 U.S.C. §159(b)(1)(A); accord, id. at § 159(b)(3).

THE UNLAWFULNESS OF THE SATELLITE FEES

1. The proposed fees do not accurately reflect the regulatory activity related to satellite services.

Satellite fees are large and getting larger. For example, the pending NPRM would increase space station fees to *$142,250 per satellite per year*. Regulatory fees are on top of the substantial application fees charged for satellites.

We have not challenged the application fees because we realize that the satellite staff spends a significant percentage of its time on processing activities. But once satellite services are authorized, the Commission incurs very little regulatory activity in the four categories mentioned in the statute:

- Enforcement: The Commission staff spends virtually no enforcement resources in the satellite area. Satellite services typically are provided on a noncommon carrier basis. Title II tariff and enforcement activities covered by regulatory fees generally do not apply to satellites.

  Similarly, the Commission rarely has to handle interference issues for licensed satellites. Operators work matters out among themselves. The Commission generally becomes involved only in the context of applications for new satellites, the cost of which is covered by the separate application fees.

- Policy and Rulemaking: We agree that the Commission occasionally conducts rulemaking proceedings affecting geostationary satellite operations. However, this activity is relatively small compared to work done in connection with new services -- for the benefit of other parties. As discussed below, the latter activity does not qualify under the statute as regulatory activity feeable to established satellite services.

- User Information Services: We do not believe that the satellite industry imposes substantial user information costs, especially compared to other industries.

- International: We fully recognize that some of the Commission's international activities are on behalf of current geostationary satellites. However, a great deal of international work either already is covered by satellite application fees, or relates to other industries (and especially new services).

2. **The proposed satellite fees are grossly disproportionate to those paid by other communications services.**

Satellite operators and users are being asked to pay a fee burden that is unreasonable on its face, particularly given their relatively small niche in the overall communications industry.

- Satellite services are essentially unregulated. Yet the satellite industry would be charged $12.7 million next year for Commission regulation, over 10% of the total fees to be collected from all industry segments ($116.4 million).

- Within the "Common Carrier Services" category, local and long distance companies will pay only $39.4 million. Yet satellite services clearly consume no where near one-third of the regulatory resources devoted to the telephone industry. The unfairness of the fees are underscored by the fact that the entire revenues of the satellite industry are less than one per cent of those of the telephone industry.

- Satellite services would pay 42.6% as much as the total regulatory fees paid by the cable industry. It is impossible to square this allocation with the relative regulatory resources required for the two industries.

3. **To the extent satellite staff are active on MSS rulemakings and other proceedings to create new services, it is unlawful to impose those cost burdens on the incumbent satellite industry.**

- Those proceedings are not "reasonably related" to benefits provided to the current geostationary satellite services, and under the statute should not be directly allocated to them.

- The beneficiaries of new services are the future applicants and providers of those services -- whoever they may be -- *not* current providers of geostationary fixed satellite services. If anything, for example, the "Big LEO" and "Little LEO" rulemakings have taken staff resources away from activities that actually would benefit geostationary satellites.

- If rulemaking activity for new services is appropriately recovered from regulatory fees at all, it should be included in "overhead" and charged proportionately across the board to all fee payors.

SOURCE OF THE FEES PROBLEM

The NPRM mechanically increases last year's satellite fee schedule by a percentage override, even though the original satellite fees themselves were not reasonably based upon the costs actually associated with satellite regulation.

- The original fee schedule adopted in 1994 was neither fair nor reasonable. However, the Commission concluded last year that it did not have time to review and correct the schedule during the relatively brief interval following enactment of the fee statute by Congress.

- Last year, however, the Commission at least stated that it would look more closely at fees in 1995 to make sure that the burdens of regulatory costs were more equitably imposed on the regulatory cost-causers. This review was not done in the NPRM.

Excessive Direct Cost Allocation: As a result, the satellite industry is bearing the direct cost of feeable enforcement, rulemaking, user information and international activities directed at other industries, and related to other services.

Excessive Overhead Allocation: The unfairness is exacerbated because errors in direct cost allocation also result in additional overhead costs being disproportionately shifted to the satellite industry.

This result violates Congressional intent. The statute requires that in deriving regulatory fees, the Commission shall adjust fees "to take into account factors that are reasonably related to the benefits provided to the payor of the fee by the Commission's activities." 47 U.S.C. § 159(b)(1)(A); accord, id. at § 159(b)(3).

CONSEQUENCES

The satellite industry is cross-subsidizing other industries, including terrestrial telecommunications providers with whom we compete.

- Satellite user costs are artificially inflated.

- The magnitude of the imbalance is enough to distort market decisions, and impede healthy competition between space-based telecommunications systems and terrestrial-based providers.

We are particularly concerned that if defects in the regulatory fee schedule are not corrected this year, when the schedule is under review, they will not be corrected any time in the future, and that fee distortions will continue to be magnified.

COMMISSION ACTION REQUIRED

The Commission should substantially reduce its proposed satellite regulatory fees to more closely reflect the very small percentage of overall regulatory resources used by satellite operators.

Regulatory costs should be more appropriately allocated to common carrier and other services that cause them.

- **This should result in substantial reductions in the revenues to be recovered from the satellite industry and its customers in 1995.**
- **The Commission should commit to further refine cost allocations for fee purposes in future years.**