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June 26, 1995

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

Re: IB Docket No. 95-41
Amendments to the Commission's Regulatory Policies Governing Domestic Fixed Satellites and Separate International Satellite Systems

Dear Mr. Caton:

Enclosed for filing are comments of GE Americom in the above-referenced docket. GE American Communications, Inc. requests leave to file these one day late. Although the Reply Comments had been prepared in time for filing on Friday, weather and traffic delays prevented them from being filed until today.

Please date stamp and return the enclosed copy so marked, in the addressed, stamped envelope.

Thank you.

Sincerely,

Alexander P. Humphrey

APH:wml

Enclosures

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

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OFFICE OF SECRETARY

In the Matter of	)	
	)	
Amendments to the Commission's	)	IB Docket No. 95-41
Regulatory Policies Governing	)	
Domestic Fixed Satellites and	)	
Separate International Satellite Systems	)	

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REPLY COMMENTS OF
GE AMERICAN COMMUNICATIONS, INC.

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June 23, 1995

Summary

In its opening comments , GE Americom generally supported the proposals of the Notice of Proposed Rulemaking in this matter. We noted, however, that the Notice incorrectly links elimination of the Transborder Policy applicable to domsats with elimination of the "ancillary use" policy applicable to separate satellite systems. Accordingly, while we are not opposed to lifting the "ancillary use" policy, we proposed a two-year transition plan, tempered by Commission waivers if necessary.

GE Americom also explained in its opening comments why the question of entry into domestic services by Intelsat and foreign carriers is not ripe and would raise even more difficult issues that go well beyond the scope of this proceeding.

In these reply comments, GE Americom addresses the views of parties that would replace the Transborder Policy with even more onerous requirements and those of parties that wish the Commission to forfeit the opportunity of controlling foreign entry without obtaining reciprocity for U.S. satellites.

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REPLY COMMENTS OF
GE AMERICAN COMMUNICATIONS, INC.

Introduction

GE American Communications, Inc. (GE Americom) responds here briefly to the positions of several of the parties in the above-captioned proceeding. Our reply comments fall into two categories. First, we oppose the request of some parties for additional restrictions on the ability of domsats to provide international services. These suggestions are unjustified and would constitute a step in exactly the wrong direction. Second, we respond to those parties who would improperly allow Intelsat and foreign carriers into the U.S. market without regard to reciprocity and similar considerations. Any consideration of such entry is at best premature given the many complicated policy questions it would present.

In its opening comments, GE Americom stated that it shared the Commission's goals of eliminating regulatory distinctions between domestic and separate systems satellites. In our view the principal issue here is one of timing. As we explained, the Notice of Proposed Rulemaking (Notice)[1] incorrectly links elimination of the Transborder

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[1] Order FCC 95-146, 60 Fed. Reg. 24817 (May 10, 1995).

Policy applicable to domsats with elimination of the "ancillary use" restriction applicable to separate systems. These two policies serve independent purposes, and the Commission should review the benefits and effects of deleting each policy independently of the other. Similarly, we explained why domestic use of Intelsat and foreign satellite capacity would raise even more difficult areas that go far beyond the appropriate scope of this FSS proceeding.

GE Americom emphasizes again that it is not opposed to elimination of both the Transborder Policy and the "ancillary use" restriction. But the Commission must recognize that flash-cut elimination of both in lockstep would have unfair competitive consequences. On the one hand, removal of the "ancillary use" restriction would immediately allow separate satellite systems to provide domestic service, including bundled "one stop shopping" services to customers with both domestic and international service requirements. In contrast, the Transborder Policy is not the main barrier to provision of international service by domsats. We would still need foreign administrations to grant us permission to serve foreign points equivalent to those held by the separate systems. We are fully prepared to take on that challenging task. But we have reason to be concerned that it will not move forward on a smooth, rapid, and non-discriminatory basis.

GE Americom has proposed a transition plan that would balance these marketplace realities with the Commission's overall goals of a more competitive market -- goals that we share. Specifically, we suggested that the Commission establish a two-year sunset period for the "ancillary use" restriction, during which time domsat operators would have

an opportunity to test the process of negotiating their own agreements with other countries. Prior to the expiration of this sunset period, the Commission would have an opportunity to examine the success of that process. In the absence of material discrimination, the "ancillary use" restriction would expire as scheduled. On the other hand, the Commission also could maintain the restriction or impose restrictions on bundling of domestic and international service from certain points, if discrimination is significant.

In our comments, we explained that the Transborder Policy could be eliminated immediately. It was created to serve independent purposes that no longer apply, given changes in the Intelsat Article XIV(d) process. As discussed above, its elimination would only improve the conditions by which domsats could negotiate landing rights with other nations; elimination would not materially increase domsat international service by itself.

However, we also explained that, if the Commission was determined to link elimination of the ancillary use and Transborder policies, then both policies should be subjected to the two-year sunset. Competition would be better served if domsats remained subject to the cost and delay burdens of the Transborder Policy for an additional period than if the "ancillary use" restriction is eliminated prematurely. During the sunset period, the Commission would remain free to grant waivers as necessary to meet the public interest.

In the balance of these reply comments, GE Americom addresses the views of other parties who fail to appreciate important realities in the satellite marketplace.

THE COMMISSION SHOULD NOT IMPOSE ADDITIONAL CONDITIONS UPON THE RIGHT OF DOMESTIC SATELLITES TO PROVIDE INTERNATIONAL SERVICE

In its opening comments, GE Americom explained that the Transborder Policy should be eliminated. Not only is it unnecessary in light of changes in the INTELSAT coordination policy; it imposes significant costs and regulatory delays on domsat operators that interfere with our ability to respond to customer desires for international service.[2] Elimination of this policy would better allow domsats to address a more formidable barrier to entry -- persuasion of foreign telecommunications authorities to grant non-discriminatory "landing rights" -- a barrier to entry that would continue to exist whether or not the Transborder Policy continues to apply.

It is significant that not a single party asked the Commission to retain the Transborder Policy. Certain parties, however, urged the Commission to replace the Transborder Policy with new tests that would go beyond it in producing delay and uncertainty. For example, PanAmSat, which stands to benefit from every barrier that prevents GE Americom from expanding its services into international markets, suggests new entry tests that exceed the complexity of the Transborder Policy and would result in further delays and prolong the uncertainty about GE Americom's international authority. This delay and uncertainty would only exacerbate the difficulty GE Americom has had in the past securing customers for international service.

In PanAmSat's view, a domsat would have to obtain separate permission each time it sought to provide service to a customer with international service needs. Rather than

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[2] Comments at 6-7.

evaluate the comparatively simple question of the impact of such service on Intelsat. PanAmSat would have the Commission delve into such complex issues as the amount of capacity to be removed from domestic service, the impact of this upon "regulatory parity" and the larger questions of effective market access, unfair tying of domestic with international services, and other unspecified public interest factors.[3] In effect, PanAmSat is asking the Commission to institute a proceeding tantamount to a rulemaking each time a domestic satellite operator seeks to respond to a customer's need for international service.

The Commission should reject these suggestions. They would simply place roadblocks in the way of domestic satellite operators, preventing them from being more responsive to the needs of their customers for international services and frustrating one of the principal reasons for the proposed elimination of the Transborder Policy. As the Commission stated in the Notice, elimination of the Transborder Policy "would allow major U.S. corporations to meet their increasingly global communications needs without the delays and uncertainties associated with the current policy . . . ."[4] Proposals such as those of PanAmSat and others would reintroduce, and indeed exacerbate, the very delays and uncertainties the Commission is attempting to eliminate.

The Commission should reject the proposals of Motion Picture Association of America and Capital Cities/ABC to condition applications for international authority on protecting the copyrights held by third parties from infringement on the part of the customers of these satellites, or to revoke these satellites' international authority in the case of infringement. GE Americom operates 227 satellite transponders within its fleet,

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[3] PanAmSat Comments at 6.

[4] Notice at para. 11.

which carry video and/or audio programming. A number of these transponders carry multiple programs simultaneously. Because GE Americom has no knowledge of the content transmitted by its customers using these transponders, it is certainly unable to know or discern whether any existing copyrights are licensed or being violated, either in the United States or in foreign jurisdictions. In addition, apart from these considerations, to make a satellite operator a guarantor of copyrights would add another entry requirement to replace the Transborder Policy that the Commission has proposed to abandon in the interests of giving satellites the flexibility they need to serve their customers.

A similar reply is in order to those comments that would require domsats to maintain a certain amount of capacity in domestic service or continue to set aside an amount of capacity for occasional use. The entire thrust of this rulemaking is to enhance the flexibility with which the Commission has traditionally endowed satellite operators to meet the needs of their customers and to allow customer choice, made in the context of marketplace competition, rather than regulation, to determine the nature and distribution of capacity. Some requirements proposed here would interfere with that flexibility and replace customer choice with regulation. Clearly, setting aside capacity for one favored class of customer to the detriment of another defeats the purposes of this rulemaking.

Moreover, the amount of satellite capacity currently in operation will be significantly augmented shortly. AT&T plans to launch Telstar 402R before the end of 1995, with a total of 48 transponders. GE Americom and Hughes will be launching 48 transponder satellites in early 1996, and GE Americom has applied to launch a third such

satellite in mid-1996. The Commission also has before it a number of applications for new satellites that will further augment the amount of existing capacity. The laws of supply and demand, coupled with the increased competition that will result from this rulemaking, are adequate assurances that capacity will be available for both domestic and international applications on a cost-efficient basis. Moreover, the use of digital compression will continue to effectively increase the amount of capacity in the market.

GE Americom takes particular exception to PanAmSat's self-serving proposal that the number of satellites of each current domestic operator be capped.[5] This suggestion is contrary to the entire thrust of the Notice to eliminate distinctions among FSS licensees. It would be patently unfair to both domsats and their customers. GE Americom and other domsat operators have been pioneers in developing and promoting satellite communications service in this country. We should not have our growth arbitrarily stymied -- and our ability to compete with both terrestrial and other satellites hampered -- by artificial rules to protect one segment of the industry. Nor should our customers be denied the opportunity to expand their use of our satellite service by artificial restrictions on our growth. The current application processing rules, [6] and more importantly natural market forces, should determine which carriers should launch satellites and when.

Similarly, PanAmSat's proposal that the Commission set aside "at least" one 50-state orbital location for itself [7] should also be rejected. PanAmSat has always had the

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[5] Comments at 6.

[6] In that regard, GE Americom opposes the request by some separate satellite system operators that they continue to be excused from the financial qualification rules that apply to domsats. Comments of PanAmSat at 7; comments of Columbia at 6; Comments of Orion at 6. Those rules have played a critical part in ensuring that orbital resources are deployed efficiently and without warehousing.

[7] Comments at 7.

opportunity to apply for fifty-state domestic authorizations. It has seen fit, for its own reasons, never to request any domestic authorizations. PanAmSat would now ask the Commission to revise this history. Clearly, there is no reason other than PanAmSat's pure self-interest to support this proposal.

In addition to restricting GE Americom's ability to compete for domestic service severely, these and other proposals would hobble GE Americom's entry into international service more significantly than the existing Transborder Policy. As we noted in our opening comments in this proceeding, GE Americom has been significantly impeded in concluding international arrangements in the past due to its lack of necessary authority to implement them. The proposals of PanAmSat and others would exacerbate this situation and assure them that they would continue the status quo in the international service arena while significantly impeding the ability of GE Americom and other operators to serve their customers in the domestic arena.

Finally, the Commission should also deny Comsat's request that all satellite carriers with international authority be put to the choice of being a common carrier, in which case they would be barred from carrying traffic in private carriage, or a private carrier, which would disqualify them from carrying common carrier traffic.[8] This would again reintroduce regulatory barriers and narrow the number of competitors.

For example, in order to meet the requests of customers wanting occasional-use service, which are often made on a spot basis, GE Americom has tariffed occasional use of its fleet, all satellites of which are otherwise in non-common carriage. It is in the interest of users for occasional service to be able to buy service quickly, without lengthy contract

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[8] Comments at 13.

negotiation and at well understood pricing. Common carriage serves these users well. On the other hand, common carriage does not serve the needs of other customers who do not share these interests.

Assuming, arguendo, that the Commission were to adopt Comsat's proposal, the following scenario would unfold. In order to continue to provide its services in private carriage and meet the expectations of its contract customers, GE Americom would have to turn away potential users of tariffed services. This would not only result in underutilization of wasting satellite assets and deny GE Americom the necessary flexibility to provide service as it sees fit. It would also mean that customers with needs for occasional service would be severely limited in finding providers of that service other than Comsat.

Adoption of Comsat's proposal would also mean that GE Americom would have to reserve an entire satellite for common carriage. Apart from the impossibility of doing that for existing satellites that have already been committed due to outstanding private contracts for service, adoption of such a rule would virtually assure that no common carrier other than Comsat would offer occasional use capacity. The investment risk that all transponders on a satellite would be sufficiently utilized would be so significant that it is likely that only a carrier such as Comsat, with a guaranteed rate of return on property used and useful, could accept that risk.

No other solution is possible. GE Americom could not flipflop from private carriage to common carriage and back again on any given satellite. GE Americom's contracts are long term, and its customers look to the certainty of their relationship with

GE Americom as a foundation for the communications services that they provide to their customers. For these reasons, Comsat's proposal is not well founded and should be rejected.

ANY CONSIDERATION OF ACCESS BY INTERNATIONAL SATELLITES TO U.S. MARKETS SHOULD BE ACCOMPANIED BY REQUIREMENTS OF RECIPROCITY

GE Americom's opening comments argued that, if the Commission is to consider the use of Intelsat and other foreign satellites in this proceedings, it should condition their access to U.S. international or domestic markets upon conditions of reciprocity in their home countries. In contrast, several parties requested that the Commission to give foreign satellites unlimited authority to provide service in the U.S. without restriction.[9]

For the reasons given by GE Americom and other parties,[10] it would be premature to consider entry of Intelsat, particularly of Intelsat's "spare" capacity. This would involve satellites that, having been acquired by Comsat and other signatories through revenues derived from ratepayers, could be "dumped" into domestic communications virtually free of cost. On the larger question of entry by Intelsat as a whole into domestic markets, it would be premature for the Commission to consider this. Intelsat is actively studying restructuring. If, after studying this issue, Intelsat decides not to restructure itself, Comsat should inform the Commission and, if it wishes, seek entry into the domestic market. If Intelsat decides to restructure, the Commission should wait until this

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[9] Comments of Comsat; Charter Communications International; the television networks; General Communications; IGC Wireless Services; Tranworld Communications. See also comments of Arter & Hadden.

[10] Comments of AT&T; Hughes; PanAmSat; Columbia Communications; and Orion. Other parties opposed the introduction of the services of Inmarsat-P, which has just recently completed a restructuring.

restructuring has been implemented before considering entry, since the Intelsat of the future may hardly resemble the Intelsat of today. In either event, the question of Intelsat's entry is not ripe and should therefore not complicate and delay the consideration of other issues that can be implemented on the basis of the record compiled in this docket.

As for entry by other foreign carrier GE Americom would welcome competition from foreign satellites if it had a similar ability to compete in the home countries of these satellites. This increased competition is in the long-term interest of even those parties who support immediate, unconditional entry of foreign satellites because free and fair trade is the best and only guarantor of high quality, technical innovation, and low price. The Commission should not forfeit the opportunity though its earth station licensing policies to promote fair trade in this industry and should insist on reciprocal rights in the home countries of foreign satellite operators who seek to export their services to the United States.

Conclusion

With the minor changes proposed by GE Americom, the proposals in the Notice should be adopted.

Respectfully submitted.

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(703) 848-1216

June 23, 1995

Certificate of Service

I, Wanda M. Latta, hereby certify that on this 23rd day of June 1995, copies of the foregoing Reply Comments of GE American Communications, Inc., in the matter of Amendments to the Commission's Regulatory Policies Governing Domestic Fixed Satellites and Separate International Satellite Systems, IB Docket No. 95-41, have been served by first-class United States mail, postage prepaid, on the parties who filed comments in this matter.

Wanda M. Latta

Wanda M. Latta