

4. Transoceanic Fiber Optic Cable Is Not Yet A Competitive Occasional Use Service Alternative

The Brattle Group's projections concerning the competitive viability of transoceanic fiber optic cable for video transmissions are unreliable. In 1994, the Brattle Group claimed that "there is little doubt that fiber optic cables will become a serious competitor in the transoceanic transmission of video and audio signals in the near future."^{23/} In 1996, the Brattle Group did not repeat such an erroneous prediction. Instead, the 1996 Brattle Report references "AtlanticVision," the only existing transoceanic fiber optic video service.^{24/} This single transoceanic fiber link between New York and London, however, is not considered a competitive occasional use option by the Networks, for both operational and cost reasons. The fiber optic charges for transoceanic occasional service are more than a third higher than those for the typical end-to-end satellite transmission, the service is limited to a single route, and the point-to-point fiber optic service lacks the flexibility inherent to satellites with their point-to-multi-point capabilities.

^{23/} Id. at 31 (footnote omitted).

^{24/} 1996 Brattle Report at 11.

5. The Presence of Resellers By Itself Is Not Evidence Of A Competitive Market

The 1996 Brattle Report also misses the mark when it points to the existence of a few entities reselling transoceanic satellite capacity as evidence of a competitive occasional service market.^{25/}

The Commission has found on several occasions that a telecommunications service market characterized by only a few facilities-based carriers is not fully competitive even if the market supports several resellers. For example, the Commission agreed with the Department of Justice that the existence of "numerous" resellers and other radio services that potentially could compete with cellular providers was not sufficient evidence to declare the cellular service market subject to effective competition.^{26/}

^{25/} Typical of the technically accurate but nevertheless misleading assertions found elsewhere in the 1996 Brattle Report is a reference implying that IDB and Keystone are competing resellers of COMSAT/INTELSAT transoceanic capacity. *Id.* at 30. IDB/Keystone, however, effectively constitute only a single reseller because Keystone manages both its own and IDB's video operations.

^{26/} Unbundling of Cellular Customer Premises Equipment and Cellular Service, 7 FCC Rcd 4028, 4029 (1992).

Elsewhere the Commission has found that a reseller has minimal pricing flexibility when it must rely on a facilities-based competitor's underlying basic services.^{27/} Indeed, it has been argued that the continued entry of resellers is evidence that the facilities-based provider is holding prices sufficiently above the competitive level as to make reseller entry profitable.^{28/} The Commission consistently has relied upon the existence of several strong facilities-based competitors, not the existence of resellers, as the basis for determining that a market is subject to substantial competition.^{29/}

C. The Proposed Restructuring of INTELSAT Presents Another Reason to Defer Granting COMSAT Streamlined Tariff Relief for Occasional Services

The proposed restructuring of INTELSAT, and the concomitant changes that will be associated with such restructuring, presents another independent reason for deferring grant of COMSAT's request for relief with regard to occasional

^{27/} Market Entry and Regulation Foreign-affiliated Entities, 10 FCC Rcd 4844, 4872 (1995).

^{28/} See Motion of AT&T Corp. To Be Reclassified As A Non-Dominant Carrier, 11 FCC Rcd 3271, 3299 (1995).

^{29/} Id. See also Interconnection and Resale Obligations Pertaining To Commercial Mobile Radio Services, CC Docket No. 94-54, FCC 96-263, July 12, 1996, at para. 17.

services. The U.S. position on the restructuring of INTELSAT recommends splitting INTELSAT facilities between a residual INTELSAT intergovernmental organization (IGO) and a newly created corporate affiliate (INC).^{20/} Under the U.S. proposal, INTELSAT IGO would focus on the global provision of "core services," including occasional video services, while INTELSAT INC would be allowed, but not required, to provide occasional video services.^{21/} Aspects of the U.S. proposal have met with resistance from other INTELSAT members. Until it can be determined how the provision of occasional video service will be affected by the restructuring plan actually adopted by the INTELSAT Assembly of Parties, the Commission should postpone granting COMSAT streamlined tariff relief for occasional use and short-term video service rate increases and service changes.

Once an INTELSAT restructuring plan has been implemented, granting COMSAT streamlined tariff relief for international occasional video service may be appropriate if the Commission authorizes entities in the U.S. other than COMSAT to

^{20/} Contribution of the Party and Signatory of the United States, INTELSAT Future Structure, IWP-3-5E w/4/96, 16 February 1996.

^{21/} Id. at 5.

obtain "direct access" to INTELSAT facilities. Direct access would provide benefits to all U.S. users of the INTELSAT system in terms of encouraging reduced end user rates and providing a competitive check on COMSAT.

Currently, direct access to INTELSAT by U.S. entities other than COMSAT is barred, but only by Commission policy not by INTELSAT regulations. In fact, several years ago INTELSAT adopted procedures by which non-Signatories may obtain direct access to INTELSAT facilities, and several countries throughout the world now authorize non-Signatory access to INTELSAT. The Commission, on the other hand, has not formally addressed the issue of direct access in the U.S. since 1984 when it declined to authorize U.S. entities other than COMSAT to obtain direct access to INTELSAT facilities. The Commission, however, based its decision solely on policy grounds (as they existed in 1984), not on any perceived statutory bar to direct access.^{32/} In conjunction with the proposed INTELSAT restructuring, therefore, it would be appropriate to revisit the issue of direct access to INTELSAT, as part of a Commission rulemaking and/or as part of

^{32/} Regulatory Policies Concerning Direct Access to INTELSAT Space Segment For The U.S. International Service Carriers, 97 F.C.C. 2d 296 (1984), aff'd sub nom., Western Union International, Inc. v. FCC, 804 F.2d 1280 (D.C. Cir. 1986).

the legislative changes to the Satellite Act which are likely to accompany the restructuring of INTELSAT.^{23/}

D. The Networks Do Not Oppose Immediate Streamlining Of COMSAT Tariff Proposals Other Than Occasional Use And Short-Term Video Service Rate Increases And Service Changes

Notwithstanding the Networks' opposition to granting COMSAT streamlined tariff relief for proposed rate increases and service changes affecting occasional use and short-term video services, the Networks support granting COMSAT streamlined tariff authority to adopt either rate reductions or new service and rate options for occasional and short-term video services. Indeed, the Networks recommend that COMSAT be granted streamlined authority to adopt rate reductions and new service or rate options for any video transmission service -- regional DTH or transoceanic, occasional or full-time.

^{23/} See 47 U.S.C. §§701-757. Even in the absence of direct access to INTELSAT, the Networks acknowledge that the introduction of additional facilities-based capacity could bring effective competition to the international occasional use and short-term video submarket. The Networks would not object, therefore, to evaluating the competitive state of the occasional market again in two years to determine whether additional competition has been introduced.

The Networks also support granting COMSAT's request for streamlined tariff authority for the following submarkets which are subject to more effective competition:

- all tariff proposals for new full-period (24 hours per day) international video leases greater than three months in length;
- all offerings of occasional and short-term international video services bundled with other COMSAT services in individually negotiated "contract tariff" arrangements.

As the Networks stated in their reply comments in the Commission's DISCO II proceeding, they also do not oppose granting COMSAT the authority to use some pre-defined amount of INTELSAT capacity for U.S. domestic service.^{34/} Allowing COMSAT to react more quickly and compete more vigorously in the market for long-term video leases and for international/domestic service packages will not harm the public interest because those submarkets are subject to more effective competition than the market for transoceanic occasional use and short-term video services.

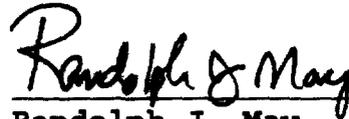
^{34/} Reply Comments of Capital Cities/ABC, Inc., CBS Inc., National Broadcasting Company, Inc., and Turner Broadcasting System, Inc., IB Docket No. 96-111, August 16, 1996, at 8-10.

IV. CONCLUSION

For the foregoing reasons, the Commission should take actions consistent with the views expressed herein.

Respectfully submitted,

CAPITAL CITIES/ABC, INC.
CBS INC.
NATIONAL BROADCASTING COMPANY, INC.
TURNER BROADCASTING SYSTEM, INC.



Randolph J. May
Timothy J. Cooney
SUTHERLAND, ASBILL & BRENNAN
1275 Pennsylvania Avenue, N.W.
Washington, D.C. 20004-2404
(202) 383-0100

Charlene Vanlier
CAPITAL CITIES/ABC, INC.
Sixth Floor
21 Dupont Circle
Washington, D.C. 20036

Mark W. Johnson
CBS INC.
Suite 1200
600 New Hampshire Avenue, N.W.
Washington, D.C. 20037

Diane Zipursky
NATIONAL BROADCASTING COMPANY,
INC., 11th Floor
1299 Pennsylvania Avenue, N.W.
Washington, D.C. 20004

Bert Carp
TURNER BROADCASTING SYSTEM, INC.
Third Floor
1155 - 21st Street, N.W.
Washington, D.C. 20036

January 17, 1997

Their Attorneys

CERTIFICATE OF SERVICE

I, Marcia Towne Devens, do hereby certify that true and correct copies of the foregoing document, "COMMENTS OF CAPITAL CITIES/ABC, INC., CBS INC., NATIONAL BROADCASTING COMPANY, INC. AND TURNER BROADCASTING SYSTEM, INC.," were served by hand or by first-class U.S. Mail, postage prepaid, this 17th day of January, 1997, on the following:

Donald Gips *
Chief, International Bureau
Federal Communications Commission
2000 M Street, N.W., Room 827
Washington, D.C. 20554

Warren Y. Zeger
Howard D. Polsky
Keith H. Fagan
COMSAT Corporation
6560 Rock Spring Drive
Bethesda, Maryland 20817

Lawrence W. Secrest, III
William B. Baker
Rosemary C. Harold
Kevin J. Martin
WILEY, REIN & FIELDING
1776 K Street, N.W.
Washington, D.C. 20012


Marcia Towne Devens

* (Served by hand delivery)