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April 29, 1997

BY HAND DELIVERY

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APR 29 1997
Federal Communications Commission
Office of Secretary

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

Re: Notice of Ex Parte Presentation
CC Docket No. 96-45

Dear Mr. Caton:

Pursuant to Section 1.1206 of Commission's Rules, it is hereby noted that today the following met with Tom Boasberg, Legal Advisor to Chairman Reed Hundt: Gary Epstein on behalf of DIRECTV, Inc. and Hughes Communications Galaxy, Inc.; Daniel Goldberg on behalf of PanAmSat Corporation; Leo Fitzsimon on behalf of Orion Network Systems, Inc.; and myself on behalf of GE American Communications, Inc. The purpose of the meeting was to discuss the attached ex parte statement in the above-referenced docket.

An original and one copy of this notice are being submitted to the Secretary's office. Please contact me in the event of any questions regarding this matter.

Respectfully submitted,

Peter A. Rohrbach

cc: Tom Boasberg

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April 24, 1997

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APR 24 1997
Federal Communications Commission

BY HAND DELIVERY

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

Re: Federal-State Joint Board on Universal Service
CC Docket No. 96-45

Dear Mr. Caton:

The four undersigned companies operate satellite space stations. We are writing to address an issue that, while of little consequence to the proposed reform of universal service support, is of critical concern to the satellite industry.

Specifically, it is important that the Commission expressly recognize that when a satellite licensee merely supplies bare transponder space segment capacity, it is not acting either as a telecommunications carrier or a provider of telecommunications under Section 254(d) of the 1996 Act. As a result, revenue received for such space segment is excluded from the Act's universal service contribution provisions. This statutory result is consistent with the fact that space segment is not interconnected to, and does not make use of, the public switched network. In contrast, when space segment is used by a carrier as part of the provision of a telecommunication service, contribution obligations would apply to that service. 1/

1/ This principle would apply when a satellite operator itself acts as a carrier, as well as when a customer of the operator uses satellite space segment to provide carrier services. It would not apply when the operator provides telecommunications on a noncommon carrier basis. This issue has been discussed in previous comments in this docket, and will not be repeated here. See, e.g., Comments of GE American Communications, Inc. (filed Dec. 19, 1996); Comments of DIRECTV, Inc. and Hughes Communications Galaxy, Inc. (filed Dec. 19, 1996); Comments of PanAmSat (filed Dec. 19, 1996); Reply Comments of Orion Atlantic (filed Jan. 10, 1997). We continue to believe that for both legal and public interest reasons, Section 254(d) should not apply to noncommon carrier satellite telecommunications that are not

No party has challenged this interpretation of Section 254(d), which is consistent with the Recommended Decision. Nevertheless, the issue is so important to the satellite industry that we felt it important to reemphasize our position here. Imposition of a contribution requirement on bare space segment would not only go beyond the scope of the statute; it also would have serious adverse consequences for the U.S. satellite industry and our customers. Such a decision would interfere with private long term contractual expectations underlying the many space stations launched or soon to be launched by U.S. companies. It also could have serious adverse consequences for future satellite investment, and lead to unnecessary litigation.

The line between "telecommunications services" and "transponder space segment capacity" is simple to draw. In the first case a party creates a transmission path by using a Commission-licensed earth station to uplink to a satellite, bouncing the transmission off the transponder repeater, and arranging to complete the transmission at one or more receive antennas. In the second case, the satellite operator is simply making the transponder space segment available for use. The operator is not a party to the transmission at all. 2/

This distinction was recognized by the Commission 15 years ago in a decision that helped spark the full development of the nation's fleet of privately-financed and operated spacecraft. In its Transponder Sales Order and elsewhere, 3/ the Commission recognized that the construction, launch and operation of satellites requires hundreds of millions of dollars in investment, and involves unique risks. The Commission also recognized that companies with expertise to develop and operate spacecraft may not also want to operate as carriers in all cases. The Commission therefore has allowed satellite operators to dispose of some or all of their transponder space segment under private contracts to others. The D.C.

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interconnected with the public network. However, our particular focus in this letter is on the provision of bare transponder space segment, which is even more clearly outside Section 254(d).

2/ The operator provides other services, such as managing spacecraft operations, maintaining space segment capacity in working order, and handling licensing and related regulatory and coordination matters. But in these circumstances the operator is not engaged in transmission of communications.

3/ Domestic Fixed-Satellite Transponder Sales, 90 FCC2d 1238 (1982).

Circuit Court of Appeals affirmed this "regulatory regime for key pieces of radio equipment, called transponders, located on domestic communications satellites." 4/ Since that time, satellite operators have routinely entered into long term customer supply contracts for space segment. This industry structure has been very successful in promoting satellite development.

Section 254(d) does not permit, let alone require, that these space segment contracts be subject to the universal service obligation. The 1996 Act states that contribution is mandatory only from a "telecommunications carrier that provides interstate telecommunications services." This sentence would reach a carrier that uses satellite capacity to provide a telecommunications service. But a satellite operator is not acting as a "carrier" itself when it supplies bare space segment, nor is it providing a "telecommunications service." As discussed above, the operator only is supplying (under private contract) space segment that the customer may in turn use as one of the inputs to a telecommunications service.

Section 254(d) goes on to state that contribution also may be required from "[a]ny other provider of interstate telecommunications * * * if the public interest so requires." But a satellite operator is not "providing telecommunications" when it supplies bare space segment. "Telecommunications" is defined in Section 153(43) as the "transmission, between and among points specified by the user, of information of the user's choosing * * *." But a satellite operator is not engaged in such transmission when it simply supplies a customer with the right to access transponder capacity. The transmission is made by the customer when it uplinks to the spacecraft and arranges for reception at the other end of the transmission link.

Furthermore, even if the Commission were to conclude that bare transponder capacity is "transmission," there still would be no public interest grounds for forcing space segment revenues into the ambit of contributing revenues. First of all, a transponder has no nexus whatsoever to the public switched network. It is simply a piece of equipment 22,500 miles above the equator. The satellite operator does not interconnect the space segment with the public network, or with any network. It only provides use of the space segment to others who use it to create a transmission path. The 1996 Act mandated this proceeding to reform universal service as part of accommodating increased telephone competition. This goal is not advanced by extending the reach of Section 254(d) to firms that have no connection to telephony or the public network itself.

4/ Wold Communications, Inc. v. FCC, 735 F.2d 1465, 1476 (D.C. Cir. 1984).

Second, application of a contribution requirement to space segment would seriously interfere with the economic assumptions and private contracts underlying billions of dollars of spacecraft investment already in orbit or planned for launch within the next several years. As we have discussed, long term space segment contracts have been a central element in the development of the nation's satellite fleet. The operators here have made commitments to their customers to deliver space segment by private contract at fixed prices over often very extended terms of years. 5/ Application of a new universal service obligation would raise serious issues for all parties concerned. Either the operator would suffer a substantial unreimbursed charge against its revenues, or if the charge is passed through, the customer would face unexpected costs.

Third, application of universal service contribution to space segment would competitively disadvantage U.S. operators in a post-WTO world. We will be supplying our future transponder capacity to customers in competition with spacecraft of other nations that now will be able to enter this country. Those foreign satellites will not be subject to universal service charges when they offer long term space segment to customers who use the capacity in this country. It would be anomalous and unfair if U.S. operators bore such charges. Again, if a carrier uses satellite capacity (from either a foreign or U.S. operator) to provide telecommunications services in this country, that customer would itself pay contribution in the ordinary course. But bare space segment would not carry a contribution burden.

These public interest problems are also reasons why the Commission should not impose contribution obligations on private contracts for noncommon carrier satellite telecommunications. Again, however, we will not reargue that point here. But however the Commission decides this issue, it has no statutory authority to reach bare transponder space segment.

5/ This is not just a problem for space segment already in service. For example, although the satellite operators do not wish to reveal confidential business information, it is reasonable to assume that some of them already have entered into contracts to supply space segment for the life of satellites to be launched later in this decade, meaning that the satellites (and the fixed price) could continue to 2015 and beyond.

We have written at such length because this matter is so important to the satellite industry. We ask that the Commission act carefully in this area to avoid either conclusions that damage the reasonable expectancies of satellite operators and their customers, or ambiguity that could lead to unnecessary disputes and litigation. The development of the United States satellite industry has been one of this country's major successes. The Commission can fully achieve its universal service objectives without unintentionally jeopardizing the further development of the industry here.

Respectfully submitted,

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