

In the matter of )  
)  
1998 Biennial Regulatory Review — ) IB Docket No. 98-118  
Review of International Common Carrier )  
Regulations )

1998-10-13 1003

**COMMENTS OF PANAMSAT CORPORATION**

PanAmSat Corporation ("PanAmSat"), by its attorneys, hereby submits these comments regarding the above-referenced Notice of Proposed Rulemaking ("NPRM").

The Commission has asked for comment on a number of proposals to modify and streamline its international Section 214 review process. Among other things, the Commission seeks comment on its tentative decision to preserve its current rules requiring specific Section 214 authority to use any non-U.S.-licensed satellite system. PanAmSat agrees with that tentative decision.

In addition, however, PanAmSat urges the Commission to clarify (1) that, consistent with DISCO II,<sup>1</sup> "global" Section 214 authorizations do not allow carriers to use any and all Intelsat services and facilities, but only those that have been previously approved by the Commission and that streamlining the Section 214 process will not affect the Commission's review of Comsat applications under the Satellite Act, and (2) that 214 streamlining will not affect the regulatory fee collection program.

**DISCUSSION**

**1. The Use of Non-U.S.-Licensed Satellites.**

Global Section 214 authorizations allow facilities-based carriers to serve all markets and to use all facilities except (i) markets in which they are affiliated with a foreign carrier with market power and (ii) markets and facilities on an "exclusion list" maintained by the International Bureau. Currently, the exclusion list includes Cuba, all

<sup>1</sup> See Amendment of the Commission's Regulatory Policies to Allow Non-U.S.-Licensed Space Stations to Provide Domestic and International Satellite Service in the United States, 12 FCC Rcd 24094 (1997).

No. of Copies rec'd 04  
List A B C D E

non-U.S.-licensed satellite systems, and most non-U.S.-licensed submarine cable systems.<sup>2</sup>

Although the Commission has proposed modifications to its rules to remove all non-U.S.-licensed cable systems from the exclusion list, it has tentatively concluded that it should retain the current practice of requiring specific Section 214 authority for the use of any non-U.S.-licensed satellite system.

PanAmSat agrees with this conclusion. As explained in the NPRM, applications to use a non-U.S.-licensed satellite system need to be evaluated pursuant to the rules and policies adopted in DISCO II, which resulted from an exhaustive inquiry into competitive conditions in the international and domestic satellite markets. These rules and policies should not be set aside merely to further a general streamlining effort.

## 2. The Use of Intelsat Satellites.

In the 1996 Streamlining Order, the Commission suggested that "global" Section 214 authorizations would allow carriers to use half-circuits on all Intelsat facilities.<sup>3</sup> A year later, however, in DISCO II, the Commission clarified that it did not mean to give entities holding "global" Section 214 authorizations *carte blanche* to use any and all Intelsat facilities, but only those that have been approved by the Commission.

In DISCO II, the Commission declined to allow satellites operated by intergovernmental organizations (*e.g.*, Intelsat and Inmarsat) free access to the U.S. market because of "unique competitive concerns relevant to entry by IGOs and IGO affiliates."<sup>4</sup> Instead, the Commission concluded that it would engage in a substantive review of applications to "provide international services via Intelsat or Inmarsat on a case-by-case basis [and] address[] questions about foreign market access or competition issues .... spectrum [use] and other appropriate considerations."<sup>5</sup> Thus, under DISCO II, Intelsat facilities may not be used to provide service in the United States unless and until the FCC has had a chance to review and pass on the competitive implications of such service.

---

<sup>2</sup> As discussed further below, global Section 214 authorizations also permit carriers to use approved Intelsat services and facilities.

<sup>3</sup> Streamlining the International Section 214 Authorization Process and Tariff Requirements, 11 FCC Rcd 12884 (1996) ¶ 16.

<sup>4</sup> DISCO II, 12 FCC Rcd at 24140, 24148.

<sup>5</sup> Id. at 24149-50.

Traditionally, this review took place in the context of applications filed by Comsat pursuant to Section 201(c) of the Satellite Act, and Section 214 and Title III of the Communications Act, to participate in Intelsat satellite procurements. However, following the release of the Comsat Non-Dominance Order,<sup>6</sup> the International Bureau concluded that it would no longer conduct a Section 214 review of Comsat's participation in Intelsat procurements.<sup>7</sup>

The International Bureau's decision creates an obvious tension with the Commission's decision in DISCO II. On one hand, the Commission has determined that "unique competitive concerns" warrant case-by-case review of applications to provide international services to and from the U.S. via the Intelsat or Inmarsat systems. On the other hand, the International Bureau has eliminated one of the mechanisms that would enable the Commission to conduct such a review — the 214 application process.

The tension is mitigated, perhaps, by the fact that, under Section 201(c) of the Satellite Act, the Commission is required to review Comsat's Intelsat operations. Indeed, when it eliminated the Section 214 requirement for Comsat with regard to the use of Intelsat facilities, the International Bureau noted that it would, as required by statute, continue to review under Section 201(c) applications by Comsat to provide services over Intelsat satellites.<sup>8</sup>

Thus, presumably, the International Bureau now will discharge its responsibilities under DISCO II to review the competitive implications of Intelsat entry into the U.S. market in the context of its review of Comsat applications filed under Section 201(c) of the Satellite Act. The Commission should, however, clarify that this is indeed the case or otherwise explain how the International Bureau is to fulfill the responsibilities delegated to it by the Commission in DISCO II. The Commission also should reiterate that global Section 214 authority does not encompass all Intelsat facilities, but only those that the Commission has approved.

---

<sup>6</sup> Comsat Corporation Petition Pursuant to Section 10(c) of the Communications Act of 1934, as amended, for Forbearance from Dominant Carrier Regulation and for Reclassification as a Nondominant Carrier Order and Notice of Proposed Rulemaking, FCC 98-78 (rel. Apr. 28, 1998).

<sup>7</sup> Comsat Corporation, File No. CSS-93-009(4)-A (rel. May 22, 1998) ¶ 10.

<sup>8</sup> Id.

**3. Section 214 Streamlining Should Not Affect The Collection Of Regulatory Fees.**

The Commission has proposed the elimination of a number of Section 214 application filing requirements and suggested that it may substitute a Section 214 "notification process" for full Section 214 authorization in other cases. Although the proposals outlined in the NPRM will reduce the number of Section 214 applications actually processed by the Commission, and presumably help to conserve some Commission resources, the International Bureau will continue to expend considerable regulatory resources conducting rulemaking proceedings, and monitoring carrier notification filings and market behavior in order to "detect, deter, and penalize anticompetitive conduct."<sup>9</sup>

It is unclear from the NPRM, however, whether the Commission intends to collect regulatory fees from those rate payers who will now be filing notifications in lieu of applying for and holding Section 214 authorizations. As a result, there is a potential disconnect in the proposed rules. The Commission will continue to invest resources regulating international carriers, but at the same time may be eliminating a major portion of the regulatory fee rate base. PanAmSat urges the Commission to retain the regulatory fee requirement for those filing notifications.

If the Commission were to eliminate the requirement, PanAmSat is concerned that, rather than recovering the shortfall on a *pro rata* basis from all fee payors on a Commission-wide basis, the Commission will load the unrecovered regulatory costs on the remaining fee paying entities in the International Bureau — principally space station operators. As PanAmSat has noted in the past, it is inequitable and unfair to assess regulatory fees upon space station operators, without regard to the actual cost of regulating these entities, solely to recover costs incurred by the International Bureau in regulating other entities that, for one reason or another, are not required to pay regulatory fees.<sup>10</sup> The Commission should not exacerbate existing inequities by shrinking the rate base without also addressing the effect of those changes on the regulatory fee collection program.

---

<sup>9</sup> NPRM ¶ 10.

<sup>10</sup> See, e.g., Assessment and Collection of Regulatory Fees for 1998, MD Docket No. 98-36, Comments of PanAmSat (filed Apr. 22, 1998).

PanAmSat requests, therefore, that the Commission clarify that changes in its Section 214 authorization procedures as a result of this proceeding will not affect the regulatory fees paid by entities regulated by the International Bureau.

#### CONCLUSION

For the foregoing reasons, PanAmSat supports the Commission's tentative conclusion to require specific Section 214 authority to use any non-U.S.-licensed satellite systems. Further, PanAmSat urges the Commission to clarify (1) that streamlining will not affect the Commission's review of Comsat applications under the Satellite Act, and (2) that streamlining will not affect the regulatory fee collection program .

Respectfully submitted,

PANAMSAT CORPORATION



By: /s/ W. Kenneth Ferree

Joseph A. Godles  
W. Kenneth Ferree

GOLDBERG, GODLES, WIENER & WRIGHT  
1229 Nineteenth Street, N.W.  
Washington, D.C. 20036  
(202) 429-4900

Its Attorneys

August 13, 1998