

Federal Communications Commission

FCC 98-299

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

86-285

In re Application of	)	
	)	
Columbia Communications Corporation	)	Fee Control No. 9408228835035009
	)	
For Partial Waiver of its Regulatory Fee Payment for Two Geostationary Space Stations	)	

## MEMORANDUM OPINION AND ORDER

Adopted: November 12, 1998

Released: January 22, 1999

By the Commission:

Introduction

1. The Commission has before it an Application for Review, filed September 8, 1995, on behalf of Columbia Communications Corporation (Columbia),<sup>1</sup> licensee of two geostationary space stations. Columbia seeks review of a decision by the Associate Managing Director for Operations (AMD(O)), which denied Columbia's request for partial waiver of its Fiscal Year 1994 (FY 1994) regulatory fee. See letter to Raul R. Rodriguez, Esquire from Marilyn J. McDermott, Associate Managing Director for Operations, dated August 9, 1995. For the reasons that follow, we grant the Application for Review.

Background

2. Columbia holds FCC licenses to operate two geostationary space stations. Columbia submits, however, that the design and operational characteristics of its system differentiate it from other U.S. fixed-satellite service licensees and provide "a compelling justification for the modest reduction in regulatory fees that Columbia seeks." Supplement to Application for Review, p. 2 (September 13, 1996). In particular, Columbia explains that the satellite capacity is not entirely within its control. Pursuant to an agreement with the National Aeronautics and Space Administration (NASA), Columbia uses twelve C-band transponders on NASA's Tracking Data and Relay Service Satellites. Under its contract with

---

<sup>1</sup> On September 13, 1996, Columbia filed a Supplement to the Application for Review.

NASA, which predated the regulatory fee requirement by several years, Columbia's use of the spacecraft is secondary to NASA's and can be preempted on minimal notice. Supplement to Application for Review, p. 4. Thus, Columbia explains, its ability to adapt its operations to account for regulatory fees is more limited than other licensees. In addition, Columbia points out that, quite apart from any regulatory fees, it already remits 70% of its revenues to the United States Treasury. *Id.*, p. 5.

### Discussion

3. Congress has authorized the Commission to waive, reduce or defer regulatory fees in certain instances "for good cause shown, where such action would promote the public interest." 47 U.S.C. § 159(d). See also 47 C.F.R. § 1.1166. We have exercised this authority only rarely and do not do so lightly. We believe however, that the unique circumstances presented in this case warrant such a waiver. We find it pertinent that the usefulness of the license we have granted to Columbia is subject to change upon minimal notice from NASA, another government body. It is also pertinent that 70% of Columbia's revenues already go to the U.S. Treasury. Under these circumstances, we believe that it would promote the public interest to grant the waiver Columbia has requested.

4. Columbia paid a total of \$130,000 in FY 1994 regulatory fees for two geostationary space stations. Half of that fee, \$65,000, will be waived and refunded. In accord with this finding, the waiver of 50 percent of Columbia regulatory fees for its geostationary space stations operated pursuant to its agreement with NASA shall also apply to subsequent Fiscal Years and until such time as there is a substantial modification in Columbia's contract with NASA, or a substantial change in the operation of its geostationary space stations.

5. ACCORDINGLY, IT IS ORDERED, That the Application for Review filed by Columbia Communications Corporation, IS GRANTED, and \$65,000 will BE REFUNDED to Columbia Communications Corporation.

6. IT IS FURTHER ORDERED, That the Managing Director shall, in accord with paragraph 4 of this Memorandum Opinion and Order, grant waivers and make appropriate refunds for Fiscal Years after 1994.<sup>2</sup>

FEDERAL COMMUNICATIONS COMMISSION

Magalie Roman Salas  
Secretary

---

<sup>2</sup> The Managing Director is authorized to obtain any information that may be necessary to assure that any such waivers are granted consistent with our decision here.

7700 4400 23 42001

BEFORE THE

RECEIVED

**Federal Communications Commission**

SEP 13 1996

WASHINGTON, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

In the Matter of )  
)  
COLUMBIA COMMUNICATIONS CORPORATION )  
)  
Request for Reduction of )  
Regulatory Fee Payments for )  
Fiscal Year 1994 )

To: The Commission

**SUPPLEMENT TO APPLICATION FOR REVIEW**

Columbia Communications Corporation ("Columbia"), by counsel, hereby supplements its Application for Review, filed September 8, 1995, in the above-captioned matter. The pending Application seeks reversal of the August 9, 1995 decision by the Office of the Managing Director ("OMD") denying Columbia's request for reduction of its 1994 regulatory fee payment.

In its initial pleading, Columbia showed that the OMD had failed to give fair and reasoned consideration to the waiver request, and that the request for relief was fully justified based on the unique circumstances of Columbia's authorizations. It bears emphasizing that, contrary to the OMD's characterization, Columbia's request for fee reduction is not premised merely upon the bare number of transponders that Columbia operates, but upon the fact that Columbia's use of the Tracking and Data Relay Satellite System ("TDRSS") spacecraft is secondary to NASA's operation of these satellites in connection with the Space Shuttle program. Columbia uses only one of the three communications payloads on the satellite. This, in itself, is

significant given the fact that the Commission's satellite regulatory fees are assessed on a per space station (not a per authorization) basis.<sup>1/</sup>

Both the design of the TDRSS C-band transponders and the limitations placed upon them under Columbia's lease agreement with NASA further distinguish the character of Columbia's authorizations from those of the typical satellite operator. The purpose of this supplement is to offer additional detail concerning how these design and operational characteristics fundamentally differentiate Columbia's TDRSS authorizations from those of any other U.S. fixed-satellite service ("FSS") licensee, providing a compelling justification for the modest reduction in regulatory fees that Columbia seeks.

As discussed in Columbia's Application for Review, the section of the Communications Act establishing the Commission's authority to collect regulatory fees provides that the purpose of the fees is "to recover the costs" of the agency's regulatory activities, while at the same time taking into account "factors that are reasonably related to the benefits provided to the payor of the fee by the Commission's activities."<sup>2/</sup> Both the regulatory costs and the operational benefits of the Columbia authorizations are limited by the unique nature of the TDRSS space segment capacity.<sup>3/</sup>

---

<sup>1/</sup> See 47 U.S.C. § 159(g).

<sup>2/</sup> See 47 U.S.C. § 159(a) & (b).

<sup>3/</sup> It is also significant that Columbia's agreement with NASA pre-dates the regulatory fee requirement by several years. The revenue sharing arrangement between these two parties, under which the U.S. government receives 70 cents of every dollar generated by Columbia's operations, was fundamentally premised on the revenue generating potential of the TDRSS transponder satellites without any provision for substantial regulatory fee payments. Unlike other operators, which have been able to design spacecraft for

(continued...)

On the regulatory side, it is more than just the small number of transponders and the shared regulatory responsibility with the NTIA that contains the FCC's costs of regulating the Columbia capacity. In addition, the nature of the transponders themselves minimizes the need for extensive engineering review and technical assistance in the process of international coordination. Not only does Columbia's capacity fall in only one frequency band (C-band), in contrast to the C- and Ku-band hybrid satellites that many operators are currently operating, constructing, and/or proposing, but its operations are limited solely to the traditional C-band frequencies from 3.7 to 4.2 GHz (downlink) and 5.925 to 6.425 GHz (uplink) and do not make use of the expansion bands that satellite operators, including Columbia, are now utilizing in designing new satellites. Moreover, the architecture of the TDRSS transponders dates back more than a decade-and-a-half and is accordingly very simple and uncomplicated as compared to more recent and sophisticated designs.

It is on the operational side, however, that the atypical nature of Columbia's space segment capacity is even more starkly apparent. In addition to having access to a smaller number of transponders, Columbia is constrained by other unique characteristics of the TDRSS capacity

---

<sup>3/</sup>(...continued)

particular types of service irrespective of regulatory costs, Columbia's lease with NASA simply makes the best use possible of a limited amount of existing space segment capacity. Because operators that design their own spacecraft seek to optimize the efficiency of the satellite and maximize the ability to operate profitably, the advent of regulatory fees presents only an additional incremental cost that does not undermine the critical assumptions on which the venture was based. In Columbia's case, however, the imposition of regulatory fees — in a manner that treats Columbia as if it operated two full geostationary satellites — undermines critical revenue assumptions upon which the TDRSS contractual arrangement was established, forcing Columbia to bear unforeseen costs that are much larger relative to its potential revenues than those imposed on other satellite licensees.

and conditions in its lease with NASA that effectively consign it to offering a different class of service than other FSS licensees. First, as noted above, Columbia had no voice in the design, frequency, or location of the TDRSS satellites. The limitation to C-band is a significant handicap in the Atlantic market in that most customers seeking trans-Atlantic transmission capacity prefer to use Ku-band to avoid interference with terrestrial microwave users. Second, because the TDRSS C-band capacity was designed many years ago as a secondary payload, it operates with lower power than other commercial C-band space segment. Third, because it is NASA that actually operates the satellites and has priority with respect to their use, Columbia's access to the C-band capacity is fully pre-emptible with only minimal notice. NASA can unilaterally alter the positioning, pointing, or orbital inclination of the satellite in ways that adversely impact Columbia's operations.<sup>4/</sup>

All of the foregoing factors dictate that Columbia must offer its TDRSS capacity to users at prices that are significantly and consistently lower than those of the other U.S. FSS licensees. Thus, not only does Columbia have fewer transponders to sell or lease, but each one is itself capable of generating less revenue than a higher power, non-preemptible transponder on a

---

<sup>4/</sup> For example, as Columbia has previously pointed out, in May of this year NASA decided to place the TDRSS satellite at 41° West Longitude into an inclined orbit. *See* Letter from David S. Keir, Counsel for Columbia, to Lawrence Schaffner, FCC Assistant General Counsel, dated August 30, 1996. This change, made one-and-a-half years earlier than originally agreed, required all antennas used to access the satellite to be retrofitted with tracking equipment to follow the movements of the satellite. Because inclined orbit operation is generally viewed as a lower quality of service, Columbia has been forced both to bear the expenses of the tracking equipment and to lower its prices for satellite capacity.

satellite that is owned and operated by the licensee.<sup>2/</sup> For all of these reasons, each authorization that Columbia holds to operate limited capacity on the TDRSS satellites provides it substantially less "benefit" than the authorizations held by other U.S. satellite licensees.

Finally, as Columbia noted in its Application for Review,<sup>6/</sup> imposing disproportionate fees upon Columbia would undermine the Commission's established policy of promoting intramodal competition in satellite services because it would handicap a unique, niche service provider which has played a significant role in cutting prices for space segment users. Columbia's lease agreement with NASA has made available for commercial purposes idle capacity on government satellites at prices substantially below those offered by other FSS operators. This arrangement not only promotes competition and price reductions in the industry, but also provides a steady revenue stream for the federal government (70 percent of Columbia's revenues go to the U.S. Treasury under the agreement with NASA). The FCC should not countenance a regulatory fee structure that arbitrarily discriminates against such an innovative use of orbit and spectrum resources.

---

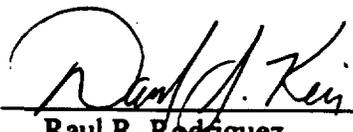
<sup>2/</sup> Columbia reiterates that it is not arguing financial hardship. *See* Columbia Application for Review at 9. Its request for waiver is premised on the unique nature of the TDRSS capacity, not on Columbia's financial condition. Because of the limitations on this capacity described here and in Columbia's Application for Review, it would be inequitable to charge full regulatory fees for these portions of space segment no matter who was authorized to operate them. That said, however, because Columbia is currently operating using only the TDRSS capacity, the levying of full space station fees for these C-band payloads is especially harsh in its impact on the company.

<sup>6/</sup> *See* Columbia Application for Review at 9-10.

Accordingly, Columbia renews its request for a fifty percent reduction in its regulatory fees to more accurately reflect the regulatory burdens its operation imposes in relation to the benefits it receives as a result of its two TDRSS authorizations. The unique nature of Columbia's partial use of the NASA TDRSS satellites presents a compelling case for this relief.

Respectfully submitted,

COLUMBIA COMMUNICATIONS CORP.

By:   
Raul R. Rodriguez  
David Keir

Of Counsel:

Kenneth Gross  
General Counsel & Chief Operating Officer  
Columbia Communications Corporation  
7200 Wisconsin Avenue, Suite 701  
Bethesda, Maryland 20814  
(301) 907-8800

Leventhal, Senter & Lerman  
2000 K Street, N.W.  
Suite 600  
Washington, D.C. 20006  
(202) 429-8970

September 13, 1996

Its Attorneys

## CERTIFICATE OF SERVICE

I, Vera L. Pulley, hereby certify that true and correct copies of the foregoing "Supplement Application for Review" were sent via hand delivery, this 13th day of September, 1996, to the following:

**Julius Genachowski**  
Federal Communications Commission  
1919 M Street, NW, Room 814  
Washington, D.C. 20554

**Rudolfo M. Baca**  
Federal Communications Commission  
1919 M Street, NW, Room 802  
Washington, D.C. 20554

**Jane Mago**  
Federal Communications Commission  
1919 M Street, NW, Room 844  
Washington, D.C. 20554

**David Siddall**  
Federal Communications Commission  
1919 M Street, NW, Room 832  
Washington, D.C. 20554

**Lawrence Schaffner, Esq.**  
Associate General Counsel  
Administrative Law  
Federal Communications Commission  
1919 M Street, NW, Room 628-H  
Washington, D.C. 20554

**James Mullins, Esq.**  
Office of General Counsel  
Federal Communications Commission  
1919 M Street, NW, Room 616  
Washington, D.C. 20554

**Jerome Remson, Esq.**  
**Office of General Counsel**  
**Federal Communications Commission**  
**1919 M Street, NW, Room 610**  
**Washington, D.C. 20554**

**Donald Gips**  
**Chief, International Bureau**  
**Federal Communications Commission**  
**2000 M Street, NW, Room 822**  
**Washington, D.C. 20554**

**John Stern**  
**International Bureau**  
**Federal Communications Commission**  
**2000 M Street, NW, Room 819-A**  
**Washington, D.C. 20554**

**Thomas Tycz**  
**Chief, Satellite & Radiocommunication Division**  
**International Bureau**  
**Federal Communications Commission**  
**2000 M Street, NW, Room 811**  
**Washington, D.C. 20554**

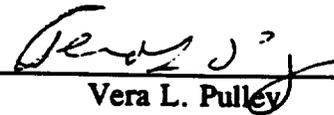
**James Ball**  
**Associate Chief, Satellite & Radiocommunication Division**  
**International Bureau**  
**Federal Communications Commission**  
**2000 M Street, NW, Room 820**  
**Washington, D.C. 20554**

**Fern J. Jarmulnek**  
**International Bureau**  
**Federal Communications Commission**  
**2000 M Street, NW, Room 518**  
**Washington, D.C. 20554**

**Cassandra Thomas**  
**International Bureau**  
**2000 M Street, NW, Room 810**  
**Washington, D.C. 20554**

Kathleen Campbell  
International Bureau  
Federal Communications Commission  
2000 M Street, NW, Room 505  
Washington, D.C. 20554

Frank Peace, Jr.  
International Bureau  
Federal Communications Commission  
2000 M Street, NW, Room 805  
Washington, D.C. 20554



---

Vera L. Pulley

**Federal Communications Commission**  
WASHINGTON, D.C. 20554

AAA  
9/15/95  
→ FC01R

In the Matter of )  
 )  
COLUMBIA COMMUNICATIONS CORPORATION )  
 )  
Request for Reduction of )  
Regulatory Fee Payments for )  
Fiscal Year 1994 )

To: The Commission

APPLICATION FOR REVIEW

Columbia Communications Corporation ("Columbia"), by counsel and pursuant to Sections 1.115 and 1.1156(a) of the FCC's Rules, hereby seeks Commission review of the August 9, 1995 decision by the Office of the Managing Director ("MD") denying Columbia's August 19, 1994 request for reduction of its 1994 regulatory fee payment. See Attachment A, Letter from Marilyn J. McDermott, FCC Associate Managing Director for Operations, to Raul R. Rodriguez, Counsel to Columbia, dated August 9, 1995 ("MD Letter"). The MD's decision is defective in that it fails to consider in any meaningful way the arguments raised by Columbia in its initial request for reduction of fees. As a result, the ruling is fundamentally inconsistent with several of the underlying principles upon which the FCC's regulatory fees program is based, including the concept that such payments are related directly to the benefits enjoyed by licensees as a result of their FCC authorizations. Accordingly, it is appropriate for the Commission to undertake a full review of this matter *de novo* and to provide the reasoned consideration of Columbia's waiver request that was lacking in the MD's decision.

## **I. BACKGROUND**

As the Commission is aware, Columbia is authorized to operate C-band transponders on the National Aeronautics and Space Administration ("NASA") Tracking and Data Relay Satellite System ("TDRSS") satellites at 41° West Longitude and 174° West Longitude. Although Columbia holds two FCC authorizations (File Nos. CSS-90-110 and CSS-90-111), as if it operated two geostationary space stations, Columbia actually operates only a portion of the capacity of each satellite -- twelve C-band transponders -- pursuant to a lease with NASA. In reality, although labelled a "satellite operator" by the FCC, Columbia actually functions as a reseller. NASA itself operates both satellites<sup>1/</sup> and uses the on-board Ku-band and S-band packages to communicate with the Space Shuttle and other orbiting spacecraft. Columbia's capacity thus constitutes about one-third of the communications capability on each space station, which is only one-half of the typical complement of twenty-four transponders normally required by the Commission's full-frequency reuse policy for telecommunications satellites,<sup>2/</sup> and a mere quarter of the capacity of the typical C-and Ku-band hybrid satellite.

Section 1.1154 of the Commission's Rules established a 1994 regulatory fee of \$65,000 per space station in the geostationary orbit. As applied to Columbia on a per authorization basis, Columbia was required to pay an unreasonably high \$130,000 in regulatory fees for 1994 simply because it leases part of the communications capacity on two different satellites.

---

<sup>1/</sup> NASA is responsible for maintaining all tracking, telemetry, and control functions of the TDRSS satellites.

<sup>2/</sup> See Licensing of Space Stations in the Domestic Fixed-Satellite Service and Related Revisions of Part 25 of the Rules and Regulations, 54 R.R. 2d 577, 598, n. 67 (1983), recon. granted in part, 99 F.C.C. 2d 737 (1985).

Section 1.1156(a) of the FCC's Rules states that the fees established by Section 1.1154 may be waived, reduced or deferred in specific instances, on a case-by-case basis, where good cause is shown and where waiver, reduction or deferral of the fee would promote the public interest. In light of the disparate impact of the FCC's fee structure upon Columbia, it filed, on August 19, 1994, a request for reduction of the regulatory fees that it was then called upon to pay. Columbia demonstrated that grant of the limited waiver sought would promote the public interest by recognizing that Columbia's unique position as a lessee of a portion of a satellite payload renders the payment of full fees for each of its authorizations inequitable and unreasonable. Indeed, because each of Columbia's primary competitors operates satellites with a minimum of 24 transponders, Columbia is burdened by the imposition of regulatory fees of at least twice the rate per unit applicable to the ordinary provider of space-station-based telecommunications capacity. Despite this showing, the MD denied Columbia's request for fee reduction on August 9, 1995. As shown herein, this decision was entirely arbitrary and unsupported by any analysis of Columbia's waiver request.

## **II. DISCUSSION**

### **A. The Managing Director's Office Failed To Give Columbia's Waiver Request A "Hard Look," As It Is Required To Do.**

Under long-prevailing precedent, the FCC is required to give each request for waiver of its rules a "hard look."<sup>3/</sup> The MD Letter is devoid of recognition of or adherence to this precedent. Despite its obligation to weigh waiver requests carefully, the MD's letter gives only the most perfunctory treatment to arguments raised by Columbia. In a ruling that

---

<sup>3/</sup> See WAIT Radio v. FCC, 418 F.2d 1153, 1157 (D.C. Cir. 1969).

is less than two and one-half pages in length, a full page and a half is devoted to a summary of Columbia's waiver request and a brief description of the applicable waiver standard.<sup>4/</sup>

The letter then proceeds to reject the substance of Columbia's request for relief in two short paragraphs that focus not on the heart of Columbia's arguments, but upon the Commission's recent decision in a related, but distinct, proceeding rejecting a proposal to assess regulatory fees for geostationary satellites on a per transponder basis.<sup>5/</sup>

The hard look policy clearly requires more than a perfunctory reference to arguments raised in a waiver request that go to the underpinning of the regulation in question. As the WAIT Radio court made clear, it is not the rule itself that is at issue in evaluating a waiver request, but the merits of the arguments justifying that waiver, and whether a waiver is in the public interest: "The salutary presumptions [of rules of general applicability] do not obviate the need for serious consideration of meritorious applications for waiver, and a system where regulations are maintained inflexibly without any procedure for waivers poses legal difficulties."<sup>6/</sup>

In this instance, the dearth of analysis of the legitimate issues raised in Columbia's fee reduction request is patently contrary to the standard established in WAIT Radio and consistently applied by the Commission. For this reason, as explained more fully in the following section, the Commission should reverse the MD's ruling and grant Columbia's request for reduction of fees. Because 1995 regulatory fees are now due in less

---

<sup>4/</sup> See Attachment A, MD Letter at 1-2.

<sup>5/</sup> See Assessment and Collection of Regulatory Fees for Fiscal Year 1995, FCC 95-227 (released June 19, 1995).

<sup>6/</sup> Id.

than two weeks, Columbia requests that the Commission address this application on an expedited basis.

**B. Grant Of The Fee Reduction Columbia Requests Is Not Only Fully In Accord With The Commission's Waiver Standard, It Is Fully Consistent With The Underlying Purposes of the Act.**

Under the statute establishing the Commission's authority to collect fees from the entities it regulates, there are two essential guiding principles. First, Section (a)(1) of the regulatory fees provision establishes that the purpose of assessing charges upon FCC licensees is "to recover the costs" of enumerated "regulatory activities."<sup>7/</sup> Second, the law provides in Section (b)(1)(A) that the fees should be set so as "to take into account factors that are reasonably related to the benefits provided to the payor of the fee by the Commission's activities."<sup>8/</sup> Because these requirements are the underpinning of the FCC's authority to impose fees, there is no question that application of these principles is relevant in the waiver context, *i.e.*, that, in particular, the Commission should take into account significant differences in the costs attributable to a particular entity, as well as the benefits provided to it as the result of Commission activities, in determining whether an adjustment of its payment is warranted.

Based on these underlying principles, a reduction of fees based on Columbia's unique circumstances is in full accord with the regulatory fee requirement. Because Columbia does not actually operate the TDRSS satellites, but merely resells a portion of their capacity, Columbia's two authorizations do not require the same regulatory oversight as two full satellites operated by a typical FCC satellite licensee. Because the fees are

---

<sup>7/</sup> 47 U.S.C. § 159(a)(1).

<sup>8/</sup> 47 U.S.C. § 159(b)(1)(A).

intended to recoup administrative costs associated with regulating telecommunications satellites, by collecting full fees for both authorizations, the Commission would be charging Columbia in a manner disproportionate to the Commission resources expended.

More specifically, while the FCC is wholly responsible for the regulation of other commercial satellite operations, the TDRSS satellites are actually authorized by the National Telecommunications and Information Administration ("NTIA") for use by NASA. Although the FCC does incur costs in regulating Columbia's limited commercial use of the orbit/spectrum resource, it shares the overall regulatory burden with NTIA, and the actual costs to the FCC are substantially less than they would be if Columbia were operating two full satellites for commercial purposes. Accordingly, Columbia's regulatory fees should be reduced to reflect more fairly the actual regulatory burden upon the Commission created by Columbia's activities.

Even more significantly, however, the "benefits" received by Columbia as a result of each of its authorizations are not equivalent to those enjoyed by the typical FCC space station licensee. Columbia is unique among FCC satellite permittees in that neither of its authorizations allows it to use the entire space segment capacity of a satellite. As described above, in each case Columbia is limited to the C-band package carried on the TDRSS satellites -- a total of twelve transponders on each satellite. This contrasts sharply with the satellites deployed by its competitors, which have significantly higher transponder capacities. For example, PanAmSat-1 has 24 transponders, PanAmSat-2 has 32 transponders, and Orion Satellite Corporation's Atlantic Ocean Region satellite has 34 transponders.<sup>2/</sup> Columbia thus has available to it only one-half the capacity per authorization of the next smallest full space station in the separate system industry.

---

<sup>2/</sup> See The World Satellite Directory at 328, 331 and 347 (Phillips 1995).

Despite this unique circumstance, the MD's ruling concludes without substantive analysis that "we cannot find that Columbia should be afforded a reduction in fees because the TDRSS satellites carry fewer than the ordinary compliment (sic) of commercial transponders, notwithstanding that the TDRSS satellites carry transponders dedicated to other purposes."<sup>10/</sup> In rejecting the disparity in space segment capacity utilized by Columbia as a basis for a waiver, the MD's ruling inappropriately relied solely upon the Commission's recent decision rejecting a proposal that all satellite regulatory fees be assessed on a per transponder basis.<sup>11/</sup> Although adoption of that formula (which Columbia proposed) would have mooted the issue raised by Columbia in its waiver, its rejection does not eliminate the basis for Columbia's waiver request.

While the Commission may have concluded that the added burden to licensees and the FCC of establishing satellite fees on a per transponder basis outweighed the utility of targeting the fees to more precisely reflect the communications capability of each satellite, it does not follow that this generalized policy determination is dispositive of Columbia's waiver request. Columbia's problem is not simply that it has a smaller number of transponders available to it, but that the terms of each of its authorizations permit it to use only a very limited portion of a satellite's capacity, not the entire capacity of the satellite. As a result, Columbia's capacity per authorization is not somewhat less (i.e., 34 vs. 32 transponders), but dramatically less than that available to all other U.S. satellite licensees.<sup>12/</sup>

---

<sup>10/</sup> Attachment A, MD Letter at 2.

<sup>11/</sup> See Attachment A, MD's Letter at 2 (citing Assessment and Collection of Regulatory Fees for Fiscal Year 1995, FCC 95-227, slip op. at ¶ 111 (released June 19, 1995)).

<sup>12/</sup> It is also significant that other satellite operators have designed their own satellites, giving them the opportunity to determine as an aspect of their business plan, based on projected service needs, the number of transponders that they will employ at a given  
(continued...)

Because the number of customers a space segment operator can serve is a direct function of the amount of capacity it has available for sale or lease, Columbia's limited number of transponders is a direct limitation on its ability to generate revenue, *i.e.*, the principal "benefit" it receives from its FCC authorization. Accordingly, to the extent that the fees have been established on a per satellite basis, it is only logical and reasonable that Columbia's fee liability be pro-rated based upon its substantially limited use of each TDRSS satellite's communications capability.

Indeed, in requiring that fees be adjusted in order to comport with "benefits provided to the payor of the fee," the Act specifically mentions two factors deemed significant public interest reasons for making distinctions in fee payments. One of these two enumerated factors is "shared use versus exclusive use."<sup>13/</sup> Given the fact that Columbia is the only fixed-satellite service licensee that functions on a shared use basis -- sharing the TDRSS satellites with NASA -- the statute itself provides a compelling basis upon which to grant Columbia the relief it has requested.

Finally, because a reduction by the FCC of the fees payable by Columbia would be a response to its unique situation, the FCC would not open the door for other requests of a similar nature. Conversely, subjecting Columbia to the full regulatory fees appropriate for two satellites singles out for payment of disproportionately high fees a

---

<sup>12/</sup>(...continued)

orbital location. Columbia, on the other hand, is limited to just a C-band package on a larger satellite designed and operated by another entity.

<sup>13/</sup> 47 U.S.C. § 159(b)(1)(A).

relatively small company that has developed a low-cost, niche service that might not otherwise have been made available.<sup>14/</sup>

Contrary to the MD's characterization, Columbia's identification of this disparity in treatment is not an assertion that payment of full fees is a financial hardship<sup>15/</sup>; it is merely an identification of a substantial inequity in Columbia's treatment. An entity's mere ability to muster the wherewithal to pay unduly high regulatory fees does not render those fees fair or reasonable where other fee payors are receiving substantially greater benefits in return for the same payment. Disproportionate application of fees does not reach a level of intolerability only when the aggrieved party is pushed to the brink of bankruptcy.<sup>16/</sup>

Finally, failure to acknowledge the reality of Columbia's situation would conflict squarely with the Commission's commitment to encourage the development of robust intramodal competition in the market for satellite-based international telecommunications service.<sup>17/</sup> The arbitrary imposition of full regulatory fees upon Columbia runs counter to

---

<sup>14/</sup> Indeed, this effect is magnified by the fact that Columbia competes in a market that is dominated by a large, monopolistic, quasi-governmental entity that is not, for the most part, subject to direct FCC regulation -- and has been exempted from payment of satellite fees -- but nonetheless consumes a large share of FCC staff attention and effort.

<sup>15/</sup> See Attachment A, MD Letter at 3.

<sup>16/</sup> Furthermore, as it noted in its original waiver request, because Columbia provides its capacity under a lease arrangement with a U.S. Government agency, Columbia already pays to the Federal Treasury a significant share of its revenues from the sale of TDRSS space segment. Payment of disproportionately high regulatory fees upfront could reduce by a substantially larger amount the ultimate income to the U.S. Treasury by depriving Columbia of operating funds needed to market its capacity.

<sup>17/</sup> See Establishment of Satellite Systems Providing International Communications, 101 F.C.C. 2d 1046 (1985), recon. in part, 61 R.R. 2d 649, further recon. denied, 1 FCC Rcd 439 (1986).

the Commission's policy of promoting innovative approaches to competitive international satellite service because it produces unique harm to one of the start-up competitors that the Commission has sought to nurture. The public interest in promoting regulatory parity and the development of healthy international separate systems would be best served by reducing by half the regulatory fees that apply to each of Columbia's authorizations to better reflect the costs of regulating its partial commercial use of TDRSS and the benefits that Columbia receives from its authorization.

### **III. CONCLUSION**

For the reasons outlined above, Columbia respectfully requests that the Commission overrule the Managing Director's denial of its waiver request, and reduce by one half the fees assessed upon Columbia for each of its two satellite authorizations. In light of the impending due date for 1995 regulatory fee payments, Columbia respectfully requests expedited treatment of this application for review.

Respectfully submitted,

**COLUMBIA COMMUNICATIONS  
CORPORATION**

By: \_\_\_\_\_



Raul R. Rodriguez  
David S. Keir

Leventhal, Senter & Lerman  
2000 K Street, N.W.  
Suite 600  
Washington, D.C. 20006  
(202) 429-8970

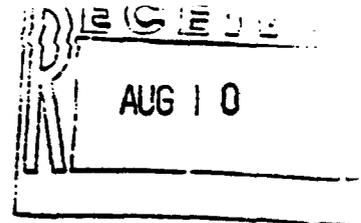
September 8, 1995

Its Attorneys

**ATTACHMENT A**

FEDERAL COMMUNICATIONS COMMISSION  
Washington, D. C. 20554

August 9, 1995



OFFICE OF  
MANAGING DIRECTOR

Raul R. Rodriguez, Esquire  
Leventhal, Senter & Lerman  
2000 K Street, N.W.  
Suite 600  
Washington, D.C. 20006

Dear Mr. Rodriguez:

This is in response to your request, filed on behalf of Columbia Communications Corporation (Columbia), for reduction in its Fiscal Year (FY) 1994 regulatory fee payments for two geostationary satellites.

Columbia holds licenses issued by the Commission to operate two National Aeronautics and Space Administration (NASA) Tracking and Data Relay Satellite System (TDRSS) satellites. You maintain that, in fact, Columbia operates only the commercial C-band transponders on these satellites and NASA operates the K-band and S-band communications transponders carried on these satellites for its purposes. Further, NASA administers the TDRSS tracking, telemetry, and control functions of the TDRSS satellites.

You urge that Columbia's fees for both its satellites be reduced to the level equivalent to the fee for a single space station because it operates less than a full complement of transponders. Further, you stress that a reduction is warranted because of the unusual nature of the satellite service and the limited role that Columbia plays in the operation of NASA's satellites. Specifically, Columbia's communications capacity on each of its TDRSS satellites is limited to twelve C-band transponders, less than one-third of the communications capability of these satellites, and only one-half of the typical complement of twenty-four transponders normally required by the Commission's full-frequency reuse for telecommunications satellites. Thus, if its fees are not reduced, you contend that Columbia will be burdened by the imposition of regulatory fees at twice the rate per unit applicable to the other providers of space segment communications capacity.

Also, you contend that a fee reduction is appropriate because Columbia's space segment operations do not require the same degree of regulatory oversight as would generally be necessary for commercial communications satellites because NASA, not Columbia, actually operates the satellites and Columbia merely markets their C-band transponder capacity. Further, the TDRSS satellites are authorized for NASA's use by the National Telecommunications and Information Administration (NTIA). Thus,

although the Commission does incur costs in regulating Columbia's commercial use of the TDRSS satellites, since NTIA also regulates the TDRSS satellites' operation, you argue that the actual cost of the Commission's regulation is substantially less than if Columbia were operating satellites authorized solely by the Commission. As a consequence, you state that the imposition of the standard space segment fee upon Columbia results in its making a disproportionately high contribution to the recovery of the Commission's costs of regulating satellites.

Under the Schedule of Regulatory Fees, individual operational space stations in geosynchronous orbit are subject to a regulatory fee. Section 1.1165 of the Commission's rules provides that waiver of regulatory fees will be granted only where "good cause is shown and where waiver ... of the fee would promote the public interest." 47 C.F.R. § 1.1165. Moreover, in establishing its waiver standard, the Commission contemplated affording waivers only in "extraordinary and compelling circumstances outweighing the public interest in recouping the cost of the Commission's regulatory services from a particular regulatee." See Implementation of Section 9 of the Communications Act, 9 FCC Rcd 5333, 5344 (1994), reconsidered, FCC 95-257, released June 22, 1995.

Our review of your request does not convince us that Columbia's circumstances warrant a waiver or reduction of its fees. We recognize, as the Commission has in its proceedings involving Columbia's operations, that Columbia utilizes fewer transponders than entities operating conventional satellite systems. Recently, the Commission rejected a proposal to assess regulatory fees for geostationary space segments based upon the number of transponders that a satellite licensee operates. See Assessment and Collection of Regulatory Fees for Fiscal Year 1995, FCC 95-227, released June 19, 1995. Instead, at paragraph 111 of its decision, the Commission decided to continue to assess fees for geostationary space segments based upon the number of satellites operated by a licensee, as provided for in Section 9(g) of the Communications Act, because "the cost of satellite regulatory activities is reasonably related to the number of operational satellites... ." Thus, we cannot find that Columbia should be afforded a reduction in fees because the TDRSS satellites carry fewer than the ordinary compliment of commercial transponders, notwithstanding that the TDRSS satellites carry transponders dedicated to other purposes.

Similarly, we cannot find that Columbia's commercial operation of transponders in a government satellite system or its contractual relationship with NASA warrant a reduction in fees. While Columbia's operational circumstances undoubtedly differ from the

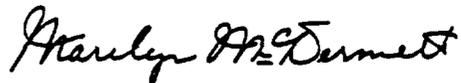
Raul R. Rodriguez, Esquire  
Page 3

manner in which satellite service is ordinarily provided, it is undisputed that Columbia is fully subject to the Commission's jurisdiction and to its regulatory oversight. Therefore, the fact that Columbia does not directly undertake certain elements of TDRSS operations, but rather receives these services pursuant to its agreement with NASA, does not constitute grounds for reduction of its fees.

Finally, with respect to Columbia's contention that it is competitively handicapped by its fee requirement, you are advised that the Commission has set forth criteria for grant of a waiver based upon financial hardship. See 9 FCC Rcd at 5345-5346, reconsidered, FCC 95-257 at paragraphs 12-13.

Accordingly, your request is denied.

Sincerely,



Marilyn J. McDermott  
Associate Managing Director  
for Operations