

In the Matter of AMERICAN TELEPHONE AND TELEGRAPH COMPANY; For authority to supplement facilities for the provision of its authorized services between points in or reached via both the U.S. and the Republic of Cuba in the U.S.-Cuba Troposcatter System; AMERICAN TELEPHONE AND TELEGRAPH COMPANY; For authority for unattended operation of its OH Troposcatter System station at Florida City, Florida; TRT TELECOMMUNICATIONS CORPORATION; For authority to acquire a telegraph-grade satellite circuit for the provision of TRT's authorized message telegram service between the United States and the Republic of Cuba; AMERICAN TELEPHONE AND TELEGRAPH COMPANY AND the CUBAN AMERICAN TELEPHONE AND TELEGRAPH COMPANY; For authority to construct and operate a submarine cable between the United States and the Republic of Cuba; AMERICAN TELEPHONE AND TELEGRAPH COMPANY; For authority to lease and operate facilities for the provision of AT&T's authorized Private Line Services between points in or reached via the United States and the Republic of Cuba; COMMUNICATIONS SATELLITE CORPORATION; For authority to provide satellite services between the United States and the Republic of Cuba

File No. I-T-C-87-046; File No. C3-87-002-ML; File No. I-T-C-87-159; File No. I-T-C-87-160; File No. I-T-C-87-161; File No. I-T-C-87-163

RELEASE-NUMBER: DA 87-1901

FEDERAL COMMUNICATIONS COMMISSION

3 FCC Rcd 45; 1988 FCC LEXIS 27

January 8, 1988 Released; Adopted December 24, 1987

ACTION:

[**1]

MEMORANDUM OPINION, ORDER AND AUTHORIZATION

JUDGES: By the Chief, Common Carrier Bureau

OPINION BY: BROCK

OPINION:

[*45] 1. The Commission has before it for consideration several applications for authority, pursuant to Section 214 of the Communications Act of 1934, as amended, 47 U.S.C. § 214, (19 to acquire and operate facilities for the provision of telecommunications services to Cuba. We are acting on these applications together because of the interrelationship of some of the applications and in view of recent clarifications from the Department of State concerning authorization of telecommunications services between the United States and Cuba under the Cuban Embargo Act of 1961, 23 U.S.C. 2370 (1961).

2. First, AT&T has filed two applications concerning the operation of its International Fixed Public Over-the-Horizon Troposcatter System (OH Troposcatter System) station located at Florida City, Florida. First, AT&T is seeking authority to activate additional circuits for the provision of its authorized services between points reached via both the U.S. and the Republic of Cuba (Cuba) via the OH Troposcatter System. Petitions to Deny were filed by the Communications Satellite Corporation (Comsat) and BellSouth Corporation. BellSouth Mobility, Inc., and its subsidiary, Miami CGSA, Inc. (collectively BellSouth) on January 16, 1987. An Opposition to the Petitions to Deny was filed by AT&T on January 29, 1987. A reply to AT&T's Opposition was filed on February 9, 1987 by Comsat. In addition, AT&T has filed an application requesting authority for unattended, continuous operation of the OH Troposcatter System. No comments or oppositions have been received in response to this application.

3. Subsequent to filing its OH Troposcatter applications, AT&T and the Cuban American Telephone and Telegraph Company (CATT) n1 filed an application to construct and operate a submarine cable (U.S.-Cuba #7 Cable System) between the United States and Cuba. Comments supporting the application were filed by BellSouth Mobility, Inc., and its subsidiary, Florida Cellular Service, Inc. (collectively, BellSouth), Florida Cellular Telephone Company (FCTC), and RCA Global Communications, Inc. (RCA Globcom). In the application, AT&T/CATT seek authority to replace the Key West, Florida-Havana, Cuba #5 and #6 Cable System (Key West-Havana [**3] cable) with a refurbished portion of the TAT-3 cable which was retired in 1986. The proposed cable is a single analog submarine cable of SD design with rigid two-way repeaters, to be located in the Atlantic Ocean (except for a land portion at each end) extending about 326 nautical miles between West Palm Beach, Florida in the United States and Guanabo, Cuba. The cable will have a capacity of one hundred thirty-eight (138) two-way voice-grade channels, each having a bandwidth of approximately 3 kilohertz. In addition, terminal equipment, including nine 16-channel broadband carrier telephone terminals (modified Type L [*46] or the equivalent), associated power feed and channelizing equipment, will be installed at the U.S. terminal. Similar equipment will be installed at the terminal in Cuba. AT&T will own the terminal equipment in the cable station and the land portion at West Palm Beach. CATT will own the submerged cable, repeaters and equalizer, the terminal equipment at the terminal station and the land portion at Guanabo. The cost of the proposed facilities is estimated at approximately \$7.7 million dollars.

n1 CATT is a corporation organized and existing under the laws of Cuba and is jointly owned by AT&T and ITT Corporation.

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4. TRT Telecommunications Corporation (TRT), has filed an application to acquire by lease and operate one telegraph-grade channel between the United States and Cuba. TRT proposes to establish a route between the United States and Cuba via Montreal utilizing one telegraph-grade channel in an existing TRT-Teleglobe Canada circuit extending between Fort Lauderdale, Florida and Montreal, Canada, which then will connect with a like channel in an existing Canada - Empresa de Telecomunicaciones Internacionales de Cuba (EMTELCUBA) satellite circuit between Montreal and Havana, Cuba. Matching facilities in both the land line circuit between the U.S.-Canada border and Montreal, and the satellite circuit from Montreal to Havana, Cuba will be furnished by EMTELCUBA.

5. Finally, AT&T and Comsat each have filed applications to establish via the INTELSAT System a private line to Cuba to be used by the Federal Aviation Administration (FAA) for international aviation communications between the U.S. and Cuba. AT&T seeks authority to lease an INTELSAT half-circuit in an Atlantic Ocean Region (AOR) satellite from Comsat and to operate and use this facility together with matching facilities provided [**5] by its foreign correspondent in Cuba to provide private line services to the FAA between points in or reached via both the United States and Cuba. Comsat seeks authority to provide to AT&T for this purpose a 4 KHz SCPC voicegrade half-circuit to be uplinked from the Roaring Creek earth station located in Bloomsburg, Pennsylvania. Matching facilities will be provided by the Cuban correspondent from its earth station located in Havana.

DISCUSSION

6. The United States exercises an embargo upon trade and commercial relations between the United States and Cuba under the Cuban Embargo Act of 1961. The Departments of State and Treasury have joint responsibility for implementation of the statute. The Secretary of the Treasury is responsible for carrying out the prohibition and also is authorized to make or revoke exemptions from the embargo. n2 Exemptions for telecommunications are handled on a case-by-case basis. Such exemptions have generally only been granted for news media coverage of news worthy events of limited duration. Otherwise, it has been the policy of the U.S. government to deny requests to upgrade telecommunications facilities between the U.S. and Cuba. n3 Accordingly, [**6] it has been the Commission's practice to return any application for service to Cuba as unacceptable for filing absent an accompanying statement from the Department of State that the filing is in accord with U.S. policy.

n2 The Office of Foreign Assets Control is responsible for promulgating the rules. 31 CFR Part 515, governing the Cuban Embargo Act. Section 515.542 of those rules as originally issued contained a general license authorizing all transactions of common carriers incidental to the receipt or transmission of mail and communications with Cuba. However, in actual practice, the Office of Foreign Assets Control issued specific licenses authorizing appropriate transactions to each of the small number of common carriers providing telephone and telegraph service between the United States and Cuba. In 1980, it amended Section 515.542 to require specific li-

censes on a case-by-case basis for transactions incident to the receipt or transmission of communications between the United States and Cuba. At the same time, the rules were amended to provide for a general license for transactions incident to the use of satellite channels for the transmission of television news and news programs originating in Cuba by United States news organizations. Section 515.542(b).

n3 Order Dismissing Applications for Service to Cuba, Mimeo No. 6460 (released September 14, 1983); see also. American Telephone and Telegraph Company, Mimeo No. 3980 (released August 15, 1984).

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7. The instant applications were accepted for filing in view of recent Department of State letters coordinated with the Treasury Department and sent to the Commission clarifying U.S. policy concerning the transmission of telephone, telegraph and telex communications between the United States and Cuba. n4 The State Department informed the Commission that, in the context of broad United States foreign policy interests, all transactions relating to communications with Cuba must remain subject to the Cuban embargo and all business arrangements with Cuban communications organizations must continue to be licensed by the Department of Treasury, Office of Foreign Assets Control (OFAC). It further stated that U.S. firms should be authorized or licensed by OFAC to enter into technical arrangements with Cuba only if the following principles are fully respected:

No payments will be made to Cuba: all monies due Cuba from the settlement of accounts for services will be paid into blocked accounts in accordance with Department of the Treasury regulations;

No technology or financing will be provided to Cuba by any U.S. firm including technology which Cuba might seek in order to undertake services [**8] with American companies (except in unusual circumstances after review and approval by the Departments of State and Treasury);

Telephone service from Cuba will be collect and payable in the United States, where required by the Department of the Treasury.

Those companies which provide "carrier's carrier" service or private leased circuits must notify customers of their obligation to obtain Treasury licenses and to take appropriate action thereafter to comply with those licenses.

No service will be authorized using domestic transborder satellites (i.e. all service through INTELSAT); and

All companies seeking to provide service to Cuba must have a Department of the Treasury license indicating these conditions and such others as the Treasury may require will be met.

The State Department also determined that: (1) AT&T's proposed replacement of its 1949-vintage submarine cable with a newer cable of similar technology would not be in conflict with U.S. policy; (2) the use of satellite circuits over existing INTELSAT and Comsat facilities also would not conflict with U.S. policy; n5 and (3) it would be consistent with U.S. policy to permit a modest annual increase in communications [**9] circuits between the U.S. and Cuba. n6 On this last point, the State Department indicated that no more than 90 circuits should be authorized for total communications service with Cuba in 1987; thereafter, the Commission may authorize an annual increase of up to 12 circuits for the years 1988 through 1990. The State Department stated that it would look to the Commission as the competent authority to determine issues relating to the distribution of these circuits. It said that existing or potential applications for the circuits are matters appropriately decided in the licensing process.

n4 Letter from Acting Director. Bureau of International Communications and Information Policy, Department of State, to Chairman, Federal Communications Commission, dated July 31, 1987; Letter from Director. Office of Regulatory and Treaty Affairs. Department of State, to Assistant Chief, International, Common Carrier Bureau, dated September 16, 1987. See also Letter from U.S. Coordinator and Director, Bureau of International Communications and Information Policy, Department of State, to Chairman, Federal Communications Commission, dated December 5, 1986.

n5 While Cuba commenced operation of its INTELSAT earth station in 1979, satellite service between the United States and Cuba has not been authorized on a permanent basis. However, temporary authorizations for satellite services to transmit news coverage and certain athletic events has been granted.

n6 The State Department further asked the Commission to condition carrier licenses: (1) to ensure that discussions with the Cuban government are limited to those technical details necessary to bring authorized facilities into use; and (2) to ensure compliance with applicable Treasury regulation and State Department policies.

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8. The applicants present a persuasive case for a grant of the proposed facilities and circuits. AT&T and CATT currently have two facilities for the provision of telecommunications service between the United States and Cuba: the Key West-Havana #5 and #6 Cable System; and the U.S.-Cuba Over-the-Horizon (OH) Troposcatter System. The Key West-Havana cable was installed in 1949, [*47] with a design life of 25 years. This cable has been in service for approximately 38 years, is subject to frequent failures and outages and requires considerable maintenance and repair. It carries 24 circuits of which AT&T operates 20 circuits. These circuits are 17 Message Telephone Service (MTS), 2 Private Line (PL) circuits, and 1 Order-Wire circuit. The remaining four circuits are leased to other carriers. The OH Troposcatter System was installed in 1957, and while it now represents an outdated technology, its spare capacity is used to restore cable circuits during periods of outage. Currently, service to Cuba is being rendered via the OH Troposcatter System due to a cable outage. However, the OH Troposcatter System is presently the subject of an interference complaint alleging interference [**11] to the operation of cellular mobile carriers in the southern sections of Florida. n7

n7 See Petition to Deny filed by Bell South in File No. I-T-C-87-046.

9. The need for additional circuits on a reliable facility is clear. AT&T states that in 1986 customers attempted 28.0 million calls to Cuba. Only 368,000 calls from the U.S. to Cuba were completed. Thus, only 1.31% of calls made to Cuba were successfully terminated. The Department of State has indicated in its letter that use of the proposed cable facility would be consistent with U.S. policy. Accordingly, we will grant the AT&T/CATT application to construct and operate the proposed cable. In doing so, we note that AT&T intends to file applications to retire both the OH Troposcatter System and the Key West-Havana cable systems upon favorable Commission action on its application for the U.S.-Cuba #7 Cable System. n8 AT&T intends that all circuits on the OH System be transferred to the new cable when the proposed cable becomes operational. n9 Therefore, we will dismiss AT&T's OH applications (File Nos. I-T-C-87-046 and C3-87-002-ML). However, we will extend the temporary authority (TAO-1357) for the additional circuits [**12] to Cuba on the OH system now scheduled to expire on January 30, 1988, until such time as the U.S.-Cuba #7 Cable System is constructed and activated. In addition, we will expect AT&T to file in a timely manner an appropriate Section 214 application for discontinuance of its OH Troposcatter System and the Key West-Havana Cable System.

n8 Letter from American Telephone and Telegraph Company to the Secretary, Federal Communications Commission, associated with File No. I-T-C-87-046, dated December 4, 1987.

n9 AT&T states that it is studying restoration options, including the possible use of satellite, to ensure restoration of U.S.-Cuba service in the event of any service interruption to the new facility.

10. TRT presently provides message telegraph service between the United States and Cuba via two telegraphgrade channels in a point-to-point (High Frequency Radio) Telegraph Station located near Slidell, Louisiana. TRT notes that upon a grant of its request for a satellite circuit it will discontinue its HF radio system. In view of the age of TRT's HF System we believe that grant of its application is in the public interest. Although the State Department did not specifically [**13] discuss TRT's application, we find that it is consistent with the principles established by State Department to implement U.S. policy. n10 We therefore will grant TRT's application subject to the terms of the State Department letters. We expect TRT to file in a timely manner an appropriate Section 214 application for discontinuance of its HF radio system.

n10 The Bureau's staff has orally coordinated the TRT application with State Department staff to confirm consistency with the principles established by the State Department letters.

11. As to the AT&T and Comsat applications to establish private line to Cuba via INTELSAT for FAA use, it is clear that a basic concern for air safety justifies authorization of the proposed facility. Again, the Department of State has indicated that authorization of the facility would be consistent with U.S. policy. We therefore will grant these applications.

12. Finally, as to the assignment of circuits necessary to implement the current proposals, U.S. policy allows the authorization of a total of 90 circuits for service to Cuba in 1987. Thereafter, 12 circuits per year may be authorized for service to Cuba for the period 1988-1990. AT&T [**14] presently utilizes 77 circuits to provide telecommunications service to Cuba via the OH Troposcatter System. Since it is the intent of AT&T that service from both the Key West-Havana Cable and the OH System facilities be discontinued, it is necessary to assign 77 of the 90 circuits available for 1987 to AT&T in order to continue AT&T's existing service. We will assign one circuit to meet the service request of the FAA for satellite service and one satellite circuit for the provision of telegraph service to Cuba by TRT. The remaining 11 circuits for 1987 will be assigned to AT&T in view of the clear need for additional circuits for telephone service and the absence of any request from another applicant. As for the remaining circuits available under U.S. policy for authorization for 1988 through 1990, we anticipate initiating in the near future an appropriate proceeding to determine how they should be allocated to U.S. carriers for service to Cuba.

13. Accordingly, in view of the foregoing, IT IS ORDERED that application File Nos. I-T-C-87-159, I-T-C-87-160, I-T-C-87-161, and File No. I-T-C-87-163 ARE GRANTED, subject to the following terms, conditions, and limitations, and: [**15]

(A) TRT is authorized to:

- (1) utilize for service to Cuba an existing Fort Lauderdale-Montreal bearer circuit to the U.S.-Canada border;
- (2) lease from Teleglobe Canada and operate a telegraph-grade half-circuit between the U.S.-Canada border and Montreal;
- (3) lease from Teleglobe Canada and operate a telegraph-grade half-circuit between Montreal and an appropriate satellite over the Atlantic Ocean, connecting with a similar circuit between the satellite and an earth station in Cuba, furnished by TRT's correspondent in Cuba; and

(4) use said facilities to provide TRT's message telegram services between the United States and Cuba.

(B) AT&T and CATT are authorized to:

- (1) construct and operate the U.S.-Cuba #7 Cable System as proposed herein;
- (2) assign the circuits of the U.S.-Cuba #7 Cable System as set forth in paragraph 12 herein; and
- (3) provide their authorized services between points in or reached via both the United States and Cuba.

(C) AT&T is authorized to:

(1) lease from Comsat a single 4 kHz SCPC voicegrade half-circuit between the Roaring Creek earth station located in Bloomsburg, Pennsylvania and an INTELSAT Atlantic Ocean Region satellite together with a matching [**16] single half-circuit between the satellite and an earth station in Havana, provided by AT&T's foreign correspondent in Cuba for the specific purpose of providing international civil aviation service to the FAA between the U.S. and Cuba.

[*48] (D) Comsat is authorized to:

(1) provide a single 4 kHz SCPC voice-grade half-circuit between the Roaring Creek earth station in Bloomsburg, Pennsylvania and an INTELSAT Atlantic Ocean Region satellite at 325.5 degree E.L. together with a matching half-circuit between the satellite and an earth station in Havana, Cuba, provided by AT&T's foreign correspondent in Cuba, for the specific purpose of providing international civilaviation communications to the FAA between the U.S. and Cuba.

14. IT IS FURTHER ORDERED that AT&T's applications File Nos. I-T-C-87-046 and C3-87-002-ML ARE HEREBY DISMISSED.

15. IT IS FURTHER ORDERED that AT&T's TAO-1357 IS HEREBY EXTENDED until such time as the U.S.-Cuba #7 Cable System is constructed and activated.

16. IT IS FURTHER ORDERED, that the applicants herein limit discussions with the Cuban Government to those technical details necessary to bring into use the facilities herein authorized.

17. IT IS [**17] FURTHER ORDERED, that the applicants herein comply with the Department of the Treasury's Office Foreign Assets control regulations and the Department of State's policies as enunciated in the Department's letters dated July 31, and September 16, 1987.

18. IT IS FURTHER ORDERED, that no substantial changes inconsistent with this or any other relevant Commission order shall be made in the construction and maintenance agreement governing the U.S.-Cuba #7 Cable System, and copies of the agreement shall be filed with the Commission 30 days before execution.

19. IT IS FURTHER ORDERED, that the Commission retains jurisdiction to reallocate U.S. carriers interests in the capacity of the U.S.-Cuba #7 Cable System, as the public interest may require, and further jurisdiction is retained by the Commission over all matters relating to AT&T/CATT's ownership, management, maintenance and operation of the U.S.-Cuba #7 Cable System authorized herein.

20. IT IS FURTHER ORDERED, that this authorization is issued subject to the terms and conditions of any license issued to the applicants herein under the act entitled "An Act relating to the landing and operation of submarine cables in the United States" (47 U.S.C. §§ 34- 39), covering the subject submarine cable, and shall become effective upon the acceptance of the aforementioned license by all such parties.

21. IT IS FURTHER ORDERED, that the Commission retains jurisdiction over this matter to reallocate the U.S. carriers interests in the capacity of the communications satellite system and earth stations, and to insure that all present and future authorized carriers have nondiscriminatory use of, and equitable access to the communications satellite system and earth stations.

22. IT IS FURTHER ORDERED, that no applicant herein shall dispose of any interest in any facility or circuit it is authorized to acquire in any way without prior authorization by the Commission.

23. IT IS FURTHER ORDERED, that each applicant herein shall file with the Commission an appropriate application for authority before acquiring and operating additional facilities for telecommunications service to Cuba.

24. This order is issued under Section 0.291 of the Commission's rules and is effective upon release. Petitions for reconsideration under Section 1.106 or applications for review under Section 1.115 of the rules may be filed within 30 days of the date of public notice of this order (see Section 1.4(b)(2)).

FEDERAL COMMUNICATIONS COMMISSION

Gerald Brock

Chief, Common Carrier Bureau

APPENDIX:

REPORT NO. 145

TYPE APPROVAL ACTIONS

January 11, 1988

The Commission, by the Office of Engineering and Technology, Authorization and Evaluation Division, took the following type approval actions during the period December 1 thru December 31, 1987. Actions include grants of equipment authorization and modifications to previously approved equipment.

Questions concerning these actions may be directed to the Authorization and Evaluation Division of the Office of Engineering and Technology as follows:

Federal Communications Commission, 7435 Oakland Mills Road, Columbia, Maryland 21046, Phone: (301) 725-1585

EQUIPMENT CLASSIFICATION CODES

CSE - Compulsory Ship Equipment

EAS - Specific Low Power Communications Device

EST - Specific Low Power Communications Device

8CD - Consumer Device

8ID - Industrial Device

8MD - Medical Device

Type Approved Equipment Granted between 12/ 1/87 and 12/31/87

FCCID	Rule Part Numbers	Freq Range MHZ	Equipment Code	Grant Date
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Type Approved Equipment Granted between 12/ 1/87
and 12/31/87

FCCID	Rule Part Numbers	Freq Range MHZ	Equipment Code	Grant Date
FF24CURRT200 [**20]	Dallas Instruments Inc 30 Centurian Drive, Suite 201 Markham Ontario L3R 6B2 Canada 15	88-108	EAS	121487