

In the Matter of AMERICAN TELEPHONE AND TELEGRAPH COMPANY For authority pursuant to Section 214 of the Communications Act of 1934, as amended, to activate and operate 24 circuits in the U.S.-Cuba No.7 Cable System for the provision of AT&T's authorized services between the United States and the Republic of Cuba

File No. I-T-C-89-026

RELEASE-NUMBER: DA 89-358

FEDERAL COMMUNICATIONS COMMISSION

4 FCC Rcd 2753; 1989 FCC LEXIS 703

April 7, 1989 Released; Adopted March 29, 1989

**ACTION:**

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MEMORANDUM OPINION, ORDER AND AUTHORIZATION

**JUDGES:** By the Chief, Common Carrier Bureau

**OPINION BY:** BROCK

**OPINION:**

[\*2753] 1. On November 23, 1988 the American Telephone and Telegraph Company (AT&T) filed the above-captioned application requesting authority to activate and operate additional 24 circuits in the U.S.-Cuba No.7 Cable for the provision of service between the United States and the Republic of Cuba (Cuba). n1 The application was placed on public notice on November 30, 1988. No comments were received.

n1 On November 15, 1988, AT&T's request for temporary authority to activate and operate seven U.S.-Spain circuits on a transit basis for service to Cuba on an outbound basis only was granted (TAO-1473). The seven circuits are included within the 24 circuits requested by AT&T requests in this application and will be transferred to the U.S.-Cuba No.7 cable as soon as it becomes operational.

**BACKGROUND**

2. The United States exercises an embargo upon trade and commercial relations between the U.S. and Cuba under the Cuban Embargo Act of 1961, 22 U.S.C. 2370. The Departments of State and Treasury have joint responsibility for implementation of the statute. [\*\*2] 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

n2 The Office of Foreign Assets Control is responsible for promulgating the rules, 31 C.F.R. Part 515, governing the Cuban Embargo Act. Section 515.542 requires specific licenses on a case-by-case basis for transactions incident to the receipt or transmission of communications between the United States and Cuba. However, the rules do 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 new 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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3. U.S. policy concerning the transmission of telephone, telegraph and telex communications between the United States and Cuba is outlined in two 1987 letters from the State Department to the Commission. n4 The State Department informed the Commission that, while in the context of broad United States foreign policy interests, all transactions relating to communications with Cuba must remain subject to the Cuban Embargo Act and all business arrangements with Cuban communications organizations must continue to be licensed by the Department of Treasury, Office of Foreign Assets Control (OFAC), the use of satellite circuits over existing INTELSAT and Comsat facilities would not conflict with U.S. policy. The State Department also indicated that it would be consistent with U.S. policy to permit a modest annual increase in communications circuits between the U.S. and Cuba. The State Department indicated that not more than 90 circuits should be authorized for total communications service with Cuba in 1987, thereafter, the Commission may authorized an annual increase of up to 12 circuits for the years 1988 through 1990. It stated that it would look to the Commission as the competent [\*\*4] 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. Finally, the State Department also determined that 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.

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.

4. On December 24, 1987, the Commission authorized the construction and operation of the U.S.-Cuba No.7 Cable System, and the assignment of circuits necessary to implement service to Cuba. n5 The U.S.-Cuba No.7 Cable system is [\*\*5] a single analog submarine cable of SD design with a capacity of one hundred thirty-eight (138) two-way voice-grade channels, each having a bandwidth of approximately 3 kilohertz. The anticipated service date for the U.S.-Cuba No.7 cable system is April 1989. In authorizing construction and operation of the cable, the Commission assigned a total of 88 circuits to AT&T, one 4 KHz SCPC satellite circuit to AT&T, and one telegraph-grade satellite circuit to TRT Telecommunication Corporation, for communications service to Cuba in 1987. In the application before us, AT&T is requesting an additional 12 circuits for activation in 1988 and 12 circuits for activation in 1989.

n5 *AT&T et al, File Nos. I-T-C-87-046 et al, 3 FCC Rcd 45 (1988).*

## DISCUSSION

5. It is clear that additional telecommunications facilities between the U.S. and Cuba are necessary to meet present and future demands for U.S.-Cuba telephone service. In the past 20 years, the number of telephone lines in service in Cuba has more than doubled to over 300,000. Latest official Cuban government statistics show there were 53.3 telephones per 1,000 Cuba residents in 1986. Correspondingly, [\*\*6] there has been a large increase in the number of calls to Cuba by Cubans living in the United States, particularly in the Miami and New York areas. As we noted in granting AT&T's application to construct and operate the U.S.-Cuba No.7 cable system, the antiquated cable and radio facilities serving Cuba lack sufficient capacity to adequately serve Cuba, causing congestion which results in only one of every 10 calls attempted from the United States reaching Cuba. The cable authorized by the Commission for service to Cuba will only relieve the congestion by about 50%, so there will still not be enough capacity for long-distance calls.

6. The Commission's ability to authorize additional facilities for telecommunications service with Cuba is subject to the determination of the Department of State that circuitry may be increased by 12 circuits per year during the period 1986-1990. The State Department has determined that this level of increase is sufficient to maintain service and consistent with U.S. policy goals regarding Cuba. The State Department has indicated it would look [\*2754] to the Commission as the competent authority to determine the issues related to the distribution [\*\*7] of circuits subject to the requirements of the Cuban Embargo Act. Our responsibility is to assure that these circuits are assigned in a manner that best serves the public interest. To properly address the problem of distribution of circuits for service, we must ascertain the number of circuits available, the time frame in which they are available, the restrictions, if any, on their use and finally the priority of needs to be met.

7. The Commission already has assigned to AT&T 24 circuits for the years 1986 and 1987 in accordance with the Department of State guidelines for service to Cuba. n6 Accordingly, the remaining 36 circuits may be assigned, 12 cir-

cuits annually, for the period 1988-1990. We find that AT&T has demonstrated the need for the additional 24 circuits in the U.S.-Cuba No.7 Cable, covering the period 1988-1989. The need for these additional circuits to meet the demand for telephone service to Cuba is clear. AT&T estimates that out of 28.4 million calls attempted in 1987, only 418,000 calls from the U.S. to Cuba were completed. Moreover, during the three month period from August 1987 to October 1987, during the average busy hour, approximately 80% of attempted [\*\*8] calls could not be completed. The number of circuits available during the 1988-1990 period will merely alleviate, not cure, current problems with telecommunications service to Cuba.

n6 Id.

8. Accordingly, IT IS ORDERED that application File No. I-T-C-89-026 IS GRANTED and AT&T is authorized to:

a. activate and operate the additional 24 circuits in the U.S.-Cuba No.7 Cable, covering the period 1988-1989 for service to Cuba; and

b. provide its authorized services between points in or reached via both the United States and Cuba.

9. IT IS FURTHER ORDERED that the grant of application File No. I-T-C-89-026 is subject to the same terms, conditions and limitations set forth in (a) In the Matter of AT&T et. al., File Nos. I-T-C-87-046 et. al., Memorandum Opinion, Order and Authorization released *January 8, 1988, 3 FCC Rcd 45 (1988)* and (b) In the Matter of AT&T et. al., File No. S-C-L-87-004, Cable Landing License released *January 8, 1988, 3 FCC Rcd 50 (1988)*.

10. IT IS FURTHER ORDERED that temporary authorities (TAO-1357, TAO-1403, TAO-1426 and TAO-1473) shall be terminated upon transfer of the existing 88 Over-the-Horizon [\*\*9] Troposeatter System circuits to the U.S.-Cuba No.7 cable.

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

FEDERAL COMMUNICATIONS COMMISSION

Gerald Brock

Chief, Common Carrier Bureau