

LEXSEE 6 FCC Rcd 5962

In the Matter of the Application of IDB AERO-NAUTICAL COMMUNICATIONS, INC. For authority pursuant to the International Maritime Satellite Communications Act of 1978 and Section 214 of the Communications Act of 1934, as amended, to provide maritime mobile satellite service in the Indian Ocean Region via the Inmarsat system

File No. I-T-C-91-012

FEDERAL COMMUNICATIONS COMMISSION

6 FCC Rcd 5962; 1991 FCC LEXIS 5510; 70 Rad. Reg. 2d (P & F) 16

RELEASE-NUMBER:

DA 91-1296

October 21, 1991 Released; Adopted October 10, 1991

ACTION: **1

MEMORANDUM OPINION, ORDER AND AUTHORIZATION

JUDGES:

By the Deputy Chief, Common Carrier Bureau

OPINIONBY:

VAUGHAN

OPINION:

*5962 1. On October 3, 1990, IDB Aero-Nautical Communications, Inc. (IDB-A), filed the above-captioned application requesting authority pursuant to the International Maritime Satellite Communications Act of 1978, 47 U.S.C. §§ 751 et. seq., and Section 214 of the Communications Act of 1934, as amended, 47 U.S.C. § 214, to provide maritime mobile satellite service (MMSS) in the Indian Ocean Region (IOR) via the Inmarsat system. The application was placed on public notice on October 18, 1990. Communications Satellite Corporation (Comsat) filed a petition to deny on November 19, 1990 but subsequently withdrew the petition on July 12, 1991. For the reasons set forth below, we grant the application.

2. IDB-A seeks authority to provide MMSS in the IOR via the Inmarsat satellite system using the Perth coast earth station (CES) operated by OTC Limited of Australia (OTC). n1 IDB-A says that it plans to provide Standard A telephone, including facsimile and data, and telex services. Ultimately, IDB-A wishes to provide **2 other Inmarsat services, and thus requests blanket authority to provide any other MMSS service offered now or in the future by Inmarsat. IDB-A states that its provision of MMSS will be consistent with the Commission's decisions in Common Carrier Docket No. 87-75 n2 and General Docket No. 84-1234. n3

n1 IDB-A has received special temporary authority (TAO-1845) to provide interim MMSS in the ship-to-shore direction only in the IOR via OTC's CES at

Perth, Australia.

n2 Provision of Aeronautical Services via the Inmarsat System, 4 FCC Rcd 6072 (1989), recon. pending.

n3 Amendment of Parts 2, 22, and 25 of the Commission's Rules to Allocate Spectrum for and to Establish Other Rules and Policies Pertaining to the Use of Radio Frequencies in a Land Mobile Satellite Service for the Provision of Various Common Carrier Services, 4 FCC Rcd 6041 (1989); remanded Aeronautical Radio, Inc. v. FCC, 928 F.2d 428 (D.C. Cir. 1991), on remand Tentative Decision, FCC 91-240 (released August 2, 1991).

3. IDB-A states that it will bear minimal construction costs: only those associated with modifying the Perth CES **3 to recognize IDB-A's Inmarsat identification number for the IOR. IDB-A states that estimated operating costs will be set forth in the cost justification to be submitted with IDB-A's tariff. Charges and regulations governing the services will be specified in one or more tariffs which IDB-A will file with the Commission to the extent required by law.

4. IDB-A states that the present application serves the public interest, convenience and necessity because it will permit IDB-A to offer MMSS services in the IOR. IDB-A states that there is an increasing demand for such services, and its entry into the market will substantially increase competition and result in lower charges, innovative service offerings, and better service to the public. Further, offering global MMSS services is vital for IDB-A to compete with foreign signatories and will be of enormous benefit to potential customers. Comsat also agrees that the public interest will benefit from allowing IDB-A's competing shore-to-ship service for U.S. originating traffic to the IOR, and concedes that the use of a foreign CES for ship-to-shore services is consistent with the Inmarsat Act.

5. IDB-A states that it is the first U.S. **4 carrier to request authority to provide international MMSS services in the IOR. Since IOR satellites cannot be "seen" from the U.S., IDB-A states that it can only provide IOR service by using a foreign coast earth station. Comsat agrees that there are no U.S. facilities serving the IOR, and that it is impossible at present to provide IOR service through a U.S. coast earth station. Comsat therefore affirms that it would be impossible for IDB-A to provide Inmarsat service from the United States to the IOR other than through a foreign coast earth station.

6. We find that grant of this application, except for blanket authority to provide services not specifically enumerated, will advance the Commission's general policy of enhancing competition in the provision of maritime communications services. n4 It will serve the public interest, convenience and necessity because it will substantially increase competition, which should result in lower charges, innovative service offerings, and better service to the public. In particular, it will further effective U.S. competition with foreign signatories. We are not granting blanket authority to provide services not specifically mentioned because **5 pursuant to Section 214 of the Communications Act and Section 63.01 of the Commission's Rules, carriers are required to file separate applications to provide new services. In the future, IDB-A may file applications to provide other services offered now or at a later time by Inmarsat. Finally, in the extraordinary circumstances present here, we find that it is necessary for IDB-A to use a foreign coast earth station in order to provide Inmarsat service in the IOR. n5 We note that the Bureau previously determined that IDB-A is a dominant carrier under International

Competitive Carrier. n6

n4 Implementation of Requirements of the International Maritime Satellite Telecommunications Act, 91 FCC 2d 245, 252 (1982).

n5 Comsat in its petition to deny raised an issue as to whether the Inmarsat Act, 47 U.S.C. §§ 751 et seq., bars the use of foreign coast earth stations to carry U.S.-originating shore-to-ship traffic without Comsat's provision of the Inmarsat space segment. However, since Comsat has withdrawn its petition and hence is not asserting in this particular proceeding any purported statutory protection, we infer that Comsat is waiving any statutory right it might have to provide the space segment, if such a right exists. Thus, we limit our decision to allow the use of this foreign coast earth station to the particular facts of this case, and need not address the larger issue here. All the parties agree that without this arrangement in this case, service would not be possible.

n6 International Competitive Carrier Policies, 102 FCC 2d 812 (1985), recon. denied, 60 Rad. Reg. 2d (P&F) 1435 (1986). See IDB Aeronautical Communications, Inc., 6 FCC Rcd 2485 (1991). **6

7. Accordingly, pursuant to Section 214 of the Communications Act of 1934, as amended, 47 U.S.C. § 214, and the International Maritime Satellite Telecommunications Act of 1978, 47 U.S.C. §§ 751 et. seq., IT IS ORDERED that the application of IDB Aero-Nautical Communications, Inc., File No. I-T-C-91-012, IS GRANTED IN PART and IDB-A is authorized to provide Standard A telephone, including facsimile and data, and telex maritime mobile satellite service via the Inmarsat system in the Indian Ocean Region.

8. IT IS FURTHER ORDERED that IDB-A shall, pursuant to Section 203 of the Communications Act, 47 U.S.C. § 203, and Part 61 of the Commission's Rules, 47 C.F.R. Part 61, file a tariff for the services authorized in this order before offering services to the public.

9. IT IS FURTHER ORDERED that IDB-A IS CLASSIFIED AS DOMINANT in its provision of maritime mobile satellite services via the Inmarsat system.

10. The Commission retains jurisdiction over this matter to ensure the nondiscriminatory use of, and equitable access to, the Inmarsat satellite system.

*5963 11. **7 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 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 P. Vaughan, Deputy Chief, Common Carrier Bureau