

LEXSEE 6 FCC Rcd 2485

In the Matter of the Applications of IDB AERONAUTICAL COMMUNICATIONS, INC. For authority pursuant to Sections 503 and 504(c) of the International Maritime Satellite Communications Act of 1978 and Section 214 of the Communications Act of 1934 to provide aeronautical and maritime mobile satellite service via the INMARSAT system; CICI, Inc. For authority under Section 504(c)(4) of the International Maritime Satellite Communications Act of 1978 and Title III of the Communications Act of 1934, to modify its earth station KA-76 at Niles Canyon (Fremont), California to provide aeronautical and maritime mobile satellite service via the INMARSAT system; CICI, Inc. For authority under Section 504(c)(4) of the International Maritime Satellite Communications Act of 1978 and Title III of the Communications Act of 1934, to modify its earth station KA-63 at Niles Canyon (Fremont), California to provide aeronautical and maritime mobile satellite service via the INMARSAT system; CICI, Inc. For authority under Section 504(c)(4) of the International Maritime Satellite Communications Act of 1978 and Title III of the Communications Act of 1934, to modify its earth station KA-227 at the Teleport on Staten Island, New York to provide aeronautical and maritime mobile satellite service via the INMARSAT system

File No. I-T-C-90-088; File No. CSG-90-042-ML; File No. CSG-90-084-ML; File No. CSG-90-085-ML

FEDERAL COMMUNICATIONS COMMISSION

6 FCC Rcd 2485; 1991 FCC LEXIS 2347

RELEASE-NUMBER:

DA 91-558

May 8, 1991 Released; Adopted April 26, 1991

ACTION: \*\*1

MEMORANDUM OPINION, ORDER AND AUTHORIZATION

JUDGES:

By the Chief, Common Carrier Bureau

OPINIONBY:

FIRESTONE

OPINION:

\*2485 I. INTRODUCTION

1. IDB Aeronautical Communications, Inc. (IDB-A), and its affiliate, CICI, Inc. (CICI), filed the above-captioned applications requesting authority pursuant to Sections 503 and 504(c) of the International Maritime Satellite

Communications Act of 1978, 47 U.S.C. §§ 752 and 753(c), and Section 214 and Title III of the Communications Act of 1934, as amended, 47 U.S.C. §§ 214 and 301 et seq., to provide aeronautical and maritime mobile satellite service via the INMARSAT system, and to modify the Niles Canyon, California, INTELSAT earth stations (KA-76 and KA-63) and Staten Island, New York, INTELSAT earth station (KA-227) to provide aeronautical mobile satellite service (AMSS) and maritime mobile satellite service (MMSS) via the INMARSAT system. The first two above-listed applications were placed on public notice on April 11, 1990, and the latter two on July 20, 1990. Pan American Satellite (PAS) and Aeronautical Radio, Inc. (ARINC) filed comments. IDB-A and CICI (Applicants) filed a consolidated \*\*2 reply. PAS replied to the consolidated filing. The Applicants filed additional information pursuant to a Common Carrier Bureau request. For the reasons set forth below, we grant the applications, subject to certain conditions.

## II. THE APPLICATIONS

2. In application File No. I-T-C-90-088, IDB-A seeks authority to provide AMSS and MMSS between the ground earth stations listed above and aircraft in international flight and ships accessing INMARSAT, and to provide other such uses of the INMARSAT system as may be authorized by the Commission. IDB-A requests blanket authority to provide Pacific Ocean Region (POR) and Atlantic Ocean Region (AOR) MMSS and AMSS via all present and future INMARSAT owned or leased satellites. In applications File Nos. CSG-90-042-ML (Call Sign KA-76, 13.1 meter antenna), CSG-90-084-ML (Call Sign KA-63, 13.1 meter antenna), and CSG 90-085-ML (Call Sign KA-227, 13.1 meter antenna), CICI seeks authority to modify three of its INTELSAT earth stations to provide AMSS and MMSS via the INMARSAT system. The ground earth stations will have the capability to communicate with INMARSAT POR, AOR-West, and AOR-East satellites, respectively.

3. The Applicants state \*\*3 that AMSS will include slow and high speed cockpit data services, digitally encoded voice services for flight operations, airline administrative traffic, air traffic service, automatic dependent surveillance, and passenger voice communications. MMSS will include analog voice, telex, digital data, and compressed video.

4. The Applicants also state that grant of these applications will permit them to offer services that will greatly improve maritime and aviation communications, including the introduction of satellite communications to aircraft in transoceanic flight, which will further aviation safety, improve the efficiency of airline operations, and, \*2486 for the first time, offer voice and data communications to transoceanic airline passengers. The Applicants state that competition will increase service options to the public, improve overall service and reduce charges.

5. The application states that IDB-A will lease the use of the earth stations from IDB Communications Group, Inc. (IDB-CG). n1 It claims that operating costs cannot be estimated at this time because the cost of the space segment has not been determined, nor has the size of the market, although IDB-A believes \*\*4 that there is an increasing demand for these services. IDB-A states that charges and regulations governing its services will be specified in one or more tariffs which will be filed with the Commission to the extent required by law.

n1 A later contract assigned all of IDB-CG's rights and responsibilities to CICI. Thus, as now proposed, IDB-A will lease the use of the earth stations from CICI.

6. By amendment dated May 9, 1990, the Applicants emphasize that their provision of AMSS and MMSS will be consistent with the Commission's decisions in CC Docket No. 87-75 n2 and Gen. Docket No. 84-1234. n3 In further amendments, the Applicants state that they do not seek to be regulated as non-dominant carriers, and thus request that they be deemed dominant with respect to the provision of international mobile satellite communications services. They also acknowledge that the Communications Satellite Corporation (Comsat) is the sole U.S. signatory and operating entity for INMARSAT mobile satellite services, and that the carrier-to-carrier relationship between Comsat and the Applicants will be consistent with the International Maritime Satellite Telecommunications Act of 1978.

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

n3 Amendment of Parts 2 and 22, Report and Order, Gen. Docket Nos. 84-1231, 84-1233, and 84-1234, 2 FCC Rcd 1825 (1986); recon. denied 2 FCC Rcd 6830 (1987); recon. denied 4 FCC Rcd 6016 (1989); Second Report and Order, Gen. Docket No. 84-1234, 2 FCC Rcd 485 (1986); recon. denied 4 FCC Rcd 6029 (1989); Memorandum Opinion, Order and Authorization, 4 FCC Rcd 6041 (1989); remanded sub nom. Aeronautical Radio, Inc. v. FCC, No. 88-1009 (D.C. Cir. March 19, 1991). \*\*5

### III. COMMENTS AND REPLIES

7. In its comments, PAS contends that IDB-A and IDB-CG are commonly owned. According to PAS, IDB-CG is 20 percent owned by Teleglobe Canada and has two Canadian citizens on its nine-member board. In addition, PAS argues that the proposed aeronautical service is related to a joint venture between IDB-A and Teleglobe Canada to provide these services in North America. PAS thus concludes that IDB-A is foreign-owned and subject to regulation as a dominant carrier. Furthermore, PAS alleges that Teleglobe Canada has effectively prevented PAS from providing service between Canada and Europe and between Canada and Latin America, and that the Commission should evaluate this market access issue in ruling on IDB-A's applications. PAS maintains that the Commission should be wary of Teleglobe Canada's efforts to expand its presence in the U.S. while effectively keeping its Canadian market closed to U.S. separate systems.

8. ARINC also asks that IDB-A be classified as dominant, and that IDB-A be required to comply with all of the reporting and disclosure obligations, facilities licensing requirements, and service initiation and discontinuance obligations associated \*\*6 with dominant-carrier status. n4

n4 ARINC also reminds the Commission that in CC Docket No. 87-75, IDB-A advocated direct access to the INMARSAT system, and made a late proposal concerning structural separation of Comsat's INMARSAT-related space and ground segment activities. ARINC accuses IDB-A of jeopardizing the timely initiation of INMARSAT aeronautical services in the U.S. and the ability of U.S. companies to compete in their own markets. ARINC also claims that IDB-A is positioning itself to access INMARSAT capacity in the U.S. at wholesale rates while other U.S. companies are obligated under long term contracts with Comsat at retail rates. The Applicants respond that in that docket, IDB-A has withdrawn its request for direct access and for Comsat restructuring. Thus, IDB-A reasons that ARINC's concerns have been met.

9. The Applicants reply by first observing that neither ARINC nor PAS

opposed their applications. They therefore request the Commission to grant the applications expeditiously to allow a second U.S. company into the highly competitive world market for international mobile satellite communications services. The Applicants restate their intention to be \*\*7 regulated as dominant carriers. With respect to the PAS comments, the Applicants assert that the Commission has no jurisdiction to consider the policies of Teleglobe Canada with respect to international communications between Canada and nations other than the U.S. Even if it did, the Applicants allege that the Commission would retain adequate regulatory oversight by exercising dominant-carrier procedures.

10. In its response to the Applicants' reply, PAS disputes that the Commission lacks jurisdiction to consider services between two foreign countries. PAS argues that the Commission's interest is in ensuring generally that markets are not manipulated in such a way as to harm U.S. carriers, including U.S. separate satellite system providers. PAS asks the Commission to exercise its dominant carrier regulation by adding conditions on IDB-A's Section 214 authorization to encourage IDB-A's affiliate, Teleglobe Canada, to open the Canadian market to U.S. separate satellite systems.

#### IV. ADDITIONAL INFORMATION

11. In response to a December 6, 1990, inquiry from the Common Carrier Bureau, the Applicants filed additional information indicating IDB-A's intention to use the three above-referenced \*\*8 earth stations operated by CICI in the provision of aeronautical and maritime mobile satellite services in the AOR and POR. IDB-A will provide MMSS pursuant to its tariff which covers "service between a ship earth station and a station located in the United States and Canada." IDB-A explains that "station" when applied to a land location means a telephone number, not a satellite earth station.

12. The Applicants further explain that the three earth stations will be operated and controlled by CICI with equipment furnished by IDB-A. CICI, an established common carrier with numerous Title II and Title III authorizations, will provide ground/coast earth station services to IDB-A pursuant to carrier-to-carrier agreements. CICI will not offer maritime or aeronautical services to the public and, thus, will not file a tariff for such services.

13. IDB-A states that it seeks Title II authorization to offer service to the public as a common carrier. IDB-A has filed a tariff covering MMSS and will file a tariff covering AMSS in the near future. Finally, IDB-A states that it is a joint venture owned 50 percent by IDB Aeronautical Holdings, Inc., a wholly-owned subsidiary of IDB-CG, a \*\*9 Delaware Corporation, and 50 percent by TII Aeronautical Corporation (TII), which is a wholly-owned subsidiary of Teleglobe International, Inc., which is ultimately a wholly-owned subsidiary of Memotec Data, Inc., a Canadian corporation. Teleglobe International (U.S.), Inc., is an affiliate of Teleglobe Canada, Inc. IDB-A lists three of its six directors as Canadian citizens and two Canadian citizens as officers.

#### V. DISCUSSION

14. In CC Docket No. 87-75, one of the Commission's objectives was to promote competition in the provision of INMARSAT international aeronautical services. n5 The Commission directed that Comsat acquire space segment capacity from INMARSAT and provide that capacity both to aeronautical customers using Comsat aeronautical earth stations and to U.S. service providers operating their own aeronautical earth stations. The Commission emphasized that Comsat would not be the only service provider for aeronautical earth station services. The

arrangements \*2487 adopted for international aeronautical services were intended to enable other service providers to make full service offerings to their customers. n6

n5 Provision of Aeronautical Services via the INMARSAT System, 4 FCC Rcd at 6080.

n6 Id. at 6083. \*\*10

15. The Commission further noted that both the Maritime Satellite Act and Commission policy permit entities other than Comsat to operate coast earth stations with the INMARSAT system to provide maritime mobile satellite service. n7 Section 503(f) of the International Satellite Maritime Communications Act, 47 U.S.C. 752(f), provides that the Commission may authorize ownership of satellite earth stations by entities other than Comsat for the provision of maritime satellite services. In Implementation of Requirements of the International Maritime Satellite Telecommunications Act, 91 FCC 2d 245, 251 (1982), the Commission adopted a general policy to permit persons other than Comsat to own earth stations accessing the INMARSAT space segment if such persons make a showing that such ownership will be in the public interest.

n7 Id.

16. Accordingly, we need not consider the legal and policy implications of allowing persons other than Comsat to own earth stations for maritime and aeronautical use of the INMARSAT system; we need only determine that the applications are consistent with the Commission's policy decisions and \*\*11 the public interest. For the following reasons, we find that IDB-A's and CICI's applications are consistent with Commission policy and the public interest standard and therefore should be granted, subject to certain conditions.

17. Initially, we find that the provision of INMARSAT aeronautical services by the Applicants will serve the public interest. The Commission's goal of promoting competition in the provision of INMARSAT aeronautical services will be advanced by grant of these applications. It will permit competition in transoceanic aeronautical services that should increase service options to the public, improve overall service, and reduce charges.

18. We also find that the Applicants' proposal to provide maritime services will serve the public interest. It will advance the Commission's general policy to promote competition in the provision of maritime communications services in the manner contemplated by Congress. n8

n8 Implementation of Requirements of the International Maritime Satellite Telecommunications Act, 91 FCC 2d at 252.

19. Moreover, most of the issues raised by ARINC and PAS have been resolved by the Applicants' amendments \*\*12 which recognize their status as dominant carriers and by their supplemental information regarding ownership. n9 The earth stations will be operated and controlled by CICI, a fully qualified common carrier. CICI's obligations as outlined in the contracts indicate that it is the appropriate licensee for the earth stations, and that its holding of the licenses will comply with Title III of the Communications Act. The contracts are consistent with the representations made in the applications themselves.

n9 We note that in its June 1, 1990, amendments, CICI, in order to address the concerns of PAS and ARINC, requested that the grant of its application be

conditioned upon its being deemed a dominant carrier. CICI, however, has not filed a Section 214 application or a tariff. We are therefore conditioning the grant of these applications on CICI's filing such an application and tariff.

20. In the International Competitive Carrier proceeding, n10 the Commission determined that foreign-owned carriers should be considered dominant in the provision of international telecommunications services in order to address the concern that foreign telecommunications entities could favor the U.S. \*\*13 carriers in which they held a financial interest and, operating in concert with these carriers, could deny market entry to, or discriminate against, competing U.S. carriers. The Commission concluded that, for the purposes of the international competitive carrier policies, a foreign-owned carrier would be defined as a carrier that is over 15 percent directly or indirectly owned by a foreign telecommunications entity or on whose board a representative of a foreign telecommunications entity sits. IDB-A, which seeks authorization under Title II of the Communications Act, is 50 percent owned by a foreign telecommunications entity and, therefore, is dominant under International Competitive Carrier.

n10 International Competitive Carrier Policies, 102 FCC 2d 812 (1985), recon. denied, 60 Rad. Reg. 2d (P&F) 1435 (1986).

21. IDB-CG already has been found to be dominant in the provision of all services because Teleglobe International (U.S.), Inc. owns 20 percent of IDB-CG's stock and designates two of the nine directors of IDB-CG's board. n11 CICI is a wholly-owned subsidiary of IDB-CG. We also note that CICI, as a provider of INTELSAT \*\*14 services, is already dominant under the provisions of the International Competitive Carrier decision.

n11 See December 21, 1989 letter to Robert S. Koppel, Director, Legal and Regulatory Affairs, IDB Communications Group, Inc., File No. CSG-90-015-AL.

22. We continue to support the efforts of PAS and other U.S. companies to gain entry into the Canadian market. We would be concerned about imposition of any restrictions that would not permit U.S. service providers to compete fairly. n12 PAS has failed to show why classification of IDB-A and CICI as dominant carriers will not provide sufficient safeguards against unfair practices. However, we do not foreclose the possibility of appropriate Commission action at a later date if U.S. service providers are not permitted to compete fairly.

n12 We are also concerned by recent efforts of Teleglobe to restrict the use of transborder services between the United States and Canada, but note that in our view any such Canadian-imposed restrictions on U.S. carriers that may be contained in operating agreements for service between the United States and Canada would be considered as inapplicable in the United States. See, e.g., Letter from Robert Seguin, Vice-President Policy Planning and International Affairs, Teleglobe Canada, to Secretary, FCC (August 16, 1990). See also Petition of Telecom Canada and Teleglobe Canada, Inc., to Suspend and Investigate AT&T Communications Tariffs F.C.C. Nos. 1 and 9, Transmittal No. 2409 (August 27, 1990). See Letter from John Cimko, Chief, Tariff Division, to C. E. Link, AT&T (August 27, 1990). \*\*15

23. As conditions on the grant of these applications, we will limit the Applicants' provision of aeronautical mobile satellite services to aircraft in international flight as defined by the Commission in CC Docket No. 87-75. In that decision, the Commission said that it would authorize the use of INMARSAT aeronautical services via U.S. aeronautical earth stations for aircraft in

flight: (1) from the United States to a foreign point; (2) from a foreign point into the United States; and (3) between any two foreign points. n13 In addition, the Applicants will be required to comply with any arrangements that will be established for handing-off traffic between INMARSAT and a domestic system for both AMSS(R) and non-AMSS(R) communications. The Commission has left development of the specifics of these hand-off arrangements to the satellite operators. Of course, the Applicants will be expected to comply with all other aspects of the Commission's decisions in CC Docket No. 87-75, including maintaining a carrier-to-carrier relationship with Comsat as the sole U.S. signatory and operating entity in INMARSAT for U.S. space segment.

n13 See Provision of Aeronautical Services via the INMARSAT System, 4 FCC Rcd at 6078-79. We will not at this time authorize the Applicants to use U.S. earth stations to provide INMARSAT aeronautical service to aircraft in flight between two U.S. domestic points pending further proceedings in Gen. Docket No. 84-1234 and Commission action on various pending interim AMSS and land mobile satellite service (LMSS) applications. Applicants will of course be expected to comply with further proceedings in Gen. Docket No. 84-1234. \*\*16

24. The INMARSAT first- and second-generation satellites have been authorized by the Commission to utilize the 5925-6443 MHz, n14 3600-3623 MHz, and 3700-4200 MHz bands for feeder links and the 1530-1548 MHz and 1626.5-1649.5 MHz L-band frequencies for maritime and aeronautical mobile services. The internal Commission coordination of CICI's transmitting and receiving frequency C-band feeder links for INMARSAT second-generation satellites with other services has also been completed. Therefore, CICI's ground earth stations shall be authorized to use these frequency bands. However, we will defer action on CICI's request to use INMARSAT third-generation satellite frequency bands which are not included in first- and second-generation satellites. Therefore, we will not authorize at this time the use of 1649.5-1660.5 MHz, 1548-1559 MHz, 6443-6454 MHz, or 3623-3629 MHz.

n14 INMARSAT second-generation satellites were constructed and authorized to operate on the feeder-link bands 6425-6443 MHz and 3600-3623 MHz. First generation INMARSAT satellites consisted of leased packages from existing satellites which were operating its feeder links in the standard fixed satellite C-bands, 5925-6425 MHz and 3700-4200 MHz. As a result of coordination of the INMARSAT second generation satellite shared frequency band 6425-6443 MHz, the Mass Media Bureau has requested that the Applicants also provide the Society of Broadcast Engineers' frequency coordination group in the relevant geographical area with a copy of their earth station proposals. We shall therefore condition our authorization to include this requirement. \*\*17

25. Moreover, for operations with second-generation INMARSAT satellites, the Applicants' use of test aircraft earth station (AES) facilities has been coordinated with the National Telecommunications and Information Administration (NTIA) for the L-band frequencies: \*2488 1626.5-1649.5 MHz and 1530-1548 MHz. n15 However, the Commission has not adopted standards for AES equipment. n16 Nevertheless, in view of the Commission's policy to introduce international aeronautical services via INMARSAT at an early date, we will authorize the Applicants' use of the AES equipment for the provision of frequency translation error correction, testing, and network coordination purposes conditioned on the Applicants making necessary modifications at a later date to comply with standards adopted by the Commission.

n15 We note that the Commission has already granted an interim waiver of the Table of Frequency Allocations to allow the use of certain L-band frequencies

presently allocated for maritime mobile satellite service for AMSS(R) operations with first generation INMARSAT satellites. Communications Satellite Corporation and American Mobile Satellite Corporation Requests for Interim Waiver of Section 2.106 of the Commission's Rules to Provide AMSS(R) and MSS Services in the Maritime Bands 1530-1544 MHz and 1626.5-1645.5 MHz, 5 FCC Rcd 4117 (1990).

n16 See Notice of Proposed Rule Making in PR Docket No. 90-315, Amendment of Part 87 of the Commission's Rules to Establish Technical Standards and Licensing Procedures for Aircraft Earth Stations, 5 FCC Rcd 3933 (1990). \*\*18

#### VI. ORDERING CLAUSES

26. Accordingly, pursuant to Section 214 of the Communications Act of 1934, as amended, 47 U.S.C. § 214, and Sections 503 and 504(c) of the International Maritime Satellite Telecommunications Act of 1978, 47 U.S.C. §§ 752 and 753(c), IT IS ORDERED that the application of IDB Aeronautical Communications, Inc., File No. I-T-C-90-088, IS GRANTED and IDB-A is authorized to acquire INMARSAT space segment capacity from Comsat and to lease capacity in CICI's ground earth stations at Niles Canyon, California, and Staten Island, New York, and use such facilities to provide:

(i) maritime mobile satellite services to ships in the AOR and POR via INMARSAT satellites; and

(ii) international aeronautical mobile satellite services in the AOR and POR via INMARSAT satellites consistent with CC Docket No. 87-75 and Gen. Docket No. 84-1234.

27. IT IS FURTHER ORDERED, pursuant to Title III of the Communications Act of 1934, as amended, and Sections 503 and 504(c) of the International Maritime Satellite Telecommunications Act of 1978, 47 U.S.C. §§ 752 and 753(c), that \*\*19 the applications of CICI, Inc., File Nos. CSG-90-042-ML, CSG-90-084-ML, and CSG-90-085-ML, ARE GRANTED to the extent provided in this Order and CICI is authorized to install and operate equipment at both its Niles Canyon, California (KA-76 and KA-63) and Staten Island, New York (KA-227) ground earth stations in order to provide international maritime and aeronautical mobile satellite services via the INMARSAT first and second generation satellite system subject to the conditions specified below and on the frequency bands listed in paragraph 24 above.

28. IT IS FURTHER ORDERED as provided in paragraph 24, above, that action on the portion of the CICI applications requesting authority to modify existing earth stations to operate with the INMARSAT third generation satellites extended frequency bands IS HEREBY DEFERRED.

29. 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.

30. IT IS FURTHER ORDERED that this grant is conditioned, as discussed \*\*20 in n. 9, supra, upon CICI's filing of an application under Section 214 of the Communications Act for authorization as a common carrier and the filing of a tariff under Section 203 of the Communications Act.

31. IT IS FURTHER ORDERED that IDB-A IS CLASSIFIED AS DOMINANT in its provision of all international services via the INMARSAT system to all points.



32. IT IS FURTHER ORDERED that the Applicants' authorization to use test aircraft earth station equipment is limited to frequency translation error correction, testing, and network coordination purposes and is subject to future modification to assure compliance with any Commission standards concerning these units.

33. IT IS FURTHER ORDERED that CICI shall provide the Society of Broadcast Engineers' frequency coordination group in the relevant geographical area with a copy of its ground earth station proposal with respect to frequency usage above 6425 MHz.

34. IT IS FURTHER ORDERED that before completion of equipment installation and facility activation, CICI shall provide the Commission with a summary of equipment which was actually installed.

35. IT IS FURTHER ORDERED that the Applicants shall provide aeronautical satellite \*\*21 service only to aircraft in international flight as defined in the Commission's decision in CC Docket No. 87-75.

36. IT IS FURTHER ORDERED that the Applicants shall comply with established arrangements for handing-off aeronautical traffic between the INMARSAT system and a domestic system in accordance with the Commission's decision in CC Docket No. 87-75.

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

38. 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

Richard M. Firestone

Chief, Common Carrier Bureau