

Before the
Federal Communications Commission
Washington, D. C. 20554

In re the Application of)
)
U.S. SATELLITE CORPORATION, INC.) File No. W-P-C-3580
)
For authority pursuant to Section)
214 of the Communications Act of)
1934, as amended, and Section 63.07)
of the Commission's Rules and)
Regulations to operate a transmit/)
receive domestic satellite earth)
station at Salt Lake City, Utah on a)
common carrier basis and to lease,)
resell, and operate a satellite)
transponder on a resale basis within)
the contiguous United States and)
Hawaii.)

ORDER AND CERTIFICATE

Adopted: December 24, 1980

Released: December 30, 1980

By the Common Carrier Bureau:

1. The Commission has before it the above captioned application filed by U.S. Satellite Corporation, Inc. (USSC) on September 19, 1980. The application appeared on public notice September 30, 1980. No comments or objections have been received.

2. In the application, USSC seeks authority to operate a 10-meter domestic satellite transmit/receive earth station in the vicinity of Salt Lake City, Utah on a common carrier basis; to lease from the Western Union Telegraph Company one fixed-term satellite transponder and to provide satellite communications services as a resale common carrier throughout the contiguous United States and Hawaii. ^{1/} It also states additional transponder space will be acquired from other resale common carriers, on an as needed basis. In addition to the above facilities, USSC plans to construct a terrestrial microwave system between its earth station and operating center in Salt Lake City. The responsibility for the installation of the required communications facilities between USSC's operating center and its subscribers' premises will be assumed by the subscribers. Initially, these facilities will be utilized primarily

^{1/} Applicant notes that, at present, it has no intentions of rendering communications services to Alaska. Should it decide to do so, USSC states it will make the necessary filing.

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for the distribution of customers' video and audio programming. 2/ Ultimately, they also will be employed to distribute data.

3. The application discloses that USSC is a 100 percent owned subsidiary of Skaggs Companies, Inc., which in turn is 100 percent owned by American Stores Company (American). American Stores Company is a holding company. Skaggs Companies, Inc. primarily engages in the retail food and drug store business. However, the application reveals Skaggs Companies, Inc., also is the sole owner of Skaggs Telecommunications Service, Inc., which in turn is the sole owner of American Television of Utah, Inc., an applicant for a construction permit for a new UHF television station and for a subscription television authorization in Salt Lake City.

4. The applicant points out that the Commission previously has conditioned authorizations issued to domestic satellite carriers to prevent them from influencing the content of information to be transmitted and requiring them to meet the so-called "50% rule." In recognition of the former and in anticipation that American's affiliates will utilize the facilities of the applicant, USSC states its creation is intended to assure compliance with the Commission's prohibition of common carriers involvement in programming. According to USSC, its employees will be separate and distinct from those of any other American affiliated company. In addition it argues that "... the mere fact that the programming supplier and the common carrier are commonly controlled does not prevent the carrier from transmitting the supplier's programming in the context of the normal customer-carrier relationship, pursuant to applicable tariff." As a precedent for this position, USSC cites American Television and Communications Corp., 70 FCC 2d 2175 (1978). Insofar as meeting the "50% rule", USSC requests that compliance be determined on a semi-annual or quarterly basis, rather than on a monthly basis. This request, contends USSC, stems from the need for operational flexibility during the start-up period, and grant thereof would assure service could be rendered to entities affiliated with or related to it.

5. Due to the corporate affiliation between USSC and American Television of Utah, Inc., and the acknowledgement by USSC that other corporate affiliates will be utilizing its facilities, we will condition its authorization to insure USSC's continuing eligibility to operate as a common carrier. Thus, we will formalize its stated intentions by imposing conditions intended to prohibit the influencing of program content and to limit affiliated service. However, in lieu of modifying the 50% requirement to reflect a different time basis as requested, recognizing the difficulties in establishing a new operation and the time required to build a customer base, we will waive the 50% requirement for a twelve month period. The commencement of that period will coincide with the date service commences, 3/

2/ Such programming will include syndicated programming, commercial announcements relayed from production center to distribution facilities in different markets, teleconferencing, network programming, etc.

3/ In view of this action, USSC must notify the Commission of the date its service commences, .

-3-

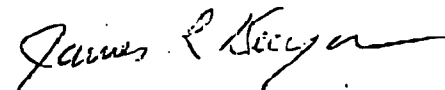
6. Having reviewed and considered the application and the information contained therein, IT IS CERTIFIED, That the public interest and necessity would be served by operation of the transmit/receive domestic satellite earth station and lease and operation of the satellite transponder as proposed in the application.

7. Accordingly, IT IS ORDERED, That the captioned application IS GRANTED, pursuant to Sections 0.291 and 63.07 of the Commission's Rules and Regulations, and U.S. Satellite Corporation, Inc., IS AUTHORIZED to operate its domestic satellite earth station on a common carrier basis and to lease and operate a satellite transponder for the provision of its video service within the contiguous United States and Hawaii.

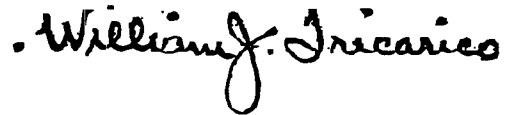
8. IT IS FURTHER ORDERED, That Application File No. W-P-C-3580 IS GRANTED, subject to the following conditions:

- a. That U.S. Satellite Corporation, Inc., will not be substantially involved in the production, writing or the selection of, or otherwise influence, the content of any information to be transmitted over its facilities; and
- b. That within twelve months of the commencement of service U.S. Satellite Corporation, Inc., will not render service to any entity who is affiliated with or related to the carrier whenever the total hours of service rendered to related customers exceeds the total hours of service rendered to unrelated customers within any calendar month.

9. Applicant is afforded thirty days from the release date of this order to decline this authorization as conditioned. Failure to respond within that period will constitute formal acceptance of the authorization as conditioned.



James R. Keegan
Chief, Domestic Facilities Division
Common Carrier Bureau



station license to add the Canadian Anik and appropriate U.S. domestic satellite systems as points of communication for the provision of U.S.- Canadian services at HIT.

DISCUSSION

5. In 1981, following consultations with the Department of State, the Commission gave initial approval to the use of U.S. domestic satellites for the transmission of certain international telecommunications services to points within the footprints of those satellites. The Commission determined that domestic satellites could be used for these services where INTELSAT is incapable of providing a service or where it would be clearly uneconomical or impractical to employ the INTELSAT system for that service. The Commission stated that applications meeting this standard could not be implemented until: 1) the concurrence of the appropriate governmental entities had been obtained; 2) the consultations requirement of INTELSAT Article XIV(d) had been fulfilled; and 3) the Chief, Common Carrier Bureau issued an order authorizing the implementation of service. In its *Transborder I* decision,² the Commission concluded that where a domestic satellite network is already in place that can be accessed in a transborder location with the addition of a small, receive-only earth station, it would be uneconomical and impractical for that country to utilize the INTELSAT system when it can reach the domestic network for little or no additional cost. The Commission has made similar findings in authorizing over one hundred applications for transborder service to Canadian, Mexican and Latin American/Caribbean locations.³

6. The proposals before us are similar, if not identical, to the many applications found to be in accord with the Commission's transborder policy. Even though INTELSAT may be able to provide the instant services, the applications involve extensions of existing transborder services which would be uneconomical and impractical to duplicate via INTELSAT. They are consistent with current INTELSAT Article XIV(d) consultations and therefore will cause neither technical interference nor significant economic harm to the global system. Since all prerequisites for the issuance of final authorization have been completed, we conclude that grant of these applications will serve the public interest.

7. Accordingly, IT IS ORDERED that the applications of USSC (File No. I-T-C-87-166), Hughes (File No. I-T-C-87-151) and STARS (File Nos. I-T-C-87-146 and 5004-DSE-ML-87) ARE GRANTED consistent with Attachments 1 and 2, and may be implemented without further action by the Commission.

8. This authorization constitutes the final step for the provision of transborder services through domestic satellites only insofar as the U.S. regulatory process is concerned. It does not, however, dispense with any requirements that may be imposed by the other country involved.

9. This order shall not be construed as authorizing the distribution of programming where the appropriate copyright clearances have not been obtained.

10. This order is issued under Section 0.291 of the Commission's Rules on Delegations of Authority and is subject to review under Section 1.115 of the Rules on Practice and Procedure. Review by the full Commission may be requested within 30 days of the date of public notice of this order (see Commission Rule 1.4(b)(2)) by

writing Secretary, Federal Communications Commission, Washington, D.C. 20554, stating the factors warranting consideration and, if mailed, should be sent by certified mail in time to be received by the due date.

FEDERAL COMMUNICATIONS COMMISSION

George S. Li
Acting Chief, International Facilities Division
Common Carrier Bureau

ATTACHMENT 1

U.S. Satellites Consulted Pursuant to Article XIV (d)

Satellites
GALAXY I
GSTAR I
GSTAR II
COMSTAR D-4
SPACENET I
SPACENET III
SATCOM IR
SATCOM IIIR
SATCOM IV
SATCOM V
SATCOM K-1
WESTAR V
SBS V
SBS I
SBS II
SBS III
**SBS IV
TELSTAR 3A
TELSTAR 302
WESTAR IV
GALAXY III
*ASC-I
*ASC-II
WESTAR (USASAT 3C)

* Consulted for Canada and Mexico service only. See note 3 with respect to service to Jamaica.

** Consulted for Canada service only.

ATTACHMENT 2

SUMMARY OF INTELSAT CONSULTATION

<u>Country</u>	<u>Service(s)</u>	<u>Satellite(s)</u>
Anguilla	T.V. and audio receive-only	all Comstar, Satcom, Westar and Galaxy satellites listed in <u>Attachment 1</u>
Antigua and Barbuda	T.V., audio and data receive-only	all satellites listed in <u>Attachment 1</u>
Bahamas	T.V., audio and data receive-only	all satellites listed in <u>Attachment 1</u>
Barbados	T.V. receive-only	all Galaxy, Satcom and Westar satel- lites listed in <u>Attachment 1</u>
Belize	T.V., audio and data receive-only	all satellites listed in <u>Attachment 1</u>
Bermuda	T.V. and audio receive-only	all Comstar, Satcom, Westar and Galaxy satellites listed in <u>Attachment 1</u>
British Virgin Islands	T.V. and audio receive-only	all Comstar, Satcom, Westar and Galaxy satellites listed in <u>Attachment 1</u>
Canada	occasional pt.-to-pt. and full time video services and business services (including data and electronic document distribution, video teleconferencing and <u>voice communications</u>)	all satellites listed in Attachment 1 plus ANIK B, C1, C2, C3, D1 and D2
Cayman Islands	T.V. and audio receive-only	all Comstar, Satcom, Westar and Galaxy satellites listed in <u>Attachment 1</u>

Costa Rica	T.V. receive-only	all satellites listed in Attachment 1
Dominica	T.V., audio and data receive-only	all satellites listed in Attachment 1
Dominican Republic	T.V., audio and data receive-only	all satellites listed in Attachment 1
El Salvador	T.V. receive-only	all satellites listed in Attachment 1
Grenada	T.V., audio and data receive-only	all satellites listed in Attachment 1
Guatemala	T.V. and audio receive-only	all satellites listed in Attachment 1
Haiti	T.V., audio and data receive-only	all satellites listed in Attachment 1
Honduras	T.V. receive-only	all satellites listed in Attachment 1
Jamaica	T.V., audio and data receive-only (See note 3)	all satellites listed in Attachment 1
Mexico	Full-time and occasional T.V. services, receive-only audio and business services (including data and electronic document distribution, video teleconferencing and voice communications)	all satellites listed in Attachment 1 plus the Morelos I and II satellites
Monsterrat	T.V., and audio receive-only	all Comstar, Satcom, Westar and Galaxy satellites listed in Attachment 1
Netherlands Antilles	T.V. receive-only	Galaxy I, Satcom III-R and IV, Westar IV and V and Comstar D4
Panama	T.V., audio and data receive-only	all satellites listed in Attachment 1

St. Christopher-Nevis	T.V., audio and data receive-only	all satellites listed in <u>Attachment 1</u>
St. Lucia	T.V., audio and data receive-only	all satellites listed in <u>Attachment 1</u>
St. Vincent and the Grenadines	T.V., audio and data receive-only	all satellites listed in <u>Attachment 1</u>
Trinidad and Tobago	T.V. receive-only	all Galaxy, Satcom, Westar and Comstar satellites listed in <u>Attachment 1</u>
Turks & Caicos	T.V. and audio receive-only	all Comstar, Satcom, Westar and Galaxy satellites listed in <u>Attachment 1</u>
Venezuela	T.V. receive-only	all satellites listed in Attachment 1

Notes

- 1) With the exception of Mexico and Canada, which were consulted separately, all services (*i.e.* T.V., audio and data receive-only) can be provided to any point over any of the satellites listed in Attachment 1 even through only certain services and satellites were initially requested. This can be accomplished through notifying INTELSAT and no additional consultation is needed.
- 2) Attachment 1 contains only those satellites that have been technically consulted with INTELSAT. In all, the U.S. sought to consult with INTELSAT on the use of 29 domestic satellites. The remaining satellites are awaiting the completion of technical consultation.
- 3) With the exception of service to Jamaica, all services to Latin American/Caribbean locations are receive-only (*i.e.* can be received as a by-product of or incidental to U.S. domestic transmissions). At its April 1987 Assembly of Parties meeting, INTELSAT approved the provision of private line business services between the contiguous United States and a teleport facility located in Montego Bay, Jamaica via the domestic satellite system of the American Satellite Company.

FOOTNOTES

¹ Hughes plans to provide service to the following locations: Anguilla, Antigua, Bahamas, Barbados, Barbuda, Belize, Bermuda, British Virgin Islands, Canada, Cayman Islands, Columbia, Costa Rica, Dominica, Dominican Republic, Ecuador, El Salvador, Grenada, Guadeloupe, Guatemala, Haiti, Honduras, Jamaica, Martinique, Mexico, Montserrat, Netherlands Antilles, Nicaragua, Panama, St. Kitts-Nevis, St. Lucia, St. Vincent, Trinidad and Tobago, Turks and Caicos Islands and Venezuela.

² Transborder Satellite Video Services, 88 F.C.C. 2d 258 (1981) (hereinafter Transborder I).

³ See Transborder I, *supra* note 2, Eastern Microwave, Inc., I-P-C-81-049 *et. al.*, Mimeo No. 2617, released March 1, 1983 (Transborder II); American Telephone & Telegraph Company, File Nos. I-P-C-82-048 *et. al.*, Mimeo No. 6119, released Aug. 26, 1983 (Transborder III); Bonneville Satellite Corp., File Nos. I-T-C-83-148 *et. al.*, Mimeo No. 1554, released Dec. 29, 1983 (Transborder IV); Western Union Telegraph Co., File Nos. I-T-C-83-068 *et. al.*, Mimeo No. 3286, released April 4, 1984 (Transborder V); Eastern Microwave, Inc., File Nos. I-T-C-84-095 *et. al.*, Mimeo No. 6425, released Sept. 11, 1984 (Transborder VI); Western Union Telegraph Co., File Nos. I-T-C-83-136 *et. al.*, Mimeo No. 3643, released April 8, 1985 (Transborder VII); American Satellite Company, File Nos. I-T-C-85-187 *et. al.*, Mimeo No. 7299, released Sept. 30, 1985 (Transborder VIII); RCA American Communications, Inc., File Nos. I-T-C-86-002 *et. al.*, Mimeo No. 2578, released Feb. 14, 1986 (Transborder IX); National Cable and Satellite Corp., File Nos. 417-DSE-ML-86 *et. al.*, Mimeo No. 5220, released June 20, 1986 (Transborder X); American Telephone and Telegraph Company, File Nos. I-T-C-86-105 *et. al.*, DA 86-26 released Oct. 9, 1986 (Transborder XI); RCA American Communications, File Nos. I-T-C-86-175 *et. al.*, DA 87-237, released March 23, 1987 (Transborder XII); GTE Spacenet, File Nos. I-T-C-86-103 *et. al.*, DA 87-444 released April 20, 1987; and Overseas Telecommunications, Inc., File Nos. I-T-C-87-106 *et. al.*, DA 87-1173 released September 4, 1987.

Before the
Federal Communications Commission
Washington, D.C. 20554

In re Application of

U.S. SATELLITE
CORPORATION

File No. I-T-C-91-040

For authority under Section 214 of the Communications Act of 1934, as amended, to establish channels of communication to provide transborder services between the U.S. and Canada and Mexico and from the U.S. to Latin American/Caribbean locations and to provide service between the U.S. and all countries the PAS satellite system is authorized to serve.

ORDER AND AUTHORIZATION

Adopted: May 13, 1991;

Released: May 28, 1991

By the Chief, International Facilities Division:

1. Upon consideration of the above-captioned application filed pursuant to Section 214 of the Communications Act of 1934, as amended, we find that its grant will serve the present and future public convenience and necessity.

2. Accordingly, IT IS ORDERED that the application of U.S. Satellite, File No. I-T-C-91-040, IS GRANTED and:

a. U.S. Satellite Corporation is authorized to provide transborder services consulted under Article XIV(d) of the INTELSAT Agreement between the U.S. and Mexico and Canada via all U.S. domestic satellites as well as the Morelos and Anik satellite systems; and via all U.S. domestic satellites from the U.S. to Latin American/Caribbean locations consistent with Attachments 1 and 2; and

b. U.S. Satellite Corporation is authorized to establish channels of communication between existing and future earth stations owned and operated or leased by U.S. Satellite Corporation in the U.S. and those countries which the the Pan American Satellite system is authorized to serve for the provision of international television, video and audio services, not interconnected with the public switched network. U.S. Satellite is also authorized to establish channels of communications not to exceed twenty-four 64 Kbps equivalent circuits to each country between existing and future earth stations owned or leased by U.S. Satellite Corporation for the provision of private line service not interconnected with the public switched network.¹

3. IT IS FURTHER ORDERED U.S. Satellite Corporation is restricted in its communications with the PAS-1 satellite to the provision of capacity through the sale or long-term lease (at least one year) of transponder capacity for communications not interconnected with the public switched message networks (except for emergency restoration services).

4. IT IS FURTHER ORDERED that authorization to use the PAS-1 satellite is subject to Commission jurisdiction over the use of all space segment within the PAS system to ensure compliance with the restrictions placed on the operation of separate satellite systems.

5. IT IS FURTHER ORDERED that the authority granted herein for the applicant to establish channels of communication between existing and future earth stations and the PAS-1 and INTELSAT satellites does not dispense with the requirement that all such earth stations must be authorized under Title III of the Communications Act of 1934, as amended, to communicate with those satellites.

6. This authorization 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 the date of public notice of this order (See Section 1.4(b)(2)).

FEDERAL COMMUNICATIONS COMMISSION

George S. Li
Chief, International Facilities Division
Common Carrier Bureau

FOOTNOTE

¹ See Alpha Lyracora, d/b/a Pan American Satellite, 4 FCC Rcd 8649 (1989). PAS-1 is authorized to provide service via its Ku-band capacity between the United States and the Bahamas, Denmark, Federal Republic of Germany, France, Ireland, Italy, Luxembourg, Monaco, the Netherlands, Portugal, Sweden, and the United Kingdom. PAS-1 is authorized to provide service via its C-band capacity between the United States and Argentina, Bahamas, Bolivia, Brazil, Chile, Colombia, Costa Rica, Dominican Republic, Ecuador, Guatemala, Honduras, and Peru.

ATTACHMENT 1U.S. Satellites Consulted Pursuant to Article XIV(d)Satellites

AURORA (SATCOM V)
COMSTAR D-4
CONTEL ASC-I
CONTEL ASC-II
GALAXY I
GALAXY II
GALAXY III
GALAXY IV-R
GALAXY V-R
GALAXY VI (WESTAR VI-S)
GSTAR I
GSTAR II
GSTAR III
SATCOM IR
SATCOM IIR
SATCOM IIIR
SATCOM IV
SATCOM V
SATCOM K-1
SATCOM K-2
SBS I
SBS II
SBS III
SBS IV
SBS V
SBS VI
SPACENET I
SPACENET II
SPACENET III
TELSTAR 301 (TELSTAR 3A)
TELSTAR 302
TELSTAR 303
WESTAR IV
WESTAR V

ATTACHMENT 2

SUMMARY OF INTELSAT CONSULTATIONS

<u>Country</u>	<u>Service[s]</u>	<u>Satellite[s]</u>
Anguilla	T.V., audio and data receive-only	all satellites listed in Attachment 1
Bahamas	T.V., audio and data receive-only	all satellites listed in Attachment 1
Barbados	T.V. receive-only	all Galaxy, Satcom and Westar satellites listed in Attachment 1
Bermuda	T.V., audio and data receive-only	all satellites listed in Attachment 1
British Virgin Islands	T.V., audio and data receive-only	all satellites listed in Attachment 1
Canada	occasional pt.-to-pt. and full time video services and business services (including data and electronic document distribution, video teleconferencing and voice communications)	all satellites listed in Attachment 1 plus Anik C1, C2, C3, D1, D2, E-A and E-B (see note 4)
Cayman Islands	T.V., audio and data receive-only	all satellites listed in Attachment 1
México	Full-time and occasional T.V. services, receive-only audio and business services (including data and electronic document distribution, video teleconferencing and voice communications)	all satellites listed in Attachment 1 plus the Morelos-I and II satellites
Montserrat	T.V., audio and data receive-only	all satellites listed in Attachment 1
Netherlands Antilles	T.V. receive-only	Galaxy I, Satcom III-R and IV, Westar IV and V and Comstar D4

SUMMARY OF INTELSAT CONSULTATIONS CONT.

<u>Country</u>	<u>Service[s]</u>	<u>Satellite[s]</u>
Turks & Caicos	T.V., audio and data receive-only	all satellites listed in Attachment 1
Venezuela	T.V. receive-only	all satellites listed in Attachment 1

Notes

- 1) All services authorized to Latin American/Caribbean locations are receive-only (i.e. can be received as a by-product of or incidental to U.S. domestic transmissions). All services (i.e. T.V., audio and data receive-only) can be provided to any Latin American/Caribbean point over any of the satellites listed in Attachment 1 even though only certain services and satellites were initially requested. This can be accomplished through notifying INTELSAT with no additional consultation required.
- 2) Attachment 1 contains only those satellites that have been technically consulted with INTELSAT.
- 3) Attachment 2 does not contain all of the Latin American/Caribbean countries which have been included in previous charts. Attachment 2 contains only those countries that associated with the most recent INTELSAT Article XIV(d) consultation in October 1989 (AP-15-23E). Other countries will be added to the list once they associate with that consultation.
- 4) No final authority will be granted for the use of the Anik E-A and E-B satellites until an applicant submits an operating agreement and the Commission determines that the agreement is in the public interest and consistent with the Commission's Transborder Policy.

ATTACHMENT 3**Countries which PAS-1 is authorized to serve.**

Ku-band Countries: Between the U.S. and the Bahamas, Denmark, France, Germany, Ireland, Italy, Luxembourg, Monaco, the Netherlands, Portugal, Sweden, and the United Kingdom.

C-band Countries: Between the U.S. and Argentina, Bahamas, Bolivia, Brazil, Chile, Colombia, Costa Rica, Dominican Republic, Ecuador, Guatemala, Honduras, and Peru.