

ITC-214-19920105-00120

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DA 92-1220

*1 IN THE MATTER OF
CICI, INC. IDB COMMUNICATIONS CORPORATION

AND
SOUTHWEST COMMUNICATIONS, INC
APPLICATIONS FOR CONSENT TO THE ASSIGNMENT OF TITLE III EARTH STATION
FACILITIES AND MICROWAVE FACILITIES.

AND
SOUTHWEST COMMUNICATIONS, INC.

APPLICATION FOR BLANKET AUTHORITY, PURSUANT TO SECTION 214 OF THE
COMMUNICATIONS ACT, AS AMENDED, TO ESTABLISH CHANNELS OF COMMUNICATION BETWEEN
THE U.S. AND INTELSAT ATLANTIC AND PACIFIC OCEAN REGION SATELLITES FOR
PROVISION OF INTELSAT BUSINESS SERVICES AND INTERNATIONAL TELEVISION SERVICE.

File Nos. CSG-92-042-(8)-AL
CSG-92-043-(21)-AL
EID-680

File No. I-T-C-92-085

Adopted: September 2, 1992; Released: September 17, 1992
MEMORANDUM OPINION, ORDER, AUTHORIZATION AND CERTIFICATE

**6031 By the Chief, International Facilities Division:

1. We have under consideration the above-captioned applications filed by CICI, Inc. (CICI), IDB Communications Corporation (IDB-C) and Southwest Communications, Inc. (SCI). [FN1] IDB-C and CICI (Assignors) request authority to assign their respective Title III authorizations for satellite earth stations and microwave systems to SCI (Assignee), [FN2] pursuant to Section 310(d) of the Communications Act of 1934 (the Act), as amended, 47 U.S.C. § 310(d). We must also consider the application pursuant to Section 212 of the Act, as amended, 47 U.S.C. § 212, and Sections 62.1(a) and 62.11 of the Commission's Rules, 47 C.F.R. §§ 62.1(a) and 62.11, for authorization of Dennis Feely to serve as an officer of both IDB and SCI. In addition, SCI requests authority, pursuant to Section 214 of the Act, as amended, 47 U.S.C. § 214, to establish channels of communication between the United States and INTELSAT Atlantic and Pacific Ocean Region satellites to provide INTELSAT Business Service (IBS) and International Television Services (ITS) via existing or future earth stations. [FN3] We placed the three applications on public notice on February 5, 1992, and received no comments. We will first consider the IDB-C and CICI assignment applications and, then, the SCI Section 214 application.
2. IDB-C and CICI are wholly owned subsidiaries of IDB Communications Group, Inc. (IDB), a dominant U.S. international common carrier. IDB-C holds international and domestic satellite earth station and microwave station licenses. CICI holds international satellite earth station and microwave station licenses. The applicants' earth stations provide video, data, and voice services.
3. Under Section 310(d), an application to transfer, assign, or dispose of a

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station license shall be disposed of as if the proposed transferee or assignee were making an initial application for a station license, pursuant to Section 308. We must determine whether SCI, as the Assignee, satisfies the minimum requirements for holding a license. Accordingly, it is essential that a licensee retain exclusive responsibility for the operation and control of its facilities at all times. [FN4]

*2 4. The Assignors state that IDB needs to make itself available to additional equity financing from existing or future shareholders. As the parent company of Title III licensees, IDB is subject to Section 310(b)(4)'s statutory benchmarks for alien ownership. [FN5] Given that IDB is a publicly traded corporation with an average daily trading volume of 1% and alien ownership of 16%, IDB alleges that it is increasingly difficult to monitor and control the public trading of its shares by aliens. [FN6] Thus, in order to eliminate any potential Section 310(b)(4) concerns arising from additional equity financing, the Assignors propose to assign their Title III earth station and microwave licenses to SCI. The Assignors state that the proposed assignments and contractual arrangements are consistent with Commission policy and precedent. [FN7]

5. Consideration of the proposed assignments from IDB-C and CICI to SCI requires an analysis of the circumstances surrounding the transaction to determine where actual control of the facilities will rest. [FN8] In asserting that SCI will retain exclusive responsibility for the facilities, the Assignors point out that SCI was established to be the assignee of existing licenses and to control, operate, and maintain the systems under a long term (10 year) contract with CICI and IDB. [FN9] CICI and IDB shall retain ownership of their respective systems. SCI will be an authorized, independent common carrier providing IBS and ITS services; it will also have its own separate, independent corporate business and will have no foreign owners, officers or directors.

[FN10] Further, neither IDB nor the Assignors will have an ownership interest in SCI. Nor will SCI have any ownership interest in IDB or CICI. [FN11]

6. The contracts state that SCI will operate as a for-profit enterprise that may solicit business opportunities in addition to those of IDB and CICI. According to the contracts, SCI will be responsible for monthly lease payments for office, operations, and storage space provided by IDB and CICI. Further, the contracts provide that SCI shall be responsible for monthly lease payments on the systems to IDB and CICI. Similarly, both IDB and CICI will remit payments of monthly operator fees to SCI. These factors further indicate that SCI will maintain exclusive control of system operations. The contracts provide that monies derived from the operation of the facilities will be received by SCI. In addition, SCI shall have control over all personnel decisions relating to its own employees. [FN12] Based upon the provisions of the contracts, SCI appears to have ****6032** unfettered use of the facilities and equipment and responsibility for day to day operation and control of the facilities.

7. Therefore, upon review of the totality of the circumstances described above, we have no reason to find that SCI will have other than exclusive control of, and responsibility for, the earth stations and microwave systems. Accordingly, we find that the applications satisfy the standards set forth in Intermountain

Microwave. [FN13]

*3 8. Section 212 of the Act prohibits persons from holding the position of officer or director of more than one carrier subject to the Act unless authorized by the Commission upon a showing that neither public nor private interests will be adversely affected by the interlock. In determining whether public or private interests will be adversely affected, we consider a number of factors, including but not limited to the potential for anticompetitive conduct, a possible diminution in the independence of each carrier involved, or the possibility of conflicts of interest on the part of common directors or officers in violation of the fiduciary duties imposed upon persons occupying those positions. [FN14]

9. Both IDB and SCI are common carriers subject to the jurisdiction of the Commission. Dennis Feely does not maintain a controlling ownership interest in either IDB or SCI. As the Executive Vice President of IDB and the proposed President of SCI, Mr. Feely seeks authorization to serve as an interlocking officer of both companies. Mr. Feely's duties as President of SCI include general charge of the business affairs and property, subject to the direction of the Board of Directors. [FN15] As Executive Vice President of IDB, Mr. Feely is responsible for administration of business affairs as assigned to him by the chief executive officer, the president, the board, or as provided for in the bylaws. [FN16]

10. The record indicates that neither Mr. Feely's limited ownership interests in IDB and SCI nor his position as an officer of IDB confer upon him sufficient independent control over policy decisions so that he may exert influence on behalf of IDB over the policies of SCI. The record further reveals that Mr. Feely, as President of SCI, is but one of four SCI officers, all of whom are subject to the ultimate control of SCI's Board of Directors. Because Mr. Feely's interests do not indicate a potential to control either IDB or SCI we do not find a conflict of interest. [FN17] Moreover, based on our review of the record, we do not believe the proposed arrangement would enable those companies to engage in anticompetitive activity or otherwise diminish the independence of IDB or SCI.

11. Upon consideration of the facts and circumstances presented by this application, we find that Mr. Feely has made a satisfactory showing as required by law that public and private interests will not be adversely affected by granting the requested authorization.

12. We now turn to SCI's request for blanket Section 214 authority to provide IBS and ITS services as we have granted to other carriers. [FN18] A grant of blanket authority here would be consistent with the action that we took in those decisions and in the public interest. SCI has the requisite qualifications to provide IBS and ITS services to overseas points where such services have been introduced.

13. Accordingly, IT IS ORDERED that applications, File Nos. CSG-92-042- (8)-AL and CSG-92-043-(21)-AL ARE GRANTED and IDB Communications Corporation and CICI, Inc. are authorized to assign their respective Title III earth station licenses to Southwest Communications, Inc., as listed in Attachments 1 and 2.

*4 14. IT IS FURTHER ORDERED that the application of Dennis Feely, EID-680, IS GRANTED.

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15. IT IS CERTIFIED, pursuant to 47 U.S.C. § 214, that the present and future public convenience and necessity require the provision by Southwest Communications, Inc. of earth segment capacity for IBS and ITS at earth stations that are now or may be licensed to it in the future.

16. IT IS FURTHER ORDERED that application File No. **I-TT-C-92-085** is GRANTED, and Southwest Communications, Inc. is authorized to establish channels of communications between the United States earth stations and appropriate INTELSAT Atlantic and Pacific Ocean Region satellites for the provision of IBS and related digital video services and ITS service between the United States and those countries that are now or hereafter will be listed in Comsat's tariff provisions for the space segment component of IBS or ITS services; provided, however, that this blanket Section 214 authorization is without commitment as to the Commission's action on any IBS earth station Title III applications that the applicant may file in the future.

17. IT IS FURTHER ORDERED that the Section 214 authorization granted herein shall be continued year-to-year, unless the Commission notifies the applicant to the contrary and requires a new application to be filed. If the Commission requires a new application to be filed, the authorization will continue in effect until Commission action on the application.

18. IT IS FURTHER ORDERED that the tariffs of Southwest Communications, Inc. must state that its customers may not resell international private lines leased from Southwest Communications, Inc. or connect them to the public switched network for the provision of international basic telecommunications services, including switched voice services, unless authorized to do so by the Commission upon a country-specific finding of resale opportunities equivalent to those available under U.S. law, in accordance with Regulation of International Accounting Rates, Phase II, First Report and Order, 7 FCCRcd. 559 (1991), petitions for reconsideration pending.

19. IT IS FURTHER ORDERED that no material changes inconsistent with this or any other relevant Commission order shall be made before final execution of any necessary operating agreements between the applicant and its correspondents and copies of the agreements shall be filed with the Commission within 30 days of their execution.

20. IT IS FURTHER ORDERED that the Commission retains jurisdiction to reallocate circuits in the satellite system among the various international common carriers and other authorized users as required to ensure nondiscriminatory use of, and equitable access to, the communications satellite system.

21. IT IS FURTHER ORDERED that Southwest Communications, Inc. shall file tariff provisions pursuant to Section 203 of the Act, 47 U.S.C. § 203, and Part 61 of the Commission's Rules, 47 C.F.R. Part 61, for the services authorized in this Order.

*5 22. IT IS FURTHER ORDERED that Southwest Communications, Inc. shall file the annual reports of overseas telecommunications traffic required by Section 43.61 of the Commission's Rules, 47 C.F.R. § 43.61.

**6033 23. IT IS FURTHER ORDERED that Southwest Communications, Inc., which is regulated as a nondominant carrier, shall file semi-annual reports of circuit additions or deletions to certificated points, pursuant to Section 63.10 of our

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Rules, 47 C.F.R. § 63.10.

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

FEDERAL COMMUNICATIONS COMMISSION
George S. Li

Chief, International Facilities Division
Common Carrier Bureau

FN1. On July 13, 1992, IDB-C and CICI filed an amendment to their applications. FN2. See Attachments 1 and 2 for complete list of IDB-C and CICI authorizations being transferred to SCI.

FN3. We expect that appropriate authorizations will be sought for any future Title III facilities.

FN4. See Intermountain Microwave, 24 RR 983 (1963), in which the Commission defined the normal indicia of such operation and control: "The normal minimum incidents of such interest include the unfettered use of all facilities and equipment used in connection therewith; day to day operation and control; determination of and the carrying out of policy decisions, including the preparation and filing of applications with this Commission; employment, supervision, and dismissal of personnel; payment of financial obligations including expenses arising out of operation; and the receipt of monies and profits derived from the operation of microwave facilities".

FN5. Section 310(b)(4) provides, in pertinent part, that no common carrier fixed radio station license shall be granted to or held by "any corporation directly or indirectly controlled by any other corporation of which any officer or more than one-fourth of the capital stock is owned or record or voted by aliens, their representatives, or by a foreign government or representative thereof, or by any corporation organized under the laws of a foreign country if the Commission finds that the public interest will be served by the refusal or revocation of such license". 47 U.S.C. § 310(b)(4).

FN6. See Applications, Attachment 2, p. 3.

FN7. In the Matter of Satellite Transmission and Reception Specialist Company, and Transmission Operator Provided Systems, Inc., CSG-91-107-AL. Application granted by letter dated June 17, 1991, from George S. Li, Chief International Facilities Division, Common Carrier Bureau.

FN8. See Advanced Business Communications, Inc., 101 FCC2d 516, 541 (1985); Metromedia, Inc., 98 FCC2d 300, 305 (1984); Powel Crosley, Jr., 11 FCC 2, 20 (1945) ("A realistic definition of the word 'control' includes any act which vests in a new entity or individual the right to determine the manner or means of operating the licensee and determining the policy that the licensee will pursue.").

FN9. Pursuant to discussion with IDB's legal counsel, staff was informed that IDB-C is to be dissolved and IDB will act in its stead.

FN10. SCI's Certificate of Incorporation prohibits foreign ownership.

FN11. We note that the individual shareholders of SCI have ownership interests in IDB. At present, SCI's shareholders in the aggregate account for less than 30% of the ownership of IDB. Moreover, this ownership percentage is likely to

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decrease proportionately to IDB's acquisition of additional equity financing. We are satisfied that this level of cross-ownership does not enable IDB to exercise control over SCI.

FN12. See Amendment.

FN13. See supra note 3.

FN14. In re Application of Walter S. Gifford, 2 FCC 741 (1935). See also In re Application of James A. Dwyer, 2 FCCRcd. 4278 (1987) (granted applicant authority to serve as both President and Director of two parents of wholly-owned carriers providing radio common carrier services).

FN15. See Bylaws of SCI at page 10.

FN16. See Bylaws of IDB at page 11.

FN17. We note that the remaining officers and directors of SCI are apparently independent of IDB.

FN18. See generally International Competitive Carrier Policies, 102 FCC2d 812, 844 (1985). For IBS services, see Vitalink International Communications, Inc., Mimeo No. 687 (released November 7, 1984). See also Communications Satellite Corporation, Mimeo No. 6564 (released September 14, 1984), and American Telephone and Telegraph Co., et. al., (File Nos. I-T-C-85-035, et. al.), Mimeo No. 3220 (released March 18, 1985); for ITS, see AT & T et. al., 18 FCC2d 402 (1969), and ITTWC, et. al., 76 FCC2d 26 (1980).

ATTACHMENT 1

CICI, INC.: INTERNATIONAL TITLE III EARTH STATION AUTHORIZED ASSIGNMENTS [FN*1]

Call Sign	Location	File Number
1. KA-63	Niles Canyon, CA	CSG-85-004-P/L
		CSG-90-084-ML
2. KA-76	Niles Canyon, CA	CSG-86-017-P/L
		CSG-90-042-ML
3. KA-249	Santa Paula, CA	CSG-87-013-P/L
		CSG-89-129-ML
4. KA-227	New York Telephort (Staten Island, NY)	CSG-87-027-P/L
		CSG-90-085-ML
5. KA-65	Washington, DC (L'Enfant Plaza)	CSG-84-035-P/L
		(CSG-86-060-ML)
6. WA-36	New York Teleport	CSG-83-034-P/L
	(Staten Island, N.Y.)	CSG-85-017-P/L
7. KA-300	Fremont, CA	CSG-91-054-P/L

FN* As per applicant's request, Call sign KA-42 was deleted from this list.

ATTACHMENT 2

IDB COMMUNICATIONS CORPORATION: INTERNATIONAL TITLE III EARTH STATION
AUTHORIZED ASSIGNMENTS [FN*1]

Call Sign	Location	File Number
1. KA-219	Culver City, CA	CSG-87-036-P/L(A)
2. KA-222	Culver City, CA	CSG-87-037-P/L
3. KA-224	Culver City, CA	CSG-88-073-P/L
4.	Culver City, CA	CSG-89-061-P/L

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| 5. | KA-228 | Staten Island, NY | CSG-87-025-P/L |
| 6. | KA-223 | Staten Island, NY | CSG-87-034-P/L |
| 7. | KA-234 | Staten Island, NY | CSG-88-009-P/L |
| | | | CSG-89-115-ML |
| | | | CSG-92-002-ML |
| 8. | KA-235 | Staten Island, NY | CSG-88-010-P/L |
| | | | CSG-89-116-ML |
| | | | CSG-91-005-ML |
| 9. | WA-37 | Manhattan, NY | CSG-84-004-P/L |
| 10. | KA-242 | Arlington, VA | CSG-87-035-P/L |
| 11. | KA-67 | Ballmawr, NJ | CSG-85-010-P/L |
| 12. | KA-209 | College Park, GA | CSG-87-001-P/L |
| 13. | | Vallejo, CA | CSG-88-089-P/L |
| 14. | KA-77 | Washington, DC | CSG-85-054-P/L |
| 15. | KA-97 | Vallejo, CA | CSG-86-065-P/L |
| 16. | KA-98 | Vallejo, CA | CSG-86-066-P/L |
| 17. | KA-230 | New York, NY | CSG-84-027-P/L |
| | | | (CSG-86-015-ML) |
| | | | (CSG-88-088-ML) |
| 18. | KA-285 | Staten Island, NY | CSG-91-044-P/L |
| | | | CSG-91-044-P/L (A) |
| 19. | KA-286 | Staten Island, NY | CSG-89-074-P/L |
| 20. | KA-298 | Culver City, CA | CSG-91-048-P/L |
| 21. | KA-308 | Staten Island, NY | CSG-91-144-P/L |
- FN* As per applicant's request, File No. CSG-88-011-ML was deleted from this list.

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