

1994 WL 541734 (F.C.C.), 76 Rad. Reg. 2d (P & F) 303, 9 F.C.C.R. 5806, 9 FCC Rcd. 5806

ITC 214-1994/03-00390

Federal Communications Commission (F.C.C.)

Memorandum Opinion, Order, Authorization & Certification

IN THE MATTER OF WITTEL INTERNATIONAL, INC.

File No. I-T-C-94-227

Application for authority to acquire and operate satellite and cable facilities
for the provision of direct services between the United States and Cuba

MCI TELECOMMUNICATIONS CORP.

File No. I-T-C-94-228

LD DS COMMUNICATIONS, INC.

File No. **I-T-C-94-229**

SPRINT COMMUNICATIONS COMPANY L.P.

File No. I-T-C-94-247

IDB WORLD COM SERVICES, INC.

File No. I-T-C-94-260

Applications for authority to acquire and operate satellite facilities for the
provision of direct services between the United States and Cuba
DA 94-1098

Adopted: October 4, 1994

Released: October 5, 1994

By the Chief, International Facilities Division:

1. The Commission has under consideration the above-captioned applications filed by WITTEL International, Inc. ("WITTEL"), MCI Telecommunications Corporation ("MCI"), LD DS Communications, Inc. ("LD DS"), Sprint Communications Company L.P. ("Sprint"), and IDB WorldCom Services, Inc. ("IDB") requesting authority pursuant to Section 214 of the Communications Act of 1934, as amended, to establish channels of communication between the United States and Cuba for the provision of direct services. The applications were placed on the Commission's public notice. AT & T filed petitions to deny against all of the applications. For the reasons stated below, we grant the applications.

BACKGROUND

2. WITTEL requests authority to acquire by lease from Comsat and operate 120 64-kbps digital satellite voice-grade circuits, and up to two satellite video transmission circuits on an occasional use basis, provided via the INTELSAT Atlantic Ocean Region (AOR) satellite at 335 <<degrees>> E.L., for the provision of international message telephone service ("IMTS") and other switched services [FN1] and for international private line service between the United States and Cuba. In an amendment to its application, WITTEL also requests the flexibility to use either the INTELSAT and/or an Intersputnik satellite. WITTEL states the proposed satellite facilities will be located between an appropriately authorized U.S. international fixed-satellite earth station and the appropriate satellite. [FN2]

3. MCI requests authority to acquire by lease from Comsat and operate 150 64-kbps satellite circuits

[FN3] between the Mount Jackson, Virginia earth station and an appropriate INTELSAT-AOR satellite, together with the necessary connecting facilities between the Mt. Jackson earth station and MCI's operating centers at Pottstown, Pennsylvania and San Antonio, Texas, for the provision of all of MCI's authorized services, including IMTS, between the United States and Cuba.

4. LDDS requests authority to acquire by lease from Comsat and operate 150 64-kbps satellite circuits between an appropriately authorized east coast earth station and an appropriate INTELSAT-AOR satellite for the provision of IMTS and private line services between the United States and Cuba. In an amendment to its application, LDDS also requests authority to use interchangeably the 150 circuits with the Intersputnik, or Columbia Communication Corporation ("Columbia") satellites in addition to the INTELSAT satellites.

5. Sprint requests authority to acquire by lease from Comsat and operate 120 voice-grade satellite circuits [FN4] between the Orion international Standard A earth station located at Shenandoah, Virginia and the INTELSAT-AOR satellite at 335 <<degrees>> E.L., connecting with its operating center in New York, New York, by using its own facilities. Sprint proposes to use these facilities to furnish all of Sprint's authorized services, including IMTS, between the United States and Cuba.

6. IDB requests authority to acquire by lease from Comsat and operate 120 voice-grade satellite circuits [FN5] between an appropriately authorized international earth station in the United States and either an INTELSAT-AOR satellite or the Intersputnik satellite located at 14 <<degrees>> W.L. ("Stationar 4"), together with the necessary connecting facilities between the earth station and an operating center in New York, New York, for the provision of IMTS between the United States and Cuba.

7. All of the applicants state that they have reached an agreement with EMTELCUBA of Cuba, to provide the matching facilities from the satellites' mid-point to an earth station in Cuba. Initially, under the terms of the agreements, EMTELCUBA agreed with each applicant to a 50/50 split of a \$1.20 per minute accounting rate for switched traffic, and a \$4.85 surcharge per call for collect calls to be paid to the originating carrier. All of the applicants state that this rate is consistent with the U.S. Department of State's policy guidelines ("Policy Guidelines"). [FN6] They also state that they will initiate service within one year.

8. The applicants state that the public interest would be served by a grant of their applications because it will result in the rapid introduction of new lines of telecommunications between the United States and Cuba. They state that an immediate and large demand exists for direct telecommunications services between the United States and Cuba, and their proposed services will help meet that demand within the regulatory framework established by the Cuban Democracy Act of 1992 (22 U.S.C. § 6002 et seq.).

9. AT & T filed a petition to deny against each of these applications stating that because of the \$4.85 surcharge per call for collect calls, the applicants' accounting rate agreements with EMTELCUBA conflict with the International Settlements Policy ("ISP") and with the directive of the Commission that U.S. carriers negotiate to achieve cost-based accounting rates with foreign administrations.

[FN7] All of the applicants individually filed oppositions to AT & T's petition. They unanimously agreed that an ISP waiver under § 64.1001 of the Commission's Rules is not required because AT & T's operating agreement with the Cuban administration expired nearly four years ago. Therefore, the applicants argue that because AT & T's operating agreement is no longer in force, their proposed arrangements do not depart from any current arrangements, and no ISP waiver is required. In addition, WITel, MCI, and LDDS argue that the Policy Guidelines do not prohibit collect surcharges, and that the \$4.85 surcharge per call is appropriate and not excessive for collect calls.

DISCUSSION

10. In a letter dated July 22, 1993, the U.S. Department of State informed us of the Executive Branch's general policy guidelines for implementation of the telecommunications provisions of the Cuban Democracy Act, which provides that "telecommunication services between the United States and Cuba shall be permitted." [FN8] Among the policy guidelines are the following requirements: 1) the proposals must have the potential to be operational within a year; 2) settlements must not be more favorable to Cuba than the current 50/50 split of the \$1.20 per minute accounting rate; 3) proposals must be limited to equipment and services necessary to deliver a signal to Cuba; 4) proposals must utilize modes of communications already in place between the United States and Cuba; and 5) carriers shall report the number of circuits activated by facility on June 30 and December 31 of each year and on the one-year anniversary of the notification by the Commission in

the Federal Register.

11. In accordance with the Policy Guidelines, we forwarded copies of the above-captioned applications to the Department of State and requested that it advise us as to its views. Pursuant to our request, the Department of State issued a follow-up letter dated May 23, 1994. [FN9] The Department of State found the IMTS portions of the applications to be fully consistent with the Policy Guidelines except for the \$4.85 surcharge per call for collect calls. The Department found that the proposed surcharge was unreasonable and unjustified. It observed that the proposed surcharge far exceeded the approximately \$.60 average rate for all countries in the region and the prevalent \$1.00 rate for those countries having a surcharge. Therefore, the Department of State had no objection to our approval of the IMTS applications without the \$4.85 surcharge provision. The Department of State, however, did state that it would favorably consider a surcharge provision that is determined by us to be based on costs, other international norms and practices, relevant ITU Recommendations, and our ISP.

12. In light of the Department of State's letter, and our own review of the applications, we concluded that we would not process the applications as filed because of the agreements with EMTELCUBA for the \$4.85 surcharge. Rather than dismiss the applications, we gave the applicants the opportunity to amend their applications to reflect a new agreement renegotiated with EMTELCUBA that provides for either no surcharge for collect calls, or a surcharge that was reasonable and justified. [FN10]

13. On September 6, 1994, LDDS amended its application to include a new operating agreement with EMTELCUBA that reflected a reduction in the proposed surcharge of \$4.85 per call for collect calls to \$1.00 per call. A week later, the other four applicants similarly amended their applications to reflect a \$1.00 per call surcharge. We sent copies of these amendments to the Department of State, and requested their advice as to whether these new surcharges were in compliance with the Policy Guidelines. [FN11] On October 3, 1994, we received a letter from the Department of State expressing its views that the new \$1.00 per call surcharge was in compliance with the Policy Guidelines. [FN12] The Department of State stated that the new proposed surcharge of \$1.00 per call appears consistent with international norms and practices, relevant ITU Recommendations, and current surcharge rates in the region. The Department of State notes, however, that it hopes that this and other surcharge rates will generally be reduced or eliminated in the future.

14. Upon our own review of the applications, we agree with the Department of State that the five applicants' amended operating agreements with EMTELCUBA are in compliance with the Policy Guidelines. The \$1.00 per call surcharge for collect calls is within the range of surcharges that other countries in the Caribbean region have for these types of calls, and reflects the cost to the originating country of providing the service. Accordingly, we find that this new surcharge is reasonable and justified. It is our desire, however, as it is the Department of State's, that this surcharge eventually be reduced or eliminated in the future.

15. In addition, we find AT & T's arguments that the \$4.85 per call surcharge is in violation of the ISP to be inapposite. AT & T's arguments were based on the original \$4.85 per call surcharge, not the amended \$1.00 per call surcharge. Further, we note that AT & T's petition stated that a \$1.00 surcharge would be consistent with industry practice. Finally, we have not received any additional pleadings from AT & T arguing that the amended operating agreements are in violation of our ISP.

16. We find that a grant of the above-captioned five applications will serve the public interest subject to the conditions set forth below. These applications are consistent with the Executive Branch's Policy Guidelines. The applicants state that they will initiate service within one year, and expect to initiate service shortly after all requisite regulatory approvals have been obtained. To the extent the applicants propose to use the INTELSAT, Intersputnik, and Columbia satellite facilities and appropriately authorized existing earth station facilities, we find these proposals satisfy the requirement that facilities already be in existence and be limited to equipment and services necessary to deliver a signal to Cuba.

17. Accordingly, IT IS ORDERED that application File No. I-T-C-94-227 IS GRANTED and WITel is authorized to:

- a. lease from Comsat and operate up to 120 64-kbps satellite circuits, and up to two satellite video transmission circuits on an occasional use basis, between an appropriately authorized U.S. international fixed-satellite earth station and the INTELSAT-AOR satellite at 335 <<degrees>> E.L., together with the necessary domestic connecting facilities between the earth station and WITel's operating center, connecting with similar circuits between the satellite and an earth station in Cuba, furnished by EMTELCUBA; or
- b. in lieu of the INTELSAT circuits, establish up to 120 64-kbps satellite circuits between an

appropriately authorized U.S. international fixed-satellite earth station and an appropriate Intersputnik satellite, together with the necessary domestic connecting facilities between the earth station and WITTEL's operating center, connecting with similar circuits between the satellite and an earth station in Cuba, furnished by EMTELCUBA; and

c. use the facilities in either (a) or (b) above to provide IMTS and other switched services (including facsimile, data and video transmission services), and international private line services, between the United States and Cuba.

18. IT IS FURTHER ORDERED that application File No. I-T-C-94-228 IS GRANTED and MCI is authorized to:

a. lease from Comsat and operate 150 64-kbps satellite circuits between the Mount Jackson, Virginia earth station and an appropriate INTELSAT-AOR satellite, together with the necessary connecting facilities between the Mt. Jackson earth station and MCI's operating centers at Pottstown, Pennsylvania and San Antonio, Texas, connecting with similar circuits between the satellite and an earth station in Cuba, furnished by EMTELCUBA; and

b. use the above facilities to provide all of MCI's authorized services, including IMTS, between the United States and Cuba.

19. IT IS FURTHER ORDERED that application File No. **I-T-C-94-229** IS GRANTED and LDDS is authorized to:

a. lease from Comsat and operate 150 64-kbps satellite circuits between an appropriately authorized U.S. international fixed-satellite earth station and an appropriate INTELSAT-AOR satellite, together with the necessary domestic connecting facilities between the earth station and LDDS's operating center, connecting with similar circuits between the satellite and an earth station in Cuba, furnished by EMTELCUBA; or

b. in lieu of the INTELSAT circuits, establish up to 150 64-kbps satellite circuits, between an appropriately authorized U.S. international fixed-satellite earth station and an appropriate Intersputnik or Columbia satellite, together with the necessary domestic connecting facilities between the earth station and LDDS's operating center, connecting with similar circuits between the satellite and an earth station in Cuba, furnished by EMTELCUBA; and

c. use the facilities in either (a) or (b) above to provide IMTS and private line services between the United States and Cuba.

20. IT IS FURTHER ORDERED that application File No. I-T-C-94-247 IS GRANTED and Sprint is authorized to:

a. lease from Comsat and operate one E-1 circuit (30 64-kbps circuits), which can derive 120 virtual voice-grade circuits, between the Orion International Standard A earth station located at Shenandoah, Virginia and the INTELSAT-AOR satellite at 335 <<degrees>> E.L., together with the necessary connecting facilities between its operating center in New York, New York, and the Orion earth station, connecting with similar circuits between the satellite and an earth station in Cuba, furnished by EMTELCUBA; and

b. use the above facilities to provide all of Sprint's authorized services, including IMTS, between the United States and Cuba.

21. IT IS FURTHER ORDERED that application File No. I-T-C-94-260 IS GRANTED and IDB is authorized to:

a. lease from Comsat and operate one 2 Mbps channel (an E-1 circuit or 30 64-kbps circuits), which can derive 120 virtual voice-grade circuits, between an appropriately authorized U.S. international fixed-satellite earth station and an appropriate INTELSAT-AOR satellite, together with the necessary connecting facilities between the earth station and an operating center in New York, New York, connecting with similar circuits between the satellite and an earth station in Cuba, furnished by EMTELCUBA; or

b. in lieu of the INTELSAT circuits, establish up to one 2 Mbps channel (an E-1 circuit or 30 64-kbps circuits), which can derive 120 virtual voice-grade circuits, between an appropriately authorized U.S. international fixed-satellite earth station and the Intersputnik satellite located at 14 << degrees>> >> W.L. ("Stationar 4"), together with the necessary connecting facilities between the earth station and an operating center in New York, New York, connecting with similar circuits between the satellite and an earth station in Cuba, furnished by EMTELCUBA; and

c. use the facilities in either (a) or (b) above to provide IMTS services between the United States and Cuba.

22. IT IS FURTHER ORDERED that the services authorized herein must be implemented within one year from the date of release of this order.

23. IT IS FURTHER ORDERED that WiTel, MCI, LDDS, Sprint and IDB shall split 50/50 with EMTELCUBA the \$1.20 per minute accounting rate for the IMTS services.
24. IT IS FURTHER ORDERED that the surcharge agreed to between the applicants and EMTELCUBA for received collect calls shall be no greater than \$1.00 per call.
25. IT IS FURTHER ORDERED that the applicants shall submit reports on or before June 30, and December 31 of each year, and on the one-year anniversary of the notification of the grant of these applications in the Federal Register indicating the numbers of circuits activated by facility.
26. IT IS FURTHER ORDERED that this authorization is subject to the applicants' obtaining all necessary licenses and authorizations from the Departments of Treasury and Commerce.
27. IT IS FURTHER ORDERED that this order is subject to revocation without a hearing in the event the Department of State or the Federal Communications Commission determines that the continuation of communications between the United States and Cuba is no longer in the national interest.
28. IT IS FURTHER ORDERED that our authorization for the applicants to provide private lines is limited to the provision of such private lines only between the United States and Cuba--that is, private lines which originate in the United States and terminate in Cuba or which originate in Cuba and terminate in the United States. In addition, the applicants may not--and applicants' tariffs must state that their customers may not--connect private lines provided over these facilities to the public switched network at either the U.S. or foreign end, or both, for the provision of international basic telecommunications services, including switched voice services, unless authorized to do so by the Commission upon a finding that its correspondents afford 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), Order on Reconsideration and Third Further NPRM, Z FCCRcd 7927 (1992), petition for reconsideration pending.
29. IT IS FURTHER ORDERED that, 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, the applicants shall file and have in effect a tariff for the services authorized in this order before offering services to the public.
30. IT IS FURTHER ORDERED that the applicants shall file copies of any operating agreements entered into by themselves or their parent/affiliates with their correspondents within 30 days of their execution, and shall otherwise comply with the filing requirements contained in Section 43.51 of the Commission's Rules, 47 C.F.R. § 43.51.
31. IT IS FURTHER ORDERED that the applicants shall file annual reports of overseas telecommunications traffic required by Section 43.61 of the Commission's Rules, 47 C.F.R. § 43.61.
32. IT IS FURTHER ORDERED that the applicants shall file a Section 214 application for any additional circuits they propose to establish between the United States and Cuba.
33. Acceptance of this authorization shall be deemed acceptance of the conditions set forth herein.
34. IT IS FURTHER ORDERED that the Petitions to Deny against each applicant filed by AT & T ARE DENIED.
35. This authorization is issued pursuant to 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

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

FN1. These services include facsimile, data and video transmission services.

FN2. WiTel also requests authority to provide service to Cuba via the fiber optic undersea cable, CUBUS-1, that has been proposed in the application for a cable landing license of WiTel Undersea Cable, Inc., FCC File No. SCL-94- 002. Because this cable landing license has yet to be granted, we will defer acting on WiTel's request to use these facilities until such time that we are assured the cable facilities will be available for WiTel's use.

FN3. MCI states these circuits are bearer circuits with a compression ratio ability of 5:1, thereby

allowing MCI to potentially derive as many as 750 circuits.

FN4. Sprint initially requested 30 digital satellite circuits, but clarified its request in a letter to the Commission on October 3, 1994, stating that the circuits are equivalent to one E-1 circuit which, in turn, can derive 120 virtual voice-grade circuits.

FN5. IDB states these are the number of circuits derived from one 2 Mbps channel (an E-1 circuit) operating at a compression ratio of 4:1.

FN6. See *infra* ¶ 10.

FN7. See Regulation of International Accounting Rates, 6 FCCRcd 3552 (1991) (expansion of traditional focus of the ISP of preventing whipsawing to include the adverse effect of above-cost levels of accounting rates on U.S. carriers and consumers).

FN8. Letter dated July 22, 1993, from Richard C. Beaird, Acting U.S. Coordinator and Director, Bureau of International Communications and Information Policy, U.S. Department of State to FCC Chairman James H. Quello.

FN9. Letter dated May 23, 1994, from Richard C. Beaird, Senior Deputy U.S. Coordinator, Bureau of International Communications and Information Policy, U.S. Department of State to FCC Chairman Reed Hundt.

FN10. See Letter dated July 29, 1994 from Wendell Harris, Assistant Bureau Chief/International, Common Carrier Bureau, to all five applicants.

FN11. See Letters dated September 9 and 16, 1994 from Wendell Harris, Assistant Bureau Chief/International, Common Carrier Bureau, to Richard C. Beaird, Senior Deputy U.S. Coordinator, Bureau of International Communications and Information Policy, U.S. Department of State.

FN12. Letter dated October 3, 1994, from Richard C. Beaird, Senior Deputy U.S. Coordinator, Bureau of International Communications and Information Policy, U.S. Department of State to FCC Chairman Reed Hundt.

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